

City Council Special Meeting Agenda

Date: 10-29-2015

Time: 4:15 p.m.

Location: City Hall Council Chambers

- Mayor Nancy Tia Brown
 - Donny Anderson
 - Karen Ballinger
 - Jerry Fritz
 - Landon Greer
 - Steve Miller
 - Stan Wolz
 - City Administrator, Barry Cook
 - Administrative Services Officer, Cindy Baker
 - City Attorney, Scott Kolpitcke
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- 4:15 – 4:35 – Presentation/Informational Item -Electric Rates
 - Spokesperson: John Osgood
 - Staff Reference: Bert Pond, Electrical Engineer
 - 4:35 – 4:45 – Shoshone Recreation District – Swim Beach Project/Agreement
 - Staff Reference: Rick Manchester, Parks, Public Facilities & Recreation Director
 - 4:45-5:15 - Utility Deposit Ordinance
 - Spokesperson: Leslie Brumage, Finance Officer
 - 5:15-5:30 - Liquor License Ordinance
 - Spokesperson: Scott Kolpitcke
 - 5:30-5:45 - Review November 3, 2015 Agenda
- Executive Session - Pursuant to Wyoming State Statue 16-4-405(a)(x)(personnel matters)
 - Meeting Reminders:
 - Tuesday, November 3, 2015–Regular Council Meeting 7:00 p.m. City Council Chambers
 - Thursday, November 12, 2015 – Council Work Session 4:15 p.m. City Council Chambers
 - Tuesday, November 17, 2015 - Regular Council Meeting 7:00 p.m. City Council Chambers

Time Adjourned: _____

LEASE AGREEMENT FOR USE OF CITY PROPERTY

THE PARTIES to this agreement are the City of Cody, Wyoming, a municipal corporation in Wyoming (CITY); and the Shoshone Recreation District, a recreation district formed pursuant to Wyoming law (REC DISTRICT). This agreement is dated as of the date last executed by the parties below.

RECITALS

- a. CITY is the owner of certain real property known Beck Lake Park, in Cody, Park County, Wyoming, which property is described in part as follows:

That land described in the patent recorded at Book 0333, page 0577, on February 20, 1969. The property to be leased is a portion of the above property, located on the northeast short of New Cody Reservoir, and as shown on the attached Exhibit "A". The exact location, dimensions, shape and size of the swim beach will be coordinated between the CITY and REC DISTRICT, and CITY shall have final approval of the exact location, dimensions, shape and size of the beach, and amenities. The location shall be known as the LEASED PREMISES.

- b. REC DISTRICT wishes to design, build, develop, operate and maintain, at its sole expense, a swim beach on a portion of the above described property. The location of the beach will be along the north shore of

New Cody Reservoir as shown on the preliminary site plan which is attached and incorporated as Exhibit "A". The exact location of the swim beach will be coordinated between the CITY and REC DISTRICT, and CITY shall have final approval of the exact location of the beach and amenities.

c. CITY believes it is in the best interests of the people in the Cody community to make such a swim beach available for their use and general enjoyment, and CITY is willing to lease the property described above to the REC DISTRICT for such purposes, subject to the terms and conditions described in this agreement.

d. The parties to this agreement understand that the CITY would not be able to provide this service to the citizens but for the REC DISTRICT'S willingness and ability to pay for 100% of the costs associated with such a project.

NOW, THEREFORE, in consideration of the mutual covenants and promises described herein, the parties agree as follows:

1. REC DISTRICT shall lease from the CITY the LEASED PREMISES for the purpose of designing, developing, building, operating and maintaining a swim beach and associated amenities as described in this agreement.

2. The term of this lease shall be for ten years. The parties understand, acknowledge and agree that this term provides a defined benefit to both parties that they would not receive from a shorter lease term in that the CITY would not be able to provide this service to the community without the REC DISTRICT'S financial commitment, and the REC DISTRICT would be unwilling to provide that financial commitment for a shorter term. After the initial term of this lease, and any subsequent terms, the lease shall automatically renew for a new two year term, without any action required by

either party, unless either party give written notice to the other party, at least 90 days prior to the end of the then current term, of its intent to not renew the lease.

3. As consideration for REC DISTRICT'S use of the LEASED PREMISES, REC DISTRICT shall pay for any and all costs associated with the engineering, design, development, building, construction, maintenance and operation of the swim beach and associated amenities, and for such other costs and expenses as described in this agreement. In addition, REC DISTRICT shall allow use of the swim beach by the general public, without charge, subject to reasonable regulations, rules and restrictions to be developed in coordination with CITY, including but not limited to regulation of hours and seasonal closures.

4. REC DISTRICT understands that water level and elevation in New Cody Reservoir will be subject to fluctuation which is beyond the control of the CITY, and that CITY makes no assurances, guarantees or promises regarding any certain water level or elevation.

5. REC DISTRICT shall provide the amenities and services for the swim beach at its expense:

- a. Sandy beach area;
- b. Picnic tables;
- c. Vault toilet;
- d. Area ground treatment;
- e. Cabanas and / or picnic shelters;
- f. Regular testing of water quality;
- g. Maintenance and cleaning of the parking lot, vault toilet, picnic areas, and the beach area in general.
- h. Rope marker /bouys/ floats for boundary of swim area;
- i. Any and all other expenses associated with the maintenance

and operation of the swim beach.

REC DISTRICT shall hire an engineering firm, to be approved by CITY, to analyze, assess and report the potential impacts of the beach on the dam for New Cody Reservoir, and to make recommendations for mitigation work to protect against any adverse impacts. That assessment shall include, but not be limited to a geotechnical analysis. REC DISTRICT will be responsible for all costs, expenses and fees associated with the assessment, analysis, report and recommendations prepared by the engineering firm, and shall also pay for the mitigation work recommended by the firm.

The REC DISTRICT may add other features and amenities to the swim beach area, such as a boat ramp, floating docks, sidewalks and barbeque pits. Any and all features, amenities and services for the swim beach area, regardless of when they are added, shall be first approved by CITY, and shall be furnished, built, maintained and replaced at the sole expense of REC DISTRICT. CITY shall have no financial or other obligation whatsoever to operate, repair, maintain, or replace any swim beach amenities or features, except as otherwise provided in this agreement.

6. REC DISTRICT shall consult and cooperate with CITY staff regarding the exact location, design and construction of the various amenities to be installed for the swim beach in order to provide for public safety, prevent damage to CITY property, and to minimize disruption to other users of Beck Lake Park.

7. CITY shall perform testing of water quality in Beck Lake at such intervals and times as CITY determines to be in the best interests of the CITY. REC DISTRICT shall reimburse CITY for CITY'S costs and expenses associated with such water quality testing.

8. CITY shall perform regular maintenance for the swim beach area (including but not limited to maintenance and cleaning of the vault toilet,

picnic areas, beach area and parking lot). REC DISTRICT shall reimburse CITY for any and all such expenses.

9. Prior to April 30 each year, CITY shall provide to REC DISTRICT an estimated cost for the upcoming fiscal year for water quality testing, maintenance and cleaning of the beach area (including but not limited to the vault toilet, picnic areas and parking lot); sand replacement, and other anticipated costs for the swim beach area.

10. REC DISTRICT shall be responsible for restoring, repairing and/ or reimbursing CITY for any and all damage to CITY property caused by REC DISTRICT, or REC DISTRICT'S agents, representatives, employees, volunteers, guests, invitees, customers, and others acting on REC DISTRICT'S behalf.

11. This agreement may be terminated by the the parties upon any of the following conditions:

a. UPON DEFAULT: If the REC DISTRICT defaults in any of its obligations as described in this agreement, including but not limited to its obligation to fully fund the operation and maintenance of the swim beach and all associated amenities as described in this agreement, CITY may give REC DISTRICT written notice of such default, and REC DISTRICT shall have ten days to cure such default. If REC DISTRICT fails to cure such default, CITY may terminate this agreement.

b. FOR CONVENIENCE: Either party may terminate this agreement for convenience, upon written notice given to the other party at least one hundred eighty (180) days in advance of the termination. CITY may not exercise its right to terminate for convenience within the first five years of this agreement.

c. FOR FINANCIAL REASONS: Either party may, at any time, terminate this agreement upon written notice to the other party if either

party, in that party's sole discretion, is unable to fulfill its obligations under this agreement due to funding limitations and budget constraints.

d. Upon termination of this agreement, CITY shall have no obligation whatsoever to operate or maintain the swim beach, or any of the features or amenities associated with the swim beach. Any and all such amenities and features shall become property of the CITY, and CITY may, at its sole option, elect to remove such amenities and restore the premises to its original condition, or may keep some or all of such amenities, as CITY determines is in its best interests. In the event CITY determines to remove any or all of such amenities, and to restore all or a portion of the LEASED PREMISES to its original condition, REC DISTRICT shall reimburse CITY for any and all expenses and costs CITY incurs for restoration of the beach to its original condition, including removal of the sand, restoration of dirt consistent with the surrounding area, excavation to restore the original slope, and removal of rope markers, buoys, floats and floating docks. REC DISTRICT shall not be responsible for removing amenities such as the cabanas, picnic shelters, picnic tables, barbeque pits, and vault toilets.

12. Either CITY or REC DISTRICT may, in its discretion, close the beach at any time if either party feels that it is in the best interests of public safety to do so. If either party determines it is necessary to close the beach, that party shall immediately notify the other party, and the parties shall work cooperatively to determine when to re-open the beach.

13. Each party assumes all liability for itself, its agents, its representatives, employees, guests, invitees, customers, and for the general public's presence and activities upon the above described property pursuant to this agreement. REC DISTRICT shall maintain liability through the Local Government Liability Pool, or such other provider as it determines, subject to approval by CITY, and CITY shall not unreasonably withhold such approval.

14. By entering into this agreement, the CITY and REC DISTRICT do not waive their sovereign immunity or governmental immunity, and do not waive the immunities, defenses and limitations provided under the Wyoming Constitution and Wyoming law, and both parties expressly reserve the right to assert immunity as a defense to any claim or case arising under this agreement.

15. This agreement shall not be assigned by REC DISTRICT without the prior, written approval of the Governing Body of the CITY.

16. This agreement contains the entire understanding of the parties and there are no other promises, covenants, assurances or understandings beyond the scope of this written agreement.

**LESSEE:
SHOSHONE RECREATION DISTRICT:**

DATE: _____

**LESSOR:
CITY OF CODY, WYOMING**

NANCY TIA BROWN, MAYOR

DATE: _____

ATTEST:

CYNTHIA D. BAKER
ADMINISTRATIVE SERVICES OFFICER

DATE: _____

Utility Deposit Overview

History of Utility Deposit Requirements

Year	Residential Deposit	Commercial Deposit	Credit History or Letter of Credit	Deposit Holding Period
2001	\$100	\$200	12 consecutive months with no more than 2 late payments, no insufficient funds checks, no non-pay disconnects and final bill paid on time	12 consecutive months of on-time payments
2012	\$200 \$300 if customer had 3 shut off notices in a 12 month period \$400 if prior collection account exists	\$500 \$1,000 if customer had 3 shut off notices in a 12 month period	12 consecutive months with no late payments, no insufficient funds checks, no non-pay disconnects and final bill paid on time Co-signer must have current City account meeting the above requirements to avoid the deposit. Co-signer option not available to customers with a prior collection account.	12 consecutive months of on-time payments
2015	\$0 \$200 \$400	\$500	Not accepted – deposit decision based on risk assessment	24 consecutive months of on-time payments

Why Utilize Risk Assessments?

- Increasing amount being sent to collections
- Increasing bad debt write offs
- Low recovery rate

Online Utility Exchange Key Services

ID Verification Service

- Verification of applicant's identity in compliance with the Federal Trade Commission's red flag rules.

Risk Assessment Service

- Utilizes a risk assessment scoring model to determine the likelihood that a payment default will occur and returns a deposit decision based on the City's predetermined deposit schedule.
- ONLINE has millions of unpaid utility bill records in their Exchange database that are not reported anywhere else, in addition to all that are reported to Experian.
- Deposit decisions are based on a set criteria that is applied equally to everyone undergoing the assessment.

Risk Assessment Score vs FICO Score

Risk Assessment Score	FICO Score
Calculated by Online Utility Exchange using factors in a customer's overall credit history and reported exchange data, prioritizing unpaid utility bills in the model.	Calculated by the individual credit bureaus and is based solely on the data within that repository's individual credit file. A FICO credit score is calculated by a system of scorecards with the main factors being: Payment History Debt/Amounts Owed Age of credit history New credit/inquiries Mix of accounts/types of credit
Score is expressed as a risk percentage (0-100%)	Score is expressed as a numerical value (300-850)
Utilizes a soft inquiry - Soft inquiries do not have an impact on the consumer's credit score.	Utilizes a hard inquiry - Hard inquiries will have an impact on the consumer's credit score.

Common Factors that can Influence a Risk Assessment Score

- Unpaid utility accounts reported to the Exchange
- Utility accounts submitted to the Exchange for collection action
- Unpaid collection accounts
- Credit accounts with a delinquent or derogatory status
- Bankruptcy within the last 5 years
- Unsatisfied public records/judgements

Legal Requirements

The Dodd-Frank Wall Street Reform and Consumer Protection Act includes credit score disclosure rules.

- If a user of credit data takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, the user is required to provide the following information to the consumer:
 - The name, address, and telephone number of the credit reporting agency (CRA) that provided the data.
 - A statement that the CRA did not make the adverse decision.
 - A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer makes a request within 60 days.
 - A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.
 - The consumer's credit score as calculated by the CRA.

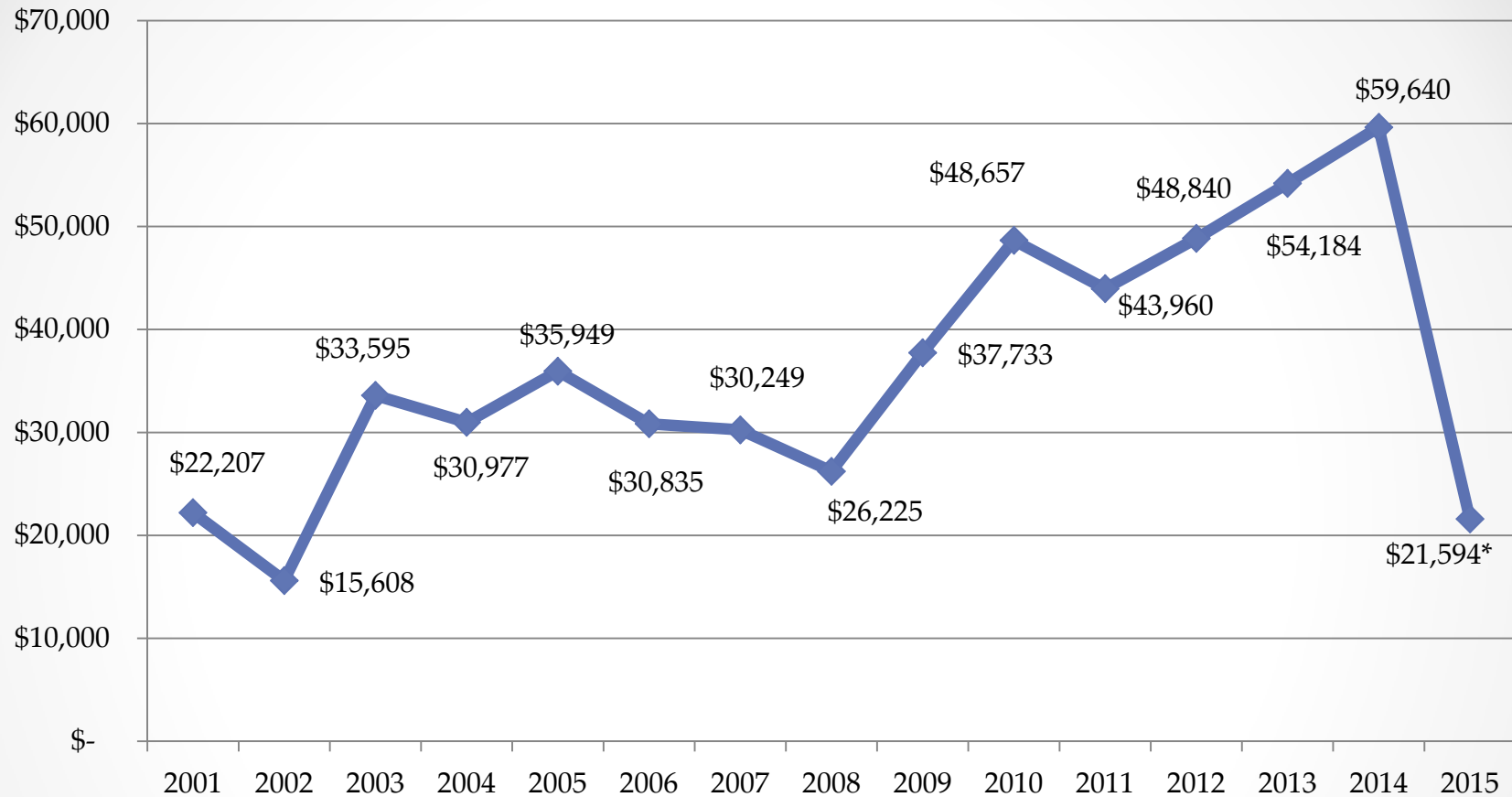
Risk Assessment Statistics

Risk Assessment Score	Deposit Decision	Average Score
10% or less	No deposit (Green)	2.6%
11% - 50%	\$200 deposit (Yellow)	22.6%
51% or higher	\$400 deposit (Red)	55.2%

Accounts Set up Since Inception*			Under 2012 Ordinance Criteria	
Account Type	Total Number of Accounts	Number of Deposits	Qualifying Credit History	Non-Qualifying Credit History
Commercial	47	45 (95%)	5	6
Residential	536	205 (38%)	16	70

*Inception through 9/30/15

Accounts Sent to Collections

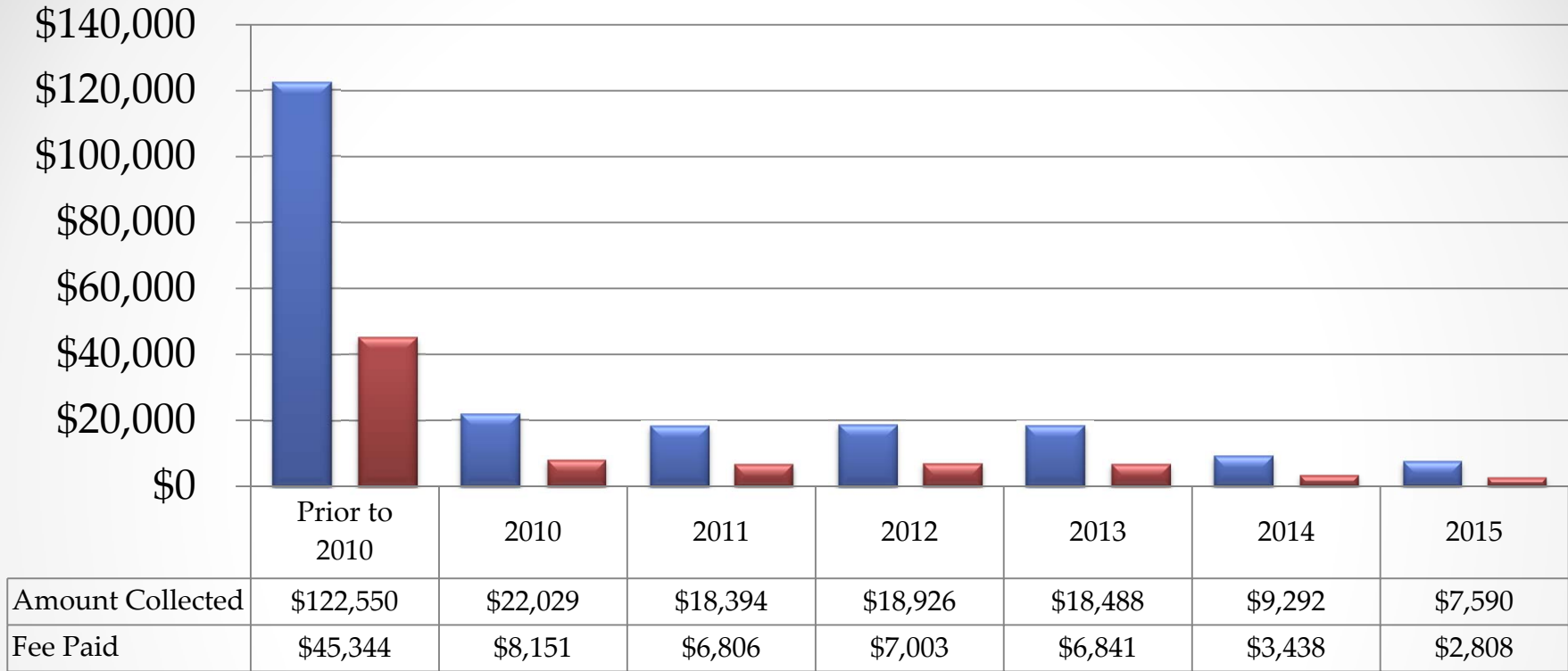


Number of Accounts	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
	130	91	144	143	130	130	145	147	174	219	171	199	181	236	78

Total Accounts Sent	2,318
Total Amount Sent	\$540,253

*so far this year

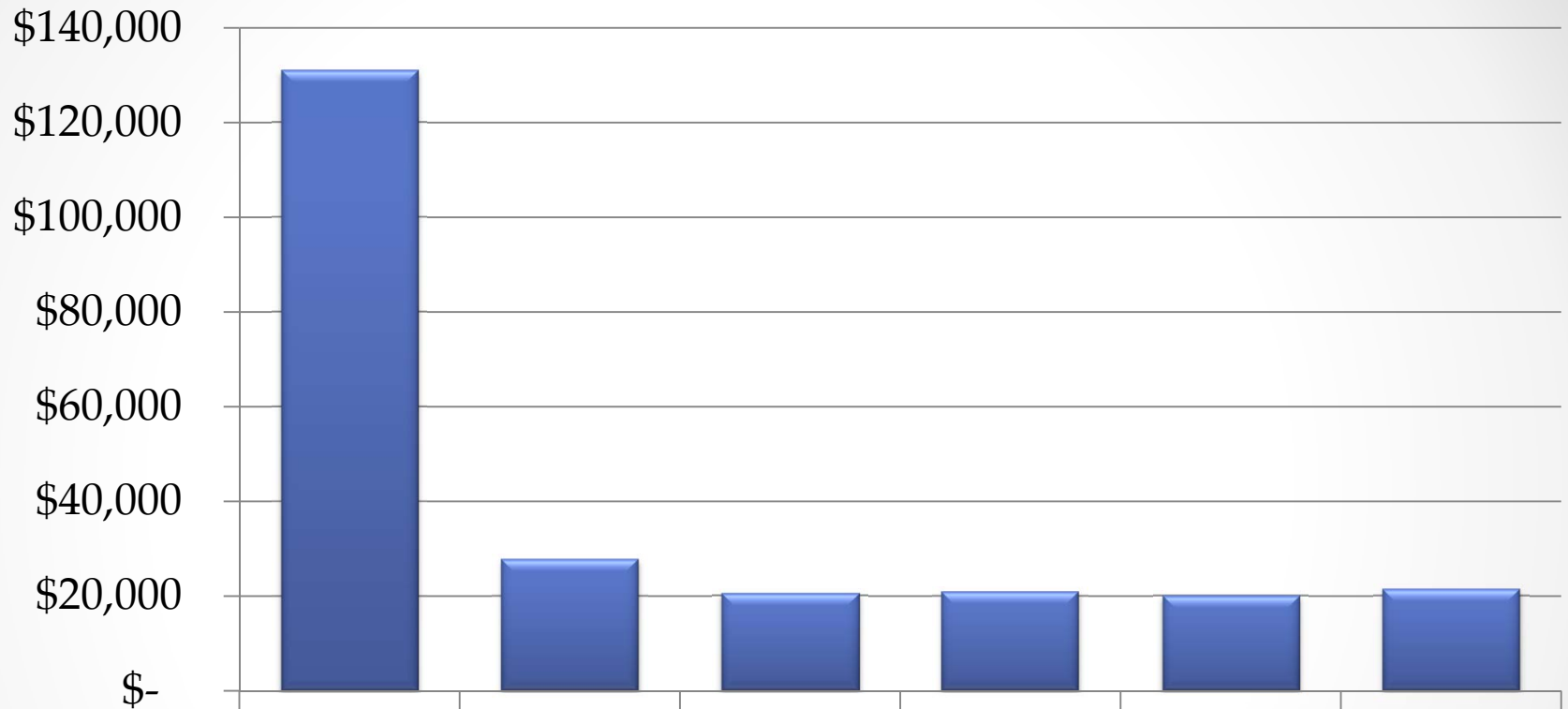
Collection Costs



■ Amount Collected ■ Fee Paid

Total Amount Collected	\$217,269
Total Fees Paid	\$80,391
Recovery Rate	25%

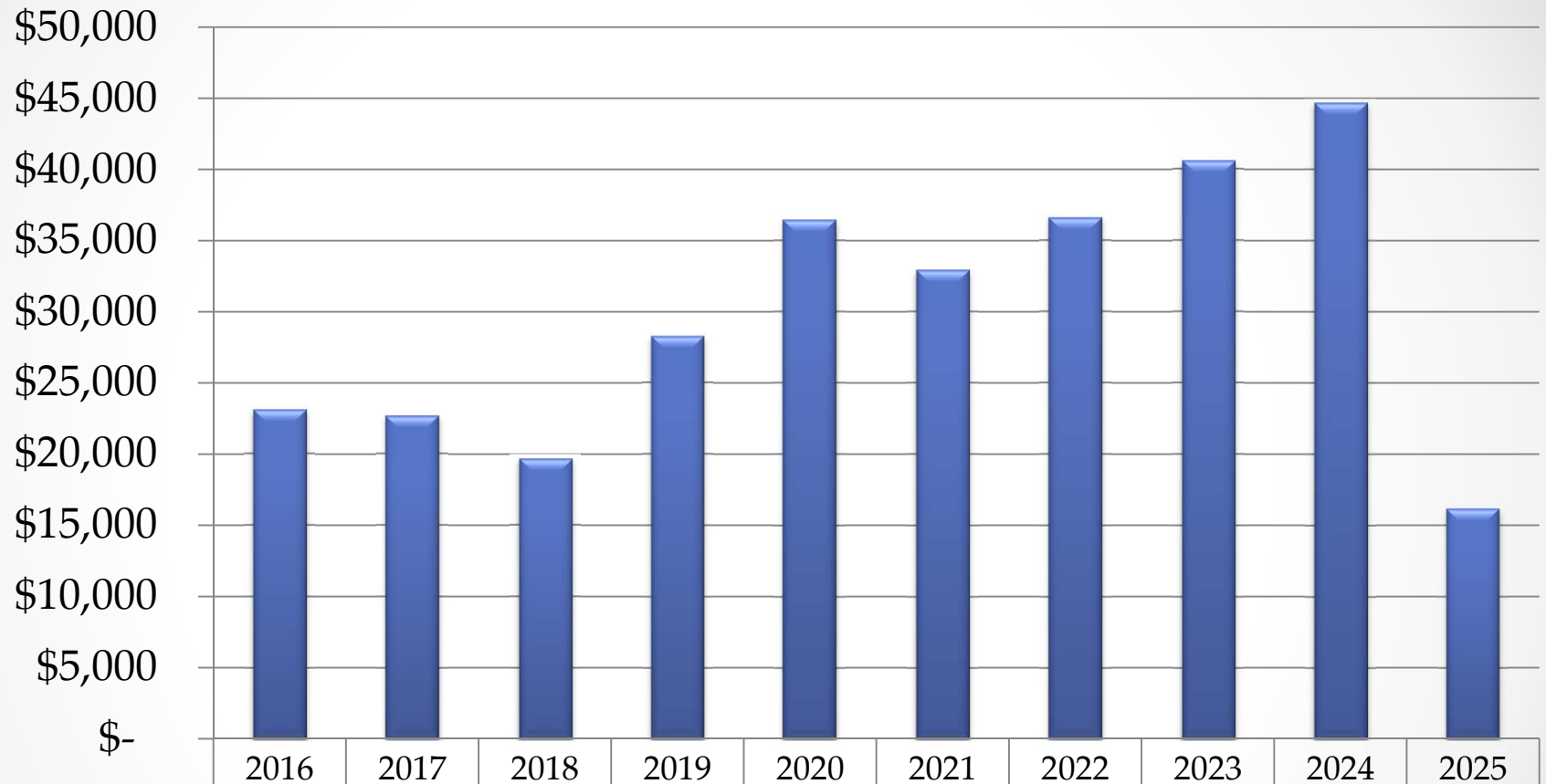
Bad Debt Write Off History



	Prior to 2011	2011	2012	2013	2014	2015
Write off amount	\$131,143	\$27,887	\$20,579	\$21,036	\$20,128	\$21,523

Total Amount Written Off \$242,296

Future Write Offs - 10 Year Projections



Write off amount	\$23,126	\$22,687	\$19,669	\$28,300	\$36,493	\$32,970	\$36,630	\$40,638	\$44,730	\$16,196
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Total Projected Future Write Offs \$301,439

What we know from experience

The dollar value of accounts sent to collections has increased 168% between 2001 and 2014

Since 2000 we have sent over half a million dollars in unpaid utilities to collections

Once an account is in the collections process the average recovery rate is about 25%

Bad debt losses and collection costs totaled \$322,687 through Sept 2015

AND

Future losses are projected to be an additional \$300,000 over the next 10 years

What we have learned so far from the risk assessment process

The new Ordinance has been in effect for 6 months – insufficient time to determine its effectiveness on reducing bad debt.

62% of customers undergoing the risk assessment have seen a benefit by paying no deposit

58% of all residential accounts established since the Ordinance change that paid a deposit did not have prior credit history with the City

75% of commercial accounts established since the Ordinance change that paid a deposit did not have prior credit history with the City

78% of customers with prior credit history that paid deposits under the new Ordinance would not have benefited from the 2012 credit history option because they did not meet the criteria

Concerns

- The risk assessment does not consider a customer's prior positive credit history with the City.
- The deposit holding period changed from 12 months to 24 months.

Potential Options

- Reinstate the City credit history option in lieu of a risk assessment and perform a risk assessment only on customers with no City credit history or those with City credit history that does not meet the established criteria to waive a deposit.
- Allow a risk assessment on a personal guarantor and/or utilize credit history on a commercial account in lieu of the set commercial deposit of \$500.
- Continue with the risk assessment process as implemented but adjust the risk assessment score ranges.
- Reinstate the 12-month deposit holding period.

Considerations

Reinstate City Credit History Option

- Revert to the 2012 criteria defining good credit history?
- Set a new criteria defining good credit history?
- Requires an Ordinance change

Personal Guarantor on Commercial Accounts

- Under what circumstances can a guarantor be relieved of responsibility?
- Requires an Ordinance change

Adjust the Risk Assessment Scoring Model

- What level of risk is acceptable?
- Requires an Ordinance change

Reinstate the 12-month deposit holding period

- Requires an Ordinance change

ORDINANCE NO. 2015 - 13

**AN ORDINANCE AMENDING TITLE 3, CHAPTER 2, Article II Section 15, Subsection C, OF THE CITY OF CODY CODE: SUSPENSION OR REVOCATION OF LICENSE: Points to be Assessed to Licensee
BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CODY, PARK**

COUNTY, WYOMING:

Title 3, Chapter 2, Article II, Section 15, Subsection C of the City of Cody Code, shall be amended as follows:

C. Type of Violation	Points
Furnishing alcohol to individuals under 21	20 (1 st violation) 30 (Any subsequent violation within 24 months of any prior violation)
Dispensing room Violations: age violation (W.S. 12-5-203); open beyond permitted hours (W.S. 12-5-101).	10 (1 st violation) 20 (Any subsequent violation within 24 months of any prior violation.)
Failure to pay or report sales Tax within five (5) days of notice to city of delinquency.	10 for the first violation; 20 for each subsequent Violation.
Failure to correct or cure violations or deficiencies within specified time after receiving notice from the City of Cody or State of Wyoming. If no time is specified in the notice, licenses must comply within ten business days of such notice, or submit a plan, acceptable to the City, for compliance if compliance is not reasonably feasible within ten days.	10
Failure to comply with a suspension order	60
Failure to comply with specifications, drawings, plans and conditions of approved permit.	10
Failing to immediately report to, and cooperate fully with law enforcement any physical fight, assault, aggravated assault, assault and battery, sexual assault, or other conduct which results in physical injury or death when any of the above occurs in or on the premises on which the licensee is operating.	60

Allowing, permitting, engaging in, promoting, or failing to stop other illegal activities on the licensed premises, including but not limited to gambling, prostitution, or public indecency (W.S. 12-5-204; W.S. 6-4-101; W.S. 6-4-201; W.S. 6-7-102; W.S. 6-4-302). 60

Other violations of City of Cody Ordinances, State law or other regulations Pertaining to the sale or distribution of alcohol or liquor.

10 (1st violation)

20 (Any subsequent violation within 24 months of any prior violation.)

This Ordinance shall become effective at the final passage and publication in the Cody Enterprise as required by law.

PASSED ON FIRST READING: __SEPTEMBER 15, 2015__

PASSED ON SECOND READING: __OCTOBER 6, 2015__

PASSED ON THIRD READING: _____, 2015

Nancy Tia Brown, Mayor

ATTEST:

Cynthia Baker, Administrative Services Director