



Missoula Consolidated Planning Board
Agenda

Date: August 20, 2019, 7:00 PM
Location: City Council Chambers
140 W. Pine Street, Missoula , MT
Members: Peter Bensen (Co. Alt.), Vince Caristo (City Alt), Neva Hassanein (Mayor appointee),
Dudley Improta (CC appointee), John Newman (Mayor appointee),
Helen Pent Jenkins (CC appointee), Michael Houlihan (BCC appointee),
Andy Mefford (BCC appointee), Stephanie Potts (BCC appointee),
Jason Rice (BCC appointee), Jamie Hoffman (PB appointee)

If anyone attending this meeting needs special assistance, please provide 48 hours advance notice by calling Development Services at 406-552-6630 or Missoula County Community & Planning Services at 406-258-4657.

Pages

1. Call to Order
2. Roll Call
3. Approval of Minutes 1
4. Public Comment
5. Staff Announcements
6. Public Hearings
 - 6.1 Continuation of Public Hearing: Ordinance to Amend Title 20 Related to Townhome Exemption Development (TED); Ben Brewer and Laval Means (Ci) 12
 - Recommended motion:
RECOMMENDED MOTION: Recommend that the Missoula City Council approve an ordinance to amend Title 20 City Zoning chapter 20.05; 20.10; 20.15; 20.40; 20.45; 20.80; 20.100; 20.110, related to Townhome Exemption Development (TED).
7. Communications and Special Presentations
8. Committee Reports
9. Other Business
10. New Business and Referrals
11. Comments from MCPB Members

12. Adjournment



Missoula Consolidated Planning Board Minutes

August 6, 2019, 7:00 PM
City Council Chambers
140 W. Pine Street, Missoula, MT

Voting members present: Jamie Hoffman (PB appointee), Neva Hassanein (Mayor appointee), Dudley Improta (CC appointee), Andy Mefford (BCC appointee), Stephanie Potts (BCC appointee), Peter Bensen (Co. Alt.), Vince Caristo (City Alt), Jason Rice (BCC appointee)

Regular member(s) absent: John Newman (Mayor appointee), Helen Pent Jenkins (CC appointee), Michael Houlihan (BCC appointee)

1. Call to Order

Mr. Rice called the meeting to order at 7:00 p.m.

2. Roll Call

Donna McCammon called the roll.

3. Approval of Minutes

The minutes were approved as submitted.

4. Public Comment

There were no public comments.

5. Staff Announcements

Staff memo from Christine Dascenzo was presented.

6. Communications and Special Presentations

6.1 Urban Renewal District Presentation, Missoula Redevelopment Agency, Ellen Buchanan

Ellen Buchanan, Missoula Redevelopment Agency (MRA), presented information on Urban Renewal Districts (URD): how they are formed, how they work, and some of things that they can and cannot do using tax increment monies. Ms. Buchanan provided the board members with copies of the six URD map districts and their boundaries. URD are authorized by state law. Missoula's first district, Urban Renewal District I was for the downtown area and was formed around 1980 and sunsetted in 2005. She gave a recap of that district's success. URD is a mechanism for community and economic development, it is also a way to eliminate blight, and correct infrastructure deficiencies.

She stated that many people think that the sole purpose of tax increment financing (TIF) is to expand the tax base; however, the real purpose is to create better communities and livability. Not every project directly creates additional property tax; Ms. Buchanan cited

parks, trails, and infrastructure projects. She displayed a chart illustrating how TIF works and the allowable uses of TIF funding. Ms. Buchanan had been asked to specifically talk about the process for creating an URD. The requests could be initiated by City Council, a citizen request or initiated by MRA request. Blight has a very specific definition in state law. Some of the allowable uses of TIF funding include planning and analysis, land acquisition, removal of structures - deconstruction (not demolition), remediation, infrastructure, and general redevelopment activities.

Ms. Buchanan gave details on the six Urban Renewal Districts:

1. 2006 Millsite lease buyout, 2006 Millsite Brownfields revolving loan fund, 2007 Safeway/St. Pats Project, 2013 Silver Park, RR Trestle, and Wyoming St.
2. 2015 S Reserve bike/pedestrian bridge, 2016 Mary Ave. East construction, 2017 Mary Ave. West reconstruction, 2018 series A and B MRL property.
3. Front Street URD. 2014 Park Place refunding, 2017a First Interstate Bank refunding (taxable), 2017b First Interstate Bank refunding (tax exempt), 2017 ROAM Student Housing and Public Parking, 2019 Missoula Mercantile Hotel.
4. Riverfront Triangle URD. Stockman Bank.
5. N Reserve/Scott Street URD.
6. Hellgate URD. Hellgate district - no bonds have been issued in the Hellgate URD. There have been no projects in the Hellgate URD that received TIF assistance.

Ms. Buchanan stated that the opportunities to support infill development include:

1. Planning and studies to identify areas appropriate for infill development.
2. Land acquisition for affordable housing, parks and mixed-use public/private partnerships.
3. Write down the cost of land for permanently affordable housing.
4. Infrastructure - new, upgrades, extensions.
5. Development and improvements to parks and trails.
6. Remediation of land to allow redevelopment.
7. Removal of blight.

Ms. Hassanein thanked Ms. Buchanan for her presentation and expertise. She asked about the benefit to homeowners along Mary Avenue; and, about the appearance of benefits to developers and large corporations.

Ms. Buchanan stated that homeowners along Mary Avenue now have a connector street, like Wyoming Avenue, which makes their properties more valuable. When infrastructure is improved, new development is accommodated, transients move on, transforming the entire neighborhood. Large corporations do not receive funding and Ms. Hassanein may be referring to franchise agreements, which is a common misunderstanding.

Mr. Improtta asked about the city initiated Front Street URD. Ms. Buchanan stated that URDs and TIFs can be initiated by city council, property owners, or MRA. She gave several examples, including South Gate Mall, the Hip Strip request, and the Brooks Street corridor. Mr. Improtta inquired if the affluent received a greater benefit by these improvements. Ms. Buchanan stated that tourist dollars and strong retail businesses are a good thing. She stated that First Interstate Bank was the catalyst for that neighborhood; it was an obsolete bank building with an insufficient HVAC system. Their options were to move to a new greenfield location, build a new two-story bank building for their own needs, or build a 6-9 story class A office space. There is now a six-story building of class A office space with parking. The taxes from First Interstate Bank pay the debt service on the bonds that were issued.

Mr. Rice thanked Ms. Buchanan. He asked about the increases in the values of the properties, and if it were not for the funds, something different may have been built. He appreciated the legacy this program has produced. Ms. Buchanan stated that TIF is not an entitlement due to location in a TIF district. She cited South Crossing as a classic example of what TIF can accomplish.

7. Public Hearings

7.1 Ordinance to Amend Title 20 Related to Townhome Exemption Development (TED)

[Please refer to attached documents as well as the official video recording for comprehensive presentation details.]

Mr. Ben Brewer presented the proposed Townhome Exemption Development (TED) ordinance amendments. He provided background information on TEDs, the strategy selection process and the proposed ordinances. He reminded the board of the state criteria for zoning amendments; 1) whether the proposed zoning amendments are consistent with the growth policy, 2) whether the proposed zoning amendment corrects an error or inconsistency in the zoning ordinance, and 3) whether the proposed zoning ordinance amendments are in the best interests of the city as a whole.

Mr. Brewer gave an overview of the background of TED. It was created in 2011 by the state legislature. He provided definitions, parameters, and stated that it must conform with local zoning regulations. Mr. Brewer gave the board a brief primer of terms and understanding on how TEDs are considered board zoning along with TED and subdivision ownership differences. He clarified the terms of 'townhome' vs. 'townhouse' under Title 20.

He presented a map with the locations of TED projects filed since 2011. 59 TEDs were filed in the city since 2011; if/when all of those are built to completion it will have provided 494 dwelling units. Mr. Brewer stated that Missoula's approach to TED is unique in the state of Montana; there are not many other places throughout the state that have used it all, or to the extent that it has been utilized in Missoula, where it has been accepted and encouraged to create home ownership options. It is an alternative to subdivision review, but new challenges have arisen with subsequent issues.

- Between 2011 and 2014 most of the TED projects were small; projects between 2-6 units and were generally all infill projects in locations with existing roads and infrastructure. They were reviewed under the regulations in the zoning; a lot of those projects were reviewed under the multi-dwelling building standards.

- Between the years of 2014 and 2018 the projects got larger and more complex; projects came in as large as 56 units. There was growing concern over neighborhood fit, there were challenges regarding resource constraint issues; how to accommodate roads, private streets, and common areas. During this time there were two different rounds of zoning amendments, one in 2016 where additional building standards were adopted for TED and implementation of the conditional use approval requirement for size; in 2018 they clarified that TED was to be treated as townhouses, not as multi-dwelling buildings.
- The scale and frequency of TEDs continued to increase since 2018. Due to continued challenges the interim ordinance was implemented in May 2019. The interim ordinance is set to end in November 2019.

A leadership group was formed to examine the benefits, challenges, what is working, what is not, and how to meet city goals. A policy/mission statement came out of the those meetings: "The Townhome Exemption Development tool is intended to encourage residential development in the city's core in concert with the City of Missoula's stated policy goals; including the development of compact and walkable neighborhoods, the effective use of existing infrastructure and the building of new affordable housing in a timely manner. The TED tool is not intended to rebuild development for public infrastructure and where there are significant impediments in the community's ability to guide development in an orderly manner or to protect the general health, safety, and welfare of the community." Mr. Brewer compared the number of subdivision projects to the number of TED projects. There have been 7 filed subdivisions since 2011 and 55 TEDs.

Mr. Brewer presented the zoning sections that would be affected by the ordinance amendment:

- 05.040.D: Residential Districts: Townhome Exemption Development Option
- 05.050.B: Residential Districts: Basic Parcel and Building Standards
- 05.060/20.10.050/20.15.060: Residential/Commercial/Industrial Districts: Other Regulations
- 40.180: Use and Building Specific Standards: Townhome Exemption Development (TED)
- 45.060: Accessory Uses and Structures: Accessory Dwelling Units
- 80.020: Nonconformities: Nonconforming Lots
- 100: Terminology
- 110.010: Measurements and Exceptions: Parcel Area
- 110.050.F Measurements and Exceptions (New Section): Setbacks and Separation of Residential Buildings on TED Parcels

He advised the planning board that all proposed text changes could be accessed in Attachment A. Another of the goals is to make the process clearer; to streamline the process. The intent is that it is not used in special zoning districts. TED is permitted only

in current Title 20 zoning districts, not in special districts or PUDs. One of the key components is the size cap, and this does not necessarily lead to affordable units, but more units. It will lead to housing being added quickly. TED is limited to residential development that includes either detached home or townhouse building types. TEDs would be limited to 10 dwelling units in single dwelling and some two-dwelling unit districts (RT10 and RT5.4), and 20 dwelling units in R3, RT2.7, and all multi-dwelling and commercial districts. Developments over the new cap on number of dwelling units would be prohibited as a TED. The conditional use process for TEDs of any size would no longer be used. Larger developments would need to go through some form of subdivision process, either minor and then TEDs on those lots, or a single major subdivision. Sites that have significant constraints or hazardous land issues would be prohibited from TED. Development that jeopardizes acquiring public roadways that are crucial to connectivity would be prohibited from TED at the discretion of the Development Services Director in consultation with the City Engineer.

Mr. Brewer stated that they are proposing changing the notification requirements; currently TEDs are required to give notification in some situations, which is tied to conditional use. With these changes there would be no conditional use, so notification would be for informational purposes only. The trigger for that would be anything over 5 dwelling units.

He stated that TEDs over the size cap would be prohibited and they are proposing the removal of the conditional use approval option. Elimination of the conditional use process will help provide predictability and certainty to a development that uses TED and provides the ability to maintain a streamlined process. He clarified that this would not mean that the development would be prohibited, but that the development through the TED option would be prohibited.

Mr. Brewer presented a strategy component addressing constraints and hazards. He stated that there are some situations where constraints should be reviewed through the subdivision process. That would include right of way; there are situations where development should include public right of way rather than establishing private roads with easements. 20.40.180.B is being re-purposed to be a condition not suitable for TED:

- The additional proposed relating to floodplain
- Slopes that are greater than 25%
- Any land that is already included in a filed TED declaration is not suitable for TED, this is from the interim ordinance and has been discussed previously.
- A situation where right of way was needed

On-Site Constraints [slide 36 of Mr. Brewer's presentation] gives the ability to ask for materials that adequately address on-site situations.

The minimum parcel size requirement would be removed for new subdivisions. This would create parity in the subdivision process and the TED exemption. The parcel and building standards table was presented along with information on nonconforming lots and measurement and parcel areas.

Section 20.45.060 states that Accessory Dwelling Units (ADUs) are not permitted on TED Ownership Units (TOUs). 20.100 addressed terminology, TOUs are not lots. Setbacks and separation were addressed in Table 20.05-3. Use and building specific standards were listed in section 20.40.180. Measurements were covered in 20.110.050; which covered setbacks and separation of residential buildings on TED parcels. Section 20.40.180 addressed use and building specific standards for TED.

Mr. Brewer stated that three public comments were received, along with comments and support from the Housing, Fire, and Parks departments. He anticipates Title 12 updates and a continued conversation on subdivision regulations.

PUBLIC COMMENT [8:37 PM]

NICK KAUFMAN, Senior Planner, WGM Group, Missoula, MT. Mr. Kaufman thanked Ms. Means and Mr. Brewer for their hard work. Mr. Kaufman was pleased that TEDs are still available for use in the development process. He felt that the root problem is the time it takes to do a major subdivision. Mr. Kaufman stated that is an issue for the State of Montana, not this Planning Board. He stated that it is important for the Planning Board to understand the context within which this amendment happens. State law says that when parcels are created for sale, they must go through a subdivision process. There are certain exemptions to this, gifts to family members once in a lifetime, creation of condominium units, and in this case, creating parcels through the TED. He stated that a typical subdivision in the City of Missoula, just the preliminary plat process, will typically take 13-15 months. The final plat process for that will take another 3-5 months. Good design takes a lot of lead time. Developments did not occur during the recession years, until after May 2018. The initial first year process takes place under the rules and regulations in place at the time you started. Changes in the middle of the process, like the proposed TED regulations, could mean that all the previous design efforts may all be for naught. This needs to be addressed as it effects a considerable process and there needs to be a safety valve. That safety valve, in the language of land use planning is "a vested right exemption". Mr. Kaufman asked the board to consider if an architect with a building at the 90% planning stage, who had been working through the planning department and building department to get to that point when suddenly the building codes changed; should that architect be able to get a vested right exemption and move forward, as long as there was no danger to the public health, safety and welfare? He feels a vested right exemption should be granted to projects in similar situations. Mr. Kaufman feels that one of the items missing in the proposed TED change is the ability for a vested right for persons and/or organizations involved in that design process. He cited the 2002 Hellgate Meadows project and provided details of the success of that. In order to meet the housing demands for today, and the contemporary design for today, his clients Wade Hoyt and David Edgell looked at this piece of property, tied it up and with the recommendation of Eran Pehan, at Housing and Community Development as well as the leadership of the City of Missoula, hired a company called Opticos Design, Inc. Opticos specializes in housing design for the middle-income population in America today. Several months of design work were completed along with strategizing with the City of Missoula. Their objective was to seek properties zoned Title 19, change the zoning to Title 20, and do a subdivision, meeting all the criteria and follow that up with a TED; all while working with development services to combine the best of two worlds; a subdivision and a TED. Now, near the end of that process, they are faced with changes to the TED. He asked the planning board members to consider adding vested right

language to the TED amendments so that those already in the process are not penalized and can continue under the rules and regulations under which they started.

David Edgell, Edgell Building, Inc. asked Mr. Brewer to put his leadership statement on the overhead screen again. Mr. Edgell stated that in 2016 his company developed the Scott Street Village Development, and it followed this exactly. He asked Mr. Brewer why the changes were necessary and what about the Scott Street development does not meet the parameters. Mr. Brewer stated that he is familiar with the larger TEDS and there is a lot to like about the Scott Street Village Development and it has been received well in the community. Mr. Brewer stated that what they are proposing does not come down to one project nor one development; this has been an accumulation of findings and a continuation of being in a reactive place. Mr. Edgell stated that 124 units were constructed, and they were very well accepted by the community and MRA. He stated that projects of that size needed, and they need to be done in a manner that is easy to get done through the city; the process does not need to be more complicated like the subdivision process. He feels that the amendments will make the TED more like subdivision review, which costs \$50,000 - \$100,000 more to complete and does not make housing more affordable. He asked that the amendment either be stopped or completely reconsidered as he feels most of the items are simply looking for ways to complicate the TED.

Mr. Rice reminded those commenting that the comments are to come to the board, not the staff nor presenters.

Jim Schafer, Straightedge Construction. Mr. Schafer has partnered with other builders on infill TED development projects. He stated that every project he has done has gone through a stringent review process which he felt had met all the requirements as subdivision review such as setbacks and infrastructure. He works on projects that add higher density and affordable housing. Without the TED process he would not be able to get the projects under development. Mr. Schafer referred to the statistic of the number of subdivisions moving forward vs. the number of TED projects. He stated that the subdivision process is so cumbersome and overwhelming that it basically pencils most of the developers out of being able to do it as homes are sold based on market value and that appraisals and bank funding needs to be considered. Additional reviews drive up the costs and the timelines.

Dwight Easton, Public Affairs Director, Missoula Organization of REALTORS (MOR). Mr. Easton stated that MOR has reported for several years that the Missoula housing market has remained tight. His information shows that there is a continuing unmet demand for housing stock. Inventory of homes for sales, which MOR measures as total market absorption rate, has hit an all-time low of 1.96. This means that there is less than two months of total market inventory in the Missoula area. Year to date median sales prices have gone up 5.86% from \$290,000 to \$307,000. Mr. Easton stated that he felt Missoula could afford to take some upward pressure off the market by incentivizing more housing development, not less. He believes that the proposed amendments would do the opposite. He stated that TED has been an effective tool utilized to lower development costs, increase the speed to market, and improve overall housing stock. Since TED statutes were enacted in 2011, 461 residential housing units, which is 89% of the total housing, were produced by TEDs vs 55 through subdivision. 281 of those units were over the 10-unit rule; that is 54.5% of all the housing stocks. He stated that the proposal

to direct developments over ten units through the subdivision process will add unnecessary costs, delays, and in some cases may make the development non-economically viable, thus killing the project. This would result in fewer and higher cost housing. He stated that it was notable that both the MOR Making Missoula Home study and A Place Called Home study done by the City of Missoula recognize TEDs as a tool to encourage more affordable housing development. He stated that there is proof that TEDs can and will provide significant housing stocks quicker and at lower cost than the subdivision process, which he feels is broken. He urged the board to seriously consider pulling this amendment and having Development Services work on the subdivision process prior to addressing the TED. He stated that process is currently working and providing housing and should not be altered so that TEDs over 10 units go to subdivision review. He asked for a "do not recommend" vote from the board.

Jared Kuehn, Vice President, Missoula Building Industry Association board. Mr. Kuehn is a commercial lender at First Security Bank and a native Missoulian. He stated that the Building Industry Association provided a letter and encouraged planning board members to read through those comments. As a commercial lender he sees a lot of these projects in his workplace. A project becomes riskier with the number of compliance items, which is a hinderance to project financing. Most importantly, he stated that it is very difficult to purchase a home in Missoula and one of the cornerstones in the community is home ownership. He understands the need to have rental properties but encourages home ownership and feels that TED is a great tool and the numbers bear that out. He asked the board members to consider any unintended consequences before voting for these additional restrictions.

Wade Hoyt, Hoyt Homes, Inc. agreed with the earlier comments. He has worked with Development Services and feels that Development Services wants to re-write the rules regarding TED. He stated that time is money and costs went up 17% in 2017 and that much again in 2018. The costs for the first six months of 2019 have stayed steady at 9%. Adding time to a project increases the cost to the buyers. He offers different building types with price ranges for most buyers. Each delay increases costs to buyers.

[SHORT MEETING BREAK]

BOARD COMMENTS

Mr. Hoffman stated that the impacts and implications of these changes would be huge, and they deserve careful review.

Mr. Mefford stated that he would like to see the entire section 20.40.180 repealed as he feels the state has already adopted it in subdivision regulations.

Mr. Caristo asked about the reasoning for updating the TED components before the subdivision regulations, and if this is restricted by state law and, he would like the staff's opinion on the "vested right exemption". Mr. Brewer stated that the reason for addressing TEDs first was that this is where residential development is currently happening. He stated that although they have some flexibility with local subdivision regulations, a lot of that is dictated by the state and needs to be a state level conversation. With regards to the vested right exemption, it is not something that has been discussed here but he appreciated the concern and it can be investigated

further. He understands Mr. Kaufman's concerns and the intent is not to make projects fail but to assist in moving projects forward.

Ms. Potts thanked Development Services for their work and the thought process that has gone into this. She shared some of her experience with the legislative process and agreed that it is good to start with the tool that our community has more control over. She reminded that board that the state holds these rights and delegates them to the communities. The TED is a tool that the state has given to communities to use as they see fit to meet their development goals and to fall in line with their growth policies. That is what this should be used for, not just to speed development. She stated that she does understand the reasoning for the creation of more housing units and would be very interested to see the proof that the Missoula Organization of Realtors says they have about how this lowers housing costs. She cited an example of TOU pricing that is not entry level housing. She commended the city planners for using the TED tool and adjusting it as there is a great difference between 10, 20 and 100 units in terms of road connectivity, the number of people using those roads, and public and emergency services accessing those roads. She felt that ultimately it comes down to the state delegation of those rights to cities and communities through the subdivision or the TED process, and the state is creating public oversight mechanisms to do that. She reminded the board that the public, even if they are not in attendance at this meeting, needs to be included in the oversight process.

Mr. Bensen stated he was having a hard time finding a compelling argument for the amendments to the TED. He understood that one of the goals was to reduce costs by streamlining the review process and asked Mr. Brewer to clarify. Mr. Brewer stated that a streamlined review process, versus subdivision review, encourages residential development in the city's core and infill. It uses existing infrastructure and leads to timely development. Mr. Bensen voiced concern over the speeding up of the review process.

Mr. Improta spoke of the history of TED and how many consider it an avenue to affordable housing, but it can also be used for high-end town homes. He would like to see it tied into affordable housing.

Mr. Hoffmann is sympathetic toward the contractors and developers who are trying to produce affordable housing. He feels that they are faced with a capricious and arbitrary subdivision review processes which are risky, time consuming and expensive. Mr. Hoffman has been a Housing Authority board member for 15 years.

Ms. Hassanein asked how City Development Services arrived at the limits of 10 or 20 units. Mr. Brewer stated that they looked at past projects; 85% of the TEDS since 1011 were 10 or less dwelling units, 15% were above 10. Mr. Brewer explained the review process from the filing of a declaration to project completion.

Mr. Rice asked about statistics and missing data from the presentation. The statistics are for 10 or less or 11 or more. He asked how many units were created in the 10-20 category. Mr. Brewer stated that there two or three between 10 and 20 units and of the 9 large TEDs over 10, the majority are 30 or more.

Ms. Hassanein stated that she disagreed with Mr. Hoffmann's statement that subdivision review was arbitrary. She feels that there are specific regulations and review procedures and the development community knows exactly how to do them and have been doing

them successfully. Her concern is that the TED may be a work around for not having to go through subdivision review; she also feels that claiming that these projects in the works may not happen is not accurate. Ms. Hassanein asked about the intent statement and affordability; however, she is willing to guess that most of the TEDs are not technically affordable housing, and that more supply does not necessarily bring down prices. She supports the proposed amendments.

Mr. Rice asked how the TED process has been implemented in the Billings, MT community. He stated that it is easier to do in Billings due to the unified code, so the road and emergency standards are all tried together. He appreciates that this version is more well written than other versions; however, it still doesn't get him to where he feels was the intent of the state law. He is concerned about the vested right exemption and would like to see that explored further. Mr. Rice discussed the history of condominium and townhome projects and the financing and requirements associated with those. He stated Title 20 needs much cleanup. He asked if the minimum lot size in the subdivision standards get us truly where we want to be. Currently with a subdivision layout the density is based off the land minus the street right of way and the parks. He stated that the big benefit of TED is that there are more housing units because it doesn't use gross density vs. net density.

Mr. Bensen asked about the benefits of passing the amendment. He feels it is a poor band-aid and possibly dangerous, things get hurried up, regulation suffers, and does it increase low-income housing in the community? Currently he does not support amendments to the TED.

Mr. Brewer stated that that all entities named in the regulation are typically involved in the review for building and zoning compliance permits for TEDs but also for building and development in general. Streamlining is about efficiencies in the process and that the goal is to create parameters for the scale of projects that they feel TED should be able to accommodate.

Mr. Bensen is concerned that the suggested amendments leave a product that is compromised. He feels it changes the regulations and restrictions, the checks and balances, and does not solve nor provide incentives for what the city wants in a broad sense. He asked if it was going to produce low income housing; does it have the regulations in place to maintain safe housing?

Mr. Rice asked the development team about the vested right concern, and more specifically, what parts of this creates roadblocks to success.

Mr. Kaufman stated that there is an administrative side of the regulations, which is City Development Services, and then the client side, those who do development. He stated that it helps to test the regulations in the field with the people who use them to see if they will work. His current project has more than 20 units on a lot, but they are doing a subdivision review process for the infrastructure and the public health, safety and welfare review; then the TED process is used to show exactly what is being built. His concern is about the performance standards. He gave statistics on the affordable housing options at Scott Street Village. With the price of land per acre densities of at least 10 per acre are needed to hit a demand price point.

Ms. Means said that the nature of trying to establish regulations is that projects get caught up and they need to recognize that. Vested rights have been discussed, and it needs to be clarified and what that means. Her department is sensitive to the time and investment that has already gone into projects underway.

Mr. Caristo asked about the Scott Street project and to what extent TED projects are exempt from building public infrastructure. Mr. Brewer answered that for the most part, TED projects meet the city infrastructure standards.

Mr. Hoffman will not be able to make the next meeting. He would like to see an increase over the numbers of 10 and 20. He agrees with the MBIA document, that existing slope requirements adequately address all applicable slope considerations for developments and that there is no need to disallow TEDs on properties with areas of 25% slope. Another of MBIA's comments was that TED projects under 10 units are not required to provide parkland. He agrees with that and feels it is a good thing. ADUs are not permitted on TED units and he wondered why staff would propose that.

Mr. Rice stated the public hearing was still open and the discussion could continue to the next meeting, August 20, 2019.

A MOTION MADE BY MR. BENSEN AND SECONDED BY MR. IMPROTA TO KEEP THE PUBLIC HEARING OPEN AND CONTINUE THE DISCUSSION TO THE NEXT MEETING, SCHEDULED FOR AUGUST 20, 2019. WITH A VOTE OF ALL AYES, THE MOTION CARRIED.

8. Committee Reports

Mr. Hoffmann gave an update on the Urban Growth Commission. There is a meeting scheduled for October 16, 2019. Due to his limited time remaining on the Missoula Consolidated Planning Board, Mr. Hoffmann stated that the board should appoint a new attendee.

9. Other Business

None to report.

10. New Business and Referrals

There was no new business nor referrals.

11. Comments from MCPB Members

Mr. Bensen would like the new subcommittee to report at the next meeting, time permitting.

Ms. Hassanein asked to what extent do the price of materials and tariffs influence the increase in housing costs. She feels that many times price increases get blamed on regulation and she would like some real numbers on this.

12. Adjournment

Mr. Rice adjourned the meeting at 10:26 p.m.



DEVELOPMENT SERVICES

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MEMORANDUM

TO: Planning Board

FROM: Ben Brewer, Planner III
Development Services, Planning Division

DATE: August 12, 2019

SUBJECT: Recommended staff changes to Ordinance to Amend Title 20 Townhome Exemption Development proposed at the Planning Board Public Hearing on August 6, 2019

Dear Planning Board Member

At the August 6th Planning Board hearing, staff included two changes to what was proposed in the ordinance language included in the Planning Board packets. Staff has provided that language here for your review in advance of the continued hearing on August 20th. The included language is meant to supplement the ordinance amendments you have already received in the August 6 packets.

NOTE: The additional staff recommendations are shown in blue.

1. 20.40.180.A.6

20.40.180: Townhome Exemption Development (TED) Standards

Commentary: Townhome vs. Townhouse - Townhouse refers to a building type that is two or more units which have common walls along shared property lines as described in 20.05.030.B.3, and is required to meet standards detailed in 20.40.140. Townhome refers to a development type consisting of residential dwellings that may be single unit or townhouse and owned in fee simple on TED Ownership Units (TOUs) and located on a TED Parcel as two-unit or, multi-unit and described in above (20.05.040.D). A townhouse can also be attached or be located on its own parcel (20.100.010).

A. Applicability

1. The following standards apply to Townhome Exemption Developments of more than five ten or fewer dwelling units in R and RT RT5.4, RT10, and all R districts (except R3), or more than nine 20 or fewer dwelling units in RT2.7, R3, and all RM, B, C, and M1R districts. Developments that exceed these numbers are not permitted through the TED process.

2. The only permitted ~~residential~~ building types that may be included in a TED project are detached houses, two-unit townhouses, and 3+-unit townhouses as described in Section 20.05.030 and as allowed in the applicable zoning district.
3. Two unit townhouse and 3+-unit townhouse building types as part of TED projects must also comply with Section 20.40.140, Townhouse Standards.
4. TED shall not be used for nonresidential developments.
45. Townhome Exemption Developments must meet all applicable City zoning municipal regulations, including Title 12 and Title 20. (see Figure 20.05-7).
6. Townhome Exemption Developments are only permitted on parcels in zoning districts described in Title 20.

2. 20.40.180.B.1

B. Conditions not suitable for TED Maximum Density

~~The maximum number of dwelling units allowed within a Townhome Exemption Development is computed by dividing the net area of the site by the subject zoning district's minimum parcel area-per unit standard. Net site area is calculated by subtracting all of the following from the site's gross land area:~~

If the subject property contains any of the following conditions, it is not suitable for development through the TED process and is not permitted for TED.

1. Any portion of the subject property that contains land with areas designated by FEMA as Floodways and Special Flood Hazard Areas (SFHAs) subject to inundation by the 1% Annual Chance of Flood, or designated Zone X behind levee or that would require a permit from one of the agencies listed on the "Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplain and Other Water Bodies".
 - a. In situations where the proposed TED project does not include any disturbance of the area defined in 20.40.180.B.1, and the SFHA is not an Approximate A, the Zoning Officer is authorized to waive 20.40.180.B.1, subject to the following:
 - i. For all development on the TED Parcel, the lowest floor and mechanical shall be 2 feet above BFE and pre and post-elevation certificates are required for primary structures (including attached garages); and
 - ii. Lands described within the SFHA shall be surveyed and designated as Common Area/No Build in the project application and in the survey accompanying the final TED Declaration.
 - b. For sites that are designated Zone X behind levee, for all primary structures (including attached garages), the lowest floor and mechanical shall be 2 feet above BFE and pre and post-elevation certificates are required.

CITY ZONING OFFICER OPINION # 19-01

DATE: April 18, 2019

RE: Townhome Exemption Developments (TEDs)

QUESTION:

Does Title 20 adequately address the processing of applications for Townhome Exemption Development (TED) projects and regulations under which they may be developed?

CONCLUSION:

Townhome Exemption Development has been permitted and even encouraged (as a tool to help address rising housing prices) in the City of Missoula since state law was revised in 2011 to provide certain local governments a mechanism to allow TEDs to be developed in lieu of traditional residential subdivisions.

Development Services staff has maintained a consistent process for handling TED projects over time based on Missoula Municipal Codes and the provisions in state law. As projects grew in unit numbers and complexity, the regulations and review process, necessarily evolved to include greater considerations.

Given the increasing scale and potential impacts of TED projects currently being proposed, coupled with arguments of some developer's legal counsels as to the legal foundation for some aspects of the City's processes and regulation around larger TED projects, it would be prudent for the City to revise municipal codes to restate very explicitly how TEDs are processed and regulated. This would also provide opportunity to reexamine the role of subdivision as a legitimate alternative for future affordable residential development.

There should be a review of current codes as they relate to TEDs and a package of proposed amendments prepared for City Council consideration that more explicitly address TED process and regulation along with any associated changes that would serve to accommodate development while protecting the public health, safety and welfare.

An Interim Ordinance is needed to address urgent concerns related to potential hazards to public health, safety, and welfare and to clarify the current process for conditional use review, while staff develops recommendations for solutions. The Interim Ordinance also eliminates the minimum lot size requirement for new subdivisions in order to equalize the density of development that can be achieved in TED and subdivision projects. This will provide developers seeking to maximize development potential with alternatives for realizing residential development in the short as well as the longer term.

ORDINANCE EXCERPT:

Existing Townhome Exemption Development regulations (Chapter 20.05.040.D)

D. Townhome Exemption Development

1. Intent

- a. The Townhome Exemption Development Option is intended to encourage affordable fee simple detached house, two-unit townhouse, and 3+-unit townhouse development without subdivision review in accordance with City zoning regulations.
- b. Public notice and City Council approval of a conditional use is required if the development contains more than five dwelling units in R and RT districts, or more than nine dwelling units in RM, B, C, and M1R districts.

2. General Description

- a. The only permitted residential building types that may be included in a TED project are detached houses, two-unit townhouses, and 3+-unit townhouses as described in Section 20.05.030 and as allowed within the applicable zoning district.
- b. Two-unit townhouse and 3+-unit townhouse building types as part of TED projects must also comply with Section 20.40.140, Townhouse standards.
- c. Townhome Exemption Developments must meet all City zoning regulations (see Figure 20.05-7).

	R Districts	RT Districts	RM Districts	All B, C Districts M1R
One (1) to five (5) total dwelling units	Administrative Approval Comply with Zoning 15 day neighborhood notice (20.05.040 D 4)		Administrative Approval Comply with Zoning	
Six (6) to Nine (9) Total dwelling Units	Conditional Use Approval (20.85.070) + Building Specific Standards (20.40.180)		Administrative Approval Comply with Zoning	
Ten (10) or More Total dwelling Units	Conditional Use Approval (20.85.070) + Building Specific Standards (20.40.180)			

Figure 20.05-7 Townhome Exemption Development Requirements

- d. All surface infrastructure shall meet the standards in Title 12 and be approved by Development Services Engineering Division.
3. **Condominium Conversion to Townhome**
Conversion of condominium projects constructed prior to May 18, 2016, to Townhome Exemption Development (TED) are not subject to the provisions of TED regulations unless dwelling units are added.
4. **Notice to Neighboring Property Owners**
Notice of the application for a zoning compliance permit for Townhome Exemption Developments of one to five dwelling units in the R and RT zoning districts must be mailed to all owners of property within 150 feet of the subject parcel at least 15 days before a permit is issued. (Mailed notice for projects of six or more dwelling units in those districts and ten or more dwelling units in RM, M1R, B, and C districts is required within the Conditional Use process.)

BACKGROUND:

In 2011, out of an initiative intended to make the financing of condominiums easier, the Montana Legislature passed HB460 that provided an exemption from subdivision for "townhomes" on lots legally created and zoned, and where a townhome was defined as "property that is owned subject to an arrangement under which persons own their units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities."

According to Title 20.100.10, Townhome Exemption Development is defined as "a residential development containing one or more dwelling units that are owned subject to an arrangement under which persons own their own dwelling units and hold separate title to the land beneath their dwelling units but under which they may jointly own the common area and facilities in accordance with MCA §§ 70-23-102 and 76-3-203."

State law allows for the consideration of the TED exemption according to the following:

MCA 76-3-203: Exemption for certain condominiums. Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

- (1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or
- (2) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

There are two key points that apply to the City within the state law:

1. TEDs are exempt from subdivision if they are expressly contemplated on lots within the city. Once a TED project is approved the units that are established are TED ownership units (according to Title 20.100.010).
2. The TED project must conform to applicable local zoning. The City has the ability to create appropriate regulations relating to TEDs. Those zoning rules can regulate the locations, conditions, review procedures, size, development standards, etc. of TED projects as the City determines necessary to fulfill the purpose and intent of zoning.

Shortly after state law took effect, developers in Missoula began to utilize the exemption to subdivision by building small residential projects (mostly in the 2-6 unit range) as TEDs on zoned parcels, with individual homebuyers owning their residential units and the land beneath and with an association created to own and maintain the common areas. Typically these were infill projects that could take advantage of existing road networks and infrastructure systems with common areas comprising little more than a driveway or short private road and landscaped common areas. Initially, TED projects were reviewed administratively as a multi-unit site development project, containing either single dwellings or two-unit buildings that would trigger some consideration of multi-dwelling standards. The City of Missoula accommodated and even encouraged TEDs as a legitimate and cost-effective alternative to minor subdivisions.

By 2015, the scale and complexity of TED projects grew. Several of the newer projects presented unique challenges, and highlighted the issue of using zoning to generally address mitigation of potentially hazardous areas and the placement of community infrastructure. By

2016, City Council approved a set of development standards and expanded review process for larger TED proposals. Additionally, TEDs must comply with all other local and state regulations (20.01.060.B) and street standards were added to Title 12 for TED projects.

Currently, for small scale projects (outlined in Figure 20.05-7), review is handled administratively. For larger scale projects (also outlined in Figure 20.05-7), review and approval follows the conditional use procedures (20.85.070) and additional building specific standards are in place (20.40.180). All projects must comply with the parcel and building standards as referenced in the Townhome Exemption Development section of Table 20.05-3. In addition to the requirements of Title 20, section 20.01.060 states that all uses and developments must comply with all other applicable city, state and federal regulations.

More recently, a next generation of TED projects are being proposed to Development Services staff. These have tended to be proposals for very large projects on greenfield sites void of a collector street network and other supporting infrastructure, some with other development constraints. The size and location of these proposed projects, combined with some developer's legal counsel opinions as to what the City can and cannot require of TED projects, based on what is in (or more often what is not specifically addressed in) state law and city regulations supports the need for this zoning officer opinion and subsequent amendments to the regulations.

Issues relating to timing and submittal material have occurred, not just for zoning requirements, but to address the expectations of other local regulations and to provide the City Council with the information that they need to be able to adequately evaluate the conditional use permit. Additional regulations are also needed to protect the public health, safety and general welfare relating to development on property with hazards such as high ground water, flooding, steep slopes, and soils with drainage constraints. The following section will address review and approval issues relating to timing and application submittal needs for conditional use TED proposals, and new hazardous lands development regulations.

Timing:

An approved conditional use permit is expected to be acted on within two years of City Council approval. To meet this deadline, a building permit or a zoning compliance permit (ZCP) has to be issued (Title 20.85.070.J). A ZCP is the tool used to document compliance with zoning and approval of the Townhome Exemption Declaration. Review of the ZCP application is the time to ensure that potential conditions of approval to the conditional use are being met. The ZCP is good for two years and is considered met when a building permit and a final certificate of zoning compliance is issued (Title 20.85.120.E). Typically, staff expects to review and approve infrastructure construction plans before approval of the ZCP. Installation of infrastructure improvements is required prior to approval of the first building permit or installation is delayed contingent on an improvements agreement, with an estimate of cost of improvements and a security guarantee. A townhome exemption declaration is tied to the ZCP so if the ZCP is not acted on in the required timeframe, the Townhome Exemption Declaration is revoked.

Local and state agencies periodically update their regulations. The mechanism for requiring approved conditional use TED projects to be modified to reflect the new regulations is very limited. This is mitigated during conditional use review by expecting a project to be fully developed in a relatively short time frame; requiring that every TED conditional use have all the units included in one townhome exemption declaration; and requiring an improvements agreement, cost estimate with contingency funds and security to cover the cost of infrastructure not yet installed.

All of the TED declarations to date have been filed with the entire TED development in one declaration. Recently, we have had applicants and attorneys suggest that they can "phase" a TED by filing multiple declarations on one parcel, leaving a remainder area each time intended to accommodate future TEDs, leaving the order and sequencing of development unknown. This approach presents several issues. Generally, a TED project results in the creation of TED Ownership Units on a TED parcel, such that the remainder areas are considered TED Ownership Units. The notion that a remainder TED Ownership Unit could be reserved for a future TED project doesn't comply with the state requirement that they occur on a lot. Not knowing when a next "phase" of TED development would come on line creates a hardship for planning orderly and beneficial development. Additionally, to consider phasing of a TED would restrict the City's ability to be responsive to potential changing conditions, and would leave the City vulnerable to potential unforeseen impacts to public health, safety and welfare over a longer period of time. Staff will continue to work toward clarifying these terms while developing recommendations for zoning solutions.

Application Submittal:

As project size increases, we also find that the correlation to other agency regulations need to be clarified. TED project review through zoning relies heavily on compliance with other local and state regulations since the process is void of the type of coordinated submittal (including environmental assessment) and review process typically found with subdivisions. Each local and state agency is tasked with developing/adopting the necessary general regulations and may not have given consideration to the unique nature of TED projects. Past practice was to rely on the submittal and review requirements of subdivision to thoroughly inform agencies of potential issues and hazards and collect potential conditions for mitigation for City Council consideration.

Currently, through the ability to address local regulations, the expectations of conditional use review, and the ability to generally require additional application information for a ZCP, staff seeks information relating to potential hazardous lands. But the expectation for related agency review material, such as storm water management plans is triggered in advance of a ZCP. However, similar to subdivision review, City Council benefits from knowing that generally and preliminarily, the proposed project will not adversely impact public health, safety and welfare by requiring the analysis, planning and design material earlier in the process. The zoning regulations and other local regulations need to be updated to create a clear coordinated avenue to review, accept and approve the various infrastructure plans and assessments needed to inform the projects' design.

Generally, conditional use TED projects are subject to review based on the review criteria found in Title 20.85.070.H and the factors to be considered in Title 20.85.070.I. City Council may approve, approve with conditions, or deny a conditional use project. An overall observation is that while the review criteria address public health, safety, and welfare in various ways, they don't generally express the ability for the City Council to view a project from the perspective of accommodating the orderly and beneficial development of the City. There may be times when City Council determines that the benefits of the project cannot overcome the issues related to loss of public connectivity, inability to require off-site improvements that are clearly associated with the impact of the project, or impose other conditions associated with access for local services. For those reasons, the code should be reviewed to clarify the ability for City Council to deny a project.

Hazardous Lands Development Regulations:

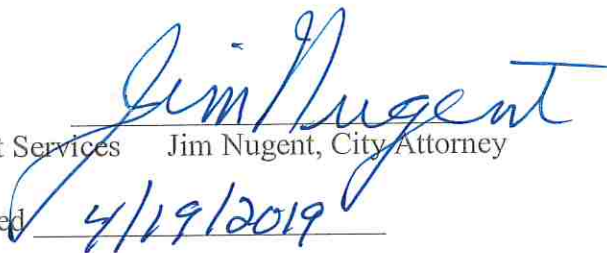
Proposed development is expected to mitigate potential impacts to public health, safety and welfare. Regulatory restrictions are placed on lands subject to hazards such as, flooding, swelling soils, subsidence, landslides, improper drainage, high ground water, and steep slopes

in order to direct development away from the hazard or to mitigate the adverse impacts. Constraints to development within flood prone areas are regulated through the City's floodplain regulations and through subdivision review. In the case of TED projects, subdivision review is not applicable, and the floodplain regulations do not adequately direct development away from flood prone areas in a way that best manages the resource. For that reason, the interim zoning should include new regulations for development within a FEMA designated floodplain area and consider solutions to address the issue.

In conclusion, Development Services staff has maintained a consistent process for handling TED projects over time based on Missoula Municipal Codes and the provisions in state law. However, given the increasing scale and potential impacts of TED projects currently being proposed coupled with arguments of some developer's legal counsels as to the legal foundation for some aspects of the City's processes and regulation around TEDs, it is necessary to clarify the review and approval procedures, the eligibility and submittal expectations and development regulations with an interim approach to regulations and a plan to consider a comprehensive review of the procedures to provide a solution.



Mike Haynes, Director of Development Services



Jim Nugent, City Attorney

Date Zoning Officer Opinion is approved

4/19/2019



DEVELOPMENT SERVICES

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EXECUTIVE SUMMARY

Agenda item:	Ordinance amending Title 20 City Zoning regulations related to Townhome Exemption Development (TED).
Report Date:	7/25/2019
Project Lead:	Ben Brewer, Planner III
Public Meetings & Hearings	
Planning Board (PB) hearing:	8/6/2019
Planning Board public hearing legal ad:	Published in the Missoulian on July 21 and 28, 2019
City Council public hearing	To be determined
Applicant:	This is a City Council initiated request.
Notification:	<ul style="list-style-type: none">• Sent agency and interested party memo (attached) via email to interested parties and City agencies for review• Posted on the city website• Published a legal ad in the Missoulian

RECOMMENDED MOTION

Recommend that the Missoula City Council approve an ordinance to amend Title 20 City Zoning chapter **20.05; 20.10; 20.15; 20.40; 20.45; 20.80; 20.100; 20.110**, related to Townhome Exemption Development (TED). See Attachment A – Proposed Ordinance Amendments (July 25, 2019).

I. PROPOSAL SUMMARY

At the request of the City Council, Development Services planning staff have drafted amendments to Title 20 City Zoning Ordinance to update Townhome Exemption Development (TED) and associated regulations. These proposed amendments are being developed during the time frame of an adopted Interim Ordinance to address TED projects that expires on Nov. 5, 2019, and new regulations are anticipated to be adopted by that time. The goal is to review current codes and develop a package of proposed amendments in order to accommodate orderly development while protecting the public health, safety and welfare of the community.

II. BACKGROUND

History of Townhome Exemptions in Missoula:

The townhome exemption from subdivision was originally created by the Montana State legislature to address the changes to financing for condominiums that occurred after the great recession. This financing tool broadened the type of projects that were considered exempt from subdivision from just condominiums to include townhomes and townhouses (Montana Code Annotated 76-3-203). The exemption allows for a streamlined review process for qualifying development projects located on legally created lots and zoned accordingly.

While other Montana communities struggled with how to interpret the state law and approached it with ways to limit it primarily to townhouse building types, Missoula accommodated and even encouraged TEDs as a legitimate and cost-

II. BACKGROUND

effective alternative to minor subdivisions. The primary goal that TED's help accommodate is infill development, especially for projects that establish new sites for additional dwelling units on a parcel that is not yet developed fully.

As TED projects grew in scale and complexity, they presented greater challenges. Largely this is due to them being exempt from subdivision regulations, which curtails the ability to require the types of public amenities that are typically associated with subdivisions and limits the kinds of submittal information, review, coordination, and conditions that are time-tested and responsive to concerns related to the community's public health, safety and general welfare. As an exemption from subdivision, the city is unable to require public right-of-way if needed and stands to lose valued transportation connections. There is also less ability to manage for impacts to the surrounding areas. Additionally, the TED exemption process is not equipped to adequately address the types of issues that arise from developing on hazardous and constrained lands. (The interim ordinance laying out some of these challenges can be viewed [here](#).)

More recently, the City adopted a comprehensive housing policy – *A Place to Call Home: Meeting Missoula's Housing Needs*. This policy document provides recommendations to address the city's affordability crisis, including for TED projects. It recognizes that TEDs present unique opportunities and challenges with an emphasis on ensuring that the benefits of flexibility and cost savings for smaller infill TED projects are not lost. The Housing Policy also acknowledges the need for regulatory controls on TEDs in order to address public health and safety issues and to minimize impacts on surrounding neighbors. It provides a recommendation to increase the allowed number of units for by-right approval for TEDs and the need for higher regulatory oversight on projects over a certain number of units (p.37). See the Housing Department Agency Comment in Attachment C for more information on how the following strategies and proposed amendments implement the Housing Policy recommendations.

The regulations in place before the Interim Ordinance was established already limited the TED process to residential development; permitted administrative review of smaller TED projects (varying by zoning district) and required a conditional use review process for larger TED projects. The larger TED projects included minimal development standards and required a percentage of land set aside or accounted for through a cash-in-lieu process for park areas. The conditional use review relied heavily on already established review criteria found in 20.85.070, and coordination with other city agency regulations to complete the review and potentially address outstanding issues.

Approach to ordinance amendments:

While the interim ordinance is in place, we re-examined what the role of TEDs should be for development in Missoula. State law grants municipalities the ability to define TEDs in their local zoning laws. This is an opportunity to comprehensively guide this development tool and regulate TEDs so that they are used in a way that meets city goals and also addresses the challenges that TED projects present.

Early in this process, a TED Leadership Team was formed to help define how TEDs help to further city policy. The following intent statement was developed to guide the process:

The Townhome Exemption Development Option is intended to encourage residential infill development that contributes to compact and walkable neighborhoods; makes efficient use of existing City infrastructure; and addresses housing affordability by generating new housing stock in a timely manner.

The TED Option is not intended for new greenfield development if it is in an area that is lacking in existing infrastructure; or for sites that would jeopardize the City's ability to manage development in an orderly manner or protect and promote the general health, safety and welfare of the community.

II. BACKGROUND

The strategy for recalibrating how to better align the TED ordinance with city goals is based on the intent statement above. The following are primary components of the selected strategy:

- TED is limited to residential development that includes either detached home or townhouse building types.

Explanation:

This strategy is how the regulations are currently applied and therefore is not a change to content. State law is ambiguous on the use or building type that 'Townhome' ownership units may be used for, but allows local zoning to provide specifics. Since the Townhome Exemption has become law, the City of Missoula has seen a wide variety of applications. Based on the Leadership intent statement, development for fee-simple residential units remain the City's primary focus for TED development in order to respond to the current housing affordability issue. TED is not a silver bullet for all situations all the time, but is meant here to be an important tool for supplying new homes and townhouses on the market in a timely manner.

- TED is permitted only in current Title 20 zoning districts (not in special districts or PUDs).

Explanation:

TEDs and the TED process are defined and contained within Title 20. The various Special Districts and PUDs that were established under Title 19 and still refer to Title 19 are not equipped to adequately process TED projects and still provide for health, safety and welfare.

- Limit TEDs to 10 dwelling units in single dwelling and some two-dwelling unit district (RT10 and RT5.4), and 20 dwelling units in R3, RT2.7, and all multi-dwelling and commercial districts.

Explanation:

Currently, the number of units allowed in a permitted TED (not requiring a conditional use approval) is 5 in single dwelling and two-dwelling unit districts and 9 in multi-dwelling and commercial districts.

Implementing a size cap is one of the key strategy components for the proposed ordinance. The general idea of implementing a cap on the number of units is to ensure that use of the TED option is limited to developments that are not too complex and that are brought on line in a timely manner. Based on the housing policy, and input from the Housing Department, a key consideration was the importance of TED as a means of reducing barriers to new supply of affordable homes. While TED projects do not necessarily lead to homes in the range of affordability identified in the housing policy, they can be a useful tool for addressing the shortage of housing stock across all price points by providing a streamlined review process that accommodates new construction and comes online quickly. If larger projects were allowed through TED at a certain point not only would the city's ability to maintain the review process as a stream-lined approach be challenged, so would the likelihood that new construction will actually occur in a timely manner.

With the above considerations in mind, the proposed cap on number of residential units in a TED project is derived for the following reasons:

Based on Institute of Trip Engineers (ITE) formulas, a development of 20 single family homes would be the point where 200 daily workday trips would be generated by a residential development and a traffic study may be needed. This threshold is already contained in Title 20 (20.60.140), and is derived from City Subdivision Regulations. The point that a traffic study is required is one indicator that a project is of a scale that could call for off-site improvements or be large enough that road grid connectivity or public right-of-way acquisition, as well as the potential for other impacts, becomes more likely.

II. BACKGROUND

We have also been looking over the existing TED projects to get a sense of what has actually been done and what to anticipate in the future. At the time of writing, there are 60 residential TED declarations on file in the City since 2012. Fifty of those (84%) are for 10 or less dwelling units, and 10 (16%) are larger than that. For TED projects of 10 or less units, the average size is 4 units, and there are just a few that are between 6-10 units. For larger TED projects (over 10 units), there are only 3 that are between 10 and 30 units, and the remaining 7 projects are between 30-60 units.

We have taken a balanced approach in limiting the scale of development, given that the TED option is an exemption to a subdivision process. Through subdivision, projects with more than 5 units are required to meet additional levels of review and public participation that are not required through TED. At the same time, we recognize that there are situations where a subdivision can be unduly onerous and review through TED may be appropriate.

Lastly, a split in the size cap based on zoning district should be maintained because of the implications for the actual area that can be developed. Most single dwelling districts have a lower density, so a development of 10 units may require more actual area than an even larger development in a higher density district. For example, a 10 unit development in R5.4 would require 1.2 acres (roughly half a city block), while a 20 unit development in RM2.7 would require the same area.

- **Developments over the new cap on number of dwelling units would be prohibited as a TED. We would no longer use the conditional use process for TEDs of any size. Larger developments would need to go through some form of subdivision process (either minor and then TEDs on those lots, or a single major subdivision).**

Explanation:

Eliminating the conditional use process will help to provide predictability and certainty to development that uses the TED option. See above for explanation of a size cap.

- **Development of any size on sites that have significant constraints or hazardous lands issues would be prohibited from TED. Significant constraints include floodplain and steep slopes.**

Explanation:

The TED exemption process is not sufficient to adequately address significant types of issues that arise from developing on hazardous and constrained lands. Some potential hazards and constraints will be addressed by adding provisions to the zoning code to enable requesting additional information for constrained sites as needed. However, there are some situations where constraints should be reviewed through the subdivision process, which is already set up to account for the appropriate level of submittal information, review, and possible mitigation of impacts. In these cases, redirecting development to the subdivision process allows for actual division of land to contain constrained areas on their own parcels, ensuring that those areas remain undisturbed and zoned accordingly.

- **Development that jeopardizes acquiring public roadways that are crucial to connectivity would be prohibited from TED (at the discretion of the Development Services Director in consultation with the City Engineer).**

Explanation:

There are some situations where, in order to best provide for orderly development and protect for the general health, safety and welfare of the community, development should include the creation of new public right-of-way, and should be directed to the subdivision process. Even though the size cap will ensure that most new large developments necessarily go through some extent of subdivision review, this is meant to address the rare case of a TED project that is proposed in an area where it is vital that public roads be included in the project, based on City plans, provision of emergency services, or allowing for needed public connections.

II. BACKGROUND

- TED projects are expected to be developed in a condensed time frame with infrastructure installed and initial building permits pulled within 2-3 years. No phasing is permitted within TEDs.

Explanation:

As established in the leadership statement, one of the primary benefits that the TED option offers for meeting City goals is that it offers a streamlined review process that can enable new housing to be brought into the housing supply pool in a timely manner. Also, with the expectation that development happen in a timely manner, there is less likelihood for regulation (state, local or federal) to change between the time of approval and actual construction.

- New subdivisions would not be subject to minimum parcel size by zoning (but would still be held to maximum density.)

Explanation:

This change to the general Title 20 zoning was included in the interim ordinance and is intended for this general ordinance. It is meant to make subdivision and TED an equally appealing development option. Essentially, in TED projects, since TED Ownership Units are not recognized as lots, the minimum parcel size requirement in zoning has not applied, and so TED projects are generally able to develop to the maximum that zoning allows more easily than in subdivisions where individual lot size must be of a certain minimum size. By removing the zoning standard for minimum parcel size, this will remove that barrier and enable development to reach maximum density potential for new subdivisions.

Section of code affected:

Based on the afore mentioned strategy components, the proposal calls for modifications to the following sections in Title 20:

- **20.05.040.D: Residential Districts: Townhome Exemption Development Option**
- **20.05.050.B: Residential Districts: Basic Parcel and Building Standards**
- **20.05.060/20.10.050/20.15.060: Residential/Commercial/Industrial Districts: Other Regulations**
- **20.40.180: Use and Building Specific Standards: Townhome Exemption Development (TED)**
- **20.45.060: Accessory Uses and Structures: Accessory Dwelling Units**
- **20.80.020: Nonconformities: Nonconforming Lots**
- **20.100: Terminology**
- **20.110.010: Measurements and Exceptions: Parcel Area**
- **20.110.050.F Measurements and Exceptions (New Section): Setbacks and Separation of Residential Buildings on TED Parcels**

For full draft language, see Attachment A

Concurrent Updates:

There are elements of TED projects that should be addressed in other regulations in order to best meet the City's intent for the townhome exemption. The following list describes other adjustments that will help to better accommodate TED projects overall:

- **Update/Modify Title 12 Standards for streets, roads, alleys and driveways**

Explanation:

As TED projects have increased in scale, it has been a constant challenge to properly review the design of interior streets and alleyways. Typically, if development was under subdivision, it would be reviewed to street design standards in the existing subdivision regulations. But since TED projects are exempt from subdivision review, there is less clarity for requirements regarding roads and access. This is especially the case since TED projects are often infill projects where efficient use of space matters greatly. In the interest of providing clarity and coordination with the modifications to TED zoning standards, Title 12 engineering code will be modified to address TED projects and align with these zoning amendments.

II. BACKGROUND

- **County Clerk's Office to implement an electronic, cloud-based system for filing documents, including TED Declarations**

Explanation:

The process for finalizing a TED project is by filing a Declaration with the County Clerk and Recorder's office, similar to establishing covenants for a subdivision or creating a condo association. The city's involvement technically ends once it releases the 'zoning letter' stating that the project has been reviewed by the City and is in compliance with zoning. At this point, the city and the Clerk's office coordinate with each other so that the City has an additional opportunity to review the Declaration that is submitted to the Clerk to verify that it matches with what was approved. This process has been necessary to ensure that TED projects have not been altered at the last minute, but also adds additional time onto the Declaration process. However, the County is currently in the process of implementing new electronic submittal capabilities that will allow an applicant to submit a document and for it to be viewed electronically by multiple parties, including Development Services, which would reduce the need for the circular reviewing process set up now. It is anticipated that the new process at the Clerk's office will be up and running close to when this proposed ordinance would go into effect.

Further Recommendations:

It is clear that the interest in development through the Townhome Exemption is bolstered by an aversion to the existing subdivision regulations. As this project has moved forward, there are issues that have been identified for how development occurs in Missoula that may not relate to, or be able to be addressed through, TED zoning regulations but are important for the City and the Missoula community to further consider even after these amendments are adopted. Many of these issues are also reiterated in the Missoula Housing Policy: *A Place to Call Home – Meeting Missoula's Housing Needs*. The following is a list of recommendations to be considered in the future:

- **Develop an Urban Subdivision Working Group**
- **Update City Subdivision Regulations**
- **Modify/update setbacks in residential zoning districts**
- **Explore ways to further accommodate/incentivize live/work unit development**
- **Update/modify City Floodplain Regulations**
- **Update/modify Storm Water Specifications and Design Standards (as part of a new Public Works Manual)**
- **Explore subsidization of open space in-lieu of fees for projects that meet affordability targets in areas that are sufficiently served by existing parkland**

III. AGENCY AND PUBLIC COMMENT

On July 12, 2019, Development Services requested agency and interested party review and comment on the proposed amendments, see Attachment B – Agency Memo. As of July 25th, 2019, no public comments were received, and three agency comments were submitted (see Attachment C – Agency and Public Comment). All agency comments received were in support of the ordinance. Also on July 12th, 2019, intra-agency comments were requested and as of July 25th, 2019, several comments were submitted. The current draft has implemented some suggested changes related to submitted comments, as well as to clarify initially proposed language.

IV. REVIEW CRITERIA

1. Whether the proposed zoning amendment is consistent with §76-2-304(2) MCA.

MCA 76-2-304(2) requires that governing bodies, in adopting zoning regulations, must be made in accordance with a growth policy and be designed to secure safety from fire and other danger, promote public health, safety, and general welfare and facilitate the adequate provision of transportation, water, sewerage, and schools, parks and other public requirements. In addition, the governing body shall consider the reasonable provision of adequate light and air; the effect on motorized and non-motorized transportation systems; the promotion of compatible urban growth, the character of the district and its peculiar suitability for particular uses, and conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The proposed regulation revisions are in accordance with the 2015 Our Missoula Growth Policy (Growth Policy.) The Growth Policy generally recognizes the need for development to locate in areas close to existing service systems and discourages development which does not have the infrastructure necessary to support it. A housing goal of the Growth Policy is to encourage the close connection between development patterns, community infrastructure and the environment as well as the importance of a healthy environment to our sense of social, economic, and physical well-being. From multiple perspectives, the Growth Policy stresses the importance of supporting innovative, orderly and well-connected development in areas that will not impact the natural resources and that will efficiently relate to our existing physical and social infrastructure. An action summary from the Growth Policy states that we should “support quality, compact, and connected urban development in areas with the necessary existing infrastructure and with consideration of the existing context.” The proposed new intent statements summarize that need.

The proposed cap is intended to help focus the TED option as an infill tool and supports the general understanding that projects of this size or less tend to create fewer impacts within the existing infrastructure system and character of the district. Other new TED regulations prohibiting the use of TED if significant hazards or resource constraints are present will ensure that the public health, safety and general welfare of the area is addressed.

The strategy to establish a cap for the number of dwelling units proposed also helps to secure the safety from fire and other danger and addresses the need for compatible urban growth that is suitable for a particular area because it ensures that the scale of the TED projects will remain small, with limited need for public through-access. Motorized and non-motorized connectivity and facilitating adequate provision of transportation are addressed through the ability to require additional infrastructure as needed, while the cap on the number of units is consistent with the point at which a traffic study may be required to evaluate potential traffic impacts. Additionally, all development subject to zoning must comply with all other applicable city, state and federal regulations (Title 20.01.060.B) so fire safety, emergency services, water, sewer and other public facilities are taken into consideration.

In situations where development is proposed for a greater number of dwelling units, or significant constraints are present, or public right-of-way and connectivity is necessary, the applicant has the ability to pursue a subdivision proposal for the appropriate level of review in those areas. This distinction helps to encourage the appropriate use of land throughout the jurisdiction.

This development option leaves the base density of a parcel unchanged and the external setback expectations along the TED parcel are considerate of the transition to surrounding areas. In that way, a TED project is responsive to adequate light and air for the community, the character of the district, and supports compatible urban growth.

The growth policy and housing policy include action items that address the need for affordable housing including the recommendation to consider zoning tools such as reduced minimum lot size. The proposed regulations provide relief from the minimum parcel size for new subdivisions while not changing the maximum density allowed by zoning. This will enable greater flexibility for subdivision design and potentially provide an alternative to TED. Incorporating the flexibility of parcel size helps to encourage the most appropriate use of land.

IV. REVIEW CRITERIA

2. Whether the proposed zoning amendment corrects an error or inconsistency in the zoning ordinance or meets the challenge of a changing condition.

The proposed zoning amendments address the challenge of a changing condition given the increasing complexity and size of TED project proposals. The previous process for reviewing larger TED projects through the conditional use review relied heavily on the established conditional use review criteria that are more appropriate for single building, non-residential uses. The review process for larger TEDs also relied on the ability of other agencies to review the project and place conditions/requirements depending on those agencies regulations. Since many of the other city agencies establish review conditions at the time of a zoning compliance permit or a building permit, the need to require necessary information, evaluate a project, and place conditions at an earlier stage in project development (the conditional use site plan review) has been impeded.

Due to the changing conditions of larger TED projects, the limitations of review through conditional use, and the recognition that subdivision regulations are already in place to address many of the types of concerns that may arise from larger TED projects, we recommend a cap on the number of units that a TED project can include. Should a development consider planning for more units then the cap, they will have the option to pursue the project as a minor subdivision first to establish the viable future TED parcels or to pursue a major subdivision.

One final response to addressing the challenge of a changing condition is to recognize the value of the streamlined process of the TED option for needed housing supply. The process should result in a predictable review for sites that are generally unconstrained and require minimal internal infrastructure. The regulations also clarify that TED projects are required to install infrastructure in a timely manner and construction of dwelling units will occur within a limited timeframe with less likelihood for regulations (federal, state or local) to change over the course of development. The ability to place dwelling units on the ground in a timely manner would be undermined should projects become larger, with more complex site constraints. For that reason, the regulations also include the cap on dwelling units.

3. Whether the proposed zoning ordinance amendments are in the best interests of the city as a whole.

The proposed zoning ordinance amendments address a community concern by providing zoning regulations to update the TED regulations. The recommended amendments establish a balance between the need for new residential development occurring in a timely manner; the need to appropriately evaluate and possibly even limit development on significant hazardous or constrained lands; the need to establish the appropriate amount of information to conduct a thorough evaluation of a proposal; and the need to ensure that public connectivity and orderly development is occurring. These amendments are in the best interests of the city as a whole because they consider the public health, safety and general welfare of the community when determining the appropriate scale of TED projects.

V. ATTACHMENTS:

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| A. Proposed ordinance amendments (July 25, 2019) |
| B. Agency memo and draft ordinance (July 12, 2019) |
| C. Agency and Public comment document |

Amendments to Title 20 Related to Townhome Exemption Development – 2019

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SPECIFIC AMENDMENTS BY CODE SECTION:

1. 20.05: RESIDENTIAL DISTRICTS

20.05.40.D: Townhome Exemption Development

D. Townhome Exemption Development (TED)

1. Intent

- a. The Townhome Exemption Development Option (TED) is intended to encourage affordable fee simple detached house , two-unit townhouse , and 3+-unit townhouse development without subdivision review in accordance with City zoning regulations.
- b. ~~Public notice and City Council approval of a conditional use is required if the development contains more than five dwelling units in R and RT districts, or more than nine dwelling units in RM, B, C, and M1R districts.~~ The Townhome Exemption Development tool is intended to encourage residential development in the city's core in concert with the city of Missoula's stated policy goals, including the development of compact and walkable neighborhoods; the effective use of existing infrastructure, and the building of new, affordable housing in a timely manner.
- c. The TED tool is not intended for new greenfield development if it is in an area that is lacking in existing infrastructure; or for sites that would jeopardize the City's ability to manage development in an orderly manner or protect and promote the general health, safety and welfare of the community.

2. General Description

- a. The only permitted residential building types that may be included in a TED project are detached houses , two-unit townhouses , and 3+-unit townhouses as described in Section 20.05.030 and as allowed within the applicable zoning district. TED is not permitted for development that includes nonresidential uses.
- b. Two-unit townhouse and 3+-unit townhouse building types as part of TED projects must also comply with Section 20.40.140, Townhouse standards.
- c. TED projects must comply with Section 20.40.180, Townhome Exemption Development (TED) Standards.
- ed. Townhome Exemption Developments must meet all applicable City zoning municipal regulations (see Figure 20.05-7).

Figure 20.05-7 Townhome Exemption Development Requirements

	R-Districts	RT-Districts	RM-Districts	All B, C-Districts M1R
One (1) to five (5) total dwelling units	Administrative Approval Comply with Zoning 15-day neighborhood notice (20.05.040 D 4)		Administrative Approval Comply with Zoning	
Six (6) to Nine (9) Total dwelling Units	Conditional Use Approval (20.85.070) + Building Specific Standards (20.40.180)		Administrative Approval Comply with Zoning	
Ten (10) or More Total dwelling Units	Conditional Use Approval (20.85.070) + Building Specific Standards (20.40.180)			

	<u>R Districts (except R3), and RT5.4 and RT10 Districts</u>	<u>RT2.7 and R3 Districts All RM Districts All B, C, Districts and M1R</u>
<u>One (1) to ten (10) total dwelling units</u>	<u>Administrative Approval, Comply with Zoning</u>	<u>Administrative Approval, Comply with Zoning</u>
<u>Eleven (11) to Twenty (20) total dwelling Units</u>	<u>Prohibited as TED</u>	<u>Administrative Approval, Comply with Zoning</u>
<u>More Than Twenty (20) total dwelling Units</u>	<u>Prohibited as TED</u>	
<u>Property is not suitable for TED 20.40.180.B</u>	<u>Prohibited as TED</u>	

~~d.—All surface infrastructure shall meet the standards in Title 12 and be approved by Development Services Engineering Division.~~

3. Condominium Conversion to Townhome

Conversion of condominium projects constructed prior to May 18, 2016, to Townhome Exemption Development (TED) are not subject to the provisions of TED regulations unless dwelling units are added.

4. Notice to Neighboring Property Owners

Notice of the application for a zoning compliance permit for Townhome Exemption

Developments of ~~one to more than~~ five dwelling units ~~in the R and RT zoning districts~~ must be mailed to all owners of property within 150 feet of the subject parcel at least 15 days before a permit is issued. ~~(Mailed notice for projects of six or more dwelling units in those districts and~~

~~ten or more dwelling units in RM, M1R, B, and C districts is required within the Conditional Use process.)~~

20.05.050.B: Parcel and Building Standards, Basic Standards

Table 20.05-3 [Parcel](#) and Building Standards (Residential Districts)

[Portion of Table]

Standards	R215	R80	R40	R20	RT10	R8	R5.4	RT5.4	R3	RT2.7	RM2.7	RM2	RM1.5	RM1-35	RM1-45 RMH [1]	RM0.5
CONVENTIONAL DEV'T																
Min. District Area (sq. ft.)	None	None	None	None	None	None	None	None	30,000	None	None	None	None	None	None	None
Minimum Parcel Size [8]																
^L Area (square feet)	215,000	80,000	40,000	20,000	10,000	8,000	5,400	5,400	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000
^L Area per unit (sq. ft.)	215,000	80,000	40,000	20,000	10,000	8,000	5,400	5,400	3,000	2,700	2,700	2,000	1,500	1,000	1,000	500

Townhome Exemption Development	<p>Minimum parcel area, minimum area per unit, and building height will be based on the zoning designation of the overall TED parcel found under Conventional Development in Table 20.05-3 above.</p> <p>Building setback and separation standards are as follows: Front or street side setbacks for Townhome Exemption Development dwellings are measured to the nearest parcel line or public circulation system such as a street, roadway, sidewalk, or trail, whichever is closer.</p> <p>Rear setbacks are measured to the parcel line.</p> <p>Side setbacks are measured to the parcel line. Minimum distance between buildings is the equivalent of two side setbacks. A minimum 6' interior side separation between buildings is allowed for zoning districts which require a minimum side yard setback distance of 7.5' or less.</p> <p>For B, C, and M1R districts refer to standards in Chapters 20.10.030 and 20.15.040.</p>
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- [1] RMH standards do not apply to manufactured housing parks. Manufactured housing parks are subject to Title 16.
- [2] In a cluster or conservation development , when a contiguous set of parcels is served by a rear alley and no building line has been established by existing buildings on the subject block face , the minimum front setback requirement is 10 feet.
- [3] Combined total front and rear setback depths must equal at least 30 feet (e.g., 10' front and 20' rear or 15' each).
- [4] Minimum interior side setbacks for principal buildings must equal at least 33% of the height of the subject building .
- [5] Maximum height limit is 30 feet for buildings with primary roof pitch of less than 8 in 12 and 35 feet for buildings with primary roof pitch of 8 in 12 or greater.
- [6] Only applies per Section 20.05.040.C.
- [7] Area per unit calculation may include a density bonus up to 20% when a project meets the criteria in Section 20.05.040.C.
- [8] The minimum parcel area requirement does not apply to lots created through subdivisions approved under MCA 76-3, parts 5 and 6 after May 6, 2019.

Explanation:

Primary changes include updating the intent statement, updating the regulations to reflect the dwelling unit cap (varying among zoning districts); clarifying that this does not apply to non-residential development; modifying regulations and the table to remove reference to a conditional use process; and infrastructure is addressed in section 20.40.180 (later in this ordinance).

Setback and Building Separation information is removed from Table 20.05-3 to a new section in 20.110: Measurements and Exceptions to better clarify the distinction between TED Parcel setback requirements versus building separation between structures within a TED Parcel.

Removal of the minimum parcel area requirement for new subdivisions is meant to create more parity between subdivision and the TED option for larger projects. Historically, TED projects have not been held to minimum parcel size restrictions which enables them to more ably meet density limits than new subdivisions. Previously, parcels created though subdivision were required to retain parcel area minimums.

2. OTHER REGULATIONS; Residential, Business and Commercial, and Industrial Districts Chapters, 20.05, 20.10, and 20.15

Explanation: The Other Regulations sections in the zoning districts chapters are meant to inform users that other standards may exist outside of the district type chapters and to guide them to where those standards can be found. Adding the Use and Building Specific chapter will benefit not just users working through the TED process, but for various other uses and design types as well.

20.05.060: Residential Districts, Other Regulations

A. Overlay Districts

See Chapter 20.25.

B. Use and Building Specific Standards

See Chapter 20.40.140 for Townhouse Development Standards

See Chapter 20.40.180 for Townhome Exemption Development (TED) Standards

AC. Accessory Uses and Structures

(e.g., home occupations, detached garages, gazebos, and sheds)

See Chapter 20.45.

BD. Natural Resource Protection

See Chapter 20.50.

CE. Parking and Access

See Chapter 20.60.

DF. Landscaping

See Chapter 20.65.

E. Overlay Districts

See Chapter 20.25.

FG. Signs

See Chapter 20.75.

GH. Nonconformities

See Chapter 20.80.

20.10.050: Commercial Districts, Other Regulations

Uses and development in B and C districts may be subject to other provisions of this zoning ordinance, including the following:

A. Overlay Districts

See Chapter 20.25.

B. Use and Building Specific Standards

See Chapter 20.40

AC. Accessory Uses and Structures

See Chapter 20.45.

BD. Natural Resource Protection

See Chapter 20.50.

GE. Parking and Access

See Chapter 20.60.

DF. Landscaping

See Chapter 20.65.

~~E. Overlay Districts~~

~~See Chapter 20.25.~~

FG. Signs

See Chapter 20.75.

GH. Nonconformities

See Chapter 20.80.

20.15.060: Industrial Districts, Other Regulations

Uses and development in M districts may be subject to other provisions of this zoning ordinance, including the following:

A. Overlay Districts

See Chapter 20.25.

B. Use and Building Specific Standards

See Chapter 20.40

AC. Accessory Uses and Structures

See Chapter 20.45.

BD. Natural Resource Protection

See Chapter 20.50.

GE. Parking and Access

See Chapter 20.60.

DF. Landscaping

See Chapter 20.65.

~~E. Overlay Districts~~

~~See Chapter 20.25.~~

FG. Signs

See Chapter 20.75.

GH. Nonconformities

See Chapter 20.80.

3. 20.40.180: TOWNHOME EXEMPTION DEVELOPMENT (TED) STANDARDS

20.40.180: Townhome Exemption Development (TED) Standards

Commentary: Townhome vs. Townhouse - Townhouse refers to a building type that is two or more units which have common walls along shared property lines as described in 20.05.030.B.3, and is required to meet standards detailed in 20.40.140. Townhome refers to a development type consisting of residential dwellings that may be single unit or townhouse and owned in fee simple on TED Ownership Units (TOUs) and located on a TED Parcel as two-unit or, multi-unit and described in above (20.05.040.D). ~~A townhouse can also be attached or be located on its own parcel (20.100.010).~~

A. Applicability

1. The following standards apply to Townhome Exemption Developments of ~~more than five ten or fewer~~ dwelling units in ~~R and RT RT5.4, RT10, and all R~~ districts ~~(except R3), or more than nine 20 or fewer~~ dwelling units in ~~RT2.7, R3, and all~~ RM, B, C, and M1R districts. Developments that exceed these numbers are not permitted through the TED process.
2. The only permitted ~~residential~~ building types that may be included in a TED project are detached houses, two-unit townhouses, and 3+-unit townhouses as described in Section 20.05.030 and as allowed in the applicable zoning district.
3. Two unit townhouse and 3+-unit townhouse building types as part of TED projects must also comply with Section 20.40.140, Townhouse Standards.
4. TED shall not be used for nonresidential developments.
45. Townhome Exemption Developments must meet all applicable City zoning municipal regulations, including Title 12 and Title 20. (see Figure 20.05-7).

B. Conditions not suitable for TED Maximum Density

Explanation:

This section is being changed because many of the things that could reduce the possible density of a project are now being added to the list of what could make a project not suitable for TED in the first place.

~~The maximum number of dwelling units allowed within a Townhome Exemption Development is computed by dividing the net area of the site by the subject zoning district's minimum parcel area-per unit standard. Net site area is calculated by subtracting all of the following from the site's gross land area:~~

If the subject property contains any of the following conditions, it is not suitable for development through the TED process and is not permitted for TED:

1. Any portion of the subject property contains land with areas designated by FEMA as Floodways and Special Flood Hazard Areas (SFHAs) subject to inundation by the 1% Annual Chance of Flood, or that would require a permit from one of the agencies listed on the "Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplain and Other Water Bodies". ~~Special flood hazard areas;~~

2. Any portion of the subject property includes land with a slope of greater than 25%. Jurisdictional (Army Corps of Engineers) wetlands and waterways;
 - a. In situations where the proposed TED project does not include any disturbance of the area with slopes over 25%, and those areas with slope over 25% are surveyed and designated No Build/No Improvement zones in the project application and in the survey accompanying the final TED declaration, the Zoning Officer is authorized to waive 20.40.180.B.2
3. Any land that is already included in a filed TED Declaration. Land with a slope of greater than 25%;
4. Any property requiring dedicated Public Right-of-Way as determined by the Development Services Director in consultation with the City Engineer. Reasons for requiring dedicated Public Right of Way include, but are not limited to: Riparian resource areas
 - a. Allowing for public motorized and non-motorized connections;
 - b. Allowing for provision of emergency services; or
 - c. Completing road sections called for in applicable adopted City Plans or Resolutions

Commentary: There are some situations where in order to best provide for orderly development and protect for the general health, safety and welfare of the community, development should include the creation of new public right of way, and should be directed to the subdivision process.

C. Setbacks and Separations

Minimum Setbacks that apply to TED Parcels for dwellings in Townhome Exemption Developments are found in Table 20.05-3, unless otherwise noted. Building separation requirements apply for structures within a TED Parcel as well. Refer to 20.110.050.F for specific information on how setbacks and building separation requirements apply to TED projects.

D. On-Site Constraints Minimum buildable envelope area

Each townhome exemption building envelope must have an average slope of no more than 25% and at least a 2,000 square foot contiguous building and disturbance area on parcels that are subject to hillside standards. See 20.50.010.B.1 for average slope determination.

Explanation:

This section is being changed to describe the types of potential hazards and constraints, identify the types of submittal information needed to conduct appropriate review and outline the review process.

Land that is subject to hazards such as swelling soils, subsidence, landslides, drainage issues or concerns, high ground water, and steep slopes, shall not cause any unmitigated adverse impacts on adjacent or nearby lands. Land with these hazards shall not receive zoning compliance approval until an engineering design sufficient to alleviate the foregoing hazard has been submitted by the applicant as follows:

1. Land with slopes averaging 15% or more: Provide a slope category map (20.50.010.C.1.a). Provide a complete geotechnical report by a soils engineer with a grading and drainage plan and storm water plan that evaluates the safety of construction on the subject property.
 - a. Each TED ownership unit (TOU) building envelope must have an average slope of no more than 25% and at least a 2,000 square foot contiguous building and disturbance area on parcels that are subject to hillside standards. See 20.50.010.B.1 for average slope determination.

2. Land with the potential for expansive soils, landslides, slope instability, and high ground water: Provide a complete geotechnical report prepared by a soils engineer with a grading and drainage plan and storm water plan that evaluates the safety of construction on the subject property and includes an evaluation of groundwater depth relative to basement construction.
3. A complete grading and drainage plan and storm water plan is required including storm drainage calculations for a 100-year frequency 24-hour storm to show that storm water shall be detained on site at pre-development levels, subject to review and approval by the City Engineer.

E. Surface Infrastructure and Fire Safety

All ~~surface~~ infrastructure shall meet the standards in Title 12 and be approved by Development Services Engineering ~~Division Department~~ and meet the requirements of the City of Missoula Standards and Specifications Manual. TED projects are subject to compliance with the adopted Fire Code.

1. Garage access off of a public or private road must be a minimum of 20 feet from back of curb or edge of sidewalk, whichever is closer.
2. Garage or surface parking access off of a public or private alley must meet engineering requirements.
3. All public and/or private streets, roads, alleys, and/or driveways must meet engineering and fire code requirements.
4. Proposed internal motorized and non-motorized access routes will be evaluated by the Development Services Director and City Engineer for connectivity in order to address public health and safety and meet the applicable goals and policies of any relevant and adopted community plans.

F. Blocks

Blocks shall be designed to assure traffic safety and ease of ~~pedestrian non-motorized~~ and ~~motorized automobile~~ circulation. Blocks ~~lengths~~ shall not exceed 480 feet in length ~~and be wide enough to allow two tiers of dwelling units in a Townhome Exemption Development unless topographic constraints y or other constraining circumstances are present as confirmed by the Zoning Officer. TOUs shall not be designed as through parcels. Pedestrian Non-motorized access easements and installation of pedestrian facilities~~ that create a break within a block may be required where there is a need for ~~pedestrian non-motorized connectivity~~.

G. Parks and Trails

TED projects of more than 10 (ten) dwelling units must:

1. Meet applicable goals and policies of the Missoula Open Space Plan, Long Range Transportation Plan, Active Transportation Plan, Conservation Lands Management Plan, Missoula County Parks and Conservation Plan and the Master Parks and Recreation Plan for the Greater Missoula Area:
 - a. Provide for trail connection to existing or planned public trail , park, open space, school, shopping, or community facilities.
 - b. Provide for protection of high quality resources and sensitive features by grant of conservation easement , dedication as public open space, or establishment of a managed common area.
 - c. Provide for useable private open space, landscaped boulevards, social interaction and livability.
2. Preserve and protect the site's natural resource values that include but are not limited to: ~~floodways,~~ wetlands, riparian lands, hillsides ~~greater than 25% slope~~, established upland forested areas, culturally significant features, natural drainage courses, irrigation canals

and ditches, etc. Means of preservation and protection may include establishing a single common area, conservation easement, or dedication of said areas as public open space.

3. Provide for 11% of the net site area (see 20.40.180.B above) as contiguous, useable private or public open space, on site, that is accessible by residents of the development and useable for passive or active recreation in conformance with the following standards:
 - a. Private Open Space shall not be sloped more steeply than five percent and must be a minimum 40 feet in width and length, unless it is used for the purpose of a trail and then the area must be a minimum of 20 feet in width.
 - b. Shall not include natural resource value areas of the site that are to be preserved.
 - c. Shall not include required zoning setback areas, parking spaces, drainage basins, driveways, or public utility features.
 - d. May be improved and dedicated as a public park, trail or open spaces subject to meeting minimum standards and approval of the Parks and Recreation Board.
 - e. May be exempted from the requirement to provide land (20.40.180.G.3) for the following reasons:
 1. ~~If~~ a cash donation is given in lieu to the Parks Department, equal to the fair market value for the amount of land that would have been required. Fair market value is determined by a Montana State certified general real estate appraiser, hired and paid for by the applicant, and is based on the market value of the unsubdivided, unimproved land based upon the applicable zoning designation of the TED project.
 - a4. Cash-in-lieu is typically permitted only if there are existing parks or other facilities (e.g., public recreational area, open space, conservation easement, trail), within reasonably close proximity to the proposed TED, as described in the most recent version of the Master Parks Plan and measured along existing and accessible travel routes. Final determination on whether cash is permitted in lieu of actual parkland is left to the discretion of the Department of Parks and Recreation.
 - b2. Money received through this cash-in-lieu process is held to the following:
 - 1a. No more than 50% of money received may be used for maintenance on existing Parks facilities.
 - 2b. Money received by the Parks Department must be spent on facilities reasonably close in proximity to the TED, as described in the most recent version of the Master Parks Plan.
 2. Development is on parcels in subdivisions that were approved subject to the parkland dedication requirements in effect after December 31, 2009.

H. Transit

If the Townhome Exemption Development is more **than ten dwelling units and** within one-fourth mile of an established public transit or school bus route, bus stop facilities may be required by the **Zoning Officer City Engineer**. If the Townhome Exemption Development parcel is not in the Missoula Urban Transportation District, a petition to annex into the District shall be provided prior to receiving zoning compliance approval.

Explanation:

This following sections are added to specifically address review process, submittal requirements, timing for installation of improvements, the relationship to TED Declarations and the potential for amendments to the Declaration, as well as introducing an entry design requirement for detached homes.

I. Review Process and Submittal Requirements

1. TED projects shall be submitted in their entirety in one townhome exemption application and reviewed in one zoning compliance permit (ZCP) application in compliance with section 20.85.120. Phasing is not permitted for TED projects.
2. The zoning compliance permit will lapse and have no further effect two years after it is issued by the Zoning Officer and the townhome exemption approval is rendered invalid unless:
 - a. A building permit has been issued; and
 - b. All infrastructure improvements, including but not limited to roads, curbs, gutters, utilities, sidewalks, boulevard improvements, storm water facilities, and drainage are installed and approved by the City Engineer or an estimate of probable cost is provided and an improvements agreement guaranteed by a security for the remaining infrastructure is approved by the City Engineer.
 - c. The Zoning Officer has extended the ZCP expiration period for no more than one year after determining that there are circumstances warranting the extension. Requests for extensions must be submitted to the Zoning Officer before the ZCP expires. An extension granted for the ZCP shall be subject to the applicable zoning regulations in place at the time the Zoning Officer grants the time extension.
3. The Zoning Officer is authorized to require additional materials for review beyond what is required through 20.85.120.
4. If a public access easement is required for a TED project, it must be filed prior to ZCP approval.
5. TED Projects of more than 5 dwelling units require the review and approval of the Fire Chief or his designee.
6. Information submitted at the time of a subdivision review approved under MCA 76-3, parts 5 and 6 may need to be resubmitted and updated if the subdivision submittal packet did not expressly contemplate the proposed TED project.

Commentary: In situations where a development is large enough that it must first go through subdivision before filing declarations for TED Parcels on the new lots, the fastest and most comprehensive way for the project to be reviewed and processed is all together during subdivision review. Expressly contemplated means that a site plan indicating access and number, size and location of TED Ownership Units was reviewed as part of the subdivision review.

J. TED Declarations

1. TED projects shall be filed as one townhome exemption declaration per TED parcel.
2. The final TED declaration must be reviewed by the Zoning Officer prior to when the declaration is filed by the Clerk and Recorder.
3. Amendments to Filed Declarations shall be reviewed for zoning compliance except for:
 - a. Incidental changes or modifications to building design; or

- b. Changes that do not affect site plan layout, easements, infrastructure improvements, or other Municipal code requirements.

K. Design Standards for TED Projects with Detached Homes on Public Roads

1. For detached homes on TED Ownership Units (TOUs) adjacent to a public road, the primary entrance must face the public road. In cases where a TOU is adjacent to more than one public road, the entrance must face at least one public road.

4. 20.45.060: ACCESSORY USES AND STRUCTURES, ACCESSORY DWELLING UNIT

20.45.0600.B.1: Accessory Dwelling Units, Regulations for all Accessory Dwelling Units

General Standards

Accessory dwelling units are subject to all applicable regulations of the zoning district in which they are located, except as otherwise expressly stated in this section. Lots that are nonconforming as to minimum parcel area are not eligible. Accessory dwelling units are not permitted on TED Ownership Units (TOUs).

5. 20.80.020.B; NONCONFORMING LOTS

20.80.020: Nonconforming Lots

A. Description

1. A nonconforming lot is a lawfully created tract of record, shown on a plat or survey map recorded in the office of the County Clerk and Recorder that does not comply with all applicable minimum parcel area or parcel width standards of the zoning district in which the lot is located.
2. All nonconforming lots are subject to nonconformity determination provisions of 20.80.010.D.
3. Lots created through subdivisions approved under MCA 76-3, parts 5 and 6 after May 6, 2019 are not considered to be nonconforming lots.

B. Use of Nonconforming Lots

1. Any nonconforming lot in an R district may be used as a building site for a single detached house, except as expressly stated in 20.80.020.B.3 and 20.80.020.B.4.
2. In nonresidential zoning districts, a nonconforming lot may be used as a building site and developed with a use allowed in the subject zoning district, except as expressly stated in 20.80.020.B.3 and 20.80.020.B.4. If the zoning allows a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable parcel area and parcel width standards, while others would not, then only the uses or intensities that comply with applicable standards are permitted.
3. Effective May 4, 2005, when two contiguous lots are held in common ownership, and when both of the lots are nonconforming lots, they will be deemed a single parcel for the purpose of meeting applicable parcel area and parcel width requirements of the zoning district in which they are located. This provision treats contiguous lots under common ownership as merged for the purposes of the zoning regulation of bulk, size, and similar dimensional standards only and does not aggregate individual parcels in a manner affected by MCA § 76-3-103(16)(b).
 - a. Lots in the R215, R80, R40, R20, and RT10 zone districts that have been rendered nonconforming as to the minimum lot size requirements by the adoption of this ordinance (Title 20) are not subject to 20.80.020.B.3.
 - b. Lots created through subdivisions approved under MCA 76-3, parts 5 and 6 after May 6, 2019 are not subject to 20.80.020.B.3.
4. A nonconforming lot may not be used as a building site if the land area resulted from:
 - a. The redesign or rearrangement of contiguous nonconforming tracts of record pursuant to a boundary line relocation exemption of the

Montana Subdivision and Platting Act occurring after October 23, 2006;
or

- b. The removal or destruction of a structure that utilized contiguous nonconforming lots as a single building site.

C. Parcel and Building Standards

- 1. Development on nonconforming lots must comply with the parcel and building standards of the subject zoning district unless otherwise expressly stated.
- 2. Nonconforming lots may not be adjusted in size or shape to create nonconformity or increase the degree of nonconformity for parcel area, parcel width, setbacks or other applicable parcel and building standards. Lot area or shape adjustments that decrease the extent of nonconformity are allowed.

6. 20.100.A; Terminology

Lot:

A contiguous area of land with defined boundaries under common ownership created by subdivision, subdivision exemption or their legal equivalent. TED Ownership Units (TOUs) are not lots.

TED Ownership Unit (TOU)

A parcel created through Townhome Exemption (MCA 76-3-203) that includes the land beneath each dwelling unit and can include land adjacent to each dwelling unit as shown in the approved Townhome Declaration Site Plan. Only one dwelling unit is associated with each TED ownership unit. TED Ownership Units (TOUs) are not lots.

7. 20.110; Measurements and Exceptions

20.110.010: Parcel Area

20.110.010 - Parcel Area

- A. Parcel area includes the total land area contained within the property lines of a parcel. The zoning officer is authorized to approve an administrative adjustment to permit the construction of a detached house on a parcel that would otherwise be prohibited solely because the parcel does not comply with the minimum parcel area standards of the subject zoning district. Such administrative adjustments are subject to the procedures and criteria of 20.85.110.
- B. The minimum parcel area requirement does not apply to lots created in subdivisions, approved under MCA 76-3, chapters 5 and 6, after May 6, 2019.
- C. The minimum parcel area requirement does not apply to TED Ownership Units (TOUs).

-

20.110.050.F: Setbacks and Separation of Residential Buildings on TED Parcels (**NEW SECTION**)

The following applies to buildings on TED Ownership Units (TOUs) created through the Townhome Exemption Development (TED) process after November 5, 2019.

1. TED projects (20.40.180) are required to meet setback standards for the underlying zoning district as described in Table 20.05-3, unless otherwise noted below.
 - a. Setbacks apply to the entire TED parcel used for a TED project as described in 20.110.050.
 - b. Setbacks for buildings within a TED parcel are measured to the nearest adjacent property line. A TOU separation line is not considered an adjacent property line. Depending on the design of the TED project, not every setback will apply to every TOU. (See 20.110.050.F.2 for information on TED building separation requirements).
 - c. TED projects of more than 5 dwelling units shall provide a side setback of no less than 7.5 feet.
2. Building separation
 - a. Building separation requirements apply on TED projects for structures on TOUs as described in 20.110.050.E. Minimum distance between buildings is the equivalent of two side setbacks.
 - b. A minimum building separation of 6' is allowed for zoning districts which require a side yard setback distance of 7.5' or less.



DEVELOPMENT SERVICES

435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX: (406) 552-6053

MEMORANDUM

TO: Jim Nugent, City Attorney
Marty Rehbein, City Clerk
Gordy Hughes, City Fire Department
Shannon Therriault, Health Department
Donna Gaukler, City Parks Department
Mike Brady, City Police Department
Ellen Buchanan, MRA
Eran Pehan, Housing and Community Development

CC: John Engen, Mayor
City Council Members
Dale Bickell, City CAO
John Newman, Chair, Planning Board
Missoula Organization of Realtors
Missoula Chamber of Commerce
Missoula Building Industry Association
Missoula Office of Neighborhoods
CAPS
Missoula Downtown Association
Interested citizens

DATE: July 12, 2019
FROM: Ben Brewer, Planner III, Development Services
RE: Townhome Exemption Development (TED) Zoning Amendments – City of Missoula Zoning Ordinance Title 20

At the request of the City Council, Development Services planning staff have drafted amendments to Title 20 City Zoning Ordinance to update Townhome Exemption Development (TED) and associated regulations. These proposed amendments are being developed during the time frame of an adopted Interim Ordinance to address TED projects. The interim ordinance established limitations for the review process for conditional use TEDs and greater parcel area flexibility for subdivisions while staff conducted a review of current codes and developed this package of proposed amendments in order to accommodate orderly development while protecting the public health, safety and welfare of the community. The goal is to establish these permanent revised regulations by the time the interim ordinance expires on Nov. 5, 2019. The interim ordinance and associated background documents can be found through the link below.

Background

The townhome exemption from subdivision was originally created by the Montana State legislature to address the changes to financing for condominiums that occurred after the great recession. This financing tool broadened the type of projects that were considered exempt from subdivision from just condominiums to include townhomes and townhouses (Montana Code Annotated 76-3-203).

The exemption allows for a streamlined review process for qualifying development projects located on legally created lots and zoned accordingly.

While other Montana communities struggled with how to interpret the state law and approached it with ways to limit it primarily to townhouse building types, Missoula accommodated and even encouraged TEDs as a legitimate and cost-effective alternative to minor subdivisions. The primary goal that TED's help accommodate is infill development, especially for projects that establish new sites for additional dwelling units on a parcel that is not yet developed fully.

As TED projects grew in scale and complexity, they presented greater challenges. Largely this is due to them being exempt from subdivision regulations, which curtails the ability to require the types of public amenities that are typically associated with subdivisions, and limits the kinds of submittal information, review, coordination, and conditions that are time-tested and responsive to concerns related to the community's public health, safety and general welfare. As an exemption from subdivision, the city is unable to require public right-of-way if needed and stands to lose valued transportation connections. There is also less ability to manage for impacts to the surrounding areas. Additionally, the TED exemption process is not equipped to adequately address the types of issues that arise from developing on hazardous and constrained lands. (For more details on the challenges brought on by TED developments please refer to the link for interim ordinance materials.)

The regulations in place before the Interim Ordinance was established already limited the TED process to residential development; permitted administrative review of smaller TED projects (varying by zoning district) and required a conditional use review process for larger TED projects. The larger TED projects included minimal development standards and required a percentage of land set aside or accounted for through a cash-in-lieu process for park areas. The conditional use review relied heavily on already established review criteria found in 20.85.070, and coordination with other city agency regulations to complete the review and potentially address outstanding issues.

Proposal Intent

While the interim ordinance is in place, we re-examined what the role of TEDs should be for development in Missoula. State law grants municipalities the ability to define TEDs in their local zoning laws. We have the opportunity to comprehensively guide this development tool and regulate TEDs so that they are used in a way that meets city goals and also addresses the challenges that TED projects present.

Early in this process, a TED Leadership Team was formed to help define how TEDs help to further city policy. The following intent statement was developed and incorporated into the regulations:

The Townhome Exemption Development Option is intended to encourage residential infill development that contributes to compact and walkable neighborhoods; makes efficient use of existing City infrastructure; and addresses housing affordability by generating new housing stock in a timely manner.

The TED Option is not intended for new greenfield development if it is in an area that is lacking in existing infrastructure; or for sites that would jeopardize the City's ability to manage development in an orderly manner or protect and promote the general health, safety and welfare of the community.

Proposal Strategies

The strategy for recalibrating how we better align the TED ordinance with city goals is based on the intent statement above. The primary components of the strategy that was selected is the following:

- TED is limited to residential development that includes either detached home or townhouse building types.

Explanation:

State law is ambiguous on the use or building type that 'Townhome' ownership units may be used for, but allows local zoning to provide specifics. Since the Townhome Exemption has become law, the City of Missoula has seen a wide variety of applications. Based on the Leadership intent statement, development for fee-simple residential units remain the City's primary focus for TED development in order to respond to the current housing affordability issue. TED is not a silver bullet for all situations all the time, but is meant here to be an important tool for supplying new homes and townhouses on the market in a timely manner.

- TED is permitted only in current Title 20 zoning districts (not in special districts or PUDs).

Explanation:

TEDs and the TED process are defined and contained within Title 20. The various Special Districts and PUDs that were established under Title 19 and still refer to Title 19 are not equipped to adequately process TED projects and still provide for health, safety and welfare.

- Currently, the number of units allowed in a permitted TED (not requiring a conditional use approval) is 5 in single dwelling and two dwelling unit districts and 9 in multi-dwelling and commercial districts. Our strategy would change those numbers to 10 in single dwelling and some two dwelling unit district (RT10 and RT5.4), and 20 in R3, RT2.7, and all multi-dwelling and commercial districts.

Explanation:

Implementing a size cap is one of the key strategy components for the proposed ordinance. The general idea of implementing a cap on the number of units is to ensure that use of the TED option is limited to developments that are not too complex and that are brought on line in a timely manner. The numbers that we are proposing are derived from a few considerations:

Based on Institute of Trip Engineers formulas, a development of 20 single family homes would be the point where 200 daily workday trips would be generated by a residential development and a traffic study may be needed. This threshold is already contained in Title 20 (20.60.140), and is derived from City Subdivision Regulations. The point that a traffic study is required is one indicator that a project is of a scale that could call for off-site improvements or be large enough that road grid connectivity or public right of way acquisition, as well as the potential for other impacts, becomes more likely.

We have also been looking over the TED projects that we've seen to get a sense of what has actually been done and to get a sense of what to anticipate in the future. Overall, there are 61 residential TED declarations on file in the City since 2012. Fifty-one of those (85%) are for 10 or less dwelling units, and 10 (15%) are larger than that. For TED projects of 10 or less units, the average size is 4 units, and there are just a few that are between 6-10. For larger TED projects (over 10 units), there are only 3 that are between 10 and 30, and the remaining 7 projects are between 30-60. The numbers we are proposing are balanced with other proposed new regulations as part of this

ordinance.

We have taken a balanced approach in limiting the scale of development, given that the TED option is an exemption to a subdivision process. Through subdivision, projects with more than 5 units are required to meet additional levels of review and public participation that are not required through TED. At the same time, we recognize that there are situations where a subdivision can be unduly onerous and review through TED may be appropriate.

Lastly, a split in the size cap based on zoning district seems worth maintaining because of the implications for the actual area that can be developed. Most single family districts have a lower density, so a development of 10 units may require more actual area than an even larger development in a higher density district. For example, a 10 unit development in R5.4 would require 1.2 acres (roughly half a city block), while a 20 unit development in RM2.7 would require the same area.

- Developments over the new cap on number of dwelling units would be prohibited as a TED. We would no longer use the conditional use process for TEDs of any size. Larger developments would need to go through some form of subdivision process (either minor and then TEDs on those lots, or a single major subdivision).

Explanation:

Eliminating the conditional use process will help to provide predictability and certainty to development that uses the TED option.

- Development of any size on sites that have significant constraints or hazardous lands issues would be prohibited from TED. Significant constraints include floodplain and steep slopes.

Explanation:

The TED exemption process is not sufficient to adequately address the types of issues that arise from developing on hazardous and constrained lands. Some potential hazards and constraints will be addressed by adding provisions to the zoning code to enable requesting additional information for constrained sites when the situation arises. However, there are some situations where constraints should be reviewed through the subdivision process, which is already set up to accommodate that, and which allows for actual subdivision of land to contain constrained lands on its own parcel that can then be zoned accordingly.

- Development that jeopardizes acquiring public roadways that are crucial to connectivity would be prohibited from TED (at the discretion of the Development Services Director in consultation with the City Engineer).

Explanation:

There are some situations where in order to best provide for orderly development and protect for the general health, safety and welfare of the community, development should include the creation of new public right of way, and should be directed to the formal subdivision process. Even though the size cap will ensure that most new large developments necessarily go through some extent of subdivision review, this is meant to address the rare case of a TED project that is proposed in an area where it is vital that public roads be included in the project, based on City plans, provision of emergency services, or an interrupted road grid.

- TED projects are expected to be developed in a condensed time frame with infrastructure installed and initial building permits pulled within 2-3 years. No phasing is permitted within TEDs.

Explanation:

As established in the leadership statement, one of the primary benefits that the TED option offers for meeting City goals is that it offers a streamlined review process that can enable new housing to be brought into the housing supply pool in a timely manner. Also, with the expectation that development happen in a timely manner, there is less likelihood for regulation (state, local or federal) to change between the time of approval and actual construction.

- New subdivisions would not be subject to minimum parcel size by zoning (but would still be held to maximum density.)

Explanation:

This change to the general Title 20 zoning was included in the interim ordinance and is meant to make subdivision and TED an equally appealing development option. Essentially, in TED development, since TED Ownership Units are not recognized as actual lots, the minimum parcel size requirement in zoning has not applied, and so TED developments are generally able to develop to the maximum that zoning allows more easily than in new subdivisions where individual lot size must be of a certain size. By removing the zoning standard for minimum parcel size, this will remove that barrier and enable development to reach maximum density potential for new subdivisions.

TED Ordinance Update: Modifications to the Following Standards:

- 20.05.040.D: Residential Districts , Townhome Exemption Development Option
 - 20.05.050.B: Residential Districts, Basic Parcel and Building Standards
 - 20.05/20.10/20.15: Residential/Commercial/Industrial Districts: Other Standards
 - 20.40.080: Use and Building Specific Standards: Townhome Exemption Development (TED)
 - 20.45.060: Accessory Uses and Structures: Accessory Dwelling Units
 - 20.80.020: Nonconformities: Nonconforming Lots
 - 20.100: Terminology
 - 20.110: Measurements and Exceptions: Parcel Size; Setbacks and Separation for TEDs
-

Agency and Public Comment Request

The attached document provides the proposed language.

For additional reference, the current Title 20 Municipal Code can be viewed at:

https://library.municode.com/mt/missoula/codes/code_of_ordinances?nodeId=TIT20ZO

Agency and interested citizen comments are requested. Comments received by Monday, July 22, 2019 will be included in an informational packet to the Planning Board prior to their public hearing. Comments will continue to be taken by Planning Board after this time until the public hearing is closed. Written comments received by noon on August 5, 2019 will be forwarded under separate cover to Planning Board prior to their meeting.

After agency input, the Planning Board will review and provide recommendations to the City Council for their final review, recommendation, and decision. Should you wish to attend, the Planning Board will hold a public hearing on Tuesday, August 6, 2019 beginning at 7:00 p.m., in the Missoula City Council Chambers, 140 W. Pine Street, Missoula, MT. Printed material is available for inspection at Development Services, 435 West Ryman Street, Missoula, MT 59802.

Please forward your comments to Ben Brewer, bbrewer@ci.missoula.mt.us. Send a notice of *no comment* if you have none so the Planning Board and City Council are aware of your participation. If you have problems viewing the document or have questions, please contact Ben Brewer via email or telephone at 552-6086.

Attachment

July 12 Draft TED Related Title 20 Ordinance Amendments

Related Materials:

See City Planning Current Projects page: <http://ci.missoula.mt.us/1521/Current-Projects>

-Interim Ordinance Materials

-Draft Ordinance Materials

Townhome Exemption Amendments – 2019

LIST OF AMENDMENTS

- 1) RESIDENTIAL DISTRICTS
 - Townhome Exemption Development Option
 - Parcel and Building Standards
- 2) Other Regulations
 - Residential Districts
 - Commercial Districts
 - Industrial Districts
- 3) USE AND BUILDING SPECIFIC STANDARDS
 - Townhome Exemption Development (TED) Standards
- 4) ACCESSORY USES AND STRUCTURES
 - Accessory Dwelling Units
- 5) NONCONFORMITIES
 - Nonconforming Lots
- 6) TERMINOLOGY
 - LOT
 - TED OWNERSHIP UNIT (TOU)
- 7) MEASUREMENTS AND EXCEPTIONS
 - PARCEL AREA
 - SETBACKS AND BUILDING SEPARATION

Townhome Exemption Amendments – 2019

SPECIFIC AMENDMENTS BY CODE SECTION:

1. 20.05: RESIDENTIAL DISTRICTS

20.05.40.D: Townhome Exemption Development

D. Townhome Exemption Development

1. Intent

- a. The Townhome Exemption Development Option is intended to encourage affordable fee simple detached house , two-unit townhouse , and 3+-unit townhouse development without subdivision review in accordance with City zoning regulations.
- b. ~~Public notice and City Council approval of a conditional use is required if the development contains more than five dwelling units in R and RT districts, or more than nine dwelling units in RM, B, C, and M1R districts.~~ The Townhome Exemption Development tool is intended to encourage residential development in the city's core in concert with the city of Missoula's stated policy goals, including the development of compact and walkable neighborhoods; the effective use of existing infrastructure, and the building of new, affordable housing in a timely manner.
- c. The TED tool is not intended for greenfield development where public infrastructure is missing and where there are significant impediments to the community's ability to guide development in an orderly manner or to protect and promote the general health, safety and welfare of the community.

2. General Description

- a. The only permitted residential building types that may be included in a TED project are detached houses , two-unit townhouses , and 3+-unit townhouses as described in Section 20.05.030 and as allowed within the applicable zoning district. TED is not permitted for development that includes nonresidential uses.
- b. Two-unit townhouse and 3+-unit townhouse building types as part of TED projects must also comply with Section 20.40.140, Townhouse standards.
- c. Townhome Exemption Development must comply with Section 20.40.180, Townhome Exemption Development (TED) Standards.
- ed. Townhome Exemption Developments must meet all applicable City ~~zoning~~ municipal regulations (see Figure 20.05-7).

Figure 20.05-7 Townhome Exemption Development Requirements

	R-Districts	RT-Districts	RM Districts	All B, C Districts M1R
One (1) to five (5) total dwelling units	Administrative Approval Comply with Zoning 15-day neighborhood notice (20.05.040-D 4)		Administrative Approval Comply with Zoning	
Six (6) to Nine (9) Total dwelling Units	Conditional Use Approval (20.85.070) + Building Specific Standards (20.40.180)		Administrative Approval Comply with Zoning	
Ten (10) or More Total dwelling Units	Conditional Use Approval (20.85.070) + Building Specific Standards (20.40.180)			

	<u>R Districts (except R3)</u> <u>RT5.4 and RT10 Districts</u>	<u>RT2.7, R3</u> <u>RM Districts</u> <u>All B, C Districts M1R</u>
<u>One (1) to ten (10) total dwelling units</u>	<u>Administrative Approval Comply with Zoning</u>	<u>Administrative Approval Comply with Zoning</u>
<u>Eleven (11) to Twenty (20) Total dwelling Units</u>	<u>Prohibited as TED</u>	<u>Administrative Approval Comply with Zoning</u>
<u>More Than Twenty (20) Total dwelling Units</u>	<u>Prohibited as TED</u>	
<u>Property is not suitable for TED 20.40.180.B</u>	<u>Prohibited as TED</u>	

~~d. — All surface infrastructure shall meet the standards in Title 12 and be approved by Development Services Engineering Division.~~

3. **Condominium Conversion to Townhome**

Conversion of condominium projects constructed prior to May 18, 2016, to Townhome Exemption Development (TED) are not subject to the provisions of TED regulations unless dwelling units are added.

4. **Notice to Neighboring Property Owners**

Notice of the application for a zoning compliance permit for Townhome Exemption Developments ~~of one to more than~~ five dwelling units ~~in the R and RT zoning districts~~ must be mailed to all owners of property within 150 feet of the subject parcel at least 15 days before a permit is issued. ~~(Mailed notice for projects of six or more dwelling units in those districts and ten or more dwelling units in RM, M1R, B, and C districts is required within the Conditional Use process.)~~

20.05.050.B: Parcel and Building Standards, Basic Standards

Table 20.05-3 [Parcel](#) and Building Standards (Residential Districts)

[Portion of Table]

Standards	R21 5	R8 0	R4 0	R2 0	RT1 0	R8	R5. 4	RT5. 4	R3	RT2. 7	RM2. 7	RM 2	RM1. 5	RM1 -35	RM1 -45 RMH [1]	RM0. 5
CONVENTIONAL DEV'T																
Min. District Area (sq. ft.)	None	None	None	None	None	None	None	None	30,000	None	None	None	None	None	None	None
Minimum Parcel Size [8]																
^L Area (square feet)	215,000	80,000	40,000	20,000	10,000	8,000	5,400	5,400	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000
^L Area per unit (sq. ft.)	215,000	80,000	40,000	20,000	10,000	8,000	5,400	5,400	3,000	2,700	2,700	2,000	1,500	1,000	1,000	500

Townhome Exemption Development	<p>Minimum parcel area, minimum area per unit, and building height will be based on the zoning designation of the overall TED parcel found under Conventional Development in Table 20.05-3 above.</p> <p>Building setback and separation standards are as follows: Front or street side setbacks for Townhome Exemption Development dwellings are measured to the nearest parcel line or public circulation system such as a street, roadway, sidewalk, or trail, whichever is closer.</p> <p>Rear setbacks are measured to the parcel line.</p> <p>Side setbacks are measured to the parcel line. Minimum distance between buildings is the equivalent of two side setbacks. A minimum 6' interior side separation between buildings is allowed for zoning districts which require a minimum side yard setback distance of 7.5' or less.</p> <p>For B, C, and M1R districts refer to standards in Chapters 20.10.030 and 20.15.040.</p>
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[1] RMH standards do not apply to manufactured housing parks. Manufactured housing parks are subject to Title 16.

- [2] In a cluster or conservation development , when a contiguous set of parcels is served by a rear alley and no building line has been established by existing buildings on the subject block face , the minimum front setback requirement is 10 feet.
- [3] Combined total front and rear setback depths must equal at least 30 feet (e.g., 10' front and 20' rear or 15' each).
- [4] Minimum interior side setbacks for principal buildings must equal at least 33% of the height of the subject building .
- [5] Maximum height limit is 30 feet for buildings with primary roof pitch of less than 8 in 12 and 35 feet for buildings with primary roof pitch of 8 in 12 or greater.
- [6] Only applies per Section 20.05.040.C.
- [7] Area per unit calculation may include a density bonus up to 20% when a project meets the criteria in Section 20.05.040.C.
- [8] The minimum parcel area requirement does not apply to lots created in subdivisions approved under MCA 76-3, chapters 5 and 6 after May 6, 2019.

Explanation:

Setback and Building Separation information is removed from Table 20.05-3 to a new section in 20.110: Measurements and Exceptions to better clarify the distinction between TED Parcel setback requirements versus building separation between structures within a TED Parcel.

2. OTHER REGULATIONS; Residential, Business and Commercial, and Industrial Districts Chapters, 20.05, 20.10, and 20.15

Explanation: The Other Regulations sections in the zoning districts chapters are meant to inform users that other standards may exist outside of the district type chapters and to guide them to where those standards can be found. Adding the Use and Building Specific chapter will benefit not just users working through the TED process, but for various other uses and design types as well.

20.05.060: Residential Districts, Other Regulations

A. Overlay Districts

See Chapter 20.25.

B. Use and Building Specific Standards

See Chapter 20.40.140 for Townhouse Development Standards

See Chapter 20.40.180 for Townhome Exemption Development (TED) Standards

AC. Accessory Uses and Structures

(e.g., home occupations , detached garages , gazebos, and sheds)

See Chapter 20.45.

BD. Natural Resource Protection

See Chapter 20.50.

CE. Parking and Access

See Chapter 20.60.

DF. Landscaping

See Chapter 20.65.

E. Overlay Districts

See Chapter 20.25.

FG. Signs

See Chapter 20.75.

GH. Nonconformities

See Chapter 20.80.

20.10.050: Commercial Districts, Other Regulations

Uses and development in B and C districts may be subject to other provisions of this zoning ordinance, including the following:

A. Overlay Districts

See Chapter 20.25.

B. Use and Building Specific Standards

See Chapter 20.40

AC. Accessory Uses and Structures

See Chapter 20.45.

BD. Natural Resource Protection

See Chapter 20.50.

GE. Parking and Access

See Chapter 20.60.

DF. Landscaping

See Chapter 20.65.

~~E. Overlay Districts~~

~~See Chapter 20.25.~~

FG. Signs

See Chapter 20.75.

GH. Nonconformities

See Chapter 20.80.

20.15.060: Industrial Districts, Other Regulations

Uses and development in M districts may be subject to other provisions of this zoning ordinance, including the following:

A. Overlay Districts

See Chapter 20.25.

B. Use and Building Specific Standards

See Chapter 20.40

AC. Accessory Uses and Structures

See Chapter 20.45.

BD. Natural Resource Protection

See Chapter 20.50.

GE. Parking and Access

See Chapter 20.60.

DF. Landscaping

See Chapter 20.65.

~~E. Overlay Districts~~

~~See Chapter 20.25.~~

FG. Signs

See Chapter 20.75.

GH. Nonconformities

See Chapter 20.80.

3. 20.40.180: TOWNHOME EXEMPTION DEVELOPMENT (TED) STANDARDS

20.40.180: Townhome Exemption Development (TED) Standards

Commentary: Townhome vs. Townhouse - Townhome refers to a development type consisting of residential dwellings that may be single unit or townhouse and owned in fee simple on TED Ownership Units (TOUs) and located on a TED Parcel as two-unit or, multi-unit and described in above (20.05.040.D). Townhouse refers to a building type that is two or more units which have common walls along shared property lines as described in 20.05.030.B.3, and is required to meet standards detailed in 20.40.140. A townhouse can also be attached or be located on its own parcel (20.100.010).

A. Applicability

1. The following standards apply to Townhome Exemption Developments of more than five ten or fewer dwelling units in R and RT RT5.4, RT10, and all R districts (except R3), or more than nine 20 or fewer dwelling units in RT2.7, R3, and all RM, B, C, and M1R districts. Developments over these numbers are not permitted through the TED process.
2. The only permitted residential building types that may be included in a TED project are detached houses, two-unit townhouses, and 3+-unit townhouses as described in Section 20.05.030 and as allowed in the applicable zoning district.
3. Two unit townhouse and 3+-unit townhouse building types as part of TED projects must also comply with Section 20.40.140, Townhouse Standards.
4. TED shall not be used for developments including nonresidential uses.
45. Townhome Exemption Developments must meet all applicable City zoning municipal regulations, including Title 12 and Title 20. (see Figure 20.05-7).

B. Conditions not suitable for TED Maximum Density

Explanation:

This section would be changed as many of the things that could reduce the possible density of a project are now being added to the list of what could make a project not suitable for TED in the first place.

The maximum number of dwelling units allowed within a Townhome Exemption Development is computed by dividing the net area of the site by the subject zoning district's minimum parcel area-per unit standard. Net site area is calculated by subtracting all of the following from the site's gross land area:

If the subject property contains one or more of the following conditions, it is not suitable for development through the TED process and is not permitted for TED:

1. Any portion of the subject property contains land with areas designated by FEMA as Floodways and Special Flood Hazard Areas (SFHAs) subject to inundation by the 1% Annual Chance of Flood, or that would require a permit from one of the agencies listed on the "Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplain and Other Water Bodies". Special flood hazard areas;
2. Any portion of the subject property includes land with a slope of greater than 25%. Jurisdictional (Army Corps of Engineers) wetlands and waterways; \

- a. In situations where the proposed TED project does not include any disturbance of the area with slopes over 25%, and those areas with slope over 25% are surveyed and designated No Build/No Improvement zones in the project application and in the survey accompanying the final TED declaration, the Zoning Officer is authorized to waive 20.40.180.B.2
- 3. Any land that is already on an existing TED Parcel. ~~Land with a slope of greater than 25%;~~
- 4. Any property requiring dedicated Public Right-of-Way as determined by the Development Services Director in Consultation with the City Engineer. Reasons for requiring dedicated Public Right of Way include: ~~Riparian resource areas~~
 - a. Interrupted street grids;
 - b. Lack of capacity for provision of emergency services; or
 - c. Road sections called for in applicable previously adopted City Plans or Resolutions

Commentary: There are some situations where in order to best provide for orderly development and protect for the general health, safety and welfare of the community, development should include the creation of new public right of way, and should be directed to the subdivision process.

C. Setbacks and Separations

Minimum Setbacks ~~apply to TED Parcels and for dwellings in Townhome Exemption Developments~~ are found in Table 20.05-3. Building separation requirements apply for structures within a TED Parcel as well. Refer to 20.110.050.F for specific information on how setbacks and building separation requirements apply to TED projects.

D. On-Site Constraints ~~Minimum buildable envelope area~~

Each townhome exemption building envelope must have an average slope of no more than 25% and at least a 2,000 square foot contiguous building and disturbance area on parcels that are subject to hillside standards. See 20.50.010.B.1 for average slope determination.

Land that is subject to hazards such as swelling soils, subsidence, landslides, drainage issues or concerns, high ground water, and steep slopes, shall not cause any unmitigated adverse impacts on adjacent or nearby lands. Land with these hazards shall not receive zoning compliance approval until an engineering design sufficient to alleviate the foregoing hazard has been submitted by the applicant as follows:

- 1. Land with slopes averaging 15% or more: Provide a slope category map (20.50.010.C.1.a). Provide a complete geotechnical report by a soils engineer with a grading and drainage plan and storm water plan that evaluates the safety of construction on the subject property.
 - a. Each TED ownership unit (TOU) building envelope must have an average slope of no more than 25% and at least a 2,000 square foot contiguous building and disturbance area on parcels that are subject to hillside standards. See 20.50.010.B.1 for average slope determination.
- 2. Land with the potential for expansive soils, landslides, slope instability, and high ground water: Provide a complete geotechnical report prepared by a soils engineer with a grading and drainage plan and storm water plan that evaluates the safety of construction on the subject property and includes an evaluation of groundwater depth relative to basement construction.
- 3. A complete grading and drainage plan and storm water plan is required including storm drainage calculations for a 100-year frequency 24-hour storm to show that storm water shall be detained on site to pre-development levels, subject to review and approval by the City Engineer.

E. **Surface Infrastructure**

All ~~surface~~ infrastructure shall meet the standards in Title 12 and be approved by Development Services Engineering ~~Department~~ and meet the requirements of the City of Missoula Standards and Specifications Manual.

1. Garage access off of a public or private road must be a minimum of 20 feet from back of curb or edge of sidewalk, whichever is closer.
2. Garage or surface parking access off of a public or private alley must meet engineering requirements.
3. All public and/or private streets, roads, alleys, and or driveways must meet engineering requirements.
4. The Zoning Officer, in consultation with the City Engineer, is authorized to permit woonerfs (as described in City Subdivision Regulations) in place of streets or alleys.

F. **Blocks**

Blocks shall be designed to assure traffic safety and ease of ~~pedestrian non-motorized~~ and ~~motorized automobile~~ circulation. Blocks ~~lengths~~ shall not exceed 480 feet in length. ~~TOUs shall not be designed as through parcels. and be wide enough to allow two tiers of dwelling units in a Townhome Exemption Development unless topographic constraints y or other constraining circumstances are present as confirmed by the Zoning Officer .~~ ~~Pedestrian~~ Non-motorized access easements that create a break within a block may be required where there is a need for ~~pedestrian non-motorized connectivity, or~~ access to school bus or transit stops, schools, shopping, parks, common areas or open space, and community facilities.

G. **Parks and Trails**

The following applies to TED projects of more than 10 (ten) dwelling units.

1. Meet applicable goals and policies of the Missoula Open Space Plan, Long Range Transportation Plan, Active Transportation Plan, Conservation Lands Management Plan, Missoula County Parks and Conservation Plan and the Master Parks and Recreation Plan for the Greater Missoula Area:
 - a. Provide for trail connection to existing or planned public trail , park, open space, school, shopping, or community facilities.
 - b. Provide for protection of high quality resources and sensitive features by grant of conservation easement , dedication as public open space, or establishment of a managed common area.
 - c. Provide for useable private open space, landscaped boulevards, social interaction and livability.
2. Preserve and protect the site's natural resource values that include but are not limited to: ~~floodways~~, wetlands , riparian lands, hillsides ~~greater than 25% slope~~ , established upland forested areas, culturally significant features, natural drainage courses, irrigation canals and ditches, etc. Means of preservation and protection may include establishing a single common area, conservation easement , or dedication of said areas as public open space.
3. Provide for 11% of the net site area (see 20.40.180.B above) as contiguous, useable private or public open space, on site, that is accessible by residents of the development and useable for passive or active recreation in conformance with the following standards:
 - a. Private Open Space shall not be sloped more steeply than five percent and must be a minimum 40 feet in width and length, unless it is used for the purpose of a trail and then the area must be a minimum of 20 feet in width.

- b. Shall not include natural resource value areas of the site that are to be preserved.
- c. Shall not include required zoning setback areas, parking spaces, drainage basins, driveways, or public utility features.
- d. May be improved and dedicated as a public park, trail or open spaces subject to meeting minimum standards and approval of the Parks and Recreation Board.
- e. May be exempted from the requirement to provide land (20.40.180.G.3) for the following reasons:
 - 1. ~~If~~ a cash donation is given in lieu to the Parks Department, equal to the fair market value for the amount of land that would have been required. Fair market value is determined by a Montana State certified general real estate appraiser, hired and paid for by the applicant, and is based on the market value of the unsubdivided, unimproved land based upon the applicable zoning designation of the TED project.
 - a1. Cash-in-lieu is typically permitted only if there are existing parks or other facilities (e.g., public recreational area, open space, conservation easement, trail), within reasonably close proximity to the proposed TED, as described in the most recent version of the Master Parks Plan and measured along existing and accessible travel routes. Final determination on whether cash is permitted in lieu of actual parkland is left to the discretion of the Department of Parks and Recreation.
 - b2. Money received through this cash-in-lieu process is held to the following:
 - 1a. No more than 50% of money received may be used for maintenance on existing Parks facilities.
 - 2b. Money received by the Parks Department must be spent on facilities reasonably close in proximity to the TED, as described in the most recent version of the Master Parks Plan.
 - 2. Development on parcels in subdivisions approved subject to the parkland dedication requirements in effect after December 31, 2009.

H. Transit

If the Townhome Exemption Development is more ~~than ten dwelling units and~~ within one-fourth mile of an established public transit or school bus route, bus stop facilities may be required by the ~~Zoning Officer City Engineer~~. If the Townhome Exemption Development parcel is not in the Missoula Urban Transportation District, a petition to annex into the District shall be provided prior to receiving zoning compliance approval.

I. Review Process and Submittal Requirements

- 1. TED projects shall be submitted in their entirety in one townhome exemption application and reviewed in one zoning compliance permit (ZCP) application in compliance with section 20.85.120. Phasing is not permitted for TED projects.
- 2. The zoning compliance permit will lapse and have no further effect two years after it is issued by the Zoning Officer and the townhome exemption approval is rendered invalid unless:
 - a. A building permit has been issued; and
 - b. All infrastructure improvements, including but not limited to roads, curbs, gutters, utilities, sidewalks, boulevard improvements, storm water facilities, and drainage are installed and approved by the City Engineer or an estimate of probable cost is

- provided and an improvements agreement guaranteed by a security for the remaining infrastructure is approved by the Zoning Officer.
- c. The Zoning Officer has extended the ZCP expiration period for no more than one year after determining that there are circumstances warranting the extension. Requests for extensions must be submitted to the Zoning Officer before the ZCP expires. Any time extension granted for the ZCP shall be subject to the applicable zoning regulations in place at the time the Zoning Officer grants the time extension.
 3. The Zoning Officer is authorized to require additional materials for review beyond what is required through 20.85.120.
 4. If a public access easement is required for a TED project, it must be filed prior to ZCP approval.
 5. TED Projects on lots subdivided after November 6th, 2019, should expressly contemplate the proposed TED development during the subdivision review process.

Commentary: In situations where a development is large enough that it must first go through subdivision before filing declarations for TED parcels on the new lots, the fastest and most comprehensive way for the project to be reviewed and processed is all together during subdivision review. In cases where TED projects are proposed on lots in subdivisions that occurred after 2019 that did not expressly contemplate the proposed TED project, it is possible that the proposed TED project will require additional mitigation.

J. TED Declarations

1. TED projects shall be filed as one townhome exemption declaration per TED parcel.
2. The final TED declaration must be reviewed prior to when the declaration is filed by the Zoning Officer.

K. Design Standards for TED Projects with Detached Homes on Public Roads

1. For detached homes on TOU's adjacent to a public roadway, the entrance must face the public roadway. In cases where a TOU is adjacent to more than one public roadway, the entrance must face at least one public roadway.

4. 20.45.060: ACCESSORY USES AND STRUCTURES, ACCESSORY DWELLING UNIT

20.45.0600.B.1: Accessory Dwelling Units, Regulations for all Accessory Dwelling Units

General Standards

Accessory dwelling units are subject to all applicable regulations of the zoning district in which they are located, except as otherwise expressly stated in this section. Lots that are nonconforming as to minimum parcel area are not eligible. Accessory dwelling units are not permitted on TED Ownership Units (TOUs).

5. 20.80.020.B; NONCONFORMING LOTS

20.80.020: Nonconforming Lots

A. Description

1. A nonconforming lot is a lawfully created tract of record, shown on a plat or survey map recorded in the office of the County Clerk and Recorder that does not comply with all applicable minimum parcel area or parcel width standards of the zoning district in which the lot is located.
2. All nonconforming lots are subject to nonconformity determination provisions of 20.80.010.D.
3. Lots created through subdivisions approved under MCA 76-3, chapters 5 and 6 after May 6, 2019 are not considered to be nonconforming lots.

B. Use of Nonconforming Lots

1. Any nonconforming lot in an R district may be used as a building site for a single detached house , except as expressly stated in 20.80.020.B.3 and 20.80.020.B.4.
2. In nonresidential zoning districts , a nonconforming lot may be used as a building site and developed with a use allowed in the subject zoning district, except as expressly stated in 20.80.020.B.3 and 20.80.020.B.4. If the zoning allows a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable parcel area and parcel width standards, while others would not, then only the uses or intensities that comply with applicable standards are permitted.
3. Effective May 4, 2005, when two contiguous lots are held in common ownership, and when both of the lots are nonconforming lots , they will be deemed a single parcel for the purpose of meeting applicable parcel area and parcel width requirements of the zoning district in which they are located. This provision treats contiguous lots under common ownership as merged for the purposes of the zoning regulation of bulk, size, and similar dimensional standards only and does not aggregate individual parcels in a manner affected by MCA § 76-3-103(16)(b).
 - a. Lots in the R215, R80, R40, R20, and RT10 zone districts that have been rendered nonconforming as to the minimum lot size requirements by the adoption of this ordinance (Title 20) are not subject to 20.80.020.B.3.
 - b. Lots created through subdivisions approved under MCA 76-3, chapters 5 and 6 after May 6, 2019 are not subject to 20.80.020.B.3.
4. A nonconforming lot may not be used as a building site if the land area resulted from:
 - a. The redesign or rearrangement of contiguous nonconforming tracts of record pursuant to a boundary line relocation exemption of the

Montana Subdivision and Platting Act occurring after October 23, 2006;
or

- b. The removal or destruction of a structure that utilized contiguous nonconforming lots as a single building site .

C. Parcel and Building Standards

- 1. Development on nonconforming lots must comply with the parcel and building standards of the subject zoning district unless otherwise expressly stated.
- 2. Nonconforming lots may not be adjusted in size or shape to create nonconformity or increase the degree of nonconformity for parcel area, parcel width, setbacks or other applicable parcel and building standards. Lot area or shape adjustments that decrease the extent of nonconformity are allowed.

6. 20.100.A; Terminology

Lot:

A contiguous area of land with defined boundaries under common ownership created by subdivision, subdivision exemption or their legal equivalent. TED ownership units are not lots.

TED Ownership Unit (TOU)

A parcel created through Townhome Exemption (MCA 76-3-203) that includes the land beneath each dwelling unit and can include land adjacent to each dwelling unit as shown in the approved Townhome Declaration Site Plan. Only one dwelling unit is associated with each TED ownership unit. TED ownership units are not lots.

7. 20.110; Measurements and Exceptions

20.110.010: Parcel Area

20.110.010 - Parcel Area

- A. Parcel area includes the total land area contained within the property lines of a parcel . The zoning officer is authorized to approve an administrative adjustment to permit the construction of a detached house on a parcel that would otherwise be prohibited solely because the parcel does not comply with the minimum parcel area standards of the subject zoning district. Such administrative adjustments are subject to the procedures and criteria of 20.85.110.
- B. The minimum parcel area requirement does not apply to lots created in subdivisions, approved under MCA 76-3, chapters 5 and 6, after May 6, 2019.
- C. The minimum parcel area requirement does not apply to TED Ownership Units (TOUs).

20.110.050.F: Setbacks and Separation of Residential Buildings on TED Parcels (**NEW SECTION**)

The following applies to buildings on TED Ownership Units (TOUs) created through the Townhome Exemption Development (TED) process after November 5, 2019.

1. TED projects (20.40.180) are required to meet setback standards for the underlying zoning district as described in Table 20.05-3.
 - a. Setbacks apply to the entire TED parcel used for TED projects as described in 20.110.050.A.1.
 - b. Setbacks for buildings within a TED parcel are measured to the nearest adjacent property line. A TOU separation line is not considered an adjacent property line. Depending on the design of the TED project, not every setback will apply to every TOU. (See 20.110.050.F.2 for information on TED building separation requirements).
2. Building separation
 - a. Building separation requirements apply on TED projects for structures on TOUs as described in 20.110.050.E. Minimum distance between buildings is the equivalent of two side setbacks.
 - b. A minimum building separation of 6' is allowed for zoning districts which require a side yard setback distance of 7.5' or less.

Mr. Brewer,

The Office of Housing and Community Development is in full support of the proposed amendments related to Townhome Exemption Development (TED). The amendments are in alignment with recommendations in *A Place to Call Home: Meeting Missoula's Housing Needs*. These amendments align closely with one of the key goals of the adopted housing policy, reducing barriers to new supply and promoting access to affordable homes. Specifically, they represent opportunities to reduce development costs and address barriers to building to currently zoned density.

The proposed TED amendments align with the following recommendations found in *A Place to Call Home*:

- Administrative approval for TEDs under the cap of 10 units (in R Districts, except R3, RT5.4 and RT10 Districts) and 20 units (in RT2.7, R3, RM Districts, All B,C, Districts M1R).
 - *A Place to Call Home* recommends the following:

“Ultimately, the City may want to consider a two-tiered approach that increase the size of by-right approval for TEDs to 10 units. Given the problematic nature of very large TEDs, which challenge the local government’s ability to protect general health and safety as provided for in the subdivision regulations, a higher tier of regulatory oversight should be considered for projects over a certain threshold”.
- The elimination of minimum parcel size for lots created in subdivisions approved under MCA 76-3, chapters 5 and 6 after May 6, 2019.
 - *A Place to Call Home* recommends the following:

“The current land use code limits minimum lot size at 3,000 square feet. Allowing smaller lots is contemplated as an incentive for TED and subdivision development under the proposed program, which could serve as a valuable pilot for eventual changes to underlying code across the board. This is critical for promoting infill development while also ensuring overall housing affordability”.

Thank you for the opportunity to provide comment and support for these proposed changes.

Eran Fowler Pehan
Director
Office of Housing and Community Development
406-552-6395

Ben,

Thanks for giving us the opportunity to comment on the proposed amendments for the Townhome Exemption Developments. The Parks Department supports the proposed changes as drafted, particularly in regards to 20.40.180. Item G. Parks and Trails.

Please let me know if you have any additional questions.

Thanks

Neil

Neil Miner, PLA

Parks and Trails Design/Development Manager

Missoula Parks and Recreation

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nminer@ci.missoula.mt.us

Ben,

On page 9 under section E. 3. I would like to add after "...must meet engineering requirements and the requirements of the adopted Fire Code at the time of construction."

I would like to see a subsection (maybe after Transit) entitled Fire Protection and have the following language attached:

- TED projects are subject to compliance with the adopted Fire Code.

I would also like to see a sentence within the subsection of Review Process and Submittal Requirements, something along the lines of:

- TED projects require the review and approval of the Fire Chief or his designee.

I hope that covers it, give me a shout if you need clarification on any of this. Thanks Ben for the opportunity to comment, I think this is a good step forward for these TED's.

Gordy Hughes
Assistant Fire Chief
552-6189

BEN:

I believe that I have possibly figured out your MCA citation problem in the draft ordinance text. The word "chapter" is erroneous and should be "part(s)" This needs to be corrected at three (3) locations that I previously identified to you.

The correct language should most accurately be cited as MCA, title 76, chapter 3, parts 5 and 6.". This revised language needs to be corrected in three (3) locations.

JIM NUGENT
City Attorney
552-6025

To Whom It May Concern:

Thank you for giving me the opportunity to comment on the proposed TED regulations. I have used the TED regulations to develop several small townhome projects (5 or fewer units) in Missoula.

I understand the need for a traditional subdivision for very large projects, or where there is green field development involved. However, this ordinance is not limited to just green field development, or to large TED projects. It applies to all TED projects, and I am concerned the ordinance will have unintended and unforeseen consequences that will create barriers for small, in-fill TED projects.

For example, a small in-fill parcel that is properly zoned and served by existing public infrastructure could still be prohibited as a TED just because a portion of the property is in the floodway. Development of the floodway is not permitted anyway, and whether or not the project happens to be a TED project does not change this. Nevertheless, under this ordinance, all TED projects will be completely prohibited on any parcel including a river, creek, or floodplain within the City limits. Similarly, if any part of the property has a 25% slope, the TED option is not allowed, regardless of how the plan would affect, or not affect, the slope. Are these "blunt instrument" restrictions really what the City is trying to achieve with this ordinance?

As another example, TED projects would be prohibited on "any land that is already on an existing TED Parcel." It is unclear to me what this is supposed to address, but if the intent is to prohibit any amendments or changes to existing TED approvals, I would question the reason for this. The fact is, plans change, markets change, and developers quite often have varying visions for development. It seems to me very arbitrary to prohibit a TED project simply because there was a previous TED plan that was approved, but never built.

Again, I do not disagree with proposed ordinance as it relates to green field development and large projects. But this ordinance regulates all TED projects of any size or location, and I am concerned the ordinance is a disproportionate response to the problem it is intended to solve. I am concerned that it is jeopardizing the most effective tool that developers have to efficiently create small in-fill housing projects. I have given you a few examples of where this will be the case, but I worry there will be other unintended and unforeseen consequences for small, in-fill TED projects.

I know that the City's planning staff has put a tremendous amount of time and effort into this ordinance and on the whole I think it is probably a good approach to regulating green field development and large projects. However, I respectfully suggest that the new ordinance and all of its restrictions should be limited to TED projects of 10 or more units. Small in-fill projects of fewer than 10 units that are already served by public infrastructure should be exempt from these new restrictions.

Thank you for taking the time to consider my comments.

Reghan Brandt



**Missoula Building
Industry Association**

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August 6, 2019

Missoula City County Planning Board Members
Sent Via Email: BrewerB@ci.missoula.mt.us

RE: Missoula Building Industry Association Government Affairs Committee
Proposed Amendments Related to Townhome Exemption Development (TED)

Dear Planning Board Members:

The Missoula Building Industry Association (MBIA) Government Affairs Committee appreciates the opportunity to provide comments regarding the proposed amendments related to Townhome Exemption Development (TED). The MBIA is a strong proponent of TED projects as they provide an important mechanism for permitting development projects.

The TED review process is a viable alternative to requiring lengthy, cumbersome and expensive subdivision review. The result of the current TED review requirements has been high-quality developments that have been processed and permitted quicker than would be possible for subdivision projects. The MBIA is unaware of any single TED project that has created undesirable living situations and/or unwise growth. Across the board, TED projects have provided an overwhelming net benefit to our community.

Reducing the usability of the current TED rules in an attempt to require subdivision review more frequently is a bad idea for our community. Subdivision projects are rare in Missoula. The main reason that they are seldomly pursued relates to the cost and associated review processes that they trigger. The state statutes that guide subdivision require no less than 30 elemental items be submitted for the smallest of subdivision projects. Requiring significant amounts of partially or wholly irrelevant information amplifies the reviewer's and the applicant's responsibilities and time commitments for completing a subdivision review. This adds undue cost to both the city and the developer. The TED review process allows for a detailed review while limiting resources needed to complete the review because the project review scope can be focused on the important review elements.

TED projects are ideal for locations with sophisticated zoning ordinances in place. The City of Missoula is greatly positioned with its updated Title 20 Zoning Ordinance. Title 20 has been updated on a regular basis which makes it a great compliment to TED review. On the other hand, Missoula's Subdivision regulations have not been updated since 2010. These have not been updated largely due to the lack of subdivision projects. Guiding



additional development projects toward the outdated subdivision review requirements will undoubtedly further delay development projects that are needed for our community.

Planning professionals from across the state have been having ongoing conversations on how to best update and fix the state subdivision rules. It is generally agreed upon that the current subdivision rules do not result in a review process that is suitable for its purpose. It would be unwise to shift Missoula's development projects back towards this outdated process. Missoula should continue to be a leader when it comes to being creative with policy. The MBIA strongly urges the City Council to find new opportunities within the framework of the TED rules that will continue to help our local economy, that will support efforts to expand workforce housing, and that add to our amazing community.

Here is a list of the MBIA's comments specific to the proposed amendments:

- Non-Residential TEDs are not Permitted
 - *State Law permits and encourages commercial and industry TEDs. Missoula should embrace this tool to strengthen local economy by permitting all possible TED project types.*
- Removing Conditional Use Permitting (CUP) Review Process
 - *We support the proposed amendment that will permit administrative review for all TEDs. This will make the review process as expedited and consistent as possible.*
- TED Projects are Limited to 20 Units
 - *Missoula needs large projects to bolster our housing supply. Approving new housing units of all price ranges will help maintain and/or lower current housing prices.*
- TEDs are not Permitted on Properties with Floodplain Designations
 - *Existing floodplain requirements adequately address all applicable floodplain considerations for developments. There is no need to disallow TEDs on properties with areas of floodplains.*
- TEDs are not Permitted on Properties with Instances of 25% Slope
 - *Existing slope requirements adequately address all applicable slope considerations for developments. There is no need to disallow TEDs on properties with areas of 25% slope.*
- TEDs are not Permitted on Existing TED Units
 - *Subsequent TED projects should be permitted on units created through the TED review process. Any new TED project will be subject to the TED rules. There is no need to permanently restrict future TEDs from occurring on projects with existing TED approvals.*

- TED Projects Under 10 Units are not Required to Provide Parkland Dedication
 - *This is a positive amendment. It will reduce project costs, which promotes affordable and workforce housing.*
- Phasing is not Permitted
 - *Phasing should be allowed to provide for the systematic development of the site. Phasing permits a developer to have some flexibility with how they approach the development of their project, while at the same time ensuring that a site is completely developed.*
- ZCP is Valid for Two Years
 - *A 3-4 year approval will better provide adequate time for projects to be constructed completely in accordance with the City's requirements.*
- ZCP can be Extended for One Additional Year
 - *Unlimited extensions should be permitted. At the very least a project should have at minimum of six years to be completed. This could come in the form of a 3-4 year initial ZCP and a 3-4 year extension.*
- New Subdivision Projects must Contemplate TED Projects
 - *This restriction is unnecessary. Most TED projects are occurring on previously subdivided lots. A newly approved subdivision lot will have gone through a far more detailed review process than all other subdivision projects. New subdivision lots should not be penalized.*
- ADUs not Permitted on TED Units
 - *ADUs provide an opportunity for infill housing. Let's find a way to permit ADUs on TED units.*

Thank you for your consideration.

Sincerely,
MBIA Government Affairs Committee



Paul Forsting, Committee Chairman

August 6, 2019

Dear Planning Board Members,

On behalf of the 700+ members of the Missoula Organization of REALTORS® we ask that you do not recommend adoption of the proposed amendments to the Townhome Exemption Development (TED) regulations. We disagree with the premise that current TED regulations have limited the City's "ability to adequately accommodate orderly development while protecting the public health, safety and welfare of the community". We are unaware of any approved TED projects that have jeopardized orderly development or public health, safety and welfare of the community.

MOR has been at the forefront of communicating the increasing challenges to Missoula's housing affordability with our 2018 Making Missoula Home study and the annual housing reports. Our information demonstrates an increasing demand for, and a decreasing supply of, homes in our market. At a time when policy makers should be working to promote increased residential development, these proposed rules will significantly limit an effective development tool, further exacerbating affordability problems.

TEDs have provided builders with the opportunity to lower development cost, reduce length of reviews and increase the supply of residential housing. Since the 2011 enactment of TED legislation, 461 residential units have been created by TEDs while at the same time only 55 units were created through subdivision. TED project larger than 10 units have also been key to significantly adding to the housing supply, representing 61% or 281 units created. Forcing projects over 10 units into the subdivision process will increase time, cost and have an immediate adverse impact to housing development.

If the city believes that it needs to further direct TED development, we would encourage them to utilize the zoning ordinances rather than subdivision as the avenue to better refine the approach. We should be looking for ways to increase housing stocks thereby reducing pressure on home prices created by the housing shortage in Missoula. After consideration of the significant negative impact to development of housing in Missoula we would ask that the board oppose recommending the adoption of these regulations.

Sincerely,



Dwight Easton
Public Affairs Director
Missoula Organization of REALTORS®