



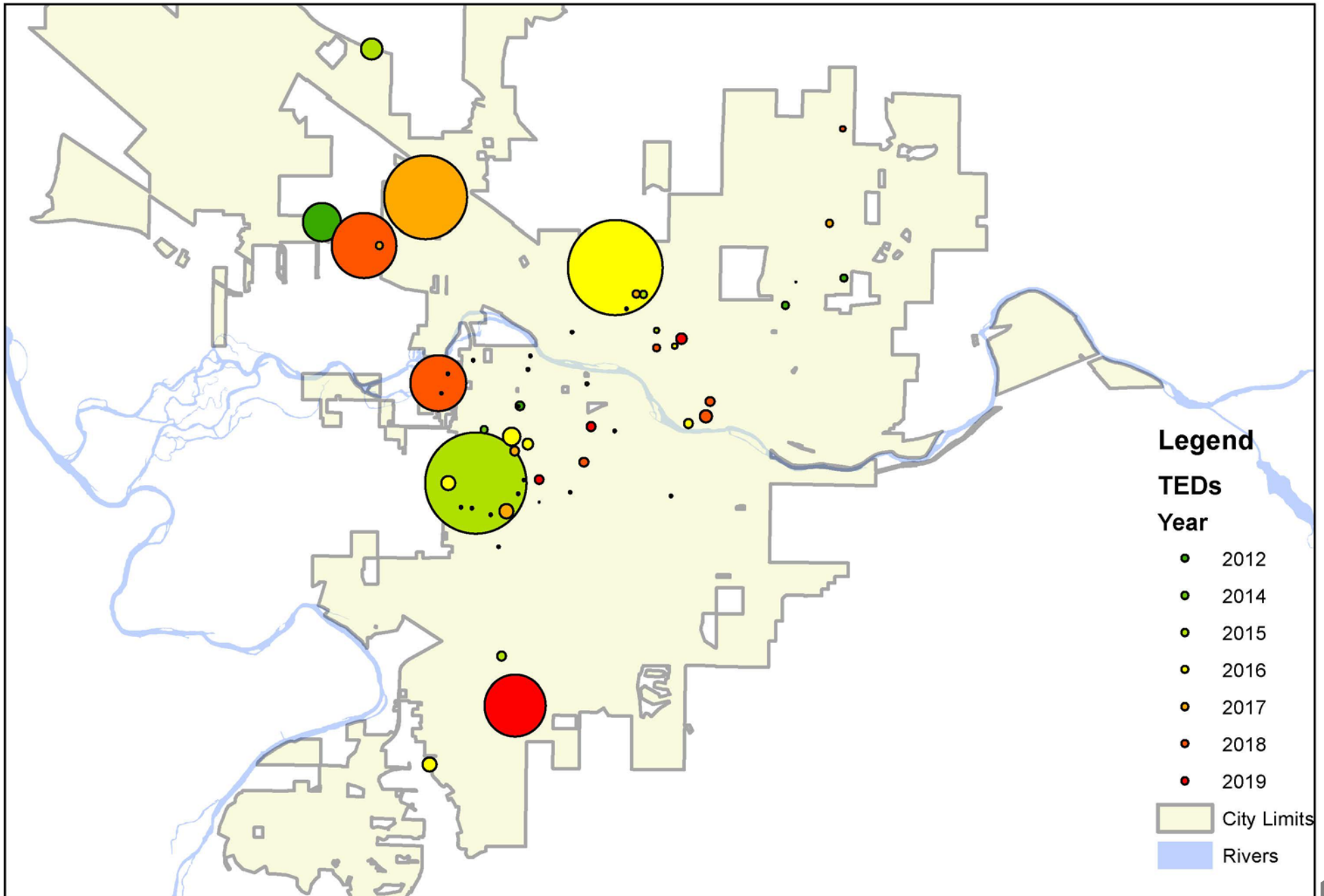
# Townhome Exemption Development (TED) Ordinance Amendments

**Land Use and Planning  
Committee**

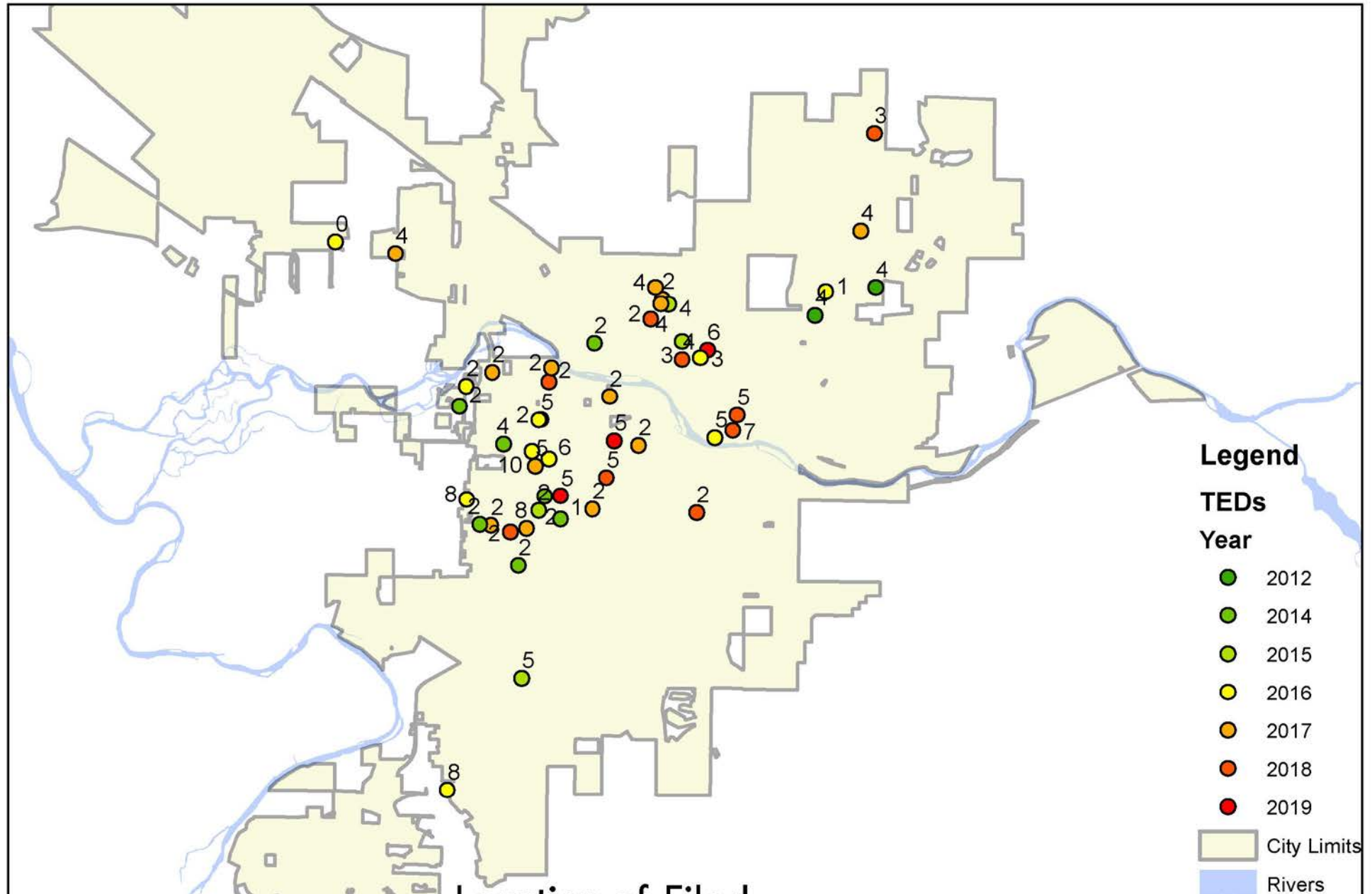
Development Services  
*September 18, 2019*



# TED General Ordinance

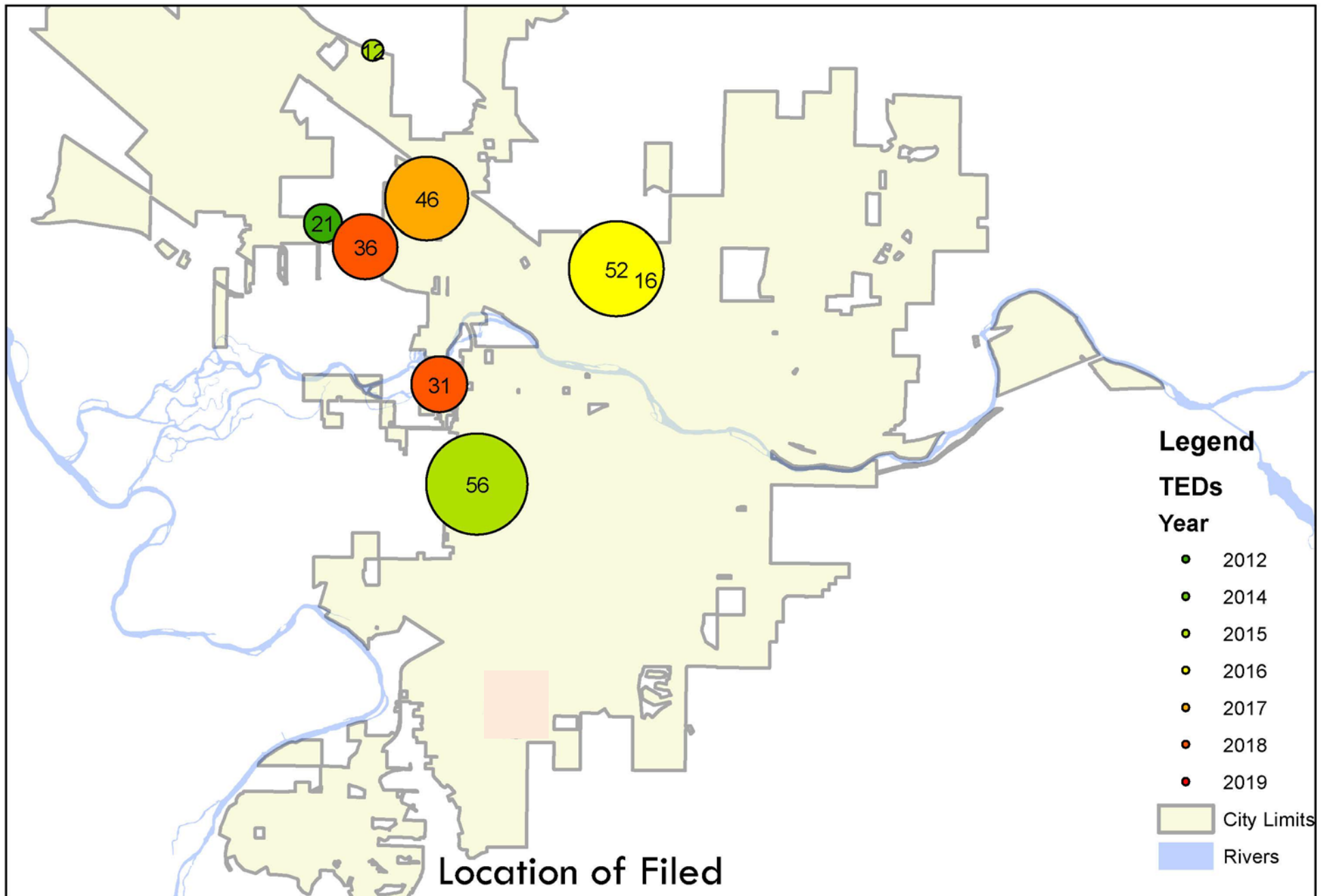


# TED General Ordinance





# TED General Ordinance



Parcel for Subdivision  
Legal: Tract A



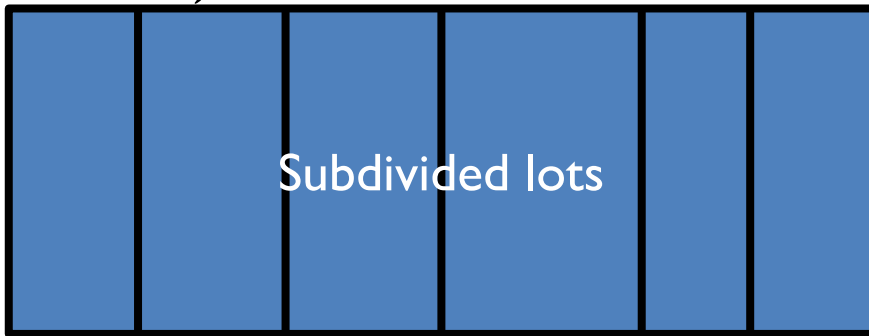
Parcel for TED  
Legal: Tract B



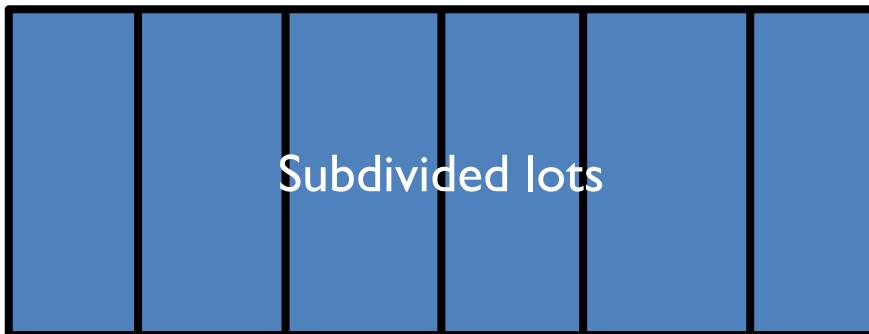
# TED General Ordinance



Subdivision Parcel  
Legal: Walley Subdivision,  
Blk 1, Lots 1-12

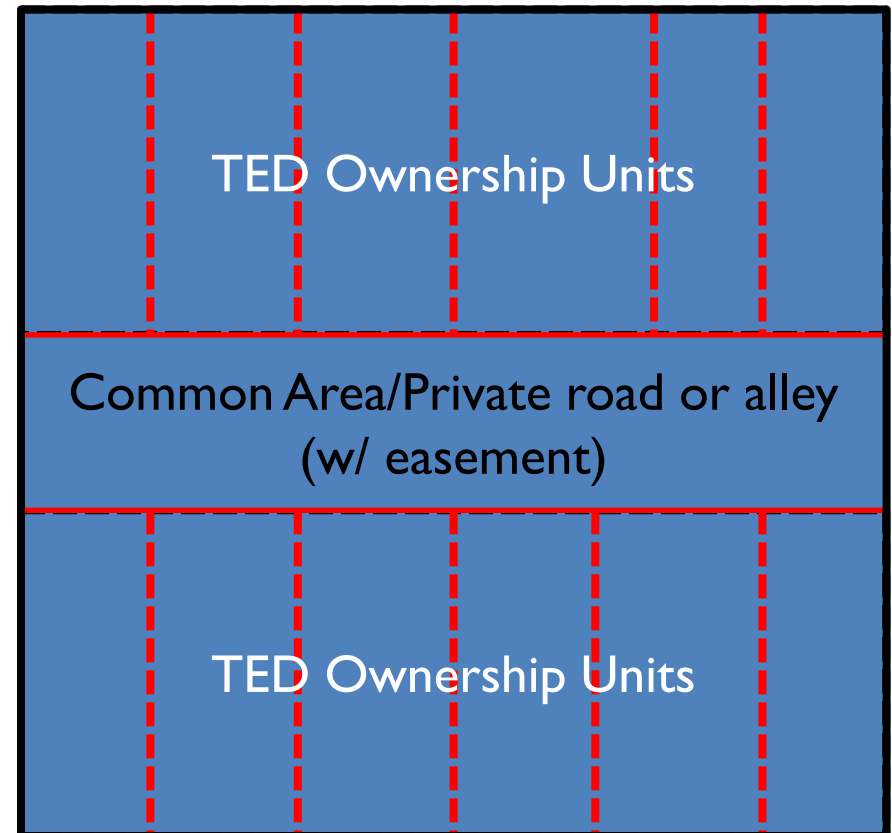


Public right of way (road or alley)



- Parcels are separate properties w/ distinct legal descriptions

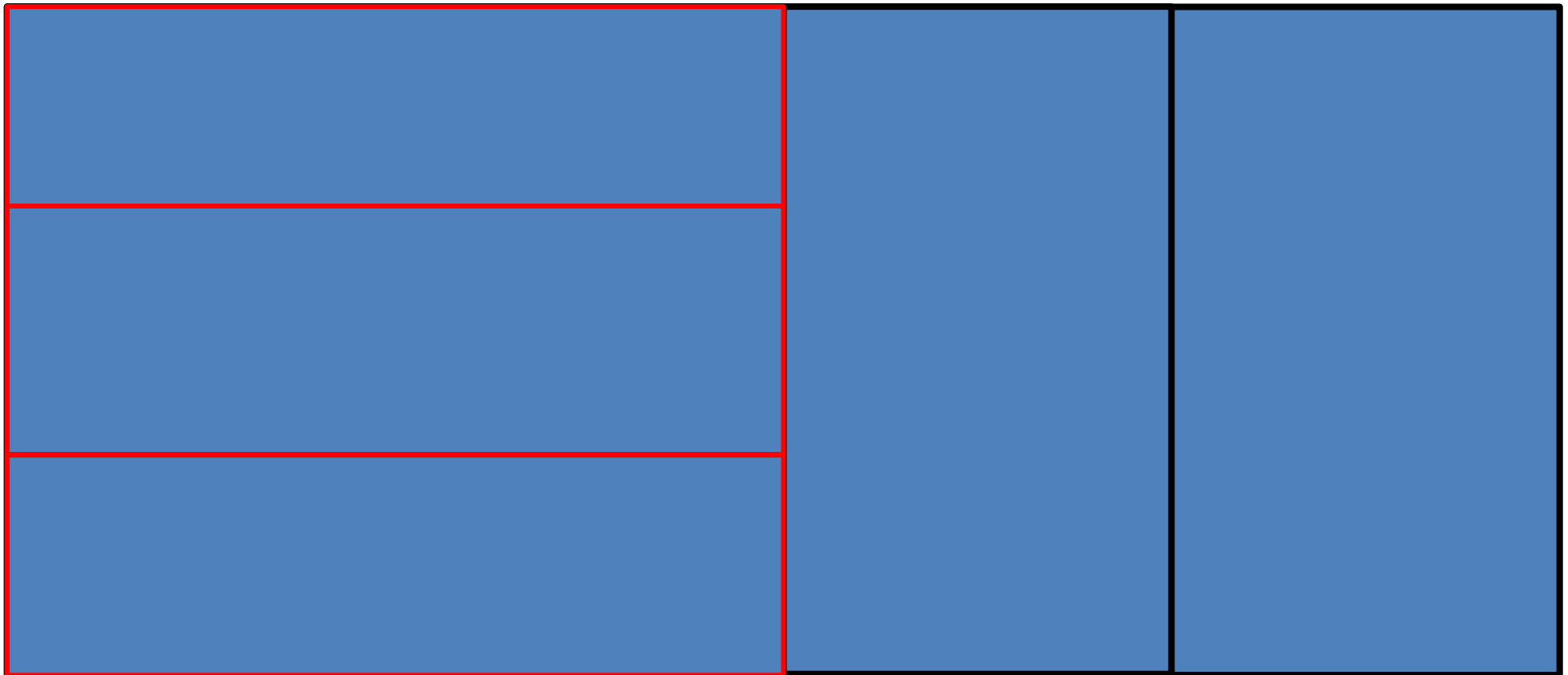
TED Parcel  
Legal: Tract B  
w/ Townhome Declaration



- Single TED Parcel with TED ownership units (TOUs) and common areas managed under Declaration/HOA

Subdivision (phasing between lots)

TED (microphasing of lots)



## ITEMS TO BE CONSIDERED (SINCE AUGUST 28 LUP)

- New comments
- Threshold for Parks Requirement
- TED and Community Land Trusts
- Agency review list
- Review Process and TED Declarations
- PB Recommendation: Minimum parcel size
- PB Recommendation: Definition of topographic constraint for section on Blocks
- PB Recommendation: Phasing Language
- PB Recommendation: Public roads/RoVW
- PB Recommendations: Remaining
  - Add 'administrative'
  - File easements before declaration instead of ZCP
  - Non-gendered pronouns
- Additional staff recommendations
  - Townhouse vs Townhome
  - On-site Constraints: Hillsides
  - Parkland Requirement: Plans Required
  - Setback and Building separation: structures taller than 22 feet
  - 20.40.180.1.5



## 8/30/2019: Draft Ordinance

‘Ordinance—Amendments to TED regs public hearing draft date 2019-08-30’

## 9/18/2019: Items still to be discussed

‘Items To Be Addressed\_TED Amendments\_09172019’

### KEY:

Language in black is existing zoning.

Language in red is original staff proposed language in Draft Ordinance.

Language in purple is planning board recommended language.

Language in green is new staff proposed language.

Page numbers:

Ord: ##      Memo: ##

# Planning Board Recommendations



The following are recommendations made by planning board:

- Re-term 'TED Tool' to 'Administrative TED Review'.
- Raise the maximum number of allowed units from 10 and 20, to 15 and 30.
- Clarify the density implications for removing minimum parcel size requirements for new subdivisions.
- Provide an incentive that increases the maximum size cap by 150% for projects that are reviewed together as subdivision and TED at the same time.
- Add an exception to the Conditions Not Suitable for TED section for when Right of Way is required by the city, so that when the applicant is willing to dedicate it as part of their project, TED is not necessarily prohibited.
- Add language to the end of 20.40.180.F: Blocks to clarify what qualifies as a topographic constraint.
- Allow phasing within TED projects. (Staff is given discretion to reevaluate the language to accommodate phasing plans.)
- The requirement for when a public road easement is filed should be tied to the TED declaration, rather than the zoning compliance permit.
- Pronouns in city code should be gender-neutral.

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- Pronouns in city code should be gender-neutral.

- Clarify the density implications for removing minimum parcel size requirements for new subdivisions.

## 20.05.050.B: Parcel and Building Standards, Basic Standards Table 20.05-3: Footnote [8]

[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. Total unit yield is calculated based upon the gross parcel area divided by the minimum parcel size.

Page numbers:

Ord: 3      Memo: 14

- Clarify the density implications for removing minimum parcel size requirements for new subdivisions.

## 20.05.050.B: Parcel and Building Standards, Basic Standards Table 20.05-3: Footnote [8]

[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. Total unit yield is calculated based upon the gross parcel area divided by the minimum parcel area per unit and any applicable hillside density reductions size.

Page numbers:

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- Add language to the end of 20.40.180.F: Blocks to clarify what qualifies as a topographic constraint.

## 20.40.180: Townhome Exemption Development (TED) Standards

### 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~~. A topographic constraint is defined as a condition where street connections are not feasible in accordance with Title 12 standards.

Page numbers:

Ord: 8

Memo: 15



- Add language to the end of 20.40.180.F: Blocks to clarify what qualifies as a topographic constraint.

## 20.40.180: Townhome Exemption Development (TED) Standards

### F. Blocks

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2. ~~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. ~~A topographic constraint is defined as a condition where street connections are not feasible in accordance with Title 12 standards.~~
3. TOUs shall not be designed as through parcels.

- Add language to the end of 20.40.180.F: Blocks to clarify what qualifies as a topographic constraint.

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3. TOUs shall not be designed as through parcels.

- Staff should craft language to allow phasing within TED projects. Staff is given discretion to reevaluate the language to accommodate phasing plans.

Proposed by staff: 20.40.180.I.1

## 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.

Page numbers:

Ord: 10      Memo: 17

- **Staff should craft language to allow phasing within TED projects. Staff is given discretion to reevaluate the language to accommodate phasing plans.**

**Recommendation by Planning Board: 20.40.180.I.1**

## **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.~~ If phasing is proposed, a phasing plan shall be submitted, and is subject to review and approval by the zoning officer and in consultation with the city engineer. If it is deemed that future infrastructure is necessary for orderly development, then the developer shall include a development agreement with security for future or installation of infrastructure.

Page numbers:

Ord: 10      Memo: 17

- **Staff should craft language to allow phasing within TED projects. Staff is given discretion to reevaluate the language to accommodate phasing plans.**

## **Additional Staff Language: Phasing**

### **20.40.180.I. Review Process and Submittal Requirements**

1. Phasing plan is required with initial zoning compliance review.
2. If phasing is proposed within a TED:
  1. First phase must include any required parkland and public roads
  2. Phases are due within two years of the original declaration or previous phase for a total duration of no more than 8 years.
  3. Each phase will be reviewed through additional zoning compliance permits.
  4. Each phase will be subject to the regulations in effect at the time of submittal.
  5. Phases shall be held to what was approved in the original phasing plan approval.

### **20.40.180.I. Review Process and Submittal Requirements**

1. Phases will be 'filed' as amendments to the declaration. Requires a ZCP.

## 20.40.180.I.6.a: Review Process and Submittal Requirements

6. If phasing is proposed within a TED project, a phasing plan shall be submitted with the initial zoning compliance permit for the entirety of the TED development, and is subject to review and approval by the Zoning Officer and the city engineer.
  - a. A phasing plan shall be subject to the following criteria:
    - i. The first phase shall include all proposed parkland and proposed dedicated Public Right-of-Way (if the right-of-way is accepted by the Development Services Director in consultation with the City Engineer), and any essential infrastructure as determined by the Development Services Director and the City Engineer.
    - ii. The deadline to establish each new phase shall be a maximum of two years from when the previous phase was established, starting with the initial declaration. The phasing plan shall not be for a duration of longer than 8 (eight) years.
    - iii. If it is deemed that future infrastructure is necessary for orderly development, then the developer shall include a development agreement with security for future installation of infrastructure.
    - iv. TED projects that include phasing do not need to provide information on building design, such as elevations or interior floor plans, for those structures not included in the first phase.



## 20.40.180.I.6.b: Review Process and Submittal Requirements

- b. At the time a TED declaration is amended to add a new phase, the applicant shall meet all of the following requirements:
- i. Phases shall be submitted sequentially in the order approved with the initial zoning compliance permit for the entire TED development.
  - ii. Amendment of a TED declaration to add a new phase requires approval of a zoning compliance permit.
  - iii. Each phase shall be subject to the regulations in effect at the time of submittal of the zoning compliance permit for that phase.
  - iv. Phases shall match the layout and number of units per phase in the phasing plan approved with the initial zoning compliance permit for the entire TED development.

## 20.40.180.J: TED Declarations

### 20.40.180.J.2: TED Declarations, General

2. When phasing is proposed for a TED project, the phasing plan for the entire TED project shall be included in the original TED declaration.

### 20.40.180.J.4.b: TED Declarations, Amendments to Filed Declarations

- b. When phasing is proposed for a TED project, phases are established through amendment of the original TED declaration. Each new phase shall be reviewed for zoning compliance subject to 20.40.180.I.6.b.

- Add an exception to the Conditions Not Suitable for TED section for when Right of Way is required by the city, so that when the applicant is willing to dedicate it as part of their project, TED is not necessarily prohibited.

Proposed by staff: 20.40.180.B.4

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

Page numbers:

Ord: 7      Memo: 20

- Add an exception to the Conditions Not Suitable for TED section for when Right of Way is required by the city, so that when the applicant is willing to dedicate it as part of their project, TED is not necessarily prohibited.

## Recommendation by Planning Board: 20.40.180.B.4

4. Any property requiring dedicated Public Right-of-Way as determined by the Development Services Director in consultation with the City Engineer.
  - a. Reasons for requiring dedicated Public Right of Way include, but are not limited to: Riparian resource areas
    - i. Allowing for public motorized and non-motorized connections;
    - ii. Allowing for provision of emergency services; or
    - iii. Completing road sections called for in applicable adopted City Plans or Resolutions
  - b. In situations where the City Engineer finds that RoW is necessary, and the developer agrees to dedication of that public right of way, then the project may proceed through TED review.

Page numbers:

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Memo: 20

- Re-term 'TED Tool' to 'Administrative TED Review'.

## 20.05.040.D.1.c:

c. The administrative TED ~~tool~~ review 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.

## 20.40.180.A.1:

### A. Applicability

1. The following administrative review standards apply to Townhome Exemption Developments of...

Page numbers:

Ord: 1,6      Memo: 22

- The requirement for when a public road easement is filed should be tied to the TED declaration, rather than the zoning compliance permit.

## 20.40.180.I.4:

~~4. If a public access easement is required for a TED project, it must be filed prior to ZCP approval.~~

## 20.40.180.J.3:

3. If a public access easement is required for a TED project, it must be filed prior to ZCP approval.

Page numbers:

Ord: 10, 11      Memo: 22



- Pronouns in city code should be gender-neutral.

**20.40.180.1.5:**

5. TED Projects of more than 5 dwelling units require the review and approval of the Fire Chief or ~~his~~ their designee.

Page numbers:

Ord: 10      Memo: 22

## 20.40.180: Commentary

### 20.40.180 - Townhome Exemption Development (TED) Standards

Commentary: Townhome vs. Townhouse - Townhouse refers to a residential building containing more than one dwelling unit, each located on its own parcel or TED ownership unit with a common or abutting wall and that each has its own external entrance as described in 20.05.030.B.3, and is required to meet standards detailed in 20.40.140. Townhome Exemption Development 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 described in 20.05.040.D.

## 20.40.180.D.1: On-site Constraints, Hillsides

### 20.40.180.D.1

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.
- 4.a. Each TED ownership unit (TOU) ~~building envelope~~ must have at least a 2,000 square foot contiguous building and disturbance area with 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.b. Building and disturbance is prohibited on slopes of greater than 25% outside the minimum contiguous building and disturbance area within each TOU.

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## 20.40.180.G.3.e: Parks and Trails, Required Parkland

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. Landscaping and maintenance plans for required parkland shall be included in the submittal for the zoning compliance permit.

## 20.110.050.F: Measurements and Exceptions, Setbacks and Building Separation of Residential Buildings on TED Parcels

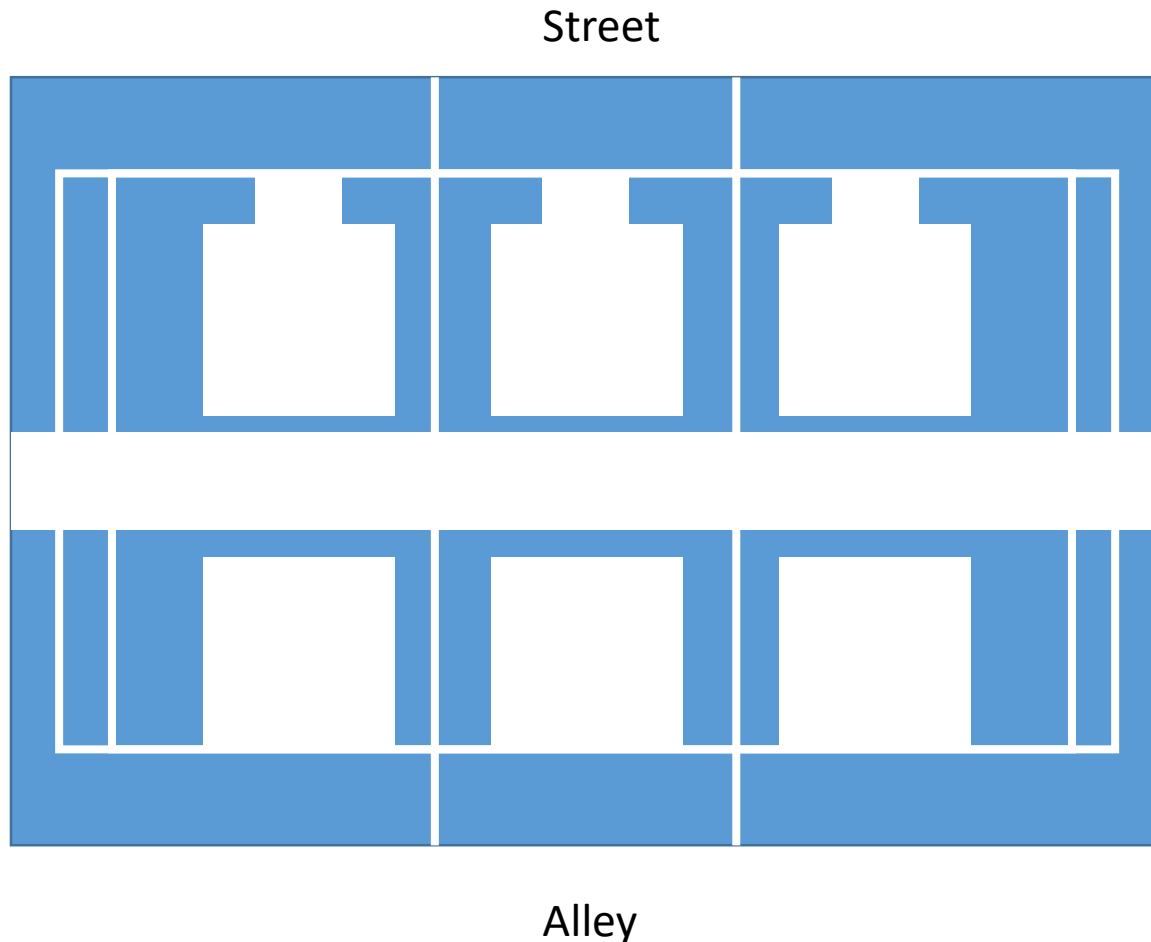
### F. Setbacks and Separation of Residential Buildings on TED Parcels

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

1. Structures in 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. Structures in TED projects located in residential zoning districts that exceed 22 feet in height 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.

## 20.110.050: Measurements

### 050.*F*: Setbacks and Separation of Residential Buildings on TED Parcels





## 20.40.180.I: Review Process and Submittal Requirements

### 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. ~~The Declaration has been filed with the County Clerk and Recorder. A building permit has been issued, and all infrastructure and other improvements, including but not limited to roads, curbs, gutters, utilities, sidewalks, boulevard improvements, storm water facilities, and drainage are installed and approved by Development Services, unless an estimate of probable cost is provided and an improvements agreement guaranteed by a security for the remaining infrastructure has been approved and received by the Development Services.~~
  - b. 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.



## 20.40.180.I: Review Process and Submittal Requirements

### J. TED Declarations

1. TED projects shall be filed as one townhome exemption declaration per TED parcel.
2. Before filing a TED declaration:
  - a. The final TED declaration must be reviewed by the Zoning Officer prior to when the declaration is filed by the Clerk and Recorder.
  - b. Conditions from the zoning compliance permit shall have received final zoning compliance approval, or been transferred to the applicable building permits.
  - c. All infrastructure and other improvements, including but not limited to roads, curbs, gutters, utilities, sidewalks, boulevard improvements, storm water facilities, and drainage are installed and approved by Development Services, unless an estimate of probable cost is provided and an improvements agreement guaranteed by a security for the remaining infrastructure has been approved and received by the Development Services.
  - d. Any required public access easement must be filed prior to the original TED Declaration is filed.
3. Amendments to filed TED declarations:
  - a. Approval of a new zoning compliance permit is required for all amendments to filed TED declarations unless the Zoning Officer has determined that the amendment complies with the following criteria:
    - i. The amendment involves incidental changes or minor modifications to building design; and
    - ii. The amendment does not include changes to site plan layout, easements, infrastructure improvements, or other Municipal code requirements.

## 20.40.180.A: Townhome Exemption Development (TED) Standards, Applicability

### A. Applicability

1. The following standards apply to Townhome Exemption Developments of ten or fewer dwelling units in RT5.4, RT10, and all R districts (except R3), or 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 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.
5. Community Land Trusts may be reviewed as TED if applicable.

## 20.40.180.A: Townhome Exemption Development (TED) Standards, Applicability

### 4. Notice to Neighboring Property Owners and Request for Agency Comment

The following is required for TED projects of more than 5 dwelling units:

- a. Notice of the application for a zoning compliance permit for Townhome Exemption Developments ~~of more than five dwelling units~~ must be mailed to all owners of property within 150 feet of the subject parcel at least 15 days before a permit is issued.
- b. Relevant agencies shall be notified and given 15 days for comment or testimony before a permit is issued. This requirement does not apply to TED projects being reviewed at the same time as an associated subdivision.

## 20.40.180.G: Parks and Trails

Original proposal

20.40.140.G

G. Parks and Trails

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

Alternate Approaches

**Recommendation 1:** Reduce the trigger from above 10 dwelling units, to above 5 dwelling units.

TED projects of more than 5 ~~10~~ (fiveten) dwelling units must:

**Recommendation 2:** Reduce the trigger for less dense zoning districts, and maintain as is for higher zoning density districts.

Townhome Exemption Development (TED) projects of 6 (six) or more dwelling units in RT5.4, RT10, and all R districts (except R3), or 11 (eleven) or more dwelling units in RT2.7, R3, and all RM, B, C, and M1R districts, must:

## 20.40.180.1.5: Review Process and Submittal Requirements

5. On lots created through subdivision review approved under MCA 76-3, parts 5 and 6 after May 6, 2019, ~~information that was submitted during subdivision review~~ TED projects may ~~need to be~~ be unable to meet the proposed density or design layout ~~resubmitted and updated~~ if the subdivision submittal packet did not ~~expressly~~ adequately contemplate how the subdivision would serve, meet regulations for, and provide access to 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.

Page numbers:

Ord: 10 Memo: NA