

## Benjamin Brewer

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**From:** Eran Pehan  
**Sent:** Friday, January 23, 2026 8:31 AM  
**To:** Benjamin Brewer; Emily Gluckin (she/her)  
**Subject:** FW: Article 4.9 Activity Area

**Follow Up Flag:** Follow up  
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For addition to the record.

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**From:** Mike Nugent <NugentM@ci.missoula.mt.us>  
**Sent:** Thursday, January 22, 2026 10:05 PM  
**To:** City Council (All) <ACouncil@ci.missoula.mt.us>  
**Cc:** Eran Pehan <PehanE@ci.missoula.mt.us>; Cassie Tripard <TripardC@ci.missoula.mt.us>; Nathan McLeod <McLeodN@ci.missoula.mt.us>; Lucy Rummler <RummlerL@ci.missoula.mt.us>  
**Subject:** Fw: Article 4.9 Activity Area

Just passing along per request.

Mike Nugent  
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**From:** Adam Hertz <[adamhertz@eralambros.com](mailto:adamhertz@eralambros.com)>  
**Sent:** Thursday, January 22, 2026 9:56:27 PM  
**To:** Mike Nugent <[NugentM@ci.missoula.mt.us](mailto:NugentM@ci.missoula.mt.us)>  
**Subject:** Article 4.9 Activity Area

Mike,

Would you please forward this message on to your city council colleagues? When I was on council there was an email address - [council@ci.missoula.mt.us](mailto:council@ci.missoula.mt.us) - the public could email that went to all council members and got posted to the city website. That email address no longer works and it seems the email address council members use to send to the whole group only works for internal use (according to the Microsoft error I received). It was sure convenient for the public to have one email address to reach everyone.

Anyway, I'm emailing about something else. I just put a 9,750 sq ft parcel on the Northside under contract with plans to remove two vacant, uninhabitable mobile homes and build an affordable

apartment building. My rents are usually considered “affordable” under HUD’s definition at around 95% AMI. I haven’t seen the 2026 figures yet, so I could be a little off if they’ve been updated. Under current zoning, it would be relatively easy to get 9 affordable units on this parcel and meet all the standards. I was hoping I’d get 12 with the new zoning. It’s actually looking like I’d have trouble getting 9.

I started working on a layout and ran into a big obstacle. The activity area requirements in Article 4.9 apply to 7 or more units. I believe that number used to be 10 or more units (which was already too low in my opinion), although that may have been reduced at some point. I know it was 10 or more 5-6 years ago when I last had a project that was in that size range. I understand the value of activity areas, but the requirements will be project killers for smaller infill projects. First and foremost, I’d recommend increasing the number of units that triggers the activity area. For multifamily, I think it ought to be something like 20+ units. It could make some sense to have a different minimum number of units for other housing types, like townhomes for instances, although I think that could complicate things. Increasing the number of units that triggers activity areas will definitely go a long way in supporting small-medium sized infill projects. There’s other issues too though.

1. The first argument against the change I’m going to suggest will probably be “Why not just go with the cash in lieu option in Section 5?” The cash in lieu option is totally infeasible if it has any tie to actual land values. The fact that figure is set by City Council is a little concerning. It would be more fair to have it be predictable right out of the gate - an appraiser sets it, it’s set by the per sq ft cost the developer paid for the land or there’s just a specific dollar figure per unit (my preference). If it was set at the value I’m paying for this land, cash in lieu for the 435 sf of space to meet the 0.01 acre per dwelling unit requirement would be around \$10,000 per unit. That’s totally unworkable. I can only make these units affordable if I pay around \$22,000 or so per unit for the land. Adding another \$10,000 per unit is completely impossible. And those figures assume actual land value. If Council sets it above actual land value, it’s even worse. I actually really like the concept of cash in lieu because I think having fantastic public parks within walking/biking distance is a far better amenity than a large patch of grass right on site. So I’d love to improve the neighborhood further through cash in lieu. But that figure is going to need to be realistic. Maybe it’s actual land value at a ratio of 0.001 acres per dwelling unit instead of 0.01 acres per dwelling unit. Or, let’s just set a dollar value per unit right now and peg it to inflation. Then it’s predictable. Also, it’s unclear how the “combination” option will work. Does that 0.01 acres get reduced proportionately if some of the activity area requirements are met on site and some are taken care of through cash in lieu? If so, the code doesn’t explicitly say so.

2. Section 4 lays out the types of activity areas. Under Title 20, we can count private decks/patios towards activity area. That does not appear to be in this draft unless I’m missing it. We usually build those areas to be around 90 sq ft, which would take care of almost 2/3 of the required activity area of a project. Then, we tend to do a small lawn or courtyard to cover the rest of the required activity area. If decks and patios don’t count, I think we’ve effectively down-zoned all multifamily zoned districts. A yard must be at least 40’x40’ to be counted as activity area in the proposed zoning. That’s impossible in smaller projects. Rooftop decks are really cool, but they’ll never pencil out for an affordable project. They are very expensive to build. Those will only work in luxury housing. Courtyards can be workable, but not at the per unit land area required in the proposed code. For 12 units, that would be 1,800 sq ft of courtyard. That’s about 42.5’ x 42.5’ of courtyard space. The entire lot is 75’ x 130’. I have to fit a building and parking on it. How could I possibly fit that much courtyard - or mix of courtyard, playground, gardens, etc? And they have to be buffered from buildings, parking, etc with another 5’. If we are having trouble encouraging affordable housing as it is, not allowing decks/patios to be counted towards activity area will ensure we really put the nail in the coffin.

3. If decks/patios aren't going to count towards activity area, I would suggest amending section 3(a) to read 50 sq ft per unit or 10% of total land area rather than 150 sq ft per unit and 20%.

4. It seems many of these changes are predicated on the argument that they can work because parking standards no longer exist. That sounds good in theory, but I can't build apartments without parking in the vast majority of the city. Nobody will rent units without parking in most areas. There are some areas where it can work and I do appreciate the flexibility. For instance, this is a corner lot, so I am comfortable with less parking than is typical because there is more on-street parking. It's also not far from a bus stop. But it's still very difficult to do anything less than 1 space per unit and that's already what I'm doing under Title 20 as long as my units are under 850 sq ft (which they always are). Maybe I'll shave a parking space or two off, but that still won't make up for the onerous activity area requirements.

If this section remains as-is, I can probably still make a project out of this piece of land. But it will have highly upgraded finishes, garage spaces and a rooftop deck in order to make things work. That will push rents on 1bd/1ba units from about \$1,295/mo to \$1,895/mo and 2bd/1ba units from \$1,595/mo to \$2,195/mo. People will rent those units. They're renting all the other luxury units being built in the city. But that is not what I think the city needs and that is not what I like to build. Much like the concerns I expressed over maximum units per building in the Urban zoning districts, this section of code is encouraging luxury housing, not affordable housing. I don't want Missoula to be Bozeman. I like Missoula.

**To recap:**

**Make Article 4.9 apply only to projects with 20+ units.**

**Add decks/patios back into the code as counting towards activity area or reduce the requirement to 50 sq ft per unit.**

**Set a specific cash in lieu figure in this code so builders, developers and architects know exactly what to expect - I suggest \$1,000 per unit and peg it to inflation.**

Thank you,

**Adam Hertz**

Real Estate Agent & Developer | Managing Partner

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