



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-

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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.

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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.

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- **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 than 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:

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