



## DEVELOPMENT SERVICES

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### 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
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**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](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](mailto: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.
- d. Townhome Exemption Developments must meet all applicable City ~~zoning~~ municipal regulations (see Figure 20.05-7).

**Figure 20.05-7 Townhome Exemption Development Requirements**

	<b>R-Districts</b>	<b>RT-Districts</b>	<b>RM Districts</b>	<b>All B, C Districts M1R</b>
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)			

	<b><u>R Districts (except R3) RT5.4 and RT10 Districts</u></b>	<b><u>RT2.7, R3 RM Districts All B, C Districts M1R</u></b>
<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]																
<sup>L</sup> 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
<sup>L</sup> 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

<b>Townhome Exemption Development</b>	<p><del>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.</del></p> <p><del>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.</del></p> <p><del>Rear setbacks are measured to the parcel line.</del></p> <p><del>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.</del></p> <p><del>For B, C, and M1R districts refer to standards in Chapters 20.10.030 and 20.15.040.</del></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 6<sup>th</sup>, 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.