

CITY OF MISSOULA DEVELOPMENT PROCESS CODE ANALYSIS

This code analysis summary focuses on the City of Missoula procedural steps in the development process. The procedural steps are then analyzed for opportunities, including in comparison to Montana State Law requirements. The regulatory requirements associated with subdivision and TED will be addressed in a subsequent submission.

NEW HOUSING PRODUCTS IN MISSOULA

New development in Missoula is guided by two policy documents, *A Place to Call Home: Meeting Missoula's Housing Needs* (2019) and *Our Missoula* (2015). The growth policy documented is mandated by Montana State Law.

The 2019 housing policy document, *A Place to Call Home: Meeting Missoula's Housing Needs*, provides guidance for the City to address housing issues in Missoula, including affordability.

The 2015 growth policy document, *Our Missoula*, addresses land use, housing, economic conditions, local services, public facilities, natural resources, community character, culture and history. It is a plan that manages growth over a 20-year horizon.

Developers working in Missoula are a critical partner for the City to provide affordable new housing products to the community through the subdivision process and/or townhome exempt developments.

SUBDIVISION DEVELOPMENT PROCESS

The subdivision development tool is the main process utilized by developers to subdivide land to create multiple residential and/or commercial parcels. The subdivision development process is governed by Montana State Law.

The Baseline Information

There are five types of subdivisions in the Missoula Subdivision Regulations in Article 2 (quoted below)¹:

Major Subdivision: a subdivision of land in which six or more lots are created.

Minor Subdivision: a subdivision of land in which five or fewer lots are created.

Rural Subdivision: a subdivision within which the density of development is two dwelling units per acre or less, exclusive of public roadways, parks, or common areas.

Urban-Suburban Subdivision: A subdivision within which the density of development is greater than two dwelling units per acre, exclusive of public roadways, parks, or common areas.

Subdivision for Lease or Rent: A subdivision created by lease or rent, including a mobile home community or recreational vehicle park, is any tract of land divided by renting or leasing portions thereof. It is owned, however, as one parcel under single-ownership (that can include a number of persons owning property in common).

Subdivision Types Analysis

- *Rural subdivision and urban-suburban subdivision types are defined in Article 2. However, they do not seem to have relevance in the current subdivision process. Those two types are candidates for removal from Article 2.*
- *Subdivision for Lease or Rent is primarily a tool for rural areas for RV parks or mobile home parks. This definition may also be considered for removal from Article 2 if it does not pertain.*

Entitlement Process

The basic outline for the entitlement process for minor and major subdivisions is as follows (adapted from Missoula Subdivision Regulations)²:

TABLE 1 STEPS REQUIRED FOR MAJOR AND MINOR SUBDIVISION REVIEW PROCEEDURE

Major Subdivision	Minor Subdivision
STEP 1: Pre-application meeting	STEP 1: Pre-application meeting
STEP 2: Neighborhood meeting	STEP 2: Neighborhood meeting
STEP 3: Element review (5 days)	STEP 3: Element review (5 days)
STEP 4: Sufficiency review (15 days)	STEP 4: Sufficiency review (15 days)
STEP 5a: Applicant submits all required copies (60 days or 80 days for 50 or more units)	STEP 5a: Applicant submits all required copies (35 days)
STEP 5b: Development Services staff report	STEP 5b: Development Services staff report

¹ Missoula Subdivision Regulations 2-020.116

² Missoula Subdivision Regulations 4-020.3 and 4-030.1

STEP 6: Planning Board public hearing	STEP 6: Land Use and Planning Committee public meeting
STEP 7: City Council’s public hearing and decision	STEP 7: City Council’s public meeting and decision

Pre-application meeting

The pre-application meeting is the first step in the entitlement process³. The pre-application must be requested by the applicant. Development Services is required to host the meeting within 30 days⁴. The applicant must provide project information with the pre-application meeting request, including an existing conditions plan and a preliminary sketch plan in addition to a project narrative, zoning map, comprehensive plan map, floodplain map, vicinity plan with adjacent uses, topographic map, aerial photograph and a slope category map, if needed⁵.

At the pre-application meeting, Development Services will provide information to the applicants including applicable state laws, local regulations and growth policy provisions⁶. At this time, additional information for the subdivision application will be identified by Development Services based on the specific project description and site plan. However, this does not limit the ability for Development Services to request more information later during the subdivision process. Montana State Law indicates that the identification of laws and regulations is “for informational purposes only” and that they “may apply to the subdivision review process”⁷.

Within five business days after the pre-application meeting, Development Services will provide information for public utilities, local, state and federal agencies and other entities that should be contacted for comment on the subdivision application⁸. Contact information and timeframes for

³ This aligns with MCA 76-3-504(1)(q)(i) “requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application.”

⁴ This aligns with MCA 76-3-504(1)(q)(iv) “requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider.”

⁵ Missoula Subdivision Regulations 4-010.1.B(3)

⁶ This aligns with MCA 76-3-504(1)(q)(ii) “Requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process.”

⁷ MCA 76-3-504(1)(q)(ii)

⁸ This aligns with MCA 76-3-504(1)(q)(iii) “requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response”

response will be identified by Development Services⁹. Timeframes are established based on major subdivision and minor subdivision. See TABLE 1 for timeframes based on subdivision sizes. The subdivision application must be submitted within one year after the pre-application meeting^{10,11}.

A subsequent pre-application meeting may be required by Development Services in some circumstances including:

- If the applicant does not submit the subdivision application within one year of the original pre-application meeting,
- If Development Services determines a substantial change in design or lot layout.
- If Development Services determines significant land use changes surrounding the project¹².

Montana State Law requires local subdivision regulations to “establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications”¹³. Detail about the procedure is provided in State Law 76-3 Part 6.

Pre-application Meeting Analysis

- *The pre-application meeting may require the developer applicant to resolve the site plan to concept or schematic level before being prepared for this meeting.*
- *The subdivision regulations do not indicate the timeframes for agency review that can be anticipated under Missoula Subdivision Regulations 4-010.1.C(2)*
- *Some of the procedures go beyond state law requirements in terms of the subsequent pre-application meetings due to amended applications.*

Neighborhood Meeting

The neighborhood meeting is required after the pre-application meeting and before the subdivision application is submitted. The applicant must invite residents within 300 feet of the proposed subdivision location, City Council ward representatives, Development Services, the neighborhood council and neighborhood association. Written responses and meeting minutes are required materials for the subdivision application¹⁴.

According to Montana State law, at least one public hearing is required per subdivision application. At least 15 days prior to the hearing, notice should be provided in a County

⁹ Missoula Subdivision Regulations 4-010.1.C.

¹⁰ Missoula Subdivision Regulations 4-010.1.C.3

¹¹ This aligns with MCA 76-3-504(1)(q)(v) “establishes a time limit after a preapplication meeting by which an application must be submitted.”

¹² Missoula Subdivision Regulations 4-010.1.C.3

¹³ MCA 76-3-504(1)(c)

¹⁴ Missoula Subdivision Regulations 4-010.2

newspaper of general circulation and certified mail notices should be sent to adjacent property owners¹⁵.

State law only requires one public hearing during governing body review¹⁶. In Missoula's case this is the City Council.

Neighborhood Meeting Analysis

- *The neighborhood meeting requires the subdivision application to be nearly completed before the community has a chance to engage in the process.*
- *Montana State Law does not require this neighborhood meeting. A public hearing is required during governing body review.*

Subdivision Application and Preliminary Plat Submittal

The applicant must provide the completed subdivision application, the preliminary plat and any additional information required by Development Services. This documentation is provided to Development Services¹⁷.

The preliminary plat materials include¹⁸:

- Identifying information
- Survey information

The subdivision application requirements include¹⁹:

- Contact information
- Ownership
- Location
- Land use
- Access
- Primary Review Criteria Report and Summary of Probable Impacts
 - Agriculture
 - Agriculture water user facilities
 - Local services
 - Natural environment
 - Wildlife
 - Wildlife habitat
 - Public health and safety
- Community Impact Report

¹⁵ MCA 76-3-605

¹⁶ MCA 76-3-605

¹⁷ Missoula Subdivision Regulations 4-010.3

¹⁸ Missoula Subdivision Regulations 5-010

¹⁹ Missoula Subdivision Regulations 5-020

- Project Summary
- Supplemental Maps: vicinity map, adjacent lands ownership map, history of subject parcels (when required by Development Services, aerial photograph, topographic map, existing conditions map, other maps)
- Street and roads plan
- Grading and drainage
- Utility Plan
- Water and Sanitation
- Other supplemental material

Environmental assessment (for major subdivision only)

Subdivision Application and Preliminary Plat Submittal Analysis

- *The City of Missoula requires multiple paper copies of the application materials. Complete application materials can be submitted digitally in whole or in part.*

Subdivision Application Review Process – Element and Sufficiency Review

The purpose of the element review is to ensure all the application materials have been provided. The application materials and the fee must be provided to Development Services at the element review meeting. Within five business days of receiving the information, Development Services will issue written notification indicating that all the material is provided or identifying any missing items. Upon resubmission, Development Services will either issue more requests for missing items or a determination notice is issued²⁰. Montana State Law dictates the reviewing agent or agency respond to the applicant within five business days with a request for additional application elements or a determination notice is issued²¹

After the determination notice is issued, the applicant is required to provide the application materials to reviewing agencies, homeowner or landowner associations, appropriate neighborhood councils, or other neighborhood organizations identified by Development Services²².

This moves the application into the sufficiency review stage. The purpose of the sufficiency review is to determine that the application materials include enough detail to allow for adequate review²³.

Development Services has a 15-business day review period to determine sufficiency that begins the day the element review is determined as complete²⁴. If additional detail is required,

²⁰ Missoula Subdivision Regulations 4-010.4

²¹ MCA 76-3-604(1)

²² Missoula Subdivision Regulations 4-010.4.C.

²³ MCA 76-3-604(2)(a)

²⁴ Missoula Subdivision Regulations 4-010.5.A.

Development Services must issue a notification to the applicant. The applicant can revise the application and resubmit. Development Services will utilize a subsequent 15 business day review period. This process is repeated until the application is notified to be sufficient by Development Services. Montana State Law allows the agent or agency 15 business days to review the application materials for sufficiency²⁵.

Even after sufficiency has been determined, additional information can still be requested by Development Services, City Council and other entities during the review process to ensure a complete understanding of the proposal²⁶.

When the determination notification is sent by Development Services, the applicant is required to provide additional copies of the application materials. The applicant must also send a letter indicating the subdivision application submission and information for the scheduled hearing or meeting. The recipients of the letter will be identified by Development Services including property owners' associations, neighborhood councils, or other neighborhood organizations. The applicant must include the agency comment letters that have been received during the 15-business day review period in addition to the applicant response.²⁷

Element and Sufficiency Review Analysis

- *The subdivision regulations specifically state an “element review meeting.” If this meeting is not necessary and is not part of the subdivision application process, then the regulation document should be updated to reflect there is no “meeting” for this milestone²⁸.*
- *To gain some efficiencies in the process, the element and sufficiency review periods could be combined so the applicant can compile all the requests at one time. This would require Montana State Law amendments.*
- *It is unclear if Development Services simply compiles agency comments or if the comments are for Development Services to consider sending to the applicant in the comment letter.*

Amended Applications – Determination and Appeal Process

The applicant can amend the application after the sufficiency review and before City Council's decision. Depending on the changes, the applicant may need to schedule a new pre-application meeting and resubmit as a new application²⁹.

²⁵ MCA 76-3-604(2)

²⁶ Missoula Subdivision Regulations 4-010.6.B. aligns with MCA 76-3-604(2)(c)

²⁷ Missoula Subdivision Regulations 4-010.7

²⁸ Missoula Subdivision Regulations 4-010.4

²⁹ Missoula Subdivision Regulations 4-010.8

Examples of application changes that may be considered as a material change include, but is not limited to configuration or number of lots, road layout, water and/or septic proposals, configuration of park land or open spaces, easement provisions and designated access³⁰.

If Development Services considers the application amendment to have materially changed then the applicant can appeal to City Council for a hearing. Additional evidence to show the application has not materially changed is required by the applicant. If City Council concludes that the application was materially changed, then City Council also needs to determine if the application needs to be resubmitted. However, if City Council determines that the application has not materially changed, then the review period may resume.³¹

Amended Application Analysis

The amended application process has some unpredictable and confusing steps for developers for the following reasons:

- *The criteria for a new subdivision application versus resubmitting an amended subdivision application is not clear. There is a list of potential changes that would qualify but it is not an exhaustive list.*
- *Detail is not provided about what the parameters are for the changes to qualify for an amended application versus a new application.*

Applicable Regulations

Missoula regulations change periodically based on a variety of reasons. The applicant is held to the regulations in effect at the time a subdivision application and preliminary plat has completed sufficiency review³². According to Montana State Law, review must be considered based on the regulations in place at the time of sufficiency review³³.

Applicable Regulations Analysis

- *This can cause costly revisions for the developer if Missoula's regulations are changed frequently and without notice.*
- *Montana State Law dictates this.*

Mitigation of Impacts

At least ten days before the meeting or hearing with City Council, the applicant may submit comments and responses to those recommendations (Planning Board recommendations for

³⁰ Missoula Subdivision Regulations 4-010.8.F

³¹ Missoula Subdivision Regulations 4-010.9

³² Missoula Subdivision Regulations 4-010.10

³³ MCA 76-3-609(5); MCA 76-3-604(9)

major subdivisions and staff recommendations for minor subdivisions). The applicant can provide alternative proposals and mitigation strategies to address the comments³⁴.

Mitigation of impacts identified in recommendations may be required by City Council. The mitigation must be accompanied by written findings as justification. City Council must determine if the proposed development is unacceptable and also consider the expressed preference of the applicant³⁵.

Mitigation of Impacts Analysis

- *The guidance provided in the subdivision regulations for an applicant to draft alternative proposals and mitigation strategies is unclear. An applicant could not confidently draft a successful response to comments without more information about the criteria that City Council will employ to review the applicant's mitigation for impacts.*
- *The City of Missoula does not seem to utilize the "mitigation letter" in the same way as described in the Subdivision Regulations, and instead is pursued during the development of conditions and the staff report. This discrepancy should be resolved.*

City Council Decision and Documentation

The prerequisites to subdivision approval include easement for utilities, access to each parcel, all public improvements are installed before final plat approval or guaranteed by applicant and will comply with state law (MCA 76-3-504) regarding water rights³⁶.

All Subdivisions are reviewed by City Council. City Council must consider standards and evidence when making a decision on a subdivision application. Standards include design standards in Article 3, zoning regulations, other regulations and Montana Subdivision and Platting Act. Evidence to consider includes the application and preliminary plat, environmental assessment, impacts and mitigation, Missoula City Growth Policy, materials from the public hearing, planning staff report and recommendations, Planning Board recommendation and any additional information³⁷.

City Council may approve, conditionally approve or deny the subdivision application. City Council is obligated to provide written findings that evaluate compliance. City Council is required to send a publicly-available letter to the applicant within 30 days of a decision. The letter must provide information about the appeal process if the application is denied or conditionally approved. The regulations, statutes, reference documents and testimony used to

³⁴ Missoula Subdivision Regulations 4-010.12

³⁵ Missoula Subdivision Regulations 4-100.13

³⁶ Missoula Subdivision Regulations 4-010.14.A

³⁷ Missoula Subdivision Regulations 4-010.14.B and C

justify the decision must be provided with an explanation to describe the process for reaching a decision.

City Council Decision and Documentation Analysis

The City Council decision and documentation process has some unpredictable and confusing steps for developers for the following reasons:

- The subdivision application requires materials for preliminary plat and subdivision concurrently. Perhaps if these steps were sequential then the applicant could address matters for preliminary plat and subdivision during separate processes.*
- If the Missoula regulations have conflicts between them then it can be difficult for the applicant to know the standard and difficult for City Council to provide a basis for decision.*
- There is some confusion about which adopted policy document has precedence in the review process. Clarity on this topic, and incorporation into the development standards, could assist the City and developers in the process.*

TOWNHOME EXEMPT DEVELOPMENT PROCESS

The purpose of the Townhome Exempt Development (TED) tool is to streamline the approvals process so that fee-simple infill housing development can be expedited in the State of Montana, under certain conditions. Local zoning identifies the conditions for when and to what extent the TED tool can be used.

The City of Missoula considered ways to ensure public health and safety are addressed along with providing for orderly development when it restricts the use of the tool for certain development types and sizes of projects. A primary goal of the process is to provide affordable, walkable infill residential development in areas with existing infrastructure.

In the City of Missoula, the TED process requires some baseline information to be established followed by an entitlement process that includes a zoning compliance permit and TED Declarations.

The Baseline Information

The applicant must follow criteria for building types, land use and quantity of units to pursue a TED in the City of Missoula.

Allowable building types: detached houses, two-unit townhouses and 3+ unit townhouses³⁸

³⁸ Missoula Title 20.40.180 A.2

Allowable land use: residential only³⁹

10 units or less: allowed in the following zoning districts RT5.4, RT10, and all R districts (except R3)⁴⁰

20 units or less: allowed in the following zoning districts RT2.7, R3, all RM, B, C, M1R⁴¹

Additional requirements and conditions not suitable for TED can be found in the Code language Title 20.40.180 A and B.

Design and planning for a TED should consider setbacks and separations, on-site constraints, infrastructure and fire safety, blocks, parks and trails and transit⁴².

Entitlement Process

The entitlement process includes a zoning compliance permit (ZCP) and TED declarations.

A ZCP is required for any change of land use on a parcel or a new land use. The ZCP is required for projects that include structures or developments but do not require a building permit such as sheds, parking lots and street vendors located on private property. Other projects may also require a ZCP. Applicants must consult with Development Services to determine specific submittal requirements for each project or land use⁴³.

A pre-application meeting is not required for a TED.

Zoning Compliance Permit

The first submission to the City for a TED project is a ZCP application⁴⁴. The only specified requirements are a completed application and site plan drawn to scale that indicates the parcel and building. The zoning officer can also require additional materials that are determined on a case by case basis. The application is a simple form with basic information required by the developer including property information, people information and project information⁴⁵. The form indicates some drawing types that are not listed in Title 20 including building elevations, floor plans and “any other information the zoning officer determines necessary.” Projects located on slopes of 5 percent or over 15 percent also require additional detail. The “conditions” print on the bottom of the first page indicates separate permits are required for electrical, plumbing, mechanical, signs, sewer, water, paving and right-of-way.

³⁹ Missoula Title 20.40.180 A.4

⁴⁰ Missoula Title 20.40.180 A.1

⁴¹ Missoula Title 20.40.180 A.1

⁴² Missoula Title 20.40.180 C through H

⁴³ Zoning Compliance Permit Application 2016, second page

⁴⁴ Missoula Title 20.40.180 I and 20.85.120

⁴⁵ Found on this page <https://www.ci.missoula.mt.us/1488/Fees-Forms-Applications>

At least 15 days prior to when a permit is issued, notice to neighboring property owners within 150 feet of the subject parcel and request for agency comment is required for TED projects of more than five dwelling units⁴⁶. These steps can happen concurrently.

The zoning officer will review the ZCP and determine an approval or denial decision based on the proposed use, structure or development compliance with Title 20⁴⁷. Appeals may be necessary to the Board of Adjustment. Alternatively, if the parcel is unzoned, then the appeal will be issued to City Council⁴⁸.

A ZCP will expire after two years unless certain conditions are met⁴⁹. A ZCP will lapse unless a building permit has been issued (if required) and a final certificate of zoning compliance has been issued.

If the ZCP is approved by the zoning officer and the TED Declaration is filed, then the approval functions similar to a building permit and the project can be built.

After the project is built and before occupancy, a “final zoning compliance approval” is required, which seems to function as an occupancy permit⁵⁰. Only a detached house or a two-unit house may be occupied prior to the final zoning compliance approval⁵¹.

ZCP Application Analysis

The ZCP application process has some unpredictable and confusing steps for developers for the following reasons:

- *The Zoning Officer can require materials in addition to the ZCP requirements mentioned in Title 20 and the ZCP form. The City included this language instead of duplicating requirements in the subdivision chapter. However, the extent of this flexibility language create uncertainty in the development process related to the potential for last minute or large information requests. The City could consider creating some parameters to this section.*
- *The ZCP form mentions potential additional permit applications that could be required. As part of updates to forms and checklists, all the City’s forms related to TED should be reviewed to ensure they reflect the most current regulations.*
- *The entity responsible for contacting the neighboring property owners is not clear in the code language. This is typically carried out by staff, but the code here, or elsewhere in Title 20 could be clearer.*

⁴⁶ Missoula Title 20.05.040 D.4

⁴⁷ Missoula Title 20.85.130 E

⁴⁸ Missoula Title 20.85.130 F

⁴⁹ Missoula Title 20.85.120 E

⁵⁰ Missoula Title 20.85.140

⁵¹ Missoula Title 20.85.140 A

- *It is assumed that the relevant agencies will be contacted through Development Services but this information is not explicit. Additional detail, potentially on a checklist, explaining which agencies will be commenting and reviewing would be helpful.*
- *Although the requirements for a public notice and agency comment are for TED projects of more than five dwelling units, it seems like agency comments would be applicable for projects of all sizes. State law does not require public comment.*
- *Since the goal of a ZCP application is an approval so the project can be built, the developer applicant is required to include drawings resolved to the detail of design development or construction documentation. This means the documentation is quite resolved by the developer team and significant costs have been invested prior to the City of Missoula seeing the plans for the first time. The City has sought to balance the level of detail needed for the review, and because the intent of TED in Missoula is to result in housing stock that is built relatively quickly, the project is assumed to be detailed enough in an applicants mind to move forward. A review of these application requirements, versus what could be taken at building permit, may be worthwhile.*

TED Declarations

The TED declarations are the final step before a TED project can be built.

TED declarations are required for each TED parcel if a project consists of multiple TED parcels. If phasing is applicable, then a phasing plan for the TED project is required⁵².

Before TED Declarations can be filed, a few requirements must be fulfilled including:

- The TED declaration must be reviewed by the Zoning Officer before being filed with the Clerk and Recorder⁵³
- The ZCP should be finalized or been transferred to building permits⁵⁴
- Infrastructure improvements must be complete or an improvements agreement must be guaranteed by a security and approved by Development Services⁵⁵
- Public easements must be filed⁵⁶

Amendments can be made to filed TED declarations but they must be approved by the zoning officer. The criteria for approval includes incidental changes to the building design and/or changes that “do not affect site plan, easements, phasing, infrastructure improvements, or other

⁵² Missoula Title 20.40.180 J.1 and 2

⁵³ Missoula Title 20.40.180 J.3.a.

⁵⁴ Missoula Title 20.40.180 J.3.b.

⁵⁵ Missoula Title 20.40.180 J.3.c.

⁵⁶ Missoula Title 20.40.180 J.3.d.

Municipal Code requirements”⁵⁷. Phasing is also considered an amendment to the original TED declaration. “Each new phase shall be reviewed for zoning compliance subject to 20.40.180.I.6.b.”⁵⁸. The ZCP review for amendments focuses on the changes only, and does not constitute a re-review of the entire TED project.

TED Declarations Analysis

The TED declarations process has some potentially unnecessary steps that could be adjusted to streamline TED projects:

- *A developer may not have enough information to determine if their amendment will meet criteria to avoid a new ZCP application.*
- *The staff may not need the full requirements of a ZCP application for amendment approval purposes.*
- *The code language around subsequent phases in an approved phased TED is somewhat unclear. The City’s intent was to ensure phases constructed in accordance with the originally proposed phasing plan are reviewed under the original code provisions. However, the language about subsequent phases can be read to require a new ZCP review under updated code requirements for each phase. This is a section worth reviewing to ensure the intent is clearly written into the regulations.*
- *The process for increased TED capacity within a subdivision project can be made more clear (“disclosed as part of a subdivision review”). More detail should be added if this is a recommended and efficient process that will result in housing units.*

⁵⁷ Missoula Title 20.40.180 J.4.a.

⁵⁸ Missoula Title 20.40.180 J.4.b.