

# MONTANA STATE LAW

This document provides an overview of Montana State Law relative to subdivision requirements and begins to identify potential areas for update within Missoula's code. Additionally, opportunities for increased involvement in crafting state law are identified.

## SUBDIVISION REGULATIONS:

The Montana Subdivision and Platting Act regulates the division of land that creates one or more parcels of less than 160 acres. State law requires that local jurisdictions cannot be more restrictive than the state<sup>1</sup>. Over the years, a number of exemptions have been incorporated into State Law, providing some flexibility for property owners and local governments. These exemptions are detailed at the end of this document, after the review of the typical requirements in state law for subdivisions.

### General Requirements:

Montana State Law indicates categories required for each county, city and town to adopt in order to provide enforceable subdivision regulations that includes orderly development, coordinated roadways, rights-of-way and utility easement dedication, roadway improvements, adequate open space, adequate transportation and water/drainage, sanitary facilities, mitigation of congestion, avoidance of environmental degradation<sup>2</sup>.

Subdivision regulations must also establish standards for: design and arrangement of lots/streets/roads, grading and drainage, water supply and sewage disposal, and public utilities<sup>3</sup>.

#### *Subdivision Regulations Analysis*

- *The City of Missoula has fulfilled the State Law requirement for subdivision regulations. Applicants articulate uncertainty around how the subdivision regulations interface with other regulatory documents like the zoning code and engineering code.*
- *Based on interviews, there is some confusion surrounding the rights-of-way requirements since there is not clear alignment between the subdivision regulations and code language. City of Missoula agencies are currently working on a public works*

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<sup>1</sup> MCA 76-3-511

<sup>2</sup> MCA 76-3-501

<sup>3</sup> MCA 76-3-504(1)(g)

*standards and specifications manual. This manual will detail the requirements for designing and constructing public infrastructure or infrastructure that will become part of a city system, placing those requirements in one location for easier review. Following completion of the manual, the city's subdivision regulations should be updated to reflect those standards and consider appropriate references and updates that will correlate with the manual while being consistent with state law requirements.*

## **Pre-Application process**

Montana Law outlines requirements for a pre-application process for all subdivision applications.<sup>4</sup> This requires that cities address the following in their process:

- A subdivision applicant must meet with the authorized agent or agency prior to the application submission. This meeting must take place no more than 30 days from the date a pre-application meeting is requested.
- The City must identify all applicable state laws, local regulations, and growth policy provisions.
- The City must provide a list 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.

### ***Pre-Application Analysis***

- *The City of Missoula includes a detailed list of requirements an applicant must provide at the pre-application meeting. This list is above and beyond what is required in state law but is generally consistent with the information the City will need to review the application at the Element and Sufficiency Reviews. The City could simplify the requirements at the pre-application phase. (Note that other Montana Cities include similar requirements at the Pre-application phase.)*

## **Subdivision Application Review Process – Element and Sufficiency Review**

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 an element review determination notice is issued<sup>5</sup>.

Montana State Law allows the agent or agency 15 business days to review the application materials for sufficiency<sup>6</sup>.

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<sup>4</sup> MCA 76-3-504(1)(q)

<sup>5</sup> MCA 76-3-604(1)

<sup>6</sup> MCA 76-3-604(2)

Additionally, Montana State Law explicitly states that an application is subject to the regulations in effect at the time the application is determined to meet the sufficiency review. If the regulations change between element and sufficiency review, the statute is clear that the new regulations apply.<sup>7</sup>

#### ***Element and Sufficiency Review Analysis***

- *The City of Missoula follows the State Law timelines for element and sufficiency review. These review periods may be reconsidered for shorter timeframes in general or shorter timeframes if the application meets certain criteria (i.e. the subdivision is a small size and/or the subdivision intends to provide housing for a needed tier in the housing policy.)*
- *While this would require a change to state law, it may be worth exploring the applicability of regulation changes between element and sufficiency reviews.*
- *An option could be to “lock” an application in at the time of element review or create additional standards that might cause an application to be subject to the requirements in effect at element review.*

### **City Council Decision and Document**

After the applicant has been notified the application is sufficient, the City has 60 to 80 working days to determine if the application conforms to state and local regulations.<sup>8</sup> A written decision is required within 30 working days of the governing body’s decision.<sup>9</sup>

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.”<sup>10</sup>

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 rights<sup>11</sup>.

#### ***Council Decision Analysis***

- *The process for conditional approval has an opportunity to be more formalized and standardized. Ideally, applicants will have ample communication with the case manager to establish clarity about the potential conditions that will be requested by City Council. Clarity of policy documents, hierarchy of regulations and code language will create the foundation for the applicant to be able to anticipate conditions in a more proactive manner.*

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<sup>7</sup> MCA 76-3-604(9)

<sup>8</sup> MCA 76-3-604(4). 80 working days for the review is permitted when 50 or more lots are created.

<sup>9</sup> MCA 76-3-504(1)(r)

<sup>10</sup> MCA 76-3-504(1)(c)

<sup>11</sup> Missoula Subdivision Regulations 4-010.14.A

## **Public Hearings and Neighborhood Meeting:**

State law only requires one public hearing during governing body review, though additional hearing are permitted<sup>12</sup>. The City of Missoula has incorporated additional public hearing and neighborhood notification requirements beyond state law.

Missoula includes a Neighborhood Meeting after the pre-application phase, and before the submission of the actual application. This is not a requirement of state law.

Montana State Law outlines the role of a Planning Board in the Subdivision process. Communities with a Planning Board and an adopted growth policy are required have all major subdivisions reviewed by the Planning Board, and a recommendation forwarded to the governing body. Additionally, for minor subdivisions, the Planning Board must complete an advisory review, or they may delegate to staff these responsibilities.<sup>13</sup> For subdivisions that include a Planning Board review, their recommendation on the subdivision must be forwarded to the City Council within 10 days of their review.

### ***Neighborhood Meeting Analysis***

- *The City of Missoula includes two public hearings in a Major Subdivision Review, which could be reduced.*
- *The City of Missoula requires a neighborhood meeting prior to the subdivision application submission. This requirement is above and beyond the State Law requirements, and could be removed or adjusted to a notification requirement instead of a meeting. The meeting could also be moved to come later in the process, after Element or Sufficiency review, when an applicant may have more detailed information.*
- *Missoula could consider adjusting the review process for Minor Subdivisions and allow the advisory recommendation to be completed by staff, rather than requiring a review by the Planning Board. To preserve the opportunity for the community to provide comments, an allowance for public written comments could be included (this would be similar to Bozeman's regulations).*

## **Phased Development<sup>14</sup>**

Requirements for phased development:

- Overall phased development preliminary plat must follow requirements in parts 5 and 6 of Title 76, Chapter 3 for all phases of the development. The phased development must also be submitted with a schedule for when each phase will be reviewed in the future.

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<sup>12</sup> MCA 76-3-605

<sup>13</sup> MCA 76-1-107

<sup>14</sup> MCA 76-3-617

- All phases of the phased development must be submitted for review for decision within 20 years of the date of the approval of the overall phased preliminary plat.
- Prior to implementation of each phase, the applicant must provide written notice to the governing body. The governing body holds a public hearing and then determine whether any changed primary criteria impacts or new information exists that create new potentially adverse impacts for the new phase. The governing body decision must indicate any necessary additional conditions to minimize impacts. Any additional conditions must be met by the applicant prior to the final plat approval.

#### ***Phased Development Analysis***

- *The process for phased development requires applicants to provide detailed information for each phase that may require adjustments when future phases are reviewed by the Council.*
- *The requirement for a public hearing with each phase is relatively new and adds more time to the process but also provides an opportunity to address any new requirements or information. This can be helpful when subdivision preliminary plats are scheduled out for 20 years, but it can also be cumbersome for smaller projects or projects with phases planned within a short timeline from the original preliminary plat.*

### **Park Dedication Requirement<sup>15</sup>**

Montana State Law outlines park dedication requirements that can manifest as cash or land donation. The Law outlines a sliding scale of requirements based on lot size, ranging from 2.5% to 11% of the land area proposed.<sup>16</sup> An exception to this is when a community has adopted a growth policy and desires to establish parks requirements related to community needs. A community choosing this option cannot use the 2.5% to 11% standard, and the dedication cannot exceed 0.03 acres per dwelling unit (approximately 1,300 sq ft per unit).<sup>17</sup> Parks Master Plan.

Additionally, State Law states that a park dedication may not be required in the following situations, which Missoula has adopted into the code:

- The subdivision parcels are greater than 5 acres;
- The subdivision parcels are nonresidential;
- The subdivision does not create parcels (except when multiple spaces are created for camping vehicles, mobile homes or condominiums); and/or
- A subdivision that only creates one additional parcel.
- First minor subdivisions unless the local governing body determines otherwise.

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<sup>15</sup> MCA 76-3-621

<sup>16</sup> MCA 76-3-621(1)(a)

<sup>17</sup> MCA 76-3-621(2)

State law includes language about times when a local government must waive park dedication requirements, including<sup>18</sup>:

- The preliminary plat provides land set asides for park and recreational uses that will meet the needs of those who will ultimately reside in the development, as measured in the 2.5% - 11% standard.
- The preliminary plat provides long-term critical wildlife habitat, cultural, historic, or natural resources, agricultural interests, or aesthetic values. Credit is given for these spaces against the 2.5% - 11% standard.
- The subdivider provided land outside of the subdivision that will meet the needs of those who will ultimately reside in the development, as measured in the 2.5% - 11% standard.

State law allows a local government, at its discretion, to require parks dedications for minor subdivisions, or the first minor subdivision from a tract of record that involved condominiums or other multi-family units.

#### ***Park Dedication Analysis***

- *The City of Missoula can establish clear minimum density requirements. This may require an amendment to the Growth Policy. Ideally there would be some relationship between density and available public parks so that residents can access open spaces.*
- *Another option for the City of Missoula would require an amendment to Montana State Law. The City of Missoula can establish a parks system master plan that removes the park dedication requirements from the subdivision applicants and replaces with an impact fee approach that funds the parks system master plan implementation. This approach is allowed in other states and could be a longer term opportunity.*
- *The City of Missoula has adopted supplemental dedication standards for parks space when the net residential density is not known at the time of preliminary plat. In these situations, a rate of 0.02 acres multiplied by the number of units per acre allowed by zoning is used. This calculation could be updated to allow a final calculation when the final plat is filed to ensure there was not an under or over count included in the project. Additionally, state law allows a calculation of up to 0.03 acres per unit.*
- *While the City of Missoula has adopted language from state law related to when the dedication requirement is waived<sup>19</sup>, additional criteria or a linkage in the code to what constitutes critical wildlife areas, natural areas, and important agricultural land could improve clarity for this exemption.*

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<sup>18</sup> MCA 76-3-621(6-7)

<sup>19</sup> Missoula Code 3-080.11

## **Water and sanitation information to accompany preliminary plat<sup>20</sup>**

Montana State Law requires water and sanitation information to be provided in the preliminary plat application. Information must be provided about the location and existing and proposed conditions, proposed water supply systems, stormwater systems, solid waste disposal systems and wastewater treatment systems.

### ***Water and sanitation information Analysis***

- *This piece of the requirements and process does not seem to be an issue for the City of Missoula.*

## **Exemptions**

Montana state law identifies exemptions for subdivisions that meet certain criteria. The purpose of considering exemptions is generally to accommodate the exceptional circumstances when plenary subdivision review is unnecessary. This analysis reviews four forms of exemptions.

### **General exemptions**

These exemptions apply to certain agricultural activities, family transfers, aggregation of lots, relocation of common boundary lines, and security interest (liens, mortgages, etc).<sup>21</sup>

Additionally, state law outlines that these exemptions cannot be undertaken to evade the subdivision requirements of the state or local government.

### ***General Exemptions Analysis***

- *These exemptions have been incorporated into the City of Missoula's code, and do not appear to be an issue. The code also indicates that while projects may be exempt from subdivision, they are not necessarily exempt from other sections of the code.*

### **Infrastructure and growth policy planning exemptions**

This exemption is a tool that can be used in cases where there is detailed infrastructure planning along with detailed growth policy information. The requirements to meet this exemption include<sup>22</sup>:

- The proposed subdivision is within or adjacent to an incorporated city or town where a growth policy has been adopted by a governing body that includes the provisions of a detailed infrastructure plan.
- The proposed subdivision is entirely within an area subject to zoning that avoids, reduces or mitigates adverse impacts identified in the growth policy.

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<sup>20</sup> MCA 76-3-622

<sup>21</sup> MCA 76-3-201

<sup>22</sup> Montana State Law 76-3-616(2)

- The subdivision proposal includes a description of future public facilities and services required to efficiently serve the development.

If the subdivision meets the above criteria, then the application is exempt from<sup>23</sup>:

- Preparation of an environmental assessment
- A public hearing
- Review of the subdivision for the criteria listed in 76-3-608(3)(a), stated below:
  - Impact on agriculture, agriculture water user facilities, local services, natural environment, wildlife, wildlife habitat and public health and safety

#### ***Infrastructure and growth planning policy exemptions Analysis***

- *While this exemption has been available within the state since 2007, it's been noted that no jurisdiction appears to have utilized it. The requirements to comply with the detailed infrastructure plan seem to be extensive, and potentially difficult for the city to detail. It appears that the concept is to acknowledge areas where the majority of detailed planning and the assessment of environmental impacts including consideration of the primary review criteria are conducted in advance, requiring potentially less reporting, evaluation, time and debate at the point of a project development proposal.*

## **Exemptions for Cluster Subdivisions**

Montana State Law includes a provision for Cluster Development in communities that have an adopted growth policy. The regulations must establish minimum parcel sizes, as well as the minimum size for areas to be preserved as open space. Regulations under this section can establish a shorter review period, incentivize the use of the regulations over other forms of subdivision. Additionally, the local regulations may exempt requirements related to an environmental assessment, certain review criteria, and certain park dedication requirements.<sup>24</sup>

#### ***Cluster Subdivision Analysis***

- *While Missoula has adopted cluster regulations, if an update to the regulations is pursued, additional language to clarify the exemptions could be included. Some simplification of the regulations to refer to the Cluster requirements included in Chapter 20-55, rather than including similar information in the Subdivision language, could assist in simplifying the City's subdivision regulations.*
- *Additionally, the City could consider reduced timeframes, consistent with state law.*

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<sup>23</sup> Montana State Law 76-3-616(1)

<sup>24</sup> MCA 76-3-509.



## Exemptions for certain townhomes and condominiumizations

Montana State law includes exemptions for condominium, townhomes, townhouses, and conversions constructed on land that has been subdivided in compliance with the local regulations and local review procedure sections of the Montana Subdivision and Platting Act.<sup>25</sup> These terms are expressly defined in state statute, as follows<sup>26</sup>:

- "*Condominium*" means the ownership of single units with common elements located on property submitted to the provisions of this chapter. The term does not include a townhome, a townhouse, a community land trust, or a housing unit located on land belonging to a community land trust.
- "*Conversion*" means a change in the character of residential real property from one or more parcels of land with attached condominium units to one or more parcels of land with attached townhome or townhouse units without a change to the undivided interest of the unit owners.
- "*Townhome*" or "*townhouse*" means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

More detailed review of Missoula's Townhome Exemption Development is included in the next section.

### *Townhome and condominiumization exemptions Analysis*

- *The City's regulations related to townhomes and condominiumizations appear to reflect the state definitions. While more detailed regulations have been adopted, the definitions generally reflect those in state law.*

## TOWNHOMES EXEMPT DEVELOPMENT<sup>27</sup>

The City of Missoula has adopted a Townhome Exemption Development (TED) procedure in accordance with the state exemption – the only local government in the state to do so. The state statute is short but provides for an exemption from complete subdivision review for these types of projects. The statute identifies this exemption is allowed for units either:

- Constructed on land subdivided in compliance with parts 5 (local regulations) and 6 (local review procedure) of the Montana Subdivision and Platting Act; **OR**
- Constructed on lots within incorporated cities and towns.

Additionally, the proposed units must be either:

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<sup>25</sup> MCA 76-3-203

<sup>26</sup> MCA 70-23-102

<sup>27</sup> MCA 76-3-203

- On land previously subdivided that contemplated this building type and is compliance with park dedication requirements; **OR**
- The proposal conforms to local zoning regulations.

The statute allows discretion for the local government in creating zoning standards that are appropriate for these types of developments. In Missoula, this has included the adoption of regulations that focus on development in the city's core and in areas that have existing infrastructure. The City has limited the number of units that qualify for the exemption, based on geographic areas. Additionally, the city has identified lands not suitable for TED development, including those areas in areas prone to flooding, development on areas in excess of 25% slopes, land already in a TED filing, and development that would require dedicated public right-of-way when the developer does not consent to that dedication.

#### **TED Analysis**

- *Montana State Law does not provide much detail for the TED development tool, so the City of Missoula has an opportunity to define this further to meet housing needs.*
- *In the case of Missoula, all TED projects are constructed on lots within incorporated cities and towns, meaning the only standards required by state law are compliance with local zoning regulations.*
- *The City has adopted the term "TED Ownership unit" to address the requirements in state law that the residential unit is held in separate title to the land beneath. While this term appears to meet these requirements, it may cause additional confusion when combined with other regulations and could be reviewed in an update to those regulations.*
- *Missoula's detailed requirements for TEDs go far beyond what is required in state law, partially because the state law lacks any detail. This has provided the City an opportunity to articulate a process that provides enough information for the city to be understand important code provisions are being met, while exempting the projects from a full subdivision review. While additional refinements could be made to the regulations, they are within the allowances of state law and place Missoula on the forefront in Montana of providing a path for housing development.*

## **WHAT IS MONTANA'S STATE LEGISLATURE SCHEDULE?**

The Montana Constitution requires that the legislature meet in regular session for no more than 90 days in each odd-numbered year. The last legislative session was in 2019 and adjourned on April 25 after 87 working days<sup>28</sup>. There was a special Legislative Week from January 13 to 17,

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<sup>28</sup> <https://www.leg.mt.gov/legweek/>

2020 where lawmakers discussed the possibility of meeting every year for no more than 45 days.<sup>29</sup>

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<sup>29</sup> No decision was made on this topic, but it is anticipated to be part of the bills considered in the 2021 session.