

## ORDINANCE 3648

A City of Missoula initiated ordinance generally amending Title 20, Missoula Municipal Code, the City Zoning Ordinance, an ordinance amending Title 20, Missoula Municipal Code, the City Zoning Ordinance, Residential Districts Chapter sections 20.05.040.D 20.05.050.B, Table 20.05-3; Other Regulations sections 20.05.060, 20.10.050, 20.15.060 in Residential, Business and Commercial, and Industrial Districts Chapters; Use and Building Specific Standards Chapter section 20.40.180; Accessory Uses and Structures Chapter section 20.45.060.B.1; Nonconformities Chapter section 20.80.020.A & B; amending the terms for 'Lot' and 'TED Ownership Unit' in the Terminology Chapter section 20.100.A; and Measurements and Exceptions Chapter section 20.110.010, and adding a new sub-section F to section 20.110.050, all related to Townhome Exemption Development (TED).

Be it ordained that the following sections and tables are hereby amended as follows: Section 20.05.040.D; 20.05.050.B, add footnote [8] to Table 20.05-3; 20.05.060; 20.10.050; 20.15.060; 20.40.180; 20.45.060.B.1; 20.80.020.A & B; 20.100.A; 20.110.010; and subsection 20.110.050.F is hereby established as follows:

### Chapter 20.05 – Residential Districts

#### 20.05.040

#### D. Townhome Exemption Development (TED)

##### 1. Intent

- a. The Townhome Exemption Development Option (TED) 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. 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 administrative TED review 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.

##### 2. General Description

- a. The only permitted 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. TED projects must comply with Section 20.40.180, Townhome Exemption Development (TED) Standards.
- d. Townhome Exemption Developments must meet all applicable City Municipal regulations (see Figure 20.05-7).

TED Project includes the following:	R Districts (except R3), and RT5.4 and RT10 Districts	RT2.7 and R3 Districts All RM Districts All B, C, Districts and M1R
One (1) to ten (10) total dwelling units	Administrative Approval, Comply with Zoning	Administrative Approval, Comply with Zoning
Eleven (11) to Twenty (20) total dwelling Units	Prohibited as TED	Administrative Approval, Comply with Zoning
More Than Twenty (20) total dwelling Units	Prohibited as TED	
Property is not suitable for TED 20.40.180.B	Prohibited as TED	

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

- 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 and Request for Agency Comment**  
The following is required for TED projects of more than 5 dwelling units:
  - a. Notice of the application for a zoning compliance permit for Townhome Exemption Developments must be mailed to all owners of property within 150 feet of the subject parcel at least 15 days before a permit is issued.
  - b. Relevant agencies shall be notified and given 15 days for comment before a permit is issued. This requirement does not apply to TED projects being reviewed at the same time as an associated subdivision.

20.05.050.B - Parcel and Building Standards, Table 20.05-3 Parcel and Building Standards (Residential Districts)

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
<b>CONVENTIONAL DEV'T</b>																
Min. District Area (sq. ft.)	None	None	None	None	None	None	None	None	30,000	None	None	None	None	None	None	None
<b>Minimum Parcel Size</b>																
L Area (square feet) [8]	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
L 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>Minimum Setbacks (feet)</b>																
L Front	25	25	25	25	20	20	20	20	10[3]	20	20	20	20	20	20	20
L Side (interior)	25	25	15	15	7.5 [4]	7.5 [4]	7.5 [4]	7.5 [4]	3	5	5	5	5	5	5	7.5
L Side (street)	12.5	12.5	12.5	12.5	10	10	10	10	10	10	10	10	10	10	10	10
L Rear	25	25	25	25	20	20	20	20	10[3]	20	20	20	20	20	20	20
Max. Building Height (feet) [5]	30/35	30/35	30/35	30/35	30/35	30/35	30/35	30/35	30/35	30/35	30/35	45	45	35	45	125
<b>CLUSTER DEV'T</b>																
<b>Overall Site</b>																
L Min. open space (% site)	30	30	30	30	30	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
L Min. area per unit (sq. ft.)	215,000	80,000	40,000	20,000	10,000	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Minimum Parcel Area (sq. ft.)	None	None	None	None	None	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
<b>Minimum Setbacks (feet)</b>																
L Front [2]	25	25	25	25	20	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
L Side (interior)	20	15	10	10	7.5	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
L Side (street)	12.5	12.5	12.5	12.5	10	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
L Rear	25	25	25	25	20	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

<b>Max. Building Height (feet)</b> [5]	30/35	30/35	30/35	30/35	30/35	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
<b>CONSERVATION DEV'T</b>																	
<b>Overall Site</b>																	
L Min. area (acres, gross)	100	40	20	10	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
L Min. open space (% site)	60	60	60	60	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
L Min. area per unit (sq. ft.)	177,000	66,000	33,000	16,500	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
<b>Minimum Parcel Area (sq. ft.)</b>	None	None	None	None	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
<b>Minimum Setbacks (feet)</b>																	
L Front [2]	25	25	25	25	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
L Side (interior)	20	15	10	10	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
L Side (street)	12.5	12.5	12.5	12.5	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
L Rear	25	25	25	25	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
<b>Max. Building Height (feet)</b> [5]	30/35	30/35	30/35	30/35	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	
<b>PERMANENTLY AFFORDABLE DEV'T [6]</b>																	
<b>Minimum Parcel Size</b>																	
L Area (sq. ft.)												None	None	None	None	None	
L Area per unit (sq. ft.)[7]												2,160	1,600	1,200	800	400	
<b>Min. Setbacks (feet)</b>																	
L Front												20	20	20	20	20	
L Side (interior)												3	3	3	3	3	
L Side (street)												10	10	10	10	10	
L Rear												20	20	20	20	20	
<b>Max. Building Height (feet)</b> [5]												30/35	45	45	35	45	

- [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 through subdivisions approved under MCA 76-3, parts 5 and 6 after May 6, 2019. Total unit yield is calculated based upon the gross parcel area divided by the minimum parcel area per unit and any applicable hillside density reductions.

### **20.05.060 - Other Regulations**

Uses and development in R 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 20.40.140 for Townhouse Development Standards  
See Chapter 20.40.180 for Townhome Exemption Development (TED) Standards
- C. Accessory Uses and Structures**  
(e.g., home occupations, detached garages, gazebos, and sheds) See Chapter 20.45.
- D. Natural Resource Protection**  
See Chapter 20.50.
- E. Parking and Access**  
See Chapter 20.60.
- F. Landscaping**  
See Chapter 20.65.
- G. Signs**  
See Chapter 20.75.
- H. Nonconformities**  
See Chapter 20.80.
  - 1. RM2.7 District**
    - a. Expansion of Existing Commercial and Industrial Uses**  
Any commercial or industrial use lawfully established in the RM2.7 district before November 4, 2009 may be expanded if the (conventional development) parcel and building standards of 20.05.050, the parking and access standards of Chapter 20.60, and the landscaping standards of Chapter 20.65 are met.
    - b. Substitution of Commercial and Industrial Uses**  
Any commercial or industrial use lawfully established in the RM2.7 district may be replaced by a use of similar or less intensity. If a less intensive use is established, the use may not later revert back to the previous intensity.
    - c. Replacement of Commercial and Industrial Buildings**  
Any commercial or industrial building lawfully established in the RM2.7 district before November 4, 2009 may be replaced or expanded if the (conventional development) parcel and building standards of 20.05.050, the parking and access standards of Chapter 20.60, and the landscaping standards of Chapter 20.65 are met.
    - d. New Commercial and Industrial Uses**  
Except as expressly allowed by this zoning ordinance, no additional parcels may be committed to commercial or industrial use in the RM2.7 district and no more intensive commercial or industrial use may be established after November 4, 2009.

**Chapter 20.10 – Business and Commercial Districts**

**20.10.050 - 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.
- C. Accessory Uses and Structures**  
See Chapter 20.45.
- D. Natural Resource Protection**  
See Chapter 20.50.
- E. Parking and Access**  
See Chapter 20.60.
- F. Landscaping**  
See Chapter 20.65.
- G. Signs**  
See Chapter 20.75.
- H. Nonconformities**  
See Chapter 20.80.

**Chapter 20.15 – Industrial Districts**

**20.15.060 - 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.
- C. Accessory Uses and Structures**  
See Chapter 20.45.
- D. Natural Resource Protection**  
See Chapter 20.50.
- E. Parking and Access**  
See Chapter 20.60.
- F. Landscaping**  
See Chapter 20.65.
- G. Signs**  
See Chapter 20.75.
- H. Nonconformities**  
See Chapter 20.80.

**Chapter 20.40 – Use and Building Specific Standards**  
**20.40.180 - Townhome Exemption Development (TED) Standards**

Commentary: Townhome vs. Townhouse - Townhouse refers to a residential building containing more than one dwelling unit, each located on its own parcel or TED ownership unit with a common or abutting wall and that each has its own external entrance as described in 20.05.030.B.3, and is required to meet standards detailed in 20.40.140. Townhome Exemption Development 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 described in (20.05.040.D).

**A. Applicability**

1. The following administrative review standards apply to Townhome Exemption Development (TED) projects of ten or fewer dwelling units in RT5.4, RT10, and all R districts (except R3), or 20 or fewer dwelling units in RT2.7, R3, and all RM, B, C, and M1R districts. Developments that exceed these numbers are not permitted through the TED process.
2. The only permitted 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 nonresidential developments.
5. TED projects must meet all applicable City Municipal regulations, including Title 12 and Title 20.
6. TED is only permitted on parcels in zoning districts described in Title 20.
7. Community Land Trusts may be reviewed as TED if applicable.
8. If the number of townhome units and layout are disclosed as part of a subdivision review, then the maximum unit count can be exceeded by up to 150% of the maximum stated in 20.40.180.A.1.

**B. Conditions Not Suitable for TED**

If the subject property contains any 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 that 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 designated Zone X behind levee.
  - a. In situations where the proposed TED project does not include any disturbance of the area defined in 20.40.180.B.1, and the SFHA is not an Approximate A, the Zoning Officer is authorized to waive 20.40.180.B.1, subject to the following:
    1. For all development on the TED Parcel, the lowest floor and mechanical shall be 2 feet above Base Flood Elevation (BFE) and pre and post-elevation certificates are required for primary structures (including attached garages); and
    2. Lands described within the SFHA shall be surveyed and designated as Common Area/No Build in the project application and in the survey accompanying the final TED Declaration.

- b. For sites that are designated Zone X behind levee, for all primary structures (including attached garages), the lowest floor and mechanical shall be 2 feet above BFE and pre and post-elevation certificates are required.
- 2. Any portion of the subject property includes land with a slope of greater than 25%.
  - 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 included in a filed TED Declaration.
- 4. Any property requiring dedicated public right-of-way as determined by the Development Services Director in consultation with the City Engineer.
  - a. Reasons for requiring dedicated public right-of-way include, but are not limited to:
    - i) Allowing for public motorized and non-motorized connections
    - ii) Allowing for provision of emergency services; or
    - iii) Completing road sections called for in applicable adopted City Plans or Resolutions.
  - b. In situations where the City Engineer finds that public right-of-way is necessary, and the developer agrees to dedication of that public right-of-way, then the project may proceed through TED review.

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 that apply to TED Parcels are found in Table 20.05-3, unless otherwise noted. 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**

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 geotechnical 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) must have at least a 2,000 square foot contiguous building and disturbance area with an average slope of no more than 25%. See 20.50.010.B.1 for average slope determination.
  - b. Building and disturbance is prohibited on slopes of greater than 25% outside the minimum contiguous building and disturbance area within each TOU.
- 2. Land with the potential for expansive soils, landslides, slope instability, and high ground water: Provide a complete geotechnical report prepared by a geotechnical 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 at pre-development levels, subject to review and approval by the City Engineer.

**E. Infrastructure and Fire Safety**

All infrastructure shall meet the standards in Title 12 and be approved by Development Services Engineering Division and meet the requirements of the City of Missoula Standards and Specifications Manual. TED projects are subject to compliance with the adopted Fire Code.

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, woonerfs, alleys, and/or driveways must meet engineering and fire code requirements.
4. Applicable internal motorized and non-motorized access routes will be required and evaluated by the Development Services Director and City Engineer in order to address public health and safety, allow for access to mail and garbage facilities, and meet the applicable goals and policies of any relevant and adopted community plans.
5. TED Parcels must provide pedestrian access in the following ways:
  - a. If a TED Parcel is adjacent to a public or private street, each TOU shall be provided pedestrian access to that street. Where a TED Parcel is adjacent to more than one street, pedestrian access for each TOU shall be provided to at least one of those streets.
  - b. If a TED parcel is adjacent to a public or private alley, each TOU shall be provided pedestrian access to that alley.

**F. Blocks**

Blocks shall be designed to assure traffic safety and ease of non-motorized and motorized circulation.

1. Block lengths shall not exceed 480 feet in length unless topographic constraints are present as confirmed by the Zoning Officer in consultation with the City Engineer. In cases where maximum block length is waived, block lengths exceeding this standard should only be allowed for the most minimal variation necessary.
2. Non-motorized access easements and installation of pedestrian facilities that create a break within a block may be required where there is a need for non-motorized connectivity.
3. TOU's shall not be designed as through parcels.

**G. Parks and Trails**

TED projects of more than 5 (five) dwelling units must:

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: wetlands, riparian lands, 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. Landscaping and maintenance plans for required parkland shall be included in the submittal for the zoning compliance permit.
  - f. 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.
      - a. 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.
      - b. Money received through this cash-in-lieu process is held to the following:
        - i. No more than 50% of money received may be used for maintenance on existing Parks facilities.
        - ii. 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 is on parcels in subdivisions that were 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 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.
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. The Declaration has been filed with the County Clerk and Recorder, or
  - b. 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. An 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. TED Projects of more than 5 dwelling units require the review and approval of the Fire Chief or their designee.
5. Information submitted at the time of a subdivision review approved under MCA 76-3, parts 5 and 6 may need to be resubmitted and updated if the subdivision submittal packet did not expressly contemplate the proposed TED project.

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. Expressly contemplated means that a site plan indicating access and number, size and location of TED Ownership Units was reviewed as part of the subdivision review.

6. If phasing is proposed within a TED project, a phasing plan shall be submitted with the initial zoning compliance permit for the entirety of the TED development, and is subject to review and approval by the Zoning Officer and the City Engineer.
  - a. A phasing plan shall be subject to the following criteria:
    - i. The first phase shall include all proposed parkland and proposed dedicated public right-of-way (if the right-of-way is accepted by the Development Services Director in consultation with the City Engineer), and any essential infrastructure as determined by the Development Services Director and the City Engineer.
    - ii. The deadline to establish each new phase shall be a maximum of two years from when the previous phase was established, starting

with the initial declaration. The phasing plan shall not be for a duration of longer than 4 (four) years for a TED of 5 (five) or fewer dwelling units and a duration of longer than 8 (eight) years for a TED of 6 (six) or more dwelling units.

- iii. If it is deemed that future infrastructure is necessary for orderly development, then the developer shall include an improvements agreement with security for future installation of infrastructure.
  - iv. TED projects that include phasing do not need to provide information on building design, such as elevations or interior floor plans, for those structures not included in the first phase.
  - v. The TED declaration shall label the portion of the site that will include future phases as a TED ownership unit (TOU), not as common area.
- b. At the time a TED declaration is amended to add a new phase, the applicant shall meet all of the following requirements:
- i. Phases shall be submitted sequentially in the order approved with the initial zoning compliance permit for the entire TED development.
  - ii. Amendment of a TED declaration to add a new phase requires approval of a zoning compliance permit.
  - iii. Each phase shall be subject to the regulations in effect at the time of submittal of the zoning compliance permit for that phase.
  - iv. Phases shall match the layout and number of units per phase in the phasing plan approved with the initial zoning compliance permit for the entire TED development.

## **J. TED Declarations**

1. Townhome Exemption Development (TED) projects shall be filed as one townhome exemption declaration per TED parcel.
2. When phasing is proposed for a TED project, the phasing plan for the entire TED project shall be included in the original TED declaration.
3. Before filing a TED Declaration:
  - a. Prior to when the declaration is filed by the Clerk and Recorder, the final TED declaration must be reviewed by the Zoning Officer.
  - b. Conditions from the zoning compliance permit shall have received final zoning compliance approval, or been transferred to the applicable building permits.
  - c. 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 Development Services.
  - d. Any required public access easement must be filed.
4. Amendments to filed TED declarations:
  - a. Approval of a new zoning compliance permit is required for all amendments to filed TED declarations unless the Zoning Officer has determined that the amendment complies with the following criteria: :

- i. Incidental changes or modifications to building design; and
  - ii. Changes that do not affect site plan layout, easements, phasing, infrastructure improvements, or other Municipal code requirements.
- b. When phasing is proposed for a TED project, phases are established through amendment of the original TED declaration. Each new phase shall be reviewed for zoning compliance subject to 20.40.180.I.6.b.

**Chapter 20.45 – Accessory Uses and Structures**

**20.45.060 - Accessory Dwelling Units**

**B. Regulations for all Accessory Dwelling Units**

All accessory dwelling units must comply with the regulations of this subsection.

**1. 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).

**Chapter 20.80 – Nonconformities**

**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, parts 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, parts 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.

**Chapter 20.100 – Terminology**

**20.100.010A – General Terms**

[Codification note: The following definitions are amended as follows.]

**Lot**

A contiguous area of land with defined boundaries under common ownership created by subdivision, subdivision exemption or their legal equivalent. TED Ownership Units (TOUs) are not lots.

**TED Ownership Unit**

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 (TOUs) are not lots.

**Chapter 20.110 – Measurements and Exceptions**

**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 (TOU's).

**20.110.050 - Setbacks**

**F. Setbacks and Separation of Residential Buildings on TED Parcels**

The following applies to buildings on TED Ownership Units (TOUs) created through the Townhome Exemption Development (TED) process after November 5, 2019.

- 1. Structures in TED projects (20.40.180) are required to meet setback standards for the underlying zoning district as described in Table 20.05-3, unless otherwise noted below.
  - a. Setbacks apply to the entire TED parcel used for a TED project as described in 20.110.050.
  - 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).
  - c. Structures in TED projects located in residential zoning districts that exceed 22 feet in height shall provide a side setback of no less than 7.5 feet.

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 feet is allowed for zoning districts which require a side yard setback distance of 7.5 feet or less.

**CODIFICATION NOTE:**

The codification notes in this ordinance should not be codified.

**SEVERABILITY**

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

**EFFECTIVE DATE**

This ordinance will be effective 30 days after passage.

First reading and preliminary adoption on the 9th day of September, 2019, by a vote of 9 ayes, Alderperson Becerra, Alderperson DiBari, Alderperson Harp, Alderperson Hess, Alderperson Jones, Alderperson Merritt, Alderperson Ramos, Alderperson von Lossberg, and Alderperson West; 0 nays; 0 abstaining; and 3 absent, Alderperson Anderson, Alderperson Armstrong, and Alderperson Cares.

Second and final reading and adoption on the 7<sup>th</sup> day of October, 2019 by a vote of: 7 ayes, Alderperson Anderson, Alderperson Becerra, Alderperson DiBari, Alderperson Hess, Alderperson Jones, Alderperson von Lossberg, and Alderperson West; 3 nays, Alderperson Cares, Alderperson Harp, and Alderperson Merritt; 0 abstentions; and 2 absent, Alderperson Armstrong, and Alderperson Ramos.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein

/s/ John Engen

\_\_\_\_\_  
Martha L. Rehbein, CMC  
City Clerk

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John Engen  
Mayor