

## **ORDINANCE NUMBER 3636**

PURSUANT TO MONTANA MUNICIPAL INTERIM ZONING STATUTE SECTION 76-2-306 MCA THE MISSOULA CITY COUNCIL HEREBY ADOPTS THIS INTERIM URGENCY ZONING MEASURE AMENDING TITLE 20, MISSOULA CITY ZONING ORDINANCE SECTION 20.05.040.DEVELOPMENT OPTIONS, SUB-SECTION D: TOWNHOME EXEMPTION DEVELOPMENT TO REQUIRE ADDITIONAL REVIEW AND APPROVAL PROCEDURES, CLARIFY ELIGIBILITY AND SUBMITTAL REQUIREMENTS, AND ESTABLISH ADDITIONAL DEVELOPMENT REGULATIONS FOR CONDITIONAL USE PERMIT REQUESTS FOR TOWNHOME EXEMPTION DEVELOPMENT; AMENDING TABLE 20.05-3 AND SECTION 20.110.010 TO PROVIDE GREATER PARCEL AREA FLEXIBILITY FOR FUTURE SUBDIVISIONS; AND AMENDING SECTION 20.100.010 GENERAL TERMINOLOGY TO CLARIFY THE DEFINITION OF A LOT.

THIS INTERIM ZONING ORDINANCE SHALL BE EFFECTIVE FOR SIX MONTHS FROM THE DATE OF ADOPTION, DURING WHICH TIME THE CITY COUNCIL WILL CONSIDER ZONING ORDINANCE AMENDMENTS TO TITLE 20, MISSOULA CITY ZONING ORDINANCE TO ENSURE THAT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE IS PROTECTED WHEN TOWNHOME EXEMPTION DEVELOPMENT PROJECTS OF A SIZE THAT TRIGGER THE REQUIREMENT FOR CONDITIONAL USE ARE PROPOSED.

### **SECTION 1. INTENT**

Montana Code Annotated (MCA) 76-2-301 states that a municipality may regulate and restrict the use of land for trade, industry, residence, or other purposes for the purpose of promoting health, safety, morals, or the general welfare of the community.

State law allows for the consideration of the Townhome Exemption Development (TED) according to the following:

MCA 76-3-203: Exemption for certain condominiums. Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

- (1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or
- (2) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

There are two key points that apply to the City within the state law:

1. TEDs are exempt from subdivision if they are expressly contemplated on lots within the city. Once a TED project is approved the units that are established are TED ownership units (according to Title 20.100.010).
2. The TED project must conform to applicable local zoning. The City has the ability to create appropriate regulations relating to TEDs. Those zoning rules can regulate the locations, conditions, review procedures, size, development standards, etc. of TED projects as the City determines necessary to fulfill the purpose and intent of zoning.

TED projects have been permitted and even encouraged (as a tool to help address rising housing costs) in the City of Missoula since state law was revised in 2011 to provide local governments a mechanism to allow TEDs to be developed in lieu of traditional residential subdivisions. Over the years, the City has steadily seen a progression in the number of units proposed in TED projects and the complexity of the review. Initially, the use of TED was for infill projects that seamlessly fit within the fabric of the neighborhood and took advantage of existing road networks and infrastructure. Most recently, TED projects of a much greater size and impact have been proposed for which there must be adequate mitigation measures. They are being proposed in locations where new infrastructure is required and potential impacts to hazardous areas may exist. As project sizes increased, the requests for creative solutions to project build out, including the ability to extend a project indefinitely also increased. As projects grew in number and site complexity, the regulations and review process evolved to include greater considerations. Title 20, chapter 20.05, sections 20.05.040.D, and 20.40.180, along with terminology in 20.100.010 have been amended over the years to address this development type and process.

In addition, legal counsel for some of these applicants have been arguing the intent of state law and that what is in state law and local land use regulations (or, more often, what is not explicitly stated in state law and local land use regulations) should be liberally construed to allow very large developments to be approved with few or no local government controls over the type of development, timing of development, sequencing of development and/or installation of infrastructure to support the development or even assurances that the development will ever be completed as presented.

Another recent line of argument for developer's legal counsels is that the Townhome Exemption Declaration isn't revoked even if the ZCP has expired. That would essentially allow the development right for a proposed TED to be preserved in perpetuity regardless of zoning or other state or local regulation changes that might be adopted in the meantime.

Zoning is the primary avenue to direct the development option by relating it to applicable zoning districts, building types, development standards, notification requirements, submittal requirements and review processes. The other local regulations that include specific consideration of TED projects are the parking facilities standards in Title 12.22. Other local regulations present general expectations and are usually written to be

applicable at the time of subdivision or during the final development stages of building permit or zoning compliance review.

The Zoning Officer Opinion (ZOO #19-01) describes the development history of TED projects within the City and the unique challenges that it has presented. It also highlights the issues relating to review procedures and development regulations for larger TED projects subject to conditional use review, and the need to equalize the density of development that can be achieved in TED and subdivision projects. The Zoning Officer directs staff to develop solutions to the issues and to seek City Council consideration of this interim zoning ordinance in order to address urgent concerns related to potential hazards to public health, safety and welfare; clarify eligibility and submittal requirements within the current process for conditional use review; and to provide greater parcel area flexibility for future subdivisions.

Development Services staff have applied procedures and regulations consistently over the life of TED projects, in coordination with the City Attorney's Office when needed, but this interim urgency measure will provide time to reevaluate local regulations, make sure that there are explicit references to how TEDs are regulated, expand on TED development standards where needed, and make zoning changes that will make subdivision a more attractive and viable alternative for the development community.

Waiting for the normal ordinance amendment process would cause potential harm to the orderly and beneficial development of the City and the public health, safety, and general welfare. The interim zoning ordinance establishes eligibility and submittal expectations for conditional use TEDs in order to fully inform the City Council of potential hazards to development and possible mitigation measures. The interim zoning ordinance will also clarify expectations for the outcome of conditional use TED projects with the understanding that projects must be considered and filed in their entirety and required infrastructure will be installed in a timely manner. At the same time, the interim zoning ordinance will eliminate the minimum lot size requirement for new subdivisions in order to equalize the density of development that can be achieved in TED and subdivision projects.

It is essential to clarify this baseline of review and approval procedures and address conditional use TED regulations for the benefit of all: City Council, the community, and the applicant. Thus, the City Council determines that it best serves the public interest and best serves to protect the public safety, health, and general welfare associated with planning and encouraging reasonable orderly development of the Missoula community by adopting an interim zoning ordinance to more timely address these urgent concerns.

MCA 76-2-306 authorizes the City Council to adopt interim zoning ordinances to be in effect for a maximum of six months from the date of adoption and provides for two one-year extensions subject to a super-majority (two-thirds) vote. During this six month time period, the City Council will contemplate zoning ordinance amendments to Title 20, Missoula City Zoning Code. These amendments may involve adopting some, all, or

none of the additional regulations listed below. The future zoning amendments will consider the benefits of townhome exemption development, state law requirements, other development tools, the regulations of other applicable agencies, and a general interest in retaining development flexibility and affordability while also protecting and promoting the public health, safety and general welfare.

**BE IT ORDAINED** that Section 20.05.040.D, Table 20.05-3, Section 20.100.010 and Section 20.110.010 of Title 20, Missoula City Zoning Ordinance are hereby amended and enacted as an interim zoning ordinance as follows:

## **SECTION 2. REGULATION**

*Add a new sub-section (5) under the Townhome Exemption Development section 20.05.040.D in Chapter 5, Residential Districts to read as follows:*

### **5. Conditional Use TED projects:**

- a. In addition to consideration of the applicable review criteria found in section 20.85.070.H, any conditional use TED application may be denied if the project has an adverse impact on the City's ability to accommodate orderly and beneficial development. Examples of development that is not orderly and beneficial include but is not limited to inability to establish public right of way in areas that necessitate public street and pedestrian connections; inability to require off-site improvements that are needed to accommodate new development; inability to provide necessary city services (including emergency and first responder services) to the project area or surrounding area.
- b. New TED projects are not permitted on a previously approved TED ownership unit.
- c. The applicant must submit evidence that the land is not subject to hazards such as, flooding, swelling soils, subsidence, landslides, improper drainage, high ground water, and steep slopes, and the project shall not cause any unmitigated adverse impacts on adjacent or nearby lands. Land with hazards shall not receive conditional use approval until an engineering design sufficient to alleviate the foregoing hazard has been submitted by the applicant as follows:
  - (1) Land with slopes averaging 15% or more: Provide a slope category map (20.50.010.C.1.a). Provide a complete geotechnical report by a soils engineer with a grading and drainage plan and storm water management plan that evaluates the safety of construction on the subject property.
  - (2) Land within a FEMA designated floodplain shall be surveyed and designated as No Build No Improvement areas within the Common Area or open space for the TED development.
  - (3) Land with the potential for landslides, slope instability, and high ground water: Provide a complete geotechnical report prepared by a soils

engineer with a grading and drainage plan and storm water management plan that evaluates the safety of construction on the subject property and includes an evaluation of groundwater depth relative to basement construction.

(4) A complete grading and drainage plan and storm water management plan is required including storm drainage calculations for a 100-year frequency 24-hour storm subject to review and approval by the City Engineer.

d. The entire TED project submitted for conditional use shall be filed in one townhome exemption declaration and reviewed in one zoning compliance permit (ZCP) application in compliance with section 20.85.120 including that a zoning compliance permit will lapse and have no further effect two years after it is issued by the zoning officer and the townhome exemption declaration is revoked unless:

(1) A building permit has been issued; and

(2) all infrastructure improvements, including but not limited to roads, curbs, gutters, utilities, sidewalks, boulevards, storm water facilities, and drainage are installed or an estimate of probable cost is provided and an improvements agreement guaranteed by a security for the remaining infrastructure is approved by City Engineering.

e. The zoning officer may extend the expiration period by up to one year if it is determined that there are circumstances warranting the extension. Requests for extensions must be submitted to the zoning officer before the zoning compliance permit expires. Any time extension granted for the ZCP shall be subject to the applicable zoning regulations in place at the time the zoning officer grants the time extension.

Add a footnote [8] to Table 20.05-3 Parcel and Building Standards (Residential Districts) to read as follows:

**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>																
<b>Min. District Area</b> (sq. ft.)	None	None	None	None	None	None	None	None	None	30,000	None	None	None	None	None	None
<b>Minimum Parcel Size</b>																
<sup>1</sup> 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
<sup>1</sup> Area per unit (sq. ft.)	215,000	80,000	40,000	20,000	10,000	8,000	5,400	5,400	3,000	2,700	2,700	2,000	1,500	1,000	1,000	500
<b>Minimum Setbacks</b> (feet)																
<sup>1</sup> Front	25	25	25	25	20	20	20	20	10[3]	20	20	20	20	20	20	20
<sup>1</sup> 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
<sup>1</sup> Side (street)	12.5	12.5	12.5	12.5	10	10	10	10	10	10	10	10	10	10	10	10
<sup>1</sup> Rear	25	25	25	25	20	20	20	20	10[3]	20	20	20	20	20	20	20
<b>Max. Building Height</b> (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

*Editors' Note: Table continues*

[8] The minimum parcel area requirement does not apply to lots created in subdivisions approved under MCA 76-3, chapters 5 and 6 after May 6, 2019.

*Add a new sub-section to Parcel Area under chapter 20.110 Measurements and Exceptions, section 20.110.010 – Parcel Area, and restructure the section.*

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.

*Add a clarification to the definition of “lot” under section 20.100.010 Terminology:*

Lot:

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

**SECTION 3. APPLICABILITY**

This ordinance only applies to complete application packages submitted and accepted by Development Services after the effective date of this ordinance.

**SECTION 4. IMMEDIATE EFFECTIVE DATE**

The effective date of this interim zoning ordinance shall be May 6, 2019. After it is adopted by the City Council, this interim zoning ordinance shall be in effect for six months, unless it is repealed or revised prior to the expiration date or unless an extension is approved subject to a super-majority (two-thirds) vote for passage.

**SECTION 5. 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, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a vote of: 8 Ayes, Mirtha Becerra, Michelle Cares, John DiBari, Heather Harp, Jordan Hess, Gwen Jones, Julie Merritt, Bryan von Lossberg; 1 Nay, Jesse L. Ramos; 1 Abstain, Julie Armstrong; and 2 Absent, Stacie M. Anderson, Heidi West.

APPROVED by the Mayor this 6<sup>th</sup> of May, 2019.

ATTEST:

/s/ Martha Rehbein

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Martha Rehbein  
City Clerk

(SEAL)

APPROVED:

/s/ John Engen

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John Engen  
Mayor