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**YELLOWSTONE COUNTY ZONING COMMISSION**  
**YELLOWSTONE COUNTY, MONTANA**  
**MONDAY, APRIL 9, 2012**

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**SUBJECT:** Zone Change #631, Text Amendment – Townhomes – Sections 27-201 and 27-622

**THROUGH:** Candi Beaudry, AICP, Planning Director

**PRESENTED BY:** Nicole Cromwell, AICP, Zoning Coordinator, Planner II

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**REQUEST**

This is a zone change that will amend Sections 27-201 and 27-622 of the Billings, Montana City Code (BMCC) to eliminate the definition of “townhome” as a type of residential land use and update the section that requires a Master Site Plan review for multi-unit developments. In 2011, the Montana Legislature approved a bill, HB0460, to amend state law to include a definition of a townhome under the unit ownership act (MCA 70-23-101 et seq). The zoning code regulates land uses and buildings but does not regulate ownership or types of ownership. The proposed amendment would update the code to align the definition of condominium and townhome/townhouse with the new state law. In March 2012, the City Council approved a previous amendment that eliminated “townhouse” as a type of use within residential zones. Townhomes can now be allowed in any residential zone provided enough lot area exists for more than 1 dwelling unit on an undivided lot. The City Zoning Commission initiated this amendment on February 7, 2012 and the County Zoning Commission initiated this amendment on February 13, 2012.

**RECOMMENDATION**

The Planning Division is recommending approval.

**BACKGROUND**

In 1977, the City Zoning Code defined “rowhouse” as a type of use. This definition has evolved over the years. In 1977, rowhouses were defined as 3 or more single dwelling units attached with the common wall along a property line. Rowhouses were allowed only by special review approval in R-50, R-60, RMF and RMF-R zoning districts. By 1985, the term “rowhouse” was replaced by the term “townhouse” then defined as 2 or more single dwelling units with common walls on the dividing line and fee simple ownership of the land and structure. The code required a property line between the units to be defined as a “rowhouse” or “townhouse”. The definition and regulation by special review in certain zoning districts identified the use by its architectural style. The building code has also adopted a definition of “townhome or townhouse” that anticipates a type of fire-rated construction that essentially isolates each dwelling unit from another.

In 2011, the Montana Legislature adopted a definition of townhome into law that relates to the ownership of the dwelling unit. The change in state law was primarily to handle the current lending practices in the real estate industry. The zoning code regulation of a townhome is an artifact of a previous era and is centered on the architecture – 2 or more attached dwelling units with a property line between each unit. The building code definition is geared toward life and safety of each unit owner. The new state law definition is focused on the type of ownership and financing of the property. These 3 definitions – zoning code, building code, and unit ownership type – have created confusion for owners, regulators and lenders.

The current zoning code does not and should not regulate the type of ownership of property. Townhomes should be allowed in any residential zoning district as long as lot area requirements are met and setbacks, building heights and lot coverage maximums are also observed. The zoning code requires multi-unit developments where more than 2 dwelling units share common private facilities such as internal driveways or private streets, to submit a Master Site Plan. The Master Site Plan ensures compliance with local codes including fire access, utilities, engineering, building and zoning. Attached dwelling units are allowed in several zoning districts. If an owner proposes to divide those dwelling units along common walls by a property line, then a side setback variance would be required. The proposed amendment will clarify the local regulation and ensure that existing and proposed townhomes are not unnecessarily regulated.

## **ATTACHMENTS**

Attachment A: Draft Resolutions

**Attachment A** – Draft Resolution Zone Change #631

Final Resolution 12-\_\_\_\_\_

A RESOLUTION TO AMEND THE UNIFIED ZONING REGULATIONS FOR THE CITY OF BILLINGS AND YELLOWSTONE COUNTY JURISDICTIONAL AREA BY REVISING SECTION 27-201-DEFINITIONS AND SECTION 27-622 – NEW CONDOMINIUMS AND MULTI-UNIT DEVELOPMENTS - TO DELETE LANGUAGE AND ADD LANGUAGE TO CLARIFY THE REGULATION AND ADOPT THE REVISION AS AN AMENDMENT TO THE ZONING REGULATIONS

WHEREAS, pursuant to Title 76, Chapter 2, Montana Code Annotated, the Board of County Commissioners of Yellowstone County, Montana, held a public hearing and adopted a resolution of intent on the 24<sup>th</sup> day of April, 2012, on the following proposed amendments and additions to the City of Billings – Yellowstone County Unified Zoning Regulations.

**Section 1.** That the Unified Zoning Regulations for the City of Billings and Yellowstone County Jurisdictional Area be amended by revising Section 27-201 as follows:

**SEC. 27-201. DEFINITIONS.**

**CONDOMINIUM:** ~~Ownership in common with others of a parcel of land and certain parts of a building, together with individual ownership in fee of a particular unit in such building or of an individual detached unit. Property that is owned as single units with common elements located on property submitted to the provisions of MCA Title 70 Chapter 23. This term does not include a townhome or townhouse.~~

**TOWNHOME OR TOWNHOUSE:** ~~A building or structure that has two (2) or more one (1) family dwelling units erected as a single building, each being separated from the adjoining unit or units by an approved fire wall or walls along individual property lines and providing for fee simple ownership of land and dwelling unit. 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.~~

**MULTI-UNIT DEVELOPMENTS:**

- Condominium, **Townhome, Townhouse** or Commercial development projects that include common, private facilities shared by buildings or lots.
- Residential developments that have more than two dwelling units and include common, private facilities shared by buildings or lots.

**Section 2.** That the Unified Zoning Regulations for the City of Billings and Yellowstone County Jurisdictional area be amended by revision Section 27-622 as follows:

**Sec. 27-622. New Condominiums, **Townhome, Townhouse** and Multi-Unit Developments.**

New Condominiums, **Townhouse, Townhome** and Multi-Unit Developments are allowed in all zoning districts if they meet all applicable zoning district requirements, and supplementary

general provisions, site development, building and fire safety regulations as per Sections 6-1200, 14-300, 27-622 and 27-623 of the Billings Municipal Code. Projects subject to these regulations include condominium, townhome, townhouse or commercial development projects that include common, private facilities shared by buildings or lots, and residential developments that have more than two dwelling units and include common, private facilities shared by buildings or lots.

Prior to filing a condominium, townhome or townhouse Declaration of Unit Ownership with the County Clerk and Recorder, or applying for building permits for the multi-unit development, the owner(s) shall submit to the Planning Division:

- (1) A City approved master site plan showing the dimensions of the lot(s) containing the condominium, townhouse, townhome units or multiple commercial units and the location and dimensions of all buildings containing the units.
- (2) A copy of the Declaration of Unit Ownership if creating a condominium, townhouse or townhome.

Only after determining that the condominium, townhome, townhouse or multi-unit development project has a City approved master site plan, as required in Section 1 above, that complies with the applicable zoning district requirements, and supplementary general provisions, site development, building and fire safety regulations as per Sections 6-1200, 14-300, 27-622, and 27-623 of the Billings Municipal Code will the Planning Division issue a condominium, townhome or townhouse Certificate of Compliance or approve a building permit.

For condominiums, townhomes or townhouses, the Certificate of Compliance will be filed with the County Clerk and Recorder prior to recording the Declaration of Unit Ownership. The Certificate shall state:

- (1) The legal description of the property.
- (2) The condominium, townhomes or townhouse units are exempt from 76-3-203, MCA because they comply with zoning, or in the case of new development, comply with zoning based on the City approved master site plan.
- (3) Any changes to the City approved Master Site Plan must be reviewed by the City through the Planning Division.

WHEREAS, the Board of County Commissioner received and considered the recommendations of the City/County Planning staff and the Yellowstone County Zoning Commission on the proposed amendment and additions.

NOW, THEREFORE, BE IT RESOLVED that it is the intent of the Board of County Commissioners that the above-described amendment to the Unified Zoning Regulations for the City of Billings and Yellowstone County Jurisdictional Area be adopted.

PASSED AND ADOPTED by the Board of County Commissioners of Yellowstone County, Montana, this 29<sup>th</sup> day of May, 2012.

BOARD OF COUNTY COMMISSIONERS  
YELLOWSTONE COUNTY, MONTANA

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John Ostlund, Chairman

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James E. Reno, Member

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Bill Kennedy, Member

(SEAL)  
ATTEST:

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Jeff Martin  
Clerk and Recorder