

**ARTICLE 27-400. NONCONFORMING USES OF LAND
NONCONFORMING STRUCTURES AND USES OF STRUCTURES**

SEC. 27-401. INTENT.

- (a) The provisions of this chapter shall apply to buildings, structures, lands and uses which become nonconforming as a result of the application of this Resolution/Ordinance [Ord. No. 97-5048, adopted 12/22/1997] to them, or from classification or reclassification of property under Ord. No. 97-5048 or any subsequent amendments thereto. If a use originally authorized by a variance, special review or other valid use permit prior to the effective date, as defined in below subsection B of this Resolution/Ordinance is located within a district in which such use is not permitted by the terms of this Resolution/Ordinance, such use shall be a nonconforming use; however, pre-existing valid uses requiring a special review after the effective date of this Resolution/Ordinance shall not require a special review.
- (b) The effective date for these regulations is May 3, 1972 for any property that was located within the limits of the City of Billings on or before that date.

The effective date for any property located within the Yellowstone County 4½ mile jurisdictional area, but outside the limits of the City of Billings is on or before November 6, 1973.

- (c) To avoid undue hardship, nothing in this Chapter shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of Ord. No. 97-5048 and upon which actual building construction has been carried on diligently. "Actual construction" is hereby defined to include the placing of construction materials in a permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

SEC. 27-402. NONCONFORMING LOTS OF RECORD.

- (a) In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Resolution/Ordinance, a single-family dwelling and customary accessory buildings may be erected on any vacant single lot of record at the effective date of adoption, as defined in above subsection B, or amendment of this Resolution/Ordinance. Such lot must be in separate ownership and not of contiguous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area, that are generally applicable in the district, provided that the yard dimensions, lot coverage and other requirements not involving area of the lot shall conform to the regulations of the district in which such lot is located. An additional variance of area and yard requirements shall be obtained only through affirmative action by the Board of Adjustment (see BMCC Sections 27-1501, et seq.)

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- (b) If two (2) or more vacant lots or combinations of lots and portions of lots with contiguous frontage in single ownership or record exist at the time of adoption, as defined in Section 27-401, subsection B, or amendment of this Resolution/Ordinance, and if all or part of the lots do not meet the requirements for lot area as established by this Resolution/Ordinance, the land involved shall be considered to be an undivided parcel for the purpose of this Resolution/Ordinance, and no portion of the parcel shall be used or sold which does not meet lot area requirements established by this Resolution/Ordinance, nor shall any division of the parcel be made which leaves remaining any lot, with area below the requirements stated in this Resolution/Ordinance.

SEC. 27-403. NONCONFORMING USES OF LAND.

Where, on the effective date of adoption, as defined in Section 27-401, subsection B, or amendment of this Resolution/Ordinance, lawful use of land exists that is no longer permissible under the terms of this Resolution/Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- (a) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption, as defined in Section 27-401, subsection B, or upon amendment of this Resolution/Ordinance.
- (b) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption, as defined in Section 27-401, subsection B, or upon amendment of this Resolution/Ordinance.
- (c) If any such nonconforming use of land ceases for any reason for a period of one (1) year or more, any subsequent use of such land shall conform to the regulations specified by this Resolution/Ordinance for the district in which such land is located.

Within a period of one (1) year or less, a manufactured home used for residential purposes which is a legal nonconforming use of land may be replaced by another manufactured home for residential purposes, so long as the new home is not substantially larger than the manufactured home that it replaced. In addition, the new manufactured home shall meet the minimum yard setback requirements including arterial setbacks (see BMCC Section 27-602), along with lot coverage requirements for the zoning district in which it is located.

SEC. 27-404. NONCONFORMING STRUCTURES.

Where a lawful structure exists at the effective date of adoption, as defined in Section 27-401, subsection B, or amendment of this Resolution/Ordinance that could not be built under the terms of this Resolution/Ordinance by reason of restriction on area, lot coverage, height, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains lawful, subject to the following provisions:

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- (a) No such structure may be enlarged or altered in a way which increases its nonconformity unless an enlargement or structural alteration makes the building more conforming or is required by law.
- (b) Should such structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Resolution/Ordinance.
- (c) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.
- (d) Structural alterations may be permitted if necessary to adapt a nonconforming building to new technologies or equipment pertaining to uses housed in such building. Any enlargement necessary to adapt to new technologies shall be authorized only by a variance, as described in BMCC Sections 27-1506 (City) and 27-1511 (County).

SEC. 27-405. NONCONFORMING USES OF STRUCTURES.

If a lawful use of a structure or of structures and premises in combination exists at the effective date of adoption, as defined in Section 27-401, subsection B, or amendment of this Resolution/Ordinance, that would not be allowed in the district under the terms of this Resolution/Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No existing structure devoted to a use not permitted by this Resolution/Ordinance in the zone in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the zone in which it is located.
- (b) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption, as defined in Section 27-401, subsection B, or amendment of the Resolution/Ordinance, but no such use shall be extended to occupy any land outside such building.
- (c) If no structural alterations are made, any nonconforming use of a structure, or structures and premises, may be changed to another nonconforming use provided that the governing body with jurisdiction on the property shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the governing body with jurisdiction on the property may require appropriate conditions and safeguards in accordance with the provisions of this chapter. Any proposed change from one nonconforming use to another nonconforming use shall be processed and reviewed under the Special Review provisions of BMCC Sections 27-1501, et seq., and the following criteria shall be considered:
 - (1) The nature and purpose of the existing nonconforming use;
 - (2) The difference in quality and character of the proposed use;

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- (3) The difference in the degree of use of the proposed use, including but not limited to hours of operation and parking requirements;
 - (4) The reasons for the proposed change; and
 - (5) The overall impact of the proposed use on the surrounding property.
- (d) Any structure, or structures and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure(s) is located, and the nonconforming use may not be thereafter resumed.
- (e) When a nonconforming use of a structure, or structures and premises in combination, is discontinued or abandoned for one (1) year or more, the structure, or structures and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located. Abandonment shall include, but not be limited to, cessation of the use for one (1) year or more.
- (f) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty (50) percent of the replacement cost at time of destruction.
- (g) Any sexually oriented business, located within the limits of the City of Billings, existing upon passage of this chapter which does not comply with the requirements established herein shall be deemed a legal nonconforming use. All existing legal nonconforming sexually oriented businesses, as of the effective date of this chapter, or any amendment hereto, shall comply with the provisions of this chapter within four (4) years from the date of the enactment of this section or any amendment thereto. (Refer also to BMCC Section 27-611.)

SEC. 27-406. REPAIRS AND MAINTENANCE.

Any building or other structure containing a nonconforming use, or any nonconforming building or portion thereof, declared unsafe by the Building Official may be strengthened or restored to a safe condition.

SEC. 27-407. UNLAWFUL USE.

Nothing in this Resolution/Ordinance shall be interpreted as authorization for or approval of a continuance of the use of a structure or premises in violation of the zoning regulations in effect at the time of the effective date of this Resolution/Ordinance.

(Ord. No. 97-5048, § 4, 12-22-97; Ord. No. 99-5079, § 1, 2-8-99)