

CHAPTER

10



IN THIS CHAPTER:

10.1	Purpose	309
10.2	General Provisions	309
10.3	Nonconforming Lots	310
10.4	Nonconforming Uses	310
10.5	Nonconforming Structures, Except Signs	311
10.6	Nonconforming Signs	312
10.7	Nonconforming Accessory Uses and Structures	312
10.8	Nonconforming Mobile Homes and Mobile Home Parks	312
10.9	Nonconforming Element	313
10.10	Temporary Nonconformities	313



## 10.1 PURPOSE

The purpose of this chapter is to establish a clear and consistent method of addressing nonconforming lots, uses, structures, and signs resulting from an interpretation or amendment of these regulations or the zoning classification or reclassification of a property.

## 10.2 GENERAL PROVISIONS

### A) Declared Incompatible.

Nonconformities, as defined in this chapter, are declared to be incompatible with the districts established by these regulations. It is the intent of these regulations to allow nonconformities to continue until they are removed, but not to encourage their survival.

**B) Applicability.** The provisions of this chapter shall apply to lots, buildings, structures, land, uses, and features which became nonconforming as a result of the application of these regulations, the classification or reclassification of property under these regulations, or any subsequent amendments to these regulations. To establish legal non-conforming status, the landowner must demonstrate that the use or structure was established or constructed legally under rules in place as of the date of adoption of these regulations, as amended, and has operated or existed since that time with no more than 180 days interruption. This chapter shall apply in any Part 1 zoning district established prior to the adoption of these regulations which references these regulations in part or in full.

**C) Undue Hardship.** To avoid undue hardship, nothing in these regulations shall be deemed to require a change in the plans, construction, or use

of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of these regulations and upon which actual construction has been carried out. Actual construction refers to the placement of materials in a permanent position and fastened in a permanent manner on a site and includes the excavation, demolition, or removal of an existing structure as preparation for rebuilding.

**D) Extension, Enlargement, and Intensification.** A nonconformity shall only be extended, enlarged, or intensified in conformance with the requirements of this chapter.

**E) Change in Ownership.** There may be a change in ownership of an existing nonconforming use or structure provided there is no change in the nature, character, or intensity of such nonconforming use or structure except as provided by this chapter. Where the nature, character or intensity of the nonconforming use or structure changes in conformance with this chapter, all other applicable requirements shall be met including provisions for non-conforming elements pursuant to Section 10.9.

**F) Certain Exceptions.** Lots, structures, or features made nonconforming solely as a result of a government entity acquiring land for roads, utilities, or other public infrastructure projects shall not be declared nonconforming. They shall have all the rights and privileges afforded to other legal conforming lots, structures, or features.

**G) Burden of Proof.** The burden of proof to establish that a nonconformity meets the requirements of this chapter is fully on the property owner, including, but not limited to, proving

that a nonconformity is legal, and that the destruction of a structure was due to accidental means.

### **10.3 NONCONFORMING LOTS**

Legal nonconforming lots are those for which plats or deeds have been recorded in the office of the Missoula County Clerk and Recorder prior to the adoption of these regulations but which fail to comply with the minimum area or other dimensional requirements of the zoning districts in which they are located. Legal nonconforming lots may continue only in accordance with all the following provisions.

- A) Vacant Nonconforming Lots.** Vacant nonconforming lots may be used for any of the uses permitted in the zoning district in which it is located, provided that all site design and dimensional requirements can be met.
- B) Developed Nonconforming Lots.** Nonconforming lots which are occupied by buildings or structures and fail to comply with the dimensional requirements for the district in which they are located may continue to be used, provided the specific nonconformity is not increased. The minimum dimensional requirements of these regulations shall not be construed as prohibiting the conversion of an existing building to another permitted use, so long as no further encroachment is made into existing setbacks.
- C) Space and Bulk for Nonconforming Lots.** For space, bulk, and setback requirements for nonconforming lots, reference Section 4.5.C.5.

- D) Calculating Allowable Homes on Non-Conforming Lots.** Any non-conforming lot will support a principal use (one dwelling). However, to build an additional dwelling, not including an accessory dwelling unit, the lot size would have to support the required density.

### **10.4 NONCONFORMING USES**

A legal nonconforming use is a use existing legally at the time of the passage of these regulations but is not listed as a permitted use or Special Exception in conformance with the regulations adopted. A use established after the passage of these regulations which is not listed as a permitted use or Special Exception in conformance with these regulations shall be considered an illegal nonconforming use and is a violation subject to the enforcement procedures in Chapter 12. Legal nonconforming uses may continue only in accordance with the following provisions.

- A) Expansion Limited.** A nonconforming use shall not be expanded except in conformity with this chapter and the following requirements:
  - 1. Any nonconforming use may be extended throughout any parts of an existing building which were manifestly arranged or designed for such use prior to the adoption or amendment of these regulations.
  - 2. Any nonconforming use shall not be extended to occupy any land outside the building(s) designed for such use and shall not include an intensification of use, an extension of the hours of operation or number of days of activity and any similar change in activity or location.
  - 3. A physical expansion of up to 50%



of the existing footprint of a building that results in increased capacity or activity associated with the use may be approved by Special Exception.

4. A nonconforming use of land outside a building may be intensified, enlarged or extended by up to 50% of additional land area by Special Exception.
5. A nonconforming use shall not be moved from one location on a site to another building, structure, or location on the same site.

**B) Change of Use Limited.** A nonconforming use shall not be changed to any other use unless the new use is permitted by these regulations, or the nonconforming use is replaced by the same or another nonconforming use provided the Zoning Officer determines that the replacement use is equally or more appropriate than the previous use for the zoning district. Conditions may be imposed on the replacement use to ensure protection of conforming uses within the district.

**C) Reestablishment Limited.** A nonconforming use shall not be reestablished after vacancy, abandonment, or discontinuance for any consecutive period of 180 days.

## **10.5 NONCONFORMING STRUCTURES, EXCEPT SIGNS**

A legal nonconforming structure is a structure, including a building, existing legally at the time of the passage of these regulations, which does not by reason of design or dimensions conform to these regulations. A structure established after the passage of these regulations which does not conform to these

regulations shall be considered an illegal nonconforming structure and is a violation subject to the enforcement procedures in Chapter 12. Legal nonconforming structures, excluding signs, may continue only in accordance with the following provisions.

**A) Ordinary Repairs Permitted.** A nonconforming structure may not be enlarged or altered in any way which increases its nonconformity unless an enlargement or alteration complies with these regulations or is required by law.

**B) Relocation Limited.** A nonconforming structure shall not be moved to another location unless it thereafter conforms to the dimensional standards of the zoning district in which it is located.

**C) Structural Changes Limited.** No structural changes shall be made in any structure integral to, and occupied by, a nonconforming use except as follows:

1. Structural changes ordered by an authorized official in order to ensure the safety of the structure shall be permitted.
2. Maintenance and repairs to keep a structure in sound condition shall be permitted.
3. An existing nonconforming structure may be enlarged or altered provided that no additional structures result, and the enlargement or alteration complies with all dimensional requirements of the district.

**D) Reconstruction Limited.** A nonconforming structure shall not be rebuilt, altered, or repaired except in conformity with these regulations after sustaining damage, demolition, or necessitating repair exceeding 50

percent of the replacement cost of the structure at the time of damage or wear. For nonconforming structures necessitating repair less than 50 percent of the replacement cost at the time of damage or wear, reconstruction shall begin within six months from the time of damage or wear as documented by the applicant in the Zoning Compliance Permit application.

## **10.6 NONCONFORMING SIGNS**

A legal nonconforming sign is a sign existing legally at the time of the passage of these regulations, which does not by reason of location, type, design, or dimensions conform to the requirements found in Chapter 8. A sign erected or created after the passage of these regulations, and which does not conform to these regulations shall be considered an illegal nonconforming sign and is a violation subject to the enforcement procedures in Chapter 12. Nothing in these regulations shall prevent the normal maintenance of an existing nonconforming sign. However, a nonconforming sign shall not be:

- A)** Changed to another type or shape of nonconforming sign. The copy, content, or message of the sign may be changed so long as the shape or size of the sign is not altered.
- B)** Structurally altered, except for what is required for normal maintenance.
- C)** Physically expanded, enlarged, or extended in any manner.
- D)** Reestablished after the sign is removed unless removal occurs to allow normal maintenance.

- E)** Reestablished after damage or destruction where the estimated expense of reconstruction exceeds 50 percent of the appraised replacement cost of the sign in its entirety.

## **10.7 NONCONFORMING ACCESSORY USES AND STRUCTURES**

No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, discontinuance, damage, or destruction unless such accessory use or structure is permitted as a temporary nonconformity pursuant to Section 10.10.

## **10.8 NONCONFORMING MOBILE HOMES AND MOBILE HOME PARKS**

- A)** A pre-HUD mobile home (constructed prior to June 15, 1976) may be replaced by a newer mobile home provided the following conditions were met for the site prior to the adoption of these regulations:
  1. The site was lawfully constructed and occupied;
  2. The site has all utilities, plumbing, and sewage disposal systems installed; and,
  3. The site has an established pad or permanent foundation prepared for the placement of the mobile home.



- B)** The number of spaces in a mobile home park that is a nonconforming use due to not being permitted within a district may be expanded by up to 50% by Special Exception.

### **10.9 NONCONFORMING ELEMENT**

A legal nonconforming element is a physical characteristic existing legally at the time of the passage of these regulations, which does not by reason of design or dimension conform to these regulations. Nonconforming elements include, but are not limited to, physical characteristics of development that exceed maximum allowable standards or fall short of required minimum standards (e.g., off-street parking, landscaping, buffering, lighting, etc.). An element added or changed after the passage of these regulations which does not conform to these regulations shall be considered an illegal nonconforming element and is a violation subject to the enforcement procedures in Chapter 12. Legal nonconforming elements may be continued subject to the following limitations.

- A)** No action shall be taken that increases the degree or extent of the nonconformity. Any enlargement, reduction, extension, structural alteration, parking changes, and other changes to site design and access shall conform to all applicable requirements of these regulations.
- B)** For development existing (or for which a vested right had been established) before the effective date of these regulations, nonconforming elements created by a change in regulations may continue to exist as permitted under the previously established regulations until such time a change is made to the legal nonconforming use or structure upon which the element is based. At such time any required changes to accompanying elements shall comply with these regulations.

### **10.10 TEMPORARY NONCONFORMITIES**

A Zoning Compliance Permit may be issued for an appropriate period of time not to exceed two 12-month increments for temporary nonconforming structures or uses incidental to building construction or land development or in response to a declared emergency, provided that the owner of such temporary nonconformity agrees to remove it upon expiration of the time period established by the Zoning Compliance Permit.

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