

**CHAPTER 11.51**  
**NON-CONFORMING USES**

**SECTIONS:**

11.51.010	Purpose
11.51.020	Continuance
11.51.030	Discontinuance
11.51.040	Normal Upkeep, Repairs, and Maintenance
11.51.050	Alteration, Expansion, or Restoration of Non Conforming Uses
11.51.060	Severability
11.51.070	Effective Date

**11.51.010 PURPOSE.** The purpose of this section is to provide reasonable alternatives to property owners for the continuance of nonconformities and in certain circumstances limited expansion.  
[Ord. 611 (2018) § 215]

**11.51.020 CONTINUANCE.** Lots, structures, and uses that were legally established prior to the adoption of Title 11 BCC or that were in compliance with Title 11 BCC at the time of initial establishment but, due to revision or amendment of Title 11 BCC, have become noncompliant are nonconforming uses that may continue, without regard to ownership changes, so long as in compliance with this section.  
[Ord. 611 (2018) § 216]

**11.51.030 DISCONTINUANCE.** If a nonconforming use is replaced by a conforming use for any length of time, no structure or land use shall revert to the nonconforming use. The mere presence of a structure shall not constitute the continuance of a nonconforming use. When a nonconforming use is discontinued for a period of one (1) year or more, legal non-conforming use status expires and

further use of the structure or lot must be in compliance with the provisions of this title.

[Ord. 611 (2018) § 217]

**11.51.040 NORMAL UPKEEP, REPAIRS, AND MAINTENANCE.** Normal upkeep, repairs, maintenance, strengthening, or restoration to a safe condition of any nonconforming structures or part thereof are not prohibited solely as a result of the structure's nonconforming use status.

[Ord. 611 (2018) § 218]

**11.51.050 ALTERATION, EXPANSION, OR RESTORATION OF NON CONFORMING USES.** Alteration, Expansion, or Restoration of Nonconforming Uses. Alteration, expansion, or restoration of nonconforming structures and uses are not allowed except as set forth in this subsection:

(a) Dwelling Units. Nonconforming dwelling units may be altered, expanded or restored on conforming or nonconforming lots if:

(1) All other requirements of the Benton County Code and the Benton-Franklin Health District are satisfied, including but not limited to setback requirements; and

(2) To restore a damaged dwelling unit, a complete application for a building permit shall be submitted within one (1) year of the act causing damage or destruction to the dwelling unit.

This subsection shall apply to each dwelling unit when two or more single-family dwellings exist on a parcel pursuant to a valid multiple detached dwelling permit.

(b) Legally Required Alterations or Expansions. Alteration or expansion of a nonconforming use or existing nonconforming structure is allowed if necessary to accommodate handicapped accessibility requirements, fire code, or other life safety related requirements mandated by local, state, or federal law.

(c) Restoration of Structures. Except as set forth above, existing nonconforming structures may not be altered or expanded. Existing structures may be restored if less than fifty (50) percent of the gross floor area has been unintentionally destroyed or damaged if

(1) All other requirements of the Benton County Code and the Benton-Franklin Health District are satisfied, including but not limited to setback requirements;

(2) The nonconforming use resumes within such structure within one (1) year from the destroying or damaging event; and

(3) The restoration of the nonconforming structure does not increase the gross floor area that existed immediately prior to the destruction or damaging event. Structures intentionally destroyed or damaged and those with fifty (50) percent or more of their gross floor area unintentionally destroyed or damaged, may not be restored or reconstructed.

(d) Nonconforming Outdoor Marijuana Production Operations. That portion of any legal non-conforming use consisting of marijuana production operations occurring outdoors may be altered by moving the operation indoors under the following circumstances:

(1) The alteration consists solely of the construction of one or more structures to move entire operations indoors and/or relocating the entire nonconforming marijuana production operation into existing structures so as to improve health and/or air quality conditions;

(2) The number of marijuana plants grown on the parcel shall not increase due to the relocation of the use indoors;

(3) The structure(s) used under this subsection for marijuana production must be constructed with rigid walls, a roof, and doors subject to and in compliance with the International Building Code, as adopted by Benton County, and all building permits issued thereunder; and

(4) Structure(s) used under this subsection are subject to the provisions of BCC 11.51.030 through BCC 11.51.050 above, except that such structure(s) may be restored under subsection (3) above even if more than fifty (50) percent of the gross floor area is destroyed or damaged.

[Ord. 611 (2018) § 219]

**11.51.060 SEVERABILITY.** If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.

[Ord. 611 (2018) § 249]

**11.51.070 EFFECTIVE DATE.** This chapter shall take effect and be in full force upon its passage and adoption.

[Ord. 611 (2018) § 250]