



ADMINISTRATIVE RULES OF MONTANA



42.12.117 SUBSTANTIALLY DIFFERENT USE

- (1) If an applicant has been denied a license under 16-4-405 , MCA, a new application cannot be considered for five years unless the department determines there has been a change great enough to be easily recognizable. The department will consider applications where the proposed use is noticeably and substantially different from the use that was previously rejected.
 - (a) The following examples constitute a substantially different use but are not all inclusive of the types of changes the department would consider:
 - (i) a situation where the new business operation has changed significantly enough to change the primary source of revenue generated by the business or the operation previously planned to be operated on the premises. Such a change would be where a business changed from primarily a casino/bar operation to a restaurant operation with all the necessary facilities to accommodate a restaurant setting and at least 65 percent of the gross revenue is from the sale of food; or
 - (ii) the zoning designation of the proposed location has changed by local government action.
 - (b) The following examples do not constitute substantially different use:
 - (i) a change in business hours;
 - (ii) a change in the type of alcoholic beverages offered for on-premises consumption; or
 - (iii) a newly constructed or remodeled building which will be used for the same primary purpose as the proposed use that was rejected.
- (2) An applicant who has applied for substantially different use, and is approved under this rule, may not change the applicant's manner of operation for five years as described in 16-4-413 , MCA.

Authorizing statute(s): Sec. 16-1-303, MCA

Implementing statute(s): Sec. 16-4-405 and 16-4-413, MCA

History: NEW, 2000 MAR p. 1762, Eff. 7/14/00; AMD, 2004 MAR p. 1972, Eff. 8/20/04.