

**Attention Property Owner:** A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION  
CONDITIONAL USE CASE NO. 18-025**

**APPLICATION:** Application of Jennifer Hoefling RLT to establish a wholesale health supplement business in an UT-20 (Urban Transition - 20 Acre Minimum) zone located at 20567 Highway 99E, Aurora (T4S; R1W; Section 14D; tax lot 900).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions.

**EXPIRATION DATE:** This Conditional Use Permit is valid only when exercised by **May 14, 2020**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

**WARNING:** A decision approving the proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

**This decision does not include approval of a building permit.**

**CONDITIONS:** The following conditions must be met before a building permit can be obtained or the approved use established:

1. The applicant shall obtain approval for all required permits, including septic permits, from the Marion County Building Inspection Division.
2. The applicant shall sign a non-remonstrance agreement with the City of Aurora to waive any and all right to remonstrate against annexation of the property into the city limits.
3. Prior to building permits, the applicant shall submit evidence of an access permit or waiver from Oregon Department of Transportation (ODOT) for access onto Highway 99E.
4. Prior to building permits, the applicant shall submit a statement signed by a traffic engineer that describes the anticipated level of traffic generated by the proposed activity, including trips per day, percentage of truck traffic, types of trucks and hours of operation.
5. Prior to development of the property the applicant shall submit, for review and approval by the Zoning Administrator, a detailed site plan showing how the development will comply with all applicable development standards contained in the zone code. The site plan shall show the location of a minimum of 10 parking spaces and an off-street loading area. Development of the property shall significantly conform to the site plan submitted with the proposal, however, minor variations are allowed.
6. The number of employees shall not exceed five (5) prior to annexation of the property.
7. The portion of the structure devoted to warehouse and wholesale distribution activities shall be located on the I (Industrial) designated portion of the property.
8. Upon annexation, all structures and improvements, and the use, shall be brought into conformance with city zoning regulations.

**ADDITIONAL CONDITIONS:** Once the approved use is established, the following conditions must be continually satisfied:

9. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to a County hearings officer for a public hearing.

**OTHER PERMITS, FEES, AND RESTRICTIONS:** This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

10. The applicant should contact Aurora Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.

**APPEAL PROCEDURE:** The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200.00) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **May 14, 2018**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **May 15, 2018** unless further consideration is requested.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the decision was based are noted below.

1. The property is designated Industrial and Commercial in the Aurora Comprehensive Plan. The purpose of this designation and the corresponding UT-20 (Urban Transition - 20 Acre Minimum) zone is to maintain land available for industrial and commercial development once the property is annexed into the city.
2. The property is located on the west side of Highway 99E approximately 1,850 feet south of its intersection with Orchard Ave NE. The property is currently developed with a dwelling. The property is described in deeds going back at least as far as 1963 and the parcel is considered a legal lot for land use purposes.
3. Adjacent properties to the north and east and south are zoned UT-20 and mostly in industrial use. Adjacent properties to the west are separated from the property by railroad right of way, are zoned Exclusive Farm Use, and are in agricultural use.
4. The applicant proposes to develop the property with a wholesale health supplement business. Water will be provided by an existing well and the existing septic system will be used for sewage disposal.
5. City of Aurora commented that the proposed wholesale distribution center is a conditional use in their Commercial and Industrial zones, expressed concerns about traffic generation, building height and location, and off-street parking, and requested annexation of the property and City land use approvals prior to approval by Marion County. The full text of the comments include requirements that are not part of the land use decision and are available for review in the planning file. Specifically the City made the following requests:

- a. *Require annexation and City approvals prior to development.*

Marion County cannot require annexation; the City of Aurora must initiate annexation procedures. The Intergovernmental Agreement (IGA) with the City of Aurora states that, for land inside the Urban Growth Boundary and outside the city limits, Marion County “shall retain responsibility for regulating land use on lands within the UGA (urban growth area)”. A condition of approval will be included requiring the property file a non-remonstrance agreement to annex the property into the city limits.

- b. *The application does not provide enough detail to assess traffic impact. A Traffic Impact Assessment may be required.*

Based on the size of the building and number of employees proposed, trip generation estimates published by the Institute of Transportation Engineers range from 22 to 225 trips per day, which is well below the threshold of 600 trips per day that would normally trigger a Traffic Impact Analysis (TIA). A statement from a traffic engineer providing an analysis of the anticipated traffic that would indicate if a TIA is needed can be made a condition of approval.

- c. *Comply with the Aurora municipal code which states that “No building within 100 feet of a residential zone shall exceed 35 feet in height”.*

This can be met by requiring the building to be constructed primarily on the I (Industrial) designated portion of the property, which is over 100 feet from the nearest residential zone.

- d. *Require driveway access and parking standards be built to City of Aurora Municipal Code and ODOT standards.*

This can be met subject to a condition of approval requiring provision of 10 parking spaces and meeting ODOT requirements for access.

- e. *Notify and provide an opportunity for property owners within 200 feet of the subject property to comment on the proposal.*

This is a procedure of the City of Aurora applicable to activities on land inside the city limits and does not apply to land in the UGA, according to the terms of the IGA.

- f. *Require the applicant to meet the AMC off-street parking and loading requirements, and all other applicable City development standards.*

The applicant submitted a revised site plan that shows the location of 10 parking spaces and a 250 foot long loading area adjacent to the warehouse portion of the proposed building. This requirement can be met by requiring the 10 parking spaces identified above and the off-street loading area to be shown on the site plan submitted with the building permit application at the time building permits are issued, as well as requiring compliance with any other municipal development standards at the time of annexation.

- g. *Require septic approval prior to approval of the use.*

It is the policy of Marion County Planning to require septic approval as a condition of approval of the proposal in conjunction with building permits for building construction so that the septic approval will be specific to the use that is approved, which may differ from the original proposal. The use shall not be established on the property until all of the conditions for approval are met.

- h. *The proposed use is not consistent with Section 9 of the Urban Growth Management Agreement between Marion County and the City of Aurora because the proposed use is for an urban use.*

Marion County considers an urban use to be an intensity of use that requires urban services. In this case, approval can be conditioned to limit the intensity of use to a warehouse and distribution center that does not involve any manufacturing or other activities that would require use of water or effluent treatment beyond sanitary needs of employees and limit the number of employees to that which can be served by on-site sewage disposal and the existing well. It is standard for Marion County to require septic permits at the time of building permits to coordinate septic requirements with the building plans submitted for the building permit.

6. Public Works Land Development and Engineering Permits commented on requirements that are not part of the land use decision and available for review in the planning file

Marion County Building Inspection commented that permits would be required.

Marion County On-Site Sewage commented that septic permits may be required.

Oregon Department of Transportation commented that the property does not have an access permit for entry onto Highway 99E.

All other contacted agencies either failed to respond or stated no objection to the proposal.

7. In order to grant approval for a conditional use listed in MCC 16.13.020, the criteria in this section must be found to be satisfied in addition to the criteria in MCC 16.40.020:

A. *The use will not increase traffic beyond the capacity of existing roads.*

Access to the property will be from Highway 99E using the existing access. An access permit or waiver from Oregon Department of Transportation is necessary to ensure access to the property. The City of Aurora commented that a Traffic Impact Analysis may be required for the use. Based on the size of the building and number of employees proposed, trip generation estimates published by the Institute of Transportation Engineers range from 22 to 225 trips per day, which is well below the threshold of 600 trips per day that would normally trigger a Traffic Impact Analysis (TIA). A statement from a traffic engineer providing an analysis of the anticipated traffic that would indicate if a TIA is needed can be made a condition of approval. This criterion is satisfied subject to conditions.

B. *If the use will remain after the area is urbanized it will be located in such a manner that any significant unused portion of the property has adequate development options.*

The improvements made to the property for the proposed use are limited to a single 15,000 square foot building located in the southeast corner of the 2.85 acre property, allowing further development of the property when the area is urbanized. If approximately 30,000 square feet is committed to the proposed activity, roughly 75% of the property would remain available for development or redevelopment after the proposed building is constructed. The proposal can satisfy this criterion.

C. *The use and related structures and improvements meet the development standards of the most restrictive zone consistent with the applicable Comprehensive Plan designation; or the city concurs and, if the city requests, conditions are imposed that require the structures and improvements to be brought into conformance with city zoning regulations upon annexation.*

The most restrictive zone consistent with the Comprehensive Plan designation of the western approximately  $\frac{3}{4}$  of the property (Industrial) is the IC (Industrial Commercial) zone. Wholesale distribution of food supplements is a permitted use in the IC zone. The eastern  $\frac{1}{4}$  of the property is designated Commercial and the Commercial Office zone is the most restrictive commercial zone. The site plan submitted with the application shows improvements that are consistent with this use; however, a detailed site plan showing all proposed improvements and their location with respect to the Aurora Comprehensive Plan designation of the property can be made a condition of approval. The city of Aurora has requested that all improvements on the property be brought into conformance

with city zoning regulations upon annexation. This can also be made a condition of approval. The proposal can satisfy this criterion subject to conditions.

*D. The most restrictive zone used in the applicable Comprehensive Plan designation lists the proposed use as a permitted or conditional use; or the city concurs and, if the city requests, conditions are imposed which require that the use be brought into conformance with city zoning regulations upon annexation.*

As discussed above, the most restrictive zone consistent with the Comprehensive Plan designation of Industrial is the IC zone and for the portion of property designated Commercial it would be the CO zone. A wholesale warehouse is a permitted use in the IC zone. The amended site plan submitted with the application shows that the office will be located at the eastern end of the building, which is a use that is allowed in the CO zone. A condition of approval can require that the portion of the building devoted to warehouse and wholesale distribution activities be located in the Industrial-designated portion of the property. A detailed site plan showing all proposed improvements can be required as a condition of approval. The proposal satisfies this criterion, subject to conditions.

8. All conditional uses are subject to the general criteria in MCC16.40.020, these include:

*(a) The use is listed as a conditional use in the zone, or is otherwise identified as a conditional use and is consistent with the intent and purpose of the zone and the provisions that authorized consideration as a conditional use.*

The use is listed as a permitted use in the IC and/or CO zone as discussed in Finding 7. This criterion is met.

*(b) The parcel is suitable for the proposed use considering such factors as size, shape, location, topography, soils, slope stability, drainage and natural features.*

The parcel is rectangular in shape and relatively flat. The proposed building would be placed in the southeast corner of the parcel. There are no geographic slide hazards on the subject parcel. Therefore, the proposal can satisfy this criterion.

*(c) The proposed use, as conditioned, will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone.*

The subject property is in an area slated for future industrial and commercial development. The office/warehouse building proposed by the applicant is situated on the property in such a manner that they will not interfere with or restrict development options on adjacent properties. The proposal can satisfy this criterion.

*(d) The proposed use, as conditioned, will not have a significant adverse effect on air or water quality.*

The applicant will be required to meet the storm water standards at time of building permits. Air quality is not expected to be significantly affected. The proposal can satisfy this criterion.

*(e) Adequate public and utility facilities and services to serve the use are available or will be made available prior to establishment of the use.*

The proposal can be conditioned to be limited to an intensity that can be served by services that are available on site, and subject to Marion County Building Inspection and Marion County Public Works permits necessary for the development. The proposal can be conditioned to meet this criterion.

9. In addition, the UT zone MCC 16.13.100 states that “the additional standards and regulations referenced in Chapters 16.24 and 16.26 through 16.34 MCC (generally landscaping, parking, paving, and signage) apply to all lots, structures and uses unless indicated otherwise. No structure or use can be approved until all requirements in this chapter have been satisfied.” The applicable standards will be required to be met prior to issuance of any building permits associated with the proposed activity.

10. Based on the above findings, it has been determined that the applicants' request meets all applicable criteria for establishing a wholesale health supplement business and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore  
Director-Planning Division

Date: April 27, 2018

If you have any questions please contact Lisa Milliman at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.