

**CHAPTER 17.119
CONDITIONAL USES**

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17.119.010 GENERAL CONCEPT. A conditional use is an activity which is basically similar to other uses permitted in the zone, but due to some of the characteristics of the conditional use, which are not entirely compatible with the zone, such use could not otherwise be permitted in the zone. Review of the proposed conditional use by the director, planning commission or hearings officer will ensure that the use will be in consonance with the purpose and intent of the zone.

17.119.020 APPLICATION. An application for a conditional use may be filed by the following only:

- A. The owner of the property that is the subject of the application;
- B. The purchaser of the property that is subject to the application when a duly executed written contract or earnest-money agreement, or copy thereof, is submitted with the application;
- C. A lessee in possession of the property subject to the application who submits written consent of the owner to make the application;
- D. The appropriate local government or state agency when the application is for public works project;
- E. A governmental body that has initiated condemnation proceedings on the property that is subject to the application, but has not yet gained title; or
- F. A co-tenant if the property that is the subject of the application is owned by tenants in common. The application for a proposed conditional use, or to enlarge, expand, or alter a conditional use shall be on a form provided by the planning division and shall contain such information as the director, planning commission or hearings officer feels is necessary to fully assess the effect of the conditional use on the surrounding area.

17.119.025 REQUIRED SIGNATURES.

- A. Applications shall include the following signatures:

1. Signatures of all owners of the subject property; or
2. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement; or
3. The signatures of lessee in possession of the property with the written consent of all the owners; or
4. The signatures of the agents of those identified in MCC 17.119.020 (A), (B), or (C) when authorized in writing by those with the interests described in MCC 17.119.020 (B) or (C), and all the owners of the property; or
5. The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; or
6. The signature of co-tenants owning at least a one-half undivided interest in the property, when the property is owned by tenants in common, provided that the signing co-tenant provides current addresses for all co-tenants who have not signed the application so the planning division can give them notice of the decision.

B. Prima facie proof of ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any owner, or when any person states that he or she is buying the property under contract, the director, planning commission, hearings officer and the board may accept these statements to be true, unless the contrary be proved, and except where otherwise in this ordinance more definite and complete proof is required. Nothing herein shall prevent the director, planning commission, hearings officer or board from demanding proof that the signer is the owner, officer, attorney in fact, or agent.

17.119.030 POWER TO HEAR AND DECIDE CONDITIONAL USES. The planning commission, hearings officer, or board on its own motion, may hear and decide only those applications for conditional uses, their expansion or alteration, that are listed in this ordinance. The planning commission, hearings officer or board shall decide whether or not the conditional use may be placed in a zone and may impose the conditions listed below, subject to the restrictions and provisions of this title.

17.119.040 HEARINGS. The planning commission or hearings officer shall hold a public hearing on the proposed conditional use as prescribed in MCC 17.119.150.

17.119.050 CONDITIONAL USE AND CONCURRENT VARIANCES. Variances may be processed concurrently and in conjunction with a conditional use application and when so processed will not require an additional public hearing.

17.119.060 CONDITIONS. The director, planning commission or hearings officer may prescribe restrictions or limitations for the proposed conditional use but may not reduce any requirement or standard specified by this title as a condition to the use. Any reduction or change of the requirements of this title must be considered as varying the title and must be requested and viewed as such. The director, planning commission or hearings officer shall impose conditions only after it has determined that such conditions are necessary for the public health, safety or general welfare, or to protect persons working or residing in the area, or the protection of property or improvements in the area. The director, planning commission or hearings officer may prescribe such conditions it deems necessary to fulfill the purpose and intent of this title.

17.119.070 FINDINGS OF THE DIRECTOR, PLANNING COMMISSION OR HEARINGS OFFICER. Before granting a conditional use, the director, planning commission or hearings officer shall determine:

- A. That it has the power to grant the conditional use;
- B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;
- C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

17.119.080 VARIANCE PROCEDURE APPLICABLE TO CONDITIONAL USES. MCC 17.122.070 through 17.122.130, relating to variances, shall apply, where applicable, to the granting of conditional uses.

17.119.100 DIRECTOR REVIEW. The provisions of MCC 17.119.030 and 17.119.040 and all other provisions of this title notwithstanding, the director shall have the power to decide applications for all conditional uses listed in this title and impose conditions consistent with MCC 17.119.060 and 17.119.070. The director shall also have the power to forward an application to the hearings officer or planning commission for the initial decision. In such case, the reviewing body shall conduct a public hearing on the application pursuant to MCC 17.119.150.

The director may, any time prior to the decision being final, reconsider the decision and issue a new or modified decision.

17.119.110 DECISION REVIEW. The director shall decide whether to approve or deny the conditional use based on the Marion County Comprehensive Plan and applicable criteria in this title. The decision should be made and notice thereof sent within 30 days of an application being determined to be complete. This administrative decision shall be final unless an appeal is taken as provided below.

17.119.120 INFORMATION FROM AFFECTED AGENCIES. Upon receipt of an application under MCC 17.119.100, a summary of the application shall be distributed to the public works department, assessor's office, building inspector, other affected agencies and the recognized area advisory committee with a request for comments or suggestions regarding those features that come within the scope of their activities.

17.119.130 NOTIFICATION OF DECISION. Notice of the decision and information on the appeal process shall be sent to the applicant, the owner(s) of the subject property, the co-tenants of the subject property if the property is owned by tenants in common, affected agencies and members of the recognized area advisory committee requesting information, others requesting notification, and all landowners within the required notification area.

17.119.140 APPEAL. After the director's final action on the application, interested persons may appeal the decision no later than 15 days after the decision is mailed.

17.119.150 PUBLIC HEARING AND DECISION ON APPEALS. If the director's decision is appealed, the hearings officer or planning commission shall conduct a public hearing in accordance with Chapter 17.111 MCC. Notice of an appeal of the director's decision shall be mailed to the applicant, those requesting notice of a hearing and all landowners within the required notification area at least 20 days prior to the hearing date. The notice shall be consistent with the requirements in ORS 197.763(3). Failure to receive such notice by mail shall not affect the validity of the proceedings. The public hearing before the hearings officer or planning commission shall be de novo.