



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: December 17, 2025

Department: Public Works

Title: Consider adoption of an administrative ordinance approving Zone Change ZC25-002/Creative Electric, LLC

Management Update/Work Session Date: N/A Audio/Visual aids ☐

Time Required: 5 min Contact: John Speckman Phone: 503-566-4173

Requested Action: Staff recommended motion: Approve the administrative ordinance approving Zone Change ZC25-002/Creative Electric, LLC.
Other motion options for consideration are:
1. Direct staff to make changes and approve a modified ordinance.
2. Not approve the ordinance.

Issue, Description & Background: The Marion County Hearings Officer held a duly noticed public hearing on May 15, 2025 and issued a decision on July 8, 2025, to deny Zone Change ZC25-002. Applicants appealed the Hearings Officer's decision. The Board held a duly noticed public hearing on the application on October 22, 2025, and considered all the evidence in the record and approved the request.

The ordinance and findings have been prepared and the notice of adoption was given on December 10, 2025. The administrative ordinance is now set for formal adoption.

Financial Impacts: None

Impacts to Department & External Agencies: None

List of attachments: Ordinance

Presenter: John Speckman

Department Head Signature: For Brandon Risch

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the
Application of:
Creative Electric, LLC

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)
)

Case No. ZC25-002

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. _____

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the Application of Creative Electric, LLC, Nestor Zarkoff and Feodor Zharkoff, to change the zone from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre parcel located in the 900 block of S Pacific Hwy 99E, Woodburn T5S; R1W, Section 19A; Tax Lot 1800).

SECTION II. Procedural History

The Marion County Hearings Officer held a duly noticed public hearing on May 15, 2024, and on July 8, 2025, issued a decision denying the zone change. Official notice was taken of the Planning Division file and the Hearings Officer's decision. The Hearings Officer decision was appealed to the Board on July 23rd, 2025. The Board held a public hearing to consider the appeal, application, and findings on October 29th, 2025. The Board closed the public hearing the same day. A motion to approve the appeal was made and passed the same day. The Board has considered all the evidence in the record, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board overturns the Hearings Officer's decision on this matter, and adopts the Findings of Fact attached as Exhibit A, subject to conditions attached as Exhibit B.

SECTION IV. Action

The requested zone change from UT-5 (Urban Transition) to CG (Commercial General) is hereby **GRANTED**, subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.

The property rezoned by this Ordinance is identified on a map in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed

pursuant to Marion County Code Section 16.01.040 to reflect the new zoning subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.

SECTION V. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this _____ day of _____, 2025, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

I. Findings of Fact and Conclusions of Law

The Board of Commissioners, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. No objections were raised to notice, jurisdiction, bias, *ex parte* contacts, conflict of interest, or to evidence or testimony by any party during the public hearing before the Board or otherwise during the appeal.
2. Creative Electric LLC proposes to change the zone from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre property located in the 900 block of S Pacific Hwy 99E, Woodburn, (T5S; R1W; Section 19A; Tax lot 1800). The subject property is within the Woodburn Urban Growth Boundary (UGB) and designated Commercial in the Woodburn Comprehensive Plan. The property is currently under the zoning jurisdiction of Marion County. The applicant proposes to establish an electrical contractor business on the subject parcel, relocated from its current location in Clackamas County.
3. The subject property is located south of the City of Woodburn on the west side of Highway 99E, off Novaya Ln NE. The subject property is a currently vacant field that was previously farmed. The property consists of three parcels created by Partition recorded in 1989 and approved by Partition case (P88-061). These parcels are all parts of tax lot 1800. The subject property was created in the current configuration by an approved Partition, and is therefore legal for land use purposes.
4. Adjacent properties to the north, and south are zoned UT-5 and within Woodburn's UGB. The northern adjacent parcel is in farm use and contains a homesite. The northeastern adjacent parcel is in rural residential use. The south adjacent parcel is a pre-existing non-conforming auto wrecking yard. To the east, across Highway 99E and outside of the UGB, are parcels zoned Exclusive Farm Use (EFU) and in active farm use. To the west of the subject parcel, outside of the UGB, is the Belle Passi Cemetery which is in a Public (P) zone.
5. The Marion County Planning Division requested comments from various governmental agencies. The following comments were received:

Marion County Building Inspection commented: "No Building Inspection concerns. Permit(s) are required to be obtained prior to any development and/or utilities installation on private property."

Marion County Septic Division commented: "A Site Evaluation followed by an installation-Construction permit is required prior to site development."

Marion County Land Development Engineering and Permits (LDEP) submitted the following:

ENGINEERING ADVISORIES

- A. PW Engineering has no action items for the proposed Zone Change itself.
- B. The following are PW Engineering advisories for future development:
- The plat for partitioning case P88-61 pertaining to the subject property is depicted on MCSR 031947 and recorded at Reel 732 / Page 127 in the Clerks records for Marion County. The plat created the private easement named 'Novya Lane' along the south property from S Pacific Hwy 99E, a State Hwy. An access approach to Novya Lane does not appear to have been constructed.
 - The proposed access location in the middle of the subject property does not align with Novya Lane. At the time of application for building permits, Applicant will be required to confirm application having been made for an ODOT approach permit.
 - County Transportation System Development Charges (SDCs) will be assessed at the time of application for building permits.
 - Development of the property as generally depicted on the land use application site plan will require stormwater detention meeting county standards, and possibly also to ODOT standards that could include water quality treatment if discharging to the State Hwy.
 - DEQ has jurisdiction over construction erosion for total ground disturbances of 1-acre plus.
 - Fire turnaround and pullout easement(s) may be required by the local fire district or State Fire Marshal.

Oregon Department of Transportation (ODOT) commented: "We do not have any comments on the zone change, however we will have comments on future applications for development of the property with respect to frontage improvements and access considerations."

The City of Woodburn Community Planning and Development Department submitted letters arguing that the proposal is not consistent with either Woodburn Comprehensive Plan or the Woodburn/Marion County Urban Growth Coordination Agreement (UGCA). These letters can both be found in the record.

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

II. Executive Summary

Applicant seeks to rezone property from Urban Transition (UT) to Commercial General (CG) to develop the property with an office and storage facility for its electric business. Applicant argues that the proposal is limited to a conditional zone change, and does not seek approval for any "use" or "development." Applicant posits that because no

particular development is proposed, the standards that apply to “development” or “use” are inapplicable.

The property cannot yet be annexed. Applicant does not seek annexation and has not sought access to City services because it states that the property can be adequately developed with onsite septic, onsite water well, and onsite stormwater control.

Applicant’s position is that a zone change is expressly allowed under the Marion County Code (MCC) if it meets county zone change criteria, and Applicant argues that the proposal meets MCC criteria. The City of Woodburn opposes the application and argues that conversion of the property from UT to CG is not permitted by the Urban Growth Coordination Agreement (UGCA), as well as the Marion County Code, Woodburn Comprehensive Plan, and the Marion County Comprehensive Plan.

In 2015, the City of Woodburn expanded its Urban Growth Boundary (UGB) to include various residential, commercial, and industrial lands. The subject property is included in the UGB. Marion County wanted to assist the City of Woodburn after a remand from LUBA of Woodburn’s effort to expand its UGB, so on December 23, 2015, the City of Woodburn and Marion County entered into an Urban Growth Coordination Agreement (UGCA). The City of Woodburn argues that approval of ZC 25-002, without express consent from the City of Woodburn, would violate the UGCA.

The City of Woodburn suggest that the proposed zone change cannot occur in the Urban Growth Boundary because the zone change would be an impermissible “urban” use. Applicant argues that the proposal does not propose development and that there is no standard in the code that defines “urban use.” However, it is the zoning code itself that identifies the uses allowed in the designated zone.

The property, located on Highway 99, is surrounded by an auto wrecking yard, a cemetery, a home site, and commercial farming. Applicant argues that the proposed zone change would not affect or change the site’s setting (except positively). Applicant presents strong arguments that the impact of denial does not protect urbanization goals. It is acknowledged that approval would allow the City of Woodburn to secure right of way designation and ensure future annexation and service extension agreements are in place. The proposed use by one specialty trade contractor is a reasonable proposal consistent with the area. Applicant describes the proposal as a “conditional zone change” limiting the use to those “now allowed in the UT zone plus one specialty trade contractor and associated warehousing.”

A zone change from UT-5 (Urban Transition) to CG (Commercial General) on a 5.02-acre parcel located in the 900 block of S Pacific Hwy 99E, Woodburn, Oregon is permitted. The Hearings Officer recognized that the application satisfied Marion County’s Comprehensive Plan and Code provisions but found that the application was not permitted by 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement, was not consistent with the policies of Woodburn’s Comprehensive Plan,

and did not satisfy Statewide Land Use Planning Goal 14. After the applicant appealed, the Board of Commissioners agreed with the Hearings Officer that the application satisfied Marion County's Comprehensive Plan and Code provisions. The Board approved the application after finding that the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement and the policies of Woodburn's Comprehensive Plan did not apply to this application and therefore the application did satisfy Statewide Land Use Planning Goal 14. As an alternative basis for approval, the Board also found that, even if additional requirements applied, the applicant met such requirements.

III. Additional Findings of Fact and Conclusion of Law

1. Applicants have the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met as explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390, 394-395(1987).

"Preponderance of the evidence" means the greater weight of evidence. It is such evidence that when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted).

Applicants must prove, by substantial evidence in the record, it is more likely than not that each criterion is met. If the evidence for any criterion is equal or less, Applicants have not met their burden and the application must be denied. If the evidence for every criterion is even slightly in Applicant's favor, the burden of proof is met.

2. 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement (UGCA) is an intergovernmental agreement between two governing bodies that was never intended to independently set out any additional criteria for land use applications. This is true for at least the following reasons:
 - Legal Counsel who worked on the UGCA in 2015, as well as a current County Commissioner who approved the UGCA in 2015, both recall the intent of the UGCA was to assist Woodburn with obtaining approval for its remanded UGB and not to independently set out any additional criteria for land use applications. This recollection is further supported by the fact that both the UGCA and a city ordinance with new land use criteria were adopted at the same time. If the UGCA independently created new criteria, then the city ordinance would not have been needed.
 - By its own terms, the UGCA is not self-executing as a creation of land use approval criteria. It does set notice requirements, all of which have been followed here. It also sets out goals for coordination on changing approval criteria. However, those goals are not binding on their own without further adoption into County regulations.
 - The UGCA (1) specifies that the agreement may be reviewed "every year," assumedly for the purpose of revising it, and (2) either the city or county may end the agreement

with 30 days notice. This clause shows that the UGCA itself does not independently create any land use criteria as this clause would otherwise be inconsistent with normal land use processes.

- The UGCA can only create approval criteria if it is incorporated through Marion County's Comprehensive Plan. The County has authority to interpret its own plan and has interpreted it as promoting agreements like the UGCA but not mandating that they be followed as approval criteria in specific applications.
- Marion County Comprehensive Plan, Section II (Goals and Policies: Urbanization: Urban Area Planning) states: "Each urban growth program should consist of an urban growth boundary, urban development policies or ordinances to achieve the desired purpose, and joint city-County agreements to coordinate land use planning activities." This contemplates that agreements like the UGCA related to coordination are different from "urban development policies or ordinances to achieve the desired purpose."
- Marion County Comprehensive Plan, Section II (Goals and Policies: Urbanization: Urban Area Planning) states: "The County and each of the cities have adopted intergovernmental agreements in the form of urban growth boundary and policy agreements or urban growth boundary coordination agreements for establishment of the urban growth boundaries, to address coordination requirements regarding Plan amendments and changes to the boundaries, and for identification of areas of special mutual concern." This section makes clear that county-city intergovernmental agreements govern how plan amendments are made and do not set out independent criteria.
- There are multiple legal issues that would arise if the County were to interpret the UGCA to apply city regulations that the County has never approved. This raises concerns under Goal 1 (Citizen Involvement) and Goal 2 (Land Use Planning) for lack of a process allowing a hearing with public participation on any subsequent city regulation changes. This also raises potential constitutional concerns regarding due process and delegation of authority.

3. In the alternative, even if the UGCA did set out application criteria, then those criteria can be met here. The County has authority to interpret its own land use regulations, which would include the UGCA if it is a land use criteria. The County finds that the application is consistent with the UGCA. The key provisions are:

- Page 2, Whereas clauses. The County determines that "whereas" clauses are not binding criteria consistent with normal contract interpretation. The County also interprets the "whereas" clauses of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion.
- Page 3, Section I(4) "All land use actions within the Urban Growth Area shall be consistent with the Woodburn Comprehensive Plan and the County's land use regulations." The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion. Alternatively, the Woodburn Comprehensive Plan designates the subject property as

“Commercial” and this application would align the zone with that “Commercial” designation, which is more than sufficient to be “consistent.”

- Page 4, Section I(7) “The County shall not allow uses requiring a public facility provided by the City within the Urban Growth Area prior to annexation to the City unless agreed to in writing by the City” The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion. Alternatively, the County interprets this *zone change* as not itself being a “use” under this clause of the UGCA. The County also interprets this application as not a use “requiring a public facility provided by the City” since the applicant can obtain and use private well, septic, and private stormwater facilities—just like many other properties in unincorporated areas of the County.
 - Page 4, Section I(9) “Conversion of land within the Urban Growth Area to urban uses shall occur upon annexation . . .” The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion. In the alternative, the County interprets this *zone change* as not itself being either a “use” or an “urban use” under this clause of the UGCA.
4. With respect to jurisdiction, Woodburn recognized during the hearing that the County has land use authority over areas outside the city limits. Also, the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement (UGCA) provides: “The County shall retain responsibility for regulating land use on lands within the Urban Growth Area until such lands are annexed by the City. The City and County identify the Urban Growth Area as urbanizable and available over time for Urban Development.”

Urban Transition Zone (UT)

5. The UT (Urban Transition) zone purpose statement listed under MCC 16.13.000 states:

The UT (urban transition) zone is intended to retain and protect for future urban use properties which are undeveloped or underdeveloped and do not have available urban facilities such as sanitary sewer, water, drainage and streets. The zone allows the continuation of legally established uses and establishment of uses compatible with the plan designation. In areas planned for development relying on urban services, transitional uses may be allowed which will not interfere with the efficient, later use of the land for planned urban uses.

The zone is appropriate in areas designated in the applicable urban area comprehensive plan for future urban residential development, but may also be used to protect lands designated for future commercial, industrial or public uses. In areas designated for urban residential development, the residential density included in the zone is intended to be consistent with the average lot size of the immediate area. In areas planned for other uses, the zone is intended to retain lot sizes conducive to efficient development of planned uses and prevent conflicts associated with development of additional dwellings.

The zone is also intended to encourage the continued practice of commercial agriculture in areas planned for future urban development. The UT zone is intended to be a farm zone consistent with ORS 215.203.

The subject property is within the Urban Growth Boundary for the City of Woodburn. The subject property is not adjacent to lands that have been annexed by Woodburn and is therefore unable to be annexed into the city and/or connect to city water and sewer services at this time. It remains in a transitional zone until such time that it annexes.

The subject property is currently undeveloped and available for farm uses. Images from 2023 on Google Streetview show harvested bales of hay on the property. Images from 2016 on Google Streetview show row crops on the property. The UT zone is intended to encourage the continued practice of agriculture in areas planned for future urban development. Other permitted uses in the UT zone are outlined in MCC 16.13.010. Conditional uses in the UT zone are outlined in MCC 16.13.020.

The City of Woodburn Comprehensive Plan designated the subject parcel Commercial. Applicant proposes a zone change to CG (Commercial General) because the proposed use is an electrical contractor shop which is neither a permitted nor conditional use in the UT zone.

Applicant asserts that the proposed use of the property as an electrical contractor shop is separate from the proposal to change the zone of the subject parcel, and that the zone change is not an urban use.

Applicant argues that the policies in the UGCA and Woodburn Comprehensive Plan regarding establishment of urban uses therefore do not apply to the subject parcel.

The City of Woodburn appears to have taken several inconsistent positions regarding whether the UGCA policies that pertain to development within the Urban Growth Boundary (UGB) apply to the application. City of Woodburn argues that the application seeks to do exactly what the UGCA was developed to prevent.

Many of the uses allowed in the CG zone may not be appropriate on a parcel that has no public services available and is not eligible for annexation. However, Applicant has agreed to limit uses to the specific planned use as an electrical contractor's shop and uses that overlap between UT and CF. This allows the zone change criteria in MCC 16.39.050 to be satisfied.

The Applicant seeks a zone change in order to establish a specific use, that in and of itself, is not unreasonable for the subject property considering that the parcel is designated Commercial in Woodburn's Comprehensive Plan

Zone Change Criteria

6. Under Marion County Code (MCC) 16.39.050, approval of a zone change shall include findings that the change meets the following criteria:

- A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.*

The subject site is located within the City of Woodburn's Urban Growth Boundary and has a Comprehensive Plan designation of Commercial. The proposed zone is appropriate for the underlying comprehensive plan designation of Commercial. Marion County and Woodburn both have Commercial General zones that would be appropriate for the underlying comprehensive plan designation of Commercial.

The Marion County Plan, the applicable Comprehensive Plan that governs the County CG zone, specifies economic development policies that govern the County's CG zone. The proposal is consistent with the economic goals of the County.

Applicant provided a detailed comparison between Marion County and Woodburn's Commercial General codes. Applicant demonstrates that Marion County's provisions are consistent with the regulations of Woodburn's version of this zone. In Woodburn's version of CG, outdoor storage for contractor shops is not permitted. Applicant offered a condition of approval limiting outdoor storage to comply with Woodburn's version of CG.

The proposed zone change is consistent with the Marion County Plan. The criterion is met.

- B. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.*

The subject parcel is adjacent to Highway 99E. Applicant submitted a letter from registered transportation engineer Chris Clemhow explaining that a detailed transportation analysis is not required for the proposed zone change and use as an electrical contractor's shop. The letter asserts that the trips generated by the proposed use are already accounted for considering the commercial designation in Woodburn's comprehensive plan, and Marion County's Transportation System Plan. There is no dispute that Highway 99 has no capacity or other limitations at the subject property.

Presently, there are neither water nor sewer facilities extended to the subject parcel. The City intends on extending water and sewer at the time of annexation. The use of the subject parcel for a for an electrical contractor's shop requires water and sewer services.

Applicant states that the subject parcel could be adequately served by a private onsite septic system and domestic well, and stormwater facilities. Use of such private facilities have long been determined to be sufficient for unincorporated areas of the County. The applicant's willingness to install a private well, septic system, and storm water facilities means that it is not necessary for public water, sewer, or storm water to be available for development and that public facilities are thus "adequate" for development of the property. The criterion is met.

- C. The request shall be consistent with the purpose statement for the proposed zone.*

The CG (Commercial General) zone purpose statement listed under MCC 16.07.000 states:

The purpose of the CG (commercial general) zone is to provide areas suitable for warehousing, wholesale commercial sales and services with related outdoor storage or retail sales. The commercial general zone is appropriate in those areas designated commercial in the applicable urban area comprehensive plan where the location has access to an arterial street or highway for transport of bulk materials and where impacts associated with permitted uses will not create significant adverse impacts on local streets or residential zones.

The proposed CG zone is appropriate for the underlying Woodburn Comprehensive Plan designation of Commercial. The subject parcel is adjacent to Highway 99E, an area that would be appropriate for warehousing or wholesale commercial sales. The proposed use as electrical contractor's shop is an approved use in CG as per MCC 16.07.010(A)(3). The location of the subject parcel, and proposed use is consistent with the purpose statement of Commercial General in the Marion County Code. MCC 16.39.050 (C) is met.

D. *If the proposed zone allows uses more intensive than uses in other ones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.*

The most restrictive zone appropriate for the Commercial designation is the Commercial Office (CO) zone. The proposed zone change to Commercial General (CG) without a limited use overlay would allow uses that are more intensive than those allowed in the CO zone. In the UT zone, uses permitted in the most restrictive of the corresponding zones may be allowed with an approved Conditional Use permit. An electrical contractor shop is not permitted in the CO zone either as a permitted or as a conditional, use.

The proposed zone allows uses that are more intensive than uses appropriate in other zones appropriate for the land use designation, however conditions of approval may be applied to limit the uses to only those that will not significantly adversely affect allowed uses on adjacent properties.

The applicant proposes a condition of approval to implement a limited use overlay that would limit the use of the subject property to an electrical contractor shop, and any uses permitted in both CG and UT. An electrical contractor shop is an outright permitted use in the CG zone as per MCC 16.07.010(3). Applicant proposes a condition of approval to limit storage to inside of the building to comply with Woodburn's version of CG.

Applicant correctly states that a low-intensity and provisional electrical contractor shop is consistent with existing uses on adjacent properties. The conditions of approval implementing a limited use overlay and WDO compliant storage ensure that the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses. The criterion is met.

City of Woodburn/Marion County Urban Growth Coordination Agreement (UCGA)

7. The proposal involves land within the Urban Growth Boundary of Woodburn. Applicant argues that the UCGA is inapplicable to the zone change application, and the City of Woodburn suggests that the UGCA is applicable.

Applicant argues that pursuant to ORS 215.427(3), only standards and criteria in effect when the application was submitted may be applied to approve or deny zone changes.

Applicant states that the UCGA, also referenced by the applicant as the “IGA” (an Intergovernmental Agreement) cannot be applied as a standard of denial in the Marion County Code. Applicant argues that IGA standards concerning “development” do not apply and that standards concerning “land use actions” are met. Applicant suggests that the UGCA is an intergovernmental agreement between the City and the County, and not a document to govern land use issues.

ORS 190.010 allows local governments to enter into written agreements with other local governments for the performance of shared functions, which includes land use planning. The terms within a binding intergovernmental agreement, however, do not automatically become established procedures for land use activities by private parties who were not signers of the agreement.

ORS 197.628 requires that all cities and counties in Oregon submit their comprehensive plans to LCDC for periodic review. In 2015, as part of the City's periodic review, LCDC issued a remand to the City, requiring the City to adopt and the County to approve, of a coordination agreement between City and County. The resulting agreement, the UGCA, encourages the City and County to agree upon policies and procedures for amending the City UGB, and before they become applicable criteria, they must first be codified through revisions to both the City and County Comprehensive Plans.

The UCGA, by its express language, does not impose independent criteria that apply here.

In the alternative, even if the 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement (UCGA) was a binding intergovernmental agreement that applies to the proposal and was enforceable, the County still has authority to interpret and apply the UCGA and finds that all standards are met here.

The applicable sections of the UCGA are addressed below.

“Whereas” Intent Provisions

Page 2 in the “whereas” section: Whereas, the intent of the urban growth program for the City is as follows:

1. *Promote the orderly and efficient conversion of land from Rural/Resource uses to urban uses within the Urban Growth Area.*

2. *Reduce potential conflicts with resource lands, establishing an Urban Reserve Area and Expansion limitations where necessary.*
3. *Promote the retention of lands in resource production in the Urban Growth Boundary until provided with urban service and developed.*
4. *Coordinate growth in accordance with the Woodburn comprehensive Plan and the Marion County Comprehensive Plan.*

The City of Woodburn challenges the proposal as failing to comply with the intent of the UGCA as reflected in “Whereas” recitals 1 through 3. The City of Woodburn states that it does not find the proposed zone change to be conducive to an orderly and efficient conversion of land from Rural to Urban uses.

The City of Woodburn argues that the transition from Rural to Urban uses with the Woodburn UGB should occur as land is annexed into the city and receives urban levels of service. Annexation of the subject property is not possible at this time, and not proposed by the applicant.

The County determines that “whereas” clauses are not binding criteria consistent with normal contract interpretation. The County also interprets the “whereas” clauses of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion.

Section I. Coordination Policies and Procedures

1. *The County shall retain responsibility for regulating land use on lands within the Urban Growth Area until such lands are annexed by the City. The City and County identify the Urban Growth Area as urbanizable and available over time for urban development.*

Marion County recognizes its responsibility.

2. *The City and County shall maintain a process providing for an exchange of information and recommendations relating to land use proposals in the Urban Growth Area. The County shall forward land use activities being considered within the Urban Growth Area by the County to the City for comments and recommendations. The City shall respond within twenty (20) days, unless the City requests and the County grants an extension.*

The City of Woodburn was provided notice of the application and the opportunity to comment.

3. *Upon receipt of an annexation request or the initiation of annexation proceedings by the City, the City shall forward information regarding the request (including any proposed zone change) to the County for comments and recommendations. The County shall have twenty (20) days to respond unless they request and the*

City allows additional time to submit comments before the City makes a decision on the annexation proposal.

Applicant is not requesting annexation. The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion.

4. *All land use actions within the Urban Growth Area shall be consistent with the Woodburn Comprehensive Plan and the County's land use regulations.*

The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion. Alternatively, the Woodburn Comprehensive Plan designates the subject property as “Commercial” and this application would align the zone with that “Commercial” designation, which is more than sufficient to be “consistent.”

5. *In order to promote consistency and coordination between the City and County, both the City and County shall review and approve amendments of the Woodburn Comprehensive Plan that apply to the Urban Growth Area. Such changes shall be considered first by the City and referred to the County prior to final adoption. If the County approves a proposed amendment to the Woodburn Comprehensive Plan, the change shall be adopted by ordinance and made a part of the County's Plan.*

The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion. This policy does not apply to the proposal.

6. *The area outside the Urban Growth Boundary shall be maintained in rural and resource uses consistent with Statewide Planning Goals. The area outside the Urban Growth Boundary designated the Urban Reserve Area shall be subject to the requirements in Section V below.*

The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion. This policy does not apply to the proposal.

7. *The City and County shall promote logical and orderly development within the Urban Growth Area in a cost-effective manner. The County shall not allow uses requiring a public facility provided by the City within the Urban Growth Area prior to annexation to the City unless agreed to in writing by the City.*

The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criteria. Alternatively, the County interprets this *zone change* as not itself being a “use” under this clause of the UGCA. The County also interprets this application as not a use “requiring a public facility provided by the City” since the applicant can obtain

and use private well, septic, and private stormwater facilities—just like many other properties in unincorporated areas of the County.

8. *City sewer and water facilities shall not be extended beyond the Urban Growth Boundary, except as may be agreed to in writing by the City and County, consistent with Oregon Administrative Rules, the Woodburn Comprehensive Plan and the Marion County Comprehensive Plan.*

The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion. This policy does not apply to the proposal.

9. *Conversion of land within the Urban Growth Area to urban uses shall occur upon annexation and be based on consideration of applicable annexation policies in the Woodburn Comprehensive Plan.*

The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion.

Applicant indicates that it would agree to a condition of approval that would limit the uses allowed by this zone change to SIC 1731, an electrical contractor shop. As conditioned, this criteria is met.

10. *The City shall discourage the extension of public facilities into the Urban Growth Area without annexation. However, if the extension of public facilities into the Urban Growth Area is necessary because of an emergency, health hazard or the City determines it is otherwise desirable, the facilities may be extended subject to terms and conditions contained in a service contract between the City and the property owner.*

This policy does not apply to the proposal. The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion.

11. *The City shall be the provider of public water, sanitary sewer and stormwater facilities within the Urban Growth Boundary unless otherwise agreed to by the City, the County, and any other applicable party. The City shall be responsible for preparing the public facilities plan for all lands within the Urban Growth Boundary.*

The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion.

The County has authority to allow private well, septic, and stormwater facilities. This will be required prior to development and allow this to be met.

Section III. Administration of Zoning and Subdivision Regulations

1. *The County shall provide notice and request for comments on conditional uses, variances, adjustments, land divisions, property line adjustments and administrative reviews within the Urban Growth Area to the City at least 20 days before the County's initial evidentiary hearing or land use decision when no hearing is held. The County shall provide the City a notice of decision for all such applications in the Urban Growth Area when requested by the City.*
2. *Applications for uses permitted outright in the applicable County zone, including ministerial actions, will not involve any notice or request for comments to the City.*

Marion County follows these procedures for conditional uses, variances, adjustments, land divisions, property line adjustments and administrative reviews within the Urban Growth Area.

The proposal is for a zone change which does not fall within this regulation. Marion County has, however, followed these procedures in processing this application and notified the City. The City of Woodburn was notified of the public hearing and responded in opposition to the proposal.

3. *The County may require City development standards for development within the Urban Growth Area, including dedication of additional right-of-way or application of special street setbacks when requested by the City. The County may require compliance with City development standards, in lieu of County standards if the development is other than a single-family dwelling.*

The City of Woodburn expressed concern that Applicant would not implement the road development standards in the Woodburn Development Ordinance (WDO). Applicant confirmed that it does not consider road improvements to be reasonable under the rough proportionality standard. Applicant proposed a non-remonstrance agreement instead that the property owners or successors will not object to the formation of a local improvement district or other public financing mechanizing for the improvements required, and furthermore that the property owner or successor will pay their share for the improvements. With a non-remonstrance agreement as a condition of approval, this standard can be met.

4. *For development approved under (1) or (2), if public sewer and water facilities or city limits are located within 300 feet of the subject property, the County shall require that the development connect to the facilities under use of wells or other means are allowed in writing by the City. The City will require any property connecting to City sanitary sewer or water facilities to annex to the City. The City shall provide the County information about the location of public sewer and water. The County may approve development of permitted uses on properties more than 300 feet from the city limits, or from a public sewer or water facility using wells and DEQ approved wastewater disposal systems.*

The County interprets this clause of the UGCA as being aspirational regarding possible future changes to County code and not an independent criterion.

Applicant references this section as applicable to the proposed zone change. However, this section is only applicable to types of development referenced in (1) or (2) of this subsection of the UGCA. The types of developments referenced in (1) or (2) are all uses that would be permitted outright permitted, permitted subject to review, or require a conditional use permit.

This section does not apply to developments that are not permitted in any way within the current zone, and require a zone change to establish. The proposed use requires a zone change to an urban zone because it is an urban use. Establishment of urban uses requires annexation as per the UGCA and Woodburn's Comprehensive Plan.

5. *If a proposed use is not specifically identified in the Marion County Urban Zone Code, and the County is proposing an interpretation classifying the use as permitted in the applicable zone under the interpretation provisions of the Zone Code, the County shall give the City an opportunity to comment before the County makes a final land use decision.*

Applicant is seeking a zone change to CG to establish a use that is specifically permitted in the CG zone. No interpretation of the use is required.

Woodburn Comprehensive Plan

8.

The City of Woodburn Comprehensive Plan applies to the proposal insofar as that the underlying land use designation of the subject parcel is consistent with the proposed zone. The underlying designation is Commercial, which is consistent with the proposed zone change to Commercial General. The Woodburn Comprehensive Plan Goals and Policies do not apply to the proposal as approval criteria.

Statewide Planning Goals

9. The relevant Statewide Planning Goals for consideration are Goals 2, 12, and 14:

Goal 2 – Land Use Planning: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The process for evaluating the proposed zone change is outlined in MCC 16.39.050. The process allows the opportunity for public comment, staff review, and requires review by a hearings officer. The Planning Division notified multiple governmental entities, including Marion County departments and the City of Woodburn for comment. Comments

received are set out above and in the record. The planning process is consistent with Goal 2 – Land Use Planning, and the goal is met.

Goal 12 – Transportation: To provide and encourage a safe, convenient and economic transportation system.

The subject property of the proposed zone change is adjacent to Highway 99E, which is classified as an Arterial road. The proposed zone is appropriate for citing adjacent to a highway. Applicant provided a letter from a registered Transportation Engineer stating the proposal will generate trips that are already accounted for within current Transportation Systems Plan for Marion County, as well as Exhibit 1. The proposed zone change is compatible with Goal 12 – Transportation, and the goal is met.

Goal 14 – Urbanization: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The proposed zone change to Commercial General under Marion County is consistent with Marion County's Comprehensive Plan and code. The Growth Management Goals and Policies of the Woodburn Comprehensive Plan do not apply since the property is outside the city limits. The 2015 City of Woodburn/Marion County Urban Growth Coordination Agreement does not apply, and even if it did, this application meets any applicable requirements. Marion County has followed all applicable consultation requirements through giving Woodburn timely notices. Therefore, the proposal is consistent with Goal 14.

**Zone Change 25-002 / Creative Electric, LLC
Conditions of Approval**

- A. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
- B. At the time of development, the applicant shall meet the requirements of MCC 16.07.250 and MCC 16.07.100, and MCC 16.30.220, related to landscaping and exterior lighting.
- C. At the time of development, the applicant must satisfy the development standards in the CG zone (MCC 16.07.000) and the general development standards found in Chapters 16.26.00 through 16.40.00 of the MCC.
- D. The applicant shall record an agreement ensuring that neither they nor their successors will object to annexation, including if requested by the City of Woodburn when any adjacent property annexes into the City.
- E. The applicant shall record an agreement ensuring that they or their successors will connect to city water, sewer, and stormwater services at the time they are available to the subject property.
- F. At the time of development, the applicant shall dedicate right-of-way on the frontage of the subject parcel as shown on the site plan submitted by the applicant for the record in this proceeding.
- G. At the time that the property is developed, the driveway and parking spaces shall be paved consistently with the requirements of Woodburn Development Ordinance 3.04.04 and 3.05.02F. Evidence in the form of a completion letter from the City of Woodburn Public Works office provided to Marion County Planning is a means to demonstrate this requirement is met.
- H. The outdoor storage of equipment or vehicles for any electrical contractor business shall be prohibited except that vehicles may park in designated parking spaces.
- I. The applicant shall develop the Subject Property consistent with the conceptual site plan submitted with their application for an electrical contractor business.
- J. The uses on the property shall be limited to only the following:

Uses permitted out right:

- SIC 1731, Electrical contractor business and associated warehousing
- MCC 16.25, Permitted Uses Generally
- MCC 16.31, Signs

Uses permitted conditionally:

- One dwelling unit* or lodging room* in conjunction with a commercial use.
- Educational services, SIC 82.
- Social services, SIC 83.
- Amusement and recreation services, SIC 79.
- General government, not elsewhere classified, SIC 919.
- Fire protection, SIC 9224.
- Administration of economic programs, SIC 96.
- Public utilities* including truck parking and material storage yard.
- The following use additionally subject to the special standards in Chapter 16.26 MCC: Religious organization* and membership organization, SIC 86 (see MCC 16.26.600).

K. Prior to the issuance of a building permit, the applicant shall execute and record, on a form approved by the City Attorney, or if the City Attorney do not wish to review and approve then by County Counsel, a Non-Remonstrance Agreement. This Agreement shall apply to the subject property and shall:

- Include a covenant running with the land, binding upon the applicant and all successors, which states that the applicant (and successors) will not object to the formation of, nor withdraw from, any local improvement district (LID) or other public financing mechanism established for the design, acquisition, and/or construction of street or right-of-way improvements benefiting the subject property.
- Acknowledge that the applicant and successors will be responsible for payment of their equitable and proportionate share of the cost of any such improvements.
- Clarify that the obligation to pay arises if and when the improvements or LID are formed or constructed, and that the share allocated to the property shall be assessed in accordance with applicable laws and regulations.
- Be recorded in the office of the Marion County Recorder.

CR

UT-5

051W19A001800

NOVAYALN

P

EFU

PACIFIC HWY SR99E


ZONING MAP


Input Taxlot(s): 051W19A001800


Owner Name: GRIGORY MELKOMUKOV RLT
MELKOMUKOV, GRIGORY C/O
CREATIVE ELECTIRC
(No Situs Address)

Situs Address:
City/State/Zip:
Land Use Zone: UT-5; P
School District: WOODBURN
Fire District: WOODBURN

Legend

 Input Taxlots

 Lakes & Rivers

 Highways

 Cities



scale: 1 in = 173 ft

DISCLAIMER: This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.