

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. 21-057**

APPLICATION: Application Boris Mirosnichenko on behalf of Intuit Leasing LLC for a conditional use permit to operate a trucking business on a 6.01 acre property in an UT-20 (Urban Transition – 20 Acre Minimum) zone located at 5611 Eastland Ave. SE, Salem. (84S, R2W, Section 18CA, Tax lot 1100).

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 **January 26, 2024**. 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 proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support the proposal. To be sure 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 all necessary permits from the Marion County Building Inspection Division, including any and all septic permits necessary for the use.
2. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

***Condition A** – In accordance with provide the public R/W half-width of 30 feet along the entire subject property frontages of Eastland Avenue and Timbet Drive. Timing for the dedication shall be prior to issuance of a Certificate of Occupancy for any future buildings.*

***Condition B** – Prior to issuance of building permits, provide evidence from the City of Salem of an accepted engineering design and city permit for a quarter-street urban frontage improvement on Eastland Drive to the City of Salem Collector 'A' standard, anticipated to consist of pavement widening to provide a 17-foot half-width, PCC access apron, curb/gutter, sidewalk and landscape strip. Prior to issuance of a Building Certificate of Occupancy or as may be agreed to by the City, complete construction of said improvements.*

***Condition C** – Prior to issuance of building permits, submit an engineering cost estimate for review and approval and corresponding Fee-in-Lieu to MCPW Engineering for future urban frontage improvements to the subject property Timbet Drive frontage meeting the City of Salem Local road standard.*

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

3. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation can 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 restrictions or conditions thereon. It is recommended that agencies mentioned in Finding #5 below be contacted to identify restrictions or necessary permits.

4. The applicants should contact Marion County Fire District #1 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.
5. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #5 below, that may be required.

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) 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 **January 26, 2022**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the above address. This decision is effective **January 27, 2022** unless further consideration is requested.

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

1. The property is within the Salem/Keizer Urban Growth Boundary (UGB) and designated Industrial in the Salem Area Comprehensive Plan. The property is zoned UT-10 (Urban Transition- 10 Acre Minimum) under the jurisdiction of Marion County. The property is situated within the Airport Overlay Zone of McNary Field.
2. The subject parcel is located on the northwest corner of Eastland Avenue SE and Timbet Drive SE, and is currently developed with a masonry contracting business which was approved pursuant to CU13-029. The property was described by deed (Volume 431, Page 493) as far back as May 28, 1950 as determined by CU13-029. Based on this, the property is considered to be a lawfully created parcel.
3. All surrounding properties are located inside the Salem UGB and designated for future industrial development. Properties to the south and east are inside the city limits. Surrounding properties to the north and west are within the UT-10 zone and are in agricultural use or contain single family homes and accessory structures.
4. The applicant is requesting to establish a trucking business on the subject property.
5. **Public Works Land Development and Engineering Permits (LDEP)** commented:

ENGINEERING CONDITIONS

Condition A – In accordance with provide the public R/W half-width of 30 feet along the entire subject property frontages of Eastland Avenue and Timbet Drive. Timing for the dedication shall be prior to issuance of a Certificate of Occupancy for any future buildings.

Nexus for this requirement is the establishment of business and property development and the corresponding need to accommodate roadway improvements as provided for under MCC 16.40.030(J). Applicant is required to have their Surveyor provide sketches and legal descriptions to MCPW Engineering in this regard.

Condition B – Prior to issuance of building permits, provide evidence from the City of Salem of an accepted engineering design and city permit for a quarter-street urban frontage improvement on Eastland Drive to the City of Salem Collector 'A' standard, anticipated to consist of pavement widening to provide a 17-foot half-width, PCC access apron, curb/gutter, sidewalk and landscape strip. Prior to issuance of a Building Certificate of Occupancy or as may be agreed to by the City, complete construction of said improvements.

Nexus for this requirement is the establishment of business and property development and the corresponding need to provide roadway improvements, as provided for under MCC 16.40.20(E) and 16.40.40(C).

Condition C – Prior to issuance of building permits, submit an engineering cost estimate for review and approval and corresponding Fee-in-Lieu to MCPW Engineering for future urban frontage improvements to the subject property Timbet Drive frontage meeting the City of Salem Local road standard.

Nexus for this requirement is the establishment of business and property development and the corresponding need to provide roadway improvements provided for under MCC 16.40.20(E) and 16.40.40(C). Due to the existing residential property having rural-style frontage at the northwest corner of Eastland Avenue and Timbet Drive, it is more practical for Timbet Drive to be improved to urban standards in the future as an aggregate project, whether it be agency or developer-driven.

ENGINEERING REQUIREMENTS

- D. Eastland Avenue SE and Timbet Drive SE in the vicinity of the subject property are under the jurisdiction of the City of Salem. Evidence of City access approval is a prerequisite for County issuance of Building Permits. The City of Salem Public Works Development Services contact telephone is 503-588-6211.
- E. Stormwater detention is required for 0.5-acres or more of development that includes buildings, paving and graveling. Water Quality Treatment is not required.
- F. Transportation System Development Charges (SDCs) are assessed at the time of application for building permits and/or establishment of the proposed use.

ENGINEERING ADVISORIES

- G. The City of Salem is the water and sanitary sewer service provider.
- H. It will be necessary to coordinate with City of Salem for utility work in the public right-of-way.

City of Salem commented that if annexed in the future and to avoid becoming nonconforming, a minimum landscaped setback of six to ten feet to the street-abutting property line would be required pursuant to SRC 806.035(c)(2) for the parking spaces in the property's NE corner.

City of Salem Public Works commented that the applicant must maintain a 60 foot minimum separation for the City of Salem transmission main on the property per easement conditions.

Marion County Building commented that a permit will be required for the proposed tent structure for storage purposes. Any other proposed structures and/or utilities on private property may require permits. Please consult with Marion County Building Inspection for additional information.

Marion County Code Enforcement commented that there is an open violation for the subject property and approving this permit would address the violation.

Marion County Septic commented that there are no septic records for the site and the plan to handle sewage is not addressed by the applicant. Septic expressed concerns regarding how restrooms will be provided for employees.

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

6. 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.*
- (b) *The parcel is suitable for the proposed use considering such factors as size, shape, location, topography, soils, slope stability, drainage and natural features.*
- (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.*
- (d) *The proposed use, as conditioned, will not have a significant adverse effect on air or water quality.*
- (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.*

7. The applicant proposes to operate a trucking business on the subject property. Motor Freight Transportation and Warehousing is allowed pursuant to SIC 42. The proposal meets the criterion in 6(a).

The subject property has flat topography with little to no elevation change. There is no noted drainage or natural features on the property that would present a development hazard. Based on the site plan submitted by the applicant, the property is of a size large enough to support the existing building and the proposed trucking business. Based on these facts, criterion 6(b) is met.

The applicant states that the proposed trucking business operates eight semi-trucks and trailers, with six trucks off site for two weeks and parked at the location for one week. The other two trucks are typically absent for one week and parked for two weeks. Based on the described characteristics of the business, the proposed use will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone due to the limited intensity of the proposed use. Based on these facts, criterion 6(c) is met.

The trucking business will not have a significant adverse effect on air or water quality as the trucks will be required to comply with any state or federal emissions requirements in order to operate. Marion County Septic commented that there are no septic permits for the site and advises the applicant to consider how restroom facilities will be provided for employees. As a condition of approval, the applicant must obtain any building permits required, including septic permits, prior to operating the business. Based on these facts, criterion 6(d) is met.

The property is served by Marion County Fire District #1 and other services are available or can be provided. The applicant will be required to obtain any needed septic permits for the business. The proposal can be conditioned to meet the criterion in 6(e).

8. In addition to these general criteria, in order to approve a use allowed in the most restrictive zone in a UT zone the specific criteria in MCC 16.13.030 must be satisfied:

- (a) *The use will not increase traffic beyond the capacity of existing roads.*

Requests for comments were sent to Marion County Land Development and Engineering Permits as well as the City of Salem. Neither agency expressed concern that approval of the trucking business would increase traffic beyond the capacity of the existing roads. This criterion is met.

- (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 size of the parcel and location of the proposed trucking business does allow for future development and does not prohibit any future uses. The applicant notes that there are adequate development options available for the north half of the property if the area is urbanized. This criterion is met.

- (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 is the Industrial Commercial (IC) zone. The City of Salem requests that the proposed parking area be developed to meet the standards in SRC 806.035(c)(2) so as not to become nonconforming upon annexation. This criterion is met.

- (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.*

The most restrictive zone is Industrial Commercial (IC), which allows Motor Freight Transportation and Warehousing pursuant to SIC 42 as a permitted use. The City of Salem requested that the proposed parking meet the standards found in SRC 806.035(c)(2). This criterion is met.

- (e) *In order to qualify as a commercial activity in conjunction with farm or forest use the use or activity must meet one of the following criteria in addition to the criteria in subsections (a) through (d) of this section:*
- (1) *The commercial activity must be primarily a customer or supplier of farm uses.*
 - (2) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting the commercial activity relates.*
 - (3) *The agricultural and commercial activities must occur together in the local community.*
 - (4) *The products and services provided must be essential to the practice of agriculture.*

The proposed use is not a commercial activity in conjunction with farm use, this criteria is not applicable.

- (f) *Farm stands subject to the following standards:*
- (1) *Structures shall be designed and used for the sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area.*
 - (A) *As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that been processed and converted into another produce but not prepared food items.*
 - (B) *As used in this section, "local agricultural area" is limited to the State of Oregon.*
 - (2) *The sale of incidental retail items and fee-based activities to promote the sale of farm crops or livestock sold at the farm stand are permitted provided the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand.*

- (3) *Farm stand shall not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.*

The proposed use is not a farm stand, this criteria is not applicable.

9. Based on the above findings it has been determined that the applicant's request has adequately addressed all the applicable criteria for locating a trucking business on the property. Therefore, subject to meeting conditions of approval, the application for a trucking business is **APPROVED** subject to conditions.

Brandon Reich
Director-Planning Division

Date: January 11, 2022

If you have any questions please contact Alyssa Schrems 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.