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TO: Multnomah County Planning Commission
FROM: Adam Barber, Deputy Land Use Planning Director, Multnomah County
DATE: November 7, 2022
SUBJECT: **Planning Commission Briefing Memo – Ballot Measure 109 (2020) Related to Psilocybin Businesses**



Briefing Memo Structure:

- 1.0 Ballot Measure 109 Summary**
- 2.0 General Summary of Key Statutes and Draft Rules**
- 3.0 Local Options**
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1.0 BALLOT MEASURE 109 SUMMARY

- 2020 Oregon Ballot Measure 109 (BM 109) authorized the Oregon Health Authority (OHA) to create a program to license and regulate the manufacture of psilocybin products for supervised use by persons 21 and older in licensed psilocybin service centers. This authority was drafted into Oregon Revised Statutes (ORS), Chapter 475A – Psilocybin Regulation ([Attachment 1](#)). Oregon was the first state to legalize the use of psilocybin products for the purposes described above.
- BM 109 did not decriminalize psilocybin. Psilocybin is the psychoactive ingredient of hallucinogenic mushrooms and is currently listed as a Schedule I drug under the federal Controlled Substances Act.
- A key purpose of recent actions to legalize psilocybin services in Oregon is to expand therapeutic options for a range of issues including depression, anxiety, addiction and post-traumatic stress disorder. The regulatory program authorized by BM 109 limits psilocybin consumption to adult clients participating in a therapeutic session conducted by a state licensed psilocybin service facilitator. Recreational use of psilocybin was not authorized by BM 109.
- BM 109 passed in Multnomah County by 71.2%, and also passed in all adjacent Oregon counties.
- OHA will begin accepting applications for psilocybin businesses on January 2, 2023. An OHA fact sheet related to psilocybin service activities is included as [Attachment 2](#). A proposed Psilocybin Business use could involve psilocybin production (growing), processing, laboratory testing and/or service center (therapeutic) business operations.
- As part of the law, local jurisdictions will be required to complete a Land Use Compatibility Statement (LUCS) for all proposed manufacture and service center license applications. A LUCS is an advisory statement that tells a partner agency what land use requirements a local jurisdiction has in place for a proposed use.
- If the use is allowed by county code without any additional approvals, the LUCS must be completed by the local jurisdiction within 21 days of receipt. If the local zoning code requires additional review or approvals before the use may commence, then the jurisdiction has 21 days from the date all required permits have been granted to complete the LUCS.
- County Land Use Planning will have land use jurisdiction in unincorporated Multnomah County for proposed psilocybin business activities including production, processing, laboratory testing and service centers. It should be noted that certain areas of unincorporated Multnomah County adjacent to city limits are under the planning and zoning jurisdiction of local cities pursuant to Intergovernmental Agreements. Properties in these areas would be subject to city land use regulations. This arrangement would not be unique to psilocybin businesses and extends to all land use proposals in these affected areas.
- It is Staff’s understanding that psilocybin businesses will be prohibited in the Columbia River Gorge National Scenic Area as is the case for marijuana businesses. This is because the authority for land use regulation within the Columbia River Gorge National Scenic Area originates from federal law and because both marijuana and psilocybin are classified by the United States Drug

Enforcement Agency as a Schedule 1 illegal drug. Two sets of federal laws cannot be in conflict with one another.

- BM 109 was codified in ORS 475A (Psilocybin Regulation). These state statutes are intended to operate in tandem with implementing Oregon Administrative Rules (OAR) rules which were released in draft form by the OHA in September, 2022 and which have not yet been finalized at the time of this briefing ([Attachment 3](#)).
- Refinements to the draft administrative rules, based on feedback from three Rural Advisory Committees recently convened by the OHA, are expected to be released for public comment in final draft form November 1, 2022. This public comment period is anticipated to conclude November 21st. Final rules are not expected to be available to the public until some point in December, 2022. As previously stated, the OHA will begin accepting applications for psilocybin businesses on January 2, 2023.

2.0 GENARL SUMMARY OF KEY STATUTES AND DRAFT STATE RULES

The following is a very general summary of key codified statutes (ORS) and a summary of key draft rules (OARs) released by the OHA in September of 2022 – See [Attachments 1 and 3](#) for more information. This is far from an exhaustive list. Rather, it is intended to highlight staff's current understanding of key safety and land use related provisions for the purposes of this briefing.

(Security)

- Every service center, manufacturer, and laboratory must enter relevant data into an OHA psilocybin tracking system that fully and transparently accounts for all psilocybin product inventory tracking activities (*DRAFT* OAR 333-333-8250).
- All harvested and dried psilocybin products must be stored in a locked enclosed area with limited access and within (at a minimum) a properly installed steel door with steel frame, and a commercial grade non-residential lock, or a locked safe in a limited access area. Products requiring refrigeration must be refrigerated (*DRAFT* OAR 333-333-4510).
- Alarm system must be present and activated when the premises is closed for business. Applies to service center, manufacturer and laboratory uses. At least two (2) indoor panic buttons required that immediately notify securing company or law enforcement (*DRAFT* OAR 333-333-4600).
- All premises must have video surveillance with continuous 24-hr/day recording (*DRAFT* OAR 333-333-4650; OAR 333-333-4620).
- Video surveillance equipment may not be installed in a client administrative area. But, licensees may record a session, using portable video equipment, with the client's prior written consent. Recording copies must be destroyed upon the client's request (*DRAFT* OAR 333-333-4640).

(Location and Use Restrictions)

- A psilocybin business cannot be located on publicly owned land nor can any psilocybin business be sited on a location containing recreational or medical marijuana business activities, on a location with a liquor license, restaurant or bed and breakfast (*DRAFT OAR 333-333-4300*).
- Psilocybin businesses cannot be conducted within a primary residence (*DRAFT OAR 333-333-4300*).
- Service centers cannot be located in an area zoned exclusively for residential use within city limits (*DRAFT OAR 333-333-4300*).
- Service centers are generally prohibited within 1,000 feet of a school, with limited exceptions (*ORS 475A.305 & 475A.310*).
- Psilocybin cannot be manufactured outdoors (*ORS 475A.430*). “Manufacture” means the manufacture, planting, cultivation, growing, harvesting, production, preparation, propagation, compounding, conversion or processing of a psilocybin product, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis...” (*ORS 475A.220*).
- Psilocybin-producing fungi as a crop cannot be permitted in the Exclusive Farm Use Zone to justify a new farm dwelling, as part of a farm stand, or in association with a commercial activity as described in *ORS 215.283(2)(a)* [*ORS 475A.570*]. State law previously applied these same limitations to marijuana.

(Service Centers)

- Every service center client must have a transportation plan (*DRAFT OAR 333-333-5150*). Law enforcement must be contacted if the client’s failure to follow their transportation plan presents a danger to client or others (*DRAFT OAR 333-333-4700*).
- Client administration of psilocybin at a service center can be indoors or outdoors, but a client must consume any psilocybin product in an indoor administration area before moving to an outdoor administration area (*DRAFT OAR 333.333-4450; DRAFT OAR 333-333-5210*).
- Any outdoor administration area must be free of falling hazards, drowning hazards and any other conditions that could pose a safety risk to clients. (*DRAFT OAR 333.333-4450*). Facilitators may not conduct outdoor administration sessions in adverse weather conditions, including, but not limited to extreme heat or cold, heavy precipitation, thunder and lightning storms, high winds or wildfire smoke (*DRAFT OAR 333.333-5210*).
- Service centers must provide indoor administration areas if the center offers outdoor areas for clients wishing to move indoors (*DRAFT OAR 333-333-5210*).

- Clients participating in a group administration session must have opportunity to meet and interact with other clients who will participate in the group session, and every facilitator (*DRAFT OAR 333-333-5020*).
- Every client participating in a group session must be provided with an opportunity to leave the group and move to an individual session (*DRAFT OAR 333-333-5230*).
- Group facilitation sessions at a service center shall have a maximum of 25 clients (*DRAFT OAR 333-333-5230*).
- The minimum facilitator to client ratio at a service center depends on amount of psilocybin product clients consume. The largest dose consumed by a client dictates the required facilitator to client ratio. Ranges from 1:16 (1 facilitator to 16 clients) to 1:1, depending on dosage (*DRAFT OAR 333-333-5230*).
- The administration session consumption limit is 50mg per client. Administration session duration depends on client consumption dosage. Ranges from 1 hour to 6 hours, depending on dose consumed (*DRAFT OAR 333-333-5240*).
- Service centers may operate between 6:00 AM and 11:59 PM. A service center must begin every administrative session at a time that allows the minimum duration of that session to elapse prior to 11:59 PM (*DRAFT OAR 333-333-4480*). A facilitator can extend a session, if necessary, beyond 11:59 PM, to ensure safety of client and public. Any such time extension requires the OHA to be notified (*DRAFT OAR 333-333-5250*).
- Facilitator must continuously monitor clients participating in administrative session. Continuous monitoring means maintaining visual and audio contact in-person (no video monitoring). Excludes client and facilitator restroom breaks, limited to 5-minues (*DRAFT OAR 333-333-5200*).
- A back-up facilitator must be able to reach the licensed premises within 15-minutes of being contacted (*DRAFT OAR 333-333-5200*).

(Other)

- A county may allow the manufacture of psilocybin products as a farm use on land zoned for farm or forest use in the same manner as the manufacture of psilocybin products is allowed in exclusive farm use zones under this section and ORS 215.213, 215.283 and 475C.053 (ORS 475A.570).
- Any service center may also function as a practicum (training) site (*DRAFT OAR 333-333-4470*).

3.0 LOCAL OPTIONS

- All cities and counties in Oregon are automatically opted-in (subject to) the BM 109 (2020) psilocybin program unless the jurisdiction specifically opts out, of all or part, by passage of a local ballot measure in a statewide general election.
- Some Oregon jurisdictions are pursuing either a permanent or temporary opt-out by sending ballot measure language to their respective county voters in November, 2022 (ORS 475A.718). This is a fluid situation and staff are currently unable to report which counties are pursuing opt-out ballot measures.
- Multnomah County is not pursuing an opt-out ballot measure.
- Jurisdictions not pursuing an opt-out measure, such as Multnomah County, and those areas where a measure fails to pass, will be automatically opted-in and required to either review Psilocybin business applications through existing zoning regulations (and through application of state law directly), or adopt a standalone ordinance establishing Time, Place and Manner (TPM) regulations related to this topic (ORS 475A.530).
- TPM regulations are narrowly tailored content neutral regulations necessary to achieve a significant public interest. Examples could be further limiting the hours of operation, number of participants, or identifying zones where certain business activities should not be allowed.

4.0 ADDITIONAL CONSIDERATIONS

- Although further analysis is required, we believe the county may be able to consider the following types of psilocybin business activities to be substantially similar to the following general existing land use categories in County code outside of the Columbia River Gorge National Scenic Area. However, staff's understanding may continue to evolve as we learn more about how state psilocybin regulations are intended to operate in the context of existing land use law.
 - **Psilocybin manufacturing.** State law definition of “manufacture” includes both the *production* and *processing* of psilocybin (ORS 475A.220; ORS 475A.570(4)). However these two activities (production and processing) are often listed as distinct and different uses within County land use regulations which can result in the application of different regulations and restrictions to each use. Therefore, it is possible that an application request to OHA for a singular ‘manufacturing’ license could be considered at the local level to equate to more than one land use category, depending on the nature of the application.
 - ***Psilocybin production*** – Potentially could be considered the product of a proposed agricultural activity (i.e. a crop, a farm use), or any other use determined by the Planning Director to be similar in nature.
 - ***Psilocybin processing*** – Potentially could be considered a facility for the processing of farm crops, or any other use determined by the Planning Director to be similar in nature.

- **Psilocybin testing laboratories** – Potentially could be considered a business or professional office, clinic, or any other use determined by the Planning Director to be similar in nature; and
- **Psilocybin service centers** – Potentially could be considered a business or professional office, clinic, hospital or any other use determined by the Planning Director to be similar in nature.
- Current Chapter 39 zoning regulations are available for review online (<https://www.multco.us/landuse/zoning-codes>).

5.0 LOOKING AHEAD

- Although it is difficult for staff to estimate potential impacts without real world examples of psilocybin business operations, we do not believe there is an immediate need to draft local Psilocybin TPM regulations at this time.
- The limited timeframe available to local jurisdictions to draft and adopt local TPM amendments once the implementing OARs are finalized (some point in December, 2022), and before the OHA begins accepting applications (January 2, 2023), effectively prevents staff from being able to convene work groups, or otherwise carefully study final rules, potential issues and regulatory options. Additionally, the draft OAR rules released to date by the OHA appear to address many of the questions and concerns identified by staff when contemplating potential impacts from these activities.
- Multnomah County code currently identifies zones where general types of different business activities can occur, and establishes how those activities must be regulated to protect public health and safety and minimize community impact. Absent TPM rules, County staff would apply existing county codes and state statute and administrative rule directly to any application for a Psilocybin Business.
- County staff can prepare local TPM amendments for the Planning Commission’s consideration at a future date if specific issues are identified justifying the need for additional regulation, or to help simplify implementation through rule consolidation.

6.0 ATTACHMENTS

Attachment 1 – Oregon Revised Statutes Chapter 475A – Psilocybin Regulation

Attachment 2 – OHA Fact Sheet (Oregon Psilocybin Services)

Attachment 3 – Draft September, 2022 Psilocybin Business Related Administrative Rules Issued by the Oregon Health Authority