



MEMORANDUM

TO: Deschutes County Planning Commission
FROM: Tanya Saltzman, AICP, Senior Planner
DATE: September 1, 2022
SUBJECT: Preparation for Public Hearing – Psilocybin TPM Amendments

Staff will present proposed text amendments to the Planning Commission on September 8, 2022, in preparation for a September 29 public hearing concerning time, place, and manner (TPM) text amendments for psilocybin. Staff submitted a Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 25, 2022 and established a project website. Further background is provided below. The proposed text amendments and findings are provided as attachments to this memorandum.

I. BACKGROUND

On June 1, 2022, staff provided the Board of County Commissioners (Board) with an overview of Measure 109, which legalized psilocybin in Oregon subject to the criteria noted in the measure and subsequent rulemaking.¹ The memorandum introduced the origin of the measure, the types of licenses that will be available, the role of the Oregon Health Authority (OHA) and its committees, and the rulemaking process. During the discussion, staff noted the compressed timeline: OHA is currently in the process of rulemaking, which may not be complete until December 2022, yet OHA is due to begin accepting applications for licenses on January 2, 2023. As noted, OHA licenses will require a Land Use Compatibility Statement (LUCS) to be issued by the County. This timeline places the Planning Commission and the Board—as well as the industry and the public—in a difficult position of not knowing key aspects of the program in advance of the program beginning.

Measure 109 automatically opts cities and counties into the psilocybin program. However, Measure 109 offers the option for cities and counties to opt out of the program via a ballot measure in the next general election—in this case, November 8, 2022. On July 13, 2022, the Board of County Commissioners conducted an afternoon and evening hearing to consider Ordinance No. 2022-009, Referring a Measure to the Electors to Prohibit Product Manufacturers and Psilocybin Service Center Operators within Unincorporated Deschutes County.² The Board deliberated on the matter on July 20 and adopted a first

¹ <https://www.deschutes.org/bcc/page/board-commissioners-meeting>

² <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-63>

reading of Ordinance No. 2022-009. Second reading occurred on August 8. The ordinance will be subject to Deschutes County voters for the November 8, 2022 General Election.

Measure 109—and the corresponding Oregon Revised Statute 475A.530—allows cities and counties to adopt “reasonable regulations” for time, place, and manner (TPM) concerning psilocybin businesses. During deliberation the Board expressed interest in developing TPM amendments in the event voters reject prohibiting psilocybin manufacturing and psilocybin service centers in the unincorporated county. Amendments could be adopted by the end of the calendar year, prior to OHA accepting applications for licensure on January 2, 2023. On July 27, the Board directed staff to begin the TPM process.³

Staff continues to monitor the rulemaking process as it continues this fall and is coordinating with Association of Oregon Counties (AOC) on any pertinent developments to the program. Staff is also coordinating with other counties, including Wasco and Jackson, which are undertaking TPM amendments on a similar schedule, while recognizing that ultimately each county will have its own set of opportunities and constraints.

II. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 18, County Zoning. The primary purpose of the amendments is to create time, place, and manner regulations concerning psilocybin manufacturing, service centers, and testing laboratories. A brief summary of the amendments are as follows, with further description following:

- DCC 18.04.030: Adds new definitions for terms relating to psilocybin.
- DCC 18.65 Rural Service Center, 18.66 Terrebonne Rural Community, 18.67 Tumalo Rural Community, 18.74 Rural Commercial, 18.108 Sunriver Urban Unincorporated Community: Adds psilocybin service centers as a conditional use with site plan review
- DCC 18.67 Tumalo Rural Community, 18.100 Rural Industrial: Adds psilocybin testing laboratories as a conditional use with site plan review
- DCC 18.116.380: Adds a new chapter creating time, place, and manner criteria for psilocybin manufacture as farm use; psilocybin manufacture as a processing use; psilocybin service centers.

III. REGULATORY CONCEPT

Measure 109 provides no direction as to reasonable time, place, and manner restrictions. The measure contains limited basic criteria pertaining to land use. For instance, psilocybin service centers may not be located within 1,000 feet of elementary or secondary schools (500 feet if there is a physical or geographic barrier), and manufacturing facilities may not be located outdoors. Service centers may not be located in single family dwellings.

³ <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-65>

It is difficult for staff to estimate impacts from a transportation and land use standpoint without real world examples of psilocybin production, processing, and service centers that the Planning Commission and the Board can consider. Ultimately, in order for regulations to be “reasonable,” such regulations must be necessary to protect public health, safety and welfare. Erring on the side of more restrictive TPM regulations is defensible because the range and extent of potential impacts of psilocybin production, processing, testing, and service centers cannot be defined at this early stage.

Table 1 outlines the psilocybin uses in the proposed amendments.

Table 1 – Summary of Proposed TPM Amendments

Use	Description	Notes
Psilocybin Manufacturing as a Farm Use	Allowed in: <ul style="list-style-type: none"> • EFU zone 	<ul style="list-style-type: none"> • Psilocybin-producing fungi is recognized by Measure 109 as a farm use and is therefore permitted outright in EFU zones. • Psilocybin-producing fungi must be grown indoors. • Commercial activities in conjunction with farm use do not apply to growing psilocybin.
Psilocybin Manufacturing as a Processing Use	Allowed in: <ul style="list-style-type: none"> • EFU zone.⁴ 	<ul style="list-style-type: none"> • Manufacturing may be carried on in conjunction with a psilocybin producing fungi crop according to Measure 109.
Psilocybin Service Centers	Allowed subject to a conditional use permit and site plan review in: <ul style="list-style-type: none"> • Rural Commercial • Rural Service Centers • Sunriver Commercial District • Sunriver Town Center District • Terrebonne Commercial District • Tumalo Commercial District 	<ul style="list-style-type: none"> • Hours of operation will be limited to daily treatments. • No option for larger retreat-style, overnight operations. • Service centers may not be located within 1,000 feet of elementary or secondary schools (500 feet if there is a physical or geographic barrier).
Psilocybin Testing Laboratories	Allowed subject to a conditional use permit and site plan review in: <ul style="list-style-type: none"> • Rural Industrial • Tumalo Industrial 	<ul style="list-style-type: none"> • OHA rulemaking concerning testing requirements thus far appear in OAR 333-333-7010 through 333-333-7150

⁴ DCC 18.16.025 requires the facility uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. Exception: A facility which uses less than 2,500 square feet for its processing area is exempt from any applicable siting standards.

IV. NEXT STEPS

The Planning Commission will conduct a public hearing on September 29, 2022, at 5:30 p.m.

The timeline for the development and adoption of TPM amendments is as follows:

Table 2 - Psilocybin TPM Schedule

Task	Timeline
1. Draft amendments and findings	August 9 to 24
2. 35-day DLCDC Post Acknowledgement Plan Amendment Notice	August 25
3. Planning Commission Work Session	September 8
4. Planning Commission Public Hearing	September 29
5. Planning Commission Deliberation	October 13 and 27 if needed
6. Board Work Session	November 14
7. Board Hearing	November 28
8. Board Deliberation	December 5
9. Consideration of First Reading	December 14
10. Consideration of Second Reading	December 28

Attachments

1. Draft Text Amendments
2. Draft Findings