

FINDINGS

I. 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:

- 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.

II. BACKGROUND

On November 3, 2020, Oregon voters approved Ballot Measure 109, the Psilocybin Program Initiative, which legalized psilocybin in Oregon subject to the criteria noted in the measure and subsequent rulemaking.

Measure 109 automatically opts cities and counties into the psilocybin program, which first underwent a two-year development period, and is slated to begin statewide on January 2, 2023. However, Measure 109 offers the option for cities and counties to opt out via a ballot measure in the next general election—in this case, November 8, 2022.

On June 1, 2022, staff provided the Board of County Commissioners (Board) with an overview of Measure 109.¹ During the discussion, staff noted the compressed timeline: Oregon Health Authority (OHA), which administers the program and the licensing system, was engaged in rulemaking throughout late 2021 and all of 2022, with completion anticipated by December 2022, yet OHA is due to begin accepting applications for licenses on January 2, 2023. OHA licenses will require a Land Use Compatibility Statement (LUCS) to be issued by the County. This timeline placed the Board—as

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

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.

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 reading of Ordinance No. 2022-009; second reading occurred on August 8. The opt-out measure was subject to Deschutes County voters for the November 8, 2022 General Election, at which time the voters overturned the opt out.

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 the Oregon Health Authority (OHA) accepting applications for licensure on January 2, 2023. On July 27, the Board directed staff to begin the TPM process.³

Measure 109 provides no direction as to reasonable time, place, and manner restrictions. 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 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 and service centers cannot be defined—and therefore analyzed to determine compliance with statewide planning goals or Comprehensive Plan policies—at this stage.

III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 18, 22, or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating one, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

IV. FINDINGS

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

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

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

FINDING: This criterion will be met because a public hearing was held before the Deschutes County Planning Commission and Board of County Commissioners.

Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.**
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.**

FINDING: This criterion will be met as notice was published in the Bend Bulletin newspaper for the Planning Commission public hearing, and the Board of County Commissioners' public hearing.

- B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.**

FINDING: Posted notice was determined by the Planning Director not to be necessary.

- C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.**

FINDING: Given the proposed legislative amendments do not apply to any specific property, no individual notices were sent.

- D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.**

FINDING: Notice was provided to the County public information official for wider media distribution. This criterion is met.

Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division at the direction of the Board of County Commissioners, and has received a fee waiver. This criterion is met.

Section 22.12.040. Hearings Body

- A. The following shall serve as hearings or review body for legislative changes in this order:**
- 1. The Planning Commission.**
 - 2. The Board of County Commissioners.**
- B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.**

FINDING: The Deschutes County Planning Commission held the initial public hearing on September 29 and October 13, 2022. The Board then held a public hearing on November 21 and November 30, 2022. These criteria are met.

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes will be implemented by Ordinance No. 2022-014 upon approval and adoption by the Board of County Commissioners. This criterion will be met.

A. Statewide Planning Goals and Guidelines

Goal 1: Citizen Involvement: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments were provided to the *Bulletin* for each public hearing.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgment plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on August 25, 2022. The Planning Commission held a public hearing on September 29, 2022 and the Board of County Commissioners held a public hearing on November 21, 2022. This Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands: Measure 109 and the corresponding Oregon Revised Statute 475A.570(2) specify that psilocybin-producing fungi is:

- (a) A crop for the purposes of "farm use" as defined in ORS 215.203;
- (b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;
- (c) A product of farm use as described in ORS 308A.062; and
- (d) The product of an agricultural activity for purposes of ORS 568.909.

The statute clearly permits the production of psilocybin-producing fungi in Exclusive Farm Use zones. DCC 18.16.025 allows small-scale processing of farm crops, provided that the facility uses

less than 10,000 square feet for its processing area and complies with all applicable siting standards. Processing facilities smaller than 2,500 square feet are exempt from any applicable siting standards.

ORS 475A.570(2) prohibits psilocybin-related farm dwellings and psilocybin-related farm stands. ORS 475A.570(3) states "The operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop." The interpretation of this statute submitted into the record by the Department of Land Conservation and Development (DLCD) is that psilocybin service centers would not be a stand-alone use on EFU but could potentially be permitted either as a commercial activity in conjunction with farm use or as a home occupation, if the criteria for those uses are met. Specifically:

- Commercial activities that are in conjunction with farm use are conditional uses subject to DCC 18.16.040, Limitations On Conditional Uses, and 18.128.015; and
- Home Occupations are conditional uses subject to DCC 18.16.0030(M), Limitations On Conditional Uses, and DCC 18.116.280, Home Occupations.

The proposed amendments to the County Code are consistent with these provisions of state law and are therefore consistent with Goal 3.

Goal 4: Forest Lands: ORS 475A.570(4) states "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." The proposed amendments are consistent with these provisions of state law and are therefore consistent with Goal 4.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: Goal 5 is to protect natural resources and conserve scenic and historical areas and open spaces. OAR 660-023-0250(3) states that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. The proposed text amendments do not create or amend a resource list or any portion of the County's acknowledged Comprehensive Plan or land use regulations adopted to protect a significant Goal 5 resource or to address specific requirements of Goal 5. The proposed text amendments do not allow new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list because the County's LM and WA overlay zones are not changed in these proposed amendments. More specifically, the amendments are not subject to a Goal 5 analysis because:

- Psilocybin manufacturing is considered a farm crop/farm use/farming practice per ORS 475A.570
- The areas in which service centers are permitted (retail/commercial zones) are not subject to the current WA combining zone

- Service centers on EFU land could be allowed not as new conflicting, stand-alone uses that would require a Goal 5 analysis, but under existing uses within EFU (home occupations/commercial activity in conjunction with farm use).

For these reasons, the proposed text amendments are in compliance with Goal 5.

Goal 6: Air, Water and Land Resources Quality: The proposed text amendments do not propose to change the County's Plan policies or implementing regulations for compliance with Goal 6. The text amendments will not impact the quality of the air, water, and land resources of the County given the fact that psilocybin farm use is required to take place fully indoors, is not odorous and is not a water-intensive use. Psilocybin service centers are proposed to be primarily limited to commercially-zoned areas and therefore will not impact the quality of land resources; for those service centers that potentially could be allowed as a commercial activity in conjunction with farm use or a home occupation, they will be subject to those criteria, respectively. For these reasons, the proposed text amendments are in compliance.

Goal 7: Areas Subject to Natural Disasters and Hazards: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding natural disasters and hazards; therefore, they are in compliance.

Goal 8: Recreational Needs: The text amendments do not propose to change the County's Plan or implementing regulations regarding recreational needs; therefore, they are in compliance.

Goal 9: Economic Development: Goal 9 and its implementing regulations focus on economic analysis and economic development planning required in urban Comprehensive Plans to ensure there is adequate land available to realize economic growth and development opportunities. The proposed amendments apply to rural lands and do not propose to amend the Comprehensive Plan. The proposed text amendments will encourage economic development in the County as they will provide new business and economic development opportunities. Because these new businesses will be taxed, the public will benefit as well. For these reasons, the proposed text amendments are in compliance with Goal 9.

Goal 10: Housing: This goal is not applicable because, unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: Complies because the text amendments do not propose to change the County's Plan or implementing regulations regarding public facilities and services.

Goal 12: Transportation: Goal 12 is to provide and encourage a safe, convenient, and economic transportation system. The proposed text amendments will not change the functional classification of any existing or planned transportation facility or standards implementing a functional classification system. The proposed text amendments will not allow any new uses expected to result in transportation system impacts that differ in degree or severity from other allowed or allowable uses in the zones in which psilocybin manufacture and/or psilocybin service centers could be sited.

Goal 13: Energy Conservation: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding energy conservation. Therefore, compliance with Goal 13 is established.

Goal 14: Urbanization: The proposed text amendments do not propose to change the County's Plan or implementing regulations regarding urbanization. Therefore, compliance with Goal 14 is established.

Goals 15 through 19 are not applicable to the proposed text amendments because the County does not contain these types of lands.

D. Deschutes County Comprehensive Plan

Chapter 1, Comprehensive Planning: This chapter sets the Goals and Policies of how the County will involve the community and conduct land use planning. As described above, the proposed regulations will be discussed at work sessions with the Board of County Commissioners, as well as to the Planning Commission, which is the County's official committee for public involvement. Both will conduct separate public hearings.

These actions also satisfy the Goals and relevant Policies of Section 1.3, Land Use Planning Policies. Goal 1 of this section is to "maintain an open and public land use process in which decisions are based on the objective evaluation of facts." Staff, the Planning Commission, and the Board reviewed the text amendments.

Chapter 2, Resource Management: This chapter sets the Goals and Policies of how the County will protect resource lands, including but not limited to, Agriculture and Forest as well as Water Resources and Environmental Quality.

Section 2.2, Agricultural Lands Policies, states that Goal 1 is to "preserve and maintain agricultural lands and the agricultural industry."

As noted above, Measure 109 and the corresponding Oregon Revised Statute 475A.570(2) specify that psilocybin-producing fungi is:

- (a) A crop for the purposes of "farm use" as defined in ORS 215.203;
- (b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;
- (c) A product of farm use as described in ORS 308A.062; and
- (d) The product of an agricultural activity for purposes of ORS 568.909.

The statute clearly permits the production of psilocybin-producing fungi in Exclusive Farm Use zones as well as in other zones that allow farm or forest use (ORS 475A.570(4)). DCC 18.16.025 allows small-scale processing of farm crops, provided that the facility uses less than 10,000 square feet for its processing area and complies with all applicable siting standards. Processing facilities smaller

than 2,500 square feet are exempt from any applicable siting standards. The proposed text amendments allow a new state-recognized agricultural use on agricultural lands.

Section 2.2 Goal 2 promotes a diversified, sustainable, revenue-generating agricultural sector. Policy 2.2.10 calls for the promotion of economically viable opportunities and practices while Policy 2.2.11 encourages small farming enterprises including but not limited to, niche markets and organic farming and value-added projects. The proposed text amendments allow a new state-recognized agricultural use on agricultural lands, thereby satisfying this goal.

Section 2.2 Goal 3 specifies the Exclusive Farm Use (EFU) policies, classifications, and codes are consistent with local and emerging agricultural conditions and markets. The proposed amendments are a direct response to changes in state law, which pursuant to Measure 109, recognize psilocybin-producing fungi as a farm crop. ORS 475A.570(2) prohibits psilocybin-related farm dwellings and psilocybin-related farm stands. ORS 475A.570(3) states "The operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop." The interpretation of this statute submitted into the record by the Department of Land Conservation and Development (DLCD) is that psilocybin service centers would not be a stand-alone use on EFU but could potentially be permitted either as a commercial activity in conjunction with farm use or as a home occupation, if the criteria for those uses are met. Specifically:

- Commercial activities that are in conjunction with farm use are conditional uses subject to DCC 18.16.040, Limitations On Conditional Uses, and 18.128.015; and
- Home Occupations are conditional uses subject to DCC 18.16.0030(M), Limitations On Conditional Uses, and DCC 18.116.280, Home Occupations.

Resource lands devoted to agricultural use in Deschutes County will thereby permit the production and processing of psilocybin-producing fungi, as well as service centers subject to certain criteria, ensuring consistency between local code, emerging markets, and state law.

Section 2.3, Forest Lands Policies, states that Goal 1 is to "preserve and maintain forest lands for multiple uses, including forest products, watershed protection, conservation, recreation and wildlife habitat protection." Policy 2.3.5 calls for uses allowed in Forest zones to comply with state statute and Oregon Administrative Rule. As noted above, ORS 475A.570(4) states "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." The amendments allow psilocybin manufacturing in forest zones pursuant to this law.