



**MEMORANDUM**

**TO:** Deschutes County Planning Commission  
**FROM:** Tanya Saltzman, AICP, Senior Planner  
**DATE:** September 22, 2022  
**SUBJECT:** Public Hearing – Psilocybin TPM Amendments

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The Deschutes County Planning Commission will conduct a public hearing on September 29, 2022 at 5:30 P.M. at the Deschutes Services Center, 1300 Wall Street, Barnes and Sawyer rooms, to consider legislative text amendments for time, place, and manner (TPM) regulations for psilocybin (File no. 247-22-000676-TA). Staff submitted a 35-day Post-Acknowledgement Plan Amendment (PAPA) notice to the Department of Land Conservation and Development (DLCD) on August 25, 2022. Staff presented the proposed amendments to the Planning Commission at a work session on September 8, 2022.<sup>1</sup> Attached to this memorandum are the proposed text amendments and findings, which have not changed since the Planning Commission work session. Within the proposed amendments, added language is shown underlined and deleted shown as ~~strikethrough~~. The public hearing will be conducted in-person, electronically, and by phone.<sup>2</sup>

The record is available for inspection at the Planning Division and at the following website: <https://www.deschutes.org/cd/page/247-22-000676-ta-psilocybin-time-place-and-manner-tpm-text-amendments>.

**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.<sup>3</sup> 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

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<sup>1</sup> <https://www.deschutes.org/bc-pc/page/planning-commission-16>

<sup>2</sup> See Deschutes County Planning Commission September 29, 2022 Agenda for more information: <https://www.deschutes.org/bc-pc/page/planning-commission-19>

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

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.<sup>4</sup> The Board deliberated on the matter on July 20 and held a first reading of Ordinance No. 2022-009. Second reading occurred on August 8. The opt-out 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.<sup>5</sup>

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. In September 2022, OHA published draft rules addressing certain criteria ranging from qualifications for facilitators to safety plans for service centers. The Rules Advisory Subcommittee (RAC) is in the process of providing input on these rules this month, which will then be revised and shared with the public for comment on November 1. A copy of the September 2022 draft rules under consideration by the RAC is provided as an attachment to this memorandum.

## 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

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<sup>4</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-63>

<sup>5</sup> <https://www.deschutes.org/bcc/page/board-county-commissioners-meeting-65>

- 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.

It is difficult for staff to estimate impacts from a transportation and land use standpoint without real world examples of psilocybin manufacturing, 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
<b>Psilocybin Manufacturing as a Farm Use</b> (manufacture, planting, cultivation, growing, harvesting, production, preparation, propagation, any packaging or repackaging)	Allowed in: <ul style="list-style-type: none"> <li>• EFU zone</li> </ul>	<ul style="list-style-type: none"> <li>• Psilocybin-producing fungi is recognized by Measure 109 as a farm use and is therefore permitted outright in EFU zones.</li> <li>• Psilocybin-producing fungi must be grown indoors.</li> <li>• Commercial activities in conjunction with farm use do not apply to growing psilocybin.</li> </ul>
<b>Psilocybin Manufacturing as a Processing Use</b> (compounding, conversion, or processing of a psilocybin product)	Allowed in: <ul style="list-style-type: none"> <li>• EFU zone.<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Manufacturing may be carried on in conjunction with a psilocybin producing fungi crop according to Measure 109.</li> </ul>

<sup>6</sup> 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.

<p><b>Psilocybin Service Centers</b></p>	<p>Allowed subject to a conditional use permit and site plan review in:</p> <ul style="list-style-type: none"> <li>• Rural Commercial</li> <li>• Rural Service Centers</li> <li>• Sunriver Commercial District</li> <li>• Sunriver Town Center District</li> <li>• Terrebonne Commercial District</li> <li>• Tumalo Commercial District</li> </ul>	<ul style="list-style-type: none"> <li>• Hours of operation will be limited to daily treatments.</li> <li>• No option for larger retreat-style, overnight operations.</li> <li>• 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).</li> </ul>
<p><b>Psilocybin Testing Laboratories</b></p>	<p>Allowed subject to a conditional use permit and site plan review in:</p> <ul style="list-style-type: none"> <li>• Rural Industrial</li> <li>• Tumalo Industrial</li> </ul>	<ul style="list-style-type: none"> <li>• OHA rulemaking concerning testing requirements thus far appear in OAR 333-333-7010 through 333-333-7150</li> </ul>

**IV. NEXT STEPS**

At the conclusion of the public hearing, the Planning Commission may:

- Continue the hearing to a date certain;
- Close the hearing and leave the written record open to a date certain; or
- Close the hearing and commence deliberations.

Attachments

1. Psilocybin Text Amendments
2. Psilocybin Findings
3. September 2022 Oregon Health Authority Draft Rules