



**MEMORANDUM**

**TO:** Deschutes County Board of Commissioners  
**FROM:** Tanya Saltzman, AICP, Senior Planner  
**DATE:** May 25, 2022  
**SUBJECT:** Measure 109 / Psilocybin

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The purpose of this memorandum is to:

- a) Provide an introduction to Measure 109 – legalization of psilocybin;
- b) Discuss its relevance to land use in Deschutes County;
- c) Discuss upcoming rulemaking; and
- d) Begin the discussion of options for Board of County Commissioners (Board) consideration moving forward.

**A. Measure 109**

On November 3, 2020, Oregon voters approved Ballot Measure 109, the Psilocybin Program Initiative. Statewide, Ballot Measure 109 passed with 1,270,057 votes (55.75%) to 1,008,199 (44.25%). In Deschutes County it passed with 63,841 votes (52.80%) to 57,064 (47.20%).

- A "yes" vote directed the Oregon Health Authority to license and regulate the manufacturing, transportation, delivery, sale, and purchase of psilocybin products and the provision of psilocybin services to individuals 21 years of age or older.
- A "no" vote opposed the creation of a psilocybin program, thus maintaining the state prohibition against the possession, manufacturing, and consumption of psilocybin.

Section 1 of Measure 109 describes the intention of initiating the program:

“(5) Studies conducted by nationally and internationally recognized medical institutions indicate that psilocybin has shown efficacy, tolerability, and safety in the treatment of a variety of mental health conditions, including but not limited to addiction, depression, anxiety disorders, and end of-life psychological distress;

(6) The United States Food and Drug Administration has:

- (a) Determined that preliminary clinical evidence indicates that psilocybin may demonstrate substantial improvement over available therapies for treatment-resistant depression; and
- (b) Granted a Breakthrough Therapy designation for a treatment that uses psilocybin as a therapy for such depression.”

## **Administration and General Timeline**

Oregon Psilocybin Services is a new section housed within the Oregon Health Authority (OHA) Public Health Division’s Center for Health Protection. The Oregon Psilocybin Services Section will implement Ballot Measure 109.

The Oregon Psilocybin Services Section will begin accepting applications for licensure (more on this below) on January 2, 2023. Until that time, the Oregon Psilocybin Services Section is in a two-year development period, working to build the regulatory framework for psilocybin services.

In April 2022, community members were invited by the OHA to provide comments on a subset of proposed rules related to products, testing, and training programs during the first public comment period. A second round of rulemaking in the fall will focus on the remainder of the rules. The remainder of rules will be posted and open for public comment in October, with all final rules adopted by December 31, 2022.

Given that this will be the first psilocybin program in the United States (and therefore, there are no existing models to follow for land use or otherwise) and that rulemaking will not be finalized until December, staff is providing updates to the Board based on the most recent information available, while being cognizant that some elements will likely be created and refined as 2022 progresses.

The original text of Measure 109 is provided as an attachment for reference, as well as a question and answer document produced by the OHA that was derived from their listening sessions in December 2021. Although many of the questions in that document do not pertain to land use, staff found the Q&A helpful as a general overview of the program.

## **Types of Licenses**

OHA may issue four types of licenses:

- (1) **Manufacturer** of psilocybin products: 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, and includes any packaging or repackaging of the psilocybin product or labeling or relabeling of its container.
- (2) Operator of a **psilocybin service center**, an establishment:

- (a) At which administration sessions (a session held at a psilocybin service center at which a client purchases, consumes, and experiences the effects of a psilocybin product under the supervision of a psilocybin service facilitator) are held; and
- (b) At which other psilocybin services may be provided. These consist of services provided to a client before, during, and after the client's consumption of a psilocybin product, including:
  - (a) A preparation session, a meeting with a client and a psilocybin service facilitator that must occur before the client participates in an administration session;
  - (b) An administration session; and
  - (c) An integration session, a meeting between a client and a psilocybin service facilitator that may occur after the client completes an administration session.

(3) **Facilitator** of psilocybin services: an individual that facilitates the provision of psilocybin services in this state.

(4) **Tester** of psilocybin products.

## Key Points

Below are initial takeaways from staff's reading and preliminary research of Measure 109. Staff has also begun conversations with Association of Oregon Counties, legal counsel who are focusing on this matter, and individuals with experience with this industry and its clinical applications.

### *General*

- Unlike with the recreational marijuana program, counties are automatically opted in to the psilocybin program. However, a governing body of a city or county may adopt ordinances to be referred to the electors of the city or county at the next statewide general election that prohibit the establishment of psilocybin production (cultivation), manufacturing (processing / edibles) or service centers (commercial land use).
- If a county or city takes no action, it is automatically opted in to the program under the regulations established in Measure 109 and subsequent rulemaking.
- A client, 21-years or older may purchase, possess, and consume a psilocybin product only at a psilocybin service center, and only under the supervision of a psilocybin service facilitator.
- Counties may adopt "reasonable" time, place, and manner regulations; however, they cannot adopt separation distances that limit service centers greater than 1,000 feet from one another
- The program requires counties to sign a Land Use Compatibility Statement (LUCS) that demonstrates that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located.

### *Production*

- Psilocybin-producing fungi is recognized as a crop for the purpose of a farm use, a farm, and farming practice. Therefore, it is permitted outright on Exclusive Farm Use (EFU) land and if a county chooses, it can also be recognized in other zones where farm or forest uses are allowed.
- Counties may adopt "reasonable" time, place, and manner regulations.

- Psilocybin-producing fungi must be grown indoors.
- Commercial activities in conjunction with farm use do not apply to growing psilocybin. However, the operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop on Exclusive Farm Use land.

### *Manufacturing*

- Psilocybin- manufacturing must take place indoors.
- Counties may adopt “reasonable” time, place, and manner regulations.
- Manufacturing may be carried on in conjunction with a psilocybin producing fungi crop.

### *Service Centers*

- 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).
- Service centers may not be located in municipalities on lands zoned exclusively for residential use.
- Service centers may not be located in single family dwellings
- Counties may adopt “reasonable” time, place, and manner regulations.
- Service centers may be carried on in conjunction with a psilocybin producing fungi crop.
- Facilitators are required to pass an OHA exam. Possessing a medical license is not required.
- A psilocybin service center is not a health care facility subject to ORS chapter 441.

## **B. Psilocybin and Land Use in Deschutes County**

Psilocybin production, manufacturing and service centers will have the most direct relevance to land use in Deschutes County. Given that service centers are not considered to be health care facilities, staff believes this presents several options of what a service center could look like, ranging from a relatively simple clinical setup similar to a doctor or therapist’s office, to potentially a more retreat-oriented business that may involve an overnight stay and the integration of psilocybin production and manufacturing. Staff anticipates some of these details as well as those governing manufacturing will be determined through the rulemaking process.

## **C. Rulemaking**

Measure 109 leaves many questions unanswered; many further details are slated to be determined in the rulemaking process, which will take place throughout the duration of 2022. The Oregon Psilocybin Advisory Board, which is comprised of fourteen to sixteen members with varying types of expertise outlined in Measure 109, will advise on numerous issues that will contribute to rulemaking. Those issues with the most significance to Deschutes County’s decision-making include:

- Recommendations to the authority on the requirements, specifications and guidelines for providing psilocybin services to a client
- Recommendations to the authority on the education and training that psilocybin service facilitators must complete
- Recommendations to the authority on public health and safety standards and industry best practices for holding and completing an administration session, including:

- Whether group administration sessions should be available;
- Whether clients should be able to access common or outside areas on the premises of the psilocybin service center at which the administration session is held;
- The circumstances under which an administration session is considered complete; and
- The transportation needs of the client after the completion of the administration session.

#### **D. Next Steps**

This memorandum provides an introduction to the psilocybin program and touches on some of the issues staff anticipates the Board will need to consider in the near future. Staff will return to the Board in approximately two to four weeks to continue the discussion of psilocybin in Deschutes County.

Soon, the Board will need to consider its preferred approach to psilocybin, including:

1. Allowing the program to proceed per Measure 109 and subsequent rulemaking;
2. Opting out and referring the matter to the voters in the next general election on November 8, 2022. This option would likely require initial coordination with the County Counsel and County Clerk by mid-August; or
3. Adopting time, place, and manner regulations for a psilocybin program to coincide with OHA accepting the first license applications on January 2, 2023.

Because OHA rulemaking and, thus, key aspects of the program will likely not be known by the time any “opt out” choice would need to be referred to voters, the Board will potentially be placed in a difficult position of choosing to stay opted in by default, or to refer an opt out measure to the voters without knowing key aspects of the program. Staff continues to engage in dialogue with other counties, industry representatives, and lawmakers to help inform the Board, Planning Commission, Community Development divisions, other departments, and the public on the details of this significant new undertaking.

#### Attachments:

1. Measure 109 text
2. Oregon Health Authority Q&A summary