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MEMORANDUM

Community Development

To: Mayor Jackola and City Council
From: Kelly Hart, Community Development Director
Subject: Psilocybin Discussion

Date: October 11, 2023

I. INTRODUCTION

In 2020, voters in Oregon passed Ballot Measure 109, allowing the "manufacture, delivery and administration" of psilocybin, a naturally occurring psychedelic drug. While psilocybin remains illegal nationally, Oregon was the first U.S. state to legalize the drug. Psilocybin must be used for "personal development" and grown and administered in licensed environments.

Measure 109 directed the Oregon Health Authority (OHA) to run the Oregon Psilocybin Services program. OHA was then required to proceed through the rulemaking process to identify the regulations and licensure process for the manufacturing, testing, and administering of psilocybin. The initial rules were adopted in December 2022. Starting January 2023, licenses could be applied for and issued by OHA for service centers, using tested psilocybin from licensed manufacturers, and legally screen and treat individuals with psilocybin in Oregon.

In terms of election results for Measure 109: statewide the measure passed with 55.75% of the vote; in Linn County 55.26% of the votes registered were against the measure; and in Lebanon 51.71% of the votes registered were against the measure (363 vote differential).

In summer, 2022, the City Council voted to refer a two-year moratorium on psilocybin facilities in Lebanon to the voters. At the November 8, 2022 general election, the voters approved the two-year moratorium. During the moratorium period, Council directed staff to review the final adopted OHA rules and bring back information for council consideration.

II. CURRENT REPORT

The following information provides a general overview of the States regulatory and permitting system for psilocybin facilities. The Oregon Administrative Rules (OARs) for all permitted psilocybin activities are also attached for review.

Types of Facilities and Licenses – There are a total of three types of facilities and five license types:

1. Manufacturer facility (cultivates, extracts, manufactures edibles)
 - a. Facility License – annual license

- b. Worker Permits (anyone working with or handling the psilocybin) – 5 year permit
 - c. Facilities permitted to date (3): Portland, Ashland, Walterville
2. Laboratories (tests product potency from manufacturers)
 - a. Facility License – annual license (must be an accredited Oregon Environmental Laboratory)
 - b. Worker Permits (anyone working with or handling the psilocybin) – 5 year permit
 3. Service Centers facility (administers psilocybin in controlled environment)
 - a. Facility License – annual license
 - b. Facilitators (person assisting patient through the psilocybin administration) – annual license
 - c. Worker Permits (anyone working with or handling the psilocybin) – 5 year permit
 - d. Facilities permitted to date (7): Albany, Eugene, Hood River, Portland, Ashland (2), and Bend

Each worker permit, facilitator license, and facility owner are required to go through a background check as part licensing process.

Regulations on each facility – Each facility license has specific requirements regarding locations where they may operate, how the facility is to be set up, security measures, and reporting requirements.

Laboratories – Laboratory facilities simply test the product from the manufactures to verify it meets state law/OHA standards before distribution to a licensed service center. There is no manufacturing or administration of psilocybin at these laboratories, therefore, they would not be subject to prohibition or Time, Place, Manner (TPM) ordinances. Laboratories would be permitted as a commercial use based on the city’s development code. Even with the current two-year moratorium, laboratories would be permissible in the city. To date, the city has received no inquiries to operate a laboratory.

Manufacturers – There are three different types of manufacturer “endorsements” associated with a license. Endorsements are the type of manufacturing process for psilocybin:

1. Fungi cultivation – growing of the psychedelic mushrooms
2. Psilocybin extraction – process of extracting the psychotropic chemical psilocin from the organic state
3. Edible psilocybin – the manufacturing of food products, tinctures, oral supplements, etc. from the cultivated fungi or the extracted psilocin.

Manufacturing facilities may hold multiple endorsements to produce the different forms of psilocybin. OHA has established rules specific for manufacturing facilities, specifically:

1. A maximum of 200 grams of psilocybin analyte may be stored on site at one time.
2. Manufacturers may only distribute to licensed Service Centers.
3. Detailed logs on the product produced, stored on-site, out to laboratories for testing, and distributed to Service Centers shall be maintained and reported to OHA.

4. Manufacturers must meet cultivation, extraction rules as established by OHA to ensure the product is grown without use of chemicals or pesticides that would impact the chemical composition of the product and that the extracted materials are not laced with anything to alter the affects of the product. For manufacturers with edible endorsements, the manufacturer must follow food and safety regulations through OHA and the Oregon Department of Agriculture.
5. Psilocybin cannot be adulterated, meaning altered to affect potency. Manufacturers may not add to psilocybin products any chemical, drug, plant or substance that has the effect of altering potency, intoxicating effect, duration of effect, toxicity or potential for excessive use, including beverage alcohol or cannabis.
6. A manufacturer of edible psilocybin may not engage in processing in an area that is operating as a restaurant, share a food establishment where psilocybin is produced, or process food intended for commercial sale that does not contain psilocybin.

Service Centers – Licensed Service Centers are the only legal facilities authorized to administer psilocybin to a consumer in the State. The Service Center has requirements for where it could be located, how the facility should be operated, security measures, reporting requirements, and safety protocols and procedures.

To administer psilocybin, it must be through a licensed facilitator, and must be administered on-site at a Service Center; psilocybin may not be sold to a consumer and taken off premise to be consumed elsewhere. To be licensed, the facilitator must participate in OHA required training, including 120 hours of coursework and pass a test on the materials. The test can be administered online and can be taken an unlimited number of times with no waiting period between test taking. Coursework hours can be reduced by OHA based on the applicant's education, work history and experience.

Service Centers are allowed to hold group administration sessions, and may also provide outdoor sessions, within a secured outdoor area on the facility premises. In addition, per the OARs for Service Centers, "Service centers must ensure that clients and facilitators are able to exit the client administration area as needed. Service centers may not lock client administration areas from the outside, nor take any other actions that prevent individuals within the client administration from exiting."

Every client is required participate in a preparation session prior to the commencement of the client's first administration session with the facilitator. This preparation session includes completion of a Safety and Support Plan, identifying emergency contact, and a narrative of client support concerns and plan of action to address those concerns as they may come up during a session. The client shall also provide a Safe Transportation Plan to identify how the client will access safe transportation after completing an administration session. Safe transportation does not include a client operating a motor vehicle, bicycle, or other form of self-operated transportation directly after their administration session. If a client is unable to follow their transportation plan, a facilitator must make reasonable efforts to arrange for alternative

transportation. If facilitators are unable to resolve safety issues caused by a client's failure to follow their transportation plan, facilitators must contact appropriate emergency services.

Licensed Premises Location Requirements – per the OARs, a licensed premises:

1. May not be located on state or federally owned land
2. The interior and exterior areas of a licensed premises may not overlap with:
 - a. An area that is licensed with an adult-use cannabis license
 - b. An area that is licensed with a medical marijuana grow site, processing site, or dispensary
 - c. An area that is licensed for on-site or off-site liquor sales
 - d. A health care facility
 - e. An area operating as a restaurant
 - f. A residence
3. The licensed premises of a Service Center may not be located within 1,000 feet of:
 - a. A public elementary or secondary school
 - b. A private or parochial or secondary school
 - c. An area zoned exclusively for residential use within city limits

Security Requirements – State OARs require specific security measures for all facilities handling psilocybin, including generally:

1. Establish limited access areas where the psilocybin is stored/manufactured. Any person with access to the limited access area is subject to a workers permit and background check.
2. All facilities require a security alarm system, that would be able to detect unauthorized entry, notify licensee when unauthorized entry is detected, have at least two panic buttons located inside the facility linked to the alarm system that would immediately notify a security company or law enforcement.
3. Video surveillance of the premises is required, with the video recordings available for review by state, local jurisdiction, or law enforcement. The state stipulates specifically where cameras are to be placed, including all entry/exit points, and all areas where psilocybin is stored.
4. Distinct product tracking requirements to ensure each batch of product is accounted for through the entire life cycle of the product from cultivation, processing, storage, transport, service center acceptance, administration, and waste.

Taxation – 15% Oregon Psilocybin Tax on the sales price of psilocybin products only and paid by clients in a licensed service center. No additional tax allowed by local municipalities.

Fire District Review – The Fire District was requested to evaluate the different psilocybin facilities and determine any concerns. An email response has been provided and attached for the record. Generally, the Fire District identified that service centers appeared to be well regulated, and there was not a specific concern related to Fire District regulations. Annual inspections of each commercial facility would be required.

For manufacturing facilities there are stated concerns related to the extraction process, with the chemicals uses under heat and pressure. The Fire District would request Council to consider not authorizing manufacturer facilities, though it is recognized that State law does allow for the manufacturing process and that it is highly regulated.

Police Department Review – The police department reached out to a few of the cities with permitted service centers to determine whether any issues have occurred since facility operations began. Most facilities only initiated operations this summer, and to date, no issues have arisen, but there is also a small operating window to evaluate. It was identified that if Service Centers were to be permitted, that strong relationships between the operators and the police department would be needed to ensure open communication and swift response if issues arise.

Options Before Council – The voter approved moratorium ends on November 8, 2024. Prior to the end of the moratorium, action would need to be taken, or psilocybin facilities would be permitted in the city, by-right, subject to OAR rules. Some actions would require voter approval. Included below are options to consider and key dates and timelines for required action based on each option:

- Do Nothing – If it's determined the State rules are sufficient to address operations and siting concerns, Council could choose to take no further action, let the moratorium lapse, then as of November 8, 2024, psilocybin manufacturing and service center facilities would be permitted in the City based on the state OARs (no action)
- Opt-Out – Prohibit both types of facilities (voter referral)
- Partial Opt-Out – Prohibit one type of facility, adopt Time, Place and Manner (TPM) for other (voter referral)
- TPM for both facilities (council action)
- Refer Opt-Out to the voters for consideration, but direct staff to prepare a TPM ordinance in preparation for possible vote to allow facilities in city

Election Calendar for voter referral – must be general election November 5, 2024

- July 10, 2024 City Council Meeting – Council Direct City Attorney to draft an ordinance and ballot title. City Attorney would draft ordinance and ballot title and provide to City Recorder so a Notice of Ballot Title could be prepared and published for the ballot title challenge period.
- August 14, 2024 City Council Meeting – The Council would consider a vote on the ordinance and refer the issue to the voters by resolution.
- August 16, 2024 – City Recorder will file referral text or prepared ballot title with Linn County.
- September 5, 2024 – Last day for Secretary of State and city election official to file ballot statement.
- November 5, 2024 – General Election

Time, Place, and Manner Ordinance Calendar – must be effective prior to November 8, 2024

- Council provides guidance on any specific issues to address with TPM ordinance

- Staff to work with Planning Commission on ordinance language
- Planning Commission public hearing on ordinance – August 21, 2024
- City Council public hearing on ordinance – September 11, 2024
- Ordinance effective 30-days after date of adoption – October 11, 2024

III. RECOMMENDED ACTION

There are five options before council for consideration. It is recommended that Council consider each option and provide staff direction on which to move forward with, identify an alternative, or have staff come back with additional alternatives.