

LEGAL MEMORANDUM

TO: St. Helens Mayor and City Councilors

FROM: Edward H. Trompke, City Attorney's Office

DATE: June 30, 2022

RE: Memo-Measure 109-Psilocybin
File No. 49698-36130

Measure 109: Psilocybin was legalized for mental health purposes, ostensibly a medical treatment and not a recreational use, by Measure 109 in 2020. However, use is not restricted to medically necessary use. While the drug may be administered by licensed facilitators, no medical or college education beyond high school and a training program may be required. Most regulation is exclusively under state control, but a few matters are left to cities and counties.

State control: The Oregon Health Authority is charged with overseeing four types of licensing, including manufacturing (growers and refiners), testing labs, service centers where people take the drug, as well as facilitators, who are personnel working for service centers.

Local control: Regulation of hours and zoning regulation may be imposed at any time by council. A city or county may prohibit licensees from operating within the city or county, but only if approved by the voters in an election held in November of an even-numbered year. To be effective in 2023, any prohibition must be placed on the ballot by Council or by citizen initiative this summer (August 10, 2022).

Overview of the law: Beginning in January 2023, the Oregon Health Authority will license applicants to produce the drug in controlled, indoor facilities. Testing labs will also be licensed. Zoning can restrict these activities to industrial or commercial zones, depending on the code definitions. Service centers will also be licensed (within described boundaries) but not in residences nor areas zoned exclusively residential. Facilitators will be licensed after passing tests, also beginning in January 2023. Licenses for all types are required. A presentation of the Oregon Health Authority is attached.

Use of the drug is still unlawful under federal law, but discussions are taking place, as with marijuana.

Taxation: The state taxes the drug at 15% of sales price, and local taxes are prohibited.

Discussion topic: Does the City want to either prohibit (permanently or for a term of years to see how the operations work elsewhere), or regulate by restricting production or service centers to certain zones? If prohibition is desired, League of Oregon Cities has a template document to refer to the voters for both prohibition and a two year moratorium on licensed facilities.

**Local Government Partners Webinar
Introduction to The Oregon Psilocybin Services Act**

**Angie Allbee, Section Manager
Jesse Sweet, Policy Analyst
Jennifer Violette, Licensing Program Manager
Gil Garrott, Compliance Program Manager
Oregon Psilocybin Services**

June 17, 2022



PUBLIC HEALTH DIVISION
Oregon Psilocybin Services

Oregon Psilocybin Services Section

Oregon Psilocybin Services is a new section housed within the Oregon Health Authority Public Health Division's Center for Health Protection.

The OPS team has been designed around three program areas:

- **Policy and Engagement**
- **Licensing**
 - **Local Government and Law Enforcement Liaison position**
- **Compliance**

Each program will center on health equity, including outreach to partners and communities and working to ensure access to services.

Ballot Measure 109: The Oregon Psilocybin Services Act

In November of 2020, Ballot Measure 109, the Oregon Psilocybin Services Act was passed by voters in Oregon. The ballot measure is now codified as ORS 475A.

M109 created a license and regulatory framework for production of psilocybin and facilitation of psilocybin services for adults 21 years of age and older and created the Oregon Psilocybin Advisory Board that makes recommendations to OHA.

M109 does not:

- Create a consumer market for psilocybin
- Allow for export or import of psilocybin
- Allow licensees to interact with unregulated markets

License Types

Manufacturer License

- Cultivates fungi and manufactures psilocybin products
- Cannot cultivate outdoors
- Premise must have defined boundaries
- Cannot exceed production quantities established in rule
- Product tracking system required to track manufacturing, sale and transfer of psilocybin products to prevent diversion, ensure accurate accounting, ensure accurate reporting of lab testing results

Laboratory License

- All psilocybin products must be tested by a licensed lab prior to sale.
- Labs must be accredited by the Oregon Environmental Laboratory Accreditation Program
- Testing results must be entered in the product tracking system

License Types (cont'd)

Facilitator License

- Supervises sessions where clients consume psilocybin.
- Must complete **OHA approved training program** as a condition of licensure.
- Must pass exam approved or administered by OHA

Service Center License

- Cannot be located within 1000 feet of a school
- Must have defined boundaries
- Transfers psilocybin products to client for use during administration session

Psilocybin Services

Psilocybin will only be administered to persons 21 years or older in licensed service center settings under the supervision of trained and licensed facilitators.

Psilocybin Services may include:

- Preparation Session
- Administration Session
- Integration Session (optional)

Product tracking system required to track manufacturing, sale and transfer of psilocybin products to:

- Prevent diversion
- Ensure accurate accounting
- Ensure accurate reporting of lab testing results

Local Government Issues

Local Government Opt-Out:

- Local governments (cities and counties) may adopt ordinances that prohibit Manufacturers and Service Centers
- Ordinances must be referred to voters at the next general election

Local Government Time Place and Manner Regulations

- Local governments may adopt reasonable regulations on hours, location, and operation of licenses

Land Use Compatibility Statements (LUCS)

- Applicants for Service Center and Manufacturer licenses are required to request a LUCS from their local government before submitting a license application

Site Requirements

Service Centers:

- GIS mapping tool for school proximity
- Cannot be located on public land; must have defined boundaries
- Cannot be located within a residence
- Cannot be located in an area within city limits that is zoned exclusively for residential use

Manufacturers:

- Cannot be located on public land; must have defined boundaries
- Outdoor cultivation is prohibited
- Landlord must consent to use

TPM:

- OPS will not track local time place and manner regulations

PUBLIC HEALTH DIVISION
Oregon Psilocybin Services



License and Application Fees, Taxes

License and Application Fees

- License and application fees will be set in rule later this year
- Oregon Psilocybin Services will be a fee-based program and fees must cover the costs associated with the agency's work

Taxes

- Service Centers collect a 15% tax on the sale of psilocybin products payable to Oregon Department of Revenue
- Local taxes and fees are prohibited
- Psilocybin services are not taxed

OHA Key Dates

- **November 24, 2021:** Preliminary recommendations from OPAB
- **December 2021:** Public Listening Sessions
- **January 1, 2022:** Community Interest Survey
- **May 13, 2022:** Effective Date for Expedited Rules.
- **June 1, 2022:** OHA begins accepting applications for training programs
- **June 30, 2022:** Recommendations for Remaining Rules
- **July 2022:** Public Listening Sessions
- **September 2022:** RAC for Remaining Rules
- **November 1-21, 2022:** Public Comment for Remaining Rules
- **December 30, 2022:** Effective Date for Remaining Rules
- **January 2, 2023:** OHA begins accepting applications for licensure

Thank You!

Please visit our website:

<https://www.oregon.gov/psilocybin>

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