

Memo

To: Cottage Grove City Council

From: City Attorney, Carrie Connelly

Date: July 6, 2022

Re: Measure 109 and Local Options

The purpose of this memorandum is to provide the City with possible options related to the prohibition, allowance, and regulation of psilocybin after passage of Measure 109 (2020) - now codified in ORS Chapter 475A.

Measure 109, passed by Oregon voters in 2020, allows the manufacture and use of psilocybin (a naturally occurring psychedelic compound produced by fungi) within the state. Oregon is the first state in the United States to allow the use and manufacture of psilocybin. The measure was drafted by the same authors of the cannabis bills, so you'll notice some similarities. Measure 109 effectively permits the use and manufacture of psilocybin in all cities and counties in Oregon. The following options are presented for the Council's consideration and not listed in any specific or preferred order.

OPTION 1: As authorized by ORS 475A.718, the City Council could consider adopting an ordinance to be referred to the voters that would prohibit or allow any one or more of the following:

- Licensed psilocybin product manufacturers
- Licensed psilocybin service center operators

As mentioned above, Measure 109 allows psilocybin in all Oregon cities and counties. To opt out completely or partially, the City will need to refer an ordinance to the voters at November's general election. For a partial ban, the City could choose to allow manufacturing but prohibit service centers. Alternatively, as exemplified in the LOC materials, the City could ban both such facilities, but only for two years.

To opt out, the Council would need to pass an ordinance, such as the one provided in the packet, followed by a resolution directing the issue to be put on the ballot. The ordinance would go into effect after the election, if supported by the majority of voters. This is similar to how some Oregon cities proceeded for cannabis related regulations. As things stand

now, the Council could opt out at any general election. In other words, if the Council decides to do nothing this time and later psilocybin becomes an issue, the Council could then refer an ordinance to the voters at the next approaching general election.

Obviously, since this option is tied to the general election, there are some deadlines to keep in mind.

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| August 19: | Ballot Title due for publication of notice |
| September 8: | SEL 802 Notice of Measure Election |
| September 12: | Explanatory statement for Voters' Pamphlet due |

OPTION 2: As authorized by ORS 475A.530, the Council could instead consider and adopt time, place and manner regulations. That statute states:

475A.530 Local time, place and manner regulations. (1) For purposes of this section, "reasonable regulations" includes:

(a) Reasonable conditions on the manner in which a psilocybin product manufacturer that holds a license issued under ORS 475A.290 may manufacture psilocybin products;

(b) Reasonable conditions on the manner in which a psilocybin service center operator that holds a license issued under ORS 475A.305 may provide psilocybin services;

(c) Reasonable limitations on the hours during which a premises for which a license has been issued under ORS 475A.210 to 475A.722 may operate;

(d) Reasonable requirements related to the public's access to a premises for which a license has been issued under ORS 475A.210 to 475A.722; and

(e) Reasonable limitations on where a premises for which a license may be issued under ORS 475A.210 to 475A.722 may be located.

(2) Notwithstanding ORS 30.935, 215.253 (1) or 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under ORS 475A.210 to 475A.722 if the premises are located in the area subject to the jurisdiction of the city or county, *except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under ORS 475A.305 from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under ORS 475A.305.* (Emphasis supplied.)

Time, place and manner regulations do not need to go to the voters and are very similar to time, place, and manner regulations for cannabis. Under this option, psilocybin would be

allowed subject to the City's existing zoning, building, and development codes, plus any new time, place, and manner regulations.

As a slight alternative, Council could decide to allow one of the uses (centers or manufacture) and put that ordinance before the voters and also adopt time, place, and manner regulations for the psilocybin use the City (and voters) choose to allow.

OPTION 3: Take no action.

The City is not required to do anything, if it chooses not to. This option would allow the facilities to be located wherever the use is compatible with the zoning district and other applicable code that is already in place.

No one knows how quickly psilocybin will “take off” in Oregon or your community. This third option allows a wait and see approach. Psilocybin will be different from cannabis in that the service center operators are predicted to be more like medical clinics and the operators will need to be licensed and have undergone some Oregon Health Authority training. (OHA has yet to issue its accompanying regulations.) Communities may have a couple of years before OHA licenses many facilities. The program may become much clearer before many facilities open.

NEXT STEPS:

1. Decide whether to adopt the attached prohibition ordinance, whether in the form provided or modified, followed by the referral resolution that references that ordinance.
2. Consider Additional/Alternative Time Place and Manner restrictions.
3. Regardless of which option the Council chooses to pursue, we recommend that staff review the City's existing zoning districts to determine where “psilocybin product manufacturers” and “psilocybin service centers” might be permitted. The relevant definitions in statute (ORS 475A.220) are as follows:

“Manufacture” means 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.

“Psilocybin products” means:

(A) Psilocybin-producing fungi; and

(B) Mixtures or substances containing a detectable amount of psilocybin.

“Psilocybin products” does not include psilocybin services.

“Psilocybin service center” means an establishment:

- (a) At which administration sessions are held; and
- (b) At which other psilocybin services may be provided.

“Psilocybin services” means services provided to a client before, during, and after the client’s consumption of a psilocybin product, including:

- (a) A preparation session;
- (b) An administration session; and
- (c) An integration session.

“Integration session” means a meeting between a client and a psilocybin service facilitator that may occur after the client completes an administration session.

“Administration session” means 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.

“Preparation session” means a meeting between a client and a psilocybin service facilitator that must occur before the client participates in an administration session.

After Measure 109 passed in 2020, the Oregon Psilocybin Advisory Board was formed and tasked with developing recommendations to the Oregon Health Authority for program development. Some of those details are still being developed. Here is the state website for that program development:

<https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Pages/Oregon-Psilocybin-Services.aspx>

As you will see, OHA has quite a bit of work to do before January 1, 2023.

Additional Notes

- ORS 475A.527 provides that local governments are prohibited from requiring a license for the manufacturing or sale of psilocybin products, or for the provision of psilocybin services.

- ORS 475A.534 provides that local governments are prohibited from adopting or enacting an ordinance imposing a fee or tax on the manufacturing, sale, or provision of psilocybin services.
- Like cannabis, OHA will require a land use compatibility statement from local jurisdictions (ORS 475A.270).

Thank you for the opportunity to provide this information. Please let me know if I can help answer any additional questions or help modify or draft additional documents based on the Council's decision on next steps.