



# Staff Report

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**Meeting Date:** July 18, 2022  
**From:** Jeff Aprati, City Recorder  
**SUBJECT:** Measure 109 Regulation Options

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## **DECISION TO BE MADE:**

Whether and how to pursue restrictions on licensed psilocybin facilities within city limits.

## **BACKGROUND / CONTEXT:**

On June 29th, staff received an email from Beery, Elsner, and Hammond concerning Ballot Measure 109 which passed in 2020 and legalized psilocybin (mushrooms). Cities have limited time to take action if they wish to enact regulations before the Oregon Health Authority (OHA) begins issuing facility licenses.

Ballot Measure 109, known as the Oregon Psilocybin Service Act (codified at [ORS 475A](#)), allows for the manufacture, delivery and administration of psilocybin (mushrooms) at licensed facilities. The Oregon Health Authority (OHA) has begun the rulemaking process to implement Measure 109 and will begin accepting applications for psilocybin licenses **in January 2023**. This means local governments need to begin thinking about whether and to what extent they want to impose regulations on these types of facilities soon.

The Measure 109 program for psilocybin was modeled after the state's marijuana program. As with the marijuana program, there are different types of licenses that OHA will issue under the state's psilocybin program—manufacturer (production), laboratory (testing), facilitator (server), and service center licenses (location where provided and taken). A summary presentation from OHA is attached to this staff report for reference.

Several options exist for the City in reaction to this new state law:

- **Option 1:** Impose prohibitions on licensed psilocybin facilities being located within city limits, either permanently or for a limited duration
- **Option 2:** Impose time, place and manner restrictions on such facilities under the Development Code
- **Option 3:** Take no action and let the state law apply as written. Under the law, applicants for licenses must still obtain a land use compatibility statement from the city stating that the proposed facility is consistent with the local government's comprehensive plan and land use regulations.

## KEY CONSIDERATIONS / ANALYSIS:

### **Option 1**

Sandy can impose prohibitions on psilocybin manufacturing and service center facilities within city limits. (Importantly, state law already prohibits locating a service center within residential zones of an incorporated city).

A local prohibition can be permanent, or for a limited duration.

As with marijuana prohibitions, however, **local psilocybin prohibitions must be approved by the voters during a statewide general election**. Thus, if the Council wants to propose a prohibition to the voters, it must do so for this November's election or it will need to wait until the November 2024 election to do so. **The deadline to refer a measure to the November 2022 ballot is August 18th**.

The League of Oregon Cities (LOC) has developed a [model ordinance](#) that can be adopted by cities and referred to the voters. If the Council chooses this option, staff would bring the model ordinance (also attached to this staff report for reference) for the Council's consideration at the August 1st meeting.

### **Option 2**

Instead of a prohibition, the Council may impose time, place, and manner restrictions on such facilities. Often, such regulations are included as part of a local jurisdiction's development code, and amendments to such codes can require a somewhat lengthy process, as they typically include providing notice to the State as well as hearings before the Planning Commission and Council. Thus, time would be of the essence if the Council wishes to pursue this option.

Of note, state law already prohibits the manufacturing of psilocybin products outdoors as well as prohibits locating a service center within 1,000 feet of a school. As noted above, service centers are also already prohibited within a residential zone of an incorporated city.

## RECOMMENDATION:

Provide direction to staff on whether the Council wishes to pursue limitations on licensed psilocybin facilities; and if so, which of the possible options is preferred by the Council.

### **Options Summary:**

- **Option 1:**

- Option 1A: Refer permanent ban ordinance to the voters
- Option 1B: Refer limited duration moratorium ordinance to the voters
- **Option 2**: enact time, place, and manner restrictions through the Development Code amendment process
- **Option 3**: take no action and let the state law apply as written

**LIST OF ATTACHMENTS/EXHIBITS:**

- Initial email notice from Beery, Elsner, and Hammond
- LOC model ordinances and ballot language (permanent ban and moratorium options)
- "Introduction to Psilocybin Services" presentation from the Oregon Health Authority (OHA) for local governments



Jeff Aprati &lt;japrati@ci.sandy.or.us&gt;

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## Local Governments & Psilocybin Regulations in Oregon

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To: japrati@ci.sandy.or.us

Wed, Jun 29, 2022 at 11:51 AM

[View this email in your browser](#)



In November 2020, Oregon voters approved Ballot Measure 109, known as the Oregon Psilocybin Service Act (codified at ORS 475A), which allows for the manufacture, delivery and administration of psilocybin (mushrooms) at licensed facilities. The Oregon Health Authority (OHA) has begun the rulemaking process to implement Measure 109 and will begin accepting applications for psilocybin licenses in January 2023. This means local governments need to begin thinking about whether and to what extent they want to impose regulations on these types of facilities soon.

The Measure 109 program for psilocybin was modeled after the state's marijuana program. As with the marijuana program, there are different types of licenses that OHA will issue under the state's psilocybin program—manufacturer (production), laboratory (testing), facilitator (server), and service center licenses (location where provided and taken). Also, like the marijuana program, local governments may be involved in this process in three ways:

(1) by imposing prohibitions on all or some of the types of licensed facilities being located within their jurisdictions; (2) by imposing time, place and manner restrictions on such facilities; and (3) by considering a land use compatibility statement (LUCS) that any such facility must acquire before it can obtain a license from OHA.

Accordingly, local governments should consider a few regulatory issues this summer so they are prepared when OHA begins to accept applications for licenses in January 2023:

- Local governments may impose prohibitions on psilocybin manufacturing and service center facilities within their jurisdictions. Importantly, state law already prohibits locating a service center within residential zones of an incorporated city. A local prohibition can be permanent or for a limited duration. As with marijuana prohibitions, however, local psilocybin prohibitions must be approved by the voters during a statewide general election. Thus, if a local government wants to propose a prohibition to the voters, it must do so for this November's election or it will need to wait until the November 2024 election to do so. The deadline to refer a measure to this November's ballot is August 18.
- Instead of a prohibition, local governments may impose time, place and manner restrictions on such facilities. Often, such regulations are included as part of a local jurisdiction's development code, and amendments to such codes can require a somewhat lengthy process, as they typically include providing notice to the state as well as hearings before the local planning commission and governing body. Thus, local governments wishing to impose time, place or manner restrictions on these types of facilities should begin the process this summer. Of note, state law already prohibits the manufacturing of psilocybin products outdoors as well as prohibits locating a service center within 1,000 feet of a school. As noted above, service centers are also already prohibited within a residential zone of an incorporated city. Whether additional regulations are necessary is a decision each jurisdiction should make locally.

Some issues local jurisdictions will not need to consider are local licensing requirements, as well as local taxes, because Measure 109 preempted local ordinances on both. The League of Oregon Cities (LOC) has produced [model ordinances](#) to be referred to the voters to prohibit the location of psilocybin facilities within a jurisdiction. In addition, LOC has made available a [presentation](#) about psilocybin from OHA for local governments. Our office, of

course, remains available to assist your jurisdiction with these issues as needed.

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MODEL



# Model Psilocybin Ordinance & Ballot Measure

JUNE 2022

Cities and counties that desire to prohibit the establishment of psilocybin-related businesses may do so by referral at a statewide general election, meaning an election in November of an even-numbered year. Cities and counties should consult the secretary of state’s referral manual and work with the city recorder, elections official, or similar official to determine the procedures necessary to refer an ordinance to the voters.

Once the governing body of a city or county adopts an ordinance, its city or county must submit the ordinance to the Oregon Health Authority (OHA). The OHA will then stop registering and licensing the prohibited businesses until the next statewide general election, when the voters will decide whether to approve or reject the ordinance. In other words, the governing body’s adoption of an ordinance acts as a moratorium on new psilocybin-related businesses until the election.

In addition, it is important to note that once election officials file the referral with the county election office, the ballot measure is certified to the ballot. At that point, the restrictions on public employees engaging in political activity will apply. Consequently, cities should consult the secretary of state’s manual *Restrictions on Political Campaigning by Public Employees* and their city attorney to ensure that public employees are complying with state elections law in their communications about the pending measure. The model ordinances and ballot measures below contain two versions. The first is a permanent ban of psilocybin-related businesses until the ordinance is repealed and the second acts as a two-year moratorium.

.....

**This document is not a substitute for legal advice.** City and county councils considering prohibiting psilocybin-related activities should not rely solely on this sample. Any city or county council considering any form of regulation of psilocybin should consult with its city or county attorney regarding the advantages, disadvantages, risks and limitations of any given approach.

Legal counsel can also assist a city or county in preparing an ordinance that is consistent with local procedures, existing ordinances and charter, and advise on what process is needed to adopt the ordinance. The sample provided is intended to be a starting point, not an end point, for any jurisdiction considering prohibiting psilocybin-related activities.



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# PERMANENT BAN

.....

ORDINANCE NO. \_\_\_\_\_

## AN ORDINANCE DECLARING A BAN ON PSILOCYBIN SERVICE CENTERS AND THE MANUFACTURE OF PSILOCYBIN PRODUCTS

**WHEREAS**, in November 2020, Oregon voters approved Ballot Measure 109, known as the Oregon Psilocybin Service Act (codified at ORS 475A), which allows for the manufacture, delivery and administration of psilocybin at licensed facilities; and

**WHEREAS**, ORS 475A.235 provides that the Oregon Health Authority will regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products and the provision of psilocybin services in the state; and

**WHEREAS**, the Oregon Health Authority has initiated a rulemaking process to implement the state’s psilocybin regulatory program and intends to begin accepting applications for psilocybin-related licenses on January 2, 2023; and

**WHEREAS**, as of June {date}, 2022, the Oregon Health Authority has not completed the rulemaking process for implementing the state’s psilocybin regulatory program, and the City of {city} is uncertain how the manufacture, delivery and administration of psilocybin at licensed psilocybin facilities will operate within the city; and

**WHEREAS**, ORS 475A.718 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of state licensed psilocybin product manufacturers and/or psilocybin service centers in the area subject to the jurisdiction of the city; and

**WHEREAS**, the {city} City Council believes that prohibiting psilocybin product manufacturers and psilocybin service centers within the city’s jurisdictional boundaries to enable the adoption of the state’s psilocybin licensing and regulatory program and to allow the city to adopt reasonable time, place, and manner regulations on the operation of psilocybin facilities is in the best interest of the health, safety and welfare of the people of {city}; and

**WHEREAS**, the City Council seeks to refer to the voters of {city} the question of whether to establish a ban on state-licensed psilocybin product manufacturers and psilocybin service centers within the city’s jurisdictional boundaries.

Now, therefore,

**THE CITY OF {CITY} ORDAINS AS FOLLOWS:**

**Section 1. Prohibition.**

The establishment of psilocybin product manufacturers licensed under ORS 275A.290 and psilocybin service centers licensed under ORS 475A.305 is prohibited in the City of {city}.

**Section 2. Referral.**

This ordinance is referred to the electors of the city of {city} for approval at the next statewide general election on November 8, 2022.

**Section 3. Effective Date.**

This ordinance takes effect and becomes operative 30 days after the day on which it is approved by a majority of voters.

First reading this \_\_\_\_ day of \_\_\_\_\_, 2022.

Second reading and passage by this Council this \_\_\_\_ day of \_\_\_\_\_, 2022.

Signed by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

SIGNED:

\_\_\_\_\_  
{NAME}, City Recorder

\_\_\_\_\_  
{NAME}, Mayor

BALLOT TITLE

A caption which reasonably identifies the subject of the measure.  
*10-word limit under ORS 250.035(1)(a)*

Prohibits psilocybin-related businesses within {city}. [Prohibition sunsets after two years.]

QUESTION

A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure.  
*20-word limit under ORS 250.035(1)(b)*

Shall {city or county} prohibit {psilocybin-related businesses} in {city or county}?

SUMMARY

A concise and impartial statement summarizing the measure and its major effect.  
*175-word limit under ORS 250.035(1)(c)*

State law allows operation manufacturer, distribution and possession of psilocybin and psilocin. State law provides that a {city or county} council may adopt an ordinance to be referred to the voters to prohibit the establishment of any of those registered or licensed activities.

Approval of this measure would prohibit the establishment of {psilocybin project manufacturers} and/or {psilocybin service center operators} within the area {subject to the jurisdiction of the city} or {in the unincorporated area subject to the jurisdiction of the county.}

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EXPLANATORY STATEMENT

An impartial, simple and understandable statement explaining the measure and its effect for use in the county voters' pamphlet.

*500-word limit under ORS 251.345 and OAR 165-022-0040(3)*

Approval of this measure would prohibit the establishment {and operation} of psilocybin-related businesses within the {city or county}.

A {city or county} council may adopt an ordinance prohibiting the establishment of psilocybin related businesses within the {city or county}, but the council must refer the ordinance to the voters at a statewide general election. The {CITY or COUNTY} OF {NAME} {city or county} council has adopted an ordinance prohibiting the establishment of psilocybin-related businesses within the {city or county} and, as a result, has referred this measure to the voters.

If approved, this measure would prohibit psilocybin-related businesses within the {city or county}.

# TWO-YEAR MORATORIUM



ORDINANCE NO. \_\_\_\_\_

## AN ORDINANCE DECLARING A TEMPORARY BAN ON PSILOCYBIN SERVICE CENTERS AND THE MANUFACTURE OF PSILOCYBIN PRODUCTS

**WHEREAS**, in November 2020, Oregon voters approved Ballot Measure 109, known as the Oregon Psilocybin Service Act (codified at ORS 475A), which allows for the manufacture, delivery and administration of psilocybin at licensed facilities; and

**WHEREAS**, ORS 475A.235 provides that the Oregon Health Authority will regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products and the provision of psilocybin services in the state; and

**WHEREAS**, the Oregon Health Authority has initiated a rulemaking process to implement the state’s psilocybin regulatory program and intends to begin accepting applications for psilocybin-related licenses on January 2, 2023; and

**WHEREAS**, as of June {date}, 2022, the Oregon Health Authority has not completed the rulemaking process for implementing the state’s psilocybin regulatory program, and the City of {city} is uncertain how the manufacture, delivery and administration of psilocybin at licensed psilocybin facilities will operate within the city; and

**WHEREAS**, ORS 475A.718 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of state licensed psilocybin product manufacturers and/or psilocybin service centers in the area subject to the jurisdiction of the city; and

**WHEREAS**, the {city} City Council believes that prohibiting psilocybin product manufacturers and psilocybin service centers within the city’s jurisdictional boundaries to enable the adoption of the state’s psilocybin licensing and regulatory program and to allow the city to adopt reasonable time, place, and manner regulations on the operation of psilocybin facilities is in the best interest of the health, safety and welfare of the people of {city}; and

**WHEREAS**, the City Council seeks to refer to the voters of {city} the question of whether to establish a two-year temporary ban on state-licensed psilocybin product manufacturers and psilocybin service centers within the city’s jurisdictional boundaries.

Now, therefore,

### THE CITY OF {CITY} ORDAINS AS FOLLOWS:

#### Section 1. Prohibition.

The establishment of psilocybin product manufacturers licensed under ORS 275A.290 and psilocybin service centers licensed under ORS 475A.305 is prohibited in the city of {city}.

**Section 2. Referral.**

This ordinance is referred to the electors of the city of {city} for approval at the next statewide general election on November 8, 2022.

**Section 3. Effective Date.**

This ordinance takes effect and becomes operative 30 days after the day on which it is approved by a majority of voters.

**Section 4. Sunset.**

This ordinance is repealed on December 31, 2024.

First reading this \_\_\_\_ day of \_\_\_\_\_, 2022.

Second reading and passage by this Council this \_\_\_\_ day of \_\_\_\_\_, 2022.

Signed by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

SIGNED:

\_\_\_\_\_  
{NAME}, City Recorder

\_\_\_\_\_  
{NAME}, Mayor

BALLOT TITLE

A caption which reasonably identifies the subject of the measure.  
*10-word limit under ORS 250.035(1)(a)*

Prohibits psilocybin-related businesses within {city}. [Prohibition sunsets after two years.]

QUESTION

A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure.  
*20-word limit under ORS 250.035(1)(b)*

Shall {city or county} prohibit {psilocybin-related businesses} in {city or county}?

SUMMARY

A concise and impartial statement summarizing the measure and its major effect.  
*175-word limit under ORS 250.035(1)(c)*

State law allows operation manufacturer, distribution and possession of psilocybin and psilocin. State law provides that a {city or county} council may adopt an ordinance to be referred to the voters to prohibit the establishment of any of those registered or licensed activities.

Approval of this measure would prohibit the establishment of {psilocybin project manufacturers} and/or {psilocybin service center operators} within the area {subject to the jurisdiction of the city} or {in the unincorporated area subject to the jurisdiction of the county.}

\*\*\*\*\*

EXPLANATORY STATEMENT

An impartial, simple and understandable statement explaining the measure and its effect for use in the county voters’ pamphlet.

*500-word limit under ORS 251.345 and OAR 165-022-0040(3)*

Approval of this measure would prohibit the establishment {and operation} of psilocybin-related businesses within the {city or county}.

A {city or county} council may adopt an ordinance prohibiting the establishment of psilocybin related businesses within the {city or county}, but the council must refer the ordinance to the voters at a statewide general election. The {CITY or COUNTY} OF {NAME} {city or county} council has adopted an ordinance prohibiting the establishment of psilocybin-related businesses within the {city or county} and, as a result, has referred this measure to the voters.

If approved, this measure would prohibit psilocybin-related businesses within the {city or county} until December 31, 2024.

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**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

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# 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

# 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 psilocibin 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>