

AGENDA ITEM FOR ADMINISTRATIVE MEETING () Discussion only
(X) Action

FROM (DEPT/ DIVISION): Planning Department

SUBJECT: Ballot Measure 109 (Psilocybin Facilities)

<p>Background: Ballot Measure 109 (BM 109) authorizes the manufacture and use of Psilocybin products under controlled supervision and establishes the regulatory framework for oversight and administration. BM 109 is codified in ORS Chapter 475A which is patterned after the current marijuana statutes and regulatory system. ORS 475A goes into effect on January 1, 2023.</p> <p>Unlike the marijuana legislation, all jurisdictions are treated as having “opted-in” to the psilocybin regulations, unless the Board refers the matter to the voters at the next general election and the voters elect to “opt-out”.</p>	<p>Requested Action: Discuss if the Board of County Commissioners should start the process to opt-out of BM 109.</p>
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ATTACHMENTS: Planning Department Memo and OHA Q&A Document

Date: (06/27/22) Submitted By: Robert Waldher, Director

*****For Internal Use Only*****

Checkoffs:

- () Dept. Head (copy)
- () Human Resources (copy)
- () Fiscal
- () Legal (copy)
- () (Other - List:)

To be notified of Meeting:
Robert Waldher

Needed at Meeting:

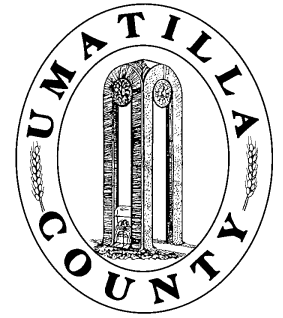
Scheduled for meeting on: June 29, 2022

Action taken:

Follow-up:

Umatilla County

Department of Land Use Planning



DIRECTOR
ROBERT WALDHER

MEMO

LAND USE
PLANNING,
ZONING AND
PERMITTING

TO: Umatilla County Board of Commissioners
FROM: Bob Waldher, Director
DATE: June 27, 2022

CODE
ENFORCEMENT

RE: Measure 109 (Psilocybin Facilities)

SOLID WASTE COMMITTEE

Background Information

SMOKE
MANAGEMENT

On November 3, 2020, Oregon voters approved Ballot Measure 109 (BM 109), the Psilocybin Program Initiative. Statewide, BM 109 passed with 1,270,057 'yes' votes (55.75%) to 1,008,199 'no' votes (44.25%). However, it was not supported in Umatilla County with 11,330 'yes' votes (36.02%) to 20,126 'no' votes (63.98%).

GIS AND
MAPPING

BM109 authorizes the manufacture and use of Psilocybin products under controlled supervision and establishes the regulatory framework for oversight and administration. BM 109 is codified in ORS Chapter 475A which is patterned after the current marijuana statutes and regulatory system. ORS 475A goes into effect on January 1, 2023.

RURAL
ADDRESSING

Unlike the marijuana legislation, all jurisdictions are treated as having "opted-in" to the psilocybin regulations, unless the Board refers the matter to the voters at the next general election and the voters elect to "opt-out". Whether opting in or opting out, the County may adopt "time-place-manner" regulations, as with the marijuana statutes.

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

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 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.

A question and answer (Q&A) document produced by the OHA that was derived from their listening sessions in December 2021 is attached. 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:

(i) A preparation session, a meeting with a client and a psilocybin service facilitator that must occur before the client participates in an administration session;

(ii) An administration session; and

(iii) 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.

Note: Retail sales of Psilocybin products will be taxed at fifteen percent, with revenue going to OHA for administration of the Psilocybin program.

Key Points

Below are initial takeaways from staff's reading and preliminary research of Measure 109.

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 standards such as 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.

Psilocybin and Land Use in Umatilla County

Psilocybin production, manufacturing and service centers will have the most direct relevance to land use in Umatilla 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.

Conclusion

Staff requests the Board of County Commissioners make a determination whether or not the county should opt-in or opt-out of BM 109. Even though final rulemaking will not be completed until late 2022, BM 109 / 475A will become effective beginning January 1, 2023, unless Umatilla County voters elect to "opt-out" in the upcoming November General Election. The deadline to get a measure on the ballot is August 19, 2022. If there is interest in putting the question on the ballot, drafting should begin soon. Otherwise, the county should begin the process of developing "time-place-manner" regulations as part of the Development Code.

Attachments:

OHA Q&A Document



Oregon Psilocybin Services Section

2021 Public Listening Sessions

Summary of Questions and Answers

The Oregon Health Authority (OHA) held a series of three virtual public listening sessions in December of 2021. The listening sessions were two hours in length and open to the public. OHA staff compiled questions across the three listening sessions and summarized questions and answers in this document.

The listening sessions were recorded and can be found on our [Public Listening Sessions webpage](#). Input from the public listening sessions will continue to inform program development, educational materials, and community engagement in 2022.

Definitions

“RAC” = Rule Advisory Committee, made up of members of the public who participate in discussions about draft rules during the rulemaking process

“May Rules” = The spring rulemaking process will result in the first set of rules being adopted by the end of May

“The Board” = The [Oregon Psilocybin Advisory Board](#)

“M109” = Ballot Measure 109, the Oregon Psilocybin Services Act

* For more definitions of terms used in this document, please refer to Section 5 of the [Oregon Psilocybin Services Act \(M109\)](#)

General Questions

Q: When will rules be adopted for Oregon Psilocybin Services?

A: OHA will complete two rulemaking sessions in 2022. The first round of rulemaking in February will focus on training programs and products/testing, with rules likely to be adopted by the end of May 2022. The second round of rulemaking in the fall will focus on the remainder of program rules. The final rules will be adopted by December 31, 2022 in time for OHA to begin receiving applications for licensure on January 2, 2023.

Q: Will one person be able to hold multiple license types?

A: Individuals may hold multiple licenses if they meet the eligibility requirements to apply for licensure and receive approval for licensure. An individual may not hold an interest in more than one manufacturer license or more than five service center licenses.

Q: Have there been conversations about creating equitable opportunities for minority business owners to ensure access within the market as the program is built?

A: Yes, equitable opportunities for minority business owners have been, and continue to be, discussed. OHA is working to better understand ways to address equity issues within the statutory authorities granted by M109 and within administrative rules. Although OHA is unable to prioritize licensees based on race, OHA is exploring social equity considerations for licensees.

Q: Are there any efforts to address conflicts of interest and moderate current committee members' ability to have advanced notice of details before they are made public?

A: All committee members are public officials and are responsible for complying with Oregon Government Ethics Law. All advisory board meetings and subcommittee meetings are accessible to the public. Meeting notes and recordings are also available online at: [Oregon Psilocybin Advisory Board](#).

Q: Is the state planning to allocate any funding to support clinical research to improve the therapy and the use of psychedelic substances as a whole?

A: No. Under M109, the funds received from application and licensure fees must cover the costs of Oregon Psilocybin Services operations. There are no additional funding sources to support additional work at this time.

Q: If rules are counter-productive to a functioning system, how quickly can rule changes be made and what is the process for license holders to submit requests for rule changes?

A: The administrative rule making process requires approximately six months from start to finish for each set of rules being adopted. In the case of an emergency, the agency may choose to use a temporary rule making process that is much quicker. OHA will continually evaluate rules for efficacy.

Products & Testing

Q: What are the land use requirements for manufacturing/production?

A: M109 requires that the property owner give permission for psilocybin production. Other land use requirements may be established by local governments. Applicants will be required to produce a Land Use Compatibility Statement (LUCS) which demonstrates that the proposed use of the property is consistent with local zoning code.

Q: What are the final forms that psilocybin can take, in terms of products?

A: We will adopt administrative rules that specify which product forms will be permitted. These rules will be effective in May 2022.

Q: What will the laboratories be required to test for?

A: This will be addressed in May rules, although additional rulemaking may occur later in 2022.

Q: Will there be security requirements for manufacturers and service centers?

A: Yes. Exact requirements will be established in rule.

Q: Can people grow and use mushrooms for their own personal use?

A: M109 does not allow for personal use. M109 creates a regulatory framework for the production of psilocybin and the provision of psilocybin services.

Service Centers

Q: What are the land use requirements for a service center?

A: M109 requires that a service center be at least 1000 ft. from a school and have defined boundaries. Other land use requirements may be established by local governments. Applicants will be required to produce a Land Use Compatibility Statement (LUCS) which demonstrates that the proposed use of the property is consistent with local zoning code.

Q: What is considered the boundaries of the center?

A: Boundaries and other premises requirements for licensed service centers will be considered during rulemaking later in 2022.

Q: What will the criteria be for the Center? interior design, furniture, music system, lighting, bathrooms, etc.

A: Premises requirements for licensed service centers will be considered during rulemaking later in 2022. Generally, these rules will focus on requirements that affect public health and safety rather than items such as lighting and design.

Q: Can centers have access to the outdoors?

A: The board has recommended that service centers have access to the outdoors. Under M109, licensed service centers must have defined boundaries and cannot be located on public land. Specific requirements for service centers premises will be considered during rulemaking later in 2022.

Q: Will there be different categories of service centers?

A: No.

Q: Can the service centers operate ancillary or peripheral services that could offer additional revenue streams and help with financial viability?

A: These requirements will be considered during rulemaking in 2022.

Administration Session

Q: Will clients need a medical referral to receive psilocybin services in a service center?

A: No. M109 specifically states that a client will not be required to be diagnosed with a medical condition to receive psilocybin services. Clients must be 21 years of age or older to access psilocybin services.

Q: What is the process by which the client gets the medicine for treatment?

A: A client may purchase psilocybin products from a licensed service center for consumption during a facilitated administrative session at that service center. Licensed facilitators will not provide psilocybin products to clients.

Q: How will dosage be recommended? Will clients have a chance to voice their preference for dosage?

A: Rules specifying dosage requirements will be adopted later in 2022. Clients will have an opportunity to discuss all aspects of their administrative session, including dosage, during their preparation session with a licensed facilitator. Maximum doses may be established in rule. Clients and licensed facilitators will work together to determine dosage. These details will be established in rule.

Q: If someone is participating in multiple administration sessions within a small window of time is a separate prep session required for each administration session?

A: Yes. M109 requires a preparation session to precede each administration session.

Q: Could the client choose to participate in multiple prep sessions before the administration session? What about multiple integration sessions after the administration session?

A: Details on the preparation, administration, and integration sessions will be established in rule later this year.

Q: Is the board considering micro-dosing sessions?

A: The term “microdose” is not used in M109. M109 requires OHA to establish the maximum concentration of psilocybin that is permitted in a single serving of a psilocybin

product, and the number of servings that are permitted in a psilocybin product package. Details will be established in rule later this year.

Q: Will there be a standardized screening tool for harm reduction purposes?

A: M109 requires a preparation session for clients with a licensed facilitator. A client intake form is required for this process and will include documentation of risk factors and contraindications, as well as considerations for health and safety. Details will be considered during the rulemaking process.

Q: Will sessions be able to be subsidized for those who cannot afford a session?

A: M109 does not allow OHA to use funds in this manner. Funds from application and licensure fees must cover the costs for Oregon Psilocybin Services. OHA does not have statutory authority to regulate costs of psilocybin services. Private organizations or licensed service centers and facilitators may choose to offer subsidies for lower income clients.

Q: Will groups be allowed? How large?

A: The board has recommended that group sessions be permitted. The exact requirements for group sessions will be detailed in administrative rules to be adopted later in 2022.

Q: How much will services cost?

A: Under M109, OHA cannot control the costs for training or services. The program will set application and license fees in rule and there will be a 15% sales tax on sale of psilocybin products to clients for administration sessions. Licensees and training programs will determine the cost of their services.

Training Programs

Q: What are the general requirements of a facilitator training program?

A: Training program curriculum must be approved by OHA. Application requirements for training program approval will be established in May rules.

Q: What are the requirements of the trainers themselves?

A: The requirements will be specified in May rules.

Q: When can the facilitator training programs start?

A: OHA estimates that staffing and systems will be in place to approve training programs in June of 2022. OHA will not be able to offer retroactive approval for programs operating before that time.

Q: There are already a lot of training programs out there... what is transferrable?

A: The board has recommended that some transfer of credits be allowed. Rules on transfer of credits will be discussed in the May rulemaking.

Q: How does OHA plan to acknowledge traditional and indigenous healers within the training requirements?

A: Experience in traditional healing may be considered as transferrable credits depending on what is established in May Rules.

Q: Will the training for facilitators include significant material on how to deal with mental health issues or issues related to trauma that arise during session?

A: The board has made recommendations on training curriculum, including trauma-informed care, and OHA will be considering these recommendations during May rulemaking.

Q: How much will a training program cost?

A: Under M109, OHA cannot control the costs for training programs or psilocybin services. The program will set application and license fees in rule, and there will be a 15% sales tax on sale of psilocybin products to clients for administration sessions. Licensees and training programs will determine the cost of their services.

Facilitation

Q: Is there somewhere I can find information about qualifications (certification, degree, experience, etc.) for preparing to work as a Psilocybin Services Facilitator?

A: Every facilitator must complete a training program that is approved by OHA as a condition of being licensed. A high school diploma, or its equivalent, will be required without additional degrees or certifications. Additional qualifications will be discussed during May rulemaking.

Q: Does a facilitator have to have a medical license?

A: No.

Q: Will a facilitator be required to have participated themselves in a psilocybin administration session?

A: No.

Q: Will there be standardized safety protocols that facilitators will be required to follow?

A: Yes. Exact requirements will be established in rule.

Q: Are 2 licenses required for a facilitator delivering this service; one for providing psilocybin products and another for the service itself?

A: Psilocybin products are provided to clients by a licensed service center for administration sessions that take place at their location. M109 allows a person to hold both a service center and facilitator license, if that is what the licensee chooses to apply for.

Q: Will the same license apply to both solo and group sessions? Will there be different types of facilitator licenses?

A: The board has recommended that there only be one type of facilitator license. OHA will consider this recommendation before adopting May Rules.

Q: Can the psilocybin services be offered within a ceremonial or religious context?

A: Yes, if psilocybin services take place at a licensed service center and is otherwise compliant with statute and rule requirements.

Q: How will OHA ensure that those who hold traditional knowledge or have experience with natural healing practices are recognized and have equitable access to licensing?

A: The board has made recommendations on training curriculum, including history of Indigenous practices, and OHA will be considering these recommendations during May rule making. Experience with traditional healing may be eligible for credit in a training program.

For more information, please go to: www.oregon.gov/psilocybin