



ORDINANCE NO. 22-706

AN ORDINANCE OF THE CITY OF WINSTON OREGON, CITY COUNCIL, ANNOUNCING A BAN ON PSILOCYBIN SERVICE CENTERS AND THE MANUFACTURE OF PSILOCYBIN PRODUCTS, WITHIN THE CITY OF WINSTON AND DECLARING AN EMERGENCY.

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 July 25, 2022, the Oregon Health Authority has not completed the rulemaking process for implementing the state's psilocybin regulatory program, and the City of Winston 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; and,

WHEREAS the Winston City Council believes that prohibiting psilocybin product manufacturers and psilocybin service centers within the City of Winston is in the best interest of the health, safety, and welfare of the people of Winston; and,

WHEREAS the City Council seeks to refer to the voters of Winston the question of whether to establish a ban on state-licensed psilocybin product manufacturers and psilocybin service centers within the City of Winston.

NOW, THEREFORE, THE CITY OF WINSTON OREGON CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. 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 Winston.

SECTION 2. This ordinance is referred to the electors of the city of Winston for approval at the next statewide general election on November 8, 2022.

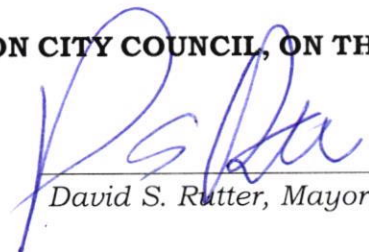
SECTION 3. This ordinance will take effect immediately upon its adoption.

FIRST READING AND ADOPTION BY THE CITY OF WINSTON OREGON CITY COUNCIL, ON THIS 18TH DAY OF JULY 2022.

APPROVED BY THE MAYOR ON THIS 18TH DAY OF JULY 2022.

Attest:


Mark D. Bauer, City Manager/Recorder


David S. Rutter, Mayor



Staff Report

Com. Dev. 22-013

Subject: The Legalization of Psilocybin

Date: July 18, 2022

Prepared by: Thomas McIntosh for Mark Bauer, City Manager

Title: Measure 109 Response by the Winston City Council

Background: Measure 109 was approved by voters in November 2020, and it directs the Oregon Health Authority (OHA) to oversee the license, control, and regulation of the manufacturing of psilocybin products and of the provision of psilocybin services to persons 21 years of age and older. Psilocybin is a psychoactive hallucinogenic, meaning that these substances produce changes in perception, mood, and cognitive processes. Cities and counties that desire to prohibit the establishment of psilocybin-related businesses outright or for two years may do so by referral at a statewide general election. As of now, the OHA has not completed its rulemaking process. As a result, the specific regulations regarding production and distribution entities have not been finalized, and many questions remain unanswered.

Analysis: Measure 109 directs the OHA to develop rules and regulations regarding the manufacturing, distribution, and administration of products containing psilocybin. The OHA will produce rules and regulations that create processes for licensing the following entities: manufacturers, laboratories, service centers (locations where psilocybin is ingested), and facilitators (persons who supervise the ingestion of psilocybin). The following rules/regulations are already known with respect to these entities:

- Psilocybin Manufacturers
 - Cannot cultivate psilocybin product outdoors
 - Cannot cultivate psilocybin product in raw manure, but may cultivate in compost
 - Cannot exceed production quantities established by OHA
 - Premises must be enclosed and have defined boundaries
 - Cannot be located on public land
 - Landlord must consent to the use
 - Must use the OHA-created product tracking system to prevent diversion and ensure accurate accounting.

- Psilocybin Laboratories
 - Must test all psilocybin products
 - Must use the OHA-created tracking system to log receipt and distribution of product along with the testing results
 - Lab must have the OHA psilocybin license and must be accredited by the Oregon Environmental Laboratory Accreditation Program
- Psilocybin Services Center
 - May only receive and sell product that is tested by a licensed laboratory
 - Must use the OHA-created tracking system
 - Cannot be located on public land
 - Cannot be located within a residence (i.e. not a home business)
 - Cannot be located in an area zoned exclusively for residential use
 - Cannot distribute psilocybin products to walk-in customers (i.e., recreationally)
 - Cannot let anyone leave the service center with psilocybin product
 - Must be located in an enclosed, defined space
 - Cannot be located within 1000 feet of a school, which will be verified and recorded using GIS mapping
 - Can only impose the State sales tax on sales of psilocybin product
- Psilocybin Facilitator
 - Undergoes at least three sessions with a patient, with the last session being the one where the psilocybin is administered to/ingested by the patient.
 - Must supervise patients at all times when they are under the influence of psilocybin during the administration session
 - Must pass an exam administered by the OHA

There are still a lot of things that are unknown about the regulation process. For instance, the criteria for dosage levels have not been released. We also know that the State can impose a 15% tax on the sale of psilocybin products, but a municipality cannot. Neither the State nor a municipality can tax psilocybin-related services. We do not know if there will be any future revenue sharing from the State for municipalities that allow these entities within their jurisdiction.

The City Council has three options for moving forward now that Measure 109 has passed: (1) do not refer the matter to the voters and allow Measure 109 (now codified as ORS 475A) to take effect; (2) do not refer the matter to the voters, but construct additional restrictions not already articulated in ORS Chapter 475A; (3) refer to the voters a two-year ban on the ability for psilocybin entities to be sited within the City's jurisdiction; (4) refer to the voters a total ban on the ability for psilocybin entities to be sited within the City's jurisdiction.

Option 1:

If the City Council decides to do nothing, then the only regulations on siting and use are those set forth in ORS 475A and those that the OHA will create for entities that wish to be licensed. This is the easiest option, but it gives the City Council the least control over these entities. Though future regulations can be imposed, once the State starts granting licenses, unforeseen issues in administering the City's regulations could arise.

Option 2:

If the City decides not to refer the matter to voters, the City still has the ability to pass ordinances that further restrict psilocybin entities. Measure 109 specifically carved out authority for municipalities to adopt "reasonable regulations" on hours, locations, and operation of license holders. The City can also make

changes to its Land Development Code such that the siting of a location can be controlled through the Land Use Compatibility (LUCs) process. Applicants for Service Center and Manufacturer licenses are required to request a LUCS from their local government before submitting a license application, and the LUCs can be an additional tool for controlling the locations of these entities. However, such restrictions could have unintended consequences as the OHA further refines its licensing process. Additionally, there is always a time delay between drafting an ordinance, voting on it, and it coming into effect.

Options 3 and 4:

Options three and four are essentially the same, but impose either a temporary or a permanent consequence. The City Council can refer either a two-year moratorium or a permanent ban on the siting and operation of psilocybin entities within the City's jurisdiction. A temporary ban would give the City time to watch how the process unfolds in other jurisdictions and pass reasonable time, place, and manner restriction ordinances, and it gives the OHA time to iron out its licensing process. A permanent ban means that the City would not need to revisit the matter unless it wished to repeal the ban. Either type of ban must be referred to the voters.

If the City Council refers and the voters pass a two-year moratorium, the City Council can refer the question of a temporary or permanent ban to voters again at the end of the two-year moratorium period. However, the City Council can only refer the question of a temporary or permanent ban to voters on ballots for general elections, meaning an election in November of an even-numbered year.

If the City adopts an ordinance banning these entities, the City must submit the ordinance to the OHA. The OHA will then stop registering and licensing the prohibited businesses until the next statewide general election.

Recommendation: Staff recommends that City Council refer to the voters a total ban on the ability for psilocybin entities to be sited within the City's jurisdiction due to the unknown regulatory ramifications from the Oregon Health Authority and the negative position it forces the City into as it relates to municipal code concurrence.

Financial Impact: There will be no negative impacts in a financial capacity.