



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

July 14, 2021

Board of County Commissioners
Clackamas County

First Reading of Ordinance No. _____, declaring a temporary ban on psilocybin service centers and the manufacture of psilocybin products. Total value is \$0. County General Funds are not involved.

Purpose/Outcome	An ordinance referring to the voters of Clackamas County the question of whether to temporarily ban psilocybin service centers and the manufacture of psilocybin products for a period of two years.
Dollar Amount and Fiscal Impact	Budgeted County Counsel Department staff time.
Funding Source	County Counsel Department Budget
Duration	Referral to the ballot of the November 8, 2022 general election. If approved by the voters, the ordinance would automatically sunset on December 31, 2024.
Previous Board Action/Review	Policy Session: 7/6/22.
Strategic Plan Alignment	This item aligns with the Department’s purpose of providing research, consultation, strategy, and implantation compliance services to the County, and its elected officials, so they can conduct their operations in a manner that comports with local, state, and federal regulations and laws. The proposal aligns with the Performance Clackamas goal to “Build Public Trust through Good Government” by responding to a state mandate and by considering regulations related to a use that is not currently addressed within in our code.
Counsel Review	Nate Boderman: 7/6/22
Procurement Review	N/A
Contact Person	Nate Boderman (503.655.8364)
Contract No.	N/A

BACKGROUND: In 2020, Oregon voters passed Measure 109, which allows the manufacturing, delivery, and administration of psilocybin, a hallucinogenic chemical found in certain mushrooms.¹ Measure 109 directs the Oregon Health Authority (“OHA”) to license and regulate activities related to the manufacturing, delivery, sale, and purchase of psilocybin products, as well as the provision of psilocybin services. Ballot Measure 109 has been codified as ORS 475A.

The effect of Measure 109 will be to have OHA issue licenses to qualifying applicants in cities and counties statewide as soon as January 2, 2023. Measure 109 does, however, provide local jurisdictions the option of adopting an ordinance, to be referred to the voters, that prohibits or allows psilocybin product manufacturers, psilocybin service centers, or both in those areas subject to the jurisdiction of the local government.² ORS 475A.718(2) provides that if the county were to adopt such an ordinance, it would need to be submitted to the electors for approval at the next statewide general election (which occurs in November of even-numbered years).

¹ In Clackamas County, Measure 109 passed with 52.4% of the vote (128,890 votes in favor vs. 117,098 votes opposed).

² These provisions are codified at ORS 475A.718 and provide as follows:

475A.718 Adoption of ordinances; referral to electors for approval. (1) The governing body of a city or county may adopt ordinances to be referred to the electors of the city or county as described in subsection (2) of this section that prohibit or allow the establishment of any one or more of the following in the area subject to the jurisdiction of the city or in the unincorporated area subject to the jurisdiction of the county:

- (a) Psilocybin product manufacturers that hold a license issued under ORS 475A.290;
- (b) Psilocybin service center operators that hold a license issued under ORS 475A.305; or
- (c) Any combination of the entities described in this subsection.

(2) If the governing body of a city or county adopts an ordinance under this section, the governing body shall submit the measure of the ordinance to the electors of the city or county for approval at the next statewide general election.

(3) If the governing body of a city or county adopts an ordinance under this section, the governing body must provide the text of the ordinance to the Oregon Health Authority.

(4) Upon receiving notice of a prohibition under subsection (3) of this section, the authority shall discontinue licensing those premises to which the prohibition applies until the date of the next statewide general election.

(5) If an allowance is approved at the next statewide general election under subsection (2) of this section, the authority shall begin licensing the premises to which the allowance applies on the first business day of the January immediately following the date of the next statewide general election.

(6) Notwithstanding any other provisions of law, a city or county that adopts an ordinance under this section that prohibits the establishment of an entity described in subsection (1) of this section may not impose a tax or fee on the manufacturing or sale of psilocybin products.

In order to be eligible for the November, 2022 election, the deadline for the County to file with the elections official the adopted ordinance would be August 19. Adopting such an ordinance would follow the County's normal adoption process as set forth in state law, which typically requires multiple readings of the proposed ordinance, each accompanied by public hearings.

The proposed ordinance attached to this report would refer to the voters, at the November 8, 2022 election, a temporary ban on both psilocybin service centers and the manufacture of psilocybin products in the unincorporated areas of Clackamas County. If the ordinance is adopted and is enacted by the voters, it would temporarily ban those psilocybin-related businesses until December 31, 2024, at which time the ordinance would automatically sunset and OHA could begin issuing licenses for psilocybin-related businesses in the unincorporated areas of Clackamas County.

RECOMMENDATION: Staff respectfully requests that the Board hold this public hearing and schedule a second reading and public hearing of this ordinance on July 28, 2022, at 10 a.m.

Respectfully submitted,

Nathan Boderman
Assistant County Counsel
County Counsel

Attachments: Ordinance No. _____

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

An Ordinance declaring a temporary ban on psilocybin service centers and the manufacture of psilocybin products



Ordinance No. _____
Page 1 of 2

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, psilocybin and psilocybin-containing mushrooms remain illegal under federal regulations; 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 6, 2022, the Oregon Health Authority has not completed the rule-making process for implementing the state's psilocybin regulatory program, and Clackamas County is uncertain how the manufacture, delivery and administration of psilocybin at licensed psilocybin facilities will operate within the county; and

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

WHEREAS, the Clackamas County Board of Commissioners 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 county time to potentially 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 Clackamas County; and

WHEREAS, the Board of Commissioners seeks to refer to the voters of Clackamas County 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.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

An Ordinance declaring a temporary ban
on psilocybin service centers and the
manufacture of psilocybin products



Ordinance No. _____
Page 2 of 2

NOW THEREFORE, the People of Clackamas County ordain as follows:

Section 1. Prohibition.

The establishment of psilocybin product manufacturers licensed under ORS 475A.290 and psilocybin service centers licensed under ORS 475A.305 is prohibited in Clackamas County.

Section 2. Referral.

This ordinance is referred to the electors of Clackamas County 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.

DATED this _____ day of July, 2022

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary