

**ORDINANCE NO. 655  
CITY OF DAYTON, OREGON**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAYTON, OREGON,  
IMPLEMENTING AN AMENDMENT TO TEXT OF THE LAND USE AND  
DEVELOPMENT CODE REGARDING PSILOCYBIN LAND USE REGULATIONS AND  
DECLARING AN EMERGENCY**

**WHEREAS**, on November 3, 2020, Oregon voters passed Ballot Measure 109 (Oregon Psilocybin Services Act), which directs the Oregon Health Authority (OHA) to license and regulate the manufacturing, transportation, delivery, sale, and purchase of psilocybin products and to provide related of psilocybin services; and

**WHEREAS**, Measure 109 authorizes local jurisdictions to adopt reasonable time, place, and manner regulations beyond those already required in the original Measure and subsequent State law; and

**WHEREAS**, the City of Dayton (“City”) initiated amendments to the text of the Land Use and Development Code regarding psilocybin land use regulations in compliance with State law specifically time, place, and manner restrictions on psilocybin service and manufacturing centers; and

**WHEREAS**, the City submitted the proposed amendments to DLCDC on October 9, 2022; and

**WHEREAS**, the Planning Commission conducted a duly-noticed public hearing, and reviewed the proposed zoning code text amendments, public testimony, and staff report at its meeting on November 9, 2022; and

**WHEREAS**, the City Council conducted a duly-noticed public hearing, and reviewed the proposed zoning code text amendments, Planning Commission recommendation, public testimony and staff report at its meeting on December 5, 2022; and

**WHEREAS**, since the passage of Measure 109, OHA has developed a regulatory framework for providing psilocybin services and licensing. Final rulemaking continues but is expected to be completed by December 31, 2022. Applications for a license to operate a psilocybin facility or service center will start being accepted on January 2, 2023, subject to local land use approval, and as a result, the City desires to have these regulations in place before OHA begins to issue licenses and declares an emergency; and

**WHEREAS**, the City Council considered the application, the evidence in the record, and applicable criteria for the amendments proposed in Application File No. LA 2022-01 (Legislative Amendment).

**Now, therefore:**

**THE CITY OF DAYTON ORDAINS AS FOLLOWS:**

Section 1. The City hereby adopts the proposed Land Use and Development Code Text Amendments related to psilocybin land uses as set forth in the attached Exhibit "A".

Section 2. In support of its decision, the City Council adopts the findings within the Planning Commission Recommendation for File No. LA 2022-01, dated November 2, 2022, as set forth in the attached Exhibit "B."

Section 3. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance takes effect on its passage.

**PASSED AND ADOPTED** by the City Council of the City of Dayton on this 5<sup>th</sup> day of December 2022 and **EFFECTIVE** on the 5<sup>th</sup> day of December 2022.

Mode of Enactment:

Date of first reading: December 5, 2022 In full \_\_\_\_\_ or by title only

Date of second reading: \_\_\_\_\_ In full \_\_\_\_\_ or by title only \_\_\_\_\_

No Council member present at the meeting requested that the ordinance be read in full.

A copy of the ordinance was provided to each Council member; three copies were provided for public inspection in the office of the City Recorder no later than one week before the first reading of the Ordinance.

Final Vote:

In Favor: Frank, Holbrook, Mackin, Maguire, Marquez, Sandoval-Perez, Wytoski

Opposed: None

Absent: None

Abstained: None

  
\_\_\_\_\_  
Elizabeth Wytoski, Mayor

  
\_\_\_\_\_  
Date of Signing

ATTESTED BY:

  
\_\_\_\_\_  
Patty Ringnald, City Recorder

  
\_\_\_\_\_  
Date of Enactment

## EXHIBIT A

### DRAFT AMENDMENTS

#### **7.1.200.03- Definitions:**

**Psilocybin Manufacturing Facility:** An establishment at where psilocybin may be grown and processed.

**Psilocybin Products:** Psilocybin-producing fungi; and Mixtures or substances containing a detectable amount of psilocybin.

**Psilocybin Service Center:** An establishment at which administration sessions are held; and at which other psilocybin services may be provided.

#### **7.2.106.04- Conditional Uses**

Q. Licensed Psilocybin service centers and manufacturing facilities as defined in Section 7.1.200.03 and by the Oregon Health Authority.

#### **7.2.107.04- Conditional Uses**

M. Licensed Psilocybin service centers and manufacturing facilities as defined in Section 7.1.200.03 and by the Oregon Health Authority

#### **7.2.417- Psilocybin-Related Uses**

##### **7.2.417.01 Standards**

Psilocybin service centers and manufacturers shall comply with the following standards:

- A. **Conflicting Uses.** No Psilocybin-related use shall be permitted within 1,000 feet of real property containing any of the following:
  1. Public elementary or secondary school for which attendance is compulsory under ORS 339.020; and
  2. Private or parochial elementary or secondary school, teaching children as described under ORS 339.030; and
  3. Public library; and
  4. Public park; and
  5. Preschools licensed by the State of Oregon

The distance between conflicting uses shall be measured in a straight line from the closest edge of each property, including any parking lot appurtenant thereto.

- B. If a conflicting use described in A is established within 1,000 feet of a legally established Psilocybin-related use, the Psilocybin-related use may remain at that location.
- C. Psilocybin-related uses shall only be permitted when the provisions of Section 1 above are met AND the property is within either the Industrial or Commercial Zone.
- D. Psilocybin-related uses shall not operate except between the hours of 10:00 am and 7:00 pm
- E. Psilocybin-related uses shall be located entirely within a permanent building and shall not include drive-through facilities. Outdoor storage is prohibited

F. Psilocybin-related uses shall at all times be registered in good standing with the Oregon Health Authority (OHA).

EXHIBIT B

**CITY OF DAYTON**

416 Ferry Street – P. O. Box 339  
Dayton, OR 97114-0039  
503-864-2221 fax 503-864-2956

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**STAFF REPORT**

PLANNING COMMISSION – NOVEMBER 9, 2022

**REPORT DATE:** November 2, 2022

**FILE NUMBER:** LA 2022-01 (Legislative Amendment)

**APPLICANT:** City of Dayton

**REQUEST:** The addition of Time/Manner/Place restrictions on Psilocybin service and manufacturing centers. The amendments also add service and manufacturing centers as conditional uses in the commercial and industrial zones.

**PROPERTY:**

<u>Tax Lot</u>	<u>Size</u>	<u>Zoning</u>
Citywide	NA	Commercial and Industrial Zones

**ZONING:** Commercial and Industrial Zones

**SURROUNDING ZONING:** North: NA  
South: NA  
East: NA  
West: NA

**CURRENT USE:** N/A

**CRITERIA:** **Dayton Land Use and Development Code (LUDC)**  
Section 7.3.112.03: Criteria to Amend Development Code Text

**EXHIBITS:** A: Text Amendments  
B: FAQs from the Oregon Health Authority  
C: Minutes from August City Council meeting  
D: ORS 475A- Psilocybin Regulations (link to ORS webpage)

**I. PURPOSE/REQUEST**

In accordance with Oregon Ballot Measure 109, to add the following to the City of Dayton Land Use and Development Code:

- Psilocybin Service Centers and Manufacturers as conditional uses in the Commercial and Residential Zones.
- Time/Manner/Place restrictions on Psilocybin-related uses.

## **II. PROCESS**

Development Code amendments are a legislative change to the LUDC and are processed as a Type IV land use action.

The LUDC Type IV process set forth in Section 7.3.203.01, Type IV Initiation, requires a Type IV process to be initiated by a majority of the City Council, a majority of the Planning Commission or by a recommendation by the City Manager subject to majority approval by Planning Commission or the City Council. The City Council initiated the legislative amendment on October 3, 2022.

Measure 56 notice was sent to all property owners within the Commercial and Industrial zones on October 18, 2022. Newspaper notice was posted in the News Register on October 25, 2022.

No written comment has been received as of the time of this staff report. Any comment submitted prior to the hearing will be available and read into the record.

## **III. BACKGROUND**

In November 2020, Oregon voters approved Measure 109 which legalized the licensed and regulated manufacturing, transportation, delivery, sale and purchase of psilocybin products and the provision of psilocybin services in Oregon for adults. Measure 109 created a license and regulatory framework for production of psilocybin and facilitation of psilocybin services for adults 21 years of age and older. It should be noted that Measure 109 did not create a consumer market for psilocybin, allow for the importation or exportation psilocybin, or allow licensees to interact with unregulated markets.

There are three types of psilocybin licenses permitted under Measure 109: Testing lab licenses, facilitator licenses, and service center licenses. Details regarding each of these licenses are provided in Exhibit B. All licenses are processed by the Oregon Health Authority as advised by the Oregon Psilocybin Advisory Board.

Measure 109 provided local governments with two response options:

1. Local Government opt-out: Cities and Counties can adopt ordinances that prohibit manufacturers and service centers. The ordinances must be referred to voters via general election.
2. Time Place Manner Restrictions: Local governments may adopt reasonable regulations on hours, location, and operation of licenses.

After discussion, the Dayton City Council elected to direct staff to proceed with TPM restrictions similar to those implemented for Marijuana facilities. The amendments included in this application establish TPM restrictions in the Dayton Land Use and Development Code.

## **IV. PROPOSED AMENDMENTS**

A list of proposed amendments is included as Exhibit A to the staff report.

#### **Vi. APPLICABLE APPROVAL CRITERIA**

The Dayton Land Use and Development Code, Section 7.3.112.03, Criteria for Approval of Development Code text amendments.

- A. *Impact of the proposed amendment on land use and development patterns within the city, as measured by:*
1. *Traffic generation and circulation patterns;*
  2. *Demand for public facilities and services;*
  3. *Level of park and recreation facilities;*
  4. *Economic activities;*
  5. *Protection and use of natural resources;*
  6. *Compliance of the proposal with existing adopted special purpose plans or programs, such as public facilities improvements.*

Findings: Staff makes the following findings for the subcriteria listed under Criterion A:

- 1- Due to limited quantity of permissible locations and limited traffic impacts associated with each potential facility, staff finds that the amendments will have negligible impacts on traffic generation and circulation patterns.
- 2- The amendments do not add any additional strain on public facilities.
- 3- The amendments have no impact on the level of park and recreation facilities.
- 4- The amendments add psilocybin manufacturers and service centers as conditional uses in the Commercial and Industrial zones.
- 5- The amendments do not have any impact on the protection and use of natural resources.
- 6- The amendments do not have an impact on any existing special purpose plans or programs.

- B. *A demonstrated need exists for the product of the proposed amendment.*

Findings: Measure 109 requires cities to either disallow Psilocybin-related uses via ordinance or allow via the City's zoning code. The Dayton City Council has chosen to implement via TMP restrictions.

- C. *The proposed amendment complies with all applicable Statewide Planning Goals and administrative rule requirements.*

Findings: Goal 1, Citizen Involvement: Measure 56 notice was sent to all property owners within the City of Dayton on October 18, 22 days prior to the date of the scheduled Planning Commission Hearing on November 9. Newspaper notice was provided on October 25, 2022. The hearings are consistent with the Development Code's procedures for legislative amendments to the Development Code. Goal 1 is met.

Goal 2, Land Use Planning: Goal 2 supports clear and thorough local procedures. The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the acknowledged Development Code for processing legislative amendments to the Development Code.

Goal 3, Agricultural Lands and Goal 4, Forest lands: Goals 3 and 4 are not applicable. The proposal does not involve or affect farm or forest lands.

Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources. Goal 5 is not applicable. The proposal amends the City's historic resources regulations in accordance with Goal 5 requirements.

Goal 6, Air, Water and Land Resource Quality: Goal 6 is not applicable. The proposal does not address Goal 6 resources.

Goal 7, Natural Hazards: Goal 7 is not applicable. The proposal does not address Goal 7 resources.

Goal 8, Recreation: Goal 8 is not applicable. The proposal does not address recreational needs.

Goal 9, Economic Development: Goal 9 is not applicable. The proposal does not address Goal 9 issues.

Goal 10, Housing: Goal 10 is not applicable. The proposal does not address Goal 10 issues.

Goal 11, Public Facilities and Services: Goal 11 is not applicable. The proposal does not address Goal 11 issues.

Goal 12, Transportation: Goal 12 is not applicable. The proposal does not address Goal 12 issues.

Goal 13, Energy Conservation: Goal 13 is not applicable. The proposal does not address Goal 13 resources.

Goal 14, Urbanization: Goal 14 is not applicable. The proposal does not address Goal 14 issues.

*D. The amendment is appropriate as measured by at least one of the following criteria:*

- 1. It corrects identified error(s) in the provisions of the plan.*
- 2. It represents a logical implementation of the plan.*
- 3. It is mandated by changes in federal, state, or local law.*
- 4. It is otherwise deemed by the council to be desirable, appropriate, and proper.*

Findings: The proposed amendments are appropriate per Criterion D3. Measure 109 mandates local government implementation of psilocybin restrictions.

## **VII. STAFF RECOMMENDATION**

Based upon the staff report and the above findings, staff recommends the Planning Commission pass a motion adopting the staff report and the findings as shown above and recommending the City Council approve the proposed amendments.

## **VIII. PLANNING COMMISSION OPTIONS – Sample Motions**



- A. Option 1: Adopt and recommend as presented.

Motion: I move the Planning Commission adopt the staff report with the findings and recommend the City Council approve LA 2022-01.

- B. Option 2: Adopt and recommend with changes.

Motion: I move the Planning Commission adopt the staff report with the findings and recommend the City Council approve the proposed amendments with the following changes...and state the changes.

- C. Option 3: Do not adopt.

Motion: I move the Planning Commission recommend the City Council deny the proposed amendments because...and state the reasons.

- D. Option 4: Continue the Hearing.

Motion: I move the Planning Commission continue the public hearing to a date/time/location certain for staff to provide more information on the following issues...and state the issues.