



BOARD OF COUNTY COMMISSIONERS

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Land Conservation and Development Commission
Department of Land Conservation and Development
Community Services Division
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

Re: Yamhill County Zoning Ordinance Amendment (Local Case File #G-02-22)

To Whom it May Concern:

Please accept this letter as Yamhill County Board of Commissioner's (the "Board") formal response in defense of its Ordinance No. 922, which amended the Yamhill County Zoning Code to allow for the establishment of psilocybin manufacturing and service centers within certain areas of unincorporated Yamhill County.

I. Background

Oregon Ballot Measure 109 passed in November 2020 and directed the Oregon Health Authority to license and regulate the manufacturing, sale, and purchase of psilocybin products and the provision of psilocybin services. Prior to receiving a license to manufacture or sell psilocybin, or to provide psilocybin services, an applicant must receive a land use compatibility statement ("LUCS") from the city or county that authorizes land use for the property to be used. The LUCS, "must demonstrate 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." See ORS 475A.270(1).

Three public hearings were held to discuss adoption of zoning restrictions that would limit the use of psilocybin in unincorporated areas of the county (public hearings were held on August 11, 2022,

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October 1, 2022, and December 1, 2022). The public testimony provided at these hearings was overwhelming in support of allowing for the production and manufacturing of psilocybin in both the Exclusive Farm Use District and the Agriculture/Forestry District. The most fervent support, however, was for allowing psilocybin services centers to be located in both the Exclusive Farm Use District and the Agriculture/Forestry District because the crop would likely be an unsuccessful farming venture without them (this will be discussed in more detail below).

On December 15, 2022, the Board formally adopted Ordinance 922 (the “Ordinance”) amending its zoning code to allow for:

- Psilocybin propagation and harvesting as a permitted use in the following zones: Exclusive Farm Use District and Agriculture/Forestry District;
- A permanent facility as a conditional use for the purpose of manufacturing psilocybin products, subject to site design review, in the following zones: Exclusive Farm Use District, the Agriculture/Forestry District, the Recreation Commercial District, and the Public Assembly Institutional District;
- Psilocybin service centers on properties with approved private campgrounds, subject to additional conditional use approval and site design review, in the following zones: Exclusive Farm Use District and Agriculture/Forestry District;
- Psilocybin service centers as a conditional use, subject to site design review, and only on lots that are licensed and actively producing the psilocybin crop, in the following zones: Exclusive Farm Use District, the Agriculture/Forestry District; and
- Psilocybin service centers as a conditional use, subject to site design review, in the following zones: the Recreation Commercial District, and the Public Assembly Institutional District.

The Ordinance went into effect on January 2, 2023 in order to coincide with the commencement of OHA’s psilocybin licensing program.

II. Issues Raised by DLCD

a. Conditional Use vs. Permitted Use

DLCD has stated that their main concern with the Ordinance is the allowance of psilocybin service centers in Exclusive Farm Use zoning as a permitted use rather than a conditional use. The Board shares DLCD’s concerns regarding psilocybin service centers being authorized as a permitted use

in any of the County's zoning districts. Accordingly, the Ordinance requires a conditional use, including a separate requirement for site design review, for all psilocybin service centers located within the unincorporated areas of Yamhill County.

b. *Use in Exclusive Farm Zoning Districts*

DLCD has conveyed to the County that psilocybin service centers should only be approved in Exclusive Farm Use as either commercial activity done in conjunction with farm use, as provided in ORS 215.213(2)(c) or 215.283(2)(a), or as a home occupation pursuant to ORS 215.213(2)(n) or 215.283(2)(i). DLCDC further specified that psilocybin service centers may not be approved as a new, standalone use in the Exclusive Farm Use zone.

i. Commercial Activity in Conjunction with Farm Use

The Board agrees with DLCDC's assessment that psilocybin service centers should only be approved in Exclusive Farm Use as a use done in conjunction with farm use. However, Measure 109 explicitly limits the County's ability to approve it as commercial activity under ORS 215. Specifically, ORS 475A.570 states:

"(2) Notwithstanding ORS chapters 195, 196, 197, 215 and 227, the following are not permitted uses on land designated for exclusive farm use:

...

(c) Subject to subsection (3) of this section, a commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a), carried on in conjunction with a psilocybin-producing fungi crop."

However, subsection (3) of the statute goes on to state that, "the operation of a psilocybin service center may be carried on in conjunction with a psilocybin-producing fungi crop." (See ORS 475A.570(3).)

Taken together, the Board concluded that the Ordinance would need to carve out an approval for psilocybin service centers as a distinct and separate use, as they could not be approved as "commercial activity".

Because the Board still wishes to restrict the use of psilocybin service centers on Exclusive Farm Use and Agriculture/Forestry zones (the only zones where production is also permitted), the Ordinance

requires psilocybin service centers to be located on lots that are also lawfully licensed to produce the psilocybin crop. Psilocybin service centers located in either of these two zones may only be approved by the County if the applicant can show that they are: 1) licensed by the state to produce psilocybin, and 2) actively producing the crop on the property. It continues to be the opinion of the Board that this is the most effective method for satisfying the requirements of both ORS 215 and ORS 475A.

Based on the testimony received at the public hearings, the Board determined that psilocybin service centers are likely going to be a necessity for psilocybin producers because the crop is unlikely to be a profitable venture without them. This is due to the limitations placed on both psilocybin producers and service providers under OHA's administrative rules (see OAR 333-333-2200, which limits manufacturers to possess no more than 200 grams of psilocybin analyte and psilocybin service centers to no more than 100 grams). Accordingly, the Ordinance was drafted to allow for the operation of psilocybin services centers on both Exclusive Farm Use zoning and Agriculture/Forestry zoning because doing so will promote the sale of an agricultural product (i.e., psilocybin), will directly relate to the production of an agriculture product, and will encourage farmers to produce the crop. Psilocybin service centers will not be allowed as a standalone use in either of these zones.

ii. Home Occupation Use

Lastly, the Board understands that DLCD prefers to have psilocybin services centers approved as a home occupation in Exclusive Farm Use zoning. The Board discussed utilizing home occupations as an approval mechanism, but those discussions were ultimately dismissed when it was determined that Measure 109 restricts psilocybin service centers from being located in a primary residence. Specifically, ORS 475A.220 includes the following definitions:

“(8)(a) ‘Premises’ includes the following areas of a location licensed under ORS 475A.210 to 475A.722:

(A) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;

(B) All areas outside a building that the Oregon Health Authority has specifically licensed for the manufacturing of psilocybin products or the operation of a psilocybin service center; and

(C) For a location that the authority has specifically licensed for the operation of a psilocybin service center outside a building, that portion of the location used to operate the psilocybin service center and provide psilocybin services to clients.

(b) 'Premise' does not include a primary residence."

In addition, OAR 333-333-1010 further restricts psilocybin service centers from an individual's home as follows:

"(41) 'Licensed premises':

...

(b) Cannot include a residence."

Because of the restrictions in state law, the Board felt that a separate and distinct approval mechanism for psilocybin service centers was required.

III. Conclusion

In summary, the Board thanks DLCD for expressing its concerns regarding the County's recently passed Ordinance 922. The Board engaged in extensive public debate and employed rigorous legal analysis regarding the production and use of psilocybin within Yamhill County, and it ultimately determined that allowing for the production and use of the crop was in the best interests of the citizens of Yamhill County. As explained herein, limitations have been placed on the production, manufacturing, and use of psilocybin that both satisfy DLCD's concerns and meet the requirements of state law. We respectfully ask that you dismiss DLCD's appeal of Yamhill County's Ordinance 922.

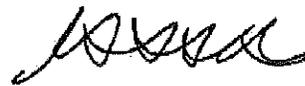
Sincerely,



Lindsay Berschauer
Chair



Kit Johnston
Vice-Chair



Mary Starrett
Commissioner

Accepted by Yamhill County
Board of Commissioners on
1/19/23 by Board Order
23-21