

ORDINANCE NO. 2022-133

AN ORDINANCE amending Sections 5.630, 5.631, 5.632, 5.633, 5.634, 5.635, 5.636, 8.5000, 8.5001, 8.5002, 8.5003, 8.5004, 8.5005, 8.5006, 8.5007, 8.5008, 8.5009, 10.337, and creating 10.839-A, of the Medford Municipal Code pertaining to Psilocybin-Related Businesses, effective December 31, 2022. (DCA-22-259).

WHEREAS, Medford Municipal Code Section 10.214 designates the City Council as the approving authority for Development Code Amendments;

WHEREAS, voter approval of Measure 109 legalized the manufacturing, transportation, delivery, sale, and purchase of psilocybin products and services to treat a variety of mental health conditions;

WHEREAS, the Medford City Council initiated the code amendment on August 17, 2022 to develop time, place, and manner regulations to govern psilocybin-related businesses locally;

WHEREAS, at the October 27, 2022 hearing, the Planning Commission considered the proposal and recommended that City Council approve of the proposed amendments with modifications; and

WHEREAS, the City Council has determined the proposed Development Code Amendment satisfies the applicable criteria as demonstrated by the Findings and Conclusions included in the Council Report dated December 8, 2022, on file in the Planning Department, now therefore,

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 1. Section 5.630 (Definitions) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

- (1) **“Facilitation” means the provision of services to a client by a licensed facilitator during a preparation, administration, or integration session.**
- (2) **“Intoxicant” means any substance that has intoxicating effects, and includes alcohol, prescription drugs, non-prescription drugs and any other controlled substances.**
- (3) **“Premises” relates to licensed psilocybin service centers licensed by the Oregon Health Authority and means all areas of a location that are licensed under the Oregon Revised Statutes including:**

- (a) All public and private enclosed areas at the location that are used in the licensed business operated at the location, including offices, kitchens, rest rooms and storerooms; and
- (b) All areas outside a building that are used in the licensed business operated at the location including those used to operate the psilocybin service center and provide psilocybin services to clients.

(4) **“Psilocybin Product” means psilocybin-producing fungi, mycelium and mixtures or substances containing a detectable amount of psilocybin, including whole fungi, homogenized fungi, psilocybin extract and edible psilocybin products. This includes products manufactured and administered at psilocybin service centers and other related psilocybin businesses as regulated by the Oregon Health Authority and defined in Oregon Revised statutes.**

* * *

Section 2. Section 5.631 (Prohibition Against Entry of Psilocybin Premises for Person Less Than 21 Years of Age) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

- (1) **A person under 21 years of age may not knowingly or recklessly enter or attempt to enter premises of a psilocybin service center or any portion of the premises that is posted or otherwise identified as being prohibited to the use of persons under 21 years of age.**
- (2) **The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of the Oregon Health Authority or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws related to psilocybin businesses.**
- (3) **It is an affirmative defense to (1) of this section that the person entered or attempted to enter the premises in order to obtain medical assistance because the person consumed a psilocybin product or in order to obtain medical assistance for another person who was in need of medical assistance because that person consumed a psilocybin product.**

(4) Violation of this section constitutes a violation.

* * *

Section 3. Section 5.632 (Prohibition Against Production of False Identification of Age) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is

new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

(1) A person may not knowingly or recklessly produce any piece of identification that falsely indicates the person's age to any psilocybin related business including a psilocybin service center.

(2) Violation of this section constitutes a crime punishable as provided in section 5.990(3).

* * *

Section 4. Section 5.633 (Prohibition Against Providing or Selling Psilocybin to Person Visibly Intoxicated) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

(1) A person may not knowingly or recklessly sell, give or otherwise make available a psilocybin product to a person who is visibly intoxicated.

(2) Violation of this section constitutes a crime punishable as provided in section 5.990(3).

* * *

Section 5. Section 5.634 (Prohibition Against Giving Psilocybin Product as Prize) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

(1) A psilocybin product may not be given as a prize, premium, promotion or consideration for a lottery, contest, game of chance, game of skill or competition of any kind.

(2) Violation of this section constitutes a violation.

* * *

Section 6. Section 5.635 (Prohibition Against Providing or Selling Psilocybin to Person Less than 21 Years of Age) of the Medford Municipal Code is hereby amended to read as follows

[language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

(1) **A person may not knowingly or recklessly sell, give or otherwise make available a psilocybin product to a person less than 21 years of age.**

(2) **It is an affirmative defense to section (1) that the person selling, giving or otherwise making available psilocybin product was provided a false identification of age of the person where a reasonable person would not have determined the identification as altered, invalid, expired or that the identification exhibited by the person under 21 years of age did not accurately describe the person to whom the psilocybin was sold, served or otherwise made available.**

(3) **Violation of this section constitutes a crime punishable as provided in section 5.990(3).**

* * *

Section 7. Section 5.636 (Prohibition for Psilocybin Facilitator Consuming Psilocybin During Session) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

(1) **A psilocybin service facilitator may not consume a psilocybin product during the facilitation of psilocybin to another person, including the session that facilitator is supervising.**

(2) **Violation of this section constitutes a violation.**

* * *

Section 8. Section 8.5000 (Definitions) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

For purposes of sections 8.5000 through 8.5005, the following terms are used as follows:

- (1) **"Service center"** means a psilocybin service center as provided for in Measure 109.
- (2) **"Client"** means an individual ingesting psilocybin at a service center.
- (3) **"Sober adult"** means an individual at least 18 years of age who has not undergone any psilocybin treatment for at least 24 hours and does not appear to be under the influence of any other intoxicant.

* * *

Section 9. Section 8.5001 (Minimum Staffing of Service Centers) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

At any time when clients are present, service centers shall have at least three employees present with either an OHA license or OHA work permit.

* * *

Section 10. Section 8.5002 (Safe Release of Clients from Service Centers) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

- (1) **Except as provided in subsection (2), service centers shall not release individuals after a psilocybin treatment session unless they are released into the care of a sober adult.**
- (2) **An individual may be released from a psilocybin service center without an accompanying sober adult no less than six hours after consuming psilocybin.**
- (3) **A client must agree on a compliant safe release plan, including designation of a sober adult for releases governed by subsection (1), prior to commencement of a facilitation session. This subsection does not prevent the parties from deviating from this plan in case of an emergency.**

* * *

Section 11. Section 8.5003 (Insurance Requirements for Service Centers) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

Service centers shall secure and maintain commercial general liability insurance with limits of not less than \$1 million per occurrence and \$2 million aggregate for claims arising out of, but not limited to, bodily injury and property damage incurred in the course of operating in the City. The insurance may not include an exclusion for psilocybin-related claims.

* * *

Section 12. Section 8.5004 (Weapons Prohibited at Service Centers) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~strikethrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

- (1) Purpose. Due to the potential for erratic behavior or unpredictable responses, a person possessing weapons while under the influence of psilocybin poses a danger to themselves and others.**
- (2) Psilocybin service centers shall enact and enforce rules prohibiting clients from possessing weapons, as defined below, while engaged in a treatment session.**
- (3) Psilocybin service centers may adopt weapon policies broader than the requirements of subsection (2).**
- (4) "Weapon" is defined as follows:**
 - (a) any firearm;**
 - (b) any knife having a blade that projects or swings into position by force of a spring or by centrifugal force and commonly known as a switchblade knife, any dirk, any dagger, or any ice pick;**
 - (c) slung shot, metal knuckles, or nunchaku sticks; or**
 - (d) any similar instrument by the use of which injury could be inflicted upon the person or property of any other person.**

* * *

Section 13. Section 8.5005 (Storage of Certain Substances) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~strikethrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

No psilocybin-related business may store products identified as category, 3, 2, or 1 on the product's Safety Data Sheet without approval of the Fire Chief or their designee.

* * *

Section 14. Section 8.5006 (Combustible Dust) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

No manufacturing or production process that creates dust or has the potential to create dust may be utilized unless the psilocybin-related business has provided a combustible dust analysis to the Fire Chief or their designee and the Fire Chief or their designee has approved the analysis.

* * *

Section 15. Section 8.5007 (Interaction with Land Development Code and Other Municipal Code provisions) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

These regulations are in addition to, not in lieu of, all regulations applicable to psilocybin businesses in the Medford Land Development Code or otherwise set forth in the Medford Municipal Code.

* * *

Section 16. Section 8.5008 (Revocation, Suspension) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

In addition to the remedies provided for in section 8.900 and ORS 30.315, the City may suspend, revoke, or refuse to issue a license if a licensee has violated or not met any of the provisions of MMC sections 5.630 through 5.636, sections 8.5000 through 8.5006, Medford Land Development Code provisions related to psilocybin businesses, or applicable OHA rules. A violation includes any failure to meet or maintain any of the requirements or qualifications set forth in sections 8.5000 through 8.5006 or Medford Land Development Code provisions related to psilocybin businesses, including the procedures and requirements for obtaining and maintaining a business license, the making of any material misrepresentation, or if an licensee is otherwise engaged in unlawful activity.

* * *

Section 17. Section 8.5009 (Severability) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is

existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

If any provision of this subsection is determined to be preempted by state law or rules, or otherwise determined to be unlawful or unenforceable, that shall affect that regulation only and not the entire subsection.

* * *

Section 18. Section 10.337 (Uses Permitted in Commercial and Industrial Zoning Districts) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *

- (2) There are **six** classifications in the following tables that do not appear in the SIC Manual; "Business Offices," (001); "Parks, Recreation, and Leisure Facilities" (002); "Marijuana-related businesses" (003); **"Psilocybin-related business" (004); "Severe Event Shelters" (005)**, and "Dwelling Units" (881). "Dwelling Units" is in the Services group, but this is not intended to suggest any relationship to the SIC classification scheme. In this context the use classification "Dwelling Units", includes housing types that are allowed in the MFR-30 zoning district.

0. USES NOT CLASSIFIED. This major group includes uses not covered in the Standard Industrial Classification (SIC) Manual, 1987 Edition.									
		C-S/P	C-N	C-C	C-R	C-H	I-L	I-G	I-H
004	Psilocybin related businesses								
0041	Psilocybin Service Centers	Cs	X	Cs	Cs	Cs	X	X	X
0042	Psilocybin Manufacturing	X	X	X	Cs	Cs	Cs	Cs	Cs
0043	Psilocybin Laboratory	Cs	X	Cs	Cs	Cs	Cs	Cs	Cs
See section 10.839-A for special use regulations on psilocybin-related businesses. See section 10.184 for Conditional Use Permit.									

* * *

Section 19. Section 10.839-A (Psilocybin-related Business) of the Medford Municipal Code is hereby amended to read as follows [language in **bold font** is new; language in ~~striketrough~~ font is existing law to be repealed; and three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity]:

* * *


Psilocybin-related businesses are subject to approval of a Conditional Use Permit. The approving authority must determine that the proposal complies with at least one of the Conditional Use Permit criteria, (10.184 Conditional Use Permit). Applicable permits from the Oregon Health Authority shall subsequently be obtained.

- 1. The following provisions apply to any psilocybin-related business per OAR 475A (Psilocybin Regulation).**
 - a. A psilocybin-related business is prohibited from locating in any residential zoning district.**
 - b. A psilocybin-related business is prohibited from locating on any publicly owned lands.**
 - c. A psilocybin-related business is prohibited from locating adjacent to any residence.**
- 2. A psilocybin Service Center may locate in a permitted zone, if the site is located a minimum of 1,000 feet from:**
 - a. A public, private, or parochial elementary school, secondary school, (as defined in ORS 339.020 and ORS 339.030);**
 - b. Any licensed preschool;**
 - c. Any licensed daycare.**


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PASSED by the Council and signed by me in authentication of its passage this 21st day of December 2022.

ATTEST: Winnie Shepard
City Recorder


Mayor

APPROVED: December 21, 2022


Mayor