



AGENDA ITEM COMMENTARY

DEPARTMENT: City Manager's Office
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AGENDA SECTION: Ordinances and Resolutions
MEETING DATE: September 7, 2023

COUNCIL BILL 2023-123

A RESOLUTION requesting that the Oregon Legislature repeal or modify Measure 110.

SUMMARY AND BACKGROUND

Council is requested to consider a resolution formally asking the Oregon Legislature to repeal or modify Measure 110 and SB 755 to restore health, safety, and livability for all Oregonians.

PREVIOUS COUNCIL ACTIONS

In May and June 2023, City Council held a series of town hall meetings in each ward which were attended by hundreds of residents. The effects of Measure 110 on livability in the City of Medford was a frequent point of concern and discussion.

ANALYSIS

I. The need for a legislative remedy.

In November of 2020, a majority of voters in the State of Oregon passed Measure 110, with the goal being to "expand access to drug treatment" and adopt a "health-based approach to addiction and overdose" that would be more "effective, humane, and cost-effective".

Regardless of whether people supported or opposed the measure when it passed, there is a growing consensus in Oregon that it is simply not working as it is currently drafted. Annual overdose deaths have nearly tripled in the state since its passage.¹ Between March 2022 and March 2023, Oregon's overdose deaths increased at the second-highest rate of any state in the United States, increasing at over seven times the rate that California experienced in the same time frame.² Concerns have been raised that Measure 110 is motivating people with substance use disorders to relocate across state lines to Oregon.³ The fact that Idaho's drug overdose rate decreased by 3.39% during the same twelve-month period that Oregon's increased by 19.61% is consistent with this concern.²

Furthermore, the Measure's attempt to use violation citations to channel individuals into drug treatment through a telephonic substance use assessment verification simply has not worked. Of the 5,540 non-criminal violation cases for possession of a controlled substance, just 47 ended with

¹ <https://www.nytimes.com/2023/08/04/briefing/portugal-portland-decriminalization-overdoses.html>

² <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

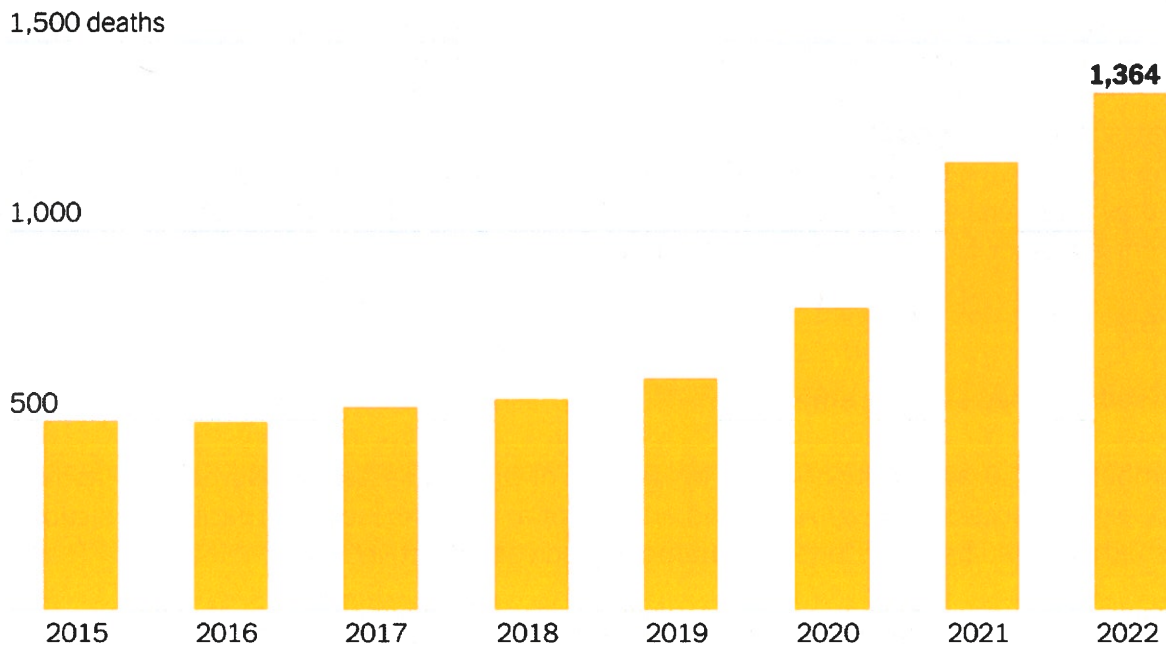
³ https://www.kezi.com/news/officials-speak-out-on-coos-countys-move-to-repeal-measure-110/article_d27d5cee-3c65-11ee-a0da-8b5b0325acaf.html



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a substance use assessment verification (0.8%), whereas 3,558 ended with a failure to appear (64%). There is no penalty for a failure to appear.⁴ Not only has Measure 110 caused ever-increasing community-wide livability issues (arising both out of public drug use and also criminal behavior associated with drug addiction), but also, the very population that Measure 110 was meant to protect is dying in ever-increasing numbers.

Annual drug overdose deaths in Oregon



Note: Chart shows provisional numbers. • Source: C.D.C. • By The New York Times

(Image courtesy of New York Times article linked in footnote 1).

Many of Measure 110's supporters looked to Portugal's model as an inspiration, but the current technical terms of Measure 110 (including SB 755's modifications) differ from Portugal's model in certain key aspects. Portugal uses civil commissions that have the ability to order people to engage in treatment (focused not just on "harm reduction" but actual cessation of drug use) and can impose civil sanctions for noncompliance. Measure 110 has no functional equivalent.⁵ To the contrary, Measure 110 gutted the "drug court" programs of Circuit Courts, which used a combination of accountability and reward to help lift individuals out of the depths of addiction, dismissing drug charges over time as a reward for successfully engaging in services. Drug courts had a proven track

⁴ <https://www.courts.oregon.gov/about/Documents/BM110Statistics.pdf>

⁵ <https://www.theatlantic.com/politics/archive/2023/07/oregon-drug-decriminalization-results-overdoses/674733/>



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record of success prior to Measure 110, but simply do not function as intended when possession charges are no longer a crime but are simply a \$100 fine with no consequence for nonpayment⁶.

Similarly, the financial component of Measure 110 has been egregiously ineffective. The State effectively prohibits the use of Behavioral Health Regional Network (BHRN) grants for inpatient addiction treatment via grant requirements that cannot be reconciled with the inpatient treatment model (specifically, that grant recipients must be able to admit clients within 48 hours, whereas inpatient treatment is in high enough demand that wait lists routinely exceed this threshold). This de facto prohibition on using BHRN grants for inpatient treatment ignores that inpatient treatment is a highly effective way for some individuals to rise up out of addiction and turn their lives around. The length of waitlist time for admittance to inpatient treatment illustrates a clear need for additional inpatient treatment beds. Ironically, if BHRN grants could be used for inpatient treatment, those waitlists for inpatient treatment would decrease. But instead, the State has prioritized "harm reduction" above all other grant recipients. While harm reduction does have its place in reducing the spread of bloodborne diseases amongst people who use drugs and may help a particular individual survive a particular drug overdose, harm reduction does nothing to help individuals overcome their addictions and avoid future drug use. Furthermore, poorly-run harm reduction programs can result in a proliferation of drug paraphernalia, including sharps, in public spaces such as City parks and the greenway.

Supporters of Measure 110 expected that there would be increased availability of drug treatment opportunities, which would result in an increase of individuals engaging in drug treatment, ultimately resulting in lower rates of drug use. The hope was that this would result in both improved livability for the community as a whole and better long-term results for individuals struggling with addiction. This has not happened, and data shows that the situation is getting worse and not better. Overdose deaths are skyrocketing far beyond the national average (which also suggests that drug use rates are skyrocketing), community livability has been severely compromised, and the State's Measure 110 grant process is prioritizing organizations that facilitate continued drug use instead of those who help lift individuals out of life-destroying addiction.

II. The proposed legislative remedies.

Repealing a measure that was passed by Oregon's voters is often seen as a significant hurdle, particularly when it passed in 2020 by a significant margin (58.5% voted yes, and 41.5% voted no). However, recent polling has shown a substantial change in public opinion. An April 2023 poll by DHM research showed that 53% of Oregonians support a complete repeal of Measure 110, and 63%

⁶ This 2018 document from the Oregon Judicial Department described how drug courts functioned prior to Measure 110: https://www.courts.oregon.gov/forms/Documents/Treatment_Program_Protocols_ROC.pdf



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support at least bringing back criminal penalties for possession of hard drugs.⁷ An August 2023 poll by Emerson College Polling corroborated those results and in fact showed an increase to 55.5% supporting complete repeal and 64.1% supporting criminal penalties for possession of hard drugs.⁸ Furthermore, in the last legislative session alone, seven bills were advanced to either fully repeal Measure 110, or to repeal the decriminalization of hard drugs: SB 254, SB 735, HB 2310, HB 2603, HB 2831, HB 2973, and HB 3549. Unfortunately, none of these seven bills were allowed to go to hearing during the last legislative session—a step which cut off the general public’s ability to show the Legislature how much popular support there now is for such changes. Regardless, these polling numbers and the seven bills proposed last session prove there is significant public interest in both repeal and significant revision.

A. Repeal.

Some jurisdictions have passed resolutions requesting complete repeal of Measure 110. If political will exists sufficient to support complete repeal, this would address the issues described in Section I, above. For the reasons that follow, a complete repeal is warranted and would not be considered repudiation of the will of Oregon’s voters.

Measure 110’s supporters criticized how the “War on Drugs” was conducted in major cities in the 70s and 80s and argued at length against lengthy prison terms for mere possession crimes. However, that was not how Oregon’s drug laws were enforced prior to the passage of Measure 110. As the Oregon Secretary of State itself acknowledged in a January 2023 audit, “Prior to M110, Oregon had no adults in custody serving time in prison for solely drug possession-related offenses.”⁹ (Emphasis added). Repealing Measure 110 would reintroduce accountability and would revitalize drug court programs, but would not result in individuals with substance use disorders being sentenced to lengthy prison sentences simply because of their addiction.

Furthermore, a complete repeal would not mean that marijuana tax revenues could not be used to support treatment programs. It would just involve a repeal of the manner in which such grants are issued. The “Oversight and Accountability Council” (OAC) created by Measure 110, and its unquestioned preference for funding harm reduction for ongoing drug use instead of programs that help individuals cease using drugs, is a panel of volunteers that is both overtaxed and underqualified. In fact, the State’s own audit of the process acknowledged as much.¹⁰

⁷ https://www.dhmresearch.com/wp-content/uploads/2023/05/DHM-Panel-Oregon_Measure110_May-2023.pdf

⁸ https://gooddrugpolicy.org/wp-content/uploads/2023/08/ECP_OR-exec-summarypollcrosstabs.pdf

⁹ <https://sos.oregon.gov/audits/Documents/2023-03.pdf>, page 9.

¹⁰ <https://sos.oregon.gov/audits/Documents/2023-03.pdf>, pages 15-16.



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Applications assessed by reviewers without sufficient program expertise. Sufficient grant evaluation training was not provided to OAC members or OHA [Oregon Health Authority] evaluators. External knowledge of applicants may have influenced OAC votes...In particular, the risk exists that bias, or external knowledge of BHRN applicants, may factor into consideration for OAC votes to approve or deny funding. While such instances do not meet the statutory definition for a conflict of interest, they may violate the procedure for materials to consider in review of grant application. On several occasions, OAC members referenced personal knowledge rather than materials in the grant applications when making funding decisions.

Repealing Measure 110 in its entirety is not a rejection of the very concept of using marijuana tax revenues to fund drug treatment programs, just the way in which the State is currently implementing that concept. The State is capable of a much more fair and transparent grant process; the State already runs such processes in countless other contexts (from transportation to fire protection to many others). Repealing this particular method of awarding grants through the OAC and OHA does not mean that the State has to abandon the concept of supporting drug treatment with marijuana tax revenues.

B. Significant revision.

If a complete repeal is not politically viable, which may be the case, the Oregon Legislature must find more effective ways to best implement the intent. The Legislature has indeed shown a willingness to pass targeted revisions (such as SB 755, which revised the grant process and modifying penalties related to fentanyl). Measure 110's failures could be addressed in a way that does not involve complete repeal, and instead targets the practical failures of the Measure without eliminating its stated intent and objectives.

The first step is reintroducing accountability. The City proposes restoring misdemeanor status for possession of methamphetamine, heroin, and similar drugs, contingent on the availability of drug courts so that individuals with substance use disorders who are willing to engage in addiction services can avoid long-term criminal consequences. The offenses would be classified as misdemeanors, but an affirmative defense would exist that would require reduction to a violation if a County's Circuit Court did not offer a drug court program. The City is also open to other similar proposals currently in discussion throughout the State that reintroduce a component of criminal consequences and strengthen drug courts instead of undermining them.

The second step is rethinking how to incentivize engagement. The substance use assessment hotline trumped as part of Measure 110 has been an unmitigated disaster to date, but the investment in this program does not need to be abandoned. Drug courts are not typically available to first-time offenders. For those individuals who do not meet the minimum requirements for drug court eligibility, the misdemeanor could be reduced to a violation upon proof of engagement with

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this hotline or an in-person behavioral health resource center. The prospect of criminal consequences would incentivize a significant number of individuals to engage with this taxpayer-funded program, in the way that a threat of a relatively-unenforceable \$100 fine cannot.

Finally, the grant process needs substantial revision. Properly-run harm reduction programs have their place, but they cannot replace licensed service providers who work to help individuals out of the destructive cycle of addiction. The makeup of the OAC should be revised so that it reflects that harm reduction is a supplement to, not a replacement for, treatment services aimed at helping individuals out of addiction, including robust funding for both outpatient and inpatient treatment aimed at cessation of drug use. As part of that revision, the restrictions creating an effective prohibition on allocating Measure 110 grants to inpatient treatment beds must be lifted. Some individuals with substance use disorder respond better to outpatient treatment, whereas others respond better to inpatient treatment (which can limit access to social triggers that might induce relapse and can provide staff support during withdrawal symptoms); there is no good reason to effectively prohibit BHRN funding for one of these two approaches. Additionally, the State must prioritize oversight and accountability for both the OAC and the OHA itself, ensuring that those organizations who are awarded grants use the funds in a proper manner and deliver meaningful results.

III. Community partner support.

Measure 110 affects treatment providers just as it affects municipalities. The City has reached out to both OnTrack Rogue Valley and Addictions Recovery Center for feedback on this proposal. See the attached joint letter of support from these two organizations.

COUNCIL GOALS

Council Goal and Objective: Health and Safety

Strategy: Support Public Safety departments as they engage with local, state, and federal response partners, stakeholder groups, and policymakers to increase department efficiencies and continue to implement best management practices.

Deliverable: Identify opportunities to engage with lawmakers to address legislative shortcomings.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

None.

TIMING ISSUES

None.



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COUNCIL OPTIONS

Approve the resolution as presented.
Modify the resolution as presented.
Deny the resolution as presented and provide direction to staff.

STAFF RECOMMENDATION

Staff recommends approval of the resolution.

SUGGESTED MOTION

I move to approve the resolution as presented.

EXHIBITS

Resolution
Joint letter of support

RESOLUTION NO. 2023-123

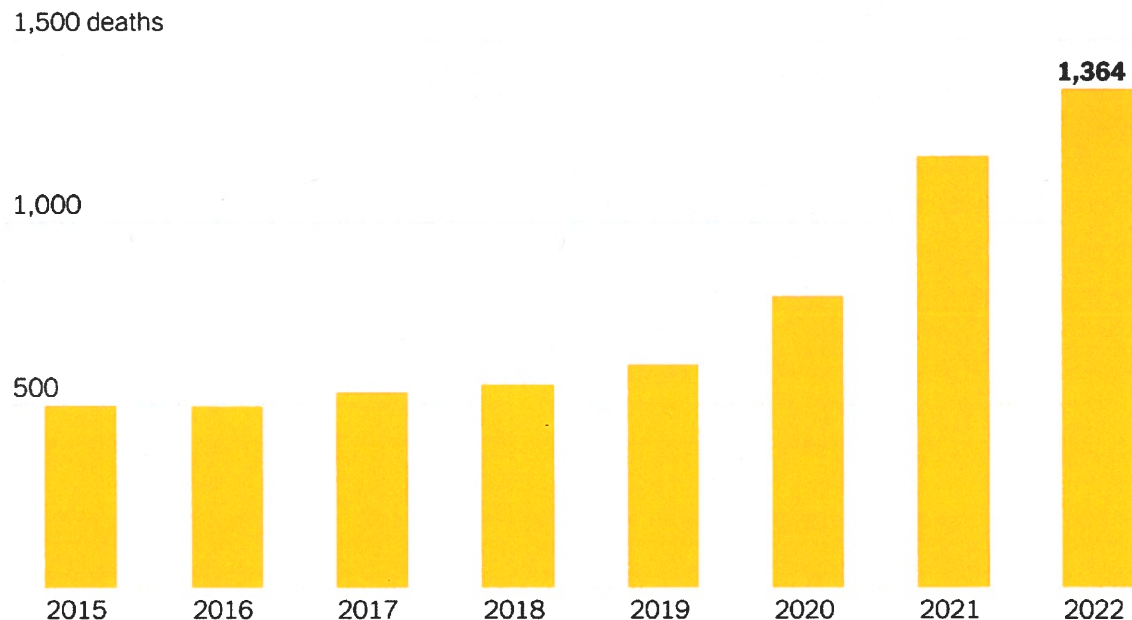
A RESOLUTION requesting that the Oregon Legislature repeal or modify Measure 110 to restore health, safety, and livability for all Oregonians.

WHEREAS, in November of 2020, a majority of voters in the State of Oregon passed Measure 110, with the goals being to “expand access to drug treatment” and adopt a “health-based approach to addiction and overdose” that would be more “effective, humane, and cost-effective”;

WHEREAS, while concerns about how the “War on Drugs” had been conducted in the 1970s and 1980s (with lengthy prison terms for mere possession charges) helped drive support for Measure 110, a recent State of Oregon audit revealed that prior to Measure 110’s passage, Oregon had zero adults in custody serving time in prison for solely drug possession-related offenses;¹

WHEREAS, Measure 110 has not reduced drug overdoses, but instead overdose deaths have steadily increased from approximately 500 per year prior to Measure 110 to 1,364 in 2022;²

Annual drug overdose deaths in Oregon



Note: Chart shows provisional numbers. • Source: C.D.C. • By The New York Times

¹ <https://sos.oregon.gov/audits/Documents/2023-03.pdf>, page 9.

² <https://www.nytimes.com/2023/08/04/briefing/portugal-portland-decriminalization-overdoses.html>

WHEREAS between March 2022 and March 2023, Oregon's overdose death rate is increasing at the second-highest rate of any state in the United States, increasing at over seven times the rate that California experienced in the same time frame;³

WHEREAS, the fact that Idaho's drug overdose rate actually decreased by 3.39% during the same twelve-month period where Oregon's overdose rate increased by 19.61% lends substantial credibility to the belief that Measure 110 is motivating people with substance use disorders to relocate across state lines to Oregon;⁴

WHEREAS, the non-criminal citations for possession of controlled substance have no effective penalty for failing to appear and end with a failure-to-appear in 64% of cases, whereas the citations have caused individuals to participate in a substance use assessment verification in just 0.8% of cases;⁵

WHEREAS, the increase in drug activity has also had severe and pervasive effects on community livability throughout the State of Oregon;

WHEREAS, many of Measure 110's supporters looked to Portugal's model as an inspiration, but the current technical terms of Measure 110 (including SB 755's modifications) differ from Portugal's model in certain key aspects. Portugal uses civil commissions that have the ability to order people to engage in treatment (focused not just on "harm reduction" but actual cessation of drug use) and can impose significant civil sanctions for noncompliance. Measure 110 has no functional equivalent mechanism for accountability;⁶

WHEREAS, Measure 110 gutted the "drug court" programs of Circuit Courts, which used a combination of accountability and reward to help lift individuals out of the depths of addiction, dismissing drug charges over time as a reward for successfully engaging in services. Drug courts had a proven track record of success prior to Measure 110, but simply do not function as intended when possession charges are no longer a crime but are simply a \$100 fine with no consequence for nonpayment;⁷

WHEREAS, the State's own audit of Measure 110 found that the Oversight and Accountability Council (OAC), which awards Behavioral Health Resource Network (BHRN) grants,

³ <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

⁴ <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

⁵ <https://www.courts.oregon.gov/about/Documents/BM110Statistics.pdf>

⁶ <https://www.theatlantic.com/politics/archive/2023/07/oregon-drug-decriminalization-results-overdoses/674733/>

⁷ This 2018 document from the Oregon Judicial Department described how drug courts functioned prior to Measure 110:

https://www.courts.oregon.gov/forms/Documents/Treatment_Program_Protocols_ROC.pdf

was provided insufficient training, and on multiple occasions awarded grants based on personal knowledge of OAC members rather than materials in the grant applications:⁸

“Applications assessed by reviewers without sufficient program expertise. Sufficient grant evaluation training was not provided to OAC members or OHA [Oregon Health Authority] evaluators. External knowledge of applicants may have influenced OAC votes...In particular, the risk exists that bias, or external knowledge of BHRN applicants, may factor into consideration for OAC votes to approve or deny funding. While such instances do not meet the statutory definition for a conflict of interest, they may violate the procedure for materials to consider in review of grant application. On several occasions, OAC members referenced personal knowledge rather than materials in the grant applications when making funding decisions.”

WHEREAS, the State effectively prohibits the use of Behavioral Health Regional Network (BHRN) grants for inpatient addiction treatment via grant requirements that cannot be reconciled with the inpatient treatment model (specifically, that grant recipients must be able to admit clients within 48 hours, whereas inpatient treatment is in high enough demand that wait lists routinely exceed this threshold). This *de facto* prohibition on using BHRN grants for inpatient treatment ignores that inpatient treatment is a highly effective way for some individuals with substance use disorders to rise up out of addiction and turn their lives around;

WHEREAS, if BHRN grants could be used for inpatient treatment and more inpatient treatment beds were made available, those waitlists for inpatient treatment would decrease;

WHEREAS, even above that *de facto* prohibition on BHRN grants for inpatient treatment, the OAC has clearly prioritized “harm reduction” programs for grant funding above even outpatient programs aimed at helping individuals with substance use disorder cease their drug use;

WHEREAS, harm reduction does have its place in reducing the spread of bloodborne diseases amongst people who use drugs and may help a particular individual survive a particular drug overdose, harm reduction does nothing to help individuals overcome their addictions and avoid future drug use, and poorly-run harm reduction programs can result in a proliferation of drug paraphernalia, including sharps, in public spaces such as City parks and the City’s greenways;

WHEREAS, the State has shown a willingness to modify Measure 110 in a more limited way in response to the fentanyl crisis that was not contemplated by voters in 2020 through its passage of SB 755, but the State has not yet engaged in a more thorough self-critical analysis of Measure 110’s systemic failures;

⁸ <https://sos.oregon.gov/audits/Documents/2023-03.pdf>, pages 15-16.

WHEREAS, in the most recent legislative session, seven bills were advanced to fully or partially repeal Measure 110 (specifically SB 254, SB 735, HB 2310, HB 2603, HB 2831, HB 2973, and HB 3549), but none were allowed to advance to public hearing; and

WHEREAS, an April 2023 poll showed 53% of Oregonians support a complete repeal of Measure 110, and 63% support bringing back criminal penalties for hard drugs,⁹ and an August 2023 poll showed these numbers had increased to 56% and 64% respectively;¹⁰ and

WHEREAS, the City has conferred with both OnTrack Rogue Valley, Inc. and Addictions Recovery Center, Inc. about the City's proposal to repeal or modify Measure 110, and the two organizations furnished a joint letter supportive of reforming the grant and services aspects of Measure 110 as outlined below; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON:

Section 1. The City Council hereby requests that the Oregon Legislature take all necessary action to repeal Measure 110, including both the decriminalization of hard drugs and the Oversight and Accountability Council. The City Council supports alternate means of directing marijuana tax revenues to supporting drug treatment programs, and requests that the State prioritize both inpatient and outpatient treatment aimed at helping individuals with substance use disorder cease drug use.

Section 2. In the alternative, the City Council hereby requests that the Oregon Legislature take all necessary action to modify Measure 110 to reintroduce accountability for drug offenses and create balance in the OAC's grant review process, specifically:

A. Possession of hard drugs should be restored to misdemeanor status, but with an affirmative defense that would require that the misdemeanor be reduced to a violation if a County's Circuit Court did not offer a drug court program;

B. For possession offenses prior to an individual defendant being eligible for drug court, the misdemeanor should be reduced to violation upon proof of the Defendant's engagement with the State's assessment hotline or an in-person behavioral health resource center;

C. The membership of the OAC and the criteria for BHRN grant awards should be modified so that inpatient and outpatient drug treatment aimed at cessation of drug use are not only eligible but prioritized; and

⁹ https://www.dhmresearch.com/wp-content/uploads/2023/05/DHM-Panel-Oregon_Measure110_May-2023.pdf

¹⁰ https://gooddrugpolicy.org/wp-content/uploads/2023/08/ECP_OR-exec-summarypollcrosstabs.pdf

D. The State must impose oversight and accountability for both the OAC and the Oregon Health Authority itself, to ensure that those organizations who are awarded grants use the funds in a proper manner and deliver meaningful results.

PASSED by the Council and signed by me in authentication of its passage this 7th day of September, 2023.

ATTEST: _____
City Recorder

Mayor Randy Sparacino

APPROVED: September 7, 2023

Mayor Randy Sparacino