

City of Encinitas (“City”) Cannabis Ordinance Amendment (Measure H) FAQs

1. What is the allowed zoning for the different businesses authorized under Measure H?

Cannabis-related businesses are authorized in the following zones. Only the zones listed in Table 1 are applicable.

Table 1. Cannabis-Related Land Uses and Allowed Zoning Districts					
Retailer (Dispensary)	Product Manufacturing	Cannabis Kitchen	Distribution	Commercial Cultivation	Industrial Hemp
General Commercial (GC)	Business Park (BP)	Business Park (BP)	Business Park (BP)	Agriculture (ER-AG)	Agriculture (ER-AG)
Downtown Encinitas Specific Plan Commercial Mixed-Use (D-CM-1 & D-CM-2)	Light Industrial (LI)	Light Industrial (LI)	Light Industrial (LI)		
North 101 Corridor Specific Plan Commercial Mixed-Use (N-CM-1, N-CM-2 & N-CM-3)	Agriculture (ER-AG)	General Commercial (GC)			
Encinitas Ranch Specific Plan Commercial (ER-C) and Mixed-Use (ER-MU1 & ER-MU2)					
Cardiff-by-the-Sea Specific Plan General Commercial (C-GC1 & C-GC2)					

2. What are the sensitive uses that affect where I can open a cannabis business?

Retailers

Per Measure H, retailers shall maintain a minimum 1,000-foot separation from sensitive uses. “Sensitive use” is defined as a day care center, playground, other retailer, or school.

“School” is defined by Measure H as an accredited institution of learning, public or private, providing instruction in kindergarten or grades 1 to 12, inclusive, but excluding private schools in which education is primarily conducted in private homes.

“Day Care Center” is defined by Section 1596.76 of the California Health and Safety Code (HSC), and must be properly licensed and zoned in the City of Encinitas, and actively operating and providing childcare to children under the age of 18. Pursuant to HSC 1596.76, this includes infant centers, preschools, extended day care facilities, and school age child-care centers. More information on state licensed day care centers is available at the following link: [Social Services - Community Care Facility search](#)

“Playground” is defined by Measure H as any outdoor grounds, owned or operated by the City, that contains any play or athletic equipment used, or primarily intended to be used by, any person less than eighteen (18) years old.

Per California Business and Professions Code (BPC) Section 26054(b), no cannabis business shall be located within a 600-foot radius from any youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The City has not specified a different radius. BPC Section 26054(b) is enforced by the state, if applicable, as a licensing requirement.

“Youth Center” is defined by Section 11353.1 of the California HSC as any public or private facility that is primarily used to host recreational or social activities for minors, including but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

Non-Retailers (All Other Cannabis Business Types)

Per California BPC Section 26054(b), no cannabis business shall be located within a 600-foot radius from a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The City has not specified a different radius; therefore, the BPC youth center requirement applies.

3. How will it be determined where cannabis retailers may locate?

The City has developed a cannabis mapping tool to assist applicants in determining where cannabis businesses may locate. The maps display zoning districts established through the Encinitas Municipal Code. In addition, the maps identify sensitive use buffer restrictions, including day care centers, playgrounds, schools, and youth centers.

It will be the responsibility of the applicant to verify that the proposed location meets all sensitive use requirements. Applicants must do their own due diligence to ensure that their location is outside of exclusionary distances outlined in Measure H and California Business and Professions Code, which will be verified by City staff.

Measure H and state law specify which zones cannabis businesses are permitted. The City does not have the authority to further restrict these areas or exhibit preference for one location over another.

4. How will the distance between sensitive uses be measured?

Per Measure H, retailers shall maintain a 1,000-foot separation from sensitive uses, as measured by a straight line from the closest property line of the premises to the closest property line of the sensitive use. The City will validate whether a business satisfies the sensitive use distance requirements during the business registration process.

Per Measure H, the measurement of the distance between a retailer and a sensitive use will consider natural topographic barriers and constructed barriers such as freeways, flood control channels, or railroad tracks without pedestrian or automobile crossings that would impede direct physical access between the uses. In such cases, the separation distance will be measured as the most direct route around the barrier in a manner that establishes direct access. Retail applicants seeking to utilize a method of measurement that takes into consideration topographic and constructed barriers will be required to submit supporting documentation as part of the business registration process. More information on this process will be provided in business registration forms, to be released at a future date.

5. How will the distance from playgrounds and other park facilities be measured?

For a playground, the premise is defined as the area containing the play or athletic equipment primarily used, or primarily intended to be used, by any person less than eighteen (18) years old (“youth-oriented”). For a playground, sensitive use measurements will be made from the boundary of the area containing the equipment. For athletic fields, the measurement will be made from the boundary of the athletic field itself. Using aerial imagery, staff has created polygons of the playground and athletic equipment areas, which are reflected in the cannabis mapping tools.

The parks throughout the City have a variety of installed athletic equipment, including but not limited to playground equipment, soccer fields, baseball fields, basketball courts, tennis courts, skate park facilities, etc. The primary users of all installed park equipment are persons under the age of eighteen (18). Therefore, the City will consider all installed park equipment to be youth-oriented.

6. Will a park without playground equipment, installed athletic equipment, or athletic fields be considered a Sensitive Use (such as Leucadia Roadside Park)?

No.

7. How will cannabis retail parking requirements be calculated?

Cannabis retail parking requirements are the same as any other retail store that might occupy the same premise. Specific parking requirements can be found in Section 30.54.030 of the Encinitas Municipal Code, and in each applicable Specific Plan. A summary of retail and commercial center parking requirements is provided below:

<u>Use</u>	<u>Parking Spaces Required</u>
Less than 100,000 sq. ft. (If not located in Specific Plan areas listed below)	1 space for each 250 sq. ft. of gross floor area
More than 100,000 sq. ft. (If not located in Specific Plan areas listed below)	1 space for each 200 sq. ft. of gross floor area
Cardiff Specific Plan - Individual retail uses	1 space for each 300 sq. ft. of gross floor area (min. 2 spaces)
North 101 Corridor Specific Plan - Individual retail uses	1 space for each 300 sq. ft. of gross floor area
Downtown Specific Plan - Individual retail uses	1 space for each 300 sq. ft. of gross floor area

8. How many retail cannabis business licenses are expected to be issued?

Measure H specifies that the City will issue a minimum of four licenses. It is not anticipated that the City will issue more than four retail licenses at this time.

9. How will I apply for a cannabis delivery business license?

Measure H does not establish a separate non-storefront delivery-only business license. However, cannabis retailers awarded a business license through the competitive lottery process will be authorized to engage in off-site delivery of cannabis products to customers.

10. How will I apply for a cannabis business license?

The City has developed cannabis business license registration materials and will post the materials on the project webpage. The registration package must be submitted through the City of Encinitas Customer Self Service (CSS) online portal.

11. Questions on satisfying preference criteria in Section 7(c) of Measure H:

- a) **Is the 30% (or more) owner of the pharmaceutical business (in Section 7[c][b] of Measure H) (“Criterion B”) required to have a current ownership interest in a lawful pharmaceutical business at the time of applying, or can they simply have had ownership for more than 36 consecutive months at any point in time?**

Preference Criterion B does not provide any timeframe or limitation for when the 36 months of consecutive ownership must have occurred. Therefore, the criterion would be satisfied if the applicant had an aggregate ownership of 30 percent or greater in the same lawful pharmaceutical business licensed in good standing and regulated by a state or federal government for any continuous 36-month period.

- b) **Does the 20% (or more) owner of a lawful properly licensed business in Encinitas (in Section 7 [c][c]) (“Criterion C”) with an average of four (4) or more employees for a minimum of 18 consecutive months need to be a current business owner?**

Preference Criterion C does not provide any timeframe or limitation for when the 18 months of consecutive ownership must have occurred. Therefore, this ownership could have occurred at any point in time over the life of that owner.

- c) **How will the ownership preference criteria work?**

Measure H states that preference will be given to applicants where “an owner of the applying organization for a cannabis business has at least one” of the experiences identified in Section 7(c)(a-c). Section 7 also states that “a cannabis business owner who meets multiple criteria will receive greater preference based on the number of criteria they meet.”

Measure H also provides that where there are multiple conflicting applicants for a retail business license, applicants who meet the most preferences will be given priority and will be entered into the first lottery drawing.

“Owner” is defined by Measure H as “a person with an aggregate ownership interest, direct or indirect, of 20% or more in a commercial cannabis business, whether a partner, shareholder, member, or the like, including any security, lien, or encumbrance in an ownership interest that, upon default, could become an ownership interest of 20% or more in a commercial cannabis business.”

The City interprets the definition of person to be that of a legal person, including corporations, so an ownership team can include multiple natural persons who each meet different preference criteria.

Example #1: John Smith is a current retail cannabis business owner in Long Beach and has been for the past 2 years (meets the criterion contained in Section 7[c][a]) (“Criterion A”). Sally Jones owned a pharmacy for 15 years in the late 1990s and early 2000s (meets Criterion B). Rick Brown currently owns a Shell station in

Encinitas and has for the past 18 months (meets Criterion C). Each owner owns more than 20% of the cannabis business. All three criteria are met by an owner of the business.

Under the proposed interpretation above, all three owners would have to be incorporated into a single ownership entity to meet all three preference criteria.

Example #2: Jane Doe presently owns and operates a cannabis retail store in Santa Ana and has for the past 12 months. She also owned a pharmacy with 3 employees for 5 years between 2000-2005, in the City of Encinitas.

Under the proposed interpretation above, the applicant would meet two (2) of the criteria for preference, Criteria A & B.

d). Within the preference provisions (Measure H - Section 7. Marijuana Business Registration), will an applicant get partial credit for meeting part of a preference criteria? For example, one of the preference criteria is met when an applicant has 12 consecutive months of experience within the past 5 years as an owner of a cannabis business (Criterion A). If an applicant has 6 months of experience, do they get 50 percent of the credit on this criterion?

No, Measure H does not provide for partial credit – applicants must meet the criteria as specified in the preference to receive the credit.

12. What documentation will be needed to prove that an owner satisfies a preference?

Minimum required documentation will be defined through the business registration process. More information will be provided upon release of registration materials.

13. When will the City begin accepting cannabis business license applications?

The City will begin accepting cannabis business license registrations on January 17, 2022, and the registration period will close on February 18, 2022 for retailers. The registration period for non-retailers will remain open.

14. How will the tiered lottery work for cannabis retailers?

Measure H specifies a numeric limit on the number of businesses licenses that shall be granted for cannabis retail; therefore, a lottery will be conducted. The City will open a 30-day application window from January 17, 2022 until February 18, 2022 to accept registration from potential cannabis retail businesses.

Upon close of the registration process, applicants will be grouped into tiers. Applications satisfying all three preference requirements will qualify for the first tier and round of the public lottery. If potential licenses are available after the first round of applicants is exhausted, a second lottery will be conducted with the second-tier qualified applications.

15. Can an owner submit more than one application for a cannabis business for the same premise?

Yes, however, applicants cannot submit more than one identical application with the same ownership and the same location within a premise.

Measure H defines a premise as “the legal parcel(s) of land and the improvements on it...” Separation requirements (described above) limit any premise to one (1) cannabis business. The City has many large parcels containing strip malls and shopping centers which include multiple units and storefronts that, taken individually, could meet the requirement specified in state law and Measure H for issuance of a cannabis business license. But following the application of a system of preferences and a lottery, as outlined in Measure H, only one cannabis business license will be issued by the City for any one premise.

16. Can an owner submit applications on more than one premise in the City?

Yes.

17. Can a landlord enter into agreements with one or more applicants to lease them the property if they are the successful licensee?

Yes.

18. What type of documentation is required to prove that a landlord is willing to enter into an agreement with a retail cannabis business or other cannabis operation?

Minimum required documentation will be defined through the business registration process. The City intends to develop a standard property owner authorization form for applicants. More information will be provided upon release of registration materials.

19. Does California have an industrial hemp state regulatory plan approved by U.S. Department of Agriculture?

Yes. The California Department of Food and Agriculture (CDFA) recently finalized their laws and regulations for industrial hemp, and their website is linked [here](#). The CDFA website includes an FAQ page on State industrial hemp law.

20. Can the City regulate flavored cannabis products, THC content, etc.?

Regulation related to the types of products that may be sold at cannabis retailers is a matter under the control of the State of California Cannabis and Industrial Hemp Laws, and may not be further regulated by the City. To the extent a product is legal for a state-licensed retailer to sell as determined by the State, it cannot be prohibited by local regulation in the City of Encinitas.

21. Can the City regulate cannabis branded merchandise?

The City may not prohibit state-licensed cannabis businesses with a valid City cannabis business license from selling branded merchandise. To do so would exceed the City’s police powers by implementing a regulation that is contrary to Measure H and state law. A local regulation prohibiting non-cannabis businesses from selling cannabis themed, branded, or related merchandise would violate the free speech provision of the First Amendment of the U.S. Constitution. Under Measure H, the City can revoke a cannabis business license of a licensee that violates state regulations related to branded merchandise.

22. What constitutes a pharmaceutical business?

Preference Criterion B has two main elements. First, the applicant must have been the owner (at least 30%) of a “lawful pharmaceutical business licensed by a state or the federal government.” The second part of the preference requires that “experience demonstrated must be of a type substantially similar to that allowed by the City License for which the applicant is

applying.” A retail pharmacy is “substantially similar” to retail cannabis. There may be other types of licensed pharmaceutical businesses beyond a retail pharmacy that are “substantially similar” to retail cannabis.

The City has determined that some pharmaceutical business types that would generally not be considered “substantially similar” to retail cannabis, including pharmaceutical developers and manufacturers, as well as medical practices and urgent care facilities.

23. How can the City ensure that retailers are not selling illegally-cultivated cannabis?

The State maintains the California Cannabis Track-and-Trace (CCTT) program, which is a system used statewide to record the inventory and movement of cannabis and cannabis products through the commercial cannabis supply chain – from cultivation to sale. All state-issued cannabis licensees are required to use the “CCTT-Metrc” system to record, track, and maintain information about their cannabis and cannabis-product inventories and activities.

24. How can I file a complaint with the City Code Enforcement Division about a cannabis business that is violating local law (aspects covered in Measure H)?

To file a complaint with the City Code Enforcement Division, complete the [Citizen Complaint Form](#). Once received, staff will respond to the complaint pursuant to the standards and procedures described in the [Code Enforcement Guide](#). For general questions regarding cannabis and Measure H, citizens should contact cannabis@encinitasca.gov.

25. How can I file a complaint about a cannabis business that is violating state law (aspects not covered in Measure H)?

To file an anonymous complaint with the California Department of Cannabis Control against a licensed or unlicensed cannabis business, visit the following state webpage: cannabis.ca.gov/resources/file-complaint.

26. What is the City’s policy requirement for an entry lobby/vestibule at cannabis retailers?

Each retail cannabis business shall ensure that the premises are designed and operated in such a manner that only qualified persons are able to access the area of the business used to display and/or sell cannabis and cannabis products. Such measures include having a separate waiting room, or if the premises are not able to accommodate a separate waiting room because of their size and/or design, having a designated and controlled area with security measures at the interior entrance used to receive and screen customers, in order to ensure that identification can be effectively checked to preclude un-qualified persons from gaining access to the display/sale area(s). Exterior windows shall be sufficiently opaque or otherwise positioned so that no cannabis and/or cannabis products shall be visible from the public right-of-way. However, this prohibition does not include signage authorized by EMC Section 9.25.020(G).