

CITY ATTORNEY'S IMPARTIAL ANALYSIS – MEASURE S

Currently, all commercial cannabis activities, including marijuana retailers, dispensaries, sales, deliveries, cultivation and processing are prohibited in the City of Solana Beach, consistent with state and federal law. This measure would repeal existing prohibitions and authorize two marijuana dispensaries without size restrictions in office professional (OP), general commercial (C), special commercial (SC), light commercial (LC) and light industrial (LI) zones (a combined land area of 0.3 square miles). Every commercial dispensary could sell medical marijuana and adult use (recreational) marijuana between the hours of 7:00 a.m. and 10:00 p.m. every day of the week. Marijuana deliveries would be allowed at all hours to every home and business in every zone with no restriction on the number of trips, delivery vehicles or total deliveries.

Marijuana activities permissible under the measure are currently illegal under federal law. Certain provisions of the measure may be found inconsistent with state law. The imposition and collection of the 1.25% "sales tax" is not authorized by the Adult Use Marijuana Act and its validity under Revenue & Taxation Code §7285.9 is questionable. The measure does not propose to tax medical marijuana sales or deliveries, nor provide for a business use tax as allowed under Revenue and Taxation Code §34021.5.

If the measure passes, should any of its provisions be declared unconstitutional, the remaining provisions would stay in effect.

The measure establishes a \$2,500 application fee without a fee study, while other jurisdictions require an initial \$10,000 cost recovery deposit. It provides an application and ranking process that the City of Solana Beach must follow and cannot change. Applicants describe how they will cater to visitors and represent Solana Beach in their marijuana businesses.

The measure allows minors who are qualified patients to enter dispensaries with a parent/ guardian. It allows indoor non-medical marijuana cultivation and permits sales of up to six plants with no limits on the number of transactions per day. While it prohibits cultivation onsite at dispensaries, the measure allows personal indoor marijuana cultivation and medical marijuana cultivation of 12 plants per qualified patient and up to 24 marijuana plants per premises. It allows parolees and probationers to live on premises where marijuana is being grown with written confirmation of their allowed medical marijuana use. Medical marijuana cultivation would be allowed 1,000 feet or more from schools, community centers or parks and not on premises with any religious or youth-oriented facilities or childcare centers. Dispensaries could be located more than 600 feet of one another or public schools, but without distance restrictions near private schools, daycare centers or youth and community centers.

The measure was placed on the ballot by a petition signed by the requisite number of voters. If the measure passes, it can only be changed, amended, or repealed by a vote of the people.

Voting "yes" repeals current prohibitions entirely and allows commercial marijuana retailers in non-residential zones and marijuana deliveries and certain cultivation in all zones in Solana Beach without clearly enforceable taxes. Voting "no" leaves in place existing City ordinances and prohibitions.

Johanna N. Canlas, City Attorney
City of Solana Beach