

ORDINANCE NO. 2016 – 2416

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY
ADDING CHAPTER 10.14 TO TITLE 10 OF THE NATIONAL CITY
MUNICIPAL CODE TO PROHIBIT ALL COMMERCIAL MARIJUANA ACTIVITY
IN THE CITY OF NATIONAL CITY, REGULATE THE CULTIVATION OF
RECREATIONAL MARIJUANA FOR PERSONAL USE, AND REGULATE
THE POSSESSION OF RECREATIONAL MARIJUANA IN ANTICIPATION
OF PROPOSITION 64, THE CONTROL, REGULATE, AND TAX ADULT
USE OF MARIJUANA ACT (“AUMA”), PASSING ON NOVEMBER 8, 2016

WHEREAS, National City is committed to the success and positive future of its community youth, and to the health and safety of its residents; and

WHEREAS, National City supports efforts to decrease and prevent youth use of and exposure to non-medical marijuana and other drugs; and

WHEREAS, marijuana use can be harmful to the adolescent brain, affecting the parts of the brain that influence pleasure, memory, thinking, concentration, sensory and time perception, and coordinated movement as documented and set forth in “Drug Facts: Marijuana”: National Institute of Health, National Institute on Drug Abuse, January 2014, <https://www.drugabuse.gov/publications/drugfacts/marijuana> and as identified in the staff report and accompanying exhibits; and

WHEREAS, a ballot measure titled the “Adult Use of Marijuana” to permit commercial sales of non-medical marijuana in California will be on the November 2016 General Election ballot; and

WHEREAS, analysis of the “Adult Use of Marijuana” (“AUMA”) initiative by the San Diego District Attorney’s office points out, “The initiative allows persons convicted of dealing large amounts of controlled substances such as heroin (up to 20,000 individual doses), methamphetamine (up to 10,000 individual doses) to become ‘legal marijuana dealers’” (see Exhibit 4); and

WHEREAS, the analysis further notes that the initiative permits convicted felony drug dealers who have used children to courier drugs to an adult buyer to be eligible to apply for a California marijuana license (see Exhibit 4); and

WHEREAS, National City is concerned that the recreational use of marijuana in the city and the commercial availability of marijuana in the city will attract greater felony behavior, increase crime in the city and can exploit children; and

WHEREAS, there are no provisions in the initiative to prevent advertising and marketing to children and teens near parks, community centers, child-focused businesses, and community colleges; and

WHEREAS, the High Intensity Drug Trafficking Areas (“HIDTA”) statistics for marijuana use in Colorado teens ages 12-17 are 74% above the national average as

documented and indicated in “The Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) September 2015 annual report (see Exhibit 2); and

WHEREAS, the initiative allows for the indoor growing of up to six marijuana plants per residence and each plant requires 6 gallons of water per day in a state that is currently battling a drought; and

WHEREAS, in Colorado, where non-medical marijuana is legal and commercialized, marijuana-related traffic deaths increased 92% from 2010 to 2014 while all traffic deaths increased only 8 percent during the same time period (see staff report and Exhibit 2); and

WHEREAS, a study released in May 2016 by AAA Foundation for Traffic Research found that fatal crashes involving drivers who recently used marijuana doubled in Washington after the state legalized the drug as discussed in “Prevalence of Marijuana Involvement in Fatal Crashes: Washington, 2010-2014,” May 2016, AAA Foundation for Traffic Safety; and

WHEREAS, National City is highly concerned of the likelihood of a severe increase in fatal crashes or incidents involving drivers who recently used marijuana should marijuana be legalized in the State of California and commercially available in the city; and

WHEREAS, National City is concerned for the health and safety of its residents should marijuana be legalized in the State of California and commercially available in the city; and

WHEREAS, National City currently prohibits medical marijuana dispensaries under National City Municipal Code section 18.30.340 and prohibits the cultivation of marijuana for medicinal and other purposes under National City Municipal Code section 18.30.345.

NOW THEREFORE, the City Council of the City of National City does ordain as follows:

Section 1. Title 10 of the National City Municipal Code is amended by adding Chapter 10.14 to read as follows:

Chapter 10.14
RECREATIONAL MARIJUANA

Sections:

- 10.14.010 Definitions.
- 10.14.020 Commercial marijuana activity – Prohibited.
- 10.14.030 Cultivation of recreational marijuana for personal use.
- 10.14.040 Possession of recreational marijuana.
- 10.14.050 Smoking of marijuana in public - Prohibited.

- 10.14.060 Penalties.
- 10.14.070 Enforcement.
- 10.14.080 Non-exclusivity.
- 10.14.090 Severability.

10.14.010 Definitions.

A. For purposes of this chapter, “marijuana” shall have the same meaning as the definition of that word in Section 11018 of the California Health and Safety Code.

B. “Commercial marijuana activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, or sale of marijuana and marijuana products.

C. “Cultivation of marijuana” shall mean the planting, growing, cultivating, harvesting, drying, curing, grading, trimming or processing of marijuana as defined in Business and Professions Code section 26001.

D. “Delivery” means the commercial transfer of marijuana or marijuana products to a customer. Delivery also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products as defined in Business and Professions Code section 26001(h).

E. “Marijuana accessories” shall have the same meaning as section 11018.2 of the Health and Safety Code. Any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

F. “Marijuana cultivation facility” means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

G. “Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

H. “Marijuana product manufacturing facility” means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

I. “Marijuana products” means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use of consumptions, such as, but not limited to, edible products, ointments and tinctures and as otherwise defined in section 11018.1 of the Health and Safety Code.

J. “Marijuana storage facility” means any entity or premise used for the storage of marijuana, marijuana products or marijuana accessories.

K. “Marijuana testing facility” means an entity licensed to analyze and certify the safety and potency of marijuana.

L. “Private Residence” means a house, an apartment unit, a mobile home, or other similar habitable dwelling as defined in Health and Safety Code section 11362.2(b)(5).

M. "Retail marijuana store" includes any entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers; or any premises, whether licensed or unlicensed, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products are offered, either individually or in any combination, for retail sale, including an establishment that delivers marijuana and marijuana products as part of a retail sale.

10.14.020 Commercial marijuana activity - Prohibited. The licensing and/or operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, marijuana delivery businesses, marijuana storage facilities, retail marijuana stores, marijuana establishments, or any commercial marijuana activity is prohibited.

10.14.030 Cultivation of recreational marijuana for personal use.

A. Outdoor Cultivation. The cultivation of marijuana outdoors is prohibited regardless of purpose.

B. Indoor Cultivation. Not more than six plants may be cultivated, planted, harvested, dried, processed or possessed within a single private residence at one time per Health and Safety Code section 11362.2(a). This provision on indoor cultivation shall only become effective if Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") passes on November 8, 2016.

10.14.040 Possession of recreational marijuana.

A. It is unlawful for a person under the age of twenty-one (21) years to possess, transfer, transport or purchase marijuana, marijuana products, marijuana accessories.

B. It is unlawful for any person to display, consume, sell, or use marijuana in or upon any public area, public park, or public building.

C. It is unlawful for any person to purchase marijuana or marijuana products for consumption or possession by, or otherwise provide marijuana for consumption or possession by, or to sell marijuana to, any person under the age of twenty-one (21) years.

D. This section 10.14.040 shall only become effective if Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") passes on November 8, 2016.

10.14.050 Smoking of marijuana in public - Prohibited.

A. General Prohibition. The smoking of marijuana is prohibited anywhere the smoking of tobacco is prohibited.

B. Smoking of marijuana shall be prohibited as stated in Health and Safety Code section 11362.3.

10.14.060 Penalties.

A. General Penalty. In addition to any other penalties that may exist under state, federal, and local laws, a violation of any provision of this chapter or a failure to comply with any mandatory requirements of this chapter is subject to prosecution in accordance with Title 1 of the National City Municipal Code and may be enforced through injunctive relief or other relief available by law. Penalties for violations of the provisions of this chapter may result in a misdemeanor citation for each day in violation, punishable by a maximum of one year in jail and a one thousand dollar fine.

B. **Public Nuisance.** The conduct of any activity or business in violation of this chapter is declared to be a public nuisance and the city may, in addition to all other remedies set forth hereunder, commence an action or actions or proceedings, for the abatement, removal and enjoinder thereof, in a manner provided by the law; and may take such other steps and may apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, marijuana delivery business, marijuana storage facility, retail marijuana store, marijuana establishment, or any commercial marijuana activity and restrain and enjoin any person from operating, conducting or maintaining such a business or establishment contrary to the provisions of this chapter.

C. **Cost Recovery.** Administering departments are authorized to charge cost recovery fees for services provided under this chapter. Cost recovery fees may also be recovered for equipment and personnel expenses incurred. Said fees may be established from time to time by resolution of the city council.

10.14.070 Enforcement. The provisions of this chapter shall be enforced by the fire marshal, any police officer, any code compliance officer, and any other city official authorized to enforce any provision of the municipal code.

10.14.080 Non-exclusivity. Nothing in this chapter shall limit or preclude the enforcement of other applicable laws.

10.14.090 Severability. The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

PASSED and ADOPTED this 1st day of November, 2016.

Ron Morrison, Mayor

ATTEST:

Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

George H. Eiser, III
Interim City Attorney