



**DENVER**  
THE MILE HIGH CITY

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**TO: Denver City Council**  
**FROM: Tina Axelrad, Principal City Planner**  
**DATE: October 20, 2010**  
**RE: Denver Zoning Code - Amendment 3: Growing Medical Marijuana**

### **Staff Report and Recommendation**

Pursuant to Section 12.4.11 (Text Amendment) of the Denver Zoning Code, the City Council is scheduled to review and make a final decision on Amendment 3 to the Denver Zoning Code, sponsored by Councilwoman Jeanne Robb, at a public hearing on October 25, 2010.

Based on the criteria for review stated for text amendments in Section 12.4.11.8 of the Denver Zoning Code, CPD staff recommends that the City Council approve Amendment 3 to the Denver Zoning Code. This amendment will expressly allow persons with official State-issued patient registry ID cards to grow, at home, a limited number of medical marijuana plants for their own personal use.

### **I. Summary and Purpose of Proposed Amendment 3**

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Purpose of Amendment 3. The Denver Zoning Code currently allows two types of plant-growing activities in Residential Zone Districts as accessory to a primary residential use: under the “garden” and “greenhouse” specific accessory use types. The City Council sponsor intends, with Amendment 3, to make clear that accessory garden and greenhouse uses may include home-based growing of medical marijuana for personal use, with limitations. The amendment seeks to (1) manage the potential adverse impacts this type of home-growing may have on surrounding residential properties, and (2) balance the general health, safety, and welfare of Denver citizens with the right to medical marijuana use granted Colorado citizens through Amendment 20 to the Colorado Constitution.

From a growing body of experience both in Colorado and nationwide, it has been found that growing marijuana indoors may present substantial health and public safety hazards and nuisances both to the grower and to surrounding property owners (e.g., from increased risks of fire, noxious odors, toxins from mold, and secondary effects such as burglary and impaired driving). Amendment 3’s zoning limitations on growing marijuana for legitimate personal use are intended to mitigate these potential hazards and protect the predominant or emerging residential character in Denver’s residential and mixed-use neighborhoods.

Summary of Amendment 3. Amendment 20 to the Colorado Constitution specifically anticipates the growing of medical marijuana by “patient registry identification cardholders” in the cardholders’ private residence. Amendment 3 makes clear that while such incidental or “accessory” growing is permitted, certain limitations are necessary to mitigate the potential for the adverse impacts and hazards described above.

Specifically, Amendment 3 makes clear that when growing is incidental or accessory to a primary residential use of land:

- (1) The resident must be registered with the state as a patient;
- (2) No more than 6 plants per registered resident may be grown and, cumulatively, no more than 12 plants may be grown for each dwelling unit in the structure,
- (3) When there are multiple units in a single building, medical marijuana cannot be grown or stored in common areas; and
- (4) All medicinal marijuana must be grown inside a completely enclosed structure.

Relationship of Amendment 3 to Other City Ordinances and Colorado Law: Denver's current and future medical marijuana ordinances, as well as state legislation, will continue to control and license all aspects of the medical marijuana industry, including retail sales, commercial grow operations, and related products manufacturing. Amendment 3's proposed changes to the zoning code manages a subset of medical marijuana growing solely for the personal use of Denver residents who qualify under state law. The limitations on these small-scale, personal-use grow operations in residential areas ensure any potential adverse impacts are substantially mitigated and controlled, while upholding the rights granted under Amendment 20. Amendment 3 will not conflict with either state law or Denver's medical marijuana licensing ordinance.

## **II. Review Criteria and CPD Analysis**

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The criteria for review of a proposed text amendment are found in Section 12.4.11.9 of the Denver Zoning Code. CPD staff analyzed the proposed text amendment for compliance with the review criteria stated above, and finds that the proposed Amendment 3 satisfies each of the criteria.

### **A. Amendment 3 is Consistent with the City's Adopted Plans**

Amendment 3 is consistent with the city's adopted plans because it provides reasonable limitations on an emerging land use and industry that may have potential adverse public health and safety impacts, thereby accommodating small-scale growing in residential areas for personal use only while protecting the stability of established and emerging residential neighborhoods.

### **B. Amendment 3 Furthers the Public Health, Safety, and General Welfare**

As noted above, growing marijuana can present substantial public health and safety hazards. Amendment 3 mitigates these hazards, thereby furthering the overall public health, safety and general welfare, by limiting how medical marijuana may be grown (only in an enclosed structure) and the amount that may be grown for personal medicinal use in residential zone districts.

C. The Proposed Text Amendment Results in Regulations that are Uniform within Each Zone District

Amendment 3 will result in the uniform regulation of growing medical marijuana in each of the zone districts where such use is allowed, limited, or prohibited.

**III. PROCESS FOR REVIEW OF AMENDMENT 3**

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In accordance with Sections 12.4.11.2 and 12.4.11.4.B of the Denver Zoning Code, Councilwoman Jeanne Robb initiated this text amendment to the Denver Zoning Code and exercised her authority under such sections to submit Amendment 3 directly to the Blueprint Denver Committee (July 28, 2010) and to the Special Issues Committee (September 20 and 29, 2010) for their consideration and action.

On July 28, 2010, the Blueprint Denver Committee voted to forward Amendment 3 to the full City Council for final action at a public hearing. On August 9, 2010, at the first reading on Council Bill No. 2010-0607 to publish Amendment 3 for public hearing, the city council ordered the amendment published, but postponed the public hearing until September 20, 2010. On September 20, 2010, City Council continued the public hearing to refer the amendment to the Special Issues Committee for further discussion and possible additional revisions.

On September 29, 2010, the Special Issues Committee voted to forward Council Bill 2010-0607 (Amendment 3) to the full City Council for final action at a public hearing on October 25, 2010, with committee support for a floor amendment to the council bill to add a 2-year sunset provision on allowing limited medical marijuana growing as accessory to primary residential uses.

**IV. CPD STAFF RECOMMENDATION TO BLUEPRINT DENVER COMMITTEE**

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Based on the criteria for review as described above, CPD Staff recommends **approval** of Council Bill 2010-0607 as originally filed. If an amendment to add a 2-year sunset provision is proposed on the floor at the October 25, 2010, public hearing, CPD will support the amendment to the council bill.