



TO: City Council Members of the Neighborhood & Planning Committee
FROM: Tina Axelrad, Principal City Planner
DATE: July 31, 2014
RE: Text Amendment to DRMC, Sec. 59-2, Growing Marijuana at Home for Personal Use

Staff Report and Recommendation

Based on the criteria for review in the Denver Revised Municipal Code (“DRMC”), CPD staff recommends that members of the Neighborhood & Planning Committee of the Denver City Council move forward this proposed text amendment to DRMC, Section 59-2, to allow for marijuana growing in home gardens, subject to specific limitations intended to mitigate potential adverse impacts.

Summary of Text Amendment

This text amendment is sponsored by Councilwoman Jeanne Robb, working closely with the City Attorney’s Office and the Community Planning & Development Department. The amendment seeks to level the playing field for Denver residents seeking to grow marijuana at home for solely personal use. Currently, residents of properties zoned under the Denver Zoning Code operate under more restrictive rules for at-home marijuana growing than do residents of properties zoned under Former Chapter 59. This text amendment will apply the same limitations on at-home marijuana growing that currently apply to properties zoned under the Denver Zoning Code to similar properties zoned under Former Chapter 59.

More specifically, the DRMC text amendment will accomplish the following:

1. Clarify that a “garden” is an allowed accessory use to a primary residential use of land in all zone districts zoned under Former Chapter 59.
2. Clarify that marijuana grown as part of an accessory garden is allowed only when the garden is accessory to a residential use (dwelling unit).
3. When marijuana is grown as part of an at-home garden, the following limitations apply (these are the same as found in the Denver Zoning Code, Section 11.8.4):
 - Maximum # of plants is capped at 6 per adult and no more than 12 total per household.
 - Marijuana must be grown in a completely enclosed structure, and not in common areas of a multi-unit building (such as lobbies, or shared laundry or recreational facilities).
 - The marijuana grown is only for the personal use of the resident; it cannot be sold or taken away from the home to sell or otherwise distribute.

A redlined copy of the proposed text amendment is attached to this staff report for your information.

Public Review Process

A summary of this pending text amendment, including a draft of the actual ordinance, was sent to all Registered Neighborhood Organizations (RNOs) on July 1, 2014. In addition, notice of the Planning Board public hearing on July 16th was sent to all RNOs on July 1, 2014. Notice of the August 6, 2014, Neighborhood and Planning Committee meeting was sent to all RNOs on July 23, 2014.

The Denver Planning Board conducted a public hearing on the proposed DRMC text amendment on July 16, 2014. No persons offered written or oral testimony. The Planning Board voted unanimously, 10-0, to recommend to the City Council approval of the proposed amendment.

As of the date of this staff report, CPD has not received any public comment on the pending text amendment.

Criteria for Review / Staff Evaluation

The criteria for review of a proposed amendment to the DRMC are found in the City Charter, Section 3.2.9, which authorizes the City Council to adopt and amend zoning regulations and the official zoning map for the purposes of “promoting health, safety, morals or the general welfare of the community.” In adopting or amending the city’s zoning relations or map, such council action must be “in accordance with a Comprehensive Plan” prepared by CPD and adopted by City Council. Finally, all zoning regulations must be “uniform for each class or kind of buildings through each [zone] district, but the regulations in one District may differ from those in other Districts.”

1. The DRMC Amendment is Consistent with the City’s Adopted Comprehensive Plan

The DRMC amendment regarding allowances and limitations on at-home growing of marijuana for personal use is consistent with the city’s adopted plans and policies in the following way:

Denver Comprehensive Plan 2000:

Land Use

- Strategy 2-A: (paraphrased) [P]roposed revisions should ensure that the Denver Zoning Ordinance will be flexible and accommodating of current and future land use needs...

This amendment is consistent with the city’s adopted plans because it implements the above plan strategy by furthering the City’s intent to allow growing of marijuana at home for personal use, but only if limited to avoid adverse impacts, particularly on surrounding neighboring properties. The City created this policy in 2013 when it adopted such limitations on residential properties zoned under the Denver Zoning Code, but inadvertently did not extend those same limitations to residential properties zoned under Former Chapter 59. This amendment simply extends the same limitations already applicable to most residential properties in Denver to the remaining residential properties not rezoned in 2010 to the Denver Zoning Code.

2. The DRMC Amendment Furthers the Public Health, Safety, and General Welfare

This amendment is reasonably necessary for the public health, safety, and general welfare because it assures the same zoning protections for neighbors and other potentially affected parties from at-home marijuana growing, regardless of the applicable Denver zoning ordinance/code.

3. The DRMC Amendment Results in Regulations that are Uniform within Each Zone District

This amendment will result in uniformity and consistency of treatment of development within each zone district, whether the zone district is a carry-over from Former Chapter 59 or a more recent Denver Zoning Code district. This amendment ensures the same limitations related to growing marijuana at home for personal use whether your home is on lands zoned under the Former Chapter 59 or the Denver Zoning Code.

Staff Recommendation

Based on the analysis set forth above, CPD staff finds that proposed DRMC text amendment meets the requisite review criteria. Accordingly, staff recommends that the Neighborhood & Planning Committee move to forward the proposed amendment to the full City Council for public hearing and a final decision.

Attachments

1. Proposed Redlined Draft of Amendment to DRMC, Section 59-2

**Amendment to the Denver Revised Municipal Code, Chapter 59, §59-2
Revisions to Address Limited Allowance for Residential Growing of Marijuana**

DRMC, Sec. 59-2. Former chapter 59.

- (a) Chapter 59 of the Denver Revised Municipal Code as filed with the Denver City Clerk on 20th day of May 2010, at City Clerk Filing No. 10-512, ("Former Chapter 59"), shall remain in full force and effect for any land not rezoned to zone districts in the Denver Zoning Code. No changes shall be enacted to the provisions of the former chapter 59 after June 25, 2010.
- (b) For lands retaining their zoning designation under the former chapter 59, including land zoned planned unit development (PUD), land zoned with waivers and conditions and land subject to a planned building group site plan, all provisions of the former chapter 59, including procedures, shall apply.
- (c) For purposes of applying the limitations on bulk planes and building heights in section 59-96 of the former chapter 59, the "protected districts" identified therein shall also include the zone districts defined as "protected districts" in section 13-3 of the Denver Zoning Code.
- (d) For purposes of applying the "L1" limitation on "eating place" primary uses applicable in the R-4-X, B-2, B-3, B-A-2, B-A-4, CCN, I-0, I-1, and I-2 zone districts in former chapter 59, the residential districts identified in the L1 limitation shall also include the zone districts defined as "protected districts" in section 13-3 of the Denver Zoning Code.
- (e) For purposes of applying the "exception to use enclosure requirement" for mixed use zone districts (C-MU, R-MU, and T-MU zones) in section 59-302(4)b.1, and 2 of the former chapter 59, the residential districts identified therein shall also include the zone districts defined as "protected districts" in section 13-3 of the Denver Zoning Code.
- (f) For purposes of applying the restrictions on the siting of outdoor animal runs within twenty (20) feet of a habitable residential structure stated in section 59-2(16) of the former chapter 59, the residential zone districts identified therein shall also include the zone districts defined as "protected districts" in section 13-3 of the Denver Zoning Code.
- (g) For purposes of applying the five-foot side setback for structures that are not single-unit or two-unit dwellings, and which have ground floor commercial or which are four (4) or more stories in height, as required in the mixed use zoning districts in section 59-312(3) of the former chapter 59, the residential zone districts identified therein shall also include all SU and TU zone districts as established on the official zoning map under the Denver Zoning Code.
- (h) For purposes of applying various zoning protections to residentially zoned properties, the terms "residential district(s)," "residential zone district(s)," "residential zone(s)," "residentially zoned lot," and "residentially zoned zone lot" used throughout former chapter 59 shall also include the zone districts defined as a "residential zone district or residential district" in section 13-3 of the Denver Zoning Code.
- (i) Gardens shall be allowed as an accessory use common, customary and incidental to a primary residential use, and shall comply with all limitations generally applicable to accessory uses stated in Former Chapter 59, Sections 59-87 and 59-88. In addition, marijuana grown as part of a garden accessory to a primary residential use shall comply with all applicable limitations found in the Denver Zoning Code, including but not limited to Section 11.8 (Uses Accessory to Primary Residential Uses – Limitations).