



DENVER
THE MILE HIGH CITY

Community Planning and Development
Planning Services
Plan Implementation

201 W Colfax Ave, Dept 205
Denver, CO 80202
p: 720-865-2983
f: 720-865-3056
www.denvergov.org/planning

TO: City Council
FROM: Kyle A. Dalton, AICP, Senior City Planner
DATE: October 25, 2012
RE: Denver Zoning Code Text Amendment 13 for Residential MMJ Sunset

Staff Report and Recommendation

Text Amendment 13 to the Denver Zoning Code (“DZC”) repeals the sunset provisions for medical marijuana growing as an accessory use to a primary nonresidential use in residential zone districts and as an accessory use to a primary residential use. This amendment is sponsored by Councilwoman Robb and prepared by Community Planning & Development. Denver City Council will hold a public hearing on this text amendment on October 29, 2012.

Based on the review criteria for text amendments stated in the Denver Zoning Code, Section 12.4.11 (Text Amendment), CPD staff recommends that the Planning Board recommend approval of this Amendment to the Denver Zoning Code.

I. Summary and Purpose

The purpose of this Text Amendment is to continue the current limitations on growing medical marijuana in residential zone districts and as an accessory use to a primary residential use by repealing the expiration dates. A redline of the proposed Text Amendment is attached.

Summary of the Current Limitations:

- The growing of medical marijuana as accessory to a primary nonresidential use in a residential zone district is prohibited. (DZC, §11.7.1.3.C)
- The growing of medical marijuana as accessory to a primary residential use is permitted subject to the following (DZC, §11.8.4.1):
 - Up to 6 plants per patient registry ID card holder residing in a dwelling unit may be grown, up to a maximum of 12 plants per dwelling unit.
 - Growing and storage of medical marijuana must be in a completely enclosed structure.
 - Growing and storage of medical marijuana cannot occur in a common area (e.g. when there are multiple units in a single building).
 - Growing must be for personal use only by the patient registry ID card holder living in the dwelling unit; retail or wholesale sales and off-site distribution are prohibited.

All of the above provisions will expire on November 1, 2012. The proposed Text Amendment will repeal the November 1, 2012, expiration date so that all of the above provisions will remain in effect. The limitations and the expiration date were added to the Denver Zoning Code in Text Amendment 3 – Medical Marijuana Growing, sponsored by Councilwoman Jeanne Robb in October 2010. At the time, state and local regulations regarding medical marijuana were



changing rapidly. A consistent regulatory framework is now in place and has been functioning well. The limitations on growing medical marijuana in residential zone districts and as accessory to a primary residential use remain appropriate.

II. Criteria for Review and CPD Analysis

The criteria for review of a proposed text amendment are found in Section 12.4.11.9 of the DZC. CPD analyzed the proposed text amendment for compliance with the review criteria stated below and finds that the proposed Text Amendment satisfies each of the criteria.

A. Text Amendment is Consistent with the City's Adopted Plans and Policies

Text Amendment for Attached Garages is consistent with the city's adopted plans and policies in the following ways:

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

B. Text Amendment Furthers the Public Health, Safety, and General Welfare

This Text Amendment furthers the general health, safety, and welfare of Denver by providing continuity and consistency in regulations regarding accessory uses. Growing marijuana can present substantial public health and safety hazards. The current restrictions mitigate 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 Text Amendment Results in Regulations that are Uniform within Each Zone District

This Text Amendment will result in continuing the existing uniform regulation of growing medical marijuana in each of the zone districts.

III. Public Outreach and Comments

Below is a summary of the public outreach for this amendment.

- *August 8, 2012:* Courtesy notice was sent to all City Council members and Registered Neighborhood Organizations and summary of the Text Amendment posted to the website
- *August 21, 2012:* Email notification about the September 5, 2012, Planning Board hearing was sent to all Registered Neighborhood Organizations.
- *August 25, 2012:* Councilmember Jeanne Robb presented a summary of the text amendment to INC-ZAP (Inter-Neighborhood Cooperation - Zoning and Planning Committee)
- *September 16, 2012:* Email notification of the Land Use, Transportation & Infrastructure Committee consent agenda review was sent to all Registered Neighborhood Organizations.
- *October 4, 2012:* Email notification of the City Council public hearing date was sent to all Registered Neighborhood Organizations.

CPD has not received public comments on this Text Amendment.

IV. Planning Board Recommendation

The Denver Planning Board held a public hearing on this Text Amendment on September 5, 2012. By a unanimous vote, the Planning Board recommended approval of this Text Amendment to the City Council.

V. CPD Staff Recommendation

Based on the criteria for review as described above, and based on the Planning Board's recommendation for approval, CPD Staff recommends that the City Council **APPROVE** Text Amendment 13 to the Denver Zoning Code.

conflicts with a limitation specific to an accessory use found in Divisions 11.8, Uses Accessory To Primary Residential Uses - Limitations, 11.9, Home Occupations Accessory to a Primary Residential Use - All Zone Districts, or 11.10, Uses Accessory to Primary Nonresidential Uses - Limitations.

2. Limitations in the Primary Structure

If an accessory use is operated partially or entirely within the structure containing the primary use, the gross floor area within such structure utilized by the accessory use (except loading docks, and dining rooms for the exclusive use of occupants or persons employed in the structure) shall not be greater than:

- a. In a Residential Zone District, 20 percent of the gross floor area, but not to exceed 300 square feet, of a single unit dwelling use, two-unit dwelling use, or multi-unit dwelling use in a structure containing 8 or less dwelling units.
- b. In a Residential Zone District, 10 percent of the gross floor area occupied by a primary use other than a single unit dwelling use, two-unit dwelling use, or a multi-unit dwelling use in a structure containing 8 or less dwelling units.
- c. In a Mixed Use Commercial Zone District or Industrial Context Zone District, 20 percent of the gross floor area of the structure containing the primary use.

When more than one accessory use is associated with a single primary use, the above limitations shall apply to the cumulative total gross floor area of all the accessory uses in the same principal structure.

11.7.1.3 Prohibited Accessory Uses in Residential Zone Districts

- A. In a Residential Zone District, the sale, lease, trade or other transfer of firearms or ammunition by a firearms dealer is prohibited.
- B. The accessory parking/storage of vehicles, trailers, commercial vehicles, and RVs are governed by Division 10.9, Parking, Keeping and Storage of Vehicles.
- C. The growing of medical marijuana is prohibited as accessory to a primary nonresidential use established in a Residential Zone District. ~~This subsection 11.7.1.2.E shall expire on November 1, 2012.~~

SECTION 11.8.3 DOMESTIC EMPLOYEES

In all Zone Districts, where permitted with limitations, housing of one or more domestic employee(s), as defined in Article 13, Rules of Measurement and Definitions, is allowed as accessory to all primary residential household living uses.

SECTION 11.8.4 GARDEN

11.8.4.1 All Zone Districts

In all Zone Districts, where permitted with limitations, the growing of medical marijuana shall comply with the following:

- A. No more than 6 plants may be grown for each patient registry identification card holder residing in a dwelling unit, not to exceed 12 plants per dwelling unit.
- B. Growing and/or storage of medical marijuana shall occur within a completely enclosed structure.
- C. Growing and/or storage of medical marijuana shall not occur in a common area associated with the dwelling unit.
- D. Growing shall be for personal use only by patient registry identification card holders residing in the dwelling unit; retail or wholesale sales of goods or products derived from the growing of medical marijuana and any off-site distribution of such plants or derived products are prohibited.

~~This subsection 11.8.4.1 shall expire on November 1, 2012.~~

11.8.4.2 All Residential Zone Districts

In a Residential Zone District, where permitted with limitations, retail or wholesale sales of goods or products derived from a Garden accessory to a primary residential use are prohibited in a Residential Zone District.

SECTION 11.8.5 KEEPING OF HOUSEHOLD ANIMALS

11.8.5.1 All Zone Districts

In all Zone Districts, where permitted with limitations:

A. Animals Allowed Without a Zoning Permit

The keeping of domestic or household animals is allowed as accessory to a primary dwelling unit use, subject to compliance with the following standards regarding number and kinds of animals:

KIND OF ANIMAL ALLOWED	PERMITTED NUMBER OF ANIMALS ALLOWED / STANDARDS
Dogs	3 maximum
Cats	5 maximum
Combination of dogs and cats	No more than 5 dogs and cats combined provided there are no more than 3 dogs as part of the total.
Rabbits	2 maximum
Pigeons or doves	25 maximum
Horses	No more than 1 horse for each 1/2 acre of zone lot area
Small rodents--Rats, mice, guinea pigs, hamsters and other similar animals	No numerical limit, however, the raising or breeding of these animals for resale is prohibited.
Fish	No numerical limit, however, the raising or breeding of these animals for resale is prohibited.