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TO: Land Use, Transportation & Infrastructure Committee of the Denver City Council
FROM: Tina Axelrad, Principal City Planner
DATE: October 14, 2013
RE: Denver Zoning Code Text Amendment 15 for Residential Growing of Marijuana under Colorado Amendment 64

Staff Report and Recommendation

With the recent passage of Amendment 64 to the Colorado Constitution, Text Amendment 15 to the Denver Zoning Code (“DZC”) revises existing allowances for accessory growing of medical marijuana on residential properties to also allow growing recreational (non-medical) marijuana.

Text Amendment 15 also clarifies that the zoning land use “plant husbandry” is the only specific use type under which persons can legally grow marijuana as a primary use of land under Denver’s marijuana licensing laws. If a zone district does not allow the “plant husbandry” use, then a person cannot grow marijuana as a primary use of land in that district. Finally, Text Amendment 15 clarifies that a primary “plant husbandry” use must be sited at least 500 feet away from a residential zone district only when operated outdoors (unenclosed), but that a “plant husbandry” use to grow marijuana must be operated entirely within an enclosed structure.

This amendment is sponsored by Councilwoman Jeanne Robb and prepared by Community Planning & Development in close cooperation with the City Attorney’s Office. Denver City Council’s Land Use, Transportation & Infrastructure (LUTI) Committee will consider this text amendment on October 15, 2013, and make a recommendation whether to send the amendment to the full City Council for final action. A redline of the proposed amendment is attached.

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 LUTI Committee send the amendment to the full City Council for final action at a public hearing.

I. Summary and Purpose

The first purpose of this Text Amendment is to continue the current limitations on growing medical marijuana as part of an accessory garden use associated with a dwelling unit, but expand the limits’ applicability to recreational marijuana grown for personal consumption, as allowed by Amendment 64 to the Colorado Constitution.

Amendment 64 specifically allows, in Section (3)(b), “Personal use of marijuana” the following activities:

“Possessing, *growing*, processing, or transporting *no more than six marijuana plants*, with three or fewer being mature, flowering plants, and possession of the marijuana produced by the plants on the premises where the plants were grown, *provided that the growing takes place in an enclosed, locked space, is not conducted openly or publicly, and is not made available for sale.*” (Emphasis added)

Accordingly, to ensure that Denver residents enjoy the rights granted them under Amendment 64 to grow non-medical marijuana for personal use, the following zoning changes are proposed:

1. Extend allowance for growing medical marijuana accessory to a primary residential use to all marijuana, subject to similar reasonable time, place and manner limitations. DZC, §11.8.4.1.
 - a. *Current Limitations:* The growing of medical marijuana as accessory to a primary residential use is permitted subject to the following:
 - 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.
 - b. *Proposed Changes:*
 - Remove the word “medical” in certain Section 11.8.4.1 limitations to clarify that growing of marijuana may be for medical or recreational purposes.
 - The current cap of 6 plants for medical marijuana purposes will be expanded to allow up to 6 marijuana plants grown for *either* medical or recreational purposes (the latter only by adults 21 and over), still not to exceed a total of 12 marijuana plants per dwelling unit.
 - Growing marijuana must still occur inside a completely enclosed structure, and cannot be grown in the common areas of a residential structure (e.g., the common lobby of an apartment building).
2. Amend prohibition on growing marijuana not associated with a primary residential use. DZC, §11.7.1.3.C.
 - a. *Current Limitation:* The growing of medical marijuana as accessory to a primary nonresidential use in a residential zone district is prohibited.
 - b. *Proposed Change:* Extend the prohibition from “medical” marijuana to all types of marijuana.

The second purpose of Text Amendment 15 is to clarify provisions in the Denver Zoning Code that have proved problematic in CPD efforts to enforce limits on medical marijuana growing in the city. These changes clarify that “plant husbandry” is the only specific zoning use type that allows growing of marijuana as a primary use of land. Changes are specifically to the following provisions:

1. DZC, §11.12.6, definitions of “Primary Agriculture Uses “: proposed changes make clear that growing marijuana is not allowed under either “aquaculture,” “urban garden,” or “plant nursery” primary uses.
2. DZC, Divisions 9.1 (Industrial Zone Districts) and 9.3 (Open Space Zone Districts), in the Summary Use and Parking Tables, and in §9.1.5.21 and §9.3.5.5 use limits: proposed changes clarify marijuana growing is permitted only as a completely enclosed “plant husbandry” use in the I-A, I-B and OS-B zones.

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 15 satisfies each of the criteria.

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

The Text Amendment 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 simply extends current reasonable limitations on marijuana growing to assure mitigation of potential adverse public health and safety impacts. The amendment will, as guaranteed by the Colorado Constitution, allow small-scale growing of marijuana for personal use only in residential areas, and for both medical and recreational purposes, 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 public health and safety hazards. To implement Amendment 64, current medical marijuana growing limits that substantially mitigate potential hazards will be extended to recreational marijuana growing, thereby furthering the overall public health, safety and general welfare.

These limits include how medical marijuana may be grown (only in a completely enclosed structure that may be secured), a prohibition on sale and distribution from a dwelling to unauthorized persons such as minors, and an overall cap on the number of marijuana plants grown for personal use (6 per non-registered adult 21 years and older and no more than 12 plants per dwelling unit). According to CPD’s Neighborhood Inspection Services and the City

Attorney's Office, experience with medical marijuana enforcement over the past 3 years has shown that a maximum of 12 plants is a reasonable number that can safely be grown inside a dwelling unit (and that only if done with substantial care). Accordingly, this amendment retains the maximum 12 plants, regardless of whether they are grown for medical or recreational marijuana use.

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.

October 11, 2013: Email notice to all Registered Neighborhood Organizations (RNOs) of scheduled LUTI Committee meeting, and schedule of subsequent Planning Board and full City Council meetings.

IV. Planning Board Recommendation

The Denver Planning Board will hold a public hearing on this Text Amendment on November 6, 2013, and make a recommendation to the City Council regarding adoption prior to the City Council's scheduled November 25th public hearing.

V. CPD Staff Recommendation

Based on the criteria for review as described above, CPD Staff recommends that the LUTI Committee move DZC Text Amendment 15 out of committee and send it to the full City Council for final action at a public hearing.

KEY: P = Permitted Use without Limitations L = Permitted Use with Limitations NP = Not Permitted Use ZP = Zoning Permit Review
 ZPIN = Subject to Zoning Permit Review with Informational Notice ZPSE = Subject to Zoning Permit with Special Exception Review
 * = Need Not be Enclosed

USE CATEGORY	SPECIFIC USE TYPE • Vehicle Parking Requirement -# of spaces per unit of measurement • Bicycle Parking Requirement -# of spaces per unit of measurement (% required spaces in indoor facility/% required spaces in fixed facility)	APPLICABLE USE LIMITATIONS			
		I-MX-3 I-MX-5 I-MX-8	I-A	I-B	
AGRICULTURE PRIMARY USE CLASSIFICATION					
Agriculture	Aquaculture* • Vehicle: .5 / 1,000 s.f. GFA • Bicycle: No requirement	L-ZP	L-ZP	L-ZP	§11.6.1
	Garden, Urban* • Vehicle: .5 / 1,000 s.f. GFA • Bicycle: No requirement	L-ZP	L-ZP	L-ZP	§11.6.2
	Husbandry, Animal* • Vehicle: .5 / 1,000 s.f. GFA • Bicycle: No requirement	NP	NP	L-ZP	§9.1.5.20
	Husbandry, Plant* • Vehicle: .5 / 1,000 s.f. GFA • Bicycle: No requirement	NP	L-ZP	PL-ZP	§9.1.5.21
	Plant Nursery • Vehicle: .5 / 1,000 s.f. GFA • Bicycle: No requirement	L-ZP	L-ZP*	L-ZP*	§9.1.5.22
ACCESSORY TO PRIMARY RESIDENTIAL USES USE CLASSIFICATION					
Accessory to Primary Residential Uses In the I-A and I-B Zone Districts, see Sections 9.1.5.1 through 9.1.5.3 for additional limitations on accessory uses. (Parking is Not Required for Accessory Uses Unless Specifically Stated in this Table or in an Applicable Use Limitation)	Accessory Dwelling Unit	L-ZP	NP	NP	§11.7; §11.8.2
	Domestic Employee	L	NP	NP	§11.8.3
	Garden*	L	L	L	§11.7; §11.8.4
	Keeping of Household Animals*	L / L-ZPIN	L / L-ZPIN	L / L-ZPIN	§11.7; §11.8.5
	Keeping and Off-Street Parking of Vehicles, Motorcycles, Trailers & Recreational Vehicles*	L	NP	NP	§11.7; §10.9
	Kennel or Exercise Run*	L	L	L	§11.7; §11.8.6
	Limited Commercial Sales, Services Accessory to Multi-Unit Dwelling Use	Not Applicable - See Allowed Primary Uses	NP	NP	§11.7; §11.8.7
	Second Kitchen Accessory to Single Unit Dwelling Use	L-ZP	L-ZP	L-ZP	§11.8.8
	Vehicle Storage, Repair and Maintenance*	L	L	L	§11.7; §10.9
	Wind Energy Conversion Systems*	Not Applicable - See Allowed Primary Uses			
Yard or Garage Sales*	L	L	L	§11.7; §11.8.9	
Unlisted Accessory Uses	L - Applicable in all Zone Districts			§11.7; §11.8.1	

9.1.5.18 Automobile Towing Service Storage Yard

An automobile towing service storage yard plant shall be located at least 500 feet from a Residential Zone District. This requirement may be reduced or eliminated by the Zoning Administrator if the applicant proves by a preponderance of the evidence that the proposed use, site design, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby Residential Zone District.

9.1.5.19 Wholesale Trade or Storage, General

All wholesale trade or storage, general uses shall be located a minimum of 500 feet from a Residential Zone District.

9.1.5.20 Husbandry, Animal

This use shall be located at least 500 feet from a Residential Zone District.

9.1.5.21 Husbandry, Plant

A. All Zone Districts

Growing of marijuana is permitted only as a “husbandry, plant” use, and shall occur only within a completely enclosed structure.

B. I-A Zone District

When not operated inside a completely enclosed structure, the Plant Nursery This use shall be located at least 500 feet from a Residential Zone District.

9.1.5.22 Plant Nursery

A. I-MX Zone District

In the I-MX Zone District, a Plant Nursery use shall be operated within a completely enclosed structure.

B. I-A and I-B Zone Districts

This use shall be located at least 500 feet from a Residential Zone District.

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USE CATEGORY	SPECIFIC USE TYPE • Vehicle Parking Requirement -# of spaces per unit of measurement • Bicycle Parking Requirement -# of spaces per unit of measurement (% required spaces in indoor facility/% required spaces in fixed facility)				APPLICABLE USE LIMITATIONS
		OS-A	OS-B	OS-C	
Waste Related Services	Automobile Parts Recycling Business	See Section 9.3.4.1	NP	NP	
	Junkyard*		NP	NP	
	Recycling Center		NP	NP	
	Recycling Collection Station		NP	NP	
	Recycling Plant, Scrap Processor		NP	NP	
	Solid Waste Facility		NP	NP	
Wholesale, Storage, Warehouse & Distribution	Automobile Towing Service Storage Yard*		NP	NP	
	Mini-storage Facility		NP	NP	
	Vehicle Storage, Commercial*		NP	NP	
	Wholesale Trade or Storage, General		NP	NP	
	Wholesale Trade or Storage, Light		NP	NP	
AGRICULTURE PRIMARY USE CLASSIFICATION					
Agriculture	Aquaculture* • Vehicle: 0.5 / 1,000 s.f. GFA • Bicycle: No requirement	See Section 9.3.4.1	L-ZP	NP	\$11.6.1
	Garden, Urban* • Vehicle: 0.5/ 1,000 s.f. GFA • Bicycle: No Requirement		L-ZP	NP	\$11.6.2
	Husbandry, Animal* • Vehicle: 0.5/ 1,000 s.f. GFA • Bicycle: No Requirement		L-ZP	NP	\$9.3.5.5
	Husbandry, Plant* • Vehicle: 0.5/ 1,000 s.f. GFA • Bicycle: No Requirement		P -ZP	NP	\$9.3.5.6
	Plant Nursery* • Vehicle: 0.5/ 1,000 s.f. GFA • Bicycle: No Requirement		L-ZP	NP	\$9.3.5.6 7

- C. No portion of any recreation facility that is not in a completely enclosed structure (e.g., basketball or racquet sport courts) shall be located nearer than 50 feet from the boundary of a Single Unit (SU) or Two Unit (TU) Zone District. All distance and spacing requirements shall be measured according to the rule of measurement found in Section 13.1.6.
- D. Any other type of accessory structure or use may be allowed only if the Zoning Administrator finds the proposed structure or use meets the general criteria for Accessory Uses stated in Division 11.7, Accessory Use Limitations, and finds that the proposed structure or use will not adversely affect properties adjoining the Open Space Zone District. See Section 12.4.6, Code Interpretations and Determination of Unlisted Uses for the applicable procedure to determine unlisted uses.

9.3.5.4 Sports and/or Entertainment Arena or Stadium

Sports and/or Entertainment Arena or Stadium uses shall comply with the following limitations:

- A. All sports and/or entertainment arena or stadium uses shall be a minimum of 500 feet from a Residential Zone District. All distance and spacing requirements shall be measured according to the rule of measurement found in Section 13.1.6, Measurement of Separation or Distance.
- B. The minimum spacing requirement may be reduced by the Zoning Administrator if the applicant proves by a preponderance of the evidence that an analysis of the proposed use, its traffic generation, and other external effects indicates a smaller separation will have no significant effect on the nearby residential district.

9.3.5.5 Husbandry, Animal

In the OS-B Zone District, this use is limited to the raising and/or grazing of livestock animals and any confinements for such animals, provided such use is located at least 500 feet from a Residential Zone District.

9.3.5.6 Husbandry, Plant

In the OS-B Zone District, growing of marijuana is permitted only as a “husbandry, plant” use, and shall occur only within a completely enclosed structure.

9.3.5.7 Plant Nursery

This use shall be located at least 500 feet from a Residential Zone District.

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.

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 or for each adult 21 years or older 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 persons 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.

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.

- vii. Air courier pickup and delivery “drop-off points”;
 - viii. Personnel services;
 - ix. Computer programming, data processing and other computer-related services;
 - x. Mailing, addressing, stenographic services; and
 - xi. Special business services such as travel bureaus, news service, importer, interpreter, appraiser, film library.
 - xii. Business to business brokers or agents that arrange for the purchase or sale of goods for others, and which services do not include the warehousing of goods, are classified as “office” uses.
- d. The wholesale trade, distribution, or storage of products in the following SIC groups:
- i. 502 Furniture and home furnishings;
 - ii. 503 Lumber and construction materials;
 - iii. 504 Professional and commercial equipment;
 - iv. 506 Electrical goods;
 - v. 507 Hardware, plumbing, and heating equipment;
 - vi. 509 Miscellaneous durable goods (except scrap and waste materials, SIC group 5093);
 - vii. 511 Paper and paper products;
 - viii. 512 Drugs, proprietaries, and sundries;
 - ix. 513 Apparel, piece goods, and notions;
 - x. 514 Groceries and related products;
 - xi. 518 Beer, wine, and distilled beverages;
 - xii. 519 Miscellaneous nondurable goods (except farm supplies, SIC group 5191).
- e. The following specific uses:
- i. Storage services, as defined in Subsection B.3 above.
- f. Operations with more than 25 percent of sales to retail customers shall be categorized as “retail sales” rather than as “wholesale trade” uses.

SECTION 11.12.6 PRIMARY AGRICULTURE USES

A. Definition of Agriculture Use Category

Agriculture Use Category includes cultivation, production, keeping, or maintenance for personal use, donation, sale or lease, of: (1) plants, including but not limited to: forages and sod crops; grains and seed crops; fruits and vegetables; herbs; and ornamental plants; and (2) livestock, including but not limited to: dairy animals and dairy products; poultry and poultry products; cattle and cattle products; or horses.

B. Specific Agriculture Use Types and Definitions

1. Aquaculture

An agricultural use in which food fish, shellfish or other marine foods, aquatic plants, or aquatic animals are cultured or grown in order to sell them or the products they produce. Includes fish hatcheries, growing tanks or raceways; the processing, storage, packaging and distribution of shellfish and fish; and accessory uses such as feed storage and water treatment facilities. This use does not include or permit the growing of marijuana.

2. Garden, Urban

Land that is (1) managed by a public or nonprofit organization, or by one or more private persons, and (2) used to grow and harvest plants for donation, for personal use consumption, or for off-site sales by those managing or cultivating the land and their households. [This use does not include or permit the growing of marijuana.](#)

3. Husbandry, Animal

The cultivation, production, and management of animals and/or by-products thereof, including, but not limited to grazing of livestock and production of meat, fur, or eggs; excluding, however, feed lots (see definition below), hog farms, dairies, poultry and egg production facilities, bee-keeping and apiaries, horse boarding, and riding stables.

a. Feed Lot

A feed lot shall be determined to be any of the following facilities:

- i. Any tract of land or structure wherein any type of fowl or the by-products thereof are raised for sale at wholesale or retail; or
- ii. Any structure, pen or corral wherein cattle, horses, sheep, goats and swine are maintained in close quarters for the purpose of fattening such livestock before final shipment to market; or
- iii. The raising of swine under any conditions.

4. Husbandry, Plant

An agricultural use, other than a Plant Nursery, in which plants are cultivated or grown for the sale of such plants or their products, or for their use in any other business, research, or commerce; excluding, however, forestry and logging uses. [This use includes the cultivation or growing of marijuana.](#)

5. Plant Nursery

An agricultural use in which plants are grown, cultivated, produced, or managed for the on-site or off-site sale of such plants or their products, or for their use in any other business, research, or commerce. Other customarily incidental products may be sold with the plants. A Plant Nursery may include accessory Aquaculture use, when the Aquaculture is integral to the growing and maintenance of the plants, and provided the accessory Aquaculture occurs within a completely enclosed structure. [This use does not include or permit the growing of marijuana.](#)

Examples of Plant Nursery uses include, but are not limited to: wholesale or retail plant nurseries with greenhouses or garden stores; retail nurseries where plant inventory and related plant products are sold, but which may not be grown or produced on-site; tree farms; vineyards and orchards; flower farms; field nurseries; and sod farms. Plant Nursery uses do not include forestry or logging uses, or the keeping of animals or livestock except where expressly allowed as an accessory use.

SECTION 11.12.7 DEFINITIONS OF USES ACCESSORY TO PRIMARY RESIDENTIAL USES

11.12.7.1 Accessory Dwelling Unit

A second dwelling unit located on the same zone lot as a primary single unit dwelling use. An accessory dwelling unit is a type of accessory use. An accessory unit may be either “attached” or “detached”, defined as follows:

A. Dwelling, Accessory unit, Attached

An accessory dwelling unit that is connected to or an integrated part of the same structure housing the primary single unit dwelling (for example, an attached accessory dwelling unit may be located in the basement level of a structure also housing a single-unit dwelling use).