



DENVER
THE MILE HIGH CITY

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TO: Denver City Council
FROM: Tina Axelrad, Principal City Planner
DATE: December 6, 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 under which persons can legally grow marijuana as a primary use of land under Denver’s marijuana licensing and zoning laws. If a zone district does not allow the “plant husbandry” use, then a persona 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 within a completely 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. 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.”

To ensure the rights granted under Amendment 64, this Text Amendment would allow Denver residents to grow marijuana, whether for medical or non-medical purposes, at the following locations within Denver city limits:

1. At your dwelling (e.g., a home or apartment), provided the following conditions are met:
 - The dwelling is the primary residence of the person(s) growing the marijuana.
 - No more than 6 plants per adult 21 years or older, or no more than 6 plants per adult 18 years or older if that adult holds a patient registry identification card (for medical marijuana).
 - Regardless of the number of adults living in the dwelling unit, no more than 12 plants total per dwelling.
 - The marijuana must be grown and stored inside a completely enclosed structure (e.g., inside the home, a garage, or a greenhouse).
 - In an apartment or condo building, marijuana growing is not allowed in common areas (e.g., the lobby or common laundry room).
 - The marijuana must be for personal use of the resident(s): both sales and distribution of the marijuana plants or products derived from the plants is prohibited.

2. If not in your dwelling, then in I-A or I-B industrial zone district, where the “plant husbandry” zoning land use is allowed, provided the growing occurs in a completely enclosed structure.
 - Marijuana grown as a zoning permitted “plant husbandry” use can be for personal use, or can be sold or distributed to others (for profit or not for profit).
 - Marijuana commercially grown (for profit) is subject to Denver’s excise and licensing laws and regulations.

The above changes can be found in the redline text amendment document, in Section 11.8.4.1.

In addition, the text amendment will make clear that any kind of marijuana growing in a residential zone district is not allowed when the growing is on the same zone lot as a nonresidential use, such as a school or church. This change can be found in the redline document in Section 11.7.1.3.C.

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. The Text Amendment will make clear that “plant husbandry” is the only specific zoning use type that allows growing of marijuana as a primary use of land. The specific changes are listed below:

1. 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. See the redline document in Section 11.12.6.

2. Proposed changes in the Code’s use tables and use limitations clarify marijuana growing is permitted only as a *completely enclosed* “plant husbandry” use in the I-A, I-B and OS-B zones. In addition, the amendment revises the use limitation in the I-A zone district to state that only unenclosed plant husbandry uses (as opposed to all plant husbandry uses) are subject to a 500-foot separation requirement from a residential zone district. The latter change arises out of the city’s experiences during the past 3 years, during which time the Board of Adjustment has consistently approved variances from the 500-foot separation requirement for enclosed plant husbandry uses. See the redline document in Divisions 9.1 (Industrial Zone Districts) and 9.3 (Open Space Zone Districts), and in Sections 9.1.5.21 and 9.3.5.5.

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 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.

October 15, 2013: The LUTI committee of the Denver City Council considered the amendment and unanimously voted to forward it to the full City Council for final action at a public hearing.

October 22, 2013: Email notice to all Registered Neighborhood Organizations (RNOs) of scheduled Planning Board public hearing.

As of the date of this staff report, CPD has received only one public comment on this Text Amendment, an email from Mr. Che McGuire (who also testified at the Planning Board hearing), which is included as part of this package.

IV. Planning Board Recommendation and LUTI Committee Action

The Denver Planning Board held a public hearing on this Text Amendment on November 6, 2013, and voted 8-0 to recommend approval to the City Council.

Denver City Council's Land Use, Transportation & Infrastructure (LUTI) Committee considered this text amendment on October 15, 2013, and recommended to send the amendment to the full City Council for final action.

V. CPD Staff Recommendation

Based on the criteria for review as described above, CPD Staff recommends to the full City Council **approval** of DZC Text Amendment 15.

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2013

COUNCIL BILL NO. CB13-0735
COMMITTEE OF REFERENCE:
Land Use Transportation and
Infrastructure

A BILL

For an ordinance amending the Denver Zoning Code to amend various provisions for the growing of marijuana as well as allowing enclosed plant husbandry uses in the I-A zone district within 500 feet of a residential zone district.

WHEREAS, the City Council has determined on the basis of evidence and testimony presented at the public hearing that the amendment set forth herein is in conformance with the Denver Comprehensive Plan 2000 and all amendments thereto, and is reasonably necessary to the promotion of the public health, safety and general welfare.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. Sections 9.1.5.21.A and 9.3.5.6 of the Denver Zoning Code (DZC) are amended to clarify that the only use under which growing of marijuana is permitted in the industrial and Open Space zone districts is plant husbandry.

Section 2. Section 9.1.5.21.B of the DZC is amended to require a 500 foot separation for plant husbandry uses from residential zone districts only if not completely enclosed.

Section 3. Sections 9.1.4.5. and 9.3.4.5 of the DZC (use tables for Industrial and Open Space Zone Districts) are amended to reflect the changes set forth above.

Section 4. Section 11.7.1.3.C. of the DZC is amended to delete the word “medical”.

Section 5. Section 11.8.4.1 of the DZC is amended to allow for the growing of 6 marijuana plants per adult resident of a dwelling unit as well as six plants per patient registry card holder, provided no more than 12 plants may be grown per dwelling unit.

Section 6. Section 11.12.6 of the DZC is amended to clarify that the only use allowing the growing of marijuana is “plant husbandry.”

Section 7. The above changes as filed with the Denver City Clerk on November 7, 2013 at City Clerk Filing No. 10-512-S.

1 COMMITTEE APPROVAL DATE: 10/15/2013.
2 MAYOR-COUNCIL DATE: 10/22/2013.
3 PASSED BY THE COUNCIL _____ 2013
4 _____ - PRESIDENT
5 APPROVED: _____ - MAYOR _____ 2013
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9
10 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2013; _____ 2013
11 PREPARED BY: Kerry A. Buckey, Assistant City Attorney _____ 11/07/2013
12 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
13 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
14 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
15 3.2.6 of the Charter.
16
17 Douglas J. Friednash, Denver City Attorney
18 BY: _____, Assistant City Attorney Date: _____, 2013

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 Husbandry 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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 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
		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 L-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).

Boatner, Venus - CPD

From: Che McGuire [chemcguire@gmail.com]
Sent: Tuesday, November 05, 2013 6:08 PM
To: Planningboard - CPD
Subject: Zoning Code Text Amendment 15

To whom it may concern:

I am a retired disabled former police officer and I have been following the proposed zoning changes in regards to Amendment 64 and in some of the proposals attempt to use differing terms as if the terms have the same meaning. Amendment 64 specifically allows, section (3) (B), Possessing, growing, Processing, marijuana, (provided that the growing takes place in an enclosed { locked space} ,). Then under the following zoning changes are proposed: 1.(a) Current limitations: Growing and storage of MMJ must be in a completely enclosed { structure}. Then I read that under the code for (Urban Garden) it reads{ Need not be enclosed}. Then under Section 11.8.4 GARDEN (B) It reads growing and storage of MMJ shall occur within a { Completely Enclosed Structure }. Now throughout the amendment proposals we have #1 in an enclosed locked space, #2 a completely enclosed Structure, the 1 is a locked back yard, 2 is a building. I am confused now as to what is the purpose of the word-smithing going on. Is it to regulate the grows so the MMJ doesn't find its way to the black market where you can't collect the tax money, or is it a fake fear that when my grand daughter visits from out of state and looks up to a 6th floor Apt. and she sees a pot plant on someone's private balcony and asks why there are no tomatoes on the plant that some how I am supposed to be embarrassed, I don't think so.

For the regulation of pot, or alcohol you need to be uniform and clear to help law enforcement officers, and wording it so every one now needs a structure to house indoor grows is not ecological , economical and with black mold can be dangerous. In conclusion, please follow the spirit of Amendment 64 that the voters chose and don't make more work for the police and courts.

Sincerely, Ché McGuire