

CITY OF ROCKVILLE

Planning/Zoning Commission Meeting Tuesday, August 16, 2016 - 6:00 p.m. City Hall - 229 Broadway Street East

AGENDA

1. **ROLL CALL**
2. **APPROVAL of AGENDA/AMENDMENTS**
3. **APPROVAL OF July 13, 2016 MEETING MINUTES**
4. **PUBLIC HEARING** To consider revisions TO SECTION 9 GENERAL REQUIREMENTS, SUBDIVISION 2 AND ADDING ITEM N OPTING-OUT OF THE REQUIREMENTS OF MINNESOTA STATUTES, SECTION 462.3593, TEMPORARY FAMILY HEALTH CARE DWELLINGS
5. **OTHER BUSINESS**
 - a) Fence Requirement / Enforcement
 - b) Next Meeting September 13, 2016, 6:00 p.m.
6. **ADJOURNMENT**

*This agenda has been prepared to provide information regarding an upcoming meeting of the Rockville City Planning Commission. This document does not claim to be complete and is subject to change.

**MINUTES OF THE REGULAR PLANNING/ZONING COMMISSION MEETING HELD
Tuesday, July 12th 2016, 6:00 p.m. – Rockville City Hall**

ROLL CALL - The meeting was called to order by Chair Bill Becker. Roll call was taken and the following members were present: Bill Becker, Dale Borgmann, Dave Meyer. The following members were absent: Toni Honer, Liaison Susan Palmer. Member Jerry Tippelt arrived at 6:03 p.m.

Staff present: City Administrator, Martin Bode.
Others present: Duane Willenbring, Mike Jordet.

APPROVAL OF AGENDA/AMENDMENTS –

Additions to the agenda - change item 5) to include the following:

5) **Lot Combination Request**

- a) Lot Combination Request - Jeffrey Reiter dba Custom Properties, LLC
- b) Lot Combination Request – Greg and Joyce Simones

Motion by Borgmann, second by Meyer, to approve the agenda with the addition to item 5. Motion carried unanimously.

APPROVAL OF JUNE 14, 2016 MEETING MINUTES –

Motion by Meyer, second by Borgmann, to approve the June 14, 2016 minutes as presented. Motion carried unanimously.

PUBLIC HEARING(s) –

a) PUBLIC HEARING FOR MN TRUCK HEADQUARTERS @ 10510 County Road 47 – Sign Variance

Notice is hereby given that the Rockville Planning Commission will hold a public hearing on Tuesday, July 12, 2016 at approximately 6:00 p.m. at Rockville City Hall – 229 Broadway Street East to consider the request of Mike J. Jordet dba: MN Truck Headquarters, for a variance to the Sign Ordinance. The address of the property is: 10510 County Road 47 - St. Cloud, MN with a legal description of: Parcel No. 76.41614.0300, 22.81 A. SE4SE4 LESS FR'L 4.73 ACRES & LESS ROADS & LESS RUPRECHT ACRES & LESS 9.65A FOR HIGHWAY.

The request is to exceed the square foot area of a sign in a B2 – General Business District.

STAFF REPORT

Re: Variance Request(s)

76.41614.0300 Owners: Mike J. Jordet dba: MN Truck Headquarters
Property Address: 10510 County Road 47
Legal Description: 22.81 A. SE4SE4 LESS FR'L 4.73 ACRES & LESS ROADS & LESS RUPRECHT ACRES & LESS 9.65A FOR HIGHWAY.
Zoning District: B-2 – General Business

Variance(s) Requested:

- 1. Variance to construct a 12 x 25, 300 sf Sign

Section 12, Subdivision 16.

B.1. Maximum aggregate area for lot.

- a. Single entity occupant property – One (1) square foot per lineal front foot.

- B.3. Maximum sign area of freestanding signs
- a. If facing Trunk Highway 23 – One hundred-fifty (150) square feet.
 - b. If facing other arterial or collector street – One hundred twenty-five (125) square feet.

Relevant Information:

1. This property is located on the North side of CR 47 at the intersection of State Highway 23.
2. Property 22.81 acres more or less.
3. Front footage (Hwy 47) 1,100 lineal feet more or less
4. 12 notices of public hearing were sent out.
5. No other business in the immediate area

RECOMMENDATION

1. Consider Approval

Mike Jordet, owner of MN Truck Headquarters, discussed his intentions for the sign and the potential of having other local businesses renting space on the sign. Mr. Jordet also clarified that the request was for a 300 sq ft main body sign with an additional 96 sq ft sign above that. Mr. Jordet also asked the Planning Commission for consideration to have a maximum of 45 feet high as apposed to the current ordinance height limit of 20 feet.

Motion by Tippelt, second by Meyer, to close the public hearing at 6:07 pm. Motion carried unanimously.

Discussion was held on the size of the sign. Requirements by the state and county will need to be enforced and input from MNDot was advised.

Request include 45' maximum height, 300' square foot/main body, with an additional 96' square feet above that.

Motion by Borgmann, second by Tippelt, to approve of the Sign Variance along with a maximum sign height of 45'. Motion carried unanimously. (It was noted that a separate public hearing maybe needed to address the request for a 45 foot maximum sign variance.)

Owners: MN Truck Headquarters

FINDING OF FACT

SUPPORTING/DENYING A VARIANCE

A variance may be granted when the applicant for the variance established that there are practical difficulties in complying with the zoning ordinance. The consideration of the following criteria as defined in Minnesota Statutes Section 462 and Minnesota Statues Section 394.27:

1. Is the variance in *harmony* with the purposes and intent of the *ordinance*?
Why or Why not?
Becker Yes Borgmann Yes Tippelt Yes Meyer Yes
2. Is the variance *consistent with* the *comprehensive plan*?
Why or Why not?
Becker Yes Borgmann Yes Tippelt Yes Meyer Yes
3. Does the proposal put property to use in a *reasonable manner*?
Why or Why not?
Becker Yes Borgmann Yes Tippelt Yes Meyer Yes
4. Are there *unique circumstances* to the property not created by the landowner?
Why or Why not?
Becker Yes Borgmann Yes Tippelt Yes Meyer Yes

5. Will the variance, if granted, maintain the *essential character* of the locality?
Why or Why not?

Becker Yes Borgmann Yes Tippelt Yes Meyer Yes

IF ALL OF THE ANSWERS ARE "YES", THE CRITERIA FOR GRANTING THE VARIANCE
HAVE BEEN MET.

ADDITIONS TO THE AGENDA –

a) Lot Combination Request - Jeffrey Reiter dba Custom Properties, LLC

STAFF REPORT

Re: Combining Lots Request
Owners: Jeffrey Reiter dba Custom Properties, LLC
PIN: 76.41835.0004, Property Address: 12383 234th Ave
PIN: 76.41835.0003, Property Address: 12359 234th Ave

Combine Two (2) Adjacent Lot(s) Requested:

1. PIN: 76.41835.0004, Legal Description: Lot 002, Block 002 of Gilbert Donabauer Plat 1
2. PIN: 76.41835.0003, Legal Description: Lot 001, Block 002 of Gilbert Donabauer Plat 1
Less Hwy 23 R/W OLD # 28.17266.003

Relevant Information:

1. This property is located in a I-1
2. One of the Lots is a corner lot at the intersection of Hwy 23 and CR 82 (Broadway)
3. No Public Hearing Required, no notices sent out

Recommendations:

1. Consider Approval

Motion by Borgmann, second by Meyer, to approve of the Lot Combination Request – Jeffrey Reiter dba Custom Properties LLC. Motion carried unanimously.

b) Lot Combination Request – Gregory and Joyce Simones

STAFF REPORT

RE: Combining two Lots
76.41604.600 / 76.41604.0602 Owners: Gregory and Joyce Simones
Property Address: 9379 County Road 6, St. Cloud, MN 56301

REQUEST:

Approval to combine two lots together. These lots were sub-divided into two parcels in July of 2008.

RELEVANT INFORMATION

1. Property is zoned R-1
2. Property combined is 10.0 acres, more or less.
3. The owner has previously granted easements along the north and east sides of the lot to facilitate drainage/utility and also roadway access for possible future extension of 93rd Ave.

RECOMMENDATION

1. Consider Approval

Motion by Becker, second by Borgmann, to approve of the Lot Combination Request – Gregory and Joyce Simones. Motion carried unanimously.

OTHER BUSINESS -

- a) Set Date of Next Meeting August 16, 2016, 6:00 p.m.
(Do to the elections.)

Motion by Borgmann, second by Meyer, to approve moving the August meeting to the 16th and November's meeting to the 15th. Motion carried unanimously.

- b) Temporary Family Healthcare Dwellings
-Set Public Hearing Date for August 16, 2016, 6:00 p.m.

- c) Fence Requirement / Enforcement

Discussion was held on enforcing fence requirements. `1

ADJOURNMENT – Motion by Borgmann, second by Tippelt, to adjourn the meeting at 6:45 p.m. Motion carried unanimously.

Martin M. Bode
City Administrator

**NOTICE OF PUBLIC HEARING
CITY OF ROCKVILLE**

Notice is hereby given that the Rockville Planning Commission will hold a public hearing on **Tuesday, August 16, 2016 at approximately 6:00 p.m. at Rockville City Hall – 229 Broadway Street East** to consider revisions TO SECTION 9 GENERAL REQUIREMENTS, SUBDIVISION 2 AND ADDING ITEM N OPTING-OUT OF THE REQUIREMENTS OF MINNESOTA STATUTES, SECTION 462.3593

All persons attending the hearing and wishing to address the Planning Commission will have an opportunity to do so. Those not able to be present at this meeting should submit their opinions in writing to the Rockville City Administrator, P.O. Box 93, Rockville, MN 56369 prior to the hearing.

Martin M. Bode
City Administrator

Publish 07/26/2016
Cold Spring Record

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MN Truck Signe Variance CS Paper.wd.doc

From: Cynthia Smith-Strack <csmithstrack@gmail.com>
Sent: Saturday, June 04, 2016 8:59 PM
To: Cynthia Smith-Strack
Subject: Temporary family health care dwellings
Attachments: Chapter 111 - Minnesota Session Laws.pdf; Temporary Dwelling Legislation Becomes Law.pdf; NYA16_MEM_Temporary_Family_Health_Care_Dwellings.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Bert,

Hello!!

Attached is information regarding a new law that takes effect Sept 1st about temporary family health care dwellings.

The City must opt out of the law by ordinance and prior to September 1, 2016 or temporary drop homes for the care of recuperating family members must be allowed as a right in all zoning classes. The League of Minnesota Cities has drafted a sample ordinance for cities to use to opt out of the law.

Temporary dwellings must meet certain standards, including but not limited to: (1) be no more than 300 [s.f.in](#) area; (2) **not** be attached to a permanent foundation; and (3) provide for sanitary provisions (water, sewer, electric) portable restrooms must be found to be acceptable.

RV's, manufactured homes, tiny houses, converted detached garages, etc. would meet the intent of the law. Temporary structures could be placed anywhere on the lot, including in setbacks if a variance was issued. Occupancy of the temporary dwelling is restricted to 'relatives' of caregivers, persons who are recuperating from mental or physical illness, and occupancy of the temporary unit is limited to one year.

The language, as drafted, is somewhat concerning to me. In the event the City Council is supportive of the concept of temporary dwellings or accessory dwelling units (ADU) opting out of the state law would not prohibit a zoning amendment authorizing the same.

Specific concerns with law include: (1) lack of opportunity for adjacent property owners to comment on the ADU, (2) potential for 'temporary' to morph into semi-permanent with separate individual family members succumbing to illness/injury and/or chronic and reoccurring instances of illness/injury, (3) constitutionality of the limited definition of 'relative' included in the law, (4) aesthetic concerns, (5) life safety concerns of dwelling unit occupants during adverse weather conditions, (6) adequacy of sanitation services, (7) oversight and staff time required to comply with, document, and follow up on temporary ADU, and (8) limited time allowance for review (i.e. 15 days).

I'm attaching the law, an article from the League of Mn. Cities , and the Leagues sample opt out ordinance.

--

Cynthia Smith Strack



To: Chairperson Heher
Members of the Planning Commission
Administrator Helget

From: Cynthia Smith Strack, Consulting Planner

Date: June 21, 2016

Re: Discussion: Temporary Health Care Dwellings

BACKGROUND

In May Governor Dayton signed into law a bill regarding temporary family health care dwellings. The law is attached to this memo and becomes effective September 1, 2016 unless the City approves an Ordinance opting out of the law. If an Ordinance opting out is approved prior to September 1st the law will not apply to NYA. Opting out of the law doesn't preclude the City from approving an ordinance allowing accessory dwelling units.

Under the law, RV's, manufactured homes, tiny houses, converted detached garages, etc. would meet the definition of a 'temporary family health care dwelling'. Under the law such dwellings must be allowed provided certain measures are attained. Among them, (1) be no more than 300 s.f.in area; (2) **not** be attached to a permanent foundation; and (3) provide for sanitary provisions (water, sewer, electric) under which porta-pottys are allowed.

The language, as drafted, is concerning. Specific concerns with law include: (1) lack of opportunity for adjacent property owners to comment on the ADU, (2) potential for 'temporary' to morph into semi-permanent with separate individual family members succumbing to illness/injury and/or chronic and reoccurring instances of illness/injury, (3) constitutionality of the limited definition of 'relative' included in the law, (4) aesthetic concerns, (5) life safety concerns of dwelling unit occupants during adverse weather conditions, (6) adequacy of sanitation services, (7) oversight and staff time required to comply with, document, and follow up on temporary ADU, and (8) limited time allowance for review (i.e. 15 days).

Discussion of the law and potential to opt out is kindly requested. Also attached please find information from the League of Minnesota Cities, including a sample Ordinance opting out of the new law.

ACTION

Discussion is kindly requested.

Temporary Dwelling Legislation Becomes Law

Cities may opt out of permitting temporary family dwellings, but they must pass an ordinance to do so.
(Published May 16, 2016)

A bill creating a new process for local governments to permit certain types of recreational vehicles as temporary family dwellings was signed into law by Gov. Dayton on May 12. Chapter 111 (*Link to: <https://www.revisor.mn.gov/laws/?year=2016&type=0&doctype=Chapter&id=111>*) (SF 2555, Sen. John Hoffman (*Link to: http://www.senate.mn/members/member_bio.php?mem_id=1205*), DFL-Champlain, and Rep. Roz Peterson (*Link to: <http://www.house.leg.state.mn.us/members/members.asp?id=15442>*), R-Burnsville) previously passed the House floor on a vote of 113-17.

Purpose of the law

The main stated motivation behind the new law is to provide transitional housing for seniors. For example, if a family wanted to keep a close eye on grandma while she recuperates from surgery, they could have grandma stay in a temporary family health care dwelling in the yard or driveway.

The law has a broader effect than that, however, with anyone who needs assistance with two or more “instrumental activities of daily life” for mental or physical reasons eligible to be housed in this manner.

Summary of changes

The League worked extensively with the authors and proponents and with other local government organizations throughout the legislative process to craft a law that is manageable for cities and counties.

Local governments may opt out of this program if they determine that this type of expedited land use permitting for temporary dwellings is not well-suited to their community. Many communities have communicated that property owners in their jurisdiction have adequate access to a permit for this type of use through existing local land use controls and permitting authority.

Cities must pass ordinance to opt out

To be clear, unless a city chooses not to participate in this program by passing an ordinance specifically opting out, the law will require the city to issue permits to qualified applicants starting on Sept. 1, 2016. A permit can be denied for appropriate cause. The law lists the information required and the requirements that may be considered in that decision.

The final act has the following key components:

Creates a new type of permit referred to as a temporary dwelling permit that has a six-month duration, with an option to extend the permit for six months.

Requires that the permit be for a property where the caregiver or relative resides.

Allows modular and manufactured housing (instead of just recreational vehicles) to use this permit process as long as the unit meets all of the listed criteria.

Lists the criteria for the structure and the information required in the permit application.

Addresses sewer safety issues with required backflow valves and advance verification of septic service contracts.

Requires the inclusion of site maps showing where the unit will be placed and notification of adjacent neighbors prior to application.

Requires applications to specify the individual authorized to live in the unit.

Applies the permit approval process found in Minnesota Statutes, section 15.99 (*Link to: <https://www.revisor.mn.gov/statutes/?id=15.99>*), but allows the local government unit only 15 days to make a decision on granting the permit (no extension). It waives the public hearing requirement and allows the clock to be restarted if an application is deemed incomplete, as long as the applicant is notified of how the application is incomplete within

five days. A 30-day decision is allowed if the regular council meeting occurs only once a month.

Requires unit placement to meet existing stormwater, shoreland, setback, and easement requirements. A permit exempts the units only from accessory unit ordinances and recreational vehicle parking and storage ordinances.

Sets a default permit fee level that may be replaced by a local ordinance.

Allows cities to pass an ordinance opting out of using this new permitting system.

A complete review of the provisions of the new law will be included in the League's *2016 Law Summaries* in June.

Read the current issue of the Cities Bulletin (*Link to: <http://www.lmc.org/page/1/cities-bulletin-newsletter.jsp>*)

* By posting you are agreeing to the LMC Comment Policy (*Link to: <http://www.lmc.org/page/1/comment-policy.jsp>*) .

4 Comments

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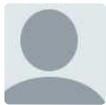
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Join the discussion...



Marshall · 14 days ago

Does the League have an ordinance drafted that Cities could adopt to opt out of this legislation?

^ | ▾ · Reply · Share >



LMC_Staff_LZ Mod  Marshall · 14 days ago

Thanks for your question. The Governor just signed the bill into law on May 12, so we are still working on crafting our guidance for cities on this new statute. A model ordinance to adopt the opt-out is part of the package we are considering. We hope to have information ready soon, since every city in the state will need to decide what to do related to this new land use option by Sept. 1, 2016. Please keep an eye on the Cities Bulletin and the League website for updates and feel free to contact me directly if you have specific questions—my contact info is in the "Your LMC Resource" box on this web page. – Craig Johnson, IGR (League staff)

^ | ▾ · Reply · Share >



Lisa Bode · 2 months ago

The summary of the posted revision should note that the bill previously allowed local governments to opt out of allowing these units, but now indicates that a temporary family health care unit cannot be prohibited by local ordinance regulating accessory uses or recreational vehicle parking or storage or any other ordinance. This could mean that the unit, if it met setback requirements, could be on a driveway or a front yard (to be accessible to a septic service management) in a single family home for a year regardless of neighborhood objection or public safety concerns. Who certifies that the physically or mentally impaired person can safely live independently (and in isolation) in this unit?

^ | ▾ · Reply · Share >



LMC_Staff_DC Mod → Lisa Bode · 2 months ago

I can cover your questions and comments, Lisa.

1 - The opt-out

option continues to be in the bill in Section 2, Subd. 9 and Section 3, Subd. 9 in both the House and Senate versions of the legislation. You may have looked at the bill as it was introduced, which did not allow that.

2 - Your comment about that these units could be placed in a driveway or front lawn if all setback and other safety requirements are met is accurate.

3 - The person is not presumed to be living independently, but to be receiving assistance. They must have a health care provider, primary care network, and caregiver identified in the permit. A doctor, physician's assistant, or nurse practitioner must verify the need for that assistance for a permit application to be complete.

Thanks for posting your thoughts – Craig Johnson, IGR (League staff)

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Your LMC Resource

Contact Craig Johnson

IGR Representative

(651) 281-1259 or (800) 925-1122

cjohnson@lmc.org (Link to: <mailto:cjohnson@lmc.org>)

Contact Irene Kao

IGR Counsel

(651) 281-1260 or (800) 925-1122

ikao@lmc.org (Link to: <mailto:ikao@lmc.org>)

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CHAPTER 111--S.F.No. 2555 (EXCERPT)

[462.3593] TEMPORARY FAMILY HEALTH CARE DWELLINGS.

Subdivision 1.

Definitions.

- (a) For purposes of this section, the following terms have the meanings given.
- (b) "Caregiver" means an individual 18 years of age or older who:
- (1) provides care for a mentally or physically impaired person; and
 - (2) is a relative, legal guardian, or health care agent of the mentally or physically impaired person for whom the individual is caring.
- (c) "Instrumental activities of daily living" has the meaning given in section 256B.0659, subdivision 1, paragraph (i).
- (d) "Mentally or physically impaired person" means a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified in writing by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state.
- (e) "Relative" means a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, or niece of the mentally or physically impaired person. Relative includes half, step, and in-law relationships.
- (f) "Temporary family health care dwelling" means a mobile residential dwelling providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that meets the requirements of subdivision 2.

Subd. 2.

Temporary family health care dwelling.

- A temporary family health care dwelling must:
- (1) be primarily assembled at a location other than its site of installation;
 - (2) be no more than 300 gross square feet;
 - (3) not be attached to a permanent foundation;
 - (4) be universally designed and meet state-recognized accessibility standards;
 - (5) provide access to water and electric utilities either by connecting to the utilities that are serving the principal dwelling on the lot or by other comparable means;
 - (6) have exterior materials that are compatible in composition, appearance, and durability to the exterior materials used in standard residential construction;
 - (7) have a minimum insulation rating of R-15;

(8) be able to be installed, removed, and transported by a one-ton pickup truck as defined in section 168.002, subdivision 21b, a truck as defined in section 168.002, subdivision 37, or a truck tractor as defined in section 168.002, subdivision 38;

(9) be built to either Minnesota Rules, chapter 1360 or 1361, and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code I19.2; and

(10) be equipped with a backflow check valve.

Subd. 3.

Temporary dwelling permit; application.

(a) Unless the municipality has designated temporary family health care dwellings as permitted uses, a temporary family health care dwelling is subject to the provisions in this section. A temporary family health care dwelling that meets the requirements of this section cannot be prohibited by a local ordinance that regulates accessory uses or recreational vehicle parking or storage.

(b) The caregiver or relative must apply for a temporary dwelling permit from the municipality. The permit application must be signed by the primary caregiver, the owner of the property on which the temporary family health care dwelling will be located, and the resident of the property if the property owner does not reside on the property, and include:

(1) the name, address, and telephone number of the property owner, the resident of the property if different from the owner, and the primary caregiver responsible for the care of the mentally or physically impaired person; and the name of the mentally or physically impaired person who will live in the temporary family health care dwelling;

(2) proof of the provider network from which the mentally or physically impaired person may receive respite care, primary care, or remote patient monitoring services;

(3) a written certification that the mentally or physically impaired person requires assistance with two or more instrumental activities of daily living signed by a physician, a physician assistant, or an advanced practice registered nurse licensed to practice in this state;

(4) an executed contract for septic service management or other proof of adequate septic service management;

(5) an affidavit that the applicant has provided notice to adjacent property owners and residents of the application for the temporary dwelling permit; and

(6) a general site map to show the location of the temporary family health care dwelling and other structures on the lot.

(c) The temporary family health care dwelling must be located on property where the caregiver or relative resides. A temporary family health care dwelling must comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure. The temporary family health care

dwelling must be located on the lot so that septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.

(d) A temporary family health care dwelling is limited to one occupant who is a mentally or physically impaired person. The person must be identified in the application. Only one temporary family health care dwelling is allowed on a lot.

(e) Unless otherwise provided, a temporary family health care dwelling installed under this section must comply with all applicable state law, local ordinances, and charter provisions.

Subd. 4.

Initial permit term; renewal.

The initial temporary dwelling permit is valid for six months. The applicant may renew the permit once for an additional six months.

Subd. 5.

Inspection.

The municipality may require that the permit holder provide evidence of compliance with this section as long as the temporary family health care dwelling remains on the property. The municipality may inspect the temporary family health care dwelling at reasonable times convenient to the caregiver to determine if the temporary family health care dwelling is occupied and meets the requirements of this section.

Subd. 6.

Revocation of permit.

The municipality may revoke the temporary dwelling permit if the permit holder violates any requirement of this section. If the municipality revokes a permit, the permit holder has 60 days from the date of revocation to remove the temporary family health care dwelling.

Subd. 7.

Fee.

Unless otherwise provided by ordinance, the municipality may charge a fee of up to \$100 for the initial permit and up to \$50 for a renewal of the permit.

Subd. 8.

No public hearing required; application of section 15.99.

(a) Due to the time-sensitive nature of issuing a temporary dwelling permit for a temporary family health care dwelling, the municipality does not have to hold a public hearing on the application.

(b) The procedures governing the time limit for deciding an application for the temporary dwelling permit under this section are governed by section 15.99, except as provided in this section. The municipality has 15 days to issue a permit requested under this section or to deny it, except that if the statutory or home rule charter city holds regular meetings only once per calendar month the statutory or home rule charter city has 30 days to issue a permit requested under this section or to deny it. If the municipality receives a written request that does not contain all required information, the applicable 15-day or 30-day limit starts over only if the municipality sends written notice within five business days of receipt of the request telling the requester what information is missing. The municipality cannot extend the period of time to decide.

Subd. 9.

Opt-out.

A municipality may by ordinance opt-out of the requirements of this section.

Sec. 4.

EFFECTIVE DATE.

This act is effective September 1, 2016, and applies to temporary dwelling permit applications made under this act on or after that date.

Presented to the governor May 12, 2016

Signed by the governor May 12, 2016, 1:27 p.m.



Temporary Family Health Care Dwellings of 2016 Allowing Temporary Structures – What it means for Cities

Introduction:

On May 12, 2016, Governor Dayton signed, into law, a bill creating a new process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling.¹ Community desire to provide transitional housing for those with mental or physical impairments and the increased need for short term care for aging family members served as the catalysts behind the legislature taking on this initiative. The resulting legislation sets forth a short term care alternative for a “mentally or physically impaired person”, by allowing them to stay in a “temporary dwelling” on a relative’s or caregiver’s property.²

Where can I read the new law?

Until the state statutes are revised to include bills passed this session, cities can find this new bill at [2016 Laws, Chapter 111](#).

Does the law require cities to follow and implement the new temporary family health care dwelling law?

Yes, unless a city opts out of the new law or currently allows temporary family health care dwellings as a permitted use.

Considerations for cities regarding the opt-out?

These new temporary dwellings address an emerging community need to provide more convenient temporary care. Cities may want to consider the below when analyzing whether or not to opt out:

- The new law alters a city’s level of zoning authority for these types of structures.
- While the city’s zoning ordinances for accessories or recreational vehicles do not apply, these structures still must comply with setback requirements.
- A city’s zoning and other ordinances, other than its accessory use or recreational vehicle ordinances, still apply to these structures. Because conflicts may arise between the statute and a city’s local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.
- Although not necessarily a legal issue for the city, it seems worth mentioning that the permit process does not have the individual with the physical or mental impairment or that

¹ [2016 Laws, Chapter 111](#).

² Some cities asked if other states have adopted this type of law. The only states that have a somewhat similar statute at the time of publication of this FAQ are North Carolina and Virginia. It is worth noting that some states have adopted Accessory Dwelling Unit (ADU) statutes to allow granny flats, however, these ADU statutes differ from Minnesota’s Temporary Health Care Dwelling law.

individual's power of attorney sign the permit application or a consent to release his or her data.

- The application's data requirements may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act.
- The new law sets forth a permitting system for both cities and counties³. Cities should consider whether there is an interplay between these two statutes.

Do cities need to do anything to have the new law apply in their city?

No, the law goes into effect September 1, 2016 and automatically applies to all cities that do not opt out or don't already allow temporary family health care dwellings as a permitted use under their local ordinances. By September 1, 2016, however, cities will need to be prepared to accept applications, must have determined a permit fee amount⁴ (if the city wants to have an amount different than the law's default amount), and must be ready to process the permits in accordance with the short timeline required by the law.

What if a city already allows a temporary family health care dwelling as a permitted use?

If the city already has designated temporary family health care dwellings as a permitted use, then the law does not apply and the city follows its own ordinance. The city should consult its city attorney for any uncertainty about whether structures currently permitted under existing ordinances qualify as temporary family health care dwellings.

What process should the city follow if it chooses to opt out of this statute?

Cities that wish to opt out of this law must pass an ordinance to do so. The statute does not provide clear guidance on how to treat this opt-out ordinance. However, since the new law adds section 462.3593 to the land use planning act (Minn. Stat. ch. 462), arguably, it may represent the adoption or an amendment of a zoning ordinance, triggering the requirements of Minn. Stat. § 462.357, subd. 2-4, including a public hearing with 10-day published notice. Therefore, cities may want to err on the side of caution and treat the opt-out ordinance as a zoning provision.⁵

Does the League have a model ordinance for opting out of this program?

Yes. Link to opt out ordinance here: [Temporary Family Health Care Dwellings Ordinance](#)

Can cities partially opt out of the temporary family health care dwelling law?

³ See Minn. Stat. §394.307

⁴ Cities do have flexibility as to amounts of the permit fee. The law sets, as a default, a fee of \$100 for the initial permit with a \$50 renewal fee, but authorizes a city to provide otherwise by ordinance.

⁵ For smaller communities without zoning at all, those cities still need to adopt an opt-out ordinance. In those instances, it seems less likely that the opt-out ordinance would equate to zoning. Because of the ambiguity of the statute, cities should consult their city attorneys on how best to approach adoption of the opt-out ordinance for their communities.

Not likely. The opt-out language of the statute allows a city, by ordinance, to opt out of the requirements of the law but makes no reference to opting out of parts of the law. If a city wanted a program different from the one specified in statute, the most conservative approach would be to opt out of the statute, then adopt an ordinance structured in the manner best suited to the city. Since the law does not explicitly provide for a partial opt out, cities wanting to just partially opt out from the statute should consult their city attorney.

Can a city adopt pieces of this program or change the requirements listed in the statute?

Similar to the answer about partially opting out, the law does not specifically authorize a city to alter the statutory requirements or adopt only just pieces of the statute. Several cities have asked if they could add additional criteria, like regulating placement on driveways, specific lot size limits, or anchoring requirements. As mentioned above, if a city wants a program different from the one specified in the statute, the most conservative approach would involve opting out of the statute in its entirety and then adopting an ordinance structured in the manner best suited to the city. Again, a city should consult its city attorney when considering adopting an altered version of the state law.

What is required in an application for a temporary family health care dwelling permit?

The mandatory application requests very specific information including, but not limited to:⁶

- Name, address, and telephone number of the property owner, the resident of the property (if different than the owner), and the primary care giver;
- Name of the mentally or physically impaired person;
- Proof of care from a provider network, including respite care, primary care or remote monitoring;
- Written certification signed by a Minnesota licensed physician, physician assistant or advanced practice registered nurse that the individual with the mental or physical impairment needs assistance performing two or more “instrumental activities of daily life;”⁷
- An executed contract for septic sewer management or other proof of adequate septic sewer management;
- An affidavit that the applicant provided notice to adjacent property owners and residents;
- A general site map showing the location of the temporary dwelling and the other structures on the lot; and
- Compliance with setbacks and maximum floor area requirements of primary structure.

⁶ New Minn. Stat. § 462.3593, subd. 3 sets forth all the application criteria.

⁷ This is a term defined in law at Minn. Stat. § 256B.0659, subd. 1(i) as “activities to include meal planning and preparation; basic assistance with paying bills; shopping for food, clothing, and other essential items; performing household tasks integral to the personal care assistance services; communication by telephone and other media; and traveling, including to medical appointments and to participate in the community.”

The law requires all of the following to sign the application: the primary caregiver, the owner of the property (on which the temporary dwelling will be located) and the resident of the property (if not the same as the property owner). However, neither the physically disabled or mentally impaired individual nor his or her power of attorney signs the application.

Who can host a temporary family health care dwelling?

Placement of a temporary family health care dwelling can only be on the property where a “caregiver” or “relative” resides. The statute defines caregiver as “an individual, 18 years of age or older, who: (1) provides care for a mentally or physically impaired person; and (2) is a relative, legal guardian, or health care agent of the mentally or physically impaired person for whom the individual is caring.” The definition of “relative” includes “a spouse, parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew or niece of the mentally or physically impaired person. Relative also includes half, step and in-law relationships.”

Is this program just for the elderly?

No. The legislature did not include an age requirement for the mentally or physically impaired dweller.⁸

Who can live in a temporary family health care dwelling and for how long?

The permit for a temporary health care dwelling must name the person eligible to reside in the unit. The law requires the person residing in the dwelling to qualify as “mentally or physically impaired,” defined as “a person who is a resident of this state and who requires assistance with two or more instrumental activities of daily living as certified by a physician, a physician assistant, or an advanced practice registered nurse, licenses to practice in this state.” The law specifically limits the time frame for these temporary dwellings permits to 6 months, with a one-time 6 month renewal option. Further, there can be only one dwelling per lot and only one dweller who resides within the temporary dwelling

What structures qualify as temporary family health care dwellings under the new law?

The specific structural requirements set forth in the law preclude using pop up campers on the driveway or the “granny flat” with its own foundation as a temporary structure. Qualifying temporary structures must:

- Primarily be pre-assembled;
- Cannot exceed 300 gross square feet;
- Cannot attach to a permanent foundation;
- Must be universally designed and meet state accessibility standards;

⁸ The law expressly exempts a temporary family health care dwelling from being considered “housing with services establishment”, which, in turn, results in the 55 or older age restriction set forth for “housing with services establishment” not applying.

- Must provide access to water and electrical utilities (by connecting to principal dwelling or by other comparable means⁹);
- Must have compatible standard residential construction exterior materials;
- Must have minimum insulation of R-15;
- Must be portable (as defined by statute);
- Must comply with Minnesota Rules chapter 1360 (prefabricated buildings) or 1361 (industrialized/modular buildings), “and contain an Industrialized Buildings Commission seal and data plate or to American National Standards Institute Code 119.2”¹⁰; and
- Must contain a backflow check valve.¹¹

Does the State Building Code apply to the construction of a temporary family health care dwelling?

Mostly, no. These structures must meet accessibility standards (which are in the State Building Code). The primary types of dwellings proposed fall within the classification of recreational vehicles, to which the State Building Code does not apply. Two other options exist, however, for these types of dwellings. If these structures represent a pre-fabricated home, the federal building code requirements for manufactured homes apply (as stated in Minnesota Rules, Chapter 1360). If these structures are modular homes, on the other hand, they must be constructed consistent with the State Building Code (as stated in Minnesota Rules, Chapter 1361).

What health, safety and welfare requirements does this new law include?

Aside from the construction requirements of the unit, the temporary family health care dwelling must be located in an area on the property where “septic services and emergency vehicles can gain access to the temporary family health care dwelling in a safe and timely manner.”

What local ordinances and zoning apply to a temporary health care dwelling?

The new law states that ordinances related to accessory uses and recreational vehicle storage and parking do not apply to these temporary family health care dwellings. However, unless otherwise provided, setbacks and other local ordinances, charter provisions, and applicable state laws still apply. Because conflicts may arise between the statute and one or more of the city’s other local ordinances, cities should confer with their city attorneys to analyze their current ordinances in light of the new law.

What permit process should cities follow for these permits?

The law creates a new type of expedited permit process. The permit approval process found in Minn. Stat. § 15.99 generally applies; however, the new law shortens the time frame for which the local governmental unit has to make a decision on granting the permit. Due to the time sensitive

⁹ The Legislature did not provide guidance on what represents “other comparable means”.

¹⁰ ANSI Code 119.2 has been superseded by NFPA 1192. For more information, the American National Standards Institute website is located at <https://www.ansi.org/>.

¹¹ New Minn. Stat. § 462.3593, subd. 2 sets forth all the structure criteria.

nature of issuing a temporary dwelling permit, the city has only 15 days (rather than 60 days) (no extension is allowed) to either issue or deny a permit. The new law waives the public hearing requirement and allows the clock to restart if a city deems an application incomplete. If a city deems an application incomplete, the city must provide the applicant written notice, within five business days of receipt of the application, telling the requester what information is missing. For those councils that regularly meet only once a month, the law provides for a 30-day decision.

Can cities collect fees for these permits?

Cities have flexibility as to amounts of the permit fee. The law sets the fee at \$100 for the initial permit with a \$50 renewal fee, unless a city provides otherwise by ordinance

Can cities inspect, enforce and ultimately revoke these permits?

Yes, but only if the permit holder violates the requirements of the law. The statute allows for the city to require the permit holder to provide evidence of compliance and also authorizes the city to inspect the temporary dwelling at times convenient to the caregiver to determine compliance. The permit holder then has sixty (60) days from the date of revocation to remove the temporary family health care dwelling. The law does not address appeals of a revocation.

How should cities handle data it acquires from these permits?

The application data may result in the city possessing and maintaining nonpublic data governed by the Minnesota Government Data Practices Act. To minimize collection of protected health data or other nonpublic data, the city could, for example, request that the required certification of need simply state “that the person who will reside in the temporary family health care dwelling needs assistance with two or more instrumental activities of daily living”, without including in that certification data or information about the specific reasons for the assistance, the types of assistance, the medical conditions or the treatment plans of the person with the mental illness or physical disability. Because of the complexities surrounding nonpublic data, cities should consult their city attorneys when drafting a permit application.

Should the city consult its city attorney?

Yes. As with any new law, to determine the potential impact on cities, the League recommends consulting with your city attorney.

Where can cities get additional information or ask other questions.

For more information, contact Staff Attorney Pamela Whitmore at pwhitmore@lmc.org or LMC General Counsel Tom Grundhoefer at tgrundho@lmc.org. If you prefer calling, you can reach Pamela at 651.281.1224 or Tom at 651.281.1266.

CITY OF ROCKVILLE

ORDINANCE NO. 2016-85

**AN ORDINANCE AMENDING SECTION 9 OF THE CITY ZONING ORDINANCE
PERTAINING TO GENERAL REGULATIONS**

WHEREAS, on May 12, 2016, Governor Dayton signed into law the creation and regulation of temporary family health care dwellings, codified at Minn. Stat. § 462.3593, which permit and regulate temporary family health care dwellings;

WHEREAS, subdivision 9 of Minn. Stat. §462.3593 allows cities to “opt out” of those regulations;

THE CITY COUNCIL OF THE CITY OF ROCKVILLE, ORDAINS as follows:

Section 9 Rockville Zoning Code, Subdivision 2 is amended as follows:

Subdivision 2, part N OPT-OUT OF MINNESOTA STATUTES, SECTION 462.3593:

Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the City of Rockville opts-out of the requirements of Minn. Stat. §462.3593, which defines and regulates Temporary Family Health Care Dwellings.

Effective Date: This Ordinance, adopted by the City Council on August 17, 2016, becomes effective the day following the publication of the ordinance, or summary thereof, in the City’s legal newspaper.

SIGNED:

WITNESSED:

Jeff Hagen, Mayor

Martin M. Bode, City Administrator

(CITY SEAL)