

ZONING CODE TEXT AMENDMENT SUMMARY

<i>Initiator:</i>	Council Member Glidden
<i>Introduction Date:</i>	July 22, 2016
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<i>Specific Site:</i>	Citywide
<i>Ward:</i>	Citywide
<i>Neighborhood:</i>	Citywide
<i>Intent:</i>	To opt out of Minnesota Statute 462.3593, which authorizes the regulation and permitting of temporary family health care dwelling units.

APPLICABLE SECTION(S) OF THE ZONING CODE

- Chapter 520, Introductory Provisions

BACKGROUND

On May 12, 2016, Governor Mark Dayton signed into law Minn. Stat. § 462.3593, which allows for the creation and regulation of temporary family health care dwellings. A “temporary family health care dwelling” – also known as a “drop house” – is a mobile, independent living facility that can be located on a property where a caregiver, or caregiver’s relative who is receiving health care assistance, resides. A “caregiver” is defined in the statutes as the relative, legal guardian, or health care agent of the mentally or physically impaired person who is receiving assistance with two or more instrumental activities or daily living.

Under the statute, the temporary dwelling cannot be attached to a permanent foundation and it may not exceed 300 square feet in size. The dwelling is required to comply with all stormwater, shoreland, setback, and easement requirements, and must also meet state-recognized accessibility standards. Cities may permit temporary family health care dwellings for up to six months, unless an additional six-month extension is granted. Additional criteria and regulatory processes are listed in the statute.

The statute requires all Minnesota cities to issue permits to qualified applicants beginning September 1, 2016. However, subdivision 9 of Minn. Stat. § 462.3593 allows cities to “opt out” of these regulations, as long as it is codified in ordinance. The City of Minneapolis – along with numerous other counties and cities in Minnesota – is choosing to opt out of the temporary family health care dwelling program.

PURPOSE

What is the reason for the amendment?

The purpose of the amendment is to codify the City of Minneapolis’ intent to opt out of Minn. Stat. § 462.3593 so that it is not obligated to accept permits for temporary family health care dwellings beginning September 1, 2016. While the statute provides an exemption for municipalities that already permit temporary family health care dwellings, cities that otherwise prohibit occupancy in recreational vehicles, or similar structures, must explicitly opt out of the statute by ordinance. Staff is proposing to amend Chapter 520 of the zoning code to clarify that the City is choosing to not permit this dwelling unit type at this time.

What problem is the amendment designed to solve?

Several other cities and counties in Minnesota are choosing to opt-out of the recent legislation due to the potential issues it poses in terms of superseding established review and inspection processes at the local level. The following common concerns are echoed by other jurisdictions choosing to opt out of the statute:

- The law does not generally require these dwellings to comply with the Minnesota State Building Code or electrical code, unless they are constructed as modular homes. The Minnesota State Building Code and electrical code do not apply to recreational vehicles.
- The temporary structure may pose a fire hazard risk to nearby buildings (on-site or off-site).
- Applicants are required to provide proof of access to water, sewer, and electric utilities. Meanwhile, there is no inspection or enforcement mechanism built into the legislation to ensure that these temporary utility services are implemented safely.
- Verifying the medical necessity requires asking for and maintaining nonpublic HIPPA information, as governed by the Minnesota Government Data Practices Act. However, there is no

requirement for the individual with the physical or mental impairment, or that individual's power of attorney, to sign the permit application or consent to release his or her information.

- The structure may be placed in front of a house as long as all setbacks are met.
- The permitting process outlined at the state level, and which requires local jurisdictions to issue permits within 15 days of receiving an application, does not generally align with cities' zoning authority, established processes, and application requirements.
- The statute may result in temporary development that is inconsistent with zoning code regulations and comprehensive plan policies.
- Inspections are only allowed if there is evidence of violation of the law, which conflicts with current rental licensing requirements.

Staff finds that there are many aspects of the statute which would be incompatible with existing building and zoning codes. Proactively opting out of the statutory requirements that are associated with this use would prevent the practical, administrative, and policy consequences that are expected to occur as a result of the statute's implementation.

What public purpose will be served by the amendment?

This amendment will serve a public purpose by allowing the City of Minneapolis to continue reviewing and inspecting all dwelling types according to the regulations and processes that are already in place, and which require interdepartmental coordination on a daily basis. The amendment is consistent with the City's goals related to streamlining City processes, and upholding the public health, safety, comfort, and general welfare.

What problems might the amendment create?

The amendment is not expected to create problems. Staff has evaluated the current options that are available as alternatives to temporary health care dwelling units against the issues that could arise as a result of opting to participate in the regulation and permitting of temporary family health care dwelling units. Under the statute, temporary family health care dwellings are permitted for up to six months, or a maximum of one year with a six-month extension. Meanwhile, the City of Minneapolis currently permits accessory dwelling units on owner-occupied properties that contain single- and two-family homes. Accessory dwelling units provide a similar, but permanent option for families seeking to add a dwelling unit to their property to care for a family member or other individual in need of medical assistance. As of the writing of this report, approximately 50 accessory dwelling units have been approved since they have been allowed citywide as of December 2014.

Approving the proposed opt-out amendment would not preclude the City from considering future amendments to allow temporary health care dwelling units.

TIMELINESS

Is the amendment timely?

The proposed amendment is timely, as the regulations become effective on September 1, 2016. The opt-out ordinance responds to a statute which was signed into law on May 12, 2016.

Is the amendment consistent with practices in surrounding areas?

The amendment would be consistent with the actions taken by other local jurisdictions and counties in Minnesota this year in response to this statute. Cities that have opted out of the statute include St. Cloud, Duluth, Eden Prairie, Arden Hills, Savage, Jordan, Burnsville, Lauderdale, Belle Plain, and Alexandria.

Are there consequences in denying this amendment?

As discussed above, staff anticipates that there would be several negative administrative, life-safety, and procedural consequences as a result of denying the opt-out ordinance. Staff also has concerns about maintaining private healthcare data.

COMPREHENSIVE PLAN

The amendment will implement the following applicable policies of *The Minneapolis Plan for Sustainable Growth*:

Land Use Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.

- 1.1.1 Ensure that the City's zoning code is consistent with The Minneapolis Plan and provides clear, understandable guidance that can readily be administered.
- 1.1.5 Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development.

Housing Policy 3.6: Foster complete communities by preserving and increasing high quality housing opportunities suitable for all ages and household types.

- 3.6.1 Promote the development of housing suitable for people and households in all life stages that can be adapted to accommodate changing housing needs over time.
- 3.6.2 Promote housing development in all communities that meets the needs of households of different sizes and income levels.
- 3.6.4 Provide and maintain moderate and high-density residential areas, as well as areas that are predominantly developed with single and two family structures.
- 3.6.5 Promote accessible housing designs to support persons with disabilities and the elderly.

Housing Policy 3.7: Maintain the quality, safety and unique character of the city's housing stock.

- 3.7.5 Promote the use of high quality materials in new housing construction to minimize long-term deterioration of the housing stock.
- 3.7.6 Continue regular inspections of rental housing to preserve its functionality and safety.
- 3.7.1.1 Ensure safety, livability and durability of the housing stock through enforcement of the Minnesota State Building Code.

Economic Development Policy 4.1: Support private sector growth to maintain a healthy, diverse economy.

- 4.1.5 Continue to streamline City development review, permitting and licensing to make it easier to develop property in the City of Minneapolis.

Urban Design Policy 10.7: Maintain and preserve the quality and unique character of the city's existing housing stock.

- 10.7.2 Encourage the use of high quality and durable materials for construction and historic preservation.
- 10.7.4 Renovation of housing should reflect the setbacks, orientation, pattern, materials, height and scale of surrounding dwellings.
- 10.7.5 Provide the flexibility in the city's ordinances to improve and maintain existing structures.
- 10.8: Strengthen the character and desirability of the city's urban neighborhood residential areas while accommodating reinvestment through infill development.
- 10.8.1 Infill development shall reflect the setbacks, orientation, pattern, materials, height and scale of surrounding dwellings.
- 10.8.2 Infill development shall incorporate the traditional layout of residential development that includes a standard front and side yard setbacks, open space in the back yard, and detached garage along the alley or at back of lot.
- 10.8.3 Building features of infill development, such as windows and doors, height of floors, and exposed basements, shall reflect the scale of surrounding dwellings.
- 10.8.6 Traditional setbacks, orientations, pattern, height and scale of dwellings should be created in areas where no clear pattern exists.
- 10.8.7 Low density residential development proposals should be evaluated and compared to the form and density of the neighborhood.

RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the City Planning Commission and City Council adopt staff findings to amend Title 20 of the Minneapolis Code of Ordinances, as follows:

A. Text amendment.

Recommended motion: **Approve** the text amendment to opt out of Minnesota Statute 462.3593, which authorizes the regulation and permitting of temporary family health care dwelling units.

Chapter 520 related to the Zoning Code: *Introductory Provisions*

ATTACHMENTS

- I. Ordinance amending Chapter 520, Introductory Provisions.