



Board of County Commissioners Agenda Request

4A

Agenda Item #

Requested Meeting Date: July 12, 2016

Title of Item: Opt-out Resolution

<input checked="" type="checkbox"/> REGULAR AGENDA <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input type="checkbox"/> Approve/Deny Motion <input checked="" type="checkbox"/> Adopt Resolution (attach draft) <i>*provide copy of hearing notice that was published</i>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing*
Submitted by: Terry Neff, Environmental Services Director		Department: Environmental Services
Presenter (Name and Title): Terry Neff, Environmental Services Director		Estimated Time Needed:
Summary of Issue: <p>This past legislative session the Governor signed into law requirements for Temporary Family Health Care Dwellings. The law amends Minnesota Statutes Chapter 394 by allowing the placement of these structures without regard to existing local land use controls and permitting process. The structures described in law are very limited on the size, duration of stay and design standards, which are similar to an RV. The law does allow local units of government to opt-out through the adoption of a resolution. I feel it is in the best interest of Aitkin County to adopt an opt-out resolution and control the placement and permitting of such structures through our local ordinances and permitting process, which do not discriminate on the size, duration or design of the structure. I have attached a copy of the amendment to Mn Statutes Chapter 394 and a copy of the proposed opt-out resolution.</p>		
Alternatives, Options, Effects on Others/Comments: Allow the placement of these structures which restricts the size, design and duration they can remain on a property.		
Recommended Action/Motion: Adopt proposed opt-out resolution.		
Financial Impact: <i>Is there a cost associated with this request?</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>What is the total cost, with tax and shipping? \$</i> N/A <i>Is this budgeted?</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>Please Explain:</i> By not adopting an opt-out resolution there will be staff time involved in tracking and enforcement of the 6mo. to 1 year time allowed to remain on a parcel of land.		

Legally binding agreements must have County Attorney approval prior to submission.

2.1 (6) private homes in which the residents are related by kinship, law, or affinity with
 2.2 the providers of services;

2.3 (7) residential settings for persons with developmental disabilities in which the
 2.4 services are licensed under Minnesota Rules, parts 9525.2100 to 9525.2140, or applicable
 2.5 successor rules or laws;

2.6 (8) a home-sharing arrangement such as when an elderly or disabled person or
 2.7 single-parent family makes lodging in a private residence available to another person
 2.8 in exchange for services or rent, or both;

2.9 (9) a duly organized condominium, cooperative, common interest community, or
 2.10 owners' association of the foregoing where at least 80 percent of the units that comprise the
 2.11 condominium, cooperative, or common interest community are occupied by individuals
 2.12 who are the owners, members, or shareholders of the units; or

2.13 (10) services for persons with developmental disabilities that are provided under
 2.14 a license according to Minnesota Rules, parts 9525.2000 to 9525.2140 in effect until
 2.15 January 1, 1998, or under chapter 245D; or

2.16 (11) a temporary family health care dwelling as defined in sections 394.307 and
 2.17 462.3593.

2.18 **Sec. 2. [394.307] TEMPORARY FAMILY HEALTH CARE DWELLINGS.**

2.19 **Subdivision 1. Definitions.** (a) For purposes of this section, the following terms
 2.20 have the meanings given.

2.21 (b) "Caregiver" means an individual 18 years of age or older who:

2.22 (1) provides care for a mentally or physically impaired person; and

2.23 (2) is a relative, legal guardian, or health care agent of the mentally or physically
 2.24 impaired person for whom the individual is caring.

2.25 (c) "Instrumental activities of daily living" has the meaning given in section
 2.26 256B.0659, subdivision 1, paragraph (i).

2.27 (d) "Mentally or physically impaired person" means a person who is a resident of
 2.28 this state and who requires assistance with two or more instrumental activities of daily
 2.29 living as certified in writing by a physician, a physician assistant, or an advanced practice
 2.30 registered nurse licensed to practice in this state.

2.31 (e) "Relative" means a spouse, parent, grandparent, child, grandchild, sibling, uncle,
 2.32 aunt, nephew, or niece of the mentally or physically impaired person. Relative includes
 2.33 half, step, and in-law relationships.

3.1 (f) "Temporary family health care dwelling" means a mobile residential dwelling
3.2 providing an environment facilitating a caregiver's provision of care for a mentally or
3.3 physically impaired person that meets the requirements of subdivision 2.

3.4 Subd. 2. Temporary family health care dwelling. A temporary family health
3.5 care dwelling must:

3.6 (1) be primarily assembled at a location other than its site of installation;

3.7 (2) be no more than 300 gross square feet;

3.8 (3) not be attached to a permanent foundation;

3.9 (4) be universally designed and meet state-recognized accessibility standards;

3.10 (5) provide access to water and electric utilities either by connecting to the utilities
3.11 that are serving the principal dwelling on the lot or by other comparable means;

3.12 (6) have exterior materials that are compatible in composition, appearance, and
3.13 durability to the exterior materials used in standard residential construction;

3.14 (7) have a minimum insulation rating of R-15;

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

3.18 (9) be built to either Minnesota Rules, chapter 1360 or 1361, and contain an
3.19 Industrialized Buildings Commission seal and data plate or to American National
3.20 Standards Institute Code 119.2; and

3.21 (10) be equipped with a backflow check valve.

3.22 Subd. 3. Temporary dwelling permit; application. (a) Unless the county has
3.23 designated temporary family health care dwellings as permitted uses, a temporary family
3.24 health care dwelling is subject to the provisions in this section. A temporary family health
3.25 care dwelling that meets the requirements of this section cannot be prohibited by a local
3.26 ordinance that regulates accessory uses or recreational vehicle parking or storage.

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

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

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

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

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

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

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

4.11 (c) The temporary family health care dwelling must be located on property where the
4.12 caregiver or relative resides. A temporary family health care dwelling must comply with
4.13 all setback requirements that apply to the primary structure and with any maximum floor
4.14 area ratio limitations that may apply to the primary structure. The temporary family health
4.15 care dwelling must be located on the lot so that septic services and emergency vehicles
4.16 can gain access to the temporary family health care dwelling in a safe and timely manner.

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

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

4.22 Subd. 4. **Initial permit term; renewal.** The initial temporary dwelling permit is
4.23 valid for six months. The applicant may renew the permit once for an additional six months.

4.24 Subd. 5. **Inspection.** The county may require that the permit holder provide
4.25 evidence of compliance with this section as long as the temporary family health care
4.26 dwelling remains on the property. The county may inspect the temporary family health
4.27 care dwelling at reasonable times convenient to the caregiver to determine if the temporary
4.28 family health care dwelling is occupied and meets the requirements of this section.

4.29 Subd. 6. **Revocation of permit.** The county may revoke the temporary dwelling
4.30 permit if the permit holder violates any requirement of this section. If the county revokes a
4.31 permit, the permit holder has 60 days from the date of revocation to remove the temporary
4.32 family health care dwelling.

4.33 Subd. 7. **Fee.** Unless otherwise specified by an action of the county board, the
4.34 county may charge a fee of up to \$100 for the initial permit and up to \$50 for a renewal
4.35 of the permit.

5.1 Subd. 8. No public hearing required; application of section 15.99. (a) Due to the
 5.2 time-sensitive nature of issuing a temporary dwelling permit for a temporary family health
 5.3 care dwelling, the county does not have to hold a public hearing on the application.

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

5.13 Subd. 9. Opt-out. A county may by resolution opt-out of the requirements of
 5.14 this section.

5.15 Sec. 3. [462.3593] TEMPORARY FAMILY HEALTH CARE DWELLINGS.

5.16 Subdivision 1. Definitions. (a) For purposes of this section, the following terms
 5.17 have the meanings given.

5.18 (b) "Caregiver" means an individual 18 years of age or older who:

5.19 (1) provides care for a mentally or physically impaired person; and

5.20 (2) is a relative, legal guardian, or health care agent of the mentally or physically
 5.21 impaired person for whom the individual is caring.

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 5.23 256B.0659, subdivision 1, paragraph (i).

5.24 (d) "Mentally or physically impaired person" means a person who is a resident of
 5.25 this state and who requires assistance with two or more instrumental activities of daily
 5.26 living as certified in writing by a physician, a physician assistant, or an advanced practice
 5.27 registered nurse licensed to practice in this state.

5.28 (e) "Relative" means a spouse, parent, grandparent, child, grandchild, sibling, uncle,
 5.29 aunt, nephew, or niece of the mentally or physically impaired person. Relative includes
 5.30 half, step, and in-law relationships.

5.31 (f) "Temporary family health care dwelling" means a mobile residential dwelling
 5.32 providing an environment facilitating a caregiver's provision of care for a mentally or
 5.33 physically impaired person that meets the requirements of subdivision 2.

5.34 Subd. 2. Temporary family health care dwelling. A temporary family health
 5.35 care dwelling must:

By Commissioner: xx

20160712-0xx

OPTING-OUT OF THE REQUIREMENTS OF MINNESOTA STATUTES, SECTION 394.307

WHEREAS, on May 12, 2016, the Governor of Minnesota signed into law Chapter 111 of the 89th Legislature of the State of Minnesota establishing definitions and requirements for Temporary Family Health Care Dwellings, which was introduced during the 2016 legislative session as Senate File 2555 and House File 2497; and

WHEREAS, Chapter 111 amends Minnesota Statute § 394 which regulates county permitting and zoning processes by establishing new rules for the placement of Temporary Family Health Care Dwellings on residential property; and

WHEREAS, the Minnesota Association of County Planning & Zoning Administrators, the professional association for county planning and zoning staff in Minnesota, supports the concept of Temporary Family Health Care Dwellings; and

WHEREAS, Chapter 111 erodes local control of the permitting process; limiting a county's ability to foster and guide development, and placing an undue burden on county staff to forego standard permitting practices; and

WHEREAS, it is the intent of the Aitkin County Board of Commissioners to protect the public health, safety and welfare of County residents and the environment of the County; and

WHEREAS, subdivision 9 of Minnesota Statute § 394.307 allows a county to "opt-out" of the regulations through the passage of a county board resolution; now therefore,

BE IT RESOLVED, Aitkin County elects to regulate Temporary Family Health Care Dwellings through already existing permitting standards of the Aitkin County Zoning Ordinance; and

BE IT RESOLVED, pursuant to authority granted by Minnesota Statutes, Section 394.307, Subdivision 9, of the County of Aitkin opts-out of the requirements of Minnesota Statute 394.307, which defines and regulates Temporary Family Health Care Dwellings.

Commissioner xx moved the adoption of the resolution and it was declared adopted upon the following vote

FIVE MEMBERS PRESENT

All Members Voting Yes

STATE OF MINNESOTA}
COUNTY OF AITKIN}

I, Nathan Burkett, County Administrator, Aitkin County, Minnesota do hereby certify that I have compared the foregoing with the original resolution filed in the Administration Office of Aitkin County in Aitkin, Minnesota as stated in the minutes of the proceedings of said Board on the 12th day of July 2016, and that the same is a true and correct copy of the whole thereof.

Witness my hand and seal this 12th day of July 2016.

Nathan Burkett
County Administrator