

## **TEMPORARY HEALTH CARE DWELLING LAW – OPTING OUT (THE GRANNY POD LAW)**

Spurred by an aging population, persistent physical and mental conditions, and the high costs of health care, the Temporary Health Care Dwelling Law (THCD), allows landowners to temporarily place mobile residential homes on their property to care for qualifying family members. These dwellings are intended to be short-term or transitional in nature, with an initial permit period of 6 months and one possible 6-month renewal period. The dwellings and their use is highly regulated by the statute, Minnesota Statute 462.3593, which includes provisions related to qualifying family members, medical conditions, dwellings, the application and permit process, the process remove non-qualifying structures, and other regulations.

By default, if an applicant meets the qualifications listed in the statute, the appropriate authority *must* issue the permit to the applicant. The statute, however, provides an “opt-out” by which towns and counties can choose not to implement this law. This resources discusses the opt-out process – it does not discuss the process of administering the statute if the town does not opt-out.

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### **1. IF THE COUNTY HAS ALREADY OPTED-OUT**

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If the county has opted-out of the THCD law, the opt-out is effective for the town as well. This is because town zoning must be consistent with and at least as restrictive as the county’s zoning ordinances. In this case, if the county prohibits temporary health care dwellings, the town could not issue any permit under the THCD law.

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### **2. IF THE COUNTY HAS NOT OPTED-OUT**

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If the county has not opted-out of the THCD law, the town board may choose to opt-out. Towns that already engage in planning and zoning could consider the opt-out ordinance before their planning and zoning authorities, just as they would any other zoning matter. Towns that already allow

temporary health care dwellings as a permitted use do not need to pass the opt-out ordinance at all because the statute automatically does not apply to those towns.

Towns that do not already engage in planning and zoning activities must begin planning and zoning activities in order to opt-out of the THCD law. The town adopts planning and zoning authority by following the process outlined in Minnesota Statutes chapter 462. The process includes forming a planning commission or having the board serve as the commission, adopting a comprehensive land use plan, and enacting zoning controls. This sounds more complicated than it really is because the town could simply adopt the county's existing comprehensive plan and zoning controls, and then add the opt-out for Temporary Health Care Dwellings. Towns pursuing this option should work with their town attorney to properly establish planning and zoning authority.

Q: Do we really need to adopt planning & zoning powers just to opt-out?

A: If the THCD law is a land use matter, then it probably requires planning & zoning authority to enact. Since the THCD law was placed in the Planning & Zoning Chapter, it appears it is a land use matter. But it's possible that is incorrect, and that a court would treat it as something else. Because of that uncertainty, the safest option is to treat it as a land use matter until there is a clear statement to the contrary.

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### 3. HOW TO OPT-OUT

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Once the town has adopted zoning powers, the town may opt-out of the requirements of the THCD law by passing an ordinance. A sample ordinance is provided with this resource. The board must hold a public hearing before passing the opt-out ordinance.<sup>1</sup> Notice of the time, place, and purpose of the public hearing must be published in the town's official newspaper at least ten days before the day of the hearing.<sup>2</sup>

If the board passes the opt-out ordinance, they must: (1) publish the ordinance or a summary of the ordinance in the town's official newspaper; (2) post a copy of the ordinance in the town's library, if the town has a library; and (3) record the ordinance in the town's ordinance book, including the ordinance book located at the county law library, within 20 days after the ordinance is published.<sup>3</sup>

After opting-out, the board may choose to allow temporary health care dwellings under the town's own local regulations.

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<sup>1</sup> See Minn. Stat. § 462.357, subd. 3.

<sup>2</sup> *Id.*

<sup>3</sup> See Minn. Stat. § 365.125.

**TOWNSHIP OF \_\_\_\_\_**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OPTING-OUT OF THE  
REQUIREMENTS OF MINNESOTA STATUTES SECTION 462.3593**

**WHEREAS**, Minn. Stat. § 462.3593, authorizes townships to permit and regulate temporary family health care dwellings;

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

**THE TOWN BOARD OF THE TOWNSHIP OF \_\_\_\_\_, ORDAINS AS FOLLOWS:**

1. Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the Township of \_\_\_\_\_ opts-out of the requirements of Minn. Stat. § 462.3593, which defines and regulates Temporary Family Health Care Dwellings.
2. This Ordinance shall be effective immediately upon its passage and publication.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the Town Board of the Township of \_\_\_\_\_.

**TOWNSHIP OF \_\_\_\_\_**

By: \_\_\_\_\_

Attested by:

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