
CITY OF MOTLEY

BOARD OF ADJUSTMENT/ PLANNING COMMISSION

MEETING PACKET FOR
February 28, 2017



CITY OF MOTLEY
PLANNING AND ZONING COMMISSION
AGENDA
February 28, 2017
6:30 pm – Motley City Hall

1. Call to Order
2. Roll Call
3. Public Hearings
(NOTE: members of the public wishing to comment on a particular public hearing will be given an opportunity during the appropriate public hearing)
 - a. None
4. Additions or Deletions to Agenda
5. Open Forum
(NOTE: the open forum is an opportunity for members of the public to comment on any item not related to a specific agenda item, but relating to land use regulations or planning within the City)
6. Approval of Minutes
 - a. January 31, 2017
7. Planning and Zoning Administrator's Report
8. Other Business
 - a. Distribution of updated Planning & Zoning Handbooks
 - b. Discussion – Regulation of land uses within zoning districts
 - c. Discussion – Recent amendments to state law affecting land use/zoning.
 - d. Discussion - Use of land within Industrial Park
 - e. Online permit applications
9. Adjournment

This agenda is not exclusive. Other business may be discussed as deemed necessary.

Members of the public:

Please see the next page for the City of Motley's policy regarding "Standards of Conduct at Public Meetings".

**CITY OF MOTLEY
STANDARDS OF CONDUCT AT PUBLIC MEETINGS**

The City Council encourages good-faith testimony from its citizens and desires to provide an environment based on respect and civility. In order to do so, the City Council of the City of Motley has established the following Standards of Conduct at Public Meetings, based on the norms of acceptable and courteous business behavior:

1. Members of the audience wishing to address the Council shall first secure the permission of the Chairperson.
2. Members of the audience will refrain from disruptive actions such as hand clapping, stamping of feet, whistling, cheering, yelling or similar demonstrations, which conduct disturbs the peace and good order of the meeting and which conduct might have an intimidating effect upon members of opposing viewpoints.
3. Persons addressing the City shall also refrain from slurs against race, creed, color, religion, national origin, gender, sexual or affectional orientation, marital status, familial status, age, disability, or status with regard to public assistance.
4. Profanity, slander, false statements, violence, or the threat of violence in any form shall not be tolerated.
5. City Officials shall also comply with these **STANDARDS OF CONDUCT**, the City of Motley's **CODE OF ETHICS FOR PUBLIC OFFICIALS** and the **CITY OF MOTLEY CONFLICTS OF INTEREST POLICY**.

Violations of these **STANDARDS** shall be determined by the opinion of the Chairperson of the meeting or, absent such opinion, by the opinion of the majority of the members of the deliberating body.

1. Any person violating these standards shall be called to order by the Chairperson of the meeting. If such conduct continues, said person may, at the discretion of the Chairperson, lose the floor. With the exception of Elected Public Officials (e.g. City Council) at City Council meetings, said person may be denied further audience before the City for that meeting.
2. If said person refuses to come to order and obey the directives of the Chairperson of the meeting, the Chairperson may request that said person leave the building. An exception to this is made for Elected Public Officials at City Council meetings as protected by law.

STAFF REPORT

Issue: Regulation of land uses within zoning districts

Agenda Item: 8(a)

Background Information:

- **Issue:** The Commission/Council has directed staff to begin drafting out an amended land use matrix. Based on previous discussions of the Commission and after reviewing several options for how to structure this section, Staff has prepared a land use matrix that attempts to list out a wider variety of land uses than existed before. Further, some of the land uses previously listed were eliminated when they could be combined under a somewhat broader heading or were duplicative or confusing in some manner.

As per the direction of the Commission, the attached is a draft amendment to the Land Use Matrix for just one section – the section relating to residential uses.

We will plan to continue working through this section until completed, and then begin moving through the other sections in the coming months.

Issue: Recent amendments to state law affecting land use/zoning

Agenda Item: 8(a)

Background Information:

- **Issue:** Every year, Staff reviews changes made by the Minnesota Legislature to state law. The purpose of this review is to determine whether any changes affect land use/zoning laws that the City should be aware of and/or which require changes to local land use/zoning regulations.

In 2016, the Legislature made two changes to state law which are of interest to cities:

1. A new law requiring that cities, townships and counties allow for “temporary family health care dwellings” unless they specifically opt-out. See the attached information sheet from the League of MN Cities regarding this law and the procedure for opting-out.

Generally speaking, Motley’s Land Use Ordinance already allows for a “temporary structure” as a permitted use and arguably this would mean that the city already allowed for what the state terms “temporary family health care dwellings”. Still, Staff would recommend the City discuss how it wants to regulate such uses and what that means in regards to the state law. In the Motley City Code, a “temporary structure” is a permitted use in all residential districts, the DMU district and the public use district and is defined as:

Temporary Structure. A structure of a temporary character including but not limited to house boats, fish houses, recreational vehicles, tents or shacks, used as dwellings for more than a 5 day period per year. Any new dwelling constructed or placed after the date of this Ordinance and not on a permanent foundation shall be considered a temporary structure.

2. Changes to the 2015 “buffer law” that requires vegetative buffers along certain public waters.

In 2015, the Legislature adopted a new law requiring perennial vegetative buffers along public waters and certain ditches. The two main public waters affected in Motley are the Long Prairie River and the Crow Wing River. The law would also impact certain wetlands, although it doesn’t appear that the City of Motley contains any.

The 2016 law change provides more clarity regarding jurisdiction over the requirements, how the buffers are to be measured, and other changes to guide the implementation of buffers. Perhaps most importantly, the modifications to the 2015 law limit the definition of “public waters” to that previously defined by the DNR and language was removed to prevent the application of buffer requirements to private ditches.

For Motley, Staff recommends that it work with the DNR and the relevant counties and SWCDs in its jurisdiction to ensure compliance with the law. Practically speaking however, as long as landowners maintain some type of perennial grass vegetation along the city’s two rivers, the law will not likely have a major impact on the city or its landowners and would not appear to require any changes to its existing ordinances. Staff will continue to monitor developments with this law, as the Legislature continues to work through implementation of the law.



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

Introduction:

On May 12, 2016, Gov. 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. When analyzing whether or not to opt out, cities may want to consider that:

- 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.

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.

- 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 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 Sept. 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.

Do cities lose the option to opt out after the Sept. 1, 2016 effective date?

No, the law does not set a deadline for opting out, so cities can opt out after Sept. 1, 2016. However, if the city has not opted out by Sept. 1, 2016, then the city must not only have determined a permit fee amount⁴ before that date (if the city wants to have an amount different than the law's default amount), but also must be ready on that date to accept applications and process the permits in accordance with the short timeline required by the law. Cities should consult their city attorney to analyze how to handle applications submitted after Sept. 1, 2016, but still pending at the time of a later opt out.

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

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

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?

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

statute, cities should consult their city attorneys on how best to approach adoption of the opt-out ordinance for their communities.

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.”

- 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.

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

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.

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;
- 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.

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.

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 within which the local governmental unit can make a decision on the permit. Due to the time sensitive nature of issuing a temporary dwelling permit, the city does not have to hold a public hearing on the application and has only 15 days (rather than 60 days) to either issue or deny a permit. For those councils that regularly meet only once a month, the law provides for a 30-day decision. The law specifically prohibits cities from extending the time for making a decision on the permit application. The new law allows the clock to restart if a city deems an application incomplete, but the city must provide the applicant written notice within five business days of receipt of the application identifying the missing information.

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.

Temporary Family HealthCare Dwellings

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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.

Buffer Mapping Project



Minnesota's Buffer Protection Map

[Buffer Map](#)

[Statewide Data Layer](#)

Minnesota's buffer law establishes new perennial vegetation buffers of up to 50 feet along rivers, streams and ditches that will help filter out phosphorus, nitrogen and sediment. The law provides flexibility and financial support for landowners to install and maintain buffers.

The DNR's role in Minnesota's buffer law is to produce and maintain a map of public waters and public ditch systems that require permanent vegetation buffers. The DNR released the buffer protection map in July, 2016. The map is helping to guide the implementation of Minnesota's buffer law by landowners, with the help of the Board of Water and Soil Resources (BWSR), Soil and Water Conservation Districts (SWCDs), Drainage Authorities and other local governments.

Common buffer questions

Click on questions below to show answers.
Click again to hide.

What are Public Waters?

How will Public Waters be mapped?

Why aren't all wetlands shown on the buffer map?

Does the clarification bill make it clear that private ditches are exempt from the new buffer law?

Landowner questions

I was never notified that the watercourse, wetland or lake on my private property is public water. Can I challenge a public water designation?

How was the map made?

With the help of a wide range of professionals inside and outside the agency, the DNR combined existing public water inventory data, shoreland classification data and public ditch data to produce the map. The DNR used an extensive public and professional review process to produce the map.

How will the buffer protection map be used?

The map is now being used for implementation. It helps landowners determine where buffers or alternative water quality practices are required and what buffer widths are required.

- The map labels **public ditches** as requiring a 16.5-foot buffer (local ordinances may require wider buffers).
- The map labels **public waters** as requiring a 50-foot average buffer (local ordinances may require wider buffers).
- The map also labels a few sites as "needing field review." The DNR is organizing on-site verification of these public water features and will change this temporary label as they are verified.
- The DNR excluded some public water wetlands from the map.

Local SWCDs are working with landowners to create the right size buffer or select an alternative water quality practice. If the SWCDs, Drainage Authorities or other local governments identify errors in the map during landowner conversations, they will notify the DNR. The DNR will make corrections where appropriate and maintain an accurate map. The DNR is releasing map updates in November 2016 and early 2017.

The DNR wants to thank all the individuals and organizations that helped us produce the map, with special thanks to those landowners and organizations that are going beyond the minimum buffer requirement to protect one of our most important natural resources: water.

Additional Resources

I understand buffer requirements on the map, but I want technical assistance about buffer requirements on my land.

I am uncertain whether my waterway requires a buffer when viewing the map.

I have a question about a public ditch designation on the map.

I believe the public ditch going through my land should require a 16.5-foot buffer and not a 50-foot buffer.

I don't think the watercourse on my land should be a public water.

I (or a previous landowner) placed tile in the bed of the public watercourse, so a buffer should not be required.

The public drainage system on my land has been tiled where the public water used to be, so a buffer should not be required.

An act of nature, previous landowner or I have moved the public watercourse to a different location than depicted on the PWI map and I believe the Buffer Protection Map is in error for the location of the buffer.

There is no channel where the public water is shown. I am farming through the area or it is a grassed waterway and a buffer requirement is not reasonable.

The Drainage Authority believes the Buffer Protection Map is in error, or has amendments to the map as a result of a redetermination of benefits or improvement proceeding.

Why aren't all change requests reflected in the Buffer Map?

The map viewer shows road ditches bordering or crossing my property. Will buffers be required along road ditches?

Board of Water and Soil Resources

[2015 Buffer Legislation](#) provides information on implementation of the buffer law.

Soil and Water Conservation Districts

To suggest a correction to the buffer map, contact [your local Soil and Water Conservation District](#). SWCDs are able to work directly with landowners on these issues.

Map criteria

Why does the location or boundary representing a lake, wetland or stream in the map viewer not match what is shown on the aerial photograph? Which information takes precedence?

How is it determined whether a watercourse is required to have an average 50-foot buffer or a 16.5-foot buffer?

The watercourse shown on the viewer only has water in it a few times a year. What requirements apply?

Why doesn't the buffer protection map show buffer widths according to local shoreland ordinances?

How were state shoreland classifications used to determine buffer widths in the buffer protection map?

Why are there differences between state shoreland classifications and local shoreland classifications?

If my community has more stringent buffer requirements in its local shoreland ordinance than those shown on the map, which applies?

In the news

- 07/12/2016 [DNR releases Minnesota buffer map; implementation begins](#)
- 04/25/2016 [Landowners, local governments reviewing preliminary buffer map](#)
- 11/23/2015 [Legacy funding proposals support pheasant action plan](#)
- 10/28/2015 [DNR provides buffer mapping project details](#)