4789

2011-2012 Regular Sessions

IN ASSEMBLY

February 7, 2011

Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the town law, the village law and the general city law, in relation to zoning provisions for temporary family health care structures

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The town law is amended by adding a new section 274-c to 2 read as follows:

3 S 274-C. ZONING PROVISIONS FOR TEMPORARY FAMILY HEALTH CARE STRUC-4 TURES. 1. FOR PURPOSES OF THIS SECTION:

5 (A) "CAREGIVER" MEANS AN ADULT WHO PROVIDES CARE FOR A MENTALLY DISA-6 BLED OR PHYSICALLY IMPAIRED PERSON WITHIN THE STATE. A CAREGIVER SHALL 7 BE EITHER RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO OR THE LEGALLY 8 APPOINTED GUARDIAN OF THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED 9 PERSON FOR WHOM HE OR SHE IS CARING.

10 (B) "PHYSICALLY IMPAIRED PERSON" MEANS A PERSON WHO IS A RESIDENT OF 11 THE STATE AND WHO REQUIRES ASSISTANCE WITH TWO OR MORE ACTIVITIES OF 12 DAILY LIVING AS CERTIFIED IN A STATEMENT OF A PHYSICIAN DULY LICENSED TO 13 PRACTICE MEDICINE.

14 (C) "MENTALLY DISABLED PERSON" MEANS A PERSON WITH A MENTAL ILLNESS,
15 MENTAL RETARDATION, DEVELOPMENTAL DISABILITY, ALCOHOLISM, SUBSTANCE
16 DEPENDENCE, OR CHEMICAL DEPENDENCE AS DEFINED IN SUBDIVISION THREE OF
17 SECTION 1.03 OF THE MENTAL HYGIENE LAW.

18 (D) "TEMPORARY FAMILY HEALTH CARE STRUCTURE" MEANS A TRANSPORTABLE RESIDENTIAL 19 STRUCTURE, PROVIDING AN ENVIRONMENT FACILITATING Α 20 CAREGIVER'S PROVISION OF CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, THAT (I) IS PRIMARILY ASSEMBLED AT A LOCATION OTHER 21 THAN ITS SITE OF INSTALLATION, (II) IS LIMITED TO ONE OCCUPANT WHO SHALL 22 23 THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, (III) HAS NO BE 24 MORE THAN THREE HUNDRED GROSS SQUARE FEET, AND (IV) COMPLIES WITH APPLI-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD01120-01-1

1 CABLE PROVISIONS OF SECTION ONE HUNDRED THIRTY OF THIS CHAPTER. PLACING 2 THE TEMPORARY FAMILY HEALTH CARE STRUCTURE ON A PERMANENT FOUNDATION 3 SHALL NOT BE REQUIRED OR PERMITTED.

4 2. ZONING ORDINANCES FOR ALL PURPOSES SHALL CONSIDER TEMPORARY FAMILY 5 HEALTH CARE STRUCTURES FOR USE BY A CAREGIVER IN PROVIDING CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON AND ON PROPERTY OWNED OR 6 7 OCCUPIED BY THE CAREGIVER AS HIS OR HER RESIDENCE AS A PERMITTED ACCES-8 SORY FOR USE IN ANY SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT ON LOTS ZONED FOR SINGLE-FAMILY DETACHED DWELLINGS. SUCH STRUCTURES SHALL NOT 9 10 REQUIRE A SPECIAL USE PERMIT OR BE SUBJECTED TO ANY OTHER LOCAL REQUIRE-11 MENTS BEYOND THOSE IMPOSED UPON OTHER AUTHORIZED ACCESSORY STRUCTURES, 12 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. SUCH STRUCTURES SHALL COMPLY WITH ALL SETBACK REQUIREMENTS THAT APPLY TO THE PRIMARY STRUCTURE 13 14 AND WITH ANY MAXIMUM FLOOR AREA RATION LIMITATIONS THAT MAY APPLY TO THE 15 PRIMARY STRUCTURE. ONLY ONE FAMILY HEALTH CARE STRUCTURE SHALL BE 16 ALLOWED ON A LOT OR PARCEL OF LAND.

17 ANY PERSON PROPOSING TO INSTALL A TEMPORARY FAMILY HEALTH CARE 3. STRUCTURE SHALL FIRST OBTAIN A PERMIT FROM THE PLANNING BOARD OR 18 SUCH 19 OTHER ADMINISTRATIVE BODY, FOR WHICH THE LOCALITY MAY CHARGE A UNIFORM 20 FEE OF UP TO ONE HUNDRED DOLLARS. THE LOCALITY MAY NOT WITHHOLD SUCH PERMIT IF THE APPLICANT PROVIDES SUFFICIENT PROOF OF COMPLIANCE WITH 21 22 THIS SECTION. THE LOCALITY MAY REQUIRE THAT THE APPLICANT PROVIDE EVIDENCE OF COMPLIANCE WITH THIS SECTION ON AN ANNUAL BASIS AS LONG AS 23 THE TEMPORARY FAMILY HEALTH CARE STRUCTURE REMAINS ON THE PROPERTY. SUCH 24 25 EVIDENCE MAY INVOLVE THE INSPECTION BY THE LOCALITY OF THE TEMPORARY 26 FAMILY HEALTH CARE STRUCTURE AT REASONABLE TIMES CONVENIENT TO THE CARE-27 GIVER, NOT LIMITED TO ANY ANNUAL COMPLIANCE CONFIRMATION.

4. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO
THIS SECTION MAY BE REQUIRED TO CONNECT TO ANY WATER, SEWER, AND ELECTRIC UTILITIES THAT ARE SERVING THE PRIMARY RESIDENCE ON THE PROPERTY
AND SHALL COMPLY WITH ALL APPLICABLE REQUIREMENTS OF SECTION ONE HUNDRED
THIRTY OF THIS CHAPTER.

5. NO SIGNAGE ADVERTISING OR OTHERWISE PROMOTING THE EXISTENCE OF THE
 34 STRUCTURE SHALL BE PERMITTED EITHER ON THE EXTERIOR OF THE TEMPORARY
 35 FAMILY HEALTH CARE STRUCTURE OR ELSEWHERE ON THE PROPERTY.

6. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO
THIS SECTION SHALL BE REMOVED WITHIN THIRTY DAYS AFTER THE MENTALLY
DISABLED OR PHYSICALLY IMPAIRED PERSON IS NO LONGER RECEIVING OR IS NO
LONGER IN NEED OF THE ASSISTANCE PROVIDED FOR IN THIS SECTION.

40 7. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY MAY REVOKE THE PERMIT GRANTED PURSUANT TO SUBDIVISION THREE OF THIS SECTION IF THE 41 PERMIT HOLDER VIOLATES ANY PROVISION OF THIS SECTION. ADDITIONALLY, 42 THE 43 LOCAL GOVERNING BODY MAY SEEK INJUNCTIVE RELIEF OR OTHER APPROPRIATE ACTIONS OR PROCEEDINGS TO ENSURE COMPLIANCE WITH THIS SECTION. 44 THE 45 PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY IS VESTED WITH ALL NECESSARY AUTHORITY ON BEHALF OF THE GOVERNING BODY OF THE LOCALITY TO 46 47 ENSURE COMPLIANCE WITH THIS SECTION.

48 S 2. The village law is amended by adding a new section 7-725-c to 49 read as follows:

50 S 7-725-C ZONING PROVISIONS FOR TEMPORARY FAMILY HEALTH CARE STRUC-51 TURES. 1. FOR PURPOSES OF THIS SECTION:

52 (A) "CAREGIVER" MEANS AN ADULT WHO PROVIDES CARE FOR A MENTALLY DISA-53 BLED OR PHYSICALLY IMPAIRED PERSON WITHIN THE STATE. A CAREGIVER SHALL 54 BE EITHER RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO OR THE LEGALLY 55 APPOINTED GUARDIAN OF THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED 56 PERSON FOR WHOM HE OR SHE IS CARING. 1 (B) "PHYSICALLY IMPAIRED PERSON" MEANS A PERSON WHO IS A RESIDENT OF 2 THE STATE AND WHO REQUIRES ASSISTANCE WITH TWO OR MORE ACTIVITIES OF 3 DAILY LIVING AS CERTIFIED IN A STATEMENT OF A PHYSICIAN DULY LICENSED TO 4 PRACTICE MEDICINE.

5 (C) "MENTALLY DISABLED PERSON" MEANS A PERSON WITH A MENTAL ILLNESS,
6 MENTAL RETARDATION, DEVELOPMENTAL DISABILITY, ALCOHOLISM, SUBSTANCE
7 DEPENDENCE, OR CHEMICAL DEPENDENCE AS DEFINED IN SUBDIVISION THREE OF
8 SECTION 1.03 OF THE MENTAL HYGIENE LAW.

9 (D) "TEMPORARY FAMILY HEALTH CARE STRUCTURE" MEANS A TRANSPORTABLE 10 RESIDENTIAL STRUCTURE, PROVIDING AN ENVIRONMENT FACILITATING A CAREGIVER'S PROVISION OF CARE FOR A MENTALLY DISABLED OR PHYSICALLY 11 IMPAIRED PERSON, THAT (I) IS PRIMARILY ASSEMBLED AT A LOCATION OTHER 12 THAN ITS SITE OF INSTALLATION, (II) IS LIMITED TO ONE OCCUPANT WHO SHALL 13 14 BE THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, (III) HAS NO 15 MORE THAN THREE HUNDRED GROSS SQUARE FEET, AND (IV) COMPLIES WITH APPLI-CABLE PROVISIONS OF SECTION 7-700 OF THIS ARTICLE. PLACING THE TEMPORARY FAMILY HEALTH CARE STRUCTURE ON A PERMANENT FOUNDATION SHALL NOT BE 16 17 18 REQUIRED OR PERMITTED.

19 2. ZONING ORDINANCES FOR ALL PURPOSES SHALL CONSIDER TEMPORARY FAMILY 20 HEALTH CARE STRUCTURES FOR USE BY A CAREGIVER IN PROVIDING CARE FOR A 21 MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON AND ON PROPERTY OWNED OR OCCUPIED BY THE CAREGIVER AS HIS OR HER RESIDENCE AS A PERMITTED ACCES-22 SORY FOR USE IN ANY SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT ON LOTS 23 ZONED FOR SINGLE-FAMILY DETACHED DWELLINGS. SUCH STRUCTURES SHALL NOT 24 25 REQUIRE A SPECIAL USE PERMIT OR BE SUBJECTED TO ANY OTHER LOCAL REQUIRE-THOSE IMPOSED UPON OTHER AUTHORIZED ACCESSORY STRUCTURES, 26 MENTS BEYOND 27 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. SUCH STRUCTURES SHALL COMPLY WITH ALL SETBACK REQUIREMENTS THAT APPLY TO THE PRIMARY STRUCTURE 28 29 AND WITH ANY MAXIMUM FLOOR AREA RATION LIMITATIONS THAT MAY APPLY TO THE PRIMARY STRUCTURE. ONLY ONE FAMILY HEALTH CARE STRUCTURE SHALL BE 30 ALLOWED ON A LOT OR PARCEL OF LAND. 31

32 3. ANY PERSON PROPOSING TO INSTALL A TEMPORARY FAMILY HEALTH CARE STRUCTURE SHALL FIRST OBTAIN A PERMIT FROM THE PLANNING BOARD OR SUCH 33 OTHER ADMINISTRATIVE BODY, FOR WHICH THE LOCALITY MAY CHARGE A UNIFORM 34 OF UP TO ONE HUNDRED DOLLARS. THE LOCALITY MAY NOT WITHHOLD SUCH 35 FEE PERMIT IF THE APPLICANT PROVIDES SUFFICIENT PROOF OF COMPLIANCE 36 WITH 37 THIS SECTION. THE LOCALITY MAY REQUIRE THAT THE APPLICANT PROVIDE 38 EVIDENCE OF COMPLIANCE WITH THIS SECTION ON AN ANNUAL BASIS AS LONG AS 39 THE TEMPORARY FAMILY HEALTH CARE STRUCTURE REMAINS ON THE PROPERTY. SUCH 40 EVIDENCE MAY INVOLVE THE INSPECTION BY THE LOCALITY OF THE TEMPORARY FAMILY HEALTH CARE STRUCTURE AT REASONABLE TIMES CONVENIENT TO THE CARE-41 GIVER, NOT LIMITED TO ANY ANNUAL COMPLIANCE CONFIRMATION. 42

43 4. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO 44 THIS SECTION MAY BE REQUIRED TO CONNECT TO ANY WATER, SEWER, AND ELEC-45 TRIC UTILITIES THAT ARE SERVING THE PRIMARY RESIDENCE ON THE PROPERTY 46 AND SHALL COMPLY WITH ALL APPLICABLE REQUIREMENTS OF SECTIONS 11-1112 47 AND 14-1438 OF THIS CHAPTER.

48 5. NO SIGNAGE ADVERTISING OR OTHERWISE PROMOTING THE EXISTENCE OF THE 49 STRUCTURE SHALL BE PERMITTED EITHER ON THE EXTERIOR OF THE TEMPORARY 50 FAMILY HEALTH CARE STRUCTURE OR ELSEWHERE ON THE PROPERTY.

6. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO 52 THIS SECTION SHALL BE REMOVED WITHIN THIRTY DAYS AFTER THE MENTALLY 53 DISABLED OR PHYSICALLY IMPAIRED PERSON IS NO LONGER RECEIVING OR IS NO 54 LONGER IN NEED OF THE ASSISTANCE PROVIDED FOR IN THIS SECTION.

55 7. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY MAY REVOKE THE 56 PERMIT GRANTED PURSUANT TO SUBDIVISION THREE OF THIS SECTION IF THE 1 PERMIT HOLDER VIOLATES ANY PROVISION OF THIS SECTION. ADDITIONALLY, THE 2 LOCAL GOVERNING BODY MAY SEEK INJUNCTIVE RELIEF OR OTHER APPROPRIATE 3 ACTIONS OR PROCEEDINGS TO ENSURE COMPLIANCE WITH THIS SECTION. THE 4 PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY IS VESTED WITH ALL 5 NECESSARY AUTHORITY ON BEHALF OF THE GOVERNING BODY OF THE LOCALITY TO 6 ENSURE COMPLIANCE WITH THIS SECTION.

7 S 3. The general city law is amended by adding a new section 82 to 8 read as follows:

9 S 82. ZONING PROVISIONS FOR TEMPORARY FAMILY HEALTH CARE STRUCTURES. 10 1. FOR PURPOSES OF THIS SECTION:

(A) "CAREGIVER" MEANS AN ADULT WHO PROVIDES CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON WITHIN THE STATE. A CAREGIVER SHALL
BE EITHER RELATED BY BLOOD, MARRIAGE, OR ADOPTION TO OR THE LEGALLY
APPOINTED GUARDIAN OF THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED
PERSON FOR WHOM HE OR SHE IS CARING.

16 (B) "PHYSICALLY IMPAIRED PERSON" MEANS A PERSON WHO IS A RESIDENT OF 17 THE STATE AND WHO REQUIRES ASSISTANCE WITH TWO OR MORE ACTIVITIES OF 18 DAILY LIVING AS CERTIFIED IN A STATEMENT OF A PHYSICIAN DULY LICENSED TO 19 PRACTICE MEDICINE.

(C) "MENTALLY DISABLED PERSON" MEANS A PERSON WITH A MENTAL ILLNESS,
MENTAL RETARDATION, DEVELOPMENTAL DISABILITY, ALCOHOLISM, SUBSTANCE
DEPENDENCE, OR CHEMICAL DEPENDENCE AS DEFINED IN SUBDIVISION THREE OF
SECTION 1.03 OF THE MENTAL HYGIENE LAW.

24 (D) "TEMPORARY FAMILY HEALTH CARE STRUCTURE" MEANS A TRANSPORTABLE 25 STRUCTURE, PROVIDING AN ENVIRONMENT FACILITATING A RESIDENTIAL 26 CAREGIVER'S PROVISION OF CARE FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, THAT (I) IS PRIMARILY ASSEMBLED AT A LOCATION OTHER 27 28 THAN ITS SITE OF INSTALLATION, (II) IS LIMITED TO ONE OCCUPANT WHO SHALL 29 BE THE MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON, (III) HAS NO MORE THAN THREE HUNDRED GROSS SQUARE FEET, AND (IV) COMPLIES WITH APPLI-30 CABLE PROVISIONS OF SUBDIVISIONS TWENTY-FOUR AND TWENTY-FIVE OF SECTION 31 TWENTY OF THIS CHAPTER. PLACING THE TEMPORARY FAMILY HEALTH CARE STRUC-32 33 TURE ON A PERMANENT FOUNDATION SHALL NOT BE REQUIRED OR PERMITTED.

ZONING ORDINANCES FOR ALL PURPOSES SHALL CONSIDER TEMPORARY FAMILY 34 2. HEALTH CARE STRUCTURES FOR USE BY A CAREGIVER IN PROVIDING CARE 35 FOR A MENTALLY DISABLED OR PHYSICALLY IMPAIRED PERSON AND ON PROPERTY OWNED OR 36 37 OCCUPIED BY THE CAREGIVER AS HIS OR HER RESIDENCE AS A PERMITTED ACCES-38 SORY FOR USE IN ANY SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT ON LOTS ZONED FOR SINGLE-FAMILY DETACHED DWELLINGS. SUCH STRUCTURES SHALL NOT 39 40 REOUIRE A SPECIAL USE PERMIT OR BE SUBJECTED TO ANY OTHER LOCAL REOUIRE-MENTS BEYOND THOSE IMPOSED UPON OTHER AUTHORIZED ACCESSORY STRUCTURES, 41 EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION. SUCH STRUCTURES SHALL 42 43 COMPLY WITH ALL SETBACK REQUIREMENTS THAT APPLY TO THE PRIMARY STRUCTURE 44 AND WITH ANY MAXIMUM FLOOR AREA RATION LIMITATIONS THAT MAY APPLY TO THE 45 PRIMARY STRUCTURE. ONLY ONE FAMILY HEALTH CARE STRUCTURE SHALL BE 46 ALLOWED ON A LOT OR PARCEL OF LAND.

47 ANY PERSON PROPOSING TO INSTALL A TEMPORARY FAMILY HEALTH CARE 3. 48 STRUCTURE SHALL FIRST OBTAIN A PERMIT FROM THE PLANNING BOARD OR SUCH 49 OTHER ADMINISTRATIVE BODY, FOR WHICH THE LOCALITY MAY CHARGE A UNIFORM 50 FEE OF UP TO ONE HUNDRED DOLLARS. THE LOCALITY MAY NOT WITHHOLD SUCH THE APPLICANT PROVIDES SUFFICIENT PROOF OF COMPLIANCE WITH 51 PERMIT IF THIS SECTION. THE LOCALITY MAY REQUIRE THAT THE APPLICANT PROVIDE 52 EVIDENCE OF COMPLIANCE WITH THIS SECTION ON AN ANNUAL BASIS AS LONG AS 53 54 THE TEMPORARY FAMILY HEALTH CARE STRUCTURE REMAINS ON THE PROPERTY. SUCH 55 EVIDENCE MAY INVOLVE THE INSPECTION BY THE LOCALITY OF THE TEMPORARY

1 FAMILY HEALTH CARE STRUCTURE AT REASONABLE TIMES CONVENIENT TO THE CARE-2 GIVER, NOT LIMITED TO ANY ANNUAL COMPLIANCE CONFIRMATION.

4. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO
THIS SECTION MAY BE REQUIRED TO CONNECT TO ANY WATER, SEWER, AND ELECTRIC UTILITIES THAT ARE SERVING THE PRIMARY RESIDENCE ON THE PROPERTY
AND SHALL COMPLY WITH ALL APPLICABLE REQUIREMENTS OF SECTIONS TWENTY AND
FIFTY-THREE OF THIS CHAPTER.

8 5. NO SIGNAGE ADVERTISING OR OTHERWISE PROMOTING THE EXISTENCE OF THE 9 STRUCTURE SHALL BE PERMITTED EITHER ON THE EXTERIOR OF THE TEMPORARY 10 FAMILY HEALTH CARE STRUCTURE OR ELSEWHERE ON THE PROPERTY.

11 6. ANY TEMPORARY FAMILY HEALTH CARE STRUCTURE INSTALLED PURSUANT TO 12 THIS SECTION SHALL BE REMOVED WITHIN THIRTY DAYS AFTER THE MENTALLY 13 DISABLED OR PHYSICALLY IMPAIRED PERSON IS NO LONGER RECEIVING OR IS NO 14 LONGER IN NEED OF THE ASSISTANCE PROVIDED FOR IN THIS SECTION.

7. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY MAY REVOKE THE 15 PERMIT GRANTED PURSUANT TO SUBDIVISION THREE OF THIS SECTION IF THE PERMIT HOLDER VIOLATES ANY PROVISION OF THIS SECTION. ADDITIONALLY, THE 16 17 LOCAL GOVERNING BODY MAY SEEK INJUNCTIVE RELIEF OR OTHER APPROPRIATE 18 19 ACTIONS OR PROCEEDINGS TO ENSURE COMPLIANCE WITH THIS SECTION. THE PLANNING BOARD OR OTHER SUCH ADMINISTRATIVE BODY IS VESTED WITH ALL 20 21 NECESSARY AUTHORITY ON BEHALF OF THE GOVERNING BODY OF THE LOCALITY TO ENSURE COMPLIANCE WITH THIS SECTION. 22

23 S 4. This act shall take effect immediately.