



## **PLANNING AND ZONING COMMISSION REPORT**

**Meeting Date:** May 3, 2018

**Agenda Item:** 4R

**Case Name:** TA18-01: Temporary Use Permit Text Amendment

**Case Number(s):** TA18-01

### **General Application Information**

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*Proposal:*

A comprehensive amendment to the Temporary Use Permit section of the Zoning Ordinance for the purposes of adding clarity and providing a delineation between temporary use that require a permit and those deemed minor, subject to generally applicable criteria.

*Location:*

N/A

*Project Acreage:*

N/A

*Applicant:*

City of Peoria

### **Project Description**

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A request to consider a city-initiated comprehensive amendment to Section 21-322 ("Temporary Use Permits") of the Peoria City Code.

### **Recommendations:**

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Recommend APPROVAL of Case TA18-01 to the Peoria City Council.

### **ATTACHMENTS:**

Description

Staff Report

Exhibit A - Proposed Section 21-322 Temporary Uses

Exhibit B - Existing Section 21-322 Temporary Uses

## BACKGROUND

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### Context

The City of Peoria's current standards for Temporary Uses have remained largely unchanged for well over twenty years. The subject amendment seeks to modernize the code in several facets. The following are focal points for the proposed text amendment:

- Eliminate duplicative or unnecessarily onerous regulation.
- Provide opportunities for maximizing otherwise inactive locations.
- Facilitate short-term place-making opportunities for areas that would benefit from increased pedestrian and vehicular interest.

## PROPOSAL

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### Goal/Purpose of Request

The purpose of this city-initiated text amendment is to address the aforementioned factors by creating a streamlined, easy to follow ordinance. Further, the proposed refinements will provide exemptions for those temporary uses, which are minor in nature or intensity, and will not have a significant impact to the surrounding permanent uses or facilities.

## DISCUSSION AND ANALYSIS

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The objective of the proposed text amendment is to simplify and organize the temporary use requirements in a more efficient manner and to require a Temporary Use Permit (TUP) in those situations when it is appropriate. For example, the current ordinance is silent on many types of temporary events that would commonly be thought of as innocuous or a normal ancillary practice. This includes events such as yard sales, open houses, and Homeowner's Association (HOA) events on HOA property. Because the current ordinance is silent on such items, the structure of the regulations would suggest a TUP is required for every occurrence of any such event. The proposed language seeks to clarify the intent of the regulations, and proposes exemptions for these minor common practices to ensure that there is no ambiguity in the regulation of such activities.

### Exemptions

In addition to clarifying those uses that would not fall under the purview of a Temporary Use Permit, the proposed amendment creates exemptions that did not previously exist. These exemptions allow additional flexibility for property owners to appropriately program otherwise inactive space for a limited duration. These exemptions are not blanket exemptions; rather, these exemptions are caveated with general requirements that are applicable to all Temporary Uses, unless deviations are otherwise approved through Temporary Use Permit process.

One of the key exemptions proposed includes proportionate allowances for temporary uses based on the size of the overall parcel or center. Parcels between 1-5 acres will allow for temporary uses up to four thousand (4,000) square feet. Parcels in excess of 5 acres would allow for temporary uses up to ten thousand (10,000) square feet.

Regardless of the size exemptions provided, the temporary uses must also comply with specific criteria to receive an exemption from a Temporary Use Permit process. Some of these criteria include:

- The use must occur on an improved surface without blocking primary drive aisles or site and building general or emergency access;
- Uses which do not operate between the hours of 10:00 p.m. and 7:00 a.m., and do not occur for more than one (2) day within a thirty (30) day period per site;
- Uses which are located at least two hundred (200) feet away from a residential structure;
- Uses which provide for all necessary pedestrian and vehicular queuing to occur outside of the right-of-way and outside of any primary or emergency drive aisles; and
- Events occurring within a designated entertainment district.

#### General Requirements

There are also general criteria that apply to all temporary uses (not just exempt temporary uses). The purpose of the general criteria is to ensure the temporary nature of the use, as well as cohesive operation with the surrounding uses. The criteria include some of the following:

- Permanent alterations to the site are prohibited;
- If the property is undeveloped, it shall contain sufficient land area to support the temporary use, including but not limited to, adequate parking and traffic movement to support the event;
- All signage proposed for the temporary use or event shall comply with the Sign Code, and all signage shall be removed upon completion of the event;
- Tent and or generator permits shall be required for all uses in accordance with the applicable Fire or Building code, regardless of any Temporary Use Permit exemptions;
- All uses shall comply with adopted City noise ordinances contained within the City Code; and
- All Temporary Uses shall prevent activity across improved landscape areas that would negatively impact the landscaped areas.

In addition to the proposed exemptions and general regulations identified above, the subject text amendment continues to account for and accommodate temporary uses that would extend beyond minor temporary uses. By providing for temporary uses, which do not meet these exemption criteria, City staff is able to conduct reviews through all applicable City departments. Through these reviews, City staff can provide the necessary conditions to protect health, safety, and general welfare of residents and surrounding businesses. In situations where the proposed temporary use is not congruent with the surrounding uses, staff would have the latitude to deny the use for cause.

Where possible, the proposed amendment seeks to provide exemptions and general criteria that would address what can currently become a laborious review process for applicants seeking to conduct minor temporary uses. These minor temporary uses would otherwise have little to no impact on the surrounding uses or facilities if operated in compliance with the recommended restrictions. As a result, providing opportunities for these temporary uses allows the applicants to proceed without unnecessary reviews, thus will likely foster additional and unique opportunities throughout the City.

### **Conclusions**

- The proposed amendment provides a more user-friendly ordinance for all those attempting to conduct temporary uses within the City.
- The text amendment will provide appropriate exemptions to the review process while capturing applicable standards for those minor temporary uses through generally applicable criteria.
- The text amendment as proposed would continue to provide for staff review and use specific conditions to address potential impacts on surrounding uses.

### **STAFF RECOMMENDATION**

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Staff recommends that the Planning and Zoning Commission make the following recommendations to the City Council:

- 1) Approval of case TA18-01 regarding Temporary Uses to the City Council, a request for a comprehensive amendment of Section 21-322, Temporary Uses, of Chapter 21 of the City of Peoria City Code.

### **REPORT PREPARED BY**

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**ATTACHMENTS:**

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Exhibit A:	Proposed Section 21-322 (Temporary Uses)
Exhibit B:	Existing Section 21-322 (Temporary Uses)

## Exhibit A – Temporary Uses

### 21-322 Temporary Uses

#### A. Purpose and Applicability

1. In addition to regulating uses which are permanent in nature, it is the intent of Section 21-322 of the Zoning Ordinance, otherwise referred to as the Temporary Uses Section, or Section herein, to accommodate reasonable requests for interim or temporary uses for a limited period of time when such activities are appropriate.
2. The Temporary Use Section authorizes the City to allow short-term land uses if the use does not interfere with surrounding uses, or pose a threat to public health, safety, and welfare. Allowing temporary uses, as provided for herein is not intended to permanently establish or authorize uses otherwise prohibited by the Zoning Ordinance.
3. These regulations are intended to ensure that the temporary use is conducted in a manner to maintain compatibility between the temporary use and surrounding area. Any review or approval by the City is solely intended to address City ordinances and regulations, and is not intended to supersede applicable state or federal regulations.
4. Temporary uses shall be permitted on private property with the issuance of a Temporary Use Permit (TUP) as specified within this Section. Events or activities conducted on City of Peoria owned property, or within public streets or public right-of-way shall obtain a Special Event Permit, which is administered by the City.
5. This Section establishes the procedures, and criteria to be used by the Department when considering an application for a Temporary Use Permit.

#### B. Temporary Use Permit:

##### 1. Temporary Uses Allowed, Permit Required

The Temporary Uses identified below shall obtain a Temporary Use Permit pursuant to the procedures set forth in this Section. Temporary Uses shall mean events such as, but not limited to:

- a. Carnivals, circuses, craft shows, exhibitions, fairs, festivals, home and garden shows, temporary outdoor sales events, or similar special events not otherwise excluded within this Section.
- b. Donation/Recycling Drop-Off Boxes
- c. Outdoor concerts, and paid admission events.
- d. Events held on unimproved surfaces or lots.
- e. Such other uses as the City may deem to be within the Purpose and Applicability of this Section.

##### 2. Temporary Use Permit Exemptions, No Permit Required

All temporary uses identified below are not required to submit an application for a Temporary Use Permit, but are required to comply with Subsection 21-322.C ("General Requirements for All Temporary Uses"). Those events which do not comply with the exemptions provided herein shall obtain a Temporary Use Permit as provided within this Section.

- a. Events utilizing City property, public streets or public right-of-way, provided that the applicant shall coordinate the event with the City as part of the Special Event application process.

## Exhibit A – Temporary Uses

- b. Ancillary activities on residential properties, including but not limited to, residential garage or yard sales, open houses, etc.,
- c. HOA events or activities, intended for residents only, located on HOA property,
- d. On-site school events,
- e. Other intermittent activities deemed by the Department to be ancillary to the customary use of the property.
- f. Other uses not defined in 21-322.B.1 which meet all of the following criteria:
- i. Limited activity area:
1. An activity area, which is limited to the following size requirements and summarized within the Table below:
- a. Four thousand (4,000) square feet or less on a site or center that is greater than one (1) acre, but less than five (5) acres in size, or
- b. Ten thousand (10,000) square feet or less on a site or center that is greater than or equal to five (5) acres in size.

Minimum Site or Center Size	Maximum Exemption Area
≤ 1 acre	No Exemption
> 1 & < 5 acres	≤4,000 square feet
≥ 5 acres	≤10,000 square feet

2. For the purposes of this Section, an activity area means the area housing the proposed use and any associated storage. The activity area does not take in to account patron parking for the purposes of tabulating the square foot allowances identified above.
3. An improved surface without blocking primary drive aisles or site and building general or emergency access.
- a. For the purposes of this Section, an improved site means a site with paved access to the grounds, including curb-cuts as necessary to access public rights-of-way, and paved or dust-proof surfaces for the area occupied by the subject temporary use and associated parking.
- ii. Uses which do not operate between the hours of 10:00 p.m. and 7:00 a.m., and do not occur for more than two (2) days within a thirty (30) day period, per site.
- iii. Uses which are located at least two hundred (200) feet away from a residential structure.
- iv. Uses which provide for all necessary pedestrian and vehicular queuing to occur outside of the right-of-way and outside of any primary or emergency drive aisles.
- v. Events occurring within a designated Entertainment District. Such Entertainment Districts may be adopted by resolution from time to time by the City Council in accordance with A.R.S §4-207.

## Exhibit A – Temporary Uses

1. All boundaries of the temporary use must remain at least 200 feet away from Grand Avenue right-of-way.
2. There is no limit on activity area size to qualify as an exempt temporary use when the use is located within a designated Entertainment District.
- C. General Requirements for all Temporary Uses. All temporary uses shall meet the following general requirements, unless otherwise specified in the Temporary Uses Section:
  1. Structures utilized for the Temporary Uses of outdoor sales and/or displays that exceed seven (7) days in duration shall be limited only to the following: tents, canopies, and/or membrane structures.
  2. Permanent alterations to the site are prohibited.
  3. All temporary signs associated with the temporary use shall comply with Section 21-827 of the City Code, and all associated signs shall be removed upon completion of the activity.
  4. The temporary use standards of this Section do not exempt the applicant or operator from any other required permits, such as health department permits.
  5. If the property is undeveloped, it shall contain sufficient land area to support the temporary use, including but not limited to, adequate parking and traffic movement to support the event.
  6. Tent and or generator permits shall be required for all uses in accordance with the applicable Fire or Building code, regardless of any Temporary Use Permit Exemptions identified within Subsection 21-322.B.
  7. All uses shall comply with adopted City noise ordinances contained within the City Code.
  8. All Temporary Uses shall prevent activity across improved landscape areas that would negatively impact the landscaped areas.
- D. Application Requirements. An application for a Temporary Use Permit:
  1. Must be submitted at least thirty (30) calendar days prior to the proposed commencement of the temporary use. Application made within 30 days of the start date of the event will not be accepted;
  2. Must include all information required in the official process guide and application packet for Temporary Uses made available by the Department. The Planning Manager or designee may require additional information as necessary, based on the nature of the proposed temporary use.
  3. Each occurrence of a non-exempt Temporary Use as defined within section 21-322.B shall require a separate submittal and approval of a Temporary Use Permit Application.
- E. Posting
  1. Temporary uses that will operate after 10:00pm or before 7:00am shall require notice to be posted on site. The notice shall contain the date, time, duration, location and brief description of the event. Notice shall be posted by the City within five (5) City business days.
- F. Approval Criteria
  1. Review of the Temporary Use Permit application requires reviews and approval from the Department in addition to other City Departments (e.g. Fire, Police, Building Division, etc.).



## Exhibit A – Temporary Uses

2. Approval of the Temporary Use Permit shall be given only when in the judgment of the City such approval is consistent with the intent and purpose of this section of this Ordinance, and it is determined that the use is compatible with nearby uses and will not:
  - a. Impair the normal, safe, and effective operation of a permanent use on the same site;
  - b. Create an traffic hazard or congestion;
  - c. Adversely affect public health, safety, welfare, or convenience; or
  - d. Interfere with the normal conduct of uses and activities in the vicinity.
3. The Department shall notify the applicant, in writing, of the decision to approve or deny the application, and shall state any conditions for approval or reasons for denial in said letter.
- G. Conditions of Approval. The Department may issue conditions of approval of a Temporary Use Permit as needed to make the determinations required in compliance with Section 21-833.E Approval Criteria. These conditions of approval may be required to minimize effects on nearby uses, and may include, but not be limited to, standards for hours of operation, frequency of use, parking, traffic circulation, screening of use from off-site, and site restoration.
- H. Restoration and Cleanup. A person engaging in a temporary use allowed in compliance with this Section shall remove all debris, litter, and other evidence of use from the site within 72 hours of cessation of the use or expiration of the permit, whichever occurs first. At such time, the site shall be restored to the same condition it was prior to commencement of the temporary use.
- I. Permit Duration, Renewal and Revocation. All Temporary Use Permit approvals shall be subject to a time limit as set forth below:
  1. Temporary Use Permits for off-site construction yards or residential sales trailers may be permitted for the duration of the project, or as determined by the City.
  2. Temporary Use Permits for Donation/Recycling Drop-Off Boxes may be permitted for a renewable duration not to exceed twelve (12) months, or as determined by the City. Each renewal requires a new Temporary Use Permit application and fee.
  3. All other Temporary Use Permits shall be limited to a maximum of thirty (30) consecutive days per event, and the cumulative total of all Temporary Uses shall not exceed ninety (90) days per calendar year per lot. Not more than twelve (12) Temporary Use Permits shall be granted per lot or complex per calendar year.
  4. The Department may revoke a Temporary Use Permit at any time, if the use no longer satisfies the criteria required in compliance with Section 21-322 or poses a threat to public health, safety, and welfare.
- J. Appeal of Decision. Upon receiving notification of the Department's decision to approve or deny the application for a Temporary Use Permit, the applicant or any party of interest aggrieved by the decision may file an appeal to the Board of Adjustment pursuant to Section 21-323.I.



## Exhibit B – Existing Section 21-322, Temporary Uses

### 21-322 Temporary Uses

#### A. Intent

1. In addition to regulating uses which are permanent in nature, it is the intent of this Ordinance to provide for certain temporary uses for limited periods of time. Allowing temporary uses, as herein provided for, is not intended to permit uses otherwise prohibited by the Zoning Ordinance or to allow permanent uses to be established.
2. The purpose of this Section is to establish the procedures and outline the review criteria to be used by the Department when considering an application for a Temporary Use Permit. All Temporary Uses shall be conducted so as not to be detrimental to the surrounding properties and shall be subject to the standards and regulations contained herein. The Department shall not grant a Temporary Use Permit until adequate assurances have been provided ensuring compliance with the provisions of this Ordinance and all other applicable City Codes.

#### B. General

Every Temporary use on private property shall require a Temporary Use Permit as herein stipulated.

1. Structures utilized for the Temporary Uses of outdoor sales and/or displays that exceed seven (7) days in duration shall be limited only to the following: tents, canopies, and/or membrane structures. <sup>\*4</sup>

#### C. Permitted Temporary Uses

The City may grant a Temporary Use Permit for any of the following uses.

1. Carnivals, circuses, or similar special events.
2. Outdoor sales events, such as Christmas tree sales, pumpkin sales, or similar holiday-related events.
3. Outdoor sales of consumer permissible fireworks. <sup>\*15</sup>
4. Temporary municipal uses. <sup>\*8</sup>
5. Off-site retail sales of souvenirs, gifts, and food incidental to a sporting or cultural event.
6. Tent revival or fellowship meetings.
7. Craft shows, home and garden shows, festivals, or similar events.
8. Outdoor concerts, paid admission events, and events involving the distribution of alcoholic beverages.
9. Such other uses as the City may deem to be within the intent and purpose of this Section.
10. Donation/Recycling Drop-Off Boxes

#### D. Application

A property owner or duly authorized agent may submit an application for a Temporary Use Permit. The applicant shall obtain the official application materials from the Department. Submittal requirements shall be as outlined on the official form and any other requirements that the Department deems necessary to understand the proposal, including Site Plans prepared in accordance with Section 21-320 of this Section. The applicant shall submit the official application and associated materials, together with the applicable fee, to the Department.

## Exhibit B – Existing Section 21-322, Temporary Uses

### E. Posting

Temporary Uses which, in the opinion of the Department, meet all the following criteria shall not require posting:

1. The use and/or structure complies with all applicable codes and Ordinances;
2. The use and/or structure does not interfere with pedestrian access ways, fire lanes, driveway entrances, or traffic visibility at driveways or street intersections;
3. Parking on the property is adequate to serve any existing permanent use and the temporary use;
4. The temporary use shall not be conducted between the hours of 10:00 p.m. and 7:00 a.m., excluding Donation/Recycling Drop-Off Boxes; and,
5. The City Engineer or designee thereof, approves vehicular access for the proposed temporary use.
6. Temporary uses which, in the opinion of the Department, do not meet all of the above criteria shall be posted. For such temporary uses, the City shall post the subject property within five (5) working days following submittal of the application

### F. Review and Approval

1. Application for a Temporary Use Permit shall be reviewed by the Department who shall approve, conditionally approve, or disapprove the application. Approval shall be given only when in the judgment of the City such approval is consistent with the intent and purpose of this section of this Ordinance.

In considering the application, the Department may include, but are not be limited to, the following conditions:

- a. Regulation of parking, dust control measures, and site lighting.
  - b. Regulation of hours of operation.
  - c. Regulation of site ingress and egress.
  - d. Assurance of compliance with building, fire, electrical, and all other appropriate codes.
  - e. Such other conditions deemed necessary to carry out the intent and purpose of this Section.
  - f. All signage proposed for the temporary use or event shall be in compliance with Section 21-827. All signage shall obtain a separate sign permit. \*<sup>6</sup>
2. The Department shall notify the applicant, in writing, of the decision to approve or deny the application, and shall state any conditions for approval or reasons for denial in said letter.
  3. Issuance of Permits  
To be issued a permit, the applicant shall sign an agreement with the City stating that within 72 hours of cessation of the use or expiration of the permit, whichever occurs first, the site shall be restored to the same condition prior to commencement of the temporary use.
  4. Time Limits and Renewal of Permits  
All Temporary Use Permit approvals shall be subject to a time limit as set forth by the Department.

## Exhibit B – Existing Section 21-322, Temporary Uses

- a. Temporary Use Permits for off-site construction yards or residential sales may be permitted for the duration of the project, or as determined by the City.
- b. Temporary Use Permits for Donation/Recycling Drop-Off Boxes may be permitted for a renewable duration not to exceed twelve (12) months, or as determined by the City. Each renewal requires a new Temporary Use Permit application and fee.
- c. All other Temporary Use Permits shall be limited to a maximum of thirty (30) consecutive days per event, and the cumulative total of all Temporary Uses shall not exceed ninety (90) days per calendar year per lot. Not more than twelve (12) Temporary Use Permits shall be granted per lot or complex per calendar year.
- d. Each occurrence of a Temporary Use and each distinct Temporary Use on a property shall require separate submittal and approval of a Temporary Use Permit Application.

### G. Appeal of Decision to Board of Adjustment

1. Upon receiving notification of the Department's decision to approve or deny the application for a Temporary use Permit, the applicant or any party in interest, aggrieved by the decision may file an appeal to the Board of Adjustment. Such appeal shall be filed in writing within seven (7) calendar days of the decision. Any appeal to the Board of Adjustment shall follow the procedures outlined in this Section, Section 21-323.I.
2. Upon appeal, the Department shall file all material on the matter with the Board of Adjustment. The Board shall review the case based on the material filed by the Department and on information presented at the hearing. The Board shall uphold the action of the Department, remand the matter back to the Department with instructions for further review, or overturn the action of the Department.