



# PLANNING & ZONING COMMISSION

## STAFF REPORT

Meeting Date: 11/14/2024

Agenda Item(s): 4R

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**TO:** Planning and Zoning Commission  
**THROUGH:** Chris M. Jacques, AICP, Planning Director  
**FROM:** Lorie Dever, Deputy Director  
**SUBJECT:** Code Amendment: Accessory Dwelling Units and Backyard Fowl (TA24-02)

### ***PURPOSE***

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This is a city-initiated text amendment to modify Sections 21-200 *Definitions*, 21-300 *General Provisions and Standards*, 21-400 *Residential District*, and 21-600 *Special Uses, Districts and Overlays* of the Zoning Ordinance. A summary of the purpose of the amendment is to modify the existing provisions to:

- Renaming 21-202 “*Definitions*” to “*Definitions and Land Use Classifications*”
- Update existing definitions and provide new definitions within Section 21-202
- Modify and provide Development Standards for Accessory Buildings and Uses in Section 21-300.
- Within Section 21-400 and 21-600, integrate new allowances for Accessory Dwelling Units and Backyard Fowl pursuant to House Bills HB2325 and HB2720.
- Update cross-references within individual regulations to point to new section numbers; and
- Create uniformity in terminology for Zoning Administrator and Department references.

If approved, staff believes these code modifications will bring the Zoning Ordinance in compliance with the regulatory requirements and provisions of House Bills HB2720 and HB2325.

### ***BACKGROUND***

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The 56th Arizona state legislature passed several bills this session that have been signed into adoption by the Governor pertaining to municipal zoning, including House Bills HB2720: Accessory Dwelling Units, and HB2325: Backyard Fowl.

With regard to HB2325: Backyard Fowl, the provisions of the bill went into effect on September 24, 2024 and specifically preempts any city regulations associated with the keeping of backyard fowl (**Exhibit B**). Given the mandatory nature of these provisions, minor adjustments to the Zoning Ordinance are required to realign the existing regulations to follow the newly adopted regulations. Regarding HB2720, the bill requires municipalities with a population of 75,000 or more to adopt regulations allowing accessory dwellings units (ADUs) on any lot or parcel where a single-family dwelling is allowed. HB2720 additionally outlines minimum allowances and prohibits municipalities from establishing various restrictions. (**Exhibit C**) If a municipality fails to adopt these development regulations by January 1, 2025, ADUs will be allowed on all lots or parcels zoned for residential use without limits.

Given the scope and nature of these mandated provisions, they result in refinements being needed within the same sections of the Zoning Ordinance. Therefore, staff have combined the proposed text changes associated with these bills into one code amendment, which more specifically impacts Sections 21-200, 21-300, 21-400 and 21-600 of the Peoria Zoning Ordinance.

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***PROPOSED REGULATIONS***

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***HB2325: Backyard Fowl***

As noted within **Exhibit B**, HB2325 preempts cities from prohibiting a resident of a single-family detached residence from keeping up to six (6) fowl on the property, subject to specific criteria and restrictions. Within Peoria, there are several residential zoning districts specifically established within Section 21-400. While 21-400 encompasses the bulk of the relevant zoning districts, there are specific specialty zoning districts within Section 21-600 which also allow single-family residential as an allowed land use. Therefore, the proposed code changes to address HB2325 requirements include updating cross-references within Section 21-400 “*Residential Districts*” and 21-600 “*Special Use, Districts and Overlays*”.

These changes were summarized and presented during the public meetings noted below, and the draft code was posted to the city’s website. No comments were received regarding these changes.

***HB2720: Accessory Dwelling Units (ADUs)***

Known as the “Casita Bill”, HB2720 requires cities to allow at least one (1) detached and one (1) attached Accessory Dwelling Unit (ADU) in zoning districts where single-family residential is allowed. Further, one (1) additional ADU is permitted when a lot is over one (1) acre in size, and the ADU is “restricted-affordable” unit as defined within the legislative bill. HB2720 also includes strict provisions which limit what a municipality may and may not enact. These mandated provisions were transmitted without deviation or alteration as required by the bill and are included within the proposed text.

While these legislative provisions are centered around establishing development standards for an accessory dwelling unit, it is important to note that the criteria which make the building an ADU is limited to those specific components which make the interior space habitable. Aside from those interior components, there are often no discernable or appreciable exterior differences between ADU’s and common accessory buildings/structures such as garages, casitas, pool cabanas, etc. With that said, most interiors of existing and typical accessory buildings could easily be converted to qualify it as an ADU, again without having any outward change in appearance. Given these dynamics, trying to enforce mismatched setback and height standards for ADUs versus common accessory buildings solely based on interior space becomes highly problematic for city staff, and can lead to inequitable treatment of property owners within the same district or community. As such, city staff recommended the realignment of the development standards of common accessory buildings with ADUs, as shown in Option #1. As proposed, these changes resulted in the least amount of legal non-conformance issues going forward. However, feedback received from the Planning and Zoning Commission during the public meetings indicated lack of concurrence with the proposed code changes. As an alternative, staff has provided Option #2, which addresses the necessary legislative mandates in HB2720, while still retaining the existing multi-tiered height/setback standards for non-ADU accessory buildings. More specifically, the two options for proposed text changes are:

***Option #1:*** *Alignment of ADU and Assessor Building development standards*

***Option #2:*** *Establishment of required ADU development standards, and retention of existing multi-tiered building setback and height standards for non-ADU accessory buildings.*

## CODE AMENDMENT: ACCESSORY DWELLING UNITS AND BACKYARD FOWL (TA24-02)

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While the second option is provided for consideration, it is not preferred by City staff for a variety of reasons beyond even those noted above. A few examples are provided below to help illustrate common issues staff would regularly encounter should Option #2 be selected.

- *What is a “kitchen”?*
  - *The ADU definition within HB2720 does not clearly define what a “kitchen” is and is not. Rather, the bill only identifies that an ADU should have one.*
  - *From a building code perspective, the definition or classification of a “dwelling unit” identifies that it should have “cooking facilities”; however, does not specifically classify what, if any appliances are required to satisfy that criterion.*
  - *Given the latitude of these regulations, simply providing a microwave or counter-top toaster oven in the “kitchen” would suggest they have met the intent of providing cooking facilities.*
  - *Go further, one could argue that by providing electrical outlets for these types of appliances, it should be enough to establish that area as a kitchen as it would be up to the resident or tenant to supply their own countertop appliances.*
  - *To date, there have been a number of these types of questions from the public, and that trend is expected to continue given the ambiguity of HB2720 and existing building code regulations throughout the state. Along those same lines, members of the public also wanted to know if providing a sofa bed in a living area, such as in a furnished studio apartment, would suffice for a “sleeping area”. Again, there is no clear definition available either within the legislative bill or within the building code to help objectively define this term; therefore, any attempt to propose a definition would likely be deemed subjective and open for wide-ranging interpretation.*
  - *In absence of defensible definitions, it is expected that a significant number of detached buildings will easily comply with the ADU criteria outlined within HB2720, and be afforded reduced setbacks compared to those in existence today.*
- *It is the same building from the outside, so why does not having a “kitchen” on the inside mean a greater building setback is required?*
  - *In images provided to the Commission at the October 17, 2024 meeting, there were a number of detached structures which would qualify as an ADU given their interior components; however, there was no discernable exterior difference noted compared to those buildings which did not meet the ADU criteria.*
  - *Given the lack of appreciable or detectable exterior appearance, staff finds no compelling or overriding governmental interest in requiring a larger building setback for non-ADU buildings.*
- *Administration of the regulatory provisions within the Zoning Ordinance are required to be applied fairly and equitably, as specified within the administrative provisions of the Code. Having or retaining multi-tiered development standards based on potentially arbitrary and subjective criteria reduces and impairs ability for the Zoning Administrator and Code Enforcement Official to equally apply standards, leaving the city open for additional litigation and liability.*

## **CODE AMENDMENT: ACCESSORY DWELLING UNITS AND BACKYARD FOWL (TA24-02)**

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### ***KEY FINDINGS***

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- Cross-references within Section 21-400 and 21-600 have been updated to comply with the preemptions within HB2327. As such, staff believes the proposed text changes are in conformance with the imposed legislative requirements.
- Where regulations and provisions associated with Multifamily Adaptive Reuse in HB2720 are mandated, without allowance for deviation or exception, staff believes the proposed text changes in Sections 21-200 and 21-300 are in conformance with the imposed legislative requirements.

### ***COMMUNITY INVOLVEMENT***

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#### *Public Meetings:*

- Legislative Briefing to City Council on September 17, 2024.
- Legislative Briefing to Planning and Zoning Commission on October 3, 2024.
- Planning and Zoning Commission Study Session on October 17, 2024.

#### *Public Noticing:*

The application was properly noticed pursuant to Section 21-315 of the Peoria Zoning Ordinance, which includes placing a legal ad in the Peoria Times at least 15 days prior to the Public Hearing.

#### *Support / Opposition:*

No opposition or support for this proposal was received.

### ***POSSIBLE ACTIONS / OPTIONS***

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As noted above, staff has provided two options for proposed code changes for consideration by Planning and Zoning Commission. The Planning Commission may consider the following actions and options:

- A:** Approve Option #1 as recommended by staff; or
- B:** Approve Option #2; or
- C:** Approve either Option #1 or #2 in part or with modifications; or
- D:** Deny both Option #1 and #2; or
- E:** Continue action to a date certain or indefinitely.

### ***RECOMMENDATION***

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Staff recommends that the Planning and Zoning Commission take the following action:

**Recommend approval of Case TA24-02 to the City Council as proposed in Option #1, Exhibit A.**

### ***STAFF CONTACT***

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Lorie Dever  
Deputy Director  
(623)773-5168  
[Lorie.Dever@peoriaaz.gov](mailto:Lorie.Dever@peoriaaz.gov)