

*DRAFT – OCTOBER 1, 2024*

**ORDINANCE NO. 02024.xx**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE TEMPE ZONING AND DEVELOPMENT CODE, PART 3 – LAND USE, SECTIONS 3-102, 3-402, RELATED TO ACCESSORY DWELLING UNITS, REPEALING SECTION 3-411 RELATED TO GUEST QUARTERS, INCORPORATING FINDINGS OF FACT BY REFERENCE, PROVIDING FOR THE REPEAL OF A CONFLICTING ORDINANCE, AND ESTABLISHING AN EFFECTIVE DATE.**

The City Council for the City of Tempe makes the following findings of fact:

WHEREAS the State Legislature adopted H.B. 2720 relating to municipal planning to amend Title 9, Chapter 4, Article 6, Arizona Revised Statutes, by adding A.R.S. 9-461.18 (regulating accessory dwelling units) and amending A.R.S. 9-500.39 (relating to accessory dwelling units that are used as short-term rentals);

WHEREAS the effective date of H.B. 2720 is September 14, 2024, and municipalities with a population exceeding 75,000 residents must adopt certain regulations required by A.R.S. 9-461.18 on or before January 1, 2025;

WHEREAS H.B. 2720 prohibits municipalities from requiring additional parking or fees in lieu of additional parking to accommodate a new accessory dwelling unit;

WHEREAS H.B. 2720 prohibits municipalities from setting rear and side setbacks that are greater than five feet for a new accessory dwelling unit;

WHEREAS H.B. 2720 prohibits municipalities from requiring improvements to public streets as a condition of allowing a new accessory dwelling unit except as necessary to reconstruct or repair a public street that is disturbed because of the construction of the accessory dwelling unit;

WHEREAS H.B. 2720 prohibits municipalities from requiring a restrictive covenant pertaining to a new accessory dwelling unit on a lot or parcel zoned for residential use by a single-family dwelling except with respect to restricted-affordable dwelling units;

WHEREAS, notwithstanding the above, H.B. 2720 allows for the enforcement of residential building codes, fire codes, public health and safety regulations, and other regulations; however, zoning regulations regarding the height, setbacks, lot size, lot coverage, or building frontage of a proposed accessory dwelling unit cannot be more restrictive than the regulations that apply to a single-family dwelling within the same zoning area;

WHEREAS, H.B. 2720 does not apply to tribal land, land in the territory in the vicinity of a military airport or ancillary military facility, land in the vicinity of a Federal Aviation Administration commercially licensed airport, land in the vicinity of a general aviation airport, and land in the vicinity of a public airport;

WHEREAS, under H.B. 2720, municipalities cannot prohibit the use or advertisement of either a single-family dwelling or any accessory dwelling unit located on the same lot or parcel as separately leased long-term rental housing;

WHEREAS, under H.B. 2720, municipalities cannot require a familial, marital, employment or other preexisting relationship between an owner or occupant of a single-family dwelling and an occupant of an accessory dwelling unit located on the same lot or parcel;

WHEREAS H.B. 2720 requires the owner of a short-term rental to reside on the property if the property contains an accessory dwelling unit that was constructed on or after the general effective date and it is being used as a short-term rental; however, H.B. 2720 says this requirement does not apply to any property owner who had the right to build an accessory dwelling unit before September 15, 2024, unless the statutory time period for a just compensation action has expired;

WHEREAS H.B. 2720 mandates that certain accessory dwelling units must be allowed on all lots or parcels zoned for residential use in any municipality with a population exceeding 75,000 residents that fails to adopt the regulations mandated by H.B. 2720 on or before January 1, 2025;

WHEREAS H.B. 2720 requires a municipality with a population exceeding 75,000 residents to adopt regulations allowing for at least one attached and one detached accessory dwelling unit on a lot or parcel where a single-family dwelling is allowed;

WHEREAS H.B. 2720 requires a municipality with a population exceeding 75,000 residents to adopt regulations allowing for at least one additional detached accessory dwelling unit on a lot or parcel where a single-family dwelling is allowed if the lot or parcel is one acre or more in size and at least one restricted-affordable dwelling unit is located on the same lot or parcel;

WHEREAS H.B. 2720 requires a municipality with a population exceeding 75,000 residents to adopt regulations allowing for the area of an accessory dwelling unit to be 75% of the gross floor area of the single-family dwelling unit on the same lot or parcel or to be 1,000 square feet, whichever is less;

And WHEREAS, the City of Tempe finds that it necessary to adopt these regulations to conform with state law.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

**Section 1.** That a portion of Table 3-102 of Section 3-102 of the Tempe Zoning and Development Code is hereby amended as follows:

**Section 3-102 Permitted Uses in Residential Districts.**

Table 3-102 identifies land uses according to permit status. See key below the table:

Table 3-102 - Permitted Land Uses (AG, SFR, MF, MH, RMH, TP)				
Uses	Status of Use in District			
	AG	SFR	MF	MH/RMH/TP
...				
Accessory Uses and Structures - except accessory dwelling <u>UNITS</u> [Section 3-401]	S	S	S	S
Accessory Dwellings <u>UNITS</u> [Section 3-402]	<del>N</del> <u>S</u>	<del>N</del> <u>S</u>	S	<del>N</del> <u>S</u>
Assisted Living Facilities [Section 3-413]	U(S)	N	U(S)	N
...				

**Section 2.** That Section 3-402 of the Tempe Zoning and Development Code is hereby repealed in its entirety and is amended as follows:

**SECTION 3-402 ACCESSORY DWELLING UNITS.**

**A. PURPOSE.**

1. THIS SECTION FURTHERS THE GOALS OF THE CITY OF TEMPE’S HOUSING ELEMENT WITHIN THE GENERAL PLAN BY INCREASING ACCESS TO HOUSING STOCK, PROMOTING AFFORDABLE HOUSING AND ENSURING THAT ACCESSORY DWELLING UNITS (ADUS) ARE CONSISTENT WITH THE CHARACTER OF THE CITY AND DO NOT CREATE SIGNIFICANT IMPACTS TO TRAFFIC FLOW OR PUBLIC SAFETY. THESE REGULATIONS ARE IN ADDITION TO OTHER APPLICABLE CODES. TO THE EXTENT ANY PROVISION IN THIS SECTION CONFLICTS WITH A.R.S. 9-461.18, THE STATE LAW SHALL CONTROL.
2. ACCESSORY DWELLING-UNITS (ADUS) ARE DESIGNED TO ALLOW A SUBORDINATE DWELLING, THAT MAY BE RENTED OR LEASED INDEPENDENT FROM THE MAIN RESIDENCE. *GUEST QUARTERS*, USED TO HOUSE GUESTS OF THE MAIN RESIDENCE, ARE ALSO ALLOWED WITHIN THE PROVISIONS OF THE ADU REGULATIONS. THESE DWELLINGS AUGMENT THE DIVERSITY OF HOUSING WHILE ENSURING THAT THE PROPERTY REMAINS COMPATIBLE WITH THE SCALE OF SINGLE-FAMILY RESIDENTIAL DEVELOPMENT.

- B. APPLICABILITY.** ADUS ARE A PERMISSABLE USE, SUBJECT TO THE TERMS OF THIS SECTION AND THE CITY OF TEMPE BUILDING CODES, FIRE CODES, AND PUBLIC HEALTH AND SAFETY REGULATIONS, ADUS ARE PERMITTED IN ALL RESIDENTIAL DISTRICTS, AS IDENTIFIED IN SECTION 2-102, WHEN A PROPERTY CONTAINS SINGLE-FAMILY DWELLING. A PROPERTY SHALL RETAIN ITS SINGLE-FAMILY USE STATUS TO THE EXTENT APPLICABLE. ADUS PERMITTED UNDER THIS SECTION ARE EXCLUDED FROM MULTI-FAMILY USE REGULATIONS FOUND IN PART 4, CHAPTER 4, BUILDING DESIGN; CHAPTER 6, PARKING; CHAPTER 7, LANDSCAPE AND WALLS; CHAPTER 8, LIGHTING; AND SECTION 6-306, DEVELOPMENT PLAN REVIEW.

- C. **STANDARDS AND RESTRICTIONS.** ADUS ARE ALLOWED SUBJECT TO THE FOLLOWING REQUIREMENTS:
1. DENSITY.
    - A. ONE (1) ATTACHED AND ONE (1) DETACHED ADU ARE ALLOWED ON ANY LOT THAT IS LESS THAN ONE (1) ACRE.
    - B. ONE (1) ADDITIONAL ADU IS ALLOWED ON A LOT THAT IS ONE (1) ACRE OR MORE IN SIZE IF AT LEAST ONE (1) ADU ON THE LOT IS A RESTRICTED-AFFORDABLE DWELLING UNIT, PURSUANT TO SECTION 3-402 (G).
  2. SIZE.
    - A. THE GROSS FLOOR AREA OF AN ADU SHALL NOT EXCEED ONE THOUSAND (1,000) SQUARE FEET OF INTERIOR HABITABLE AREA, OR NO MORE THAN SEVENTY-FIVE PERCENT (75%) OF THE GROSS FLOOR AREA OF THE MAIN RESIDENCE ON THE SAME LOT, WHICHEVER SQUARE FEET IS LESS.
    - B. FOR LOTS THAT ARE ONE (1) ACRE OR MORE IN SIZE, THE GROSS FLOOR AREA OF AN ADU SHALL NOT EXCEED TWO THOUSAND (2,000) SQUARE FEET OF INTERIOR HABITABLE AREA, OR NO MORE THAN SEVENTY-FIVE PERCENT (75%) OF THE GROSS FLOOR AREA OF THE MAIN RESIDENCE ON THE SAME LOT, WHICHEVER SQUARE FEET IS LESS.
    - C. FOR THE PURPOSE OF THIS SECTION "GROSS FLOOR AREA" MEANS THE INTERIOR HABITABLE AREA OF THE RESIDENCE. THIS EXCLUDES PARKING GARAGES/CARPORTS OR EXTERIOR STORAGE SPACE.
  3. PARKING. NO ADDITIONAL VEHICLE PARKING IS REQUIRED FOR AN ADU. THE PROPERTY OWNER MAY PROVIDE ADDITIONAL VEHICLE PARKING ON SITE. AN ADU THAT REMOVES OR MODIFIES AN EXISTING REQUIRED VEHICLE PARKING SPACE(S) FOR THE MAIN RESIDENCE SHALL REPLACE THE REQUIRED PARKING SPACE(S) IN A LOCATION AUTHORIZED BY THE COMMUNITY DEVELOPMENT DIRECTOR, OR DESIGNEE.
  4. BEDROOMS. NO MORE THAN THREE (3) BEDROOMS ARE ALLOWED WITHIN AN ADU THAT IS LIMITED TO NO MORE ONE THOUSAND (1,000) SQUARE FEET OF INTERIOR HABITABLE AREA. THERE IS NO RESTRICTION ON THE NUMBER OF BEDROOMS WITHIN AN ADU ON LOTS ONE (1) ACRE OR MORE IN SIZE.
  5. SETBACKS.
    - A. THE REAR, SIDE, AND STREET SIDE YARD SETBACK FOR AN ATTACHED ADU SHALL BE A MINIMUM OF FIVE (5) FEET IN ALL DISTRICTS, UNLESS A LESSER SETBACK IS ESTABLISHED BY THE DISTRICT OR OVERLAY, PURSUANT TO SECTION 4-202.
    - B. THE REAR, SIDE, AND STREET SIDE YARD SETBACK FOR A DETACHED ADU SHALL BE A MINIMUM OF FIVE (5) FEET IN ALL DISTRICTS, UNLESS A LESSER SETBACK IS ALLOWED FOR ACCESSORY BUILDINGS, PURSUANT TO SECTION 3-401.

- C. WHEN ADJACENT TO A DEDICATED PUBLIC ALLEY, THE SIDE AND REAR YARD SETBACKS FOR AN ADU SHALL BE MEASURED FROM THE MIDPOINT OF THE ALLEY. IN NO INSTANCE SHALL ANY PORTION OF A STRUCTURE EXTEND INTO THE PUBLIC ALLEY.
  - D. THE FRONT YARD SETBACK SHALL BE CONSISTENT WITH THE FRONT YARD SETBACK REQUIRED FOR BUILDINGS AND OPEN STRUCTURES, AS IDENTIFIED WITHIN THE DISTRICT SETBACK TABLES, PURSUANT TO SECTION 4-202, DEVELOPMENT STANDARDS FOR RESIDENTIAL DISTRICTS.
6. BUILDING HEIGHT. ADUS ARE SUBJECT TO THE SAME HEIGHT REGULATIONS THAT APPLY TO THE ZONING DISTRICT WITH A SINGLE-FAMILY DWELLING ON THE SAME LOT. REFER TO SECTION 4-202 FOR THE MAXIMUM HEIGHT FOR THE DISTRICT, SECTION 3-401 FOR DETACHED ACCESSORY BUILDING HEIGHT, AND SECTION 3-420 - SINGLE-FAMILY RESIDENTIAL SECOND STORY ADDITION, REBUILD.
7. LOT COVERAGE. THE AREA OF A LOT COVERED BY AN ADU SHALL BE INCLUDED IN THE OVERALL MAXIMUM LOT COVERAGE ALLOWED IN THE DISTRICT, PURSUANT TO SECTION 4-202, DEVELOPMENT STANDARDS FOR RESIDENTIAL DISTRICTS.
8. ADDRESSING. A UNIQUE ADDRESS SHALL BE PROVIDED FOR EACH ADU AND SHALL BE PLACED NEAR THE PRIMARY ENTRANCE OF THE ADU, USING NUMBERS/LETTERS WITH CONTRASTING COLOR.
- D. CONVERSION REGULATIONS.
- 1. WHEN LOCATED IN A MULTI-FAMILY RESIDENTIAL DISTRICT, IF AN EXISTING ADU IS INCREASED TO EXCEED THE MAXIMUM ALLOWABLE INTERIOR HABITABLE AREA FOR AN ADU, THE DWELLING SHALL NO LONGER BE CONSIDERED AN ADU. THE PROPERTY CONTAINING THE EXPANDED DWELLING AND ALL REMAINING DWELLING UNITS SHALL BE SUBJECT TO THE MULTI-FAMILY USE AND DEVELOPMENT STANDARDS.
  - 2. AN ADU SHALL COUNT AGAINST THE MAXIMUM ALLOWABLE DENSITY OF THE ZONING DISTRICT IN WHICH IT IS LOCATED WHEN THE FOLLOWING OCCURS:
    - A. ANOTHER DWELLING UNIT IS PROPOSED, WHICH EXCEEDS THE MAXIMUM NUMBER OF ADUS ON THE LOT; OR
    - B. THE ADU EXCEEDS THE MAXIMUM ALLOWABLE INTERIOR HABITABLE AREA DESCRIBED IN SECTION 3-402(C)(2).
  - 3. *GUEST QUARTERS*.
    - A. AN EXISTING PERMITTED *GUEST QUARTERS* MAY REMAIN ON A LOT, PURSUANT TO PART 4, CHAPTER 5, NON-CONFORMING USE OR DEVELOPMENT.
    - B. *GUEST QUARTERS* MAY BE CONVERTED TO AN ADU FOR THE PURPOSE OF RENTAL USE, AND SHALL APPLY FOR APPROPRIATE BUILDING PERMITS, SUBJECT TO THE REGULATIONS OF THIS SECTION, EXCEPT THAT THE INTERIOR HABITABLE AREA MAY EXCEED THE MAXIMUM AREA DESCRIBED IN SECTION 3-402(C)(2). CONVERSION TO AN ADU SHALL TERMINATE THE RENTAL RESTRICTION COVENANT THAT MAY EXIST FOR THE GUEST QUARTERS.
    - C. AN EXISTING GUEST QUARTERS SHALL COUNT TOWARD EITHER THE ALLOWED ONE (1) ATTACHED OR ONE (1) DETACHED ADU. IN OTHER WORDS, A LOT SHALL NOT PROVIDE AN ADDITIONAL DETACHED ADU IF THERE IS AN EXISTING DETACHED

GUEST QUARTERS, UNLESS THE PROPOSED ADU COMPLIES WITH THE MAXIMUM ALLOWED.

E. RESTRICTIONS.

1. SHORT-TERM RENTAL OR VACATION RENTALS ARE PERMITTED, SUBJECT TO TEMPE CITY CODE, CHAPTER 16A, ARTICLE X, AND OWNER OCCUPANCY REQUIREMENTS.
2. AN ADU SHALL NOT BE SUBDIVIDED OR SPLIT ON ITS OWN LOT, OR BE SOLD SEPARATELY FROM THE LOT.
3. PUBLIC ACCESS. PROPERTY OWNERS SHALL PROVIDE UNENCUMBERED PUBLIC ACCESS TO ACCESSORY DWELLINGS. NO OWNER MAY DENY OR RESTRICT IN ANY WAY, ACCESS TO AN ADU. OWNER(S) OF PROPERTY WITH AN ADU WAIVE ANY AND ALL RIGHTS TO DENY AND RESTRICT ACCESS IN ANY WAY TO EMERGENCY PROVIDERS RESPONDING TO CALLS FOR SERVICE TO AN ADU.

F. INFRASTRUCTURE AND CONSTRUCTION.

1. RESIDENTIAL CONNECTIONS TO SEWER, WATER AND/OR UTILITY SERVICES SHALL BE PROVIDED TO THE ADU IN CONFORMANCE WITH CITY STANDARDS.
2. THE ADU SHALL INCLUDE ITS OWN SLEEPING AND SANITATION FACILITIES (SHOWER/TUB, TOILET AND SINK) AND KITCHEN FACILITIES WITHIN THE UNIT.
3. ADUS CONSTRUCTED ON TRAILERS ARE ALLOWED WHEN THE SUSPENSION/AXLE COMPONENTS HAVE BEEN REMOVED AND THE CHASSIS IS PERMANENTLY ATTACHED TO A FOUNDATION AND COMPLIANT WITH THE ADOPTED BUILDING CODES.
4. TINY HOME CONSTRUCTION IS PERMISSIBLE FOR AN ADU, WHEN BUILT ON A PERMANENT FOUNDATION, AND COMPLIANT WITH TEMPE'S ADOPTED BUILDING CODE FOR TINY HOMES.
5. ADUS MAY USE AN ALTERNATE BUILDING CONSTRUCTION TYPE FOR PREFABRICATED/MODULAR HOME PERMITTED THROUGH THE BUILDING SAFETY DIVISION, AND COMPLIANT WITH THE ADOPTED BUILDING CODES.

G. RESTRICTED-AFFORDABLE DWELLING UNIT.

1. A LOT ONE (1) ACRE OR MORE IN SIZE MAY HAVE ONE (1) ADDITIONAL ADU (3RD ADU), AS LONG AS ONE OF THE THREE ADUS IS IDENTIFIED AS A RESTRICTED-AFFORDABLE DWELLING UNIT THROUGH A DEED RESTRICTION, IN A FORM REVIEWED AND AUTHORIZED BY THE CITY.
2. THE RESTRICTED-AFFORDABLE DWELLING UNIT SHALL ONLY BE RENTED TO HOUSEHOLDS EARNING UP TO EIGHTY PERCENT (80%) OF AREA MEDIAN INCOME. RENT SHALL BE ESTABLISHED BASED ON THE HOUSEHOLD SIZE AND INCOME IN ACCORDANCE WITH THE RENT AND INCOME LIMITS PUBLISHED BY THE ARIZONA DEPARTMENT OF HOUSING.
3. DEED RESTRICTION SHALL BE SIGNED AND RECORDED THROUGH THE COMMUNITY DEVELOPMENT DEPARTMENT, PRIOR TO THE ISSUANCE OF BUILDING PERMITS TO CONSTRUCT THE THIRD ADU.
4. REPORTING REQUIREMENT. THE PROPERTY OWNER SHALL PROVIDE AN ANNUAL TIME FRAME REPORT AND PROOF TO THE CITY OF TEMPE THAT DEMONSTRATES

COMPLIANCE WITH THE RENTAL REQUIREMENTS SET FORTH IN THIS SECTION. THE ANNUAL REPORT SHALL BE SUBMITTED TO THE [HOUSING DEPARTMENT DIRECTOR] FROM THE DATE OF THE RECORDED DEED RESTRICTION AND EACH YEAR THEREAFTER AND SHALL COVER THE ENTIRE TWELVE (12) MONTH PERIOD OF THE PRECEDING THE DEED RESTRICTION. AT MINIMUM, THE ANNUAL REPORT SHALL CONTAIN: 1. THE PERIOD THE RESTRICTED-AFFORDABLE DWELLING UNIT WAS RENTED AND THE STATUS BY WHICH ITS OCCUPANTS QUALIFIED UNDER THE DEED RESTRICTION. 2. THE MONTHLY RENT PAID/RECEIVED. 3. THE TAXES, SPECIAL ASSESSMENTS, HOA AND MANAGEMENT FEES AND ANY OTHER FEES OR CHARGES INCLUDED.

5. FAILURE TO REPORT; PENALTIES. FAILURE TO SUBMIT THE ANNUAL REPORT WITHIN THE TIME REQUESTED OR FAILURE TO COMPLY WITH THE DEED RESTRICTIONS SET FORTH, SHALL BE SUBJECT TO A CIVIL SANCTION, PURSUANT TO SECTION 1-201, AND/OR SUBJECT TO THE FORFEITURE OF THE RESTRICTED-AFFORDABLE DWELLING.

(Ord. No. O2019.08, 4-11-2019)

**Section 3.** That Section 3-411 of the Tempe Zoning and Development Code is hereby amended as follows:

**Section 3-411 Guest Quarters (REPEALED).**

THIS SECTION IS REPEALED. GUEST QUARTERS MAY BE USED WITHIN THE PROVISIONS ALLOWED FOR ACCESSORY DWELLING UNITS, PURSUANT TO SECTION 3-402.

- ~~A. Applicability. Guest quarters are permitted in single-family residential districts when a property contains a minimum net site area of eight thousand (8,000) square feet, subject to the following standards:~~
- ~~1. Only one (1) guest quarters is permitted on a single lot;~~
  - ~~2. The gross floor area shall be no greater than fifty (50) percent of the main building's gross floor area at or above grade;~~
  - ~~3. When attached to the main building, guest quarters shall conform with the development standards set forth in Table 4-202A.~~
  - ~~4. When detached from the main building, guest quarters shall conform with the standards set forth in Section 3-401.~~
  - ~~5. There shall be no separate metering for utility services (unless authorized by the Building Official and the Zoning Administrator) and no separate mailing address; and~~
  - ~~6. Prior to issuance of a building permit, a real covenant shall be recorded with the land restricting the use of the guest quarters from being rented or leased independent from the main building. Such covenant shall be binding to all subsequent owners.~~

(Ord. No. 2009.15, 10-22-2009; Ord. No. O2019.08, 4-11-2019)

**Section 4.** Pursuant to A.R.S. § 9-462.01(J), the City Council has considered a housing impact statement regarding the impact of the zoning ordinance text amendment.

**Section 5.** All ordinances and parts of ordinances in conflict with the provisions of the Code adopted herein are hereby repealed.

**Section 6.** If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the Code adopted herein by reference is for any reason held to be invalid or unconstitutional such decision shall not affect the validity of the remaining portions thereof.

**Section 7.** The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Tempe City Code.

**Section 8.** The various City officers and employees are hereby authorized and directed to perform all acts necessary to give effect to this ordinance.

**Section 9.** Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

**PASSED AND ADOPTED** BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Corey D. Woods, Mayor

ATTEST:

\_\_\_\_\_  
Kara A. DeArrastia, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Eric C. Anderson, City Attorney