Fifty-second Legislature
First Regular Session

COMMITTEE ON GOVERNMENT AND HIGHER EDUCATION

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2056

(Reference to printed bill)

Strike everything after the enacting clause and insert:
"Section 1. Section 9-462.01, Arizona Revised Statutes, is amended to read:

9-462.01. Zoning regulations; public hearing; prohibition; definitions

A. Pursuant to this article, the legislative body of any municipality by ordinance may in order to conserve and promote the public health, safety and general welfare:

1. Regulate the use of buildings, structures and land as between agriculture, residence, industry, business and other purposes.
2. Regulate signs and billboards.
3. Regulate the location, height, bulk, number of stories and size of buildings and structures, the size and use of lots, yards, courts and other open spaces, the percentage of a lot which may be occupied by a building or structure, access to incident solar energy and the intensity of land use.
4. Establish requirements for off-street parking and loading.
5. Establish and maintain building setback lines.
6. Create civic districts around civic centers, public parks, public buildings or public grounds and establish regulations therefor.
7. Require as a condition of rezoning public dedication of rights-of-way as streets, alleys, public ways, drainage and public utilities as are reasonably required by or related to the effect of the rezoning.
8. Establish floodplain zoning districts and regulations to protect life and property from the hazards of periodic inundation. Regulations may include variable lot sizes, special grading or drainage requirements, or other requirements deemed necessary for the public health, safety or general welfare.
9. Establish special zoning districts or regulations for certain lands characterized by adverse topography, adverse soils, subsidence of the earth, high water table, lack of water or other natural or man-made hazards to life or property. Regulations may include variable lot sizes, special grading or drainage requirements, or other requirements deemed necessary for the public health, safety or general welfare.
10. Establish districts of historical significance provided that:
   (a) The ordinances may require that special permission be obtained for any development within the district if the legislative body has adopted a plan for the preservation of districts of historical significance which meets the requirements of subdivision (b) of this paragraph, and the criteria contained in the ordinance are consistent with the objectives set forth in the plan.
(b) A plan for the preservation of districts of historical significance shall identify districts of special historical significance, state the objectives to be sought concerning the development or preservation of sites, area and structures within the district, and formulate a program for public action including the provision of public facilities and the regulation of private development and demolition necessary to realize these objectives.

(c) The ordinance establishing districts of historical significance shall set forth standards necessary to preserve the historical character of the area so designated.

(d) The ordinances may designate or authorize any committee, commission, department or person to designate structures or sites of special historical significance in accordance with criteria contained in the ordinance, and no designation shall be made except after a public hearing upon notice of the owners of record of the property so designated. The ordinances may require that special permission be obtained for any development respecting the structures or sites.

11. Establish age specific community zoning districts in which residency is restricted to a head of a household or spouse who must be of a specific age or older and in which minors are prohibited from living in the home. Age specific community zoning districts shall not be overlaid over property without the permission of all owners of property included as part of the district unless all of the property in the district has been developed, advertised and sold or rented under specific age restrictions. The establishment of age specific community zoning districts is subject to all of the public notice requirements and other procedures prescribed by this article.

12. Establish procedures, methods and standards for the transfer of development rights within its jurisdiction. Any proposed transfer of development rights from the sending property or to the receiving property shall be subject to the notice and hearing requirements of section 9-462.04 and shall be subject to the approval and consent of the property owners of both the sending and receiving property. Before any transfer of development rights, a municipality shall adopt an ordinance providing for:

(a) The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders.

(b) The preservation of the character of the sending property and assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner.

(c) The severance of transferable development rights from the sending property and the delayed transfer of development rights to a receiving property.

(d) The purchase, sale, exchange or other conveyance of transferable development rights prior to the rights being affixed to a receiving property.
(e) A system for monitoring the severance, ownership, assignment and transfer of transferable development rights.

(f) The right of a municipality to purchase development rights and to hold them for resale.

(g) The right of a municipality at its discretion to enter into an intergovernmental agreement with another municipality or a county for the transfer of development rights between jurisdictions. The transfer shall comply with this paragraph, except that if the sending property is located in an unincorporated area of a county, the approval of the development rights to be sent to a municipality shall comply with section 11-817.

B. For the purposes prescribed in subsection A of this section, the legislative body may divide a municipality, or portion of a municipality, into zones of the number, shape and area it deems best suited to carry out the purpose of this article and articles 6, 6.2 and 6.3 of this chapter.

C. All zoning regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulations in one type of zone may differ from those in other types of zones as follows:

1. Within individual zones, there may be uses permitted on a conditional basis under which additional requirements must be met, including requiring site plan review and approval by the planning agency. The conditional uses are generally characterized by any of the following:
   (a) Infrequency of use.
   (b) High degree of traffic generation.
   (c) Requirement of large land area.

2. Within residential zones, the regulations may permit modifications to minimum yard lot area and height requirements.

D. To carry out the purposes of this article and articles 6 and 6.2 of this chapter, the legislative body may adopt overlay zoning districts and regulations applicable to particular buildings, structures and land within individual zones. For the purposes of this subsection, "overlay zoning district" means a special zoning district that includes regulations which modify regulations in another zoning district with which the overlay zoning district is combined. Overlay zoning districts and regulations shall be adopted pursuant to section 9-462.04.

E. The legislative body may approve a change of zone conditioned upon a schedule for development of the specific use or uses for which rezoning is requested. If at the expiration of this period the property has not been improved for the use for which it was conditionally approved, the legislative body, after notification by certified mail to the owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.

F. All zoning and rezoning ordinances or regulations adopted under this article shall be consistent with and conform to the adopted general plan of the municipality, if any, as adopted under article 6 of this chapter. In the case of uncertainty in construing or applying the conformity of any part of a proposed rezoning ordinance to the adopted general plan of the
municipality, the ordinance shall be construed in a manner that will further
the implementation of, and not be contrary to, the goals, policies and
applicable elements of the general plan. A rezoning ordinance conforms with
the land use element of the general plan if it proposes land uses, densities
or intensities within the range of identified uses, densities and intensities
of the land use element of the general plan.

G. No regulation or ordinance under this section may prevent or
restrict agricultural composting on farmland that is five or more contiguous
acres and that meets the requirements of this subsection. An agricultural
composting operation shall notify in writing the legislative body of the city
or town and the nearest fire department of the location of the composting
operation. If the nearest fire department is located in a different city or
town from the agricultural composting operation, the agricultural composting
operation shall also notify in writing the fire department of the city or
town in which the operation is located. Agricultural composting is subject
to sections 3-112 and 49-141. Agricultural composting may not be conducted
within one thousand three hundred twenty feet of an existing residential use,
unless the operations are conducted on farmland or land leased in association
with farmland. Any disposal of manure shall comply with section 49-247. For
the purposes of this subsection:

1. "Agricultural composting" means the controlled biological
decomposition of organic solid waste under in-vessel anaerobic or aerobic
conditions where all or part of the materials are generated on the farmland
or will be used on the farmland associated with the agricultural composting
operation.

2. "Farmland" has the same meaning prescribed in section 3-111 and is
subject to regulation under section 49-247.

H. A ZONING ORDINANCE ADOPTED PURSUANT TO THIS ARTICLE MAY NOT ALLOW A
MARIJUANA CULTIVATION FACILITY OR MARIJUANA INFUSION PRODUCTION FACILITY TO
BE LOCATED WITHIN TWO THOUSAND FIVE HUNDRED FEET OF AN AREA ZONED FOR
RESIDENTIAL USE, A PLACE OF WORSHIP OR A PUBLIC OR PRIVATE SCHOOL OR THE
ACCOMPANYING GROUNDS. FOR THE PURPOSES OF THIS SUBSECTION, MEASUREMENTS
SHALL BE MADE FROM THE EXTERIOR WALLS OF THE BUILDING OR PORTION OF THE
BUILDING IN WHICH THE MARIJUANA CULTIVATION OR MARIJUANA INFUSION PRODUCTION
IS CONDUCTED TO THE ZONING BOUNDARY LINE OF AN AREA ZONED FOR RESIDENTIAL USE
OR THE PROPERTY LINE OF A PARCEL THAT CONTAINS A PLACE OF WORSHIP OR A PUBLIC
OR PRIVATE SCHOOL OR THE ACCOMPANYING GROUNDS.

H. I. For the purposes of this section:

1. "Development rights" means the maximum development that would be
allowed on the sending property under any general or specific plan and local
zoning ordinance of a municipality in effect on the date the municipality
adopts an ordinance pursuant to subsection A, paragraph 12 of this section
respecting the permissible use, area, bulk or height of improvements made to
the lot or parcel. Development rights may be calculated and allocated in
accordance with factors including dwelling units, area, floor area, floor
area ratio, height limitations, traffic generation or any other criteria that
will quantify a value for the development rights in a manner that will carry
out the objectives of this section.
2. "MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY THAT CULTIVATES, PREPARES OR PACKAGES AND SELLS MARIJUANA TO NONPROFIT MEDICAL MARIJUANA DISPENSARIES, MARIJUANA INFUSION PRODUCTION FACILITIES AND OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

3. "MARIJUANA INFUSION PRODUCTION FACILITY" MEANS AN ENTITY THAT ACQUIRES, POSSESSES, MANUFACTURES, PREPARES OR PACKAGES AND SELLS MARIJUANA PRODUCTS BY THE MEANS OF COOKING, BLENDING OR INCORPORATING MARIJUANA INTO CONSUMABLE, EDIBLE OR TRANSDERMAL PRODUCTS TO NONPROFIT MEDICAL MARIJUANA DISPENSARIES OR OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

4. "Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property without substantial adverse environmental, economic or social impact to the receiving property or to neighboring property.

5. "Sending property" means a lot or parcel with special characteristics, including farmland, woodland, desert land, mountain land, floodplain, natural habitats, recreation or parkland, including golf course area, or land that has unique aesthetic, architectural or historic value that a municipality desires to protect from future development.

6. "Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

Sec. 2. Section 11-811, Arizona Revised Statutes, is amended to read:

11-811. Zoning ordinance; zoning districts; prohibition; definitions

A. Pursuant to this article, the board of supervisors may adopt a zoning ordinance in order to conserve and promote the public health, safety, convenience and general welfare. The zoning ordinance and all rezonings and zoning regulations amendments adopted under this article shall be consistent with and conform to the adopted comprehensive plan. In addition to the other matters that are required or authorized under this section and article 1 of this chapter, the zoning ordinance:

1. Shall show the zoning districts designated as appropriate for various classes of residential, business and industrial uses and shall provide for the establishment of setback lines and other plans providing for adequate light, air and parking facilities and for expediting traffic within the districts.

2. May establish the percentage of a lot or parcel that may be covered by buildings and the size of yards, courts and other open spaces.

3. Shall consider access to incident solar energy.

4. May provide for retirement community zoning districts.

5. May provide for the regulation and use of business licenses, adult oriented business manager permits and adult service provider permits in conjunction with the establishment or operation of adult oriented businesses and facilities, including adult arcades, adult bookstores or video stores, cabarets, adult live entertainment establishments, adult motion picture theaters, adult theaters, massage establishments and nude model studios.
With respect to cabarets, the ordinance shall not conflict with specific statutory or valid regulatory requirements applicable to persons licensed to dispense alcoholic beverages, but the ordinance may include regulation of the age and conduct of erotic entertainers in a manner at least as restrictive as rules adopted under title 4. Notwithstanding section 11-812, a county in regulating or licensing businesses and facilities pursuant to this paragraph may impose reasonable operating requirements that affect the existing uses of businesses and facilities.

6. Shall designate and zone appropriate areas of reasonable size in which there may be established with reasonable permanency canneries, fertilizer plants, refineries, commercial feedlots, meat packing plants, tallow works and other like businesses. A dairy operation, including areas designated for the raising of replacement heifers or bulls owned by the same dairy operation, is not subject to this paragraph, and is a general agricultural purpose under subsection C, paragraph 2 of this section and section 11-812, subsection A, paragraph 2. A replacement heifer or bull raising operation of a dairy that is not on contiguous property of the dairy is subject to this paragraph unless the operation begins within one-quarter mile of the dairy.

B. To carry out the purposes of this article, the board may adopt overlay zoning districts and regulations applicable to particular buildings, structures and land within individual zones. For the purposes of this subsection, "overlay zoning district" means a special zoning district that includes regulations that modify regulations in another zoning district with which the overlay zoning district is combined. Overlay zoning districts and regulations shall be adopted pursuant to section 11-813. The provisions of overlay zoning shall apply retroactively to authorize overlay zoning districts and regulations adopted before April 20, 1993.

C. This section does not authorize:
   1. The imposition of dedications, exactions, fees or other requirements that are not otherwise authorized by law.
   2. The regulation or restriction of the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous commercial acres. For the purposes of this paragraph, general agricultural purposes do not include the cultivation of cannabis as defined in section 13-3401 or marijuana as defined in section 13-3401 or 36-2801.

D. NOTWITHSTANDING SECTION 11-812, A ZONING ORDINANCE ADOPTED PURSUANT TO THIS ARTICLE MAY NOT ALLOW A MARIJUANA CULTIVATION FACILITY OR MARIJUANA INFUSION PRODUCTION FACILITY TO BE LOCATED WITHIN TWO THOUSAND FIVE HUNDRED FEET OF AN AREA ZONED FOR RESIDENTIAL USE, A PLACE OF WORSHIP OR A PUBLIC OR PRIVATE SCHOOL OR THE ACCOMPANYING GROUNDS. FOR THE PURPOSES OF THIS SUBSECTION, MEASUREMENTS SHALL BE MADE FROM THE EXTERIOR WALLS OF THE BUILDING OR PORTION OF THE BUILDING IN WHICH THE MARIJUANA CULTIVATION OR MARIJUANA INFUSION PRODUCTION IS CONDUCTED TO THE ZONING BOUNDARY LINE OF AN AREA ZONED FOR RESIDENTIAL USE OR THE PROPERTY LINE OF A PARCEL THAT CONTAINS A PLACE OF WORSHIP OR A PUBLIC OR PRIVATE SCHOOL OR THE ACCOMPANYING GROUNDS.

   E. For the purposes of this section:
1. "Adult arcade" means any place to which the public is permitted or invited and in which coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices are maintained to show images involving specific sexual activities or specific anatomical areas to persons in booths or viewing rooms.

2. "Adult bookstore or video store" means a commercial establishment that offers for sale or rent any of the following as one of its principal business purposes:
   (a) Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, videocassettes or reproductions or slides or other visual representations that depict or describe specific sexual activities or specific anatomical areas.
   (b) Instruments, devices or paraphernalia that are designed for use in connection with specific sexual activities.

3. "Adult live entertainment establishment" means an establishment that features either:
   (a) Persons who appear in a state of nudity.
   (b) Live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.

4. "Adult motion picture theater" means a commercial establishment in which for any form of consideration films, motion pictures, videocassettes, slides or other similar photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas are predominantly shown.

5. "Adult oriented business" means adult arcades, adult bookstores or video stores, cabarets, adult live entertainment establishments, adult motion picture theaters, adult theaters, massage establishments that offer adult service or nude model studios.

6. "Adult oriented business manager" means a person on the premises of an adult oriented business who is authorized to exercise overall operational control of the business.

7. "Adult service" means dancing, serving food or beverages, modeling, posing, wrestling, singing, reading, talking, listening or other performances or activities conducted for any consideration in an adult oriented business by a person who is nude or seminude during all or part of the time that the person is providing the service.

8. "Adult service provider" or "erotic entertainer" means any natural person who provides an adult service.

9. "Adult theater" means a theater, concert hall, auditorium or similar commercial establishment that predominantly features persons who appear in a state of nudity or who engage in live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities.

10. "Cabaret" means an adult oriented business licensed to provide alcoholic beverages pursuant to title 4, chapter 2, article 1.

11. "Discernibly turgid state" means the state of being visibly swollen, bloated, inflated or distended.
12. "MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY THAT CULTIVATES, PREPARES OR PACKAGES AND SELLS MARIJUANA TO NONPROFIT MEDICAL MARIJUANA DISPENSARIES, MARIJUANA INFUSION PRODUCTION FACILITIES AND OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

13. "MARIJUANA INFUSION PRODUCTION FACILITY" MEANS AN ENTITY THAT ACQUIRES, POSSESSES, MANUFACTURES, PREPARES OR PACKAGES AND SELLS MARIJUANA PRODUCTS BY THE MEANS OF COOKING, BLENDING OR INCORPORATING MARIJUANA INTO CONSUMABLE, EDIBLE OR TRANSDERMAL PRODUCTS TO NONPROFIT MEDICAL MARIJUANA DISPENSARIES OR OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

14. "Massage establishment" means an establishment in which a person, firm, association or corporation engages in or permits massage activities, including any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of external soft parts of the body with the hands or with the aid of any mechanical apparatus or electrical apparatus or appliance. This paragraph does not apply to:

(a) Persons who are licensed pursuant to title 32, chapter 7, 8, 13, 14 or 17.

(b) Registered nurses, licensed practical nurses or technicians who are acting under the supervision of a physician who is licensed pursuant to title 32, chapter 13 or 17.

(c) Registered nurse practitioners who are licensed pursuant to title 32, chapter 15.

(d) Persons who are employed or acting as trainers for a bona fide amateur, semiprofessional or professional athlete or athletic team.

(e) Persons who are licensed pursuant to title 32, chapter 3 or 5 if the activity is limited to the head, face or neck.

15. "Nude model studio" means a place in which a person who appears in a state of nudity or who displays specific anatomical areas is observed, sketched, drawn, painted, sculptured, photographed or otherwise depicted by other persons who pay money or other consideration. Nude model studio does not include a proprietary school that is licensed by this state, a college, community college or university that is supported entirely or in part by taxation, a private college or university that maintains and operates educational programs in which credits are transferable to a college, community college or university that is supported entirely or in part by taxation or a structure to which the following apply:

(a) A sign is not visible from the exterior of the structure and no other advertising appears indicating that a nude person is available for viewing.

(b) A student must enroll at least three days in advance of a class in order to participate.

(c) No more than one nude or seminude model is on the premises at any time.

16. "Nude", "nudity" or "state of nudity" means any of the following:

(a) The appearance of a human anus, genitals or a female breast below a point immediately above the top of the areola.
(b) A state of dress that fails to opaquely cover a human anus, genitals or a female breast below a point immediately above the top of the areola.

17. "Principal business purposes" means that a commercial establishment derives fifty percent or more of its gross income from the sale or rental of items listed in paragraph 2 of this subsection.

18. "Seminude" means a state of dress in which clothing covers no more than the genitals, pubic region and female breast below a point immediately above the top of the areola, as well as portions of the body that are covered by supporting straps or devices.

19. "Specific anatomical areas" means any of the following:
   (a) A human anus, genitals, the pubic region or a female breast below a point immediately above the top of the areola that is less than completely and opaquely covered.
   (b) Male genitals in a discernibly turgid state even if completely and opaquely covered.

20. "Specific sexual activities" means any of the following:
   (a) Human genitals in a state of sexual stimulation or arousal.
   (b) Sex acts, normal or perverted, actual or simulated, including acts of human masturbation, sexual intercourse, oral copulation or sodomy.
   (c) Fondling or other erotic touching of the human genitals, pubic region, buttocks, anus or female breast.
   (d) Excretory functions as part of or in connection with any of the activities under subdivision (a), (b) or (c) of this paragraph.

Amend title to conform

and, as so amended, it do pass

BOB THORPE
Chairman

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