

REFERENCE TITLE: consideration of property rights; zoning

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SB 1235

Introduced by
Senators Farnsworth D: Lesko; Representatives Kern, Lawrence, Livingston,
Mitchell, Olson, Petersen

AN ACT

AMENDING SECTIONS 9-462.01 AND 11-811, ARIZONA REVISED STATUTES; RELATING TO
ZONING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-462.01, Arizona Revised Statutes, is amended to
3 read:

4 9-462.01. Zoning regulations; public hearing; definitions

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

8 1. Regulate the use of buildings, structures and land as between
9 agriculture, residence, industry, business and other purposes.

10 2. Regulate signs and billboards.

11 3. Regulate the location, height, bulk, number of stories and size of
12 buildings and structures, the size and use of lots, yards, courts and other
13 open spaces, the percentage of a lot that may be occupied by a building or
14 structure, access to incident solar energy and the intensity of land use.

15 4. Establish requirements for off-street parking and loading.

16 5. Establish and maintain building setback lines.

17 6. Create civic districts around civic centers, public parks, public
18 buildings or public grounds and establish regulations therefor.

19 7. Require as a condition of rezoning public dedication of
20 rights-of-way as streets, alleys, public ways, drainage and public utilities
21 as are reasonably required by or related to the effect of the rezoning.

22 8. Establish floodplain zoning districts and regulations to protect
23 life and property from the hazards of periodic inundation. Regulations may
24 include variable lot sizes, special grading or drainage requirements, or
25 other requirements deemed necessary for the public health, safety or general
26 welfare.

27 9. Establish special zoning districts or regulations for certain lands
28 characterized by adverse topography, adverse soils, subsidence of the earth,
29 high water table, lack of water or other natural or man-made hazards to life
30 or property. Regulations may include variable lot sizes, special grading or
31 drainage requirements, or other requirements deemed necessary for the public
32 health, safety or general welfare.

33 10. Establish districts of historical significance provided that:

34 (a) The ordinances may require that special permission be obtained for
35 any development within the district if the legislative body has adopted a
36 plan for the preservation of districts of historical significance that meets
37 the requirements of subdivision (b) of this paragraph, and the criteria
38 contained in the ordinance are consistent with the objectives set forth in
39 the plan.

40 (b) A plan for the preservation of districts of historical
41 significance shall identify districts of special historical significance,
42 state the objectives to be sought concerning the development or preservation
43 of sites, area and structures within the district, and formulate a program
44 for public action including the provision of public facilities and the

1 regulation of private development and demolition necessary to realize these
2 objectives.

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

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

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

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

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

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

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

41 (d) The purchase, sale, exchange or other conveyance of transferable
42 development rights prior to the rights being affixed to a receiving property.

43 (e) A system for monitoring the severance, ownership, assignment and
44 transfer of transferable development rights.

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

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

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

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

16 1. Within individual zones, there may be uses permitted on a
17 conditional basis under which additional requirements must be met, including
18 requiring site plan review and approval by the planning agency. The
19 conditional uses are generally characterized by any of the following:

- 20 (a) Infrequency of use.
- 21 (b) High degree of traffic generation.
- 22 (c) Requirement of large land area.

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

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

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

42 F. All zoning and rezoning ordinances or regulations adopted under
43 this article shall be consistent with and conform to the adopted general plan
44 of the municipality, if any, as adopted under article 6 of this chapter. In
45 the case of uncertainty in construing or applying the conformity of any part

1 of a proposed rezoning ordinance to the adopted general plan of the
2 municipality, the ordinance shall be construed in a manner that will further
3 the implementation of, and not be contrary to, the goals, policies and
4 applicable elements of the general plan. A rezoning ordinance conforms with
5 the land use element of the general plan if it proposes land uses, densities
6 or intensities within the range of identified uses, densities and intensities
7 of the land use element of the general plan.

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

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

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

30 H. ~~A city or town~~ MUNICIPALITY may not adopt a land use regulation or
31 impose any condition for issuance of a building or use permit or other
32 approval that violates section 9-461.16.

33 I. IN ACCORDANCE WITH ARTICLE II, SECTIONS 1 AND 2, CONSTITUTION OF
34 ARIZONA, THE LEGISLATIVE BODY OF A MUNICIPALITY SHALL CONSIDER THE INDIVIDUAL
35 PROPERTY RIGHTS AND PERSONAL LIBERTIES OF THE RESIDENTS OF THE MUNICIPALITY
36 BEFORE ADOPTING ANY ZONING ORDINANCE.

37 ~~I.~~ J. For the purposes of this section:

38 1. "Development rights" means the maximum development that would be
39 allowed on the sending property under any general or specific plan and local
40 zoning ordinance of a municipality in effect on the date the municipality
41 adopts an ordinance pursuant to subsection A, paragraph 12 of this section
42 respecting the permissible use, area, bulk or height of improvements made to
43 the lot or parcel. Development rights may be calculated and allocated in
44 accordance with factors including dwelling units, area, floor area, floor
45 area ratio, height limitations, traffic generation or any other criteria that

1 will quantify a value for the development rights in a manner that will carry
2 out the objectives of this section.

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

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

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

17 Sec. 2. Section 11-811, Arizona Revised Statutes, is amended to read:
18 11-811. Zoning ordinance; zoning districts; definitions

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

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

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

33 3. Shall consider access to incident solar energy.

34 4. May provide for retirement community zoning districts.

35 5. May provide for the regulation and use of business licenses, adult
36 oriented business manager permits and adult service provider permits in
37 conjunction with the establishment or operation of adult oriented businesses
38 and facilities, including adult arcades, adult bookstores or video stores,
39 cabarets, adult live entertainment establishments, adult motion picture
40 theaters, adult theaters, massage establishments and nude model studios.
41 With respect to cabarets, the ordinance shall not conflict with specific
42 statutory or valid regulatory requirements applicable to persons licensed to
43 dispense alcoholic beverages, but the ordinance may include regulation of the
44 age and conduct of erotic entertainers in a manner at least as restrictive as
45 rules adopted under title 4. Notwithstanding section 11-812, a county in

1 regulating or licensing businesses and facilities pursuant to this paragraph
2 may impose reasonable operating requirements that affect the existing uses of
3 businesses and facilities.

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

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

24 C. IN ACCORDANCE WITH ARTICLE II, SECTIONS 1 AND 2, CONSTITUTION OF
25 ARIZONA, THE BOARD SHALL CONSIDER THE INDIVIDUAL PROPERTY RIGHTS AND PERSONAL
26 LIBERTIES OF THE RESIDENTS OF THE COUNTY BEFORE ADOPTING ANY ZONING
27 ORDINANCE.

28 ~~C~~ D. This section does not authorize:

29 1. The imposition of dedications, exactions, fees or other
30 requirements that are not otherwise authorized by law.

31 2. The regulation or restriction of the use or occupation of land or
32 improvements for railroad, mining, metallurgical, grazing or general
33 agricultural purposes, if the tract concerned is five or more contiguous
34 commercial acres. For the purposes of this paragraph, general agricultural
35 purposes do not include the cultivation of cannabis as defined in section
36 13-3401 or marijuana as defined in section 13-3401 or 36-2801.

37 ~~D~~ E. For the purposes of this section:

38 1. "Adult arcade" means any place to which the public is permitted or
39 invited and in which coin-operated or slug-operated or electronically,
40 electrically or mechanically controlled still or motion picture machines,
41 projectors or other image producing devices are maintained to show images
42 involving specific sexual activities or specific anatomical areas to persons
43 in booths or viewing rooms.

1 2. "Adult bookstore or video store" means a commercial establishment
2 that offers for sale or rent any of the following as one of its principal
3 business purposes:

4 (a) Books, magazines, periodicals or other printed matter,
5 photographs, films, motion pictures, videocassettes or reproductions or
6 slides or other visual representations that depict or describe specific
7 sexual activities or specific anatomical areas.

8 (b) Instruments, devices or paraphernalia that are designed for use in
9 connection with specific sexual activities.

10 3. "Adult live entertainment establishment" means an establishment
11 that features either:

12 (a) Persons who appear in a state of nudity.

13 (b) Live performances that are characterized by the exposure of
14 specific anatomical areas or specific sexual activities.

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

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

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

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

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

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

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

41 11. "Discernibly turgid state" means the state of being visibly
42 swollen, bloated, inflated or distended.

43 12. "Massage establishment" means an establishment in which a person,
44 firm, association or corporation engages in or permits massage activities,
45 including any method of pressure on, friction against, stroking, kneading,

1 rubbing, tapping, pounding, vibrating or stimulating of external soft parts
2 of the body with the hands or with the aid of any mechanical apparatus or
3 electrical apparatus or appliance. This paragraph does not apply to:

4 (a) Persons who are licensed pursuant to title 32, chapter 7, 8, 13,
5 14 or 17.

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

9 (c) Registered nurse practitioners who are licensed pursuant to title
10 32, chapter 15.

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

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

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

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

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

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

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

33 (a) The appearance of a human anus, genitals or a female breast below
34 a point immediately above the top of the areola.

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

38 15. "Principal business purposes" means that a commercial establishment
39 derives fifty ~~per-cent~~ PERCENT or more of its gross income from the sale or
40 rental of items listed in paragraph 2 of this subsection.

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

- 1 17. "Specific anatomical areas" means any of the following:
2 (a) A human anus, genitals, the pubic region or a female breast below
3 a point immediately above the top of the areola that is less than completely
4 and opaquely covered.
5 (b) Male genitals in a discernibly turgid state even if completely and
6 opaquely covered.
- 7 18. "Specific sexual activities" means any of the following:
8 (a) Human genitals in a state of sexual stimulation or arousal.
9 (b) Sex acts, normal or perverted, actual or simulated, including acts
10 of human masturbation, sexual intercourse, oral copulation or sodomy.
11 (c) Fondling or other erotic touching of the human genitals, pubic
12 region, buttocks, anus or female breast.
13 (d) Excretory functions as part of or in connection with any of the
14 activities under subdivision (a), (b) or (c) of this paragraph.