

House Engrossed

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HOUSE BILL 2116

AN ACT

AMENDING SECTION 9-462.04, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL ZONING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-462.04, Arizona Revised Statutes, is amended
3 to read:

4 9-462.04. Public hearing required; definition

5 A. If the municipality has a planning commission or a hearing
6 officer, the planning commission or hearing officer shall hold a public
7 hearing on any zoning ordinance. Notice of the time and place of the
8 hearing including a general explanation of the matter to be considered and
9 including a general description of the area affected shall be given at
10 least fifteen days before the hearing in the following manner:

11 1. The notice shall be published at least once in a newspaper of
12 general circulation published or circulated in the municipality, or if
13 there is none, it shall be posted on the affected property in such a
14 manner as to be legible from the public right-of-way and in at least ten
15 public places in the municipality. A posted notice shall be printed so
16 that the following are visible from a distance of one hundred feet: the
17 word "zoning", the present zoning district classification, the proposed
18 zoning district classification and the date and time of the hearing.

19 2. In proceedings involving rezoning of land ~~which~~ THAT abuts other
20 municipalities or unincorporated areas of the county or a combination
21 thereof, copies of the notice of public hearing shall be transmitted to
22 the planning agency of ~~such~~ THE governmental unit abutting such land. In
23 proceedings involving rezoning of land that is located within the
24 territory in the vicinity of a military airport or ancillary military
25 facility as defined in section 28-8461, the municipality shall send copies
26 of the notice of public hearing by first class mail to the military
27 airport. In addition to notice by publication, a municipality may give
28 notice of the hearing in ~~such~~ ANY other manner ~~as it may deem~~ THAT THE
29 MUNICIPALITY DEEMS necessary or desirable.

30 3. In proceedings that are not initiated by the property owner
31 involving rezoning of land ~~which~~ THAT may change the zoning
32 classification, notice by first class mail shall be sent to each real
33 property owner, as shown on the last assessment of the property, of the
34 area to be rezoned and all property owners, as shown on the last
35 assessment of the property, within three hundred feet of the property to
36 be rezoned.

37 4. In proceedings involving one or more of the following proposed
38 changes or related series of changes in the standards governing land uses,
39 notice shall be provided in the manner prescribed by paragraph 5 OF THIS
40 SUBSECTION:

41 (a) A ten ~~per cent~~ PERCENT or more increase or decrease in the
42 number of square feet or units that may be developed.

43 (b) A ten ~~per cent~~ PERCENT or more increase or reduction in the
44 allowable height of buildings.

1 (c) An increase or reduction in the allowable number of stories of
2 buildings.

3 (d) A ten ~~per cent~~ PERCENT or more increase or decrease in setback
4 or open space requirements.

5 (e) An increase or reduction in permitted uses.

6 5. In proceedings governed by paragraph 4 OF THIS SUBSECTION, the
7 municipality shall provide notice to real property owners pursuant to at
8 least one of the following notification procedures:

9 (a) Notice shall be sent by first class mail to each real property
10 owner, as shown on the last assessment, whose real property is directly
11 governed by the changes.

12 (b) If the municipality issues utility bills or other mass mailings
13 that periodically include notices or other informational or advertising
14 materials, the municipality shall include notice of ~~such~~ THE changes with
15 such utility bills or other mailings.

16 (c) The municipality shall publish ~~such~~ THE changes ~~prior to~~ BEFORE
17 the first hearing on such changes in a newspaper of general circulation in
18 the municipality. The changes shall be published in a "display ad"
19 covering not less than one-eighth of a full page.

20 6. If notice is provided pursuant to paragraph 5, subdivision (b)
21 or (c) OF THIS SUBSECTION, the municipality shall also send notice by
22 first class mail to persons who register their names and addresses with
23 the municipality as being interested in receiving such notice. The
24 municipality may charge a fee not to exceed five dollars per year for
25 providing this service and may adopt procedures to implement this
26 paragraph.

27 7. Notwithstanding the notice requirements ~~set forth~~ in paragraph 4
28 OF THIS SUBSECTION, the failure of any person or entity to receive notice
29 ~~shall~~ DOES not constitute grounds for any court to invalidate the actions
30 of a municipality for which the notice was given.

31 B. If the matter to be considered applies to territory in a high
32 noise or accident potential zone as defined in section 28-8461, the notice
33 prescribed in subsection A of this section shall include a general
34 statement that the matter applies to property located in the high noise or
35 accident potential zone.

36 C. After the hearing, the planning commission or hearing officer
37 shall render a decision in the form of a written recommendation to the
38 governing body. The recommendation shall include the reasons for the
39 recommendation and be transmitted to the governing body in such form and
40 manner as may be specified by the governing body.

41 D. If the planning commission or hearing officer has held a public
42 hearing, the governing body may adopt the recommendations of the planning
43 commission or hearing officer without holding a second public hearing if
44 there is no objection, request for public hearing or other protest. The
45 governing body shall hold a public hearing if requested by the party

1 aggrieved or any member of the public or of the governing body, or, in any
 2 case, if ~~no~~ A public hearing has NOT been held by the planning commission
 3 or hearing officer. In municipalities with territory in the vicinity of a
 4 military airport or ancillary military facility as defined in section
 5 28-8461, the governing body shall hold a public hearing if, after notice
 6 is transmitted to the military airport pursuant to subsection A of this
 7 section and before the public hearing, the military airport provides
 8 comments or analysis concerning the compatibility of the proposed rezoning
 9 with the high noise or accident potential generated by military airport or
 10 ancillary military facility operations that may have an adverse impact on
 11 public health and safety, and the governing body shall consider and
 12 analyze the comments or analysis before making a final determination.
 13 Notice of the time and place of the hearing shall be given in the time and
 14 manner provided for the giving of notice of the hearing by the planning
 15 commission as specified in subsection A of this section. ~~In addition~~ A
 16 municipality may give ADDITIONAL notice of the hearing in ~~such~~ ANY other
 17 manner as ~~it may deem~~ THE MUNICIPALITY DEEMS necessary or desirable.

18 E. A municipality may enact an ordinance authorizing county zoning
 19 to continue in effect until municipal zoning is applied to land previously
 20 zoned by the county and annexed by the municipality, but in no event for
 21 longer than six months after the annexation.

22 F. A municipality is not required to adopt a general plan ~~prior to~~
 23 BEFORE the adoption of a zoning ordinance.

24 G. If there is no planning commission or hearing officer, the
 25 governing body of the municipality shall perform the functions assigned to
 26 the planning commission or hearing officer.

27 H. If the owners of twenty ~~per cent~~ PERCENT or more ~~either of the~~
 28 ~~area of the lots included in a proposed change, or of those immediately~~
 29 ~~adjacent in the rear or any side thereof extending one hundred fifty feet~~
 30 ~~therefrom, or of those directly opposite thereto extending one hundred~~
 31 ~~fifty feet from the street frontage of the opposite lots, OF THE PROPERTY~~
 32 BY AREA AND NUMBER WITHIN THE ZONING AREA file a protest in writing
 33 against a proposed amendment, ~~it~~ THE CHANGE shall not become effective
 34 except by the favorable vote of three-fourths of all members of the
 35 governing body of the municipality. If any members of the governing body
 36 are unable to vote on such a question because of a conflict of interest,
 37 then the required number of votes for passage of the question shall be
 38 three-fourths of the remaining membership of the governing body, provided
 39 that such required number of votes shall in no event be less than a
 40 majority of the full membership of the legally established governing body.

41 I. In applying an open space element or a growth element of a
 42 general plan, a parcel of land shall not be rezoned for open space,
 43 recreation, conservation or agriculture unless the owner of the land
 44 consents to the rezoning in writing.

1 J. Notwithstanding ~~the provisions~~ of section 19-142, subsection B,
2 a decision by the governing body involving rezoning of land ~~which~~ THAT is
3 not owned by the municipality and ~~which~~ THAT changes the zoning
4 classification of such land may not be enacted as an emergency measure and
5 ~~such~~ THE change shall not be effective for at least thirty days after
6 final approval of the change in classification by the governing body.
7 K. FOR THE PURPOSES OF THIS SECTION, "ZONING AREA" MEANS THE AREA
8 WITHIN ONE HUNDRED FIFTY FEET OF THE PROPOSED AMENDMENT OR CHANGE.