State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HOUSE BILL 2514

AN ACT

AMENDING SECTIONS 9-462.01, 11-821 AND 33-1808, ARIZONA REVISED STATUTES;
RELATING TO AMATEUR RADIO ACCOMMODATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

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

9-462.01. Zoning regulations: public hearing: 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. REASONABLE HEIGHTS AND DIMENSIONS SHALL BE PROVIDED FOR ACCOMMODATION OF AMATEUR RADIO STATION EMERGENCY SERVICE COMMUNICATIONS ANTENNAE AND STRUCTURES.

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 11-821.03.

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. 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. "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.

3. "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.

4. "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 11-821, Arizona Revised Statutes, is amended to read:

11-821. County plan; definitions

A. The commission shall formulate and the board of supervisors shall
adopt or readopt a comprehensive long-term county plan for the development of
the area of jurisdiction in the manner prescribed by this article. The
planning commission shall coordinate the production of the county plan with
the creation of the conceptual state land use plans under title 37, chapter
2, article 5.1. The county plan, with the accompanying maps, plats, charts
and descriptive matter, shall show the commission's recommendations for the
development of the area of jurisdiction together with the general zoning
regulations. The county plan shall be made with the general purpose of
guiding and accomplishing a coordinated, adjusted and harmonious development
of the area of jurisdiction. In the preparation of the county plan the
commission shall make surveys and studies of the present conditions and
prospective future growth of the area of the jurisdiction. The planning
commission shall cooperate with the state land department regarding
integrating the conceptual state land use plans into the county plan. The
county plan shall include provisions that identify changes or modifications
that constitute amendments and major amendments to the plan.

B. In addition to the other matters that are required or authorized
under this section and article 1 of this chapter, the county plan:

1. Shall provide for zoning, 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 plan shall not conflict with specific statutory
or valid regulatory requirements applicable to persons licensed to dispense
alcoholic beverages, but the plan may include regulation of the age and
conduct of erotic entertainers in a manner at least as restrictive as rules
adopted under title 4.

6. SHALL PROVIDE FOR REASONABLE HEIGHTS AND DIMENSIONS FOR
ACCOMMODATION OF AMATEUR RADIO STATION EMERGENCY SERVICE COMMUNICATIONS
ANTENNAE AND STRUCTURES IN GENERAL ZONING REGULATIONS.

C. In addition to the other matters that are required or authorized
under this section and article 1 of this chapter, for counties having a
population of more than one hundred twenty-five thousand persons according to
the most recent United States decennial census, the county plan shall
include, and for other counties the county plan may include:

1. Planning for land use that designates the proposed general
distribution and location and extent of uses of the land for housing,
business, industry, agriculture, recreation, education, public buildings and
grounds, open space and other categories of public and private uses of land
appropriate to the county. The land use plan shall include:

   (a) A statement of the standards of population density and building
   intensity recommended for the various land use categories covered by the
   plan.

   (b) Specific programs and policies that the county may use to promote
   compact form development activity and locations where those development
   patterns should be encouraged.

   (c) Consideration of air quality and access to incident solar energy
   for all general categories of land use.

   (d) Policies that address maintaining a broad variety of land uses
   including the range of uses existing in the county at the time the plan is
   adopted, readopted or amended.

2. Planning for circulation consisting of the general location and
extent of existing and proposed freeways, arterial and collector streets,
bicycle routes and any other modes of transportation as may be appropriate,
all correlated with the land use plan under paragraph 1 of this subsection.

3. Planning for water resources that addresses:

   (a) The known legally and physically available surface water,
groundwater and effluent supplies.

   (b) The demand for water that will result from future growth projected
in the county plan, added to existing uses.

   (c) An analysis of how the demand for water that will result from
future growth projected in the comprehensive plan will be served by the water
supplies identified in subdivision (a) of this paragraph or a plan to obtain
additional necessary water supplies.

4. Planning for energy use that:

   (a) Encourages and provides incentives for efficient use of energy.
(b) Identifies policies and practices for greater use of renewable energy.

D. In addition to the other matters that are required or authorized under this section and article 1 of this chapter, for counties having a population of more than two hundred thousand persons according to the most recent United States decennial census, the county plan shall include, and for other counties the county plan may include:

1. Planning for open space acquisition and preservation. The open space plan shall include:
   (a) A comprehensive inventory of open space areas, recreational resources and designations of access points to open space areas and resources.
   (b) An analysis of forecasted needs, policies for managing and protecting open space areas and resources and implementation strategies to acquire additional open space areas and further establish recreational resources.
   (c) Policies and implementation strategies designed to promote a regional system of integrated open space and recreational resources and a consideration of any existing regional open space plan.

2. Planning for growth areas, specifically identifying those areas, if any, that are particularly suitable for planned multimodal transportation and infrastructure expansion and improvements designed to support a planned concentration of a variety of uses, such as residential, office, commercial, tourism and industrial uses. The mixed use planning shall include policies and implementation strategies that are designed to:
   (a) Make automobile, transit and other multimodal circulation more efficient, make infrastructure expansion more economical and provide for a rational pattern of land development.
   (b) Conserve significant natural resources and open areas in the growth area and coordinate their location to similar areas outside the growth area's boundaries.
   (c) Promote the public and private construction of timely and financially sound infrastructure expansion through the use of infrastructure funding and financing planning that is coordinated with development activity.

3. An environmental planning element that contains analyses, policies and strategies to address anticipated effects, if any, of plan elements on air quality, water quality and natural resources associated with proposed development under the comprehensive plan. The policies and strategies to be developed under this element shall be designed to have countywide applicability and shall not require the production of an additional environmental impact statement or similar analysis beyond the requirements of state and federal law.

4. A cost of development element that identifies policies and strategies that the county will use to require development to pay its fair share toward the cost of additional public facility needs generated by new
development, with appropriate exceptions when in the public interest. This element shall include:

(a) A component that identifies various mechanisms that are allowed by law and that can be used to fund and finance additional public services necessary to serve the development, including bonding, special taxing districts, development fees, in lieu fees and facility construction, dedications and privatization.

(b) A component that identifies policies to ensure that any mechanisms that are adopted by the county under this element result in a beneficial use to the development, bear a reasonable relationship to the burden imposed on the county to provide additional necessary public facilities to the development and otherwise are imposed according to law.

E. The water resources element of the comprehensive plan does not require:

1. New independent hydrogeologic studies.
2. The county to be a water service provider.

F. 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 11-829. The provisions of overlay zoning shall apply retroactively to authorize overlay zoning districts and regulations adopted before April 20, 1993.

G. The policies and strategies to be developed under these elements shall be designed to have regional applicability.

H. 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.

I. 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. "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) Physicians 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.

13. "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.

14. "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.

15. "Principal business purposes" means that a commercial establishment derives fifty per cent or more of its gross income from the sale or rental of items listed in paragraph 2 of this subsection.
16. "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.
17. "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
opaquey covered.

18. "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.

Sec. 3. Section 33-1808, Arizona Revised Statutes, is amended to read:
33-1808. Flag display; political signs; caution signs; for sale
signs; political petitions; amateur radio structures
A. Notwithstanding any provision in the community documents, an
association shall not prohibit the outdoor display of any of the following:
1. The American flag or an official or replica of a flag of the United
States army, navy, air force, marine corps or coast guard by an association
member on that member's property if the American flag or military flag is
displayed in a manner consistent with the federal flag code (P.L. 94-344; 90
Stat. 810; 4 United States Code sections 4 through 10).
2. The POW/MIA flag.
3. The Arizona state flag.
4. An Arizona Indian nations flag.
B. The association shall adopt reasonable rules and regulations
regarding the placement and manner of display of the American flag, the
military flag, the POW/MIA flag, the Arizona state flag or an Arizona Indian
nations flag. The association rules may regulate the location and size of
flagpoles but shall not prohibit the installation of a flagpole.
C. Notwithstanding any provision in the community documents, an
association shall not prohibit the indoor or outdoor display of a political
sign by an association member on that member's property, except that an
association may prohibit the display of political signs earlier than
forty-five days before the day of an election and later than seven days after
an election day. An association may regulate the size and number of
political signs that may be placed on a member's property if the
association's regulation is no more restrictive than any applicable city,
town or county ordinance that regulates the size and number of political
signs on residential property. If the city, town or county in which the
property is located does not regulate the size and number of political signs
on residential property, the association shall permit at least one political
sign with the maximum dimensions of twenty-four inches by twenty-four inches
on a member's property. For the purposes of this subsection, "political
sign" means a sign that attempts to influence the outcome of an election,
including supporting or opposing the recall of a public officer or supporting
or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer.

D. Notwithstanding any provision in the community documents, an association shall not prohibit the use of cautionary signs regarding children if the signs are used and displayed as follows:

1. The signs are displayed in residential areas only.
2. The signs are removed within one hour of children ceasing to play.
3. The signs are displayed only when children are actually present within fifty feet of the sign.
4. The temporary signs are no taller than three feet in height.
5. The signs are professionally manufactured or produced.

E. Notwithstanding any provision in the community documents, an association shall not prohibit children who reside in the planned community from engaging in recreational activity on residential roadways that are under the jurisdiction of the association and on which the posted speed limit is twenty-five miles per hour or less.

F. Notwithstanding any provision in the community documents, an association shall not prohibit the indoor or outdoor display of a for sale sign and a sign rider by an association member on that member’s property, including a sign that indicates the member is offering the property for sale by owner. The size of a sign offering a property for sale shall be in conformance with the industry standard size sign, which shall not exceed eighteen by twenty-four inches, and the industry standard size sign rider, which shall not exceed six by twenty-four inches.

G. Notwithstanding any provision in the community documents, an association shall not prohibit but may reasonably regulate the circulation of political petitions, including candidate nomination petitions or petitions in support of or opposition to an initiative, referendum or recall or other political issue on property dedicated to the public within the association. A planned community is not required to comply with this subsection if the planned community restricts vehicular or pedestrian access to the planned community. Nothing in this subsection requires a planned community to make its common elements available for the circulation of political petitions to anyone who is not an owner or resident of the community.

H. Notwithstanding any provision in the community documents, an association shall provide for reasonable heights and dimensions for accommodation of amateur radio station emergency communications antennae and structures.