

REFERENCE TITLE: zoning regulations; private schools

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HB 2461

Introduced by
Representatives Leach: Allen J, Barton, Bowers, Campbell, Cobb, Finchem,
Grantham, Kern, Lawrence, Livingston, Mosley, Norgaard, Nutt, Payne,
Thorpe, Toma, Senators Allen S, Barto, Borrelli, Burges, Fann,
Farnsworth D, Gray, Griffin, Kavanagh, Pratt, Smith, Worsley, Yee

AN ACT

AMENDING SECTION 9-462.01, ARIZONA REVISED STATUTES; AMENDING TITLE 11,
CHAPTER 6, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION
11-820.01; 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
3 to read:

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

5 A. Pursuant to this article, the legislative body of any
6 municipality by ordinance may in order to conserve and promote the public
7 health, safety 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
12 of buildings and structures, the size and use of lots, yards, courts and
13 other open spaces, the percentage of a lot that may be occupied by a
14 building or structure, access to incident solar energy and the intensity
15 of land use.

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

17 5. Establish and maintain building setback lines.

18 6. Create civic districts around civic centers, public parks,
19 public buildings or public grounds and establish regulations ~~therefor~~ **FOR**
20 **THE CIVIC DISTRICTS**.

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

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

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

36 10. Establish districts of historical significance provided that:

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

43 (b) A plan for the preservation of districts of historical
44 significance shall identify districts of special historical significance,
45 state the objectives to be sought concerning the development or

1 preservation of sites, area and structures within the district, and
 2 formulate a program for public action including the provision of public
 3 facilities and the regulation of private development and demolition
 4 necessary to realize these objectives.

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

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

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

26 12. Establish procedures, methods and standards for the transfer of
 27 development rights within its jurisdiction. Any proposed transfer of
 28 development rights from the sending property or to the receiving property
 29 shall be subject to the notice and hearing requirements of section
 30 9-462.04 and shall be subject to the approval and consent of the property
 31 owners of both the sending and receiving property. Before any transfer of
 32 development rights, a municipality shall adopt an ordinance providing for:

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

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

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

1 (d) The purchase, sale, exchange or other conveyance of
2 transferable development rights ~~prior to~~ BEFORE the rights being affixed
3 to a receiving property.

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

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

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

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

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

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

25 (a) Infrequency of use.

26 (b) High degree of traffic generation.

27 (c) Requirement of large land area.

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

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

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

1 the schedule for development or take legislative action to cause the
2 property to revert to its former zoning classification.

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

15 G. A regulation or ordinance under this section may not prevent or
16 restrict agricultural composting on farmland that is five or more
17 contiguous acres and that meets the requirements of this subsection. An
18 agricultural composting operation shall notify in writing the legislative
19 body of the municipality and the nearest fire department of the location
20 of the composting operation. If the nearest fire department is located in
21 a different municipality from the agricultural composting operation, the
22 agricultural composting operation shall also notify in writing the fire
23 department of the municipality in which the operation is located.
24 Agricultural composting is subject to sections 3-112 and 49-141.
25 Agricultural composting may not be conducted within one thousand three
26 hundred twenty feet of an existing residential use, unless the operations
27 are conducted on farmland or land leased in association with farmland.
28 Any disposal of manure shall comply with section 49-247. For the purposes
29 of this subsection:

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

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

37 H. A municipality may not adopt a land use regulation or impose any
38 condition for issuance of a building or use permit or other approval that
39 violates section 9-461.16.

40 I. In accordance with article II, sections 1 and 2, Constitution of
41 Arizona, the legislative body of a municipality shall consider the
42 individual property rights and personal liberties of the residents of the
43 municipality before adopting any zoning ordinance.

1 J. A MUNICIPALITY MAY NOT:

2 1. ADOPT OR ENFORCE A LAND USE REGULATION THAT PLACES REQUIREMENTS
3 ON A PRIVATE SCHOOL THAT ARE NOT PLACED ON A DISTRICT SCHOOL OR CHARTER
4 SCHOOL.

5 2. IMPOSE ANY CONDITION FOR THE ISSUANCE OF A BUILDING OR USE
6 PERMIT OR OTHER APPROVAL ON A PRIVATE SCHOOL THAT WOULD NOT BE IMPOSED ON
7 A DISTRICT SCHOOL OR CHARTER SCHOOL IN THE SAME OR A SIMILAR LOCATION.

8 ~~J.~~ K. For the purposes of this section:

9 1. "Development rights" means the maximum development that would be
10 allowed on the sending property under any general or specific plan and
11 local zoning ordinance of a municipality in effect on the date the
12 municipality adopts an ordinance pursuant to subsection A, paragraph 12 of
13 this section respecting the permissible use, area, bulk or height of
14 improvements made to the lot or parcel. Development rights may be
15 calculated and allocated in accordance with factors including dwelling
16 units, area, floor area, floor area ratio, height limitations, traffic
17 generation or any other criteria that will quantify a value for the
18 development rights in a manner that will carry out the objectives of this
19 section.

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

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

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

35 Sec. 2. Title 11, chapter 6, article 2, Arizona Revised Statutes,
36 is amended by adding section 11-820.01, to read:

37 11-820.01. Restriction on regulation; private schools

38 A COUNTY MAY NOT:

39 1. ADOPT OR ENFORCE A LAND USE REGULATION THAT PLACES REQUIREMENTS
40 ON A PRIVATE SCHOOL THAT ARE NOT PLACED ON A DISTRICT SCHOOL OR CHARTER
41 SCHOOL.

42 2. IMPOSE ANY CONDITION FOR THE ISSUANCE OF A BUILDING OR USE
43 PERMIT OR OTHER APPROVAL ON A PRIVATE SCHOOL THAT WOULD NOT BE IMPOSED ON
44 A DISTRICT SCHOOL OR CHARTER SCHOOL IN THE SAME OR A SIMILAR LOCATION.