

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HOUSE BILL 2662

AN ACT

AMENDING SECTIONS 9-462.04 AND 9-471, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL PROCEDURES.

(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 that abuts other
20 municipalities or unincorporated areas of the county or a combination
21 thereof OF A MUNICIPALITY AND AN UNINCORPORATED AREA, copies of the notice
22 of public hearing shall be transmitted to the planning agency of the
23 governmental unit abutting such land. In proceedings involving rezoning
24 of land that is located within the territory in the vicinity of a military
25 airport or ancillary military facility as defined in section 28-8461, the
26 municipality shall send copies of the notice of public hearing by first
27 class mail to the military airport. In addition to notice by publication,
28 a municipality may give notice of the hearing in any other manner 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 that may change the zoning classification,
32 notice by first class mail shall be sent to each real property owner, as
33 shown on the last assessment of the property, of the area to be rezoned
34 and all property owners, as shown on the last assessment of the property,
35 within three hundred feet of the property to be rezoned.

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

40 (a) A ten percent or more increase or decrease in the number of
41 square feet or units that may be developed.

42 (b) A ten percent or more increase or reduction in the allowable
43 height of buildings.

44 (c) An increase or reduction in the allowable number of stories of
45 buildings.

1 (d) A ten percent or more increase or decrease in setback or open
2 space requirements.

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

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

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

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

14 (c) The municipality shall publish the changes before the first
15 hearing on such changes in a newspaper of general circulation in the
16 municipality. The changes shall be published in a "display ad" covering
17 not less than one-eighth of a full page.

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

25 7. Notwithstanding the notice requirements in paragraph 4 of this
26 subsection, the failure of any person or entity to receive notice does not
27 constitute grounds for any court to invalidate the actions of a
28 municipality for which the notice was given.

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

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

39 D. If the planning commission or hearing officer has held a public
40 hearing, the governing body may adopt the recommendations of the planning
41 commission or hearing officer without holding a second public hearing if
42 there is no objection, request for public hearing or other protest. The
43 governing body shall hold a public hearing if requested by the party
44 aggrieved or any member of the public or of the governing body, or, in any
45 case, if a public hearing has not been held by the planning commission or

1 hearing officer. THE GOVERNING BODY MAY CONSIDER THE TESTIMONY OF ANY
2 PARTY AGGRIEVED WHEN MAKING ITS DECISION. In municipalities with
3 territory in the vicinity of a military airport or ancillary military
4 facility as defined in section 28-8461, the governing body shall hold a
5 public hearing if, after notice is transmitted to the military airport
6 pursuant to subsection A of this section and before the public hearing,
7 the military airport provides comments or analysis concerning the
8 compatibility of the proposed rezoning with the high noise or accident
9 potential generated by military airport or ancillary military facility
10 operations that may have an adverse impact on public health and safety,
11 and the governing body shall consider and analyze the comments or analysis
12 before making a final determination. Notice of the time and place of the
13 hearing shall be given in the time and manner provided for the giving of
14 notice of the hearing by the planning commission as specified in
15 subsection A of this section. A municipality may give additional notice
16 of the hearing in any other manner as the municipality deems necessary or
17 desirable. FOR THE PURPOSES OF THIS SUBSECTION, "PARTY AGGRIEVED" MEANS
18 ANY PROPERTY OWNER WITHIN THE NOTIFICATION AREA PRESCRIBED BY SUBSECTION
19 A, PARAGRAPH 3 OF THIS SECTION.

20 E. A municipality may enact an ordinance authorizing county zoning
21 to continue in effect until municipal zoning is applied to land previously
22 zoned by the county and annexed by the municipality, but ~~in no event for~~
23 NOT longer than six months after the annexation.

24 F. A municipality is not required to adopt a general plan before
25 the adoption of a zoning ordinance.

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

29 H. If the owners of twenty percent or more of the property by area
30 and number of lots, tracts and condominium units within the zoning area of
31 the affected property file a protest in writing against a proposed
32 amendment, the change shall not become effective except by the favorable
33 vote of three-fourths of all members of the governing body of the
34 municipality. If any members of the governing body are unable to vote on
35 such a question because of a conflict of interest, then the required
36 number of votes for passage of the question shall be three-fourths of the
37 remaining membership of the governing body, provided that such required
38 number of votes shall ~~in no event~~ NOT be less than a majority of the full
39 membership of the legally established governing body. For the purposes of
40 this subsection, the vote shall be rounded to the nearest whole number. A
41 protest filed pursuant to this subsection shall be signed by the property
42 owners opposing the proposed amendment and filed in the office of the
43 clerk of the municipality not later than 12:00 noon one business day
44 before the date on which the governing body will vote on the proposed

1 amendment or on an earlier time and date established by the governing
2 body.

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

7 J. Notwithstanding section 19-142, subsection B, a decision by the
8 governing body involving rezoning of land that is not owned by the
9 municipality and that changes the zoning classification of such land may
10 not be enacted as an emergency measure and the change shall not be
11 effective for at least thirty days after final approval of the change in
12 classification by the governing body.

13 K. For the purposes of this section, "zoning area" means both of
14 the following:

15 1. The area within one hundred fifty feet, including all
16 rights-of-way, of the affected property subject to the proposed amendment
17 or change.

18 2. The area of the proposed amendment or change.

19 Sec. 2. Section 9-471, Arizona Revised Statutes, is amended to
20 read:

21 9-471. Annexation of territory; procedures; notice;
22 petitions; access to information; restrictions

23 A. The following procedures are required to extend and increase the
24 corporate limits of a city or town by annexation:

25 1. A city or town shall file in the office of the county recorder
26 of the county in which the annexation is proposed a blank petition
27 required by paragraph 4 of this subsection setting forth a description and
28 an accurate map of all the exterior boundaries of the territory contiguous
29 to the city or town proposed to be annexed, except that a city or town
30 shall not file an annexation petition that includes any territory for
31 which an unsuccessful annexation was attempted by the same city or town
32 until at least forty-five days after completion of the unsuccessful
33 attempt. A property owner may waive the forty-five day waiting period for
34 the owner's property that was part of the original unsuccessful
35 annexation. Notice and a copy of the filing shall be given to the clerk
36 of the board of supervisors and to the county assessor. The accurate map
37 shall include all county rights-of-way and roadways that are within or
38 contiguous to the exterior boundaries of the area of the proposed
39 annexation. If state land, other than state land utilized as state
40 rights-of-way or land held by the state by tax deed, is included in the
41 territory, written approval of the state land commissioner and the
42 selection board established by section 37-202 shall also be filed. The
43 description shall identify the entity, if any, that will be responsible
44 for maintaining the existing rights-of-way and roadways that are within or
45 contiguous to the exterior boundaries of the area of the proposed

1 annexation. For the purposes of this paragraph, "unsuccessful annexation"
2 means an annexation attempt that was withdrawn or that was not completed
3 pursuant to this section.

4 2. Signatures on petitions filed for annexation shall not be
5 obtained for a waiting period of thirty days after filing the blank
6 petition.

7 3. After filing the blank petition pursuant to paragraph 1 of this
8 subsection, the governing body of the city or town shall hold a public
9 hearing within the last ten days of the thirty-day waiting period to
10 discuss the annexation proposal. The public hearing shall be held in
11 accordance with title 38, chapter 3, article 3.1, except that,
12 notwithstanding section 38-431.02, subsections C and D, the following
13 notices of the public hearing to discuss the annexation proposal shall be
14 given at least six days before the hearing:

15 (a) Publication at least once in a newspaper of general
16 circulation, which is published or circulated in the city or town and the
17 territory proposed to be annexed, at least fifteen days before the end of
18 the waiting period.

19 (b) Posting in at least three conspicuous public places in the
20 territory proposed to be annexed.

21 (c) Notice by first class mail sent to the chairman of the board of
22 supervisors of the county in which the territory proposed to be annexed is
23 located.

24 (d) Notice by first class mail with an accurate map of the
25 territory proposed to be annexed sent to each owner of the real and
26 personal property as shown on the statement furnished pursuant to
27 subsection G of this section that would be subject to taxation by the city
28 or town in the event of annexation in the territory proposed to be
29 annexed. For the purposes of this subdivision, "real and personal
30 property" includes mobile, modular and manufactured homes and trailers
31 only if the owner also owns the underlying real property.

32 4. Within one year after the last day of the thirty-day waiting
33 period a petition in writing signed by the owners of one-half or more in
34 value of the real and personal property and more than one-half of the
35 persons owning real and personal property that would be subject to
36 taxation by the city or town in the event of annexation, as shown by the
37 last assessment of the property, may be circulated and filed in the office
38 of the county recorder. For the purposes of this paragraph, "real and
39 personal property" includes mobile, modular and manufactured homes and
40 trailers only if the owner also owns the underlying real property.

41 5. Alterations increasing or reducing the territory sought to be
42 annexed shall not be made after a petition has been signed by a property
43 owner.

44 6. The petitioner shall determine and submit a sworn affidavit
45 verifying that no part of the territory for which the filing is made is

1 already subject to an earlier filing for annexation. The county recorder
2 shall not accept a filing for annexation without the sworn affidavit.

3 B. All information contained in the filings, the notices, the
4 petition, the tax and property rolls and other matters regarding a
5 proposed or final annexation shall be made available by the appropriate
6 official for public inspection during regular office hours.

7 C. Any city or town, the attorney general, the county attorney or
8 any other interested party **WITHIN THE TERRITORY TO BE ANNEXED** may on
9 verified petition move to question the validity of the annexation for
10 failure to comply with this section. The petition shall set forth the
11 manner in which it is alleged the annexation procedure was not in
12 compliance with this section and shall be filed within thirty days after
13 adoption of the ordinance annexing the territory by the governing body of
14 the city or town and not otherwise. The burden of proof shall be on the
15 petitioner to prove the material allegations of the verified petition. An
16 action shall not be brought to question the validity of an annexation
17 ordinance unless brought within the time and for the reasons provided in
18 this subsection. All hearings provided by this section and all appeals
19 therefrom shall be preferred and heard and determined in preference to all
20 other civil matters, except election actions. In the event more than one
21 petition questioning the validity of an annexation ordinance is filed, all
22 such petitions shall be consolidated for hearing. If two or more cities
23 or towns show the court that they have demonstrated an active interest in
24 annexing any or all of the area proposed for annexation, the court shall
25 consider any oral or written agreements or understandings between or among
26 the cities and towns in making its determination pursuant to this
27 subsection.

28 D. The annexation shall become final after the expiration of thirty
29 days after the adoption of the ordinance annexing the territory by the
30 city or town governing body, provided the annexation ordinance has been
31 finally adopted in accordance with procedures established by statute,
32 charter provisions or local ordinances, whichever is applicable, subject
33 to the review of the court to determine the validity of the annexation
34 ordinance if petitions in objection have been filed. After adoption of
35 the annexation ordinance, the clerk of the city or town shall provide a
36 copy of the adopted annexation ordinance to the clerk of the board of
37 supervisors of each county that has jurisdiction over the annexed area
38 within sixty days after the annexation becomes final.

39 E. For the purpose of determining the sufficiency of the percentage
40 of the value of property under this section, the values of property shall
41 be determined as follows:

42 1. In the case of property assessed by the county assessor, values
43 shall be the same as shown by the last assessment of the property.

1 2. In the case of property valued by the department of revenue,
2 values shall be appraised by the department in the manner provided by law
3 for municipal assessment purposes.

4 F. For the purpose of determining the sufficiency of the percentage
5 of persons owning property under this section, the number of persons
6 owning property shall be determined as follows:

7 1. In the case of property assessed by the county assessor, the
8 number of persons owning property shall be as shown on the last assessment
9 of the property.

10 2. In the case of property valued by the department of revenue, the
11 number of persons owning property shall be as shown on the last valuation
12 of the property.

13 3. If an undivided parcel of property is owned by multiple owners,
14 those owners ~~shall be~~ ARE deemed as one owner for the purposes of this
15 section.

16 4. If a person owns multiple parcels of property, that owner ~~shall~~
17 ~~be~~ IS deemed as one owner for the purposes of this section.

18 G. The county assessor and the department of revenue, respectively,
19 shall furnish to the city or town proposing an annexation, within thirty
20 days after a request, a statement in writing showing the owner, the
21 address of each owner and the appraisal and assessment of all such
22 property.

23 H. Territory is not contiguous for the purposes of subsection A,
24 paragraph 1 of this section unless:

25 1. It adjoins the exterior boundary of the annexing city or town
26 for at least three hundred feet.

27 2. It is, at all points, at least two hundred feet in width,
28 excluding rights-of-way and roadways.

29 3. The distance from the existing boundary of the annexing city or
30 town where it adjoins the annexed territory to the furthest point of the
31 annexed territory from that boundary is ~~no~~ NOT more than twice the maximum
32 width of the annexed territory.

33 I. A city or town shall not annex territory if as a result of that
34 annexation unincorporated territory is completely surrounded by the
35 annexing city or town.

36 J. Notwithstanding any provisions of this article to the contrary,
37 any town incorporated before 1950 that had a population of less than two
38 thousand persons by the 1970 census and that is bordered on at least three
39 sides by Indian lands may annex by ordinance territory owned by the state
40 within the same county for a new townsite that is not contiguous to the
41 existing boundaries of the town.

42 K. Subsections H and I of this section do not apply to territory
43 that is surrounded by the same city or town or that is bordered by the
44 same city or town on at least three sides.

1 L. A city or town annexing an area shall adopt zoning
2 classifications that permit densities and uses ~~to~~ NOT greater than those
3 permitted by the county immediately before annexation. Subsequent changes
4 in zoning of the annexed territory shall be made according to existing
5 procedures established by the city or town for the rezoning of land.

6 M. The annexation of territory within six miles of territory
7 included in a pending incorporation petition filed with the county
8 recorder pursuant to section 9-101.01, subsection D shall not cause an
9 urbanized area to exist pursuant to section 9-101.01 that did not exist
10 before the annexation.

11 N. As an alternative to the procedures established in this section,
12 a county right-of-way or roadway may be transferred to an adjacent city or
13 town by mutual consent of the governing bodies of the county and city or
14 town if the property transferred is adjacent to the receiving city or town
15 and if the city or town and county each approve the proposed transfer as a
16 published agenda item at a regular public meeting of their governing
17 bodies. A transfer of property made pursuant to this subsection shall be
18 treated by the receiving city or town as if the transferred property was
19 newly annexed territory.

20 O. On or before the date the governing body adopts the ordinance
21 annexing territory, the governing body shall have approved a plan, policy
22 or procedure to provide the annexed territory with appropriate levels of
23 infrastructure and services to serve anticipated new development within
24 ten years after the date when the annexation becomes final pursuant to
25 subsection D of this section.

26 P. If a property owner prevails in any action to challenge the
27 annexation of the property owner's property, the court shall allow the
28 property owner reasonable attorney fees and costs relating to the action
29 from the annexing municipality.

30 Q. A city or town may annex territory that is a ~~county-owned~~
31 COUNTY-OWNED park or a park operated on public lands by a county as part
32 of a management agreement if otherwise agreed to by the board of
33 supervisors. If the board of supervisors does not agree to the
34 annexation, the ~~county-owned~~ COUNTY-OWNED park or park operated on public
35 lands by a county as part of a management agreement shall be excluded from
36 the annexation area, notwithstanding subsections H and I of this section.
37 A ~~county-owned~~ COUNTY-OWNED park or park operated on public lands by a
38 county as part of a management agreement that is excluded from the
39 annexation area pursuant to this subsection may subsequently be annexed
40 with the permission of the board of supervisors notwithstanding any other
41 provision of this section. For the purposes of this subsection, "public
42 lands":

- 43 1. Has the same meaning prescribed in section 37-901.
- 44 2. Does not include lands owned by a flood control district.

1 R. Notwithstanding subsection H of this section, territory is
2 considered contiguous for the purposes of subsection A, paragraph 1 of
3 this section if all of the real property in the territory is owned by one
4 person, the city or town and the owner of the real property agree to the
5 annexation and the territory adjoins the exterior boundary of the annexing
6 city or town for at least three hundred feet.