

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 111
SENATE BILL 1235

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
45 regulation of private development and demolition necessary to realize these
46 objectives.

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

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

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

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

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

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

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

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

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

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

45 (g) The right of a municipality at its discretion to enter into an
46 intergovernmental agreement with another municipality or a county for the

1 transfer of development rights between jurisdictions. The transfer shall
2 comply with this paragraph, except that if the sending property is located in
3 an unincorporated area of a county, the approval of the development rights to
4 be sent to a municipality shall comply with section 11-817.

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

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

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

- 16 (a) Infrequency of use.
- 17 (b) High degree of traffic generation.
- 18 (c) Requirement of large land area.

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

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

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

38 F. All zoning and rezoning ordinances or regulations adopted under
39 this article shall be consistent with and conform to the adopted general plan
40 of the municipality, if any, as adopted under article 6 of this chapter. In
41 the case of uncertainty in construing or applying the conformity of any part
42 of a proposed rezoning ordinance to the adopted general plan of the
43 municipality, the ordinance shall be construed in a manner that will further
44 the implementation of, and not be contrary to, the goals, policies and
45 applicable elements of the general plan. A rezoning ordinance conforms with
46 the land use element of the general plan if it proposes land uses, densities

1 or intensities within the range of identified uses, densities and intensities
2 of the land use element of the general plan.

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

18 1. "Agricultural composting" means the controlled biological
19 decomposition of organic solid waste under in-vessel anaerobic or aerobic
20 conditions where all or part of the materials are generated on the farmland
21 or will be used on the farmland associated with the agricultural composting
22 operation.

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

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

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

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

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

43 2. "Receiving property" means a lot or parcel within which development
44 rights are increased pursuant to a transfer of development rights. Receiving
45 property shall be appropriate and suitable for development and shall be
46 sufficient to accommodate the transferable development rights of the sending

1 property without substantial adverse environmental, economic or social impact
2 to the receiving property or to neighboring property.

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

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

11 Sec. 2. Section 11-811, Arizona Revised Statutes, is amended to read:
12 11-811. Zoning ordinance; zoning districts; definitions

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

20 1. Shall show the zoning districts designated as appropriate for
21 various classes of residential, business and industrial uses and shall
22 provide for the establishment of setback lines and other plans providing for
23 adequate light, air and parking facilities and for expediting traffic within
24 the districts.

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

27 3. Shall consider access to incident solar energy.

28 4. May provide for retirement community zoning districts.

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

43 6. Shall designate and zone appropriate areas of reasonable size in
44 which there may be established with reasonable permanency canneries,
45 fertilizer plants, refineries, commercial feedlots, meat packing plants,
46 tallow works and other like businesses. A dairy operation, including areas

1 designated for the raising of replacement heifers or bulls owned by the same
2 dairy operation, is not subject to this paragraph, and is a general
3 agricultural purpose under subsection ~~C~~ D, paragraph 2 of this section and
4 section 11-812, subsection A, paragraph 2. A replacement heifer or bull
5 raising operation of a dairy that is not on contiguous property of the dairy
6 is subject to this paragraph unless the operation begins within one-quarter
7 mile of the dairy.

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

17 C. IN ACCORDANCE WITH ARTICLE II, SECTIONS 1 AND 2, CONSTITUTION OF
18 ARIZONA, THE BOARD SHALL CONSIDER THE INDIVIDUAL PROPERTY RIGHTS AND PERSONAL
19 LIBERTIES OF THE RESIDENTS OF THE COUNTY BEFORE ADOPTING ANY ZONING
20 ORDINANCE.

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

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

24 2. The regulation or restriction of the use or occupation of land or
25 improvements for railroad, mining, metallurgical, grazing or general
26 agricultural purposes, if the tract concerned is five or more contiguous
27 commercial acres. For the purposes of this paragraph, general agricultural
28 purposes do not include the cultivation of cannabis as defined in section
29 13-3401 or marijuana as defined in section 13-3401 or 36-2801.

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

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

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

40 (a) Books, magazines, periodicals or other printed matter,
41 photographs, films, motion pictures, videocassettes or reproductions or
42 slides or other visual representations that depict or describe specific
43 sexual activities or specific anatomical areas.

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

1 3. "Adult live entertainment establishment" means an establishment
2 that features either:

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

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

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

11 5. "Adult oriented business" means adult arcades, adult bookstores or
12 video stores, cabarets, adult live entertainment establishments, adult motion
13 picture theaters, adult theaters, massage establishments that offer adult
14 service or nude model studios.

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

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

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

25 9. "Adult theater" means a theater, concert hall, auditorium or
26 similar commercial establishment that predominantly features persons who
27 appear in a state of nudity or who engage in live performances that are
28 characterized by the exposure of specific anatomical areas or specific sexual
29 activities.

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

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

34 12. "Massage establishment" means an establishment in which a person,
35 firm, association or corporation engages in or permits massage activities,
36 including any method of pressure on, friction against, stroking, kneading,
37 rubbing, tapping, pounding, vibrating or stimulating of external soft parts
38 of the body with the hands or with the aid of any mechanical apparatus or
39 electrical apparatus or appliance. This paragraph does not apply to:

40 (a) Persons who are licensed pursuant to title 32, chapter 7, 8, 13,
41 14 or 17.

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

45 (c) Registered nurse practitioners who are licensed pursuant to title
46 32, chapter 15.

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

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

5 13. "Nude model studio" means a place in which a person who appears in
6 a state of nudity or who displays specific anatomical areas is observed,
7 sketched, drawn, painted, sculptured, photographed or otherwise depicted by
8 other persons who pay money or other consideration. Nude model studio does
9 not include a proprietary school that is licensed by this state, a college,
10 community college or university that is supported entirely or in part by
11 taxation, a private college or university that maintains and operates
12 educational programs in which credits are transferable to a college,
13 community college or university that is supported entirely or in part by
14 taxation or a structure to which the following apply:

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

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

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

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

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

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

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

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

35 17. "Specific anatomical areas" means any of the following:

36 (a) A human anus, genitals, the pubic region or a female breast below
37 a point immediately above the top of the areola that is less than completely
38 and opaquely covered.

39 (b) Male genitals in a discernibly turgid state even if completely and
40 opaquely covered.

41 18. "Specific sexual activities" means any of the following:

42 (a) Human genitals in a state of sexual stimulation or arousal.

43 (b) Sex acts, normal or perverted, actual or simulated, including acts
44 of human masturbation, sexual intercourse, oral copulation or sodomy.

45 (c) Fondling or other erotic touching of the human genitals, pubic
46 region, buttocks, anus or female breast.

1 (d) Excretory functions as part of or in connection with any of the
2 activities under subdivision (a), (b) or (c) of this paragraph.

APPROVED BY THE GOVERNOR MAY 6, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 6, 2016.