

House Engrossed
municipal general plan; adoption

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2044

AN ACT

AMENDING SECTION 9-461.06, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL PLANNING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 9-461.06, Arizona Revised Statutes, is amended
3 to read:

4 9-461.06. Adoption and amendment of general plan; expiration
5 and readoption

6 A. In municipalities that have territory in a high noise or
7 accident potential zone as defined in section 28-8461, the legislature
8 finds that in general plans and amendments to general plans land use
9 compatibility with the continued operation of a military airport or
10 ancillary military facility as defined in section 28-8461 is a matter of
11 statewide concern.

12 B. The general plan and any amendment to such plan shall be adopted
13 or readopted in the manner provided in this article.

14 C. The governing body shall:

15 1. Adopt written procedures to provide effective, early and
16 continuous public participation in the development and major amendment of
17 general plans from all geographic, ethnic and economic areas of the
18 municipality. The procedures shall provide for:

19 (a) The broad dissemination of proposals and alternatives.

20 (b) The opportunity for written comments.

21 (c) Public hearings after effective notice.

22 (d) Open discussions, communications programs and information
23 services.

24 (e) Consideration of public comments.

25 2. Consult with, advise and provide an opportunity for official
26 comment by public officials and agencies, the county, school districts,
27 associations of governments, public land management agencies, the military
28 airport if the municipality has territory in the vicinity of a military
29 airport or ancillary military facility as defined in section 28-8461,
30 other appropriate government jurisdictions, public utility companies,
31 civic, educational, professional and other organizations, property owners
32 and citizens generally to secure maximum coordination of plans and to
33 indicate properly located sites for all public purposes on the general
34 plan.

35 D. At least sixty days before the general plan or an element or
36 major amendment of a general plan is noticed pursuant to subsection E of
37 this section, the planning agency shall transmit the proposal to the
38 planning commission, if any, and the governing body and shall submit a
39 copy for review and further comment to:

40 1. The planning agency of the county in which the municipality is
41 located.

42 2. Each county or municipality that is contiguous to the corporate
43 limits of the municipality or its area of extraterritorial jurisdiction.

44 3. The regional planning agency within which the municipality is
45 located.

1 4. The Arizona commerce authority or any other state agency that is
2 subsequently designated as the general planning agency for this state.

3 5. The department of water resources for review and comment on the
4 water resources element, if a water resources element is required.

5 6. If the general plan or an element or amendment of the general
6 plan is applicable to territory in the vicinity of a military airport or
7 ancillary military facility as defined in section 28-8461, the military
8 airport.

9 7. If the general plan or an element or major amendment of the
10 general plan is applicable to property in the high noise or accident
11 potential zone of a military airport or ancillary military facility as
12 defined in section 28-8461, the attorney general. For the purposes of
13 this paragraph, "major amendment" means a substantial alteration of the
14 municipality's land use mixture or balance as established in the
15 municipality's existing general plan land use element.

16 8. Any person or entity that requests in writing to receive a
17 review copy of the proposal.

18 E. If the municipality has a planning commission, after considering
19 any recommendations from the review required under subsection D of this
20 section, the planning commission shall hold at least one public hearing
21 before approving a general plan or any amendment to such plan. When the
22 general plan or any major amendment is being adopted, planning commissions
23 in municipalities with populations of more than twenty-five thousand
24 persons shall hold two or more public hearings at different locations
25 within the municipality to promote citizen participation. Notice of the
26 time and place of a hearing and availability of studies and summaries
27 related to the hearing shall be given at least fifteen and not more than
28 thirty calendar days before the hearing by:

29 1. Publication at least once in a newspaper of general circulation
30 published or circulated in the municipality, or if there is none, the
31 notice shall be posted in at least ten public places in the municipality.

32 2. Such other manner in addition to publication as the municipality
33 may deem necessary or desirable.

34 F. Action by the planning commission on the general plan or any
35 amendment to the plan shall be transmitted to the governing body of the
36 municipality.

37 G. Before adopting the general plan, or any amendment to it, the
38 governing body shall hold at least one public hearing. Notice of the time
39 and place of the hearing shall be given in the time and manner provided
40 for the giving of notice of the hearing by the planning commission as
41 specified in subsection E of this section.

42 H. The adoption or readoption of the general plan or any amendment
43 to such plan shall be by resolution of the governing body of the
44 municipality, after notice as provided for in subsection E of this
45 section. The adoption or readoption of or a major amendment to the
46 general plan shall be approved by affirmative vote of at least two-thirds

1 of the members of the governing body of the municipality. All major
2 amendments to the general plan proposed for adoption by the governing body
3 of a municipality shall be presented at a public hearing HELD within
4 twelve months ~~of when~~ AFTER the proposal is made. The general plan, or
5 any amendment to the plan, shall be endorsed in the manner provided by the
6 governing body to show that it has been adopted by the governing body. If
7 the municipality includes property in the high noise or accident potential
8 zone of a military airport or ancillary military facility as defined in
9 section 28-8461, the governing body of the municipality shall send notice
10 of the approval, adoption or readoption of the general plan or major
11 amendment to the general plan to the attorney general by certified mail,
12 return receipt requested, within three business days after the approval,
13 adoption or readoption. If the attorney general determines the approval,
14 adoption or readoption of the general plan or major amendment to the
15 general plan is not in compliance with section 28-8481, subsection J, the
16 attorney general shall notify the municipality by certified mail, return
17 receipt requested, of the determination of noncompliance. The
18 municipality shall receive the notice from the attorney general within
19 twenty-five days after the notice from the municipality to the attorney
20 general is mailed pursuant to this subsection. The effective date of any
21 approval, adoption or readoption of, or major amendment to, the general
22 plan shall be thirty days after the governing body's receipt of the
23 attorney general's determination of noncompliance. Within thirty days
24 after the receipt of a determination of noncompliance by the attorney
25 general as prescribed by this section, the governing body of the
26 municipality shall reconsider any approval, adoption or readoption of, or
27 major amendment to, the general plan that impacts property in the high
28 noise or accident potential zone of a military airport or ancillary
29 military facility as defined in section 28-8461. If the governing body
30 reaffirms a prior action subject to an attorney general's determination of
31 noncompliance pursuant to this section, the attorney general may institute
32 a civil action pursuant to section 28-8481, subsection L. If the
33 governing body timely sends notice pursuant to this subsection and the
34 attorney general fails to timely notify the governing body of a
35 determination of noncompliance, the general plan or major amendment to the
36 general plan shall be deemed to comply with section 28-8481,
37 subsection J. If the motion to adopt or readopt a general plan or an
38 amendment to the general plan fails to pass, the governing body may
39 reconsider the motion in any manner allowed by the governing body's rules
40 of procedure, but any subsequent motion for the adoption or readoption of
41 the general plan or a major amendment to the general plan must be approved
42 by an affirmative vote of at least two-thirds of the members of the
43 governing body. For the purposes of this subsection, "major amendment"
44 means a substantial alteration of the municipality's land use mixture or
45 balance as established in the municipality's existing general plan land
46 use element. The municipality's general plan shall define the criteria to

1 determine if a proposed amendment to the general plan effects a
2 substantial alteration of the municipality's land use mixture or balance
3 as established in the municipality's existing general plan land use
4 element.

5 I. If the municipality does not have a planning commission, the
6 only procedural steps required for the adoption of the general plan, or
7 any amendment to such plan, shall be those provided in this article for
8 action by the governing body.

9 J. A copy of the adopted general plan of a municipality shall be
10 sent to the planning agency of the county within which the municipality is
11 located, and such plan or any portion of the plan may be adopted as a part
12 of the county general plan.

13 K. A general plan, with any amendments, is effective for up to ten
14 years after the date the plan was initially adopted and ratified pursuant
15 to subsection M of this section, or until the plan is readopted pursuant
16 to this subsection and ratified pursuant to subsection M of this section
17 or a new plan is adopted pursuant to this subsection and ratified pursuant
18 to subsection M of this section, and becomes effective. On or before the
19 tenth anniversary of the plan's most recent adoption, the governing body
20 of the municipality shall either readopt the existing plan for an
21 additional term of up to ten years or shall adopt a new general plan as
22 provided by this article.

23 L. Except for general plans that are required to be submitted to
24 the voters for ratification pursuant to subsection M of this section, the
25 adoption or readoption of a general plan, and any amendment to a general
26 plan, shall not be enacted as an emergency measure and is subject to
27 referendum as provided by article IV, part 1, section 1, subsection (8),
28 Constitution of Arizona, and title 19, chapter 1, article 4.

29 M. The governing body of a city or town ~~having~~ WITH a population of
30 more than two thousand five hundred persons but less than ten thousand
31 persons and whose population growth rate exceeded an average of two
32 percent per year for the ten-year period before the most recent United
33 States decennial census, and any city or town ~~having~~ WITH a population of
34 ten thousand or more persons, shall submit each new general plan adopted
35 pursuant to subsection K of this section to the voters for ratification at
36 the next regularly scheduled municipal election or at a special election
37 scheduled at least one hundred ~~twenty~~ EIGHTY days after the governing body
38 adopted the plan pursuant to section 16-204. IN A CITY OR TOWN WITH A
39 POPULATION OF MORE THAN TWO THOUSAND FIVE HUNDRED PERSONS BUT LESS THAN
40 TEN THOUSAND PERSONS, WHOSE POPULATION GROWTH RATE DID NOT EXCEED AN
41 AVERAGE OF TWO PERCENT PER YEAR FOR THE TEN-YEAR PERIOD BEFORE THE MOST
42 RECENT UNITED STATES DECENNIAL CENSUS AND WHOSE CURRENT GENERAL PLAN WAS
43 APPROVED BY THE VOTERS, THE GOVERNING BODY MAY SUBMIT A NEW GENERAL PLAN
44 ADOPTED PURSUANT TO SUBSECTION K OF THIS SECTION TO THE VOTERS FOR
45 RATIFICATION AT THE NEXT REGULARLY SCHEDULED MUNICIPAL ELECTION OR AT A
46 SPECIAL ELECTION SCHEDULED AT LEAST ONE HUNDRED EIGHTY DAYS AFTER THE

1 GOVERNING BODY ADOPTED THE PLAN PURSUANT TO SECTION 16-204. The governing
2 body shall include a general description of the plan and its elements in
3 the municipal election pamphlet and shall provide public copies of the
4 plan in at least two locations that are easily accessible to the public
5 and may include posting on the municipality's official internet website.
6 If a majority of the qualified electors voting on the proposition approves
7 the new plan, it shall become effective as provided by law. If a majority
8 of the qualified electors voting on the proposition fails to approve the
9 new plan, the current plan remains in effect until a new plan is approved
10 by the voters pursuant to this subsection. The governing body shall
11 either resubmit the proposed new plan, or revise the new plan as provided
12 by this section, for subsequent submission to the voters at the next
13 regularly scheduled municipal election or at a special election scheduled
14 at least one hundred ~~twenty~~ EIGHTY days after the governing body readopted
15 the new or revised new plan. All subsequent adoptions and submissions of
16 the new plan or revised plans must comply with the procedures prescribed
17 by this section until the plan is ratified.

18 N. In applying an open space element or a growth element of a
19 general plan, a municipality shall not designate private land or state
20 trust land as open space, recreation, conservation or agriculture unless
21 the municipality receives the written consent of the landowner or provides
22 an alternative, economically viable designation in the general plan or
23 zoning ordinance, allowing at least one residential dwelling per acre. If
24 the landowner is the prevailing party in any action brought to enforce
25 this subsection, a court shall award fees and other expenses to the
26 landowner. A municipality may designate land as open space without
27 complying with the requirements of this subsection if the land was zoned
28 as open space and used as a golf course pursuant to a zoning ordinance
29 adopted pursuant to article 6.1 of this chapter before May 1, 2000 and the
30 designation does not impose additional conditions, limitations or
31 restrictions on the golf course, unless the land is state trust land that
32 was not planned and zoned as open space pursuant to title 37, chapter 2,
33 article 5.1.

34 O. A person, after having participated in the public hearing
35 pursuant to subsection H of this section, may file a petition for special
36 action in superior court to review the governing body's decision that does
37 not comply with the mandatory requirement prescribed in section 9-461.05,
38 subsection C, paragraph 1, subdivision (g) within thirty days after the
39 governing body has rendered its decision. The court may affirm, reverse
40 or remand to the governing body, in whole or in part, the decision
41 reviewed for further action that is necessary to comply with the mandatory
42 requirements prescribed in section 9-461.05, subsection C, paragraph 1,
43 subdivision (g).