

REFERENCE TITLE: local planning; residential housing; repeal

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

## **HB 2390**

Introduced by  
Representatives Hernandez M: Aguilar, Cano, Contreras L, De Los Santos,  
Gutierrez, Ortiz, Quiñonez, Schwiebert, Stahl Hamilton, Senator Marsh

### **AN ACT**

REPEALING SECTION 9-461.16, ARIZONA REVISED STATUTES; AMENDING SECTION 9-462.01, ARIZONA REVISED STATUTES; REPEALING SECTION 11-819, ARIZONA REVISED STATUTES; REPEALING LAWS 2015, CHAPTER 140, SECTION 4; RELATING TO LOCAL PLANNING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section 9-461.16, Arizona Revised Statutes, is repealed.

4 Sec. 2. Section 9-462.01, Arizona Revised Statutes, is amended to  
5 read:

6 9-462.01. Zoning regulations; public hearing; definitions

7 A. Pursuant to this article, the legislative body of any  
8 municipality by ordinance, in order to conserve and promote the public  
9 health, safety and general welfare, may:

10 1. Regulate the use of buildings, structures and land as between  
11 agriculture, residence, industry, business and other purposes.

12 2. Regulate signs and billboards.

13 3. Regulate the location, height, bulk, number of stories and size  
14 of buildings and structures, the size and use of lots, yards, courts and  
15 other open spaces, the percentage of a lot that may be occupied by a  
16 building or structure, access to incident solar energy and the intensity  
17 of land use.

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

19 5. Establish and maintain building setback lines.

20 6. Create civic districts around civic centers, public parks,  
21 public buildings or public grounds and establish regulations for the civic  
22 districts.

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

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

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

38 10. Establish districts of historical significance provided that:

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

1 (b) A plan for the preservation of districts of historical  
2 significance shall identify districts of special historical significance,  
3 state the objectives to be sought concerning the development or  
4 preservation of sites, area and structures within the district, and  
5 formulate a program for public action, including providing public  
6 facilities and regulating private development and demolition necessary to  
7 realize these objectives.

8 (c) The ordinance establishing districts of historical significance  
9 shall set forth standards necessary to preserve the historical character  
10 of the area so designated.

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

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

29 12. Establish procedures, methods and standards for the transfer of  
30 development rights within its jurisdiction. Any proposed transfer of  
31 development rights from the sending property or to the receiving property  
32 shall be subject to the notice and hearing requirements of section  
33 9-462.04 and shall be subject to the approval and consent of the property  
34 owners of both the sending and receiving property. Before any transfer of  
35 development rights, a municipality shall adopt an ordinance providing for:

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

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

1 (c) The severance of transferable development rights from the  
2 sending property and the delayed transfer of development rights to a  
3 receiving property.

4 (d) The purchase, sale, exchange or other conveyance of  
5 transferable development rights before the rights being affixed to a  
6 receiving property.

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

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

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

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

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

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

- 28 (a) Infrequency of use.
- 29 (b) High degree of traffic generation.
- 30 (c) Requirement of large land area.

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

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

41 E. The legislative body may approve a change of zone conditioned on  
42 a schedule for development of the specific use or uses for which rezoning  
43 is requested. If, at the expiration of this period, the property has not  
44 been improved for the use for which it was conditionally approved, the  
45 legislative body, after notification by certified mail to the owner and

1 applicant who requested the rezoning, shall schedule a public hearing to  
2 take administrative action to extend, remove or determine compliance with  
3 the schedule for development or take legislative action to cause the  
4 property to revert to its former zoning classification.

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

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

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

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

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

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

1           ~~I.~~ I. Before adopting any zoning ordinance or zoning ordinance  
2 text amendment of general applicability, the legislative body of a  
3 municipality shall consider the probable impact of the proposed zoning  
4 ordinance or text amendment on the cost to construct housing for sale or  
5 rent.

6           ~~K.~~ J. A municipality may not adopt or enforce a land use  
7 regulation that requires the property on which a nongovernmental primary  
8 or secondary school operates to be larger than one acre.

9           ~~L.~~ K. For the purposes of this section:

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

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

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

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

36           Sec. 3. Repeal  
37 Section 11-819, Arizona Revised Statutes, is repealed.

38           Sec. 4. Repeal  
39 Laws 2015, chapter 140, section 4 is repealed.