Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 275

# HOUSE BILL 2442

AN ACT

AMENDING SECTIONS 9-462.01 AND 11-830, ARIZONA REVISED STATUTES; RELATING TO AGRICULTURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 9-462.01, Arizona Revised Statutes, is amended to read:

9-462.01. Zoning regulations; public hearing; definitions

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

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

2. Regulate signs and billboards.

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

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

5. Establish and maintain building setback lines.

6. Create civic districts around civic centers, public parks, public buildings or public grounds and establish regulations therefor.

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

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

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

10. Establish districts of historical significance provided that:

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

(b) A plan for the preservation of districts of historical significance shall identify districts of special historical significance, state the objectives to be sought concerning the development or preservation of sites, area and structures within the district, and formulate a program for public action including the provision of public facilities and the

1 regulation of private development and demolition necessary to realize these
2 objectives.
3 (c) The ordinance establishing districts of historical significance
4 shall set forth standards necessary to preserve the historical character of
5 the area so designated.
6 (d) The ordinances may designate or authorize any committee,
7 commission, department or person to designate structures or sites of special
8 historical significance in accordance with criteria contained in the
9 ordinance, and no designation shall be made except after a public hearing
10 upon notice of the owners of record of the property so designated. The
11 ordinances may require that special permission be obtained for any
12 development respecting the structures or sites.
13 11. Establish age specific community zoning districts in which
14 residency is restricted to a head of a household or spouse who must be of a
15 specific age or older and in which minors are prohibited from living in the
16 home. Age specific community zoning districts shall not be overlayed over
17 property without the permission of all owners of property included as part
18 of the district unless all of the property in the district has been
19 developed, advertised and sold or rented under specific age
20 restrictions. The establishment of age specific community zoning districts
21 is subject to all of the public notice requirements and other procedures
22 prescribed by this article.
23 12. Establish procedures, methods and standards for the transfer of
24 development rights within its jurisdiction. Any proposed transfer of
25 development rights from the sending property or to the receiving property
26 shall be subject to the notice and hearing requirements of section 9-462.04
27 and shall be subject to the approval and consent of the property owners of
28 both the sending and receiving property. Prior to any transfer of
29 development rights, a municipality shall adopt an ordinance providing for:
30 (a) The issuance and recordation of the instruments necessary to sever
31 development rights from the sending property and to affix development rights
32 to the receiving property. These instruments shall be executed by the
33 affected property owners and lienholders.
34 (b) The preservation of the character of the sending property and
35 assurance that the prohibitions against the use and development of the
36 sending property shall bind the landowner and every successor in interest to
37 the landowner.
38 (c) The severance of transferable development rights from the sending
39 property and the delayed transfer of development rights to a receiving
40 property.
41 (d) The purchase, sale, exchange or other conveyance of transferable
42 development rights prior to the rights being affixed to a receiving property.
43 (e) A system for monitoring the severance, ownership, assignment and
44 transfer of transferable development rights.

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

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

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

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

(a) Infrequency of use.

(b) High degree of traffic generation.

(c) Requirement of large land area.

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

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

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

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

1 densities or intensities within the range of identified uses, densities and
2 intensities of the land use element of the general plan.
3 G. NO REGULATION OR ORDINANCE UNDER THIS SECTION MAY 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 AND THE NEAREST FIRE DEPARTMENT OF THE LOCATION OF THE COMPOSTING
8 OPERATION. IF THE NEAREST FIRE DEPARTMENT IS LOCATED IN A DIFFERENT CITY OR
9 TOWN FROM THE AGRICULTURAL COMPOSTING OPERATION, THE AGRICULTURAL COMPOSTING
10 OPERATION SHALL ALSO NOTIFY IN WRITING THE FIRE DEPARTMENT OF THE CITY OR
11 TOWN IN WHICH THE OPERATION IS LOCATED. AGRICULTURAL COMPOSTING IS SUBJECT
12 TO THE PROVISIONS OF SECTIONS 3-112 AND 49-141. AGRICULTURAL COMPOSTING MAY
13 NOT BE CONDUCTED WITHIN ONE THOUSAND THREE HUNDRED TWENTY FEET OF AN EXISTING
14 RESIDENTIAL USE, UNLESS THE OPERATIONS ARE CONDUCTED ON FARMLAND OR LAND
15 LEASED IN ASSOCIATION WITH FARMLAND. ANY DISPOSAL OF MANURE SHALL COMPLY
16 WITH SECTION 49-247. FOR PURPOSES OF THIS SUBSECTION:
17 1. "AGRICULTURAL COMPOSTING" MEANS THE CONTROLLED BIOLOGICAL
18 DECOMPOSITION OF ORGANIC SOLID WASTE UNDER IN-VESSEL ANAEROBIC OR AEROBIC
19 CONDITIONS WHERE ALL OR PART OF THE MATERIALS ARE GENERATED ON THE FARMLAND
20 OR WILL BE USED ON THE FARMLAND ASSOCIATED WITH THE AGRICULTURAL COMPOSTING
21 OPERATION.
22 2. "FARMLAND" HAS THE SAME MEANING PRESCRIBED IN SECTION 3-111 AND IS
23 SUBJECT TO REGULATION UNDER SECTION 49-247.
24 ~~G.~~ H. For purposes of this section:
25 1. "Development rights" means the maximum development that would be
26 allowed on the sending property under any general or specific plan and local
27 zoning ordinance of a municipality in effect on the date the municipality
28 adopts an ordinance pursuant to subsection A, paragraph 12 of this section
29 respecting the permissible use, area, bulk or height of improvements made to
30 the lot or parcel. Development rights may be calculated and allocated in
31 accordance with factors including dwelling units, area, floor area, floor
32 area ratio, height limitations, traffic generation or any other criteria that
33 will quantify a value for the development rights in a manner that will carry
34 out the objectives of this section.
35 2. "Receiving property" means a lot or parcel within which development
36 rights are increased pursuant to a transfer of development rights. Receiving
37 property shall be appropriate and suitable for development and shall be
38 sufficient to accommodate the transferable development rights of the sending
39 property without substantial adverse environmental, economic or social impact
40 to the receiving property or to neighboring property.
41 3. "Sending property" means a lot or parcel with special
42 characteristics, including farmland, woodland, desert land, mountain land,
43 floodplain, natural habitats, recreation or parkland, including golf course
44 area, or land that has unique aesthetic, architectural or historic value that
45 a municipality desires to protect from future development.

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

Sec. 2. Section 11-830, Arizona Revised Statutes, is amended to read:

11-830. Restriction on regulation; exceptions; definition

A. Nothing contained in any ordinance authorized by this chapter shall:

1. Affect existing uses of property or the right to its continued use or the reasonable repair or alteration thereof for the purpose for which used at the time the ordinance affecting the property takes effect.

2. Prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous commercial acres.

3. PREVENT, RESTRICT OR OTHERWISE REGULATE THE USE OR OCCUPATION OF LAND OR IMPROVEMENTS FOR AGRICULTURAL COMPOSTING, IF THE TRACT IS FIVE OR MORE CONTIGUOUS COMMERCIAL ACRES. AN AGRICULTURAL COMPOSTING OPERATION SHALL NOTIFY IN WRITING THE BOARD OF SUPERVISORS AND THE NEAREST FIRE DEPARTMENT OF THE LOCATION OF THE COMPOSTING OPERATION. IF THE NEAREST FIRE DEPARTMENT IS LOCATED IN A CITY, TOWN OR FIRE DISTRICT WHERE THE AGRICULTURAL COMPOSTING IS NOT LOCATED, THE AGRICULTURAL COMPOSTING OPERATION SHALL ALSO NOTIFY IN WRITING THE FIRE DISTRICT IN WHICH THE OPERATION IS LOCATED. AGRICULTURAL COMPOSTING IS SUBJECT TO THE PROVISIONS OF SECTIONS 3-112 AND 49-141. FOR PURPOSES OF THIS PARAGRAPH:

(a) "AGRICULTURAL COMPOSTING" HAS THE SAME MEANING PRESCRIBED IN SECTION 9-462.01, SUBSECTION G.

(b) "FARMLAND" HAS THE SAME MEANING PRESCRIBED IN SECTION 3-111 AND IS SUBJECT TO REGULATION UNDER SECTION 49-247.

B. A nonconforming business use within a district may expand if such expansion does not exceed one hundred per cent of the area of the original business.

C. For the purposes of subsection A, paragraph 2 of this section, mining does not include sand and gravel operations in counties which have adopted a specific sand and gravel operations zoning district pursuant to this section. Subject to subsection D of this section, a county may adopt, as internal administrative regulations, sand and gravel operations zoning district standards limited to permitted uses, procedures for approval of property development plans and site development standards for dust control, height regulations, setbacks, days and hours of operation, off-street parking, screening, noise, vibration and air pollution control, signs, roadway access lanes, arterial highway protection and property reclamation. Regulations adopted pursuant to this subsection shall not prohibit the activities included in the definition of mine pursuant to section 27-301, paragraph 8.

D. If the board of supervisors elects to establish sand and gravel operations zoning districts and adopt regulations therefor, the board shall create a sand and gravel operations recommendation committee which shall consist of not more than seven operators of active sand and gravel operations within the county and an equal number of property owners, who are not operators, residing within one mile of the boundaries of a sand and gravel operations district or a proposed sand and gravel operations district. The board of supervisors shall determine the length of terms of members of the committee and shall stagger the initial appointments so that not all members' terms expire at the same time. The committee shall elect a member who is a sand and gravel operator to serve as chairman for the first year in which the committee is created. For each year thereafter, the chairman shall be elected by the members of the committee with a member who is a property owner and a member who is a sand and gravel operator serving as chairman in alternate years. The committee shall meet and by a majority vote of all members make recommendations to the board of supervisors for sand and gravel zoning districts and administrative regulations as provided in this section. The board of supervisors may adopt or reject such recommendations but may not make any modifications to the recommendations unless such modification is approved by a majority of the members of the recommendation committee.

E. A person or entity is subject to the provisions of this chapter if the use or occupation of land or improvements by the person or entity consists of or includes changing, remanufacturing or treating human sewage or sludge for distribution or resale. These activities are not exempt from this chapter under subsection A, paragraph 2 of this section.

F. A county shall not require as a condition for a permit or for any approval, or otherwise cause, an owner or possessor of property to waive the right to continue an existing nonconforming outdoor advertising use or structure without acquiring the use or structure by purchase or condemnation and paying just compensation unless the county, at its option, allows the use or structure to be relocated to a comparable site in the county with the same or a similar zoning classification, or to another site in the county acceptable to both the county and the owner of the use or structure, and the use or structure is relocated to the other site. The county shall pay for relocating the outdoor advertising use or structure including the cost of removing and constructing the new use or structure that is at least the same size and height. This subsection does not apply to county rezoning of property at the request of the property owner to a more intensive zoning district.

G. For purposes of this section "operators" means persons who are actively engaged in sand and gravel operations within the zoning district or proposed zoning district and who have given notice to the state mine inspector pursuant to section 27-303.



APPROVED BY THE GOVERNOR APRIL 30, 2001.
FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2001.

Passed the House March 19, 2001,

by the following vote: 34 Ayes,

22 Nays, 4 Not Voting

Jake Flake
Speaker of the House
Pro Tempore

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 19, 2001,

by the following vote: 25 Ayes,

5 Nays, 0 Not Voting

President of the Senate

Charmin B. Clinton
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20___,

at _____ o'clock _____ M.

_____
Secretary of State

H.B. 2442

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 24, 2001,

by the following vote: 32 Ayes,

21 Nays, 7 Not Voting

Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

25 day of April, 2001,

at 8:05 o'clock A M.

Sandra Kay
Secretary to the Governor

Approved this 30 day of

April, 2001,

at 5:18 o'clock P M.

Jane Dee Hull
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of May, 2001,

at 4:45 o'clock P M.

Betsey Bayless
Secretary of State

H.B. 2442