House Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 15

HOUSE BILL 2252

AN ACT

AMENDING SECTIONS 9-801, 11-829 AND 11-861, ARIZONA REVISED STATUTES; REPEALING SECTION 9-805, ARIZONA REVISED STATUTES; RELATING TO THE STATE PLUMBING CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 9-801, Arizona Revised Statutes, is amended to read:

9-801. Definitions

In this article, unless the context otherwise requires:

1. "Code" means a published compilation of rules or regulations prepared by a technical trade association and includes any building code, electrical wiring code, health or sanitation code, fire prevention code, wildland-urban interface code, inflammable liquids code, code for slaughtering, processing and selling meat and meat products or for production, pasteurizing and sale of milk and milk products, or other code which embraces rules and regulations pertinent to a subject which is a proper subject of municipal legislation.

2. "Municipality" means a city or town organized in accordance with law, including a home rule or charter city.

3. "Public record" includes a statute, rule or regulation of the United States, this state or the municipality which is desired to be adopted by reference.

4. "Published" means printed, lithographed, multigraphed, mimeographed or otherwise reproduced.

~~5. "State plumbing code" means the code adopted by the Arizona uniform plumbing code commission established by section 41-619.~~

Sec. 2. Repeal

Section 9-805, Arizona Revised Statutes, is repealed.

Sec. 3. Section 11-829, Arizona Revised Statutes, is amended to read:

11-829. Amendment of ordinance or change of zoning district boundaries; definition

A. A property owner or authorized agent of a property owner desiring an amendment or change in the zoning ordinance changing the zoning district boundaries within an area previously zoned shall file an application for the amendment or change. All zoning and rezoning ordinances, regulations or specific plans adopted under this article shall be consistent with and conform to the adopted county plan. In the case of uncertainty in constructing or applying the conformity of any part of a proposed rezoning ordinance to the adopted county plan, 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 county plan. A rezoning ordinance conforms with the county plan if it proposes land uses, densities or intensities within the range of identified uses, densities and intensities of the county plan.

B. The board of supervisors shall adopt by ordinance a citizen review process that applies to all rezoning and specific plan applications that require a public hearing. The citizen review process shall include at least the following requirements:

1. Adjacent landowners and other potentially affected citizens will be notified of the application.

2. The county will inform adjacent landowners and other potentially affected citizens of the substance of the proposed rezoning.

3. Adjacent landowners and other potentially affected citizens will be provided an opportunity to express any issues or concerns that they may have with the proposed rezoning before the public hearing.

C. Upon receipt of the application the board shall submit it to the commission for a report. Prior to reporting to the board, the commission shall hold at least one public hearing thereon after giving at least fifteen days' notice thereof by one publication in a newspaper of general circulation in the county seat and by posting of the area included in the proposed change. If the matter to be considered applies to territory in a high noise or accident potential zone as defined in section 28-8461, the notice shall include a general statement that the matter applies to property located in the high noise or accident potential zone. In case of a rezoning, the posting shall be in no less than two places with at least one notice for each quarter mile of frontage along perimeter public rights-of-way so that the notices are visible from the nearest public right-of-way. The commission shall also send notice by first class mail to each real property owner as shown on the last assessment of the property within three hundred feet of the proposed amendment or change and each county and municipality which is contiguous to the area of the amendment or change. In proceedings involving rezoning of land that is located within territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the commission shall send copies of the notice of public hearing by first class mail to the military airport. The notice sent by mail shall include, at a minimum, the date, time and place of the hearing on the proposed amendment or change including a general explanation of the matter to be considered, a general description of the area of the proposed amendment or change, how the real property owners within the zoning area may file approvals or protests of the proposed rezoning, and notification that if twenty per cent of the property owners by area and number within the zoning area file protests, an affirmative vote of three-fourths of all members of the board will be required to approve the rezoning. The following specific notice provisions also apply:

1. In proceedings that are initiated by the commission involving rezoning, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and all property owners, as shown on the last assessment of the property, within three hundred feet of the property to be rezoned.

2. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed by paragraph 3 of this subsection:

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

(b) A ten per cent or more increase or reduction in the allowable height of buildings.

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

(d) A ten per cent or more increase or decrease in setback or open space requirements.

(e) An increase or reduction in permitted uses.

3. In proceedings governed by paragraph 2 of this subsection, the county shall provide notice to real property owners pursuant to at least one of the following notification procedures:

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

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

(c) The county shall publish such changes prior to the first hearing on such changes in a newspaper of general circulation in the county. The changes shall be published in a display advertisement covering not less than one-eighth of a full page.

4. If notice is provided pursuant to paragraph 3, subdivision (b) or (c) of this subsection, the county shall also send notice by first class mail to persons who register their names and addresses with the county as being interested in receiving such notice. The county may charge a fee not to exceed five dollars per year for providing this service and may adopt procedures to implement this paragraph.

5. Notwithstanding the notice requirements set forth in paragraph 2 of this subsection, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of a county for which the notice was given.

D. If the planning commission or hearing officer has held a public hearing, the board may adopt the recommendations of the planning commission or hearing officer through use of a consent calendar without holding a second public hearing if there is no objection, request for public hearing or other protest. If there is an objection, a request for public hearing or a protest, the board shall hold a public hearing thereon at least fifteen days' notice of which shall be given by one publication in a newspaper of general circulation in the county seat and by posting the area included in the proposed change. In counties with territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the board shall hold a public hearing if, after notice is mailed to the military airport pursuant to subsection C of this section and before the public

hearing, the military airport provides comments or analysis concerning the compatibility of the proposed rezoning with the high noise or accident potential generated by military airport or ancillary military facility operations that may have an adverse impact on public health and safety, and the board shall consider and analyze the comments or analysis before making a final determination. After holding the hearing the board may adopt the amendment, but if twenty per cent of the owners of property by area and number within the zoning area file a protest to the proposed change, the change shall not be made except by a three-fourths vote of all members of the board. If any members of the board are unable to vote on the question because of a conflict of interest, the required number of votes for the passage of the question is three-fourths of the remaining membership of the board, except that the required number of votes in no event shall be less than a majority of the full membership of the board. In calculating the owners by area, only that portion of a lot or parcel of record situated within three hundred feet of the property to be rezoned shall be included. In calculating the owners by number or area, county property and public rights-of-way shall not be included.

E. The planning commission ~~may~~, on its own motion, MAY propose an amendment to the zoning ordinance and ~~may~~, after holding a public hearing as required by this chapter, MAY transmit the proposal to the board which shall thereupon proceed as set forth in this chapter for any other amendment.

F. Notwithstanding ~~the provisions of~~ title 19, chapter 1, article 4, a decision by the governing body involving rezoning of land which is not owned by the county and which changes the zoning classification of such land or which changes the zoning standards of such land as set forth in subsection C, paragraph 2 of this section may not be enacted as an emergency measure and such a change shall not be effective for at least thirty days after final approval of the change in classification by the board. Unless a resident files a written objection with the board of supervisors, the rezoning may be enacted as an emergency measure that becomes effective immediately by a four-fifths majority vote of the board for those counties with five or more supervisors or a two-thirds majority vote of the board for those counties with less than five supervisors.

G. The legislature finds that a rezoning of land that changes the zoning classification of the land or that restricts the use or reduces the value of the land is a matter of statewide concern. Such a change in zoning that is initiated by the governing body or zoning body shall not be made without the express written consent of the property owner. In applying an open space element or a growth element of a county plan, a parcel of land shall not be rezoned for open space, recreation, conservation or agriculture unless the owner of the land consents to the rezoning in writing. For the purposes of this subsection, rezoning does not include the creation or expansion of overlay zones solely for the purpose of implementing airport safety and protection. Rezoning also does not include the redesignation of

areas of the county to which the residential provisions of the county building codes ~~or the state plumbing code~~ apply or do not apply. The county shall not adopt any change in a zoning classification to circumvent the purpose of this subsection.

H. For the purposes of this section, "zoning area" means the area within three hundred feet of the proposed amendment or change.

Sec. 4. Section 11-861, Arizona Revised Statutes, is amended to read:

11-861. Adoption of codes by reference; limitations; method of adoption

A. In any county which has adopted zoning pursuant to this chapter, the board of supervisors may adopt and enforce, for the unincorporated areas of the county so zoned, a building code and other related codes to regulate the quality, type of material and workmanship of all aspects of construction of buildings or structures, except that the board may authorize that areas zoned rural or unclassified may be exempt from the provisions of the code adopted. Such codes may be adopted by reference after notice and hearings before the county planning and zoning commission and board of supervisors as provided in this chapter for amendments to the zoning ordinance of the county.

B. The board of supervisors may adopt a fire prevention code in the unincorporated areas of the county in which a fire district has not adopted the uniform fire code pursuant to section 48-805. Any fire code adopted by a board of supervisors pursuant to this subsection shall remain in effect until a fire district is established and adopts a code applicable within the boundaries of the district.

C. For the purpose of this article, codes authorized by subsections A and B of this section shall be limited to the following:

1. Any building, electrical, PLUMBING, or mechanical code that has been adopted by any national organization or association that is organized and conducted for the purpose of developing codes or that has been adopted by the largest city in that county. If the board of supervisors adopts a city code, it shall adopt, within ninety days after receiving a written notification of a change to the city code, the same change or shall terminate the adopted city code.

2. Any fire prevention code that has been adopted by a national organization or association organized or conducted for the purpose of developing fire prevention codes and that is as stringent as the state fire code adopted pursuant to section 41-2146.

D. The board of supervisors may adopt a current wildland-urban interface code. The code may be adapted from a model code adopted by a national or international organization or association for mitigating the hazard to life and property. The board must follow written public procedures in the development and adoption of the code and any revisions to the code to provide effective, early and continuous public participation through:

1. The broad dissemination and publicity of the proposed code and any revisions to the code.

2. The opportunity for submission and consideration of written public comments.

3. Open discussions, communications programs and information services.

4. Consultation with federal agencies and state and local officials.

APPROVED BY THE GOVERNOR APRIL 10, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2007.

Passed the House February 12, 2007

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate April 3, 2007

by the following vote: 23 Ayes,

4 Nays, 3 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

14th day of April, 2007

at 1:58 o'clock P. M.

Secretary to the Governor

Approved this 10 day of

April

at 5:00 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 11 day of April, 2007

at 8:04 o'clock A. M.

Janice K. Brewer

Secretary of State

H.B. 2252