Senate Engrossed

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KEN BENNETT
SECRETARY OF STATE

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Fifty-first Legislature
First Regular Session
2013

CHAPTER 101

SENATE BILL 1098

AN ACT

AMENDING SECTIONS 11-811 AND 11-812, ARIZONA REVISED STATUTES; RELATING TO COUNTY ZONING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 11-811, Arizona Revised Statutes, is amended to read:

11-811. Zoning ordinance; zoning districts; definitions

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

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

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

3. Shall consider access to incident solar energy.

4. May provide for retirement community zoning districts.

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

6. Shall designate and zone appropriate areas of reasonable size in which there may be established with reasonable permanency canneries, fertilizer plants, refineries, commercial ~~feed lots~~ FEEDLOTS, meat packing plants, tallow works and other like businesses. A dairy operation, including areas designated for the raising of replacement heifers or bulls owned by the same dairy operation, is not subject to this paragraph, and is a general agricultural purpose under subsection C, paragraph 2 of this section and section 11-812, subsection A, paragraph 2. A replacement heifer or bull raising operation of a dairy that is not on contiguous property of the dairy is subject to this paragraph unless the operation begins within one-quarter mile of the dairy.

B. To carry out the purposes of this article, the board 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 that 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 11-813. The provisions of overlay zoning shall apply retroactively to authorize overlay zoning districts and regulations adopted before April 20, 1993.

C. This section does not authorize:

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

2. The regulation or restriction of 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. FOR THE PURPOSES OF THIS PARAGRAPH, GENERAL AGRICULTURAL PURPOSES DO NOT INCLUDE THE CULTIVATION OF CANNABIS AS DEFINED IN SECTION 13-3401 OR MARIJUANA AS DEFINED IN SECTION 13-3401 OR 36-2801.

D. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. "Nude model studio" means a place in which a person who appears in a state of nudity or who displays specific anatomical areas is observed, sketched, drawn, painted, sculptured, photographed or otherwise depicted by other persons who pay money or other consideration. Nude model studio does not include a proprietary school that is licensed by this state, a college,

community college or university that is supported entirely or in part by taxation, a private college or university that maintains and operates educational programs in which credits are transferable to a college, community college or university that is supported entirely or in part by taxation or a structure to which the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. Section 11-812, Arizona Revised Statutes, is amended to read:

11-812. <u>Restriction on regulation; exceptions; aggregate mining regulation; definitions</u>

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 of the property 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. FOR THE PURPOSES OF THIS PARAGRAPH, GENERAL AGRICULTURAL PURPOSES DO NOT INCLUDE THE CULTIVATION OF CANNABIS AS DEFINED IN SECTION 13-3401 OR MARIJUANA AS DEFINED IN SECTION 13-3401 OR 36-2801. For the purposes of this paragraph, "mining" has the same meaning prescribed in section 27-301.

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 sections 3-112 and 49-141. For the purposes of this paragraph, "agricultural composting" has the same meaning prescribed in section 9-462.01, subsection G.

B. A nonconforming business use within a district may expand if the 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 aggregate mining operations in an aggregate mining operations zoning district established pursuant to this section. The board of supervisors of any county with a population of more than two million persons shall designate and establish the boundaries of an aggregate mining operations zoning district on the petition of at least one hundred persons who reside within one-half mile of an existing aggregate mining operation. In addition, the board of supervisors of any county may establish, in its discretion and on the board's initiative, one or more aggregate mining operations zoning districts. Aggregate mining operations zoning districts may only be located in areas that are inventoried and mapped as areas of known reserves or in areas with existing aggregate mining operations. Subject to subsections E and F of this section, a county and the state mine inspector may jointly adopt, as internal administrative regulations, reasonable aggregate mining 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 for which aggregate mining operations are

not otherwise subject to federal, state or local regulation or a governmental contractual obligation. Regulations jointly adopted pursuant to this subsection by the county and the state mine inspector shall not prohibit the activities included in the definition of mine pursuant to section 27-301, paragraph 8 or duplicate, conflict with or be more stringent than applicable federal, state or local laws.

D. The board of supervisors of any county that establishes an aggregate mining operations zoning district shall appoint an aggregate mining operations recommendation committee for the district. The committee consists of not more than seven operators, or representatives of operators, of active aggregate mining operations in any district within the county and an equal number of private citizens, who are not operators, who are not employed by operators and who do not represent operators, residing within three miles of the boundaries of aggregate mining operations or a proposed aggregate mining operation in the district for which the committee is established. The initial members appointed to the committee shall be deemed the primary members, and the board of supervisors shall appoint no more than five alternate members who represent operators and shall appoint no more than five alternate members who are private citizens. Alternate members may serve at meetings of the committee when a primary member is unable to attend. An aggregate mining operator may serve on more than one committee in the same county. 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. Members of the committee who no longer qualify for membership as provided by this subsection are subject to removal and replacement by the board of supervisors. The committee shall elect a member who is an aggregate mining operator to serve as chairperson for the first year in which the committee is created. For each year thereafter, the chairperson shall be elected by the members of the committee with a member who is a private citizen and a member who is an aggregate mining operator serving as chairperson in alternate years. The committee is subject to the open meeting requirements of title 38, chapter 3, article 3.1.

E. Within ninety days after an aggregate mining operations recommendation committee is established, the committee shall notify all existing aggregate mining operators in the district of the application of this section and title 27, chapter 3, article 6 to the aggregate mining operation. In addition, the committee shall:

1. By a majority vote of all members make recommendations to the board of supervisors for aggregate mining zoning districts and administrative regulations as provided in this section. The board of supervisors may adopt or reject the recommendations but may not make any modifications to the recommendations unless the modification is approved by a majority of the members of the recommendation committee.

2. Serve as a forum for mediation of disputes between members of the public and aggregate mining owners or operators. If the committee is unable

to resolve a dispute, the committee shall transmit the matter to the state mine inspector, with written findings and recommendations, for further action.

3. Hear written complaints filed with the state mine inspector regarding alleged material deviations from approved community notices for aggregate mining operations and make written recommendations to the state mine inspector pursuant to section 27-446.

F. Any administrative regulations adopted by a board of supervisors pursuant to this section are not effective until the regulations are approved by the state mine inspector. The inspector may disapprove the administrative regulations adopted by the board of supervisors only if they duplicate, conflict with or are more stringent than applicable federal, state or local laws, rules or regulations. If the inspector disapproves the administrative regulations, the inspector must provide written reasons for the disapproval. The inspector shall not make any modification to the administrative regulations as adopted by the board of supervisors unless the modification is approved by a majority of the members of the board of supervisors.

G. A person or entity is subject to 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.

H. 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.

I. For the purposes of this section:

1. "Aggregate" has the same meaning prescribed in section 27-441.

2. "Aggregate mining" has the same meaning prescribed in section 27-441.

3. "Aggregate mining operation" means property that is owned, operated or managed by the same person for aggregate mining.

4. "Operators" means persons who are actively engaged in aggregate mining 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 11, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2013.

Passed the House March 28, 2013,

by the following vote: 56 Ayes,

2 Nays, 2 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 6, 2013,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Charmion Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

10 day of April, 2013,

at 12:05 o'clock P M.

Mikhaila Howard
Secretary to the Governor

Approved this 11th day of

April, 2013,

at 12:13 o'clock P. M.

Jan K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 11th day of April, 2013,

at 4:34 o'clock P M.

Ken Bennett
Secretary of State

S.B. 1098