STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

EXECUTIVE OFFICE

March 27, 2018

The Honorable Michele Reagan
Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Dear Secretary Reagan:

I am transmitting to you the following bills from the Fifty-third Legislature, 2nd Regular Session, which I signed on March 27, 2018:

HB 2034 social security; state agency designation (Livingston)
HB 2053 sexual acts; theft by extortion (Syms)
HB 2078 political subdivisions; candidate committee (Finchem)
HB 2085 schools; emergency epinephrine administration (Carter)
HB 2168 mobile homes; recreational vehicles; fund (Coleman)
HB 2190 county improvement districts; repayment agreements (Mitchell)
HB 2243 wrong-way driving; violation; DUI (Farnsworth, E.)
HB 2247 criminal justice commission; reporting requirements (Farnsworth, E.)
HB 2312 setting aside conviction; requirements (Farnsworth, E.)
HB 2404 taxidermy; registry (Mosley)
HB 2460 charter schools; vacant buildings; equipment (Leach)
HB 2461 zoning regulations; private schools (Leach)
HB 2633 pharmacists; controlled substances (Cobb)
SB 1375 contractor licensure (Fann)
SB 1423 common school districts; lapsing; procedure (Griffin)

Sincerely,

Douglas A. Ducey
Governor
State of Arizona

cc: Senate Secretary
Chief Clerk of the House of Representatives
Arizona News Service

Senate Engrossed House Bill

FILED

MICHELE REAGAN

SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 86

HOUSE BILL 2461

AN ACT

AMENDING SECTION 9-462.01, ARIZONA REVISED STATUTES; AMENDING TITLE 11, CHAPTER 6, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-820.01; RELATING TO ZONING.

(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 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 the 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 that 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~~ FOR THE CIVIC DISTRICTS.

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 that 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 regulation of private development and demolition necessary to realize these objectives.

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

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

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

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

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

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

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

STATE OF ARIZONA SENATE

(d) The purchase, sale, exchange or other conveyance of transferable development rights ~~prior to~~ BEFORE the rights being affixed to a receiving property.

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

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

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

B. For the purposes of 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 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 9-462.04.

E. The legislative body may approve a change of zone conditioned on 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 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, densities or intensities within the range of identified uses, densities and intensities of the land use element of the general plan.

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

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

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

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

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

J. A MUNICIPALITY MAY NOT ADOPT OR ENFORCE A LAND USE REGULATION THAT REQUIRES THE PROPERTY ON WHICH A NONGOVERNMENTAL PRIMARY OR SECONDARY SCHOOL OPERATES TO BE LARGER THAN ONE ACRE.

~~J.~~ K. For the purposes of this section:

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

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

3. "Sending property" means a lot or parcel with special characteristics, including farmland, woodland, desert land, mountain land, floodplain, natural habitats, recreation or parkland, including golf course area, or land that has unique aesthetic, architectural or historic value that 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. Title 11, chapter 6, article 2, Arizona Revised Statutes, is amended by adding section 11-820.01, to read:

11-820.01. Restriction on regulation; private schools

A COUNTY MAY NOT ADOPT OR ENFORCE A LAND USE REGULATION THAT REQUIRES THE PROPERTY ON WHICH A NONGOVERNMENTAL PRIMARY OR SECONDARY SCHOOL OPERATES TO BE LARGER THAN ONE ACRE.

APPROVED BY THE GOVERNOR MARCH 27, 2018

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 27, 2018

Passed the House February 15, 2018 by the following vote: 34 Ayes, 23 Nays, 3 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate March 20, 2018 by the following vote: 17 Ayes, 12 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

Passed the House March 22, 20 18,

by the following vote: 33 Ayes,

25 Nays, 2 Not Voting

M R. [illegible]
Speaker of the House Pro Tempore

[illegible]
Chief Clerk of the House

Passed the Senate _____, 20____,

by the following vote: _____ Ayes,

_____ Nays, _____ Not Voting

_____
President of the Senate

_____
Secretary of the Senate

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

22nd day of March, 20 18,

at 3:31 o'clock P. M.

[illegible]
Secretary to the Governor

Approved this 27th day of

March, 20 18,

at 11:11 o'clock A. M.

[illegible]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 27th day of March, 20 18,

at 1:32 o'clock P. M.

Michele Reagan
Secretary of State

HB 2461