

# PLANNING COMMISSION REPORT



Meeting Date: June 14, 2017  
General Plan Element: *Land Use*  
General Plan Goal: *Use community goals, character and context to determine development appropriateness*

## ACTION

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### Legal Protest Text Amendment 390-PA-2016

#### Request to consider the following:

1. Initiate a text amendment to the City of Scottsdale Zoning Ordinance (Ordinance No. 455) for the purpose of amending Section 1.706. (Legal protest by property owners) to update the legal protest provisions, and other applicable sections of the Zoning Ordinance, consistent with State of Arizona House Bill 2116.

#### Key Items for Consideration

- Changes to state statutes increase difficulty for surrounding property owners to qualify for a legal protest

#### Related Policies, References:

- Zoning Ordinance
- State of Arizona House Bill 2116
- Section 9-462.04 of Title 9, Chapter 4, Article 6.1 of the Arizona Revised Statutes (ARS)

## APPLICANT CONTACT

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Brad Carr, AICP, LEED-AP  
City of Scottsdale  
480-312-7713

## LOCATION

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Citywide

## **BACKGROUND**

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On May 10<sup>th</sup> of this year, the State of Arizona enacted House Bill 2116, which made a number of grammatical and other substantive changes to Section 9-462.04 of Title 9, Chapter 4, Article 6.1 of the Arizona Revised Statutes. Most notably amongst the changes, Bill 2116 made three changes to how legal protests are addressed when filed by a neighboring property owner. Those changes are:

- A written legal protest must be filed with the city by the property owners of 20 percent of all property (by area and number) that is located within 150 feet of all of the boundaries of the proposed zoning district map amendment and the property area itself, not just on any one side as is currently required. Moreover, by adding the phrase “... by area and number of lots, tracts and condominium units ...” to the statute, the opposition must now also take into account all individual lots, tracts and condominium units located within 150 feet of all sides when calculating the 20 percent threshold.
- Public rights-of-way will now be factored into the 150-foot measurement around the perimeter of the proposed zoning district map amendment. The existing Zoning Ordinance provisions exclude public right-of-way from the 150-foot measurement.
- The statute changes the manner in which the three-quarters vote threshold is calculated. More specifically, the statute requires that the three-quarters fraction be rounded to the nearest whole number. In a city or town that has a seven member council, such as Scottsdale, six of seven affirmative city or town council votes will no longer be required. Instead, only five affirmative votes for the proposed zoning district map amendment application will be required for the application to be approved.

These changes to the Arizona Revised Statutes take effect August 9, 2017. City staff will update Section 1.706. of the Zoning Ordinance related to legal protest by property owners, and any other applicable sections of the Zoning Ordinance, to be consistent with the recently enacted changes to the Arizona Revised Statutes. This initiation of the text amendment also provides other opportunities to evaluate the City’s existing legal protest provisions. A copy of the current Zoning Ordinance requirements are provided as Attachment #1 and a copy of the changes to the Arizona Revised Statutes are provided as Attachment #2.

## **IMPACT ANALYSIS**

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### **Community Involvement**

This proposal will include standard community involvement consisting of public notice in the newspaper, online notification, postcard mailing to interested parties and community outreach meetings.

**STAFF RECOMMENDATION**

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**Recommended Approach:**

Staff recommends that the Planning Commission initiate the text amendment.

**RESPONSIBLE DEPARTMENT**

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**Planning & Development**

Current Planning Services

**STAFF CONTACT**

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Brad Carr, AICP, LEED-AP  
Principal Planner  
480-312-7713  
E-mail: bcarr@ScottsdaleAZ.gov

**APPROVED BY**

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Brad Carr, Report Author

6.7.2017

Date



Tim Curtis, AICP, Current Planning Director  
480-312-4210, tcurtis@scottsdaleaz.gov

6/8/2017

Date



Randy Grant, Administrator  
Planning and Development Services  
480-312-2664, rgrant@scottsdaleaz.gov

6/8/17

Date

**ATTACHMENTS**

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1. Current Language of Section 1.702. of the Zoning Ordinance
2. House Bill 2116

Sec. 1.706. - Legal protest by property owners.

Legal protests may be filed against a requested zoning district map amendment subject to the below requirements.

A.

The legal protest against a proposed zoning district map amendment shall be filed in writing with the City Clerk at or before 12:00 noon on the Friday preceding the City Council hearing at which the zoning district map amendment will be considered.

B.

The zoning district map amendment shall not become effective except by a favorable vote of three-fourths of all members of the City Council. If any members of the City Council are unable to vote on the zoning district map amendment because of a conflict of interest, then the required number of votes for passage of the zoning district map amendment shall be three-fourths of the remaining membership of the City Council, provided that such required number of votes shall in no event be less than a majority of the full membership of the City Council.

C.

A legal protest may be filed only by property owner(s) who represent any of the following three (3) conditions:

1.

Twenty (20) percent or more of the area included in the zoning district map amendment, or

2.

Twenty (20) percent or more of the area of those immediately adjacent to the subject property of the zoning district map amendment along any side in each cardinal direction extending one hundred fifty (150) feet as measured from the perimeter of the subject property, or

3.

Twenty (20) percent or more of the area of those directly opposite the subject property of the zoning district map amendment extending one hundred fifty (150) feet from the dedicated street frontage of the opposite lots.

(Ord. No. 2495, § 1, 9-1-92; Ord. No. 2830, § 1, 10-17-95; Ord. No. 4143, § 1(Res. No. 9678, Exh. A, § 37), 5-6-14)

State of Arizona  
House of Representatives  
Fifty-third Legislature  
First Regular Session  
2017

## CHAPTER 290

# HOUSE BILL 2116

AN ACT

AMENDING SECTION 9-462.04, ARIZONA REVISED STATUTES; RELATING TO MUNICIPAL ZONING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 9-462.04, Arizona Revised Statutes, is amended to read:

**9-462.04. Public hearing required; definition**

A. If the municipality has a planning commission or a hearing officer, the planning commission or hearing officer shall hold a public hearing on any zoning ordinance. Notice of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the area affected shall be given at least fifteen days before the hearing in the following manner:

1. The notice shall be published at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, it shall be posted on the affected property in such a manner as to be legible from the public right-of-way and in at least ten public places in the municipality. A posted notice shall be printed so that the following are visible from a distance of one hundred feet: the word "zoning", the present zoning district classification, the proposed zoning district classification and the date and time of the hearing.

2. In proceedings involving rezoning of land ~~which~~ **THAT** abuts other municipalities or unincorporated areas of the county or a combination thereof, copies of the notice of public hearing shall be transmitted to the planning agency of ~~such~~ **THE** governmental unit abutting such land. In proceedings involving rezoning of land that is located within the territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the municipality shall send copies of the notice of public hearing by first class mail to the military airport. In addition to notice by publication, a municipality may give notice of the hearing in ~~such~~ **ANY** other manner ~~as it may deem~~ **THAT THE MUNICIPALITY DEEMS** necessary or desirable.

3. In proceedings that are not initiated by the property owner involving rezoning of land ~~which~~ **THAT** may change the zoning classification, 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.

4. 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 5 **OF THIS SUBSECTION**:

- (a) A ten ~~per-cent~~ **PERCENT** or more increase or decrease in the number of square feet or units that may be developed.
- (b) A ten ~~per-cent~~ **PERCENT** 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~~ **PERCENT** or more increase or decrease in setback or open space requirements.
- (e) An increase or reduction in permitted uses.

ATTACHMENT #2



5. In proceedings governed by paragraph 4 **OF THIS SUBSECTION**, the municipality 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 governed by the changes.

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

(c) The municipality shall publish ~~such~~ **THE** changes ~~prior to~~ **BEFORE** the first hearing on such changes in a newspaper of general circulation in the municipality. The changes shall be published in a "display ad" covering not less than one-eighth of a full page.

6. If notice is provided pursuant to paragraph 5, subdivision (b) or (c) **OF THIS SUBSECTION**, the municipality shall also send notice by first class mail to persons who register their names and addresses with the municipality as being interested in receiving such notice. The municipality may charge a fee not to exceed five dollars per year for providing this service and may adopt procedures to implement this paragraph.

7. Notwithstanding the notice requirements ~~set forth~~ in paragraph 4 **OF THIS SUBSECTION**, the failure of any person or entity to receive notice ~~shall~~ **DOES** not constitute grounds for any court to invalidate the actions of a municipality for which the notice was given.

B. 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 prescribed in subsection A of this section shall include a general statement that the matter applies to property located in the high noise or accident potential zone.

C. After the hearing, the planning commission or hearing officer shall render a decision in the form of a written recommendation to the governing body. The recommendation shall include the reasons for the recommendation and be transmitted to the governing body in such form and manner as may be specified by the governing body.

D. If the planning commission or hearing officer has held a public hearing, the governing body may adopt the recommendations of the planning commission or hearing officer without holding a second public hearing if there is no objection, request for public hearing or other protest. The governing body shall hold a public hearing if requested by the party aggrieved or any member of the public or of the governing body, or, in any case, if ~~no~~ **A** public hearing has **NOT** been held by the planning commission or hearing officer. In municipalities with territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the governing body shall hold a public hearing if, after notice is transmitted to the military airport pursuant to subsection A 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 governing body shall consider and analyze the comments or analysis before making a final determination. Notice of the time and place of the hearing shall be given in the time and manner provided for the giving of notice of the hearing by the planning commission as specified in subsection A of this section. ~~In addition~~ **A** municipality may give **ADDITIONAL** notice of the hearing in ~~such~~ **ANY** other manner as ~~it may deem~~ **THE MUNICIPALITY DEEMS** necessary or desirable.

E. A municipality may enact an ordinance authorizing county zoning to continue in effect until municipal zoning is applied to land previously zoned by the county and annexed by the municipality, but in no event for longer than six months after the annexation.

F. A municipality is not required to adopt a general plan ~~prior to~~ **BEFORE** the adoption of a zoning ordinance.

G. If there is no planning commission or hearing officer, the governing body of the municipality shall perform the functions assigned to the planning commission or hearing officer.

**H. If the owners of twenty per-cent PERCENT or more either of the area of the lots included in a proposed change, or of those immediately adjacent in the rear or any side thereof extending one hundred fifty feet therefrom, or of those directly opposite thereto extending one hundred fifty feet from the street frontage of the opposite lots, OF THE PROPERTY BY AREA AND NUMBER OF LOTS, TRACTS AND CONDOMINIUM UNITS WITHIN THE ZONING AREA OF THE AFFECTED PROPERTY file a protest in writing against a proposed amendment, ~~it~~ **THE CHANGE** shall not become effective except by the favorable vote of three-fourths of all members of the governing body of the municipality. If any members of the governing body are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths of the remaining membership of the governing body, provided that such required number of votes shall in no event be less than a majority of the full membership of the legally established governing body. **FOR THE PURPOSES OF THIS SUBSECTION, THE VOTE SHALL BE ROUNDED TO THE NEAREST WHOLE NUMBER.****

I. In applying an open space element or a growth element of a general 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.

J. Notwithstanding ~~the provisions~~ of section 19-142, subsection B, a decision by the governing body involving rezoning of land ~~which~~ **THAT** is not owned by the municipality and ~~which~~ **THAT** changes the zoning classification of such land may not be enacted as an emergency measure and ~~such~~ **THE** change shall not be effective for at least thirty days after final approval of the change in classification by the governing body.

**K. FOR THE PURPOSES OF THIS SECTION, "ZONING AREA" MEANS BOTH OF THE FOLLOWING:**

- 1. THE AREA WITHIN ONE HUNDRED FIFTY FEET, INCLUDING ALL RIGHTS-OF-WAY, OF THE AFFECTED PROPERTY SUBJECT TO THE PROPOSED AMENDMENT OR CHANGE.**
- 2. THE AREA OF THE PROPOSED AMENDMENT OR CHANGE.**

**APPROVED BY THE GOVERNOR MAY 10, 2017.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2017.**

Citizen Review Plan  
for  
**Legal Protest Text Amendment**  
**3-TA-2017**

This Citizen Review Plan outlines the means by which potentially affected citizens of the proposed text amendment will receive early notification in order to promote citizen involvement. This Citizen Review Plan will also identify the method by which potentially affected citizens of the proposed text amendment will be provided the opportunity to express any issues or concerns prior to the notice of the first public hearing.

**Notification**

Potentially affected citizens of the proposed text amendment will receive notification by the following means:

- 1/8 page advertisement in the local newspaper for the dates and times of proposed open house meetings and hearings regarding the proposed text amendment.
- Postcard notifications will be sent to those citizens on the Planning Department’s “Interested Parties” mailing list. Postcard mailings will include a postcard for open house meeting dates and another postcard for hearing dates.
- Proposed text amendment will be listed in Planning Department’s P&Z Link, NextDoor, and Facebook electronic notification services.
- Proposed text amendment will be listed on city’s webpage for viewing by the public, including open house meeting dates and proposed text amendment language.

**Public Input Opportunities**

Potentially affected citizens of the proposed text amendment will have the ability to provide public input by the following means:

- Written, e-mail, or phone input submitted to the project applicant/city staff contact.
- In-person input at either, or both, of the following open houses:

Tuesday, October 17, 2017 One Civic Center – CD Room 1 7447 E. Indian School Road Scottsdale, AZ 85251	Wednesday, October 18, 2017 Via Linda Senior Center – Room 4 10440 E. Via Linda Scottsdale, AZ 85258
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- In-person input at the Planning Commission and/or City Council public hearings to be held for this proposed text amendment.

This is a City-initiated text amendment and the applicant/city staff contact for this proposed text amendment is:

Brad Carr, AICP, LEED-AP  
Principal Planner  
Current Planning Services  
City of Scottsdale  
7447 E. Indian School Road, Ste 105  
Scottsdale, AZ 85251  
480-312-7713  
E-mail: [bcarr@scottsdaleaz.gov](mailto:bcarr@scottsdaleaz.gov)



## Legal Protest Text Amendment

### Draft Language v1 – last updated 8/28/2017

Section 1. That the Zoning Ordinance of the City of Scottsdale, Article I. Administration and Procedures is amended as follows with all new language depicted in grey shading and deleted language in strike-through:

#### ARTICLE I. ADMINISTRATION AND PROCEDURES

##### Sec. 1.102. Severability.

~~Any provisions of this ordinance held to be invalid shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of this ordinance.~~ If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

##### Sec. 1.706. Legal protest by property owners.

Legal protests may be filed against a requested zoning district map amendment subject to the below requirements.

- A. The legal protest against a proposed zoning district map amendment shall be filed in writing with the City Clerk at or before 12:00 noon on the Friday preceding the City Council hearing at which the zoning district map amendment will be considered.
- B. The zoning district map amendment shall not become effective except by a favorable vote of three-fourths of all members of the City Council. If any members of the City Council are unable to vote on the zoning district map amendment because of a conflict of interest, then the required number of votes for passage of the zoning district map amendment shall be three-fourths of the remaining membership of the City Council, provided that such required number of votes shall in no event be less than a majority of the full membership of the City Council. For the purposes of this subsection, the vote shall be rounded to the nearest whole number. Tenths of a number ending in 4 or less shall be rounded down, and tenths of a number ending in 5 or higher shall be rounded up.
- C. A legal protest may be filed only by property owner(s) who represent ~~any of the following three (3) conditions:~~ the conditions outlined in Title 9, Chapter 4, Article 6.1, Section 9.462.04 of the Arizona Revised Statutes, as amended.
  1. ~~Twenty (20) percent or more of the area included in the zoning district map amendment,~~  
or
  2. ~~Twenty (20) percent or more of the area of those immediately adjacent to the subject property of the zoning district map amendment along any side in each cardinal direction extending one hundred fifty (150) feet as measured from the perimeter of the subject property,~~ or

~~3. Twenty (20) percent or more of the area of those directly opposite the subject property of the zoning district map amendment extending one hundred fifty (150) feet from the dedicated street frontage of the opposite lots.~~

Section 2. That the Zoning Ordinance of the City of Scottsdale, Article III. Definitions is amended as follows with all new language depicted in grey shading and deleted language in strike-through:

**ARTICLE III. DEFINITIONS**

**Sec. 3.100. General.**

~~Alley is a public thoroughfare which affords only a secondary means of vehicular access to abutting property and is not intended for general traffic circulation. An alley line shall mean the centerline of an alley right-of-way as determined by the Manager of Transportation.~~

*Alley, centerline* shall mean the centerline of an alley right-of-way as determined by the Manager of Transportation.

Section 3. That the Zoning Ordinance of the City of Scottsdale, Article IV. Districts and Boundaries Thereof is amended as follows with all new language depicted in grey shading and deleted language in strike-through:

**ARTICLE IV. DISTRICTS AND BOUNDARIES THEREOF**

**Sec. 4.100. Division of City into Districts; Enumeration.**

In order to classify, regulate, restrict and separate the use of land, buildings and structures and to regulate and to limit the type, height and bulk of buildings and structures and to regulate the areas of yards and other open areas around and between the buildings and structures and to regulate the density of dwelling units, the city is hereby divided into the following districts:

A. *Residential Districts:*

<b>Table 4.100.A. Residential Districts</b>	
R1-190	Single-family Residential—190,000 square feet per lot
R1-130	Single-family Residential—130,000 square feet per lot
R1-70	Single-family Residential—70,000 square feet per lot
R1-43	Single-family Residential—43,000 square feet per lot
R1-35	Single-family Residential—35,000 square feet per lot
R1-18	Single-family Residential—18,000 square feet per lot
R1-10	Single-family Residential—10,000 square feet per lot
R1-7	Single-family Residential—7,000 square feet per lot
R1-5	Single-family Residential—4,700 square feet per lot

R-2	Two-family Residential
R-3	Medium Density Residential
R-4	Townhouse Residential
R-4R	Resort/Townhouse Residential
R-5	Multiple-family Residential
M-H	Manufactured Home

B. *Commercial Districts:*

<b>Table 4.100.B. Commercial Districts</b>	
S-R	Service-Residential
C-S	Regional Shopping Center
C-1	Neighborhood Commercial
C-2	Central Business
C-3	Highway Commercial
C-4	General Commercial
SS	Support Services
C-O	Commercial Office
PCoC	Planned Convenience Center
PNC	Planned Neighborhood Center
PCC	Planned Community Center
<del>PRC</del>	<del>Planned Regional Center</del>

C. *Industrial Districts:*

<b>Table 4.100.C. Industrial Districts</b>	
I-G	Light Employment
I-1	Industrial Park

D. *Mixed-use Districts:*

<b>Table 4.100.D. Mixed-use Districts</b>	
D	Downtown
P-C	Planned Community
<b>PRC</b>	<b>Planned Regional Center</b>
PCP	Planned Commerce Park
PUD	Planned Unit Development

E. *Supplementary Districts:*

<b>Table 4.100.E. Supplementary Districts</b>	
P-1	Parking P-1; Passenger Vehicle Parking, Limited
P-2	Parking P-2; Passenger Vehicle Parking
P-3	Parking P-3
P-4	Parking P-4
W-P	Western Theme Park
SC	Special Campus
H-P	Historic Property
OS	Open Space
COS	Conservation Open Space
ESL	Environmentally Sensitive Lands
F-O	Foothills Overlay
DO	Downtown Overlay
PBD	Planned Block Development Overlay
PSD	Planned Shared Development Overlay

**Sec. 4.200. Boundaries of Districts.**

**Sec. 4.201. Rules where uncertainty may arise.**

Where uncertainty exists with respect to the boundaries of the various districts as shown on the district map accompanying and made a part of this ordinance, the following rules apply:

- A. The district boundaries are either street centerlines or alley centerlines unless otherwise shown, and where the districts designated on the map accompanying and made a part of this ordinance are bounded approximately by street or alley centerlines, the street centerlines or alley centerlines shall be construed to be the boundary of the district.
- B. ~~Where the district boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines, and w~~Where the districts designated on the map accompanying and made a part of this ordinance are bounded approximately by lot lines, the lot lines shall be construed to be the boundary of the districts unless the boundaries are otherwise indicated on the map.
- C. In unsubdivided property, the district boundary lines on the map accompanying and made a part of this ordinance shall be determined by use of the scale appearing on the map.
- D. Where the district boundaries are not otherwise indicated and where the property has been, or may hereafter be, divided into blocks and lots, the district boundaries shall be construed to be the lot lines and/or the abutting street centerlines or alley centerlines.