

# Recent Land Use Legislation in Arizona

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# Changes to the Formal Protest Rule



# Legal Protest Statute

## ARS § 9-462.04

- Legal mechanism for property owners adjacent to or within a proposed rezone or text amendment to formally protest the requested change.
- Forces a supermajority three-fourths approval vote from municipal governing body instead of a simple majority.



## Legal Protest Statute ARS § 9-462.04

- **Prior to August 9, 2017:**

*“...twenty per cent 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...”*



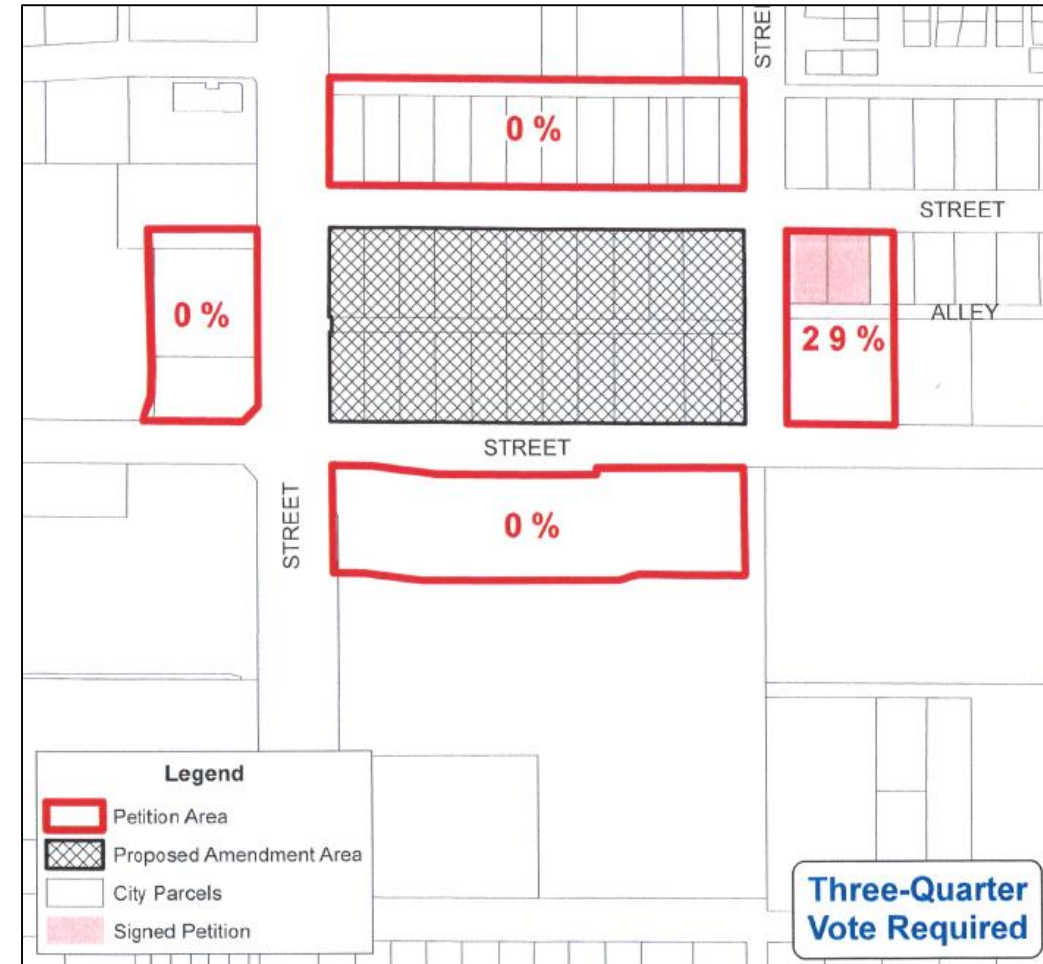
# Legal Protest Statute

## ARS § 9-462.04

- In many cases, prior rule allowed extreme minority of property owners adjacent to a proposed rezoning or text amendment to force a supermajority three-fourths approval vote by the municipality's governing body.
- Provided property owners with disproportionate power and leverage in certain zoning cases, particularly where large lots are adjacent to the narrow side of the subject property.
- In certain instances, a single property owner was able to successfully file a legal protest without any additional petition signatures.

## Old Rule: Example

- East side of Proposed Amendment Area has only four lots within 150-foot petition area.
- Petition signatures from two of the lots in the 150-foot petition area on one side of the property sufficient to exceed 20% threshold and force a three-fourths approval vote by municipal governing body.



# House Bill 2116 (HB 2116)

- On May 10, 2017, Arizona Governor Doug Ducey signed HB 2116, revising the property owner threshold that must be met to file a legal protest in a zoning or text amendment case.
- Revised legislation significantly increased threshold that must be met by adjacent property owners.
- Effective August 9, 2017



## House Bill 2116 (HB 2116)

- **After August 9, 2017:**

*“...twenty percent or more of the property by area and number of lots, tracts, and condominium units within the zoning area of the affected property...”*



## House Bill 2116 (HB 2116)

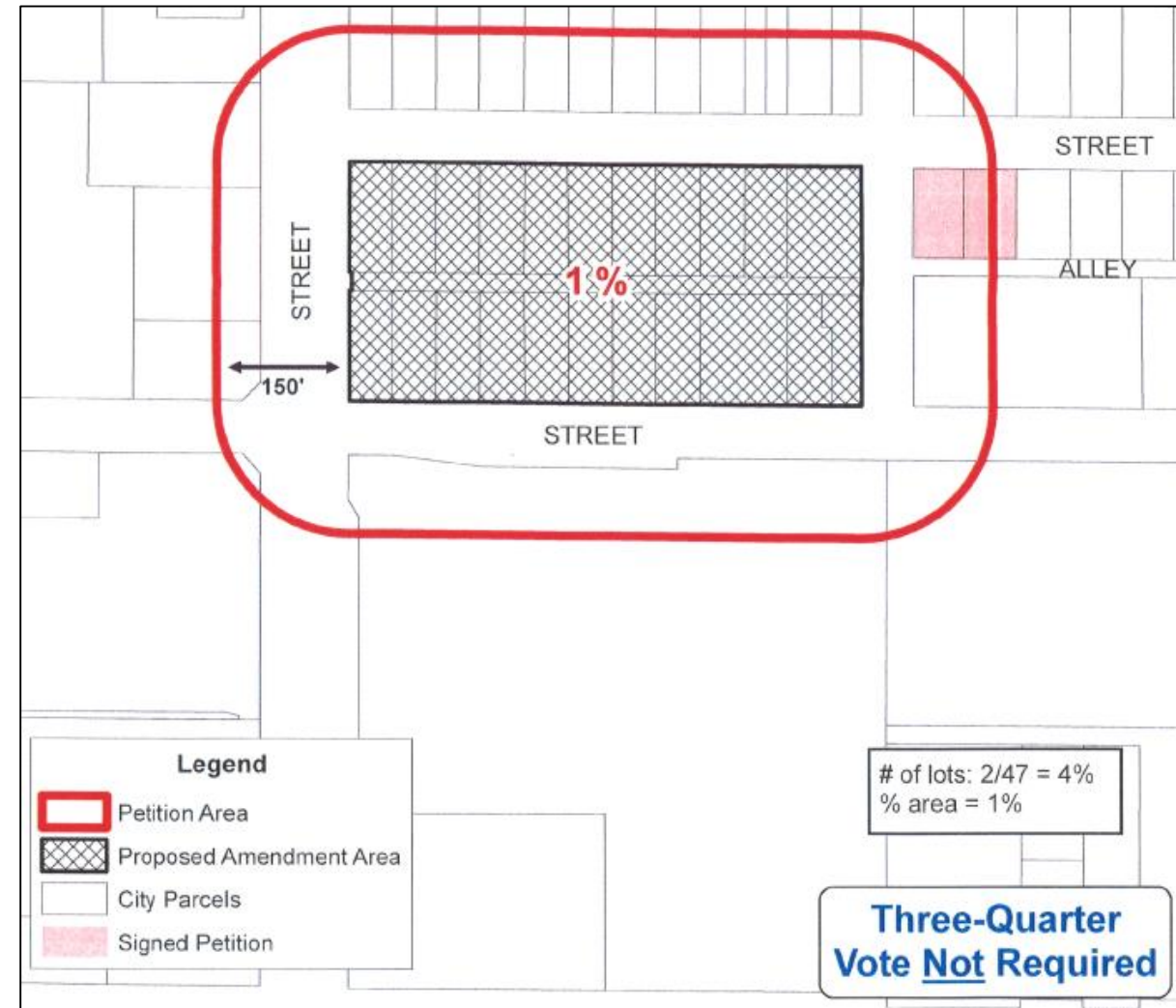
- “Zoning Area” means both of the following:
  - The area within 150 feet, including all rights-of-way, of the affected property subject to the proposed amendment or change; and
  - The area of the proposed amendment or change.

## House Bill 2116 (HB 2116)

- The definition of “Zoning Area” significantly increased the number of surrounding property owner signatures that must be obtained to file a legal protest.
- In many cases, the new requirement made filing a legal protest functionally impossible for surrounding property owners.
- If Zoning Area consists of mostly the affected property and rights-of-way, the remaining area may not even reach 20%.

## New Rule: Example

- Same two property owners from previous example sign petition.
- Equal to only 4% of total lots in Zoning Area (2 of 47).
- Equivalent to 1% of Zoning Area (20% required to meet threshold for legal protest).



# Senate Bill 1014 (SB 1014)

- On January 8, 2018, SB 1014 introduced in the Arizona State Senate to correct drafting error in HB 2116.
- As written, bill included property being rezoned in the calculation for legal protest initiated by surrounding properties.
- Created scenarios where legal protest by surrounding property owners was mathematically impossible.





# Senate Bill 1014 (SB 1014)

- **Proposed Language:**

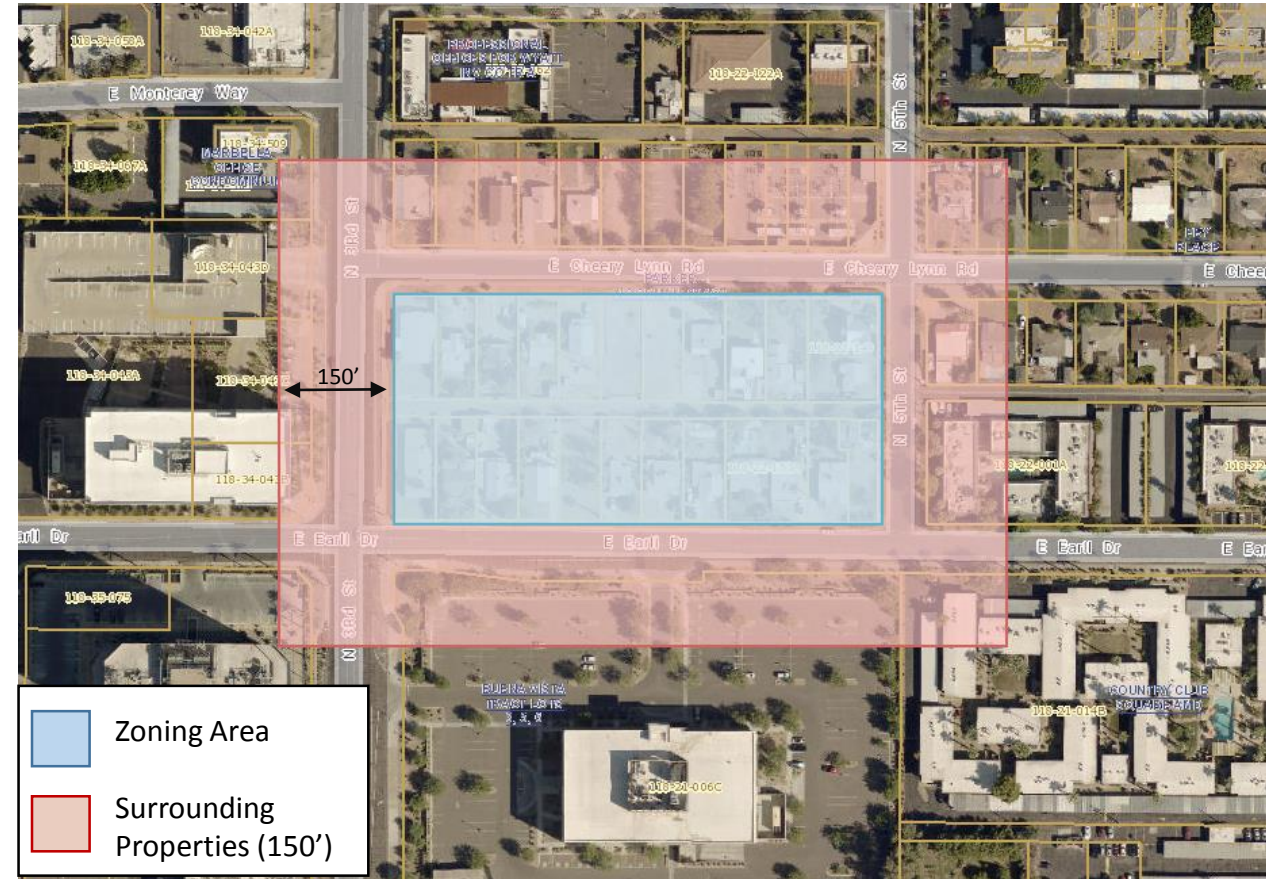
*“...twenty percent or more of the property by area and number of lots, tracts, and condominium units either within the zoning area or the area within one hundred fifty feet, including all rights-of-way, of the zoning area...”*

- **“Zoning Area” means only:**

- The area of the proposed amendment or change.

# Senate Bill 1014: Example

- Under proposed rule, a legal protest requires signatures from property owners totaling 20% of lots and area in Zoning Area of 20% of lots and area in Surrounding Properties
- Proposed rule creates standard that is more achievable than rule under HB 2116, but still more burdensome than the original rule.



# Senate Bill 1014 (SB 1014)

- SB 1014 passed Arizona State Senate 23-7 on January 29, 2018.
- Currently under consideration by Arizona House of Representatives.



**Senate Bill 1350**  
**A.R.S. § 9-500.39**



# **Lifting Restrictions on Short-Term and Vacation Rentals**



# Senate Bill 1350 (SB 1350)

- Introduced by Arizona State Senator Debbie Lesko in January 2016.
- Significantly limits the restrictions municipalities can place on short-term rentals and vacation rentals.
- Provides homeowners with wide latitude to rent out residential property with very little regulation.
- Codified in A.R.S. § 9-500.39



# A.R.S. § 9-500.39

- A city or town may not:
  - Prohibit vacation rentals or short-term rentals.
  - Restrict the use of or regulate vacation rentals or short-term rentals based on their classification, use, or occupancy.

## A.R.S. § 9-500.39

### **“Vacation rental” or “short-term rental” means:**

*“...any individually or collectively owned single family or one-to-four family house or dwelling unit or any unit or group of units in a condominium, cooperative or timeshare, that is also a transient public lodging establishment or owner-occupied residential home offered for transient use...”*

*“Vacation rental and short-term rental do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center or another similar use.”*

# Limitations on Municipal Restrictions

Cities and towns can regulate vacation rentals and short term rentals under limited circumstances

1. To protect the public's health and safety.
2. Adopting and enforcing residential use and zoning ordinances.
3. Limiting or prohibiting the use of vacation rentals for undesirable purposes.



# Protection of the Public's Health and Safety

- Cities and towns may adopt rules and regulations for short-term rentals and vacation rentals related to:
  1. Fire and building code
  2. Health and sanitation
  3. Transportation or traffic control
  4. Solid or hazardous waste and pollution control
  5. Designation of an emergency point of contact
- City must demonstrate that the primary purpose of the rule or regulation is protecting the public's health and safety.

# Adopting and Enforcing Residential Use and Zoning Ordinances

- Cities and towns are not restricted from adopting and enforcing residential use and zoning ordinances, including ordinances related to:
  1. Noise
  2. Protection of welfare
  3. Property maintenance and other nuisance issues
- Ordinances must be applied in the same manner as it is to other similarly-classified properties.

# Limiting or Prohibiting Undesirable Uses

- Cities and towns may restrict or prohibit the use of a vacation rental or short-term rental for the following purposes:
  1. Housing sex offenders
  2. Operating or maintaining a structured sober living home
  3. Selling illegal drugs,
  4. Liquor control
  5. Pornography, obscenity, nude or topless dancing, and other adult-oriented businesses.

# Response from Municipalities

- Many major cities and towns in Arizona had no existing restrictions on vacation rentals and short-term rentals in their zoning ordinances and have taken no action or have yet to update their code.
- Some municipalities have updated their ordinances to reflect A.R.S. § 9-500.39.



# Response from Municipalities: Scottsdale

- **City of Scottsdale:** updated its ordinance to include a definition of “vacation rental or short-term rental” consistent with state law, but also included a rental period restriction that is outside the scope of the state statute.
- “*Vacation rental or Short-term rental* is a dwelling offered for a rental term of less than thirty days to transient guests, visitors or family members, excluding travel accommodation as defined in this section.” Scottsdale Basic Zoning Ordinance Section 3.100.
- Rental period restriction has not been challenged.



# Response from Municipalities: Gilbert

## Definition from Gilbert Zoning Ordinance:

*“Vacation or Short-Term Rentals.* A residential dwelling unit offering transient lodging as defined in A.R.S. Section 9-500.38, if the accommodations are not classified for property taxation under A.R.S. Section 42-12001. Vacation or Short-Term Rentals do not include a unit that is used for any non-residential uses, including retail sales, restaurant, banquet facility, convention center or another similar use. This classification excludes Group Homes for the Handicapped and Recovery Residences.”

# Response from Municipalities: Gilbert

- Gilbert definition incorporates several elements of the statutory language, including a restriction on undesirable uses, which municipalities are permitted to regulate.
- Cites statutory section in early version of the bill (Section 9-500.38) before it was finalized and codified as Section 9-500.39.





# Response from Municipalities: Sedona

- Current version of Land Development Code restricts vacation rentals and short-term rentals in a manner that appears to conflict with state law.
- Example: All single-family residential zoning districts in Sedona contain the following permitted use: *“One single-family dwelling or factory-built house, not including a mobile or manufactured home. Rentals of single-family dwellings for periods of less than 30 consecutive days are prohibited.”*
- Sedona is currently in the process of updating its Land Development Code and may update its ordinances to reflect change in state law.



# Questions?