

SENATE BILL No. 418

By Senators Rose and Masterson

1-28

1 AN ACT concerning housing; relating to new housing development;
2 enacting the by-right housing development act providing a streamlined
3 permit approval process for by-right housing developments; allowing
4 for third-party review of new residential construction development
5 documents and inspection of improvements; requiring political
6 subdivisions to allow certain building provisions for single-family
7 residences of a certain size; excluding owner initiated rezoning to a
8 single-family residential district from protest petition provisions;
9 providing for all land within the corporate limits of a city to be
10 considered zoned for single-family residential use; amending K.S.A.
11 12-757 and 12-758 and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) (1) This section shall be known and may be cited
15 as the by-right housing development act.

16 (2) The purpose of this section is to promote the development of
17 housing by streamlining the approval process for by-right housing
18 development, including single-family homes, townhouses and accessory
19 dwelling units (ADUs). By facilitating the construction of additional
20 housing units, this section aims to address statewide housing shortages and
21 promote affordability.

22 (b) For the purposes of this section:

23 (1) "Accessory dwelling unit" or "ADU" means a secondary housing
24 unit that is subordinate to the primary dwelling unit on the same lot and
25 may include a separate kitchen, bathroom and entrance.

26 (2) "By-right housing development" refers to the approval of
27 proposed housing projects as a matter of right if such projects comply with
28 established land use regulations, without the need for discretionary review
29 or approval.

30 (3) "Single-family home" means a detached or semi-detached
31 dwelling arranged, intended or designed to be occupied by a single family.
32 A semi-detached dwelling is also known as a duplex.

33 (4) "Townhouse" means a single-family dwelling unit constructed in a
34 group of three or more attached units in which each unit extends from
35 foundation to roof with a yard or public way on not less than two sides.

36 (c) *By-right housing development.* (1) All proposed housing

1 developments, including single-family homes, townhouses and accessory
2 dwelling units (ADUs), that meet the criteria outlined in the zoning code
3 and land use regulations shall be approved by-right, without the need for
4 discretionary review or approval by planning commissions, zoning boards
5 or other regulatory bodies.

6 (2) A complete application for a by-right housing development that
7 demonstrates that such development meets the criteria outlined in the
8 zoning code and land use regulations shall be deemed approved unless the
9 application is denied within 15 days of receipt by the permitting or
10 regulatory authority.

11 (d) *Monitoring and compliance.* (1) Regulatory authorities shall
12 monitor compliance with approved by-right housing developments to
13 ensure adherence to applicable regulations and standards.

14 (2) Noncompliance with by-right approvals may result in
15 enforcement actions, such as fines, penalties or project modifications to
16 bring the development into compliance.

17 (e) *Restrictive covenants or condominium association or*
18 *homeowners association regulations.* Nothing in this section shall be
19 construed to invalidate or limit the legality, enforceability or effect of
20 restrictive covenants or condominium association or homeowners
21 association regulations. Courts shall recognize and enforce such covenants
22 and regulations in accordance with applicable laws.

23 (f) *Appeal of denied permit application.* (1) Notwithstanding any
24 provisions of law to the contrary, the court reviewing a denied permit
25 application for a by-right housing development shall review the decision
26 of the permitting authority de novo. The inquiry in such a case shall extend
27 to the questions of whether the permitting authority proceeded without, or
28 in excess of, jurisdiction, whether there was a fair process and whether
29 there was any abuse of discretion.

30 (2) For the purpose of this section, abuse of discretion is established
31 if the court determines that the permitting authority's findings are not
32 supported by clear and convincing evidence in light of the record as a
33 whole.

34 (3) If the court overturns the denial, the court may remand the matter
35 to the permitting authority or direct the permitting authority to grant the
36 permit.

37 (4) The court retains the authority to exercise equitable authority
38 where appropriate and shall award reasonable attorney fees and costs to a
39 prevailing applicant. In no circumstances shall attorney fees or costs be
40 awarded to the government or a third party challenging a permit.

41 New Sec. 2. (a) For the purposes of this section:

42 (1) "Development document" means a document, including an
43 application for a plat, plan or development permit, related to the

1 development of or improvement to land for new residential construction
2 that is required by law, ordinance, rule or other measure to be approved by
3 a regulatory authority in order for a person to initiate, engage in or
4 complete the development or improvement.

5 (2) "Development inspection" means the inspection of an
6 improvement to land for new residential construction required by a
7 regulatory authority as part of a project to develop the land for residential
8 construction or construct or improve an improvement to the land for new
9 residential construction.

10 (3) "Development permit" means a permit required by a regulatory
11 authority to develop land for new residential construction or construct or
12 improve an improvement to land for new residential construction.

13 (4) "Regulatory authority" means the governing body of a political
14 subdivision or a department, board, commission or other entity of the
15 political subdivision responsible for processing or approving a
16 development document or conducting a development inspection that has
17 elected to be subject to this section.

18 (b) *Third-party review of development documents or inspection of*
19 *improvements in consenting political subdivisions.* The governing body of
20 a political subdivision may elect to be subject to this section by the
21 adoption of an appropriate ordinance or resolution by a majority vote of
22 the governing body.

23 (1) If a regulatory authority does not approve, conditionally approve
24 or deny a development document within 15 days of receipt, any required
25 review of the document may be performed by a person:

26 (A) Other than:

27 (i) The applicant; or

28 (ii) a person whose work is the subject of the application; and

29 (B) who is:

30 (i) Employed by the regulatory authority to review development
31 documents;

32 (ii) employed by another political subdivision to review development
33 documents, if the regulatory authority has approved the person to review
34 development documents; or

35 (iii) a licensed professional engineer as defined in K.S.A. 74-7003,
36 and amendments thereto.

37 (2) If a regulatory authority does not conduct a required development
38 inspection within 15 days after receipt of a request for an inspection, the
39 inspection may be conducted by a person:

40 (A) Other than:

41 (i) The owner of the land or improvement to the land that is the
42 subject of the inspection; or

43 (ii) a person whose work is the subject of the inspection; and

1 (B) who is:

2 (i) Certified to inspect buildings by the international code council;

3 (ii) employed by the regulatory authority as a building inspector;

4 (iii) employed by another political subdivision as a building
5 inspector, if the regulatory authority has approved the person to perform
6 inspections; or

7 (iv) a licensed professional engineer as defined in K.S.A. 74-7003,
8 and amendments thereto.

9 (c) *Additional fee prohibited.* A regulatory authority may not impose
10 an additional fee related to the review of a development document or the
11 inspection of an improvement conducted under subsection (b).

12 (d) *Third-party requirements.* (1) A person who reviews a
13 development document or conducts a development inspection under
14 subsection (b) shall:

15 (A) Review the document, conduct the inspection and take all other
16 related actions in accordance with all applicable provisions of law; and

17 (B) not later than 15 days after the date that the person completes the
18 review or inspection, provide notice to the regulatory authority of the
19 results of the review or inspection.

20 (2) A regulatory authority may prescribe a reasonable format for the
21 notice required under paragraph (1).

22 (e) *Waiver prohibited.* A regulatory authority may not request or
23 require an applicant to waive a deadline or other procedure under this
24 section.

25 (f) *Appeal.* (1) Notwithstanding any provision of law to the contrary,
26 an aggrieved person may appeal to the governing body of a political
27 subdivision:

28 (A) A decision to conditionally approve or deny a development
29 document made by the regulatory authority for the political subdivision or
30 a person authorized by subsection (b)(1) to perform the review of the
31 document; or

32 (B) a decision regarding a development inspection conducted by the
33 regulatory authority or a person authorized by subsection (b)(2) to perform
34 the inspection.

35 (2) An aggrieved person shall file the appeal under this subsection not
36 later than 15 days after the date that the decision being appealed is made.

37 (3) Notwithstanding any provision of law to the contrary, if the
38 governing body hearing the appeal does not affirm or modify the decision
39 being appealed by a majority vote within 60 days after the date that the
40 appeal is filed, then:

41 (A) The development document that is the subject of the appeal shall
42 be deemed approved; or

43 (B) the development inspection that is the subject of the appeal shall

1 be considered to be waived by the governing body.

2 New Sec. 3. (a) Notwithstanding any provision of law to the contrary,
3 for new construction of single-family residences that are less than 3,000
4 square feet of total livable floor area, or gross floor area minus garages and
5 basements, in size, all political subdivisions shall allow the following:

6 (1) Use of any of the following, at the discretion of the political
7 subdivision:

8 (A) The 2018 edition of the international residential code (IRC);

9 (B) the version of the 2018 edition of the IRC previously adopted by
10 the political subdivision; or

11 (C) the version of the 2018 edition of the IRC adopted by another
12 political subdivision;

13 (2) construction of single-car garages;

14 (3) only one side of architectural finish; and

15 (4) a minimum residential lot size of 3,000 square feet subject to any
16 reasonable setback requirements that avoid unwarranted hardship yet
17 protect the public welfare and safety.

18 (b) Any part of any building code, ordinance, resolution, regulation or
19 rule of any political subdivision that violates this section shall be null and
20 void as applied to such property.

21 (c) For purposes of this section, "political subdivision" means any
22 county, city, unified government or any other political or taxing
23 subdivision of the state of Kansas, or an administrative unit thereof, with
24 authority to regulate the new construction of single-family residences.

25 Sec. 4. K.S.A. 12-757 is hereby amended to read as follows: 12-757.

26 (a) The governing body, from time to time, may supplement, change or
27 generally revise the boundaries or regulations contained in zoning
28 regulations by amendment. A proposal for such amendment may be
29 initiated by the governing body or the planning commission. If such
30 proposed amendment is not a general revision of the existing regulations
31 and affects specific property, the amendment may be initiated by
32 application of the owner of property affected. Any such amendment, if in
33 accordance with the land use plan or the land use element of a
34 comprehensive plan, shall be presumed to be reasonable. The governing
35 body shall establish in ~~its~~ *such governing body's* zoning regulations the
36 matters to be considered when approving or disapproving a rezoning
37 request. The governing body may establish reasonable fees to be paid in
38 advance by the owner of any property at the time of making application for
39 a zoning amendment.

40 (b) All such proposed amendments first shall be submitted to the
41 planning commission for recommendation. The planning commission shall
42 hold a public hearing thereon, shall cause an accurate written summary to
43 be made of the proceedings, and shall give notice in like manner as that

1 required for recommendations on the original proposed zoning regulations
2 provided in K.S.A. 12-756, and amendments thereto. Such notice shall fix
3 the time and place for such hearing and contain a statement regarding the
4 proposed changes in regulations or restrictions or in the boundary or
5 classification of any zone or district. If such proposed amendment is not a
6 general revision of the existing regulations and affects specific property,
7 the property shall be designated by legal description or a general
8 description sufficient to identify the property under consideration. In
9 addition to such publication notice, written notice of such proposed
10 amendment shall be mailed at least 20 days before the hearing to all
11 owners of record of real property within the area to be altered and to all
12 owners of record of real property located within at least 200 feet of the
13 area proposed to be altered for regulations of a city and to all owners of
14 record of real property located within at least 1,000 feet of the area
15 proposed to be altered for regulations of a county. If a city proposes a
16 zoning amendment to property located adjacent to or outside the city's
17 limits, the area of notification of the city's action shall be extended to at
18 least 1,000 feet in the unincorporated area. Notice of a county's action
19 shall extend 200 feet in those areas where the notification area extends
20 within the corporate limits of a city. All notices shall include a statement
21 that a complete legal description is available for public inspection and
22 shall indicate where such information is available. When the notice has
23 been properly addressed and deposited in the mail, failure of a party to
24 receive such notice shall not invalidate any subsequent action taken by the
25 planning commission or the governing body. Such notice is sufficient to
26 permit the planning commission to recommend amendments to zoning
27 regulations ~~which~~ that affect only a portion of the land described in the
28 notice or ~~which~~ that give all or any part of the land described a zoning
29 classification of lesser change than that set forth in the notice. A
30 recommendation of a zoning classification of lesser change than that set
31 forth in the notice shall not be valid without republication and, where
32 necessary, remailing, unless the planning commission has previously
33 established a table or publication available to the public ~~which~~ that
34 designates what zoning classifications are lesser changes authorized within
35 the published zoning classifications. At any public hearing held to consider
36 a proposed rezoning, an opportunity shall be granted to interested parties
37 to be heard.

38 (c) (1) Whenever five or more property owners of record owning 10
39 or more contiguous or noncontiguous lots, tracts or parcels of the same
40 zoning classification initiate a rezoning of ~~their~~ such owners' property
41 from a less restrictive to a more restrictive zoning classification, such
42 amendment shall require notice by publication and hearing in like manner
43 as required in subsection (b) ~~of this section~~. Such zoning amendment shall

1 not require written notice and shall not be subject to the protest petition
2 provision of subsection (f) ~~of this section.~~

3 (2) *Whenever a property owner initiates a rezoning of such owner's*
4 *property to a single-family residential district, such amendment shall*
5 *require notice by publication and hearing in like manner as required in*
6 *subsection (b). Such zoning amendment shall not require written notice*
7 *and shall not be subject to the protest petition provisions of subsection (f).*

8 (3) Whenever a city or county initiates a rezoning from a less
9 restrictive to a more restrictive zoning classification of 10 or more
10 contiguous or noncontiguous lots, tracts or parcels of the same zoning
11 classification having five or more owners of record, such amendment shall
12 require notice by publication and hearing in like manner as that required
13 by subsection (b) ~~of this section.~~ In addition, written notice shall be
14 required to be mailed to only owners of record of the properties to be
15 rezoned and only such owners shall be eligible to initiate a protest petition
16 under subsection (f) ~~of this section.~~

17 (d) Except as provided in subsection (g) and unless otherwise
18 provided by this act, the procedure for the consideration and adoption of
19 any such proposed amendment shall be in the same manner as that
20 required for the consideration and adoption of the original zoning
21 regulations. A majority of the members of the planning commission
22 present and voting at the hearing shall be required to recommend approval
23 or denial of the amendment to the governing body. If the planning
24 commission fails to make a recommendation on a rezoning request, the
25 planning commission shall be deemed to have made a recommendation of
26 disapproval. When the planning commission submits a recommendation of
27 approval or disapproval of such amendment and the reasons therefor, the
28 governing body may: (1) Adopt such recommendation by ordinance in a
29 city or by resolution in a county; (2) override the planning commission's
30 recommendation by a $\frac{2}{3}$ majority vote of the membership of the governing
31 body; or (3) return such recommendation to the planning commission with
32 a statement specifying the basis for the governing body's failure to approve
33 or disapprove. If the governing body returns the planning commission's
34 recommendation, the planning commission, after considering the same,
35 may resubmit ~~its~~ *the planning commission's* original recommendation
36 giving the reasons therefor or submit new and amended recommendation.
37 Upon the receipt of such recommendation, the governing body, by a
38 simple majority thereof, may adopt or may revise or amend and adopt such
39 recommendation by the respective ordinance or resolution, or ~~it~~ *the*
40 *governing body* need take no further action thereon. If the planning
41 commission fails to deliver ~~its~~ *the planning commission's* recommendation
42 to the governing body following the planning commission's next regular
43 meeting after receipt of the governing body's report, the governing body

1 shall consider such course of inaction on the part of the planning
2 commission as a resubmission of the original recommendation and
3 proceed accordingly. The proposed rezoning shall become effective upon
4 publication of the respective adopting ordinance or resolution.

5 (e) If such amendment affects the boundaries of any zone or district,
6 the respective ordinance or resolution shall describe the boundaries as
7 amended, or if provision is made for the fixing of the same upon an
8 official map ~~which~~ *that* has been incorporated by reference, the amending
9 ordinance or resolution shall define the change or the boundary as
10 amended, ~~shall~~ order the official map to be changed to reflect such
11 amendment, ~~shall~~ amend the section of the ordinance or resolution
12 incorporating the same and ~~shall~~ reincorporate such map as amended.

13 (f) (1) Except as provided in subsection (g), whether or not the
14 planning commission approves or disapproves a zoning amendment, if a
15 protest petition against such amendment is filed in the office of the city
16 clerk or the county clerk within 14 days after the date of the conclusion of
17 the public hearing pursuant to the publication notice, signed by the owners
18 of record of 20% or more of any real property proposed to be rezoned or
19 by the owners of record of 20% or more of the total real property within
20 the area required to be notified by this act of the proposed rezoning of a
21 specific property, excluding streets and public ways and property excluded
22 pursuant to paragraph (2) ~~of this subsection~~, the ordinance or resolution
23 adopting such amendment shall not be passed except by at least a $\frac{3}{4}$ vote
24 of all of the members of the governing body.

25 (2) For the purpose of determining the sufficiency of a protest
26 petition, if the proposed rezoning was requested by the owner of the
27 specific property subject to the rezoning or the owner of the specific
28 property subject to the rezoning does not oppose in writing such rezoning,
29 such property also shall be excluded when calculating the "total real
30 property within the area required to be notified" as that phrase is used in
31 paragraph (1) ~~of this subsection~~.

32 (g) An ordinance or resolution adopting a zoning amendment for
33 mining operations subject to K.S.A. 49-601 et seq., and amendments
34 thereto, regardless of a protest petition or failure to recommend by the
35 planning commission shall only require a majority vote of all members of
36 the governing body.

37 (h) Zoning regulations may provide additional notice by providing for
38 the posting of signs on land ~~which~~ *that* is the subject of a proposed
39 rezoning; for the purpose of providing notice of such proposed rezoning.

40 Sec. 5. K.S.A. 12-758 is hereby amended to read as follows: 12-758.

41 (a) Except as otherwise provided by this section and K.S.A. 12-770 and
42 12-771, and amendments thereto, regulations adopted under authority of
43 this act shall not apply to the existing use of any building or land; but shall

1 apply to any alteration of a building to provide for a change in use or a
2 change in the use of any building or land after the effective date of any
3 regulations adopted under this act. If a building is damaged by more than
4 50% of its fair market value, such building shall not be restored if the use
5 of such building is not in conformance with the regulations adopted under
6 this act.

7 (b) Except for flood plain regulations in areas designated as a flood
8 plain, regulations adopted by a city pursuant to K.S.A. 12-715b, and
9 amendments thereto, or a county pursuant to this act shall not apply to the
10 use of land for agricultural purposes, nor for the erection or maintenance
11 of buildings thereon for such purposes so long as such land and buildings
12 are used for agricultural purposes and not otherwise.

13 (c) *Notwithstanding any provision of law to the contrary, all land*
14 *within the corporate limits of a city shall be considered zoned for single-*
15 *family residential use in addition to any other zoning adopted by the city*
16 *for such land. This provision shall not limit a city's ability to impose*
17 *reasonable regulations related to setbacks, the provision of development*
18 *and performance standards, utility and subdivision standards, future*
19 *provisions for street and utility connections, grading plans and platting*
20 *the property that are related to single-family residential developments of*
21 *land not zoned for single-family residential use.*

22 Sec. 6. K.S.A. 12-757 and 12-758 are hereby repealed.

23 Sec. 7. This act shall take effect and be in force from and after its
24 publication in the statute book.