

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 ***certain*** single-
7 family residences of a certain size; excluding owner initiated rezoning
8 to a single-family residential district from protest petition provisions;
9 providing for all land within the corporate limits of a city ***that is zoned***
10 ***for any type of residential use*** to be considered zoned for single-family
11 residential use; amending K.S.A. 12-757 and 12-758 and repealing the
12 existing sections.
13

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

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

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

23 (b) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (1) "Development document" means a document, including an

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

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

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

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

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

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

27 (A) Other than:

28 (i) The applicant; or

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

30 (B) who is:

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

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

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

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

41 (A) Other than:

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

- 1 (ii) a person whose work is the subject of the inspection; and
2 (B) who is:
3 (i) Certified to inspect buildings by the international code council;
4 (ii) employed by the regulatory authority as a building inspector;
5 (iii) employed by another political subdivision as a building
6 inspector, if the regulatory authority has approved the person to perform
7 inspections; or
8 (iv) a licensed professional engineer as defined in K.S.A. 74-7003,
9 and amendments thereto.
- 10 (c) *Additional fee prohibited.* A regulatory authority may not impose
11 an additional fee related to the review of a development document or the
12 inspection of an improvement conducted under subsection (b).
- 13 (d) *Third-party requirements.* (1) A person who reviews a
14 development document or conducts a development inspection under
15 subsection (b) shall:
16 (A) Review the document, conduct the inspection and take all other
17 related actions in accordance with all applicable provisions of law; and
18 (B) not later than 15 days after the date that the person completes the
19 review or inspection, provide notice to the regulatory authority of the
20 results of the review or inspection.
- 21 (2) A regulatory authority may prescribe a reasonable format for the
22 notice required under paragraph (1).
- 23 (e) *Waiver prohibited.* A regulatory authority may not request or
24 require an applicant to waive a deadline or other procedure under this
25 section.
- 26 (f) *Appeal.* (1) Notwithstanding any provision of law to the contrary,
27 an aggrieved person may appeal to the governing body of a political
28 subdivision:
29 (A) A decision to conditionally approve or deny a development
30 document made by the regulatory authority for the political subdivision or
31 a person authorized by subsection (b)(1) to perform the review of the
32 document; or
33 (B) a decision regarding a development inspection conducted by the
34 regulatory authority or a person authorized by subsection (b)(2) to perform
35 the inspection.
- 36 (2) An aggrieved person shall file the appeal under this subsection not
37 later than 15 days after the date that the decision being appealed is made.
- 38 (3) Notwithstanding any provision of law to the contrary, if the
39 governing body hearing the appeal does not affirm or modify the decision
40 being appealed by a majority vote within 60 days after the date that the
41 appeal is filed, then:
42 (A) The development document that is the subject of the appeal shall
43 be deemed approved; or

1 (B) the development inspection that is the subject of the appeal shall
2 be considered to be waived by the governing body.

3 New Sec. 3. (a) Notwithstanding any provision of law to the contrary,
4 for new construction of single-family residences that are less than 3,000
5 square feet of total livable floor area, or gross floor area minus garages and
6 basements, in size, ***and are constructed on each such residence's own***
7 ***separate lot or parcel with its own individual legal description***, all
8 political subdivisions shall allow the following:

9 (1) Use of any of the following, at the discretion of the political
10 subdivision:

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

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

14 (C) the version of the 2018 edition of the IRC adopted by another
15 political subdivision;

16 (2) construction of single-car garages;

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

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

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

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

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

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

43 (b) All such proposed amendments first shall be submitted to the

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

41 (c) (1) Whenever five or more property owners of record owning 10
42 or more contiguous or noncontiguous lots, tracts or parcels of the same
43 zoning classification initiate a rezoning of ~~their~~ *such owners'* property

1 from a less restrictive to a more restrictive zoning classification, such
2 amendment shall require notice by publication and hearing in like manner
3 as required in subsection (b) ~~of this section~~. Such zoning amendment shall
4 not require written notice and shall not be subject to the protest petition
5 provision of subsection (f) ~~of this section~~.

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

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

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

1 commission fails to deliver ~~its~~ *the planning commission's* recommendation
2 to the governing body following the planning commission's next regular
3 meeting after receipt of the governing body's report, the governing body
4 shall consider such course of inaction on the part of the planning
5 commission as a resubmission of the original recommendation and
6 proceed accordingly. The proposed rezoning shall become effective upon
7 publication of the respective adopting ordinance or resolution.

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

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

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

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

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

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

1 (a) Except as otherwise provided by this section and K.S.A. 12-770 and
2 12-771, and amendments thereto, regulations adopted under authority of
3 this act shall not apply to the existing use of any building or land; but shall
4 apply to any alteration of a building to provide for a change in use or a
5 change in the use of any building or land after the effective date of any
6 regulations adopted under this act. If a building is damaged by more than
7 50% of its fair market value, such building shall not be restored if the use
8 of such building is not in conformance with the regulations adopted under
9 this act.

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

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

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

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