

SENATE BILL No. 418

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

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

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

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

(b) For the purposes of this section:

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

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

(A) Do not require federal or state discharge permits or stormwater drainage studies;

(B) have a maximum of 12 attached units as part of any townhouse project;

(C) comply with the condition that the construction of public infrastructure extensions or improvements:

(i) Is not required for the development;

(ii) has been completed; or

(iii) is a condition of the regulatory authority's approval of the application for a by-right housing development that has been agreed to by the applicant;

(D) would not increase impervious surface in a manner that adversely affects drainage into a special flood hazard area as defined by any adopted floodplain management ordinance, as designated by the Kansas department of agriculture's division of water resources or other office designated by the governor or by law; and

(E) are not located within a district listed on the national register of historic places or otherwise subject to historic preservation review under applicable state, federal or local law.

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

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

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

(2) A complete application for a by-right housing development that demonstrates that such development meets the criteria outlined in the zoning code and land use regulations shall be deemed approved unless the application is denied within 30 days of receipt by the permitting or regulatory authority, or within 60 days for an application that requires approval of a subdivision plat pursuant to K.S.A. 12-752, and amendments thereto, or within 90 days for an application that requires approval of a subdivision plat of more than 40 single-family homes pursuant to K.S.A. 12-752, and amendments thereto. Notwithstanding the foregoing, a subdivision plat shall not be deemed approved unless such plat complies with all applicable subdivision statutes and regulations adopted pursuant to K.S.A. 12-752, and amendments thereto.

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

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

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

(f) *Appeal of denied permit application.* (1) An appeal of a denied by-right housing development permit application pursuant to this section shall adhere to the provisions of K.S.A. 12-760, and amendments thereto, except that if the regulatory authority has established an administrative appeal process to consider such appeals, such administrative appeal process may be completed first. Notwithstanding any provisions of law to the contrary, the court reviewing a denied permit application for a by-right housing development shall review the decision of the permitting authority de novo. The inquiry in such a case shall extend to the questions of whether the permitting authority proceeded without, or in excess of, jurisdiction, whether there was a fair process and whether there was any abuse of discretion.

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

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

(4) The court retains the authority to exercise equitable authority where appropriate and may, upon a finding that the permitting authority acted in bad faith, award reasonable attorney fees and costs to a prevailing applicant. In no circumstances shall attorney fees or costs be awarded to the government or a third party challenging a permit.

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

(1) "Development document" means a document, including an application for a plat, plan or development permit, related to the development of or improvement to land for new residential construction that is required by law, ordinance, rule or other measure to be approved by a regulatory authority in order for a person to initiate, engage in or complete the development or improvement.

(2) "Development inspection" means the inspection of an improvement to land for new residential construction required by a

regulatory authority as part of a project to develop the land for residential construction or construct or improve an improvement to the land for new residential construction.

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

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

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

(1) If a regulatory authority does not approve, conditionally approve or deny a development document within 30 days of receipt, any required review of the document may be performed by a person:

- (A) Other than:
 - (i) The applicant; or
 - (ii) a person whose work is the subject of the application; and
- (B) who is:
 - (i) Employed by the regulatory authority to review development documents;
 - (ii) employed by another political subdivision to review development documents, if the regulatory authority has approved the person to review development documents; or
 - (iii) a licensed professional engineer as defined in K.S.A. 74-7003, and amendments thereto.

(2) If a regulatory authority does not conduct a required development inspection within 30 days after receipt of a request for an inspection, the inspection may be conducted by a person:

- (A) Other than:
 - (i) The owner of the land or improvement to the land that is the subject of the inspection; or
 - (ii) a person whose work is the subject of the inspection; and
- (B) who is:
 - (i) Certified to inspect buildings by the international code council;
 - (ii) employed by the regulatory authority as a building inspector;
 - (iii) employed by another political subdivision as a building inspector, if the regulatory authority has approved the person to perform inspections; or
 - (iv) a licensed professional engineer as defined in K.S.A. 74-7003, and amendments thereto.

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

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

- (A) Review the document, conduct the inspection and take all other related actions in accordance with all applicable provisions of law; and
- (B) not later than 15 days after the date that the person completes the review or inspection, provide notice to the regulatory authority of the results of the review or inspection.

(2) A regulatory authority may prescribe a reasonable format for

the notice required under paragraph (1).

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

(f) Appeal. (1) Notwithstanding any provision of law to the contrary, an aggrieved person may appeal to the governing body of a political subdivision or to an appeal board established by such governing body:

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

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

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

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

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

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

New Sec. 3. (a) Notwithstanding any provision of law to the contrary, for new construction of single-family residences that are less than 2,500 square feet of total livable floor area, or gross floor area minus garages and basements, in size, and are constructed on each such residence's own separate lot or parcel with its own individual legal description, all political subdivisions shall allow the following:

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

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

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

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

(2) construction of single-car garages;

(3) only one side of architectural finish; and

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

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

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

Sec. 4. K.S.A. 12-757 is hereby amended to read as follows: 12-757. (a) The governing body, from time to time, may supplement, change or generally revise the boundaries or regulations contained in zoning regulations by amendment. A proposal for such amendment may be initiated by the governing body or the planning commission. If such proposed amendment is not a general revision of the existing

regulations and affects specific property, the amendment may be initiated by application of the owner of property affected. Any such amendment, if in accordance with the land use plan or the land use element of a comprehensive plan, shall be presumed to be reasonable. The governing body shall establish in ~~its~~ *such governing body's* zoning regulations the matters to be considered when approving or disapproving a rezoning request. The governing body may establish reasonable fees to be paid in advance by the owner of any property at the time of making application for a zoning amendment.

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

(c) (1) Whenever five or more property owners of record owning 10 or more contiguous or noncontiguous lots, tracts or parcels of the same zoning classification initiate a rezoning of ~~their~~ *such owners'* property from a less restrictive to a more restrictive zoning classification, such amendment shall require notice by publication and hearing in like manner as required in subsection (b) ~~of this section~~. Such zoning amendment shall not require written notice and shall not

be subject to the protest petition provision of subsection (f) ~~of this section.~~

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

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

(d) Except as provided in subsection (g) and unless otherwise provided by this act, the procedure for the consideration and adoption of any such proposed amendment shall be in the same manner as that required for the consideration and adoption of the original zoning regulations. A majority of the members of the planning commission present and voting at the hearing shall be required to recommend approval or denial of the amendment to the governing body. If the planning commission fails to make a recommendation on a rezoning request, the planning commission shall be deemed to have made a recommendation of disapproval. When the planning commission submits a recommendation of approval or disapproval of such amendment and the reasons therefor, the governing body may: (1) Adopt such recommendation by ordinance in a city or by resolution in a county; (2) override the planning commission's recommendation by a $\frac{2}{3}$ majority vote of the membership of the governing body; or (3) return such recommendation to the planning commission with a statement specifying the basis for the governing body's failure to approve or disapprove. If the governing body returns the planning commission's recommendation, the planning commission, after considering the same, may resubmit ~~its~~ *the planning commission's* original recommendation giving the reasons therefor or submit new and amended recommendation. Upon the receipt of such recommendation, the governing body, by a simple majority thereof, may adopt or may revise or amend and adopt such recommendation by the respective ordinance or resolution, or ~~it~~ *the governing body* need take no further action thereon. If the planning commission fails to deliver ~~its~~ *the planning commission's* recommendation to the governing body following the planning commission's next regular meeting after receipt of the governing body's report, the governing body shall consider such course of inaction on the part of the planning commission as a resubmission of the original recommendation and proceed accordingly. The proposed rezoning shall become effective upon publication of the respective adopting ordinance or resolution.

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

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

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

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

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

Sec. 5. K.S.A. 12-758 is hereby amended to read as follows: 12-758. (a) Except as otherwise provided by this section and K.S.A. 12-770 and 12-771, and amendments thereto, regulations adopted under authority of this act shall not apply to the existing use of any building or land; but shall apply to any alteration of a building to provide for a change in use or a change in the use of any building or land after the effective date of any regulations adopted under this act. If a building is damaged by more than 50% of its fair market value, such building shall not be restored if the use of such building is not in conformance with the regulations adopted under this act.

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

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

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

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

I hereby certify that the above BILL originated in the
SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.