

SENATE BILL No. 346

By Committee on Federal and State Affairs

1-12

1 AN ACT concerning planning and zoning; relating to proposing
2 amendments to city or county zoning regulations; restricting who can
3 propose rezoning amendments; amending K.S.A. 12-757 and repealing
4 the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 12-757 is hereby amended to read as follows: 12-
8 757. (a) The governing body, ~~from time to time~~, may supplement, change
9 or generally revise the boundaries or regulations contained in zoning
10 regulations by amendment. A proposal for ~~such an upzoning or~~
11 *downzoning* amendment may be initiated by the governing body or the
12 planning commission. If such proposed amendment is not a general
13 *upzoning or downzoning* revision of the existing regulations and affects
14 specific property, the *rezoning* amendment ~~may~~ *shall only* be initiated by
15 application of the owner of property affected. Any ~~such proposed~~
16 amendment, if in accordance with the land use plan or the land use
17 element of a comprehensive plan, shall be presumed to be reasonable. The
18 governing body shall establish in its zoning regulations the matters to be
19 considered when approving or disapproving a *rezoning amendment*
20 request. The governing body may establish reasonable fees to be paid in
21 advance by the owner of any property at the time of making application for
22 a ~~zoning~~ *rezoning* amendment.

23 (b) All such proposed amendments first shall be submitted to the
24 planning commission for recommendation. The planning commission shall
25 hold a public hearing ~~thereon, shall~~, cause an accurate written summary to
26 be made of the proceedings; and ~~shall~~ give notice ~~in like the same~~ manner
27 as that required for recommendations on the original proposed zoning
28 regulations provided in K.S.A. 12-756, and amendments thereto. Such
29 notice shall fix the time and place for such hearing and contain a statement
30 regarding the proposed changes in regulations or restrictions or in the
31 boundary or classification of any zone or district. If such proposed
32 amendment is not a general *upzoning or downzoning* revision of the
33 existing regulations and affects specific property, the property shall be
34 designated by legal description or a general description sufficient to
35 identify the property under consideration. In addition to such publication
36 notice, written notice of such proposed amendment shall be mailed at least

1 20 days before the hearing to all owners of record of real property within
2 the area to be altered and to all owners of record of real property located
3 within at least 200 feet of the area proposed to be altered for regulations of
4 a city and to all owners of record of real property located within at least
5 1,000 feet of the area proposed to be altered for regulations of a county. If
6 a city proposes a zoning amendment to property located adjacent to or
7 outside the city's limits, the area of notification of the city's action shall be
8 extended to at least 1,000 feet in the unincorporated area. Notice of a
9 county's action shall extend 200 feet in those areas where the notification
10 area extends within the corporate limits of a city. All notices shall include a
11 statement that a complete legal description is available for public
12 inspection and shall indicate where such information is available. When
13 the notice has been properly addressed and deposited in the mail, failure of
14 a party to receive such notice shall not invalidate any subsequent action
15 taken by the planning commission or the governing body. Such notice is
16 sufficient to permit the planning commission to recommend amendments
17 to zoning regulations ~~which that~~ affect only a portion of the land described
18 in the notice or ~~which that~~ give all or any part of the land described a
19 zoning classification of lesser change than that set forth in the notice. A
20 recommendation of a zoning classification of lesser change than that set
21 forth in the notice shall not be valid without republication and, where
22 necessary, remailing, unless the planning commission has previously
23 established a table or publication available to the public ~~which that~~
24 designates what zoning classifications are lesser changes authorized within
25 the published zoning classifications. At any public hearing held to consider
26 a proposed rezoning *amendment*, an opportunity shall be granted to
27 interested parties to be heard.

28 (c) ~~(1)~~ Whenever five or more property owners of record ~~owning who~~
29 *in the aggregate own* 10 or more contiguous or noncontiguous lots, tracts
30 or parcels of the same zoning classification initiate a rezoning of ~~their such~~
31 property from a less restrictive to a more restrictive zoning classification,
32 such *rezoning* amendment shall require notice by publication and hearing
33 ~~in like the same manner as that~~ required in subsection (b) ~~of this section~~.
34 Such ~~zoning~~ *rezoning* amendment shall not require written notice and shall
35 not be subject to the protest petition provision of subsection (f) ~~of this~~
36 ~~section~~.

37 (2) ~~Whenever a city or county initiates a rezoning from a less~~
38 ~~restrictive to a more restrictive zoning classification of 10 or more~~
39 ~~contiguous or noncontiguous lots, tracts or parcels of the same zoning~~
40 ~~classification having five or more owners of record, such amendment shall~~
41 ~~require notice by publication and hearing in like manner as that required~~
42 ~~by subsection (b) of this section. In addition, written notice shall be~~
43 ~~required to be mailed to only owners of record of the properties to be~~

1 ~~rezoned and only such owners shall be eligible to initiate a protest petition~~
2 ~~under subsection (f) of this section.~~

3 (d) (1) Except as provided in subsection (g) and unless otherwise
4 provided by this act, the procedure for the consideration and adoption of
5 ~~any such~~ proposed amendment shall be in the same manner as that
6 required for the consideration and adoption of the original zoning
7 regulations. A majority of the members of the planning commission
8 present and voting at the hearing shall be required to recommend approval
9 or denial of the amendment to the governing body. If the planning
10 commission fails to make a recommendation on a rezoning *amendment*
11 request, the planning commission shall be deemed to have made a
12 recommendation of disapproval.

13 (2) When the planning commission submits a recommendation of
14 approval or disapproval of such *proposed* amendment and the reasons
15 therefor, the governing body may: (1) Adopt such recommendation by
16 ordinance in a city or by resolution in a county; (2) override the planning
17 commission's recommendation by a $\frac{2}{3}$ majority vote of the membership of
18 the governing body; or (3) return such recommendation to the planning
19 commission with a statement specifying the basis for the governing body's
20 failure to approve or disapprove.

21 (3) If the governing body returns the planning commission's
22 recommendation, the planning commission, after considering the same,
23 may resubmit its original recommendation giving the reasons therefor or
24 submit *a* new and amended recommendation. Upon the receipt of such
25 recommendation, the governing body, by a simple majority thereof, may
26 adopt or may revise or amend and adopt such recommendation by the
27 respective ordinance or resolution, or ~~it need~~ *may* take no further action
28 ~~thereon on the recommendation.~~ If the planning commission fails to
29 deliver its recommendation to the governing body following the planning
30 commission's next regular meeting after receipt of the governing body's
31 report, the governing body shall consider such course of inaction on the
32 part of the planning commission as a resubmission of the original
33 recommendation and proceed accordingly. The proposed ~~rezoning~~
34 *amendment* shall become effective upon publication of the respective
35 adopting ordinance or resolution.

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

1 map as amended.

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

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

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

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

30 (i) *For purposes of this section:*

31 (1) *"Development capacity" means the potential for development of*
32 *the real property within a zone or district due to the zoning regulations of*
33 *such zone or district, such as building square footage, height and setback*
34 *distances;*

35 (2) *"downzoning" means a change to regulations within an existing*
36 *zone or district that generally reduces development capacity;*

37 (3) *"rezoning" means changing the zone or district classification of*
38 *zoned property; and*

39 (4) *"upzoning" means a change to regulations within an existing zone*
40 *or district that generally allows for more development capacity.*

41 Sec. 2. K.S.A. 12-757 is hereby repealed.

42 Sec. 3. This act shall take effect and be in force from and after its
43 publication in the statute book.