

CHAPTER 150**(HB 404)**

AN ACT relating to land use.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 100.111 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Administrative official" means any department, employee, or advisory, elected, or appointed body which is authorized to administer any provision of the zoning regulation, subdivision regulations, and, if delegated, any provision of any housing or building regulation or any other land use control regulation;
- (2) "Agricultural use" means the use of:
 - (a) A tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers, or ornamental plants, including provision for dwellings for persons and their families who are engaged in the ~~above~~ agricultural use on the tract, but not including residential building development for sale or lease to the public;
 - (b) ~~[, and shall also include,]~~Regardless of the size of the tract of land used, small wineries licensed under KRS 243.155, and farm wineries licensed under the provisions of KRS 243.156;
 - (c) *A tract of at least five (5) contiguous acres used for the following activities involving horses:*
 1. *Riding lessons;*
 2. *Rides;*
 3. *Training;*
 4. *Projects for educational purposes;*
 5. *Boarding and related care; or*
 6. *Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving seventy (70) or less participants. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving more than seventy (70) participants shall be subject to local applicable zoning regulations; or*
 - (d) *A tract of land used for the following activities involving horses:*
 1. *Riding lessons;*
 2. *Rides;*
 3. *Training;*
 4. *Projects for educational purposes;*

5. *Boarding and related care; or*
6. *Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving seventy (70) or less participants. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving more than seventy (70) participants shall be subject to local applicable zoning regulations.*

This paragraph shall only apply to acreage that was being used for these activities before the effective date of this Act;

- (3) "Board" means the board of adjustment unless the context indicates otherwise;
- (4) "Citizen member" means any member of the planning commission or board of adjustment who is not an elected or appointed official or employee of the city, county, or consolidated local government;
- (5) "Commission" means planning commission;
- (6) "Conditional use" means a use which is essential to or would promote the public health, safety, or welfare in one (1) or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent, and character of performance are imposed in addition to those imposed in the zoning regulation;
- (7) "Conditional use permit" means legal authorization to undertake a conditional use, issued by the administrative official pursuant to authorization by the board of adjustment, consisting of two (2) parts:
 - (a) A statement of the factual determination by the board of adjustment which justifies the issuance of the permit; and
 - (b) A statement of the specific conditions which must be met in order for the use to be permitted;
- (8) "Development plan" means written and graphic material for the provision of a development, including any or all of the following: location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions, and all other conditions agreed to by the applicant;
- (9) "Fiscal court" means the chief body of the county with legislative power, whether it is the fiscal court, county commissioners, or otherwise;
- (10) "Housing or building regulation" means the Kentucky Building Code, the Kentucky Plumbing Code, and any other building or structural code promulgated by the Commonwealth or by its political subdivisions;
- (11) "Legislative body" means the chief body of the city or consolidated local government with legislative power, whether it is the board of aldermen, the general council, the common council, the city council, the board of commissioners, or otherwise; at times it also implies the county's fiscal court;
- (12) "Mayor" means the chief elected official of the city or consolidated local government whether the official designation of his office is mayor or otherwise;

- (13) "Nonconforming use or structure" means an activity or a building, sign, structure, or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located;
- (14) "Planning operations" means the formulating of plans for the physical development and social and economic well-being of a planning unit, and the formulating of proposals for means of implementing the plans;
- (15) "Planning unit" means any city, county, or consolidated local government, or any combination of cities, counties, or parts of counties, or parts of consolidated local governments engaged in planning operations;
- (16) "Plat" means the map of a subdivision;
- (17) "Political subdivision" means any city, county, or consolidated local government;
- (18) "Several" means two (2) or more;
- (19) "Public facility" means any use of land whether publicly or privately owned for transportation, utilities, or communications, or for the benefit of the general public, including but not limited to libraries, streets, schools, fire or police stations, county buildings, municipal buildings, recreational centers including parks, and cemeteries;
- (20) "Street" means any vehicular way;
- (21) "Structure" means anything constructed or made, the use of which requires permanent location in or on the ground or attachment to something having a permanent location in or on the ground, including buildings and signs;
- (22) "Subdivision" means the division of a parcel of land into three (3) or more lots or parcels except in a county containing a city of the first, second, or third class or in an urban-county government or consolidated local government where a subdivision means the division of a parcel of land into two (2) or more lots or parcels; for the purpose, whether immediate or future, of sale, lease, or building development, or if a new street is involved, any division of a parcel of land; provided that a division of land for agricultural use and not involving a new street shall not be deemed a subdivision. The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided; any division or redivision of land into parcels of less than one (1) acre occurring within twelve (12) months following a division of the same land shall be deemed a subdivision within the meaning of this section;
- (23) "Unit" means planning unit; and
- (24) "Variance" means a departure from dimensional terms of the zoning regulation pertaining to the height, width, length, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247.

Section 2. KRS 100.203 is amended to read as follows:

Cities and counties may enact zoning regulations which shall contain:

- (1) A text, which shall list the types of zones which may be used, and the regulations which may be imposed in each zone, which must be uniform throughout the zone. In addition, the text shall make provisions for the granting of variances, conditional use permits, and for nonconforming use of land and structures, and any other provisions which are necessary to implement the zoning regulation. The city or county may regulate:

- (a) The activity on the land, including filling or excavation of land, and the removal of natural resources, and the use of watercourses, and other bodies of water, as well as land subject to flooding;
 - (b) The size, width, height, bulk, location of structures, buildings and signs;
 - (c) Minimum or maximum areas or percentages of areas, courts, yards, or other open spaces or bodies of water which are to be left unoccupied, and minimum distance requirements between buildings or other structures;
 - (d) Intensity of use and density of population floor area to ground area ratios, or other means;
 - (e) Districts of special interest to the proper development of the community, including, but not limited to, exclusive use districts, historical districts, planned business districts, planned industrial districts, renewal, rehabilitation, and conservation districts; planned neighborhood and group housing districts;
 - (f) Fringe areas of each district, by imposing requirements which will make it compatible with neighboring districts; and
 - (g) The activities and structures on the land at or near major thoroughfares, their intersections, and interchanges, and transportation arteries, natural or artificial bodies of water, public buildings and public grounds, aircraft, helicopter, rocket and spacecraft facilities, places having unique interest or value, flood plain areas, and other places having a special character or use affecting or affected by their surroundings;
- (2) The text may provide that the planning commission, as a condition to the granting of any zoning change, may require the submission of a development plan, which shall be limited to the provisions of the definition contained in KRS 100.111(8). Where agreed upon, this development plan shall be followed. As a further condition to the granting of a zoning change, the planning commission may require that substantial construction be initiated within a certain period of time of not less than one (1) year; provided that such zoning change shall not revert to its original designation unless there has been a public hearing;
- (3) A map, which shall show the boundaries of the area which is to be zoned, and the boundaries of each zone;
- (4) Text provisions to the effect that land which is used for agricultural purposes shall have no regulations except that:
- (a) Setback lines may be required for the protection of existing and proposed streets and highways;
 - (b) All buildings or structures in a designated floodway or flood plain or which tend to increase flood heights or obstruct the flow of flood waters may be fully regulated;{
~~and~~}
 - (c) Mobile homes and other dwellings may be permitted but shall have regulations imposed which are applicable, such as zoning, building, and certificates of occupancy;
and
 - (d) *The uses set out in paragraph (c) of subsection (2) of Section 1 of this Act may be subject to regulation as a conditional use;*

- (5) The text may empower the planning commission to hear and finally decide applications for variances or conditional use permits when a proposed development requires a map amendment and one (1) or more variances or conditional use permits;
- (6) In any regulation adopted pursuant to subsection (5) of this section:
 - (a) The text shall provide that the planning commission shall assume all powers and duties otherwise exercised by the board of adjustments pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251, in a circumstance provided for by subsection (5) of this section; and
 - (b) The text shall provide that the applicant for the map amendment, at the time of the filing of the application for the map amendment, may elect to have any variances or conditional use permits for the same development to be heard and finally decided by the planning commission at the same public hearing set for the map amendment, or by the board of adjustments as otherwise provided for in this chapter;
- (7) Any judicial proceeding to appeal the planning commission action authorized by subsection (5) of this section in granting or denying any variance or conditional use permit shall be taken pursuant to KRS 100.347(2);
- (8) In urban-county governments, in addition to any other powers permitted or required to be exercised by this chapter, the text of the zoning regulations may provide, as a condition to granting a map amendment, that the planning unit may:
 - (a) Restrict the use of the property affected to a particular use, or a particular class of use, or a specified density within those permitted in a given zoning category;
 - (b) Impose architectural or other visual requirements or restrictions upon development in areas zoned historic; and
 - (c) Impose screening and buffering restrictions upon the subject property;

The text shall provide the method whereby such restrictions or conditions may be imposed, modified, removed, amended and enforced.

Approved April 22, 2004