

1 AN ACT relating to planning and zoning.

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

3 ➔Section 1. KRS 100.326 is amended to read as follows:

4 (1) As used in this section:

5 (a) ***"Car washing" means the use of a site for washing and cleaning of motor***  
6 ***vehicles, in which patrons generally remain in the vehicle, or other light-***  
7 ***duty motor vehicles or equipment in a commercial zone;***

8 (b) ***"Commercial zone" means any business, professional, or commercial zone***  
9 ***and includes zones for job creation or economic development and mixed-***  
10 ***use zones in which residential units are permitted within a zoning category***  
11 ***that would otherwise qualify as a commercial zone;***

12 (c) ***"Drive-through facilities" means one (1) or more openings in the wall of a***  
13 ***structure or building designed and intended to be used to provide for sale to***  
14 ***or service to patrons who remain in their motor vehicles, and includes***  
15 ***related facilities including:***

16 ***1. Menu boards;***

17 ***2. Order points; and***

18 ***3. Motor vehicle stacking areas within off-street vehicle areas;***

19 (d) "Electric vehicle charging station" has the same meaning as in KRS 138.477;

20 (e) ***"Major public roads" means public roads designated as arterial roads or***  
21 ***collector roads within a city and public roads designated as part of the state***  
22 ***primary system, state secondary system, or as supplement roads by the***  
23 ***Department of Highways as authorized in KRS 177.020;***

24 (f) ***"Off-street vehicle area" means an open, surfaced area for temporary***  
25 ***parking of motor vehicles, other than the rights-of-way of a public street or***  
26 ***parking structure, and the movement of motor vehicles through a***  
27 ***development, including through drive-thru facilities and drive aisles of a***

1 development; ~~and~~

2 ~~(g)(b)~~ "Retail filling station" has the same meaning as in KRS 138.210;~~;~~

3 (h) "Site plan" means a plan that is less detailed and specific than a  
 4 development plan but includes the conceptual arrangement of structures  
 5 and buildings, off-street vehicle areas, open spaces, access points, and any  
 6 other site design features; and

7 (i) "Vehicle and equipment sale or repair establishment" means an  
 8 establishment and lots for the display, rental, and sale of motor vehicles,  
 9 recreational vehicles, motorcycles, boats, contractor equipment, farm  
 10 equipment, or other light-duty vehicles or equipment or supplies for those  
 11 vehicles or equipment and minor repairs and routine maintenance,  
 12 including car washing within a commercial zone.

13 (2) A planning unit~~[city, county, urban county government, charter county, or~~  
 14 ~~consolidated local government]~~ shall not ~~[utilize a zoning process, or ]~~adopt or  
 15 enforce an ordinance~~[, order]~~, regulation, or similar measure that:

16 (a) Prohibits or limits a retail filling station or a vehicle and equipment sale or  
 17 repair establishment from locating at any place within its jurisdiction at  
 18 which other businesses~~[of similar uses or character]~~ which serve the public in  
 19 the same zoning category may locate;

20 (b) Could be reasonably construed to apply discriminatory treatment to the use or  
 21 location of retail filling stations or vehicle and equipment sale or repair  
 22 establishments; ~~or~~

23 (c) Treats retail filling stations differently than electric vehicle charging stations;

24 (d) Prohibits fuel dispensers or a canopy for a retail filling station from being  
 25 located between the principal structures or buildings and any right-of-way  
 26 of a public street;

27 (e) Prohibits the display of vehicles, supplies, or equipment for a vehicle and

- 1           equipment sale or repair establishment from being located between the  
2           principal structures or buildings and any rights-of-way of a public street or  
3           imposes a maximum display area within an off-street vehicle area;
- 4           (f) Imposes standards or siting requirements more stringent than applicable  
5           state or federal regulations or requirements related to underground storage  
6           tanks for a retail filling station or a vehicle and equipment sale or repair  
7           establishment;
- 8           (g) Requires a retail filling station or vehicle and equipment sale or repair  
9           establishment to install or invest in particular fueling infrastructure other  
10           than that required by state or federal law or regulation, including electric  
11           vehicle charging stations;
- 12           (h) Imposes a maximum number of fuel dispensers for a retail filling station;
- 13           (i) Prohibits a retail filling station or a vehicle and equipment sale or repair  
14           establishment from locating within a development in a commercial zone  
15           along a major public road, except a planning unit may prohibit a retail  
16           filling station or a vehicle and equipment sale or repair establishment from  
17           locating in a central business district and may designate a retail filling  
18           station or vehicle and equipment sale or repair establishment as a  
19           conditional use in its land use code and zoning regulations to allow the  
20           proper integration of the use into the community at suitable locations in the  
21           commercial zone. A planning unit shall not deny or conditionally approve a  
22           conditional use permit unless it determines a denial or conditional approval  
23           is necessary and appropriate due to a specific threat to public health, safety,  
24           or welfare as to a specific location by clear and convincing evidence and the  
25           denial or conditions are the least restrictive means to mitigate that specific  
26           threat;
- 27           (j) Prohibits or effectively prohibits a new retail filling station or vehicle and

- 1           equipment sale or repair establishment from locating within a development  
2           in a commercial zone near an existing retail filling station or vehicle and  
3           equipment sale or repair establishment through a policy concerning  
4           clustering, density, distancing, or other metric;
- 5           (k) Mandates access by the general public to privately owned land, including  
6           open space or off-street vehicle areas, in a development in a commercial  
7           zone, except the general public may have access to rights-of-way of a public  
8           street;
- 9           (l) Requires more than five percent (5%) open space or permeable surface  
10           within a development in a commercial zone;
- 11           (m) Requires more than ten percent (10%) tree canopy or the preservation of  
12           existing trees in a development in a commercial zone, except a planning  
13           unit may require street trees within rights-of-way of a public street;
- 14           (n) Imposes minimum size, width, height, bulk of structures and buildings, or  
15           minimum floor area to ground area ratios within a development in a  
16           commercial zone;
- 17           (o) Requires a minimum residential density within a development in a  
18           commercial zone;
- 19           (p) Requires construction of walkways with widths greater than five (5) feet  
20           within a development in a commercial zone, except a planning unit may  
21           contribute funds to a developer for the full cost of constructing wider  
22           walkways within rights-of-way of a public street;
- 23           (q) Requires construction of elevated or raised walkways within a development  
24           in a commercial zone;
- 25           (r) Imposes a maximum off-street vehicle area, limits the place at which an off-  
26           street vehicle area may be located, or prohibits an off-street vehicle area  
27           from being located within a setback area within a development in a

1           commercial zone, except a planning unit may impose screening  
2           requirements or a buffer of not greater than five (5) feet in width along the  
3           boundary of an off-street vehicle area and a residential zone or rights-of-  
4           way of a public street;

5           (s) Imposes a concurrency requirement for which principal structures or  
6           buildings for certain permitted uses shall be required to be constructed prior  
7           to the occupancy or construction of other principal structures or buildings  
8           for other permitted uses within a development in a commercial zone, except  
9           a planning unit may require the construction transportation, utility,  
10           communication, and similar facilities prior to the occupancy of structures  
11           or buildings;

12           (t) Requires the installation of transit or bicycle infrastructure within a  
13           development in a commercial zone, except a planning unit may require a  
14           bicycle lane not greater than five (5) feet in width within the adjacent public  
15           street and may contribute funds to a developer for the full cost of  
16           constructing wider bicycle lanes, protected bicycle lanes, and other bicycle  
17           infrastructure and transit infrastructure within rights-of-way of a public  
18           street;

19           (u) Mandates a particular orientation of structures or buildings or a particular  
20           layout of a development in a commercial zone, except a planning unit may  
21           impose screening requirements for structures or buildings along the  
22           boundary of a residential zone and generally applicable setback lines, but  
23           not build-to lines;

24           (v) Imposes architectural or other visual requirements or restrictions upon  
25           development in a commercial zone, except in areas zoned historic;

26           (w) Prohibits drive-through facilities within a development in a commercial  
27           zone along a major public road, except a planning unit may prohibit drive-

- 1 through facilities in a central business district and may designate a drive-  
2 through facilities as a conditional use in its land use code and zoning  
3 regulations to allow the proper integration of the use into the community at  
4 suitable locations in the commercial zone. A planning unit shall not deny or  
5 conditionally approve a conditional use permit unless it determines a denial  
6 or conditional approval is necessary and appropriate due to a specific threat  
7 to public health, safety, or welfare as to a specific location by clear and  
8 convincing evidence and the denial or conditions are the least restrictive  
9 means to mitigate that specific threat;
- 10 (x) Requires the preservation of a structure or building, except a planning unit  
11 may require preservation in areas zoned historic; or
- 12 (y) Designates a property in a commercial zone as part of an area zoned  
13 historic without the written consent of the landowner.
- 14 (3) (a) Any ordinance or regulation contrary to subsection (2) of this section is void  
15 and unenforceable.
- 16 (b) A planning unit shall not condition an approval on a developer's acceptance  
17 of any condition that is prohibited under subsection (2) of this section.
- 18 (4) This section shall not:
- 19 (a) Alleviate a developer or planning unit's obligations to provide accessible  
20 parking spaces as required by the Americans with Disabilities Act, 42 U.S.C.  
21 sec. 12101 et seq.;
- 22 (b) Be construed to prohibit a planning unit from:
- 23 1. Adopting or enforcing any ordinance, regulation, or similar measure  
24 related to environmental features, erosion, stormwater management,  
25 waterways, or wastewater management, including a requirement that  
26 a development in a commercial zone obtain service documents, if the  
27 measure is applicable to all other permitted uses in the zoning

1 category, and as to environmental features and waterways, the  
2 planning unit shall be otherwise specifically authorized to adopt the  
3 measure under state or federal law and the measure is not more  
4 stringent than the corresponding state or federal regulations or  
5 requirements;

6 2. Designating the zones in which retail filling stations, vehicle and  
7 equipment sale or repair establishments, or drive-through facilities  
8 shall be permitted uses; or

9 3. Adopting or enforcing any ordinance, regulation, or similar measure  
10 that is generally applicable to all uses within a commercial zone, and  
11 that is not otherwise preempted or prohibited by state or federal law.

12 (5) (a) Notwithstanding any provision of law to the contrary, a proposed  
13 development of a single principal structure or building on a single lot in a  
14 commercial zone that proposes a permitted use that meets the criteria  
15 outlined in a local government's land use and zoning regulations adopted by  
16 the planning unit shall be approved without a development plan.

17 (b) A planning unit may require a site plan for an application for a variance, waiver,  
18 conditional use permit, or map amendment for a proposed development of a  
19 single principal structure or building on a single lot in a commercial zone.

20 (6) A person aggrieved by a planning unit's violation of this section shall have a  
21 cause of action in the Circuit Court in the county in which the planning unit is  
22 located. The Circuit Court shall review the alleged violation of this section de  
23 novo. The Circuit Court:

24 (a) Shall award a person that prevails against the planning unit reasonable  
25 attorney's fees and court costs to be paid by the local government; or

26 (b) May award a planning unit that prevails against a person who has brought  
27 suit under this section reasonable attorney's fees and court costs to be paid

1 by that person, if the Circuit Court determines that the suit was frivolous or  
2 meritless]

3 ~~This section shall not prohibit a local jurisdiction identified in subsection (2) of this~~  
4 ~~section from subjecting retail filling stations to restrictions similar to those~~  
5 ~~applicable to other businesses that:~~

6 ~~(a) Provide siting requirements, including siting requirements involving certain~~  
7 ~~geographic areas;~~

8 ~~(b) Do not effectively prohibit the operation of a retail filling station; and~~

9 ~~(c) Are not preempted by state or federal law].~~

10 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO  
11 READ AS FOLLOWS:

12 A planning unit's activities shall be subject to the land use and planning and zoning  
13 regulations adopted by the planning unit. A planning unit shall not make any of its  
14 own activities exempt from its own land use or planning and zoning regulations.