KENTUCKY PLANNING AND ZONING STATUTES

KRS CHAPTER 100

In effect as of July 13, 2004

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KRS CHAPTER 100
2004

This booklet was prepared for use in conjunction with a series of workshops on the general subject of planning and zoning, sponsored jointly by the Northern Kentucky Area Planning Council/Commission and KAPA workshops/conferences. An internet version of this booklet appears at www.kapa.org. It is not intended to supplant the official version of the statutes published by Lexis Law Publishing (formerly Michie Law Publishers) and the West Group (formerly the Banks – Baldwin Law Publishing Company).

The statutes contained herein are those in effect as of July 13, 2004 and include any amendments enacted by the 2004 Kentucky General Assembly.

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NOTES

1. Amendments enacted during the 2004 Kentucky General Assembly include:

    a. Changes to the definition of 'agricultural use' under KRS 100.111 (2) as they pertain to horse related activities.

    b. KRS 100.325, Unlawful Restrictions On Federally Licensed Firearms Manufacturer, Importer, Or Dealer – specifying that a firearms dealer may locate anywhere in the jurisdiction in which another business may locate.

2. Amendments enacted during the 2002 Kentucky General Assembly include:

    a. Changes in the definition of variance under KRS 100.111 (24) pertaining to the definition of 'variance'.

    b. Regulations of cellular antenna towers consisting of KRS 100.324, KRS 100. 985, KRS 100.986, KRS 100.9865, and KRS 100.987.

    c. KRS 100.348, Compatibility Standards for manufactured homes – Definitions – Adoption of standards by local governments to become effective on July 1, 2003.

3. Other relevant statutes in included in this booklet are as follows:

    a. KRS 147A.027, Orientation and continuing education training for planning and zoning officials and staff, which was enacted in 2001.

    b. KRS 278.650, Procedures for proposals to construct antenna towers in an area outside the jurisdiction of a planning commission – Hearing – Building permit fee, which was enacted in 2002.

    c. KRS 278.665, Administrative regulations governing cellular antenna towers to be constructed outside the jurisdiction of a planning commission, which was enacted in 2002.

3. During the 2000 Kentucky General Assembly, KRS 100.111 (2) was amended by adding phrases to the definition of 'agricultural use'.

4. Amendments enacted in 1998 include the following:

    a. KRS 100.137, Amendments to planning commissions in counties of 300,000 or more.

    b. KRS 100.401 through 100.419, Binding elements pertaining to a county containing a city of the first class.

    c. KRS 100.985 through 100.987, Cellular Telecommunication Facilities.

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OTHER STATUTES OF RELEVANCE

DEFINITIONS

100.111. Definitions for chapter. -- 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 agricultural use on the tract, but not including residential building development for sale or lease to the public;

(b) 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.

Effective: July 13, 2004

History: Amended 2004 Ky. Acts ch. 150, sec. 1, effective July 13, 2004 -- Amended 2002 Ky. Acts ch. 346, sec. 133, effective July 15, 2002; and ch. 359, sec. 1, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 167, sec. 4, effective July 14, 2000. -- Amended 1986 Ky. Acts ch. 23, sec. 7, effective July 15, 1986; and ch. 141, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 306, sec. 1, effective July 15, 1982. -- Amended 1974 Ky. Acts ch. 398, sec. 1. -- Created 1966 Ky. Acts ch. 172, sec. 1.

Legislative Research Commission Note (7/15/2002). This section was amended by 2002 Ky. Acts ch. 346 and 358, which do not appear to be in conflict and have been codified together.

PLANNING UNITS

100.113. Types of planning units permitted. -- Before any planning operations may begin, a planning unit must be formed and designated. Planning units may consist of a city or county, acting independently in accordance with KRS 100.117; cities and their county, jointly, in accordance with KRS 100.121; or groups of counties and their cities, regionally, in accordance with KRS 100.123. (Enact. Acts 1966, Ch. 172, § 2; 1978, Ch. 384, § 22, effective June 17, 1978.)

100.117. Independent planning units. -- Any city or county may establish a planning program as an independent operation if the following required procedure is unsuccessful in establishing a joint planning unit encompassing the county and cities therein.

(1) A city shall interrogate the county and every other city therein to determine whether they desire to enter into an agreement to form a joint planning unit. The interrogation shall be in writing, addressed to the various legislative bodies stating proposed reasonable terms for combination and the reasoned purpose and objectives. The political subdivisions which have been interrogated shall have sixty (60) days in which to answer in writing and the city may assume that the answer is negative if no response is received within the sixty (60) days. If the county answers in the negative, then the city may engage in an independent planning operation. If the county responds affirmatively, then a joint planning unit shall be established, and no city located in such county may form an independent planning unit. If a city has been operating under an agreement under which its planning operations have been combined with one (1) or several counties or cities and the combination is broken, then it shall follow the procedure set forth in this subsection before it engages in an independent planning operation.

(2) A county shall interrogate every incorporated city within its boundaries and otherwise be subject to following the procedure established for an independent city operation.

(3) In a county where independent planning units have been created in accordance with this section, another interrogation shall not be permitted for a period of four (4) years from the date of the previous letter of interrogation. If another interrogation is initiated, the required procedure as defined by this section, shall be followed. If the result of such an interrogation is creation of a joint planning unit, as permitted by KRS 100.121, then all the existing independent planning units shall be dissolved, and no city located in such county may form an independent planning unit. A period of one (1) year from the date of the letter of interrogation shall be permitted for the newly formed joint planning unit to come into existence, during which time the other necessary steps required by this chapter must be complied with and the dissolution of the independent units shall be effective upon compliance with requirements of this chapter, for creation of the joint planning unit, or at the end of the one (1) year period, whichever is first. (Enact. Acts 1966, Ch. 172, § 3; 1986, Ch. 141, § 2, effective July 15, 1986.)

100.121. Joint planning units.

(1) At any time, the legislative bodies of cities and the fiscal court of the county containing the cities may enter into an agreement to form a joint planning unit by combining planning operations in order that they may carry out a joint city-county planning program. Combinations may include any combination of cities with their county or parts thereof; provided, however, that no self-excluded city in such county may form an independent planning unit.

(2) When a planning unit includes a county and a city of the first class or consolidated local government created pursuant to KRS Chapter 67C, then all other cities within the county shall also be parts of the unit.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 134, effective July 15, 2002. – Created 1966 Ky. Acts ch. 172, sec. 4.

100.123. Regional planning units. -- At any time, the legislative bodies of the cities and counties comprising two (2) or more adjacent planning units whose combined territory form a logical functional area, or portion thereof, by reasons of physical, economic, or social features may enter into an agreement to form a regional planning unit. The agreement for such regional unit may permit the continuation of any of the joint units and their planning commissions, or may serve to replace them. If any joint units are to continue in operation, the agreement shall state clearly the division or assignment of functions between the regional and joint units. Such regional units, shall be financed by the legislative parties in accordance with the agreement. (Enact. Acts 1966, Ch. 172, § 5.)

100.127. Written agreements -- Filing fees. -- (1) All agreements for joint or regional planning units shall be in writing, and shall describe the boundaries of the area involved, and shall contain all details which are necessary for the establishment and administration of the planning unit in regard to planning commission organization, preparation of plans, and aids to plan implementation. The agreement shall be adopted as an ordinance by the legislative bodies which are parties to the agreement in accordance with the procedures for the adoption of an ordinance pursuant to KRS Chapters 67, 67A, 83, and 83A, and filed in the office of the county clerk of all counties which are parties to the agreement or which contain a city which is a party to the agreement. The county clerk may charge a fee of two and one-half dollars ($2.50) for the filing of the agreement. Combination under this subsection shall be permitted notwithstanding the fact that the governmental units are also involved in area planning under KRS 147.610 to 147.705. Combined planning operations shall be jointly financed, and the agreement shall state the method of proration of financial support.

(2) Agreements for planning units shall be in existence as long as at least two (2) of the original signators are operating under the combination despite the fact that other signators have withdrawn from the unit. In addition, any enlargement of a unit may be accomplished under the existing agreement by filing a copy of the agreement in the office of the county clerk of all member counties along with a statement as to when it was admitted to the unit. The clerk may charge a fee of two and one-half dollars ($2.50) for the filing.

(3) If the planning unit, or any part thereof, has adopted regulations for historical districts under KRS 100.201 and 100.203, the planning agreement may provide the creation of a three (3) or five (5) member board to advise the zoning administrator regarding issuance of permits in such districts, the board being guided by the standards and restrictions of the community's comprehensive plan and by the historical district regulations adopted by the planning unit. (Enact. Acts 1966, Ch. 172, § 6; 1972, Ch. 323, § 1; 1978, Ch. 384, § 228, effective June 17, 1978; 1982, Ch. 253, § 11, effective July 15, 1982; 1986, Ch. 141, § 3, effective July 15, 1986; 1992, Ch. 268 § 1, effective July 14, 1992.)

100.131. Area of jurisdiction. -- An independent city planning unit or members of a joint planning unit composed only of two (2) or more cities may exercise extra territorial jurisdiction for the purposes of subdivision regulations and other regulations up to five (5) miles from all points upon the city's boundary, with the consent of the fiscal court, but not beyond the county boundary, nor within the boundary of any city not in the planning unit, provided, however, that where the extra territorial jurisdiction of planning units overlap, the boundary shall be midway between them. The jurisdiction of joint city-county and regional planning units shall be coterminous with their political boundaries. Nothing herein, however, shall prevent any planning unit from making planning studies of areas located outside its jurisdiction. (Enact. Acts 1966, Ch. 172, § 7; 1984, Ch. 412, § 2, effective July 13, 1984; Ch. 370 § 3 & 4, effective July 15, 1996.)

PLANNING COMMISSION

100.133. Planning commission -- Members, appointment -- Qualifications.

(1) Before a planning unit may engage in planning operations, a planning commission shall be appointed for the unit in conformance with an adopted agreement.

(2) A planning commission shall consist of at least five (5), but not more than twenty (20) members.

(3) The governor shall have the privilege of appointing a member to the commission to which the capital city belongs in addition to the number of members specified for that planning commission.

(4) Where extra territorial jurisdiction is exercised for subdivision regulations or other regulations, the county judge/executive of each affected county may appoint a member to the planning commission of the planning unit exercising such jurisdiction in addition to the number of members specified for that planning commission.

(5) At least two-thirds (2/3) of the members of every planning commission shall be citizen members.

(6) A regional planning commission shall include at least one (1) citizen member from each joint planning unit who is also a member of the joint planning commission.

(7) If one (1) city only joins with one (1) county, then each shall have equal representation.

(8) Except as provided in KRS 100.137, at least one (1) of the county representatives of the planning commission of a joint planning unit containing a county with an unincorporated area population exceeding one thousand (1,000) persons shall be a resident of the unincorporated area of that county.

(9) Whenever this chapter requires a city without its consent to belong to a joint planning unit, then KRS 100.137 shall apply. (Enact. Acts 1966, Ch. 172, §§ 8, 9; 1984, Ch. 153, § 1, effective July 13, 1984; 1986, Ch. 141, § 4, effective July 15, 1986; 1992, Ch. 268, § 1, effective July 14, 1992.)

100.137. Planning commission in county of 300,000 and county with consolidated local government -- Qualifications -- Appointment -- Conflicts of interest – Legislation regarding plan.

(1) Except in a consolidated local government, counties with a population of 300,000 or more inhabitants shall be a planning unit and shall have a planning commission which commission shall be composed of three (3) members, who are nonresidents of the largest city of the county, appointed by the county judge/executive of such county; three (3) members who are residents of the largest city of the county appointed by the mayor of that city; and the mayor of the largest city, or his designee; the county judge/executive, or his designee; the director of works of the largest city in the county; and the county road engineer. The county judge/executive and the mayor together shall ensure that three (3) of the six (6) appointees are citizens who have no direct financial interest in the land development and construction industry. If the commission appoints a citizen member to fill a vacancy, the commission shall ensure that the balance is maintained. All ten (10) members of the planning commission shall be required to disclose any personal or family commercial interest relevant to land use, new development supply, or new development construction. The disclosure shall be a written, signed statement of the general nature of the member's interest. The disclosure shall be filed with the commission's records under KRS 100.167 and shall be available for public inspection during regular business hours. A member shall not vote on an issue in which the member or member's family has an interest. The willful failure of a member to disclose an interest, or a member's voting on an issue in which the member or member's family has a known interest, shall subject the member to removal proceedings under KRS 100.157.

(2) A county with a consolidated local government created pursuant to KRS Chapter 67C shall be a planning unit and shall have a planning commission which shall include eight (8) members who are residents of the planning unit, approved by the mayor of the consolidated local government pursuant to the provisions of KRS 67C.139. The membership of the planning commission shall also include the mayor of the consolidated local government, or his or her designee, and the director of public works of the consolidated local government or the county engineer as determined by the mayor. The mayor shall ensure that four (4) of the eight (8) appointees are citizens who have no direct financial interest in the land development and construction industry. If the commission appoints a citizen member to fill a vacancy, the commission shall ensure that the balance is maintained. All ten (10) members of the planning commission shall be required to disclose any personal or family commercial interest relevant to land use, new development supply, or new development construction. The disclosure shall be a written, signed statement of the general nature of the member's interest. The disclosure shall be

filed with the commission's records pursuant to KRS 100.167 and shall be available for public inspection during regular business hours. A member shall not vote on an issue in which the member or member's family has an interest. The willful failure of a member to disclose an interest, or a member's voting on an issue in which the member or member's family has a known interest, shall subject the member to removal proceedings pursuant to KRS 100.157.

(3) In counties containing a city of the first class or a consolidated local government, all legislation implementing or amending the plan or amended plan which affects cities of the first through fourth classes shall be enacted by such cities and all other legislation implementing the plan or amended plan shall be enacted by the fiscal court or, in the case of a consolidated local government, by the consolidated local government.

(4) In all other counties the establishment of a planning unit is optional, but any planning unit established in other counties shall comply with the remaining provisions of this chapter.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 136, effective July 15, 2002. – Amended 1998 Ky. Acts ch. 534, sec. 1, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 100, sec. 1, effective July 13, 1990. -- Created 1966 Ky. Acts ch. 172, sec. 10.

100.141. Appointing authority. -- Except in counties containing a consolidated local government, the mayor of each city entitled to one (1) or more members and the county judge/executive of each county shall appoint the members of the planning commission with the approval of their respective legislative bodies.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 137, effective July 15, 2002. – Created 1966 Ky. Acts ch. 172, sec. 11.

100.143. Term of office. -- The term of office of all elected public officials appointed to a planning commission shall be the same as their official tenure in office. The term of office for other members of the planning commission shall be four (4) years, but the term of office of members first appointed shall be staggered so that a proportionate number serve one (1), two (2), three (3), and four (4) years respectively, and later appointments or reappointments shall continue the staggered pattern. The pattern for staggering the terms of the members first appointed shall be stated in a regulation or in the agreement under which the unit operates, as applicable. (Enact. Acts 1966, Ch. 172, § 12.)

100.147. Vacancies. -- Vacancies on the planning commission, shall be filled within sixty (60) days by the appropriate appointing authority. If the authority fails to act within that time, the planning commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of that term. (Enact. Acts 1966, Ch. 172, § 13.)

100.151. Oath of office. -- All members of a planning commission shall, before entering upon their duties, qualify by taking the oath of office prescribed by section 228 of the constitution of the Commonwealth of Kentucky before any judge, county judge/executive, notary public, clerk of a court, or justice of the peace within the district or county in which he resides. (Enact. Acts 1966, Ch. 172, § 14; 1980, Ch. 184, § 2, effective July 15, 1980.)

100.153. Reimbursement or compensation. -- In the agreement under which the planning unit operates, reimbursement for expenses or compensation, or both, may be authorized for citizen members of a planning commission. Reimbursement for expenses may be authorized for public officials and employees of participating cities and counties who are members of the planning commission, but such members shall receive no compensation. (Enact. Acts 1966, Ch. 172, § 15; 1986, Ch. 141, § 5, effective July 15, 1986.)

100.157. Removal -- Effect of compact -- Membership upon establishment of consolidated local government.

(1) Any member of a planning commission may be removed by the appropriate appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest. Any appointing authority who exercises the power to remove a member of the planning commission shall submit a written statement to the commission setting forth the reasons for removal, and the statement shall be read at the next meeting of the planning commission, which shall be open to the general public. The member so removed shall have the right of appeal in the Circuit Court.

(2) Notwithstanding subsection (1) of this section, and KRS 100.143, when a city of the first class and a county containing such city have in effect a compact pursuant to KRS 79.310 to 79.330, the terms of the appointed members on the commission shall be for three (3) years and until their successors are appointed and qualified. Upon the effective date of the compact, the mayor, and county judge/executive with the approval of the fiscal court, shall adjust the terms of the sitting members so that the terms of one (1) of each of their appointments expire in one (1) year, the term of one (1) of each of their appointments expire in two (2) years and the term of one (1) of each of their appointments expire in three (3) years. Upon expiration of these staggered terms, successors shall be appointed for a term of three (3) years.

(3) Notwithstanding subsections (1) and (2) of this section, and KRS 100.143, upon the establishment of a consolidated local government in a county where a city of the first class and a county containing that city have had in effect a cooperative compact pursuant to KRS 79.310 to 79.330, the terms of the appointed citizen members of the planning commission shall be for three (3) years and until their successors are appointed and qualified, and the term of office of members appointed shall be staggered. Members appointed to the planning commission prior to consolidation of a city of the first class and the county containing the city pursuant to KRS Chapter 67C shall continue to serve as members of the planning commission for the consolidated local government, and shall serve the remainder of the terms for which the members were appointed and until their successors are appointed and qualified pursuant to KRS 100.137(2).

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 138, effective July 15, 2002. – Amended 1986 Ky. Acts ch. 77, sec. 19, effective July 15, 1986. -- Created 1966 Ky. Acts ch. 172, sec. 16.

100.161. Officers. -- Each planning commission annually shall elect a chairman, and any other officers which it deems necessary. All officers shall be citizen members, and shall be eligible for reelection at the expiration of his term. (Enact. Acts 1966, Ch. 172, § 17.)

100.163. Meetings. -- The planning commission shall conduct regular meetings as it deems necessary for the transaction of its business; but there shall be at least six (6) regular meetings annually. The schedule for regular meetings shall be expressed in the rules and regulations of the commission. Special meetings shall be held at the call of the chairman who shall give written or oral notice to all members at least seven (7) days prior to the meeting, which notice shall contain the date, time and place, and the subject or subjects which shall be discussed. (Enact. Acts 1966, Ch. 172, § 18.)

100.167. Minutes and bylaws. -- The planning commission shall adopt bylaws for the transaction of business, and shall keep minutes and records of all proceedings, including regulations, transactions, findings, and determinations, and the number of votes for and against each question, and if any member is absent or disqualifies from voting, indicating the fact, all of which shall, immediately after adoption, be filed in the office of the commission or board as applicable. If the commission has no office, such records shall be filed in the office of the county clerk. A transcript of the entire proceedings of a planning commission shall be provided if requested by a party at the expense of the requesting party, and the transcript shall constitute the record. (Enact. Acts 1966, Ch. 172, § 19; 1978, Ch. 384, § 229, effective June 17, 1978.)

100.171. Quorum -- Member may conduct hearing or preside. -- (1) A simple majority of the total membership of a planning commission as established by agreement shall constitute a quorum, except that a planning unit created pursuant to KRS 100.137 may specify in its planning agreement that five (5) members of the planning commission shall constitute a quorum. Any member of a planning commission who has any direct or indirect financial interest in the outcome of any question before the body shall disclose the nature of the interest and shall disqualify himself from voting on the question, and he shall not be counted for the purpose of a quorum. A simple majority vote of all members present where there is a properly constituted quorum shall be necessary to transact any business of the commission, except that a vote of a simple majority of the total membership shall be necessary for the adoption or amendment of the comprehensive plan.

(2) A planning commission may appoint one (1) or more of its members to act as a hearing examiner or examiners to preside over a public hearing and make recommendations to the commission based upon a transcript of record of the hearing. (Enact. Acts 1966, Ch. 172, § 20; 1982, Ch. 20, § 1, effective July 15, 1982; 1986, Ch. 141, § 6, effective July 15, 1986.)

100.173. Employing planners or other persons. -- The planning commission may employ a staff or contract with planners or other persons as it deems necessary to accomplish its assigned duties under this chapter. (Enact. Acts 1966, Ch. 172, § 21.)

100.177. Finances. -- The legislative bodies in the planning unit may appropriate out of general revenues for the expenses and accommodations necessary for the work of the commission. Any planning commission shall have the right to receive, hold, and spend funds which it may legally receive from any and every source both in and out of the Commonwealth of Kentucky, including the United States government, for the purpose of carrying out the provisions of this chapter. All bylaws shall describe the method for administration of funds, and an annual audit shall be performed of all receipts, expenditures, and funds on hand by the auditor of public accounts or an independent certified public accountant. The report of every audit, including financial statements, shall be kept in the same manner prescribed in this chapter for other

records. Every independently budgeted planning commission shall annually publish a financial statement, pursuant to the requirements set forth in KRS Chapter 424. (Enact. Acts 1966, Ch. 172, § 22; 1986, Ch. 141, § 7, effective July 15, 1986; 1990, Ch. 362, § 16, effective July 13, 1990.)

100.181. Assigning other agency functions to commission. -- The legislative body or mayor of the city and the fiscal court or county judge/executive of the county may assign to the planning commission of the planning unit of which it is a member, or to an area planning commission if in existence, any powers, duties and functions relating to urban renewal, public housing, or community development. (Enact. Acts 1966, Ch. 172, § 23; 1986, Ch. 141, § 8, effective July 15, 1986.)

100.182. Effect of failure to comply strictly with procedural provisions or publication requirements -- Limitation. -- All other provisions of this chapter to the contrary notwithstanding, no comprehensive plan, land use or zoning regulation, subdivision regulation, public improvements program, or official map regulation shall be invalidated in its entirety for failure to strictly comply with any procedural provision of this chapter or with the requirements of KRS Chapter 424 in making any publication required to be made under this chapter, unless a court finds that the failure to strictly comply with any procedural requirements results in material prejudice to the substantive rights of an adversely affected person and that such rights cannot be adequately secured by any remedy other than invalidating the comprehensive plan, land use or zoning regulation, subdivision regulation, public improvements program, or official map regulation in its entirety. (Enact. Acts 1984, Ch. 412, § 1, effective July 13, 1984; 1986, Ch. 141, § 9, effective July 15, 1986.)

COMPREHENSIVE PLAN

100.183. Comprehensive plan required. -- The planning commission of each unit shall prepare a comprehensive plan, which shall serve as a guide for public and private actions and decisions to assure the development of public and private property in the most appropriate relationships. The elements of the plan may be expressed in words, graphics, or other appropriate forms. They shall be interrelated, and each element shall describe how it relates to each of the other elements. (Enact. Acts 1966, Ch. 172, § 24; 1986, Ch. 141, § 10, effective July 15, 1986.)

100.187. Contents of comprehensive plan. -- The comprehensive plan shall contain, as a minimum, the following elements:

(1) A statement of goals and objectives, which shall serve as a guide for the physical development and economic and social well-being of the planning unit;

(2) A land use plan element, which shall show proposals for the most appropriate, economic, desirable and feasible patterns for the general location, character, extent, and interrelationship of the manner in which the community should use its public and private land at specified times as far into the future as is reasonable to foresee. Such land uses may cover, without being limited to, public and private, residential, commercial, industrial, agricultural and recreational land uses;

(3) A transportation plan element, which shall show proposals for the most desirable, appropriate, economic and feasible pattern for the general location, character, and extent of the channels, routes, and terminals for transportation facilities for the circulation of persons and goods for specified times as far into the future as is reasonable to foresee. The channels, routes, and terminals may include, without being limited to all classes of highways or streets, railways, airways, waterways; routings for mass transit trucks, etc.; and terminals for people, goods, or vehicles related to highways, airways, waterways, and railways;

(4) A community facilities plan element which shall show proposals for the most desirable, appropriate, economic and feasible pattern for the general location, character, and the extent of public and semipublic buildings, land, and facilities for specified times as far into the future as is reasonable to foresee. The facilities may include, without being limited to, parks and recreation, schools and other educational or cultural facilities, libraries, churches, hospitals, social welfare and medical facilities, utilities, fire stations, police stations, jails, or other public office or administrative facilities; and

(5) The comprehensive plan may include any additional elements such as, without being limited to, community renewal, housing, flood control, pollution, conservation, natural resources, regional impact, historic preservation, and other programs which in the judgment of the planning commission will further serve the purposes of the comprehensive plan. (Enact. Acts 1966, Ch. 172, § 25; 1986, Ch. 141, § 11, effective July 15, 1986; 1990, Ch. 362, § 1, effective July 13, 1990.)

100.191. Research requirements for comprehensive plan. -- All elements of the comprehensive plan shall be based upon but not limited to, the following research, analysis, and projections:

(1) An analysis of the general distribution and characteristics of past and present population and a forecast of the extent and character of future population as far into the future as is reasonable to foresee;

(2) An economic survey and analysis of the major existing public and private business activities, and a forecast of future economic levels, including a forecast of anticipated necessary actions by the community to increase the quality of life of its current and future population through the encouragement of economic development as far into the future as is reasonable to foresee;

(3) Research and analysis as to the nature, extent, adequacy, and the needs of the community for the existing land and building use, transportation, and community facilities in terms of their general location, character and extent, including the identification and mapping of agricultural lands of statewide importance and analysis of the impacts of community land use needs on these lands; and

(4) Additional background information for the elements of the comprehensive plan may include any other research analysis, and projections which, in the judgment of the planning commission, will further serve the purposes of the comprehensive plan. (Enact. Acts 1966, Ch. 172, § 26; 1986, Ch. 141, § 12, effective July 15, 1986; 1994 Ch. 390 § 31, effective July 15, 1994 .)

100.193. Statement of goals and objectives. -- (1) The planning commission of each planning unit shall prepare and adopt the statement of goals and objectives to act as a guide for the preparation of the remaining elements and the aids to implementing the plans. The statement shall be presented for consideration, amendment and adoption by each legislative body and fiscal court in the planning unit. Each legislative body and fiscal court in the planning unit may develop goals and objectives for the area within its jurisdiction which the planning commission shall consider when preparing or amending the comprehensive plan. During its preparation and that of the other plan elements, it shall be the duty of the planning commission to consult with public officials and agencies, boards of health, school boards, public and private utility companies, civic, educational, professional and other organizations, and with citizens.

(2) During the preparation of the statement of goals and objectives, and at least fourteen (14) days prior to any public hearing on the adoption, amendment, or readoption of any element of the comprehensive plan, the planning commission shall give notice of the preparation of the statement or the hearing to the following public officials in each city and county adjacent to the planning unit:

(a) If the adjacent city or county is part of a planning unit, the notice shall be sent to the planning commission of that unit; or

(b) If the adjacent city or county is not part of a planning unit, the notice shall be sent to the chief executive officer of that city or county government.

(3) The notice required in subsection (2) of this section, and a copy of the proposed comprehensive plan element, shall also be given to the regional planning council for the area in which the planning unit is located. The council shall coordinate the review and comments of local governments and planning commissions serving planning units affected by the proposal and make recommendations designed to promote coordinated land use in the regional planning council's area of jurisdiction.

(4) Any planning commission which is adopting, amending, or readopting any element of the comprehensive plan may conduct a hearing to receive testimony from adjacent planning units, city or county governments, or the regional planning council of the affected area. (Enact. Acts 1966, Ch. 172, § 27; 1986, Ch. 141, § 13, effective July 15, 1986; 1990, Ch. 362, § 2, effective July 13, 1990; 1992, Ch. 268, § 2, effective July 14, 1992.)

100.197. Adoption of plan elements -- Periodic amendment or readoption. -- (1) All elements of the comprehensive plan shall be prepared with a view towards carrying out the statement of goals and objectives. The various elements may be adopted as they are completed, or as a whole when all have been completed. The planning commission shall hold a public hearing and adopt the elements. The comprehensive plan elements, and their research basis, shall be reviewed from time to time in light of social, economic, technical and physical advancements or changes. At least once every five (5) years, the commission shall amend or readopt the plan elements. It shall not be necessary to conduct a comprehensive review of the research done at the time of the original adoption pursuant to KRS 100.191, when the commission finds that the original research is still valid. The amendment or readoption shall occur only after a public hearing before the planning commission.

(2) The elements of the comprehensive plan shall be reviewed by the planning commission at least once every five (5) years and amended if necessary. If the goals and objectives statement is proposed to be amended, then the proposed amendments shall be submitted to the legislative bodies and fiscal courts in the planning unit for consideration, amendment, and adoption. If the goals and objectives statement is not proposed to be amended, it shall not be necessary to submit it to the legislative bodies and fiscal courts for action. If the review is not performed, any property owner in the planning unit may file suit in the circuit court. If the circuit court finds that the review has not been performed, it shall order the planning commission, or the legislative body in the case of the statement of goals and objectives element, to perform the review, and it may set a schedule or deadline of not less than nine (9) months for the completion of the review. No comprehensive plan shall be declared invalid by the circuit court unless the planning commission fails to perform the review according to the court's schedule or deadline. The procedure set forth in this section shall be the exclusive remedy for failure to perform the review.

(3) Within thirty (30) days after its adoption, amendment, or readoption by the planning commission, a copy of each element of the comprehensive plan shall be sent to public officials in adjacent cities, counties and planning units, following the procedures provided in subsection (2) of KRS 100.193. (Enact. Acts 1966, Ch. 172, § 28; 1986, Ch. 141, § 14, effective July 15, 1986; 1990, Ch. 362, § 3, effective July 13, 1990.)

LAND USE MANAGEMENT

100.201. Interim and permanent land use regulations authorized -- Designation and regulation of urban residential zones.

(1) Except as provided in subsection (3) of KRS 100.137, when the planning commission and legislative bodies have adopted the statement of goals and objectives, and the planning commission has additionally adopted at least the land use element for the planning unit, the various legislative bodies and fiscal courts of the cities and counties, which are members of the unit, may enact interim zoning or other kinds of growth management regulations which shall have force and effect within their respective jurisdictions for a period not to exceed twelve (12) months, during which time the planning commission shall complete the remaining elements of the comprehensive plan as prescribed by KRS 100.187. Interim regulations shall become void upon the enactment of permanent regulations as provided in subsection (2) of this section, or after twelve (12) consecutive months from the date such interim regulations are enacted, whichever occurs first.

(2) When all required elements of the comprehensive plan have been adopted in accordance with the provisions of this chapter, then the legislative bodies and fiscal courts within the planning unit may enact permanent land use regulations, including zoning and other kinds of growth management regulations to promote public health, safety, morals, and general welfare of the planning unit, to facilitate orderly and harmonious development and the visual or historical character of the unit, and to regulate the density of population and intensity of land use in order to provide for adequate light and air. In addition, land use and zoning regulations may be employed to provide for vehicle parking and loading space, as well as to facilitate fire and police protection, and to prevent the overcrowding of land, blight, danger, and congestion in the circulation of people and commodities, and the loss of life, health, or property from fire, flood, or

other dangers. Land use and zoning regulations may also be employed to protect airports, highways, and other transportation facilities, public facilities, schools, public grounds, historical districts, central business districts, prime agricultural land, and other natural resources; to regulate the use of sludge from water and wastewater treatment facilities in projects to improve soil quality; and to protect other specific areas of the planning unit which need special protection by the planning unit.

(3) Land use and zoning regulations may include the designation of specifically defined areas to be known as urban residential zones, in which:

(a) The majority of the structures were in use prior to November 22, 1926; and

(b) 1. The entire area embodies the distinctive characteristics of a type, period, or method of construction; or

2. The entire area represents a significant and distinguishable entity whose components may lack individual distinction.

The usage of structures within an urban residential zone may be regulated on a structure-by-structure basis, permitting a mixture of uses in the zone, including single-family and multifamily residential, retail, and service establishments, which stabilizes and protects the urban residential character of the area. The regulation of the usage of any structure shall be guided by the architecture, size, or traditional use of the building.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 139, effective July 15, 2002. – Amended 1996 Ky. Acts ch. 370, sec. 1, effective July 15, 1996. -- Amended 1990 Ky. Acts ch. 353, sec. 2, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 28, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 141, sec. 15, effective July 15, 1986. -- Amended 1980 Ky. Acts ch. 188, sec. 96, effective July 15, 1980. – Created 1966 Ky. Acts ch. 172, sec. 29.

100.202. Land use regulation permitting placement of all property within planning unit within a single zone -- Addressing land use proposals as conditional use.

(1) Subject to KRS 100.137(3), nothing in this chapter shall preclude the legislative bodies and fiscal courts of cities and counties comprising a planning unit from enacting a land use regulation which places all property within their respective jurisdictions in a single zone and addressing all land use proposals therein as conditional use permits.

(2) The text of any land use regulation enacted pursuant to this section need not comply with the provisions of KRS 100.203, and may provide that the planning commission shall assume all powers and duties of a board of adjustment as provided in KRS 100.217 to 100.263. Any appeal from an action of the planning commission in granting or denying a variance or conditional use permit shall be taken pursuant to KRS 100.347(2).

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 140, effective July 15, 2002. – Created 1988 Ky. Acts ch. 144, sec. 10, effective July 15, 1988.

100.203. Content of zoning regulations -- Appeal -- Special provisions for urban-county governments. -- 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;

(d) The uses set out in KRS 100.111(2)(c) 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. (Enact. Acts 1966, Ch. 172, § 30; 1974, Ch. 360, § 1; 1986, Ch. 141, § 16, effective July 15, 1986; 1986, Ch. 190, § 1, effective July 15, 1986; 2004, Ch. 150, § 2, effective July 13, 2004.)

100.204. Effect of KRS 100.203. -- Nothing in KRS 100.203 shall be deemed to abrogate laws, regulations and ordinances of cities and counties which relate to health, safety and sewage requirements. (Enact. Acts 1974, Ch. 360, § 2.)

100.205. Identical zoning regulations among cities and counties comprising joint planning unit not required. -- Except as provided in KRS 100.137(3), nothing contained in this chapter shall be construed or implied as requiring the legislative bodies of cities and counties

comprising the same joint planning unit to adopt identical zoning regulations. Nor shall the adoption or amendment of a zoning regulation by the legislative body of any city or county contained within a joint planning unit be made contingent on the adoption or amendment of such zoning regulation by the legislative body of any other city or county within the planning unit.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 141, effective July 15, 2002. – Created 1988 Ky. Acts ch. 144, sec. 11, effective July 15, 1988.

100.207. Text and map of zoning regulations -- Notice and publication -- (1) Before a city or county enacts zoning regulations, as authorized by KRS 100.201, the planning commission shall prepare the text and map of all zoning regulations and shall hold at least one (1) public hearing. Notice of the public hearing shall be given in accordance with the provisions of KRS Chapter 424.

(2) Subsequent to the public hearing, the planning commission shall submit, along with their recommendation, a copy of the approved zoning regulation text and map to the various legislative bodies and fiscal courts for adoption. A majority of the entire legislative body or fiscal court shall be required for passage of an ordinance adopting these regulations. Notwithstanding publication requirements, the ordinance by which these regulations are originally adopted may be published by stating the title and general description of the regulations and referring to the place within the unit where a copy of the complete ordinance may be examined without charge.

(3) The procedure for amending the zoning regulation text and map shall be as set forth in KRS 100.211. (Enact. Acts 1966, Ch. 172, § 31; 1986, Ch. 141, § 17, effective July 15, 1986; 1988, Ch. 19, § 1, effective July 15, 1988.)

100.208. Transferable development rights. -- (1) Any city, county, or urban-county government which is part of a planning unit may provide, by ordinance, for:

(a) The voluntary transfer of the development rights permitted on one (1) parcel of land to another parcel of land;
(b) Restricting or prohibiting further development of the parcel from which development rights are transferred; and
(c) Increasing the density or intensity of development of the parcel to which such rights are transferred.

(2) The ordinance shall designate and show on the zoning map areas from which development rights may be transferred and areas to which such rights may be transferred and used for development. These zones may be designated as separate use districts or as overlaying other zoning districts.

(3) Any city within a county that adopts an ordinance providing for the transfer of development rights, may also adopt a transfer of development rights ordinance and the county and city by adoption of mutual provisions may provide for the transfer of development rights on land located in one to land located in another.

(4) "Transferable development rights" means an interest in real property that constitutes the right to develop and use property under the zoning ordinance which is made severable from the parcel to which the interest is appurtenant and transferable to another parcel of land for development and use in accordance with the zoning ordinance. Transferable development rights may be transferred by deed from the owner of the parcel from which the development rights are derived and upon the transfer shall vest in the grantee and be freely alienable. The zoning ordinance may provide for the method of transfer of these rights and may provide for the granting of easements and reasonable regulations to effect and control transfers and assure compliance with the provisions of the ordinance. (Enact. Acts 1990, Ch. 286, § 1, effective July 13, 1990.)

100.209. Amendment of comprehensive plan prior to annexation permitted -- Land use management regulation in newly annexed or reclassified territory.

(1) When a city which has adopted zoning or other land use regulations pursuant to this chapter proposes to annex unincorporated or accept the transfer of incorporated territory, it may amend its comprehensive plan and official zoning map to incorporate and establish zoning or other land use regulations for the property proposed for annexation or transfer prior to adoption of the ordinance of annexation or transfer. If the city elects to follow this procedure, the planning commission shall hold a public hearing, after the adoption of the ordinance stating the city's intention to annex or transfer property and prior to final action upon the ordinance of annexation or transfer, for the purpose of adopting the comprehensive plan amendment and making its recommendations as to the zoning or other land use regulations which will be effective for the property upon its annexation or transfer. Notice setting forth the time, date, location, and purpose of the public hearing shall be published as required by KRS Chapter 424 and shall be given to the owners of all properties within the area proposed for annexation or transfer and to adjoining property owners in accordance with KRS 100.212(2). The city legislative body shall take final action upon the planning commission's recommendations prior to adoption of the ordinance of annexation or transfer and shall include in the ordinance of annexation or transfer a map showing the zoning or other land use regulations which will be effective for the annexed or transferred property. If the city elects not to follow the procedure provided for in this section prior to the adoption of the ordinance of annexation or transfer, the newly annexed or transferred territory shall remain subject to the same land use restrictions, if any, as applied to it prior to annexation or transfer until those restrictions are changed by zoning map amendments or other regulations in accordance with this chapter.

(2) When a city is created or when a city of the fifth or sixth class is reclassified to a city of the fourth class or higher in a county containing a city of the first class or a consolidated local government, and the intent is to regulate land use within the confines of the city, the process for adopting or amending the comprehensive plan and adopting zoning or other land use regulations shall be as provided for in this chapter. Until such actions have been taken, the properties within the city shall remain subject to the land use restrictions, if any, as applied prior to the creation or reclassification of the city.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 346, sec. 143, effective July 15, 2002. – Amended 1992 Ky. Acts ch. 17, sec. 6, effective February 28, 1992.-- Amended 1990 Ky. Acts ch. 362, sec. 4, effective July 13, 1990. -- Created 1986 Ky. Acts ch. 141, sec. 18, effective July 15, 1986.

100.211. Procedure for amending zoning map and text of regulation -- Notice -- Hearing -- Time limit for final action.

(1) A proposal for a zoning map amendment may originate with the planning commission of the unit, with any fiscal court or legislative body which is a member of the unit, or with an owner of the property in question. Regardless of the origin of the proposed amendment, it shall be referred to the planning commission before adoption. The planning commission shall then hold at least one (1) public hearing after notice as required by this chapter and make findings of fact and a recommendation of approval or disapproval of the proposed map amendment to the various legislative bodies or fiscal courts involved. The findings of fact and recommendation shall include a summary of the evidence and testimony presented by the proponents and opponents of the proposed amendment. A tie vote shall be subject to further consideration by the planning commission for a period not to exceed thirty (30) days, at the end of which, if the tie has not been broken, the application shall be forwarded to the fiscal court or legislative body without a recommendation of approval or disapproval. It shall take a majority of the entire legislative body or fiscal court to override the recommendation of the planning commission and it shall take a majority of the entire legislative body or fiscal court to adopt a zoning map amendment whenever the planning commission forwards the application to the fiscal court or legislative body without a recommendation of approval or disapproval due to a tie vote. Unless a majority of the entire legislative body or fiscal court votes to override the planning commission's recommendation, such recommendation shall become final and effective and if a recommendation of approval was made by the planning commission, the ordinance of the fiscal court or legislative body adopting the zoning map amendment shall be deemed to have passed by operation of law.

(2) A proposal to amend the text of any zoning regulation which must be voted upon by the legislative body or fiscal court may originate with the planning commission of the unit or with any fiscal court or legislative body which is a member of the unit. Regardless of the origin of the proposed amendment, it shall be referred to the planning commission before adoption. The planning commission shall hold at least one (1) public hearing after notice as required by KRS Chapter 424 and make a recommendation as to the text of the amendment and whether the amendment shall be approved or disapproved and shall state the reasons for its recommendation. In the case of a proposed amendment originating with a legislative body or fiscal court, the planning commission shall make its recommendation within sixty (60) days of the date of its receipt of the proposed amendment. It shall take an affirmative vote of a majority of the fiscal court or legislative body to adopt the proposed amendment.

(3) Procedures prescribed in KRS 100.207 applicable to the publication of notice also shall apply to any proposed amendment to a zoning regulation text or map; provided that:

(a) Any published notice shall include the street address of the property in question, or if one is not available or practicable due to the number of addresses involved, a geographic description sufficient to locate and identify the property, and the names of two (2) streets on either side of the property which intersect the street on which the property is located; and

(b) When the property in question is located at the intersection of two (2) streets, the notice shall designate the intersection by name of both streets rather than name the two (2) streets on either side of the property.

(4) When a property owner proposes to amend the zoning map of any planning unit other than a planning unit containing a city of the first class or a consolidated local government, the provisions of KRS 100.212 shall apply in addition to the requirements and procedures prescribed in subsection (3) of this section.

(5) When a property owner proposes to amend the zoning map of any planning unit comprising any portion of a county containing a city of the first class or a consolidated local government, the provisions of KRS 100.214 shall apply in addition to the requirements and procedures prescribed in subsection (3) of this section.

(6) In addition to the public notice requirements prescribed in subsection (3) of this section, when the planning commission, fiscal court, or legislative body of any planning unit originates a proposal to amend the zoning map of that unit, notice of the public hearing before the planning commission, fiscal court, or legislative body shall be given at least thirty (30) days in advance of the hearing by first-class mail to an owner of every parcel of property the classification of which is proposed to be changed. Records by the property valuation administrator may be relied upon to determine the identity and address of said owner.

(7) The fiscal court or legislative body shall take final action upon a proposed zoning map amendment within ninety (90) days of the date upon which the planning commission takes its final action upon such proposal.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 144, effective July 15, 2002. – Amended 1990 Ky. Acts ch. 362, sec. 15, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 19, sec. 2, effective July 15, 1988; and ch. 144, sec. 9, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 134, sec. 2, effective July 15, 1986; and ch. 141, sec. 19, effective July 15, 1986. -- Amended 1978 Ky. Acts ch. 327 and sec. 1, effective June 17, 1978. -- Created 1966 Ky. Acts ch. 172, secs. 32 and 33.

100.2111. Alternative regulation for zoning map amendment. -- A legislative body or fiscal court may adopt, in lieu of the provisions of KRS 100.211, a regulation to provide as follows:

(1) A proposal for a map amendment may originate with the planning commission of the unit, with any fiscal court or legislative body which is a member of the unit, or with the owner of the property in question.

(2) Regardless of the origin of the proposed amendment, it shall be referred to the planning commission before adoption.

(3) The planning commission shall then hold at least one (1) public hearing after notice as required by KRS Chapter 424 and this chapter and make recommendations to the various bodies or fiscal courts involved.

(4) A planning commission recommendation relating to the proposed amendment shall become final and the map amendment shall be automatically implemented subject to the

provisions of KRS 100.347, all as set forth in the planning commission recommendations, unless within twenty-one (21) days after the final action by the planning commission:

(a) Any aggrieved person files a written request with the planning commission that the final decision shall be made by the appropriate legislative body or fiscal court; or

(b) The appropriate legislative body or fiscal court files a notice with the planning commission that the legislative body or fiscal court shall decide the map amendment.

(5) It shall take a majority of the entire legislative body or fiscal court to override the recommendation of the planning commission.

(6) All procedures for public notice and publication as well as for adoption shall be the same as for the original enactment of a zoning regulation, and the notice of publication shall include the street address of the property in question, or if one is not available, or if it is not practicable due to the number of addresses involved, a geographic description sufficient to locate and identify the property, and the names of two (2) streets on either side of the property which intersect the street on which the property is located. If the property is located at the intersection of two (2) streets, the notice shall designate the intersection by name of both streets rather than name the two (2) streets on either side of the property. (Enact. Acts 1988, Ch. 31, § 1, effective July 15, 1988.)

100.212. Notice of hearing on proposed map amendment. -- When in any planning unit except for a planning unit containing a city of the first class or a consolidated local government, a hearing is scheduled on a proposal by a property owner to amend any zoning map, the following notice shall be given in addition to any other notice required by statute, local regulation, or ordinance:

(1) Notice of the hearing shall be posted conspicuously on the property the classification of which is proposed to be changed for fourteen (14) consecutive days immediately prior to the hearing. Posting shall be as follows:

(a) The sign shall state "zoning change" and the proposed classification change in letters three (3) inches in height. The time, place, and date of hearing shall be in letters at least one (1) inch in height; and

(b) The sign shall be constructed of durable material and shall state the telephone number of the appropriate zoning commission; and

(2) Notice of the hearing shall be given at least fourteen (14) days in advance of the hearing by first-class mail, with certification by the commission secretary or other officer of the planning commission that the notice was mailed to an owner of every parcel of property adjoining the property the classification of which is proposed to be changed. It shall be the duty of the person or persons proposing the map amendment to furnish to the planning commission the names and addresses of the owners of all adjoining property. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of the owner. If the property is in condominium or cooperative forms of ownership, the person notified by mail shall be the president or chairman of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be

mailed to two (2) or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.

(3) If the property the classification of which is proposed to be changed adjoins property in a different planning unit, or property which is not part of any planning unit, notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, by first-class mail to certain public officials, as follows:

(a) If the adjoining property is part of a planning unit, notice shall be given to that unit's planning commission; or

(b) If the adjoining property is not part of a planning unit, notice shall be given to the mayor of the city in which the property is located or, if the property is in an unincorporated area, notice shall be given to the judge/executive of the county in which the property is located.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 346, sec. 145, effective July 15, 2002. – Amended 1990 Ky. Acts ch. 362, sec. 5, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 144, sec. 2, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 141, sec. 20, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 20, sec. 2, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 114, sec. 11, effective July 15, 1980. – Amended 1976 Ky. Acts ch. 66, sec. 1. -- Amended 1974 Ky. Acts ch. 315, sec. 7. -- Created 1972 Ky. Acts ch. 233, sec. 1.

100.213. Findings necessary for proposed map amendment -- Reconsideration. -- (1) Before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the adopted comprehensive plan, or, in the absence of such a finding, that one (1) or more of the following apply and such finding shall be recorded in the minutes and records of the planning commission or the legislative body or fiscal court:

(a) That the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate; and

(b) That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area.

(2) The planning commission, legislative body or fiscal court may adopt provisions which prohibit for a period of two (2) years, the reconsideration of a denied map amendment or the consideration of a map amendment identical to a denied map amendment. (Enact. Acts 1966, Ch. 172, § 34; 1968, Ch. 198, § 1; 1980, Ch. 325, § 1, effective July 15, 1980; 1986, Ch. 141, § 21, effective July 15, 1986.)

100.214. Hearing on proposed map amendment in county containing city of the first class or consolidated local government. -- When in any planning unit containing any portion of a county containing a city of the first class or a consolidated local government a hearing is scheduled on a proposal by a property owner to amend any zoning map, the following notice shall be given in addition to any other notice required by statute, local regulation, or ordinance to be given:

(1) Notice of the hearing shall be posted conspicuously on the property the classification of which is proposed to be changed thirty (30) days immediately prior to the hearing. Posting shall be as follows:

(a) The sign shall state "zoning change" and the proposed classification change in letters three (3) inches in height. The time, place, and date of hearing shall be in letters at least one (1) inch in height; and

(b) The sign shall be constructed of durable material and shall state the telephone number of the appropriate zoning commission;

(2) Notice of the hearing shall be given at least thirty (30) days in advance of the hearing by first class mail, with certification by the commission secretary or other officer of the planning commission that the notice was mailed, to the mayor and city clerk of any city of the fifth or sixth class so affected, to an owner of every parcel of property adjoining at any point the property the classification of which is proposed to be changed, to an owner of every parcel of property directly across the street from said property, and to an owner of every parcel of property which adjoins at any point the adjoining property or the property directly across the street from said property; provided, however, that no first-class mail notice, required by this subsection, shall be required to be given to any property owner whose property is more than five hundred (500) feet from the property which is proposed to be changed. It shall be the duty of the person or persons proposing the map amendment to furnish to the planning commission the names and addresses of the owners of all property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairman of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two (2) or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address;

(3) If the hearing has been scheduled for a time during normal working hours, and if, within fifteen (15) days of the scheduled date of the hearing the planning commission shall receive a petition from two hundred (200) property owners living within the planning unit requesting that the hearing be rescheduled for a time after normal working hours, then the planning commission shall reschedule the hearing for a time after normal working hours on a date no earlier than the date of the original hearing. The planning commission shall then publish notice of the new hearing time and date according to the provisions of KRS 100.211, except that notice shall occur at least seven (7) days prior to the public hearing. The sign required by subsection (1) of this section shall be changed to reflect the new hearing time and date at least seven (7) days prior to the public hearing. The persons who receive mail notice according to the provisions of subsection (2) of this section shall again be notified in the same manner of the new hearing time and date at least seven (7) days prior to the hearing. The hearing time shall not be changed more than once by the procedures of this section except in the event of intervening emergency which requires the cancellation of a hearing; and

(4) Notice by mail shall include a list of the names and addresses of each person so notified, and a description of the procedure by which those notified can petition for a change in the hearing time.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 346, sec. 146, effective July 15, 2002. – Amended 1988 Ky. Acts ch. 144, sec. 3, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 141, sec. 22, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 20, sec. 3, effective July 15, 1982. -- Amended 1980 Ky. Acts ch. 114, sec. 12, effective July 15, 1980. -- Created 1978 Ky. Acts ch. 327, sec. 2, effective June 17, 1978.

BOARD OF ADJUSTMENT

100.217. Board of adjustment -- Membership -- Appointment -- Terms -- Vacancies --Oath -- Compensation -- Removal -- Officers -- Effect of compact – Membership upon establishment of consolidated local government.

(1) Before any zoning regulation may have legal effect within the planning unit, a board or boards of adjustment shall be appointed for the planning unit as stated in the agreement under which the unit operates. The agreement may provide for additional boards of adjustment with jurisdiction of a particular city or area within the planning unit. Provided, that the jurisdiction of the boards of adjustment so established shall be clearly defined as to territorial limits, that all territory within the planning unit is within the jurisdiction of some board of adjustment so established and, that no territory is subject to the jurisdiction of more than one (1) board of adjustment, except as provided in KRS 100.203(5). In a county containing a consolidated local government where a planning agreement is not required, there shall be one (1) board of adjustment which shall be established by ordinance of the consolidated local government. Until such time as the consolidated local government establishes and appoints a board of adjustment pursuant to this subsection, the existing board of adjustment for the county shall serve as the board of adjustment for the entire planning unit.

(2) A board of adjustment shall consist of either three (3), five (5), or seven (7) members, all of whom must be citizen members, and not more than two (2) of whom may be citizen members of the planning commission.

(3) The mayor shall be the appointing authority for cities, and the county judge/executive shall be the appointing authority for counties, subject to the approval of their respective legislative bodies. The mayor shall be the appointing authority for a consolidated local government pursuant to the provisions of KRS 67C.139.

(4) The term of office for the board of adjustment shall be four (4) years, but the term of office of members first appointed shall be staggered so that a proportionate number serve one (1), two (2), three (3), and four (4) years respectively.

(5) Vacancies on the board of adjustment shall be filled within sixty (60) days by the appropriate appointing authority. If the authority fails to act within that time, the planning commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of that term.

(6) All members of boards of adjustment shall, before entering upon their duties, qualify by taking the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky before any judge, county judge/executive, notary public, clerk of a court, or justice of the peace within the district or county in which he resides.

(7) Reimbursement for expenses or compensation or both may be authorized for members on a board of adjustment.

(8) Any member of a board of adjustment may be removed by the appropriate appointing authority for inefficiency, neglect of duty, malfeasance, or conflict of interest. Any appointing authority who exercises the power to remove a member of the board of adjustment shall submit a written statement to the commission setting forth the reasons for removal, and the statement shall be read at the next meeting of the board of adjustment, which shall be open to the general public. The member so removed shall have the right of appeal from the removal to the Circuit Court of the county in which he resides.

(9) Notwithstanding subsection (4) of this section, when a city of the first class and a county containing such city have in effect a compact pursuant to KRS 79.310 to 79.330, the terms of the members on the board shall be for three (3) years and until their successors are appointed and qualified. Upon the effective date of the compact, if the board is not reorganized pursuant to subsection (1) of this section, the mayor, and county judge/executive with approval of the fiscal court, shall adjust the terms of the sitting members to provide that the terms of one-third (1/3) plus one (1) of the members expire in one (1) year, the terms of one-third (1/3) of the members in two (2) years, and the terms of one-third (1/3) of the members expire in three (3) years. Upon expiration of these staggered terms, successors shall be appointed for a term of three (3) years. Notwithstanding subsection (4) of this section, upon the establishment of a consolidated local government in a county where a city of the first class and a county containing such city have had in effect a cooperative compact pursuant to KRS 79.310 to 79.330, the terms of the members on the board shall be for three (3) years and until their successors are appointed and qualified. Upon expiration of the terms of incumbent members, their successors shall be appointed to three (3) year terms which are staggered.

(10) Each board of adjustment annually shall elect a chairman, vice chairman, and secretary and any other officers it deems necessary, and any officer shall be eligible for reelection at the expiration of his term.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 147, effective July 15, 2002. – Amended 1986 Ky. Acts ch. 77, sec. 20, effective July 15, 1986; and ch. 141. sec. 23, effective July 15, 1986. -- Amended 1980 Ky. Acts ch. 184, sec. 3, effective July 15, 1980. -- Created 1966 Ky. Acts ch. 172, secs. 35 to 43.

100.221. Meetings of board -- Quorum -- Minutes -- Bylaws -- Hearing examiner. -- (1) Each board of adjustment shall conduct meetings at the call of the chairman who shall given written or oral notice to all members of the board at least seven (7) days prior to the meeting, which notice shall contain the date, time and place for the meeting, and the subject or subjects which will be discussed.

(2) A simple majority of the total membership of a board of adjustment as established by agreement shall constitute a quorum. Any member of a board of adjustment who has any direct or indirect financial interest in the outcome of any question before the body shall disclose the nature of the interest and shall disqualify himself from voting on the question.

(3) All boards of adjustment shall adopt bylaws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, findings, and determinations, and the number of votes for and against each question, and if any member is absent or abstains from voting, indicating the fact, all of which shall, immediately after adoption, be filed in the office of the board. If the board has no office, such records may be kept in custody of an officer of the board and shall be available to the general public. A transcript of the minutes of a board of adjustment shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

(4) A board of adjustment may appoint one (1) or more of its members to act as hearing examiner to preside over a public hearing or public meeting and make recommendations to the board based upon a transcript or record of the hearing. (Enact. Acts 1966, Ch. 172, §§ 44 to 46; 1986, Ch. 141, § 24, effective July 15, 1986.)

100.223. Employing planners or other persons. -- Any board of adjustments may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties under this chapter. (Enact. Acts 1966, Ch. 172, § 47.)

100.227. Finances. -- Any board of adjustments shall have the right to receive, hold, and spend funds which it may legally receive from any and every source both in and out of the Commonwealth of Kentucky, including the United States government, for the purpose of carrying out the provisions of this chapter. (Enact. Acts 1966, Ch. 172, § 48.)

100.231. Subpoena power. -- Any board of adjustments shall have the power to issue subpoenas to compel witnesses to attend its meetings and give evidence bearing upon the questions before it. The sheriff shall serve such subpoenas. The circuit court may, upon application by the board compel obedience to such court or such subpoena by proceedings of contempt. (Enact. Acts 1966, Ch. 172, § 49.)

100.233. Administration of oaths. -- The chairman of any board of adjustments shall have the power to administer an oath to witnesses prior to their testifying before the board on any issue. (Enact. Acts 1966, Ch. 172, § 50.)

100.237. Conditional use permits. -- The board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named in the zoning regulations which may be suitable only in specific locations in the zone only if certain conditions are met:

(1) The board may approve, modify, or deny any application for a conditional use permit. If it approves such permit it may attach necessary conditions such as time limitations, requirements that one (1) or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the board's minutes and on the conditional use permit, along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. The board shall have power to revoke conditional use permits, or variances for noncompliance with the condition thereof. Furthermore, the board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.

(2) Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of building, housing, and other regulations.

(3) In any case where a conditional use permit has not been exercised within the time limit set by the board, or within one (1) year if no specific time limit has been set, such conditional use permit shall not revert to its original designation unless there has been a public hearing. "Exercised," as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement have been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree, or that prerequisite conditions involving substantial investment under contract, in development, are completed. When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions as set forth in the permit.

(4) The administrative official shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions which are listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the administrative official shall report the fact in writing to the chairman of the board of adjustment. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit, and a copy of the report shall be furnished to the landowner at the same time that it is furnished to the chairman of the board of adjustment. The board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one (1) week prior to the hearing. If the board of adjustment finds that the facts alleged in the report of the administrative official are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the board of adjustment may authorize the administrative official to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

(5) Once the board of adjustment has completed a conditional use permit and all the conditions required are of such type that they can be completely and permanently satisfied, the administrative official, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied, and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

(6) When an application is made for a conditional use permit for land located within or abutting any residential zoning district, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, administrative official, the mayor and city clerk of any city of the fifth or sixth class so affected within any county containing a city of the first class or a consolidated local government, an owner of every parcel of property adjoining the property to which the application applies, and such other persons as the local zoning ordinance, regulations, or board of adjustment bylaws shall direct. Written notice shall be by first-class mail with certification by the board's secretary or other officer that the notice was mailed. It shall be the duty of the applicant to furnish to the board the name and

address of an owner of each parcel of property as described in this subsection. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two (2) or more co-owners of an adjoining property who are listed in the property valuation administrator's records as having the same address.

(7) When any property within the required notification area for a public hearing upon a conditional use permit application is located within an adjoining city, county, or planning unit, notice of the hearing shall be given at least fourteen (14) days in advance of the hearing, by first-class mail to certain public officials, as follows:

(a) If the adjoining property is part of a planning unit, notice shall be given to that unit's planning commission; or

(b) If the adjoining property is not part of a planning unit, notice shall be given to the mayor of the city in which the property is located or, if the property is in an unincorporated area, notice shall be given to the judge/executive of the county in which the property is located.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 346, sec. 148, effective July 15, 2002. – Amended 1990 Ky. Acts ch. 362, sec. 10, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 30, sec. 6, effective July 15, 1988; and ch. 144, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 134, sec. 1, effective July 15, 1986. -- Amended 1978 Ky. Acts ch. 384, sec. 23, effective June 17, 1978. -- Created 1966 Ky. Acts ch. 172, sec. 51.

100.241. Variances. -- The board shall have the power to hear and decide on applications for variances. The board may impose any reasonable conditions or restrictions on any variance it decides to grant. (Enact. Acts 1966, Ch. 172, § 52; 1980, Ch. 188, § 97, effective July 15, 1980; 1986, Ch. 141, § 25, effective July 15, 1986.)

100.243. Findings necessary for granting variances. -- (1) Before any variance is granted, the board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the board shall consider whether:

(a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;

(b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

(c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

(2) The board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought. (Enact. Acts 1966, Ch. 172, § 53; 1986, Ch. 141, § 26, effective July 15, 1986; 1988, Ch. 144, § 4, effective July 15, 1988.)

100.247. Variance cannot contradict zoning regulation. -- The board shall not possess the power to grant a variance to permit a use of any land, building, or structure which is not permitted by the zoning regulation in the zone in question, or to alter the density requirements in the zone in question. (Enact. Acts 1966, Ch. 172, § 54.)

100.251. Variance runs with the land. -- A variance applies to the property for which it is granted, and not to the individual who applied for it. A variance runs with the land and is transferable to any future owner of the land, but it cannot be transferred by the applicant to a different site. (Enact. Acts 1966, Ch. 172, § 55; 1986, Ch. 141, § 27, effective July 15, 1986.)

100.253. Existing nonconforming use, continuance -- Change -- Effect of nonconforming use of ten years' duration -- Application.

(1) The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it, may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.

(2) The board of adjustment shall not allow the enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain nonconforming-use status, for enlargements or extensions, made or to be made, of the facilities of a nonconforming use, where the use consists of the presenting of a major public attraction or attractions, such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.

(3) Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten (10) years, and which has not been the subject of any adverse order or other adverse action by the administrative official during said period, shall be deemed a nonconforming use. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

(4) The provisions of subsection (3) of this section shall not apply to counties containing a city of the first class, a city of the second class, a consolidated local government, or an urban-county government.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 346, sec. 149, effective July 15, 2002. – Amended 1986 Ky. Acts ch. 141, sec. 28, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 412, sec. 3, effective July 13, 1984. -- Amended 1978 Ky. Acts ch. 327, sec. 3, effective June 17, 1978. -- Created 1966 Ky. Acts ch. 172, sec. 56.

100.257. Administrative review. -- The board of adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation. Such appeal shall be taken within thirty (30) days. (Enact. Acts 1966, Ch. 172, § 57; 1986, Ch. 141, § 29, effective July 15, 1986.)

100.261. Procedure for all appeals to board. -- Appeals to the board may be taken by any person, or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of any zoning enforcement officer. Such appeal shall be taken within thirty (30) days after the appellant or his agent receives notice of the action of the official by filing with said officer and with the board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. Said officer shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At the public hearing on the appeal held by the board, any interested person may appear and enter his appearance, and all shall be given an opportunity to be heard. (Enact. Acts 1966, Ch. 172, § 58; 1986, Ch. 141, § 30, effective July 15, 1986.)

100.263. Public notice of appeal hearing. -- The board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 424, as well as written notice to the appellant and the administrative official at least one (1) week prior to the hearing, and shall decide it within sixty (60) days. The affected party may appear at the hearing in person or by attorney. (Enact. Acts 1966, Ch. 172, § 59.)

100.267. Restraint of construction without permit. -- If no building permit has been issued and a builder begins or continues to build, a restraining order may be obtained upon application to the proper court of record and evidence of the lack of a building permit shall establish a prima facie case for the issuance of the restraining order. (Enact. Acts 1966, Ch. 172, § 60.)

100.271. Administrator of zoning regulations, powers. -- An administrative official shall be designated by the city or county to administer the zoning regulation, and, if delegated, housing or building regulations. The administrative official may be designated to issue building permits or certificates of occupancy, or both, in accordance with the literal terms of the regulation, but may not have the power to permit any construction, or to permit any use or any change of use which does not conform to the literal terms of the zoning regulation. (Enact. Acts 1966, Ch. 172, § 61.)

SUBDIVISION MANAGEMENT

100.273. Land subdivision regulations by planning commission or fiscal court -- Procedures for urban-county government. -- (1) Any planning commission which has completed the objectives, land use plan, transportation plan, and community facilities elements of a comprehensive plan may adopt regulations for the subdivision of land within its boundaries.

(2) A county which does not wish to establish a planning program or form a planning unit may adopt regulations for the subdivision of land within its boundaries. In this case, the county shall be governed by the provisions of KRS 100.111(22), 100.277, 100.281, 100.283, 100.287 and 100.291, but any powers delegated to a planning commission in these sections shall instead be delegated to the fiscal court, any reference to the planning unit shall be considered a reference to the county, and any reference to the chairman of the planning commission shall be considered a reference to the county judge/executive. (Enact. Acts 1966, Ch. 172, § 62; 1986, Ch. 25, § 1, effective July 15, 1986; 1986, Ch. 141, § 31, effective July 15, 1986.)

100.277. Commission approval required for subdivisions.

(1) All subdivision of land shall receive commission approval.

(2) No person or his agent shall subdivide any land before securing the approval of the planning commission of a plat designating the areas to be subdivided, and no plat of a subdivision of land within the planning unit jurisdiction shall be recorded by the county clerk until the plat has been approved by the commission and the approval entered thereon in writing by the chairman, secretary, or other duly authorized officer of the commission.

(3) No person owning land composing a subdivision, or his agent, shall transfer or sell any lot or parcel of land located within a subdivision by reference to, or by exhibition, or by any other use of a plat of such subdivision, before such plat has received final approval of the planning commission and has been recorded. Any such instrument of transfer or sale shall be void and shall not be subject to be recorded unless the subdivision plat subsequently receives final approval of the planning commission, but all rights of such purchaser to damages are hereby preserved. The description of such lot or parcel by metes and bounds in any instrument of transfer or other document used in the process of selling or transferring same shall not exempt the person attempting to transfer from penalties provided or deprive the purchaser of any rights or remedies he may otherwise have. Provided, however, any person, or his agent, may agree to sell any lot or parcel of land located within a subdivision by reference to an unapproved or unrecorded plat or by reference to a metes and bounds description of such lot and any such executory contract of sale or option to purchase may be recorded and shall be valid and enforceable so long as the subdivision of land contemplated therein is lawful and the subdivision plat subsequently receives final approval of the planning commission.

(4) Any street or other public ground which has been dedicated shall be accepted for maintenance by the legislative body after it has received final plat approval by the planning commission. Any street that has been built in accordance with specific standards set forth in subdivision regulations or by ordinance shall be, by operation of law, automatically accepted for maintenance by a legislative body forty-five (45) days after inspection and final approval.

(5) Any instrument of transfer, sale or contract that would otherwise have been void under this section and under any of its subsections previously, is deemed not to have been void, but merely not subject to be recorded unless the subdivision plat subsequently receives final approval of the planning commission. This subsection shall not apply to instruments of transactions affecting property in counties containing cities of the first class, in consolidated

local governments created pursuant to KRS Chapter 67C, or in urban-counties created pursuant to KRS Chapter 67A.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 150, effective July 15, 2002. – Amended 1990 Ky. Acts ch. 362, sec. 14, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 144, sec. 5, effective July 15, 1988; and ch. 343, sec. 4, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 141, sec. 32, effective July 15, 1986; and ch. 461, sec. 21, effective July 15, 1986. -- Created 1966 Ky. Acts ch. 172, sec. 63.

100.281. Contents of subdivision regulations. -- Subdivision regulations shall be based on the comprehensive plan, in those counties which have adopted a comprehensive plan, and all subdivision regulations shall contain:

(1) The procedure for the submission and approval of preliminary and final plat and the recordation of final plats. The commission may delegate to its secretary or any other officer or employee the power to approve plats in accordance with the commission's adopted requirements, but all plats, preliminary and final, shall be approved or disapproved within ninety (90) days;

(2) Specifications for the contents and the format of all subdivision plats;

(3) Requirements for the design of streets, blocks, lots, utilities, recreation areas, other facilities, hazardous areas, and areas subject to flooding. Such requirements may deal with all forms of land use including residential, commercial, industrial, and other uses. If the subdivision plat includes a proposal for any street to cross a jurisdictional line out of the planning unit, the commission shall require that notice of the proposal be given to the planning commission serving the planning unit into which the road will cross. If there is no planning unit for that area, the notice shall be given to the affected city or county government;

(4) Specifications for the physical improvements of streets, utilities, and other facilities, and the extent to which they shall be installed or dedicated as conditions precedent to approval of any plat, including the provision of good and sufficient surety to insure proper completion of physical improvements;

(5) Specifications for the extent to which land is to be used for public purposes shall be reserved as a condition precedent to approval by the commission of any subdivision plat. The planning commission may require a reservation, not to exceed two (2) years, for parks, open space, school and other public uses;

(6) The text may empower the planning commission to hear and finally decide applications for variances when a proposed development requires a subdivision and one (1) or more variances;

(7) In any regulation adopted pursuant to subsection (6) of this section:

(a) The text shall provide that the planning commission shall assume all powers and duties otherwise exercised by the board of adjustment 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 (6) of this section; and

(b) The text shall provide that the applicant for the subdivision at the time of the filing of the application for the subdivision may elect to have any variance for the same development to be heard and finally decided by the planning commission at the same public hearing set for the subdivision, or by the board of adjustment as otherwise provided for in this chapter. (Enact. Acts 1966, Ch. 172, § 64; 1986, Ch. 25, § 2, effective July 15, 1986; 1986, Ch. 141, § 33, effective July 15, 1986; 1988, Ch. 144, § 6, effective July 15, 1988; 1990, Ch. 362, § 11, effective July 13, 1990.)

100.283. Recording final plats. -- After the approval of a subdivision plat by the planning commission, it shall be recorded at the expense of the subdivider in the office of the county clerk. The plat shall be in the form of a rectangle and the clerk shall not be required to record a plat exceeding twenty-four (24) inches on one side and thirty-six (36) inches on the other. The county clerk shall provide a plat cabinet with an appropriate index for those plats which are too large to be placed in a plat book. (Enact. Acts 1966, Ch. 172, § 65; 1978, Ch. 384, § 230, effective June 17, 1978; 1980, Ch. 143, § 1, effective July 15, 1980.)

100.285. Revocation of subdivision plat. -- (1) Upon application of all persons owning land comprising a subdivision, the planning commission may revoke the approval of a subdivision plat, including all dedications of public facilities, easements and rights-of-way.

(2) Before any plat shall be revoked, all owners shall, as part of their application for revocation, state under oath that no person has purchased a lot shown on the plat.

(3) A revocation shall become effective only upon:

(a) A notation on the margin of the recorded plat stating that such plat has been revoked and the date of such vote on revocation; such notation shall be signed by the chairman, secretary, or other duly authorized officer of the commission; and

(b) A written approval of such revocation filed with the commission, duly signed by each entity to which an offer of dedication of any public or private facility, easement or right-of-way was made on the plat.

(4) The remedy provided in this section is in addition to all other remedies provided by law and shall not impair the right of the commission or any interested party from filing an action in circuit court for such relief as may be appropriate. (Enact. Acts 1986, Ch. 141, § 38, effective July 15, 1986.)

100.287. Department of Highways may review plats. -- The state department of highways may file with the planning commission of any planning unit exercising subdivision jurisdiction, a map of the territory within one (1) mile on either or both sides of any existing or proposed highway. After receipt of the map by the planning commission, no preliminary plats shall be approved by the commission until one (1) copy of such preliminary plat has been referred to the designated office of the department of highways for its review. If the department of highways desires to make any recommendations on the plan, it shall communicate such to the planning commission within fifteen (15) days after the receipt of the plat. (Enact. Acts 1966, Ch. 172, § 66.)

100.291. Restraint of subdivision construction. -- The planning commission shall have the power to apply for an injunction against any type of subdivision construction by the subdivider or the landowner where a subdivision's regulations have been violated. (Enact. Acts 1966, Ch. 172, § 67.)

100.292. Land sold in violation of chapter -- Plats filed -- Effect. -- When it has been discovered that land has been sold or transferred, or that a contract has been entered into for the sale or transfer of land in violation of the provisions of this chapter pertaining to the regulation of subdivisions, the owner or owners of record shall file plats of the land in accordance with this chapter. When land is sold or transferred, or a contract has been entered into for the sale or transfer of land in violation of this chapter, the land shall be governed by the subdivision regulations both prior to and after the platting of the land by the owner of record as if a plat had been filed in accordance with the provisions of this chapter pertaining to subdivision regulations. Plats filed pursuant to this section may be filed by the last transferee in the chain of title including holders of deeds which may otherwise be void under KRS 100.277(2). (Enact. Acts 1966, Ch. 172, § 68 (2nd sentence); 1986, Ch. 461, § 22, effective July 15, 1986.)

MAP FOR PLANNING UNIT

100.293. Official map authorized. -- When all components of the comprehensive plan which are prescribed under this chapter as a minimum for a planning unit and a public facilities improvement program have been prepared and adopted, the commission and legislative bodies and fiscal courts of the cities and counties shall have the power to prepare and adopt an official map regulation. The regulation shall incorporate a map of the entire area under jurisdiction, but it may be accomplished by parts in which case the first part shall be passed as the original regulation and all other parts shall be treated as amendments to the original regulation. (Enact. Acts 1966, Ch. 172, § 69.)

100.297. Official map, contents -- Hearing, posting. -- (1) The official map may show, without being limited to, the location and extent of existing and proposed public streets, including rights of way, watercourses, parks and playgrounds, public schools and building sites, and other public facilities needs.

(2) Prior to the adoption or amendment of the official map, the planning commission shall review the map or changes to it in light of the comprehensive plan, shall hold a public hearing on the map or proposed changes pursuant to public notice as prescribed by KRS Chapter 424, and shall recommend its approval or disapproval to the legislative bodies.

(3) After the passage of the official map regulation for all or part of the city or county, all streets, watercourses, parks and playgrounds, public buildings, public school sites, or other public facilities which have been approved under subdivision regulations as provided in this chapter, shall be posted to the official map; no public hearing need be held for such additions to the official map. (Enact. Acts 1966, Ch. 172, §§ 70 to 72.)

100.301. Adoption of map, how construed. -- The passage of the official map regulation shall not be deemed as opening or establishing of any street, or as a taking or as an

acceptance of any land for a street, watercourse, or public ground; nor shall it obligate the city or county to improve or maintain any such street or facility. (Enact. Acts 1966, Ch. 172, § 73.)

100.303. Construction permits required. -- For the purpose of preserving the integrity of the official map of the city or county, no permit shall be issued for the construction or material alteration of any building within the lines of any streets, including right of way, watercourse, parks and playgrounds, public schools, or other public building sites shown on the official map, except as provided in this section. The official map of a city may include the area outside the city limits over which the approval of subdivision plats is required. Any persons desiring to construct or materially alter a building in the lines of any proposed facility shown on the official map shall apply to the administrative official of the city or county for a building permit. Unless such application is made and the permit is granted, no person shall recover any damages for the taking for public use of any structure or improvement constructed within the lines shown on the map, and any such structure or improvement shall be removed at the expense of the owner when the land is acquired for public use. (Enact. Acts 1966, Ch. 172, § 74.)

100.307. Permits for unprofitable land. -- If the land shown on the official map is not yielding a fair return, the board of adjustments shall have the power to grant a permit for the building which will, as little as practicable, increase the cost of future acquisition, and the board may impose reasonable requirements as a condition of granting such permits. Such a permit shall not be granted when the applicant will not be substantially damaged by placing his building outside the boundary lines of the proposed facility. (Enact. Acts 1966, Ch. 172, § 75.)

MISCELLANEOUS PROVISIONS

100.311. Public improvement program. -- Any city or county may prepare and adopt a program and budget for capital improvements which the planning commission may recommend. The long-term capital improvements program shall list, in priority order of need, all of the public facility improvements proposed on the comprehensive plans for the entire time period covered thereby. The short-term capital improvements budget shall include those capital improvements which are programmed for the first five (5) or six (6) years, shall show estimates of cost, where applicable, for land acquisition, planning and design, construction and equipment, and all other necessary capital outlays, and shall relate such capital improvement costs to over-all city or county governmental costs by projecting revenues and expenditures for the five (5) or six (6) year period on a year by year basis. The resulting short-term capital improvements budget will assure the ability of the city or county to meet its capital needs without impairment to its operating needs. The first year of the short-term capital improvements budget shall automatically become part of that year's current operating budget, at which time the short-term capital improvements budget shall be revised and another year added. For the purpose of year to year budget revision and updating, the long-term capital improvements program may be reviewed and revised at any time in keeping with the review and revision of the comprehensive plans. Nothing herein shall prevent any city or county from preparing and adopting a public facility improvement program in the absence of a proposed public improvements map regulation. (Enact. Acts 1966, Ch. 172, § 76; 1986, Ch. 141, § 34, effective July 15, 1986.)

100.317. Relationship to official map. -- No proposed public facility improvements shall be placed upon the official map other than those included in the short term capital improvements budget. (Enact. Acts 1966, Ch. 172, § 77.)

100.324. Public utility facilities excepted -- Review of proposed acquisition, disposition, or change by commission.

(1) All other provisions of this chapter to the contrary notwithstanding, public utilities operating under the jurisdiction of the Public Service Commission, except as specified in KRS 100.987, or the Department of Vehicle Regulation or Federal Energy Regulatory Commission, any municipally owned electric system, and common carriers by rail shall not be required to receive the approval of the planning unit for the location or relocation of any of their service facilities. Service facilities include all facilities of such utilities and common carriers by rail other than office space, garage space, and warehouse space and include office space, garage space, and warehouse space when such space is incidental to a service facility. The Public Service Commission and the Department of Vehicle Regulation shall give notice to the planning commission of any planning unit of any hearing which affects locations or relocations of service facilities within that planning unit's jurisdiction.

(2) The nonservice facilities excluded in subsection (1) of this section must be in accordance with the zoning regulations.

(3) Upon the request of the planning commission, the public utilities referred to in this section shall provide the planning commission of the planning unit affected with information concerning service facilities which have been located on and relocated on private property.

(4) Any proposal for acquisition or disposition of land for public facilities, or changes in the character, location, or extent of structures or land for public facilities, excluding state and federal highways and public utilities and common carriers by rail mentioned in this section, shall be referred to the commission to be reviewed in light of its agreement with the comprehensive plan, and the commission shall, within sixty (60) days from the date of its receipt, review the project and advise the referring body whether the project is in accordance with the comprehensive plan. If it disapproves of the project, it shall state the reasons for disapproval in writing and make suggestions for changes which will, in its opinion, better accomplish the objectives of the comprehensive plan. No permit required for construction or occupancy of such public facilities shall be issued until the expiration of the sixty (60) day period or until the planning commission issues its report, whichever occurs first.

Effective: April 23, 2002

History: Amended 2002 Ky. Acts ch. 89, sec. 3, effective July 15, 2002; ch. 343, sec. 1, effective April 23, 2002; and ch 346, sec. 151, effective July 15, 2002. -- Amended 1998 Ky. Acts ch. 231, sec. 3, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 383, sec. 1, effective July 15, 1996. -- Amended 1988 Ky. Acts ch. 144, sec. 7, effective July 15, 1988. -- Amended 1984 Ky. Acts ch. 304, sec. 1, effective July 13, 1984. – Created 1966 Ky. Acts ch. 172, sec. 80.

Legislative Research Commission Note (4/23/2002). This section was amended by 2002 Ky. Acts ch. 89, sec. 3, ch. 343, sec. 1, and ch. 346, sec. 151. Chs. 89 and 343 are not in conflict and have been codified together. Chs. 343 and 346 appear to be in conflict, and where a conflict exists, the substantive changes in ch. 343 have been allowed to prevail over the revisory changes in ch. 346. Cf. KRS 7.123.

100.325. Unlawful restrictions on federally licensed firearms manufacturer, importer, or dealer. – No city, county, urban-county government, charter county, or

consolidated local government shall utilize the zoning process to prohibit a federally licensed firearms manufacturer, importer, or dealer from locating at any place within the jurisdiction at which any other business may locate. This section shall not prohibit local jurisdictions from subjecting the businesses of federally licensed firearms manufacturers, importers, and dealers to the same restrictions related to the exterior appearance of the property and number of paid employees applied to other commercial uses in residential zones. No restrictions shall be enacted that could be reasonably construed to solely affect federally licensed firearms manufacturers, importers, or dealers.

Effective: July 13, 2004
History: Created 2004 Ky. Acts ch. 187, sec. 1, effective July 13, 2004.

100.327. KRS 100.215 and 100.324 apply, when. -- Only after the statement of goals and objectives and land use plan elements of the comprehensive plan, at least, have been adopted for the unit, KRS 100.215 and 100.324 shall govern. (Enact. Acts 1966, Ch. 172, § 78; 1986, Ch. 141, § 35, effective July 15, 1986.)

100.328. Bylaws and procedures. -- (1) The planning commission shall have the authority to adopt all bylaws and procedures necessary to carry out the functions of this chapter.

(2) The contents of, and procedure for adoption and amendment of interim regulations, as provided in KRS 100.201 shall be the same as for permanent zoning or other kinds of growth management regulations. (Enact. Acts 1966, Ch. 172, §§ 81, 88A; 1986, Ch. 141, § 36, effective July 15, 1986; 1988, Ch. 28, § 2, effective July 15, 1988.)

100.329. Recording of plats. -- All final plats approved by the planning commission shall be recorded at the expense of the applicant in the office of the county clerk. A copy of all regulations and the official maps of each planning unit shall be filed with the appropriate agency as provided in this chapter, or as otherwise provided by law. (Enact. Acts 1966, Ch. 172, § 88; 1978, Ch. 384, § 231, effective June 17, 1978; 1988, Ch. 30, § 7, effective July 15, 1988.)

100.3291. Restrictions imposing highest standards apply. -- Whenever any other restrictions or covenants impose a higher standard than permitted by this chapter, then such other restriction or covenant shall govern. (Enact. Acts 1966, Ch. 172, § 76; 1986, Ch. 141, § 37, effective July 15, 1986.)

100.331. Grant of legislative powers to fiscal courts -- Exception. -- Except in counties containing a consolidated local government, fiscal courts are granted all the legislative powers granted to all cities for purposes of adopting regulations and legislation proposed under this chapter.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 152, effective July 15, 2002. – Created 1966 Ky. Acts ch. 172, sec. 86.

100.337. Enforcement by commission. -- Commission shall have a cause of action for all appropriate relief including injunctions against any governmental bodies or any aggrieved person who violates this chapter or regulations adopted hereunder. (Enact. Acts 1966, Ch. 172, § 84.)

100.345. Presiding body to adopt rules of procedure for public hearing.-- Whenever a public hearing is required by this chapter, the presiding body may prescribe the procedures to be followed. No information offered at the hearing shall be excluded for failure to follow judicial rules of evidence. The presiding body may adopt its own rules to determine the kind of information that will be received. Members of the presiding body may visit a site pertinent to a hearing prior to the final decision of the presiding body. All information allowed to be received shall constitute evidence upon which action may be based. (Enact. Acts 1986, Ch. 141, § 40, effective July 15, 1986.)

100.347. Appeal from board of adjustment, planning commission, or legislative body action -- Final action defined.

(1) Any person or entity claiming to be injured or aggrieved by any final action of the board of adjustment shall appeal from the action to the Circuit Court of the county in which the property, which is the subject of the action of the board of adjustment, lies. Such appeal shall be taken within thirty (30) days after the final action of the board. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. The board of adjustment shall be a party in any such appeal filed in the Circuit Court.

(2) Any person or entity claiming to be injured or aggrieved by any final action of the planning commission shall appeal from the final action to the Circuit Court of the county in which the property, which is the subject of the commission's action, lies. Such appeal shall be taken within thirty (30) days after such action. Such action shall not include the commission's recommendations made to other governmental bodies. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. Provided, however, any appeal of a planning commission action granting or denying a variance or conditional use permit authorized by KRS 100.203(5) shall be taken pursuant to this subsection. In such case, the thirty (30) day period for taking an appeal begins to run at the time the legislative body grants or denies the map amendment for the same development. The planning commission shall be a party in any such appeal filed in the Circuit Court.

(3) Any person or entity claiming to be injured or aggrieved by any final action of the legislative body of any city, county, consolidated local government, or urban-county government, relating to a map amendment shall appeal from the action to the Circuit Court of the county in which the property, which is the subject of the map amendment, lies. Such appeal shall be taken within thirty (30) days after the final action of the legislative body. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. The legislative body shall be a party in any such appeal filed in the Circuit Court.

(4) The owner of the subject property and applicants who initiated the proceeding shall be made parties to the appeal. Other persons speaking at the public hearing are not required to be made parties to such appeal.

(5) For purposes of this chapter, final action shall be deemed to have occurred on the calendar date when the vote is taken to approve or disapprove the matter pending before the body.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 346, sec. 153, effective July 15, 2002. – Amended 1988 Ky. Acts ch. 144, sec. 8, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 141, sec. 39, effective July 15, 1986. -- Created 1966 Ky. Acts ch. 172, sec. 82.

100.348. Compatibility standards for manufactured homes -- Definitions -- Adoption of standards by local governments. (Effective July 1, 2003)

(1) The Kentucky General Assembly hereby recognizes and affirms that the protection of property values is a legitimate issue to local governments and the enactment of regulations designed to protect property values is a proper exercise of local government legislative power.

(2) As used in this section, unless the context requires otherwise:

(a) "Compatibility standards" means standards that have been enacted by a local government under the authority of this section for the purpose of protecting and preserving the monetary value of real property located within the local government's jurisdiction;

(b) "Local government" means a city, county, urban-county government, charter county government, or consolidated local government that is engaged in planning and zoning under KRS Chapter 100;

(c) "Manufactured home" means a single-family residential dwelling constructed after June 15, 1976, in accordance with the National Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., as amended, and designed to be used as a single-family residential dwelling with or without permanent foundation when connected to the required utilities, and which includes the plumbing, heating, air conditioning, and electrical systems contained therein;

(d) "Qualified manufactured home" means a manufactured home that meets all of the following criteria:

1. Is manufactured on or after July 15, 2002;
2. Is affixed to a permanent foundation and is connected to the appropriate facilities and is installed in compliance with KRS 227.570;
3. Has a width of at least twenty (20) feet at its smallest width measurement or is two (2) stories in height and oriented on the lot or parcel so that its main entrance door faces the street;
4. Has a minimum total living area of nine hundred (900) square feet; and
5. Is not located in a manufactured home land-lease community; and

(e) "Permanent foundation" means a system of supports that is:

1. Capable of transferring, without failure, into soil or bedrock, the maximum design load imposed by or upon the structure;
2. Constructed of concrete; and
3. Placed at a depth below grade adequate to prevent frost damage.

(3) Any local government may adopt and enforce, as a part of its zoning regulations, compatibility standards governing the placement of qualified manufactured homes in residential zones within the local government's jurisdiction. Compatibility standards shall be adopted,

amended, and enforced in the same manner as other zoning regulations and shall be in addition to any zoning regulations that are generally applicable to single-family residences. The compatibility standards shall be designed to ensure that when a qualified manufactured home is placed in a residential zone it is compatible, in terms of assessed value, with existing housing located with a one-eighth (1/8) mile or less radius from the proposed location of the qualified manufactured home. The compatibility standards adopted by a local government shall relate to architectural features that have a significant impact on the overall assessed value of the structure, including, for example, but not limited to features such as:

1. Roof pitch;
2. Square footage of livable space;
3. Type and quality of exterior finishing materials;
4. Foundation skirting; and
5. Existence and type of attached structures.

(4) Nothing in this section shall be construed to affect, modify, or abolish restrictions contained in recorded deeds, covenants, or developers' subdivision restrictions.

(5) Nothing in this section shall be construed as limiting in any way the authority of local governments to adopt regulations designed to protect historic properties or historic districts.

Effective: July 1, 2003
History: Created 2002 Ky. Acts ch. 337, sec. 1, effective July 1, 2003.

100.361. Construction of chapter. -- (1) Nothing in this chapter shall apply or affect zoning regulations adopted pursuant to KRS Chapter 183.

(2) Nothing in this chapter shall impair the sovereignty of the commonwealth of Kentucky over its political subdivisions. Any proposal affecting land use by any department, commission, board, authority, agency, or instrumentality of state government shall not require approval of the local planning unit. However, adequate information concerning the proposals shall be furnished to the planning commission by the department, commission, board, authority, agency, or instrumentality of state government. If the state proposes to acquire, construct, alter, or lease any land or structure to be used as a penal institution or correctional facility, and the proposed use is inconsistent with or contrary to local planning regulations or the comprehensive plan for the area, the secretary of the Justice Cabinet, or his designee, shall notify, in accordance with KRS 424.180, the planning commission, the local governing body, who has jurisdiction over the area involved, and the general public of the state's proposals for the area, and he shall hold a public hearing on the proposals within the area at least ninety (90) days prior to commencing the acquisition, construction, alteration or leasing. A final report on the public hearing shall be submitted to the governor and members of the general assembly within twenty-five (25) days of the public hearing, and prior to commencing any construction, alteration, acquisition, or leasing of such property or facilities. (Enact. Acts 1966, Ch. 172, § 89; 1984, Ch. 178, § 1, effective July 13, 1984; 1992, Ch. 211,§ 15, effective July 14, 1992.)

RECORDING OF LAND USE RESTRICTIONS

100.3681. Filing of certificates of land use restrictions required -- Contents -- Amendments -- Effect of failure to file or file properly. -- (1) Effective October 1, 1988, the

county clerk of every county containing a planning unit which has enacted land use regulations pursuant to this chapter shall, upon receipt of a recording fee of ten dollars and fifty cents ($10.50), file and maintain among the official records of his office certificates of land use restriction completed according to this section and KRS 100.3682 to 100.3684. The certificates shall be in the form designated in KRS 100.3683; shall be completed and filed by the secretary of the planning commission, board of adjustment, legislative body or fiscal court which finally adopts or imposes the land use restriction described in the certificate; and shall be filed within thirty (30) days of the date upon which the body takes final action to impose or adopt the restriction. The certificate shall set forth the name and address of the property owner; the address of the property; the name of the subdivision or development, if there is one; the name and address of the body which maintains the original records containing the restriction; and shall indicate the type of land use restriction adopted or imposed upon the subject property on or after October 1, 1988, including variances, conditional use permits, conditional zoning conditions, unrecorded preliminary subdivision plats and development plans; but not including zoning map amendments which impose no limitations or restrictions upon the use of the subject property other than those generally applicable to properties within the same zone and not including any recorded subdivision plat. The county clerk shall index the certificates by property owner and, if applicable, name of subdivision or development. The county clerk shall maintain in his office a record of the name and address of the agency having custody of the official zoning map for each planning unit within the county. All zoning map amendments shall be reflected on the official zoning map within thirty (30) days of the date upon which final action approving the amendments is taken by the planning unit.

(2) The planning unit shall collect the county clerk's filing fee for the certificate from the applicant at the time any proceeding is initiated which may result in the imposition, adoption, amendment or release of any land use restriction provided for in this chapter; and the planning unit may also charge the applicant a fee for the reasonable cost of completing and filing the certificate, not to exceed ten dollars and fifty cents ($10.50), in addition to any other applicable filing or administrative fee, to compensate the planning unit for completing and filing the certificate. The fees permitted by this subsection shall be refunded to the applicant in the event no land use restriction is imposed or adopted as a result of the proceeding.

(3) When a restriction reflected on the certificate is amended, a new certificate shall be filed. In the case of such amendment or in the event the original restriction is released, the previous certificate shall be released by the secretary of the body which amended or released the restriction in the same manner as releases of encumbrances upon real estate.

(4) The failure to file, to file on time, or to complete the certificate properly or accurately shall not affect the validity or enforceability of any land use restriction or regulation. Any improper filing may be cured by a subsequent proper filing. Nothing herein shall affect the running of time for any appeal or other act for which a time limit is prescribed by this chapter. (Enact. Acts 1988, Ch. 30, § 1, effective July 15, 1988; 1990, Ch. 362, § 6, effective July 13, 1990.)

100.3682. Certificate for contiguous properties and properties part of same proceeding. -- If a planning commission, fiscal court or legislative body originates a zoning map amendment for more than five (5) contiguous properties, upon approval of the map amendment, there shall be filed a single certificate setting forth the required information for all the properties,

and the originating body shall pay a single filing fee for such certificate. When a land use restriction is imposed upon two (2) or more properties or lots in the same proceeding, including but not limited to the approval of an unrecorded preliminary subdivision plat or development plan for multiple lots, a single certificate shall be filed for all the properties or lots collectively and a single filing fee shall be paid there for. (Enact. Acts 1988, Ch. 30, § 3, effective July 15, 1988; 1990, Ch. 362, § 7, effective July 13, 1990.)

100.3683. Form of certificate. -- The form for the certificate of land use restriction required by KRS 100.3681 shall be as follows:

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)

_____ _____
_____ _____
_____ _____
_____ _____

2. ADDRESS OF PROPERTY

_____
_____
_____
_____

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

_____
_____
_____
_____

4. TYPE OF RESTRICTION(S) (Check all that apply):

___ Zoning Map Amendment to _____ Zone
___ Development Plan
___ Unrecorded Subdivision Plat
___ Variance
___ Conditional Use Permit
___ Conditional Zoning Condition
___ Other specify _____

5. NAME AND ADDRESS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, LEGISLATIVE BODY OR FISCAL COURT WHICH MAINTAINS THE ORIGINAL RECORDS CONTAINING THE RESTRICTION

_____
_____
_____

_____
Signature of Completing Official

_____
Name and Title of Completing Official
(Type or print)

(Enact. Acts 1988, Ch. 30, § 4, effective July 15, 1988; 1990, Ch. 362, § 8, effective July 13, 1990.)

100.3684. Effect of KRS 100.3681 to 100.3683. -- Nothing in KRS 100.3681 to 100.3683 shall affect other recording requirements imposed by this chapter. (Enact. Acts 1988, Ch. 30, § 2, effective July 15, 1988.)

BINDING ELEMENTS

100.401. Legislative intent. -- It is the intent of KRS 100.401 to 100.419 to strengthen the enforcement of binding elements which have been approved as part of a land use development plan in a county containing a city of the first class or consolidated local government. This is intended to be done by extending to a planning commission in counties containing a city of the first class or consolidated local government the authority to issue remedial orders and impose civil fines in order to provide an equitable, expeditious, effective, and inexpensive method of ensuring compliance with approved land use plans as they apply to binding element agreements. KRS 100.401 to 100.419 is intended and shall be construed to provide an additional or supplemental means of obtaining compliance with local zoning ordinances and nothing contained in KRS 100.401 to 100.419 shall prohibit the enforcement of local zoning ordinances by any other means authorized by law.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 154, effective July 15, 2002. – Created 1998 Ky. Acts ch. 10, sec. 1, effective July 15, 1998.

100.403. Definitions for KRS 100.401 to 100.419. -- As used in KRS 100.401 to 100.419, unless the context otherwise requires:

(1) "Land use enforcement officer" in a county containing a city of the first class or consolidated local government means an officer authorized by a planning commission to enforce binding elements.

(2) "Land use ordinance" in a county containing a city of the first class or consolidated local government means an official action of a local government body which is a regulation of a general and permanent nature relating to the use and development of land within the jurisdictional boundary of the planning commission. It is enforceable as a local law and shall include any provision of a code of ordinances adopted by a local government which embodies all or part of an ordinance.

(3) "Local government" means a county containing a city of the first class or consolidated local government and all cities of the first through fourth classes within the county.

(4) "Binding element" in a county containing a city of the first class or consolidated local government means a binding requirement, provision, restriction, or condition imposed by a planning commission or its designee, or a promise or agreement made by an applicant in writing in connection with the approval of a land use development plan or subdivision plan.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 155, effective July 15, 2002. – Created 1998 Ky. Acts ch. 10, sec. 2, effective July 15, 1998.

100.405. Enforcement of binding elements classified as civil offenses -- Exception to powers of classification.

(1) The planning commission in counties containing a city of the first class or a consolidated local government may issue remedial orders and impose civil fines as a method of enforcing a binding element when a violation of that binding element has been classified as a civil offense in accordance with this section.

(2) Subject to the limitations set forth in subsections (1) and (3) of this section, if a local government elects to enforce a binding element as a civil offense, it shall do so by ordinance, which shall provide:

(a) That a violation of the binding element is a civil offense; and
(b) A maximum civil fine that may be imposed for each violation of a binding element.

(3) No local government shall classify the violation of a binding element as a civil offense if the violation would also constitute an offense under any provision of the Kentucky Revised Statutes, including specifically and without limitation any provision of the Kentucky Penal Code and any moving motor vehicle offense.

Effective: July 15, 2002
History: Amended 2002 Ky. Acts ch. 346, sec. 156, effective July 15, 2002. – Created 1998 Ky. Acts ch. 10, sec. 3, effective July 15, 1998.

100.407. Binding elements - Planning Commission Authority. -- Each planning commission which is given the authority by the local government to enforce binding elements shall have the power to:

(1) Adopt rules and regulations to govern its operation and the conduct of its hearings that are consistent with the requirements of KRS 100.401 through 100.419.

(2) Conduct hearings to determine whether there has been a violation of a binding element.

(3) Subpoena alleged violators, witnesses, and evidence to its hearings. Subpoenas issued by the planning commission may be served by any land use enforcement officer.

(4) Take testimony under oath. The chairman of the planning commission may administer oaths to witnesses prior to their testimony before the planning commission on any matter.

(5) Make findings and issue orders that are necessary to remedy any violation of a binding element.

(6) Impose civil fines as authorized in the ordinance on any person found to have violated any binding element that the planning commission is authorized to enforce. (Acts Ch. 10, § 4, effective July 15, 1998.)

100.409. Binding Elements - Enforcement Procedures. -- (1) When a land use enforcement officer, based upon personal observation or investigation, has reasonable cause to believe that a violation of a binding element has occurred, the officer may issue a warning notice and citation to the offender. Prior to issuing a citation, the officer shall issue a warning notice giving the offender a specified period of time in which to remedy the violation. If the person to whom the notice is given fails or refuses to remedy the violation within the time specified, the land use enforcement officer may issue a citation. However, if the violation is deemed by the land use enforcement officer to be a threat to public safety, then a citation shall be immediately issued without a prior warning notice.

(2) Enforcement proceedings shall be initiated by the issuance of a citation by a land use enforcement officer.

(3) The citation issued by the land use enforcement officer shall be in a form prescribed by the planning commission and shall contain, in addition to any other information required by the planning commission:

(a) The date and time of issuance;
(b) The name and address of the person to whom the citation is issued;
(c) The date and time the violation of the binding element was committed;
(d) The facts constituting the violation of the binding element;
(e) A specific description of the binding element violated;
(f) The name of the land use enforcement officer;
(g) The civil fine that will be imposed for the violation if the person does not contest the citation;
(h) The procedure for the person to follow in order to pay the civil fine or to contest the citation; and
(i) A statement that if the persons fails to pay the civil fine set forth in the citation or to contest the citation within the time allowed, the person shall be deemed to have waived the right to a hearing before the planning commission to contest the citation and that the determination that a violation was committed shall be final.

(4) After issuing a citation to an alleged violator, the land use enforcement officer shall notify the planning commission by delivering the citation to the administrative official designated by the planning commission.

(5) All citations issued shall be hand delivered to the alleged violator.

(6) When a citation is issued, the person to whom the citation is issued shall respond to the citation within fourteen (14) days of the date the citation is issued by either paying the civil fine set forth in the citation or requesting, in writing, a hearing before the planning commission to contest the citation. If the person fails to respond to the citation within fourteen (14) days, the person shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be considered final. In this event, the planning commission shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation. (Acts Ch. 10 §5, effective July 15, 1998.)

100.411. Binding Elements - Hearing Requested before Planning Commission. -- (1) When a hearing before a planning commission has been requested, the planning commission, through its clerical and administrative staff, shall schedule a hearing. The hearing shall be conducted within thirty (30) days of the date of the request, unless the person who requested the hearing requests or agrees to a continuance not to exceed thirty (30) days. All continuances must receive the approval of the planning commission. Not less than seven (7) days before the date set for the hearing, the planning commission shall notify the person who requested the hearing of the date, time, and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Any person requesting a hearing before the planning commission who fails to appear at the time and place set for the hearing shall be deemed to have waived the right to a hearing to contest the citation and the determination that a violation was committed shall be final. In this event, the planning commission shall enter a final order determining that the violation was committed and imposing the civil fine set forth in the citation.

(2) Each case before a planning commission shall be presented by an attorney who shall be counsel to the commission.

(3) All testimony shall be under oath and shall be recorded. The planning commission shall take testimony from the land use enforcement officer, the alleged offender, and any witnesses to the alleged violation offered by the land use enforcement officer or the alleged offender. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(4) After the hearing, the planning commission shall determine, based on the evidence presented, whether a violation was committed. When the commission determines that no violation was committed, an order dismissing the citation shall be entered. When the commission determines that a violation has been committed, the commission shall issue an order upholding the citation and may order the offender to pay a civil fine in an amount up to the maximum authorized by the ordinance, or may order the offender to remedy a continuing violation within a specified time to avoid the imposition of a fine, or both, as authorized by the ordinance.

(5) Every final order of a planning commission shall be reduced to writing, which shall include the date the order was issued, and a copy of the order shall be furnished to the person named in the citation. If the person named in the citation is not present at the time a final order

of the planning commission is issued, the order shall be delivered to that person by certified mail, return receipt requested; by personal delivery; or by leaving a copy of the order at that person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the order. (Acts Ch. 10 § 6, effective July 15, 1998.)

100.413. Binding Elements - Appeal of Final Order of Planning Commission. -- (1) An appeal from any final order issued by a planning commission may be made to the District court of the county in which the planning commission is located. The appeal shall be taken within thirty (30) days of the date the order is issued. The appeal shall be initiated by the filing of a complaint and a copy of the commission's order in the same manner as any civil action under the Rules of Civil Procedure. The action shall be tried de novo and the burden shall be upon the planning commission to establish that a violation has occurred. If the court finds that a violation occurred, judgment shall be entered ordering the offender to pay to the planning commission all fines assessed for the violation. If the court finds a violation did not occur, the complaint shall be dismissed.

(2) A judgment of the District court may be appealed to the Circuit Court in accordance with the Rules of Civil Procedure.

(3) If no appeal from a final order of a planning commission is filed within the time period set forth in this section, the planning commission's order shall be deemed final for all purposes. (Acts Ch. 10 § 7, effective July 15, 1998).

100.415. Binding Elements - Assessment of Violation. -- The person or entity found to have committed a violation of a binding element shall be responsible for the amount of all fines assessed for the violation. A planning commission may bring a civil action against the person or entity and shall have the same remedies as provided for the recovery of a debt. (Acts, Ch. 10 § 8, effective July 15, 1998.)

100.417. Binding Elements - Remedy of Violation. -- Nothing contained in KRS 100.401 through 100.419 shall prohibit a local government from taking immediate action to remedy a violation of a binding element when there is reason to believe that the existence of the binding element violation presents a serious threat to the public health, safety, and welfare, or if in the absence of immediate action, the effects of the binding element violation will be irreparable or irreversible. (Acts Ch. 10 § 9, effective July 15, 1998.)

100.419. Binding Element Enforcement Act. -- The provisions of KRS 100.401 through 100.419 may be cited as the "Binding Element Enforcement Act." (Acts Ch. 10 § 10, effective July 15, 1998.)

RESIDENTIAL CARE FACILITIES FOR HANDICAPPED PERSONS

100.982. Definitions for KRS 100.982 to 100.984. -- (1) "Person with a disability" means a person with a physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, deafness or hard of hearing, sight impairments, and orthopedic impairments, but not including convicted felons or misdemeanants on probation or parole or receiving supervision or rehabilitation services as a result of their prior

conviction, or mentally ill persons who have pled guilty but mentally ill to a crime or not guilty by reason of insanity to a crime. "Person with a disability" does not include persons with current, illegal use of or addiction to alcohol or any controlled substance as regulated under KRS Chapter 218A.

(2) "Residential care facility" means a residence operated and maintained by a sponsoring private or governmental agency to provide services in a homelike setting for persons with disabilities.

(3) "Services" means, but is not limited to, supervision, shelter, protection, rehabilitation, personal development and attendant care. (Enact. Acts 1990, Ch. 91, § 1, effective July 13, 1990; 1992, Ch. 144, § 8, effective July 14, 1992; 1994 Ch. 405 § 12, effective July 15, 1994.)

100.984. Residential care facility for persons with disabilities. -- Any sponsoring private or governmental agency shall be permitted to operate a residential care facility in any residential district, zone or subdivision subject only to compliance with the same limitations upon area, height, yard, screening, parking, number of dwelling units and number of occupants per dwelling unit as apply to other residences in the district, zone or subdivision. For purposes of determining the number of occupants in a residential care facility, or in any of the dwelling units which comprise the facility, employees of the sponsoring agency providing services to persons with disabilities shall be counted only if their permanent residence is maintained at the facility. No conditional use permit, not otherwise required for other residences within a zone or land use category shall be required for the operation of a residential care facility. (Enact. Acts 1990, Ch. 91, § 2, effective July 13, 1990; 1994 Ch. 405 §13, effective July 15, 1994.)

CELLULAR TELECOMMUNICATION FACILITIES

100.985. Definitions for KRS 100.985 to 100.987. -- In addition to the definitions set forth in KRS 100.111, the following definitions shall apply to KRS 100.985 to 100.987:

(1) "Cellular antenna tower" means a tower constructed for, or an existing facility that has been adapted for, the location of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services;

(2) "Cellular telecommunications service" means a retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations;

(3) "Co-location" means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower;

(4) "Personal communication service" has the meaning as defined in 47 U.S.C. sec. 332(c);

(5) "Uniform application" means an application to construct a cellular antenna tower submitted to a planning commission in conformity with KRS 100.9865 and 100.987;

(6) "Utility" has the meaning as defined in KRS 278.010(3); and

(7) "Antennas or related equipment" means transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include towers.

Effective: April 23, 2002
History: Amended 2002 Ky. Acts ch. 343, sec. 2, effective April 23, 2002; and ch. 346, sec. 157, effective July 15, 2002. -- Created 1998 Ky. Acts ch. 231, sec. 1, effective July 15, 1998.
Legislative Research Commission Note (4/23/2002). This section was amended by 2002 Ky. Acts ch. 343, sec. 2, and ch. 346, sec. 157, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.

100.986. Prohibited actions of planning commission in regulating placement of cellular antenna towers. -- In regulating the placement of cellular antenna towers, a planning commission shall not:

(1) Regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that these facilities comply with the regulations of the Federal Communications Commission concerning radio frequency emissions;

(2) Institute a moratorium upon the siting of cellular antenna towers;

(3) Charge an application fee that exceeds an amount that is reasonably related to expenses associated with processing an application to construct a cellular antenna tower, and to issue any necessary permits including any required building permit, up to a maximum of two thousand five hundred dollars ($2500). Application fee amounts shall not be raised after June 15, 2002;

(4) Regulate the placement of antennas or related equipment on an existing structure; or

(5) Require the submission of application materials in addition to those required by KRS 100.9865 and 100.987, unless agreed by both parties.

Effective: April 23, 2002
History: Created 2002 Ky. Acts ch. 343, sec. 4, effective April 23, 2002.

100.9865. Contents of uniform application. -- In addition to the requirements of KRS 100.987, a uniform application shall include:

(1) The full name and address of the applicant;

(2) The applicant's articles of incorporation, if applicable;

(3) A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs and foundation design recommendations;

(4) A written report, prepared by a professional engineer or land surveyor, of findings as to the proximity of the proposed site to flood hazard areas;

(5) Clear directions from the county seat to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions;

(6) The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the county clerk, an applicant may file a copy of the agreement as recorded by the county clerk and, if applicable, the portion of the agreement demonstrating compliance with KRS 100.987(2);

(7) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;

(8) A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within five hundred (500) feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within two hundred (200) feet of the access drive, including the intersection with the public street system;

(9) A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas;

(10) The tower and foundation design plans and a description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky;

(11) A map, drawn to a scale no less than one (1) inch equals two hundred (200) feet, that identifies every structure and every owner of real estate within five hundred (500) feet of the proposed tower;

(12) A statement that every person who, according to the records of the property valuation administrator, owns property within five hundred (500) feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:

(a) Notified by certified mail, return receipt requested, of the proposed construction, which notice shall include a map of the location of the proposed construction;

(b) Given the telephone number and address of the local planning commission; and

(c) Informed of his or her right to participate in the planning commission's proceedings on the application;

(13) A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners;

(14) A statement that the chief executive officer of the affected local governments and their legislative bodies have been notified, in writing, of the proposed construction;

(15) A copy of the notice sent to the chief executive officer of the affected local governments and their legislative bodies;

(16) A statement that:

(a) A written notice, of durable material at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted and shall remain in a visible location on the proposed site until final disposition of the application; and

(b) A written notice, at least two (2) feet by four (4) feet in size, stating that "[Name of applicant] proposes to construct a telecommunications tower near this site" and including the addresses and telephone numbers of the applicant and the planning commission, has been posted on the public road nearest the site;

(17) A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed;

(18) A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved;

(19) A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers' facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant's antennas and related facilities; and

(20) A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located.

Effective: April 23, 2002
History: Created 2002 Ky. Acts ch. 343, sec. 5, effective April 23, 2002.

100.987. Local government may plan for and regulate siting of cellular antenna towers -- Duties of utility or company proposing to construct antenna tower -- Confidentiality of information contained in application -- Duties and powers of planning commission -- Co-location.

(1) A planning unit as defined in KRS 100.111 and legislative body or fiscal court that has adopted planning and zoning regulations may plan for and regulate the siting of cellular antenna towers in accordance with locally adopted planning or zoning regulations in this chapter.

(2) Every utility or a company that is engaged in the business of providing the required infrastructure to a utility that proposes to construct an antenna tower for cellular telecommunications services or personal communications services within the jurisdiction of a planning unit that has adopted planning and zoning regulations in accordance with this chapter shall:

(a) Submit a copy of the applicant's completed uniform application to the planning commission of the affected planning unit to construct an antenna tower for cellular or personal telecommunications services. The uniform application shall include a grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes:

1. All of the planning unit's jurisdiction; and
2. A one-half (1/2) mile area outside of the boundaries of the planning unit's jurisdiction, if that area contains either existing or proposed construction sites for cellular antenna towers;

(b) Include in any contract with an owner of property upon which a cellular antenna tower is to be constructed, a provision that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing a cellular antenna tower, including a timetable for removal; and

(c) Comply with any local ordinances concerning land use, subject to the limitations imposed by 47 U.S.C. sec. 332(c), KRS 278.030, 278.040, and 278.280.

(3) All information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the cellular antenna tower then being reviewed, shall be deemed confidential and proprietary within the meaning of KRS 61.878. The local planning commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030.

(4) After an applicant's submission of the uniform application to construct a cellular antenna tower, the planning commission shall:

(a) Review the uniform application in light of its agreement with the comprehensive plan and locally adopted zoning regulations;

(b) Make its final decision to approve or disapprove the uniform application; and

(c) Advise the applicant in writing of its final decision within sixty (60) days commencing from the date that the uniform application is submitted to the planning commission or within a date certain specified in a written agreement between the local planning commission and the applicant. If the planning commission fails to issue a final decision within sixty (60) days

and if there is no written agreement between the local planning commission and the applicant to a specific date for the planning commission to issue a decision, the uniform application shall be deemed approved.

(5) If the planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower shall be issued until the planning commission approves the uniform application or the sixty (60) day time period has expired, whichever occurs first.

(6) The planning commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. A planning commission may provide the location of existing cellular antenna towers on which the commission deems the applicant can successfully co-locate its transmitting and related equipment. If the local planning commission requires the applicant to attempt co-location, the applicant shall provide the local planning unit with a statement indicating that the applicant has:

(a) Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities, and that identifies the location of the tower or suitable structure on which the applicant will co-locate its transmission and related facilities; or

(b) Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities and that:

1. Identifies the location of the towers or other structures on which the applicant attempted to co-locate; and

2. Lists the reasons why the co-location was unsuccessful in each instance.

(7) The local planning commission may deny a uniform application to construct a cellular antenna tower based on an applicant's unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers or other structures.

(8) In the event of co-location, a utility shall be considered the primary user of the tower, if the utility is the owner of the antenna tower and if no other agreement exists that prescribes an alternate arrangement between the parties for use of the tower. Any other entity that co-locates transmission or related facilities on a cellular antenna tower shall do so in a manner that does not impose additional costs or operating restrictions on the primary user.

(9) Upon the approval of an application for the construction of a cellular antenna tower by a planning commission, the applicant shall notify the Public Service Commission within ten (10) working days of the approval. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be

prohibited from beginning construction on the cellular antenna tower until such notice has been made.

(10) A party aggrieved by a final action of a planning commission under the provisions of KRS 100.985 to 100.987 may bring an action for review in any court of competent jurisdiction.

Effective: April 23, 2002
History: Amended 2002 Ky. Acts ch. 343, sec. 3, effective April 23, 2002; and ch. 346, sec. 158, effective July 15, 2002. -- Created 1998 Ky. Acts ch. 231, sec. 2, effective July 15, 1998.
Legislative Research Commission Note (4/23/2002). This section was amended by 2002 Ky. Acts ch. 343, sec. 3, and ch. 346, sec. 158, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.

PENALTIES

100.991. Penalties. -- (1) Any person or entity who violates any of the provisions of KRS 100.201 to 100.347 or any of the regulations adopted pursuant thereto for which no other penalty is provided, shall upon conviction, be fined not less than ten dollars ($10) but not more than five hundred dollars ($500) for each conviction. Each day of violation shall constitute a separate offense.

(2) Any person, owner or agent who violates this chapter shall, upon conviction, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each lot or parcel which was the subject of sale or transfer, or a contract for sale or transfer.

(3) Any person who intentionally violates any provision of KRS 100.3681 to 100.3684 shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(4) A commission may appoint enforcement officers who shall have authority to issue citations for violations of this chapter which the officer has observed, but shall not have powers of peace officers to make arrests or carry deadly weapons. The defendant shall appear within a designated time pursuant to the citation.

(5) The procedure for citations issued by an enforcement officer shall be as provided in KRS 431.015. (Enact. Acts 1966, Ch. 172, §§ 68 (1st sentence), 83; 1986, Ch. 141, § 41, effective July 15, 1986; 1988, Ch. 30, § 5, effective July 15, 1988.)

147A.027. Orientation and continuing education training for planning and zoning officials and staff.

(1) (a) Each planning commissioner and board of adjustment member of a planning unit shall, within one (1) year prior to appointment, or within one hundred twenty (120) days of appointment, attend a minimum of four (4) hours of orientation training in one (1) or more of the subjects listed in subsection (4) of this section.

(b) Each planning professional, zoning administrator, and administrative official, and each planning professional's deputies and assistants, shall, within one (1) year prior to being employed, or within one hundred twenty (120) days of employment, attend a minimum of eight (8) hours of orientation training in one (1) or more of the subjects listed in subsection (4) of this section.

(c) Each of the individuals listed in paragraphs (a) and (b) of this subsection shall certify his or her attendance by a written statement filed with the secretary of his or her respective planning commission within one hundred forty (140) days of appointment or employment. Each statement shall identify the date of each program attended, its subject matter, location, sponsors, and the time spent in each program.

(2) (a) Each planning commissioner and board of adjustment member of a planning unit shall, within each period of two (2) consecutive calendar years, starting at the date of the individual's appointment, attend no less than eight (8) hours of continuing education in any of the subjects listed in subsection (4) of this section.

(b) Each planning professional, zoning administrator, and administrative official, and each planning professional's deputies and assistants, shall, within each period of two (2) consecutive calendar years, starting at the date of the individual's appointment, attend no less than sixteen (16) hours of continuing education in any of the subjects listed in subsection (4) of this section.

(c) Each of the individuals listed in paragraphs (a) and (b) of this subsection shall certify his or her attendance by a written statement filed with the secretary of his or her respective planning commission by December 31 of each calendar year. Each statement shall identify the date of each program attended, its subject matter, location, sponsors, and the time spent in each program.

(3) The planning commission or the legislative body of the city, county, urban-county, charter county government, or consolidated local government in which the planning commission has jurisdiction or, in the case of a joint planning unit, has representation in, shall be responsible for providing training as required by subsections (1) and (2) of this section or for providing funding to each planning commissioner, board of adjustment member, fulltime planning professional, zoning administrator, administrative official, and planning professional's deputies or assistants so that each individual may obtain training as required by subsections (1) and (2) of this section from other sources.

(4) The subjects for the education required by subsections (1) and (2) of this section shall include, but not be limited to, the following: land use planning; zoning; floodplains; transportation; community facilities; ethics; public utilities; wireless telecommunications facilities; parliamentary procedure; public hearing procedure; administrative law; economic

development; housing; public buildings; building construction; land subdivision; and powers and duties of the board of adjustment. Other topics reasonably related to the duties of planning officials or planning professionals may be approved by majority vote of the planning commission prior to December 31 of the year for which credit is sought.

(5) Each local planning commission shall keep in its official public records originals of all statements and the written documentation of attendance required in subsection (6) of this section filed with the secretary of the planning commission pursuant to subsections (1)(c) and (2)(c) of this section for three (3) years after the calendar year in which each statement and appurtenant written documentation is filed.

(6) Each planning commissioner, board of adjustment member, full-time planning professional, zoning administrator, administrative official, and planning professional's deputies or assistants shall be responsible for obtaining written documentation signed by a representative of the sponsor of any continuing education course for which credit is claimed, acknowledging the fact that the individual attended the program for which credit is claimed. That documentation shall be filed with the secretary of the planning commission as attachments to the statements required by subsections (1)(c) and (2)(c) of this section.

(7) If a planning commissioner or board of adjustment member fails to:

(a) Complete the requisite number of hours of orientation training and continuing education within the time allotted under subsections (1) and (2) of this section;

(b) File the statement required by subsections (1)(c) and (2)(c) of this section; or

(c) File the documentation required by subsection (6) of this section; the planning commissioner shall be subject to removal from office according to the provisions of KRS 100.157, and the board of adjustment member shall be subject to removal according to the provisions of KRS 100.217.

(8) No city, county, urban-county, charter county, consolidated local government, planning commission, board of adjustment, or any entity performing local planning under KRS Chapter 100, shall employ a planning professional, zoning administrator, administrative official, or a planning professional's deputy or assistant, who fails to complete the requisite number of hours of orientation and continuing education required by subsections (1) and (2) of this section in the capacity of a planning professional, zoning administrator, administrative official, or planning professional's deputy or assistant.

Effective: June 21, 2001
History: Created 2001 Ky. Acts ch. 50, sec. 1, effective June 21, 2001.

278.650. Procedures for proposals to construct antenna towers in an area outside the jurisdiction of a planning commission -- Hearing -- Building permit fee. -- If an applicant proposes construction of an antenna tower for cellular telecommunications services or personal communications services which is to be located in an area outside the jurisdiction of a planning commission, the applicant shall apply to the Public Service Commission for a certificate of public convenience and necessity pursuant to KRS 278.020(1), 278.665, and this section. The commission shall convene a local public hearing on the application upon the receipt of a request from the local governing body or from not less than three (3) interested persons that reside in a

county or municipal corporation in which the tower is proposed to be constructed. In reviewing the application, the commission may take into account the character of the general area concerned and the likely effects of the installation on nearby land uses and values. A local government may charge a fee for a building permit, in connection with the construction or alteration of any structure for cellular telecommunications services or personal communication services, if the fee does not exceed that charged for any other commercial structure of comparable cost of construction.

Effective: April 23, 2002
History: Amended 2002 Ky. Acts ch. 343, sec. 6, effective April 23, 2002; and ch. 346, sec. 222, effective July 15, 2002. -- Created 1996 Ky. Acts ch. 383, sec. 2, effective July 15, 1996.
Legislative Research Commission Note (4/23/2002). This section was amended by 2002 Ky. Acts ch. 343, sec. 6, and ch. 346, sec. 222, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.

278.665. Administrative regulations governing cellular antenna towers to be constructed outside the jurisdiction of a planning commission.

(1) The commission shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish the minimum content of an application for a certificate of convenience and necessity to construct cellular antenna towers for areas outside the jurisdiction of a planning commission.

(2) The commission, in establishing the public notice requirements of an application as provided for in subsection (1) of this section, shall distinguish between areas of low and high population densities. At a minimum, when the site of the proposed cellular antenna tower is outside of an incorporated city, the commission shall require that every person who owns property contiguous to the property where the proposed cellular antenna tower will be located receives notice by certified mail, return receipt requested, of the proposed construction, given the commission docket number under which the application will be processed, and informed of the opportunity to intervene in the commission proceedings on the application.

Effective: April 23, 2002
History: Amended 2002 Ky. Acts ch. 343, sec. 7, effective April 23, 2002; and ch. 346, sec. 223, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 103, sec. 1, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 231, sec. 4, effective July 15, 1998.
Legislative Research Commission Note (4/23/2002). This section was amended by 2002 Ky. Acts ch. 343, sec. 7, and ch. 346, sec. 223, which appear to be in conflict. The changes made by ch. 346 are revisory in nature, while the changes made by ch. 343 are substantive. The changes of ch. 343 have been allowed to prevail. Cf. KRS 7.123.