

## **CONSTRUCTION, CITY PLANNING AND ZONING**

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Design and development of German planning law is determined by federal governance structures. The main legislative focus of planning is based on federal law [Article 74, paragraph (1), clause 18 and clause 31 Grundgesetz (Basic Law)]. However, the influence of EU law on spatial development and urban planning in Germany is increasing, e.g. EU ecological planning law, EU competition law, EU structural policy and EU soft law [ESDP, TAEU, LCSEC]. In contrast, planning practice and planning administration are tasks of the Länder [federate states] and the municipalities.

German planning law differentiates between sectoral planning and general spatial planning. Sectoral planning is divided into specialised sectors, e.g. infrastructure of transport, of communications and of energy, or agriculture. Special statutes of sectoral planning exist for each field, for instance the Federal Street Building Act. In contrast to sectoral planning, general spatial planning is cross-sectoral, comprehensive planning. It has the function of preparation and control of land-use to ensure all social, economic and ecological issues. Competences for general spatial planning can be found on all political levels in the form of state, regional and urban spatial planning and development. General spatial planning on the state and regional level is codified in the Federal Spatial Planning Act [Raumordnungsgesetz] and spatial planning statutes, enacted by the Länder.

Urban planning and development concerning land-use is conceptualised by two constitutional guaranties: the basic right of property [Article 14, paragraph (1) Basic Law] and the guarantee of local self-government [Article 28, paragraph (2), sentence 1 Basic

Law]. It is regulated by the Federal Building Code [Baugesetzbuch] and the Building Utilisation Ordinance [Baunutzungsverordnung]. Generally spoken, urban development is managed by urban land-use plans. The Federal Building Code comprises two types of urban land-use plans: the preparatory land-use plan [Flächennutzungsplan] and the binding land-use plan [Bebauungsplan] [Section 1, paragraph (2) of the Federal Building Code]. The task of preparatory land-use plans is the preparation of binding land-use plans by structuring the entire municipal territory and outlining the use of land to be kept for the planning and development goals of the municipality [Sections 5 to 7 Federal Building Code].

The binding land-use plan [Bebauungsplan] sets out legally binding stipulations for urban development [Sections 8 to 10 Federal Building Code]. These stipulations are arrangements concerning property within the scope of Article 14, paragraph (1), sentence 2 Basic Law. Accordingly, the enforcement of urban development instruments is mainly based on the binding land-use plan, which is the chief instrument of local planning. First of all, the Federal Building Code structures the urban land-use planning by procedural law, that combines elements of representative and participatory democracy [Sections 1 to 4c and 10 Federal Building Code]: Urban land-use plans are to be prepared, amended, supplemented or set aside by municipalities as required for urban development and planning purposes [Section 1, paragraph (3) Federal Building Code]. In this process municipalities have to involve the public, public authorities and other public agencies at the earliest possible planning stage. Especially the public has to be informed about the general aims and purposes of the binding land-use plan and about alternative planning solutions. The public has to be provided with suitable opportunities for comments to and discussion of the binding land-use plan [Section 3, paragraph (1) Federal Building Code]. The aims and principles of urban land-use planning are laid down in form of planning guidelines [Section 1, paragraph (5) Federal Building Code]: The planning decision has to balance public and private interests, in particular social, economic and ecological issues, to secure sustainable urban development [Section 1, paragraphs (5), (6) and (7) Federal Building Code]. Ecological issues gain a special role in the planning procedure: The ecological aspects of the binding land-use plan have to be documented in a special environmental report (Section 2a Federal Building Code). The Higher Administrative Court can adjudicate binding land-use plans on application of any natural or juristic person claiming a violation of rights by

the plan [Section 47 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung)].

In addition to urban land-use planning, several other instruments of sustainable urban development were established during the last decades: The urban development contract is becoming increasingly important for huge planning projects [Sections 11 and 12 Federal Building Act]. Financial aid for municipalities by the government secure urban redevelopment measures [Section 164a Federal Building Code]. The Federal Building Code was also supplemented by urban governance structures for special challenges in urban development, e.g. the consequences of segregation and the aging of society: The concept of urban reconstruction is designed to avoid demographic perforations of cities [Sections 171a to 171d Federal Building Code]. The concept of the so-called “Social City” stands against segregation [Section 171e Federal Building Code]. To enhance the status of urban districts Business Improvement Districts (BIDs), Neighbourhood Improvement Districts (NIDs) and Housing Improvement Districts (HIDs) have been formalized [Section 171f Federal Building Code].

The current challenge for sustainable urban development in Germany is to ensure climate protection by urban land-use planning. First steps of the legislator included the codification of climate protection as a general task of urban land-use planning [Section 1, paragraph (5), sentence 2 Federal Building Code], the codification of special designation possibilities for climate protection [Section 9, paragraph (1), clause 23 and clause 24 Federal Building Code] and planning instruments for wind farms and hydro power plants [Section 35, paragraph (1), clause 5 Federal Building Code]. But while performing the “Energiewende“, sustainable urban development issues will further be an important item on the political agenda.