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Special Urban Development Law



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URN: 0156-559918937

This is a translation of the following entry:

Krautzberger, Michael (2018): Besonderes Städtebaurecht. In:
ARL – Akademie für Raumforschung und Landesplanung (Hrsg.):
Handwörterbuch der Stadt- und Raumentwicklung. Hannover, 197-206.

The original version can be accessed here:
[urn:nbn:de:0156-5599189](https://nbn-resolving.org/urn:nbn:de:0156-5599189)

Typesetting and layout: ProLinguo GmbH
Translation and proofreading: ProLinguo GmbH

Special Urban Development Law

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The regulations of Special Urban Development Law comprise urban structural measures for implementing special urban design objectives, thereby supplementing the laws on city planning. They contain essential elements of modern urban development law, primarily to maintain and renew cities and municipalities, but also to reconfigure residential areas.

Preliminary remarks

Although the middle of the first chapter of the Federal Building Code (*Baugesetzbuch, BauGB*) (sections 1 to 135c) contains the provisions on ▷ *Urban land-use planning* and the associated classic instruments and regulations on ▷ *Urban design* and tender planning (such as planning safeguards, compensation, land reallocation, compulsory purchase or the provision of local public infrastructure, as well as provisions on the permissibility of urban development projects), the regulations of Special Urban Development Law (sections 136 to 191 of the Federal Building Code) are aimed at urban structural measures to implement special urban design objectives. Until the Federal Building Code (1987), some of those regulations were contained in a special law on urban regeneration and development measures: the Urban Development Promotion Law (*Städtebauförderungsgesetz*) (1971). With the Federal Building Code (1987), those regulations were consolidated together with additional instruments for implementation in the ‘Special Urban Development Law’ Chapter (see also Ernst/Zinkahn/Bielenberg et al. 2014: preliminary remarks to sections 136-164a). This contains essential elements of modern urban development law, primarily to maintain and renew cities and municipalities, but also to develop and reconfigure residential areas.

1 Urban regeneration

1.1 Comprehensive measures for urban development

Urban regeneration is regulated in sections 136 to 164b of the Federal Building Code. Regeneration measures serve to significantly improve or reconfigure an area to address particular urban design problems (so-called ‘urban deficits’). They are characterised by the fact that they refer to a specific area: they do not involve individual, selective renewal projects, but rather improving an area as a whole. They are comprehensive measures. Unlike other urban structural measures (such as individual urban land-use plans and projects), they function to solve complex problems related to urban development where a qualified need for action regarding urban development exists in an area that, due to public interest, requires a planned, coordinated process. Urban regeneration measures are characterised by a bundle of problems and solutions that require unified preparation and implementation.

1.2 Overview of the most important regulations

Regeneration measures aim to significantly improve or reconfigure areas to resolve urban deficits while taking issues related to climate protection and climate change adaptation into account. Urban regeneration measures serve the common good. They contribute to the built structure in all parts of the federal territory to meet general requirements regarding ▷ *Climate protection* and ▷ *Climate change adaptation*, and are developed according to social, hygienic, economic, and cultural needs. They should also contribute to adapting the settlement structure to meet environmental protection requirements and ensure healthy living and working conditions for the population, and in regard to population development, as well as to improve cityscape and

landscape design, while taking into account the requirements for conserving historic buildings and monuments (▷ *Conservation of historic buildings and monuments/heritage management*). Under section 136 of the Federal Building Code, urban deficits occur if an area fails to meet general requirements for healthy living and working conditions (▷ *Health in spatial planning (Raumplanung)*) or for the safety of the people living or working in it, in terms of its existing development or other aspects of its character. To that end, concerns in relation to climate protection and climate change adaptation must also be incorporated. Beyond any such substantive weaknesses of an area, using a regeneration measure to rectify functional deficiencies can also be considered if an area is considerably hindered from fulfilling its function according to its location.

The tasks of an urban regeneration measure include: Modernising or even demolishing dilapidated properties; redesigning inner city areas and city centres; redesigning the flow and position of moving and stationary traffic; converting spaces for a new use; building densification; rezoning areas formerly used for buildings due to a declining need for settlement areas; sustainable reconciliation of different uses in mixed-use areas; soil conservation measures, including the reprocessing of old industrial and commercial areas (▷ *Contaminated sites*); measures to reduce noise; converting areas formerly used for military or commercial purposes (▷ *Brownfield site, derelict/vacant site*); addressing social deficits; tasks related to urban redevelopment.

Urban regeneration measures are not only for cities, but also for rural areas and villages (▷ *Rural areas*; ▷ *Village*). What matters here is not the size of a municipality, but the situation in relation to urban design and therefore the need to address existing urban deficits through regeneration measures. Thus, what applies to using the regeneration provisions in cities (▷ *City, town*) and rural areas also applies to using, e.g. urban land-use planning: they must be used uniformly in all municipalities.

Urban regeneration can influence a population's living and working conditions and requires not only participation from those affected, but also cooperation from other public administrative entities. Therefore, regeneration should be discussed as early as possible with owners, tenants, leaseholders, and other affected parties. The affected parties should be encouraged to participate in the regeneration and in the implementation of the necessary construction measures, and should be advised to that end as much as possible. Such active ▷ *Participation* that reaches out to those affected is a hallmark of regeneration. However, those affected by the regeneration are also obligated to disclose to the local authority or those acting for it information on the facts that must be known to assess the need for redevelopment in an area, or to prepare for or carry out the regeneration.

Before formally establishing the area to be regenerated, the local authority must carry out preparatory investigations to obtain documents for assessment concerning the necessity of the regeneration; the social, structural, and urban-design-related circumstances and contexts; the general objectives to be pursued and the practicalities of carrying out the regeneration (section 141 of the Federal Building Code). The preparatory investigations should also extend to possible adverse effects. The areas in which urban regeneration measures are carried out are formally determined through a decision by the local authority. If necessary, alternative and complementary areas can also be defined. The area is formally specified through the regeneration bye-law, in which the area to be regenerated must be precisely designated.

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With the regeneration bye-law, a series of special provisions to ensure that the regeneration can be carried out will take effect in the defined area. Under section 144 of the Federal Building Code, certain projects and legal processes require permission. In the regeneration bye-law, the local authority can restrict or exclude the applicability of those provisions if the controls are not required to carry out the regeneration. In the formally defined regeneration area, the local authority's written permission is required for the following:

- projects involving erecting, modifying, or changing the use of built structures,
- changes to sites which are significant or materially increase their value,
- contractual relationships under the law of obligations that govern the use of sites,
- selling the property in a legal transaction and registering and selling a heritable building right,
- registering a right that would encumber the property,
- contracts under the law of obligations through which obligations to sell or encumber the property are entered into,
- establishing, changing, or repealing a building encumbrance, or dividing up a site.

The permission may be denied only if there is reason to assume that the project, legal process or discernible intended use would make carrying out the regeneration impossible or much more difficult, or would be counter to the objectives and purposes of the regeneration. The local authority is entitled to a right of pre-emption in the area to be regenerated (section 24(1) sentence 1 no. 3 of the Federal Building Code).

Moreover, the Federal Building Code contains special provisions on regeneration that counteract the regeneration being complicated by increases in the value of the site as a result of the regeneration and at the same time contribute to financing the regeneration measures (sections 152 to 156 of the Federal Building Code). In particular, it is envisaged that such increases in value that arise solely due to the prospect of the regeneration, or through its preparation or execution, will not be taken into account when settlement and compensation payments are determined. After the regeneration is finished, the owner must pay a settlement amount to the local authority, which will generally amount to the increase in land value caused by the regeneration. By contrast, service connection charges are omitted.

However, the local authority must exclude these provisions from the regeneration bye-law if they are not needed to carry out the regeneration and excluding them is not expected to make executing the regeneration more difficult ('simplified regeneration process'; section 142(4) of the Federal Building Code).

The local authority bears total responsibility for carrying out the regeneration. Its responsibilities include all measures needed to implement the construction projects, including restructuring the land and property rights and acquiring land, relocating residents and businesses, clearing the site, and establishing and modifying public infrastructure (▷ *Provision of local public infrastructure*). The execution of the construction measures is generally left up to the owners.

For the most part, federal and state funding is required to execute regeneration measures properly (▷ *Urban development promotion*).

2 Urban development measures

2.1 Function

Development measures aim to develop boroughs or other parts of the municipal territory for the first time according to their particular importance for urban structural development and how the territory within the municipality is structured, or in accordance with the desired development of the state territory or region, or to redevelop them as part of a reorganisation in relation to urban renewal. A prerequisite for formally establishing development measures is that the measure is required for the common good.

By law, the ▷ *Urban development measure* must function to cover an increased need for housing and workplaces and reuse brownfield sites (section 165(3) sentence 1 no. 2 of the Federal Building Code). Moreover, a number of other public interests come into consideration which form the basis for the measures being required for the common good, such as developing commercial and industrial areas, restructuring a predominantly agrarian-oriented space in an industrial area and a middle-order centre, creating a key settlement area to relieve stress on a high-density area, building a freight centre, locating university facilities, preventing urban sprawl by concentrating the development in a new borough, maintaining and further developing the functions of a ▷ *Central place*, developing a parliament and government district as part of urban structural development, covering an increased need for workplaces, developing residential areas, reusing areas formerly used for military purposes (conversion), comprehensive demolition and restructuring measures, and urban redevelopment measures. To that end, development measures can focus on existing boroughs or those to be developed for the first time.

Fulfilling the ‘common good’ clause, which is linked to Article 14(3) sentence 1 of the Basic Law (*Grundgesetz, GG*), constitutes an essential requirement for defining a development area (▷ *Common good*). The compulsory purchase condition must be tested in a general sense (i.e. not in relation to a specific site) when the development area is formally defined. This is necessary since, in the area to be developed, compulsory purchases are possible without a ▷ *Binding land-use plan* and without meeting the conditions in sections 85 and 87 of the Federal Building Code.

Urban development measures pursue objectives directly related to urban development. Their use assumes a qualified need for action in relation to urban development that, for reasons of the public interest, requires a planned, coordinated process in the sense of a comprehensive urban development measure (section 165(1) of the Federal Building Code). Nevertheless, the development or restructuring of municipal territories can be initiated on the grounds of supra-local planning (state or regional planning). Urban development measures can also serve entirely local objectives of local development or ▷ *Urban development*. Those objectives can relate to the municipal territory as a whole, to boroughs, or to other parts of the municipal territory.

2.2 Legal specifics

As with regeneration measures, the development measures regulated in sections 165 to 171 of the Federal Building Code can be differentiated from other city planning acts and measures in that they require a planned, coordinated process in regard to a certain area to enable the preparation,

planning and execution of the urban structural development development measure to occur in one unbroken process. In accordance with the public interest in executing such urban structural measures, by law they are subject to special objectives. Local authorities have far-reaching actions at their disposal in terms of land and compulsory purchase law. For systematic development, local authorities must above all have the required land available so that it can be sold again in accordance with the objectives and purposes of the development measure after individual elements of the comprehensive measure have been executed, unless the land is needed for public purposes. Local authorities' power to make proxy purchases is thus a characteristic of urban development measures. Another special feature of development law is the practice of using the land's increase in value, which results from the development, to finance the measure. If the local authority is not to acquire the land, it will collect settlement payments from the owners, as with regeneration measures.

The area to be developed is formally defined through a local authority bye-law (section 165(6) of the Federal Building Code). The local authority is responsible for preparing and executing urban development measures. In particular, they must purchase the land in the area subject to urban development. An exception applies if the owner of a site whose use has been determined according to the objectives and purposes of the urban development measure (or is determinable with sufficient certainty) is in a position to use the site accordingly within a reasonable period and commits to doing so.

To ensure and carry out the intended urban structural development measures, the local authority has at its disposal a range of instruments under land law, as are also provided under regeneration legislation (▷ *Land law*). Furthermore, there is also a municipal land acquisition duty. Compulsory purchases are permitted without a ▷ *Binding land-use plan*. The local authority's right to acquire land is offset by a comprehensive obligation to sell. The local authority's revenues from preparing and executing the development measures serve to finance the measures, and the local authority must use them only for that purpose (section 171 of the Federal Building Code).

3 Urban redevelopment

The regulations governing ▷ *Urban redevelopment* in sections 171a to 171d of the Federal Building Code aim to reflect the significance of urban redevelopment measures as a reaction to structural changes, primarily in view of demographic (▷ *Demographic change*) and economic issues and the associated effects on urban structural development. Losses of function in relation to urban design, which can trigger urban redevelopment measures, can also occur if the requirements of climate-compatible urban development are not met.

As with the regeneration and development measures, urban redevelopment measures under the Federal Building Code are comprehensive measures whose unified and efficient execution is in the public interest. When undertaking urban redevelopment, local authorities can decide, according to the respective circumstances, whether to apply the provisions of sections 171a et seq. of the Federal Building Code or those of regeneration legislation. Urban redevelopment measures serve the common good. In particular, they should serve to adapt the settlement structure (▷ *Settlement/settlement structure*) to the needs of developing the population and economy; improve living, working, and environmental conditions; strengthen inner-city areas; repurpose

built structures that no longer fulfil a need (or if this is impossible, demolish them); dedicate cleared areas to sustainable urban structural development or to a compatible ▷ *Temporary use*; and conserve old buildings in the inner city.

The area subject to urban redevelopment must be determined through a decision by the local authority and spatially delineated so that measures can be carried out expediently. The local authority's decision should be based on an urban development strategy put together by the local authority that describes the objectives and intended projects in the area subject to urban redevelopment.

4 Socially Integrative City

Ensuring and improving the habitability and efficiency of cities is one of the most important tasks of ▷ *Urban development* today. In more and more urban boroughs, social, economic, and urban design problems are getting worse. Those are urban boroughs with high unemployment (especially with growing unemployment among young people), an increasing percentage of foreign nationals, neglected public spaces, buildings that stand empty, drug problems, and a growing propensity for violence and vandalism. Urban and municipal boroughs that are threatened with becoming marginalised due to socio-spatial ▷ *Segregation* are often crowded, highly densified boroughs in areas that show significant deficits in terms of social structure, building conditions, job opportunities, the educational level of inhabitants, available social and cultural ▷ *Infrastructure*, and the quality of dwellings, the surroundings and the environment. Poor decisions regarding urban development in the past may have given rise to areas of social deprivation. However, these also include municipal areas that exhibit a comparable problem structure due to their peripheral location, such as areas in starkly disadvantaged regions or former military locations.

The provision in section 171e of the Federal Building Code on the ▷ *Socially Integrative City* is an independent regulation which supplements the other instruments under urban development law as well as the application of urban regeneration provisions. The essential elements of the regulation on the Socially Integrative City are as follows: Urban structural measures for the Socially Integrative City serve to stabilise and upgrade boroughs that have been disadvantaged through social deficits, or other parts of a municipal territory in which there is a special need for development. Social deficits exist in particular if an area is significantly disadvantaged due to the composition and economic situation of the people living and working in it. A special need for development exists if there are disadvantaged areas within or close to the inner city, or densified residential and mixed used areas in which there is a need for a coordinated bundling of investment and other measures.

The area in which the measures are to be implemented is determined by a resolution passed by the local authority. This is based on a written development strategy describing the objectives and measures, which is drawn up by the local authority with the participation of those affected and the relevant public authorities. When the development strategy is being drawn up and implemented, participants should be included in an appropriate format and encouraged to cooperate. Local authorities should continually consult with and support participants as much as possible.

5 Private initiatives for urban development

Section 171f of the Federal Building Code contains a provision related to land law on area-related measures through which, in accordance with state law, location-specific measures are carried out by private entities on the basis of a strategy coordinated with the local authority's urban development goals, which serve to strengthen or develop areas of inner cities (▷ *Inner city*), urban borough centres, residential neighbourhoods, commercial centres and other areas that are significant for urban structural development. Regulations under state law can be passed to finance the measures and to fairly distribute the associated costs. A corresponding state law is a prerequisite for determining the area subject to such measures.

6 Preservation statute

The preservation statute under sections 172 to 174 of the Federal Building Code gives local authorities the option to establish special situations in which approval must be sought to ensure that preservation objectives related to urban development are met, namely, ▷ *Urban design* (protection of the cityscape and landscape or other built structures important for preservation), the so-called *Milieuschutz* (protecting the existing population structure and social mix for special reasons related to urban development) and the protections related to restructuring (ensuring that restructuring measures in relation to urban development are socially just). Particularly in the unplanned, built-up inner zones, under section 34 of the Federal Building Code, a preservation statute for a specifically delineated area may be called for if the local authority wishes to enforce the preservation of buildings or social structures for reasons related to urban design. In areas subject to the preservation statute, built structures may not be demolished, modified, or repurposed without permission. If the area's special character is to be preserved, permission is also required before any built structures can be erected. For cases in which *Milieuschutz* (protecting the social mix of a particular neighbourhood) applies, permission is also required before any separate ownership of multi-occupancy buildings that are wholly or partially for residential purposes is established under the German Act on the Ownership of Apartments and the Permanent Residential Right (*Wohnungseigentumsgesetz*). This presupposes that the state governments allow this through a statutory ordinance.

7 Urban development enforcement orders

Urban development enforcement orders serve to implement the urban planning and development regime in an area in which local authorities, owners, authorised users and investors are required to cooperate to an especially high degree due to a superordinate public (urban development) interest. More specifically, this entails the building order (section 176 of the Federal Building Code), the modernisation and refurbishment order (section 177 of the Federal Building Code), the planting order (section 178 of the Federal Building Code) and the dismantling and desealing order (section 179 of the Federal Building Code).

8 Social plan and hardship allowance (sections 180, 181)

Developing a social plan in accordance with section 180 of the Federal Building Code is called for if binding land-use plans, urban regeneration measures or urban development measures are expected to have adverse effects on the personal living conditions of the people living or working in the area (▷ *Social planning*). In this case, local authorities should develop ideas and discuss with those affected how adverse effects can be avoided or alleviated as much as possible. The result of the discussions and investigations, and the measures being considered, must be presented in a written social plan. If a measure is being executed by an entity other than the local authority, the local authority can demand that the third party take on the obligations arising from the social plan regulation in consultation with them.

The hardship allowance under section 181 of the Federal Building Code contains a regulation for cases in which an economic disadvantage arises (primarily in the social sense) in the implementation of the Federal Building Code that signifies a particular hardship for the parties whose personal living conditions are affected and which cannot be settled or compensated for otherwise. The hardship allowance comes into consideration with all urban structural measures for the purposes of the Federal Building Code. In practice, it is especially significant in connection with urban regeneration measures, but also if tenancies or leases have been terminated through land reallocation measures.

9 Tenancies and leaseholds

Sections 182 to 186 of the Federal Building Code contain urban development provisions governing the termination of tenancies and leases (in particular). Those regulations come into consideration exclusively in formally defined regeneration areas or urban development areas, as well as with urban development orders. Accordingly, local authorities can, for example, order the termination or extension of a tenancy or leasehold to realise the goals and purposes of the regeneration in the formally defined regeneration area.

10 Urban structural measures connected with measures to improve agricultural structure

Sections 187 to 191 of the Federal Building Code regulate the coordination of urban structural measures with measures to improve agricultural structure (▷ *Agricultural planning*). The provisions especially aim to coordinate measures for urban land-use planning with land consolidation measures, and to instruct the competent bodies early on.

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Last update of the references: December 2016