

Vienna Building Code: new provision renders short-term letting illegal

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On 22 December 2018 a new provision in the Vienna Building Code entered into force, rendering short-term letting – including through rental services such as Airbnb – illegal in large areas of Vienna.

Background

The Vienna Building Code defines what can be built and where. According to the city's zoning plan, each plot of land in Vienna is designated as:

- a green area;
- a traffic area;
- land for construction; or
- land designated for certain special purposes.

The third designation (land for construction) is subdivided into:

- purely residential areas (in which only limited commercial use is permitted);
- garden settlements;
- mixed-use areas; and
- industrial areas.

A purely residential or mixed-use area may be deemed a 'residential zone' under the Vienna Building Code.

All parts of residential zone buildings that were being used for residential purposes when the provision entered into force – or were built thereafter – may be used only for residential purposes (ie, not as offices or shops).

Exceptions to this rule include certain activities which are carried out residentially (eg, medical and teaching professions). In addition, up to 20% of a building's floor space may be exempt and therefore used for non-residential purposes.

The provision's principal aim is to sustain the mixed use of all parts of the city (ie, to prevent certain areas from becoming only offices or commercial centres where the lights go out after 5:00pm, while other parts of the city are deserted during the day). Thus, if the city's officials fear that there are too many offices in a certain area, they can declare this area a residential zone.

Large parts of the Vienna – notably, its historic centre – are currently designated as residential zones.

New provision

The new provision redefines what may be done in residential zones, stating that commercial use for purposes of short-term letting does not qualify as residential use. Therefore, the short-term letting of apartments in residential zones is prohibited.

However, apartments in residential zones may be rented (even on a short-term basis) if the owner or head tenant continues to use the apartment for their own purposes. For example, a university student can rent out their apartment during the summer break provided that they will return to the

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apartment afterwards.

The amended Vienna Building Code does not specify what constitutes short-term letting; however, it likely means 30 days or less.

Consequences

Violations of the new provision carry the following consequences:

- a cease and desist order issued by the building authority; and
- a penalty of up to €50,000.

The penalty is payable not only by the person who rents out an apartment, but also the owner(s) of the building if they did not inform the tenant of such restrictions.

Apartment owners who rent out their properties under long-term lease agreements must therefore include a clause in the lease which informs their tenant about the restriction and prohibits short-term (sub)renting.

Comment

Airbnb is extremely popular among apartment owners because, unlike regular lease agreements, statutory rent limits do not apply. Landlords can therefore achieve market rent rather than statutory rent. However, the new provision deals a significant blow to homeowners that list their properties on marketplaces such as Airbnb.

As outlined, up to 20% of a building's floor space may be used for non-residential purposes. However, affected property owners should promptly apply for an exemption, before a neighbour or co-owner uses up the zone's quota.

Although the definition of 'short-term letting' remains unclear (30 days or less seems valid), it may be worth engaging with the courts to determine whether shorter terms (eg, two or three weeks) are permitted.

That said, the new provision may be unconstitutional for several reasons:

- The provision entered into force without any transitional arrangement. Given the fact that tourists often book apartments in advance, many landlords can no longer honour the commitments that they entered into in good faith. City officials argue that the provision is in fact a "clarification", meaning that the Vienna Building Code has always prohibited short-term letting and therefore owners had no right to let for short terms.
- Vienna's residential zones are quite large, and it remains to be seen whether each zone is necessary to prevent over commercialisation.
- It is unclear whether the new provision can be competently enforced in Vienna. The power to issue regulations relating to housing matters lies with the federal republic; however, city officials issued the new provision on the grounds that it was necessary for Vienna's development.

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