

Urban development contracts fuel private real estate investments in Vienna



GRAF & PITKOWITZ

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- 🕒 **Introduction**
- 🕒 **Private law contracts**
- 🕒 **Goals of urban development contracts**
- 🕒 **Experiences with urban development contracts**
- 🕒 **Comment**

Introduction

Vienna is the second-largest city in the German-speaking world and one of the fastest-growing cities in Europe. It is estimated that Vienna's population will rise from 1.8 million to more than 2 million within the next eight years alone. This influx of people has led to a heightened demand for living and working space. It is estimated that an additional 10,000 to 12,000 apartments are needed each year. Property prices have already increased by more than 80% since 2008.

In an effort to alleviate the pressure on the market, the Vienna City Council recently amended the Building Code. This amendment authorises the city, among others things, to conclude urban development contracts as a means of expediting private investment in real estate projects. Since the amendment entered into force, the city has concluded several contracts with real estate owners.

Private law contracts

The amended code enables the city to enter into private law contracts as a means to achieve its town planning goals, while at the same time obliging landowners to pay a fair share of the infrastructure cost.

The amended code sets out the general principles for private contracts:

- The city must guarantee that all potential contracting partners are treated equally and contracts are concluded under the same conditions. Any deviations must be based on objective criteria, such as size, location, historic use and contemplated future use of the property in question. Different factual situations must be treated differently.
- Changes to a zoning plan may not be made conditional on the execution of a private contract. The city may not exert undue pressure on the landowner by threatening to act or not act in a certain way

if the contract is not concluded. However, the contract may be used to create necessary preconditions for a change in zoning.

- Urban development contracts must be executed in writing and contain:
 - a description of the property;
 - a description of the services to be performed by the landowner, including time limits; and
 - importantly, a security provided by the landowner to ensure performance. This security can be a guarantee, liquidated damages, a purchase option or pre-emption rights.
- The parties must ensure that the obligations contained in the urban development contract are passed on to legal successors, which include persons acquiring long-term rent interests or building rights in the property.

Goals of urban development contracts

For investors, urban development contracts provide legal certainty, with regard to both the cost and existence of necessary infrastructure.

The city concludes urban development contracts for two reasons. First, urban development contracts can be used as an instrument to achieve planning goals – in particular, the provision of sufficient space for residential housing and the services, trade and industry sectors. Previously, the city could pursue its planning goals only by changing the zoning plan. The zoning plan could ban certain types of use and impose size restrictions. Urban development contracts provide the city with a more sophisticated arsenal of measures – for example, they may contain regulations on the quality of the construction and the type of use. The city can actively request a specific measure in a certain area (eg, the type of energy supply or reservation of a certain proportion of the apartments for council housing). The city can also use urban development contracts as a means to ensure high quality of living at affordable prices and to prevent the creation of ghettos.

Second, the city can request that the developer shoulder a fair share of the infrastructure cost for facilities which must be built as a result of the change in zoning (eg, roads, public transport, schools, playgrounds and parks). The private investor may either construct and operate the facilities or contribute to the cost of the measures carried out by the city.

These costs must always relate to the actual cost of the infrastructure measures. They cannot be seen as a tax on the increase in property value which results from the rezoning.

Experiences with urban development contracts

Even though the concept of urban development contracts is relatively new, the city has already concluded a number of agreements for large-scale developments, mostly for residential projects. For example, the development company for a 520-unit residential project agreed to invest in certain infrastructure projects, including:

- noise and wind protection installations for a nearby motorway;
- a bridge to ensure direct access to the banks of the Danube;
- upgrades to a metro station;
- primary education facilities;
- carpooling facilities; and
- the reservation of a certain proportion of apartments for social housing.

The cost of these measures was €10 million, which is a fraction of the presumed €100 million increase in

property value resulting from the rezoning.

Comment

Urban development contracts are a valuable tool, particularly for large-scale development projects. Previously, similar arrangements were also concluded between the city and potential investors. However, these arrangements lacked a legal base and therefore did not give investors legal security.

As stated above, the amended code expressly provides that a change in zoning may not be made conditional on the execution of an urban development contract. While this is intended to protect the landowner from undue pressure, the effect is exactly the opposite: it deprives the landowner of the legal certainty that the zoning will actually be changed. As a result, the landowner's obligations will be conditional on whether the change in zoning is effected by a certain date, thus putting the investor at risk that the project development costs may have been paid in vain if the change is not made.

For further information on this topic please contact Martin Foerster at Graf & Pitkowitz by telephone (+43 1 401 17 0) or email (foerster@gpp.at). The Graf & Pitkowitz website can be accessed at www.gpp.at.

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Martin Foerster