

MADRID CITY COUNCIL'S NEW ORDINANCE ON URBAN PLANNING LICENCES AND STATEMENTS OF COMPLIANCE AND THE REGULATIONS GOVERNING THE REGIME OF COLLABORATING URBAN PLANNING ENTITIES

1. Introduction

On 17 May 2022, Ordinance 6/2022 on Urban Planning Licences and Statements of Compliance (the “**New Ordinance**” or the “**OLDRUM**”) approved last April by the Plenary of Madrid City Council (the “**City Council**”) was published in the Official Gazette of the Community of Madrid (“**BOCM**”) and will enter into force once a period of 1 month has elapsed following its publication.

However, the second transitional provision on the extension of the administrative authorisations of the collaborating entities and the first final provision on the amendment of the General Ordinance for the Protection of the Urban Environment both apply from the day after their publication.

The OLDRUM (i) unifies the applicable legal regime at the local level by replacing the traditional Ordinances for the Processing of Urban Development Licences, of 23 December 2004 (“**OMTLU**”) and the Opening of Economic Activities in the city of Madrid, of 28 February 2014 (“**OAAE**”), the coexistence of which had given rise to certain doubts of interpretation in practice; and (ii) introduces principles from case law and legislative changes that have been approved in recent years in this area (e.g. Law 1/2020, of 8 October, amending Law 9/2001, of 17 July, on the Land of the Community of Madrid, for the promotion and reactivation of urban development (“**Law 1/2020**”), thus bringing greater coherence to the regulatory system in the municipality of Madrid.

2. Content

The New Ordinance comprises 6 titles with 83 articles, 7 additional provisions, 2 transitional provisions, 2 repealing provisions, 4 final provisions and 8 annexes that clearly and succinctly govern the new regime of participation in construction and activities in the municipality of Madrid. These are summarised below:

- (i) Title I governs the traditional tools available to citizens to access urban planning information (e.g. urban planning certificates, common and special urban planning consultations). The urban planning viability report is added as a new feature.
- (ii) Title II establishes the regime applicable to activities (a) in which, in addition to processing the corresponding statements of compliance or licences, it is necessary to obtain other permits (e.g. authorisations or concessions) and (b) that are carried out on properties that may be in a situation of total non-compliance with planning regulations or are in breach of planning regulations.

- (iii) Title III governs the statements of compliance, the procedure and processing methods, as well as their effects.
- (iv) Title IV is dedicated to urban planning licences (e.g. urban planning licences and licences of first occupation and operation), procedure, processing methods and the effect of silence. As a new feature, basic licences and temporary licences are introduced.
- (v) Title V, in addition to providing for measures to restore urban planning compliance in the area of works, establishes the legal framework for such procedures in the area of activities, given the scarcity of regulation on the matter in Law 9/2001, of 17 July, on the Land of the Community of Madrid (the “LSCM”).
- (vi) Title VI deals with the sanctioning regime applicable in cases where urban planning breaches have been committed.

Finally, the content of the first transitory provision is of interest. This provision establishes that processes initiated before the entry into force of the New Ordinance will continue to be processed under the OMTLU or the OAAE, as appropriate, and the interested party may also withdraw the current application and initiate a new one to be dealt with under the OLDRUM.

3. Highlights of the New Ordinance

The most relevant aspects of the New Ordinance, whose main features are the simplification of procedures and the reduction of deadlines, allowing urban development projects to be initiated in shorter periods of time, are provided below:

- (i) **Statement of compliance as the best urban planning tool:** the statement of compliance is established as the main authorisation method. The licence is only used for activities in which there are grounds of general interest that make this tool the most appropriate¹.

It also incorporates the regulation on the **declaration of first occupation and operation**, as provided in the LSCM, which the City Council had been applying directly through Instruction 1/2020 of the Head of the Urban Development Area for the application of Law 1/2020, within the scope of the Madrid City Council.

- (ii) **New procedure for follow-up checks of the statement of compliance:** the procedure for follow-up checks as part of the processing of statements of compliance is governed in a more precise and detailed manner, seeking to provide greater legal certainty and guarantees for this procedure.
- (iii) **Ineffectiveness of the statement of compliance in the absence of notification of the completion of the declared urban development activity:** the need to notify the City Council or the Collaborating Urban Development Entities for Verification, Inspection and Control (the “ECU”) of the completion of the declared urban development activity is included as an obligation of the citizen as a necessary condition for the municipal technical services or an ECU to carry out the appropriate verification using the limited verification system or the traditional inspection visit. Failure to communicate the completion of the declared urban

¹ The activities subject to licensing are listed in Annex I of the New Ordinance (e.g. buildings affecting protected elements, location of prefabricated houses, felling of trees, implementation of temporary constructions).

development activity will entitle the City Council to declare the statement of compliance ineffective.

- (iv) **Greater information for the citizen before processing the statement of compliance or licence:** The “urban planning feasibility report” is introduced in addition to the traditional common and special urban planning consultations. This report will confirm, within a period of 1 month, the viability or non-viability of the intended urban development activities before the presentation of the statement of compliance or the application for a licence, with binding effects for the City Council.
- (v) **More flexible licensing:** The “basic licence” is introduced, which allows an initial licence to be obtained at a very preliminary stage of the planning permission process. This allows the start of the works (i.e. new construction, replacement and/or total restructuring) within the essential parameters, leaving the inspection of other detailed planning issues for a later stage. The start of such works will be carried out under the joint and several responsibility of the developer, builder, technical director of the works and the technician responsible for their execution.

The introduction of the basic licence is intended to considerably reduce the time it takes to obtain licences, reducing the costs that developers and investors may incur due to the delay in processing them (the so-called “invisible fee”).

- (vi) **Simplification of the licensing regime for temporary urban development activities:** this provides for licences for temporary activities in premises that already have the relevant planning permission, and in premises or open spaces with removable fittings.

4. Brief reference to the Regulation of the Regime of Collaborating Urban Development Entities

In addition to the new features provided in the previous section, the New Ordinance stands out for favouring public-private collaboration, giving a greater role to ECUs, which from now on will also be able to take part in the authorisation processes for urban development activities in residential use.

To this end, the Regulation of the Regime of Collaborating Urban Development Entities (“RRECU”) has been published in the same BOCM of 17 May 2022. These regulations provide the regulatory framework for the functioning of ECUs and establish (i) the scope and content of their functions; (ii) their obligations²; and (iii) the regime of incompatible activities.

As the most noteworthy new feature, the RRECU, which came into force the day after its publication in the BOCM, establishes a new regime of incompatible activities that both ECUs and their employees must comply with, among which we highlight the following:

- (i) ECUs may not be planners, manufacturers, providers, installers, suppliers, purchasers, owners, users, servicers, consultants or directors of any urban development activity in which they have the capacity to act.

² Examples include the following: (i) carrying out acts of verification, inspection and control, within the deadlines established for this purpose; (ii) complying with the instructions and technical criteria of the City Council; (iii) carrying out the tasks expressly entrusted to them by the City Council, which have been initiated by another ECU; (iv) carrying out on their own and exclusively the activities that they themselves have initiated; (v) guaranteeing the confidentiality of the information obtained in their activity; (vi) communicating the urban planning breaches that they identify in the exercise of their functions to the City Council; (v) complying with the system of incompatibilities established in the RRECU.

- (ii) ECUs may not advise upon or process urban planning activities, inspect works for which they have previously issued a certificate at the request of an interested party, or be involved in the preparation of technical plans for works, reports, or in the management or execution of works.
- (iii) The employees of an ECU may not be involved in any other activity that could conflict with or jeopardise their independence regarding inspection, verification and control activities.

The failure to comply with these regulations shall not invalidate certificates, reports, or acts in which an ECU has been involved. However, it will give rise to the application of the liability regime provided for by the RRECU.

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