

Initial approval of the amendment of the urban planning regulations of the General Urban Development Plan of Madrid of 1997

Alberto Ibort, Beatriz Álvarez

1. Introduction

On 9 June, the initial approval of the amendment of the urban planning regulations of the General Urban Development Plan of Madrid of 1997 (the “PGOUM” and the “Amendment”) was published in the Official Gazette of the Community of Madrid (“BOCM”). With the publication in the BOCM, a public information period of 45 days (i.e. until 12 August) has begun, during which time arguments (“alegaciones”) can be submitted.

2. Purpose

The Amendment is structured as 26 specific proposals aimed mainly at: (a) adapting the PGOUM to the current regulatory framework, but not going as far as reviewing or reformulating it, or modifying the classification or categorisation of land; (b) unifying the interpretative criteria of the PGOUM of the last two decades; (c) introducing improvements in terms of sustainability; (d) focusing on new developments in residential, public and logistical areas; (e) allowing the hybridisation of uses to recover areas of the municipality that are currently obsolete; (f) focusing on greener and more comfortable buildings; (g) incorporating the regulation of the Special Plan for Accommodation that was approved in 2019, with certain nuances; and (h) providing greater clarity and legal certainty in all areas.

3. Main features of the Amendment

The most significant aspects of the Amendment are set out below:

- (i) **Chapter 1.4. Instruments of implementation. Types of temporary works and actions:** (a) the definitions of projects and actions (e.g. urbanisation project, building project, works in buildings, new building works, extension works, etc.) have been updated, in line with the LOE¹, CTE² and LSCM³, depending on the case; (b) the types of works in buildings have been reduced to two categories: conservation/maintenance and renovation (which includes consolidation, restructuring, rehabilitation, exterior works, etc.); and (c) reference to “provisional actions” (e.g. marquees, dismantlable constructions, etc.) has been removed, to avoid confusion with the term “provisional uses” under the LSCM, by adopting the term “temporary actions”, which will have a time limit of four years.
- (ii) **Transitional use of plots of land:** (a) new permitted uses have been introduced for vacant plots (e.g. urban allotment, above-ground car parking, construction and real estate development cabins); and, in addition, (b) on publicly owned plots, public uses have been permitted, all

¹ Act 38/1999 of 5 November, on Urban Development.

² Royal Decree 314/2006, of 17 March, which approves the Technical Building Code.

³ Act 9/2001, of 17 July 2001, on the Land of the Community of Madrid.

with a time limit of four years. One of the conditions for the facilities to be executed is that they must be dismantlable and reusable.

- (iii) **Simplification and reorganisation of protection regulations:** (a) the regulation of listed buildings with level 3 status has been modified; (b) the regime by which the listing of buildings included in the same plot is extended by applying the level of the building with the highest protection has been modified; (c) the concept of legal urban ruin and imminent physical ruin has been adapted to the current wording of the LSCM; (d) the article on transfers of urban land has been removed; (e) the name of the municipal commission responsible for heritage protection has been updated, incorporating its current name (i.e. CPPHAN, “*Comisión para la Protección del Patrimonio Histórico-Artístico y Natural de la Ciudad de Madrid*”); (f) the regime of permitted works on listed buildings has been modified, establishing different limits of intervention depending on the case and the level of protection; (g) it has been made possible, in some cases, to authorise works that exceed the limits of intervention permitted through the processing of a Special Plan (except for extension works); (h) the regulation of reconstruction works has been clarified; and (i) existing interior dwellings have been exempted from complying with the conditions for exterior dwellings, if the CPPHAN considers this appropriate.
- (iv) **Study of impact due to implementation of uses (“ERIU”):** the processing of PECUAUs⁴ has been removed and replaced by the processing of studies of impact due to implementation of uses (“*Estudios de Repercusión por Implantación de Usos*”, ERIUs), in certain cases (e.g. authorised uses, recreational tertiary use or other tertiary services), with the aim of simplifying the urban planning procedures prior to the implementation of an activity and without assessing sectoral or environmental conditions (which will be analysed in the processing of the corresponding licences and responsible statements).

However, among the actions that still require a Special Plan or Special Protection Plan is tertiary-commercial use in the category of large commercial area or hotel use in an exclusive listed building with protection level 1 or 2 respectively.

- (v) **Built-up area per floor and façade projections and overhangs:** the following areas have been excluded from the calculation of buildable area for new building and restructuring works, and for all other works that alter the built-up area (with particularities): (a) uncovered mezzanines and courtyards; (b) auxiliary constructions enclosed with translucent materials and light structures and removable and reusable elements; (c) certain areas intended for garage-parking; (d) premises intended to house the building services; (e) spaces intended for loading and unloading when they constitute a facility serving the uses of the building; (f) planters on external façades; (g) uncovered or covered terraces with a roof at least two storeys above the ground; (h) for clothing airers, the exemption is extended to 4 m² when they provide for the installation or pre-installation of air conditioning; (i) elements that improve sustainability and energy efficiency - e.g. enclosure wall thickness of more than 25 cm or increased thickness of façades in renovation works, storage rooms for bicycles, scooters and other active mobility vehicles, lift towers and lifting platforms, etc.-; (j) bioclimatic glazed verandas on open plot space of certain sizes, etc.

⁴ Special Plan for the Environmental Urban Planning Control of Uses.

- (vi) **Floors and above-ground constructions:** (a) the maximum depth of floors below ground level has been increased from 12 to 18 metres, and may even exceed this depth subject to a favourable report from the municipal services; (b) a mezzanine may be located on any floor of the building, including the top floor when it has a sloping roof slab; and (c) the roof of the attic floor may not be enclosed or glazed, although isolated open-plan ornamental elements (e.g. pergolas and colonnades) may be permitted.
- (vii) **Green factor and development of open spaces:** (a) more sustainable and energy-efficient buildings are sought (e.g. by excluding sustainable elements from the calculation of buildable surface area and introducing elements that improve sustainability and energy efficiency); (b) a new parameter called “green factor” - e.g. low absorption façades, plant shade using trees, landscaping at ground level, etc.- has been incorporated; (c) the minimum percentage of landscaping of 50% of the area of private open spaces has been abolished as a single requirement, and replaced by the calculation of the green factor (depending on the coefficients of building type and class of construction, as well as the surface area of the plot); (d) the installation of solar panels (thermal or photovoltaic) in open spaces on plots -exceeding the maximum permitted height-, etc. has been allowed.
- (viii) **Regime, classification and general conditions of uses:** (a) the implementation of different activities in the same premises or establishment has been allowed; (b) as a general rule, it has been made possible to establish uses other than residential (excluding associated uses) on the ground floor, with independent access from the outside or linked to premises for uses other than residential located on the ground floor; (c) with regard to the implementation of different uses in the same building, as a new feature, if the implementation is carried out through works other than new construction and general restructuring, independent access will not be necessary if the complementary use is included on the ground floor; (d) independent access will also not be necessary for tertiary use of offices and other tertiary healthcare services on floors below the ground and first floors; and (e) premises for tertiary recreational, accommodation or commercial use are not permitted above dwellings.
- (ix) **Residential use⁵:** (a) the minimum surface area for a dwelling has been increased (from 38 to 40 m²) and the generic possibility of reducing the surface area to 25 m² has been removed; (b) the following new residential modalities (other than the type of housing - collective / co-housing or single-family) have been allowed: community residence (with ties of a religious, social or similar nature) and shared residence (where co-living would be included, without the above ties being necessary, with a minimum surface area for each private accommodation unit of 15 m², which may not be less than 10 m² per person, including bedroom and bathroom, and a minimum area of 25 m² for dining room, kitchen, etc.); (c) open-plan dwellings without partitions, except for the bathroom, have been allowed provided there is a surface area equal to or greater than 40 m² (where lofts would be included); and (d) an additional detail has been included regarding non-computable areas, with particularities (e.g. concierges, reception of parcels, cleaning supplies, etc.).
- (x) **Conversion of premises to housing:** (a) it has been made possible to convert premises into housing when the classified use of the plot is residential, placing them on the ground floor or first floor, with particularities (e.g. premises with other premises for tertiary recreational, tertiary accommodation or tertiary commercial use above them cannot be converted); (b)

⁵ The modalities / concepts of co-housing, co-living and lofts are not expressly included in the Amendment. However, according to the City Council's press release: “Co-housing is included within residential housing, redefining the minimum housing conditions, allowing a reduction in exchange for the creation of the same surface area in a common area and introducing co-living in an exclusive building, a new category in the use of housing called ‘shared residential’”.

ground floor premises for industrial use that exceed the maximum buildable depth cannot be converted into housing unless the excess depth is demolished; etc.

- (xi) **Industrial use:** (a) the new regulation has maintained the distinction of the three main classes (i.e. general industry, warehousing and business services), and has added new sub-types (e.g. conventional industry, craft industry, automotive workshop, domestic workshop, industrial kitchens, wholesale warehousing, delivery warehousing and logistics warehousing); (b) industrial kitchens, delivery warehousing and logistics warehousing have been made subject to special conditions (e.g. surface area limitations if they are in classified or alternative residential areas); and (c) the need for a Special Plan has been introduced to authorise multi-business industrial buildings on plots of land classified for industrial use with a surface area of more than 2,000 m² when the buildable surface area is broken down into more than 20 premises.
- (xii) **Provision of parking facilities:** (a) parking space standards have been established for cars, differentiating between three zones (i.e. historic centre and precinct, inside the M-30 motorway and outside the M-30 motorway), for loading and unloading, bicycles, buses, etc.; (b) maximum limits have been established for some uses (except for residential use), and total or partial exemptions apply in some cases, subject to a municipal report (which will be included in the corresponding licence or responsible statement); and (c) the standards may be modified by Special Plan to adapt them to the city's environmental conditions.
- (xiii) **Tertiary services use:** (a) the Special Plan for Accommodation has been incorporated into the Amendment, with some nuances and clarifications; (b) dwellings for tourist use have been included in the tertiary use of accommodation; (c) the requirement for a mobility report for the implementation of the tertiary use of accommodation in an exclusive building in the area of the Historic District and its surroundings and in those regulated by Zoning Regulations 7 and 8 has been removed; (d) the references to the PECUAU have been amended and replaced by the ERIU; and (e) in large commercial areas, it has been regulated that the complementary areas that do not count towards the buildable surface area may not be used for commercial or leisure activities (unless specific planning permission is granted).
- (xiv) **Public service uses (collective, infrastructural and transport services):** (a) two types of public service housing have been introduced within the categories of use of facilities: sheltered housing (intended for the accommodation of elderly people with disabilities or in need of social assistance and supervised by a public body competent in the matter) and public social integration housing (intended for rental on a rotational basis and publicly owned); (b) the scope of the classification of facilities has been amended and/or extended; (c) the regulation of aeronautical and aeronautical acoustic easements has been included in a broader manner (e.g. establishing limitations and referring to the need for prior favourable agreement of the competent body before any construction, installation, planting, etc. in the affected areas).
- (xv) **Public services use (green area and urban allotment):** (a) urban allotments have been included within the public service use of green areas, limiting the surface area that can be used for urban allotments to 25% for plots larger than 1,000 m²; and (b) the regulation of green areas has been extended, both at a basic level (e.g. designs with ecosystem services, the creation of ecological corridors, and bioclimatic elements on façades and roofs, etc. are provided for) and at a specific level (e.g. bioclimatic elements on façades and roofs, underground garage roofs with landscaping, etc.).

- (xvi) **Zoning Regulation 1:** among others (a) the regime of permitted uses in block courtyards has been made more flexible, within the compatible and authorised uses, with the corresponding limitations for listed buildings; (b) it will only be necessary to recover block courtyards (and/or open spaces) in partial and general restructuring works or new buildings; (c) to carry out actions in block courtyards, it has been made a requirement to improve the environmental conditions of the existing buildings in them -e.g. renovation of façades, landscaped roofs-; and (d) any intervention on buildings occupying block courtyards will require a mandatory opinion from the CPPHAN.
- (xvii) **Zoning Regulation 3:** (a) new criteria have been introduced to determine the classified use for non-public-service land with grade 1, non-public-service land with grade 2 and land classified for use for public services; (b) in the event of subdivisions, it has been made a requirement to process a Special Plan in which the appropriateness and conditions of the subdivision will be assessed; and (c) additional regulation has been included in the grade 1 building conditions (e.g. conditions for the replacement of buildings -such as the modification of the building envelope-, extension works -such as compensation of surface area of elements excluded from the buildable surface area calculation-, etc.).
- (xviii) **Zoning Regulation 9:** (a) new criteria have been introduced to measure the height of the building, according to the grades; (b) the compatible uses (associated, complementary and alternative) have been modified for all grades; and (c) within the alternative uses, with regard to works on existing buildings, it is stated that if the buildable area is exceeded and assignments derived from the excess are necessary, the decision on how to materialise the assignments (and, where appropriate, the valuation of the same) will be resolved through urban planning consultation or an equivalent procedure.
- (xix) **Urban planning licences and responsible statements, duty of conservation and non-compliance with planning regulations -absolute and relative- and prescribed urban planning infringements:** (a) in line with the approval of the OLD RU⁶, responsible statements have been introduced as an instrument of urban planning intervention; (b) universal accessibility has been included within the duty of conservation, along with the obligation to adapt buildings up to the limit of “reasonable adjustments” (understood as those that facilitate accessibility in a safe and practical manner without being a disproportionate burden); (c) the regime of permitted works in buildings in a situation of absolute and relative non-compliance with planning regulations has been detailed; (d) new implementations or changes of uses in a situation of absolute non-compliance with planning regulations have been made possible; and (e) the regime of works and uses in buildings and constructions resulting from prescribed urban planning infringements (i.e. including the jurisprudential criterion of equating this regime to the situation of absolute non-compliance with the planning regulations) has been regulated.
- (xx) **Urban planning regime for APIs⁷, UZIs⁸, APEs⁹ and APRs¹⁰:** (a) the regulation of APIs, UZIs, APEs and APRs has been amended by including in the Amendment the agreements adopted between 1997 and 2020 in this respect (e.g. on the liberalisation of the number of dwellings, on the

6 Ordinance 6/2022, of 26 April, on Urban Planning Licences and Responsible Statements of the Madrid City Council.

7 Incorporated Planning Area (“Área de Planeamiento Incorporado”).

8 Incorporated Developable Land (“Suelo Urbanizable Incorporado”).

9 Specific Planning Area (“Área de Planeamiento Específico”).

10 Referred Planning Area (“Área de Planeamiento Remitido”).

provisional works permitted in APEs, on the implementation of activities below ground floor level in some APIs, etc.); and (b) the API regime has been adapted to the new provisions on the tertiary use of accommodation and the regime of compatible and permissible uses of plots for classified industrial use in APIs has been made more flexible (in relation to zoning regulation 9).

- (xxi) Plot conditions, position and occupation:** (a) for cases in which the plots have buffer spaces in order to be considered a plot of land, the need to simultaneously process the Detailed Study and the Plotting Project has been removed, and they will be carried out successively; (b) clarifications have been included with respect to official alignments in specific volumetrics, adjoining boundaries, the definition of ground floor in existing buildings (e.g. for works other than extensions or restructuring of existing buildings, the original elevation will be that of the ground floor levelling), the position of the building and enclosure with respect to the alignment (e.g. when the plots to be built on contain elements belonging to municipal public services, these may not remain within the plot).
- (xxii) Built volume, height in relation to street width and classes of buildings:** (a) the concept of built volume has been defined as that “made up of the façades and roofs of buildings above ground level and the enclosures of underground buildings below ground level”; (b) a new formula has been included for calculating the height when the alignment of the plot is in contact with a public facility other than a public road; (c) the definition of existing building has been extended to include not only those built prior to the entry into force of the PGOUM but also publicly developed buildings whose approval was granted prior to the PGOUM and buildings included in the General Catalogue of Protected Buildings of the PGOUM; and (d) additionally, the exclusive nature of the building will not be distorted by the associated or complementary uses applicable.
- (xxiii) Sanitary conditions and courtyard provisions:** (a) references to building quality have been removed and replaced by “sanitary conditions in buildings”, namely “those established to ensure the sanitary use of premises by persons”; (b) new considerations have been added to the ventilation conditions of premises (e.g. mechanical ventilation and hybrid ventilation); (c) the definition of “courtyard” has been completed by including references to the ventilation and lighting of the premises and dwellings it serves; (d) among others, the heights of non-uniform enclosed courtyards have been configured in accordance with existing provisions; and (e) the installation of lift towers in courtyards of existing buildings lacking this provision has been permitted, subject to a series of conditions.
- (xxiv) Public service, access and safety and aesthetic conditions:** (a) renewable energy generation has been included as a mandatory provision; (b) the regulation regarding the provision of lifts has been maintained, with nuances, also contemplating the possible partial replacement of lifts by other mechanical elements of vertical mobility (e.g. escalators); (c) duplications and inconsistencies regarding access and safety conditions have been eliminated; and (d) nuances regarding aesthetic conditions (e.g. projections on the ground floor, exterior advertising, enclosures) have been included.
- (xxv) Specific conditions for car parks:** (a) the classification and naming of the classes of car parks has been modified (i.e. public and private car parks are renamed as rotation and designated car parks, respectively); (b) the dimensions of car park spaces have been modified according

to the type of vehicle; (c) the clear floor height in car parks has been modified; and (d) the requirement for infrastructure for charging zero-emission vehicles has been incorporated.

(xxvi) Zoning regulations 4, 5, 7 and 8: (a) in order to avoid contradictions with the LSCM, it is permitted to alter specific conditions of urban land not only by means of a Detailed Study but also by means of a Special Plan; (b) with regard to Zoning Regulation 4, complementary industrial and public uses have been permitted in ground floor buildings that exceed a depth of 12 m; (c) with regard to Zoning Regulation 5, certain regulations have been removed (e.g. porter's accommodation buildings, access for fire-fighting vehicles to interior free space); (d) with regard to Zoning Regulation 7, minor issues have been included in some articles and the wording has been adapted to the Green Factor; and (e) with regard to Zoning Regulation 8, nuances have been introduced as regards the minimum plot exemption (in plots registered in the Land Registry at the entry into force of the PGOUM).

4. Suspension of licences

As a general rule, the Amendment provides for a suspension regime for the processing of licences and responsible statements submitted after 9 June 2022, which will be in force until 9 June 2023.

In any case, this suspension does not apply to all licences and responsible statements, but will have to be analysed individually since, among other exceptions, the granting of responsible statements/licences of first occupation and operation and actions that are in accordance with the current planning and with the Amendment are excluded from the suspension.

It is also worth bearing in mind that the content of the Amendment is not yet definitive and is subject to any amendments that may arise following arguments made in the public information process which will run for 45 days (i.e. until 12 August), so the text that is finally approved is the one to take into account.

CONTACTS



Alberto Ibor
Partner, Urban Planning and Environmental
aibort@perezllorca.com
T. +34 91 426 30 47

www.perezllorca.com | [Madrid](#) | [Barcelona](#) | [London](#) | [New York](#) | [Brussels](#)

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