

## **FEDERAL BUILDING CODE**

[Baugesetzbuch – BauGB]

in the wording of the Act to Amend the Federal Building Code and to Reorder Spatial Planning Law  
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**GERMAN FEDERAL BUILDING CODE [BauGB]**

**CHAPTER ONE  
General Urban Planning Legislation**

**Part One  
Urban Land-Use Planning**

**Subdivision One  
General Provisions**

**Section 1  
The Scope, Definition and Principles of  
Urban Land-Use Planning**

(1) The function of urban land-use planning [Bauleitplanung] is to prepare and control the use of land within a municipality, for buildings or for other purposes, in accordance with this Act.

(2) Urban land-use plans comprise the preparatory land-use plan [Flächennutzungsplan] and the legally binding land-use plan [Bebauungsplan].

(3) It is the responsibility of municipalities to prepare land-use plans [Bauleitpläne] as soon as and to the extent that these are required for urban development and regional policy planning.

(4) Land-use plans shall be brought into line with the aims of [comprehensive regional planning](#).

(5) Land-use plans shall safeguard [sustainable](#) urban development and a socially equitable utilisation of land for the general good of the community, and shall contribute to securing a more humane environment and to protecting and developing the basic conditions for natural life. In the preparation of land-use plans, attention is to be paid in particular to the following:

1. the general requirement for living and working conditions which are conducive to good health, and the safety of the population at home and at work,
2. the housing requirements of the population – whilst avoiding unbalanced population structures, increasing property ownership among broader sections of the population, [especially by supporting low-cost housing](#), and population development,
3. the social and cultural needs of the population, in particular those of families, the young and the elderly and those with handicaps, as well as to the requirements of the education system and the need for sports, leisure and recreational facilities,
4. the preservation, renewal and development of existing local centres [Ortsteile] and to the shaping of the town- and landscape,
5. the requirements relating to the preservation and maintenance of historic monuments and to local centres, streets and public spaces of historical, artistic or architectural importance which warrant preservation,

6. the requirements of Churches and religious organisations under public law for worship and pastoral care,
7. the requirements of environmental protection pursuant to section 1a and through the use of renewable energy sources, nature protection and the preservation of the countryside [Landschaftspflege], in particular of the ecological balance in nature, and of water, the air, the ground including its mineral deposits, and the climate,
8. economic requirements, including maintaining the structural role of medium-sized companies, in the interests of local, close-to-the-consumer supply to the population, the requirements of agriculture and forestry, of transport including local public transport, of the postal and telecommunications services, public utilities – in particular power supply and water, waste disposal and sewerage, and the protection of natural resources and the preservation, protection and creation of employment,
9. defence and civil defence requirements,
10. the results of other urban planning measures adopted by the municipality.

(6) In preparing land-use plans, public and private interests are to be duly weighed.

### **Section 1a Consideration for Environmental Concerns**

(1) Land shall be used sparingly and with due consideration; the extent to which it is sealed by development shall be kept to a minimum.

(2) In the course of the weighing process pursuant to Section 1 para. 6, the following matters shall be considered:

1. the content of landscape and other plans, in particular those produced under water, waste and pollution control legislation.
2. the avoidance of, and counterbalances for, the impact expected to be suffered by nature and the landscape (provisions of the Federal Nature Conservation Act on intrusions),
3. assessment of the calculated and described impact of a development project on the environment corresponding to the respective stage of planning (environmental impact assessment), to the extent that the admissibility under building and planning law of specific development projects within the sense of the appendix to Section 3 of the Environmental Impact Assessment Act is to be established by reference to environmental impact assessment, and
4. the preservation aims and the purpose of protection for areas of Community importance and of European bird sanctuaries within the meaning of the Federal Nature Conservation Act; in cases where these may be seriously impaired, the provisions of the Federal Nature Conservation Act on the permissibility or execution of such intrusions and the requirement to obtain an opinion from the Commission shall be applied (assessment according to the Flora-Fauna-Habitat Directive).

(3) Counterbalances for the impact to be expected on nature and on the landscape as a consequence of intrusions is set out in the form of appropriate representations as spaces for counterbalances pursuant to Section 5 and as designations as spaces for counterbalances and counterbalancing measures pursuant to Section 9. The representations and designations required under sentence 1 may also be made in respect of some other location than that at which the intrusion takes place provided that this is compatible with ordered urban development and the aims of regional planning, of nature protection and of conservation of the countryside. In place of the representations and designations called for in sentence 1 or sentence 2, contractual agreements pursuant to Section 11 may be entered into or other suitable measures taken to provide counterbalances on land made available by the municipality. Counterbalancing measures are not required in the case of an intrusion which was carried out or was permissible prior to a planning decision being taken.

### **Section 2**

### **The Preparation of Land-Use Plans, Power to Prepare Statutory Instruments**

(1) The adoption of land-use plans falls within the responsibility of the relevant municipality. Public notice of the resolution on the preparation of a land-use plan is to be made in the manner customary in the municipality.

(2) Land-use plans for neighbouring municipalities must be co-ordinated.

(3) No person or party has the right to require a municipality to prepare or adopt land-use plans **or urban-planning statutes; such a right cannot be established by contract.**

(4) The provisions of this Act on the adoption of land-use plans also are applicable in respect of amendments, supplements and cancellation.

(5) The Federal Minister for Regional Planning, Building and Urban Development, with the approval of the Federal Council [Bundesrat], is empowered to introduce regulations by legal ordinance on

1. representations and designations in land-use plans regarding
  - a) the type of land use for building purposes,
  - b) the degree of land use for building purposes and the manner in which this is to be calculated,
  - c) the coverage type and the plot areas which may or may not be built on;
2. the types of development – by constructing buildings or otherwise – permissible within specific land-use areas [Baugebiete];
3. the admissibility of designations under Section 9 para. 3 on various types of specific land-use areas or on developments – by constructing buildings or otherwise – permissible within these areas;
4. the preparation of land-use plans, including associated documentation, and the representation of the contents of the plan, in particular with regard to the notation symbols used and their interpretation.

### **Section 3 Public Participation**

(1) The public is to be informed at the earliest possible stage about the general aims and purposes of planning, about significantly different solutions which are being considered for the redesign or development of an area, and of the probable impact of the scheme; the public is to be given suitable opportunity for comment and discussion. Public notification and discussion may be dispensed with in cases where

1. **a legally binding land-use plan [Bebauungsplan] is being prepared, modified, or is revoked, where this has only minimal effects on the plan area and adjacent areas, or**
2. **public notification and discussion have already been effected by some other means.**

Notification and discussion is also followed by the procedure as described in para. 2 where discussion results in changes being made to the plan.

(2) Drafts of land-use plans with the accompanying explanatory report or statement of grounds are to be put on public display for a period of one month. The place and times at which plans may be inspected are to be made public at least one week in advance in the manner customary in the municipality with the advice that suggestions may be lodged during the display period. Involved parties within the meaning of Section 4 para. 1 are to be informed of plans being placed on display. Suggestions lodged within the period allowed are to be examined; persons who have lodged suggestions are to be informed of the outcome of this examination. In cases where more than **fifty** people lodge what are essentially the same suggestions, personal notification of the outcome of the examination may be dispensed with by allowing those concerned access to inspect the appraisal; public notice of the offices at which the appraisal may be inspected is to be made in the manner customary in the

municipality. On submission of the land-use plans in accordance with Section 6 or [Section 10 para. 2](#), any suggestions which have not been incorporated are to be included with the official comment of the municipality.

(3) Where amendments or supplements are made to the draft of a land-use plan subsequent to the display period, it shall once again be put on display in accordance with para. 2; in respect of this display period, stipulation may be made that only suggestions pertaining to those sections which have been amended or added may be lodged. [The display period may be shortened to two weeks](#). In cases where amendments and supplements to a land-use plan [Bauleitplan] do not affect the general principles of planning, [the simplified procedure may be adopted as applicable pursuant to Section 13 no. 2](#).

#### **Section 4 Participation by Public Agencies**

(1) The municipality shall obtain comments and opinions from public authorities and from other public agencies whose activities are affected by the planning measure at the earliest opportunity. Participation may take place simultaneously with the procedure pursuant to Section 3 para. 2.

(2) Public agencies shall supply their comments and opinions as provided in Section 1 within a period of one month; the municipality may extend this period as appropriate where there is deemed to be good reason to warrant this. Public agencies shall restrict their comments to those matters which lie within their purview; they are also required to supply information, including time-scales, on any planning or other measures either scheduled or already embarked upon which may be of significance for the urban development and the ordering of the territory.

(3) The comments of public agencies shall be considered within the weighing procedure pursuant to Section 1 para. 6. Any matters not raised by the public agencies within the period stated in para. 2 sentence 1 shall not be considered within the weighing procedure, unless those matters raised subsequent to expiry of this period are or should have been known to the municipality or are significant for ensuring that the weighing procedure is lawful.

(4) In the case of a draft urban land-use plan being subsequently amended or supplemented in such a way that this leads to the purview of a public agency being affected or being more seriously affected than previously, the simplified procedure provided in Section 13 no. 3 may be implemented as applicable.

#### **Section 4a Informing Neighbouring Municipalities and Public Agencies Across National Borders**

(1) In the case of urban land-use plans capable of exerting a significant impact on a neighbouring country, municipalities and public agencies in the neighbouring country shall be informed in accordance with the principles of mutuality and equivalence.

(2) Any consultations which take place on the basis of the procedure provided in para. 1 shall be conducted in accordance with the principles of mutuality and equivalence.

#### **Section 4b Involvement of a Third Party**

The municipality may delegate the preparation and implementation of the steps described in Sections 3 to 4a to a third party in particular in order to accelerate the land-use planning procedure.

#### **Subdivision Two The Preparatory Land-Use Plan [Flächennutzungsplan]**

## Section 5 The Content of the Preparatory Land-Use Plan

(1) The preparatory land-use plan shall represent in basic form the type of land uses arising for the entire municipal territory in accordance with the intended urban development which is proposed to correspond to the anticipated needs of the municipality. The preparatory land-use plan may exclude spaces and representations of other kinds, provided that the basic intention to be represented in accordance with sentence 1 is not affected, and the municipality intends to produce this representation at some later date; the grounds for this exclusion are to be included in the explanatory report.

(2) The preparatory land-use plan may in particular show:

1. the areas designated for development according to general land-use types (general land-use areas [Bauflächen]), according to specific land-use types [Baugebiete] and according to the general level of built development; building land for which no central sewerage provisions have been made should be marked;
2. the existence within the municipal area of facilities and infrastructure for public and private provision of goods and services, in particular buildings and amenities serving the community and institutions for public needs, and in addition schools and churches and any other buildings or amenities which serve church-related, social, health-care and cultural purposes, and sports areas and playgrounds;
3. spaces for supra-local transport and the main local communications routes;
4. spaces for public utility use, for waste and sewage disposal, for tipping and for mains water supply and main sewers;
5. green spaces, such as parks, allotment gardens, sports grounds, playgrounds, campsites and bathing areas, cemeteries;
6. spaces to which use restrictions apply, or for protective measures against harmful environmental effects within the meaning of the Federal Control of Pollution Act [Bundes-Immissionsschutzgesetz];
7. water bodies, docks and areas of water designated for supply and distribution purposes, and spaces to be kept clear in the interests of flood control and to control drainage;
8. spaces for earth deposits, excavation and for quarrying for stone, earth and other minerals;
9. a) agricultural land and  
b) woodland;
10. spaces for measures for the protection, preservation and development of **topsoil**, of the natural environment and of the landscape.

**(2a) Spaces for counterbalancing measures within the meaning of Section 1a para. 3 within the territory covered by a preparatory land-use plan may be assigned either wholly or in part to those areas in which intrusion harmful to nature and to the landscape is to be expected.**

(3) The preparatory land-use plan shall mark:

1. spaces which, when built upon, will require special physical provisions to counter external forces, or for which special physical safeguarding measures are required as protection against the elements;
2. spaces which have mining below the surface, or which have been designated for the extraction of minerals;
3. spaces designated for building where the ground has been severely contaminated by hazardous materials.

(4) Any plans or other arrangements for use which have been determined under other statutory provisions, and any assemblies of physical structures protected as monuments under federal state law [Landesrecht] are to be included as a matter of course. Where designations of this kind are in prospect, these shall be noted in the preparatory land-use plan.

(5) The preparatory land-use plan shall be accompanied by an explanatory statement.

## **Section 6**

### **Approval of the Preparatory Land-Use Plan**

(1) The preparatory land-use plan requires the approval of the higher administrative authority [höhere Verwaltungsbehörde].

(2) Approval may only be denied where the preparatory land-use plan has not been produced in a proper manner, or where it contravenes this Act or legal provisions issued on the basis of this Act, or any other relevant legal ordinances.

(3) Where the grounds for denying approval cannot be removed, the higher administrative authority may exclude physical areas or substantive parts of the preparatory land-use plan from its approval.

(4) Adjudication on approval must be made within a period of three months; the higher administrative authority may approve of particular physical areas or substantive parts of the preparatory land-use plan in advance of the overall outcome. Where important grounds exist, the time-limit may be extended by the appropriate higher authority on application by the authority responsible for approval, as a rule, however, by no more than three months. The municipality is to be notified of such an extension. Approval is regarded as having been granted if, within the specified time-limit, it has not been refused and grounds stated for this refusal.

(5) Public notice is to be issued of approval having been granted in the manner customary. The preparatory land-use plan becomes effective from the time of public notice being issued of its approval. The preparatory land-use plan and the explanatory statement are to be made available to the general public for inspection, and information is to be provided on request regarding their contents.

(6) Following a decision to amend or supplement the preparatory land-use plan, the municipality may also decide to issue new public notice of the amended or supplemented version of the preparatory land-use plan.

## **Section 7**

### **Adaptation to the Preparatory Land-Use Plan**

Public bodies charged with planning tasks and involved under Section 4 and [Section 13](#) must adapt their planning proposals to the preparatory land-use plan to the extent that they have not objected to this plan. [Any objection must be lodged prior to adoption by the municipality](#). Where a change in circumstances requires a deviation from the planning proposal, these bodies must make immediate contact with the municipality. Where it is not possible for the body charged with planning and the municipality to reach an agreement, the planning body may object retrospectively. An objection is only permissible where the concerns cited as justification for a deviation from the planning proposal do not merely slightly outweigh the concerns of urban planning arising from the preparatory land-use plan. In cases where deviation from a planning proposal arises, Section 37 para. 3 applies *mutatis mutandis* in respect of expenditure and costs ensuing from the amendment or supplement to the preparatory land-use plan, or to a binding land-use plan which has been developed from a preparatory land-use plan and has had to be amended, supplemented or revoked; nothing here shall affect Section 38 sentence 3.

## **Subdivision Three**

### **The Legally Binding Land-Use Plan**

#### **[Bebauungsplan]**

## **Section 8**

### **The Purpose of the Legally Binding Land-Use Plan**

(1) The binding land-use plan contains the legally-binding designations for urban development. It forms the basis for further measures required for the implementation of this Act.

(2) Binding land-use plans are to be developed out of the preparatory land-use plan. A preparatory land-use plan is not required in cases where a binding land-use plan is sufficient to organise urban development.

(3) Preparation, amending, supplementation and revocation of a binding land-use plan may take place simultaneously with the preparation, amending, supplementation and revocation of a preparatory land-use plan (parallel procedure). **Public advertising** of the legally binding land-use plan may take place in advance of the preparatory land-use plan being adopted where it can be assumed from the current state of planning that the binding land-use plan will be developed from the representations to be contained within the preparatory land-use plan when it is completed.

(4) A binding land-use plan may be prepared, amended, supplemented or revoked prior to the completion of the preparatory land-use plan where urgent grounds for this exist, or where the binding land-use plan will not be in conflict with proposed urban development within the territory of the municipality (**anticipatory** binding land-use plan). Where a preparatory land-use plan remains in force following territorial or substantive changes to a municipality, or following other changes affecting responsibility for the preparation of preparatory land-use plans, an advanced binding land-use plan may be produced before the preparatory land-use plan has been supplemented or amended.

### **Section 9 The Content of the Legally Binding Land-Use Plan**

(1) The legally binding land-use plan may **on urban-planning grounds** make designations regarding:

1. the type and degree of building and land use;
2. the coverage type, plot areas which may or may not be built on and the location of physical structures;
3. minimum dimensions for the size, width and depth of building plots, and also maximum dimensions for residential plots in the interests of economical and considerate exploitation of land;
4. spaces for secondary structures which are required in accordance with other regulations on the use of land, such as play, leisure and recreational areas, and car-parking spaces, garages and drive-ways;
5. spaces for common facilities and for sports and play areas;
6. the highest permitted number of dwellings in residential buildings, where such stipulation is required;
7. spaces which have been wholly or partly set aside for publicly subsidised housing developments;
8. spaces which have been wholly or partly set aside for housing developments for members of the population with special accommodation requirements;
9. special uses for sites;
10. spaces to be kept free from built development, with their use;
11. public thoroughfares including public thoroughfares for specific purposes, such as pedestrian areas, parking spaces for motor vehicles, and links from other spaces to the public thoroughfares;
12. spaces for local public infrastructure;
13. the location and course of public infrastructure installations and transmission routes;
14. spaces for waste disposal and **drainage, including rainwater retention and seepage**, and for tipping;
15. public and private green spaces, such as parks, allotment gardens, sports grounds and playgrounds, camping sites and bathing areas, cemeteries;
16. water bodies and spaces for water supply and distribution, for installations for flood control and for the control of drainage;
17. spaces for earth deposits, excavation and for quarrying for stone, earth and other minerals;
18. a) agricultural land and  
b) woodland;

19. spaces for the construction of facilities for keeping small domestic animals and for exhibiting and breeding, kennels, paddocks, etc.;
20. measures for the protection, conservation and development of [topsoil, of the natural environment and of the landscape](#), where these arrangements cannot be made in pursuance of other regulations, and spaces for measures for the protection, conservation and development of the natural environment and the landscape;
21. spaces to be encumbered with walking and driving rights and rights of passage in favour of the general public, an agency charged with the provision of public infrastructure or a limited group of persons;
22. spaces for community amenities to serve specific spatial areas, such as children's playgrounds, leisure facilities, parking spaces and garages;
23. areas in which, [in order to provide protection against harmful environmental impact within the meaning of the Federal Control of Pollution Act, certain materials which give rise to air pollution may not be used, or used only within defined limits](#);
24. protected areas to be kept free from development with their uses, spaces for specific installations and measures to provide protection against harmful environmental impact within the meaning of the Federal Control of Pollution Act, and the provisions to be made, including building and other technical measures, to provide protection against such impact or to prevent or reduce such impact;
25. in respect of individual spaces or of areas covered by a binding land-use plan or parts thereof, and of parts of physical structures, excluding spaces given over to agricultural use or for woodland
  - a) planting of trees, shrubs and greenery of any other kind,
  - b) obligations relating to planting and to the preservation of trees, shrubs and greenery of any other kind and of water bodies;
26. spaces for mounds, cuttings and retaining walls, where these are required for road construction.

[\(1a\) Spaces or measures intended to provide counterbalances within the meaning of Section 1a para. 3 may be designated on those plots on which intrusion harmful to nature and to the landscape is to be expected or at some other location either within the territory covered by the binding land-use plan in question or within the plan area of another binding land-use plan. Spaces or measures intended to provide a counterbalance at some other location may be assigned either wholly or in part to those areas in which intrusion harmful to nature and to the landscape is to be expected; this holds equally in the case of measures on land made available by the municipality.](#)

(2) Designations under para. 1 may contain stipulations regarding altitude.

(3) Designations in accordance with para. 1 may be made separately for superimposed storeys and levels within a building and for other sections of buildings; this also applies in cases where the storeys, levels and other sections of buildings are proposed for construction below ground level.

(4) Federal states may rule to allow regulations based on federal state law to be included in the binding land-use plan as designations, and may determine to what extent the provisions of this Act shall apply to these designations.

(5) The binding land-use plan shall indicate:

1. spaces which, on development, will require special physical provisions to counter external forces, or for which special physical safeguarding measures are required as protection against the elements;
2. spaces which have mining below the surface, or which have been designated for the extraction of minerals;
3. spaces where the ground has been severely contaminated by hazardous materials.

(6) Designations made in accordance with other statutory regulations, and monuments as defined in federal state law [Landesrecht] shall be included in the binding land-use plan as a matter of record to the extent that this is deemed necessary or expedient with regard to its comprehensibility or for assessing planning applications from the point of view of urban development.

(7) The binding land-use plan defines the limits of its territorial validity.

(8) The binding land-use plan shall be accompanied by a statement of grounds for its adoption. This shall set out the aims, purposes and most significant effects of the binding land-use plan.

**Section 10**  
**The Resolution on the Binding Land-Use Plan**

- (1) The municipality adopts the binding land-use plan as a statute.
- (2) Binding land-use plans pursuant to Section 8 para. 2 second sentence, para. 3 second sentence and para. 4 require the approval of the higher administrative authority. Section 6 paras. 2 and 4 apply *mutatis mutandis*.
- (3) The granting of permission or, where permission is not required, the resolution to adopt a binding land-use plan shall be advertised in the manner customary within the municipality. The binding land-use plan and supporting documentation shall be made available for inspection by the general public; explanations and information on the content shall be supplied on request. The advertisement shall state where the binding land-use plan is available for inspection. The binding land-use plan enters into force on being advertised. Public advertisement replaces other forms of publication required for statutes.

**Subdivision Four**  
**Co-operation with the Private Sector; Simplified Procedure**

**Section 11**  
**The Urban Development Contract**

(1) The municipality may enter into urban development contracts. Suitable subjects for urban development contracts include:

1. the preparation and implementation of urban development measures by and at the expense of the contract partner; this shall include reordering plot boundaries, soil remediation and other preparatory measures, and the drawing up of urban development plans; such delegation shall not affect the municipality's responsibility for the statutory plan adoption procedure;
2. promoting and safeguarding the aims pursued by urban land-use planning, in particular regarding the use of plots, the implementation of counterbalancing measures pursuant to Section 1a para. 3, supplying the housing needs both of groups within society who experience special problems with regard to housing supply and of the local community;
3. the assumption of responsibility for the costs and other expenses which the municipality incurs or has incurred in respect of urban development measures and which are either prerequisites or consequences of the proposed development project; this shall include the provision of building plots.

(2) Contractually agreed obligations must be commensurate with the overall circumstances. It is not permissible for an obligation to be placed upon a contract partner if this contract partner would have a claim to the performance offered in return without the said obligation being placed on him.

(3) An urban development contract must be made in writing unless regulations exist to prescribe some other form.

(4) Nothing here shall affect the admissibility of other urban development contracts.

**Section 12**  
**The Project and Infrastructure Plan**

(1) The municipality may employ a project-based binding land-use plan to determine the admissibility of a development project if on the basis of an implementation plan for the project and the associated infrastructure (the project and infrastructure plan), drawn up in consultation with the municipality, it is evident that the project

developer is prepared and in a position to enter into an obligation prior to a resolution to adopt a binding land-use plan pursuant to Section 10 para. 1 committing him to implement the project within a fixed time-limit and to bear either wholly or in part the costs of planning and of the provision of public infrastructure (the implementation contract). Project-based binding land-use plans pursuant to sentence 1 are subject to the additional provisions contained in paras. 2 to 6.

(2) The municipality shall exercise due discretion in coming to a decision on the initiation of a procedure to adopt a binding land-use plan following an application from the project developer.

(3) The project and infrastructure plan becomes an integral part of the project-based binding land-use plan. Within the territory covered by a project and infrastructure plan the municipality is not bound in the decisions it takes on the admissibility of projects by designations made pursuant to section 9 or by the ordinance issued on the basis of Section 2 para. 5; Sections 14 to 28, 39 to 79 and 127 to 135c have no application. To the extent that a project-based binding land-use plan also contains designations for public purposes pursuant to Section 9 within the territory covered by the project and infrastructure plan, expropriation may take place in accordance with Section 85 para. 1 no. 1.

(4) Individual spaces outside the territory covered by the project and infrastructure plan may be incorporated into the project-based binding land-use plan.

(5) The approval of the municipality is required for any change of developer. Approval may only be denied when there are factual grounds to justify the belief that such a change would jeopardise implementation of the project and infrastructure plan within the time-limit stipulated under para. 1.

(6) In the case of the project and infrastructure plan not being implemented within the time-limit stipulated under para. 1, the municipality shall revoke the binding land-use plan. Revocation of the binding land-use plan may not be advanced by the developer as grounds for establishing a claim against the municipality. The simplified procedure provided in Section 13 may be applied in the case of revocation.

### **Section 13 Simplified Procedure**

Where modifications or additions to an urban land-use do not affect the basic principles of the plan, it is permissible

1. to dispense with the requirement to provide information and to enter into discussion pursuant to Section 3 para. 1 sentence 1,
2. to provide aggrieved citizens with the opportunity to comment within an appropriate period, or alternatively to make use of the public display procedure as provided under Section 3 para. 2,
3. to provide aggrieved public agencies with the opportunity to comment within an appropriate period, or alternatively to make use of the participation procedure as provided under Section 4.

## **Part Two Safeguarding Land-Use Planning**

### **Subdivision One Prohibitions on Development and the Postponement of Building Applications**

#### **Section 14 Development Freezes**

(1) Once the decision has been taken to prepare a binding land-use plan, the municipality may opt to add a development freeze in order to safeguard the planning for the area to be covered by the proposed plan. This development freeze may stipulate that

1. development projects within the meaning of Section 29 may not be implemented, or that physical structures may not be removed;
2. no major or fundamental changes of a kind which would result in an increase in value may be made to such plots and physical structures in respect of which changes do not require approval, permission or notification.

(2) In cases where there is no overriding conflicting public interest, exceptions to the development freeze may be permitted. Decisions on exceptions are to be taken by the building permit authority [Baugenehmigungsbehörde] in accord with the municipality.

(3) Not affected by the development freeze are developments for which building permission has been granted prior to the development freeze becoming operative, [or which are permitted by virtue of some other procedure under building law](#), maintenance work and the continuation of a use exercised up until such time as the development freeze came into force.

(4) In the case of proposed developments within formally designated redevelopment areas and requiring permission in accordance with Section 144 para. 1, the regulations regarding the development freeze do not apply.

### **Section 15 Postponement of Building Applications**

(1) Where a development freeze in accordance with Section 14 has not been adopted, although the conditions required are met, or in cases where a development freeze has been adopted but has not yet come into force, the building permit authority must at the request of the municipality [defer](#) its decisions on the legitimacy of individual planning proposals for a period of up to twelve months, if there is reason to fear that going ahead with the development would prohibit or seriously impede the implementation of the land-use plan. [Where no procedure to consider an application for building permission is carried out, upon the application of the municipality an interim prohibition shall be pronounced within a period stipulated under state law in place of the postponement of the decision on legitimacy. An interim prohibition is equivalent in standing to the postponement referred to in sentence 1.](#)

(2) In the case of proposed developments within formally designated redevelopment areas and requiring permission in accordance with Section 144 para. 1, the regulations regarding the postponing of planning applications do not apply; on the formal designation of the redevelopment area, notification of the postponing of a building application in accordance with para. 1 is rendered inoperative.

### **Section 16 The Resolution to Impose a Development Freeze**

(1) The development freeze is adopted by the municipality as a statute.

(2) The municipality shall make public notice of the development freeze in its customary manner. It may announce publicly that a development freeze has been imposed; [Section 10 para. 3 sentences 2 to 5](#) applies *mutatis mutandis*.

### **Section 17 Validity of the Development Freeze**

(1) The development freeze ceases to be valid after a period of two years. The two-year period of validity is to include any time which elapses from the serving of the first notice of postponement of a building application under Section 15 para. 1. The municipality may extend the period of validity by one year.

(2) Where special circumstances require, and with the approval of the competent authority under federal state law [Landesrecht], the municipality may grant a further extension of up to one year.

(3) With the approval of the higher administrative authority the municipality may resolve to renew a lapsed development freeze, either in its entirety or in part, provided that the conditions required for it to be imposed continue to exist.

(4) The development freeze is to be put out of force prior to expiration, either in its entirety or in part, as soon as the conditions required for it to be issued cease to exist.

(5) The development freeze ceases in any case to be valid as soon as and to the extent that the land-use plan has been finalised and is legally binding.

(6) On the formal designation of the redevelopment area an existing development freeze ceases to be valid under Section 14. This does not apply where permit requirement is excluded in the redevelopment statute under Section 144 para. 1.

### **Section 18 Compensation in Respect of Development Freezes**

(1) Where a development freeze remains in force for a period of more than four years beyond the date originally set for expiration, or from the first postponement of an application for building permission under Section 15 para. 1, aggrieved parties are to be paid financial compensation of an appropriate amount in consideration of property loss which has been incurred as a consequence of this. Regulations governing compensation contained in Subdivision Two of Part Five and Section 121 apply *mutatis mutandis*; compensation is to be based on the plot value [Grundstückswert] in respect of which compensation would be due under the regulations contained in Subdivision Two of Part Three.

(2) The obligation to provide compensation rests with the municipality. The party entitled to compensation may demand compensation if the property loss referred to in para. 1 sentence 1 has actually ensued. This party may stake a claim to compensation being due for payment by applying in writing for payment of compensation to the party liable to provide compensation. Where the parties involved are unable to agree on compensation, adjudication is to be made by the higher administrative authority. Notification of the level of compensation set is governed by Section 122 as appropriate.

(3) In respect of the expiry of a claim for compensation Section 44 para. 4 applies provided that, in the case of a development freeze intended to safeguard a designation under Section 40 para. 1 or Section 41 para. 1, the period of validity commences at the earliest on the coming into force of the legally binding land-use plan. Public notice under Section 16 para. 2 is to draw attention to the provisions of para. 2 sentences 2 and 3.

### **Subdivision Two Permission to Subdivide Plots**

#### **Section 19 Permission to Subdivide Plots**

(1) The municipality may adopt a resolution to determine in respect of the territory covered by a binding land-use plan within the meaning of Section 30 paras. 1 and 3 that permission shall be required for the subdivision of a plot to be rendered effective. The municipality shall advertise this statute in the customary manner. It may also undertake public advertisement of the statute by applying Section 10 para. 3 sentences 2 to 5 as applicable.

(2) Subdivision requires the declaration submitted or otherwise communicated by a property owner to the land registry office to the effect that a portion of a plot is to be removed from the register in accordance with the Land Registration Code and entered either as a separate plot or in combination with other plots or with portions of other plots.

(3) Permission is granted by the municipality. A decision on the granting of permission is to be made within one month of the submission of the application to the municipality. Where it is not possible to complete the examination of an application within the time allowed, this period is to be extended before it expires by the

amount of time required to complete examination and the applicant is to be informed accordingly by means of an interlocutory notice. The extension to the time-limit referred to in sentence 2 may not be of more than three months. Permission is to be regarded as having been granted where no refusal has been issued within the period stated.

(4) Subdivision does not require permission where

1. it takes place within expropriation proceedings or proceedings for the reorganisation of land holdings in accordance with this Act or any other regulations under federal or federal state law , or for an undertaking for which expropriation has been declared permissible or as part of an acquisition procedure based on the Mining Code,
2. it is to be undertaken within a formally designated redevelopment area or in an urban development zone and a permit requirement under Section 144 para. 1 is not excluded in the redevelopment statute;
3. the federal government [Bund], a federal state [Land], a municipality or a municipalities association is involved as purchaser, property owner or administrative authority,
4. a public agency, institution or foundation of an exclusively religious, scientific, charitable or non-profit nature, a religious organisation which has been granted the rights of a corporation under public law or a legally competent institution, foundation or association of persons serving the purposes of such a religious organisation is involved as purchaser or property owner, or
5. for the purposes of constructing public utilities infrastructure for electricity, gas, heat or water supply or for sewage management.

Section 191 remains unaffected.

(5) In respect of the territory or sections of the territory of their state, state governments may stipulate by means of legal ordinance that a municipality may not adopt a resolution pursuant to Section 1.

## **Section 20**

### **Grounds for Refusing Permission and Temporary Prohibitions on Making Entries in the Land Register**

(1) Permission is to be refused where subdivision or the use intended subsequent to subdivision would not be compatible with the designations contained within the binding land-use plan.

(2) Where subdivision of a plot does not require permission under Section 19, or where permission is deemed to have been granted, upon the application of an interested party the municipality shall issue a certificate to this effect. The land registry shall not make an entry in the land register until such time as the permission or the certificate has been presented.

(3) In the case of an entry having been made in the land register in respect of a sub-division undertaken without permission, the municipality may, if permission was required, request that the land registry should enter an objection; Section 53 para. 1 of the Land Registry Act remains unaffected.

(4) An objection entered pursuant to para. 3 shall be expunged at the request of the municipality or on the granting of permission.

## **Section 21**

### **(repealed)**

## **Section 22**

### **Safeguards for Areas of Tourism**

(1) Municipalities which are strongly characterised by their function as centres of tourism may determine in a binding land-use plan or by means of some other statute that in the interests of safeguarding the functions of areas serving tourism permission shall be required for the establishment or subdivision of ownership of

residential apartments or of property in part-ownership (Section 1 of the Condominium Act [Wohnungseigentumsgesetz]). This applies *mutatis mutandis* in respect of the rights contained in Sections 30 and 31 of the Condominium Act. The precondition for this provision is that the establishing or division of rights would have a detrimental effect on the current or proposed use of the area for tourism, and consequently on ordered urban development. A tourism function is to be assumed to exist in particular in the case of an areas designated in the binding land-use plan as spa areas, areas providing tourist accommodation, locations for weekend and holiday homes, and in the case of those built-up areas which are similar in nature to such areas, and in the case of other areas serving tourism functions and characterised by the presence of commercial providers of accommodation and residential buildings offering accommodation to visitors.

(2) The municipality shall issue public notice in the customary manner of the statute and of the conducting of the notification procedure. It may issue public notice in accordance with the applicable provisions of Section 10 para. 3 sentences 2 to 5.

(3) Permission is not required where

1. the application for registration has been received by the land registry office prior to the reserved right to require building permission becoming effective, and, where a reserved right to require building permission has become effective before the termination of a period of postponement in accordance with para. 6 sentence 3, prior to public notice of the resolution under para. 6 sentence 3, or
2. where prior to the coming into force of the reserved right to require building permission a certificate has been issued to the effect that permission is not required.

(4) Permission may only be refused where the establishing or division of rights would have a detrimental effect on the current or proposed use of the area for tourism, and consequently on planned urban development. Permission is to be granted in cases where it is required in order for claims made by third parties to be met, and where such claims have been safeguarded by the entry of a note in the land register or in respect of which an application for the entering of such a note has been received prior to the time which would be applicable in the case of para. 3 no. 1; permission may be sought by the third party. Permission may be granted to prevent any economic disadvantage which, for the property owner would represent undue hardship.

(5) The decision on the granting of permission is taken by the building permit authority in accord with the municipality. Section 19 para. 3 sentences 3 to 7 applies *mutatis mutandis*. This accord is deemed to have been given if it is not explicitly denied within a period of two months of the application being received by the authority responsible for granting permission; a request directed to the municipality is equivalent in status to the lodging of an application with the municipality where the latter is prescribed under state law.

(6) In the case of land located within the area affected by a binding land-use plan or any other statute issued pursuant to para. 1, the land registry office may only perform the entries in the land register referred to in para. 1 on presentation of a permit or of a certificate stating that permission is to be regarded as having been granted or is not required. Section 20 paras. 2 to 4 applies *mutatis mutandis*. Once a resolution has been adopted to prepare a binding land-use plan or other statute in accordance with para. 1, and public notice of this resolution has been issued in the customary manner, the building permit authority shall, at the request of the municipality, postpone the issuing of a certificate to state that permission is not required for a period of up to 12 months if there is reason to fear that the purpose of providing a safeguard by allowing a reserved right to require building permission might be seriously impeded or prohibited by such an entry.

(7) Where permission is refused, the property owner may demand that ownership of the property be transferred to the municipality under the conditions contained in Section 40 para. 2. Section 43 paras. 1, 4 and 5 and Section 44 paras. 3 and 4 apply *mutatis mutandis*.

(8) The municipality shall withdraw its reserved right to require building permission, or by means of a declaration to the property owner allow individual exemptions to the reserved right to require building permission, should the conditions for issuing the reserved right to require building permission no longer prevail.

(9) In the other statute provided for in para. 1, and in addition to specifying a reserved right to require building permission, stipulation may be made as to the maximum permitted number of dwellings in residential buildings in accordance with Section 9 para. 1 no. 6. Prior to a stipulation in accordance with sentence 1, those members of the public who are aggrieved, and public agencies which are affected, are to be given the opportunity to make representations within an appropriate time-limit.

(10) The other statute provided for in para. 1 is to be accompanied by an explanatory statement. The explanatory statement to accompany the binding land-use plan (Section 9 para. 8) or the other statute shall demonstrate that the necessary conditions for designating the area contained in para. 1 sentence 3 are indeed met.

**Section 23**  
(repealed)

**Subdivision Three**  
**The Municipality's Statutory Pre-Emption Rights**

**Section 24**  
**General Right of Pre-Emption**

(1) The municipality is entitled to exercise a pre-emption right in respect of the purchase of property

1. within the area designated by the legally binding land-use plan to the extent that the spaces concerned are spaces which have been designated in the binding land-use plan for public use or as spaces or measures for counterbalancing or replacement purposes pursuant to Section 1a para. 3,
2. in a land reallocation area,
3. in a formally designated redevelopment area and an urban development zone,
4. within the territory for which a preservation statute is valid,
5. within the areas covered by a preparatory land-use plan to the extent that the land concerned is not developed and is situated in outlying areas not covered by a binding land-use plan and has been earmarked in the preparatory land-use plan for use as housing land or as a residential area,
6. in areas which under Sections 30, 33 or 34 para. 2 may be used predominantly for housing construction, where these plots have not already been developed.

In cases covered by no. 1, the pre-emption right may be exercised prior to public display if the municipality has resolved to adopt, to amend or to supplement a binding land-use plan. In those cases covered by no. 5, the pre-emption right may be exercised as soon as the municipality has resolved to adopt, to amend or to supplement a preparatory land-use plan, and this has been advertised in the manner customary in the municipality, and the current state of planning provides reason to believe that the future preparatory land-use plan will contain a representation for such a use.

(2) Pre-emption is not available to the municipality for the purchase of rights within the meaning of the Condominium Act [Wohnungseigentumsgesetz] or of building leases.

(3) The pre-emption right may only be exercised where this is justified by being to the general good. In exercising the pre-emption right the municipality shall indicate the use proposed for the site.

**Section 25**  
**Specific Right of Pre-Emption**

(1) The municipality may

1. assert by statute its pre-emption right in respect of undeveloped land within the area covered by a binding land-use plan;
2. in the case of areas for which urban development measures are being considered, and in order to safeguard planned urban development, designate by statute such spaces in respect of which it may exercise a right of pre-emption.

This statute is subject to Section 16 para. 2 as appropriate.

(2) Section 24 paras. 2 and 3 sentence 1 applies. The use proposed for the land shall be stated where this is possible at the time when pre-emption is exercised.

### **Section 26 Exclusion of the Right of Pre-Emption**

The right of pre-emption may not be exercised where

1. the owner sells the property to a spouse or to a person related to the owner either by blood or by marriage within the third degree,
2. the property
  - a) is being purchased by a public agency for purposes of national defence, protecting the federal borders, customs administration, policing or civil defence, or
  - b) is being purchased by churches or religious organisations under public law for the purposes of worship and pastoral care,
3. there are plans to undertake a development scheme on the land for which one of the proceedings listed in Section 38 has been initiated or conducted, or
4. the development on the land and its use are in keeping with the designations contained in the binding land-use plan or with the aims and intentions of the urban development measure, and a physical structure erected on the plot reveals no deficits or defects within the meaning of Section 177 paras. 2 and 3 sentence 1.

### **Section 27 Forestalling the Pre-Emption Right**

(1) The purchaser may forestall the exercising of a pre-emption right where the use for the land has been determined, or can with sufficient surety be determined, in accordance with the building regulations or the aims and purposes of the urban development measure, and the purchaser is in the position to use the land accordingly within an appropriate period, and the purchaser makes an undertaking to this effect prior to the termination of the period stated in Section 28 para. 2 sentence 1. Where a physical structure erected on the land reveals deficits or defects within the meaning of Section 177 paras. 2 and 3 sentence 1, the purchaser may forestall the exercising of the pre-emption right if the purchaser is able to remove these deficits and defects within an appropriate period, and undertakes to do so prior to the termination of the period stated in Section 28 para. 2 sentence 1. At the request of the purchaser the municipality shall extend the period stated in Section 28 para. 2 sentence 1 by two months, if the purchaser is able to demonstrate prior to the termination of this period that he is in a position to meet the conditions required under sentence 1 or 2.

(2) A right to forestall does not exist

1. in cases covered by Section 24 para. 1 sentence 1 no. 1, and
2. in a reallocation area if the land is required for purposes of reallocation (Section 45).

### **Section 27a Exercise of a Pre-Emption Right in Favour of a Third Party**

(1) The municipality may

1. exercise the pre-emption right due to it in favour of a third party where the plot to be acquired through the exercise of the pre-emption right is to be used for social housing or for housing construction for groups within society with special housing needs, and the third party is in the position and undertakes to develop the plot accordingly within an appropriate period of time, or

2. exercise the pre-emption right accorded to it under Section 24 sentence. 1 no. 1 in favour of a public agency or utility and the pre-emption right accorded to it under Section 24 sentence. 1 no. 3 in favour of a redevelopment or development agency if this agency, utility or developer is in agreement.

In those cases covered by no. 1 the municipality in exercising the pre-emption right in favour of a third party shall indicate the time-scale within which the plot is to be developed for the designated purpose.

(2) The contract of sale between the beneficiary and the vendor takes effect with the exercising of the pre-emption right. The municipality is jointly and severally liable with the beneficiary in respect of obligations arising from the contract of sale.

(3) The amount to be paid by the beneficiary and the associated procedure shall be subject to Section 28 paras. 2 to 4 as applicable. In the case of a beneficiary failing to meet his obligations under para. 1 sentence 1 no. 1 and sentence 2, the municipality shall require that title to the property shall pass to the municipality in application of Section 102 or be assigned in favour of a party who is willing, able and undertakes to implement the development measures within an appropriate period. Compensation and the procedure to be followed shall be subject to the provisions of Part Five on re-expropriation as applicable. Nothing here shall affect the liability resting with the municipality under Section 28 para. 3 sentence 7.

### **Section 28 Procedures and Compensation**

(1) The vendor is obliged to inform the municipality without delay of the contents of the contract of sale; the vendor is released from this obligation where such information has been provided by the purchaser. On the presentation of contracts of sale, the land registry office may only enter the purchaser in the land register as the owner of the title if it is provided with evidence that a pre-emption right is not to be exercised or does not exist. Where a pre-emption right does not exist or is not to be exercised, the municipality shall at the request of a party involved issue a certificate to this effect without delay. The certificate is to be regarded as a waiver of the right to exercise pre-emption.

(2) The pre-emption right may only be exercised by means of an administrative act towards the vendor within a period of two months of details of the contents of the contract of sale being received. Sections 504, 505 para. 2, 506 to 509 and 512 of the German Civil Law Code [Bürgerliches Gesetzbuch] apply. Following communication of the contents of the contract of sale, and at the request of the municipality, a priority note is to be entered in the land register in order to safeguard the municipality's claim to transference of the title to the property; the costs for the entry and removal of this note are to be borne by the municipality. The pre-emption right is not transferable. With the purchase of a property through exercise of the pre-emption right, all contractual pre-emption rights expire. Where subsequent to the exercising of a pre-emption right a municipality is entered in the land register as the property owner, it may request that the land registry office remove a note entered in the register for the purpose of safeguarding the purchaser's right to transference of title; it may only make this request where the exercising of the pre-emption right is indefeasible for the purchaser.

(3) Notwithstanding para. 2 sentence 2, the municipality may set the amount to be paid by reference to the standardised market value (Section 194) at the time of sale if the selling price agreed upon evidently exceeds the standardised market value by a significant amount. In this case the vendor is entitled to withdraw from the contract within a period of one month of the administrative act to exercise the pre-emption right becoming indefeasible. The right of withdrawal from the contract is subject to the application of Sections 346 to 354 and 356 of the German Civil Code as applicable. Where the vendor withdraws from the contract, the municipality shall bear the contract costs calculated on the basis of the standardised market value. Where the vendor does not withdraw from the contract, the duty upon the vendor to cede title to the property to the municipality imposed in the contract becomes null and void on expiry of the time-limit for withdrawal pursuant to sentence 2. In this case title to the property shall pass to the municipality once transfer of the title to the property has been entered in the land register upon application of the municipality. Should the municipality fail to put the property to use within an appropriate period of time for the purpose for which the pre-emption right was exercised, it shall pay to the vendor an amount of money equivalent to the difference between the agreed selling price and the standardised market value. Section 44 para. 3 sentences 2 and 3, Section 43 para. 2 sentence 1 and Sections 121 and 122 apply *mutatis mutandis*.

(4) In those cases covered by Section 24 para. 1 sentence 1 no. 1 the municipality shall set the amount to be paid in accordance with the provisions contained in Subdivision Two of Part Five if purchase of the property is required for the implementation of the binding land-use plan and the property would be subject to expropriation to achieve the designated use. With the notification of the exercising of the pre-emption right becoming indefeasible, the duty to transfer title to the property to the municipality imposed on the vendor within the contract of sale becomes null and void. In this case title to the property passes to the municipality once transmission of the title to the property has been entered in the land register

(5) The municipality may waive the exercising of the rights to which it is entitled under this Subdivision, either for the entire territory covered by the municipality or for all of the plots within a local subdistrict. It may at any time revoke this waiver in respect of contracts of sale to be entered into in the future. Public notice is to be made of the waiver and revocation of the waiver in the customary manner. The municipality shall inform the land registry office of the wording of its declaration. Where a municipality has waived the exercising of its rights, a certificate is required under para. 1 sentence 3 should a revocation not have been issued.

(6) Where the municipality has exercised its pre-emption right and this has resulted in property loss to a third party, the municipality shall pay compensation to the extent that the third party had a contractual right to purchase the property prior to the municipality's statutory pre-emption right being established on the basis of this Act or of any federal state regulations cancelled by Section 186 of the Federal Building Act [Bundesbaugesetz]. The regulations on compensation contained in Subdivision Two of Part Five apply *mutatis mutandis*. Where the parties involved are unable to agree on compensation, adjudication is to be made by the higher administrative authority.

### **Part Three Control of Land Use for Building or Other Purposes; Compensation**

#### **Subdivision One Permissibility of Development Projects**

#### **Section 29 The Definition of a Development Project; Validity of Legal Provisions**

(1) In respect of development projects which involve the erection, alteration or change of use of physical structures, and for large-scale dumping and excavation, the sinking of shafts, deposits including natural mineral deposits, Sections 30 to 37 apply.

(2) The provisions of federal state building orders and other regulations under public law shall remain unaffected.

(3) Where the conservation aims and the purpose of protection for areas of Community importance and of European bird sanctuaries within the meaning of the Federal Nature Conservation Act may be seriously impaired by development projects permitted under Section 34, the provisions of the Federal Nature Conservation Act on the permissibility or execution of such intrusions and the requirement to obtain an opinion from the Commission shall be applied (assessment according to the Flora-Fauna-Habitat Directive).

#### **Section 30 The Permissibility of Development Projects Within the Area Covered by a Legally Binding Land-Use Plan**

(1) Within the area covered by a binding land-use plan which, either in isolation or jointly with other building regulations, contains as a minimum designations on the type and extent of use for building, the land on which built development may take place and spaces dedicated as public thoroughfares, a development project is permissible where it does not contravene these designations and the provision of local public infrastructure has been secured.

(2) Within the area covered by a binding land-use plan adopted for the purpose of facilitating a development project pursuant to Section 12, a development project is permissible if it is not in conflict with the binding land-use plan and the provision of required infrastructure can be guaranteed.

(3) Within the area covered by a binding land-use plan which does not meet the requirements of para. 1 (non-qualified binding land-use plan), the permissibility of development projects is determined in other respects by Section 34 or Section 35.

### **Section 31 Exceptions and Dispensations**

(1) Exceptions to the designations contained in a binding land-use plan may be permitted where explicit provision is made for such dispensations in the binding land-use plan in respect of type and scale.

(2) A dispensation from the designations contained in the binding land-use plan may be granted in individual cases where the basic intention underlying the plan are not affected, and

1. a dispensation is required for the public good, or
2. a deviation is justifiable in the interests of urban development, or
3. implementation of the binding land-use plan would result in evidently unintended hardship

and where, after taking due account of the interests of neighbours, deviation is compatible with public interests.

### **Section 32 Use Restrictions on Spaces for Future Community Use, for Transport, Infrastructure and Green Spaces**

Where developed areas are designated in the binding land-use plan as land for public facilities, as spaces for transport infrastructure or utilities infrastructure or as green spaces, any development projects for these areas which would result in changes to physical structures, and thus the creation of added value, may only be permitted, and dispensations from the designations of the binding land-use plan only granted for them, with the approval of the public agency or the provider of public infrastructure, or if the owner of the property renounces in writing any claim, on behalf or himself and any heirs at law, to reparation for any rise in value should the binding land-use plan be implemented. This applies equally in respect of those parts of a physical structure which do not contravene the binding land-use plan and which are not capable of being put to economic use in isolation, or where in the course of expropriation transfer of ownership of the remaining developed areas may be demanded.

### **Section 33 The Permissibility of Development Projects During Preparation of the Plan**

(1) In areas in respect of which a resolution to prepare a binding land-use plan has been adopted, a development project is permissible if

1. public display has taken place (Section 3 paras. 2 and 3) and the relevant public agencies (Section 4) have been involved,
2. it can be assumed that the development project is not in conflict with the future designations of the binding land-use plan,
3. the applicant recognises these designations in writing both for himself and for any heirs at law, and

4. the provision of local public infrastructure has been secured.

(2) A development project may be permitted prior to public display and the involvement of the relevant public agencies if the conditions stipulated in para. 1 nos. 2 to 4 are fulfilled. Members of the public aggrieved by the proposal and interested public agencies shall be given the opportunity to make representations within an appropriate period before permission can be granted to the extent that they have not previously had the opportunity to do so.

#### **Section 34** **The Permissibility of Development Projects** **within Built-Up Areas**

(1) Within built-up areas a development project is only permissible where, in terms of the type and scale of use for building, the coverage type and the plot area to be built on, the building proposal blends with the characteristic features of its immediate environment and the provision of local public infrastructure has been secured. The requirements of healthy living and working conditions must be satisfied; the overall appearance of the locality may not be impaired.

(2) Where the characteristic features of the immediate environment correspond to one of the specific land-use areas contained in the legal ordinance issued in pursuance of Section 2 para. 5, the permissibility of the development project is determined solely with reference to type and to whether it would in general be permissible under the ordinance within the specific land-use area; in respect of building developments permitted under the ordinance as exceptional cases Section 31 para. 1 applies, in other cases Section 31 para. 2 applies *mutatis mutandis*.

(3) (repealed)

(4) The municipality may by statute

1. designate the boundaries of built-up areas,
2. designate built-up spaces in the undesignated outlying areas as built-up areas where these spaces are represented as general land-use areas in the preparatory land-use plan,
3. incorporate individual plots located in the undesignated outlying area *within sections of the municipality which have been developed cohesively when the nature of plots to be incorporated has been significantly affected by the built development in the adjoining area.*

Statutes may be conjoined. Statutes pursuant to sentence 1 nos. 2 and 3 must be compatible with planned urban development; they may contain individual pursuant to Section 9 paras. 1, 2 and 4. Section 6 applies *mutatis mutandis*. Statutes adopted pursuant to sentence 1 no. 3 are subject to supplementation by the appropriate application of Sections 1 a and 9 paras. 1 a and 9.

(5) *In the course of preparing and adopting statutes under para. 4 sentence 1 nos. 2 and 3 the simplified procedure provided under Section 13 nos. 2 and 3 shall be employed as applicable. A statute framed under para. 4 sentence 1 no. 3 requires the approval of the higher administrative authority; Section 6 paras. 2 and 4 applies mutatis mutandis. This is not the case where a statute framed under para. 4 sentence 1 no. 3 has been developed out of the preparatory land-use plan. Statutes framed under para. 4 sentence 1 nos. 1 to 3 are subject to the provisions of Section 10 para. 3 as applicable.*

#### **Section 35** **Building in the Undesignated Outlying Area**

(1) A development project in the undesignated outlying area is only permissible where there are no conflicting public interests, ample public infrastructure provision can be *guaranteed* and where

1. it serves agricultural or forestry activities and occupies only a minor proportion of the total plot,
2. *it is for market-gardening purposes,*

3. it is for the purposes of the public supply of electricity, gas, telecommunications services, heat and water or for sewerage, or it serves a commercial operation which is only possible at this location,
4. it is only to be carried out in the outlying area because of the specific demands it makes on its surroundings, its harmful effect on its surroundings or because of its special function,
5. it is intended for research and development into, or the use of, nuclear energy for peaceful purposes or for the treatment of radioactive waste, or
6. it is intended for research, development or use of wind or water-powered energy sources.

(2) Other development projects may be permitted as exceptional cases provided that their execution and use do not conflict with any public interests and public infrastructure provision can be guaranteed.

(3) A conflict with public interests exists in particular where the development project

1. contravenes the representations in the preparatory land-use plan,
2. contravenes the representations of a landscape plan or of some other sectoral plan based in particular on water, waste or pollution-control law,
3. may give rise to or is exposed to harmful environmental impact,
4. requires an inappropriate level of expenditure for roads and other traffic requirements, public utilities installations, including waste treatment, for the safeguarding of health and for any other requirements,
5. is in conflict with the interests of nature conservation, the preservation of the countryside, the protection of top-soil and of sites of historic interest, or detracts from the natural character of the landscape or from its function as an area for recreation, or mars the overall appearance of the locality or of the landscape
6. hampers measures to improve agricultural structure or represents a danger to water supply and distribution,
7. provides reason to suppose that it may lead to the creation, consolidation or expansion of a splinter settlement.

Space-consuming developments in accordance with paras. 1 and 2 may not be in conflict with the aims of comprehensive regional planning; public interests do not stand in the way of space-consuming developments in accordance with paras. 1 and 2, provided that the various interests have been duly weighed as aims of comprehensive regional planning in plans within the meaning of Sections 8 and 9 of the Federal Regional Planning Act [Raumordnungsgesetz] during the presentation of these development projects. In general public interests are deemed to be in conflict with a development project pursuant to para. 1 nos. 2 to 6 even where it has been designated for some other location by means of representations in a preparatory land-use plan or within aims of regional development.

(4) In the case of the following development projects of other types within the meaning of para. 2, it cannot be objected that they are in conflict with the representations of a preparatory land-use plan or a landscape plan, detract from the natural character of the landscape or provide reason to suppose that they may lead to the creation, consolidation or expansion of a splinter settlement to the extent that they are otherwise compatible with the undesignated outlying area within the sense of para. 3:

1. change to a previous use of a building within the sense of para. 1 no. 1 under the following conditions:
  - a) the development project is in the interests of an appropriate use of building stock which is worthy of preservation,
  - b) there is no significant change to the external appearance of the building,
  - c) the previous use was abandoned no more than seven years previously,
  - d) the building was erected with all required permissions prior to August 27th 1996,
  - e) the building is physically or functionally linked to the operational base of an agricultural or forestry operation,
  - f) in the case of a change to residential use a maximum of three dwellings per operational base are created in addition to those permitted under para. 1 no. 1,

- g) an obligation is assumed not to undertake any new development for the purpose of replacing the abandoned use, unless new development is in the interests of developing the commercial activities within the sense of para. 1 no. 1.
2. the rebuilding of a permitted residential building, of the same type and in the same position, under the following conditions:
    - a) the existing building was erected with all permissions required,
    - b) the existing building displays deficits or defects,
    - c) the existing building has been used by the owner for a considerable period of time,
    - d) there are facts to support the assumption that the new building will be used by the previous owner himself, or by his family; in the case of the previous owner having inherited the building from a previous owner who himself used the building for a considerable period of time, it is sufficient if there are facts to justify the assumption that the building, once rebuilt, will also be for the personal use of the owner or of his family.
  3. the earliest possible rebuilding of a permitted building, of the same type and in the same position, where this building has been destroyed by fire, natural phenomena or any other extraordinary circumstances,
  4. the alteration or change of use of buildings which contribute significantly to the appearance of the cultural landscape and warrant preservation, even where they have been abandoned, if the development project is for an appropriate use of the buildings and serves to preserve the cultural value,
  5. the extension of a residential building to comprise a maximum of two dwellings under the following conditions:
    - a) the existing building was erected with all permissions required,
    - b) the extension is appropriate both in scale, with reference to the existing building, and with regard to the requirements of accommodation,
    - c) where an additional dwelling is to be created, there are facts to justify the assumption that the building will be used by the previous owner or his family,
  6. the physical extension of a building with commercial use and erected with permission where the extension is appropriate in scale with reference to the existing building and the business.

In the cases covered by sentence 1 nos. 2 and 3 minor extensions to the new building in comparison with the building which has been demolished or destroyed, and minor deviations from the previous site of the building are permissible.

(5) Development projects permitted under sentences 1 to 4 are to be realised in a manner which makes economical use of land, limiting the amount of land sealed by development to a minimum, and shows due consideration for undesignated land in the outlying area. By means of a public easement permitted under state law or by some other means the authority responsible for granting permission shall ensure compliance with the obligation contained in para. 4 sentence 1 no. 1 letter g. In those cases covered by para. 4 sentence 1 it shall also assure itself that the building or other physical structure subsequent to the realisation of the development will be used only in the manner designated.

(6) In respect of developed sections of the undesignated outlying areas which are not characterised by predominantly agricultural use and which contain a significant amount of residential development, the municipality may adopt a statute to determine that development projects for residential purposes within the meaning of para. 2 cannot be objected to on the grounds of their being in conflict with the representation of the land in a preparatory land-use plan as being for agricultural use or for woodland, or that they provide reason to suppose that they may lead to the creation or consolidation of a splinter settlement. The statute may also be extended in scope to include development projects for the purposes of small-scale workshops and commercial enterprises. The statute may include more detailed provisions to regulate what is to be permitted. The statute must be compatible with ordered urban development. The preparation and adoption of the statute is subject to the simplified procedure provided in Section 13 nos. 2 and 3 as applicable. The statute shall require the approval

of the higher administrative authority; Section 6 paras. 2 and 4 and Section 10 para. 3 apply *mutatis mutandis*. The statute shall not affect the application of para. 4.

### **Section 36** **Involvement of the Municipality and the** **Higher Administrative Authority**

(1) Decisions on the permissibility of development projects in accordance with Sections 31 and 33 to 35 are taken within a building control procedure by the building permit authority in accord with the municipality. The accord of the municipality is also required when a decision on permissibility is to be taken within another procedure in accordance with the regulations referred to in [sentence 1](#); this does not apply in the case of development projects of the type referred to in Section 29 [para. 1](#), which are governed by the mining control authority. [Where the admissibility of development projects is governed by Section 30 para. 1, the federal states shall ensure that the municipality is able to take a decision on measures to safeguard urban land-use planning under Sections 14 and 15 in good time and prior to implementation of the development project. In those cases covered by Section 35 paras. 2 and 4, the federal state government may stipulate by legal ordinance, either generally or in specific cases, that the approval of the higher administrative authority is required.](#)

(2) The accord of the municipality and the approval of the higher administrative authority may only be withheld for reasons arising from Sections 31, 33, 34 and 35. The accord of the municipality and the approval of the higher administrative authority are to be regarded as having been given if they are not refused within two months of receipt of the application by the building permit authority; a request made by the municipality is equivalent to the submitting of an application to the municipality where this is required under federal state law. [The authority competent under state law may permit development where an accord which has been unlawfully withheld.](#)

### **Section 37** **Built Developments by the Federation [Bund]** **and Federal States [Länder]**

(1) Where a built development to be carried out by the Federation or by federal states for a specific public purpose requires deviation from the regulations contained in this Act, or from regulations issued on the basis of this Act, or where accord with the municipality under Section 14 of Section 36 has not been achieved, the decision falls to the higher administrative authority.

(2) Where the development project in question is for purposes of national defence, for official purposes in connection with the protection of the federal borders or in the interests of the protection of the civilian population, only the approval of the higher administrative authority is required. Before granting its approval the latter authority shall consult the municipality. Should the higher administrative authority refuse to give its approval, or the municipality raise objections to the proposed development, the decision falls to the appropriate federal minister in accord with the federal ministries involved and after consultation with the relevant Supreme State Authority.

(3) Where as a result of the implementation of measures in accordance with sentences 1 and 2 the municipality finds itself liable for the payment of compensation in accordance with this Act, these payments shall be reimbursed by the agency responsible for the measures. Where as a result of these measures it becomes necessary to prepare, amend, supplement or revoke a legally binding land-use plan, the municipality shall also be reimbursed in respect of the expenditure it has incurred.

(4) Where physical structures are erected on land which has been acquired under the Acquisition of Land (for Military Purposes) Act, the procedure under Section 1 para. 2 of the Acquisition of Land (for Military Purposes) Act shall include full discussion and adjudication on all objections raised by the municipality or the higher administrative authority and permitted under sentences 1 and 2. A procedure under sentence 2 is not required in such cases.

**Section 38**  
**Physical Structures of supra-Local Significance Resulting from Plan Approval Procedures; Waste Disposal Facilities with Public Access**

Sections 29 to 37 have no application in respect of plan approval procedures and other procedures with the legal effects of plan approval procedures for development projects of supra-local significance or in respect of regulations issued under the Federal Control of Pollution Act governing the construction and operation of waste disposal facilities with public access if the municipality is involved; consideration is to be given to the concerns of urban development. Obligations resulting from Section 7 remain unaffected. Section 37 para. 3 shall apply.

**Section 39**  
**Breaches of Faith**

Where owners, or any other persons entitled to exercise rights of use, have made preparations for the realisation of such uses as are provided for in the legally binding land-use plan in justifiable faith in the continuing validity of a legally binding land-use plan, they are entitled to demand an appropriate amount of financial compensation to the extent that material investments fall in value as a result of the amendment, supplementation or revocation of the legally binding land-use plan. This also applies in the case of levies under federal or federal state law charged for the provision of local public infrastructure.

**Section 40**  
**Compensation in Money or by Transference of Title**

(1) Where a binding land-use plan designates:

1. spaces for community use and sports grounds and playgrounds,
2. spaces for groups within the population with special housing needs,
3. spaces assigned to a specific use,
4. protected areas to be kept free from development and spaces for specific installations and provisions for protection against emissions,
5. spaces for public thoroughfares,
6. spaces for public utilities,
7. spaces for waste disposal and drainage, including the retention and seepage of rainwater, and for tipping,
8. public green spaces,
9. spaces for earth deposits, excavation or for the extraction of stones, earth or other minerals,
10. public parking spaces and garages,
11. spaces for community amenities,
12. spaces to be kept free from development,
13. water bodies, spaces for the supply and distribution of water, spaces for installations for flood control and to control drainage,
14. spaces for measures for the protection, conservation and development of soil, of the natural environment and the landscape,

the owner is to be compensated in accordance with the following paragraphs to the extent that property loss is suffered. This does not apply in cases covered by sentence 1 no. 1 in respect of spaces for sports grounds and playgrounds, or by sentence 1 nos. 4 and 10 to 14 to the extent that the designations or the implementation of the designations are either in the interests of the owner or are for the purpose of complying with a legal obligation resting with the owner.

(2) The owner may demand transfer of title to these spaces

1. where and to the extent that the designations or the implementations of the binding land-use plan make it unreasonable in economic terms for the owner to be expected to retain the property, or to continue to use it in the previous or some other permissible manner, or
2. in cases where development projects are not permitted under Section 32, and as a consequence the previous use of a physical structure is terminated or significantly reduced.

In place of transference of title the owner may claim the establishment of joint ownership, or some other appropriate right, where implementation of the binding land-use plan does not require the withdrawal of ownership.

(3) The owner is to be paid financial compensation of an appropriate amount if and to the extent that development projects may not be realised under Section 32, and as a result of this the previous use of the property is economically impaired. Where the conditions for a claim to transference under para. 2 exist, only this claim may be asserted. The party liable to pay compensation may advise the party entitled to compensation of the right to transference of title where the site is required immediately for the purpose designated in the binding land-use plan.

#### **Section 41**

#### **Compensation on the Establishing of Walking and Driving Rights and Rights of Passage and in Connection with Obligations Regarding Greenery**

(1) Where the binding land-use plan encumbers spaces with walking and driving rights and rights of passage, the owner may under conditions provided for in Section 40 para. 2 demand that for such spaces, inclusive of the protective strips required for laying pipes and cables, this right is asserted in favour of the party referred to in Section 44 paras. 1 and 2. This does not apply in the case of the obligation to tolerate those local pipes and cables which are for purposes of public utility provision and local public infrastructure. Nothing here shall affect any further statutory regulations obliging the owner to tolerate public utilities transmission infrastructure.

(2) Where the binding land-use plan places obligations in respect of planted areas and provided for the preservation of trees, shrubs, and other greenery and water bodies, or designates the planting of trees, shrubs or greenery, the owner is to be paid financial compensation of an appropriate amount where and to the extent that as a result of these provisions

1. extraordinary expenditure is incurred which goes beyond the level required for the proper management of the property, or
2. a significant drop in the value of the property ensues.

#### **Section 42**

#### **Compensation Following Change of Withdrawal of a Permitted Use**

(1) Where the use permitted for a plot is withdrawn or changed and this results in a not insignificant drop in the value of the property, the owner may demand financial compensation of an appropriate amount in accordance with the following paragraphs.

(2) Where the use permitted for a plot is withdrawn or changed within a period of seven years of its being permitted, the level of compensation due is the difference between the value of the property arising out of its permitted use and the value which emerges subsequent to the withdrawal or change of use.

(3) Where the use permitted for a plot is withdrawn or changed on expiration of the term referred to in sentence 2, the owner may demand compensation only for encroachments on the exercised use, in particular where, as a result of the withdrawal or change of the use permitted, continuation of this use of the property, or any other possible commercial uses of the property arising from the actual use, are rendered impossible or are severely impaired. The level of compensation for the depreciation of the value of the property is the difference between the value of the property arising out of its actual use and the value which emerges as a consequence of the restrictions contained in sentence 1.

(4) Nothing here shall affect compensation in respect of encroachments on exercised uses.

(5) Notwithstanding para. 3, the level of compensation is calculated in accordance with sentence 2 if the owner has been hindered, prior to the expiration of the term specified in sentence 2, in the realisation of a development project which is in keeping with the permitted use by a development freeze or by a limited postponement imposed on the development project, and as a result of the withdrawal or change of use permitted for the plot this development can no longer be realised.

(6) Where, prior to expiration of the term specified in sentence 2, either a building permit or a preliminary notice has been issued on the permissibility within planning control law of the development project, and the owner is no longer able to realise the development project before expiration of the term as a consequence of the withdrawal or change of the permitted use of the plot, or where consequently the owner can, on economic grounds, no longer reasonably be expected to proceed with the development project, the owner may claim compensation at a level which represents the difference between the value of the property based on the use intended when building permission was granted and the value of the property which emerges on withdrawal of or change to the use permitted.

(7) In cases where an application either for the granting of building permission or the issuing of a preliminary notice under planning control law to confirm the permissibility of a planning application under land law has been unlawfully rejected prior to expiration of the term specified in sentence 2, and where, following the outcome of an appeal, permission or a preliminary notice with the contents requested cannot be issued as a consequence of the use permitted at the time of application having since been withdrawn or changed, the level of compensation shall be calculated in accordance with sentence 6. Correspondingly sentence 6 also applies where no decision has been taken on a building application which meets the requirements of the regulations and warrants permission, or on a preliminary notice under planning control law to confirm the permissibility of the planning application under land law, although an application was submitted in sufficient time for permission to have been granted within the term.

(8) In the cases covered by sentences 5 to 7 no claim to compensation exists if the property owner was either not prepared or not in a position to implement the proposed development. The onus lies on the property owner to demonstrate that he was prepared and capable of implementing the proposed development.

(9) Where the permitted use of a plot is withdrawn, a claim to transference of title under Section 40 para. 2 sentence 1 no. 1 also exists.

(10) The municipality shall on request provide the owner with information as to whether the permitted use for his land is protected under the law of property in consequence of sentence 2, and when such protection terminates with expiration of the term specified in sentence 2.

### **Section 43 Compensation and Procedures**

(1) Where compensation is due in the form of transference of title to the property or the establishing of a right and no agreement can be reached, the property owner may demand the vesting of ownership in the municipality or the establishment of the right. The owner may apply to the expropriation authority for the vesting of ownership in the municipality or the establishment of the right. The vesting of ownership and establishing of the right are subject to the provisions contained in Part Five apply as appropriate.

(2) Where financial compensation is due and a decision on the level of compensation cannot be reached, the higher administrative authority shall adjudicate. The regulations on compensation contained in Subdivision Two of Part Five and Section 121 apply *mutatis mutandis*. In respect of notification of the financial compensation due, Section 122 applies *mutatis mutandis*.

(3) Where the conditions contained in Sections 40 and 41 para. 1 are found, compensation is to be paid in accordance with these regulations. In cases covered by Sections 40 and 41, any loss of value which would not attract compensation under Section 42 is not to be considered.

(4) No compensation is due in consideration of land values to the extent that these are based on

1. the use permitted on the plot not being in keeping with general requirements regarding healthy living and working conditions or the safety of those living or working on or close to the plot, or
2. serious deficits in the field of urban planning within the meaning of Section 136 paras. 2 and 3 exist in a district and the use of the plot makes a significant contribution to these deficits.

(5) Once the conditions required for the payment of compensation have been established, no consideration shall be given to any appreciation in value which has taken place subsequent to the time at which the party entitled to compensation was in a position to apply to have the level of financial compensation set, or rejected an offer of an appropriate level of financial compensation from the party liable to pay compensation. Where the party entitled to compensation has entered an application for transference of the property or for the establishment of a relevant right, and where the party liable to compensate has subsequently offered transference of the property or the establishment of the right on suitable terms, Section 95 sentence 2 no. 3 applies *mutatis mutandis*.

**Section 44**  
**Liability to Pay Compensation, Due Date of Payment**  
**and the Expiration of Claims to Compensation**

(1) The beneficiary is obliged to render compensation where he is in agreement with the designation in his favour. Where no beneficiary is identified, or where agreement has not been expressed, the municipality is liable for the payment of compensation. Where a beneficiary fails to meet his obligation, the municipality is also liable towards the owner of the property; the beneficiary is obliged to reimburse the municipality.

(2) Where the designation has the purpose of removing or reducing the harmful impact resulting from the use of a property, the owner is liable for compensation if he agreed to the designation. Where an owner is obliged under any other statutory regulations to remove or reduce the harmful impact resulting from the use of his property, the owner is similarly liable for compensation, even without his agreement, to the extent that this designation leads to a saving in investment in the property. Where the owner fails to meet his obligations, para. 1 sentence 3 applies *mutatis mutandis*. The municipality shall grant the property owner a hearing before deciding on designations which may result in compensation being due under sentence 1 or 2.

(3) The party entitled to compensation may demand compensation where the property loss referred to in Sections 39 to 42 has indeed been incurred. He may render the claim due for settlement by applying in writing for payment of compensation to the party liable. Financial compensation is subject to an annual rate of interest, to commence on payment falling due, set at 2 per cent above the German Central Bank's discount rate [Diskontsatz der Deutschen Bundesbank]. Where compensation is due in the form of transference of the property, Section 99 sentence 3 applies in respect of interest.

(4) Any claim to compensation expires where no application is made to render the claim due for settlement within three years from the end of the calendar year in which the property loss referred to in para. 3 sentence 1 was incurred.

(5) In the public notice required under Section 10 para. 3, attention is to be drawn to the regulations contained in para. 3 sentences 1 and 2 and in para. 4.

**Part Four**  
**Land Reallocation**

**Subdivision One**  
**Reallocation of Property Rights**

**Section 45**  
**The Purpose of Reallocation**

(1) Within the area covered by a binding land-use plan and for the purpose of reorganising or opening up specific new areas for development, it is permissible for both developed and undeveloped land to be reorganised through a process of reallocation in such a manner as to create plots suitable in terms of location, shape and size for built development or for other uses.

(2) The process of reallocation may be initiated even where a binding land-use plan has not yet been prepared. In such a case the binding land-use plan must have come into force prior to the resolution on the preparation of the reallocation plan (Section 66 sentence 1).

#### **Section 46 Responsibility and Preconditions**

(1) The ordering and execution of reallocation is the responsibility of the municipality (reallocation department) and shall occur where and as soon as this is required to implement the binding land-use plan.

(2) Federal state governments may provide by legal ordinance

1. that the municipality shall form reallocation committees with independent decision-making powers for the execution of the reallocation,
2. how the reallocation committees are to be composed and with what powers they are to be endowed,
3. that the reallocation committee may delegate adjudication on less significant procedures under Section 51 to another body which [shall prepare the decisions of the reallocation committee](#),
4. that higher reallocation committees may be formed to advise on legal redress during the reallocation process, and how these committees are to be composed,
5. that the authority charged with the reallocation and consolidation of agricultural land holdings, or some other suitable authority, shall, at the request of the municipality (reallocation department), be obliged to prepare the way for decisions to be made within the reallocation process.

(3) No legal right exists to the ordering and execution of reallocation.

(4) For the whole or for part of its territory, the municipality may transfer its powers to execute reallocation to the authority charged with the reallocation and consolidation of agricultural land holdings, or to some other suitable authority. The details of such delegation, including the municipality's rights of participation, may be regulated in an agreement between the municipality and the authority which is to execute reallocation. [The municipality may transfer the preparation of the decisions to be made within the reallocation procedure and any land survey and cadastral tasks required for the implementation of reallocation to publicly appointed surveyors.](#)

(5) The municipality may delegate the powers to exercise a pre-emption right to which it is entitled under Section 24 para. 1 [sentence 1](#) no. 2 to the reallocation committee, either in respect of individual cases or for particular districts; the municipality may withdraw delegation at any time. Nothing shall affect the municipality's right to exercise a pre-emption right for purposes other than reallocation subsequent to its delegating powers. Claims made by third parties are not justified by sentences 1 and 2.

#### **Section 47 Resolution on Reallocation**

Reallocation is initiated by a resolution adopted by the reallocation department. The resolution on reallocation must designate the reallocation area (Section 52). The individual properties located within the reallocation area are to be specified.

#### **Section 48 Parties Involved**

(1) Involved in the process of reallocation are

1. the owners of the properties located within the reallocation area,
2. the holders of a title entered in the land register or of a secured right to a property located within the reallocation area, or to a right encumbering the property,

3. the holders of a title to the property which has not been entered in the land register, or of a right encumbering the property, or of a claim with the right to payment derived from the property or of a personal right entitling to the purchase, possession or use of the property, or which imposes limits on the way in which an obligated party may use the property,
4. the municipality,
5. public agencies, under the preconditions contained in Section 55 para. 5, and
6. public agencies charged with the provision of local public infrastructure.

(2) The persons referred to in para. 1 no. 3 become involved parties at the point at which they register their entitlement with the reallocation department. Registration may be made until such time as the resolution on the reallocation plan is adopted (Section 66 para. 1).

(3) Where doubt exists in connection with an entitlement which has been registered, the reallocation department shall without delay set a time-limit within which the party registering the entitlement shall furnish substantiation. Where this period expires without substantiation being furnished, the party shall no longer be involved until such time as substantiation is furnished.

(4) The registered creditor of a mortgage or rent charge for which a bond has been issued, and any of his heirs at law, shall at the request of the reallocation department furnish a declaration as to whether any other party has acquired the mortgage or rent charge or any right to it; the identity of the purchaser is to be disclosed. Section 208 sentences 2 to 4 applies *mutatis mutandis*.

#### **Section 49 Legal Succession**

Should the identity of an involved party change during the course of a reallocation procedure, his heir at law enters the proceedings in the state which they have reached at the time when the right is transferred.

#### **Section 50 Public Notice of a Resolution on Reallocation**

(1) Public notice of the resolution on reallocation is to be issued in the manner customary in the municipality. With the agreement of all parties involved, public notice may be dispensed with.

(2) Public notice of the resolution on reallocation shall include a call for the registration within one month with the reallocation department of any rights not evident in the land register entitling the holders to participation in the reallocation procedure.

(3) Where a right is not registered until after the expiration of the term stipulated in para. 2 or is not substantiated before expiration of the term set under Section 48 para. 3, the holder of the right shall accept the foregoing negotiations and designations, should the reallocation department so determine.

(4) The holder of a right referred to in para. 2 is bound to accept the consequences of expiration of a term prior to registration, and likewise an involved party against whom a term has been set with public notice being issued of the administrative act.

(5) In the public notice attention shall be drawn to the legal consequences under para. 3 and 4 and under Section 51.

#### **Section 51 Prohibition on Disposition and Development Freezes**

(1) From public notice being issued of the resolution on reallocation to public notice under Section 71, the following are allowed within the reallocation area only with written permission from the reallocation department:

1. the subdivision of a plot or the making of dispositions over a plot or over rights to a plot, or the completion of agreements, any of which allow another party a right to purchase, use or build on a plot or part of a plot, or the establishing, alteration or cancellation of public easements;

2. significant change to the ground surface or any other major alterations to plots causing added value;
3. the erection of physical structures causing added value, but for which building permission, approval or registration is not required, or any changes to such structures which represent an increase in value;
4. the erection of or changes to physical structure for which building permission, approval or registration is not required.

Permission under sentence 1 is required in formally designated redevelopment areas only where and to the extent that permission is not required under Section 144.

(2) Development projects for which building permission has been granted prior to the coming into force of the development freeze, [or which are permissible by virtue of some other procedure under building law](#), work carried out for the purpose of maintenance and the continuation of a previously practised use are not affected by the development freeze.

(3) Permission may only be refused in cases where there are grounds for the assumption that proceeding with the development project would prohibit or seriously impair the implementation of reallocation. [Section 19 para. 3 sentences 2 to 5 and Section 20 para. 2 apply \*mutatis mutandis\*](#).

(4) Permission may be granted subject to constraints or, except in the case of dispositions over plots and over rights to plots, may be subject to conditions or time-limits. Where permission is granted subject to constraints, conditions or time-limits, the affected party is entitled to withdraw from the contract up to a time one month subsequent to the decision becoming infeasible. The right to withdrawal is subject to Sections 346 to 354 and 356 of the Civil Law Code [Bürgerliches Gesetzbuch] as appropriate.

(5) Where the reallocation committee delegates decisions on procedures under sentence 1 on the basis of an ordinance under Section 46 para. 2 no. 3 to the department referred to therein, this department shall act under the instructions of the reallocation committee; in the case of legal redress being sought, the reallocation committee shall take over. The reallocation committee may withdraw its delegation of powers at any time.

## **Section 52 The Area for Reallocation**

(1) The area designated for reallocation is to be limited in such a way as to suit the purposes of practical execution of reallocation. This area may consist of spaces which are not adjoining.

(2) Individual plots which impair the process of reallocation may be excluded from reallocation either in their entirety or in part.

(3) Minor changes to the reallocation area may be made by the reallocation department up until the resolution to prepare a reallocation plan (Section 66 para. 1) is adopted, without the need for a formal change to the resolution on reallocation. These changes become effective on the notification in writing of the owners of the plots concerned. In other cases Section 50 applies *mutatis mutandis*.

## **Section 53 As-Built Map and Inventory**

(1) The reallocation committee shall produce a map and an inventory of the plots contained within the area for reallocation. The map shall depict as a minimum the current position and shape of plots within the reallocation area with building lines, and shall identify the owners. The inventory shall state as a minimum for each plot

1. the registered owners,
2. the description given in the land register and the land survey register [grundbuch- und katastermäßige Bezeichnung], the size and use for plots as indicated in the land survey register [Liegenschaftskataster] with street names and house numbers, and
3. the charges and restrictions registered in the land register in Section II [Abteilung II].

(2) Both the map and the sections of the inventory referred to in para. 1 sentence 3 nos. 1 and 2 shall be placed on public display in the municipality for a period of one month. The offices and times at which these may be inspected are to be made public at least one week prior to the beginning of the display period in the manner customary in the municipality. Display of the map and inventory may be dispensed with where all parties involved are in agreement.

(3) Where reallocation applies only to a small number of plots, it is sufficient, in the place of public notice, for notification to be made to the property owners and to holders of any other rights where these are evident in the land register or their right has been registered with the reallocation department.

(4) Inspection of the part of the inventory referred to in para. 1 sentence 3 is to be allowed to anyone with a legitimate interest.

#### **Section 54 Notification and Note of Reallocation**

(1) The reallocation department shall inform the land registry office and the office charged with keeping the land survey register of the initiation (Section 47) of the reallocation procedure and of later alterations to the reallocation area (Section 52). The land registry office shall record in the register for each of the plots to be reallocated that the reallocation procedure has been initiated (note of reallocation).

(2) The land registry office and the office charged with the keeping of the land survey register shall notify the reallocation department of all entries for the plots concerned which have been or are made in the land register or in the land survey register subsequent to the initiation of the reallocation procedure.

(3) Where record has been made in the land register of a court order for compulsory auction or sequestration, the reallocation department shall inform the court competent for enforcement of the existing resolution on reallocation to the extent that this affects the plot which is subject to the enforcement.

#### **Section 55 Reallocation Mass and Redistribution**

(1) The extent of the reallocation mass is calculated by adding together the plots located within the area for reallocation based on surface area (reallocation mass).

(2) To be excluded from the start from the reallocation mass and allotted to the municipality, or to any other agency charged with providing local public infrastructure, are those spaces within the reallocation area designated in the binding land-use plan area as

1. local thoroughfares for roads, paths including footpaths and residential paths, for public open spaces and for collecting roads,
2. spaces for car-parking, public green spaces including children's playgrounds and provisions for protection against harmful environmental conditions within the meaning of the Federal Control of Pollution Act, to the extent that such measures are not already covered by the traffic requirements under no. 1, and for purification and overflow basins for rainwater where these spaces are intended primarily to serve the requirements of residents of the reallocation area.

Other spaces to be excluded from the start include those spaces designated for counterbalancing measures within the meaning of Section 1a para. 3 for the facilities listed in sentence 1. The green spaces referred to in sentence 1 no. 2 may also include those spaces required under Section 1a para. 3 as a counterbalance to the area on which building is permitted.

(3) With allocation the municipality or other public infrastructure provider is compensated for those spaces which it has contributed to the reallocation mass under para. 2.

(4) The remaining mass constitutes the redistribution mass [Verteilungsmasse].

(5) Any other spaces which have been designated within the binding land-use plan for public use, including spaces for counterbalancing measures within the meaning of Section 1a para. 3, may be excluded and allocated

to the user, public agency or agency charged with supplying local public infrastructure where the latter is able to contribute suitable alternative land, which may be located outside the reallocation area, to the redistribution mass. The reallocation department shall avail itself of this power where this would serve to expedite implementation of the binding land-use plan.

### **Section 56 Criteria for Redistribution**

(1) Calculation of the share of the redistribution mass due to each property owner involved is to be based on either the relative size or the relative value of the former plots prior to reallocation. The appropriate criterion to be applied is to be decided unanimously by the reallocation department after due weighting and consideration has been given to the interests of the parties involved.

(2) Where all involved parties are in agreement, the redistribution mass may be divided up according to some other criterion.

### **Section 57 Redistribution by Value**

Where the reallocation department opts to proceed on the basis of value, the redistribution mass is divided up proportionately on the basis of the degree to which each of the owners to be considered is involved in the reallocation. Each owner shall be allocated a plot with a current market value [Verkehrswert] at least equal to the standardised market value the plot commanded on the day the resolution on reallocation was adopted [giving due regard to the duty to supply land as a counterbalance within the meaning of Section 1a para. 3](#). A standardised market value as of the date on which the resolution of reallocation was adopted shall be established for plots due for reallocation. Consideration is to be given to changes in value resulting from reallocation; where plots for reallocation containing spaces of the types referred to in Section 55 para. 2 are subject to charges for the recoupment of public money spent on local public infrastructure, changes in value resulting from this shall not be taken into account. Financial restitution shall be made in respect of any difference between the market values thus established.

### **Section 58 Redistribution by Size**

Where the reallocation department opts to proceed on the basis of plot size, it shall deduct from each of the plots included in the redistribution mass, making allowances for space deducted under Section 55 para. 2, an area of such dimensions as to compensate for any gains resulting from reallocation; in cases covered by Section 57 sentence 4 clause 2 any gains are not to be taken into account. The area deducted shall not be in excess of 30 per cent of the plot contributed in districts which have not previously been serviced by local public infrastructure, and shall not be in excess of 10 per cent in any other districts. The reallocation department may opt to replace such a deduction, either in part or in its entirety, by levying an appropriate financial charge.

(2) Where the new plot cannot be allocated in the same or in an equivalent location, compensation is to be provided either in the form of land or in money for any consequential and substantiated difference in value.

(3) The assessment of financial restitution and compensatory measures is to be based on current values at the date on which the resolution of reallocation was adopted.

### **Section 59 Allocation and Financial Settlements**

(1) In accordance with the purposes of reallocation, property owners are as far as is possible to be allocated from within the redistribution mass plots, [including spaces for counterbalancing measures within the meaning of](#)

[Section 1a para. 3](#), with a comparable or with an equivalent location to the plots which have been contributed, and which correspond to the proportional entitlement calculated under Sections 57 and 58.

(2) Where it is not in fact possible within the framework of the binding land-use plan and any other building regulations to allocate plots as calculated under Sections 57 and 58, a financial settlement is to be made. Such a financial settlement is subject as applicable to the regulations governing the payment of compensation contained in Subdivision Two of Part Five, to the extent that the allocation is lower in value than the property contributed, or more than marginally lower in value than the entitlement [Sollanspruch]. The financial settlement is assessed on the basis of the standardised market value as of the date on which the reallocation plan was adopted, to the extent that the value of the allocation exceeds that of the entitlement by more than a negligible amount and thus enables a use conforming with the binding land-use plan.

(3) Where a property owner who is required to surrender residential or commercial premises inside the reallocation area and who, in the course of reallocation, fails to receive a plot applies for the provision as a settlement within the reallocation procedure of one of the entitlements referred to in para. 4 nos. 2 and 3, this request shall be granted to the extent that this is practicable within reallocation and is compatible with the binding land-use plan.

(4) With the consent of the other property owners affected, the following may be provided as a settlement:

1. money, or
2. property outside the reallocation area, or
3. the establishment of joint ownership of a plot, the granting of rights similar to real property rights, rights under the Condominium Act [Wohnungseigentumsgesetz], or any other real rights within and outside the reallocation area.

(5) Property owners may be given money or plots located outside the reallocation area as a settlement where it is not possible for them to be offered developable plots within the area, or where this is deemed necessary on other grounds in order to realise the aims and purposes of the binding land-use plan; any owner who refuses to accept settlement in the form of a plot located outside the reallocation area may be offered financial settlement. The regulations on the payment of compensation contained in Section Two of Part Five apply *mutatis mutandis*.

(6) Where an owner refuses a settlement in the form of the entitlements referred to in para. 4 nos. 2 and 3, although such a settlement would permit the avoidance of financial settlements for a larger number of the parties concerned and settlement in the form of these entitlements would be compatible with the binding land-use plan, the owner shall be offered financial settlement. The regulations on the payment of compensation contained in Subdivision Two of Part Five apply *mutatis mutandis*.

(7) During the allocation of plots, the reallocation department – the reallocation committee at the request of the municipality – may impose a building order under the conditions stipulated in Section 176, a modernisation or reinstatement order under the conditions stipulated in Section 177, or may order planting under the conditions stipulated in Section 178.

(8) The reallocation plan shall identify any buildings or physical structure which are in conflict with the binding land-use plan and prevent realisation of the new utilisation anticipated in the reallocation plan (Section 66 para. 2). The owners and other holders of rights of use are obliged to tolerate the removal of such buildings and other physical structures referred to in the reallocation plan, where the municipality proceeds with removal in the interests of implementing the reallocation plan.

(9) Nothing here shall affect the power of the municipality to impose a building, modernisation or refurbishment, planting or [a development reduction or unsealing](#) order under Sections 176 to 179.

## **Section 60**

### **Financial Settlements and Adjustments for Physical Structures, Planting and Other Constructions**

In respect of physical structures, planting and other constructions a financial settlement is only to be made, and in the case of redistribution a financial adjustment to be set, to the extent that these constructions contribute to the plot commanding a current market value in excess of the land value. The regulations on the payment of compensation contained in Subdivision Two of Part Five apply *mutatis mutandis*.

**Section 61**  
**The Withdrawing, Alteration and Establishing of Rights**

(1) Rights similar to real property rights, as well as any other entitlements to a plot located within the reallocation area or to a right encumbering the plot, or to claims with a right to satisfaction from the plot, or personal rights entitling the holder to purchase, own or otherwise use a plot located within the reallocation area, or which restrict the obligated party in the use of the plot, may be withdrawn, altered or re-established. In order to allow practical and economic use of the plots, spaces may be designated, in accordance with the aims of the binding land-use plan and with due regulation of the legal position, for rear access, communal courtyards, children's playgrounds, leisure amenities, car-parking spaces, garages, [spaces to counterbalance the loss of land to building within the meaning of Section 1a para. 3](#) or other communal facilities. Any obligations under public law provided in federal state law and governing action, tolerance and constraints (public easements) in respect of the plot may be withdrawn, altered or re-established in accord with the building permit authority.

(2) To the extent that the withdrawal, alteration or establishing of rights or public easements results in property loss or property gain, a financial adjustment is to be made. Where property loss arises, the regulations on compensation contained in Subdivision Two of Part Five and on compensation for hardship under Section 181 apply *mutatis mutandis*.

(3) Paras. 1 and 2 apply similarly in respect of plots contributed to the reallocation mass in accordance with Section 55 para. 5.

**Section 62**  
**Shared Ownership; Special Legal Relationships**

(1) Where the purposes of reallocation are served and with the agreement of the owners, plots may be allocated in shared ownership.

(2) When an owner is allocated one plot in place of either several old plots or rights subject to different legal relationships, proportional segments of the total settlement are to be designated corresponding to the various legal relationships and to supplant the individual plots or entitlements. In such cases a separate plot may be allocated for each plot contributed or entitlement instead of a segment.

(3) When shared ownership is allocated (para. 1) or an owner is allocated several new plots to replace one old plot, the reallocation department may spread mortgages and land charges encumbering the plots contributed over the plots to be allocated in correspondence with the values established in the course of the reallocation procedure.

**Section 63**  
**Transfer of Legal Relationships to the Financial Settlement**

(1) In respect of rights to the old plots and those legal relationships affecting these plots which are not withdrawn, the allocated plots supplant the old plots. Any locally bound public easements resting on the old plots are transferred to the new plots occupying the same physical location.

(2) Where an owner who is allocated a new plot receives either a financial adjustment to make up for the difference in value compared with the old plot or a financial settlement under Sections 59, 60 or 61, those holders of real rights whose rights have been impaired by reallocation are dependent on the owner's financial claim.

**Section 64**  
**Payments**

(1) The municipality is both creditor and debtor in respect of the payments ordered in the reallocation plan.

(2) Payment becomes due with public notice being issued under Section 71. The due date for adjustments for additional value (Sections 57 to 61) may be postponed for up to ten years; provision may be made in this context for adjustment payments to be made either wholly or partially in instalments. In the cases described in sentence 2, adjustment payments are subject to the payment of annual interest set at 2 per cent above the Deutsche Bundesbank's discount rate to commence on the due date, or, where the reallocation plan is contested solely in respect of the amount to be paid as adjustment, the adjustment at the level being contested is subject to this interest from the date on which the reallocation plan comes into force.

(3) Obligations on the owner or tenant under a building lease regarding payments under Sections 57 to 61 are deemed contributions and encumber the plot or the lease as a public charge.

(4) Where a mortgage is taken out as security for a loan for purposes of

1. new building construction, the reconstruction of damaged buildings or conversions and extensions to existing buildings, or
2. the carrying-out of essential and extraordinary refurbishment work on buildings

on the encumbered plot, a right to receive payment may, on application, be consented to in respect of this in the case of execution imposed on the debtor's immovable property, with priority over the public charge under para. 3 or a part thereof, where this does not jeopardise the security of the public charge, and the interest and repayment rates on the mortgage correspond to the usual annual payments for first position repayment mortgages. This consent may be made dependent on conditions being met.

(5) Where costs and payments associated with reallocation are caused by a public agency or an agency charged with the provision of local public infrastructure, the latter agency shall reimburse the municipality for these costs and payments.

(6) Public charges (para. 3) shall be recorded in the land register.

#### **Section 65**

#### **Deposits of Payments and the Redistribution Procedure**

Deposits of payments and the redistribution procedure are subject to the regulations contained in Sections 118 and 119 as applicable.

#### **Section 66**

#### **The Preparation and Contents of the Reallocation Plan**

(1) The reallocation plan is to be prepared by the reallocation department following a resolution and after discussion with property owners. It may apply only to sections of the reallocation area (sectional reallocation plan [Teilumlegungsplan]).

(2) The reallocation plan must indicate the new utilisation proposed, stating all actual and legal changes to which the plots located within the reallocation area will be subjected. The form and contents of the reallocation plan must be suitable for adoption within the land survey register.

(3) The reallocation plan comprises the reallocation map and the reallocation inventory.

#### **Section 67**

#### **The Reallocation Map**

The reallocation map depicts the future organisation of the reallocation area. The map shall include in particular the new plot boundaries with designations and other spaces within the meaning of Section 55 para. 2.

#### **Section 68**

#### **The Reallocation Inventory**

(1) The reallocation inventory lists

1. the plots, including those which have been assigned and are located outside the reallocation area, with details of location, size, type of use and ownership and matching the old and the new states;
2. the rights to a plot or to a right encumbering the plot, or to claims with a right to satisfaction from the plot or personal rights entitling the holder to purchase, own or otherwise use a plot, or which restrict the obligated party in the use of the plot, where these are withdrawn, altered or re-established;
3. the encumbrances on the plot stating order and amount;
4. payments, including due dates and form of payment and the value of plots under Section 53 para. 2 on allocation with any charges due for the recoupment of public money spent on local public infrastructure;
5. those persons in whose favour or against whom financial payments have been set;
6. the spaces due for seizure and development within the meaning of Section 55 para. 2 and flowing water bodies;
7. orders under Section 59 para. 7, and
8. public easements under Section 61 para. 3 sentence 3.

(2) Reallocation inventories may be compiled for each individual plot.

#### **Section 69 Public Notice of the Reallocation Plan, Availability for Inspection**

(1) The reallocation department shall issue public notice of the resolution to adopt the reallocation plan (Section 66 para. 1) in the manner customary in the municipality. This notification shall contain information to the effect that the reallocation plan is available for inspection at a named location subject to para. 2, and that extracts from the reallocation plan can be served subject to Section 70 para. 1 sentence 1.

(2) The reallocation plan is available for inspection by anyone able to substantiate a legitimate interest.

#### **Section 70 Serving the Reallocation Plan**

(1) Relevant extracts from the reallocation plan are to be served on involved parties whose rights are affected. They are to be informed of the fact that the reallocation plan is available for inspection at a named location subject to Section 69 para. 2.

(2) Where the reallocation department considers it necessary to make alterations to the reallocation plan, public notice and the serving of the modified plan may be limited to those parties affected by the alterations.

(3) Where an order of compulsory auction or sequestration has been recorded in the land register, the reallocation department shall notify the court competent for execution of the contents of the reallocation inventory to the extent that this inventory concerns the plot which is the subject of execution and the rights thereto.

#### **Section 71 The Coming into Force of the Reallocation Plan**

(1) The reallocation department shall issue public notice of the date upon which the reallocation plan became indefeasible. The onset of the indefeasibility of the reallocation plan is to be treated in the same way where the reallocation plan is defeasible solely with regard to the level of a financial settlement.

(2) Prior to the reallocation plan becoming indefeasible, the reallocation department may put into force particular spatial or substantive sections of the reallocation plan by issuing public notice if any adjudication

pending on legal redress is not capable of having an effect on these sections. Those persons who have appealed for legal remedies are to be instructed of the coming into force.

### **Section 72** **The Effects of Public Notice**

(1) With the issuing of public notice under Section 71 the previous legal situation is superseded by the new legal situation provided in the reallocation plan. Public notice includes putting the new owners in possession of the plots allocated to them.

(2) The municipality is obliged to execute the reallocation plan as soon as public notice has been issued of its indefeasibility under Section 71. It is obliged to procure the new rights of ownership and use for the parties involved, where necessary by application of administrative force.

### **Section 73** **Alterations to the Reallocation Plan**

The reallocation department may make alterations to the reallocation plan after it has become indefeasible, where

1. the binding land-use plan is altered,
2. a binding ruling by a court renders alteration necessary, or
3. the parties involved agree to the alteration.

### **Section 74** **Rectification of Public Registers**

(1) The reallocation department shall forward an authorised copy of the public notice issued under Section 71 and an authorised copy of the reallocation plan to the land registry office [Grundbuchamt] and to the office responsible for keeping the land survey register with the request that these bodies record the changes in the land register and in the land survey register and remove the note on reallocation from the land register. This applies equally in the case of plots located outside the reallocation area.

(2) Until such time as the land survey register has been corrected, the reallocation map and inventory shall serve as the official inventory of the plots as defined in Section 2 para. 2 of the Land Registration Code [Grundbuchordnung], provided that the body responsible for keeping the land survey register has certified on these documents that they are suitable in form and content for adoption into the land survey register. Certification is not required in cases where the reallocation map and inventory were prepared by the authority responsible for the reallocation and consolidation of agricultural land holdings (Section 46 para. 2 no. 5 and para. 4).

### **Section 75** **Inspection of the Reallocation Plan**

Until such a time as the land register has been rectified, the reallocation plan is available for inspection by anyone able to demonstrate a legitimate interest.

### **Section 76** **Pre-Emption of the Decision**

With the agreement of those holders of rights affected, ownership and possession relationships in respect of individual plots and other rights may be regulated under Sections 55 to 62 prior to the final adoption of the reallocation plan. Sections 70 to 75 apply *mutatis mutandis*.

**Section 77**  
**Putting in Possession Prior to Completion**

(1) Where the binding land-use plan has already come into force, the reallocation department may, where purposes of public welfare render this necessary,

1. prior to preparation of the reallocation plan, put the municipality or other public agencies and public infrastructure providers in possession of the plots designated in the binding land-use plan as spaces within the meaning of Section 9 para. 1 no. 21 or Section 55 paras. 2 and 5;
2. subsequent to preparation of the reallocation plan and the physical marking of the boundaries of the new plots, put any other parties involved in reallocation in possession of the plots or rights of use provided for them under the reallocation plan.

(2) Putting in possession before completion may be required for purposes of public welfare in particular

1. in the cases covered by para. 1 no. 1 in favour of the municipality or some other public agency or provider of local public infrastructure where measures are in place to implement the binding land-use plan and the spaces are required for the proposed installations and facilities required for public utilities provision and local public infrastructure in the area,
2. in the cases covered by para. 1 no. 2 in favour of any other parties involved in reallocation where urgent grounds pertaining to urban development exist to justify putting in possession, and where these grounds substantially outweigh the affected parties' interests in their continued possession.

(3) Sections 116 and 122 apply *mutatis mutandis*.

**Section 78**  
**Procedural and Material Costs**

Procedural costs and those material costs not covered by contributions under Section 64 para. 3 are to be borne by the municipality.

**Section 79**  
**Waiving of Charges and Expenses**

(1) Transactions and negotiations with the purpose of implementing or preventing reallocation, including the rectification of public registers, are free of any charges or other similar fees not classified as taxes, or expenses; this does not apply to costs incurred in legal action. Nothing here shall affect regulations under the provisions of federal state law.

(2) Freedom from charges is to be acknowledged by the appropriate authority without examination where assurance is provided by the reallocation department that a transaction or negotiation serves the purposes of implementing or preventing reallocation.

**Subdivision Two**  
**Adjustment of Plot Boundaries**

**Section 80**  
**Purpose, Requirements and Authority**

(1) Within the area covered by a binding land-use plan or within a built-up area, and in order to facilitate planned and orderly development, including the provision of local public infrastructure, or in order to remove conditions which contravene building law, the municipality may by adjusting plot boundaries

1. exchange adjacent plots or parts of adjacent plots where such action serves an overriding public interest,
2. allocate adjacent plots, and in particular splinter plots or parts of adjacent plots, to one party where such action is in the public interest.

The plots and parts of plots may not be capable of independent development and the loss in value incurred by the owner as a result of the adjustment to plot boundaries may only be minimal.

(2) Any private servitudes and public easements in accordance with Section 61 para. 1 sentence 3 which are affected by the adjustment procedure for plot boundaries may be rearranged and also re-established or cancelled for this purpose. Any relevant mortgages may be reordered subject to the agreement of the parties concerned to the proposed new legal status.

(3) Federal state governments may stipulate by legal ordinance that the reallocation committees constituted under Section 46 para. 2 nos. 1 and 2 carry out the adjustment to plot boundaries independently. The regulations under Section 46 para. 4 governing the transference of reallocation to the authority responsible for the reallocation and consolidation of agricultural land holdings, or to some other suitable authority, apply in the case of adjustments to plot boundaries as appropriate.

### **Section 81 Payments**

(1) Financial adjustment is to be made by the owners in respect of any changes in the value of plots arising from the adjustment of plot boundaries or for any differences in value between plots which have been exchanged. The regulations on compensation contained in Subdivision Two of Part Five apply *mutatis mutandis*.

(2) The municipality is both creditor and debtor in respect of payments. The parties involved may make other arrangements with the approval of the municipality. Payment falls due on the issuing of public notice under Section 83 para. 1. Section 64 paras. 3, 4 and 6 on contribution and public charges applies *mutatis mutandis* where the municipality is the creditor of payments.

(3) Parties holding real rights [dinglich Berechtigte] and whose rights have been impaired by the adjusting of boundaries are dependent on any monetary claim on the part of the owner. Deposits of payments and the redistribution procedure are subject to the regulations contained in Sections 118 and 119 as applicable.

### **Section 82 The Resolution on the Adjustment of Plot Boundaries**

(1) The municipality designates the new boundaries and sets the payment due by resolution and regulates therein, to the extent that this is required, the rearrangement and the re-establishing for this purpose of private servitudes, mortgages and public easements. Parties involved whose rights are affected by the resolution without their approval being sought are to be given prior opportunity to express their views. The resolution must be suitable in both form and content for inclusion in the land survey register.

(2) All parties involved are to be served with an extract from the resolution stating how their rights are affected.

### **Section 83 Public Notice and Legal Effects of the Adjustment of Plot Boundaries**

(1) The municipality shall issue public notice of the time at which the resolution on the readjustment of plot boundaries becomes indefeasible. Section 71 para. 2 on coming into force before completion applies *mutatis mutandis*.

(2) With the issuing of public notice the previous legal status is superseded by the new legal status provided for in the resolution on the adjustment of plot boundaries. Public notice includes putting the new owners in possession of the plots or parts of plots allocated to them. Section 72 para. 2 on execution applies *mutatis mutandis*.

(3) Ownership of plots and parts of plots which have been exchanged or allocated without exchange is transferred to the new owners free of encumbrances; clearance certificates are not required. Plots and parts of plots which have been exchanged or allocated without exchange become part of the plot to which they have been allocated. Real rights to this plot extend to plots and parts of plots which have been allocated. Sentence 1 clause 1 and sentence 3 apply only to the extent that nothing results to the contrary from a regulation under Section 80 para. 2.

#### **Section 84 Rectification of Public Registers**

(1) The municipality shall convey to the land registry and the department charged with keeping the land survey records certified copies of the resolution on the adjustment of plot boundaries, inform them of the date of public notice being issued under Section 83 para. 1 and request that they enter the legal changes in the land register and land survey register. Section 74 para. 2 applies *mutatis mutandis*.

(2) In respect of the costs of readjustment to plot boundaries, Sections 78 and 79 apply *mutatis mutandis*.

### **Part Five Expropriation**

#### **Subdivision One Legal Requirements for Expropriation**

#### **Section 85 The Purpose of Expropriation**

(1) Expropriation may only take place under this Act in order

1. to use a plot, or to prepare a plot for use in accordance with the designations contained in the binding land-use plan,
2. in the case of land which is not developed or only developed to a very low level and is not within the area covered by the binding land-use plan but lies within a built-up area, to use this land or to supply it for a use to for infill development in accordance with regulations under building law,
3. to procure plots for compensation in the form of land,
4. to replace rights taken away by expropriation with other rights,
5. to make plots available for development where an owner has not met an obligation under Section 176 para. 1 or 2, or
6. to preserve a building structure situated within the area covered by a preservation statute on one of the grounds contained in Section 172 paras. 3 to 5.

(2) Nothing here shall affect

1. regulations on expropriation for purposes other than those referred to in para. 1,
2. regulations on expropriation under federal state law for the purposes referred to in para. 1 no. 6.

## **Section 86**

### **The Subject of Expropriation**

(1) By means of expropriation it is permissible to

1. remove or encumber ownership rights to land;
2. remove or encumber other rights to land;
3. remove rights entitling holders to the acquisition, possession or use of land, or which restrict obligated parties in their use of land; [these shall include claims to reinstatement under property law](#);
4. to the extent that this is provided for in the regulations within this Part, to establish legal relations which grant rights of the types referred to in no. 3.

(2) Expropriation may only be extended to include the appurtenances of a plot, and those objects which are only connected with the plot or have been placed inside a building for a temporary purpose, where this is in accordance with Section 92 para. 4.

(3) The regulations governing the removal and encumbering of ownership of plots apply *mutatis mutandis* to the removal, encumbering and establishing of the rights designated in sentence 1 nos. 2 and 4.

## **Section 87**

### **Requirements for the Admissibility of Expropriation**

(1) Expropriation is only admissible in individual cases where this is required for the general good and the purpose to be served by expropriation cannot reasonably be achieved by any other means.

(2) Expropriation presupposes that the applicant has made a serious but vain attempt to acquire the land subject to expropriation privately on reasonable terms and offering an appropriate piece of land in return under the conditions of Section 100 paras. 1 and 3. The applicant must provide evidence that the land will be used for the designated purpose within a suitable term.

(3) Expropriation of land for the purpose of preparing it for development (Section 85 para. 1 no. 1) or to make it available for development (Section 85 para. 1 no. 1) may only be permitted where this is to the benefit of the municipality or of a public agency or agency charged with public infrastructure provision. In the cases covered by Section 85 para. 1 no. 5, the expropriation of land may be demanded in favour of a party who is willing to develop the land, and who is able to do so, and who enters into an obligation to complete the building measures within a suitable period. To the extent that expropriation in favour of the municipality is admissible within a formally designated redevelopment area, it may also be allowed in favour of a body charged with carrying out redevelopment.

(4) The legal requirements for expropriation shall not be affected by the regulations contained in Part Three of Chapter Two.

## **Section 88**

### **Expropriation on Urgent Urban Development Grounds**

Where the municipality applies for the expropriation of a plot for the purposes designated in Section 85 para. 1 nos. 1 and 2 on urgent grounds connected with urban planning, it is sufficient in place of Section 87 para. 2 for the municipality to provide evidence that it has made a serious but vain attempt to acquire this land privately on reasonable terms and conditions. Clause 1 applies *mutatis mutandis* where application is being made for expropriation of a plot situated within a formally designated redevelopment area in favour of either the municipality or redevelopment agency.

**Section 89**  
**Duty of Disposal**

(1) The municipality shall dispose of such land as

1. it has accumulated by exercising its pre-emption right, or
2. has been the subject of expropriation in its favour in order for the land to be prepared for development or made available for building use.

This does not apply to plots which are required as land for exchange in the context of proposed urban development measures, or as compensation in the form of land or for any other public purposes. This duty of disposal is not applicable where suitable replacement land is provided for the plot, or where transfer to joint ownership of a plot has taken place, or where rights similar to real property rights, rights under the Condominium Act or any other real rights to a plot have been established or granted.

(2) The municipality shall dispose of a plot as soon as it is possible to achieve the purpose which lay behind the acquisition, or this purpose is no longer applicable.

(3) Having shown consideration for broad sections of the public, the municipality shall dispose of plots to such persons who commit themselves to using the land within a suitable period in accordance with the building regulations or the aims and purposes of the urban development measure. In the cases covered by para. 1 sentence 1 no. 1, the former purchasers, or in the cases covered in para. 1 sentence 1 no. 2 the former owners, are to be given priority consideration.

(4) The municipality may fulfil its duty of disposal by

1. transferring ownership of the plot, or
2. by establishing or granting rights similar to real property rights or rights under the Condominium Act, or
3. by establishing or granting any other real rights.

The procurement of a claim to acquisition of such rights is equivalent to the establishing or granting of the rights or to transfer of ownership.

**Section 90**  
**The Expropriation of Plots for Purposes**  
**of Compensation in the Form of Land**

(1) Permission may be granted for the expropriation of plots for purposes of compensation in the form of land (replacement land) where

1. compensation in the form of land is due to an owner under Section 100,
2. it is neither possible nor reasonable to provide plots suitable as replacement land within the framework of the proposed urban-planning development either from the land holdings of the beneficiary of expropriation, or from the land holdings of the Federation or federal state or of the municipality (association of municipalities), or of a juristic person governed by private law in which the Federation or federal state or the municipality (association of municipalities) has a preponderant interest, and
3. it has not been possible for the beneficiary of expropriation to acquire suitable land privately on reasonable terms and conditions, in particular, where this is possible and reasonable by offering suitable alternative land owned by the beneficiary or from the land holdings of juristic persons governed by private law in whose capital the beneficiary has a preponderant interest.

(2) Plots are not subject to expropriation for purposes of compensation in the form of land where and to the extent that

1. the owner or, in the case of land in agricultural or forestry use, any other holder of rights of use, depends on the land considered for expropriation to sustain a livelihood, and in view of such an interest in the maintenance of the economic basis for a business it would be unreasonable to demand forfeiture, or

2. the land or revenue from the land directly serves or is intended to serve public purposes or public welfare, or purposes of instruction, research, medical and health care, education, physical training or the work of the churches or other religious organisations under public law and their institutions.

(3) Outside the area covered by a binding land-use plan and outside built-up areas, plots may only be expropriated for purposes of compensation in the form of land if they are intended for agricultural or forestry use.

(4) Permission shall not be granted for expropriation for the purpose of rendering compensation to an owner whose land is expropriated in order to procure replacement land.

### **Section 91 Restitution for Withdrawn Rights**

Expropriation for the purpose of providing restitution for rights withdrawn by expropriation in the form of new rights is only admissible to the extent that restitution is provided for in the regulations contained in Subdivision Two. In respect of restitution of withdrawn rights in the form of new rights through expropriation under Section 97 para. 2 sentence 3, the regulations on expropriation for purposes of compensation in the form of land provided in Section 90 paras. 1 and 2 apply *mutatis mutandis*.

### **Section 92 The Scope, Limits and Extent of Expropriation**

(1) Permission for expropriation of a plot may only be granted to the extent that the plot is required to achieve the purpose of expropriation. Where the purpose being pursued by expropriation can be achieved by encumbering the plot with a right, expropriation is to be restricted to this.

(2) Where a plot is encumbered with a building lease, the owner may demand the withdrawal of ownership in place of the encumbrance. Where it is intended to encumber a plot with another right, the owner may demand the withdrawal of ownership if the encumbrance with the real right is inequitable to him.

(3) Where a plot or a physically or economically cohesive property is to be expropriated only in part, the owner may demand that expropriation be broadened to cover the rest of the plot or the rest of the property where this is no longer capable of being put to building or economic use.

(4) The owner may demand that expropriation be broadened to cover those objects referred to in Section 86 para. 2 where and to the extent that, as a result of expropriation, the owner is no longer able to put them to economic use or to utilise them in any other appropriate manner.

(5) Demands under paras. 2 to 4 are to be lodged in writing with the expropriation authority or asserted for minuting before the conclusion of the hearing.

## **Subdivision Two Compensation**

### **Section 93 Principles Governing Compensation**

- (1) Where expropriation takes place, compensation is due.
- (2) Compensation is provided
  1. for rights forfeited as a result of expropriation,
  2. for property loss of other kinds arising from expropriation.

(3) Any property gain accruing to the beneficiary of compensation as a result of expropriation is to be taken into consideration in setting the level of compensation due. Where the beneficiary of compensation is partly responsible for property loss arising, Section 254 of the Civil Law Code [Bürgerliches Gesetzbuch] applies *mutatis mutandis*.

(4) The assessment of compensation is based on the state of the plot at the time at which the expropriation authority adjudicates on the application for expropriation. In cases where the date of putting in possession has been brought forward to before completion, it is the state of the plot at the time when possession becomes effective which is decisive.

#### **Section 94** **Beneficiaries of Compensation and Obligated Parties**

(1) Compensation may be demanded by any person whose rights are adversely affected by expropriation resulting in property loss.

(2) The beneficiary of expropriation is legally obligated to make compensation. Where replacement land is expropriated it is the party with responsibility for supplying the replacement land for the expropriated plot which is legally obligated to make compensation.

#### **Section 95** **Compensation for the Loss of a Right**

(1) Compensation for the loss of a right arising from expropriation is assessed on the basis of the current market value (Section 194) of the plot to be expropriated or of any other subject of expropriation. It is the current market value at the time at which the expropriation authority adjudicates on an application for expropriation which is decisive.

(2) In setting the level of compensation the following are not to be considered:

1. any increase in the value of a plot which has ensued in anticipation of a change of the permitted use where the change cannot be expected to take place in the foreseeable future;
2. changes in value resulting from imminent expropriation;
3. rises in value which occur subsequent to the time at which the owner could have prevented expropriation by accepting an offer of purchase or exchange from the applicant made on reasonable terms and conditions (Section 87 para. 2 sentence 1 and Section 88);
4. any alterations resulting in a rise in value which were carried out during a development freeze without the permission of the building permit authority;
5. any alterations resulting in a rise in value which were carried out after the initiation of the expropriation procedure in the absence of an official order or the permission of the expropriation authority;
6. any agreements, to the extent that these deviate noticeably from the usual agreements, and any facts which provide grounds for the assumption that they were created with the purpose of obtaining a higher amount of compensation;
7. land values which would not be taken into consideration if the owner were to claim compensation in any of the cases contained in Sections 40 to 42.

(3) In the case of those physical structures which may be subject to compulsory [reduction of development](#) without compensation at any time under public-law regulations, compensation is only to be made where this is deemed necessary for reasons of equity. Where demolition without compensation cannot be required before expiration of a term, compensation is to be assessed proportionately based on the relationship between the remaining period and the overall term.

(4) Where the value of ownership of a plot is diminished by third party rights which are maintained in respect of the plot, newly established in respect of another plot, or for which separate compensation is made, due consideration is to be given to this in setting the level of compensation for the loss of rights.

### **Section 96** **Compensation for Other Property Loss**

(1) Compensation for any other property loss arising from expropriation is due only and to the extent that such property loss has not been taken into consideration in assessing the level of compensation in respect of the loss of rights. This compensation is to be assessed giving due weighting to the respective interests of the public and of the parties concerned, in particular in respect of

1. any temporary or permanent loss suffered by the previous owner in the pursuance of his profession or livelihood or in performance of the tasks incumbent upon the owner, however, only up to the amount required to utilise another plot in the same manner as the plot which is subject to expropriation;
2. decrease in value arising from the expropriation of part of a plot or for the remaining area in the case of expropriation of part of a spatially or economically cohesive property, or from the expropriation of a right to a plot in the case of another plot, to the extent that the decrease in value has not been taken into consideration in assessing the level of compensation under no. 1;
3. the unavoidable expenditure incurred in moving house where this is made necessary by expropriation.

(2) In cases under para. 1 no. 2, Section 95 para. 2 no. 3 applies.

### **Section 97** **The Treatment of the Rights of Secondarily Entitled Parties**

(1) Any rights to the plot subject to expropriation and any personal rights with an entitlement to possession or use of the plot, or which restrict the obligated parties in their use of the plot, may be maintained to the extent that this is compatible with the purpose of expropriation.

(2) In replacement for a right to a plot which is not maintained, the replacement land, or some other plot owned by the beneficiary of expropriation, may with the approval of the entitled person, be encumbered with an equivalent right. In replacement for a personal right which is not maintained, a legal relationship may, with the approval of the entitled person, be established granting an equivalent right in respect of the replacement land or some other plot owned by the beneficiary of expropriation. In replacement for real or personal rights held by a public transport operator or a public utility provider (electricity, gas, heat and water), and on which this party is dependent to perform the tasks incumbent upon it, equivalent rights are to be established at the request of this party; where plots owned by the beneficiary of expropriation are not suitable, other plots may be claimed for this purpose. Applications under sentence 3 are to be lodged in writing with the expropriation authority or declared for minuting before the end of the hearing.

(3) Where rights are neither maintained nor replaced by new rights, special compensation is to be made on the expropriation of land to

1. tenants under a building lease, retired farmers entitled to a portion of the estate and the holders of servitudes and acquisition rights to the land,
2. holders of personal rights containing an entitlement to possession or use of the land where the entitled party is in possession of the land,
3. holders of personal rights containing an entitlement to acquisition of the land or which restrict the entitled party in its use of the land.

(4) Entitled persons whose rights are not maintained or replaced by new rights and to whom no special compensation is made have a claim in the event of expropriation to restitution of the value of the right from the financial compensation for ownership of the property to the extent that this is covered by their right. This applies *mutatis mutandis* in respect of financial compensation ordered in other cases or under Section 96 para. 1 sentence 2 no. 2 for the loss of rights arising from expropriation.

### **Section 98**

### Succession in Debt

(1) Where the person affected by expropriation is at the same time personally liable for a mortgage loan which is either maintained or replaced by a new right to another plot, the beneficiary of expropriation shall assume the debt at a level equal to the mortgage. Sections 415 and 416 of the Civil Law Code apply *mutatis mutandis*; the transferor [Veräußerer] within the meaning of Section 416 is the party affected by expropriation.

(2) The same applies in the case of a land charge or rent charge which is maintained or replaced by a new right to another plot where the party affected by expropriation is also personally liable, provided that this party has registered the claim against him within the term permitted under Section 108 with details of the amount due and its justification, and has proved this claim by evidence, where this is required by the expropriation authority or by another party involved.

### Section 99

#### Compensation in the Form of Money

(1) Compensation is to be paid in one instalment unless stipulation to the contrary is made within this Act. On application by the owner, compensation may be paid in regular instalments where this can reasonably be expected of the other parties involved.

(2) Where land is encumbered with a building lease, compensation is to be made in the form of ground rent.

(3) One-off payments of compensation are subject to interest at an annual rate 2 per cent above the Deutsche Bundesbank's discount rate commencing at the date on which the expropriation authority reaches a decision on the application for expropriation. In cases where putting in possession has been brought forward in time to before completion, it is the point at which this takes effect which is decisive.

### Section 100

#### Compensation in the Form of Land

(1) On application by the owner, compensation is to be set in the form of suitable replacement land, where the owner is dependent on such replacement land for the continued pursuance of his profession or livelihood, or in performance of the tasks incumbent upon the owner, and

1. the beneficiary has land available which would be suitable as replacement land and does not require this land for the pursuance of his profession or livelihood or in performance of the tasks incumbent upon him, or
2. the beneficiary of expropriation, in the best judgement of the expropriation authority, is in a position to procure suitable replacement land privately and at reasonable terms, or
3. suitable land can be procured by expropriation under Section 90.

(2) Where compensation is set in the form of land, stipulation is to be made as to the use for which the land is to be utilised and the time limit within which the land is to be put to such use. Sections 102 and 103 apply.

(3) Under the preconditions set out in nos. 1 to 3 of para. 1 and on application by the owner, compensation is also to be set in the form of suitable replacement land when the land subject to expropriation contains a private residential building or a small housing estate. This does not apply in cases where [reduction of development](#) without compensation may be ordered at any time under public law regulations.

(4) On application by either the party subject to expropriation or the beneficiary of expropriation, compensation may be set wholly or partly in the form of replacement land where this form of compensation is deemed equitable by the expropriation authority after due weighting and consideration has been given to the public interest and to the interests of the parties involved, and the preconditions relating to the beneficiary of expropriation set out in nos. 1 to 3 can be met.

(5) In respect of the assessment of the value of the replacement land, Section 95 applies *mutatis mutandis*. Account may be taken of any rise experienced in the value of the remaining irremovable property owned by the

party affected by expropriation arising from acquisition of the replacement land over and above the value of that land under sentence 1. Where the replacement land is lower in value than the plot subject to expropriation, additional financial compensation is to be set to correspond to the difference in value. Where the replacement land is higher in value than the plot subject to expropriation, stipulation is to be made to the effect that the party entitled to compensation shall make a compensatory payment to the beneficiary of expropriation corresponding to the difference in value. Such a compensatory payment becomes due on the day fixed under Section 117 para. 5 sentence 1 of the implementing ordinance.

(6) Where compensation is fixed in the form of land, any real or personal rights to the land subject to expropriation which are not maintained shall, on application by the holder of such rights, be replaced either wholly or in part in accordance with Section 97 para. 2. Where this is not possible or not sufficient, the holders of rights are to receive a separate payment as financial compensation; this applies to the entitlements contained within Section 97 para. 4 only to the extent that their rights are not covered by additional financial compensation due to the owner under para. 5.

(7) Applications under paras. 1,3,4 and 6 are to be submitted to the expropriation authority in writing or declared for minuting; applications in cases covered by paras. 1,3 and 4 are due prior to the opening of the hearing, and those covered by para. 6 prior to its completion (Section 108).

(8) Where joint ownership, rights similar to real property rights or rights under the Condominium Act [Wohnungseigentumsgesetz] are equally suitable to allow the entitled person to continue in the pursuance of his profession or livelihood or in performance of the tasks incumbent upon him, the owner may be offered such rights instead of replacement land. An owner who refuses to accept compensation offered under sentence 1 is to receive financial compensation. Nothing here shall affect Section 101.

(9) Where an owner has a claim to replacement land under para. 1 or 3 and personally procures replacement land, or the rights referred to in para. 8, with the approval of the beneficiary of expropriation outside the expropriation proceedings, this owner may claim reimbursement from the beneficiary of expropriation for the necessary expenses incurred. The beneficiary of expropriation is only liable to make reimbursement to the extent that this saves him from incurring expenses. Where no agreement can be reached on reimbursement, adjudication is to be made by the expropriation authority; with regard to notification Section 122 applies *mutatis mutandis*.

### **Section 101 Compensation by the Granting of Other Rights**

(1) The owner of the land subject to expropriation may, on application and provided that this is equitable to the interests of other parties concerned, be offered compensation either wholly or in part

1. in the form of the granting or transfer of joint ownership to land, rights equivalent to real property rights, rights under the Condominium Act, other real rights to the property subject to expropriation or to some other property owned by the beneficiary of expropriation, or
2. by means of the transfer of ownership of a developed plot belonging to the beneficiary of expropriation, or
3. by means of the transfer of ownership of land owned by the beneficiary of expropriation on which a private house or small housing estate is to be built.

Where a difference in value exists between the rights under sentence 1 and the property subject to expropriation, Section 100 para. 5 applies *mutatis mutandis*.

(2) The application under para. 1 must be submitted to the expropriation authority in writing, or alternatively made orally for minuting prior to the completion of the hearing.

### **Section 102 Re-Expropriation**

(1) The former owner of the expropriated property may demand that the expropriated property be re-expropriated in his favour where and to the extent that

1. the beneficiary of expropriation or that person's heir at law does not utilise the expropriated property for the designated purpose of expropriation within the time-limits set (Section 113 para. 2 no. 3 and Section 114) or abandons this purpose prior to expiration of the term, or
2. the municipality has failed to meet its obligation under Section 89 to transfer ownership.

(2) Re-expropriation may not be demanded where

1. the person whose land was expropriated had himself acquired the land through expropriation in accordance with the provisions of this Act or of the Procurement of Building Land Act [Baulandbeschaffungsgesetz], or
2. expropriation proceedings have been initiated for the land in accordance with this Act in favour of another party prepared to build on the land, and the former owner of the expropriated land is unable to provide evidence of an intent to utilise the land for the required purpose within an appropriate period.

(3) The application for re-expropriation is to be submitted to the appropriate expropriation authority within two years of the claim arising. Section 203 para. 2 of the Civil Law Code applies *mutatis mutandis*. The application is no longer admissible where, in the cases cited in para. 1, the legitimate use has already been undertaken or where disposal or transfer of the property to a building lease has been initiated prior to the submission of the application.

(4) The expropriation office may refuse re-expropriation where the land has been significantly altered or where compensation wholly or substantially in the form of land has already been granted.

(5) The previous holder of a right which has been extinguished by expropriation under the provisions of this Act may, in accordance with the conditions contained in para. 1, demand that an equivalent right to the previously encumbered land be re-established in his favour by means of expropriation. The provisions relating to re-expropriation apply *mutatis mutandis*.

(6) The procedure is subject to Sections 104 to 122 as applicable.

### **Section 103 Compensation in the Case of Re-Expropriation**

Where an application for re-expropriation is approved, the applicant is liable to make compensation to the party aggrieved by such re-expropriation for any loss of a right. Section 93 para. 2 no. 2 does not apply. Where compensation for other property loss has been made to the applicant upon the initial expropriation, this compensation is to be repaid to the extent that such loss is reversed by the re-expropriation. The compensation to be made to the property owner must not exceed the standardised market value applicable on the initial expropriation; any expenses incurred which have resulted in an increase in the value of the property are to be taken into account. In all other cases the provisions on compensation contained in Subdivision Two have apply.

### **Subdivision Three The Expropriation Procedure**

#### **Section 104 The Expropriation Authority**

(1) Expropriation is administered by the higher administrative authority (the expropriation authority).

(2) The federal state governments may by legal ordinance involve honorary assessors in the decision-making process undertaken by the expropriation authority.

### **Section 105**

#### **The Application for Expropriation**

The application for expropriation is to be submitted to the municipality within whose territory the land subject to expropriation is situated. The municipality shall present the application to the expropriation authority with its comment within one month.

### **Section 106**

#### **Parties Involved**

(1) The parties involved in the expropriation procedure are:

1. the applicant,
2. the owner or those persons in whose favour a right to the land or to a right encumbering the land has been entered in the land register, or is secured by such an entry,
3. holders of rights to the land or to rights encumbering the land not entered in the land register, of claims with a right to satisfaction from the land or of a personal right entitling the holder to the acquisition, possession or use of the land, or which imposes restrictions on the use of the land,
4. where replacement land is provided, the owner and the holders of those rights mentioned in nos. 2 and 3 in respect of the replacement land,
5. the owners of land affected by expropriation under Section 91, and
6. the municipality.

(2) The persons described in para. 1 no. 3 become involved parties from the point at which they register their right with the expropriation authority. Registration may be made up to the termination of the hearing with the parties involved.

(3) Where doubts exist regarding a right which has been registered, the expropriation authority shall without delay set a period within which the person concerned shall substantiate this right. Should this period pass without such substantiation being forthcoming, the person concerned is to be excluded until such time as substantiation of the right is provided.

(4) The registered creditor of a mortgage or rent charge for which a bond has been issued, and any heir at law shall at the request of the expropriation authority make a declaration as to whether any other person has acquired the mortgage or rent charge or a right to it; the identity of the acquiring party is to be stated. Section 208 sentences 2 to 4 applies *mutatis mutandis*.

### **Section 107**

#### **Preparation for the Hearing**

(1) The expropriation procedure is to be carried out expeditiously. Prior to the commencement of the hearing, the expropriation authority shall take all necessary measures to ensure as far as is possible that the procedure can be completed in one session. The property owner, the applicant and those authorities affected by the expropriation are to be given the opportunity to make representations. In assessing the facts and circumstances the expropriation authority shall obtain an expert opinion from the committee of experts (Section 192) in cases where ownership is to be withdrawn or a building lease established.

(2) The expropriation authority shall hear the agricultural authority in those cases where agricultural land outside the plan area of a binding land-use plan is to be expropriated for purposes of compensation in the form of land.

(3) A number of expropriation procedures may be linked together and shall be linked on application by the municipality. Expropriation procedures which have been linked may later be separated.

### **Section 108**

### **Initiation of the Expropriation Procedure and Fixing the Date for the Hearing; Note of Expropriation**

(1) The expropriation procedure is initiated by setting a date for the hearing with the parties involved. The parties to be summoned to appear at the hearing are the applicant, the owner of the land affected, any other parties revealed by the land registry as having an interest, and the municipality. Summonses to appear at the hearing are to be served. The period of summons shall be one month.

(2) An expropriation procedure in favour of the municipality may be initiated where

1. the draft of a legally-binding land-use plan [Bebauungsplan] has been available for public inspection under Section 3 para. 2, and
2. negotiations have been conducted with the parties involved pursuant to Section 87 para. 2 and those **objections** lodged within the term set have been dealt with. The municipality may both conduct the negotiations in pursuance of Section 87 and deal with **objections** in one session.

The procedure is to be treated as a matter of urgency so that the decision on expropriation can be issued as soon as the land-use plan becomes legally binding. Agreement in the sense of Section 110 or Section 111 may be reached prior to the land-use plan becoming legally binding.

(3) The summons shall contain

1. indication as to the identity of the applicant and of the land affected,
2. the essential contents of the application for expropriation along with the information that the application and accompanying documentation are available for inspection at the offices of the expropriation authority,
3. the request that any objections to the application for expropriation should be lodged with the expropriation authority in writing or declared for minuting as far as possible prior to the hearing, and
4. advice that in the case of failure to attend, a decision may nonetheless be taken concerning the application for expropriation as well as any other applications to be dealt with within the procedure.

(4) Summonses to persons whose participation is based on an application for compensation in the form of land must contain, in addition to the contents described in para. 3, indication as to the identity of the owner on behalf of whom compensation in the form of land has been applied for, and of the land in respect of which compensation in the form of land is to be granted.

(5) Public notice of the initiation of the expropriation procedure is to be issued in the customary manner stating the land affected and the identity of the person registered at the land registry as the owner, as well as the first date scheduled for the hearing with the parties involved. This notice shall request all parties involved to exercise their rights at the latest during the hearing and advise these parties that in the case of failure to attend a decision may nonetheless be taken concerning the application for expropriation as well as any other applications to be dealt with within the procedure.

(6) The expropriation authority shall notify the land registry of the initiation of an expropriation procedure. It shall request that the land registry make an entry in respect of the land affected to the effect that an expropriation procedure has been initiated (note of expropriation); on the completion of the expropriation procedure, the expropriation authority shall request that the land registry remove the note of expropriation. The land registry shall notify the expropriation authority of all entries which have been or are made in the land register for the land affected subsequent to initiation of the expropriation procedure.

(7) Where an entry has been made in the land register ordering compulsory auction or sequestration, the expropriation authority shall inform the court competent for enforcement of the initiation of an expropriation procedure where this affects the land which is subject to enforcement.

### **Section 109 Requirement of Official Consent**

(1) Prior to giving notice of the initiation of an expropriation procedure, the legal processes, proposals and subdivisions mentioned in Section 51 require the consent in writing of the expropriation authority.

(2) The expropriation authority may only withhold consent where it has reason to believe that the legal process, proposal or subdivision might seriously impair realisation of the purpose for which expropriation is to be pursued, or render this purpose impossible.

(3) Where legal processes or proposals under para. 1 are to be expected prior to public notice being issued, the expropriation authority may order that the requirement of official consent under para. 1 take effect at an earlier time. Public notice of such an order is to be issued in the customary manner and the land registry is to be notified.

(4) Section 51 para. 2 and Section 116 para. 6 apply *mutatis mutandis*.

### **Section 110 Agreement**

(1) The expropriation authority shall strive to achieve agreement between the parties involved.

(2) Where the parties involved are able to reach agreement, the expropriation authority shall write minutes of the agreement. These minutes shall meet the requirements of Section 113 para. 2. They shall be signed by all the parties involved. A person empowered to represent the owner requires an officially authorised proxy.

(3) The certified agreement is equivalent to an indefeasible resolution to proceed with expropriation. Section 113 para. 5 applies *mutatis mutandis*.

### **Section 111 Partial Agreement**

Where the parties involved reach agreement only on the matter of transition or on the encumbrance of ownership of the land subject to expropriation, but not however on the level of compensation, Section 110 paras. 2 and 3 applies *mutatis mutandis*. The expropriation authority shall order the advance payment to the beneficiary of an amount equivalent to the anticipated compensation to the extent that this is not inconsistent with the agreement. Where agreement is not reached, the expropriation procedure shall continue.

### **Section 112 Adjudication by the Expropriation Authority**

(1) Where no agreement is reached, the expropriation authority passes a resolution based on the hearing on the application for expropriation, any other applications and on any objections which may have been raised.

(2) At the request of any party involved the expropriation authority shall make a preliminary adjudication regarding the transfer or encumbrance of ownership of the land subject to expropriation or on any other alterations to rights to be effected by the expropriation. In such a case the expropriation authority shall order the advance payment to the beneficiary of an amount equivalent to the anticipated compensation.

(3) Where the expropriation authority approves an application for expropriation, it shall decide at the same time on

1. which of the rights to the subject of expropriation held by the entitled persons as described in Section 97 are to be maintained,
2. the rights with which the subject of expropriation, the replacement land or any other land is to be encumbered,
3. what legal relations are established of a nature which grant rights of the type described in Section 86 para. 1 nos. 3 and 4,
4. the transfer of ownership or the expropriation of replacement land in the case of compensation in the form of replacement land.

### **Section 113 The Resolution on Expropriation**

(1) The resolution on expropriation is to be served upon all of the parties involved. This resolution shall contain information regarding legal redress with regard to the admissibility, form and time-limit for motions for a court ruling (Section 217).

(2) Where the expropriation authority approves the application for expropriation, the resolution (resolution on expropriation) shall in addition state

1. the persons affected by and the beneficiaries of the expropriation;
2. the other parties involved;
3. the purpose of expropriation and the period within which the land is to be utilised for the proposed purpose;
4. the subject of expropriation, in particular
  - a) where the ownership of land is the subject of expropriation, it shall describe the plot in terms of its size stating the designation attached to it in the land register, land survey and any other usual designation; where expropriation applies to a part of a plot, description of the land shall contain reference to land survey documents (land survey elevations and maps) produced by either a body authorised to conduct a continuous land survey or an officially appointed surveyor,
  - b) where some other right to a property is the subject of independent expropriation, it shall indicate the content of this right and state the designation given to it in the land register,
  - c) where the subject of independent expropriation is a personal right either entitling the holder to acquire, possess or use land or which imposes restrictions on the obligated parties in respect of their use of the land, then it shall indicate this right stating its content and the grounds for its existence,
  - d) the properties mentioned in Section 86 para. 2 where expropriation is extended to include these;
5. where the land is encumbered with a right, the nature and content of the right to the extent that this can be determined by contract, the status of the right, the entitled party and the plot;
6. in the case of the establishing of a right of the type mentioned in no. 4 c), the content of the legal relationship and the parties to it;
7. the status of ownership and other legal relations prior and subsequent to expropriation;
8. the type and level of compensation and the level of the compensatory payment under Section 100 para. 5 sentence 4 and Section 101 para. 1 sentence 2 stating by and to whom this payment is due; financial compensation out of which other parties aggrieved by the expropriation under Section 97 para. 4 are to be compensated shall be shown separately from other financial compensation;
9. in the case of compensation in the form of land, the land in question in the manner described in no. 1 a).

(3) In cases covered by Sections 111 and 112 para. 2, the resolution on expropriation is to be limited correspondingly.

(4) Where it is not yet possible to describe a part of a plot in accordance with para. 2 no. 4, the resolution on expropriation may designate it with reference to permanent features in nature or by reference to an entry in a ground plan. On the results of the land survey becoming available, the resolution on expropriation is to be adjusted by means of a supplementary resolution.

(5) Where the land register contains an entry ordering compulsory auction or sequestration, the expropriation authority shall notify the court of enforcement of the resolution on expropriation on the application for expropriation being given approval.

#### **Section 114 Time Limit for Use**

(1) The time-limit within which the purpose of expropriation under Section 113 para. 2 no. 3 is to be realised commences on the alteration of the right becoming effective.

(2) The expropriation authority may on request extend this period prior to its termination where

1. the beneficiary of expropriation is able to demonstrate that, on grounds for which he cannot be held responsible, he is unable to satisfy the purposes for which expropriation was granted within the period allowed, or
2. universal succession occurs prior to the expiration of the period and the heir at law demonstrates that he is unable to satisfy the purposes for which expropriation was granted within the period allowed.

The former owner prior to expropriation is to be heard before a decision on such an extension is taken.

### **Section 115** **Procedure for Compensation by the Granting** **of Other Rights**

(1) Where compensation to an owner of land subject to expropriation is to be set in accordance with Section 101, and at the time at which the resolution on expropriation is issued it is not yet possible to establish, transfer or assess the value of any of the rights mentioned therein, the expropriation authority may, at the request of the owner stating the right in question, include in the resolution on expropriation, in addition to its ruling on the level of financial compensation due, an order requiring the beneficiary of expropriation within a defined period to offer to the party aggrieved by expropriation on reasonable terms and conditions a right of the type mentioned.

(2) Where the beneficiary of expropriation fails to offer a right of the type mentioned within the defined period, or is not able to reach an agreement with the party aggrieved by expropriation, such a right shall on request be withdrawn from him by means of expropriation in favour of the party aggrieved by expropriation. The expropriation authority shall determine the content of the right to the extent that its content can be settled by agreement. The provisions of this Part regarding procedure and compensation apply *mutatis mutandis*.

(3) An application under para. 2 may only be made within six months of the expiration of the defined period.

### **Section 116** **Putting in Possession Before Completion of the Procedure**

(1) Where immediate execution of the proposed measure is urgently required for reasons of public welfare, the expropriation authority may on request resolve to put the applicant in possession of the land affected by the expropriation procedure. Putting the applicant in possession is only admissible where negotiations on this matter have been conducted in a hearing. The resolution on putting the applicant in possession is to be served upon the applicant, the owner and the person in immediate possession. Possession takes effect at the time appointed by the expropriation authority. At the request of the person in immediate possession, this date is to be set at not less than two weeks from his receipt of the order on possession before completion.

(2) The expropriation authority may make possession before completion dependent on the lodging of a security equivalent in value to the anticipated compensation and on the prior satisfaction of other conditions. At the request of the holder of a right entitling the holder to use or possession of the land, possession is to be made dependent on the lodging of a security equivalent in value to the anticipated compensation due to him. This order is to be served upon the applicant, the person in possession and the owner.

(3) In granting possession, possession is withdrawn from the person previously in possession and vested in the person who is placed in possession. The party placed in possession may proceed with the development described in the application for expropriation on this land and take whatever measures are required to this end.

(4) The party in whom possession is vested is obliged to make compensation in respect of any property loss resulting from possession before completion to the extent that such loss is not offset by interest on the financial compensation (Section 99 para. 3). The type and level of compensation due is set by the expropriation authority no later than in the resolution mentioned in Section 113. Where a resolution on the type and level of compensation is issued prior to this, it is to be served upon the persons mentioned in para. 2 sentence 3. Compensation for the taking of possession is due on the date stipulated in para. 1 sentence 4 irrespective of whether a motion has been lodged for a court ruling.

(5) At the request of any of the persons mentioned in para. 2 sentence 3, the expropriation authority shall order a written record to be made of the condition of the land prior to expropriation, to the extent that the condition is of relevance to compensation for possession or expropriation. The parties involved shall each be sent a copy of the record.

(6) Where the application for expropriation is turned down, possession before completion shall be reversed and the person previously in immediate possession reinstated in possession. The party in whom possession before completion had been vested is liable for compensation in respect of any harm suffered as a consequence of being put in possession before completion. Para. 4 sentence 2 applies *mutatis mutandis*.

### **Section 117** **Execution of the Resolution of Expropriation**

(1) Once the resolution on expropriation or the decision under Section 112 ceases to be defeasible, the expropriation authority shall, at the request of any of the parties involved, order the execution of the resolution on expropriation or of the preliminary ruling (order of execution) when the beneficiary of expropriation has rendered the financial compensation, or in the case of a preliminary ruling under Section 112 para. 2 sentence 2 the advance payment, or has deposited it in a permissible manner renouncing any right of redemption. At the request of the party entitled to compensation, the expropriation authority may, in cases covered by Section 112 para. 2, make the order of execution dependent on the beneficiary of expropriation providing other security for an appropriate amount.

(2) In those cases covered by Section 111, the order of execution shall, at the request of any of the parties involved, be issued once the beneficiary of expropriation has paid the undisputed amount of compensation agreed among the parties involved, or has deposited this amount in a permissible manner renouncing any right of redemption. Para. 1 sentence 2 applies *mutatis mutandis* to the extent that this is not inconsistent with what has been agreed upon.

(3) Where Section 113 para. 4 applies, the order of execution is to be issued at the request of any involved party at such time as the beneficiary of expropriation has made the financial compensation set in the resolution on expropriation in conjunction with the supplementary resolution, or has deposited the amount in a permissible manner renouncing any right of redemption. The supplementary resolution need not be indefeasible.

(4) The order of execution is to be served upon all involved parties whose legal position is affected by the resolution on expropriation. A copy of the order of execution is to be sent to the municipality in whose territory the land subject to expropriation is situated. Section 113 para. 5 applies *mutatis mutandis*.

(5) On the day designated in the order of execution the previous legal status is superseded by that settled in the resolution on execution. Simultaneously the legal relations established under Section 113 para. 2 no. 6 come into being; these apply from this point on as agreed among the parties to the legal relationship.

(6) The order of execution includes the putting in possession of the expropriated land and of the replacement land on the day designated.

(7) The expropriation authority shall convey to the land registry a certified copy of the resolution on expropriation and of the order of execution with the request that these alterations of rights be entered in the land register.

### **Section 118** **Deposits**

(1) Compensation in the form of money for the satisfaction of those with claims under Section 97 para. 4 is to be deposited with no right of redemption where a number of persons hold a claim and no agreement on payment can be demonstrated. The deposit is lodged with the local court [Amtsgericht] in whose district the land subject to expropriation is situated. Section 2 of the Compulsory Auctioning of Immovable Property Act [Zwangsvorsteigerungsgesetz] applies *mutatis mutandis*.

(2) Nothing here shall affect any other regulations under which depositing is either required or permissible.

### **Section 119**

#### **The Distribution Procedure**

(1) With the commencement of the new legal status, any involved party may assert his claim to the money deposited against any other involved party who disputes the former's entitlement in the law courts, or may apply for the initiation of a distribution procedure by the court.

(2) Jurisdiction for distribution procedures lies with the local court in whose district the land subject to expropriation is situated; in case of doubt Section 2 of the Compulsory Auctioning of Immovable Property Act applies *mutatis mutandis*.

(3) Distribution procedures are governed *mutatis mutandis* by the provisions for the distribution of proceeds subsequent to compulsory auction subject to the following deviations:

1. distribution procedures shall be opened by means of a resolution;
2. service of the opening resolution upon the applicant shall be regarded as seizure within the meaning of Section 13 of the Compulsory Auctioning of Immovable Property Act; where the land has already been seized within the course of compulsory auction or sequestration, no further action shall be taken;
3. at the commencement of a procedure the court competent for distribution shall request ex officio of the land register the notification as described under Section 19 para. 2 of the Compulsory Auctioning of Immovable Property Act; the certified extract from the land register shall show all entries existing at the time of the resolution on expropriation being served on the party subject to expropriation, as well as any later alterations or deletions;
4. account shall be taken in the course of the procedure of the parties mentioned under Section 97 para. 4 as entitled to compensation in accordance with Section 10 of the Compulsory Auctioning of Immovable Property Act; this shall, however, end with the lodging of the deposit in view of claims to additional recurring payments.

(4) To the extent that distribution of the proceeds from compulsory auction is, under federal state law, a matter not for the court of enforcement, but for some other body, this other body may be deemed under federal state law to be competent for distribution in accordance with paras. 1 to 3. Where this body is called upon to revise a decision, adjudication by the court of enforcement shall be sought. Any complaint shall be against the adjudication of the court of enforcement.

### **Section 120**

#### **Revocation of the Resolution on Expropriation**

(1) Where the execution order has not yet been issued, the expropriation authority shall on request revoke the resolution on expropriation, should the beneficiary of expropriation fail to make the payments required of him in the resolution on expropriation within one month of the resolution becoming infeasible. The right to make an application exists for each involved party to whom due compensation has not been paid, or whose claim is to be satisfied from a payment under Section 97 para. 4.

(2) Before revocation takes place, the beneficiary of expropriation shall be heard. The resolution on revocation shall be served on all parties involved and copies sent to the municipality and to the land registry.

### **Section 121**

#### **Costs**

(1) In the case of the application for expropriation being rejected or withdrawn, the costs are to be borne by the applicant. Where the application for expropriation is granted, the costs fall to the party liable to make compensation. Where an application for re-expropriation is granted, the costs shall be borne by the party affected by re-expropriation. In the case of an application lodged by any other involved party being rejected or withdrawn, and the application being obviously without foundation, costs incurred in dealing with the application shall be imposed on the applicant.

(2) Costs are procedural costs and the necessary and relevant expenditure incurred by involved parties in prosecuting or defending the action. Fees and expenses in respect of lawyers and any other authorised representatives qualify for reimbursement where legal counsel has been necessary. Where no statutory provision exists for fees and expenses, expenditure on legal representation can be reimbursed only up to the amount set for statutory fees and expenses for legal counsel.

(3) Expenditure incurred as a consequence of negligence on the part of a party entitled to reimbursement shall be borne by that party; a represented party is liable for negligence on the part of his representative.

(4) Procedural costs are subject to regulations under federal state law. The expropriation authority shall fix the costs in the resolution on expropriation or by means of a separate resolution. The resolution shall in addition deem whether the appointment of a lawyer or other legal representative was necessary.

### **Section 122 Enforceable Title**

(1) Sequestration pursuant to the provisions of the Code of Civil Procedure on the enforcement of judgements in civil disputes takes place

1. on the basis of the written record of an agreement in respect of the requirements contained therein;
2. on the basis of an indefeasible resolution on expropriation in respect of the financial compensation or compensatory payment due;
3. on the basis of a resolution on possession before completion or its revocation in respect of the compensatory action required therein.

Sequestration in respect of a compensatory payment becomes admissible only on the execution order taking effect and becoming indefeasible.

(2) The enforceable transcript is conferred by the authenticating official of the local court [Amtsgericht] in whose district the expropriation authority is located, and, where the procedure is pending at a court, by the authenticating official of that court. In cases under Sections 731, 767 to 770, 785, 786 and 791 of the Code of Civil Procedure the local court in whose district the expropriation authority is located replaces the trial court.

## **Part Six Provision of Local Public Infrastructure**

### **Subdivision One General Provisions**

#### **Section 123 Responsibility for the Provision of Local Public Infrastructure**

(1) Responsibility for the improvement of land by the provision of local public infrastructure and road access rests with the municipality unless this duty is incumbent on some other body under other statutory provisions or other obligations under public law.

(2) Improvements shall be undertaken [at a reasonable cost](#) to meet the requirements of the development and of traffic and be available for use no later than on the completion of the physical structures to be serviced .

(3) No legal claim exists to provision of local public infrastructure.

(4) The maintenance of local public infrastructure is subject to provisions under federal state law.

### **Section 124 Infrastructure Contract**

(1) The municipality may by contract delegate the provision of local public infrastructure to a third party.

(2) The subject of such an infrastructure contract may be those infrastructure installations within an area specified for land improvement, irrespective of whether they qualify under federal or state law for the collection of recoupment charges. The third party may assume an obligation vis-à-vis the municipality to bear the costs of providing infrastructure either wholly or in part; this shall apply irrespective of whether the said infrastructure installations qualify under federal or state law for the collection of recoupment charges. Section 129 para. 1 sentence 3 shall not apply.

(3) Obligations agreed upon by contract must be proportionate to the overall circumstances and must be related materially to the improvement of land by the provision of infrastructure. Where a municipality has issued a binding land-use plan in accordance with Section 30 para. 1 and rejects a reasonable offer from a third party to provide the infrastructure scheduled within the binding land-use plan, the municipality shall itself be liable to provide the infrastructure.

(4) The infrastructure contract must be made in writing unless regulations exist to prescribe some other form.

### **Section 125 Ties to the Legally Binding Land-Use Plan**

(1) The provision of local public infrastructure within the meaning of Section 127 assumes the existence of a legally binding land-use plan.

(2) Where no such legally binding land-use plan exists, this infrastructure may only be provided **if it meets the requirements laid down in Section 1 paras. 4 to 6**. This does not apply in the case of infrastructure within built-up areas for which the preparation of a legally binding land-use plan is not required. Permission may only be refused where construction of the infrastructure contravenes the requirements of Section 1 para. 4 to 6.

(3) The legality of the provision of local public infrastructure is not affected by deviations from the provisions of the binding land-use plan, provided that such deviations are compatible with the basic principles of the development, and

1. the local public infrastructure falls short of the said provisions, or
2. those parties liable to pay charges for the recoupment of public money spent on local public infrastructure are not burdened with higher costs than would have been the case had construction been in accordance with the binding land-use plan, and the deviations do not substantially impair use of the land affected.

### **Section 126 Duties of the Owner**

(1) The owner shall tolerate on his land the erection of

1. fixtures and supply lines for street lighting including streetlamps and accessories, and
2. identification plates and signs for local public infrastructure.

The owner shall be given advance notification.

(2) The body charged with the provision of local public infrastructure is responsible for repairs in respect of damage suffered by the owner in the course of erecting or removing the objects mentioned in para. 1; reparation may be made in the form of suitable financial compensation. Where no agreement can be reached on the level of compensation to be paid, the matter shall be adjudicated on by the higher administrative authority; the parties involved shall be heard prior to a decision being taken.

(3) The owner shall display on his property the number assigned by the municipality. Any other matters are subject to provisions under federal state law.

### **Subdivision Two**

## **Recoupment Charges for Local Public Infrastructure**

### **Section 127**

#### **The Collection of Recoupment Charges**

(1) Municipalities shall collect charges for the recoupment of otherwise unrecoverable public expenditure on local public infrastructure in accordance with the following provisions.

(2) Local public infrastructure for the purposes of this Subdivision shall comprise

1. public roads, paths and public spaces scheduled for development;
2. public thoroughfares within specific land-use areas [Baugebiete] which, for either legal or physical reasons, are not accessible to motorised vehicles (e.g. footpaths, walk-ways in residential developments);
3. collecting roads [Sammelstraßen] within specific land-use areas; collecting roads routes are public roads, paths and spaces which are themselves not scheduled for building, but which are necessary to provide access to areas of development;
4. parks and green spaces, excluding children's playgrounds, to the extent that these form part of the thoroughfares included under nos. 1 to 3, or are required in accordance with principles of urban development to service specific land-use areas;
5. physical structures to provide protection in specific land-use areas against harmful environmental influences within the meaning of the Federal Control of Pollution Act [Bundes-Immissionsschutzgesetz], also where these do not form part of the local public infrastructure.

(3) The recoupment charge may be collected separately in respect of land purchase, groundworks and for individual components of the land improvement provision (cost splitting).

(4) Nothing in this Act shall affect the right to collect a charge for physical structures which do not form part of the local public infrastructure within the meaning of this Subdivision. This applies in particular in respect of structures for sewerage and electricity, gas, heat and water supply.

### **Section 128**

#### **The Extent of Expenditure on Local Public Infrastructure**

(1) Expenditure on local public infrastructure within the meaning of Section 127 comprises costs in respect of

1. the acquisition and preparation of spaces for local public infrastructure;
2. initial construction including installations for drainage and illumination;
3. the adoption of existing structures as part of the municipal local public infrastructure.

Expenditure on local public infrastructure also includes the value of land made available by the municipality from its own resources assessed at the time at which this land is made available. In cases where allocation is subject to recoupment charges within the meaning of Section 57 sentence 4 and Section 58 para. 1 sentence 1, costs for the acquisition of land for local public infrastructure shall also include the value under Section 68 para. 1 no. 4.

(2) Nothing in this Act shall affect any rights municipalities may have under federal state law to collect contributions towards the costs in respect of extensions and enhancements to local public infrastructure. The federal states may determine that costs relating to the illumination are not to be included as part of the expenditure on local public infrastructure.

(3) Expenditure on local public infrastructure does not include the cost of

1. bridges, tunnels and underpasses and accompanying ramps;
2. the carriageways of federal highways [Bundesstraßen] or of Grade I and Grade II minor roads traversing municipal areas, where the carriageways of these roads do not need to be any wider than in the open stretches of land they also traverse.

### **Section 129 Legitimate Recoupment Charges**

(1) Charges may only be collected for the recoupment of otherwise unrecoverable expenditure on local public infrastructure where the land improvement thus achieved is essential to allow the relevant building land or spaces scheduled for commercial use to be utilised in accordance with the existing regulations under building law (legitimate recoupment charges). Where infrastructure within the meaning of Section 127 para. 2 has been constructed by the property owner, or is required by him under building law regulations, charges are not to be collected. At least 10 per cent of the legitimate charges for land improvements are to be borne by the municipality.

(2) Any costs previously incurred by the owner or his predecessor in title in respect of public infrastructure measures shall not be charged again on their adoption as part of municipal infrastructure.

### **Section 130 Assessment of Legitimate Recoupment Charges**

(1) Legitimate recoupment costs may be assessed on the basis either of costs actually incurred or of standard rates. Standard rates are to be determined on the basis of the average costs customarily incurred in the municipality in respect of comparable local public infrastructure.

(2) The legitimate recoupment charges may be assessed for an individual unit of infrastructure or for particular sections of a unit of infrastructure. Sections of an infrastructure unit may be defined in terms of locally familiar features or with reference to legal criteria (e.g. the boundaries of the plan areas of legally binding land-use plans, reallocation areas, formally designated redevelopment areas). In the case of a number of structures combining to form a single unit for the servicing of several plots, recoupment charges may be assessed in total.

### **Section 131 Criteria for the Allocation of Recoupment Charges**

(1) The legitimate recoupment charge for a unit of local public infrastructure shall be spread over the plots serviced by this infrastructure. In assessing shared recoupment charges for one unit of infrastructure (Section 130 para. 2 sentence 3) and determining the individual allocation of recoupment charges, land which is multiply serviced shall only be subject to one charge.

(2) The criteria for allocating charges shall be

1. the type and extent of use for building or otherwise;
2. plot area;
3. the width of the plot adjacent to the infrastructure facility.

The criteria for allocating charges may be linked.

(3) In the case of areas serviced subsequent to the Federal Building Act [Bundesbaugesetz] coming into force, and where a divergent use of the land either for building or for other purposes is permissible, the criteria contained in para. 2 shall be applied in accordance with the variety of uses in respect of type and extent.

### **Section 132 Regulation by Statute**

Municipalities shall regulate by statute

1. the type and extent of local public infrastructure within the meaning of Section 129,
2. the manner of assessment and allocation of recoupment charges and the level of the standard rate,

3. cost-splitting (Section 127 para. 3), and
4. the characteristics for the final construction of a public infrastructure facility.

### **Section 133**

#### **The Subject and Commencement of the Duty to Make Recoupment Charges**

(1) The duty to make recoupment charges applies in respect of land designated for use for building or for commercial purposes from the point when this land is permissible for it to be either built on or put to commercial use. Serviced land which has not been designated for use for building or for commercial use is subject to the collection of recoupment charges where it is held to be building land and has been released for development in accordance with ordered development in the municipality. The municipality shall announce what land is subject to recoupment charges under sentence 2; such an announcement does not have the effect of establishing a right.

(2) The duty to make recoupment charges takes effect on the completion of public infrastructure facilities, and, in the case of instalments, on the completion of the measure in respect of which each instalment is due. In the case of Section 128 para. 1 sentence 1 no. 3, the duty to make recoupment charges takes effect on adoption by the municipality.

(3) Advance payment of recoupment charges **up to a level equivalent to the anticipated final recoupment charge** may be required in the case of land in respect of which a duty to make recoupment charges has not yet, or not to the full extent taken effect, and where permission has been granted for a proposed development on the land, or construction of the public infrastructure facilities **can be expected to be completed within a period of four years**. Any advance payment shall be credited against the final amount due, even where a party who makes such a payment is under no obligation to make recoupment charges. Where the duty to make recoupment charges does not take effect within six years of the issuing of a demand for advance payment, and the public infrastructure facility has not been completed, the said payment may be reclaimed. The amount reclaimed is subject to the payment of interest at 2 per cent per annum above the Deutsche Bundesbank's discount rate, calculated from the date on which advance payment was made. The municipality may make provisions for the anticipatory payment of recoupment charges in full prior to the duty to make such charges taking effect.

### **Section 134**

#### **Liability to Render Recoupment Charges**

(1) Liability rests with whoever is the owner of the land in question at such time as the demand for payment is issued. In the case of land encumbered with a building lease, it is the tenant under the building lease rather than the owner who liable for payment. Where liability extends to a number of individuals, these are jointly and severally liable; in the case of part-ownership or where ownership extends to an individual private flat in a multiple-unit, the individual owners and part-owners are liable in proportion to their share in the ownership of the property.

(2) The charge rests on the property as a public charge: in the case of para. 1 sentence 2 on the building lease, and in the case of para. 1 sentence 3 on the part-ownership or condominium.

### **Section 135**

#### **Due Date and Payment**

(1) Payment of the charge is due one month subsequent to the issuing of the demand for payment.

(2) The municipality may in individual cases permit the recoupment charge to be paid in instalments or in the form of an annuity, where such action would prevent undue hardship, in particular where this is required to allow the realisation of a permitted building development to go ahead. Where the financing of a development has been secured, the schedule for payment shall be aligned with the funds becoming available, but shall not extend beyond two years.

(3) Where the municipality permits payment in the form of an annuity pursuant to para. 2, the recoupment payment shall by notification be transformed into a debt to be paid off in no more than ten annual instalments. The notification shall indicate the amount set for annual payments and the date on which payment is due. The balance due is subject to annual interest calculated at no more than 2 per cent above the Deutsche Bundesbank's discount rate. The annual payments are equivalent to recurrent payments within the meaning of Section 10 para. 1 no. 3 of the Compulsory Auction of Immovable Property Act [Zwangsversteigerungsgesetz].

(4) Where the land concerned is under agricultural or forestry use, the charge shall be deferred without interest until such time as the land is required to be put to use in order to preserve the economic functioning of the agricultural operation. Clause 1 also applies in cases of surrender of use [Nutzungsüberlassung] and the transfer of a business to family-members within the meaning of Section 15 of the tax code [Abgabenordnung].

(5) In individual cases the municipality may decide to refrain from collecting the recoupment charge, either in part or in total, where this is deemed to be in the public interest, or in order to prevent the creation of undue hardship. Provision may also be made for exemption from payment in cases where the duty to make recoupment charges has not yet taken effect.

(6) Nothing in this Act shall affect more far-reaching provisions on equity under federal state law.

## **Part Seven Nature Conservation Measures**

### **Section 135a Duties on Developers; Implementation by the Municipality; Reimbursement**

(1) Measures designated for counterbalancing purposes within the meaning of Section 1a para. 3 shall be implemented by the developer.

(2) To the extent that counterbalancing measures at other locations are assigned to plots pursuant to Section 9 para. 1a, the municipality shall implement such measures in place of and at the expense of the developers or owners of the plots and also make available the land required for this purpose where this cannot be secured in any other way. Counterbalancing measures may be carried out prior to construction and to formal assignment.

(3) Costs may be claimed as soon as the plots on which intrusions are to be expected are rendered available for use for building or for commercial purposes. The municipality shall levy a reimbursement charge to cover the costs incurred in respect of counterbalancing measures including the supply of land required for this purpose. Reimbursement becomes due on completion of the counterbalancing measures by the municipality. The respective amount rests on the plot as a public charge.

(4) Regulations on local-authority charges, including provisions on equity, issued under state law shall apply *mutatis mutandis*.

### **Section 135b Criteria for Cost-Sharing**

To the extent that the municipality implements counterbalancing measures pursuant to Section 135a para. 2, the costs shall be apportioned to the corresponding plots. The criteria for cost-sharing shall be

1. the site occupancy index,
2. the permitted building area,
3. the extent of anticipated coverage by development,
4. the severity of the anticipated intrusion.

The cost-sharing criteria may be combined.

### **Section 135c**

### **The Right to Enact Statutes**

The municipality may adopt statutes to govern

1. general principles on the nature and characteristics of counterbalancing measures equivalent to the designations of a binding land-use plan,
2. the extent of the reimbursement provided under Section 135a; this shall be subject to Section 128 para. 1 sentence 1 nos. 1 and 2 and sentence 2 as applicable,
3. the procedure for calculating costs and the level of the standard rates pursuant to Section 130,
4. cost-sharing as provided under Section 135b including generalised appraisals of degrees of severity of the anticipated intrusion according to types of biotope and types of use,
5. preconditions for demands for prepayment,
6. the time at which reimbursement becomes due.

**CHAPTER TWO**  
**Special Urban Planning Legislation**

**Part One**  
**Urban Redevelopment Measures**

**Subdivision One**  
**General Provisions**

**Section 136**  
**Urban Redevelopment Measures**

(1) Redevelopment measures in town and country planning, for which the public interest requires consistent preparation and speedy execution, are prepared and carried out in accordance with the regulations contained in this Part.

(2) Urban redevelopment measures are those measures by means of which an area is substantially improved or transformed with the purpose of alleviating urban deficits. Deficits in respect of urban development occur where

1. in its existing state of physical development or condition, an area fails to meet the general needs of the people living or working within it in respect of healthy living and working conditions and general safety, or
2. an area is seriously impaired in its ability to meet the requirements placed on it as a consequence of its position and function.

(3) In judging whether deficits in urban development exist in either an urban or a rural area, special consideration is to be given to the following:

1. the living and working conditions and the general safety of the people living and working in the area with regard to
  - a) ventilation in housing and work-places and their exposure to light and sunshine,
  - b) the structural condition of buildings, housing and work-places,
  - c) access to plots,
  - d) the effects of the existing mix of housing and commercial properties,
  - e) the use made of developed and undeveloped spaces in terms of type, extent and condition,
  - f) the impact emanating from properties, commercial premises, institutions or from transport structures, in particular noise, pollution and vibration,
  - g) existing public infrastructure;
2. the ability of the area to function in respect of
  - a) moving and stationary traffic,
  - b) the economic situation and the potential of the area for development taking account of its supply function within a wider network,
  - c) the level of infrastructure provision and amenity in the area, the existence of green spaces, sports facilities and playgrounds and public amenities in particular with regard to the social and cultural responsibilities of this area within a wider network.

(4) Urban redevelopment measures are undertaken in the interests of public welfare. Their purpose is to contribute towards

1. the development of built structure throughout the Federal Republic of Germany in accordance with social, hygienic, economic and cultural requirements,
2. supporting improvements to the economic and agricultural structure of the country,
3. ensuring that the settlement pattern meets the requirements of protecting the environment, and the demands of providing healthy living and working conditions for the present population and in the future, or
4. towards preserving, renewing or developing existing local urban districts, improving the town- and landscape and satisfying the need to preserve buildings of historical importance.

Conflicting public and private interests are to be weighed against each other and given fair consideration.

#### **Section 137**

#### **Participation and Involvement by Parties Affected**

Redevelopment measures shall be explained to and discussed with property owners, leaseholders, tenants and any other parties affected at the earliest possible opportunity. Parties affected shall be encouraged to involve themselves throughout the process of rehabilitation and the implementation of the physical measures required for redevelopment, and shall be given every possible assistance.

#### **Section 138**

#### **Duty to Provide Information**

(1) Owners, tenants, leaseholders and any other persons authorised to possess or use a plot, a building or part of a building, and their agents, are obliged to provide the municipality or its agents with any information on any matters which may be necessary in order to assess an area's need for redevelopment and to prepare and execute redevelopment measures. Personal data may be gathered in particular with reference to the economic and social circumstances under which an affected party lives, specifically information relating to occupation, employment and family status, age, housing requirements, social relations and local ties.

(2) The personal data collected under para. 1 may only be used for purposes of redevelopment. Where such data is gathered by an agent acting on behalf of the municipality, the data may only be made available to the municipality; the municipality is empowered to pass on this data to other agents within the meaning of Section 157 and to the higher administrative authority where this is required for purposes of redevelopment. On the termination of the formal designation of an area as a redevelopment area, the data shall be destroyed. Where the data collected is required for taxation purposes, it may be made available to the taxation authorities.

(3) Agents charged with collecting the data shall on the commencement of their duties pledge to be bound by para. 2. This obligation shall extend beyond the cessation of their employment.

(4) Where a party who is obligated to provide information under para. 1 refuses to provide such information, Section 208 sentences 2 to 4 on warnings on the imposition of penalty payments shall apply *mutatis mutandis*. The party obliged to provide information may refuse to answer those questions where an answer might place him, or any relative within the meaning of Section 383 para. 1 nos. 1 to 3 of the Code of Civil Procedure, at risk of criminal proceedings or of action under the Administrative Offences Act [Gesetz über Ordnungswidrigkeiten].

#### **Section 139**

#### **Participation and Involvement of Public Agencies**

(1) Each within its respective jurisdiction, the federal authorities, including their statutory separate estates, the federal states, the associations of municipalities and other corporations, bodies and foundations under public law shall support the preparation and execution of redevelopment measures as part of urban development.

(2) The provisions under Section 4 on the participation and involvement of public agencies apply accordingly. Public agencies shall in addition notify municipalities of any alterations to their intentions.

(3) Where an alteration is intended in respect of the aims and purposes of redevelopment or of co-ordinated measures and plans to be undertaken by public agencies, the parties concerned shall consult with each other without delay.

(4) (repealed)

## **Subdivision Two Preparation and Execution**

### **Section 140 Preparation**

The preparation of redevelopment measures is the responsibility of the municipality; it comprises

1. preparatory investigations,
2. the formal designation of the redevelopment area,
3. determining the aims and purposes of redevelopment,
4. urban planning measures; this may include urban land-use planning [Bauleitplanung] or framework development planning as required by the redevelopment,
5. discussion and explanation of the proposed redevelopment,
6. the preparation and forward projection of the social plan,
7. [individual infrastructural measures undertaken for public order purposes and also constructional measures to be executed prior to the formal designation of the redevelopment area.](#)

### **Section 141 Preparatory Investigations**

(1) Prior to the formal designation of the redevelopment area, the municipality shall conduct or commission such preparatory investigations as are needed in order to procure the documentation required to arrive at an assessment of the need for the redevelopment, the social, structural and urban planning conditions and context, the general aims to be pursued and the general feasibility of the redevelopment. The preparatory investigations shall also extend to cover any negative impact which may be anticipated for persons directly affected by the redevelopment with regard to the economic and social circumstances of their lives.

(2) Preparatory investigations may be dispensed with where sufficient documentation already exists for assessment.

(3) The municipality shall initiate preparation of redevelopment measures by adopting a resolution on the commencement of preparatory investigations. Public notice of this resolution shall be issued in the customary manner. This notice shall draw attention to the duty to provide information under Section 138.

(4) [On the issuing of public notice in the customary manner of the resolution on the commencement of preparatory investigations, Sections 137, 138 and 139 on the participation and involvement of parties affected, on the duty to provide information and the participation and involvement of public agencies shall have application; from this point on Section 15 shall apply \*mutatis mutandis\* in respect of the implementation of a development project within the meaning of Section 29 para. 1 and of the removal of a physical structure. On formal designation of the redevelopment area any official notice of the postponement of a building application or of the postponement of the removal of a physical structure pursuant to sentence 1 second clause is rendered inoperative.](#)

### **Section 142 The Redevelopment Statute**

(1) The municipality may by resolution formally designate an area in which a redevelopment measure within urban development is to be implemented as a Redevelopment Area (formally designated redevelopment area). This area is to be demarcated in such a way as to allow the speedy execution of the redevelopment measure. Individual plots of land not affected by the redevelopment measure may be wholly or partly excluded from the redevelopment area.

(2) Where land outside the formally designated redevelopment area proves to be required

1. for replacement buildings or replacement installations to reaccommodate residents and businesses from the formally designated redevelopment area as a cohesive unit, or
2. for public amenities required as a result of or consequentially to the redevelopment

in order to implement the aims and purposes of redevelopment (replacement and supplementary land), the municipality may formally designate suitable land for this purpose. Formal designation and the ensuing impact are subject to the same provisions as apply in the case of formally designated redevelopment areas.

(3) The municipality shall adopt the resolution on the formal designation of the redevelopment area as a statute (redevelopment statute). The redevelopment statute shall identify the redevelopment area.

(4) The redevelopment statute shall exclude the application of the provisions contained in Subdivision Three where this is not required for the implementation of the redevelopment and where execution would in all probability not be impaired by such exclusion (simplified [redevelopment](#) procedure); in this case the redevelopment statute may additionally make a provision to exclude the requirement of consent under Section 144 passim, Section 144 para. 1 or Section 144 para. 2.

### **Section 143** **Public Notice of the Redevelopment Statute,** **Entry of the Note of Redevelopment**

(1) Public notice shall be issued of the redevelopment statute in the customary manner. [The municipality may advertise in the customary manner the fact that a redevelopment statute has been adopted; Section 10 para. 3 sentences 2 to 5 applies \*mutatis mutandis\*. Attention shall be drawn in the notice issued pursuant to sentences 1 and 2 – except where the simplified redevelopment procedure applies – to the provisions contained in Subdivision Three. The redevelopment statute becomes legally binding on being advertised.](#)

(2) The municipality shall notify the land registry of the redevelopment statute on its becoming legally binding, listing the individual plots affected by the redevelopment statute. The land registry shall make entries in the land register in respect of the plots concerned stating that redevelopment is to take place (note of redevelopment). Section 54 paras. 2 and 3 applies *mutatis mutandis*. Clauses 1 to 3 do not have application where the requirement of consent has been excluded from the redevelopment statute under Section 144 para. 2.

### **Section 144** **Development Projects and Legal Procedures** **Requiring Permission**

(1) Within a formally designated redevelopment area, written permission is required from the municipality in respect of

1. development projects and other measures described in Section 14 para. 1;
2. any agreements entered into to create or extend a contractual agreement under the law of obligations on the use or utilisation of a plot, building or part of a building for a stipulated period of more than one year.

(2) Within a formally designated redevelopment area, written permission is required from the municipality in respect of

1. transactions for the disposal of land and the establishing and disposal of a building lease;

2. the establishment of any right encumbering the land; this does not apply in the case of any right established in connection with building measures within the meaning of Section 148 para. 2;
3. a contractual agreement under the law of obligations establishing an obligation in respect of one of the transactions mentioned in nos. 1 and 2; where consent has been granted for a contractual agreement, consent is to be regarded as extending to the real transaction conducted in the execution of this agreement;
4. the establishing of, modification to or revocation of a public easement;
5. the subdivision of a plot.

(3) For certain cases the municipality may grant general consent in respect of the designated redevelopment area or parts thereof; public notice is to be issued of this in the customary manner.

(4) Consent is not required for

1. development projects and legal procedures where the municipality or the agency charged with the implementation of the redevelopment is involved as the owner or as a party to the contract on behalf of a property held in trust;
2. legal procedures under para. 2 nos. 1 to 3 for the purpose of anticipating statutory succession;
3. development projects under para. 1 no. 1 for which building consent was given prior to the formal designation of the redevelopment area, or which is permissible by virtue of some other procedure under building law, and for maintenance work and the continuation of an existing use;
4. legal procedures pursuant to para. 1 no. 2 and para. 2 for purposes of national defence;
5. transactions in respect of the acquisition by the public agency of land which is included in a procedure within the meaning of Section 38.

#### **Section 145 Permission**

(1) A decision on permission is to be taken within one month of the application being submitted to the municipality. Section 19 para. 3 sentences 3 to 5 applies *mutatis mutandis*.

(2) Permission may only be refused where grounds exist for the assumption that the development project, including the subdivision of a plot, or the purpose evidently being pursued by such action would inhibit or seriously impede implementation of the redevelopment, or would be in conflict with the aims and purposes of the redevelopment.

(3) Permission is to be granted where the major impediment in the way of permission can be removed by the parties involved relinquishing, both for themselves and their heirs at law, in the case of the redevelopment measure being implemented

1. any claim to compensation in cases covered by Section 144 para. 1 no. 1 in respect of appreciation in value arising from the development project, and for other alterations which would result in a rise in the value of the property undertaken in connection with the proposed use underlying the development project;
2. any claim to compensation in cases covered by Section 144 para. 1 no. 2 or para. 2 no. 2 or 3 in respect of the suspension of a right, and for any alterations which would result in a rise in the value of the property undertaken on the basis of this right.

(4) The permission granted may be subject to certain conditions being met, or in cases covered by Section 144 para. 1 a time limit may be imposed or permission may be qualified. Section 51 para. 4 sentences 2 and 3 applies *mutatis mutandis*. The granting of permission may be made dependent on the conclusion of an urban contract if this is capable of removing grounds for refusal within the meaning of para. 2.

(5) Where permission is refused, the owner may demand that ownership of the property be transferred to the municipality if, in view of the redevelopment project, he can no longer for economic reasons reasonably be expected to retain the property or put it to the previous or some other permissible use. Where the land belonging to an agricultural or forestry operation lies both within and outside the boundaries of a formally designated redevelopment area, the owner may demand the transfer of the entire property owned by the operation to the municipality where satisfying this demand would not represent an unreasonable burden to the municipality; the

municipality may not claim that the burden is unreasonable where the land situated outside the formally designated redevelopment area is no longer suitable to a sufficient degree to be put to use for development or for commercial use. Where no agreement can be reached on the transfer of ownership, the owner may demand the withdrawal of ownership rights to the land. The withdrawal of ownership is subject to the provisions of Part Five of Chapter One as applicable. [Section 43 paras. 1, 4 and 5 and Section 44 paras. 3 and 4 apply \*mutatis mutandis\*.](#)

(6) The granting of permission [pursuant to Section 144 paras. 2 and 3](#) is subject to [Section 20 paras 2 to 4](#) as applicable.

(7) [\(repealed\)](#)

### **Section 146 Implementation**

(1) Implementation comprises the infrastructural and constructional measures within the formally designated redevelopment area required to satisfy the aims and purposes of the redevelopment.

(2) On plots serving those purposes listed in [Section 26 no. 2](#) and on plots of the kind referred to in [Section 26 no. 3](#), individual infrastructural and constructional measures to be implemented within the context of urban redevelopment measures require the approval of the public agency. The public agency shall give approval where even after giving full consideration to his duties there remains an overriding public interest in implementation of the redevelopment measures.

(3) The municipality may by contract entrust the implementation of the infrastructural and constructional measures and the construction of and changes to public amenities and consequential developments within the meaning of [Section 148 para. 2 sentence 1 no. 3](#) either wholly or in part to the property owner. Where there is no certainty that individual owners will proceed with speedy and proper implementation of the measures contractually entrusted to them under sentence 1, the municipality shall ensure that the measures in question are implemented or shall itself implement the said measures.

### **Section 147 Infrastructural Measures**

The implementation of infrastructural measures is the responsibility of the municipality; these comprise

1. land reallocation measures including the acquisition of land,
2. relocating residents and businesses,
3. groundworks,
4. construction and modification of local public infrastructure, and
5. any other measures required to enable the constructional measures to be implemented.

Infrastructural measures also include the provision of plots and the implementation of counterbalancing measures pursuant to [Section 1a para. 3](#) where, in accordance with [Section 9 para. 1](#), these are undertaken at some other point and assigned wholly or in part to the plots on which intrusions damaging to nature or to the landscape are to be expected.

Local public infrastructure required as a part of redevelopment, including replacement infrastructure, may be located outside the formally [designated redevelopment area](#).

### **Section 148 Constructional Measures**

(1) Responsibility for constructional measures remains with the owners of property to the extent that speedy and proper implementation by them can be assured; responsibility remains, however, with the municipality for

1. ensuring the construction of and changes to public amenities and consequential developments, and
2. the implementation of any other constructional measures where the municipality is the owner or there is no guarantee that these will be implemented speedily and properly by individual owners.

Replacement buildings and installations, public amenities and consequential developments required as a result of the redevelopment may be located outside the formally designated redevelopment area.

(2) Constructional measures include

1. modernisation and refurbishment,
2. reconstruction and replacement buildings,
3. the construction of and changes to public amenities and consequential developments, and
4. the relocation or change of business operations.

Constructional measures also include counterbalancing measures pursuant to Section 1a para. 3 where, in accordance with Section 9 para. 1, these are undertaken on the plots on which intrusions damaging to nature or to the landscape are to be expected.

#### **Section 149** **Overview of Costs and Financing**

(1) The municipality shall prepare an overview of costs and financing as of the stage of planning. This overview is to be co-ordinated with the costs and financing projections of other public agencies whose responsibilities are affected by the redevelopment and is to be presented to the higher administrative authority.

(2) This overview shall reveal the costs anticipated to be incurred by the municipality for the complete measure. Costs falling to other public agencies in respect of measures connected with the redevelopment shall be included as a matter of course.

(3) In the overview of financing the municipality shall indicate how it proposes to meet the costs in respect of the overall measure. Details of finance and subsidies on some other statutory basis and of the arrangements for financing proposed by other public agencies shall be included as a matter of course.

(4) The overview of costs and financing may, with the approval of the competent authority under federal state law, be limited to the period of years covered by the municipality's financial planning. The requirement that the urban redevelopment measure should be undertaken within the foreseeable future shall remain unaffected.

(5) The municipality and the higher administrative authority may demand information from other public agencies in respect of their own intentions within the formally designated redevelopment area and on their cost projections and proposals for financing.

(6) The higher administrative authority may require the municipality to supplement or modify the overview of costs and financing. It shall also ensure that the municipality and other public agencies co-operate in the implementation of the measures they undertake in a manner which is economically prudent and shall support the municipality in its attempts to secure public subsidies.

#### **Section 150** **Reparations for Changes to Public Utility Installations**

(1) Where a formally designated redevelopment area contains public utility installations for the supply of electricity, gas, water and heat, telecommunications services or for sewerage, which as a result of the implementation of the redevelopment are no longer available for use, and where an extraordinary level of expenditure is required beyond what would normally be called for within proper budgeting, such as in the case of the replacement or relocation of these installations, the municipality shall reimburse the costs incurred by the agency charged with this task. An adjustment is to be made to balance any gain or loss ensuing to the said agency in this connection.

(2) Where no agreement can be reached on the level of reimbursement, adjudication shall be made by the higher administrative authority.

### **Section 151 Exemption from Charges and Expenses**

(1) Exemption from any fees, other charges other than taxes, and expenses exists in respect of transactions and negotiations for purposes of

1. the preparation and implementation of urban redevelopment measures,
2. the execution of acquisition procedures,
3. the setting up or dissolution of a business operation, the sole purpose of which is to act as an agency for redevelopment.

(2) The exemption from charges does not apply in respect of costs incurred in litigation in the courts. Nothing here shall affect regulations under the provisions of federal state law.

(3) Acquisitions procedures within the meaning of para. 1 no. 2 are:

1. The acquisition of land by the municipality or by a legal entity within the meaning of Sections 157 and 205 for purposes of the preparation and implementation of redevelopment measures within urban development. This shall also include the acquisition of land for use as replacement land or for land swapping in connection with redevelopment measures as part of urban development.
2. The acquisition of land by a person who has transferred or forfeited ownership of land for purposes of the preparation and implementation of redevelopment measures within urban development, or for use as replacement land or for land swapping. An exemption from charges can only be granted
  - a) in respect of the acquisition of land within the redevelopment area in which the land which has been forfeited, or whose ownership has been transferred, is located up to the completion of the redevelopment measure,
  - b) in other cases for a period of ten years from the date on which the land was forfeited or ownership was transferred.
3. The acquisition of land within the formally designated redevelopment area where consideration consists in the surrendering of another property located within the same redevelopment area.
4. The acquisition of land contingent on the creation, existence or dissolution of a trust relationship within the meaning of Section 160 or Section 161.

### **Subdivision Three Special Statutory Provisions for Redevelopment**

#### **Section 152 Scope of Application**

The provisions contained within this Subdivision apply within formally designated redevelopment areas where redevelopment is not implemented in accordance with the simplified [redevelopment](#) procedure.

#### **Section 153 Assessment of Settlements and Compensatory Payments, Purchasing Prices, Reallocation of Land**

(1) Where financial settlements and compensatory payments are due under the provisions of this Act as a consequence of measures for purposes of the preparation or implementation of redevelopment within a formally

designated redevelopment area, consideration shall be given in the assessment of such payments to any rise in value ensuing merely from the prospect of redevelopment, or from its preparation or implementation, only to the extent that this rise in value has come about as a consequence of permitted outlay by the party concerned. Account is to be taken of general changes in prices on the property market.

(2) Where at such time as a legal transaction is undertaken to sell a property, or on the creation or disposal of a building lease, the agreed consideration in respect of this property or of this lease is higher than the value attained by application of para. 1, this constitutes a serious impediment to redevelopment within the meaning of Section 145 para. 2.

(3) In acquiring the property, the municipality or agency charged with redevelopment may not agree to pay a higher price than would be attained by the appropriate application of para. 1. In cases covered by Section 144 para. 4 nos. 4 and 5 the agency charged with redevelopment may not agree to pay a higher price than would be attained by the appropriate application of para. 1.

(4) In the case of sale in pursuance of Section 89 and Section 159 para. 3, the property shall be sold for the current standardised market value [Verkehrswert] established as a result of the reorganisation in law and in fact of the formally designated redevelopment area. Section 154 para. 5 applies *mutatis mutandis* in respect of the proportion of the price corresponding to appreciation in value resulting from the redevelopment.

(5) Within a formally designated redevelopment area

1. para. 1 applies *mutatis mutandis* in respect of the assessment of values in accordance with Section 57 sentence 2, and of financial settlements in accordance with Section 59 paras. 2 and 4 to 6 and Section 60 and 61 para. 2;
2. account is to be taken in the assessment of values in accordance with Section 57 sentences 3 and 4, and of financial settlements in accordance with Section 59 para. 2 and Sections 60 and 61 para. 2, of any changes in value resulting from the reorganisation in law and in fact of the formally designated redevelopment area;
3. Section 58 shall not apply.

#### **Section 154 Financial Settlement from the Property Owner**

(1) A financial settlement towards the financing of redevelopment to correspond to the increase in the land value of the property as a consequence of redevelopment is due in favour of the municipality from owners of property within a formally designated redevelopment area; joint owners are liable to make settlements in proportion to their share of the joint ownership. Where local public infrastructure within the meaning of Section 127 para. 2 is constructed, extended or enhanced in a formally designated redevelopment area, the provisions on the collection of charges in respect of these measures in formally designated redevelopment areas do not apply. [Sentence 2 applies \*mutatis mutandis\* in respect of application of the provision on reimbursement within the meaning of Section 135a para. 3.](#)

(2) The rise in the land value of a property contingent on redevelopment consists in the difference between the land value which would apply in respect of the property if redevelopment had been neither proposed nor implemented (initial value), and the land value ensuing in respect of the property from the reorganisation in law and in fact of the formally designated redevelopment area (final value).

(3) Financial settlements are due on the completion of the redevelopment (Sections 162 and 163). The municipality may permit anticipatory payment in full prior to completion of the redevelopment; [it is acceptable in this case for an amount to be agreed to cover the costs of the redevelopment measure which is higher than the financial settlement.](#) Where a party liable to make a financial settlement has a legitimate interest in the level of financial settlement being set prior to completion of the redevelopment, and a sufficiently reliable assessment of the level of financial settlement due can be made, the municipality shall at the request of this party set the level of financial settlement due in advance of completion.

(4) The municipality shall issue demands in respect of payment of the financial settlement; payment is due one month from the issuing of the demand. Prior to the level of financial settlement due being set, parties who are liable in respect of such settlements are to be given the opportunity, within a reasonable period, to comment and to receive clarification of the factors relevant for assessment of the value of the land and of the amounts to

be taken into account under Section 155 para. 1. The financial settlement does not rest on the property as a public charge.

(5) At the request of the property owner, the municipality shall convert the financial settlement into a redeemable loan in cases where the owner cannot reasonably be expected to meet his obligation on its falling due out of his own or from borrowed funds. Interest on the amount owed on the loan shall not exceed 6 per cent per annum, and the repayment rate 5 per cent per annum plus the interest saved. The repayment rate may in individual cases be lowered to a minimum of 1 per cent and the loan made subject to low or to no interest where such action is in the public interest or is expedient in order to prevent the creation of undue hardship or to prevent the use of the property becoming uneconomic to a degree which the party liable for payment cannot reasonably be expected to bear. The municipality shall accord priority to mortgages required to finance reconstruction, modernisation or refurbishment over a mortgage to provide security in respect of a redeemable loan.

(6) The municipality may require prepayment from property owners in respect of the financial settlement due in accordance with paras. 1 to 4 as soon as construction, or any other use pursuant to the aims and purposes of redevelopment, is permissible on the property; paras. 1 to 5 apply *mutatis mutandis*.

### **Section 155** **Allowances Against the Financial Settlement, Waiver**

(1) Allowances are to be made against the financial settlement in respect of

1. any advantage or appreciation in land value gained through redevelopment which has already been taken into account in some other procedure, in particular in the course of expropriation proceedings; in the case of reallocation proceedings nothing here shall affect para. 2,
2. any rise in the land value of the property which has come about as a consequence of permitted outlay by the owner; where the owner has executed infrastructural measures in accordance with Section 146 para. 3 or has erected or undertaken modifications to public amenities or consequential developments within the meaning of Section 148 para. 2 sentence 1 no. 3, the costs incurred by him are, however, to be credited,
3. rises in the land value of the property which the owner has already legitimately paid for on buying the property as part of the purchase price, where these are at levels in keeping with the provisions of nos. 1 and 2 and Section 154.

(2) Financial settlement is not due where reallocation has taken place in accordance with Section 153 para. 5.

(3) The municipality may waive its right to set financial settlements in respect of a formally designated redevelopment area or for specified parts thereof where

1. by expert opinion only minimal rises in land values have come about, and
2. the administrative expense involved in collecting the financial settlement would be out of proportion to the possible revenue.

A decision pursuant to sentence 1 may be taken prior to completion of the redevelopment.

(4) In individual cases the municipality may waive the financial settlement, either wholly or in part, where this is in the public interest or in order prevent the creation of undue hardship. The waiver may become effective prior to completion of the redevelopment.

(5) Other cases are subject to provisions under federal state law on municipal charges, including regulations governing deferment and waiver, as applicable.

(6) Where a property owner has incurred costs in respect of infrastructural measures or of the construction or modification of public amenities or consequential developments within the meaning of Section 148 para. 2 sentence 1 no. 3, these costs are to be reimbursed by the municipality to the extent that they exceed the amount set for financial settlement under Section 154 and reimbursement has not been explicitly excluded by contract.

### **Section 156** **Transitional Regulations for Formal Designation**

(1) Nothing in this Act shall affect any obligations to pay charges in respect of local public infrastructure within the meaning of Section 127 para. 2 which arose prior to formal designation. [This applies equally in respect of reimbursement within the meaning of Section 135a para. 3.](#)

(2) Where the reallocation department has prepared a reallocation plan in accordance with Section 66 para. 1 prior to the formal designation of the redevelopment area in connection with reallocation proceedings relating to land within the redevelopment area, or where a preliminary decision has been made under Section 76, this shall be adhered to.

(3) Where the expropriation authority has issued a resolution on expropriation under Section 113 prior to formal designation of the redevelopment area in respect of land within that area, or where agreement under Section 110 has been officially recorded, the provisions of Chapter One remain applicable.

### **Section 156a** **Costs and Financing of Redevelopment Measures**

(1) Where subsequent to implementation of the urban redevelopment measure and the transference of the trust assets of the redevelopment agency to the municipality the municipality finds itself with a surplus resulting from the revenues received in respect of the preparation and implementation of the urban redevelopment measure being in excess of the expenditure incurred in connection with this measure, this surplus shall be divided among the owners of the plots located within the redevelopment area. The applicable status of ownership shall be that as of the date of publication of the resolution on the formal designation of the redevelopment area. Where the title to the property has passed by way of sale to another owner subsequent to this point, the amount to be apportioned to the property shall be shared equally between the previous owner and the owner who was required under Section 154 to render a financial settlement.

(2) The surplus shall be apportioned to the individual plots reflecting the initial values of the plots within the meaning of Section 154 para. 2.

(3) In calculating the surplus the municipality shall deduct any subsidies which have been granted out of other public funds either to the municipality or to property owners to cover the costs of preparation and implementation of the redevelopment measure. Other details of the procedure for distribution of the surplus shall be governed by the provisions of state law.

### **Subdivision Four** **Redevelopment Agencies and Other Agents**

#### **Section 157** **The Discharging of Municipality Responsibilities**

(1) The municipality may appoint a suitable agent to discharge the responsibilities incumbent on it for purposes of the preparation and implementation of redevelopment. The responsibilities

1. of implementing redevelopment measures within urban development incumbent on the municipality under Sections 146 to 148,
2. of acquiring land or rights to land on behalf of the municipality for purposes of the preparation or implementation of the redevelopment, and
3. of managing the funds dedicated to redevelopment

may only be transferred to such a body as has been confirmed by the relevant authority pursuant to Section 158 as satisfying the requirements of a redevelopment agency for the transfer of responsibilities.

(2) The municipality shall not transfer responsibility for the preparation of urban land-use plans [Bauleitpläne] to the same organisation as the functions of a redevelopment agency acting for its own account, or to any organisation which is legally or economically dependent on it.

### **Section 158**

### **Confirmation of Status as a Redevelopment Agency**

- (1) Confirmation of the assumption of responsibilities as a redevelopment agency may only be given where
1. the organisation is not itself acting as or dependent on a building contractor,
  2. the organisation is suitable and capable in respect of its business operations and its economic standing of properly discharging the responsibilities of a redevelopment agency,
  3. the organisation has submitted or is prepared to submit itself to an examination of its business operations and economic standing, to the extent that such an examination is not already required of it annually by law,
  4. the persons appointed to represent it, and its managerial staff, possess the required reliability in business.
- (2) Confirmation may only be revoked at such time as the prerequisites under para. 1 can no longer be met.
- (3) Confirmation is issued by the authority competent under federal state law.

### **Section 159**

#### **The Discharging of Responsibilities as a Redevelopment Agency**

(1) The redevelopment agency discharges the responsibilities transferred to it by the municipality under Section 157 para. 1 sentence 2 nos. 1 or 2 either in its own name for the account of the municipality acting as its trustee, or in its own name for its own account. It discharges the responsibilities transferred to it by the municipality under Section 157 para. 1 sentence 2 no. 3 in its own name for the account of the municipality acting as its trustee. The redevelopment agency is under an obligation to supply information to the municipality on request.

(2) The municipality and the redevelopment agency shall settle by written contract, as a minimum, the responsibilities transferred, the legal status in which the redevelopment agency shall discharge these responsibilities, an appropriate amount of remuneration to be paid by the municipality, and the powers of the municipality to issue instructions. This contract need not be in the form of Section 313 of the Civil Law Code [Bürgerliches Gesetzbuch]. It may be terminated by either party only with good reason.

(3) The redevelopment agency is obliged to dispose of land which it acquires subsequent to its assumption of responsibilities for the preparation and implementation of the redevelopment in accordance with Section 89 paras. 3 and 4 and giving due consideration to the instructions of the municipality. It is obliged to inform the municipality of any such land of which it has not already disposed, and, at the request of the municipality, to dispose of it either to a third party or to the municipality.

(4) Where the purchase price paid to the redevelopment agency includes an element which, in accordance with Sections 154 and 155, should be borne by the property owner, the redevelopment agency shall pay or credit this amount to the municipality. In cases covered by Section 153 para. 4 sentence 2 the redevelopment agency shall, on request, assign claims arising from the loan to the municipality and either transfer or credit to the municipality any interest or repayments it has received.

(5) The redevelopment agency shall pay financial settlements to the municipality in accordance with Sections 154 and 155 in respect of any properties of which it remains the owner.

(6) The contract which the municipality has entered into with a redevelopment agency acting for its own account expires on the instigation of liquidation proceedings in respect of the assets of the redevelopment agency. The municipality may require that the receiver transfer to the municipality ownership of those properties situated in the formally designated redevelopment area which were acquired by the redevelopment agency subsequent to its assumption of the responsibilities of preparing and implementing the redevelopment, whereby the municipality shall reimburse the expense incurred by the redevelopment agency in this respect. The liquidator is obliged to pass to the municipality a list of such properties. The municipality must assert its claim within a period of six months from receipt of the list of properties. Otherwise the municipality is liable as a guarantor towards creditors in respect of obligations arising from the implementation of infrastructural measures to the extent that such obligations cannot be met in full out of the assets of the redevelopment agency in the course of liquidation proceedings.

(7) Where the municipality terminates the contract in the case of administration proceedings being instigated in respect of the assets of a redevelopment agency acting for its own account, it may demand that the

redevelopment agency transfer ownership to it of those properties situated within the formally designated redevelopment area which the redevelopment agency acquired subsequent to its assumption of responsibilities for the preparation and implementation of the redevelopment, whereby the municipality shall reimburse the expense incurred by the redevelopment agency in this respect. In this case Section 64 para. 2 of the Composition Code [Vergleichsordnung] does not apply. The redevelopment agency is obliged to pass to the municipality a list of such properties; para. 6 sentences 4 and 5 applies *mutatis mutandis*.

### **Section 160 Trust Assets**

(1) Where the function of trustee of the municipality has been transferred to the redevelopment agency, it discharges this function with trust assets in its own name for the account of the municipality. The redevelopment agency shall receive written confirmation of the transfer of the function of trustee from the municipality. In the discharge of its responsibilities, it shall add a note to its name to indicate the trust relationship.

(2) The redevelopment agency acting as trustee shall administer the trust assets accumulated in the discharging of its responsibilities separately from its other assets.

(3) The trust assets include the funds made available to the redevelopment agency by the municipality in order for it to discharge its responsibilities. The trust assets also include any acquisitions the redevelopment agency has made with the trust assets, or by means of a transaction relating to the trust assets, or on the basis of a right which forms part of the trust assets, or in replacement for the destruction, damage or divestment of a property forming part of the trust assets.

(4) The municipality shall guarantee the satisfaction of obligations for which the redevelopment agency is liable with the trust assets. Funds which the redevelopment agency obtains as a loan from a third party only form part of the trust assets where written approval of the loan by the municipality has been given. The same applies in respect of any of its own funds which the redevelopment agency brings in.

(5) Land within the formally designated redevelopment area which has been acquired by the redevelopment agency prior or subsequent to its assumption of responsibilities and using funds which are not part of the trust assets, or by surrendering land in a swap, shall, at the request of the municipality, be transferred into the trust assets with reimbursement made in respect of costs incurred by the redevelopment agency. The land values to take into account are those attained through application of Section 153 para. 1.

(6) The redevelopment agency acting as trustee shall render account to the municipality on the termination of its activities. On the termination of its activities it shall transfer the trust assets, including any property which it has not disposed of, to the municipality. From the time at which such transfer takes place, the municipality becomes liable in place of the redevelopment agency in respect of any obligations still outstanding and in respect of which the redevelopment agency was liable with the trust assets.

(7) Prior to transfer pursuant to para. 6, the redevelopment agency shall retransfer into its own assets any property contained in the trust assets which it has acquired by surrendering land of which it was the owner in a land swap, and which did not form part of the trust assets, or which it acquired at least two years prior to its being appointed by the municipality to discharge responsibilities in connection with redevelopment and which it transferred into the trust assets. Where such properties as it has transferred into the trust assets have been disposed of, or used for the creation of new plots within the context of infrastructural measures, or where the boundaries of such properties have been changed, the redevelopment agency may retransfer to its own assets other properties corresponding in value to those properties it transferred into the trust assets; in this case the consent of the municipality is required. The redevelopment agency shall reimburse to the trust assets the current market value of the properties arising from the reorganisation in law and in fact of the formally designated redevelopment area.

### **Section 161 Security for the Trust Assets**

(1) The redevelopment agency is not liable to third parties with the trust assets for obligations not relating to the trust assets.

(2) Where execution imposed on the trust assets takes place in respect of an obligation for which the redevelopment agency is not liable with the trust assets, the municipality may on the basis of the trust relationship lodge a protest against execution in accordance with Section 771 of the Code of Civil Procedure [Zivilprozeßordnung], and the redevelopment agency raise objections in application of Section 767 para. 1 of the Code of Civil Procedure.

(3) The trust relationship expires on the instigation of liquidation proceedings in respect of the redevelopment agency's assets. The trust assets do not form part of the estate in liquidation. The receiver shall transfer the trust assets to the municipality and shall administer these assets until such time as transfer has been effected. From the point of transfer, the municipality is liable in place of the redevelopment agency in respect of any obligations for which the redevelopment agency was liable with the trust assets. The legal consequences connected with the instigation of liquidation proceedings do not apply in respect of these obligations. Section 418 of the Civil Law Code [Bürgerliches Gesetzbuch] does not apply.

### **Subdivision Five The Termination of Redevelopment**

#### **Section 162 Repeal of the Redevelopment Statute**

(1) The redevelopment statute shall be repealed at such time as

1. redevelopment has been completed, or
2. redevelopment proves to be impossible to implement, or
3. the intention of proceeding with redevelopment is abandoned for some other reason.

Where these conditions are met only in respect of a section of the formally designated redevelopment area, the statute shall be repealed for that section.

(2) The resolution by the municipality repealing the formal designation of the redevelopment area is issued as a statute. Public notice of the statute shall be issued. This notice shall draw attention to the completion of the notification procedure. [The municipality may also advertise in the customary manner the fact that a statute to repeal the formal designation of a redevelopment area has been adopted; Section 10 para. 3 sentences 2 to 5 applies \*mutatis mutandis\*.](#)

(3) The municipality shall request that the land registry remove the notes of redevelopment .

#### **Section 163 Cessation of Legal Effects for Individual Plots**

(1) The municipality may declare redevelopment in respect of a property to be terminated where, in accordance with the aims and purposes of the redevelopment,

1. the land has been built on or is under some other use, or
2. the building has been modernised or refurbished.

On application by the owner, the municipality shall declare redevelopment in respect of a property to be completed.

(2) The municipality may declare implementation of the redevelopment to be completed in respect of individual properties, prior to the point in time referred to in para. 1, by means of notice to this effect to the respective owners, where construction, or some other use, or modernisation or refurbishment in accordance with the aims and purposes of redevelopment could be carried out at some later time without jeopardising the aims and purposes of redevelopment. No legal claim exists in this case to the issuing of such a declaration.

(3) [With the issuing of this declaration, Sections 144, 145 and 153 cease to be applicable in respect of the property.](#) The municipality shall requests the land registry to remove the note of redevelopment.

**Section 164**  
**Claims to Retrotransfer**

(1) Where the redevelopment statute is repealed on one of the grounds contained in Section 162 para. 1 nos. 2 or 3, and where the municipality or the redevelopment agency acquired the property from the previous owner subsequent to the formal designation of the redevelopment area in order to implement the redevelopment, either by private contract or under the provisions of this Act without rendering suitable replacement land, engaging in a land swap, or establishing rights of the type contained in Section 101 para. 1 sentence 1, the previous owner of a property has a claim against the current owner to the retrotransfer of ownership.

(2) No such claim exists where

1. the property is required as building land for the public good or has been designated as a thoroughfare, green space or for public utility use within a legally binding land-use plan, or is required for some other public purpose, or
2. the previous owner himself acquired the property in the course of an expropriation procedure, or
3. the owner has commenced with a use of the property consistent with the declared purposes, or
4. the property was disposed of to a third party in accordance with Section 89 or Section 159 para. 3, or
5. the boundaries of the property have been significantly altered.

(3) Retrotransfer may be demanded only within two years of the statute on redevelopment being repealed.

(4) The previous owner shall pay as the purchase price the standardised market value valid at the time at which the retrotransfer takes place.

(5) Nothing here shall affect any claim to re-expropriation under Section 102. Compensation due to the owner under Section 103 is assessed on the basis of the current market value of the land by virtue of its status in law and in fact applicable at such time as formal designation is repealed.

**Subdivision Six**  
**Financial Support for Urban Development**

**Section 164a**  
**The Utilisation of Urban Development Grants**

(1) Subsidies and grants (urban development grants) are available to cover the costs of inclusive and consistent preparation and speedy implementation of the urban redevelopment measure as a cohesive unit (overall measure). In respect of measures associated with redevelopment which attract subsidies or grants on the basis of some other statute, the subsidies and grants made available through the relevant budget statutes shall be utilised in a manner which allows the measures to be implemented within the framework of redevelopment.

(2) Urban development grants may be utilised for

1. the preparation of redevelopment measures (Section 140),
2. the implementation of infrastructural measures taken in the public interest for public order purposes pursuant to Section 147, including compensation to the extent that this does not establish an asset of enduring value; the costs of infrastructural measures shall not include the staffing and material costs incurred by the municipal administration,
3. the execution of constructional measures as provided in Section 148,
4. the remuneration at an appropriate level of third parties commissioned under the provisions of this Act,
5. implementation of the social plan pursuant to Section 180 and the payment of hardship allowances pursuant to Section 181.

(3) Urban development grants may be utilised for modernisation and refurbishment within the meaning of Section 177. Where nothing has been agreed to the contrary, this shall also apply in respect of measures of this

nature which an owner has undertaken to implement in a contract entered into with the municipality as well as in respect of any additional measures undertaken for the purposes of preserving or renovating a building or in order to allow it to be put to an appropriate use where the building in question warrants preservation on the grounds of its historical, artistic or architectural importance.

### **Section 164b Administrative Agreements**

(1) Under Art. 104a para. 4 of the Basic Law, in accordance with relevant budget law and following a consistent, general and appropriate standard, the Federation may grant financial assistance to the federal states to support major investments by municipalities and associations of municipalities. The criteria and other details governing the utilisation of financial assistance shall be settled in an administrative agreement between the Federation and the federal states.

(2) The primary uses of such financial assistance shall be

1. to strengthen the urban function of city centres and local sub-centres paying special attention to housing construction and to matters pertaining to the preservation and conservation of buildings of historic interest,
2. the reutilisation of land, in particular derelict industrial sites, conversion land (disused military sites) and railway land close to city centres, for purposes of housing construction and the construction of commercial premises, public amenities and consequential developments paying due regard to establishing a sensible functional balance (mixed uses) and to the employment of environmentally benign, low-cost construction techniques which make economical use of land.
3. urban planning measures to mitigate social deficits.

## **Part Two Urban Development Measures**

### **Section 165 Urban Development Measures**

(1) Urban development measures in town and country planning, for which the public interest requires consistent preparation and speedy execution, shall be prepared and carried out in accordance with the regulations contained in this Part.

(2) The purpose of urban development measures within the meaning of para. 1 is to subject local districts or other parts of the municipal territory to development for the first time in a manner which is in keeping with their particular significance for urban development within the municipality, or which is in accordance with the desired development of the federal state district or the region, or to make such areas available for new development within the framework of urban reorganisation.

(3) The municipality may by resolution formally designate an area in which urban development measures are to be implemented as an urban development zone, where

1. the measure conforms with the aims and purposes mentioned in para. 2;
2. implementation of the measure is required in the public interest, in particular in order to meet an increased demand for housing and places of employment, for the construction of public facilities or consequential developments, or in order to return derelict land to productive use,
3. the aims and purposes being pursued by means of an urban development measure are not capable of being achieved through the use of urban development contracts or where, on due consideration of the provisions of Section 166 para. 3, owners of the plots affected by the measure are not prepared to sell their plots to the municipality or to the developer appointed by the municipality at the price arrived at by application of Section 169 para. 1 no. 6 and para. 4.

4. speedy implementation of the measure can be guaranteed within a foreseeable period.

Public and private interests shall be duly weighed.

(4) Prior to the formal designation of an urban development zone, the municipality is required to carry out or to commission whatever preparatory investigations are necessary in order to acquire the information required to provide a basis for determining whether the conditions for designation set out in para. 3 have been fulfilled. Sections 137 to 141 apply *mutatis mutandis*.

(5) An urban development zone is to be limited in such a way as to allow expedient development. Individual properties not affected by the development may be excluded, either wholly or in part, from the development area. Built-up areas may be included in an urban development zone where spaces, existing buildings or other physical structures contained therein are not being used in a manner which is in keeping with the proposed urban development and organisation. Land serving the purposes described in Section 26 no. 2 and Section 35 para. 1 no. 5, land of the types described in Section 26 no. 3, and land in respect of which a hearing has been initiated under Section 1 para. 2 of the Acquisition of Land (for Military Purposes) Act, and federally owned land in respect of which the municipality has been notified of an intention to use this land for purposes of national defence may only be included in an urban development zone with the approval of the relevant public body. The public body shall grant approval where, notwithstanding the duties with which it is charged, an overriding public interest exists in the implementation of the urban development measure.

(6) The municipality shall formally designate an urban development zone by the adoption of an appropriate resolution as a local statute (development statute). The development statute shall describe the urban development zone.

(7) The development statute requires permission from the higher administrative authority; applications for permission are to be accompanied by a statement setting out the grounds to justify the designation of an area as being in need of development. Section 6 paras. 2 and 4 applies *mutatis mutandis*.

(8) Public notice shall be issued of the development statute and of permission having been granted in the manner customary in the municipality. The municipality may opt merely to advertise the fact that permission has been granted; Section 10 para. 3 sentences 2 to 5 applies *mutatis mutandis*. Attention is to be drawn in a public notice issued pursuant to sentences 1 and 2 to the requirement of permission under Sections 144, 145 and 153 para. 2. The development statute becomes legally binding on the issuing of public notice.

(9) The municipality shall notify the land registry of the development statute having become legally binding. This notification shall list each plot affected by the development statute. The land registry shall enter notes in the land registers for each of these plots to the effect that an urban development measure is to be implemented (development note). Section 54 paras. 2 and 3 applies *mutatis mutandis*.

## Section 166 Competence and Responsibilities

(1) Where nothing has been decided to the contrary under para. 4, the development measure is prepared and implemented by the municipality. The municipality is responsible for the preparation without undue delay of legally binding land-use plans in respect of the urban development zone, and, where a particular responsibility does not lie with another body under other statutory provisions, for taking any other measures required to implement the proposed development in the urban development zone.

(2) The municipality is charged with providing the necessary conditions to create a viable local community which, in both the structure of its economy and the composition of the population, is consistent with the aims and purposes of the urban development measure, and for which provisions have been made to ensure the proper supply of necessary goods and services to the population.

(3) The municipality shall acquire the land located within the urban development zone. It shall establish whether, and in what legal form, the previous owners intend at some later date to acquire land or rights within the provisions of Section 169 para. 6. The municipality shall refrain from purchasing land where

1. in the case of land which has been built on, the type and extent of building are not to be altered in the course of implementing the urban development measure, or

2. the owner of the land for which a use has been or can confidently be determined in accordance with the aims and purposes of the urban development measure is in a position to and undertakes to put the land concerned to an appropriate use within a reasonable period of time.

Where the municipality does not acquire a property, the owner is obliged to make a financial settlement to the municipality to correspond to the rise in the land value of the property resulting from the development measure.

(4) The preparation and implementation of a development measure may be transferred to a planning association in accordance with Section 205 para. 4.

### **Section 167** **The Delivery of Tasks on Behalf of the Municipality; Development Agencies**

(1) The municipality may appoint a suitable agent, and in particular a development agency, to deliver tasks incumbent upon it arising in connection with the preparation and implementation of an urban development measure. Section 157 para. 1 sentence 2 and Section 158 apply *mutatis mutandis*.

(2) The development agency shall discharge the duties transferred to it by the municipality in its own name for the account of the municipality acting as its trustee. Section 159 para. 1 sentence 3 and para. 2 and Sections 160 and 161 apply *mutatis mutandis*.

(3) The development agency is obliged to dispose of the land in accordance with Section 169 paras. 5 to 8; it shall be bound in the matter by instructions from the municipality.

### **Section 168** **Requirement to Transfer Ownership**

The owner of a property located within the urban development zone may require transfer of the ownership of the property to the municipality where, for economic reasons, he cannot reasonably be expected, in view of the declaration of an urban development zone or the state of the development measure, to retain the property or to put it to the previous or some other permitted use. The provisions contained in Section 145 para. 5 sentences 2 to 5 apply *mutatis mutandis*.

### **Section 169** **Special Provisions for Urban Development Zones**

(1) Within an urban development zone the following provisions apply *mutatis mutandis*:

1. Sections 137, 138 and 139 (participation and involvement of affected parties; duty to provide information; participation and involvement of public agencies),
2. Section 142 para. 2 (replacement and supplementary land),
3. Sections 144 and 145 (development projects and legal procedures requiring permission; permission),
4. Sections 146 to 148 (implementation, infrastructural measures; building measures),
5. Sections 150 and 151 (reparations for changes to public utility installations; exemption from charges and expenses),
6. Section 153 paras. 1 to 3 (assessment of settlements and compensatory payments, purchasing prices),
7. Sections 154 to 156 (financial settlement from the property owner; allowances against the financial settlement, waiver; transitional regulations for formal designation),
8. Sections 162 to 164 (termination of the measure),
9. Sections 164a and 164b (the utilisation of urban development grants; administrative agreements),
10. Section 191 (regulations on transactions involving agricultural and forestry land).

(2) The provisions of Part Four of Chapter One on the reallocation of land and minor adjustments to plot boundaries do not apply within an urban development zone.

(3) Expropriation is permissible within an urban development zone for which no legally binding land-use plan exists in favour of the municipality or the development agency for the discharge of its duties. This assumes that the applicant has made a serious effort to acquire the property in question by private contract at reasonable terms. Sections 85, 87, 88 and 89 paras. 1 to 3 do not apply within an urban development zone.

(4) Section 153 applies *mutatis mutandis* in respect of land used for agricultural or forestry purposes, with the proviso that in those areas where no standardised market value has been established which deviates from the internal agricultural standardised market value, the value which shall apply is that which would be realisable in comparable cases in a normal transaction on the general property market in an area for which no development measures have been proposed.

(5) The municipality is obliged to dispose of those properties which it has acquired in order to enable implementation of the development measure, either by private contract or under the provisions of this Act, in accordance with paras. 6 to 8, with the exception of those spaces which are required as building land for the public good or have been designated as thoroughfares, green spaces or for public utility use within a legally binding land-use plan, or are required for some other public purpose, or as replacement land or for purposes of compensation in the form of land.

(6) Subsequent to reorganisation and servicing with public infrastructure, and with consideration being given to broad sections of the population and to the aims and purposes of the development measure, the land is to be disposed of to persons who are willing to build on it, and who undertake to build on it in accordance with the designations of the binding land-use plan and the requirements of the development measure within a reasonable period of time. Consideration is to be given in the first instance to the previous owners, and in particular to those who otherwise would own no, or very little real property. Section 89 para. 4 applies in respect of the duty to dispose of land. Land designated for agricultural or forestry use shall be offered to any farmers and foresters who have been obliged to surrender or transfer ownership of their land to enable the implementation of the development measure.

(7) In disposing of the land, the municipality shall ensure that the parties who intend to build on the land proceed with development in a sequence which is economically sensible, so that the aims and purposes of the development measure can be achieved, and also that their proposals for building can be assimilated within the framework of the overall measure. It is additionally charged with ensuring that the new buildings and facilities are used in the long term in a way which is consistent with the aims and purposes of the urban development measure.

(8) The property, or the right thereto, is to be disposed of for the current market value arising as a result of the reorganisation in law and in fact of the urban development zone. Section 154 para. 5 shall apply in respect of that proportion of the property's purchasing price which corresponds to an increase in value resulting from development.

### **Section 170 Special Provision for Adjustment Areas**

Where the aims and purposes of an urban development measure within a built-up area give rise to measures to make adjustments in an area to bring it into line with the proposed development, the municipality may formally designate this area in the development statute (adjustment area). The adjustment area shall be indicated in the development statute. Formal designation may only take place on the completion of preparatory examinations pursuant to Section 141. Within the adjustment area the provisions governing redevelopment shall apply *mutatis mutandis* with the exception of Sections 136, 142 and 143, and in addition to valid provisions governing urban development measures with the exception of Section 166 para. 3 and Section 169 paras. 2 to 8.

### **Section 171 The Cost and Funding of Development Measures**

(1) Any income arising during the preparation and execution of a development measure is to be used to fund this development measure. [Where subsequent to implementation of the urban development measure and the transference of trust assets of a development agency to the municipality the municipality finds itself with a surplus resulting from the revenues received in respect of the preparation and implementation of the urban](#)

development measure being in access of the expenditure incurred in connection with this measure, this surplus shall be divided in accordance with the provisions of Section 156a as applicable

(2) The municipality is required to prepare an overview of costs and funding as of the stage of planning in accordance with Section 149. The costs to be considered are those which are necessary with regard to the aims and purposes of the development.

### **Part Three The Preservation Statute and Urban Development Enforcement Orders**

#### **Subdivision One The Preservation Statute**

#### **Section 172 The Preservation of Physical Structures and of the Specific Urban Character of an Area (The Preservation Statute)**

(1) Either in a legally binding land-use plan or by some other statute, the municipality may designate areas in which

1. in order to preserve the specific urban character of an area deriving from its urban pattern (para. 3),
2. in order to maintain the composition of the local residential population (para. 4), or
3. in the course of reorganisation of the structure of urban development (para. 5)

permission is required for [the reduction of development](#), for alterations and changes in use in respect of physical structures. In those cases covered by para. 1 no. 1, permission is also required for the erection of physical structures. The statute is subject to Section 16 para. 2 as applicable. [State governments are empowered to determine by legal ordinance valid for up to five years in respect of plots in areas affected by a statute issued pursuant to sentence 1 no. 2 that the establishment of individual ownership for personal use \(condominium and part-ownership pursuant to Section 1 of the Condominium Act\) in respect of buildings which are scheduled either wholly or in part for residential use may only proceed where permission has been obtained. Such a prohibition is to be regarded as a prohibition within the meaning of Section 135 of the German Civil Code. Section 20 paras. 2 to 4 applies \*mutatis mutandis\*.](#)

(2) Where the resolution to prepare a preservation statute has been adopted and public notice thereof has been issued in the customary manner, Section 15 para. 1 applies *mutatis mutandis* in respect of [the implementation of](#) a development project within the meaning of para. 1.

(3) In cases covered by para. 1 sentence 1 no. 1, permission may only be refused where the physical structure, either alone or in conjunction with other buildings, contributes to shaping the character of the locality, the townscape or landscape, or is otherwise of architectural or historical importance. Permission to erect a physical structure may only be refused where the architectural character of the area would be impaired by the proposed development.

(4) In cases covered by para. 1 sentence 1 no. 2 [and sentence 4](#), permission may only be denied where special urban development grounds exist to justify preserving the composition of the residential population. Permission shall be granted where preservation of the physical structure or refrain from [the establishment of individual ownership](#) is no longer economically viable even in due consideration of general public interest. [Permission shall also be granted where](#)

1. alteration of a physical structure serves the purpose of bringing an average dwelling up to modern-day standards of comfort having regard for minimum requirements under building regulations,

2. the property forms part of a decedent's estate and application has been made for individual ownership in favour of joint heirs or legatees to be established,
3. application has been made for individual ownership for personal use to be alienated to members of the owner's family,
4. in the absence of permission it would be impossible to meet claims to individual ownership lodged by third parties for whose protection a priority notice has been entered in the land register prior to the reserved right to require permission to be granted becoming effective,
5. at the time of the application for the establishment of individual ownership the building is not being used for residential purposes, or
6. the owner undertakes to sell individual dwellings only to the respective tenants within a period of seven years of the establishment of individual ownership; a time-limit imposed under Article 14 sentence 2 no. 1 of the Investment Facilitation and Housing Development Land Act of April 22nd 1993 (BGBl. 1 p. 466) shall be curtailed by seven years. Time-limits imposed under Section 564b para. 2 sentence 1 nos. 2 and 3 of the German Civil Code do not apply.

In those cases covered by sentence 3 no. 6, the permission may provide that the permission of the municipality shall also be required for disposal of individual ownership in respect of the property during the period of obligation. At the request of the municipality, this requirement to seek permission may be entered in the land register for individual ownership; it shall expire on the termination of the obligation.

(5) In cases covered by para. 1 sentence 1 no. 3, permission may only be refused for purposes of safeguarding the progression of reorganisation based on a social plan (Section 180) and which takes due account of social needs. Where a social plan has not been prepared, the municipality shall prepare such a plan pursuant to Section 180 as applicable. Para. 4 sentence 2 applies *mutatis mutandis*.

### **Section 173** **Permission, Claims to Transfer of Ownership**

(1) Permission is granted by the municipality. Where permission or approval under building law is required, permission is granted by the building permit authority in accord with the municipality; in the course of proceedings on the granting of permission or approval, decisions shall be taken regarding the matters mentioned in Section 172 paras. 3 to 5.

(2) Where in cases covered by Section 172 para. 3 permission is refused, the owner of the property may demand that ownership be transferred to the municipality under the conditions contained in Section 40 para. 2. Section 43 paras. 1, 4 and 5 and Section 44 paras. 3 and 4 apply *mutatis mutandis*.

(3) Before a decision is taken on the application for permission, the municipality shall explain and discuss the significant issues affecting the decision with the owner of the property, or with any other parties charged with its maintenance. In cases covered by Section 172 paras. 4 and 5, it shall additionally hear any tenants, leaseholders and other parties with rights of use.

(4) Nothing in this Act shall affect provisions under federal state law, in particular those governing the protection and preservation of historic buildings and monuments.

### **Section 174** **Exceptions**

(1) Section 172 does not apply in the case of properties serving the purposes mentioned in Section 26 no. 2, or to the properties mentioned in Section 26 no. 3.

(2) Where a property of a type mentioned in para. 1 is located within the territory covered by a preservation statute, the municipality shall inform public agency to this effect. Where the public agency proposes to embark on a development within the meaning of Section 172 para. 1, it shall notify the municipality of its intentions. At the request of the municipality the public agency shall refrain from its proposal where conditions obtain which would entitle the municipality to refuse permission under Section 172, and where, with due regard to its duties,

the public agency can reasonably be expected to tolerate preservation or refraining from the erection of a physical structure.

## **Subdivision Two Urban Enforcement Orders**

### **Section 175 General Provisions**

(1) Where the municipality intends to issue a building order (Section 176), a modernisation or refurbishment order (Section 177), a planting order (Section 178) or a [development reduction or unsealing](#) order (Section 179), it shall discuss the measure beforehand with the parties affected. The municipality shall advise owners, tenants, leaseholders and any other parties with a right of use in every way possible on the manner in which the measure is to be implemented and on any public funds available to finance it.

(2) The ordering of measures under Sections 176 to 179 assumes that immediate implementation is required on urban development grounds; a building order under Section 176 may be issued to meet an urgent need within the population for housing.

(3) Tenants, leaseholders and any other parties with a right of use are obliged to tolerate the implementation of measures under Sections 176 to 179.

(4) Sections 176 to 179 do not apply to property serving the purposes mentioned in Section 26 no. 2, or to the property mentioned in Section 26 no. 3. Where the conditions for issuing an order under Sections 176 to 179 are met in respect of such properties, the public agency shall at the request of the municipality implement the relevant measures, or tolerate implementation to the extent that this does not impede it in the execution of its duties.

(5) Nothing in this Act shall affect provisions under federal state law, in particular those governing the protection and preservation of historic buildings and monuments.

### **Section 176 Building Orders**

(1) Within the plan area of a legally binding land-use plan [Bebauungsplan] the municipality may by notification oblige property owners, within a stipulated period,

1. to build on their property in accordance with the designations of the legally binding land-use plan, or
2. to adapt an existing building or some other existing physical structure to satisfy the designations of the legally binding land-use plan.

(2) A building order may apply in respect of land located outside the areas mentioned in para. 1 but within a built-up area, in order to utilise land with no, or with low levels of building in accordance with the provisions under building law, or to put land into use for building, in particular for in-fill development.

(3) Where an owner cannot for economic reasons reasonably be expected to implement the development project, the municipality shall refrain from issuing an order.

(4) The property owner may require that the municipality take possession of the property where he is able to demonstrate that he cannot, for economic reasons, reasonably be expected to implement the development project. Section 43 paras. 1, 4 and 5 and Section 44 paras. 3 and 4 apply *mutatis mutandis*.

(5) Where implementation of a building order requires the prior removal of a physical structure or parts thereof, the owner is obliged on the issuing of a building order to take the action required. Section 179 paras. 2 and 3 sentence 1, Section 43 paras. 2 and 5 and Section 44 paras. 3 and 4 apply *mutatis mutandis*.

(6) Where some use other than for building is designated for a property, paras. 1 and 3 to 5 apply *mutatis mutandis*.

(7) A building order may be linked with an obligation to make an application within a reasonable period, which is to be specified, for the granting of the building permission required in order for the plot to be put to use for building.

(8) Where even subsequent to enforcement measures under the provision of federal state law state an owner fails to meet the obligation imposed under para. 7, expropriation proceedings under Section 85 para. 1 no. 5 may be initiated prior to the termination of the period stipulated in accordance with para. 1.

(9) In expropriation proceedings the assumption shall be made that the conditions required for the issuing of a building order are met; nothing here shall affect provisions on the permissibility of expropriation. In assessing the level of compensation, no account shall be taken of increases in value which have come about subsequent to the building order becoming infeasible, except in those cases where such an increase in value results from permitted expenditure on the part of the property owner.

### **Section 177 Modernisation and Refurbishment Orders**

(1) Where a physical structure reveals deficits and defects, either internal or external, which are capable of being corrected or removed by means of modernisation or refurbishment, the municipality may order the removal of the deficits by modernisation order and the correction of the defects by refurbishment order. An obligation to remove deficits and to correct defects rests with the owner of the physical structure. The notice ordering modernisation or refurbishment shall list the deficits to be removed and the defects requiring correction, stipulating an appropriate period within which the required measures are to be implemented.

(2) Deficits are deemed to exist, in particular, where the physical structure no longer meets general requirements concerning healthy living and working conditions.

(3) Defects are deemed to exist, in particular, where as a result of wear and tear, age, climatic conditions or action by third parties

1. the intended use of the physical structure is more than minimally impaired,
2. the external condition of the physical structure more than minimally detracts from the appearance of the street or of the locality, or
3. the physical structure is in need of restoration and is to be preserved on account of its urban – and in particular its architectural or historical – importance.

In cases where correction of the defects found in a physical structure may be required under the provisions of federal state law, including on grounds of the preservation of historic buildings and monuments, a refurbishment order may only be issued with the approval of the competent authority at federal state level. The notice ordering refurbishment shall detail the various refurbishment measures to be implemented, including those required in connection with the preservation of historic buildings and monuments.

(4) The property owner shall bear the costs of measures ordered by the municipality to the extent he can meet them out of his own or with borrowed funds and can raise the ensuing capital costs and the subsequent management costs from the revenue accruing from the physical structure. Where the owner incurs costs for which he is not liable, these costs shall be reimbursed to him by the municipality, provided that no other body has made a grant towards covering these costs. This does not apply in cases where the owner is obliged under other statutory provisions to bear the costs himself, or where he has failed to carry out refurbishment and is not able to prove that the undertaking is not justified economically, or could not reasonably be expected of him. The municipality may come to an agreement with an individual owner to dispense with calculating the amount to be reimbursed and to fix it as an agreed percentage of the costs of modernisation or refurbishment.

(5) The share of the costs to be borne by the property owner shall be assessed on completion of the modernisation or refurbishment measures with due consideration given to the sustainable revenue which can be achieved from the physical structure under proper management subsequent to modernisation or refurbishment; due consideration is to be given to the aims and purposes underlying a legally binding land-use plan, a social plan, a redevelopment measure or any other measure in urban planning.

### **Section 178 Planting Orders**

The municipality may serve notice on the property owner obliging him to undertake planting on his property within an appropriate period, which is to be specified, in accordance with the designations of the legally binding land-use plan made under Section 9 para. 1 no. 25.

### **Section 179 Development Reduction and Unsealing Orders**

(1) The municipality may oblige a property owner to tolerate the partial or total removal of a physical structure within the area covered by a legally binding land-use plan where this structure

1. is in conflict with the designations of the binding land-use plan and is not capable of suitable adaptation, or
2. reveals deficits or defects within the meaning of Section 177 paras. 2 and 3 sentence 1 which cannot be rectified even by modernisation or refurbishment.

Sentence 1 no. 1 applies *mutatis mutandis* in respect of the regeneration in any other form of areas subject to long-term disuse where the underlying intention is that of preserving or restoring the natural fertility of soil which has been impaired by building or by being otherwise sealed by development; regeneration in any other form shall be equivalent to removal within the sense of sentence 1. Notification of the demolition order is to be given to those parties in favour of whom a right to the property or to a right encumbering the property, where this is not a right of use, has been recorded in the land register or secured by entry, and these parties are affected by removal. The owner's right to undertake removal himself shall not be affected.

(2) In the case of residential property, the order may only be executed where suitable replacement accommodation is available for the residents at reasonable terms at the time of demolition. Where an occupier of space which is given over principally to commercial or professional purposes (commercial space) requires alternative premises, the order may only be executed if suitable commercial space is available at the time of demolition at reasonable terms.

(3) In the case of an owner, tenant, leaseholder or other entitled user suffering property loss as a consequence of demolition, the municipality shall make financial compensation of an appropriate amount. As an alternative to financial compensation, the owner may require that the municipality assume ownership of the property where, on economic grounds, he can no longer be reasonably expected, in view of the [development reduction](#) or unsealing order, to retain the property. Section 43 paras. 1, 2, 4 and 5 and Section 44 paras. 3 and 4 apply *mutatis mutandis*.

## **Part Four The Social Plan and Hardship Allowances**

### **Section 180 The Social Plan**

(1) Where legally binding land-use plans, urban redevelopment measures or urban development measures are anticipated to exert adverse effects on the personal living conditions of people resident in and working in the area, the municipality shall develop a strategy to be discussed with those aggrieved for preventing, where possible, or mitigating these adverse effects. The municipality shall offer assistance to those aggrieved in their own endeavours to prevent or to mitigate the adverse effects, in particular in respect of moving house or finding other employment and the relocation of businesses; where financial assistance from public funds may be available, the municipality shall provide information to this effect. Where the personal situation of aggrieved parties makes it impossible for them to follow the recommendations and other advice given by the municipality on preventing adverse effects, or to make use of the help provided, or where for other reasons further measures are required from the municipality, the municipality shall investigate suitable measures.

(2) The results of the discussions and investigations in accordance with para. 1 shall be put in writing stating the measures to be considered by the municipality and the potential for their implementation (the social plan).

(3) Where realisation of a measure by a body other than the municipality is imminent, the municipality may require that the other body assume the duties arising from para. 1 in accord with the municipality. The municipality may assume these duties itself, either wholly or in part, and charge the costs to the other body.

### **Section 181 Hardship Allowances**

(1) In the implementation of this Act the municipality shall, where this is required for reasons of equity and on request, grant hardship allowances in the form of payments in order to prevent or to mitigate economic disadvantage, including disadvantage of a social nature, to

1. tenants or leaseholders, where the tenancy or lease has been terminated or expropriated on account of the implementation of urban development measures;
2. a party to a contract who has been given notice to quit, where such notice is required for the implementation of urban development measures; this applies accordingly where a tenancy or lease is terminated prematurely by agreement of the parties affected; the municipality shall confirm that termination of the legal relationship is required in view of the imminent implementation of the urban development measure;
3. a party to a contract where, without the legal relationship being terminated, the space rented or leased is temporarily either partly or wholly not available for use, and the municipality has confirmed that this state is due to the imminent implementation of the urban development measure;
4. a tenant or leaseholder in respect of removal costs arising from his being temporarily rehoused subsequent to vacating his home and a new tenancy agreement or lease being created in the area at some later date, where this is provided for in the social plan.

The precondition for such a payment is that the disadvantage suffered by the aggrieved party in the personal circumstances of his life represents special hardship, that no other compensatory payment or compensation is due and no other settlement will be made by measures of any other kind.

(2) Para. 1 applies *mutatis mutandis* in respect of other contractual relationships containing entitlements to the use or utilisation of land, of a building or of part of a building or of any other type of physical structure.

(3) No hardship allowance shall be granted where an applicant has failed, or fails to take reasonable steps, in particular by the use of his own or of borrowed funds, to avert economic disadvantage.

## **Part Five Tenancies and Leases**

### **Section 182 The Termination of Tenancies and Leases**

(1) Where realising the aims and purposes of redevelopment in a formally designated redevelopment area, of development within an urban development zone or of a measure in accordance with Sections 176 to 179, calls for the termination of a tenancy or a lease, the municipality may terminate the legal relationship, either on application by the property owner or in view of a planning order, on notice of not less than six months, or to the end of a year of lease in the case of land under agricultural or forestry use.

(2) The municipality may only terminate a tenancy in respect of residential accommodation where suitable replacement accommodation is available for the tenant and all members of his household at reasonable terms on termination of the tenancy. Where a tenant or leaseholder of commercial space requires alternative

accommodation, the municipality shall only terminate the tenancy or lease if suitable commercial space is available on termination of the legal relationship at reasonable terms.

(3) Where a tenant or leaseholder of commercial space within a formally designated redevelopment area faces a severe impediment to the basis of his livelihood as a result of the implementation of redevelopment measures in urban development, and can consequently not reasonably be expected to continue in the tenancy or lease, the municipality may terminate the legal relationship at the request of the tenant or leaseholder on notice of not less than six months.

### **Section 183** **The Termination of Tenancies and Leases** **in Respect of Undeveloped Land**

(1) Where the designations of a legally binding land-use plan provide for a different use in respect of land which is currently not built on, and such a change of use is imminent, the municipality may at the request of the property owner terminate any tenancies and leases pertaining to the property and which are in conflict with the new use.

(2) Termination is subject to Section 182 para. 1 as applicable.

### **Section 184** **The Termination of Other Contractual Relationships**

Sections 182 and 183 apply *mutatis mutandis* in respect of any other contractual relationships under the law of obligations which contain rights to the use or utilisation of land, buildings, parts of buildings or any other physical structure.

### **Section 185** **Compensation on the Termination of Tenancies and Leases**

(1) Where a legal relationship has been terminated on the basis of Section 182, Section 183 or Section 184, the parties concerned are to be granted financial compensation of an appropriate amount to the extent that they have suffered property loss as a consequence of premature termination of the legal relationship. The provisions of Subdivision Two of Part Five apply *mutatis mutandis*.

(2) The municipality is liable to make compensation. Where no agreement can be reached on the level of compensation due, adjudication shall be made by the higher administrative authority.

(3) Where termination under Section 182, Section 183 or Section 184 takes place in respect of a contract of lease relating to land containing allotments, the municipality is obliged, in addition to the payment of compensation under para. 1, to provide or procure replacement land. In assessing the level of financial compensation, due account is to be taken of the replacement land provided or procured. The higher administrative authority may release the municipality from its obligation to provide or procure replacement land where the municipality is able to demonstrate that it is in no position to meet this obligation.

### **Section 186** **The Extension of Tenancies and Leases**

Either at the request of a tenant or leaseholder or in view of measures under Sections 176 to 179, the municipality may extend a tenancy or lease relating to residential or commercial space within a formally designated redevelopment area, where this is required to implement the social plan.

**Part Six**  
**Urban Development Measures in Connection with Measures**  
**for the Improvement of the Agrarian Structure**

**Section 187**  
**The Co-ordination of Measures; Urban Land-Use Planning**  
**and Measures for the Improvement of Agrarian Structure**

(1) In the preparation and implementation of urban development measures account is to be taken of measures for the improvement of the agrarian structure, and in particular of the results of preliminary planning in pursuance of Section 1 para. 2 of the Law on Common Tasks in respect of the "Improvement of the Agrarian Structure and Coastal Defences". Where measures to improve the agrarian structure may be expected to exert effects on building development within the boundaries of the municipality, the municipality shall determine whether urban land-use plans [Bauleitpläne] should be prepared and whether any other urban development measures should be undertaken.

(2) In the course of preparing urban land-use plans, the farmland consolidation authority [Flurbereinigungsbehörde] shall examine whether any need exists in this context to initiate a procedure for the reallocation and consolidation of agricultural land holdings [Flurbereinigung], or for any other measures to improve the agrarian structure.

(3) The municipality shall involve the farmland consolidation authority, and any other departments which might be responsible for implementing a measure to improve the agrarian structure, in the preliminary stages leading to preparation of the urban land-use plans as early as possible.

**Section 188**  
**Urban Land-Use Planning and the Consolidation**  
**of Agricultural Land Holdings**

(1) Where notification has been made by the farmland consolidation authority in a municipality of its intention to undertake the reallocation and consolidation of agricultural land holdings on the basis of the Farmland Consolidation Act [Flurbereinigungs-gesetz], or where this has already been ordered, the municipality is obliged to prepare urban land-use plans in good time, unless such consolidation cannot be expected to exert any effect on building development within the boundaries of the municipality.

(2) The farmland consolidation authority and the municipality are obliged to co-ordinate their proposals for the territory covered by the municipality at the earliest time possible. Plans shall not be changed prior to completion of reallocation and consolidation except where agreement exists between the farmland consolidation authority and the municipality, or where compelling grounds exist for changes to be made.

**Section 189**  
**The Procurement of Replacement Land**

(1) Where an agricultural or forestry operation is required either wholly or in part by an urban development measure, the municipality shall establish in discussion with the owner whether the owner intends to set up another agricultural or forestry operation or claim replacement agricultural or forestry land. Where the land demanded is a settler's holding within the meaning of the German Reich Settlement Act [Reichssiedlungsgesetz], the competent resettlement authority is to be involved.

(2) The municipality shall take action to provide or procure suitable replacement land and shall make properties belonging to it available as replacement land, where such land is not required to fulfil the duties incumbent upon it.

**Section 190**

**Reallocation and Consolidation of Land Holdings  
to Enable an Urban Development Measure**

(1) In the case of agricultural or forestry land being claimed by an urban development measure, reallocation and consolidation proceedings may be initiated under Section 87 para. 1 of the Farmland Consolidation Act [Flurbereinigungsgesetz], at the request of the municipality and with the approval of the higher administrative authority, where the land loss suffered by the aggrieved party is to be distributed over a larger group of land owners, or adverse effects for agriculture as a whole resulting from the urban development measure are to be prevented. Land consolidation proceedings may be ordered before a land-use plan [Bebauungsplan] has become legally binding. In this case the land-use plan must have come into force before the announcement of the reallocation and consolidation plan (Section 59 para. 1 of the Farmland Consolidation Act). The municipality is the executing agency within the meaning of Section 88 of the Farmland Consolidation Act.

(2) Implementation before completion of the reallocation and consolidation plan under Section 63 of the Farmland Consolidation Act may be ordered where public notice of the reallocation and consolidation plan has already been issued.

(3) Initiation of reallocation and consolidation proceedings shall not affect powers of expropriation provided under this Act.

**Section 191  
Regulations on Transactions Involving  
Agricultural and Forestry Land**

Within the area covered by a legally binding land-use plan or a redevelopment statute, regulations governing transactions involving agricultural and forestry land do not apply, except in the case of the disposal of the economic base of an agricultural or forestry operation, or of land which is designated in a legally binding land-use plan as agricultural land or as woodland.

**CHAPTER THREE  
Other Provisions**

**Part One  
Valuation**

**Section 192  
The Committee of Valuation Experts**

(1) In order to determine property values, and for valuation of other types, autonomous and independent committees of experts in valuation shall be formed.

(2) The committees of experts shall consist of a chairperson and of other experts working in an honorary capacity.

(3) The chairperson and other committee members shall have both expertise and experience in determining property values and in valuation of other kinds, and shall not be otherwise involved on a full-time professional basis with the management of property in the territorial entity for which the committee of experts has been formed. In order to determine standard land values, an official from the competent revenue authority with experience in assessing property for tax purposes is to be made available as an expert.

(4) Committees of experts shall have the use of staffed offices.

**Section 193  
The Duties of the Committee of Valuation Experts**

(1) The committee of experts shall produce expert opinions on the current market values of properties both with and without buildings, and of rights to property, where this is requested by

1. the authorities charged with enforcing this Act in the execution of their duties under this Act,
2. the authorities responsible for assessing the value of a property, or the level of compensation due in respect of a property or a right to a property, on the basis of other statutory provisions,
3. the owners or persons with equivalent rights, holders of other rights to the property and persons entitled to a compulsory portion, where the value of the property is significant for assessing the value of the portion, or
4. courts and judicial authorities.

Nothing here shall affect entitlements under other statutory provisions in respect of requests or applications.

(2) In addition to producing expert opinions on the level of compensation due in the case of loss of a right, the committee of experts may produce opinions on levels of compensation in respect of property loss of other types.

(3) The committee of experts shall compile data on purchasing prices, which it shall analyse to establish standard ground values and other data required in valuation.

(4) The expert opinions are not binding where nothing has been determined or agreed to the contrary.

(5) A copy of the expert opinion is to be sent to the property owner.

#### **Section 194 Standardised Market Values**

The standardised market value is defined as the price which would be achieved in an ordinary transaction at the time when the assessment is made, taking into account the existing legal circumstances and the actual characteristics, general condition and location of the property or other object of assessment, without consideration being given to any extraordinary or personal circumstances.

#### **Section 195 Purchasing Price Data**

(1) In order to enable the compilation of purchasing price data, a copy of every contract by means of which a person enters into an obligation to convey property for payment or in exchange, or to establish a lease, shall be sent by the office where this is recorded to the committee of experts. This also applies to the offer and acceptance of a contract, where this has been recorded separately, and to agreements before an expropriation authority, resolutions on expropriation, resolutions on the anticipation of a decision within proceedings on land reallocation, resolutions on the preparation of reallocation plans, resolutions on boundaries, and to the surcharge in the case of compulsory auction proceedings in respect of immovable property.

(2) Purchasing price data may be made available only to the competent tax authority for purposes of taxation. Nothing here shall affect provisions governing the submission of documents and files to courts or to public prosecution departments.

(3) Where a legitimate interest exists, information derived from the purchasing price data shall be provided in accordance with provisions under federal state law (Section 199 para. 2 no. 4).

#### **Section 196 Standard Ground Values**

(1) An assessment shall be made on the basis of the purchasing price data of average local ground values for each section of the municipal territory, taking due account of varying degrees of development; as a minimum requirement such assessment shall be made in respect of building land which has either been exempted from recoupment charges for public infrastructure or in respect of which such charges are due (standard ground values). In areas where building has taken place, standard ground values are to be assessed as if the ground had not been built on. Where nothing has been determined to the contrary, standard ground values are to be assessed at the end of each calendar year. Standard ground values for purposes of the valuation of economic units for property for purposes of taxation [Einheitsbewertung] shall be assessed at the principal time of reference as applicable. At the request of the authorities charged with the enforcement of this Act, standard ground values shall be assessed for individual localities as of some other point in time.

(2) Where land quality within an area has been changed as a result of a legally binding land-use plan or of some other measure, the subsequent up-dating of standard ground values on the basis of the changes in quality shall also include an assessment of standard ground values to reflect values at the time of the previous valuation of economic units for property for taxation purposes. This assessment need not be made where it is not required by the relevant tax authorities.

(3) Standard ground values shall be published and notification made to the relevant tax authorities. Information on standard ground values is to be made freely available to the public from the offices of the committee of experts.

### **Section 197** **The Powers of the Committee of Experts**

(1) The committee of experts may gather information orally or in writing from persons with specialist knowledge, and from those persons who are in a position to provide information concerning the property in question, and, where this is required in order to assess the level of payment due within reallocation proceedings, as a compensatory settlement or as compensation for expropriation, information concerning a property which is being used for purposes of comparison. The committee may require that owners and other holders of rights to property submit the documents required for compilation of purchasing price data and for the production of the expert opinion. Owners of, and holders of rights to property are obliged to tolerate inspection of their property for purposes of the assessing of purchasing prices and the preparation of expert opinions. Dwellings may only be entered with the permission of the occupier.

(2) All courts and authorities are obliged to provide the committee of experts with administrative and legal co-operation. The tax authority shall provide information on property, where this is required for the assessment of compensatory payments and of compensation for expropriation.

### **Section 198** **The Higher Committee of Experts**

(1) Higher committees of experts for the territory covered by one or more higher administrative authorities may be formed as required; these committees shall be subject to the provisions on committees of experts as applicable.

(2) At the request of a court, the higher committee of experts shall furnish a decisive expert opinion where an expert opinion from a committee of experts is already available.

### **Section 199** **Delegated Powers**

(1) The Federal Government, with the approval of the Federal Council [Bundesrat], is authorised to impose regulations by statutory orders to ensure the application of the same principles in both the assessment of current market values and the derivation of the data required for assessment.

(2) Federal state governments are authorised to regulate by means of statutory orders

1. the formation and the activities of committees of experts and of higher committees of experts, where this has not already been performed by this Act, and the role to be played in individual cases by experts and by a committee,
2. the duties of the chairperson,
3. the setting up and the duties of the committee's offices,
4. the compilation and analysis of purchasing price data, the assessment of standard ground values and the publication of standard ground values and other valuation data, and the provision of information derived from the purchasing price data,
5. the communication of data from the farmland reallocation and consolidation department for purposes of the compilation and analysis of purchasing price data,
6. the transfer of other duties to the committee of experts and the higher committee of experts, and
7. remuneration to members of the committee of experts and the upper committee of experts.

**Part Two**  
**General Provisions; Administrative Responsibilities; Administrative**  
**Procedures; Planning Safeguards**

**Subdivision One**  
**General Provisions**

**Section 200**  
**Properties; Rights to Properties; Cadaster of Building Land**

(1) The provisions of this Act applicable to properties apply equally *mutatis mutandis* to parts of properties.

(2) Where nothing to the contrary is stated in this Act, the provisions existing in respect of ownership of property apply equally *mutatis mutandis* to rights similar to real property rights.

(3) The municipality may record land available either immediately or in the foreseeable future for built development in map form or in lists based on a plan of the municipality containing cadastral unit and lot numbers, street names and details of plot size (cadaster of building land). It may publish details of plots in map or in list form provided no objection has been raised by the owner of the land. The municipality shall give one month's prior notice in the customary manner of its intention to publish such information drawing attention to the right of property owners to object.

**Section 200a**  
**Replacement Measures under State Nature Conservation Legislation**

Representations of spaces for counterbalancing measures and designations of spaces or measures for counterbalancing measures within the meaning of Section 1a para. 3 shall also include replacement measures as provided under state legislation on nature conservation. Compensatory measures need not be undertaken in close proximity to the place of intrusion provided that this is compatible with ordered urban development and the aims of regional planning, of nature protection and of conservation of the countryside.

**Section 201**  
**Definition of Agriculture**

Within the meaning of this Act, the term agriculture shall include in particular the cultivation of land, the management of meadows and pastures, including the accommodation of livestock for payment on a livery basis where this is based predominantly on internally produced feed, horticultural production, commercial fruit growing, wine-growing, commercial bee-keeping and freshwater fishery.

## **Section 202 Protection of Topsoil**

Any topsoil which is excavated during the construction or alteration of physical structures, or in the course of any other major changes to the surface of the earth, shall be preserved in a usable condition and protected from destruction or wasteful disposal.

## **Subdivision Two Administrative Responsibilities**

### **Section 203 Provisions for Deviations in Administrative Responsibility**

(1) With the accord of the municipality, the federal state government, or the authority designated by it, may by statutory instrument provide for the duties incumbent upon the municipality under the present Act to be transferred to some other territorial authority, or to an association in whose decision-making processes the municipality is involved.

(2) The duties incumbent upon municipalities under this Act may by federal state law be transferred to associations of municipalities, associations of administrations or other comparable associations of municipalities in law which are charged under federal state law with local, municipal self-government responsibilities. Federal law shall regulate in what form municipalities are to be involved in the discharge of responsibilities.

(3) The federal state government may by statutory instrument transfer the duties incumbent under this Act upon the higher administrative authority to other government agencies, counties [Landkreise] or other municipalities not associated with a county [kreisfreie Gemeinden].

(4) Where planning areas covered by joint preparatory land-use plans (Section 204), or the planning areas of one planning association's preparatory land-use plans and statutes (Section 205) fall under the ambit of different higher administrative authorities, the power to make decisions in proceedings relating to permission and approval falls to the supreme federal state authority. Where the territorial application extends to two federal states, the relevant supreme federal state authorities shall decide by common accord.

## **Section 204 Joint Preparatory Land-Use Plans, Urban Land-Use Planning in the Context of the Formation of Planning Associations and in the Case of Local Government Reorganisation**

(1) Adjoining municipalities shall prepare a joint preparatory land-use plan, where their urban development is determined largely by common conditions and requirements, or where a joint preparatory land-use plan would facilitate an equitable balance between their various concerns. A joint preparatory land-use plan shall be prepared in particular in those cases where joint planning is required to satisfy the aims of comprehensive [regional planning](#), or in connection with public transport and traffic installations and other local public infrastructure, including public amenities and other consequential facilities. Revocation, amendment or supplementation of a joint preparatory land-use plan may only be undertaken jointly by the municipalities concerned; municipalities may agree to limit this tie to specific territorial or substantive sections of the plan. Where joint planning is required only in respect of certain territorial or substantive sections of the plan, it is sufficient for an agreement produced by the municipalities concerned on particular representations in their preparatory land-use plans to take the place of a joint preparatory land-use plan. Where the conditions for joint planning contained in sentences 1 and 4 no longer exist, or where their purpose has already been achieved, the

municipalities concerned may amend or supplement the preparatory land-use plan in respect of their own municipal territory; the approval of the higher administrative authority is required prior to the initiation of urban land-use planning procedures.

(2) Where changes are made affecting the boundaries or the existence of municipalities, or where responsibility for the preparation of preparatory land-use plans is transferred to associations or to municipal corporate bodies of any other kind, the existing preparatory land-use plans continue to be valid, notwithstanding any rulings under federal state law to the contrary. This applies equally in respect of territorial and substantive sections of preparatory land-use plans. Nothing here shall affect the power and duties incumbent upon a municipality, association or other body to rescind valid preparatory land-use plans, or to make supplementation to them in respect of new municipal territory, or to replace them with a new preparatory land-use plan.

(3) Procedures relating to the preparation of, or amendments and supplements to legally binding land-use plans [Bebauungspläne] may be continued subsequent to changes to boundaries or in composition from the state they had reached. Where planning associations are created, and in the case of association within the meaning of Section 205 para. 6, sentence 1 applies *mutatis mutandis*. The higher administrative authority may require the repetition of specified procedural stages.

### **Section 205 Planning Associations**

(1) Municipalities and any other public bodies charged with planning may join together to form a planning association in order to achieve an equitable balance between their varying concerns by means of joint and co-operative urban land-use planning. In accordance with its standing rules, a planning association takes over the responsibilities of the municipalities in charge of urban land-use planning and implementation.

(2) Where agreement on forming an association pursuant to para. 1 cannot be reached, the parties concerned may be brought together to form a planning association at the request of one of the planning agencies, should this be urgently required for the public good. Where association is necessary in the interests of comprehensive regional planning, application may be made by the department responsible under federal state law for comprehensive regional planning. Where association would involve planning agencies from different federal states, association requires the agreement of the federal states concerned. Where it is proposed to involve federal government, or a corporation or institution directly under federal government, in the planning association, association requires an agreement between the federal government and the government of the federal state concerned, provided no objection to association by the federal state is forthcoming from the authority representing federal government or the said corporation or institution.

(3) Where no agreement is reached between members on the standing rules or on the plan, the competent federal state authority shall draft standing rules or a plan, which it shall present to the planning association for voting. Where the members cannot agree on these standing rules or on this plan, the federal state government shall prescribe these standing rules or the plan. Para. 1 sentence 4 applies *mutatis mutandis*. Where the federal government, or a corporation or institution directly under federal government, is a member of the planning association, the standing rules or the plan are fixed by agreement between the federal government and the government of the federal state concerned, provided no objection to prescription by the federal state is forthcoming from the authority representing federal government or the said corporation or institution.

(4) The duties incumbent upon a municipality under this Act may be transferred to a planning association in accordance with its standing rules.

(5) The planning association shall be dissolved at such time as the conditions for association no longer exist, or the purpose of joint planning has been achieved. Where unanimity cannot be achieved on dissolving the association, dissolution shall be ordered at the request of a member where the conditions mentioned in sentence 1 are met; in other cases para. 2 applies *mutatis mutandis*. Following the dissolution of a planning association, the plans which it has prepared remain in effect as urban land-use plans for the various municipalities.

(6) Nothing in this Act shall preclude association under the Special Association Act, or under any special federal state law.

(7) Where the power to prepare urban land-use plans is transferred in accordance with paras. 1 to 3 and 6, draft versions of these plans, including explanatory statements or statements of the grounds for plans, shall be

furnished to the municipalities whose territory is affected by the urban land-use plans for comment within a suitable period and prior to a resolution being adopted on the plans, or to prescription in accordance with para. 3 sentences 2 and 4. [Suggestions](#) made by a municipality within the period allowed shall be dealt with in accordance with Section 3 para. 2 sentences 4 and 6 as applicable.

### **Section 206** **Territorial and Subject-Matter Responsibility**

(1) Territorial responsibility rests with the authority within whose boundaries the property is located. Where a number of territorially or economically linked properties with a common owner are affected, and where these properties are located within the territories of several authorities with subject-matter responsibilities under this Act, the authority to be given territorial responsibility shall be determined by the next highest shared authority.

(2) Where there is no higher administrative authority, the supreme federal state authority shall act as the higher administrative authority.

### **Subdivision Three** **Administrative Procedures**

#### **Section 207** **Officially Appointed Representatives**

Where a party is not represented, the guardianship court shall, at the request of the authority responsible, appoint a representative who is both versed in law and technically competent on behalf of

1. a concerned party whose identity is not known, or for a person whose participation is uncertain,
2. a concerned party who is absent and whose whereabouts are not known, or are known, but who is prevented from attending to affairs concerning his personal estate,
3. a concerned party whose place of abode is not within the territorial application of this Act, where this person has not acceded within the period allowed to a request from the authority responsible to appoint a representative,
4. joint owners or owners according to their share of the property, and also of a number of holders of some other right to a property or to a right encumbering the property, where such persons have not acceded within the period allowed to a request from the authority responsible to appoint a representative,
5. and, in the case of unclaimed properties, in order to safeguard the rights and duties arising from ownership.

The appointment and office of representative is subject to the provisions for curatorship in the Civil Law Code as applicable.

#### **Section 208** **Orders for Investigating the Facts and Circumstances**

In order to investigate the facts and circumstances, the authority may in addition order that

1. concerned parties appear in person,
2. certificates and any other documents to which a concerned party has made reference be produced,
3. creditors of mortgages and rent charges produce the mortgage or rent charge certificates which are in their possession.

Where a concerned party fails to comply with such an order, the party may be threatened with, and have imposed, a penalty of up to DM 1,000. Where the concerned party is a corporate body under public law or an

unincorporated society, its authorised representatives shall be subject to the threat of and imposition of the penalty payment in accordance with law or statute. Threats and impositions may be repeated.

### **Section 209** **Preliminary Groundwork on Private Properties**

(1) Property owners and occupiers are obliged to tolerate their property being entered by agents acting on behalf of the relevant authorities for purposes of preparation in respect of the measures with which they are charged under this Act, and to tolerate land surveying, ground and groundwater investigations or any other similar work. Property owners and occupiers shall be given prior notice of an intention to carry out such work. Dwellings may only be entered with the consent of the occupant.

(2) Where a property owner or occupier suffers property loss as a direct consequence of a measure permitted under para. 1, financial compensation of an appropriate amount shall be rendered by the body which commissioned the action; where no agreement can be reached on the level of financial compensation, adjudication shall be made by the higher administrative authority; the parties concerned are to be heard prior to adjudication being made. Where expropriation was commissioned by an expropriation authority, compensation to the aggrieved party is to be paid by the applicant in whose interests the expropriation authority was acting; where no agreement can be reached on the level of financial compensation, compensation shall be set by the expropriation authority; the parties concerned are to be heard prior to a decision being taken.

### **Section 210** **Restitution**

(1) Where a concerned party has been prevented without fault from adhering to a time limit set for a procedural action, either statutory or imposed under this Act, the party shall on application be granted restitution to the previous state of proceedings.

(2) Subsequent to restitution to the previous state of proceedings, the authority competent under Section 32 para. 4 of the Administrative Procedures Act [Verwaltungsverfahrensgesetz] may set compensation rather than take a decision which would alter the new legal position created by the previous proceedings.

### **Section 211** **Advice on Legal Redress**

The administrative documents issued in accordance with this Act shall include a note informing parties concerned of legal redress available to them against the administrative document, of where such legal redress is to be sought, and of any time-limits to be observed.

### **Section 212** **Preliminary Proceedings**

(1) Federal state governments may provide by statutory instrument that an administrative document issued under Part Four or Part Five of Chapter One may not be contested by means of a motion for a court ruling under Section 217 until such time as its legality and expediency have been examined in preliminary proceedings; preliminary proceedings are to be conducted following the provisions of the Administrative Court Procedures Code [Verwaltungsgerichtsordnung].

(2) Where preliminary proceedings are planned, an objection against putting in possession before completion has no suspensory effect.

### **Section 212a** **Exemptions to Suspensory Effect**

(1) Objections and actions for invalidity lodged by a third party to contest permission granted in respect of a development project have no suspensory effect.

(2) Objections and actions for invalidity lodged to contest claims by the municipality for reimbursement under Section 135a para. 3 and for financial settlement under Section 154 para. 1 have no suspensory effect.

### **Section 213 Administrative Offences**

- (1) An administrative offence is deemed to have been committed where a person
1. against their better knowledge, provides false information or submits incorrect plans or documents with the purpose of attaining a favourable, or preventing a disadvantageous administrative action;
  2. removes, alters, defaces or incorrectly places posts, pegs or markings of any other type used for preparatory groundwork;
  3. contravenes a requirement under Section 9 para. no. 25 b) contained in a legally binding land-use plan relating to the planting or maintenance of trees, shrubs and other greenery, and the maintenance of bodies of water, by causing their removal, damage or destruction;
  4. **removes** or alters, without obtaining permission, a physical structure within the territory covered by a preservation statute (Section 172 para. 1 sentence 1).

(2) Administrative offences as described in para. 1 nos. 1 and 2 may result in punishment in the form of fines of up to DM 1,000 (one thousand German Marks), those covered by para. 1 no. 3 in fines of up to DM 20,000 (twenty thousand German Marks), and those covered by para. 1 no. 4 in fines of up to DM 50,000 (fifty thousand German Marks).

### **Subdivision Four Planning Safeguards**

#### **Section 214 Relevance of Violations of the Provisions Governing the Preparation of Preparatory Land-Use Plans and Local Statutes**

(1) A violation of the procedural and formal requirements contained in this Act shall be regarded as seriously affecting the validity of the preparatory land-use plan or of local statutes only where

1. requirements concerning public participation or the participation of public agencies under Section 3 paras. 2 and 3, Sections 4, 4a, 13, 22 para. 9 sentence 2 and Section 34 para. 5 sentence 1 and Section 35 para. 6 sentence 5 have been violated; where the provisions have been applied, it is not crucial that every individual public agency affected should have participated, nor is it crucial in the application of Section 3 para. 3 sentence 3 or of Section 13 that the conditions for the organisation of participation under these provisions should have been fully appreciated;
2. requirements concerning explanatory statements and the justification of a preparatory land-use plan, or of statutes and draft versions thereof, under Section 3 para. 2, Section 5 para. 1 **sentence 2** clause 2 and para. 5, Section 9 para. 8 and Section 22 para. 10 have been violated; it is not regarded as crucial that the explanatory statement or the justification of a preparatory land-use plan, or of statutes and draft versions thereof, should be complete;
3. no resolution by the municipality regarding the preparatory land-use plan or the statutes has been adopted, permission has not been granted, or where the purpose of information underlying the requirement to issue public notice of the preparatory land-use plan or the statute has not been achieved.

In the case of para. 1 sentence 1 no. 2 where the explanatory statement or the justification is incomplete in respect of major issues requiring consideration, the municipality shall supply information on request where a legitimate interest exists.

(2) The validity of urban land-use plans similarly is not affected by a violation of the provisions under Section 8 paras. 2 to 4 governing the relationship between the legally binding land-use plan and the preparatory land-use plan, where

1. the requirements governing either the preparation of an independent legally binding land-use plan (Section 8 para. 2 sentence 2), or the urgent grounds mentioned in Section 8 para. 4 requiring that preparation of a legally binding land-use plan be brought forward, have not been correctly assessed;
2. a violation of Section 8 para. 2 sentence 1 has occurred in respect of the development of a legally binding land-use plan out of the preparatory land-use plan, without any obstacle having been created to the planned urban development ensuing from the preparatory land-use plan;
3. the legally binding land-use plan has been developed out of a preparatory land-use plan which proves to be invalid due to a violation of procedural or formal requirements, including Section 6, subsequent to publication of the legally binding land-use plan;
4. Section 8 para. 3 has been violated in parallel proceedings without any obstacle having been created to planned urban development.

(3) Consideration shall be based on the factual and legal position at the time when the resolution on the urban land-use plan was adopted. Flaws of procedure in the course of consideration are only significant where these have had an obvious influence on the outcome of consideration.

#### **Section 215 Time-Limits for Claiming Violation of Procedural and Formal Requirements and Procedural Flaws in the Course of Consideration**

(1) Not to be regarded as crucial are

1. violations of the procedural and formal requirements of the kinds described in Section 214 para. 1 sentence 1 nos. 1 and 2, and
2. flaws in the course of consideration,

provided no written claim has been asserted with the municipality within a period of one year, in the case of no. 1, and within a period of seven years, in the case of no. 2, either period to commence on publication of the preparatory land-use plan or the statute; the grounds for alleging violation or the existence of flaws shall be stated in detail.

(2) On the preparatory land-use plan or of the statute being put into force, attention is to be drawn to the conditions applying in respect of claims of the violation of procedural or formal requirements or of procedural flaws, and of the legal consequences (para. 1).

(3) (repealed)

#### **Section 215a Supplementary Procedure**

(1) Flaws in a statute which under Sections 214 and 215 are not to be deemed to seriously affect validity and which are capable of being rectified by means of a supplementary procedure shall not render the statute null and void. Until such time as the said flaws have been rectified, the statute shall not exert any legal effects.

(2) In the event of breaches of the provisions listed in Section 214 para. 1 or of any other procedural or formal flaws under state law, the preparatory land-use plan or statute may be put back into force with retrospective effect.

**Section 216**  
**Responsibilities in Permission Procedures**

Nothing shall affect the obligation incumbent on the authority responsible for [permission procedures](#) to verify that those requirements whose violation would have no effect on the validity of a preparatory land-use plan or statute have indeed been observed.

**Part Three**  
**Proceedings Before Court Chambers (Senates) for Building-Land Matters**

**Section 217**  
**Motions for Court Rulings**

(1) Administrative acts under Part Four and Part Five of Chapter One, and under [Section 18](#), Section 28 paras. 3, 4 and 6, Sections 39 to 44, Section 126 para. 2, Section 150 para. 2, Section 181, Section 209 para. 2 or Section 210 para. 2, can only be contested by means of a motion for a court ruling. Sentence 1 applies equally in respect of other administrative acts on the basis of this Act for which the application of Subdivision Two of Part Five of Chapter One is prescribed, or which are issued in the course of proceedings under Part Four or Part Five of Chapter One, and equally to disputes concerning the level of financial compensation under Section 190 in connection with Section 88 no. 7 and Section 89 para. 2 of the Farmland Consolidation Act [Flurbereinigungsgesetz]. A motion for a court ruling may at the same time seek to bring about either an adjudication on the issuing of an administrative act or on some other action, or a declaratory judgement. Adjudication on the motion shall be made by the regional court's Chamber for Building-Land Matters.

(2) A motion is to be lodged at the place of issue within seven days of the administrative act being served. Where public notice of an administrative act is required to be issued in the customary manner, the motion shall be lodged within a period of six weeks from public notice being issued. Where preliminary proceedings (Section 212) have taken place, the time-limit referred to in sentence 1 commences with the serving of notice that preliminary proceedings have been concluded.

(3) The motion must state which administrative act it is directed against. It shall explain the extent to which the administrative act is to be challenged, and contain a specific motion. It shall state the grounds, facts and evidence to be cited to justify the motion.

(4) The body which issued the administrative act shall present the motion without delay to the competent regional court [Landgericht] together with its own files. Where proceedings before the said body have not yet been completed, copies of relevant documents shall be submitted in place of the files.

**Section 218**  
**Restitution**

(1) Where a concerned party has been prevented without fault from adhering to a time-limit set in accordance with Section 217 para. 2, the party shall on application be granted restitution to the previous state of proceedings by the regional court's chamber for building-land matters, provided that this party lodges the motion for a court ruling within two weeks of the obstacle to adherence being removed, and substantiates the grounds to justify restitution. Any appeal against the adjudication on the motion is to be lodged immediately with the senate for building-land matters at the Regional Appeal Court [Oberlandesgericht]. An application for restitution may not be lodged more than one year after the lapsing of the time-limit.

(2) Where the contested administrative act is a resolution on expropriation and where the previous legal position has already been superseded by the new legal position (Section 117 para. 5), the court may not in allowing restitution revoke the resolution on expropriation or alter it in respect of the subject of expropriation or the type of compensation.

**Section 219**  
**The Territorial Jurisdiction of Regional Courts [Landgerichte]**

(1) Territorial jurisdiction rests with the regional court within whose district the office which issued the administrative act is located.

(2) Federal state governments may by statutory instrument assign proceedings and adjudication on motions for court rulings to one single regional court to act for several regional court districts, where pooling would be in the interests of expediting the dispatch of the proceedings. Federal state governments may also transfer these powers to federal-state administration of justice departments.

**Section 220**  
**The Composition of Chambers for Building-Land Matters**

(1) At regional courts one or more chambers for building-land matters shall be established. The chamber for building-land matters shall be composed of three regional court judges, including the presiding judge, and two full-time judges from the administrative courts. Regulations concerning judges sitting alone do not apply.

(2) The judges from administrative courts, and their deputies required for the event of them being prevented from attending, are appointed by the federal state's supreme authority with responsibility for administrative tribunals for a period of years.

**Section 221**  
**General Provisions on Procedure**

(1) Cases pending with the courts following a motion for a court ruling are subject to the provisions governing actions in civil cases, where nothing to the contrary is provided in Sections 217 to 231. Proceedings shall not be affected by court recesses.

(2) The court may order *ex officio* the taking of evidence, and after hearing the parties involved may also consider those facts which have not been presented by these parties.

(3) Where a number of motions have been lodged against the same administrative act, these shall be heard and adjudicated on at the same time.

(4) Regulations on the prepayment of fees for proceedings in general under Section 65 para. 1 [sentences 1 and 3](#) of the Court Fees Act [Gerichtskostengesetz] do not apply.

**Section 222**  
**Concerned Parties**

(1) Any person who was concerned in the proceedings within which the administrative act was issued is also a concerned party in the court proceedings if that person's rights or duties could be affected by the adjudication of the court. The office which issued the administrative act is also a concerned party within the court proceedings.

(2) The motion for a court ruling shall be served upon the other concerned parties described in para. 1 sentence 1, where their identity is known.

(3) In respect of concerned parties, the provisions of the Code of Civil Procedure on litigant parties apply *mutatis mutandis*. In proceedings before a regional court and the Regional Appeal Court [Oberlandesgericht], Section 78 of the Code of Civil Procedure applies only in respect of those parties who have lodged motions in the cause of action.

(4) Concerned parties may also be represented by a legal counsel who is admitted to a regional court within whose district the property which forms the subject of the proceedings is situated. Before a court which has been designated under Section 219 para. 2, they may also be represented by counsel who is admitted to the regional court in whose jurisdiction the motion for a court ruling would fall in the absence of the arrangement under Section 219 para. 2.

### **Section 223 Challenges to Discretionary Adjudications**

Where the office which has issued the administrative act is empowered to act at its own discretion, the challenge may only be based on a claim of the adjudication being unlawful on the grounds either that the statutory bounds of discretion have been exceeded, or that a use has been made of discretionary powers which is not consistent with the purposes for which discretion is allowed. This does not apply in those cases where the administrative act contains a decision on a claim for financial settlement.

### **Section 224 Challenges to Possession Before Completion**

A motion for a court ruling against installing into possession before completion does not have a suspensory effect. Section 80 para. 5 of the Administrative Court Procedures Code [Verwaltungsgerichtsordnung] applies *mutatis mutandis*.

### **Section 225 Orders of Implementation Before Completion**

Where it is only the level of financial compensation which is still a matter of dispute, the court may rule, at the request of the beneficiary of expropriation, that the expropriation authority shall order implementation of the resolution on expropriation. In its ruling the court may require the beneficiary of expropriation to provide security for the amount at dispute. The implementation order may not be issued until such time as the beneficiary of expropriation has paid the prescribed financial compensation, or has deposited the prescribed amount in a permissible manner renouncing any right of redemption.

### **Section 226 Judgements**

(1) Adjudication on motions for a court ruling is made by judgement.

(2) Where a motion for a court ruling concerning a claim for a financial settlement is deemed to be valid, the court shall amend the administrative act. In other cases where a motion for a court ruling is deemed to be valid, the court shall revoke the administrative act, and pronounce, where this is required, that the office which issued the administrative act is obliged to alter its decision on the matter in compliance with the court's interpretation of the law.

(3) A resolution on expropriation may also be altered by a court in cases where the motion for a court ruling does not concern a claim for a financial settlement. In this case the court may also alter a resolution on expropriation over and above the subject-matter of the motion by the party who lodged the motion for a court ruling, where such changes have been moved for by another party; it is not admissible in this process for alterations to be made to the resolution on expropriation which would be to the disadvantage of the person who lodged the motion for a court ruling. Where a resolution on expropriation is altered, Section 113 para. 2 applies *mutatis mutandis*. Where a resolution on expropriation is revoked or altered in respect of the subject of expropriation, and where Section 113 para. 5 is touched, the court shall make its judgement known to the court of enforcement.

(4) Where only one of a number of motions, or only a part of one motion, is ripe for final adjudication, the court shall make a ruling on this part of the action only if this is deemed to be necessary in order to expedite proceedings.

**Section 227**  
**Default by a Concerned Party**

(1) Where the party who lodged the motion for a court ruling appears for a court hearing at the appointed time, the action may be heard even if one of the other parties concerned fails to appear. A motion made in the course of an earlier hearing by the party who fails to appear may be adjudicated on as matters stand.

(2) Where the party who lodged the motion for a court ruling fails to appear for a court hearing at the appointed time, any other concerned party may request that a ruling be made as matters stand.

(3) Sections 332 to 335, 336 para. 2 and Section 337 of the Code of Civil Procedure apply *mutatis mutandis*. In other cases the provisions on judgements by default do not apply.

**Section 228**  
**Costs of the Proceedings**

(1) Where the party which lodged the motion for a court ruling is successful, and provided that no other party has lodged a conflicting motion on the cause of action, for purposes of the application of the provisions of the Code of Civil Procedure governing costs, the body which issued the administrative act is regarded as being the defeated party.

(2) Reimbursement of costs to a concerned party who did not lodge a motion on the cause of action may be granted by the court, on application by the party concerned, at the discretion of the court.

**Section 229**  
**Appeals and Grievances**

(1) Appeals and grievances are to be heard by the senate for building-land matters at the Regional Appeal Court, to be composed of three regional appeal court judges, including the presiding judge, and two full-time judges from the administrative appeals tribunal [Oberverwaltungsgericht]. Section 220 para. 1 sentence 3 and para. 2 applies *mutatis mutandis*.

(2) Federal state governments may by statutory instrument assign proceedings and adjudication on appeals and grievances against decisions made by the chambers for building-land matters to one single Regional Appeal Court to act for several regional appeal court districts, where pooling would be in the interests of expediting the dispatch of the proceedings. Federal state governments may also transfer these powers by statutory instrument to federal-state administration of justice departments [Landesjustizverwaltungen].

(3) Before the court assigned in accordance with para. 2, concerned parties may also be represented by a legal counsel who is admitted to the Regional Appeal Court which would have been competent to adjudicate on appeals and grievances in the absence of the arrangement under para. 2.

**Section 230**  
**Appeals on Points of Law**

Appeals on points of law shall be heard by the Federal Court of Justice [Bundesgerichtshof].

**Section 231**  
**Agreement**

Where the parties concerned reach an agreement during the course of proceedings on expropriation, Sections 110 and 111 apply *mutatis mutandis*. The court shall take the place of the expropriation authority.

**Section 232**  
**Additional Responsibilities of the Chambers (Senates)**  
**for Building-Land Matters**

Federal states may, by act of parliament, assign to the chambers and senates for building-land matters court hearings and adjudication on expropriation measures and on official actions equivalent to expropriation affecting the objects mentioned in Section 86 and having their basis in federal state law, or which are executed under federal state law, and also on compensation claims; they may in addition declare the provisions of this Part to be applicable.

**CHAPTER FOUR**  
**Transitional and Concluding Regulations**

**Section 233**  
**General Transitional Provisions**

(1) Procedures pursuant to this Act which have been formally initiated prior to a change to the law coming into force shall be concluded in accordance with the regulations previously valid where nothing is provided in the following to the contrary. Where individual statutorily prescribed stages of a procedure have not yet been commenced, these stages of the procedure may also be conducted in accordance with the provisions of this Act.

(2) The provisions of Chapter Three, Part Two, Subdivision Four on Planning Safeguards shall also apply in respect of preparatory land-use plans and statutes which have been brought into force on the basis of prior versions of this Act.

(3) Any plans, statutes and decisions which have come into force or have remained in force on the basis of prior versions of this Act shall remain valid.

**Section 234**  
**Transitional Provisions Regarding the Right of Pre-Emption**

(1) The right of pre-emption shall be subject to the application of the urban development law prevailing at the time of sale.

(2) Statutes adopted under Section 25 of the Federal Building Act remain in force as statutes adopted under Section 25 para. 1 sentence 1 no. 2.

**Section 235**  
**Transitional Provisions for Urban Development and Redevelopment Measures**

(1) Notwithstanding Section 233 para. 1, urban development and redevelopment measures in respect of which a decision to undertake preparatory or preliminary investigations was taken under previously valid law prior to a change to the law entering into force shall be subject to the application of the provisions of this Act; completed stages of procedure remain unaffected. Where, however, an urban development measure was formally designated prior to July 1st 1987, Sections 165 to 171 in the wording valid up to April 30th 1993 shall remain applicable; where proper implementation of a development measure of this kind in accordance with its aims and purposes calls for a change to be made to the purview of the regulations governing development measures, Section 53 shall remain applicable in conjunction with Section 1 of the Urban Renewal and Town Development Act.

(2) Where an urban redevelopment measure was formally designated prior to January 1st 1998 and under the redevelopment statute only the requirement of permission pursuant to Section 144 para. 2 in the wording valid up to December 31st 1997 is excluded, the written consent of the municipality shall continue to be required for the subdivision of a plot. The municipality shall inform the land registry retrospectively and without delay of redevelopment statutes within the meaning of sentence 1 in due application of Section 143 para. 2 sentences 1 to 3 valid as of January 1st 1998.

(3) In the territory which prior to October 3rd 1990 lay within the jurisdiction of the Basic Law, Section 141 para. 4 shall have no application in respect of resolutions on the commencement of preparatory investigations advertised prior to May 1st 1993.

### **Section 236**

#### **Transitional Provisions on Building Orders and the Preservation of Physical Structures**

(1) Section 176 para. 9 shall apply in respect of expropriation procedures pursuant to Section 85 para. 1 no. 5 where the owner fails to comply with obligations arising from a building order served after May 31st 1990.

(2) Section 172 para. 1 sentences 4 to 6 shall not apply to the creation of part-ownership and condominium where an application for entry in the land registry has been made prior to June 26th 1997. This applies equally in those cases where a right to the creation or transference of part-ownership or condominium was safeguarded by means of a priority notice prior to June 26th 1997. Section 172 in the wording as valid from January 1st 1998 shall also apply in respect of statutes advertised in the customary manner prior to January 1st 1998.

### **Section 237**

**(repealed)**

### **Section 238**

#### **Transitional Provision on Compensation**

Where changes to Section 34 of the Federal Building Act resulting from the act to amend the Federal Building Act of August 18th 1976 either revoked or seriously impaired a hitherto legitimate use of the land, compensation shall be granted as applicable in application of Sections 42, 43 paras. 1, 2, 4 and 5 and Section 44 para. 1 sentence 2, paras. 3 and 4; this shall not apply to cases where at the time at which compensation may be claimed under Section 44 paras. 3 to 5 it would also have been possible for an equivalent revocation of or change to the permitted use to ensue under Section 34 of the Federal Building Act in the wording as valid up to December 31st 1976 without the said revocation or change giving rise to compensation under Section 44 of the Federal Building Act in the wording as valid up to December 31st 1976.

### **Section 239**

#### **Transitional Provisions on Land Reallocation**

(1) Where a reallocation plan has been made available for public inspection prior to July 1st 1987 (Section 69 Federal Building Act), Sections 53, 55, 58 para. 2, Section 61 para. 1 and Sections 63, 64 and 68 to 70 of the Federal Building Act shall continue to have application. In the case of a pre-emptive decision having been taken under Section 76 of the Federal Building Act prior to July 1st 1987, Section 55 of the Federal Building Act shall continue to have application.

(2) Section 57 sentence 4 and Section 58 para. 1 sentence 1 shall also have application if prior to July 1st 1987 the land reallocation authority adopted the reallocation plan (Section 66 para. 1 Federal Building Act) or took a pre-emptive decision on this matter (Section 76 Federal Building Act) and the plots were clearly assigned to the spaces detailed in Section 55 para. 2 of the Federal Building Act as liable for recoupment charges for infrastructure.

(3) Where the municipality has adopted a resolution on the adjustment of plot boundaries prior to July 1st 1987 (Section 82 Federal Building Act), Sections 80 to 83 of the Federal Building Act shall continue to have application.

**Section 240  
(repealed)**

**Section 241  
(repealed)**

**Section 242  
Transitional Regulations on the Provision of Local Public Infrastructure**

(1) Under this Code it is similarly not admissible for a recoupment charge to be made in respect of existing infrastructure for which a charge could not be levied under the regulations in force up to June 29th 1961.

(2) To the extent that long-term contracts or other agreements were valid on June 29th 1961 to regulate the discharge of duties on the part of owners of abutting property to pay recoupment charges, and in particular on collecting money for road construction in road-construction funds and dedicated bank accounts, the federal states may pass legislation to regulate their termination.

(3) Section 125 para. 3 shall apply also to legally-binding land-use plans which entered into force prior to July 1st 1987.

(4) Section 127 para. 2 sentence 2 shall apply also to traffic installations completed prior to July 1st 1987. Any duty to pay a recoupment charge arising under federal state law prior to July 1st 1987 shall remain effective.

(5) Any duty to make a financial contribution towards a children's playground already arising under the regulations valid up to July 1st 1987 (Section 127 para. 2 nos. 3 and 4 Federal Building Act) shall stand. The municipality shall waive the collection of recoupment charges for public infrastructure either wholly or in part where this is considered appropriate in the light of local conditions, in particular where the children's playground is available for use by the wider community. Sentence 2 shall apply also in respect of contributions arising prior to July 1st 1987 where

1. the contribution has not yet been made, or
2. the contribution has been made but the order stating the amount due has not yet become infeasible.

(6) Section 128 para. 1 shall also have application where the reallocation plan (Section 66 Federal Building Act) or the pre-emptive decision (Section 76 Federal Building Act) was advertised in the customary manner prior to July 1st 1987 (Section 71 Federal Building Act).

(7) Where a decision has been taken prior to July 1st 1987 on the deferment of the contribution for agricultural land (Section 135 para. 4 Federal Building Act) and this decision has not yet become infeasible, Section 135 para. 4 of this Act shall have application.

(8) Section 124 para. 2 sentence 2 shall also apply in respect of agreements on costs within infrastructure contracts closed prior to May 1st 1993. Such contracts remain subject to Section 129 para. 1 sentence 3.

(9) An infrastructure recoupment charge may not be raised in respect of infrastructure installations or parts thereof in the territory referred to in Article 3 of the Unification Treaty which had already been completed prior to accession becoming effective. Completed infrastructure installations or parts thereof shall be those infrastructure installations or parts thereof which have been completed in accordance with a technical development plan or to locally accepted standards. Any payments which have already been rendered by those liable for recoupment charges for the construction of infrastructure installations or parts thereof shall be taken into account in setting the recoupment charge due. State governments shall be empowered to issue transitional regulations in the form of statutory orders should the need arise.

**Section 243  
Transitional Provisions for the Administrative Measures Act to  
Supplement the Federal Building Code**

(1) Section 233 shall apply *mutatis mutandis* in respect of procedures, plans, statutes and decisions which have been initiated, have been put into force or have become effective on the basis of the Administrative Measures Act to Supplement the Federal Building Code.

(2) The provisions on intrusion under the Federal Nature Conservation Act in the wording valid up to December 31st 1997 may continue to be applied in respect of urban land-use planning procedures which were formally initiated before January 1st 1998.

**Section 244  
(repealed)**

**Section 245  
(repealed)**

**Section 245a  
(repealed)**

**Section 245b**

**Transitional Provisions for Development Projects in Undesignated Outlying Areas**

(1) Upon application by the municipality the authority responsible for issuing building permission shall defer decisions on the permissibility of wind-power installations within the meaning of Section 35 para. 1 no. 6 until after December 31st 1998 at the latest in the case of the municipality having decided to adopt, modify or supplement a preparatory land-use plan and intending to examine the question as to whether representations for wind-power installations within the meaning of Section 35 para. 3 no. 3 are to be included. Sentence 1 shall apply *mutatis mutandis* in respect of an application from the authority responsible for spatial planning where this authority has initiated the adoption, modification or supplementation of aims of spatial planning with regard to wind-power installations.

(2) The federal states may determine that the time-limit provided in Section 35 para. 4 sentence 1 letter c shall not be applied until after December 31st 2004.

**Part Two  
Concluding Provisions**

**Section 246**

**Special Regulations for Individual Federal States**

(1) The permissions or consents required under Section 6 para. 1, Section 10 para. 2, Section 17 paras. 2 and 3, Section 34 para. 5 sentence 2, Section 35 para. 6 sentence 6, Section 165 para. 7 and Section 190 para. 1 are not applicable in the city-states of Berlin and Hamburg; the city-state Bremen may determine that these permissions or consents shall not be applicable.

(1a) The federal states may determine that binding land-use plans and statutes adopted under Section 34 para. 4 sentence 1 for which permission is not required shall be notifiable to the higher administrative authority prior to their entry into force; this shall not apply in respect of binding land-use plans adopted under Section 13. The higher administrative authority shall raise any breaches of legal provisions which would warrant the refusal of permission under Section 6 para. 2 within a period of one month of receiving notification. Binding land-use plans and statutes may only be put into force if the higher administrative authority has not raised a breach of legal provisions within the time-limit stipulated in sentence 2.

(2) The federal states of Berlin and Hamburg shall determine what form of legislation shall replace the statutes as provided in this Code. The federal state of Bremen may make such a determination. The federal states of Berlin, Bremen and Hamburg may order matters in deviation from Section 10 para. 3, Section 16 para. 2, Section 19 para. 1 sentences 2 and 3, Section 22 para. 2, Section 143 para. 1, Section 162 para. 2 sentences 2 to 4 and Section 165 para. 8.

(3) In the federal state of Berlin an anticipatory binding land-use plan is also permissible pursuant to Section 8 para. 4 prior to the preparatory land-use plan being modified or supplemented. In this case the preparatory land-use plan shall be adjusted by way of correction.

(4) The Senates of the federal states of Berlin, Bremen and Hamburg shall be empowered to adjust the provisions of this Code on the responsibilities of administrative authorities to suit the specific organisation of public administration in their respective state.

(5) For the purposes of the application of this Code, the federal state of Hamburg shall be equivalent to a municipality.

(6) The federal states may determine that municipalities shall not be required to apply Section 1a para. 2 no. 2 and para. 3 (regulation on intrusion pursuant to the Federal Nature Conservation Act) until after December 31st 2000 to the extent that the requirements of nature protection and the conservation of the landscape can be duly met by some other means. The Federal Government shall present a progress report on the application of this provision by June 30th 2000.

(7) The federal states may determine that Section 34 para. 1 sentence 1 shall not have application in respect of shopping centres, large-scale retailing operations and large-scale commercial operations of other types within the meaning of Section 11 para. 3 of the Federal Land Utilisation Ordinance until after December 31st 2004. Section 238 shall apply *mutatis mutandis* where the hitherto legitimate use of a plot has been revoked or substantially altered by a determination made pursuant to sentence 1.

**Section 246a  
(repealed)**

**Section 247**

**Special Provisions for Berlin as the Capital of the Federal Republic of Germany**

(1) In the process of preparing and adopting urban land-use plans and other statutes under the provisions of this Code, special attention shall be given to giving due consideration to matters arising from the development of Berlin as the capital of the Federal Republic of Germany and of the requirements of the Federation's constitutional bodies for the proper discharge of their duties.

(2) The matters and requirements referred to in para. 1 shall be explored in a Joint Committee with representation from the Federation and from Berlin.

(3) In the event of the Joint Committee failing to reach agreement, the Federation's constitutional bodies may determine their requirements independently; in doing so they shall have regard for the orderly urban development of Berlin. Urban land-use plans and other statutes adopted under the provisions of this Code shall be adjusted accordingly to make allowance for the requirements as determined.

(4) Where the Federation's constitutional organs have determined their requirements pursuant to para. 3 sentence 1 and implementation of these requirements calls for the preparation and adoption of an urban land-use plan or other statute provided in this Code, the urban land-use plan or statute shall be prepared and adopted.

(5) Development of the parliamentary and governmental precincts of Berlin shall satisfy the aims and purposes of an urban development measure as stated in Section 165 para. 2.

(6) Where decisions within permission, consent or other procedures relating to the development projects of the Federation's constitutional organs call for the exercise of discretion, or where personal assessments or the weighing of interests are involved, the requirements determined by the Federation's constitutional organs pursuant to para. 3 shall be considered with the due weight allotted to them under the Basic Law. Para. 2 shall apply *mutatis mutandis*.