

Update

Newsflash April 2019

Federal Council Announces Temporary Ban on new Construction Zones in Several Cantons

On 10 April 2019, the Federal Council announced a temporary ban on new construction zones in the Cantons of Geneva, Zurich, Lucerne, Zug and Schwyz. The temporary ban will enter into effect on 1 May 2019 and will be valid until the affected Cantons have adapted their Cantonal legislation to the requirements imposed by Federal planning and zoning legislation.

Background

On 1 May 2014 the revised Federal Act on Spatial Planning (**FASP**; *Raumplanungsgesetz*; *loi sur l'aménagement du territoire*) entered into force and required the Cantons to adjust their Cantonal planning and zoning laws within no later than 5 years from the entry into force of the revised FASP to provide for, amongst others, binding rules for the absorption of at least 20 percent of a value surplus resulting from the re-zoning of non-construction zones into new construction zones. The revised FASP stipulates that non-compliance of any Canton with that time limit will result in a ban on the re-zoning of non-constructible land to construction zones.

Due to the failure of several Cantons to timely enact such provisions regarding the absorption of value surplus, the Federal Council now issued a temporary ban on any future, planned or ongoing re-zoning of non-construction zones into new construction zones in the affected Cantons, being the Cantons of Geneva, Zurich, Lucerne, Zug and Schwyz. The ban will enter into force on 1 May 2019.

Consequences

On 10 April 2019, the Federal Council took note of the Cantons (being the Cantons of Geneva, Zurich, Lucerne, Zug and Schwyz) that failed to enact provisions regarding the absorption of value surplus consistent with the minimum requirements set forth in the revised FASP. The Federal Council issued a temporary ban on any ongoing or future re-zoning of land into construction zones in the affected Cantons. The temporary ban also includes zoning compensations (i.e. the practice of a Canton to re-zone land to a construction zone and simultaneously re-zone a corresponding surface of constructible land to a non-construction zone).

The temporary ban will persist until the affected Cantons will have enacted provisions regarding the absorption of value surplus consistent with the minimum requirements set forth in the revised FASP.

The temporary ban now imposed by the Federal Council will affect numerous ongoing planning and zoning projects in affected Cantons to the

extent such projects depend on the re-zoning of non-construction zones into new construction zones (such as, for example, the current projects for the campus enlargements of ETH Zurich and the University of Zurich).

Cantonal planning and zoning adjustments

The reasons for the failure to timely implement Cantonal planning and zoning laws consistent with the minimum requirements set forth in the revised FASP varies from Canton to Canton: Geneva, Lucerne and Schwyz each have enacted corresponding provisions but these fail to meet the Federal minimum requirements and must be amended.

Similarly, the proposed provisions of the Canton of Zug meet the Federal minimum requirements but will only enter into force after they will have been approved in a public vote that is scheduled to take place on 19 May 2019.

By contrast, the relevant legislative proceedings for the implementation of revised Cantonal planning and zoning laws in the Canton of Zurich are still under way. Currently, the draft legislation is under review by the Cantonal Parliament and it is difficult to predict the further development of the parliamentary review and the timing of the entry into force of the revised Cantonal legislation as the draft legislation may be subjected to a public vote.

Ban on further Cantons Expected

The revised FASP also requires the Cantons to amend their Cantonal structure plans (*Richtpläne; plans directeurs*) and corresponding Can-

tonal planning and zoning laws within the same 5 year time limit (ending on 30 April 2019) to reduce excess construction zones and ensure that the structure plans limit the construction zone planning reserves to each Canton's needs for a forward looking period not to exceed 15 years. A Canton's failure to meet this time limit will also be subject to the same sanction of a temporary ban on re-zoning of non-construction zones to construction zones.

To date, the structure plans of eight Cantons (being the Cantons of Ticino, Wallis, Fribourg, Jura, Basel Landschaft, Zug, Obwalden and Glarus) have not been approved by the Federal Council. Therefore, the ban on re-zoning of land to construction zones may be extended by the Federal Council to any of these Cantons unless their respective structure plans and corresponding Cantonal planning and zoning laws will be approved before by the Federal Council until 30 April 2019.

Outlook

With the announcement of the ban the Federal Council manifests its intent to rigidly enforce the provisions of the revised FASP and sanction non-compliant Cantons. The ban has the potential to delay ongoing or future construction projects requiring the re-zoning of non-construction zones into construction zones and its impact will largely depend on the speed with which affected Cantons progress with their legislative duties under the revised FASP.

Please do not hesitate to contact us in case of any questions.

Legal Note: The information contained in this UPDATE Newsflash is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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