

Update

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Initiative Weber – New Limitation of Second Homes on a Federal Level: Main Features and Uncertainties

On March 11, 2012 Swiss voters surprisingly accepted the popular initiative launched by Franz Weber "Stop the Boundless Construction of Second Homes" with a tight majority (50.6%). This initiative restricts the construction of second homes to 20% of the homes and the gross floor space of each Swiss municipality. This Newsflash shows the main features of the initiative as well as legal uncertainties for current and future owners of second homes.

1. Content of the Initiative

The initiative adds two new provisions to the Swiss Federal Constitution: According to the new article 75a of the Constitution, the proportion of second homes is limited to 20% of all homes and the gross floor space of each municipality. Furthermore, the new article 197 para 8 of the Constitution declares building permits for second homes null and void if they are issued between January 1, 2013 and the entry into force of the implementing regulations.

2. Implementation of the Popular Initiative

These new constitutional provisions have to be implemented in federal legislation regulating the legal situation of current and future owners of second homes as well as of idle premises in the residential zone. For this purpose, the Federal Department of the Environment, Transport, Energy and Communications ("DETEC") established a special working group which, in a first step, consulted several interested organisations and has now elaborated a draft ordinance containing the provisions of the implementing legislation. Representatives of the cantons, however, have expressed reservations about the fact that these provisions are being regulated at ordinance level, and not at statutory level. This shall be clarified in the context of an expert's report commissioned by the working group, which will, in parallel, continue with the elaboration of the draft ordi-

nance. Further, several parliamentary motions and interpellations have been submitted questioning the rightfulness of a regulation by ordinance and pointing out several aspects that need to be substantiated in the implementing legislation.

3. Pending and Future Building Applications

The text of the initiative as approved by the people provides that the new provisions of the Constitution shall enter into force immediately, i.e. on March 11, 2012.

However, the text contains also a limitation to this principle of immediacy: only building permits issued after January 1, 2013 shall be considered null and void – provided, of course, they concern a second home in a municipality in which the rate of 20% has already been reached. The text of the popular initiative says nothing about building applications, filed before or after March 11, 2012 that enter into force before December 31, 2012.

In the light of these legal uncertainties, the DETEC issued guidelines, on March 15, 2012 with the aim to clarify the legal situation until December 31, 2012 and containing the following main principles:

- > Building permits issued prior to March 11, 2012 remain valid;
- > Building permits issued between January 1, 2013 and the date of the entry into force of the implementing regulations shall be null and void;
- > Applications filed between March 11, 2012 and December 31, 2012 shall not be accepted automatically;
- > Applications for building permits filed after March 11, 2012 must comply with the text of the popular initiative;
- > Applications for building permits which are pending on March 11, 2012 shall be subject to individual solutions adopted on a case by case basis.

The Federal Council further recommended the authorities to suspend procedures for building permits filed after March 11, 2012 until the implementing regulations have entered into force, in case of any doubt as to whether they are compliant with the text of the initiative.

Some municipalities support this recommendation by the Federal Council. Others, however, prefer that the courts decide on the issuance of such building permits. Environmental protection organisations have clearly stated their intent to appeal against any building permits issued in municipalities with more than 20% second homes. The Franz Weber Foundation (founded by the persons who launched the initiative) already raised or supported objections against 300 planned second home constructions. The courts will, thus, have to decide on numerous appeals against building permits in the next months. In certain cantons (e.g. Valais), the number of building applications reached already an all-time high.

A working group has been installed (on March 15, 2012) with the goal to resolve the legal uncertainties related to the transitory provisions of the popular initiative. The first session of the working group is envisaged to take place by mid-April 2012.

4. Shortcomings of the Popular Initiative

The popular initiative has several strongly criticised shortcomings. These shortcomings are also subject of various parliamentary motions and interpellations.

First of all, the popular initiative offers no precise definition of the terms main residences and second homes and is silent on the possibility of transforming a second home into a main residence and vice versa. Second, the text adopted

by the Swiss people does not state the extent of vested rights enjoyed by owners of second homes in the context of demolition, reconstruction, renovation, and extension, as well as in case of resale, death or similar events. The persons who launched the initiative stated recently that, in their view, any home that is only used temporarily shall qualify as second home.

The persons who launched the initiative confirmed at several occasions on March 11, 2012 and on later press conferences that the initiative does not hinder owners of second homes to sell them which constituted a relief to these owners. However, they expressed more recently a slightly different view by stating that the principle of protection of acquired rights was contradictory to the people's will. Only the final text of the implementing legislation will establish clarity and, in the meantime, no absolute guarantee may be given.

5. Economic Impact of the Initiative

In municipalities with a rate of second homes of 20% or more, the popular initiative has the effect to stop the construction of new second homes as from January 1, 2013.

This limitation is likely to result in decreasing prices of main residences and building grounds on the one hand and in increasing prices of second homes on the other hand. Due to declining building activities a recession in the construction sector and, consequentially, a decline in employment of 5-8% may be expected.

Municipalities close to tourist centres with a rate of second homes of less than 20% may expect an increase of applications for building permits.

6. Conclusions

The vote on March 11, 2012 constitutes an about-turn in Swiss land use regulation. The question of second homes, treated by municipalities until now, has become subject to provisions of the Federal Constitution.

The elaboration of the implementing legislation necessary to implement the initiative Weber will give reason for extensive debates. The working group faces the difficult task to respect and accommodate the will of the Swiss people and the specialities of each canton.

Please do not hesitate to contact us for any follow-up queries you may have.

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