Global Corporate Real Estate Guide - Spain

Planning and Environmental Issues

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# Who has authority over land development and environmental regulation?

National regulations establish the basic rules of land development, but the autonomous communities and municipalities have the powers to legislate and regulate the specific matters of land development for their territories.

Regulations on specific environmental matters at national level are approved by the competent ministry, the Ministry for ecological transition and the demographic challenge (Ministerio para la transición ecológica y el reto demográfico).

Autonomous community governments normally have a department of environment in addition to environmental agencies devoted to water and waste management issues. City halls also have a department devoted to environmental matters, although in large cities, this is an area that has been decentralized to city districts.

Municipalities are entitled to promote and approve the zoning plans of their territory. These plans must follow the guidelines of the master plan approved by the governments of the respective autonomous communities. The zoning plans establish the detailed regulation applicable to construction and real estate development, uses of the land, dedication of land to infrastructures, public services, etc. Zoning plans of specific areas may also be promoted by private party developers with the approval of the municipality. In large cities, the zoning plan is normally promoted by the municipality and approved by the zoning department of the autonomous community government.

# What environmental laws affect the use and occupation of real estate?

At the national level, the most important zoning and environmental norms are the following:

The Soil Act, enacted by Legislative Royal Decree 7/2015, of 30 October

The Administrative Regulation on Management of Zoning Provisions, enacted by Decree 3288/1978, of 25 August, and the Urban Disciplinary Regulations, enacted by Decree 2187/1978, of 23 June, which still remain partially applicable

The Integrated Prevention and Control Pollution Act, enacted by Legislative Royal Decree 1/2016, of 16 December

The Environmental Impact Assessment Act, enacted by Law 21/2013, of 9 December

The Right to Access Environmental Information Act, enacted by Law 27/2006, of 18 July

The Waste and Contaminated Land for a Circular Economy Act, enacted by Law 7/2022, of 8 April

Royal Decree 9/2005, of 14 January, related to land contamination

The Environmental Liability Act, enacted by Law 26/2007, of October 23, complemented by Royal Decree 2090/2008, of 22 December

Each autonomous community has its own legislation, which must be taken into account in its own territory.

# What main permits or licenses are required for building or occupying real estate?

Work license

It is to be granted or assessed by the municipality. It approves the work project submitted by the applicant upon review of its compliance with zoning and construction regulations.

Environmental license

It is to be granted or assessed by the municipality or, in some cases of significant environmental impact, by the relevant body of the autonomous community. The environmental license approves the technical project submitted by the applicant, describing the activity to be engaged in the building. When so required, it will be necessary to obtain an environmental impact assessment.

First occupation license

It is to be granted by the city hall after verifying that the construction has been completed in accordance with the work project for which the work license was granted.

Start-up authorization

This is only necessary in buildings in which activities with environmental impact are engaged in. It is granted or assessed by the city hall after the application by the applicant and prior to the relevant technical inspection to verify that the activity meets the technical requirements for start-up.

# Can an environmental cleanup be required?

Yes. Article 116.1. of the Waste and Contaminated Land Act for a Circular Economy Act establishes that polluters are obligated to restore the land to the condition in which it was in before the polluting activity occurred. Any activity involving pollution is considered an administrative infraction.

Cleanup procedures are imposed on the liable party as follows: (i) the party that caused the contamination; (ii) in the event of various parties being involved, all of them jointly and severally; (iii) subsidiarily, liability shall be imposed on the owner of the land; and (iv) further subsidiarily, on the current possessors of the contaminated land.

In the event that urgent decontamination actions are required to avoid greater damages, such actions may be carried out without delay and without the need for a warning, requirement or prior administrative act. In any case, the promoter of such actions must immediately inform the competent authorities of the event and of the scope and content of the actions, who may require complementary actions if they deem it appropriate.

In addition, when land is classified as “contaminated,” cleanup procedures must be carried out applying the best available techniques. The scope of the recuperation activities must also guarantee acceptable risk levels for the remaining contamination. Furthermore, the administrative resolution declaring land contaminated must be registered in the Property Registry for the protection of potential third-party purchases. The fact that land has been used for an especially contaminating activity listed by the authorities must be included in any deed of purchase for said piece of land, in the declarations of new construction by any title and in the operations of contribution of properties and allocation of resulting plots in the urban development execution actions.

Land will be declared decontaminated when cleanup activities guarantee that the remaining concentrations do not represent an unacceptable risk for human health or the environment, and has been so declared in an administrative resolution. For these purposes, the party responsible for the decontamination will submit to the autonomous community a report accrediting this, attaching the necessary information for this purpose. This resolution will also be registered in the Property Registry to cancel the previous note warning about land contamination.

# Are there minimum energy performance requirements for buildings?

Yes. The Technical Building Code, enacted by the Royal Decree 314/2006, of 17 March, establishes minimum energy performance requirements for newly constructed or refurbished buildings. These requirements are focused on lighting fixtures and thermal installations.

In addition, there is also a basic procedure to certify the building’s energy efficiency, approved by Royal Decree 390/2021, of 1 June. This certificate is compulsory for all new buildings and for all buildings or parts being sold or rented.

# Are there other regulatory measures that aim to improve the sustainability of newly constructed and existing buildings?

Spain has implemented Directive 2010/31/EU of 19 May on energy performance for buildings by means of the: (i) Royal Decree 235/2013 of 5 April -now repealed by the Royal Decree 390/2021, of 1 June-; and (ii) Royal Decree 238/2013 of 5 April on the modification of certain thermic installation requirements for buildings. These royal decrees basically refer to renovating the buildings and applying high energy performance standards to newly constructed buildings.

In addition, Law 8/2013, of 26 June, on urban rehabilitation, renewal and regeneration regulates the basic conditions which ensure a sustainable, competitive and efficient urban development.

Furthermore, Law 7/2021, of 20 May, on climate change and energy transition explicitly states that the government will promote and facilitate the efficient use of energy, demand management and the use of energy from renewable sources in the building sector. In this regard, it is foreseen that the building materials used in both the construction and renovation of buildings should have the smallest possible carbon footprint in order to reduce the total emissions of the whole project or building. It is also provided that the Public Administrations may establish incentives that promote the achievement of these goals, with particular attention to the introduction of renewable energies in housing rehabilitation, promoting self-consumption, small power installations, zero-emission heating and cooling.

Likewise, Law 10/2022, of 14 June, on urgent measures to promote the building rehabilitation activity in the context of the Recovery, Transformation and Resilience Plan includes an energy efficiency first principle whereby energy efficiency solutions must be considered as a priority within a cost-benefit analysis in planning, policies and major investment decisions related to both the energy sector and non-energy sectors, where the latter sectors have an impact on energy consumption and energy efficiency. In this sense, energy efficiency solutions will be considered to be those aimed at reducing energy consumption and optimizing the energy system, in particular those aimed at reducing and managing demand, obtaining energy savings, making the energy system more flexible and minimizing losses in the generation, transport and distribution of energy. This principle should be taken into account when establishing new policies or measures, or granting public aids.

Finally, it should be noted that each autonomous community may have a specific set of requirements and regulations in the field of developing energy efficiency.

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