

# FORMS OF ADMINISTRATIVE AND LEGAL REGULATION OF PERMITTING ACTIVITIES IN THE FIELD OF URBAN PLANNING

Onyskovets M. Yu.

DOI: <https://doi.org/10.61345/1339-7915.2024.6.11>

**Annotation.** The article is devoted to the consideration of the issues of forms of implementation of administrative and legal regulation of permitting activities in the field of urban development. The issue of forms of activity according to the subjects of permitting activities in the field of urban development is investigated. An administrative act is defined as a form of implementation of administrative and legal regulation of permitting activities in the field of urban development by a public subject of such activity. Other methods of implementation of administrative and legal regulation of permitting activities in the field of urban development are given. Control and supervision are defined as types of implementation of administrative and legal regulation of permitting activities in the field of urban development. The features of public control are given as a form of implementation of administrative and legal regulation of permitting activities in the field of urban development by a subject of control such as the public. Legislative gaps are identified that do not determine an exhaustive list of both subjects of permitting activities in the field of urban development and forms of implementation of permitting activities in the field of urban development. We proposed ways to eliminate shortcomings in the legislative regulation of determining the subjects of administrative and legal regulation of permitting activities in the field of urban development, as well as the legislative definition of the forms of implementing administrative and legal regulation of permitting activities in the field of urban development.

**Key words:** permitting activities, urban planning, legal relations of a permitting nature, legal principles of urban planning activities, forms of implementing permitting activities, subjects of permitting activities, reforms, public participation, digitalization, regulatory and legal regulation, information support for environmental management, public interests, public control, technological development.

## 1. Formulation of the problem.

Currently, there are legislative gaps in Ukraine, as the legislation does not define an exhaustive list of both subjects of permitting activities in the field of urban development and forms of implementation of permitting activities in the field of urban development. Therefore, it is necessary to study and solve problems in the legislative regulation of determining subjects of administrative and legal regulation of permitting activities in the field of urban development, and determining forms of implementation of administrative and legal regulation of permitting activities in the field of urban development.

**2. The purpose of the article** is to investigate and solve problems in the legislative regulation of determining the subjects of administrative and legal regulation of permitting activities in the field of urban development, and determining the forms of implementing administrative and legal regulation of permitting activities in the field of urban development.

### 3. Presentation of the material.

The relevance of the study of legal forms of permitting activities in the field of urban development is due, first of all, to the strategic priorities of improving public administration, which are reflected in program documents. Thus, the sphere of permitting activities is characterized by the presence of significant corruption risks, insufficient predictability of the results of licensing and permitting procedures, and other shortcomings that negatively affect the implementation of economic activities in the field of urban development.

It is worth noting that the current legislation, which regulates the relations of permitting activities in urban development, does not have a single definition of the types of permits in this area. Thus, Article 37 of the Law of Ukraine "On Regulation of Urban Development Activities" provides for a permit to perform construction work, the presence of which gives the customer and the general contractor or contractor the right to perform preparatory and construction work at construction sites. The following Article 37-1 of the said Law establishes the obligation to license economic activities in the construction of facilities. Article 8 of the Law of Ukraine "On the Fundamentals of Urban Planning" defines the content of state regulation in the field of urban planning through, in particular, licensing of types of economic activity in construction, as well as the development and approval of building codes, cost estimates, standards and rules. The Law of Ukraine "On the List of Documents of a Permitting Nature in the Field of Economic Activity" establishes that documents of a permissive nature in the field of urban planning activity are, in particular, a permit to perform construction work and a certificate of acceptance into operation of a completed facility (clause 32, 121 of the List of Documents of a Permitting Nature in the Field of Economic Activity).

However, the list of permits in the field of urban development is not limited to the two legal forms of permits, as subordinate regulatory legal acts provide for the use of other documents: urban development conditions and restrictions (in accordance with the List of construction objects for the design of which urban development conditions and restrictions are not provided, approved by order of the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine dated 06.11.2017 No. 289 [1]); declaration of readiness of the facility for operation, construction passport of the land plot development, permission to carry out excavation works (in accordance with the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Improvement of Urban Planning Activities" dated 17.01.2017 No. 1817-VIII), construction of facilities that, by the class of consequences (responsibility), belong to facilities with medium (CC2) and significant (CC3) consequences, according to the list of types of work determined by the Cabinet of Ministers of Ukraine, taking into account the features specified in the Law of Ukraine "On Regulation of Urban Planning Activities" (in accordance with the Law of Ukraine "On Licensing Types of Economic Activities" [2]).

Article 1 of the Law of Ukraine "On the List of Documents of a Permitting Nature in the Sphere of Economic Activity" provides a general definition of the concept of "document of a permitting nature", namely in accordance with the Law "On the Permitting System in the Sphere of Economic Activity", which lists the following features of a document of a permitting nature: the subject of issuance is the permitting authority, the subject of receipt is the business entity, the object of the permit is the right to perform certain actions or types of economic activity in accordance with the legislation [3].

However, this definition does not take into account the specifics of urban development activities, the subject of which may not necessarily be a business entity. In addition, certain actions that are clearly permissive in nature do not require the issuance of a separate document (for example, approval of a declaration on the start of construction of a facility).

The lack of a unified approach by the legislator to determining the types of permits and documents of a permissive nature in the field of urban development leads to the regulation of the relevant issue by subordinate regulatory legal acts, and the form of such acts, the effect of which extends to relations in the field of urban development, raises certain reservations.

This concerns the letter of the State Architectural and Construction Inspectorate of Ukraine "On the submission and execution of a declaration on the commencement of preparatory work (declaration on the commencement of construction work, declaration on the readiness of the facility for operation)" dated 01.11.2011 No. 40-17-3856, which provides a definition of a document of a permitting nature, which is formulated on the basis of the relevant norm of the Law of Ukraine "On the permitting system in the sphere of economic activity" and which is of a general nature (does not reflect the specifics of the subject of permitting activity - the sphere of urban development).

Thus, a document of a permitting nature is called "a permit, conclusion, decision, approval, certificate, other document that the permitting authority is obliged to issue to a business entity in the event of granting it the right to carry out certain actions regarding the implementation of economic activity or types of economic activity and/or without the presence of which the business entity cannot carry out certain actions regarding the implementation of economic activity or types of economic activity" [4].

Scientists distinguish the following documents of a permitting nature in the field of urban planning: a certificate of acceptance into operation of a construction object, a declaration of readiness of the object for operation, a permit for the construction of structures, road service facilities, gas stations, laying of engineering networks and performing other works within the right-of-way of highways [5, p. 19, 21], etc.

An administrative act as an act of individual action is not the only instrument of public administration, including in the field of urban planning. Thus, S. K. Grechanyuk distinguishes such management functions as: forecasting, programming, planning, organization, regulation, coordination, control [6, p. 916].

Investigating the issues of urban planning as an object of legal regulation by means of administrative law, K. O. Rybak defines the essence of administrative and legal regulation in this area as the activity of authorized entities (public administration), which consists in influencing public relations through administrative and legal means defined by law [7, p. 219].

At the same time, O. V. Stukalenko, considering administrative procedures regarding urban planning activities, distinguishes between procedures of an organizational nature and procedures of a jurisdictional nature. The former include control and supervision, licensing, permitting, registration, and others (an open list). The latter include bringing to disciplinary or administrative liability, procedures for appealing administrative acts in the field of urban planning, etc. (an open list) [9, p. 198].

In scientific works on administrative and legal regulation of urban development activities, not enough attention is paid to the analysis of forms of management activity in the relevant administrative procedures. Therefore, in further research, it is worth proceeding from the generally accepted content of the category of management as a complex social, technological, informational, state phenomenon, which is aimed at streamlining certain processes and functions, including the effective use of all types of available resources, overcoming crisis situations, creating prerequisites for the further development of the managed system [8, p. 915].

Making a decision to provide a land plot is a non-normative form of management activity. Its implementation is preceded by actions of an organizational nature (formation of a land plot, determination of technical conditions, etc.), as well as actions of a material and technical nature related to the functioning of the relevant authority. A comprehensive analysis of the scientific provisions of the above and other researchers provides grounds to conclude that the above forms of management activity are inherent in all selected administrative procedures in the field of urban development.

One of the features of urban planning activity is the specific subjects of its implementation. Among these, O. V. Stukalenko names design, expert organizations (at the design stage); customer, contracting organization, subjects of technical supervision (stage of preparatory work, construction work). In addition, the subjects of urban planning activity also include manufacturers of building materials and structures, operating organizations [9, p. 198]. The activities of the specified subjects are inherently professional. However, there is also a significant number of cases of development by private individuals who do not have the appropriate professional competencies, for example, in the case of an extension or construction (reconstruction) of a private house, without the involvement of professional subjects.

#### 4. Conclusions.

A generalized definition of a document of a permitting nature in the field of urban development as a document issued in the field of urban development in order to grant the entity acquiring it the right to carry out certain actions in the field of urban development, it is advisable to enshrine in the Law of Ukraine "On Regulation of Urban Development Activities", taking into account the compliance of its legal nature with public-law relations and the scope of its application.

A document of a permitting nature in the field of urban development is an external expression of the purposeful law enforcement activity of authorized bodies (their officials), which is carried out within the framework of the procedure established by law and consists in the implementation of the obligation of authorized bodies (their officials) to grant the entity the right to carry out actions to create and maintain a full-fledged living environment within settlements and territories.

The introduction of the above changes to the current legislation, the implementation of the identified areas of its improvement will contribute, on the one hand, to the elimination of the negative practice of unauthorized construction and construction without compliance with urban planning standards, and on the other hand, to the simplification of the economic activities of professional urban planning entities.

#### References:

1. On approval of the List of construction objects for the design of which urban planning conditions and restrictions are not provided: Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine dated 06.11.2017 No. 289. URL: <https://zakon.rada.gov.ua/laws/show/z1437-17#Text> (date of access: 11.11.2024).
2. On licensing of types of economic activity: Law of Ukraine dated 02.03.2015 No. 222-VIII. Bulletin of the Verkhovna Rada of Ukraine. 2015. No. 23. Art. 158.
3. On the List of documents of a permitting nature in the field of economic activity: Law of Ukraine dated 19.05.2011 No. 3392-VI. Official Gazette of Ukraine. 2011. No. 45. Art. 1824.
4. Regarding the submission and execution of a declaration on the start of preparatory work (declaration on the start of construction work, declaration on the readiness of the facility for operation): letter of the State Architectural and Construction Inspectorate of Ukraine dated 01.11.2011 No. 40-17-3856.
5. Apanasenko K. I. (2018) On the legal regime of permits in the field of urban development. Economics and law. No. 3 (51). P. 17–30.
6. Great Ukrainian Legal Encyclopedia: in 20 vols. Kharkiv: Law, 2016. Vol. 5: Administrative law / editors: Yu. P. Bytyak (chairman) and others. 2020. 960 p.
7. Rybak K. O. (2018) Urban planning activity as an object of administrative and legal regulation: dissertation ... candidate of law: 12.00.07 / Taras Shevchenko National University of Kyiv. Kyiv, 275 p. URL: <https://nrat.ukrintei.ua/searchdoc/0418U003108/> (date of access: 11.11.2024).
8. Great Ukrainian Legal Encyclopedia: in 20 volumes. Kharkiv: Law, 2016. Vol. 5: Administrative law / editors: Yu. P. Bytyak (chairman) and others. 2020. 960 p.
9. Stukalenko O.V. (2016) Administrative and legal support of the construction industry: monograph. Kyiv: Center for Educational Literature, 376 p.

---

**M.Yu. Onyskovets,**

Postgraduate student of the Department of Theory and History of State and Law,  
University of Economics and Law «KROK»