Commentary on the City Statute

(Law Nº 10. 257 of 10 July 2001)

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Chapter I. General Guidelines

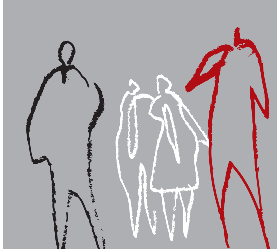
Article 1. The provisions of this law will be applied in the execution of urban policy, which is the subject of Arts. 182 and 183 of the Federal Constitution.
Sole paragraph - For all effects, this Law known as the City Statute establishes norms of public order and social interest which regulate the use of urban property in favor of the common good, safety and well-being of citizens, as well as environmental equilibrium.

The City Statute is the Brazilian federal law which regulates Articles 182 and 183 of the Federal Constitution of 1988.

Article 182 sets forth that urban policy is the responsibility of the municipality and must guarantee the social functions of the city and the development of its citizens. It also establishes that the Municipal Master Plan is the basic instrument for the organisation of urban land. The Master Plan must define what shall be the use and the type of occupation of each part of the municipal territory in a bid to ensure that all the properties therein fulfill their social role.

Paragraph 4 of the same article contains a set of key instruments for giving concrete expression to the social role of property: compulsory parceling and building; progressive property and land tax and expropriation/sanction.

Article 183 of the Federal Constitution deals with acquisition of property by the occupant of an urban dwelling who uses it for housing himself or his family. This measure guarantees the right of ownership to the person who effectively uses the property in accordance with its legal purpose.



Article 2. The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, based on the following general guidelines:

I – to guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, employment and leisure, for current and future generations;

II - democratic administration by means of participation by the population and the representative associations of the various sectors of the community in the formulation, execution and monitoring of urban development projects, plans and programmes;

III - cooperation between governments, the private sector and other sectors of society in the urbanisation process, to satisfy the social interest;

IV - planning of the development of cities, of spatial distribution of the population and of the economic activities of the Municipality and of the territory under its area of influence, in order to avoid and correct distortions caused by urban growth and its negative effects on the environment;

V - provision of urban and community equipments, transportation and public services that are appropriate to the interests and needs of the population as well as reflecting local circumstances;

VI - ordering and control of land use, in order to avoid:

> **a) the improper use of urban real estate;**
>
> **b) the proximity of incompatible or inconvenient uses;**
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> **c) the parcelling of land, construction or excessive or improper use with regard to urban infrastructure;**
>
> **d) the installation of developments or activities that could become hubs that generate traffic, with no prevision for corresponding infrastructure;**
>
> **e) the speculative retention of urban real estate, resulting in its underutilisation or non-utilisation;**
>
> **f) the deterioration of urbanised areas;**
>
> **g) pollution and environmental degradation;**

VII - integration and complementarity between urban and rural activities, taking account of the social economic development of the Municipality and the territory under its area of influence;

VIII - adoption of production and consumption patterns related to goods and services and of standards of urban expansion compatible with the limits of environmental, social and economic sustainability of the Municipality and of the territory under its area of influence;

IX - fair distribution of the costs and benefits resulting from the urbanisation process;

X - adaptation of economic, taxation and financial policy instruments and public expenditure to suit the goals of urban development, in order to give priority to investments which generate general well-being and enjoyment of the assets by different social segments;

XI - recovery of government investments that have led to appreciation in the value of urban property;

XII - protection, preservation and recovery of the natural and built environment, and of the cultural, historic, artistic, landscape and archeological heritage;

XIII - public hearings involving municipal governments and members of the population interested in the processes of execution of developments or activities with potentially negative effects on the natural or built environment, the comfort or safety of the population;

XIV – tenure regularisation and urbanisation of areas occupied by low income populations through the establishment of special urbanisation, land use, land occupation and building norms, taking due account of the socio-economic situation of the population and environmental norms;

XV - simplification of the legislation concerning subdivision, land use, occupation and building regulations, in order to permit cost reductions and increase the supply of lots and housing units;

XVI - equality of conditions for public and private agents in the promotion of developments and activities related to the urbanisation process, serving the social interest. o, atendido o interesse social.

Article 2 of the City Statute defines the guidelines which must be followed by the Municipality when elaborating its urban policy. All these guidelines are intended to ensure the existence of just and fair cities in which all inhabitants, both rich and poor, can enjoy the benefits of the urbanisation process.

Article 3. It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy:

I - to establish legislation concerning general norms of urban law:

II - to establish legislation concerned with norms for cooperation between the Federal Government, the States, the Federal District and the municipalities with regard to urban policy, bearing in mind the need to balance development with well-being nationwide;

III – to promote, on its own initiative and in conjunction with the States, the Federal District and the municipalities, housing construction schemes and the improvement of housing conditions and basic sanitation;

IV – to institute guidelines for urban development, including housing, basic sanitation and urban transportation;

V – to prepare and execute national and regional plans to order territory and promote economic and social development.

The Federative Republic of Brazil consists of four federated entities not subordinate to one another. The municipalities are the local bodies most closely in touch with citizens. The States comprise several municipalities; the Federal District is the administrative seat of the country; finally, the Union represents the sum total of the States and the Federal District.

Each of these entities is responsible for elaborating its own laws, executing public policies, and fixing and collecting taxes, in accordance with the distribution of competences set forth in the Federal Constitution. For certain subjects and policies, the Federal Constitution makes cooperation between these entities obligatory.

In the case of Urban Law, legislative competence is concurrent, i.e. requiring cooperation between the federated entities. Urban policy must be developed by the municipalities according to the attributes conferred upon them by the Federal Constitution, while the states are responsible for legislating on the establishment and regulation of Metropolitan Regions. The Federal Government sets out general norms for urban development.

Exercising its role on the subject of Urban Law, the Federal Government promulgated the City Statute. This law embraces the general norms which must be observed by all the municipalities with regard to the territorial organisation of their territories as well as with respect to the elaboration and execution of their urban development policies.

Chapter II. The tools of urban policy

Section I. The instruments in general

Article 4. For the purposes of this Law, the following instruments among others shall be employed :

I - national, regional and state plans for organizing territory and promoting economic and social development;

II - planning of the Metropolitan Regions, urban and micro-regional conglomerations;

III - municipal planning, especially:

a) elaborating a Master Plan;

b) disciplining parcelling, land use and occupation;

c) environmental zoning;

d) multi-annual plan;

e) budget guidelines and annual budget;

f) participatory budget management;

g) sectoral plans, programmes and projects;

h) economic and social development plans;

IV - financial and taxation rules, involving:

a) taxes on built property and urban land – IPTU;

b) betterment fees;

c) fiscal and financial incentives and benefits;

V - legal and political rules regarding:

a) expropriation;

b) administrative easement;

c) administrative limitations;

d) earmarking buildings or urban properties of heritage interest;

e) establishment of Conservation Zones;

f) establishment of Special Social Interest Zones;

g) Concession of Real Right to Use;

h) Concession of Special Use for Housing Purposes;

i) Compulsory Parcelling, Building or Utilization;

j) Special Usucapiao **for Urban Property;**

l) Surface Rights;

m) Right to Preemption;

n) Award of the Right to Build or Change of Use;

o) Transfer of the Right to Build;

p) Consortiated Urban Operations;

q) Land Tenure Regularisation;

r) free technical and legal assistance for poorer communities and social groups;

s) popular referendum and plebiscite;

t) demarcation of urban land for the purpose of tenure regularisation (included in Law No. 11.977 of 2009)

u) legitimation of possession (included in Law No. 11.977 of 2009).

VI – Draft bill on Environmental Impact Study and Neighborhood Impact Studies.

§1. The instruments mentioned in this Article are governed by specific legislation, observing that established by the present Law.

§2. In the cases of social housing programmes and projects developed by government entities that operate specifically in this area, the Concession of the Real Right to Use public properties can be contracted on a collective basis.

§3. The instruments foreshadowed in this article which require expenditure of municipal funds shall be subject to social control as a way of guaranteeing the participation of communities, movements and civil society entities.

Article 4 of the City Statute defines a broad set of instruments to enable the Municipality to be in a position to formulate an urban policy that can give concrete expression to the social function of urban property and to the right of all people to the city.

The Statute establishes that urban policy must be the outcome of extensive planning, involving integrated plans for territorial organisation at the national, state, regional, metropolitan, municipal and inter-municipal levels. Specifically at the municipal level, the Statute determines that municipal planning must involve urban, environmental, budgetary, sectoral planning as well as economic and social development planning and, moreover, that municipal plans must determines that budgetary management is undertaken in a participatory manner, involving all citizens.

The Statute includes taxation instruments embracing taxes, contributions, incentives and fiscal and financial benefits aimed at providing the means for introducing uses and activities that are considered important in the context of urban policy.

The clause concerned with legal and political measures provides the Municipality with tools for enabling the following:

- A range of social intervention measures concerned with the free use of private property: expropriation, easement and administrative limitations, designation of properties for heritage purposes, the establishment of conservation units, compulsory parcelling, building or utilisation and the right of pre-emption;
- Tenure regularisation of property used for social purposes: Concession of the Real Right of Use, the Special Use Concession for Housing Purposes, Special *Usucapiao* of Urban Properties (a form of adverse possession), surface rights, urban planning demarcation for tenure regularisation purposes and legitimation of possession;
- Urban development and redistribution to the community of the benefits arising from the urbanisation process: Building Waiver Rights and Usage Alterations, Transfers of the Right to Build and Consortiated Urban Operations;
- Instruments targeted at democratising urban management and the right to housing: popular referendum and plebiscite, free technical and legal assistance for poorer communities and social groups. It is worth noting that the development of a housing policy that is also socially inclusive is afforded by the establishment of Special Social Interest Zones (ZEIS). This instrument can be used for regularising occupied areas where the process of occupation has occurred regardless of urban planning norms. The device can also be used for vacant areas earmarked for social housing.

In the first case, the establishment of an area occupied as a ZEIS allows the introduction in a particular parcel of land of special urbanistic parameters that are in line with the form of occupation undertaken by the community. Thus the ZEIS procedure can permit the installation of, for example, street systems consisting of narrow streets or alleyways that are more suitable for occupied hilly or steep areas, or also for 'consolidating' occupied areas in environmental preservation areas, thereby minimising the need for removing homes during the process of tenure regularisation. This also allows mechanisms to be implemented that prevent the eviction of residents from already regularised settlements and their subsequent occupation by wealthier social segments attracted to such areas by rising property prices. Examples of mechanisms of this type include: (i) the prohibition of lot 're-parcelling' to avoid situations where someone can acquire various regularised lots, transform them into a single larger lot and construct new buildings on the land); and (ii) defining the type of land use that is permissible in the circumstances (e.g. allowing only single- family units to be erected).

When applied to vacant or unused properties, the ZEIS enables the public authorities to reserve areas benefiting from infrastructure, services and urban equipments for social housing, thereby proving that this is an important instrument for avoiding the eviction of poor people, forcing them to live in peripheral areas remote from the urban centres.

It is worth noting that the City Statute establishes no direct correlation between urban readjustments and instruments. Each Municipality chooses, regulates and applies the instruments in accordance with its desired urban development strategy. Different instruments in the City Statute do not present, by themselves, a solution for a particular urban problem. Specific urban upgrading will depend on the relevant municipal authorities applying instruments which can be used in an integrated and coordinated manner in a particular territory. Therefore regulation of the instruments must be detailed in the Master Plan and introduced as part of an urban development strategy with a view to ensuring their effective application.

Section II. Of compulsory parcelling, building or use

Article 5. Specific municipal laws to cover areas included in the Master Plan shall determine the compulsory parcelling, building or use of non-aedificandi, under-utilised or un-utilised urban land and must establish conditions and deadlines for the implementation of the said obligations.

§ 1. Properties are considered to be under-utilised if:

I - utilisation is lower than the minimum defined in the Master Plan or its related legislation;

II - (VETOED)

§ 2. The owner shall be notified by the Municipal Administration to comply with the requirement and the notification must be registered in the local property deed office.

§ 3. Notification shall be conducted as follows:

I - by an official of the responsible municipal government agency, to the owner of the property, or, if the owner is a company, to whosoever possesses general administrative or managerial responsibility;

II - by public notice following three unsuccessful attempts to notify the owner in the manner called for in above sub-clause I.

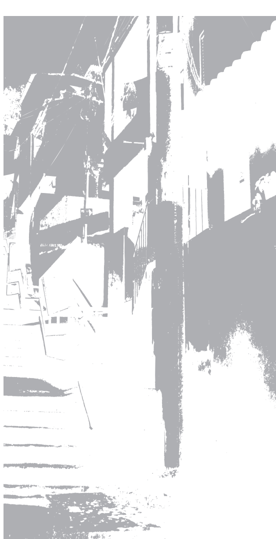
§ 4. The deadlines referred to in the header above cannot be less than:

I - one year, from the time of notification, for the project to be registered in the relevant municipal agency;

II - two years, from the approval of the project, to allow work on the development to commence.

§ 5. In large-scale developments, in exceptional cases, a specific municipal law (referred to in the header paragraph) can call for the procedure to be concluded in stages and assure that the approved development includes the project as a whole.

Article 6. The transmission of the property, inter vivos or on death, after the date of notification, transfers the obligations for parcelling, construction or use determined under Article 5 of this Law, without any deadlines being interrupted.



The retention of vacant or idle land within the urbanised area of a municipality in the expectation of future price appreciation to benefit its owners means that fewer urban spaces are available in the city for housing as well as for undertaking economic activities vital for the development of society as a whole and especially that of economically vulnerable groups.

In order to avoid such vacant spaces being formed, to restrain property speculation and to increase access to urbanised land, the City Statute regulates the compulsory sub-dividing (parcelling), building or utilisation of such areas in order to oblige owners to use underutilised land for a proper purpose, thereby giving concrete expression to the constitutional precept of the social function of property.

The municipalities are responsible for publishing norms for applying this instrument within their territories, without which the instrument would not be valid. The local public authority must specify in its Master Plan the areas where this instrument will be employed and introduce a specific law regulating its application.

It is important to note that the various instruments designed to force owners to make full use of properties, such as compulsory parcelling, building and utilisation, the Progressive IPTU (property tax) and 'expropriation reimbursed with public debt bonds', can be combined with the establishment of ZEIS. By combining such instruments the local authority can ensure that idle urbanised land is used for social housing.

Compulsory parcelling, building or utilisation is applied to non-edificandi properties consisting only of bare earth, or properties that are unused, abandoned and uninhabited; and underutilised property, the use of which is less than the minimum defined by law. Once the owner of a particular property has been notified, he is obliged to ensure that an effective and appropriate use is made of such property within a specific period of time. If this property is sold, the new owner becomes responsible for complying with this obligation.

Section III. Progressive Property Taxes (IPTU)

Article 7. In the case of noncompliance with the conditions and deadlines established in the form of the header of Article 5 of this Law, or if the steps called for in §5 of Article 5 of this law are not complied with, the Municipality shall proceed to impose built property and urban land taxes (IPTU) that are progressive over time, with the basic aliquot increasing over a period of five consecutive years.

§1. The value of the tax aliquot to be applied for each year will be fixed in the specific law referred to in the header of Article 5 of this Law and shall not exceed twice the value charged in the previous year, to a maximum rate of fifteen percent.

§2. In the event of the obligation to parcel, build or use the property not being complied with within five years, the Municipality shall charge the IPTU at the maximum rate until the said obligation is met, with the prerogative detailed in Article 8 guaranteed.

§3. The concession of exemptions or a tax amnesty with regards to the progressive taxation charge determined by this article is prohibited.

In order to compel owners to comply with the required obligation, whether compulsory parcelling, building or utilisation, the City Statute rules that municipalities can proceed to charge Progressive IPTU.

The IPTU is a tax to be paid by owners or holders of urban properties, calculated as a percentage of the market value of a given property. The City Statute enables the Municipality to increase the IPTU aliquot progressively over the years for properties whose owners fail to obey the fixed deadlines established for compulsory parcelling, building or utilisation. This is a way of penalising the retention of a property with a view to taking advantage of increasing prices, and ensures that the delay incurred in waiting for speculative price appreciation, of no benefit to the city itself, becomes an economically unviable proposition. In this case, the Progressive IPTU is employed more as a sanction than as a revenue-gathering device.

In order to ensure that the instrument is effective, the City Statute vetoed the concession of tax waivers or amnesties.

Section IV. For expropriation with payment in bonds

Article 8. If the property owner has not complied with the obligation to sub-divide, build or use the property five years after IPTU has been charged, the Municipality can proceed to expropriation of the property, with payment to be made in public debt bonds.

§ 1. The public debt bonds must be previously approved by the Federal Senate and shall be redeemed over a period of up to ten years in annual, equal, and successive installments, with the real value of the compensation assured and at a legal interest rate of six percent (6 per cent) per year.

§ 2. The real value of the indemnity:

I - shall reflect the base value for calculation of the IPTU, discounting the amount included as the result of public works undertaken by the local authorities in the area where the property is located after the notification mentioned in §2 of Article 5 of this Law;

II - expectations of yields, foregone profits and compensatory interest will not be computed.

§ 3. The bonds mentioned in this article cannot be used to pay taxes.

§ 4. The Municipality will proceed to the suitable use of the property in a maximum of five years calculated from the time the property becomes a public asset.

§ 5. The use of the property can be made effective directly by the local government or by means of conveyance or concession to third parties providing the due bidding procedures are observed.

§ 6. The party acquiring the property under the terms of §5 is subject to the same obligations for parcelling, building or use set forth in Article 5 of this Law.

Property, in common with any fundamental right, can be limited and even the target of a suppressive intervention. The Federal Constitution, conferring upon the State the power to relieve an owner of his property, makes it possible to undertake expropriation in the public interest or for social interest purposes, but this procedure requires prior fair compensation to be made in cash.

As exceptions to this general rule, the Federal Constitution foreshadows two other expropriation modalities, both intrinsically related to the social function of property: expropriation for purposes of urban reform and expropriation for agrarian reform purposes, both as sanctions.

The Statute regulates expropriation of property for urban purposes. Through this modality the municipal authority can punish an owner who fails to use his property for the social function established in the Municipal Master Plan. Unlike expropriations undertaken in the public and social interest, expropriation for urban reform purposes requires payment to the owner to be made in public debt bonds repayable over a period of ten years.

Another important difference, also concerning the sanction character of this modality of expropriation, consists of the value of the compensation involved. This value in general corresponds to the market value of a particular property. In the case of expropriation for urban purposes this involves a real value corresponding to the calculation base used for the IPTU, with an amount proportionate to the value of public investment in the area near to the property discounted. This type of calculation is in line with the guidance on fair distribution of the benefits of urbanisation expressed in Article 2 of the City Statute. Furthermore, the real value of expected yields, foregone profit and compensatory interest cannot be considered as part of the calculation.

Expropriation for urban reform purposes can only be undertaken if the owner, compelled to make appropriate use of his property, fails to do so after Progressive IPTU has been applied over a period of five years. Expropriation presupposes the following sequence of actions: firstly, the municipal authority, under the terms of municipal law, notifies the owner to parcel, build or utilise his property. After the deadline stipulated in the official notification in accordance with legal procedures, and in the event of the owner failing to comply, the Municipality can increase the IPTU aliquot on an annual basis over a period of five years in accordance with Article 7 of the City Statute and local municipal law. Only after these instruments have been applied can expropriation for urban reform purposes be undertaken by the Municipality.

The linking of the expropriation sanction regulated by the City Statute to the social function of property also obliges the local authorities to make appropriate use of the property following expropriation. In the event of this is not happening, the city mayor and other public agents involved are judged to have committed an administrative impropriety in accordance with Article 52 of the City Statute. Administrative impropriety is taken to signify any act that contravenes the duty of the public officials to act honestly and decently. An administrative impropriety act is not a crime from a legal point of view, but any person acting thus is subject to sanctions which can occasion suspension of political rights, loss of public employment, seizure of assets, and repayment of monies to the public purse.[1]

Section V. Special *Usucapiao* Rights for Urban Property

Article 9. Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and unopposed, who uses it as his or his family's home, can establish dominion over the property, as long as he is not the owner of any other urban or rural property.

§ 1. The title of dominion will be conferred to the man or woman, or both, whether or not they are married or single.

§ 2. The rights granted in this article will not be recognised to the same possessor more than once.

§ 3. For the purposes of this article, the legitimate heir continues to have full rights to the possession enjoyed by his predecessor providing he was residing in the property at the time that it was left open to succession.

Article 10. In urban areas of over two hundred and fifty square meters occupied by the low income population for housing purposes, for five years, uninterruptedly and without opposition, and where it is not possible to identify the land occupied by each possessor, residents can avail themselves of collective usucapiao**, providing the possessors do not own any other urban or rural property.**

1. Administrative impropriety is addressed in the Federal Constitution, Art.37, §4 and by Law No. 8.429/92.

§ 1. The owner can, for the purpose of calculating the timeframe required by this Article, add to his possession that of his predecessor, providing possession is continuous for both.

§ 2. The Special Collective Usucapiao **of urban real estate shall be decided by the judge who shall pass down a ruling which will serve as a title for registering in the real estate deeds office.**

§ 3. In his ruling the judge will award an equal ideal portion of the land to each possessor, regardless of the size of the land that each occupies, except in the case of a written agreement existing among the condominial parties establishing differentiated ideal portions.

§ 4. The special condominium thus constituted is indivisible and cannot be terminated except by a favorable determination submitted by at least two thirds of the members of the condominium, in the event of urbanisation works being implanted after the condominium has been constituted.

§ 5. The determinations related to the administration of the special condominium shall be based upon a majority vote by the condominium members present, requiring the others to comply with the decision, whether or not they in agreement or were absent from the voting session.

Article 11. While the special urban action for usucapiao **is pending, any other actions, petitions, or possessions that are proposed relating to the property subject to** usucapiao **will be stayed.**

Article 12. Legitimate parties involved in proposing an action to lead to special urban usucapiao **include:**

I - the possessor, alone, in a group or supervenient;

II - the possessors, in co-possession;

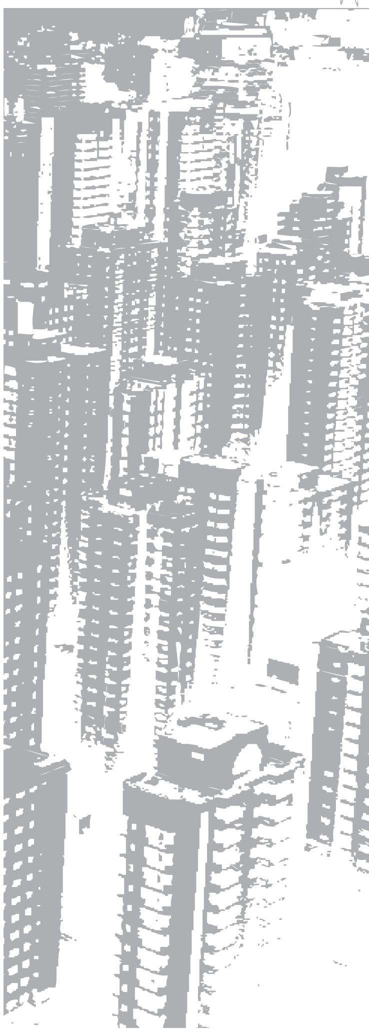
III - an association of community residents acting as a procedural substitute, duly established, with legal standing, providing this association is explicitly authorised by those that it represents.

§1. Intervention by the Ministério Publico is obligatory in the event of Special Urban Usucapiao.

§2. The submitting party shall enjoy the benefits provided by the courts and free legal assistance, including assistance in the real estate deeds office.

Article 13. Special usucapiao **for urban real estate can be invoked as defense, with the ruling that recognises it to be regarded representing a valid title which can be registered in the real estate deeds office.**

Article 14. In the legal procedures related to special urban real estate usucapiao**, the summary action will be considered as a procedural writ.**



In Brazil around 40 per cent of families living in urban areas do not legally possess a property or any legal document(s) to confirm possession of the land on which they live. This has arisen from the rapid, disorganised and unjust process of urbanisation, resulting in poor people not having their right to housing recognised, and with their only option being to occupy a space in the city by constructing their own houses on vacant land or squatting in abandoned buildings.

Acknowledging that this illegal situation is unfair for poorer people as well as being prejudicial to society as a whole, the Federal Constitution, in its Article 183, guarantees to the holder of an urban property of up to 250 square meters square and who does not have another property or who has not yet been the beneficiary of the instrument, the acquisition of the said property. In this case the possessor must demonstrate that he has occupied the property for at least five years, unopposed, and that he uses the property for dwelling purposes.

Once the legal requirements have been fulfilled, the possessor becomes the owner by means of a judicial process of *usucapiao* or of a specific extrajudicial procedure in accordance with Law No. 11.977 of 7 July 2009, which rules on urban demarcation and legitimation of ownership.

In Articles 9 and 14 the City Statute regulates special urban *usucapiao* by introducing a series of norms intended to overcome bureaucratic and economic bottlenecks that could obstruct the effective acknowledgement of the right conceded to the possessor of the property under the terms of the Constitution. It guarantees, for example, free of charge access to all the legal documents and those deposited in the land registry office, including legal assistance for beneficiaries. It also ensures that residents´ associations can submit *usucapiao* requests in the name of residents providing this is authorised by the latter, and also permits collective submissions for urban *usucapiao*.

It is often not possible to identify and separate favelas areas into smaller lots, which technically would rule out the possibility for individuals to make individual submissions. However, collective *usucapiao* means that only the external perimeter of the occupied area needs to be demarcated, a procedure which could lead to possible recognition of the right of ownership of the group of residents living in a given urban settlement.

Section VI. Concerning Special Use Concession for Housing Purposes

Article 15. (VETOED)

Article 16. (VETOED)

Article 17. (VETOED)

Article 18. (VETOED)

Article 19. (VETOED)

Article 20. (VETOED)

Section VII. Concerning surface rights

Article 21. The urban property owner can concede to another party the right to use of surface of his land for a specified or unspecified time, through a public deed registered in the public deeds office.

§. The surface right includes the right to utilise the land, the sub-soil, or the aerial space related to the land, in the form established in the respective contract, in conformity with urban legislation.

§2. The surface rights can be offered free of charge or not.

§3. The person receiving the surface rights shall be wholly responsible for defraying the fees and taxes levied on the surface of the property, also accepting responsibility proportional to his effective share of occupation, with the fees and taxes on the area that is the object of the concession of the surface rights, excepting any measure to the contrary expressed in the respective contract.

§4. The surface right can be transferred to third parties in accordance with the terms of the respective contract.

§5. Upon the death of the person receiving the surface rights, his rights are transferred to his successors.

Article 22. In case of conveyance of the land, or of the surface right, the party receiving the surface rights and the property owner respectively, will have the right of preference, in equal conditions, to offers received from third parties.

Article 23. Surface rights are terminated:

I - by the expiry of the term;

II - by failure to comply with the contractual obligations assumed by the person assuming the surface rights.

Article 24. Upon termination of the surface rights, the property owner will recover full dominion the land, as well as the accessions and improvements in the property regardless of any compensation, unless the parties have stipulated to the contrary in the respective contract.

§ 1. Before final termination of the contract, the surface rights shall be terminated if the person receiving the surface rights uses the land for a purpose that is different from that for which it was conceded.

§ 2. Extinction of the surface rights shall be registered in the real estate deed office.

Surface right was an innovation in Brazilian law introduced by the City Statute[2]. Until this law was promulgated, the general understanding in Brazil was that everything that was constructed or planted, (i.e. all ways of accessing land) presumed that the land belonged to an owner.

Surface right effectively means that ownership of the land is separated from the right to use the surface of such land. This is an interesting instrument for tenure regularisation of a social interest occupation of publicly owned land. Based on a contract which sets out the right to the surface, the public authority retains the ownership of the public land concerned, but can concede to the resident the right to construct a dwelling on this land, with a full guarantee that he can exercise upon it his right to housing, sell it under certain conditions or pass it to his heirs. Since the public authority retains ownership of the land, it can also prevent the property being acquired by someone who intends to use it for another purpose than that for which the right has been given—for example the provision of housing for the low-income population—thereby avoiding eviction of the residents and occupation of the property by wealthier people.

2.At present the Surface Law is also addressed in the Civil Code, Law No. 10.406/2002 promulgated after the City Statute

Section VIII. The Right to Preemption

Article 25. The Right to Preemption confers upon the municipal government a preference to purchase urban property which is being conveyed in exchange for money between private parties.

§ 1. Municipal law based on the Master Plan shall establish areas in which the right to preemption will apply, and shall establish a period of during which this right will be in force, not more than five years, renewable from one year after termination of the initial period.

§ 2. The Right to Preemption is assured during the period when it will be in force, established according to the terms of §1, regardless of the number of conveyances of the property to which it applies.

Article 26. The Right to Preemption will be exercised whenever the local government needs areas for:

I – land tenure regularisation;

II - execution of social housing programmes and projects;

III - establishment of a land reserve stock;

IV - ordering and guiding urban growth;

V - installation of urban and community equipments;

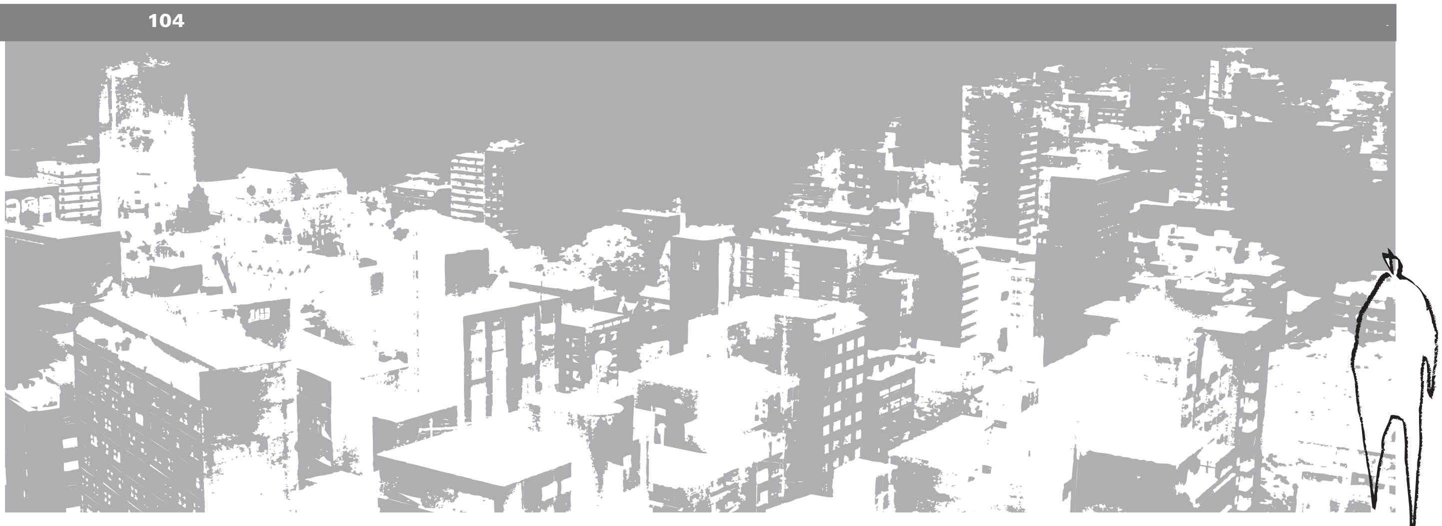
VI - creation of public leisure spaces and green areas;

VII - creation of conservation units or protection of other areas of environmental interest;

VIII - protection of areas of historic, cultural or landscape interest;

IX - (VETOED)

Sole paragraph. The municipal law foreshadowed in §1 of Article 25 of this Law must include each area in which the right to preemption will be applied for one or more of the purposes indicated by this Article.



Article 27. The owner must notify his intention to convey the property so that the Municipality, within a maximum period of 30 days, can confirm in writing its interest in purchasing it.

§1. The notification mentioned in the header will be annexed to the purchase proposal signed by the third party interested in purchasing the property, on which will be indicated the payment terms and period of validity.

§2. The Municipality will publicise, in an official journal and in at least one wide circulation local or regional newspaper, an official notice advising of the notification received in the terms of the header and of the municipality´s intention to acquire the property in accordance with the conditions set forth in the proposal.

§3. Once the deadline mentioned in the header has expired without any declaration of interest being submitted, the property owner is authorised to undertake conveyance to third parties, in accordance with the conditions set forth in the proposal.

§4. Once the sale to a third party is finalised, the owner will be required to present a copy of the public property transaction deed to the Municipality within a period of thirty days.

§5. A conveyancing undertaken in conditions different to those of the proposal presented is void of complete rights.

§6. If the hypothesis presented in §5 materialises, the Municipality can acquire the property for the appraised base value of the IPTU or by the value indicated in the proposal presented, if this is lower.

The right of preemption guarantees to the municipal authority that it will have preference for acquiring properties are that are being conveyed [3]. Under this procedure the owner who wishes to sell property must first communicate the facts to the local authority which, if it so wishes, can buy the property at the same price as that offered by a third party.

Utilisation of this instrument enables the municipal authority to acquire urban land to be used for the purposes set forth under Article 26.

In order to apply this instrument, it is necessary for the municipality to have drawn up its Master Plan as well as a specific law delimiting the areas that will be subject to the right of pre-emption and that indicates the purpose to which each of the areas will be put after the land has been acquired by the public authority.

The municipal law addressing the right of pre-emption in an area must also define the period of time during which this right will remain valid. During this period, any conveyance involving payment of properties must be preceded by notification to the municipality in order to give the latter the power to exercise its right of preference.

In the exercise of its right of preference the municipal authority must observe a number of specific precautions: it must only use the property for purposes specified in the law and can only purchase the asset at market price. If these obligations are not observed, the mayor and his agents involved in the operation and utilisation of the property following purchase will be charged with administrative impropriety under the terms of Article 52, III and VIII of the City Statute.

3. City Statute: Guide for Implementation by Municipalities and Citizens. Brasilia: Publications Division, Chamber of Deputies, 2001, p.137.

Section IX. Award with Costs of the Right to Build

Article 28. The Master Plan can establish areas in which the right to build can be exercised above the basic floor area coefficient adopted, with a counterpart sum to be handed over by the beneficiary.

§1. For the purposes of this Law, floor area coefficient is the ratio between the built area and the lot size.

§2. The Master Plan can establish a single basic floor area coefficient for the entire urban area or a different coefficient relating to specific areas within the urban zone.

§3. The Master Plan will define the maximum limits of the floor area coefficient, taking account of the proportion between the existing infrastructure and the increased density foreseen in each area.

Article 29. The Master Plan can establish areas in which changes of land use can be permitted, with a counterpart sum to be handed over by the beneficiary.

Article 30. A specific municipal law will establish the conditions to be observed for the award with costs of the right to build and change of use, establishing:

I - the formula for calculating the charge;

II - the cases that might be exempt from payment for the award;

III - the counterpart sum to be paid by the beneficiary.

Article 31. The funds generated by the award of the right to build and change of use shall be applied for the purposes established in sub-clauses I to IX of Article 26 of this Law.

The Onerous Grant on the Right to Build ('Building Waiver with Costs') is an instrument designed to boost urban development, enabling the public authorities to encourage densification of certain areas of the city to the detriment of others as a way of promoting the maximum use of the installed infrastructure, as well as making it possible for the community to capture the value generated by public authority interventions. The instrument is also an indirect way for the local government to increase revenue.

The guidelines related to the "just distribution of the costs and benefits arising from the urbanisation process" and to the "recovery of investment by the public authority resulting from the price appreciation of urban properties" (Clauses IX and XI of Article 4), together with the separation of the rights to build from the right to ownership and to fulfillment of the social function of property, sustain the argument that it is legitimate for the public authorities to recover for the community the increased value of the properties resulting from property price appreciation generated as a result of public investments.

The mechanism can be traced back to the principle of 'Solo Criado' introduced in Brazil in the 1970s, which in the words of José Afonso da Silva,[4] can be understood as "all building above a single coefficient, whether involving occupation of air or underground space" ('artificial land' based on the separation of land and building rights'). In simple terms, this refers to buildings constructed on land that measures more than the built-up area proportionate to this area of land and is therefore considered to be 'Solo Criado', and this creation of land calls for compensation to be sought in exchange for the costs generated by the infrastructure works involved.

It can be seen that the concept of 'Solo Criado' presupposes that the right of property encompasses the right to build, but the latter is limited by a single or basic use coefficient. In other words, the right of an owner to build is restricted to the single law-based building coefficient as defined in the Municipal Master Plan. Any building above this coefficient will only be permitted in predefined areas and will be subject to a counterpart payment to the municipal authority.

In order to apply the Building Waiver, the Municipality must, on the basis of its Master Plan, define the basic use coefficient for its entire territory. This does not need to be uniform in all areas (i.e. it can differ from zone to zone). In addition, the Master Plan must identify the areas where the right to build over and above the established coefficient can be exercised, the basic use coefficients and the Plan must also establish the maximum allowable coefficients.

The establishment of the maximum use coefficient must take into account the capacity of the infrastructure and the increased density to which a property will be subject. In order to avoid overloading the infrastructure, the public authority must establish limits for the additional constructed area and also define limits by type of use (e.g., residential use, services use or commercial use).

The concession of additional building potential by the local government also makes it possible to regulate the land market. It is known that, given that there are great variations in the building potential of properties and the fact that no charge has been levied for using this potential, certain areas will appreciate in price to the detriment of others. This instrument, however, can certainly influence land prices, resulting in a specific properties increasing substantially in value.

4. SILVA José Afonso da: Direito urbanístico brasileiro. 4th Edition revised and updated. São Paulo:Malheiros, 2006. p. 262.

Section X. Of Consortiated Urban Operations

Article 32. A specific municipal law, based on the Master Plan, can limit the area for application of consortiated operations.

§ 1. A Consortiated Urban Operation is the totality of the interventions and measures coordinated by the municipal government, with the participation of owners, residents, permanent users and private investors and aimed at undertaking structural urban readjustments, social improvement and introducing environmental benefits in a given area.

§ 2. Urban Consortiated Operations can include:

I - the modification of indices and formats related to the parcelling, use and occupation of land, as well as alterations to building norms, always taking into account the environmental impacts generated as a result;

II - the regularisation of constructions, repairs or extensions undertaken in contravention of current legislation.

Article 33. The specific law that rules on Urban Consortiated Operations shall include an urban consortiated operation plan and this will contain the following as minimum requirements:

I - the definition of the area to be affected;

II - the basic occupation programme for the area;

III - a programme covering ways and means to attend to the economic and social needs of the population directly affected by the operation;

IV - the purposes of the operation;

V - a prior Neighbourhood Impact Study;

VI – counterpart payment to be required from the owners, permanent users and private investors in order to compensate for their enjoyment of the benefits established in sub-clauses I and II of §2 of Article 32 of this Law;

VII - the form in which the operation will be controlled, with the operation to be obligatorily shared with civil society representatives.

§1. The funds obtained by the municipal government under the terms of sub-clause VI of this article will be exclusively invested in the Consortiated Urban Operation.

§2. Once the specific law indicated in the header is approved, any licenses and authorizations issued by the municipal government in violation of the Consortiated Urban Operation will be declared null and void.

Article 34. The specific law that approves the consortiated urban operation can call for the issuing by the Municipality of an specific number of certificates to cover potential additional construction, which will be offered for sale at auction or used directly in payment for work required for the operation.

> **§1. The certificates for potential additional construction shall be freely traded, but will be converted to the right to build solely in the area to be covered by the operation.**
>
> **§2. Once the request for the license to build is submitted, the certificate for additional building potential will be used in payment for the construction area that exceeds the standards established by the land use and occupation legislation, up to the limit fixed by the specific law ruling on the consortiated urban operation.**

Consortiated Urban Operations are concerned with introducing urban projects on the basis of partnerships between the public authority, property owners, civil society and private capital, with all of them conforming to municipal urban planning guidelines. Such projects must be in accordance with the rules governing urban structural development, environmental protection and the promotion of social improvement.

The basic idea of this instrument is to transform a specific area of the city under the aegis of the municipal public authority with a view to giving concrete expression to the objectives and actions established under the Master Plan by means of partnerships established with the private sector. The instrument can be used for different purposes: conversion and upgrading of old deactivated industrial and port areas which have cut back on operations or are undergoing land use changes; the transformation of urban complexes endowed with infrastructure and vacant land where it is proposed to upgrade usage and density; upgrading the land use and infrastructure around large urban facilities such as avenues, metro stations, special bus corridors, parks and stadiums; better land use connected with substantial urban works, etc.

The City Statute establishes a number of requirements for the undertaking of urban operations by municipalities in a bid to guarantee that the benefits of such operations are distributed between the directly affected population, the public authority and private investors.

In order to encourage involvement by the private sector, the municipal authority must provide a number of incentives, including, for example, alterations to the parameters and types of parcelling, use and occupation of land. One of these incentives is related to awarding additional building potential to private sector firms. The municipal authority can award additional potential building 'certificates' as a form of counterpart payment to enable the local authorities to recoup funds for undertaking public works and urban improvements based upon forecasts of increased density and on certificate values that reflect the market value of the land involved in such operations. These certificates also make it possible to link resources to the undertaking of a particular public work foreseen both in the Master Plan and the urban operation law, guaranteeing that the resources are allocated for the purpose to which they were earmarked.

Municipalities need to be forewarned of problems regarding the implementation of this instrument: the concentration of public and private resources in a specific area can end up causing residents to be ejected, particularly low income families, as a result of the price appreciation of the land and properties located on it. Thus the urban operation plans must pay specific attention to establishing housing programmes to cater for these families, ensuring that they remain within the urban operation area. Care is particularly required in cases where relocation of families is necessary for executing the works. It is also vital to guarantee housing solutions with the wide-ranging participation of the population affected.

Section XI. Of the Transfer of the Right to Build

Article 35. Municipal law, based on the Master Plan, can authorise the owner of urban property, whether public or private, to exercise in another location, or convey, through public deed, the right to build established in the Master Plan or in related urban legislation, when the said property is considered necessary for purposes of:

I - installation of urban and community equipments;

II - preservation in cases where the property concerned is considered to be of historic, environmental, landscape, social or cultural interest;

III - facilitating programmes directed to tenure regularisation, urbanisation of areas occupied by low-income populations and social interest housing.

§1. The same facility can be conceded to a property owner who donates his asset, or part of it, to the local government, for the purposes detailed in sub-clauses I to III of the header.

§2. The municipal law referred to in the header shall establish the conditions regarding application of the Transfer of the Right to Build.

The instrument for transferring the rights to build aims to ensure that the owner of a property situated in an area with restrictions on the right to build (e.g. where constructions cannot be erected up to the limits of the basic use coefficient defined for that particular piece of land) can be assured of the economic use of his assets. Such limitations can occur in cases where the municipal authority, in the public interest, restricts construction of buildings in order to preserve environmental areas or areas of particular historic, cultural, landscape or social interest.

In order to make it possible to protect these areas and at the same time guarantee the economic use of a particular property, the municipal government must institute the transfer of right to build, a device which is generally operated by and among private parties. By means of this instrument the owner can exercise his right to build in another location, whether this is another piece of land owned by him or whether it involves transferring or conveying the land or property to a third party. In both cases the maximum use coefficient of the place where the rights to build will be exercised must be respected, as well as the other rules foreshadowed in the Master Plan, such as building potential eligible for transfer, the appropriateness of areas or zones of the city to which the rights will be transferred and the conditions to be complied with for preserving the property once the owner has been benefited by the transfer.

This instrument can also be used for installing public amenities, for tenure regularisation or for urbanising areas occupied by low income people. In these cases, the transfer of the rights to build can present advantages over and above the device of expropriation.

Section XII. Concerning the Neighbourhood Impact Study

Article 36. Municipal law shall define the private and public developments and activities in urban areas which require the previous preparation of a Neighbourhood Impact Study (NIS) prior to being able to secure the licenses or authorizations to build, expand or operate from the municipal government.

Article 37. The NIS will be executed in such a way as to take into account the positive and negative effects of the development or activity concerning the quality of life of the population residing in the area and its proximities, including the analysis, at least, of the following questions:

I - population density;

II - urban and community equipments;

III - land use and occupation;

IV - real estate appreciation;

V - generation of traffic and demand for public transportation;

VI - ventilation and lighting;

VII - urban landscape and natural and cultural heritage.

Sole paragraph. The documents that comprise the NIS will be publicised and be made available for public consultation by the competent municipal government agency to interested parties.

Article 38. The preparation of the NIS will not be a substitute for the preparation and approval of the prior Environmental Impact Study required by environmental law.

Any activity developed in the city generates corresponding impacts that need to be taken into consideration with regard to urban planning. A variety of urban norms for different parts of the city are called for.

However, certain activities interfere in the urban dynamic in such a way that urban norms are not sufficient for guiding urban development and cause certain impacts (e.g., overloading the urban infrastructure, public services and equipments, etc.) which must be subjected to specific evaluation. In order to enable the local government to appraise the consequences of the establishment of large developments or major extensions to existing constructions, the Neighbourhood Impact Study has been instituted.

This instrument provides the public authority with information to enable it to decide whether to award licences for development to proceed or not. Once in possession of the NIS, the municipality can issue a licence, refuse to issue a licence, or condition the issuing of a licence to the implementation of measures by the developers to attenuate or take action to reduce the impact[5]. Throughout this process the community must be allowed to participate in decisions, and it will be an obligatory requirement that all the documents and studies are available for consultation by any interested party.

Each municipality must be responsible for elaborating a specific law identifying the activities and developments that are subject to the NIS requirement prior to licences being awarded. Given the varied situations in different municipalities, only the local government is in a position identify causes of impacts on their territory.

Chapter III. Of Master Plans

Article 39. Urban property fulfills its social function when it meets the basic requirements for ordering the city set forth in the Master Plan, assuring that the needs of the citizens are satisfied with regards to quality of life, social justice and the development of economic activities, respecting the guidelines established in Article 2 of this Law.

5. City Statute: a guide for implementatation by municipalities and citizens. Brasilia:Chamber of Deputies, Publications Division, 2001, p.200.

Article 40. The Master Plan, approved by municipal law, is the basic instrument of urban development and expansion policy.

§1. The Master Plan is an integral part of the municipal planning process, and the multi-year plan, the budget guidelines and the annual budget shall be required to include the guidelines and priorities established in this Plan.

§2. The Master Plan shall apply to the municipal territory as a whole.

§3. The law that institutes the Master Plan shall be revised at least once every 10 years.

§4. In the course of preparation of the Master Plan and in the monitoring of its implementation, the municipal Legislative and Executive powers will be required to ensure that:

I - public hearings and debates are organised with participation by the population and associations representing the different segments of the community;

II - publicity concerning the documents and information;

III - access to the documents and information by interested parties.

§5. (VETOED)

Article 41. The Master Plan is mandatory for :

I – cities with over 20,000 inhabitants;

II – cities located in metropolitan regions and urban conglomerations;

III – cities where the municipal government intends to use the instruments established in §4 of Article 182 of the Federal Constitution;

IV - cities of special tourist interest;

V – cities falling within the area of influence of developments or activities with significant environmental impact in the regional or national domain.

§1. In the case of the developments or activities described in sub-clause V of the header, the technical and financial resources required for the preparation of the Master Plan will be inserted in the compensatory measures adopted.

§2. In the case of cities with over 500,000 inhabitants, an integrated urban transport plan shall be prepared, compatible with the Master Plan or contained within it.

Article 42. The Master Plan should contain as a minimum requirement:

I - delimitation of the urban areas where compulsory parcelling, building or use is to be applied, taking due account of the existence of infrastructure and demand for use of this infrastructure in accordance with Article 5 of this Law;

II - measures required by Arts. 25, 28, 29, 32 and 35 of this Law;

III - a system of oversight and control.

The Master Plan is the main instrument established by the Statute which assembles all the remaining instruments and establishes how each part of the municipal territory fulfils its social function. This municipal law should be revised at least once every ten years. Moreover it must embrace the construction of a social, economic and territorial pact targeted at the urban development of the municipality.

The City Statute defines which cities are obliged to draw up a Master Plan. This plan should not be restricted only to the urban area of cities but to the totality of the municipal territory, encompassing rural areas, woodland, traditional communities, environmental preservation areas, water resources, etc. throughout the entire municipality. It follows that the Master Plans will differ from one municipality to another given the different types of environments throughout the country in which the municipality is located, the particular bioma, the size of the municipal territory, the size of the urbanised area, the urban agglomeration to which a given municipality will eventually belong, the size of the population, the patterns of urbanisation, economic aspects, the existence and location of large infrastructural works such as ports, railways, roads, airports etc.

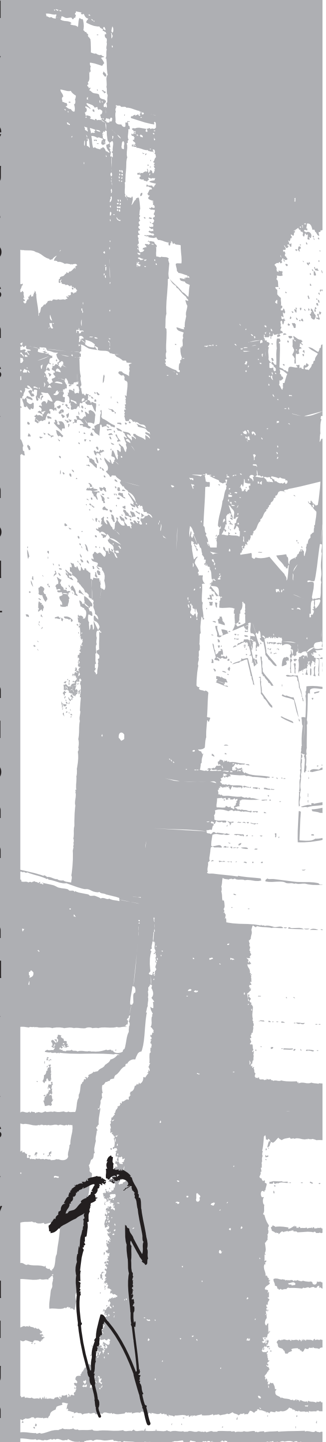
The concept of the Master Plan as set forth in the City Statute presupposes the need to address urban problems, in particular the enormous liability resulting from social inequality in Brazilian cities, in addition to calling for a dynamic and ongoing planning process in the municipality itself. Thus the Master Plan should not be conceived merely as a technical piece of urban planning but as a political process involving decision-taking about the management of the municipal territory which involves the entire community.

In order for the process of elaboration and implementation of the Master Plan to be truly expressed in a social, economic and territorial pact, it is vital to involve the effective participation of the population at all stages. This must be assured by the municipal authority by establishing Councils with a broad membership representing the different segments of society in the municipality, follow-up, monitoring and discussion forums, the holding of public meetings and, finally, the municipal authorities must ensure that any information provided to the public is eminently transparent.

The Master Plan should also influence municipal budgets and public investment as a whole, with guidelines that can be easily incorporated in the multi-annual plans, in the annual budget procedures, and in other sectoral municipal programmes, plans and projects related to housing, environmental sanitation, transport, urban mobility etc.

The Master Plan must refer to the application of the City Statute instruments by defining the concept, procedures of application and demarcation of the territory covered by the Plan. Some of the instruments such as compulsory parcelling, building and utilisation, the right of pre-emption, building waivers, consortiated urban operations and transfer of the right to build can only be applied if they are expressly contained in the Master Plan.

It is worth noting that the Master Plan brings together sectoral policies involved in the planning and ordering of the entire territory, and the municipality must use its regulatory powers to formulate sectoral policies and schedule its investments in timed stages. In this respect, in order to counteract housing deficits and improve public services, the municipal authority must seek to take forward a land use policy in the Master Plan aimed at making land available for the provision of social housing and the installation of the requisite infrastructure.



Chapter IV. Democratic administration of the city

Article 43. To guarantee the democratic administration of the city the instruments, among others, shall be employed:

I - urban policy councils, at the national, state and municipal levels;

II - debates, hearings and public consultations;

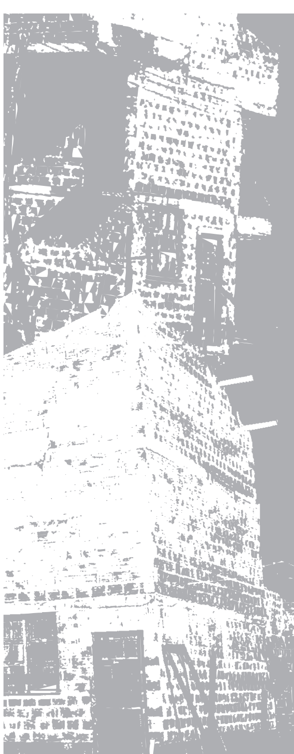
III - conferences on subjects of urban interest, at the national, state and municipal level;

IV - popular initiatives related to bills of law, plans, programmes and urban development projects;

V - (VETOED)

Article 44. Within the municipal context, participatory budget management as indicated in line f of sub-clause III of Article 4 of this law shall mean conducting debates, hearings and public consultations about the proposals of the multi-annual plan, the budget guidelines law and the annual budget as a mandatory condition prior to their approval by the City Chamber.

Article 45. The administrative entities of metropolitan regions and urban conglomerations must assure the compulsory and substantive participation of the population and of associations representing different segments of the community in order to guarantee to them direct control of administrative activities as well as assuring the population of complete exercise of citizenship.



One of the fundamental elements of the City Statute is to promote participation by society in the entire process of urban management. Decisions about the future of cities cannot be limited to representative democracy represented by local Council Chambers; they need to involve all those directly affected by public actions and investments. It is not simply a question of 'consulting' popular opinion about proposals put forward by the municipality, but to guarantee the existence of genuinely effective consultative and deliberative fora during the urban planning process. It is also essential to ensure citizen participation in decisions involving the use of public funds.

In the struggle to overcome the massive social inequality that is a feature of Brazilian cities, the participatory process now plays an important role in the battle for investments and in efforts to reach agreement on an urban planning scheme that takes into account the needs of poor people living in the city. In other words, it is a way of ensuring that the poorer members of the population, traditionally excluded from the planning process in the cities, are able to participate in decisions about how land is regulated and occupied, as well as having a say in how public funds are to be used.

Exploring these possibilities, the City Statute introduced a number of instruments to ensure the democratisation of city administration in an effort to encourage popular participation in decision-making processes and to prevent cities from mirroring a model desired by those with sufficient economic power capable of influencing political decisions. These instruments include: the creation and functioning of councils, the holding of public meetings and municipal urban policy-related conferences.

These consultative and deliberative fora should ensure that all sectors of society are taken into account and that the investment and action agenda of the municipalities is submitted to such fora.da.

Chapter V. General Measures

Article 46. The municipal government can extend to the owner affected by the obligation determined in the header of Article 5 of this Law, the creation of a property consortium as a way to establish financial viability arising from the use of the property.

§1. A property consortium is considered as a way to make viable the implementation of urbanisation or building plans by means of a procedure which involves an owner transferring his property to the municipal government and after work has been undertaken receives, as payment, duly built property units or urbanised units.

§ 2. The value of the property units to be delivered to the owner shall correspond to the value of the property before execution of the works in accordance with the provisions set forth in §2 of Article 8 of this Law.

It is possible that in certain cases the owner obliged by the municipal authorities to parcel, build or utilise his property in accordance with Article 5 of the City Statute does not possess sufficient resources to do so. In this case, the application of this instrument could be rendered unviable if the owner of the property shows that he is not capable of complying with the municipal order. In order to make it possible to effect compulsory parcelling, building or utilisation and consequently to ensure that an underutilised urban property complies with its social function, the' property consortium' was established.

With this instrument, the Municipality can make it easier for an owner to transfer his property to the municipal authorities that aim to undertake urbanisation or building programmes. As counterpart, after the public works have been undertaken, the ex-owner is entitled to receive property of a value corresponding to the value of his own property at the time it was transferred to the municipality.

Article 47. The taxes on urban property, as well as the fees for public urban services, shall vary, depending on the social interest function involved.

Article 48. In the case of social housing programmes and projects developed by public organs or entities engaged in with specific activities in this area, the real right to use public property contracts shall:

I - for all legal purposes be considered as a public deed and the requirements of sub-clause II of Article 134 of the Civil Code will not apply;

II - constitute a title of mandatory acceptance as a guarantee for housing finance contracts.

Article 49. The States and Municipalities shall have a period of 90 days, from the time this law comes into force, to establish deadlines for issuing guidelines for urban developments, the approval of projects for parcelling and building, the undertaking of inspections and the issuing of the term of verification and conclusion of construction.

Sole paragraph. If the provisions of the header are not complied with, a period of 60 days will be established for undertaking each of the said administrative acts, a requirement which shall remain in force until the States and Municipalities have established them by law in another form.

Article 50. The Municipalities that need to comply with the requirement called for in sub-clauses I and II of Article 41 of this Law and that do not have a Master Plan approved at the time this law comes into force, must approve a Plan by 30 June 2008.

Article 51. For the effects of this Law, the measures relating to the Municipality and the Mayor also apply to the Federal District and its Governor.

Article 52. Without prejudice to the punishment of other public agents involved in the application of other applicable sanctions, the Mayor will be held responsible for administrative impropriety under the terms of Law No 8.429 of 2 June 2 1992, when:

I - (VETOED)

II - within five years there is no compliance with the appropriate use of the property incorporated into the public domain in accordance with the terms of §4 of Article 8 of this Law;

III - areas obtained on the basis of the right to preemption are used in violation of the terms of Article 26 of this Law;

IV - the funds generated by the award of the right to build and change use are disbursed in contravention of the measure set forth in Article 31 of this Law;

V - the funds obtained from consortiated operations are disbursed in contravention of the measure set forth in §1 of Article 33 of this Law;

VI - the Mayor impedes or fails to guarantee the requirements set forth in sub-clauses I to III of §4 of Article 40 of this Law;

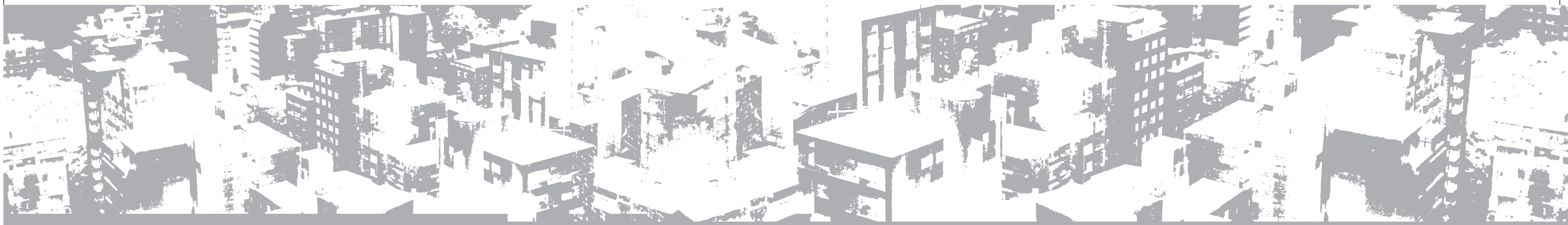
VII - there is a failure to take the necessary measures to guarantee the observance of the terms of §3 of Articles 40 and 50 of this Law;

VIII - a property is acquired under the right to preemption under the terms of Articles 25 – 27 of this Law at a price that proves to be higher than the going market rate.

Impropriety consists of any bad conduct contrary to the duty to perform public duties honestly. For public agents this duty flows from the Federal Constitution itself, which demands correct behaviour by officials as a basic principle of good public administration. The Constitution also sets forth a range of sanctions to be applied in the event of acts of impropriety being committed: suspension of political rights, loss of public office, seizure of assets and obligation to reimburse the public purse in the form and amount set forth in the law, without prejudice to the determination of appropriate penal charges.

In order to regulate this article of the Federal Constitution, Law No.8249/9092 was brought into force. This law defies three modalities of administrative impropriety: acts leading to illicit enrichment, acts that are prejudicial to the public purse and acts against the principles of public administration. In each of these cases appropriate sanctions are established.

Conducts or omission defined as acts of administrative impropriety by the City Statute must be interpreted by taking account of the acts defined by the Law of Administrative Impropriety. Once the act impropriety has been identified the appropriate sanctions will be decided upon.



For example, a city mayor who uses funds secured by the municipal authority from cash-generating building waivers for purposes not foreshadowed in Article 31 of the City Statute can be accused of committing an act of impropriety contrary to the principles of public administration or an act that affects the public purse. In the first case, it is enough that the mayor has acted fraudulently and the public agent will be punished with the sanctions appropriate to the act in question. In the second case, it is necessary to demonstrate that actual harm has been caused to the public coffers.

Article 53. Article 1 of Law No. 7.347 of 24 July 24 1985 will be in force, with the addition of a sub-clauses 37,38 and 39: [Repealed by Provisional Measure No. 2.180-35 of 24 August 2001].

Article1. ....

..

III -

...

Article 54. Article 4 of Law No. 7.347 of 1985 will now be in force in the following terms:

Article 4. An alert can be issued for the purposes of this Law for the purpose of avoiding environmental damage, or harm to the consumer, urban order, or to the property and rights of properties of artistic, aesthetic, historic, tourist and landscape value (VETOED).

Article 55. Article 167, sub-clause, item 28 of Law No.6.015 of 31 December 1973, modified by Law No. 6.216 of June 1975, comes into force as follows:

Article167. ....

I - ....

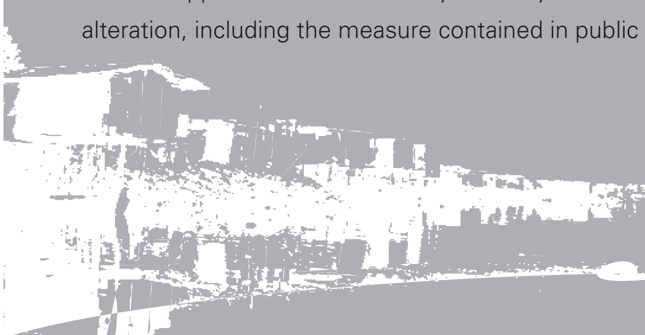
...

28) of the declaratory rulings of usucapiao**, regardless of the regularity parcelling of land or buildings;**

...

Articles 53 and 54 of the City Statute modified Law No. 7347/1985, known as the law of Public Civil Action, address the procedural tutelage of collective interests. With this alteration, public civil action aimed at making those who caused moral and patrimonial harm to collective interests becomes an important instrument for protecting the urban order and for giving effect to the norms contained in the City Statute.

It should be noted that Article 53 of the City Statute was repealed by Provisional Measure No. 2180/2001, which has the force of law. This repeal, in response to a number of technical questions raised, did not in fact suppress the alteration by the City Statute since the Provisional Measure generated a similar alteration, including the measure contained in public civil action law regarding the urban environment.



By means of public civil action it is possible to make those who cause harm to the urban environment responsible for repairing the damage, desist from a given conduct or to pay some form of compensation. Any person who causes damage to the urban environment, whether an individual, a firm or an agent of the public authority, can be obliged to make good the damage. A number of different practitioners can propose that a public civil action should be started, including the Ministério Público and civil society associations. A residents´ association from a particular neighbourhood that has been in existence for at least one year and is active in monitoring public policies espoused by the municipal authority can, for example, start an action with a view to halting the construction of a building in a place that is not permitted by municipal legislation.

Article 56. Article 167, sub-clause 1 of Law No. 6.015 of 1973, comes into force with the addition of sub-clauses 37, 38 and 39:

Article167. ....

I - ....

37) of the administrative terms or of the declaratory rulings for the Special Use Concession for housing purposes, regardless of the regularity of parcelling of land or building;

38) (VETOED)

39) of the constitution of the right to the surface of urban property;

Article 57. Article 167, sub-clause of Law No. 6.015 of 1973, comes into force with the addition of sub-clauses 18, 19 and 20:

Article167. ....

II - ....

18) of the notification of the compulsory parceling, building or use of the urban property;

19) of the termination of the Special Use Concession For Housing Purposes;

20) of the termination of the surface right to urban property.

Article 58. This law shall enter force 90 days following its publication.