

# **THE STATUTE OF THE CITY**

**new tools for assuring  
the right to the city in Brasil**

#### SPONSOR

CAIXA ECONÔMICA FEDERAL

**President** Valdery Frota de Albuquerque

**Urban Development Director** Aser Cortines Peixoto Filho

#### EXECUTION

INSTITUTO PÓLIS

[www.polis.org.br](http://www.polis.org.br)

**general coordinator** Raquel Rolnik

**assistant coordinator** Paula Santoro

**spanish translation** Marcelo Canossa

**english translation** Jeffrey Hoff

**graphic design and editing** Cássia Buitoni, Luciana Facchini

**cover design** Paulo Von Poser

#### SUPPORT

UN-HABITAT Regional Office for Latin American and The Caribbean

The text in the introduction is based on the following publications:

FERNANDES, Edésio. "New Statute Aims to Make Brazilian Cities More Inclusive". In: **Habitat Debate**, Kenya, Nairobi, vol. 7, nº 4, dez 2001.

GRAZIA, Grazia de. "Estatuto da Cidade: uma longa história com vitórias e derrotas". In: **Estatuto da Cidade e Reforma Urbana: Novas Perspectivas para as Cidades Brasileiras**, Brasil, Porto Alegre, Sérgio Antônio Fabris Editor, 2002.

ROLNIK, Raquel e SAULE JR, Nelson (coord.) **Estatuto da Cidade – Guia para Implementação pelos Municípios e Cidadãos**. Brasil, Brasília: Câmara dos Deputados, Coordenação de Publicações, 2001.

# THE STATUTE OF THE CITY

**new tools for assuring  
the right to the city in Brasil**



## **INDEX**

- 09 STATUTE OF THE CITY: THE COLLECTIVE  
CONSTRUCTION OF INNOVATIVE LEGISLATION
- 
- 15 Risk urbanization: territorial expression of an  
exclusionary and predatory urban order
- 20 Urban order, urban technocratic planning and  
exclusionary management: the construction of urban  
“disorder”
- 25 STATUTE OF THE CITY: NEW CONCEPTS NEW TOOLS
- 
- 37 LEGAL TEXTS
- 
- 39 Law nº 10.257, of July 10, 2001
- 77 Provisional Measure nº 2.220, September 4, 2001

The United Nations Human Settlements Programme (UN-Habitat) is committed to promote urban policy and urban law reform in all countries of the world as an instrument toward improved urban governance. UN-Habitat is also committed to document and disseminate world-wide those instances of policy and urban law reform which mark significant advances in equity, efficiency, transparency and citizens' participation.

In Brazil, the Federal Government – Municipal Government – civil society coalition which led to the ratification of the 'Statute of the City' is a rather unique example of a participatory process leading to enforcing progressive legislation. The Statute of the City, for its provisions enhancing social control over urban development and reaffirming the primary social function of urban space and property, deserves to be analyzed as an example among 'Best Policies'.

It is for these reasons that UN-Habitat has decided to present the 'Statute' at its World Urban Forum in Nairobi (29 April-5 May 2002) and proceed subsequently to the dissemination in English and Spanish of the Law and of a guide for its implementation.

**Roberto Ottolenghi**

Chief – Regional Office for Latin America and the Caribbean  
UN-HABITAT

United Nations Human Settlements Programme

**STATUTE OF THE CITY:  
THE COLLECTIVE CONSTRUCTION  
OF INNOVATIVE LEGISLATION**



\* This text is based on the following publications:

FERNANDES, Edésio. "New Statute Aims to Make Brazilian Cities More Inclusive". In: *Habitat Debate*, Kenya, Nairobi, vol. 7, n° 4, dez 2001.

GRAZIA, Grazia de. "Estatuto da Cidade: uma longa história com vitórias e derrotas". In: *Estatuto da Cidade e Reforma Urbana: Novas Perspectivas para as Cidades Brasileiras*, Brasil, Porto Alegre, Sérgio Antônio Fabris Editor, 2002.

ROLNIK, Raquel e SAULE JR, Nelson (coord.) *Estatuto da Cidade – Guia para Implementação pelos Municípios e Cidadãos*. Brasil, Brasília: Câmara dos Deputados, Coordenação de Publicações, 2001.

### **STATUTE OF THE CITY: THE COLLECTIVE CONSTRUCTION OF INNOVATIVE LEGISLATION \***

On July 10, 2001 a groundbreaking legal development took place in Brazil with the enactment of Federal Law no. 10.257, entitled The City Statute, which aims to regulate the chapter on urban policy found in the 1988 Constitution. The new law provides consistent legal support to those municipalities committed to confronting the grave urban, social and environmental problems that have directly affected the daily living conditions of the 82 percent of Brazilians who live in cities. According to the Brazilian constitution, the municipality is responsible for planning and implementation of urban policy.

Resulting from an intense negotiation process which lasted more than ten years, within and beyond the national Congress, The City Statute confirmed and widened the fundamental legal-political role of municipalities

in the formulation of guidelines for urban planning, as well as in conducting the process of urban development and management. It deserves to be known at the international level because it is an inspiring example of application of Habitat Agenda, materializing the principles and proposals of the UN-Habitat's Global Campaigns for Good Governance and Secure Tenure for the Urban Poor.

During the process of consolidation of the Constitution of 1988, a multi-sectoral movement of national scope fought to include in the constitutional text instruments that established the social function of the city and of property in the process of the construction of cities. Once again taking up the cause of Urban Reform, this movement brought up to date and to the conditions of an urbanized Brazil, a platform built since the 1960s. The attempts to build a regulatory mark for urban policy at the federal level go back to proposals for urban development law prepared by the then National Urban Development Counsel of the 1970s, which resulted in the proposed legislation sent to Congress in 1983. Without organized social pressure to promote the legislation, and with strong interests working against its

passage, this bill did not find a strong enough base of support to be approved. Then, in 1987, an alliance of social actors involved in urban issues – movements for social housing and regularization of land possession, unions, professional associations of engineers and architects, legal assistance entities, urban squatters, NGOs and academics – joined together to formulate the Popular Urban Reform Amendment – which, underwritten by 250,000 signatures, was presented to the Constitutional Congress.

As a result of this action, for the first time in history, the Constitution included a specific chapter on urban policy that called for a series of instruments to guarantee, in the realm of each municipality, the right to the city, the defense of the social function of the city and property, and of democratization of urban management (articles 182 and 183). Then, in the 1990s, a more permanent organization of these actors was formed – the National Urban Reform Forum – which came to act nationally and internationally for the universalisation of the right to housing and to the city.

The constitutional text required specific legislation of national scope: so that the principals and instruments

called for there could be implemented, this required, on one hand, complementary regulatory legislation of these instruments; and on the other, the mandatory formulation of master plans that would incorporate the constitutional principals in municipalities with more than 20,000 residents.

This launched more than a decade of revisions, negotiations and debates around the proposed complementary bill to the urban policy chapter of the Constitution.

Various municipalities did not wait for the promulgation of this federal law to establish practices and implement the principals expressed in the Constitution, in such a way that, during the 1990s, while the Statute was discussed and constructed on the local level, a rich renovation process took place in the field of urban policy and planning. The bill finally approved and sanctioned incorporated this local experience in a certain way, consecrating practices and instruments that had already been adopted, in addition to opening space for others that, because of a lack of federal regulation, could not be implemented.

It is impossible to underestimate the impact the new law can have on Brazil's legal and urban order, once its

possibilities are fully understood and its provisions effectively put into practice. This new legislation should have an impact on the ruling model of urban development in the country, marked by an imbalanced social environment.

#### **RISK URBANIZATION: TERRITORIAL EXPRESSION OF AN EXCLUSIONARY AND PREDATORY URBAN ORDER**

The intense and rapid urbanization through which Brazilian society passed was certainly one of the most striking social-territorial processes in the country's history. While in 1960, the urban population represented 44.7% of the total population – compared with a rural population of 55.3% – 10 years later this ratio was inverted, with nearly identical numbers: 55.9% of the population was urban and 44.1% rural. By the year 2000, 81.2% of the Brazilian population lived in cities. This transformation became even more haunting if we think in absolute numbers: in the 40 years that separate 1960 from 2000, more than 100 million new residents were received by the cities. In Brazil today (year 2000 Census data) there are more



than 5,500 municipalities; while more than  $\frac{3}{4}$  of the urban population lives in the 500 cities with more than 50,000 residents.

The dizzying urbanization, spanning periods of highs and lows in the performance of the Brazilian economy, introduced in the territories of the cities a new and dramatic passage: more than evoking progress or development, it came to reflect – and intensify – the injustices and inequalities of society.

These are presented in the large and medium size Brazilian cities under various morphologies: in the immense differences between the central and peripheral districts of the metropolitan regions, in the precarious occupations of swamps or hillsides in contrast to the high quality neighborhoods on the edge of coastal cities, in the eternal dividing line that separates the level regions suitable for urban development, from the steeply inclined and potentially erosive regions where the poorest live.

The so-called “favelas”, the most extreme and sharpest situation of urban precariousness and legal insecurity, are present today in at least  $\frac{1}{3}$  of Brazilian municipalities: in more than half of the 279 municipalities

between 50 and 100 thousand inhabitants, in 80% of the 174 cities with between 100 thousand and 500 thousand and in all of the 26 cities with populations above 500,000 people.

The painting of a contrast between a qualified minority and a majority with precarious urban conditions, is much more than an expression of income disparity and of social inequalities: it is the agent of reproduction of this inequality. In a city divided between the legal portion, that which is rich and with infrastructure, and the illegal portion – that which is poor and precarious – the population that is in an unfavorable situation winds up having very little access to the opportunities of work, culture or leisure. Symmetrically, the opportunities for improvement circulate among those who already live better, for the superimposition of various dimensions of exclusion that befall the same population, causes the permeability between the two parts to be increasingly restricted. This mechanism is one of the factors that extends the city indefinitely: it can never grow from within, taking advantage of locations that can be made more dense because it is impossible for most of the people to pay up front for access to the infrastructure that was already installed.

In general, the low income population only has the possibility of occupying peripheral lands – that are much cheaper because in general they have no infrastructure – and to build their houses little by little. Their other option is to occupy environmentally fragile areas, which theoretically can only be urbanized under much more rigorous conditions and by adopting generally expensive solutions, exactly the opposite of what takes place.

This behavior is not exclusive to the agents of the informal market: the very action of governments often has reinforced the trend to expel the poor from the best locations, to the degree that they seek the cheapest lands at the periphery to build large and homogeneous housing projects. In this way, an unlimited horizontal expansion is configured, advancing voraciously over fragile areas, or those designated for environmental preservation, which characterizes our wild and high-risk urbanization.

These processes generate ominous effects for cities as a whole. Upon concentrating employment opportunities in a fragment of the city, and extending the occupation of the precarious and increasingly distant peripheries, this urbanization of risk winds up generating

a need to transport multitudes of people, which in the large cities has generated chaos in the circulation systems. When the occupation of the fragile or strategic areas, from an environmental perspective, causes floods or erosion, it is clear that who will suffer more is the inhabitant of these locations. But floods, the contamination of wetlands and the more dramatic erosive processes affect the city as a whole. In addition, the small portion of the city with better infra-structure and preparation of the urban fabric comes to be the object of real estate dispute, which also winds up generating a super form of utilization, with consequent urban deterioration.

The blame for this model of urban expansion and growth, which cuts through the cities in the North and South of Brazil, has been identified, in the public image, with a “lack of planning”. According to this understanding, the cities are not planned, and for this reason, are “imbalanced” and “chaotic”. Nevertheless, as we will try to show below, it is not an absence of planning, but rather a perverse interaction between social-economic processes, planning options and urban policies and political practices that builds an exclusionary model in which many lose and very few gain.

**URBAN ORDER, URBAN TECHNOCRATIC PLANNING  
AND EXCLUSIVE MANAGEMENT: THE CONSTRUCTION  
OF URBAN “DISORDER”**

How, during the 40 years of accelerated urbanization, was the theme of control of the city and urban expansion confronted? First, by establishing a permanent contradiction between urban order (expressed in urban planning and legislation) and management. Planning – principally by means of Master Plans and traditional zoning – creates a virtual city, which does not relate with the real conditions of production of the city by the market, ignoring that the large portion of the urban population has very low income and no capacity for investment in an expensive market – the built space. Urban planning, and above all zoning, defines standards of land occupation based on the practices and logic of investment of middle class and high income markets and destines urban territory to these markets. Nevertheless, although these markets exist, their scope in relation to the totality of built space and of demand for urban space corresponds to a very small portion.

In this way, the zoning winds up by instituting a potential supply of built space for the middle and upper class sectors that is far superior to its size, while at the same time it generates an enormous scarcity of locations for the low income markets, since it practically ignores their existence. The housing policies themselves – and the efforts of local, state and federal government in the supply of new housing units, wind up victims of this contradiction – and, for reasons of financial order, wind up locating their interventions in the “non-city”: rural and peripheral areas, far from the supply of equipment, services and opportunities for the most poor. In this way, they also define, in the local realm, the interlocutors of the plans and zoning, destining for the most poor the space of housing policy and the management of illegality.

Produced in “self-built” form in the “leftover” spaces of the regulated city, the precarious settlements will thus be the object of daily management. This involves incorporating, in small doses, these areas into the city, regularizing, urbanizing, and providing infrastructure yet never definitively eliminating the precariousness and the marks of difference in relation to the regulated areas.

In this way a highly perverse dynamic – from the urbanistic point of view – is perpetuated.

Despite its apparent urban irrationality, this dynamic is politically highly profitable. By separating its interlocutors, the government can be at the same time a “partner” in profitable real estate deals, while it also establishes a base of popular support in the settlements. The popular base, of a nearly clientelistic nature, is sustained on the very principal of establishing a counter point between the legal and illegal city. The condition of illegality and informality of the popular settlements convert them into hostages to “favors” from the government, in order to be recognized and incorporated into the city, and in order to receive infrastructure, equipment etc.. This has become an important form of currency in electoral accounting. The emission of favors establishes a source of popular support for governments and more perversely, sustains the distribution of privileges in the city, defined by the symbol of urban policy “the plans”.

The technocratic vision of the plans and of the process of preparation of the strategies for urban regulation completes the scene. This means the treatment of the city in the plans, as a purely technical object, in which

the function of law is to establish satisfactory standards, ignoring any conflicts, such as the reality of inequality of income conditions, and the influence of this factor on the functioning of urban markets.

Finally, it is important to indicate that the models of urban policy and planning adopted by the cities in the 1970s and at the beginning of the 1980s were also marked by a rather statist vision of urban policy. Formulated and implemented during the period of the Brazilian miracle, these practices were marked by the authoritarian political regime in vigor at that time and by a strong belief in the State’s capacity to finance the urban development policies then practiced. This vision came under pressure not only from the redemocratization process, but also by the fiscal crises of the State. We will not elaborate here upon the nature of this crises and its origins, but simply emphasize that the urban development model then practiced had as one of its presumptions the possibility of large state investments, something that today no longer takes place in the same way. Even in first world countries, which already had established a basic standard of urban development and inclusion in their cities, the crises of the State generated a need to review

planning practices. Among us, the challenge is much more complex. Under the context of privatization of public services, the shrinking of the public machinery and cuts in social spending, the need to build a new urban order that is redistribute and inclusive is more urgent than ever.

The City Statute responds in a propositional manner to this challenge for reconstruction of the urban order, under new principles, with new methods and concepts and new tools.

## **STATUTE OF THE CITY: NEW CONCEPTS NEW TOOLS**



\* This text is based on the following publications:

FERNANDES, Edésio. "New Statute Aims to Make Brazilian Cities More Inclusive". In: *Habitat Debate*, Kenya, Nairobi, vol. 7, n° 4, dez 2001.

GRAZIA, Grazia de. "Estatuto da Cidade: uma longa história com vitórias e derrotas". In: *Estatuto da Cidade e Reforma Urbana: Novas Perspectivas para as Cidades Brasileiras*, Brasil, Porto Alegre, Sérgio Antônio Fabris Editor, 2002.

ROLNIK, Raquel e SAULE JR, Nelson (coord.) *Estatuto da Cidade – Guia para Implementação pelos Municípios e Cidadãos*. Brasil, Brasília: Câmara dos Deputados, Coordenação de Publicações, 2001.

### **STATUTE OF THE CITY: NEW CONCEPTS NEW TOOLS\***

The City Statute has four main dimensions, namely: a conceptual one, providing elements for the interpretation of the constitutional principle of the social functions of urban property and of the city; the regulation of new instruments for the construction of a different urban order by the municipalities; the indication of processes for the democratic management of cities; and the identification of legal instruments for the comprehensive regularization of informal settlements in private and public urban areas.

In conceptual terms, the City Statute broke with the long-standing tradition of civil law and established a basis for a new legal-political paradigm for urban land use and development control, especially by adopting the following approach to urban property rights: the right to urban property is ensured, provided that a social

function is established, which is determined by municipal urban legislation. It is the task of municipal governments to control the process of urban development through the formulation of land use policies in which the individual interests of landowners necessarily co-exist with social, cultural and environmental interests of other groups and the city as a whole. For this purpose, municipal government was given the power to, through laws and several urban planning and management instruments, determine the scope of this (possible) balance between individual and collective interests over the utilization of this non-renewable resource essential to sustainable development in cities, that is, urban land. In order to materialize and widen the scope for municipal action, the City Statute regulates the legal instruments created by the 1988 Constitution, and also creates new ones. All such instruments can, and should, be used in a combined manner aiming not only to regulate the process of land use and development, but in particular to interpret it according to a “concept of the city” to be expressed through the local Master Plan.

In the field of the new urban instruments – the evident interaction between urban regulation and the logic of

formation of prices in the real estate market is faced through the devices that seek to deter the speculative retention of land and of tools that consecrate the separation between the right to property and the potential for construction on land, attributed by urban legislation. Based on the promulgation of the Statue, vacant or underutilized lands located in areas that have infrastructure are subject to payment of Urban Building and Land Taxes that are progressive over time and to compulsory building and subdivision, in accord with the destination established for the region in the Master Plan. The adoption of this instrument can represent light at the end of the tunnel for cities that in vain have tried to confront unlimited horizontal expansion – that advances voraciously over fragile areas or those for environmental preservation – which characterizes wild and high risk urbanism and which has led governments to the absurd need to invest in expansion of infrastructure networks – road paving, sanitation, lighting, transportation. More importantly, the process condemns considerable portions of the population to a situation of permanent precariousness. Still in the field of urban instruments, the Statue consecrates the idea of Created

Land, through the institutionalization of the Right to the Surface and of the Award With Costs of the Right to Build. The idea is simple: if the potential of different urban lands should be distinct due to the determination of urban policy (areas which because of their already installed infrastructure should be more densely populated, and other areas should not be intensely occupied because they are of high risk – of landslides or flooding for example), it is not fair for the property owners to be penalized – or to benefit – individually for this condition, which was completely independent of their action at the site. In this way a basic right that all urban lots should have, was separated from the potentials defined by urban policy.

Critics of these new mechanisms tried during the long legislative process to characterize these instruments as “just another tax” or “a confiscation of rights to private property”. This discourse sought to invert what really occurs in our cities – private appropriation (and in the hands of the few) of real estate appreciation that is the result of public and collective investments, paid by everyone’s taxes. This private appropriation of public wealth, drives a powerful machine of territorial exclusion,

a monster that transforms urban development into a real estate product, denying most citizens the right to benefit from the essential elements of urban infrastructure).

Another fundamental dimension of the City Statute concerns the need for municipalities to integrate urban planning, legislation, fiscal policy and management in order to democratize the local decision-making process and relate land planning to budget preparation and thus legitimize a new, socially orientated urban-legal order. Several mechanisms were recognized to ensure the effective participation of citizens and associations in urban planning and management: public hearings, consultations, creation of councils, environmental and neighborhood impact studies, popular initiatives for the proposal of urban laws, and, above all, the practices of the participatory budget process.

In relation to broadening the space for citizens to participate in the process of making decisions about urban development, the City Statute calls for Neighborhood Impact Studies for developments that municipal law considers could cause significant changes in a region.

Moreover, the new law also emphasizes the importance of establishing new relations between the state,



and the private and community sectors, especially through partnerships and urban linkage operations to be promoted within a clearly defined legal-political and fiscal framework. Consortial Urban Operations, according to the Statute, are specific definitions for a certain area of the city, where transformations are wanted, and which call for a use and occupation distinct from the general rules that govern the city and that can be implanted with the participation of the owners, residents, users and private investors. The City Statute allows these operations to take place; nevertheless it requires that each municipal law that permits such an Operation to include: the basic program and plan for the area, the program of economic and social service for the population that is directly affected by the operation and the neighborhood impact study. These measures seek to avoid that the operations become nothing more than liberations of building indexes to meet private interests, or simple operations to increase real estate values that drive out lower income activities and residents.

Last, but not least, the City Statute also recognized legal instruments to enable municipalities to promote land tenure regularization programs and thus demo-

cratize the conditions of access to urban land and housing. As well as regulating the constitutional rights to usucapion (adverse possession) and concession of the real right to use (a form of leaseholding), and allow them to be used in the regularization of informal settlements on, respectively, private and public land, the new law went one step further and admitted the collective utilization of such instruments.

The section of the City Statute that created a third instrument, the concession of special use for housing purposes, was vetoed by the President on legal, environmental and political grounds. However, given the active mobilization of the National Forum for Urban Reform, Provisional Measure no. 2.220 was signed by the President on September 4, 2001, recognizing the subjective right (and not only the prerogative of the Public Authorities) of those occupying public land until that date, under certain circumstances, to be granted a concession of special use for housing purposes. The Provisional Measure also established conditions for the municipal authorities to promote the removal of the occupiers of unsuitable public land to more adequate areas. This is a measure of extreme social and political

importance, but its application will require a concentrated legal, political and administrative effort on the part of municipalities to respond to existing situations in a suitable legal manner that is compatible with other social and environmental interests.

The Statute embraces a set of principles that express a concept of the city and of planning and urban management – and a series of instruments that, as the very name defines, are means to achieve the desired ends. Nevertheless, it delegates – as it must – to each municipality, based on a democratic and public process, the clear definition of these ends. In this sense, the Statute functions as a type of “tool box” for local urban policy. It is the definition of the “city that we want” in Master Plans for every city, that will determine the mobilization (or not) of the instruments and their form of application. The nature and direction of the intervention and use of the instruments established by the Statute will therefore depend on the political process and the broad engagement (or not) of civil society. Those that are engaged in the transformation of cities in the direction of overcoming an exclusionary, patrimonialist, and predatory urban order will find in the City Statute an

important tool. Nevertheless, as we already know, the approval of a legal measure is only the beginning, and never the conclusion of a social process. The implementation of the law and the universalization of the application of its principles in the reconstruction of the nation’s territory is the challenge that will mark the first years of the City Statute, and the possibility for building more just and beautiful cities.

**LEGAL TEXTS**



**LAW N° 10.257, OF JULY 10, 2001**

This law regulates arts. 182 and 183 of the Federal Constitution, it establishes general guidelines for urban policy and other measures.

THE PRESIDENT OF THE REPUBLIC

I proclaim that the National Congress decrees and I sanction the following Law:

**CHAPTER I**

GENERAL GUIDELINES

**Art. 1º** The provisions of this law will be applied in the execution of urban policy, which is the subject of arts. 182 & 183 of the Federal Constitution.

Sole paragraph. For all effects, this Law, known as the

City Statute, establishes norms for 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.

**Art. 2º** The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, through the following general guidelines:

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

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

III - cooperation between governments, private initiative and other sectors of society in the urbanization process, in service of 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 the distortions of urban growth and its negative effects on the environment;

V - supply of urban and community equipment, transportation and public services adequate for the interests and needs of the population and the local characteristics;

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;

c) the sub-division of land, construction or excessive or improper use in relation to urban infra-structure;

d) the installation of developments or activities that could become centers that generate traffic, without a prevision for corresponding infrastructure;

e) the speculative retention of urban real estate, which results in its under utilization or non-utilization;

f) the deterioration of urbanized areas;

g) pollution and environmental degradation;

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

VIII - adoption of production and consumption standards of goods and services and 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 benefits and burdens resulting from the urbanization process;

X - adaptation of tools of economic, tax and financial policy and of public spending to the objectives of urban development, in order to give priority to investments that generate general well-being and the fruition of the goods by different social segments;

XI - recovery of government investments that have caused an appreciation in the value of urban real estate;

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

XIII - a hearing with municipal government and the population interested in the processes of implantation of developments or activities with potentially negative effects on the natural or built environment, the comfort or safety of the population;

XIV - regularization of land ownership and urbanization

of areas occupied by low income populations through the establishment of special urbanization norms, and for land use and occupation and building, considering the social economic situation of the population and environmental norms;

XV - simplification of the legislation concerning subdivisions, land use, occupation and building regulations, in order to permit a reduction in costs and increase in 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 urbanization process, serving the social interest.

**Art. 3º** 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 about norms for cooperation between the Federal government, the States and the Federal District and the municipalities in relation to urban policy, considering the equilibrium of development and of well being on a national level;

III - promote, through its own initiative and in

conjunction with the States, the Federal District and the municipalities, housing construction programs and the improvement of housing conditions and basic sanitation;  
IV - institute guidelines for urban development, including housing, basic sanitation, and urban transportation;  
V - prepare and execute national and regional plans to order territory and economic and social development.

## **CHAPTER II**

### THE TOOLS OF URBAN POLICY

#### **Section I**

##### **The instruments in general**

**Art. 4º** For the purposes of this Law, the following – and other – tools will be used:

I - national, regional and state plans, for organization of territory and economic and social development;

II - planning of the metropolitan regions, urban and micro-regional conglomerations;

III - municipal planning, in particular:

a) master plan;

b) disciplining of sub-divisions, of land use and occupation;

c) environmental zoning;

d) multi-annual plan;

e) budget regulations and annual budget;

f) participative budget management;

g) sectoral plans, programs and projects;

h) economic and social development plans;

IV - financial and tax institutes:

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

b) improvement fees;

c) fiscal and financial incentives and benefits;

V - legal and political institutes:

a) appropriations;

b) administrative right-of-ways;

c) administrative limits;

d) landmarking of buildings or urban real estate;

e) establishment of conservation districts;

f) establishment of special social interest zones;

g) concession of real right to use;

h) concession of special use for housing purposes;

i) compulsory sub-division, building or utilization;

j) special usucapion for urban property;

- l) right to the surface;
- m) right to preemption;
- n) award with costs of the right to build or change of use;
- o) transfer of the right to build;
- p) urban operations through consortiums;
- q) land ownership regularization;
- r) free technical and legal assistance for less favored communities and social groups;
- s) popular referendum and plebiscite;

VI - Pre-project Environmental Impact Statement and Neighborhood Impact Statements.

§ 1º The instruments mentioned in this article are governed by specific legislation, observing that established by this Law.

§ 2º In the cases of social interest housing programs and projects developed by government entities that operate specifically in this area, the concession of the real right to use public real estate can be collectively contracted.

§ 3º The tools called for in this article that require expenditure of municipal government funds should be the object of social control, guaranteeing the participation of communities, movements and entities of civil society.

## **Section II**

### **Of the sub-division, building or compulsory use**

**Art. 5º** Specific municipal law for areas included in the master plan can determine the sub-division, building upon or compulsory use of non-built, under utilized or not utilized urban land, and should establish conditions and deadlines for the implementation of the referred to obligations.

§ 1º Real estate is considered under utilized if:

I - the utilization is lower than the minimum defined in the master plan or in related legislation;

II - (VETOED)

§ 2º The owner will be notified by the Municipal Administration to comply with the requirement, and the notification should be registered in the local real estate deed office.

§ 3º The notification will be conducted as follows:

I - by employee of the responsible Municipal Government agency, to the owner of the real estate, or, if the owner is a company, to whomever has general administrative or managerial responsibility;

II - by public notice when there were three unsuccessful



attempts to notify the owner in the form called for in item I.

§ 4º The deadlines referred to in the caput cannot be less than:

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

II - two years, from the approval of the project, to initiate work at the development.

§ 5º In large scale developments, in exceptional cases, a specific municipal law which is referred to in the caput can call for the conclusion in phases, assuring that the approved development includes the project as a whole.

**Art. 6º** The transmission of the property, inter vivos or upon death, after the date of notification, transfers the obligations for sub-division, construction or use called for in art. 5º of this Law, without interruption of any deadlines.

### **Section III**

#### **Property Taxes (IPTU) that are progressive over time**

**Art. 7º** In case of noncompliance with the conditions and deadlines established in the form of the caput of art.

5º of this Law, or if the steps called for in § 5º of art. 5º of this law are not obeyed, the Municipality can proceed to apply taxes over the built property and urban land (IPTU) that are progressive over time, through the increase of the tax rate for the period of five consecutive years.

§ 1º The value of the tax rate to be applied for each year will be fixed in specific law referred to in the caput of art. 5º of this Law and will not exceed twice the value referred to the previous year, respecting a maximum rate of fifteen percent.

§ 2º In case the obligation to sub-divide, build or use is not met in five years, the Municipality will maintain the taxes at the maximum rate, until the referred to obligation is met, to guarantee the prerogative called for in art. 8.

§ 3º The concession of exemptions or of an amnesty relative to the progressive taxation determined by this article is prohibited.

### **Section IV**

#### **For appropriation with payment in bonds**

**Art. 8º** Five years after the charging of progressive IPTU, if the property owner has not complied with the

obligation to sub-divide, build or use the property, the Municipality can proceed towards a appropriation of the property with payment in public debt notes.

§ 1º The public debt notes must be previously approved by the Federal Senate and will be paid back in a period of ten years, in annual, equal, and successive installments, guaranteed by the real value of the indemnity and of legal interest rates of six percent per year.

§ 2º The real value of the indemnity:

I - will reflect the base value for calculation of the IPTU, discounting the total incorporated, due to the work conducted by the government in the area where the property is located after the notification mentioned in § 2º art. 5º of this Law;

II - expectations of gains, ceased profits and compensatory interest will not be computed.

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

§ 4º The Municipality will proceed to the suitable use of the property in a maximum of five years, counting from the time it became incorporated to the public patrimony.

§ 5º The use of the property can be made effective directly by the government or by means of alienation or

concession to third parties, observing in these cases, the proper public bidding process.

§ 6º The party acquiring the real estate under the terms of § 5º is subject to the same obligations for sub-division, building or use called for in art. 5º of this Law.

## **Section V**

### **Special usucapion rights for urban property**

**Art. 9º** Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and without contestation, who uses it for their residence or that of their family, can establish their dominion, as long as they are not the owner of any other urban or real estate.

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

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

§ 3º For the purposes of this article, the legitimate heir, continues to have full rights to the possession of their predecessor as long as they reside in the property at the time it was left open to succession.

**Art. 10.** Urban areas with more than two hundred and fifty square meters, occupied by the low income population for their housing, for five years, uninterruptedly and without opposition, where it is not possible to identify the land occupied by each possessor, are susceptible to collective usucapions, as long as the possessors are not owners of other urban or rural property.

§ 1º The owner can, in order to count the time period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.

§ 2º The special collective usucapion of urban real estate will be declared by the judge, through a sentence, which will serve as title to register in the real estate deeds office.

§ 3º In the sentence, the judge will attribute an equal ideal portion of the land to each possessor, independently of the size of the land that each occupies, except in the case of a written agreement among the condominiums, establishing differentiated ideal portions.

§ 4º The special condominium constituted is indivisible and cannot be terminated except by favorable determination made by at least two thirds of the members of the condominium, in the case of the execution of urbanization after the constitution of the condominium.

§ 5º The determinations related to the administration of the special condominium will be taken by a majority of votes of the condominium members present, requiring the others to comply with the decision, whether or not they agree or were absent.

**Art. 11.** While the special urban action for usucapion is pending, any other actions, petitions, or possessions that come to be proposed relative to the real estate subject to usucapion will be stayed,

**Art. 12.** Legitimate parties for the proposal of an action for special urban usucapion include:

I - the possessor, in isolation, in group or supervenient;  
II - the possessors, in a state of co-possession;  
III - as a processual substitute, an association of community residents, duly established, with legal standing, as long as it is explicitly authorized by those it represents.

§ 1º In the action of special urban usucapion, intervention by the Attorney General is required.

§ 2º The author should have all the benefits of the courts and of free legal assistance, as well as in the real estate deeds office.

**Art. 13.** Special usucapion for urban real estate can be invoked as a matter of defense, with the sentence that recognizes it considered valid title to be registered in the real estate deeds office.

**Art. 14.** In the legal action of special urban real estate usucapion, the processual writ to be observed is a summary action.

#### **Section VI**

##### **Concerning special use concessions for housing purposes**

**Art. 15.** (VETOED)

**Art. 16.** (VETOED)

**Art. 17.** (VETOED)

**Art. 18.** (VETOED)

**Art. 19.** (VETOED)

**Art. 20.** (VETOED)

#### **Section VII**

##### **Concerning surface rights**

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

§ 1º The surface right includes the right to utilize the land, the sub-soil, or the aerial space related to the land, in the form established in the respective contract, meeting the urban legislation.

§ 2º The surface rights can be offered for free or at cost.

§ 3º The person receiving the surface rights will respond wholly for the fees and taxes on the surface of the property, also accepting responsibility proportional to their effective share of occupation, with the fees and taxes on the area that is object of the concession of the surface rights, except for any contrary disposition in the respective contract.

§ 4º The surface right can be transferred to third parties, obeying the terms of the respective contract.

§ 5º Upon death of the person receiving the surface rights, their rights are transferred to their inheritors.

**Art. 22.** In case of alienation 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 the offer of third parties.

**Art. 23.** Surface rights are terminated:

I - by the expiration of the deadline;

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

**Art. 24.** Upon termination of the surface rights, the property owner will recover the full domain over the land, as well as the accessions and improvements made to the real estate, independent of indemnification, if the parties have not stipulated otherwise in the respective contract.

§ 1º Before the final termination of the contract, the surface rights are terminated if the person receiving the surface rights give to the land a use distinct from that for which it was conceded.

§ 2º The extinction of the surface rights will be registered in the real estate deed office.

## **Section VIII**

### **The right to preemption**

**Art. 25.** The right to preemption confers to the municipal government preference in the purchase of urban real estate subject to alienation at cost between private parties.

§ 1º Municipal law based on the master plan will establish areas in which will apply the right to preemption and will establish a period of enforcement, not greater than five years, renewable from one year after the duration of the initial period of enforcement.

§ 2º The right to preemption is assured during the period of enforcement established in the form of § 1º, independent of the number of alienations of the real estate in question.

**Art. 26.** The right to preemption will be exercised whenever the government needs areas for:

I - regularization of land ownership;

II - execution of social interest housing programs and projects;

III - establishment of a land reserve;

IV - ordering and guidance of urban expansion;

- V - implantation of urban and community equipment;
- VI - creation of public spaces for leisure and green areas;
- VII - creation of conservation districts 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 called for in § 1º of art. 25 of this Law should include each area in which the right to preemption will be applied for one or more of the purposes indicated by this article.

**Art. 27.** The owner should notify of his intention to alienate the property so that the Municipality, within a maximum period of 30 days, manifests by writing its interest in purchasing it.

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

§ 2º The municipality will publicize, in an official journal and in at least one local or regional newspaper of wide circulation, an official statement of notification

received in terms of the caput and of the intention to acquire the real estate under the conditions presented in this proposal.

§ 3º Once the deadline mentioned in the caput has expired without any declaration of interest, the property owner is authorized to undertake alienation to third parties, in the conditions presented in the proposal.

§ 4º Once the sale to third parties is realized, the owner will be required to present to the Municipality, within a period of thirty days, a copy of the public real estate transaction deed.

§ 5º An alienation processed in conditions different than the proposal presented is void of complete rights.

§ 6º If the hypothesis presented in § 5º takes place, the Municipality can acquire the real estate for the base appraised value of the IPTU or by the value indicated in the proposal presented, if this is inferior.

## **Section IX**

### **Award with costs of the right to build**

**Art. 28.** The master plan can establish areas in which the right to build can be exercised above the basic floor area

ratio adopted, through a compensation to be offered by the beneficiary.

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

§ 2º The Master Plan can establish a single basic floor area ratio for the entire urban zone or one that is differentiated by a specific area within the urban zone.

§ 3º The Master Plan will define the maximum limits to be reached by the floor area ratio, considering the proportion between the existing infrastructure and the increased density expected in each area.

**Art. 29.** The master plan can establish areas in which can be permitted alterations in land use, through a counterpart offered by the beneficiary.

**Art. 30.** A specific municipal law will establish the conditions to be observed for the award with cost of the right to build and the alteration in use established:

- I - the formula for calculation of the charge;
- II - the cases that can be exempt for payment of the award;
- III - the counterpart issued by the beneficiary.

**Art. 31.** The resources received from the adoption of the award at cost of the right to build and the alteration in use will be applied for the purposes established in lines I to IX of art. 26 of this Law.

## **Section X**

### **Of consortial urban operations**

**Art. 32.** Specific municipal law, based on the master plan, can limit the area for application of the consortial operations.

§ 1º A consortial 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, with the objective of undertaking structural urban transformations, social improvements and environmental benefits in a given area.

§ 2º Urban consortial operations can include:

- I - the modification of rates and characteristics for the sub-division, use and occupation of land, as well as the alterations of building norms, considering the environmental impacts that stem from them;

II - the regularization of construction, reform or expansion not executed in violation of current legislation.

**Art. 33.** The specific law that approves the urban consortial operation will include the plan for urban consortial operation, containing, in the minimum:

I - the definition of the area to be affected;

II - the basic program for occupation of the area;

III - the program for economic and social servicing of the population directly affected by the operation;

IV - the finalities of the operation;

V - a neighborhood impact study conducted before construction;

VI - compensation to be demanded from the owners, permanent users and private investors due to the use of the benefits established in inserts I and II of § 2º of art. 32 of this Law;

VII - the form of control of the operation, which must be shared with representatives from civil society.

§ 1º The resources obtained by the municipal government in the form of insert VI of this article will be exclusively invested in the consortial urban operation itself.

§ 2º Based on the approval of the specific law indicated

in the caput, any licenses and authorizations issued by the municipal government in violation of the consortial urban operation are null.

**Art. 34.** The specific law that approves the consortial urban operation can call for the issue by the Municipality of an established number of certificates for potential additional construction, which will be alienated at auction or used directly in payment for work required for the operation itself.

§ 1º The certificates for potential additional construction will be freely traded, but convertible to the right to build solely in the area that is the object of the operation.

§ 2º Once the request for the license to build is presented, the certificate for additional potential will be used in payment for the area of construction that exceeds the standards established by the land use and occupation legislation, until the limit fixed by the specific law that approves the urban consortial operation.



## **Section XI**

### **Of the transfer of the right to build**

**Art. 35.** Municipal law, based on the master plan, can authorize the owner of urban real estate, whether public or private, to exercise in another location, or alienate, through public deed, the right to build established in the master plan or in related urban legislation, when the referred to property is considered necessary for purposes of:

- I - implantation of urban and community equipment;
- II - preservation when the real estate considered is of historic, environmental, landscape, social or cultural interest;
- III - serve programs for land ownership regularization, urbanization of areas occupied by low-income population and social interest housing.

§ 1º The same possibility can be conceded to the owner who donates his real estate to the government, or part of it, for the purposes called for in items I to III of the caput.

§ 2º The municipal law referred to in the caput will establish the conditions relative to the application of the transfer of the right to build.

## **Section XII**

### **Concerning the Neighborhood Impact Study**

**Art. 36.** Municipal law will define the private and public developments and activities in urban areas that will require the previous preparation of a Neighborhood Impact Study (EIV) to obtain the licenses or authorizations to build, expand or operate from the municipal government.

**Art. 37.** The EIV will be executed in such a way as to consider 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 equipment;
- III - land use and occupation;
- IV - real estate appreciation;
- V - generation of traffic and demand for public transportation;
- VI - ventilation and illumination;
- VII - urban landscape and natural and cultural heritage.

Sole paragraph. The documents that comprise the EIV will

be publicized and will be made available for public consultation, by the competent municipal government agency to anyone interested.

**Art. 38.** The preparation of the EIV will not substitute the preparation and approval of the previous environmental impact statement required under the terms of environmental law.

### CHAPTER III

#### THE MASTER PLAN

**Art. 39.** Urban property fulfills its social function when it meets the basic requirements for establishing order for the city expressed in the master plan, assuring attending the needs of the citizens concerning quality of life, social justice and development of economic activities, respecting the rights established in art. 2º of this Law.

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

§ 1º The master plan is an integral part of the municipal planning process, and the multi-year plan, the budget guidelines and the annual budget should incorporate the rights and priorities established in the plan.

§ 2º The master plan should encompass the Municipal territory as a whole.

§ 3º The law that institutes the master plan should be revised, at least, every 10 years.

§ 4º In the process of preparation of the master plan and in the monitoring of its implementation, the municipal Legislative and Executive powers will guarantee:

I - the promotion of public hearings and debates with the participation of the population and associations that are representative of the various segments of the community;

II - publicity concerning the documents and information produced;

III - access to the documents and information produced for anyone interested.

§ 5º (VETOED)

**Art. 41.** The master plan is mandatory for cities:

I - with more than 20,000 inhabitants;

II - members of metropolitan regions and urban conglomerations;

III - where the municipal government will intend to use the instrument established in § 4º of art. 182 of the Federal Constitution;

IV - members of special tourist interest areas;

V - inserted in the area of influence of developments or activities with significant environmental impact in the regional or national domain.

§ 1º In the case of the realization of developments or activities included in item V of the caput, the technical and financial resources for the preparation of the master plan will be inserted among the compensatory measures adopted.

§ 2º In the case of cities with more than 500,000 inhabitants, an integrated urban transport plan should be prepared, compatible with the master plan or inserted within it.

**Art. 42.** The Master Plan should minimally contain:

I - the delimitation of the urban areas where sub-divisions, building or compulsory use are applied considering the existence of infrastructure and demand for use, according to art. 5º of this Law;

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

III - system of oversight and control.

#### **CHAPTER IV**

##### DEMOCRATIC ADMINISTRATION OF THE CITY

**Art. 43.** To guarantee the democratic administration of the city, the following, and other, instruments should be utilized:

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

II - debates, hearings and public consultations;

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

IV - popular initiative for proposed laws and plans, programs and urban development projects;

V - (VETOED)

**Art. 44.** Within the municipal realm, participative budget management indicated in line f of item III of art. 4º of this law will include 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 for their approval by the City Council.

**Art. 45.** The administrative entities of metropolitan regions and urban conglomerations must include the significant participation of the population and of associations that represent various segments of the community, in order to guarantee the direct control of their activities and the complete exercise of citizenship.

## CHAPTER V

### GENERAL MEASURES

**Art. 46.** The municipal government can extend to the owner affected by the obligation determined by the caput of art. 5º of this Law, the creation of a real estate consortium as a way to establish financial viability for the real estate.

§ 1º The real estate consortium is considered a way to make viable the implantation of urban infrastructure or building plans by means of which the owner transfers

his real estate to the municipal government, and after the realization of the work, receives, as payment, real estate units, with suitable urban infrastructure or actually built.

§ 2º The value of the real estate units to be delivered to the owner will correspond to the value of the real estate before the execution of the work, observing the determinations of § 2º of art. 8 of this Law.

**Art. 47.** The taxes on urban real estate, as well as the fees related to public urban services, will be distinguished as a function of their social interest.

**Art. 48.** In the case of social interest housing programs and projects, developed by Public organs or entities with specific activity in this area, the concession contracts of the real right to use public real estate:

I - will have for all legal purpose, be considered as public register, and the requirements of item II of art. 134 of the Civil Code do not apply;

II - will constitute a title of mandatory acceptance in a guarantee of for housing financing contracts.

**Art. 49.** The States and Municipalities will have a period of 90 days, from the moment this law takes force, to establish deadlines for the issue of guidelines for urban developments, the approval of projects for sub-division and building, the realization of inspection and issue of a term of verification and conclusion of construction.

Sole paragraph. If the determinations of the caput are not complied with, a period of 60 days will be established for the realization of each one of the said administrative acts, which will be in vigor until the States and Municipalities have established them by law in another form.

**Art. 50.** The Municipalities that fit into the requirement called for in items I and II of art. 41 of this Law that do not have a master plan approved at the time this law comes into force, should approve one within five years.

**Art. 51.** For the effects of this Law, the dispositions relative to the Municipality and the Mayor, apply respectively to the Federal District and its Governor.

**Art. 52.** Without interference with the punishment of other public agents involved in the application of other

applicable sanctions, the Mayor will be held responsible for administrative impropriety, in the terms of Law nº 8.429, of June 2, 1992, when:

I - (VETOED)

II - within five years there is a lack of compliance with the suitable use of the real estate incorporated in the public heritage, according to the terms of § 4º of art. 8º of this Law;

III - areas obtained by means of the right to preemption are used in violation of the terms of art. 26 of this Law;

IV - the resources garnered with the award with cost of the right to build and to alter usage are spent in violation of that called for in art. 31 of this law;

V - the resources obtained with consortial operations is spent in violation of that called for in § 1º of art. 33 of this law;

VI - the mayor impedes or fails to guarantee the requirements found in items I to III of § 4º of art. 40 of this Law;

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

VIII - a property is acquired under the right to preemption, under the terms of arts. 25 – 27 of this Law,

by the value of the proposal presented, if this proves to be higher than the market rate.

**Art. 53.** Art. 1º of Law nº 7.347, of July 24, 1985, will now be in vigor with the addition of a new item III, renumbering the current item II and the following ones:

Art.1º .....  
.....  
III - to the urban order;  
.....

**Art. 54.** Art. 4º of Law nº 7.347, of 1985, will now be in vigor with the following language:

Art. 4º A warning action can be issued for the purposes of this Law, in order to avoid environmental damage, or harm to the consumer, urban order, or to the property and rights of artistic, aesthetic historic, tourist and landscape value (VETOED).

**Art. 55.** Art. 167, item I, item 28, of Law nº 6.015, of December 31, 1973, altered by Law nº 6.216, of June 1975, comes into vigor with the following language:

Art.167. ....

I - .....  
.....  
28) of the declaratory sentences of usucapion, independent of the regularity of the sub-division of the land or building;  
.....

**Art. 56.** Art. 167, item I, of Law nº 6.015, of 1973, comes into vigor with the addition of items 37, 38 and 39:

Art.167. ....  
I - .....  
37) of the administrative terms or of the declaratory sentences for concession of special use for the purposes of housing, independent of the regularity of division of land or building;  
38) (VETOED)  
39) of the constitution of the right to the surface of the urban real estate;

**Art. 57.** Art. 167, item II, of Law nº 6.015, of 1973, comes into vigor with the addition of the following items 18, 19 and 20:

Art.167. ....

II - .....

18) of the notification of the sub-division, building or compulsory use of the urban real estate;

19) of the termination of the special use concession for housing purposes;

20) of the termination of the right to the surface of urban real estate.

**Art. 58.** This law comes into vigor 90 days after its publication.

Brasilia, July 10, 2001; 180th since Independence and 113th of the Republic.

**PROVISIONAL MEASURE N<sup>o</sup> 2.220, SEPTEMBER 4, 2001**

Regulates the concession of special use established by § 1<sup>o</sup> of art. 183 of the Constitution, creates the National Urban Development Counsel – CNDU and other measures.

The PRESIDENT OF THE REPUBLIC, with the power granted to him by art. 62 of the Constitution, adopts this Provisional Measure, which has the power of law:

**CHAPTER I**

OF THE SPECIAL USE CONCESSION

**Art. 1<sup>o</sup>** Whomever, until June 30, 2001, possesses as his or her own, for five years, without interruption and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using

it for their own residence or that of their family, has the right to concession of special use for housing purposes in relation to the property that is the object of said possession, as long as he is not the owner or concessionaire, in any form, of any other urban or rural real estate.

§ 1º The concession for special use for housing purposes will be conferred free of charge to the man or woman, or both, independent of their marital status.

§ 2º The right established by this article shall not be recognized to the same concessionaire more than once.

§ 3º For the purposes of this article the legitimate heir, can continue, with complete rights, on the possession of his or her predecessor, as long as he or she resided in the property since the time of the opening of the succession.

**Art. 2º** In the properties indicated in art. 1º, with more than 250 square meters, which, until June 30, 2001, were occupied by a low income population for housing purposes, for five years, uninterruptedly and without opposition, where it was not possible to identify the land occupied by each possessor, the special use concession for housing purposes will be conferred in a collective form, as long as the possessors are not

property owners or concessionaires, in any way, of other urban or rural property.

§ 1º The possessor can, in order to calculate the period required by this article, add to their possession that of their predecessor, as long the contact was continuous to both.

§ 2º In the special use concession established by this article, an equal ideal fraction of land will be attributed to each possessor, independently of the size of the land that each occupies, unless there is a written accord among the occupants, establishing distinct ideal fractions.

§ 3º The ideal fraction attributed to each possessor cannot be superior to two hundred and fifty square meters.

**Art. 3º** The option to exercise the rights established in arts. 1º and 2º will also be guaranteed to the occupants, regularly inscribed, in public real estate, of up to two hundred and fifty square meters, of the Federal government, the States, the Federal District and the municipalities, which are located in an urban area, as determined by the regulation.

**Art. 4º** In a case where the occupation involves a risk to the lives or to the health of the occupants, the government



will guarantee the possessor the exercise of the right established by arts. 1º and 2º in another location.

**Art. 5º** The Government is responsible for assuring the exercise of the rights established in arts. 1º and 2º in another location in the case of occupation of the real estate:

- I - for common use of the people;
- II - destined for an urbanization project;
- III - of interest for national defense, environmental preservation and protection of natural ecosystems;
- IV - reserved for construction of reservoirs and related works; or
- V - located in a communication route.

**Art. 6º** The title for special use concession for housing purposes will be obtained by the administrative route through the competent Public Administrative organ, or, in case of its refusal or omission, by judicial decree.

§ 1º The Public Administration will have a maximum period of 12 months to determine the request, counting from the date it is received.

§ 2º In the case of a real estate property of the federal

government or the states, the interested party must instruct the requirement for special use concession for housing purposes with a certificate issued by the municipal government, which attests that the real estate is located in an urban area and is destined for the housing of the occupant or his or her family.

§ 3º In case of legal action, the special use concession for housing purposes will be declared by a judge, through a sentence.

§ 4º The title issued by administrative procedure or judicial sentence will serve for the purpose of the registration in the real estate deeds office.

**Art. 7º** The right to special use concession for housing purposes is transferable inter vivos or because of death.

**Art. 8º** The right to special use concession for housing purposes is extinguished in the case:

- I - the concessionaire uses the real estate for a purpose other than for housing for themselves or for their family; or
- II - the concessionaire acquires the property or the use concession of another urban or rural real estate.

Sole paragraph. The termination indicated in this article

will be recorded in the real estate deed office, by means of a declaration of the issuing public authority.

**Art. 9º** It is the responsibility of the competent public authority to authorize the use to whom, until June 30, 2001, possesses as his own, for five years uninterruptedly and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for commercial purposes.

§ 1º The authorization for use determined by this article is conferred free of charge.

§ 2º The possessor can, for the purpose of counting the period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.

§ 3º The authorization for use called for in the caput of this article, is subject to the dispositions of arts. 4º and 5º of this Provisional Measure.

## **CHAPTER II**

### OF THE NATIONAL URBAN DEVELOPMENT COUNCIL

**Art. 10.** Be it created, The National Urban Development Council – CNDU, a deliberative and consultative body, within the structure of the Presidency of the Republic, with the following responsibilities:

I - propose guidelines, instruments, norms and priorities for national urban development policy;

II - accompany and evaluate the implementation of the national urban development policy, in particular the policies regarding housing, basic sanitation and urban transport and recommend the necessary measures for compliance with their objectives;

III - propose the preparation of general norms of urban law and express opinions about the proposals for alterations in relevant urban development legislation;

IV - issue guidelines and recommendations about the application of Law no10.257, of July 10, 2001, and other normative acts related to urban development;

V - promote the cooperation between the federal, state and municipal governments and that of the Federal

District, and civil society in the formulation and execution of national urban development policy; and  
VI - prepare the council's by-laws.

**Art. 11.** The CNDU is composed of its President, by the Assembly and by an Executive Secretary, whose responsibilities will be defined by decree.  
Sole paragraph. The CNDU can institute technical committees for assistance as determined by the by-laws.

**Art. 12.** The President of the Republic will determine the structure of the CNDU, the composition of its Assembly and the designation of the members of the Counsel and their substitutes and of its technical committees.

**Art. 13.** Participation in the CNDU and its technical committees will not be remunerated

**Art. 14.** The functions of the members of the CNDU and of the technical committees will be considered a public service and the absence from work caused by participation in the CNDU will be reimbursed and computed as an effective work shift, for all legal purposes.

### CHAPTER III

#### FINAL DISPOSITIONS

**Art. 15.** Item I of art. 167 of Law no. 6.015, of December 31, 1973, comes into vigor with the following alterations:

“I - .....

.....

28) of the declaratory sentences for usucapion;

.....

37) of the administrative terms or of the declaratory sentences for special use concession for housing purposes;

.....

40) of the contract for concession of real right to use of public real estate.” (NR)

**Art. 16.** This Provisional Measure takes force on the date of its publication.

Brasilia, Sept. 4, 2001; 180th of Independence and 113<sup>th</sup> of the Republic.