

THE PROCESS OF IMPLEMENTATION OF COMPULSORY SUBDIVISION, CONSTRUCTION AND USE OF LAND:

THE CASE OF VACANT PROPERTIES IN THE
CENTRAL DISTRICTS OF SÃO PAULO - SP¹

O PROCESSO DE IMPLEMENTAÇÃO DO PARCELAMENTO, EDIFICAÇÃO OU UTILIZAÇÃO COMPULSÓRIOS:

O CASO DOS IMÓVEIS NÃO UTILIZADOS NOS DISTRITOS CENTRAIS DE SÃO PAULO (SP)

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ABSTRACT: This paper describes the process of regulation and implementation of Compulsory Subdivision, Construction and Use of Land in the municipality of São Paulo after 2013. It offers context about the vacant, not built or underused properties in the form of further characterization, notice status, counter-arguments by the notified and description of the effects of vacant properties in the urban fabric of the central region of the city. Up until February 2018, 1,384 buildings were notified, of which 709 were considered vacant and 645 are in the central districts. Some of those still have time to address the notice; others are already under Progressive Land Taxation. The number is small and the effects in the urban fabric are inexpressive, indicating the persistence of speculative processes. However, the implementation process has proved innovative in its political and pedagogical character by creating regulation, procedures and concept strategies – such as the Strategic Master Plan of 2014 with its accompanying acts and decrees, as well as the institution of management spaces such as the Department of Control of the Social Function of Property (2013) – in order to fight property vacancy.

KEYWORDS: compulsory subdivision, construction and use of land, vacant land, social function of urban properties.

RESUMO: *Este artigo descreve o processo de regulação e implementação do Parcelamento, Edificação ou Utilização Compulsórios (PEUC) no município de São Paulo, após 2013, fazendo uma contextualização dos imóveis ociosos e aprofundando na caracterização, situação da notificação, argumentações dos notificados e descrição dos efeitos urbanísticos dos imóveis não utilizados em área central. Até fevereiro de 2018 foram notificados 1.384 imóveis, destes 709 considerados não utilizados, sendo que 645 se localizam nos distritos centrais. Alguns ainda têm prazo para cumprir a notificação; outros já estão recebendo o IPTU Progressivo no Tempo. O número é pequeno e os efeitos urbanísticos pouco evidentes, indicando a persistência de processos especulativos. No entanto, o processo de implementação mostrou-se inovador com caráter político-pedagógico, ao criar estratégias de regulação, procedimentos e conceitos – como o Plano Diretor Estratégico de 2014, leis e decretos que o acompanharam –, e espaços institucionais de gestão – como a criação do Departamento de Controle da Função Social da Propriedade (2013) – para o combate à ociosidade imobiliária.*

PALAVRAS-CHAVE: *Parcelamento, Edificação ou Utilização Compulsórios; imóveis ociosos; função social da propriedade.*

Contribution of each author: **A.** designed and conceived the theoretical concept; **B.** data search and statistical analysis; **C.** designed figures and tables; **D.** photographs; **E.** wrote the manuscript; **F.** selected all references.

¹ The development of this article and research was supported by FAPESP (Fundação de Amparo à pesquisa do Estado de São Paulo) - Research Support to Paula Freire Santoro.

DOI: <https://doi.org/10.22296/2317-1529.2019v21n1p63>

INTRODUCTION

Vacant properties – here understood as *vacant*, *underused* or *unused* – are a reality faced by many Brazilian municipalities, a situation that calls for reflection by urban management and planning about how to take action against high vacancy rates and real estate speculation. Vacant property has been on the debate agenda since the 1960s. In the 1980s, during the democratization process, the debate gained political relevance by means of the proposals for urban regulation to curb real estate speculation and promote urban reform (CARDOSO, 2012; GRAZIA, 2003). Brajato (2015) shows, citing Maricato (2010), that the first proposal for urban reform “incorporated the concept of vacant property as illegitimate”. In this context, land was seen as a central element for the transformation of the country and speculation was deemed its major nemesis, something against which to fight.

Based on the concept of social function of the city and property, the subject was initially covered in article 182 of the Federal Constitution of 1988. The legislation provided that property fulfills its social function when it answers to collective interests, to guidelines and principles, and to the territorial ordering expressed in its master plans. With the City Statute of 2001, the subject gained a trio of urban instruments: i) Compulsory Subdivision, Construction and Use of Land (PEUC), (ii) the Progressive Property Taxation Over Time (Imposto Predial Territorial Urbano – IPTU) and (iii) Expropriation of Properties Through Payment with Securitized Public Debt.

Several prognoses were put forward about master plans and consecutive regulations for opposing urban real estate vacancy. The research coordinated by Denaldi (2015) presented the most recent national overview of the application of PEUC (see also DENALDI et. al., 2017). Other authors introduced the subject conceptually and surveyed municipal experiences – such as those in Santo André (BRUNO FILHO & DENALDI, 2007), Curitiba (FARIA, 2013), São Bernardo do Campo (BRUNO FILHO et al., 2014), Maringá (BRAJATO, 2015) and São Paulo (COSTA, 2015), among others – converging that the undergoing experiences, while deserving of improvement and criticism, pave the way for planners and urban managers to expand this roster, overcoming the difficulties encountered when tackling property vacancy and land speculation.

This work sought to contextualize vacant properties according to the three modalities and to focus on some of the aspects of the application of PEUC over real estate deemed *unused* in a central area of the municipality of São Paulo. The goal is to contribute toward the debate about two different phases of the application of such instruments. It describes the elaboration of legislation and the structuring of the management – internal to the city hall – analyzed as advance with innovation. It also presents an analysis of an implementation period, with empirical data that shows that it is still incipient, that the number of notices is small and that urban effects are hardly evident.

The closer look at the *unused* properties is justified by their abundance in the central areas, which frequently poses a challenge demanding of public policies against speculation and encouraged use of the unused buildings. Its effects can eventually have different speeds in relation to other modalities of vacant properties, such as the *undeveloped* properties that may demand an entirely new construction process in order to be fit for use, instead of the renovations and adaptations of *unused* buildings. A little over half of the *undeveloped* properties are Special Areas of Social Interest (365 properties in Feb 2018) and a good portions of them are parking lots, which reinforc-

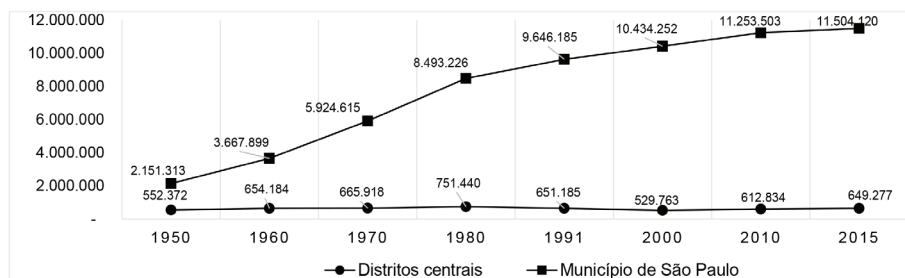
es the hypothesis that their characteristics, notification status, effects on urban plans, as well as whether they have or have not complied with obligations and the allegations to be presented when contesting the PEUC must be different from those of the groups of *unused* properties, highlighting the option for the focus on *unused* buildings as interesting for this research.

In this paper, *unused* buildings are defined as residential or non-residential constructions, public or private in different states of conservation and urban insertion. They can be on the market, either for rent or on sale. In addition to that, they can be abandoned while waiting for demolition, litigation or any other situation that prevents its use. Such properties are considered vacant buildings, alongside those that are *undeveloped* (lots or plots with a coefficient of use equal to zero) and *underused* (lots or plots with construction below the coefficient of minimum use), according to the legal definition of the 2014 Strategic Master Plan. The existence of such properties is detrimental for the better portion of society, directly or indirectly, especially to the poorest who long for residences in good locations, while a small fraction may be profiting from such areas, due to the promotion of property speculation, even if it is not the sole cause of the property's vacancy.

VACANT BUILDINGS IN THE CENTRAL AREA OF SÃO PAULO

Vacancy in the central area of São Paulo was generally observed after some periods associated to the population and economic dynamics of the area from the 1950s on, with various foci (VILLAÇA, 2001; NAKANO ET AL., 2004; MEYER, GROSTEIN & BIDERMAN, 2005; KARA-JOSÉ, 2010; NAKANO, 2015; among others). This paper focuses on the “central districts” (Fig. 1), an area destined to present population density, for offering good urban infrastructure and services, especially regarding mobility, in relation to other urban contexts; and upon which the PEUC policy was implemented. In order to understand the evolution of population in the central district, we propose three periods presenting, in essence, growth, retraction and growth again, however small, reverting the vacancy trend (Graph 1), along with real estate appreciation.

Graph 1 – Evolution of population – Central districts and Municipality of São Paulo – 1950-2015



Source: IBGE – Demographic census surveys by decade and estimated population for 2015. Organization by DEINFO/SMDU. Elaborated by the authors.

The **first period, between 1950 and 1980**, was characterized by population growth. It corresponds to the alterations observed after the elites and middle classes moved away, triggering a popularization process (VILLAÇA, 2001, p. 282; KARRA-JOSÉ, 2010). This marked the beginning of the expansion of the central character afforded by tertiary activities from the central district to other areas of the Southeast Quadrant, without the “shrinking economy” effect, once new production chains of major economic pull (mainly specialized trade) were established in these districts (NAKANO et al., 2004, p. 385).

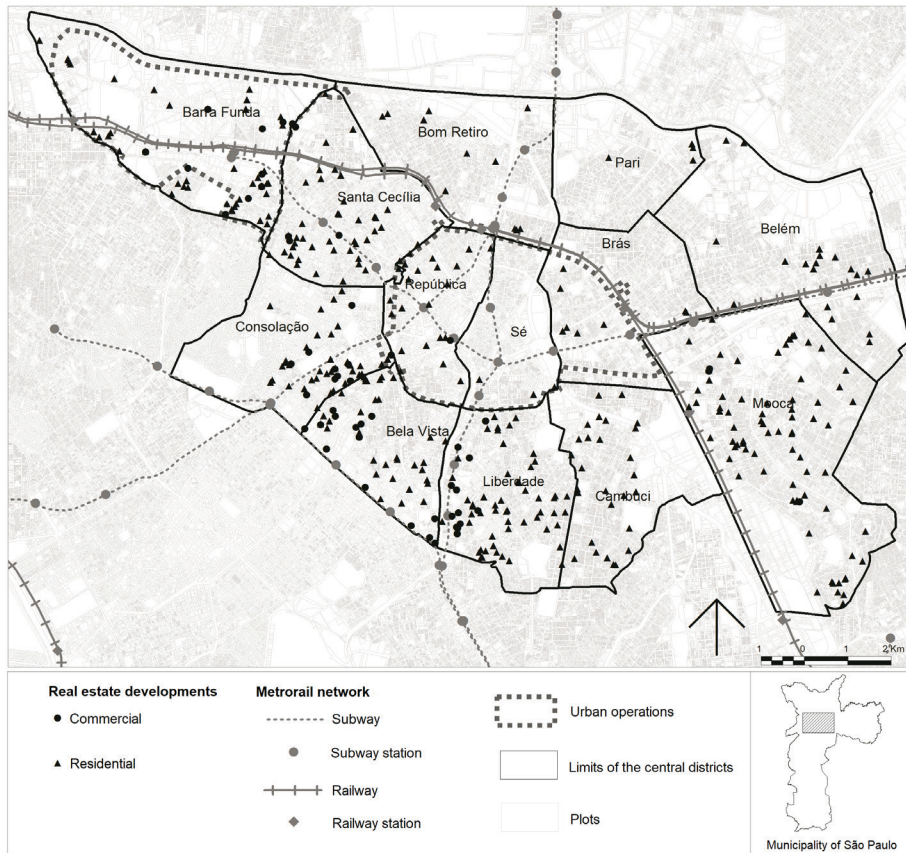
The **second period, between 1980 and 2000**, featured a decreasing population and deflated real estate dynamics. It also differs from the previous period as it was marked by public proposals attempting to revert this process, involving tax and fiscal incentives, special zonings and instruments to operationalize sales with development potential. The first urban operations designed for the central districts such as Anhangabaú, Downtown and Água Branca took place in the 1990s.

And the **third period, starting in the years 2000**, saw the reversion of a shrinking population process, with an increased population and warmed-up real estate business, even though it started at the edges of the central districts (Fig. 1). Between 2001-2013, the area got 18% of the commercial developments and 10% of the residential ones in the municipality, which is not very different from the previous period (1985-2000), when percentages hit 15% and 8%, respectively (EMBRAESP, 2013). In spite of the growth, the population contingent of the 1980s has not been achieved yet. Marques & Requena (2013, p. 18) caution that the growth comeback was a much more complex process than mere population gains. The analysis by weighting areas indicated places that went through a deflation process in the 1990s and went on to grow in the 2000s, others experienced continuous deflation. In addition to that, they demonstrated that the demographic trajectory should be observed beyond the census data, with property production, income variation, the presence of precarious settlements and indicators of migration and reproduction. It is still necessary to develop studies about the relationship between property development and population growth/densification, especially if we consider how the properties are and for what kind of families. Property development in the Borough of Sé corresponded to 10% of the total of vertical units opened over the last ten years (2007-2017) in the municipality, and apartment sizes have shrunk – from 61 m² to 41 m² on average –, geared toward small families, single youth or couples (Santoro, 2018).

Property vacancy in the central districts has displayed negative variation between 2000 and 2010, with a reduction from 45,464 to 29,968 residential units (IBGE census surveys). Only 3 out of 13 districts had positive variation with the increased availability of vacant residences (Barra Funda, Belém and Mooca) while, in the opposite direction, the others had decreased availability, especially Sé and República, by almost 50% each (Graph 2). The decrease was also observed in the municipal scale by 30%, since the 420,327 vacant residences dropped to 299,621, while, in the national scale, the numbers went up.

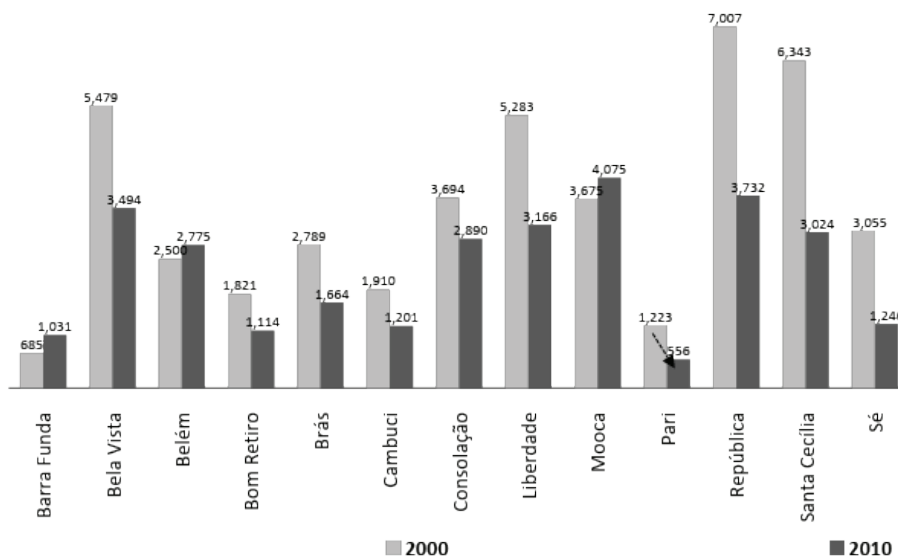
Housing vacancy (or residential vacancy) – understood as the ratio of empty properties against the property total – of São Paulo has shown greater reduction over the same period, decreasing from 11,8% to 7,5%. On the central districts, it was practically reduced by half, going from 24,0% to 12,5% (IBGE census surveys).

Figure 1 | Commercial and residential developments – Central districts – 2001-2013



Map model: MDC (2004); Source: EMBRAESP (2013); Organization: CEM/Cepid (2014). Elaborated by the authors.

Graph 2 – Evolution of the number of vacant residences – Central districts of São Paulo – 2000-2010



Source: IBGE - 2000 and 2010 Demographic Census surveys. Elaborated by the authors.

The offer of vacant properties for rent or purchase is considered important for residential mobility. Some authors have done research on what would be an acceptable percentage for a “well-functioning” residential property market – something that avoids very high vacancy numbers (which denotes either area dereliction or an overly high number of proprietors doing speculation) – and came up with something between 5 and 6.5% of the property total (Belskya, 1992), a much lower percentage than the residential vacancy numbers displayed on the central districts (12.5%). This excess signals a need for regulation policies geared toward reducing vacancy, as well as for fostering the occupancy of vacant properties, especially considering that there is overwhelming demand for well-located housing from the poorer and more vulnerable population.

Other researches have surveyed vacant property in their investigations. The listing by the Technical Group for Property Analysis (Grupo Técnico de Análise de Imóveis – GTAI), elaborated in the context of the Morar Centro Program (2001-2004) included 317 properties of different typologies in the districts of Sé and República (SILVA et al., 2009, p. 11). In 2009, in order to think about renovation and reconversion policies for verticalized buildings, Devecchi (2010) took inventory of 342 buildings developed between 1912 and 1945 in the same area. He identified 175 properties with some degree of sub-utilization (varying between 11% and 69%). As for the research conducted by Silva et al. (2009), it identified 158 buildings of more than four stories where the upper stories were not in use. Most of them, 68 in total, were completely empty; and 90 were partially so, most of which being of commercial use. The study commissioned by the Metropolitan Housing Company of São Paulo (Companhia Metropolitana de Habitação de São Paulo – COHAB-SP) for the Environmental Research Foundation (Fundação para a Pesquisa Ambiental – FUPAM), of 2009, has listed 221 vacant properties with features befitting the development of social interest housing in the central region (GONÇALVES et al., 2009). The latter was important for the identification of unused properties and PEUC notices by the end of 2014. More recently, a LabHab FAUUSP research has been mapping PEUC-marked properties in the central area of São Paulo, as well as their proprietors and uses (Almeida et al., 2018).

Rolnik & Balbim (2005, p. 21), when observing property vacancy in some central areas of metropolitan regions, have pointed out that, in order for those properties to be used, they often have to go through renovations and adaptations, sometimes even demanding an alteration of a building’s use permit. While waiting for the permits, they often stay vacant for years, under an intensive process of physical degradation or until they end up getting occupied by social and cultural movements in order to put pressure on property speculation.

Several unused properties in the central area of São Paulo have been occupied by housing movements as an alternative for permanent or temporary housing, a fight strategy to call attention to vacant properties and the need for public policies in order to revert this situation. There was a process of appropriation of the urban regulation discourse on the part of social movements for housing rights and rights to the city, whereupon the vocabulary against property vacancy has penetrated the discourse and justification of the squats (TRINDADE, 2014).

Some have interpreted that those occupied properties may be fulfilling their social function. The line of action of Public Authorities against vacant properties dictates that, if the property is occupied for any use or by residents, even in precarious conditions and independently of their legal or illegal status, they will not be notified.

This perspective on vacant properties, as well as the non-notification strategy, is not moot and neither consensual. Different municipal governments have shown different understandings. The decision to not notify has been questioned by the State Public Prosecutor, under the argument that the property is not fulfilling its social function because situations of occupancy are precarious and unsafe. There are also those who state that it is a loss of opportunity to put pressure on proprietors to sell or rent; or even, that it means losing the articulation of the instrument as part of the housing solution. The articulation of PEUC with Areas of Special Social Interest (Zonas Especiais de Interesse Social – ZEIS) happened mainly over cases of *undeveloped* properties, zoned as ZEIS 3, which, in the central area are mostly properties with parking lots.

EVOLUTION OF REGULATION FRAMEWORKS

The subject of the social function of property stems from a debate that takes us back to the 18th Century with the distinction between “absolute and subjective rights” and “social and collective interests” regarding property. In Brazil, the concept has informed Bill 775 from 1983, made obsolete by the constitutional debate of the 1980s. At the time, social movements already talked about the social function of the city and of property. The National Movement for Urban Reform (Movimento Nacional de Reforma Urbana – MNRU) was responsible for the inclusion of the subject of countering vacant property in the Federal Constitution of 1988, whose article 182 introduced the centrality of the Master Plan for an urban development policy and the subjection of the social function of property to its content. The article introduced the triad of instruments: PEUC, Time-Progressive IPTU and Expropriation of Properties Through Payment with Securitized Public Debt (art. 182, § 4º). It was only in 2001, with the Statute of the City (Federal Law n. 10257) that the constitutional article was regulated, with the definition of minimum content and referring the regulation of the subject to the municipal master plans.

Conservative and asset-hoarding practices, the absence of articulation of social and political forces in city halls and lobbies from the real estate sector have all slowed down the elaboration of master plans and the incorporation of instruments to fight vacant properties (FARIA, 2013). A national overview of the application of the instruments coordinated by Denaldi (2015) has observed the Brazilian municipalities with more than 100 thousand residents that regulated and applied PEUC and Progressive IPTU: aside from the predictions of the master plan; only 25 municipalities have regulated PEUC so as to make it applicable and 10 were applying the instrument, 2 of which were at the Progressive IPTU stage.

THE IMPLEMENTATION OF PEUC IN SÃO PAULO

The implementation of PEUC in São Paulo, understanding the process as regulation and effective application, can be divided into two phases. The first one includes the constitutional framework up to the creation of the Department of Control of the Social Function of Property (Departamento de Controle da Função Social da Propriedade – DCFSP) in 2013, and the second includes the creation of the Department and

its later regulation, which made notifications to vacant properties effective, especially up to the end of 2016.

In 1988, a first and still very incipient regulation concerning the subject appeared with the 1988 Master Plan (Municipal Law n. 10676/88), approved within the deadline during the government of Mayor Jânio Quadros (1986-1988). It ignored, however, the constitutional debate and the coition to vacant properties encamped by the MNRU. This “regulation trial” was the starting point for the regulation that would take place in later years. During Mayor Luiza Erundina’s office (1989-1992), the Master Plan proposal of 1991 bestowed a progressive character to the fight against social welfare issues. Even though it did not make an outline of vacancy typologies, it advanced in its interpretation of urban reality and proposition of guidelines and instruments. Its guidelines were: the social function of property; real-estate added value; tackling the issue of *underused* and *undeveloped* lots and plots; the definition of areas of application for the instruments according to constitutional demands. In addition to that, it also fixed deadlines for the elaboration of specific regulations. After it was sent to the City Council, it remained untouched. After 1991, the subject of social function, always depending on the regulation of municipal master plans, would only get back in the fold with the elaboration of the Strategic Master Plan (Plano Diretor Estratégico – PDE) in 2002, post-Statute of the City.

The PDE (Municipal Law n. 13430/02), during Mayor Marta Suplicy’s office (2001-2004), brought about, among other principles, the social function of property and real estate added value, stressing the prevention of “distortion and abuse in the economic exploitation of urban property and the coition of speculative utilization of land as value reserve”. It put forward some areas where the PEUC might be applicable: Special Social Interest Zones (Zonas Especiais de Interesse Social – ZEIS), urban operations, among others. And it defined that *undeveloped and underused property* are plots or lots with an area above 250m² in which the floor area ratio (FAR) is equal to zero and does not hit the minimum defined for the lot, respectively. The definition of *unused* property given was: any real estate in which a minimum of 80% of its area has been unoccupied for over five years. In spite of the regulation, the survey of vacant properties was not carried out and no administrative entity was put in charge of doing so.

It was only in 2010 that the PEUC would be given a more specific content, with Municipal Law n. 15234/10, approved during the second office of Mayor Gilberto Kassab (2009-2012), including the instruments for upholding the social function of urban property in the municipality, which originated what became known as the “prior call”. Among other provisions, it defined the initial application area (ZEIS typologies and Urban Operation Center, already projected on PDE 2002). Decree n. 51920/10 regulated the law, imparting a set of actions for the elaboration of a vacant property register. A commission was constituted in 2011, in charge of the elaboration of the preliminary register of properties with signs of vacancy, based on the registration data for IPTU taxing. A total of 1,503 properties with signs of vacancy was listed, exclusively *undeveloped* and *underused*, and their proprietors were summoned to provide clarification statements online regarding the use of the asset. The act did not generate notices, as those would have to be carried out personally.

The creation of the Department of Control of the Social Function of Property (DCFSP) in 2013, attached to the Municipal Secretariat of Urban Development (Secretaria Municipal de Desenvolvimento Urbano – SMDU),

during the office of Mayor Fernando Haddad (2013-2016) was a milestone in the history of the fight against property vacancy in São Paulo, as it began notifying proprietors of real estate not upholding the social function of property. This was made possible by advanced regulation, the approval of a new Strategic Master Plan (PDE) in 2014 (Law n. 16050/2014), which held the social function of the city and property as one of its founding principles, understood as a dimension of the right to property and as fulfilling the legal demands of territorial planning. The areas defined for the application of PEUC were ZEIS typologies, Urban Operations, Boroughs of Sé and Mooca (central areas of the municipality), the Macro-zones of Consolidated Urbanization, of Qualification of Urbanization and or Reduction of Urban Vulnerability; the latter, exclusively in order to force the subdivision of vacant lots and plots.

The regulation introduced the minimum floor area ratio (FAR) for the characterization of vacancy by *underutilization* that vary according to the newly-created macro-areas (ranging from 0.3 to 0.5). *Undeveloped* and *underused* properties were defined as lot and plot with areas equal to or higher than 500 m² and CA of or lower than the minimum, respectively. As for *unused* properties, those were defined as buildings above the minimum CA where at least 60% of their developed areas have been unoccupied for over one year. The provision represented one of the main gains the application of PEUC, considering that, in the 2002 PDE, the deadline was of 5 years, which practically compromised the application of the instrument in a wide range of properties that could be considered *unused*. According to the regulation, in order to uphold the obligations, *undeveloped* and *underused* properties must, within one year of notification, have filed a plan for subdivision or construction development. When the construction permit is issued, the works must start within two years and must be finished in three years. *Unused* properties must present proof of effective utilization within one year of notification. In case the notified properties do not uphold those demands, the Time-Progressive IPTU applies in the terms of the Statute of the City, and after 5 years of its recurrent application, the property can be served and expropriation notice for payment in public debt securities. It bears stressing that this is slated to be another challenge, once the public debt securities cannot be issued because of federal tax adjustments and controls.

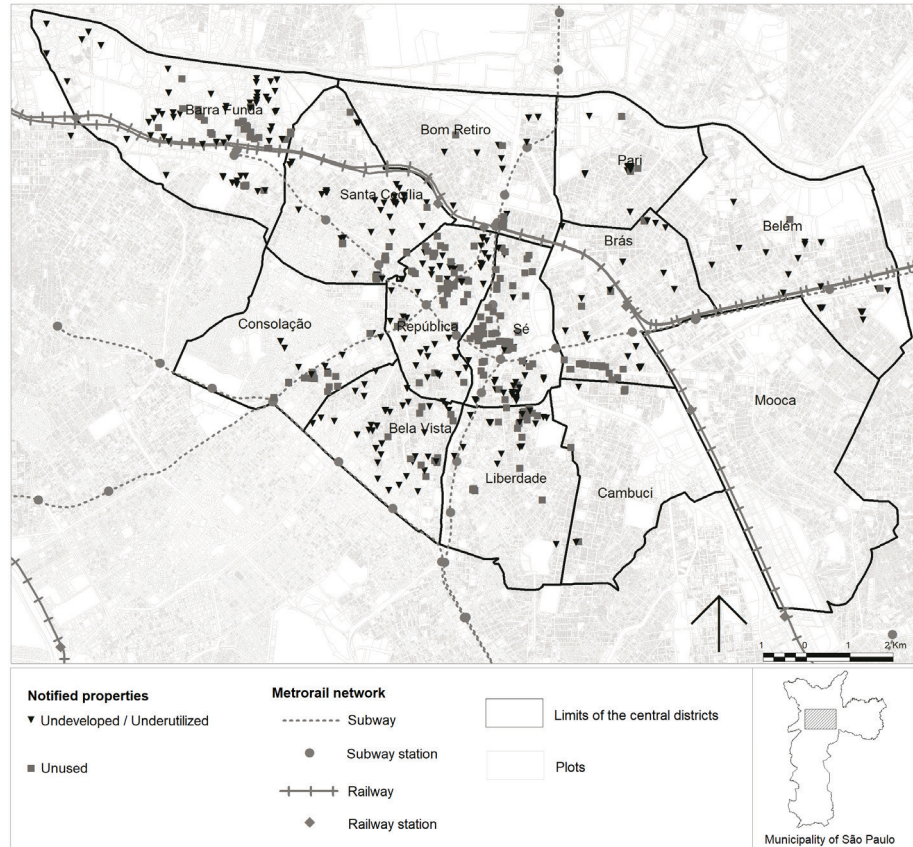
In 2014, a new decree for the PEUC (Municipal Decree n. 55638/2014) was elaborated, including the initial areas for the application of the instruments: ZEIS, Urban Operation Center and Água Branca. Those perimeters were expanded in December 2015 with the inclusion of the Boroughs of Sé and Mooca in their entirety, the blocks belonging to the Influence Area of the Structuring Axis of Urban Transformation in Santo Amaro and the Bairros do Tamanduateí urban operation, when approved.

In November 2014 the vacant properties notices respective to PEUC were issued. Up until February 2018, 1,384 properties that were not complying with the social function of property in the municipality were notified (95% until the end of 2016). Figure 2 shows the spatial distribution of notifications just in the central districts, with 958 properties (69,2% of the notified total), but, when considering the area of the notified properties, it can be observed that most are peripherally located, with undeveloped or underused properties located on ZEIS.

In the central districts, notified properties were mainly in the perimeter of Urban Operation Center, followed by Urban Consorted Operation Água Branca, and ZEIS perimeters. Considering only the *undeveloped* and *underused* typologies, it would mean

almost 500 thousand sq. mt. of lands available for real estate development. In truth, part of those properties are used as parking lots, an usage deemed as transitional, possibly waiting for profitable transactions. As for the *unused* ones, out of 645 centrally-located properties, 402 refer to vertical condominium units distributed among 7 buildings; the largest of which, located at Rego Freitas Street, holding 204 vacant units.

Figure 2 | Map of PEUC-notified properties in the central districts of São Paulo



Map model: MDC (2004); Source: CEPEUC, 2018. Elaborated by the authors.

From the analysis of *unused* properties, we gathered, among other characteristics:

- Different states of conservation of the *façade*, indicating the inexistence of a strong relation between poor maintenance and vacancy, since many of the properties were well-kept, available for rent or purchase;
- Many cases of partial vacancy, where the ground floor was in use while the other stories remained vacant, illustrating the hypothesis raised by Silva et. al (2009, p. 5 and 6), by which the use of the upper stories is only interesting for entrepreneurs above a certain percentage because of the expenses connected to its occupancy (elevators, janitorial work, safety, electricity, etc.);
- The better part of the notified properties fits in the typology of commercial and service uses (67.4%), followed by residential use (28.2%) and industrial use (3.4%). Considering also the constructed area of those properties, commercial and services comes first (70.9%) followed by industrial (24.8%) and residential (3.76%). This data reveals the small amount of residential buildings and the

challenges for the possible rehabilitation and expansion of residential areas with the use of vacant properties that were *unused*.

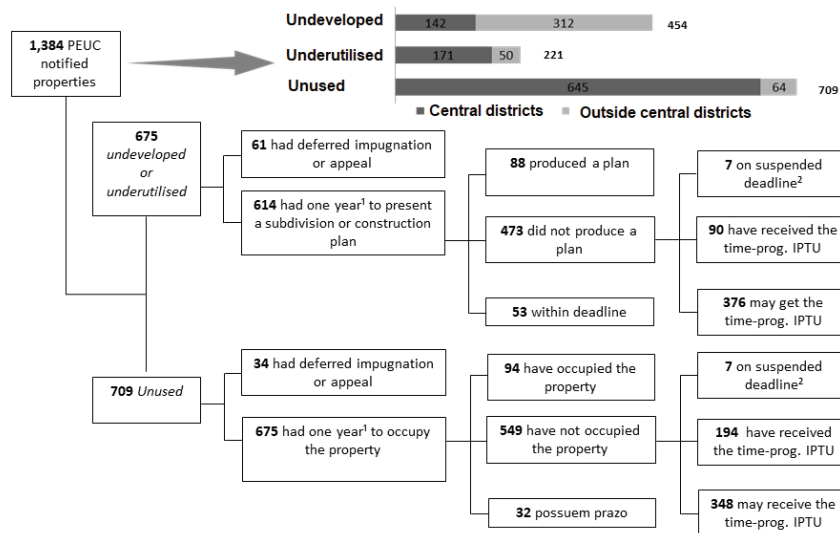
Figure 3 shows the situation of properties notified by vacancy typology, in absolute data, for the municipality of São Paulo. In order to calculate percentages, the property total to be considered must be that of properties with an obligation demand by PEUC that were not impugned or had deferred appeals, which leads to the cancellation of the notice; and the properties still within deadline and therefore apt to meet the demands.

In the case of the properties considered *undeveloped* or *underused* in the municipality, out of the 561 properties that round up this total (614 minus the ones within deadline), only 88 properties have produced a project permit application (15.6% of the group). Those 88 have legally up to 2 years maximum to start the works after the execution permits are issued and 3 years, from the beginning, to finish them. Therefore, the properties also have those deadlines that will be followed up until the conclusion of the work. The numbers also show that 90 of them (16%) have already received the Progressive IPTU).

As for the group of 709 properties considered *unused* in the municipality, 34 have had deferred appeals and out of the 643 properties that had occupancy deadlines (675 minus the 32 within deadline), only 94 have shown proof of occupancy (14.6% of the total) and 194 have already received the Progressive IPTU (30% of the total).

Figure 4 shows the situation of properties notified by vacancy typology, in absolute data, for the central area of the municipality of São Paulo. The same method was applied for the numbers: the total refers to properties that did not have impugnations or deferred appeals and those within deadline, that is, a total of 590 notified properties. Out of the ones considered *unused* in the group that had yet to show effective occupancy, only 91 have done so (15.4% of the total).

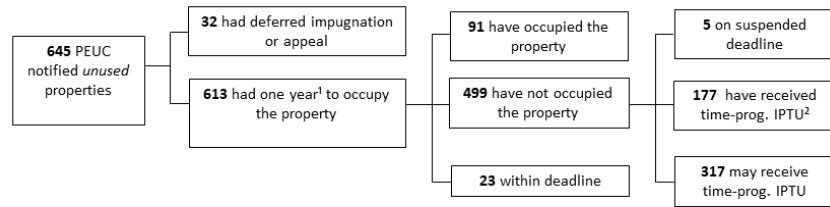
Figure 3 | Situation of notified properties in São Paulo – 2018



1 – The deadline may be extended for non-profits, housing cooperatives, when large-scale work is required for occupation or when occupation is not viable.
 2 – The deadline can be suspended for the fulfillment of obligations due to legal impossibilities.

Source: CEPEUC, 2018. Elaborated by the authors.

Figure 4 | Situation of unused notified properties in the central districts of São Paulo – 2018



1 – The deadline may be extended for non-profits, housing cooperatives, when large-scale work is required for occupation or when occupation is not viable.
 2 – The deadline can be suspended for the fulfilment of obligations due to legal impossibilities.

Source: CEPEUC, 2018. Elaborated by the authors.

The effects of this application on the urban makeup were very subdued. The properties, after meeting the demand issued by the notice, end up taking on any use, apparently whatever is more profitable. Some of the properties have done façade renovations – although most of them have found uses without façade alterations (Figure 5) – and others were reactivated with commercial use (Figure 6).

Figure 5 | Unused properties that met the demands



Condo units at Prestes Maia Ave., 526 (Sé). 1. At the time of the inspection, when the existence of vacant residential units was confirmed. 2. After meeting the demand for compulsory use. Source: Authors’ collections and Google Street View.

Figure 6 | Unused property that met the notice demand



Set of 2 commercial buildings at Roberto Bosch Street, 315-375 (Barra Funda). 1. Vacant, available for rent (April 2015); 2. Functioning (May 2016). Source: Authors’ collections and Google Street View.

The numbers referring to properties that have met the demands are relatively low and can increase with the incidence of the Time-Progressive IPTU, so as to force

PEUC application. In 2016, the progressive specification has been applied to only 19 properties, a number that increased to 287 in 2017, at the beginning of Mayor João Dória's office. The numbers were supposed to be three times larger in 2018.

The application of PEUC on public interest areas, especially central and ZEIS areas, strategic though it may have been, with São Paulo as a pioneer among the few municipalities applying the instrument (DENALDI et al, 2017), it has been observed that, up until this moment, the destination of properties when entering the market have covered other uses other than social interest housing. Revisiting the data of up until February 2018, out of 1,384 notified properties, 505 are on ZEIS (2, 3 and 5). From those, 140 are not in use (one of them corresponds to the condo building on Ipiranga Avenue with 66 units, among other smaller ones) and 365 are *undeveloped* and *underused*. Out of the 140 that are *underused* on ZEIS, only 17 had met the utilization demand, and 10 were in the vertical residential typology, 3 were warehouses, 3 of collective use and 1 was an office. Therefore, according to the typology of use, only 10 have upheld residential use.

The articulation of notified properties with certain sectorial policies happened only within the public debate of the Municipal Housing Plan¹, not yet approved, as well as during the process of overseeing notices and along with presentations of construction projects on ZEIS, which points to the need to associate this policy to other sectorial public policies. Another possibility that was considered was the articulation of PEUC with the Real Estate Consortium instrument, provided by PDE 2014, to be offered to proprietors of notified vacant properties through a specific regulation (Municipal Law n. 16377/16). In those cases, in order to meet the PEUC demands, the proprietor who lacks funds will be able to transfer their property to the municipality, who will be in charge of the works and will grant the proprietor plot sections or real estate units to the proprietor according to the value of their former property before renovations. According to the public managers who conceived the norm, a regulation decree still needs to be elaborated for the application of the instrument to be possible.

¹ The proposal of the Municipal Housing Plan in 2016 (PMSP, 2016) covered the use of notified properties for social rent, according to a policy related to this including the setup of a public real estate bank, as well as the use of those properties as temporary shelters.

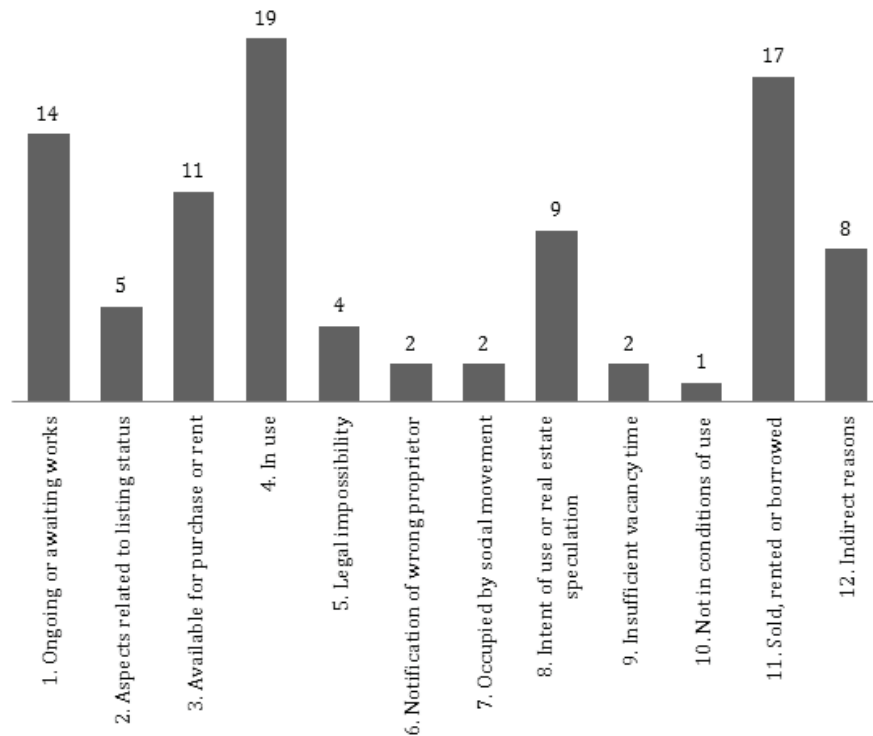
WHAT ARE THE ALLEGATIONS OF THE PROPRIETORS WHO FAIL TO UPHOLD THE SOCIAL FUNCTION OF THE PROPERTY?

When the first vacant property notices were being served, Rolnik (2014), predicting the behavior of the proprietors, remarked that “unhappy proprietors will try to battle it out in court. They do not care that the way they use their property may have nefarious consequences for the city. The expectation of future profit – what we call ‘speculation’ – that’s what really matters...”.

The strategy of notifying properties gradually instead of all at once, according to a judicious analysis of the vacancy status, using concepts and procedures defined by public management, was relevant also for the construction of legal arguments that avoid court battles. The analysis of the contestations of the proprietors notified as non-compliant regarding the social function, present in the administrative processes up until November 2016, illustrates the diversity of arguments, which are not sufficient to exempt them from upholding the constitutional principle and just demonstrate the persistence of speculative processes. The motives given by the owners of properties notified with the

PEUC, in order to defend themselves from the instrument, orbit around the individual right to property and the perspective of future gains (Graph 3).

Graph 3 | Motives given by proprietors when contesting the PEUC²



Source: DCFSP, 2016. Elaborated by the authors.

The top motive is the assertion that the property was “in use”, which cannot be proven with the production of utility bills. This situation may represent failed attempts to convince the public forces of the property’s occupancy, hiding its vacancy and sometimes revealing the ongoing speculative processes. According to an excerpt from an overruled impugnation that advocated for the cancellation of the notice, the proprietor “seeks not only to use the building but also needs to turn it into a means for market profitability, seeing as the taxes involving the property are onerous and have been fully paid off”.

The second most common motive is the allegation that the property is available for rent or purchase or even in and ongoing transaction, which does not guarantee its effective occupancy.

The allegation that the property “is on standby or undergoing construction work” took the third place. This one involves situations in which the property is awaiting restoration or construction adequacy works, including with the approval of heritage agencies or with compliance to construction safety norms, none of which mandatorily implicates restriction of use. In those cases, a deadline for the regularization of the building may be granted.

What stand out are the arguments of “indirect reasons” that have no evident connection to the use of the property. Among them are the economic crisis and an unfavorable market for real estate business. The proper and timely payment of taxes

² Were considered “legal impossibilities” the ones with pending legal issues, Declaration of Public Value (DUP – Declaração de Utilidade Pública) or Social Interest (DIS) for expropriation or deterrents to the licensing for use, subdivision or construction due to legislation that cannot be provided by the owner (Decree 55638/14, art. 8); “in use”, the properties in sporadic or partial use, with a ground floor in use, upper floors in use with complementary activities on the ground floor; “indirect reasons” are the Brazilian economic crisis, paid taxes, tax immunity, policies for the area and market disinterest.

was also cited as a justification for lack of use. However, paying due taxes does not mean that the property can be vacant, as the payment of tributes does not implicate fulfillment of the asset's social function, only the interests of the proprietors. The owners of property such as temples, charity and education organizations, churches, cemeteries, parish houses, schools, daycares, shelter homes, etc. also alleged tax immunity or exemption. According to Article 3 of Decree 56589/15, if the owner of a property that is exempt of the IPTU (as is the case of the ones cited above) is notified for PEUC, the exemption must be suspended for the application of the traditional, as well as the time-progressive, IPTU.

In this group are also the allegations that view the policies for the central area as actions that hinder market interest in the area, which has not been proven. One argument in this direction was:

The business group [name redacted] is dedicated to renting commercial and industrial properties for businesses that would rather rent than purchase them. When it comes to commerce, in the central area of São Paulo, dozens of rent deals were made over the last 30 years. When the tenant leaves, it sometimes takes almost a year to find another one (especially if the property is in need of restoration). The other cause for this long waiting time is the lack of parking in the region and the present City Hall policy with all its 'public utility' decrees, without expropriation, which hinders renting and stimulates invasion. (Source: Administrative process for PEUC notices apud COSTA, 2017).

FINAL CONSIDERATIONS

Compliance with the social function of property in São Paulo has proven, since the first steps toward regulation, an extremely morose process, far from being achieved through the application of the triad of instruments proposed by the Federal Constitution of 1988 and by the Statute of the City. However, the process of implementation of the PEUC in São Paulo has been innovative for moving forward in the creation of strategies and policies to fight real estate vacancy, culminating in the elaboration of regulations and definition of the *underused*, *unused* and *undeveloped* typologies – such as the Strategic Master Plan from 2014, as well as the laws and decrees that went with it –, in addition to the creation of institutional spaces and management procedures – such as the creation of the Department of Control of the Social Function of Property (2013) and the procedures for street-level bureaucracy – geared toward fighting vacant property. In this sense, the experience has a political-pedagogical character and is relevant in the dialogue with other municipalities seeking to reflect on how to fight against high building vacancy rates in central areas.

Until February 2018, 1,384 properties were served notices for compliance with the social function of property, 958 of which located in the central districts. Out of that number, 645 were considered *unused*. From those, only 91 have complied with the demand to occupy the property, representing the fraction of 15.4% of notified properties in the area that should have met the demand for compulsory use. Few are still within the deadline to meet the notice's demands, others are already getting their Progressive IPTU, aimed at inducing compliance with the obligations. The effects of this application on the urban makeup have yet to be noticed, as few properties were

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Paper received on 3 March 2018 and approved for publication on 15 December 2018.

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actually notified and they are not the target for specific policies. However strategic the application of the PEUC on areas of public interest, especially ZEIS (Special Social Interest Zones), may have been, it has become notorious, up until this moment, that the real estate entering the market have taken on other uses apart from social interest housing. The articulation of the notified properties to certain sectorial policies is still tentative within the proposal of the Municipal Housing Plan (2016) or present in the Law of Social Interest Real Estate Consortium (Municipal Law n. 16377/16), which makes its further articulation with other sectorial public policies even more necessary.

The analysis of the contestations of the proprietors notified as non-compliant with the social function illustrates the diversity of the arguments, which are still insufficient to exempt them of upholding the constitutional principle, and reveals the persistence of speculative processes and the maintenance of vacancy. Meanwhile, the Center acquires real estate relevance faster than the processes to tackle speculation, and may even take advantage of the triad of instruments in order to get properties that enter the market without guarantees of public interest use – on the contrary, being connected to the ongoing real estate profitability mentality.

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