



## MINISTRY OF CITIES

**ORDINANCE No** , **DATED (month) (day), 2012**

Regulates procedures and measures which ensure the right to housing and the city to those persons affected by involuntary displacement caused by construction works and engineering services in interventions managed by the Ministry of Cities.

The **STATE MINISTRY OF CITIES**, in its legal capacity and considering article 14 of Law No. 11.124, dated June 16<sup>th</sup> 2005, article 4 of Decree No. 5.796, dated June 6<sup>th</sup> 2006, and considering article 6, of Law No. 8.036, dated May 11<sup>th</sup> 1990, article 66, of the FGTS Consolidated Regulation, approved by Decree No. 99.684, dated November 8<sup>th</sup> 1990, with the wording adopted by Decree No. 1.522, dated June 13<sup>th</sup> 1995,

Considering that the Federal Constitution ensures the social right to housing and dignified living conditions, and considering that Federal Law No. 10.257, dated July 10<sup>th</sup> 2011, also known as the City Statute, sets out public policy and social interest rules which regulate the use of urban property for the collective good, safety and welfare of citizens, as well as environmental balance;

Considering that construction works and engineering services may cause involuntary displacement of people from their homes or income sources or means of livelihood;

Considering that this displacement affects not only people's daily lives, but also their existing social and community relationships in the areas under direct or indirect influence of the intervention program;

Considering that there is a need to adequately plan for different applicable solutions aiming to replace lost property and restore social conditions, standards of living and the productive assets of the people affected;

Considering that there is a need to avoid situations which may pose a risk of impoverishment or exposure to vulnerability situations, as well as a need to mitigate the negative impacts resulting from construction works and engineering services executed;

Considering that the works and engineering services promoted by the Federal Government, through the Ministry of Cities, should, directly or indirectly, in addition to their specific objectives, promote the improvement of the standard of living of the population affected;

Considering Recommended Resolution No. 127, dated September 16<sup>th</sup> 2011, passed by the National Council of Cities, which resolves that works and projects which involve funds

from federal programs for urban development and which entail resettlements should guarantee the right to housing and the city in their implementation;

Finally, considering that the execution of interventions, even if delegated to States, the Federal District and Municipalities, should be guided by the principles of federalism, of strengthening local management and population participation;

Resolves:

Art. 1º To regulate procedures and measures, as in the Annex to this Ordinance, which ensure the right to housing and the city to those persons affected by involuntary displacement caused by construction works and engineering services in interventions managed by the Ministry of Cities.

Single paragraph. The present Ordinance shall apply, as appropriate, to Terms of Agreement, On-lending and Financing Agreements, including those in force, entered into before the publication of the present Ordinance, and the Ministry of Cities should be in charge of evaluating each case individually, considering the specificities involved.

Art. 2º All interventions proposed to the Ministry of Cities, even if they are to be delegated to States, the Federal District and Municipalities, shall be preceded by a diagnosis and study of alternatives aiming to avoid or mitigate the need for involuntary displacements, and to identify the best economic solutions, which are technically and socially sustainable as well as effective.

Art. 3º The displacement of persons residing or developing economic activities in intervention areas shall only happen when it is critical for:

- a) the execution or supplementation of works for infrastructure projects;
- b) the implementation of interventions which ensure adequate housing solutions and upgrading of precarious settlements;
- c) the elimination of risk factors or unhealthy/hazardous conditions to which people are exposed, such as: flooding, property collapse, landslides, earthquakes, proximity to high voltage energy lines or contaminated soil, when the elimination of these factors is not an economic or socially viable alternative;
- d) the recovery of environmental conservation areas or buffer zones, where it is not possible to have a sustainable consolidation of existing occupations; or
- e) the vacation of land with liens, encumbrances or absolute restrictions for human occupation as set forth by specific legislation.

Art. 4º When inevitable, displacement shall be preceded by the drafting of a Plan for Resettlement and Compensatory Measures, which ensures that the people affected will be offered adequate solutions to offset displacement and losses caused by the intervention, if any, as per the terms and conditions set forth in the Annex to the present Ordinance.

Single paragraph. The funds necessary to conduct a study of alternatives, to draft the Plan for Resettlement and Compensatory Measures and to execute the actions set forth therein shall be considered when calculating the amount of investment required for the intervention causing displacement.

Art. 5° The Plan for Resettlement and Compensatory Measures should be approved by the Ministry of Cities, or any to whom this power is delegated, before the intervention causing displacement starts.

Art. 6° In case of Terms of Agreement, On-lending and Financing Agreements in force, the Plan for Resettlement and Compensatory Measures shall be presented by the project agent to the Ministry of Cities, or any to whom this power is delegated, within one hundred and eighty (180) days of the publication of the present Ordinance, for assessment and approval, and shall include a feasibility and implementation framework, as well as conditions and deadlines.

Single paragraph. Funds for the implementation of the Plan for Resettlement and Compensatory Measures, when not included in the total amount for investment in the intervention, may be made possible through rescheduling as part of the instrument itself or with additional counterpart resources.

Art. 7° Failure to meet the conditions herein, by the intervention agent, shall suspend the release or disbursement of funds from the Terms of Agreement, On-lending and Financing Agreements.

Single paragraph. All actions in the Plan for Resettlement and Compensatory Measures must be completed in order for works which are part of the intervention to be delivered and for approval of the corresponding final accountability document.

Art. 8° The present Ordinance shall enter into force as of its publication.

**MINISTER OF CITIES**

## ANNEX I

### ORDINANCE No           , DATED (month) (day), 2011

1. This Annex aims to set forth concepts and procedures for drafting the Plan for Resettlement and Compensatory Measures, which ensures that people forced to relocate due to involuntary displacements caused by construction works and engineering services in interventions managed by the Ministry of Cities are offered adequate solutions to offset displacement and losses caused by the intervention, if any, so as to ensure the right to housing and the city.
2. Its content was written based on the assumption of respect for individual and social rights; and, in the design and execution of the intervention that will cause displacement, the people affected should be granted effective care and sustainable solutions, as well as proper conditions for social participation.
3. This guideline is directed to States, the Federal District and Municipalities, which execute actions and programs managed by the Ministry of Cities, and shall be observed at all times when drafting and executing interventions.

#### I GENERAL CONCEPTS

4. For the purpose of this Annex, the following concepts are adopted:
  - a) **Study of Alternatives:** the engineering project phase, corresponding to the initial study, where different project implementation solutions are tested and budgeted, aiming to eliminate or reduce the number of people affected by involuntarily displacement.
  - b) **Involuntary Displacement:** a compulsory move from home or income sources and means of livelihood, caused by construction works and engineering services, even when such displacement is triggered by the need to eliminate risks or unhealthy/hazardous situations, or the vacation of land that is improper for human occupation, thus improving the quality of life of the people affected.
  - c) **People Affected:** those who own, lease, possess, rent and/or are assigned land/property, who are partially or completely impacted by the intervention.
  - d) **Expropriation:** a procedure through which the Public Power, based on a public need, public purpose or social interest, takes away property, either real estate or chattel, on a permanent basis, and on exchange of a fair indemnification.
  - e) **Indemnification:** pecuniary compensation for investments made by a property owner. When an indemnification is calculated, the following should be taken into consideration: an amount equating the actual value of the original property, including recognized land tenure, soil use, its economic exploitation and the social possibilities inherent to the right to decent housing.
  - f) **Property Replacement:** resettlement, property swapping, direct acquisition or assisted acquisition, aiming to provide access to property offering same use and comparable characteristics to those of the property affected, provided that all conditions are met for habitability, legal safety and decent housing.

g) **Resettlement:** replacement of the expropriated property for a comparable one and built specifically to that end or acquired in the market, which is awarded to the person being resettled.

h) **Property Swapping:** a property in the area affected by the intervention is swapped for another property used to the same end and offered by the intervention agent.

i) **Decent housing:** one which provides access to a dwelling, secure tenure, urban goods and services offered by the city, in terms of available public transportation and adequate circulation conditions, access to public services supply, healthcare, security, work, education, culture and leisure, as well as adequate infrastructure, according to the city's average standards.

j) **Compensatory Measures:** a set of actions which aim to ensure that the people affected will be compensated, in a fair and equitable way, so as to restore, and if possible, improve their prior social, living and income conditions.

k) **Plan for Resettlement and Compensatory Measures:** an instrument guiding the displacement process, containing applicable care solutions and the eligible population, ensuring that the people affected receive proper support to deal with the displacement and losses caused by the intervention, if any, and whose actions should be implemented in agreement with the schedule for intervention execution and social work.

l) **Social Work:** a set of actions of a participatory, social, educational and inclusive nature, implemented by the public Power – States, the Federal District or Municipalities – to be developed together with the affected people, aiming to promote population mobilization and engagement, follow-up, preparation for the decision and ownership of the solutions proposed for relocation and compensation, environmental education and support for social and productive inclusion.

## II THE STAKEHOLDERS AND THEIR MAIN ROLES

5. **Ministry of Cities – MCIDADES, as the manager,** is in charge of managing, following and assessing the execution and outcomes of the programs and actions, setting general guidelines and operational procedures for their implementation.

6. **Public Power – States, the Federal District or Municipalities, as the agent, shall:**

a) draft the Plan for Resettlement and Compensatory Measures, execute and inspect the works necessary to its implementation, and follow the guidelines and procedures herein;

b) follow and monitor the implementation of the Plan for Resettlement and Compensatory Measures, setting up its own management body/bodies;

c) ensure the means to guarantee that the people affected will participate in the intervention planning and execution, by forming a specific forum for participatory and joint management, thus enabling agreements to define care solutions that will be part of the Plan for Resettlement and Compensatory Measures;

c.1) whenever possible, ensure the means for general public input on the intervention, in the form of public hearings;

d) put in place a mechanism to prevent and mediate possible conflicts resulting from the intervention;

d.1) inform the Office of Public Defenders in case of conflicts due to the intervention;

e) prioritize the people affected in their access to public policies and social programs;

f) make it possible to include those families that were granted housing units in the **CadÚnico** (national cadaster for social programs), under the responsibility of the Municipalities;

g) ensure, in the rules for hiring and control of the intervention execution, the fulfillment of all obligations by the **construction company responsible for the work**, as appropriate, in terms of:

g.1) ensuring the synchronization between the execution of the work and the implementation of the Plan for Resettlement and Compensatory Measures;

g.2) collaborating as much as possible for a full implementation of the Plan for Resettlement and Compensatory Measures, and;

g.3) assigning a permanent and skilled representative on site as a liaison officer to the people affected.

h) seek to include in the local land use regulation standards mechanisms which allow the public power to capture part of the real estate appreciation generated by the intervention.

#### 7. **The people affected shall:**

a) individually or collectively, participate in all stages of the intervention process;

b) respond, on a timely basis, to requests regarding the submission of documentation and participation in the execution of the works, as set forth in the Plan for Resettlement and Compensatory Measures, and;

c) be responsible for informing cadastral data and social and economic information, as required by **CadÚnico**, when benefitted by housing units.

### III **APPLICABLE GUIDELINES, GUARANTEES AND SOLUTIONS**

8. The Plan for Resettlement and Compensatory Measures shall meet the following general guidelines:

a) to mitigate the negative impacts due to involuntary displacement caused by construction works and engineering services; even when these are triggered by the need to eliminate risks or unhealthy/hazardous situations, or the vacation of land that is improper for human occupation;

b) to set clear criteria to select the people to be displaced, applicable care solutions and the eligible population;

c) to facilitate solutions for access to decent housing and means for economic, social and cultural production, so as to restore or improve social, living and income conditions for the people affected.

d) to diagnose the risk of impoverishment and exposure to vulnerability situations for the people affected, with specific mitigation and compensation solutions when such risks exist;

e) to provide opportunities for participation and joint management, seeking to include, if any, the participation of existing local bodies;

f) to put in place mechanisms to prevent and mediate possible conflicts due to the intervention.

9. The Plan for Resettlement and Compensatory Measures should encompass a definition of applicable care solutions and the eligible population, taking into account the form of occupation, land status, and social and economic conditions diagnosed, thus ensuring, at a minimum, the following measures:

#### **9.1. Property expropriation, in accordance with the legislation in force.**

##### **9.1.1 Eligibility:**

a) Owner of a property affected.

#### **9.2. Replacement of the property affected.**

##### **9.2.1 Eligibility:**

a) The owner of a housing unit affected, who resides in it, and exercises this option in detriment of the indemnification due for property expropriation.

b) A holder of tenure rights over a property affected belonging to a third party, provided that:

b.1) he/she is not the owner or tenure holder of another property used for the same purpose as the property affected;

b.2) he/she resides or develops economic activities in the property affected at the time that social and economic cadastral information was gathered, and;

b.3) he/she had an average monthly turnover in the last fiscal year compatible with the category of individual micro-entrepreneurs or micro enterprises, in the case of replacement of a commercial property.

#### **9.3. Indemnification.**

##### **9.3.1 Eligibility:**

a) Owner of property improvement, who holds direct tenure over the property affected belonging to third parties, if the amount to be received is sufficient to ensure the acquisition in the market of a comparable replacement property, which:

a.1) is regularized or can be regularized;

a.2) is provided with infrastructure and habitability conditions defined by local rules, and;

a.3) meets the conditions of decent housing, in the case of residential properties.

b) Owner of property improvement in a property affected belonging to third parties, and who does not have direct tenure.

#### **9.4. Pecuniary indemnification at an amount corresponding to a minimum three-month rental of a comparable replacement property.**

##### **9.4.1 Eligibility:**

a) Low-income tenants, with no formal rental contract.

10. The Plan for Resettlement and Compensatory Measures should observe the following provisions, when implementing applicable solutions:

10.1. For cases involving indemnification or a comparable replacement property, whenever necessary, moving and temporary storage of personal property shall be provided for.

10.2. For cases involving people living in social vulnerability, the necessary measures should be adopted for their inclusion in public policies and social programs.

10.2.1 For cases involving rental tenants living in those conditions, they might be included as eligible for replacement dwelling/property.

10.3. For cases involving properties used for institutional or community purposes, the same applicable solutions shall be adopted as those for properties used for commercial activities and income generation, as appropriate.

10.4. For cases involving mitigation or compensation for losses related to economic activities, the overall appraisal of impact shall take into consideration accounting records of formal activities, and individual case studies, in case of informal activities.

10.5. For cases involving resettlement, the area provisioned for housing shall be located, whenever possible, close to the place of origin of the people affected, and shall be served by basic infrastructure and public services, either pre-existing or to be built, which meet the demand generated, in accordance with average city standards, and dwelling units shall be provided with infrastructure and habitability conditions.

10.6. For cases involving indemnification, States, the Federal District or Municipalities shall be in charge of setting its values, forms of calculation and payment, in accordance with local specificities, technical standards that guide the matter and concepts defined in the present Ordinance, and it shall be regulated by the agent at least three months before families start being displaced.

10.7. For cases involving the need for transient solutions, only admissible where a definitive solution is not available, the units shall meet the minimum requirements in terms of appropriateness, healthy conditions and sustainable use during the period of occupation, which must not exceed the time defined in the global intervention schedule.

11. States, the Federal District or Municipalities may incorporate other alternatives and care solutions in their Plans for Resettlement and Compensatory Measures, adjusted for local

specificities, as long as they ensure the right to decent housing and the necessary conditions to restore or improve social and living conditions of the people affected, as well as their income generation.

#### **IV PLAN FOR RESETTLEMENT AND COMPENSATORY MEASURES**

12. The Plan for Resettlement and Compensatory Measures should present the minimum content as follows:

a) a summary of the intervention project that will cause a displacement, defining its scope and justifications for implementation, indicating that the solution chosen, among all alternatives considered to mitigate involuntary displacements, offered the best economic solutions, which are technically and socially sustainable as well as effective;

b) a census mapping as well as a social and economic diagnosis of the intervention area, a clear definition of the criteria used to characterize the population affected by the intervention, and deadlines and measures to prevent the arrival of new dwellers in the intervention area;

c) quantification and characterization of the assets that will be affected, in terms of construction material, size, conservation, type of use and occupation, and land status;

d) details and quantification of the population affected, considering social and economic aspects, housing conditions, and use of the intervention area;

e) definition and quantification of applicable care solutions, eligibility criteria and transient solutions, when necessary;

f) mapping of risks and negative impacts resulting from the intervention, and an indication of mitigating and compensatory measures, and of the means to serve families which are socially vulnerable;

g) operational, legal, financial and institutional procedures to implement compensatory solutions, clearly stating the schedules for displacement, expropriations, indemnifications and replacement dwelling/property;

h) a social work project with detailed mechanisms for participation and joint management in drafting and executing the intervention, in defining alternative applicable solutions which will be an integral part of the plan, as well as actions for social and productive inclusion, and social and environmental sustainability;

i) a mechanism for prevention and mediation of possible conflicts resulting from the intervention, which must be accessible and independent, and take into account the existence and availability of community, judicial and extrajudicial procedures for dispute resolution;

j) definition of a structure for management, implementation and monitoring of the Plan for Resettlement and Compensatory Measures;

k) a plan implementation budget with an outline of fund sources, including documentation proving financial and budget support;

l) a general schedule for plan execution, compatible with that of the intervention that caused a displacement and that of social work, informing deadlines for landmark stages, such as census mapping, payment for expropriations, regulation and payment of

indemnifications, erection of housing units, resettlement, mechanism in place for dispute mediation, clearly indicating:

1.1) timeframe to reach an agreement with the population affected for the selection of applicable solutions;

1.2) timeframe for displacing the people affected, relating them to the definitive solutions available and, as appropriate, to a deadline to make transient solutions viable; and

1.3) timeframe to monitor the population affected until the provision and completion of a definitive solution.

## **V PARTICIPATION, CONFLICT MEDIATION AND RESOLUTION, AND SOCIAL WORK**

13. The adoption of mechanisms for the participation of all people affected across all stages of the intervention is required, as well as the implementation of the Plan for Resettlement and Compensatory Measures, with the formalization of a specific forum for participation and joint management, and considering the existence and availability of community, judicial and extrajudicial procedures for prevention and resolution of disputes caused by the intervention.

14. Social work, under the responsibility of the intervention agent, should implement actions necessary to the participation of all people affected during the stages of intervention planning, execution and follow-up after its completion, and the Plan for Resettlement and Compensatory Measures.

15. Social work is made up of a set of actions directed to the social development of communities, and it includes:

a) community mobilization and organization, aiming to implement mechanisms for participation, representation, communication and information, which may offer a foundation to improve the intervention project and the Plan for Resettlement and Compensatory Measures, and to monitor the execution of actions planned;

b) organization, structuring and functioning of a mechanism to prevent and mediate possible conflicts due to the intervention process and a specific forum for participation in and joint management of the intervention;

c) preparation of families and support in defining alternative solutions which will make up the Plan for Resettlement and Compensatory Measures, in accessing solutions for property replacement or compensation for losses, and in preparing the process for moving;

d) training on the proper use and maintenance of the new housing units, on rights and duties associated with the new dwelling, as well as raising awareness of and providing guidance to the people affected in terms of their active role in the maintenance of the works done;

e) environmental education, fostering sustainable practices to relate to the natural and built environment, particularly regarding solid waste management, use of the basic water and power supply services, and maintenance of green and environmental protection areas, when present;

f) support to social and productive inclusion of the people affected, encompassing actions directed to access to basic social policies, reduction of social vulnerability, including actions to improve their insertion in the labor market, and participation in public policies and social programs; and

g) follow-up of the families affected, for a period of time set in the Plan for Resettlement and Compensatory Measures, which shall be no less than six (6) months after the completion of the definitive solutions aiming to ensure the effectiveness of the solutions adopted.

## **VI COST STRUCTURE**

16. Included in the Plan for Resettlement and Compensatory Measures are those costs necessary to its design and implementation, and they must be taken into account in the investment breakdown for the interventions leading to a displacement.

17. The following costs may be broken down in the Plan for Resettlement and Compensatory Measures, in accordance with intervention and site specificities:

- a) Mapping and surveys;
- b) Studies, technical plans and projects, including those necessary for the areas where the people affected will be relocated;
- c) Transient solutions;
- d) Indemnifications;
- e) Expropriations;
- f) Execution of infrastructure works and environmental sanitation;
- g) Acquisition, production or requalification of housing units, upgraded land subdivisions and commercial or institutional properties;
- h) Land regularization of properties acquired, produced or requalified;
- i) Social work;
- j) Expenses with the organization, structuring and functioning of a mechanism to prevent and mediate possible conflicts due to the intervention process and a specific forum for participation in and joint management of the intervention;
- k) Plan implementation management.