
LEGAL PRINCIPLES AND TOOLS FOR URBAN COMMONS POLICIES

*Legal briefs and canvases from
Amsterdam, Barcelona, Gdansk,
Ghent, Iasi and Presov*

AMSTERDAM

COMMONS: AMSTERDAMMERS TAKING CHARGE

Exploration of (legal)
instruments for urban commons
policy in Amsterdam.

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1 Introduction

The Municipal Executive Board of the City of Amsterdam has indicated its intention to actively support the establishment of commons, for example in the energy transition, healthcare and/or community activities. This is an important part of the democratisation ambition where the municipality sets out to organise more ownership and control for Amsterdam residents.

In this context, Amsterdam actively participates in the Civic eState Urbact programme. Together with cities such as Barcelona, Gdansk, Iasi, Presov and Ghent, Amsterdam is looking into policy and case law aimed at strengthening the urban commons in Naples, Bologna, Madrid and Seoul, among others.

This memo constitutes an exploration of existing policy instruments and legal possibilities in order to strengthen commons in Amsterdam. Based on international examples, it can be concluded that 3 things are part of any urban regulatory framework::

1. cooperation with citizens, organised in commons, is recognised and appreciated;
2. the 'common goods' are defined;
3. cooperation agreements are made with respect to budgets, usage and/or practices.

The above needs to be arranged to allow the Amsterdam commons to be properly supported. Because the term and narrative of the commons remains novel, this has been explored in a separate memo. The present memo builds on that, looking specifically into commons-enabling policy instruments.



In this memo, we first explore the practice: both on the policy side and on the side of the city makers (also known as the co-city movement). In section 2 we examine what is already being worked on in terms of policy and what commons in the city act as reference cases in this respect. In section 3 we zoom out and analyse the national and European context, and in section 4 we look into the legal instruments at Amsterdam's disposal for supporting the commons. In section 5 we take a look at the practices of other cities in the network, and in section 6 we reflect on our look into our own pilot and answer the question: how do we facilitate progressive policy for the commons in Amsterdam?

In addition to being an exploration of policy instruments, this memo also constitutes an invitation to enter into a mutual dialogue about subjects that we, as a city, consider to be part of 'our common good'. Is this food, heating, energy, data and/or healthcare? By looking at these daily human needs (or revisiting them) from the perspective of the commons, we are able to experiment with the organisational model of the commons. After all, it is precisely this direct-democratic organisational model that makes the commons unique, valuable and - according to Nobel Prize winner Elinor Ostrom - sustainable: by organising our common interests in the commons, we not only provide food, heating, energy, data and/or healthcare, but also facilitate more ownership and control in the city, more economic and social value creation in and for the neighbourhood, more places and domains for a lively, local and direct democracy, and with that, above all: increased public value.

2 The Amsterdam Context

In the May 2018 coalition agreement, the Municipal Executive Board indicated its intention to support urban commons. Much is already being done in view of this topic, across portfolios. In this section, we will discuss the ambitions and policy pertaining to various directions and also briefly explore practical reference cases; the co-city developments.

2.1 Democratisation

"Residents have ideas that are as good as, if not better than, those of the city council. We aim for an open and transparent administration, an organisation that focuses on the outside world and is open to social initiative, and employs an area-specific working method. We consider it our responsibility to increase our residents' level of control. Not through new systems, but by entering into a dialogue and a debate with the city about how this can be achieved."

"The municipal government faces the major task of improving the relationship between citizens, entrepreneurs and government. [...] Amsterdam residents demonstrate the ability to take care of things on their own frequently and in a wide range of areas. The government should take a supporting role in these areas rather than a directing one."

- *"The municipality actively supports the creation of commons, for example in terms of the energy transition, healthcare or in setting up neighbourhood activities. The municipality shares best practices and provides legal advice."*
- *"Neighbourhood initiatives are given all the space they need to flourish and we are exploring ways of better supporting them."*
- *"A social initiative fund is being created that will be available to small-scale initiatives."*

The statements above were drawn from the 2018 2022 Coalition agreement – 'A new spring and a new voice', by the Amsterdam Municipal Executive Board. The Municipal Executive Councillor of Democratisation, Rutger Groot Wassink, later composed a policy brief containing the goals with regards to this topic. This brief, dated 16 February 2019, states the ambitions of the board in more concrete terms.

"Just like many other large European cities, our city is facing drastic developments such as speculation, mass tourism, growing socioeconomic inequality and a widening gap between people, groups and institutions. Increased alienation is lurking and neglecting social involvement has the potential to exacerbate polarisation, reduce mutual understanding, stifle dialogue, harm tolerance and increase division. We are charged with the honourable task of strengthening the representative democracy, expanding our executive strength and working together to build new, firm foundations for dramatically increased ownership and control in neighbourhoods, inclusive participation and a healthy growth climate for social initiative."

[...] "In Amsterdam, the definition is shifting to initiators, placemakers, cooperatives i.e. 'the Amsterdam Approach' (<https://www.kl.nl/nieuws/directeur-nora-linden-the-amsterdam-approach/>). For example, Amsterdam initiators may be working on similar social objectives. Social initiatives and social enterprises may be facing the same issues or commons may have already been set up. We are working towards signing a commons agreement and the Environmental Planning Bill also offers the

municipality new opportunities for growth and more commons than we may be able to envision at present.”

These quotes clarify the fact that democratisation, as phrased in the coalition agreement and subsequently in the democratisation policy brief, revolves around increased ownership and control for Amsterdam residents. In the years to come, we will be working towards these goals with tools, practices and policy while aiming to improve the balance between residents, government and market players. Various urban networks have been achieving a lot and the democratisation network will be working on implementing a participation paragraph, increased digital democracy and neighbourhood budgets as well as progressive policy such as for the commons in the years ahead.

Co-city developments:

Ma.ak – social agreement

Ma.ak is an initiative by Amsterdam residents for Amsterdam. The mission of the social agreement is to enable cooperation between active Amsterdam residents in order to sustainably increase the city's fairness, inclusivity, health, innovation and initiative. This mission is in line with the ambitions of the current coalition agreement. What is remarkable about this agreement is that it was created by many parties in the city over the course of several months. The agreement was signed by Deputy Mayor Groot Wassink in November and will be elaborated this year.
<https://ma.ako20.nl/>

MAEX

MAEX is an online tool created by the city makers and initiator community, that offers insight into the value (and needs) of social initiatives. The municipality supports this initiative and is exploring how it can play a role in Amsterdam policy for the commons. MAEX developed a 'social handprint': a tool based on SDGs, among other things, for visualising the value and impact of initiatives. This may be comparable to the 'community balance' developed in Barcelona in collaboration with commoners. It turned out to be of great value in terms of enabling the policy in Barcelona.
<https://maex.nl/>

2.2 Open Space

City Alderwoman Touria Meliani (Arts and Culture, Heritage and Digital Affairs).

As the city grows in size and density, open spaces are coming under increasing pressure. The Amsterdam 2018- 2022 coalition agreement states the following: "Amsterdam is unique due to its long tradition of counterculture. The city is rapidly developing which is putting pressure on this culture. This is why we protect the rough edges."

Open spaces are currently being developed based on a sociocultural framework: it is about laid-back resting places, neighbourhood initiatives on undeveloped land (vegetable gardens and urban worm hotels), housing cooperatives with cultural spaces, innovative and non-commercial nightlife culture and large cultural free havens at the edge of the city.

The city currently numbers around 150 cultural development sites, and now wants to clear land for 'free space' as well.

➔ Status: this policy is currently being developed; 10 pilots are scheduled for mid-2020.

Co-city developments:

The Open Space programme is currently being drawn up together with the city. An important part of the assignment has been outsourced to Space of Urgency, an agency with a background and research experience in the squatting movement. Existing cultural development sites and stakeholders are involved in the project.

2.3 Housing cooperatives

City Alderman Ivens (Housing, Construction and Public Space).

Ivens has appointed Maarten van Poelgeest, former City Alderman, as project leader for the housing cooperatives. The objective: the city wants more housing cooperatives for affordable housing. Amsterdam has an enormous construction ambition and challenge while aspiring to keep the city affordable. Several examples: De Warren was recently kicked off, the new *Meent* (a traditional Dutch term for a commons) but older examples exist as well. The housing cooperative as a legal entity has been provided for in the housing act since 2015 and yet Amsterdam has always had multiple ways of living and working together in the city. Several housing groups emerged in the city at the time of the squatting movement, with their very own infrastructure and allocation system. Recently, during the days of the credit crisis, CPOs emerged: construction groups that jointly develop an owner-occupied apartment for a member of the group within a larger project, often led by a project coordinator or contractor. Ever since the housing cooperative was included in the housing act, resident groups are able to create a housing cooperative.

→ Status: this team has been active for a number of years. Further collaboration is being sought.

Co-city developments

De Warren <https://dewarren.co/> is the first self-construction housing cooperative in the Netherlands. In addition to finding a location, financing constitutes a hurdle for this type of project. De Warren uses four types of funding: the majority of the sum constitutes a loan from GLS, a sustainable and cooperative German bank. The 'Participatiefonds Duurzame Economie Noord-Holland' [Noord-Holland Province Sustainable Economy Participation Fund] is another investor plus they use various sustainability subsidies and issue bonds for the final 25% of the project. The bonds are sold at €250 each. There is no limit to how many bonds one can buy and the bonds can be traded.

2.4 Amsterdam Climate Neutral

City Alderman Marieke van Doorninck (Sustainability and Spatial Development).

The councillor wants to shape the energy transition in consultation with the city, upholding climate justice as an important principle. An extensive exploration was conducted together with 'public servant-brokers', front-runners and residents which resulted in the Amsterdam Climate Agreement and the site 'Nieuw Amsterdams Klimaat' [New Amsterdam Climate]:

<https://www.nieuwamsterdamsklimaat.nl/#/>

The Climate Neutrality Roadmap that is currently being developed (partially) relies on a collaboration with front-runners: neighbourhood residents who are committed to innovation and ownership in the neighbourhood. A sum of 150 million was allocated from the climate fund.

→ Status: this policy is currently being developed. Heating commons will be particularly relevant in the years ahead both in terms of the energy transition and placing commons on the agenda.

Co-city developments

There are a lot of inspiring examples for the commons in Amsterdam. In addition to various solar power projects such as <https://www.zuiderlicht.nu/> and Ecostrøm: <https://www.ecostroom.nu/>, three heating commons are being developed: Meerenergie in the Watergraafsmeer area in Amsterdam-Oost: <https://meerenergie.amsterdam>, The WG grounds in Amsterdam West: <https://www.ketelhuiswg.nl/> and Gaasperdam Groen Gas in Amsterdam Zuidoost: <https://www.cocratos.nl/gaasperdamsgroengas/>. Furthermore o2o25 (Amsterdam Climate Neutral in 2025), a civil society initiative, is a partner in the energy transition and receiving funds by the municipality to organise meetups and knowledge sharing. <https://o2o25.nl/>.

2.5 Food: food strategy and circular economy

City Aldermen Laurens Ivens and Marieke van Doorninck

The city is currently working on a food transition that consists of three pillars. One of them is the pillar 'social', which revolves around Amsterdam's appreciation of the social function of food and urban farming projects. Another pillar for the circular economy programme is 'food': avoiding food waste is key in eliminating waste streams.

Co-city developments

The city hosts a lively movement of urban farmers, communal vegetable gardens, communal greenery projects and more. An inventory of these initiatives was made a number of years ago. It can be found here: <https://maps.amsterdam.nl/stadslandbouw?LANG=nl>

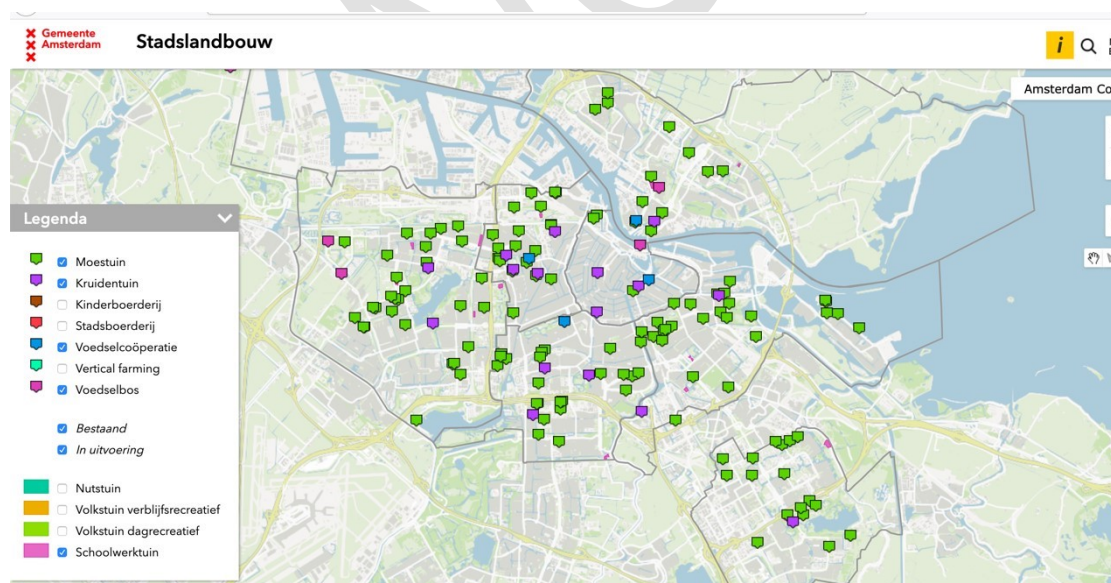


Illustration: urban farming in Amsterdam

Multiple conversations were held with urban farmers based on the commons agenda, including with the City Alderman. NoordOogst is a project in Amsterdam-Noord where multiple projects come together: a butterfly garden, an urban farming project, a sustainable hotel, a restaurant, daycare and more. Kaskantine is located in Amsterdam West, not location-bound:

<http://www.kaskantine.nl/>

2.6 Data

City Alderwoman Touria Meliani

Amsterdam has a digital city agenda: <https://www.amsterdam.nl/wonen-leefomgeving/innovatie/digitale-stad/> A number of priorities: internationally and nationally recognised digital rights and rules with regards to handling the collection of data pertaining to persons in the public space. Safeguard people's privacy as much as possible. Amsterdam residents own the data pertaining to them as much as possible. This applies to data collected by the Amsterdam municipality as well as data collected by companies. In addition, Amsterdam is active in the coalition for digital rights: <https://www.amsterdam.nl/wonen-leefomgeving/innovatie/digitale-stad/samen-digitale-rechten/>

Co-city developments

City projects include: <https://www.amsterdam.nl/wonen-leefomgeving/innovatie/digitale-stad/initiatieven-digitale-stad/>

In addition, De Waag, an active knowledge partner and expert in the commons, is a cooperative partner in the Urban project based on its expertise and network in commons, including in terms of measuring the air quality: <https://buiksloterham.nl/project/5486/hollandse-luchten-in-buiksloterham-> as well as mobility.

Early this year, we organised a well-attended citizens panel on data commons in collaboration with De Waag.

3 National and European context

A number of relevant national and international developments that can support Amsterdam's commons policy further are outlined below. This is a brief exploration rather than an exhaustive list:

Article 2(14) REDII and Article 2(11), IEMD

These European ordinances recognise the renewable energy community and citizen's energy community. This offers important starting points for local commons policy in the energy transition, particularly because the 'energy commons' are recognised so explicitly. In addition, Amsterdam receives further support from the National Climate Agreement that states the objective of 50% local ownership of locally generated electricity.

National Climate Agreement

In the aforementioned National Climate Agreement, the 'energetic society', a partnership of energy cooperatives and civil society organisations, negotiated for the condition of 50% local ownership. This is currently being drawn up in regional energy strategies (RESs).

Municipal Act 150 (Right to Challenge)

At the national level, the right to challenge is currently available for consultation in the municipal law. The House of Representatives intends to include it in article 150 of the municipal law.

The Environment and Planning Act I

The Environment and Planning Act is a future Dutch bill (scheduled for 2021) that aims to achieve a dramatic simplification of the legislative framework for the development and maintenance of the living environment by grouping tens of laws and hundreds of rules into a new bill. Under this new bill, municipalities will have to draft an integral Environmental Plan for their own living environment instead of zoning plans.

A bill, a compliance office and a procedure (from 26 weeks to 8 weeks) will be implemented.

Participation is an important pillar of the Environment and Planning Act. The legislator wants to involve citizens, companies and social organisations in an Environmental Plan at an early stage.

(Citizen) initiatives for the direct living environment are stimulated and will have a better chance of succeeding than in the present situation.

CIVIL SOCIETY DEVELOPMENTS

DAEB

Several civil society organisations are exploring DAEB as a model for collaborating with the government.

<https://europadecentraal.nl/onderwerp/diensten-van-algemeen-belang/>

NCR

Nationale Coöperatieve Raad (NCR) [National Cooperative Council] is the association by and for cooperatives in the Netherlands. The objective: strengthening cooperative entrepreneurship in the Netherlands.

A new cooperative code was recently developed:



Reference: <https://www.cooperatie.nl/>

Some of the principles of the cooperation code: Membership is open and voluntary; members are in charge democratically; cooperatives are self-sufficient and independent; cooperatives are involved in education and training; cooperatives work together; cooperatives contribute to sustainability.

Developments in other cities (including the Urbact network)

Local legislation and policy is being developed in several cities in order to facilitate more commons, both within and outside the Urbact network. For example, Madrid has issued a cooperative ordinance in order to strengthen local democracy, Naples has declared their cultural heritage 'common goods' and entered into partnerships with citizen collectives in order to maintain them for the city permanently. In Bologna, agreements were made about the tools (such as money and support) that will be made available to commoners if the collective organises itself democratically and not-for-profit.

4 The city's legal instruments

This paragraph explores the city's current legal instruments and the possibilities of deploying them for the commons under the header 'legal hack'.

4.1 Ordinances

Based on article 149 of the Municipal Law, municipalities are allowed to draft their own ordinances pertaining to their territory, e.g. the vacancy ordinance. An important ordinance is the APV which prescribes rules for the public space. This pertains to events, festivals, commercial ads and the right to sell alcohol, drugs and such by the public road.

Legal hack:

Subject to conditions, exemptions and permits can be granted for events and such based on general local ordinances. This includes initiatives related to commons. We can temporarily suspend or broaden such conditions, which was done in the case of the 'Free Zones'; this constituted specific policy for pilots in three urban areas with a lot of vacant commercial space, focused on small-scale initiatives. This pilot is not extended because interest was limited. Temporarily suspending or broadening municipal rules remains a possibility.

4.2 Subsidies

Amsterdam offers many subsidies, listed here: <https://www.amsterdam.nl/subsidies/>.

There are 15 subsidy schemes for greenery, 12 for art and culture plus subsidies for entrepreneurship, education and youth, parking and traffic, sports, leisure, work and income, living and living environment, healthcare and support.

Legal hack:

We are working on an integral social initiative subsidy scheme because we have noticed that initiatives by residents do not (want to be) categorised which makes it difficult to facilitate them. Plus, it is costing initiators a lot of time and energy. This integral social initiative scheme is being developed and will focus on policy-transcending initiatives. It is expected to take effect in 2020.

4.3 Public Tender Procedure and contracting

A tender procedure is a process that involves an attempt to obtain a certain service or product by having suppliers apply for it which allows the principal to choose one supplier based on a weighing of factors. These factors are traditionally price and/or quality. In recent years, social value has become an increasingly important factor.

Based on the Public Procurement Law, contractors are required to offer as much social value as possible in each tender procedure. The European Union is taking it a step further by stating that "government services must use tender procedures strategically by purchasing products with a higher social value. For example, goods and services that promote innovation and sustainability, combat climate change, reduce power consumption, improve the employment rate, public health and social circumstances while promoting equality and combating the exclusion of disadvantaged groups.

Irrespective of the legal requirements, social entrepreneurs, social institutions and local residents are growing increasingly explicit in their demand to be involved by the government, in addition to the market, in important decisions which includes public tender procedures.

Legal hack:

The central public administration will be explaining the legal possibilities for concretising social tendering this year.

4.4 Participation Ordinance

Amsterdam has had a Participation Ordinance since 2003. This ordinance provides for citizen participation with regards to policy aspirations and decisions by the municipal administration. Participants can present their views in writing by mail or electronically. The administration may also decide to organise a meeting for verbal deliberation. In addition, committee and council meetings allow for citizen participation.

Legal hack:

The municipality has adopted a participation paragraph. All proposals submitted to the council include a description of how participation has been organised. This will be assessed and possibly expanded later this year.

4.5 Contracts

The municipality may provide buildings and parcels, either temporarily or permanently, based on lease or user agreements, leasehold or purchase. The agreements include social conditions in addition to those pertaining to public order and (fire) safety, environment, energy, waste and hygiene.

Legal hack:

'Kaskantine' is a sustainable neighbourhood project that contributes to the development of the Slotervaart area and awareness about sustainability, urban farming and the circular economy. It is also an important meeting point for residents. Kaskantine wants to lease a parcel from the municipality at a reduced rate because they don't require any traditional utilities such as water, sewage and electricity. Kaskantine provides these utilities themselves which should entail a considerable cost reduction for the municipality allowing them to lease the parcel at a reduced price. This is referred to as a climate-adaptive lease contract, but the municipality does not (yet) offer such a contract. The municipality is in favour of the proposal and is exploring how it can be legally arranged.

4.6 Zoning Plans

Zoning plans will be replaced by environmental planning that will regulate zoning: what is allowed in this location and under what conditions.

Legal hack:

According to the Wabo (Wet algemene bepalingen omgevingsrecht) [General Environmental Planning Act], (temporary) deviations from assigned zoning can be allowed for a maximum of ten years. In addition, we are exploring the possibility of assigning 'open space' to area plans and including 'mixed functions' in new environmental plans.

4.7 Vacancy Ordinance

A vacancy ordinance requires real estate owners to report vacancy, mandates vacancy deliberation and allows for a municipality to propose tenants for vacant premises as well as issue fines in extreme cases.

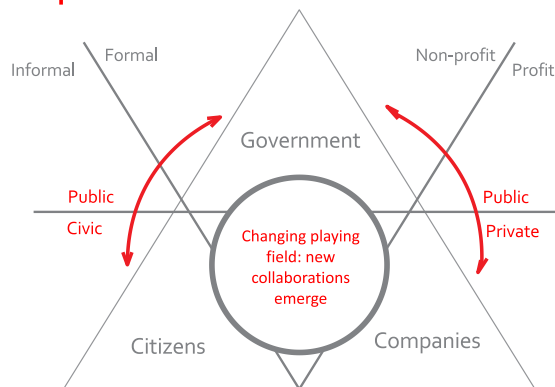
Legal hack:

The vacancy ordinance offers the possibility of invoking article 6 thereby proposing a user as well as to prioritise commons upon allocating the use of vacant space/buildings in the city.

5 The way forward: towards more collaboration with and for the urban commons

What inspires us are the lively local democratic practices that emerge from the perspective of the commons. Urban commons imply more local democracy in addition to increased ownership and control. We do not organise public value as a government nor do we leave it to the market; we give citizen collectives the opportunity and tools to create public value themselves:

Illustration: public-civic collaborations for public value



Commoning as a third route?

'That's why I tell economists that if you ignore the commons, you're ignoring one of the most vibrant spaces of the 21st century economy'
(Kate Raworth in *our commons: political ideas for a new europe*)

14

In Amsterdam, we are working on strengthening the Urban Commons in several ways. We do this in collaboration with commoners in various reference cases and with colleagues from many directions. We are currently co-designing the commons policy approached from the perspective of the following themes: food (Kaskantine/NoordOogst), energy (Gaasperdam Groen Gas) and cultural free space (Vrije Ruimte). Based on the knowledge and experience of the city's commoners and inspired by the 'community balance' in Barcelona, we are working on an 'value case' in order to facilitate integral financing as well as more public-civil partnerships and in other locations and domains as well.

This is how we are working towards an ordinance that, together with the value case and the aforementioned integral financial scheme, will act as a foundation for the Bureau Maatschappelijk Initiatief [Social Initiative Agency] that will be launched later this year: a co-city desk for initiators and the municipality.

6 Annex 1 - References

"the municipality actively supports the creation of commons in areas such as the energy transition, healthcare or neighbourhood activities. The municipality shares best practices and provides legal advice" (coalition agreement)

"We are working towards a signed commons agreement and the environmental planning bill also offers the municipality new growth opportunities and more commons than we might be able to envision right now" (democratisation policy brief)

"Commons such as energy cooperatives, food cooperatives, housing cooperatives and other citizen collectives are supported with (legal) advice and constructive collaboration" (Ma.ak)

"Research, experiments and active collaboration in public-civil partnerships in various places and domains (themes) in the city" (Ma.ak)

7 Annex 2 – Platform Recommendations 31

Knowledge and network organisation *Platform31* is researching trends in the city and region. They connect policy, practice and science concerning current issues and explored various solutions to bottleneck rules in the 'Ruim op die regels' publication. Below, a brief summary of several important recommendations.

Some examples of solutions to bottleneck rules:

1. Social tendering

An official tender procedure is not always necessary in order to finance social initiatives. Subsidies provide an alternative.

2. Liability

Social initiatives can address unclarity pertaining to liability in a collaboration agreement. In addition, they can explore the municipal volunteer insurance and take out a director's liability insurance if they are a legal entity.

3. Taxation

Renovation of old community centres may cause the real estate appreciation value to increase which in turn elevates the revenue tax payable by the initiative. The municipality can freeze the revenue tax, offer exemption or subsidy as compensation.

4. Lenient zones

Urban farming is being initiated by residents more and more but it is usually not included in the zoning plans. A municipality may issue a lenience order, allowing residents to get started quickly.

A lot of volunteers who are active in social initiatives are required to seek work. A municipality may temporarily exempt them from this obligation.

Cleaning up rules not necessary?

The experiment programme reveals that legislation doesn't have to be adjusted in order to execute the *activities* of the initiatives. Existing legislation often offers enough possibilities but they need to be sought actively. It then takes a lot of resilience to ensure proper legal understanding of these possibilities. An important factor is to keep in mind the intention of the rule.

Toolkit

Platform31 offers tools for initiators, municipalities, the Ministry of the Interior and Kingdom Relations and for VNG [association of Netherlands municipalities].

Tools for initiators:

1. 1) Identify bottleneck rules with precision and examples.
2. 2) Organise legal knowledge if not present in-house. The rules often permit more than you think.
3. 3) Discuss bottleneck rules with the municipality, address the essence of the law rather than its literal wording.

4. 4) Inspire with your passionate ambition and formulate a common interest for your initiative.
5. 5) Create results and make them visible, even at a small scale. It energises and generates trust.

Tools for municipalities

1. 1) Offer experiment status to innovative social initiatives if possible.
2. 2) If necessary, include an experiment provision in local legislation.
3. 3) Offer social initiatives a legal knowledge voucher for professional support for things like requesting a permit, tax returns or a subsidy application.
4. 4) Create a municipal initiative office and appoint initiative brokers who can provide answers to questions that social initiatives are entitled to get the answer to.
5. 5) Organise an initiative chamber within the municipality. Multiple departments participate in order to generate multiple interest perspectives when seeking solutions to bottleneck regulation.

Tools for Ministry of the Interior and Kingdom Relations

1. 1) Offer a stage to experiments and pilots through national programmes and point to local and national experimentation possibilities within the current legislation.
2. 2) Adopt an interfacing role between ministries in order to open bottleneck legislation that affects multiple ministries for discussion. For example, interfacing with the Ministry of Social Affairs and Employment with regards to bottlenecks affecting volunteers on welfare.
3. 3) Stimulate knowledge development and knowledge sharing with best practices.

Tools for association of Netherlands municipalities

1. 1) Develop model contracts and model agreements for municipalities and social initiatives.
2. 2) Develop a General Local Ordinance that includes an experiment provision.
3. 3) Offer a helping hand by creating an initiative office, appointing initiative brokers and creating an initiative chamber.
4. 4) Stimulate knowledge development and knowledge sharing with best practices.

Social discussion

Utilising the room offered by legislation demands extra effort from social initiatives and governments alike. In addition to the aforementioned practical tools, a more fundamental discussion is required about stimulating initiatives and what role the government should play in that context. Questions for the future:

1. 1) How far can the government go to remove hurdles affecting social initiatives without losing sight of various interests?
2. 2) How do governments decide whether or not to utilise more or less leniency within the law in order to help progress social initiatives? Based on what values are these decisions made?
3. 3) How far does a municipality or a social initiative want to go in terms of gaining a deep understanding of the rules? How much time, energy, knowledge, money can one afford to invest?
4. 4) How can social initiatives and municipalities develop into equal partners?

8 Annex 3 – International inspiration: Cooperation Ordinance Madrid

(in Spanish, waiting for translation)

Urban Commons Policy/Regulation Canvas

DEFINING THE URBAN COMMONS (30 minutes)

TYPOLOGY OF RESOURCES

Energy, food (production and foodwaste), (data), affordable housing, free space

TYPOLOGY OF USERS

Amsterdam residents in a broad sense, inclusive, everybody with respect to the rules and values of the commons

POLICY ENDS / PUBLIC VALUES

Circular economy, food security, local ownership of the commons, sustainability, innovation, local, direct democracy

SCALE

Micro, meso and macro scale: food, arts, data, energy

PRINCIPLES

URBAN COMMONS GOVERNANCE (60 minutes)

INTERNAL MANAGEMENT AND SUSTAINABILITY MECHANISMS

What principles, features, characteristics should urban commons governance mechanisms bear? Self-organization and civic autonomy, openness in management and non exclusivity in use, responsibility and entrepreneurship, *multistakeholder*ship and transparency, mutual trust and informality, sustainability and innovativeness? Other?

- direct democracy: one (wo)man, one vote
- creating public value: like sustainability, circular economy, lively neighbourhood, social value, inclusive diversity

What kind of internal decision-making mechanisms should urban commons have? Should they be designed to guarantee their economic sustainability and if so how should economic sustainability be guaranteed?

- continued transparency and openness is important
- most is up to the commoners,
- important to the public authority is if they're respecting local laws, the environment, local surroundings and residents

CITY-COMMONS LEGAL TOOL AND PARTNERIAL DIALOGUE METHODOLOGY

Civic Uses Recognition / Collaboration Pacts / Cooperation Agreements / Value Labeling? How should the legal tool strike the balance between rights and obligations among the parties? How should the City identify the Urban Commoners, through collaborative dialogue, Accreditation, Self - emergence?

- self emergence
- accreditation by legal framework/ regulation framework/ co-city agreement

INSTITUTIONAL ARRANGEMENTS

What kind of resources should the City put in place to enable the urban commons (e.g. internal office, external entity such as a foundation, funding, logistics, training/mentoring, digital tools)? At the central/district/neighborhood level?

- Legal support, financial support, technical support
- Resources: land, buildings, access to information

EVALUATION MECHANISM (30 minutes)

Describe the evaluation mechanisms to measure the public value produced by the urban commons, indicators to be used and subdimensions, as well as techniques/process/steps to implement the evaluation.

- MAEX: valuecase by self-regulation in combination with accreditation
- working together in quintuple helix with local universities

MONITORING (15 minutes)

Describe the monitoring, conflict resolution, and sanctioning mechanisms to be implemented internally by the urban commoners and externally by the city

- in progress

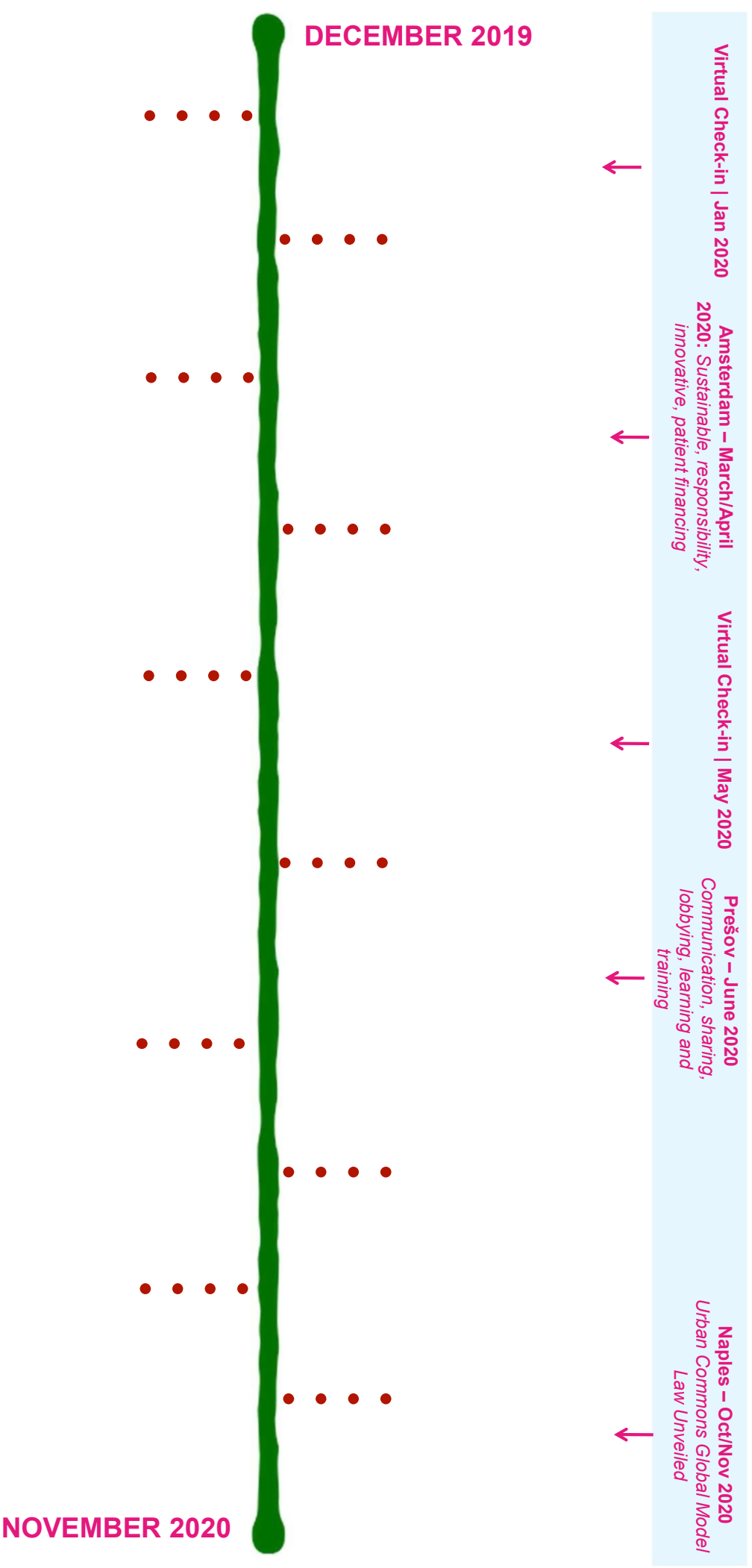
ANY OTHER ELEMENT (15 minutes)

Describe any other element you think it's necessary in the design of a policy or regulation enabling the urban commons

Building a good working relationship with commons by opening a 'special desk' for the commons and legal support

Urban Commons Policy/Regulation Timeline

Describe your city's policymaking timeline. What's the schedule of ULG and LAWG agenda to co-produce your city policy regulation? Fine tune them with the transnational timeline milestones represented by the virtual check-ins and the transnational meetings. Include a detailed roadmap composed of milestones, ULG meeting plan, experimentalns, transnational meetings, treasure box inputs (30 minutes)



BARCELONA



**Directorate of Active Democracy and Decentralisation
Councillor's Office for Citizenship Rights and Participation
Area of Culture, Education, Science and Community Affairs**

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www.bcn.cat/participaciocitadana/ca/patrimoni-ciutada

www.bcn.cat/participaciocitadana/en/citizen-assets

CITIZEN ASSETS PROGRAMME FOR COMMUNITY USE AND MANAGEMENT

Legal and judicial analysis document

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Barcelona, December 2019



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1. Introduction¹

This report aims to analyse the legal and judicial context upon which the **“Citizen Assets Programme for Community Use and Management”** started in 2017 by Barcelona City Council, is based. The aim of the programme is to support, promote and strengthen citizen initiatives for the community use and management of municipal public assets (real estate, vacant lots and facility management). This programme is based on the rationale that what is public (municipal property) can become common (citizen assets) by means of new forms of interaction between municipal public institutions and community citizen initiatives, based on recognising citizens' right to community use and management of public property.

These are associative initiatives that have emerged spontaneously from among city residents who, finding that the administration is not addressing their social needs, are organising themselves in ways to meet community needs. This phenomenon must be understood by the public administration as a new opportunity for the management of collective resources and citizen co-responsibility. These public-community practices have a long tradition in the city of Barcelona where different participative models and types of shared management of municipal assets and resources have been implemented; assigning the use of assets to non-profit entities, the Empty Land Site Plan, and the civic management of facilities (which, apart from assigning the use of assets also involves the indirect management of a municipal service). These **public-community experiences are what pave the way for what is known conceptually as “common assets”**²

The objective of this report is **to analyse the instruments and challenges permitted and offered by the current municipal legal framework in Barcelona around strengthening and promoting common urban assets**. From a legal point of view, it is essential to bear in mind that the concepts of “common assets” or “urban commons” are not concepts known in Law, but are neologisms for which there is currently no legal recognition. However, if we study their various elements, some light can be shed

¹ Information taken from the *Strategic Citizen Assets Plan 2019-2023 New agenda of policies that foster public-community collaboration* (Barcelona City Council, 2019); and *Urban Commons--Citizen Assets Conceptual framework and proposed lines of action*. (Barcelona City Council, Castro, Fresnillo i Martínez, 2016).

² “Common assets” is understood to mean the social relations that arise among communities organised around the use and management of shared assets through democratic forms of governance. Therefore, we are not referring to a type of economic asset (public, private, etc.) or a specific resource (natural, heritage, etc.), but to some group-action institutions made up of a triad composed of: (1) the existence of a resource that belongs to the community; (2) an active community that takes part in managing this asset; and (3) a set of rules for managing it that outline its form of government and are characterised by the universality of access, democracy in its management, and sustainability in its use.



on this phenomenon from Law: **"Urban commons" are public resources and assets, a defined community, and a set of rules.**

This definition enables us to identify the aspects that must be kept in mind when organising this report into different sections: in the identification of the (2) *Legal instruments that prepare Barcelona's common urban assets*; in the analysis of the (3) *Judicial limitations of the legal instruments and the criteria for improvement*; and in exposing (4) *Legal lessons learned and challenges for further study*.

To this end, **during the period 2018-2019 Barcelona City Council's Directorate of Active Democracy worked with other city council areas as a *Local Administrative Working Group (LAWG)*** to draft the present *Preparatory Legal Brief*. This document is the outcome of the coordinated work to compile different analysis reports on the legal and judicial implications of the Citizen Assets Programme³.

The following have participated in the LAWG to this effect:

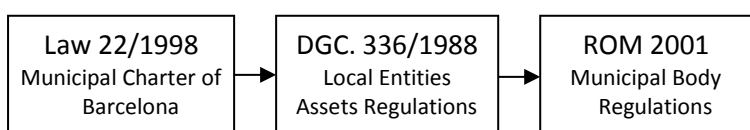
- *Directorate of Active Democracy and Decentralisation*, with the preliminary conceptual and strategic development of the "Citizen assets programme", with the collaboration of the *Solidarity Economy Network*, the *Community Spaces Network*, the *Hidra Cooperative* and the *Ekona Cooperative*.
- *Directorate of Heritage*, with compiling a legal and judicial analysis report on "assigning property" classified as public domain and public assets.
- *Directorate of Legal Services of the Technical Programming Office*, with compiling a legal and judicial analysis report on the "civic management" of municipal services.
- *Directorate of Community Action*, with compiling a report about the challenges of applying "civic management" in Neighbourhood Civic Centres. This report was compiled in conjunction with the *Citizen Management Platform*, the *General-Services Directorate* and the *Services for People and the Territory* of the 10 Barcelona districts. This legal and judicial analysis task culminated in an extraordinary session of the LAWG on 19 December 2019, in which 36 representatives of all the districts took part.
- *Col·lectiu Ronda - Lawyers cooperative*, with the conceptual preparation on a legal level and the exploration of possible legal alternatives for "common urban assets".

³ The *Bibliographic references* section (5) of this report contains the full set of legal and judicial reports concerning urban commons, citizen assets and civic management in Barcelona compiled by Barcelona City Council during the period 2016-2019.

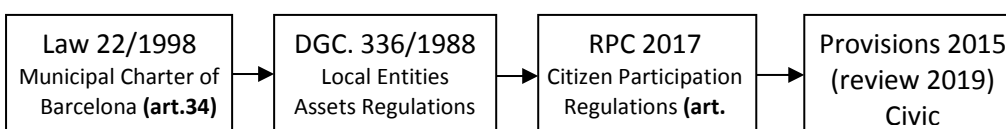
2. Legal instruments that enable Barcelona's common urban assets.

First and foremost, this report aims to identify the legal and judicial instruments that enable policies to promote “common urban assets” in Barcelona. To this effect, what follows is a classification of the relevant articles, the objective of which is to regulate the adjudications of: *the assignment of the use of property to non-profit entities*; and *the collaboration agreement for the management of municipal services by Barcelona’s non-profit entities*.

Assignment/permission for non-profit entities to use public assets (2.1)

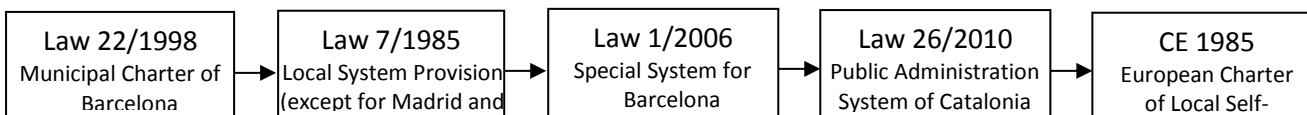


Collaboration agreement for the civic management of municipal services by non-profit entities (2.2)



Law 22/1998, on the Municipal Charter of Barcelona, is the main legal instrument that provides for the promotion of the assignment/permission to use property and the civic management of facilities by non-profit entities. Based on this Law, and by *Legislative Decree 2/2003 corresponding to the consolidated text of the Municipal act and the local system of Catalonia*, the *City Council Framework Regulations* were developed in 2001, the *Citizen participation Regulations* in 2017, and the model of the *Provisions for the Civic Management of Facilities for Barcelona City Council activities and services* in 2015 (revised in 2019).

Laws that provide for the powers pertaining to Law 22/1998 of the Municipal Charter of Barcelona (2.3)



Procedure acts for assigning public assets for use and in civic management collaboration agreements (2.4)



2.1 Assignment/permission for entities to use public assets

Act 22/1998, of 30 December, on the Barcelona Municipal Charter (art. 13)

<https://www.boe.es/buscar/pdf/1999/BOE-A-1999-2518-consolidado.pdf>

Article 13. 1. The Mayor is the President of the Municipal Council They have the following responsibilities:

n) To offer contracts and concessions of all types that do not exceed 1 billion pesetas, including those of several years' duration but less than 4 years, provided the accumulated amount of all the yearly amounts is no more than the cited quantity.

*o) To propose the acquisition of property and rights if their value does not exceed 1 billion pesetas, and the **disposal of the any assets that do not exceed the amount indicated in the following cases:***

First. The disposal of property, provided it is included in the budget.

Second. The disposal of property, except for assets recognised as having historic or artistic value, which is not contemplated in the budget.

Decree of the Generalitat 336/1988, of 17 October, approving the Regulations for Local Authority Assets (art. 41-42-49-55-57-58-59-60-72-73)

<https://portaldogc.gencat.cat/utillsEADOP/PDF/1076/1211905.pdf>

Article 41.

*41.1. The disposal, encumbrance or **assignment of property must be agreed by the Full Meeting of the City Council.***

41.2. The assignment agreements and the disposal agreements, in the latter case if the corresponding amount is in excess of 10% of the ordinary resources of the budget, must be adopted by absolute majority of the legal number of members of the Council. For the purposes of this Regulation, ordinary resources are understood to be the usual ones that derive from current operations, except for credit operations, capital operations and operations that arise from special contributions, urban planning quotas and special purpose subsidies.

*41.3. **Acts of encumbrance and acts of disposal that are not those determined in article 41.2 can be delegated to the Government Commission.***

Article 42.

The disposal of citizen assets must be done through public auction, in accordance with the local authorities' regulatory standards for contracts, except if it is an exchange and with the exceptions set out in the following articles:

Article 49. Assignment

49.1. Local authorities can assign citizen assets for free:

a) To other public administrations or authorities.

b) To non-profit private entities which must use them for public purposes or in the social interest, provided they meet or contribute to meeting local interests.

49.2. *The assignment agreement corresponds to the Full Meeting of the local authority, and it must determine the specific purpose to which the beneficiary institutions or entities must put the property, previously documented [...]*

Article 55. Use of public domain assets

There are different types of use of public domain assets:

- a) Common, general or special use.*
- b) Private use.*

Article 57.

57.1. *Private use consists of the direct or immediate occupation of part of the public domain, limiting or excluding its use by other interested parties.*

57.2. *Private use that does not entail the transformation or modification of the public domain is **subject to the granting of a temporary occupation license**, which constitutes a temporary possession situation that is essentially revocable in the public interest and with the right to compensation, where appropriate. [...]*

Article 58.

Special and private common uses subject to license can give rise to the levying of taxes and public sector charges, which will be fixed by the public administration body that authorises them.

Article 59.

Private use inherent to the affectation of the assets, and which entails the transformation or modification of the public domain, is subject to Government franchise, the request for which must be resolved within a period of six months, leading to dismissible effects should no resolution be found.

Article 60.

60.1. *The mayor is responsible for granting the licenses, and the Full Meeting is responsible for the concessions, with an affirmative vote from the absolute majority of the legal number of members of the Council when licenses are granted for more than 5 years, and the amount of the public domain assets is more than 10% of the ordinary resources of the budget. It will be understood that the value of the assets corresponds to the amount that could be obtained for them if they were not private property.*

60.2. *The concessions must be adjudicated by means of public bid, in accordance with the following articles and the regulations governing local authority contracts.*

Article 72. Use of citizen assets

72.1. *Citizen assets must be administrated in accordance with maximum profitability criteria, under the usual conditions of civil and commercial practice, either directly by the local authority or through private entities.*

72.2. *The lease and any other form of assignment of use of citizen assets must be done through public auction or, exceptionally, by means of public bid.*



72.3. Notwithstanding the content of the previous section, the local authorities can appraise such reasons as the provision of social services, social promotion and reinsertion, cultural and sporting activities, the promotion of urban planning, the fostering of tourism, free time activities, or similar, where social profitability prevails over economic profitability.

Article 73.

The documentation of assignment of use of a citizen asset, for which the Full Meeting is responsible, must include the justification of the opportunity or interest, and its classification as a citizen asset and the technical evaluation must be authenticated.

City Council Framework Regulations approved by agreement of the Municipal Council plenary session on 16 February 2001 (BOPB, n.64 of 15-03-2001) (art. 30)

https://bcnroc.ajuntament.barcelona.cat/jsui/bitstream/11703/114343/1/ROM_consolidat_CAST.pdf

Article 30. Municipal Council Responsibilities

24. To assign assets to other local authorities, public institutions or private entities, free of charge, in cases authorised by the regulations governing municipal property.

2.2 Collaboration agreements for the civic management of municipal services by entities

Act 22/1998, of 30 December, on the Barcelona Municipal Charter.(art.34)

<https://www.boe.es/buscar/pdf/1999/BOE-A-1999-2518-consolidado.pdf>

Article 34.

Non-profit citizen entities, organisations and associations can exercise municipal powers, or participate in representation of the City Council, in the management of services and facilities owned by other Public Authorities. Civic management of municipal assets can be used for activities and services liable to indirect management, are always voluntary and non-profit in nature, and are adjudicated by means of public bid when there are different entities or organisations with identical or similar characteristics.

Decree of the Generalitat 336/1988, of 17 October, approving the Regulations for Local Authority Assets (art.41-42)

<https://portaldogc.gencat.cat/utillsEADOP/PDF/1076/1211905.pdf>

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Article 42.

The disposal of citizen assets must be done through public auction, in accordance with the local authorities' regulatory standards for contracts, except if it is an exchange and with the exceptions set out in the following articles:

Reglament de Participació Ciutadana de l'Ajuntament de Barcelona, aprobado por acuerdo del Plenario del Consejo Municipal de 6 de octubre de 2017 (BOPB, 30-10-2017) (art.111)

https://bcnroc.ajuntament.barcelona.cat/jspui/bitstream/11703/106138/1/BOPB_Reglament_participaci%3fb3_Ajubcn.pdf

Article 111. Civic management of municipal services and facilities

1. ***Non-profit citizen entities, foundations, organisations and associations may exercise municipal powers, or take part on behalf of the City Council, in managing services or facilities that belong to other public authorities. All these entities may collaborate in the exercise of municipal***

powers through their projects and activities. They can also collaborate in the management of services and facilities that belong to other public authorities.

2. Voluntary civic management of municipal powers may be used for activities and services eligible to be indirectly managed. This will always be non-profit in nature and awarded through a public tender process in which various entities or organisations with similar or identical characteristics will take part.

3. Civic management involves the obligation to allocate all the profits that may be produced to the programme or facility managed.

4. Agreement must be facilitated and promoted with the association network to manage sectoral programmes and facilities decided by the City Council, including potential co-management by means of agreements, while seeking to ensure universal access and service quality. The conditions of the management must be determined at the same time as the terms and conditions of use are established specifying, on applying Section 3, the proper allocation of the financial gains that may be generated and regulating the composition and functions of the citizen monitoring committee which users must belong to. The means of electing user members of this committee must likewise be decided at this time.

Model of provisions for the Civic management of facilities for Barcelona City Council activities and services [amending the 2015 provisions] (BOPB, 02-08-2019)

https://bcnroc.ajuntament.barcelona.cat/jspui/bitstream/11703/115187/1/BOPB_model_bases_gestio_civica.pdf

Sixth provision Procedure for selecting the managing entity

The managing entity will be selected by means of a competitive public process open to all entities interested in undertaking the civic management of the facility To this effect, the call will be published in the Official Bulletin of the Province of Barcelona (BOPB) at least 15 working days prior to the last day for presenting proposals, which will include the required documents set out in the eighth provision. This information can also be disseminated by other municipal means _____, stating the date of publication in the BOPB.

Once the period for presenting proposals has ended, the Evaluation Committee established in the eleventh provision will examine the proposals presented (the project and the descriptive technical report must be compiled following the format previously decided by the City Council and, where necessary, with the collaboration of the associative network), check compliance with the requirements set out in the provisions for applying for civic management, and the preliminary weighting of the evaluation criteria set out in the tenth provision, and will formulate a proposal for the competent authority to pass the corresponding resolution.

*The civic management will be formalised **by means of signing a collaboration agreement**, which must contain the aspects provided for in article 111.3 of the Citizen Participation Regulation, and will be approved by the competent municipal authority.*

Appendix 1.- Conceptualization of the Civic Management (Government Commission Agreement, 25 July 2013).

https://bop.diba.cat/temp/04_022015010598.pdf

I.- Concept.

Civic management is a citizen participation instrument by which non-profit entities are assigned to manage municipal activities and services that are eligible to be indirectly managed. One of the main objectives of civic management is to promote citizen/association participation in public interest initiatives, including in management itself.[...]

I. - Characteristic features

In civic management, the entity's experience and knowledge must add value to the management project, and to citizen participation processes, and there must be the opportunity to apply this experience and knowledge efficiently and in a way that is better adapted to the particular situation, and with the voluntary involvement of citizens in both decision making and carrying out the activities [...]

Non-profit entities, associations and organisations tied to the territory or in the operational sector corresponding to the management interest can be the subjects of civic management. This tie to the territory involves there being existing representative, proximity and collaborative relationships between the entity and other organisations, and their participation in community dynamics. In all cases, the entities that wish to take part in a civic management project must meet all the necessary requirements to be able to receive subsidies and they must have a proven track record of their action in the area of associations, citizen participation, and community interest projects. Only municipal activities and services that can be managed indirectly and at the same time can serve as a channel and as instruments to facilitate citizen participation can be the object of civic management.

This model cannot be used in judicial relations, the object of which is constitutive of a works, supplies or defined services contract under the Consolidated text of the Public Sector Contracts Law.

The City Council will decide which activities, facilities and services shall be subject to civic management after consultation with the pertinent associative network.

The civic management will be formalised by means of a collaboration agreement and, despite the establishment of bilateral obligations, the City Council will not take part in the legal ramifications of public sector contracts. To this effect, it is not a type of public services management contract, and its reach cannot impinge on the basic regulations on matters of public sector contracting or the applicable community directives.

This agreement must include a time frame that is sufficient to be able to develop the civic management project.

Civic management requires that there is a descriptive technical report covering all the elements involved in the management (purposes, objectives, areas of action, organisation, evaluation system, and so on.) This report and/or the corresponding technical documents will be approved by Barcelona City Council. The pertinent associative network can take part in compiling this report.

The civic management will be carried out on a voluntary and non-profit basis on the part of the entity, and should there be any financial profit derived from this management, it must be assigned entirely to the service or activity.

Civic management is not an instrument by which premises can be assigned for use by non-profit entities to develop private activities. This purpose is achieved through the legal precept that provides for the regulatory standards of public authority assets.

III.-Formal elements: prior definition of the project, drafting and approval of the applicable provisions, procedure to determine the manager and way to formalise the civic management

Prior definition of the project.

Civic management requires that an initial technical report is compiled which attests to the suitability of a specific municipal service or facility to be managed by means of this type of citizen participation. It must also describe the main features of the civic management project, and propose with supporting arguments the way to designate the entity that will be responsible for this, in the sense of whether a collaboration agreement will be directly formalised or if this decision will be based on the outcome of a competitive process, depending on whether there are one or more entities representative of the sector or territory with the capacity to take on this management. This report must include an economic-financial study of the expenses and income expected for the civic management, especially including the amount in subsidies and budgetary credit that will be attributed to it.

The project can be developed by the City Council or the associative network.

Drawing up and approving the Applicable Provisions.

Once this report has been issued, the competent municipal authority must draw up and approve the Provisions that will serve to determine the requisites with which the entities that wish to opt for civic management must comply, and will include the weighting criteria to appoint the management entity, and the commitments that the two parties involved must agree to. These criteria can include, among others, those related to ties with the territory, previous experience in the sector, number of associates, degree of innovation and creativity of the project, and so on. When a competitive process requires that the management project is produced by the entities, its content will be evaluated (methodology, programming, participation channels, etc.)

Without prejudice to the provisions that must govern each specific civic management project, developing some generic provisions applicable to all cases of civic management may be considered.

Procedure to determine the manager 3.1. Public competition

Once the supporting report has been issued and the Provisions approved in accordance with the previous two sections, the procedure to determine the entity to which the civic management will be adjudicated will begin. To guarantee free competition among all the interested entities, the call will be published in the Official Bulletin of the Province and through other dissemination means, and a time period will begin for the entities to present their proposals together with the documents that provide evidence of their suitability in accordance with the requisites previously established in the Provisions of the call. Once the public scrutiny period has ended, a Commission constituted as set out in the Provisions will decide which entity the civic management

agreement will be formalised with, together with supporting arguments and following the criteria previously established in the Provisions.

3.2. Direct adjudication:

In cases where the nature of the project or the facility to be managed means that the civic management can only be entrusted to one entity, this fact should be stated in the project report referred to in the first section. In these cases, the call does not need to be publicised, notwithstanding the fact that to complete the process the competent authority must provide supporting arguments for the decision to formalise the civic management with the entity proposed in the preliminary report.

Where the adjudication is direct and there is no competitive process, this adjudication is, obviously, casuistic in nature, which precludes total prior objectivation. **The following are causes for direct adjudication:**

When after having made a public call, no entity has put themselves forward, or none of the entities that have submitted a proposal have presented a management project that is suitable for the purposes previously defined by the City Council.

When for reasons of a technical or social nature only one entity can be entrusted with the management assignment. More specifically, this situation will occur, for example, when only one entity has a social purpose adapted to the objectives that motivate and justify the civic management of a specific facility.

Formalising the civic management.

The civic management is formalised by means of a collaboration agreement approved by the competent municipal authority, which includes the aforementioned provisions. The content of these Provisions will include the following aspects, among others: prohibition of assigning or transmitting the condition of civic manager, duration, maintenance and conservation- where relevant- of the municipal installations or property, management indicators and control, economic system, designation of channels of participation, management system of the auxiliary or complementary installations (for example, bar-cafeteria), causes of termination, etc.)

IV. - Employment aspects

As stated above, civic management is a citizen participation model for managing municipal activities and services, so under no circumstances may the establishment of an employment type link be considered between the people the entity assigns to run the civic facility or service and the city council, given that this would clearly contravene the regulations on public operations. [...]

V. Economic Aspects

The economic aspects of the civic management must be included, in line with the project's financial-economic study, in the provisions or in the collaboration agreement where the managing entity is directly designated. The municipal contribution is designated exclusively to implementing the approved project. The concepts eligible for subsidy will be defined in the provisions, as will the form and deadline to justify the subsidy in line with the general regulations for subsidies approved by the City Council.[...].

2.3 Laws that provide for the powers pertaining to Law 22/1998 of the Municipal Charter of Barcelona

Act 7/1985, of 2 April, Governing Local Government Regulations (art.25-92 a)

<https://www.boe.es/buscar/pdf/1985/BOE-A-1985-5392-consolidado.pdf>

Article 25. Competences

1. To manage its interests and in the area of its competences, the City Council can promote activities and provide public services that help to meet the needs and aspirations of the local community under the terms set out in this article [...]

Article 92 a. Local government civil servants with national authorisation.

1. These are public functions required in all local government, whose administrative responsibility is reserved for local government civil servants with national authorisation:

- a) The function of Secretary, including public authority and preceptive legal advice.
- b) Control and internal audit of economic-financial and budgetary management, and of accounts, the treasury and revenue.

Nonetheless, in municipalities with large populations, the provisions of Title X of the present Law are taken into account, and **in the municipalities of Madrid and Barcelona the regulations contained** in Act 22/2006, of 4 July, on Capital Status and the Special Regime of Madrid, and in **Law 1/2006, of 13 March, governing the Special Regime of the Municipality of Barcelona**, respectively, are taken into account.

Act 1/2006, of 13 March, on the Special Regime of the Municipality of Barcelona (art,2-3)

<https://www.boe.es/buscar/pdf/2006/BOE-A-2006-4583-consolidado.pdf>

Article 2. Guarantee of municipal autonomy

1. In accordance with the autonomy guaranteed to the municipalities by the Constitution, and pursuant to the provisions in the Statute of Autonomy of Catalonia and the European Charter of Local Self Government, Barcelona City Council's right and effective capacity to organise and manage public matters that affect its citizens is recognised, within the framework of the legal system and under its own responsibility and in the interests of its inhabitants.

2. For the effectiveness of this autonomy, the present Law confers upon Barcelona City Council, in accordance with its capacity for management, competences in matters of infrastructure, the maritime-terrestrial public domain, telecommunications, Historical Assets, mobility, citizen security, local justice, and the municipal Tax Office. Likewise, and in compliance with the provisions of article 2 of Act 7/1985, of 2 April, governing Local Government Regulations, the sectoral legislation of the State will designate, where appropriate, competences in the area of services and infrastructures that are essential for the development of the city.

Article 3. General competences clause

*Barcelona City Council **will be able to promote all types of activities and provide all the public services that contribute to meeting city residents' needs that are not expressly designated to other public administrations.** Additionally, activities and services complementary to those developed by the state and regional administrations can also be carried out.*

Act 26/2010, of 3 August, on the legal system and procedures of the public administrations of Catalonia (art.108-109-110-111-112)

<https://www.boe.es/boe/dias/2010/08/21/pdfs/BOE-A-2010-13313.pdf>

Article 108. Collaboration agreements General characteristics

- 1. For the purposes of the present Act, a collaboration agreement is understood to be any agreement that is subject to public law, from which direct legal obligations are derived for both parties, irrespective of the name of the instrument it contains.*
- 2. The instruments that are restricted to establishing general agreements of a programmatic or declarative nature, without obligatory direct effectiveness and whose compliance is not legally required, are considered to be protocol agreements, irrespective of their name.*
- 3. The public administrations of Catalonia can sign agreements and protocol agreements with other public administrations, and with the public bodies and entities dependent on or linked to them, in the area of their respective competences, and to achieve common interest objectives.*

European Charter of Local Self-Government. Opened for signature in Strasbourg on 15 October 1985 (art.4)

<https://www.boe.es/buscar/pdf/1989/BOE-A-1989-4370-consolidado.pdf>

Article 4. Scope of local self-government

- 1. The basic powers and responsibilities of local authorities shall be prescribed by the Constitution or by Law. Nonetheless, this ruling does not preclude local authorities from being assigned powers for specific purposes, in accordance with the Law.*
- 2. Within the area of the Law, local authorities have complete freedom to take the initiative in all matters that are not within their competence or are designated to another authority.*

2.4 Procedural laws for assigning assets for use and in civic management agreements

Law 33/2003, of 3 November, Public Administration Assets (art. 92-93-137-145)

<https://www.boe.es/buscar/pdf/2003/BOE-A-2003-20254-consolidado.pdf>

Article 92. Authorisations

1. Authorisations are granted directly to the petitioners that fulfil the required conditions, except where for any circumstance their number is limited, in which case they will be granted on a competitive basis, and where this is not appropriate, and to not have to assess special conditions in the applicants, by means of a draw, if no alternative has been established in the conditions governing authorisations. [...]

4. Authorisations can be revoked unilaterally by the granting Administration at any time where it is in the public interest to do so, without the right to compensation, when this authorisation is incompatible with the general conditions approved at a later date, where damage is being done to the public domain, where use for major public interest is being prevented, or where general use is hindered.

Article 93. Public domain concession

1. Concessions on public domain assets are granted on a competitive basis. Notwithstanding the above, a concession may be granted directly in the cases referred to in article 137.4 of this Act, in exceptional and duly justified circumstances, or in other cases established by law.

2. Whatever the procedure followed for the adjudication, once the concession has been granted it must then be formalised in an administrative document. This document will have sufficient authority for the concession to be registered in the Property Register.

3. Concessions will be granted for a specific time period. Their maximum duration, including any extensions, cannot exceed 75 years, unless a shorter period is established in any special rules that may apply.

Article 137. Types of disposal of property

4. Direct adjudication can be agreed in the following cases:

a) When the transferee is another Public administration or, in general, any other legal entity governed by public or private law belonging to the public sector. To these effects, a legal entity governed by private law belonging to the public sector is understood to be the limited company in whose capital one or various public administration or legal entities governed by public law are, either directly or indirectly, majority shareholders.

b) When the transferee is a non-profit entity, declared to be of public use, or a legally recognised church, religious faith, or religious community.

c) When the property is needed to fulfil a public service function or to fulfil a general interest purpose by a person different to those stipulated in paragraphs a) and b).

Legislative Decree 2/2003, of 28 April, approving the consolidated text of the Municipal Act and the local government system of Catalonia (art. 200-201-202-203-206-209-211-212)

<https://www.boe.es/buscar/pdf/2003/DOGC-f-2003-90008-consolidado.pdf>

Article 200. Classification of assets.

Local authority assets are classified as public domain assets or citizen assets.

Article 201. Public domain assets.

- 1. Public domain assets are those subject to **public use or to local authority public services**, and those declared by the law as such. Communal property is also considered to be a public domain asset.*
- 2. Assets designated for direct use by private individuals are understood to be subject to public use.*
- 3. Assets which, due to their nature or particular organisational arrangements, are adapted essentially or exclusively to the specific purpose of the service, are understood to be subject to public use.*
- 4. In all cases, any local authority property in which the City Council's headquarters and their bodies and services are located, are public domain assets.*
- 5. Also subject to the public domain system are the real property rights that correspond to local entities over property belonging to other people, when these rights are established for the use of some of the property stipulated in the previous sections, or in pursuit of the public interest ends equivalent to those that the property serves.*

Article 202. Communal assets

Communal assets are those used by all local residents. They are subject to the legal system of public domain assets, without prejudice to the specific regulations that govern their use.

Article 203. Citizen assets

*Citizen assets are those that **belong to the local authority and are not directly designated for public use**, or are not used to provide any public service within the local competence, or for use by all local residents. They are governed by the provisions of their specific legislation and, where there is none, by private law regulations.*

Article 206. Acquisition of assets

- 1. The local authorities have full legal capacity to acquire all types of property and rights, and to possess them, and also to start any proceedings and appeals in defence of their property.*

Article 209. Disposal and encumbrance

- 1. The disposal of citizen assets and rights for valuable consideration requires compliance with the regulations on the procurement of local citizen assets and rights.*
- 2. To dispose of or encumber property classified as a citizen asset, the following rules must be taken into consideration:*

a) Property classified as a citizen asset can be disposed of by means of public bid, public auction or direct adjudication. The ordinary procedure for disposing of property is the public bid. [...] d) The department responsible for local government matters must issue a preliminary report if the value of the asset or the encumbrance is in excess of 100,000 Euro. If this value is not exceeded, a preliminary report from the secretary of the local entity must be included. The report from the department must be issued within 20 days. If the department report is not favourable, the Full Meeting must adopt the disposal agreement with the requisites established by article 47.2 of Spanish Act 7/1985, of 2 April, governing Local Government Regulations. In municipalities where there is a large population and in the municipality of Barcelona, the preliminary report from the department is only required if the value of the property or the encumbrance exceeds 25% of the ordinary resources of the Council's consolidated budget.

e) Expert valuation by the local technician is required to authenticate the valuation of the property or the encumbrance.

f) The creation of charges and levies on citizen assets must respect, where applicable, the requisites established for the encumbrance.

Article 211. Free assignments of assets

1. Local authorities can assign citizen assets to third parties for free by means of previously opening a file which determines at least the following:

a) **The purpose for which the asset is assigned and the fact that this is to the advantage of the population of the local authority.**

b) Justification that the purpose of the assignment cannot be accomplished if the local authority keeps control over or co-control over the assets, not even by constituting real rights over them.

2. Before the Full Meeting approves the assignment, the file must be subject to public scrutiny for a minimum period of 30 days, during which time claims and observations can be submitted.

Article 212. Free assignation of property

1. Citizen assets can be assigned for use on a free basis:

a) To other public administrations or authorities.

b) **To non-profit private entities that must designate them for public use or in the social interest, provided that they complement or contribute to meeting local interests.**

2. The assignment agreement must determine the final purpose for which the beneficiary entities and institutions must designate the assets.

Act 9/2017, of 8 November, on Public Sector Contracts, transposing the Spanish legal regulation, the Directives of the European Parliament and the Council 2014/23/UE and 2014/24/UE, of 26 February 2014 (art.9)

<https://www.boe.es/buscar/pdf/2017/BOE-A-2017-12902-consolidado.pdf>

Article 9. Legal, business and contract relationships excluded in the areas of the public domain and citizen assets

1. **Excluded from the present Law are the authorisations and assignments of public domain assets and the contracts for the use of citizen assets that are different from those defined in article 14 [Works assignments contract], which will be regulated by their specific legislation except in cases where the prescriptions of the present Law are expressly declared to be applicable.**

2. Also excluded from the present Law are sales contracts, donations, exchange agreements, leases and other similar legal businesses on property, and marketable securities and intangible assets, provided they do not fall to computer programmes and must be classified as supplier or services contracts, which will always be private contracts, governed by property legislation. In these contracts, only services typical of the standard contracts regulated under Section 1 of Chapter II of the Preliminary Title may be included, provided their estimated value is no more than 50% of the total amount of the business and provided that, with the service characteristic of the property contract, relationships of linkage and complementarity are maintained under the terms provided for in article 34.2.

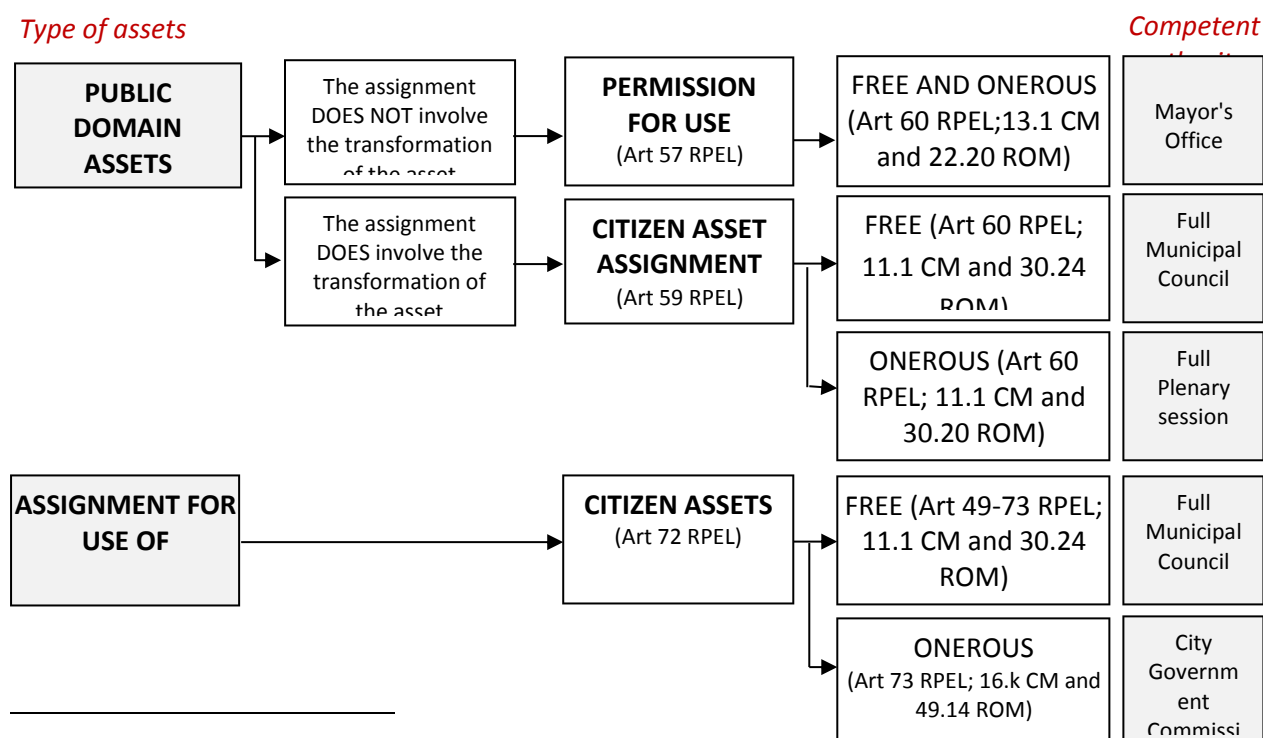
3. Judicial limits of the legal instruments and criteria for improvement

Up to now, this report has analysed the legal instruments that provide for the municipal policies in Barcelona and Madrid for assigning public assets to non-profit entities. The limits of the legal and judicial instruments for promoting “urban commons” in their three defining areas will now be set out: (3.1) *public assets*, (3.2) *the communities* and (3.3) *regulations and conditions of assignment*.

3.1 Public assets and the implications of their urban planning classification⁴

In *Legislative Degree 2/2003, of 28 April, on the Municipal Law and the local government system of Catalonia*, the types of existing assets are classified, based on article 200. **The assets classified as “public domain” (which includes the sub-type of communal assets)** must be destined for public use or for the public services of the local authority aimed directly at private individuals. On the other hand, the **assets classified as “citizen assets”** are the property of the local authority and they do not necessarily have to be destined directly for public use.

The procedure for assigning these assets to non-profit entities (legal form of the communities organised) involves different legal conditions depending on the type of assets:



⁴ Information taken from *Competence in approving the use of Public Assets* (Barcelona City Council, 2018); and from *Urban Commons - Citizen Assets. Legal framework and regulatory proposals* (Barcelona City Council, Torra i Prado, 2016)

If the assignment of an asset classified as “public domain” does not involve transforming/modifying the asset, then it is carried out by means of the “permission for use” formula (art. 57 Local Authority Asset Regulations, DGC 336/1988) with a maximum duration of 4 years by Mayoral Decree, irrespective of whether it is free or onerous. This assignment can be carried out by direct adjudication to a non-profit entity (art. 92.1 Public Authority Property Law 33/2003). In accordance with the Municipal Charter, if the public domain asset is assigned for more than 4 years, even if it is with an extension, the approving authority is the Full Commission if there is payment for provision of the service, or the Full Municipal Council if it is free.

If the assignment of an asset classified as “public domain” does involve transforming/modifying the asset, it is carried out by means of the “citizen asset assignment” formula (art. 59 RPEL) with a maximum duration of 50 years (art. 61c RPEL). In contrast, if it is a free assignment it has to be approved by the Full Municipal Council, and if it is an onerous assignment the competent authority is the City Government Commission.

The assignment of an asset classified as a “citizen asset” is carried out by means of the “assignment for use” formula (art. 72 RPEL) with no established maximum duration and with the need to justify the “general interest” to which the direct and/or free adjudication of the asset to a non-profit entity responds. Free assignments for use must be approved by the Full Municipal Council; assignments with payment for provision of the service require the agreement of the City Government Commission and are accountable to the corresponding Full Commission. It is theoretically possible that the assignment is for longer than 50 years, but this has not yet happened. When assignments are for longer than 50 years, surface rights are usually constituted, but up to now this has only been the case where the Generalitat de Catalunya has created schools or Primary Health Care Centres. Thus, there must be very well justified reasons why, exceptionally, the duration of an assignment is more than 50 years.

Three main limitations are identified:

1. The urban planning classification of the assets and their legal implications are often one of the main problems in harmonising community needs and the availability of public assets on offer (activity uses allowed in the space, structure, duration).
2. The lack of assets classified as “communal” in the city of Barcelona, and the fact that legal precedents at a state level are restricted to “Minor Local Entities” in rural settings.
3. The need to define some regulated criteria and indicators concerning “the general interest” of the community project and how the beneficiary entity is tied to the territory that legally justify the direct adjudication of the assignment of the space with some conditions or others concerning durations and canon.

3.2 The community and its legal forms⁵

One of the constituent elements of “urban commons” is the existence of a community. Communities, associations and social agents can take different legal forms: associations, foundations or federations or other less formal types such as citizen platforms or informal groups. The problem posed by the legal personality of the social stakeholder lies in the fact that one of the fundamental contents of any agreement is the identification of the parties, and that these must have full capacity to comply with the obligations derived from any agreement made.

Regarding both the assignment for use of municipal assets and collaboration agreements for the civic management of facilities, Barcelona City Council only signs these agreements with legally constituted entities with their own legal personality. Nonetheless, for administrative purposes, the capacity to act is regulated by Law 39/2015, of 1 October, on the Common Administrative Procedure of the Public Administrations⁶, and entities without a legal personality, or affected groups, can also have this when the law so declares:

Article 3. Capacity to act

Under the provisions of this Law, the following have the capacity to act before the Public Administrations: a) Physical/Legal persons that have the capacity to act depending on the civil regulations.

[...] c) When the Law expressly declares this be the case, affected groups, unions and entities without a legal personality and independent or autonomous assets.

The objectives of the communities formally constituted in entities and associations can be directly or indirectly linked to the management of a public space or a sector of interest (neighbourhood, health, nature conservation, youth, etc.). Some of these may be entities with roots and a long tradition in the territory and others are constituted specifically to take on the task of managing a specific space. However, **the significant element of the entity must be its participative essence, its capacity to mobilise and the absence of profit-making.**

The adjudication of the assignment or civic management of a facility is a convenient strategy for promoting participation and commitment to the territory in the case where there is an entity tied to the territory with the capacity to act. However, the indicators to measure the quality of the

⁵ Information taken from the *The Collective Management of Public Spaces and Facilities Guide* (Generalitat de Catalunya, 2015); and from *The civic management of common urban assets. Criteria for the Design of a Municipal Policy* (Barcelona City Council, 2018).

⁶ Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations <https://www.boe.es/buscar/pdf/2015/BOE-A-2015-10565-consolidado.pdf>

management do not enable measurement of the added value above the direct management or the indirect management via contract. To this effect, and to objectify criteria like “tied to the territory”, the following items have been incorporated into the Public competition provisions approved for the civic management of different facilities:

- *Have a head office or branch in the neighbourhood. Where appropriate and with supporting arguments, Barcelona City Council can authorise the establishment of the head office in the municipal facility to be managed, but the manager must commit to changing their registered office when the civic management ends or if it is revoked.*
- *Have objectives and purposes linked to promoting activities related to the social and community improvement of the territory.*
- *To have been active for at least 5 years and have the voluntary support of its members in the entity's projects/activities.*
- *To be affiliated to the Ethical Code of Associations or to other codes, or to have applied for this.*
- *Have been active in the area of associations and/or in citizen participation and/or in community interest projects in the reference neighbourhoods where the centre is located for the last five years.*
- *Have carried out activities in the last five years in the area of associations or civic management.*
- *Belong to a second or third level network or entity in the neighbourhood/district/city.*

The entities tied to the territory are used to working in a network with other entities, and they often form second level structures (federations, etc.) to take on new tasks, for example the civic management of a facility (Neighbourhood Centres, Youth centres, etc.). To manage local facilities it is important that the entity is from the territory and has a consolidated social base, both for the added value of legitimacy and for the capacity of mobilisation to take on the management task. Moreover, when communities have associative strength they have continuity over time and their commitment remains stable irrespective of the local authority's electoral periods and cycles. However, the associations can also change over time in terms of their capacity, with fluctuations in the soundness of their projects despite the stability of their foundational objectives.

Regarding the community, three limitations are identified on a legal level:

1. The need for the communities and groups to have a legal personality to be able to establish relationships with the city council.
2. Regarding the direct adjudication of the assignment of property, there is the difficulty of legally justifying that a project or entity really does represent the community and its interests.
3. Regarding the civic management of facilities, the variability over time of the entities' mobilisation and participation capacity, and therefore the need to adapt to the management capacities/needs of the entities in different types of public-community collaboration.

3.3 Rules and conditions for assigning public assets and “civic management”⁷

In Barcelona, the proliferation of different community practices has meant that over the last few decades, Barcelona City Council has had to position itself in this area by establishing regulations and developing actions concerning these practices. Some of the main municipal initiatives are: (1) *assignment and permission to use municipal premises* (Local Plan and other actions) and *vacant lots* (Empty Land Site Plan) *classified as citizen assets or public domain assets*; and (2) *the assignment for use of public assets together with funding in the form of “collaboration agreements” for a municipal facility or service* (Civic Management).

The procedural rules for adjudicating property for a community initiative, article 212 of Law 33/2003 (Public Authority Property), establish that **assigning property for free to non-profit entities can occur when it is destined for the purposes of public use or social interest, provided that this use complements or contributes to meeting local interests**. Specifically, when local authorities assign “citizen assets” for use they can positively value motives such as the provision of social services, cultural activities, etc., where social profitability prevails over economic profitability (art. 72 Local Authority Asset Regulations, DGC, 336/1988). The same can be applied to “public domain assets”, but these remain subject to a temporary occupation permit being granted, which brings about a precarious possession situation that can be revoked for reasons of public interest (art. 57 RPEP.). Nonetheless, there is an evident lack of precision in the standard regulated criteria and/or indicators.

Regarding the deadlines for assignment, Law 40/2015 on the Public Sector Legal System came into effect on 2 October 2016, establishing for the first time an exhaustive set of regulations for agreements between public authorities and private entities. Article 49.h1 establishes a maximum validity of 4 years for all agreements, but this can be lengthened via a ruling. The general interpretation of Law 40/2015 is that it is applicable to all agreements but, as the law states, it can be amended by the approval of a specific municipal ruling.

Moreover, there are two different ways to proceed for adjudicating the “Civic Management” of facilities: by public competition or by direct designation. It is understood that eliminating competition is not desirable, and neither is eliminating direct designation, and that each case must be considered on its own merits given that there are cases where the nature of the project or the facility means that its management can only be undertaken by one particular entity. The Model of Provisions emphasises “community” management above competitions, wherever justified.

⁷ Information taken from *Urban Commons - Citizen Assets Legal framework and regulatory proposals* (Barcelona City Council, Torra i Prado, 2016); from *The Civic Management of Common Urban Assets. Criteria for Designing a municipal policy* (Barcelona City Council, 2018); and *Civic management in Barcelona. Notes for a situational map and proposals for improvement* (Barcelona City Council, 2019)

To this effect, however, it is established that adjudication depends on technical justification that this is an entity with a project that: has a sufficiently authenticated track record of action in the area of associations; is identified as the only representative entity of the sector or territory with the capacity to undertake the management task while guaranteeing experience in the sector, the fact of being tied to the territory, number of associates, degree of innovation and creativity of the project (purposes, objectives, areas of action, organisation, evaluation system).

The regulations derived from the Municipal Charter of Barcelona (Law 22/1998) must co-exist with the European, Spanish and Catalan corpus of legislation regulating public procurement and subsidies, which notably limits room for manoeuvre. Civic management must not be a type of procurement to manage public services, and neither must its reach involve prejudicing the basic regulations on matters of public sector procurement nor the community directives applicable to such matters. For example, the law is very clear that civic management is not an option in cases involving works, supplies and services as defined in the Public Sector Contracts Law.

However, on a legal level, direct municipal management of services, indirect management (through public procurement) and civic management have their differentiated spaces depending on their characteristics, potentials and limits. **Specifically, the legal framework for civic management is underpinned at its core and in a consubstantial way by the “participative” dimension in providing services.** While the main justifications for direct management and indirect management are equality and efficiency, respectively, the main justification for civic management is participation. To this effect, the civic management justification regarding legal interpretation is mainly underpinned by the authentication of the “general interest” objective circumscribed in the promotion of citizen participation, the reinforcement of associationism and/or civic involvement in the management of municipal services or facilities. For example, the fact that people go from being passive users of a facility or service (clientèle rationale) to being co-directors or co-participants in its management and decision making (citizen rationale).

Civic management is coordinated by means of two elements: The assignment of the property and subsidy/funding. Not forgetting that these factors do not necessarily imply a public service management, this can be considered to be a differentiating feature: it is the management of a municipal service by the community, of what are known as complementary activities; or it is a sui generis form of managing community projects. The use of the word “service” as the object of civic management has been seen to be problematic, so its use must be focused on and restricted to an interpretation of “a broad, and to a certain degree indefinite, set of actions”: community activation service; or directly as “management of a facility”; civic centre service, Youth Centre service, etc. And regarding “funding”, these cases are governed by the subsidy regulations: “direct subsidy”. A procedure that is technically justified using the same parameters as the procedure for assigning the use of property, providing evidence of the impossibility of promoting public competition given that a

single entity suited to developing the project has been identified for reasons of being tied to the territory and the active community.

Hence, Decree 2015 (amended in 2019), on the Model of Provisions for Civic Management, works with the following conceptual delimitation: **“civic management of facilities, for municipal activities and services”**. Civic management is a citizen participation instrument by which non-profit entities are assigned to manage municipal activities and services that are eligible to be indirectly managed. Only municipal activities and services that can be managed indirectly and at the same time can serve as a channel and as instruments to facilitate citizen participation can be the object of civic management.

Through the entity, civic management must contribute the added value of experience, the fact of being tied to the territory and knowledge in citizen participation processes. This tie to the territory involves there being existing representative, proximity and collaborative relationships between the entity and other organisations, and their participation in community dynamics. To this effect, suitability must be considered in terms of the representativeness of and how tied to the territory the second-degree entities of a neighbourhood are, despite each sector or territory having their own casuistry: neighbourhood, youth, educational, social support, sporting, etc.

Thus, regarding public-community relations, and especially in relation to “civic management”, three legal limitations are identified:

1. The need to legally define some specific criteria concerning “participation” in the management of municipal services and facilities.
2. The need to legally define some specific regulated criteria about how an entity is tied to the territory and the community that justify the suitability of direct adjudication/competition for the “civic management” of a municipal service or facility.
3. The need to delimit the application of the “civic management” formula for managing municipal services or facilities depending on the entities’ capacities of mobilisation and participation, from which different “mixed” management formulas of the community project can be derived.

4. Legal lessons learned and challenges to be explored

Regarding the task of establishing new administrative-legal structures upon which a consolidation and promotion policy for “urban commons” can be developed, three different issues are identified: The first is to do with what has been learned from the process undertaken by Barcelona City Council derived from the “Citizen assets programme for community use and management”, to (4.1) define a new legal-administrative framework. The second is to study the three legal lines that present themselves in relation to (4.2) public assets, (4.3) the communities and (4.4) the public-community relationship, which better capture the essence of what is considered to be “urban commons”, enabling us to consolidate the practices established:

4.1 Legal-administrative proposals for promoting “urban commons”⁸

Having analysed the elements that would constitute the development of what could be considered to be the “urban commons” of Barcelona, an approach to what could be legally structured from Barcelona City Council based on the programme needs to make. Below are a series of organisational and technical proposals that enable us to place legal knowledge of the community use of municipal property at the centre of the policy:

- **Citizen Assets Board.** Structuring a collegiate governing body for the community management of municipal assets and to coordinate areas and districts when deciding on adjudicating property to non-profit entities. A Board that meets monthly comprised of Participation representatives (Active Democracy and Community Action), Heritage, Areas (Urban Ecology, Social Rights, Institute of Culture, Solidarity Economy) and Districts. *Officially constituted in November 2017.
- **Circular on the internal operational circuit of the Citizen Assets in Adjudicating Municipal Spaces programme.** Drafting the adjudication circuit and procedure and the criteria for which cases and conditions will be considered to be assets for community use. * Approved July 2019
- **Citizen Assets Technical Office** The constitution of an internal management body for the programme coordinated from Participation (Active Democracy and Community Action) and Assets. The tasks are focused on assessing the entities when creating the project and

⁸ Information taken from the *Strategic Citizen Assets Plan 2019-2023. New agenda of policies that foster public-community collaboration* (Barcelona City Council, 2019); and *Urban Commons-Citizen Assets Conceptual framework and proposed lines of action*. (Barcelona City Council, Castro, Fresnillo i Martínez, 2016); and *Urban Commons - Citizen Assets. Legal framework and regulatory proposals* (Barcelona City Council, Torra i Prado, 2016).

compiling the Community Balance Sheet; drafting the evaluation reports about the projects; monitoring and surveying the use of the premises assigned for use; updating the citizen assets catalogue and coordinating with the areas and the Citizen Assets Board. *Created November 2019.

- **Citizen Assets Catalogue of Property for Community Use and Management** Drawing up a public dissemination instrument for the census of public assets assigned to non-profit entities and the assets eligible for inclusion in the programme. * In progress
- **Community balance sheet** Defining a (self)-assessment tool based on social criteria to monitor the project and its impact. These criteria or guiding principles must enable us to define, evaluate and demonstrate that we are dealing with a social, open and participative use of a collective resource that is democratically and community managed by entities and projects that seek the common good. The criteria are thus the framework by which the mechanism to access and be assigned these public resources is regulated, and they are the means by which a new self-evaluation mechanism can be created as a kind of Community Balance Sheet that has been agreed with the communities themselves, which facilitates the monitoring of these experiences and the (self)evaluation of their impact to help measure the impact of the community task. *Pilot version completed in March 2019. *The final version is in progress.*
- **Citizen Asset participative body: space of governance** Creating a participative-type body with a large citizen component in which all their interests are represented, and that can act as the representative body in this extremely important area of community and municipal management. This organ will be responsible for monitoring and evaluating the level of application of the principles of the Citizen Assets Programme, and for making rulings in relation to possible contentious claims about a specific asset. * In progress

4.2 Communal assets, public domain license and a new urban planning classification⁹

“**Communal assets**” are the assets that the Law recognises as belonging to a community, managed by neighbourhood bodies, also known as Minor Local Entities, which either guarantee their universal use by all the residents, or ensure that their private use is adequately compensated for in the community. This traditional concept responds perfectly to the concept of “urban commons” as it is currently being reformulated. This is the most important aspect among all of those analysed: giving

⁹ Information taken from *Urban Commons - Citizen Assets Legal framework and regulatory proposals* (Barcelona City Council, Torra i Prado, 2016).

back to citizens the sovereignty of their assets. However, there is the drawback that the city of Barcelona does not have this type of asset or the neighbourhood/participative structures that would enable them to exist. On the other hand, there is no legal impediment to creating “urban communal assets” and giving them a form of community government to administer them. The number of inhabitants in the municipality is also usually seen as an impediment, making it difficult to guarantee the universal and equal use of communal assets among everybody. To this effect, it is in our interest to find alternatives at the district or neighbourhood level which provide a suitable community dimension .

- **Exploring the possibility of changing the classification of a “citizen asset” to a “communal asset”.**

With the classification of communal asset, use of the asset is common to all local residents (communal use system) and the administration and conservation of these assets corresponds to a neighbourhood Committee, or to an equivalent local entity, or in other words, communal responsibility is exercised through the minor local entity, which is a body that must be universal in character. All the expenses must be covered by this body and its members, and this responsibility cannot be delegated to the public administration. The minor local entity’s annual accounts must be surrendered. This typology strengthens the component of inalienability and fits in better with the rationale of community initiatives. Communal assets are inalienable, unseizable and imprescriptible. Barcelona presently has no Communal Assets, so this is an option that requires additional work and is suggested as a long-term option that can be tested out with a specific case. Regarding the advantages and disadvantages of changing the legal classification of property to a communal asset, the only available examples are in rural settings, given that there are no urban communal assets. In the case of the city, the main limitation would be universality, which is the basic feature of this concept. This is why the possibility of creating territory level universal representative bodies to be able to fulfil this requirement similar to the Minor Local Entities (and the Neighbours Committees in rural settings) needs to be analysed. This is why it is unusual even in the rural world for real estate to be declared as a communal asset. This is much more usual in the case of intangible assets or common use assets (rural world: with firewood, woods, mills; in the urban world: Internet, TV, radio, water).

To this effect, in the city of Barcelona, the implications of the *Citizen Participation Regulation* in regulating the territorial participation bodies known as the “Neighbourhood Councils” (Art. 60-61)¹⁰ and the implications of the *Regulations of the functioning of the districts* in relation

¹⁰ *Citizen Participation Regulation of Barcelona* (BOPB, 30 October 2017):
“Article 60. The Neighbourhood Councils Definition.”

to the “Facility Councils” (Art. 50) needs to be analysed¹¹.

There is also the “**public domain license**”, implemented by Sabadell City Council¹², which is a license to use and carry out an activity in a public asset for private gain, or its use by an entity or group to

The Neighbourhood Council is a community-strengthening and political participatory body for local residents regarding neighbourhood matters. The sphere and name of each Neighbourhood Council is established by agreement with the Municipal Council.

They are channels for citizen participation in the development of local community public policies, which foster social cohesion and improve the quality of neighbourhood life.

Article 61. Composition of the Neighbourhood Councils

1. The Neighbourhood Council is made up of the following members:

- a) The chairperson of the Neighbourhood Council, a position occupied by the district councillor; [...]
- b) Neighbourhood entities and associations, existing groups and platforms, and any citizens and local residents who wish to take part.”

¹¹ Regulatory standards of the functioning of the districts (BOPB, 23 October 2001) :

https://bop.diba.cat/temp/08_022015020912.pdf

“Article 50. Composition and functions

- 1. The Civic Centres of the districts, the neighbourhood facilities, the sporting facilities and, in general, the facilities that determine the internal regulations of the districts, should have a Facilities Council.
- 2. This Facilities Council will be chaired by the District Councillor or whoever the Minister in the Generalitat of Catalonia delegates. Representatives of the entity managing the facility, representatives of the user entities, and individual representatives of the users will also form part of the Council. Minister of the Generalitat of Catalonia will also form part of the Council in accordance with the internal regulations of each District.
- 3. The composition, electoral system and operation are regulated by each district’s internal regulations.
- 4. They will have the basic functions of monitoring the management and the programming.”

¹² Regulations for assigning the ongoing use of municipal spaces to non-profit citizen entities (BOPB, 5 January 2017): https://bop.diba.cat/temp/01_022016023284.pdf.

“Article 6. Nature of the concession and its formalisation.

The administrative act approving the public domain licenses regulated in this Regulation will contain the full text of the agreement to be signed between the City Council and the entity. Citizen Assets is responsible for its administrative processing.

The beneficiary entity must be a private entity which, by virtue of this activity, does not enter into a relationship of dependency with the City Council in any area. The City Council accepts no liability for any actions or omissions of any type that may occur inside the premises, and is therefore neither directly nor subsidiarily responsible for any material, personal or moral damage that may occur, without prejudice to the cover provided by the policies signed by the council that name the non-profit entities mentioned in Article 2 of this Regulation as beneficiaries.

The authorisations for use agreed by the City Council will be formalised with the beneficiary entities by means of agreements, which will be signed in representation of the City Council by the Mayor or the councillor who has been delegated responsibility for municipal assets and, for the entity, by the representative granted the legal capacity to do so by the Statutes, or the person from the collegiate governing body with the authority to do so.

The agreements will be made without detriment to the right to property without harm to others, and shall therefore not entail a transfer of ownership of the premises assigned for use, such that Sabadell City Council will preserve all the rights inherent to ownership of the property, except for its use, which can be recovered should unforeseen circumstances make it necessary to do so.

carry out their social objectives. To formulate this policy, an asset reserve must be made in favour of the entities for whom recognition of the community activity by the public administration, who is creating this instrument precisely to support community initiatives of public interest, would be automatic. The licenses would determine the duration, with the advantage of being indefinitely renewable, as is the case with any administrative permit, provided that the requirements leading to the assignment for use are met. This would also guarantee the reversal of the situation in the case of non-compliance. The monitoring body would be responsible for monitoring and controlling at the City Council, dispensing with the requirement for community participation in the governance or the need to draw up public policies that affect them. This initiative guarantees a more effectively controlled process and reversibility, and it does not have the drawback of the limitations that the agreement usually formalised when assigning a citizen asset for use has.

- **Study the possibility of developing the “public domain license” to be a license to use public property to carry out an activity for private gain by a non-profit entity to implement its community project.**

With this license, the administrative authorisation does not have the limitations of concessions of spaces, especially those concerning the duration of the agreements since the license is renewable indefinitely. The license is a major recognition of the activity that takes place in the space, one of the demands of the community groups and experiences. For this procedure, the change to the legal classification of assets would need to be approved by the City Council's Full Council, accrediting its pertinence, and regulations would need to be drawn up to organise the license, together with the model of the contract for the assignment of the use of spaces that accompanies the public domain license. The regulations must define the beneficiary entities, the duration (to be able to surpass the four-year limit established by Law 40/2015), who will be responsible for monitoring, and the criteria and conditions of use. The different licenses and authorisations for use will be approved by the Governing body.

In addition to the general regulatory requirements, the document formalising the assignment for use must explicitly and mutually recognise that the beneficiary entity of the assignment a precari does not enter into a relationship of dependency with the City Council and the use of the asset is free and simply accepted. The Commission will be informed of all the assignments for use by the Area responsible for matters concerning Assets. The agreement can anticipate the creation of a monitoring committee specifically for that agreement or for a set of agreements for a municipal space, which will ensure strict compliance with the authorisation for use and the agreement that formalises it. [...]

Article 23. Termination of the contract.

The public domain licenses granted by the City Council will be revoked for the reasons provided for in the Public Administrations Property Law and in agreement with the Asset Regulations of the local authority, for the reasons provided for in the assignment for use agreements in force, and for the reasons outlined in this Regulation”

Finally, another policy that would be interesting to study is the **creation of a new type of urban use** which guarantees the asset reserve in favour of community initiatives or initiatives whose aim is community building. Based on this new classification, the city's general plan (General Metropolitan Plan) should be amended to include the public spaces that are determined by means of participative processes. All these regulatory changes would enable us to change the use to which a property is designated through the general planning instruments. An administrative intervention of this type would enable us to change the use of certain spaces, using the "community use and management" model. This use would be compatible with instruments like the public domain license, assignment for use, civic management, and the potential creation of communal assets.

- **Study the possibility of changing the urban classification and thus the use to which certain spaces are put, with the aim of creating a new type of use of vacant lots, which makes reference to "community use and management".**

The idea is to create, through planning, a new urban key and to delimit the spaces where this new key is implemented. This option would be compatible with other instruments such as the public domain license, civic management, and the potential creation of communal assets. It can be developed for both citizen assets and public domain assets (it is different to the classification of the asset itself, since here it refers to the use (urban classification)). This enables the definition of urban uses that would be compatible or complementary to this new urban planning key. This proposal means amending the General Metropolitan Plan or incorporating the metropolitan Urban Planning Master Plan.

4.3 Citizen entities and groups

With the approval of *Madrid City Council's Public-Social Cooperation Byelaw* in 2018, Madrid City Council establishes entities and "citizen groups" as subjects of collaboration with the city council¹³. While the figure of non-profit entities is recognised by the legislation referred to in the administration of assets, the figure of citizen groups is new in legal terms. This figure aims to be an umbrella for legal purposes for the existing diversity of informal associative forms that communities and organised citizenship take.

- **Explorar la possibilitat de crear una nova figura jurídica que doni cobertura a la diversitat de formes associatives informals que prenen les comunitats i la ciutadania organitzada.**

¹³ Madrid City Council's Public-social Cooperation Ordinance, Full Council agreement, 30 May 2018 (BOCM no. 140, 13-6-2018): http://www.bocm.es/boletin/CM_Orden_BOCM/2018/06/13/BOCM-20180613-25.PDF

Seria factible utilitzar la mateixa cobertura legal emprada per l'ordenança de l'Ajuntament de Madrid. Concretament defineix en l'article 7.2 que *"tendrán la consideración de colectivos ciudadanos sin ánimo de lucro las agrupaciones de tres o más personas físicas, distintas de las previstas en el apartado anterior, inscritos en la sección 3.a del Censo Municipal de Entidades y Colectivos Ciudadanos"*, en l'article 7.3 que *"se considera que un colectivo ciudadano no tiene ánimo de lucro cuando las actividades que desarrolla no tienen carácter lucrativo y no existe reparto de beneficios, directos o indirectos, entre las personas que sean miembros del mismo"*, en l'article 7.4 que *"los colectivos ciudadanos sin ánimo de lucro deberán reunir los siguientes requisitos: a) Tener domicilio en el municipio de Madrid. b) Que sus fines tiendan a la promoción del interés general y sean de carácter deportivo, cultural, educativo, científico o promuevan los derechos humanos, los valores constitucionales, la igualdad, la diversidad, la lucha contra la violencia de género y la LGTBI fobia, el acceso universal a los servicios sociales, la participación ciudadana, la cooperación al desarrollo, la defensa de las personas consumidoras y usuarias, la defensa del medio ambiente, la defensa y promoción de los derechos de las personas con discapacidad y sus familias, la sostenibilidad, el fomento de la economía social o de la investigación, la promoción del voluntariado social o la atención a las personas en riesgo de exclusión social; i en l'article 7.5 que "El régimen de responsabilidad de las personas integrantes de los colectivos ciudadanos que participen en la realización de actividades de cooperación público-social será el establecido en el Reglamento Orgánico de Participación Ciudadana"*.

4.4 New forms of mixed management and sustainable procurement in the management of services

There is currently no perfect and ideal legal formula for public-community relations that protects and promotes "common urban assets." Given that civic management is justified, in terms of legal interpretation, by the accreditation of general interest circumscribed in "promotion of citizen participation", legal alternatives must be explored:

- **Studying "mixed management and co-management" models for managing facilities and services¹⁴.**

The "mixed management and co-management" model for managing municipal facilities and services has less room for legal interpretation, given that it is part of public procurement for

¹⁴ Information taken from the *The Collective Management of Public Spaces and Facilities Guide* (Generalitat de Catalunya, 2015); and from *Civic management in Barcelona. Notes for a situational map and proposals for improvement* (Barcelona City Council, 2019)



the indirect management of services following *Law 9/2017 (Public Service Contracts)*. Furthermore, it is a model provided for by the *Citizen Participation Regulation of Barcelona* (Art. 111.4) where it is stated that “agreement with the associative network for managing sectoral programmes or facilities determined by the City Council must be encouraged and promoted, including the possibility of co-management by means of establishing agreements”. And specifically, it states that in this agreement the role of the community or the non-profit entity must be determined to ensure “the correct allocation of economic benefits” and to regulate “the composition and functions of the citizen monitoring committee that users must form part of”. This formula allows the community to be charged solely with managing and programming the municipal services and facilities, freeing them of the responsibility of managing economic and human resources.

Hence, regarding public-community collaboration for undertaking the management of municipal services or facilities, the suitability of mixed management and co-management models in different possible contexts must be evaluated. (1) *prior* to “civic management” in new community projects, (2) *temporarily*, to strengthen the community in projects that have become weakened, and (3) *in an ongoing way* if considered necessary by the organised community and/or the administration. The suitability of one or other of the management models may be determined by the characteristics of the public space, by the needs detected in managing the space, or by the characteristics of the entity eligible to take on the management.

- **To study new sustainable contracting clauses for the indirect management of services¹⁵.**

The “sustainable procurement” route for the indirect management of services could be more worthwhile than civic management to promote social, committed, participative, local management (by means of social and environmental clauses) in such a way that it is possible to adjudicate a service to a very specific type of entity by public competition. A basic problem is that in the tender for contracts, the regulations do not allow any type of clause that implies excluding bidders for reasons of where they are located. To this effect, being tied to the territory as an indicator should be understood more in the way of interaction with the environment than simply as presence in it; providing evidence of the existence of representative, proximity and collaboration relationships between the entity and other organisations, their participation in community dynamics, or belonging to a second or third level network or entity in the neighbourhood/district/city.

¹⁵ Information taken from *Urban Commons - Citizen Assets Legal framework and regulatory proposals* (Barcelona City Council, Torra i Prado, 2016).



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Urban Commons Policy/Regulation Canvas

TYPOLOGY OF RESOURCES

Material and immaterial assets: public buildings (cultural, civic, educational) and common goods (water, energy, data).

DEFINING THE URBAN COMMONS (30 minutes)

TYPOLOGY OF USERS

All the citizens. Non-profit entities, social movements and informal groups.

POLICY ENDS / PUBLIC VALUES

Bonding with the territory, social return to the community, internal democracy and participation, and people and environment care.

SCALE

Scale depends on the resource: neighbourhood in civic or little buildings, city in sectorial or large buildings.

PRINCIPLES

What principles, features, characteristics should urban commons governance mechanisms bear? Self-organization and civic autonomy, openness in management and non exclusivity in use, responsibility and entrepreneurship, *multistakeholder*ship and transparency, mutual trust and informality, sustainability and innovativeness? Other?

- Direct democracy and self-organisation of the citizens.
- Respect to the human rights/non-discrimination by sex, gender, race, age, etc.
- Use and management of the asset open to all citizens.

URBAN COMMONS GOVERNANCE (60 minutes)

INTERNAL MANAGEMENT AND SUSTAINABILITY MECHANISMS

What kind of internal decision-making mechanisms should urban commons have? Should they be designed to guarantee their economic sustainability and if so how should economic sustainability be guaranteed?

- Promote the loan of public resources to the common good and community management
- Establishment of decision and governance channels between public administration and communities.

CITY-COMMONS LEGAL TOOL AND PARTNERIAL DIALOGUE METHODOLOGY

Civic Uses Recognition / Collaboration Pacts / Cooperation Agreements / Value Labeling? How should the legal tool strike the balance between rights and obligations among the parties? How should the City identify the Urban Commoners, through collaborative dialogue, Accreditation, Self - emergence?

- Recognition of the communities organized by the public administration.
- Public-community collaboration to create tools, participatory spaces and relationship rules.

EVALUATION MECHANISM (30 minutes)

Describe the evaluation mechanisms to measure the public value produced by the urban commons, indicators to be used and subdimensions, as well as techniques/process/steps to implement the evaluation.

- Reporting about activities
- Reporting about citizen involvement and participation in the organization
- Reporting about externalities for the benefit of the unorganized community

MONITORING (15 minutes)

Describe the monitoring, conflict resolution, and sanctioning mechanisms to be implemented internally by the urban commoners and externally by the city

- Community balance (tool for monitoring activities by the public administration and self-evaluation by the community).
- Participatory space (governing body formed by public administration and organized communities that deliberate on issues or incidents in the promotion of urban commons).

INSTITUTIONAL ARRANGEMENTS

What kind of resources should the City put in place to enable the urban commons (e.g. internal office, external entity such as a foundation, funding, logistics, training/mentoring, digital tools)? At the central/district/neighborhood level?

- Technical support (monitoring or collaboration by a civil servant, external private entity...)
- Financial support (paying bills, municipal grants, ...)

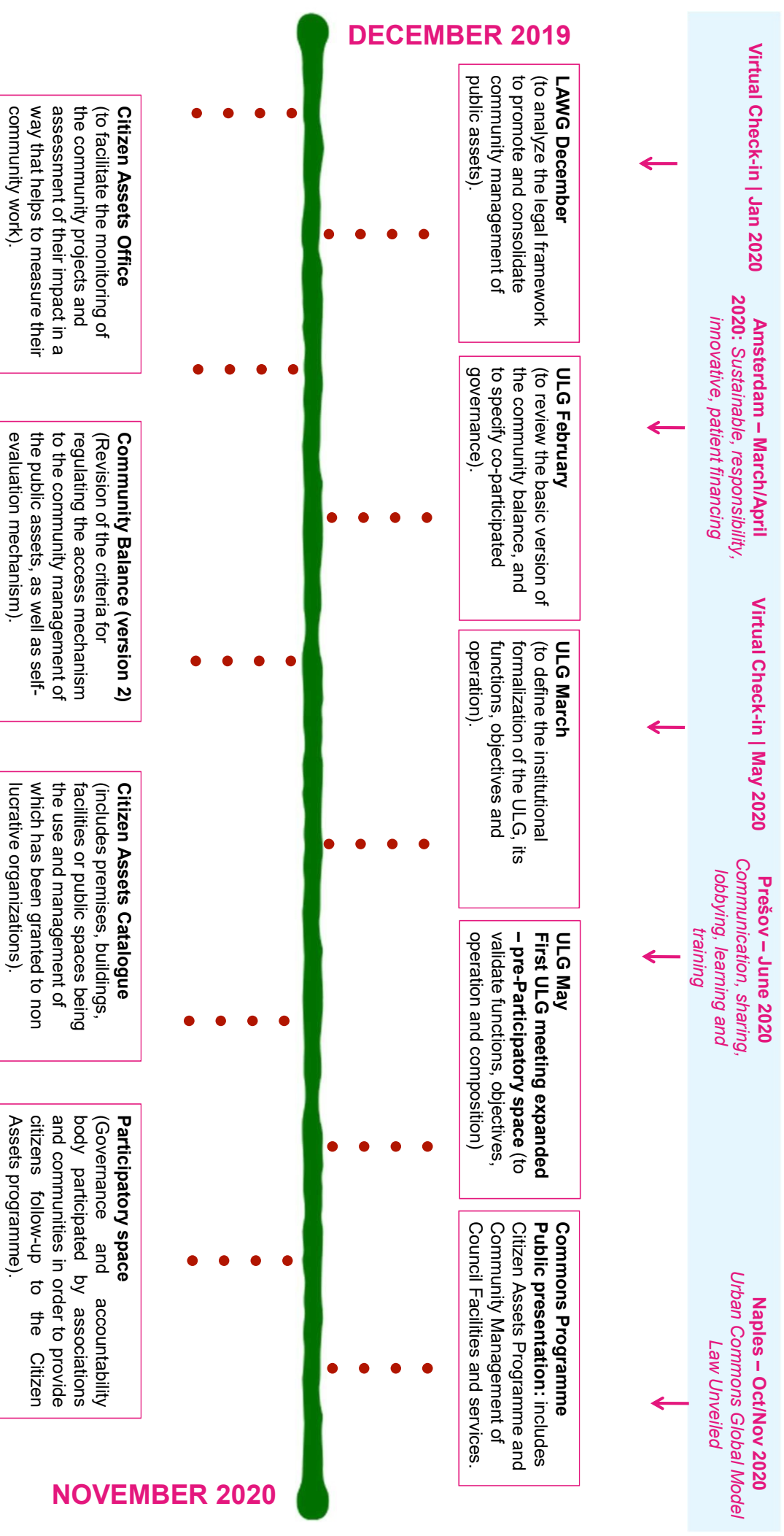
ANY OTHER ELEMENT (15 minutes)

Describe any other element you think it's necessary in the design of a policy or regulation enabling the urban commons

- To consolidate the LAWG, but also to socialize the conception of urban commons in all civil servant levels, areas and districts of the city council.
- It is very important to value the positive of public-community collaboration relations for citizens, over public-private relations.

Urban Commons Policy/Regulation Timeline

Describe your city's policymaking timeline. What's the schedule of ULG and LAWG agenda to co-produce your city policy regulation? Fine tune them with the transnational timeline milestones represented by the virtual check-ins and the transnational meetings. Include a detailed roadmap composed of milestones, ULG meeting plan, experiments, transnational meetings, treasure box inputs (30 minutes)



GDANSK



Analysis of legal conditions for commons management in polish legal order

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1. Introduction

This analysis was based on research in which various Polish legal acts were studied. During our work, several organizational forms were taken under consideration. Each of these forms is different and has its own strengths and weaknesses. They differ in a few key features, e.g. creation procedure, legal character (mainly in possibility to gain legal personality), basic principles of their functioning or in possibility to transfer communal real estates to the project.

Our research gave us the opportunity to find and furthermore to select several organizational forms that allow City of Gdańsk to accomplish the Commons Management project according to Polish law. These forms are as following:

- Budget unit;
- Local government cultural institution;
- Capital companies (both limited liability and joint-stock companies);
- Association;
- Foundation;
- Local initiative.

Each of them will be wider described in the further part of this document.

2. Selected legal institutions

2.1. Budget unit

Budget units belong to the traditional organizational forms of public finance sector and are also known as the biggest and most diverse group of these forms. They can be established both as a part of government and local government sub-sector. The constitutive features of budget units are:

- **lack of legal personality** - budget units in civil law relations (e.g. during concluding contracts) use the legal personality of the government (or local government) unit.
- **gross budgeting** - budget units cover their expenses directly from the budget of government (or local government) unit, and the revenues collected by it are transferred to the same budget.

As it was written before, budget units can be established both as:

- **National budget units** – created, combined and liquidated at the government level by ministers, directors of central offices, province governors, etc.;
- **Communal budget units** – created, combined and liquidated at the local level by commune councils.

The functioning of communal budget units is based on its main organizational act – a **statute** – adopted by commune councils. It shall particularly contain budget unit's:

- Name;
- Headquarters;
- Core business – determined to be a part of communal public tasks.

What's important, communal budget unit's financial economy is based on a **financial plan**, which is just a part of local government unit budget.

2.2. Local government cultural institution

Organizing cultural activities is one of communal public tasks, which local government units are bounded to perform. To fulfill these duties, commune councils can create local government cultural institutions. While cultural activities can be performed by both public or private organizations, phrase “cultural institution” refers only to public (national or local) legal institutions. For the purposes of this analysis, it's crucial to emphasise that one of main features of this kind of institutions is the possibility of gaining **legal personality**.

Speaking of local government cultural institutions, four possible options shall be considered:

- Creating new local government cultural institution by the city authorities;
- Using one of existing institutions;
- Organizing cultural activities by the actors and the inhabitants themselves as an individuals or through legal person (association, foundation) created especially for this purpose (“non-public cultural institution”). City of Gdańsk is able to transfer ownership of communal real estate to non-public cultural institution for its statutory activity.
- Entrusting management of the local government cultural institution to a natural or legal person with the use of public procurement procedure.

The creator of local government cultural institution adopts its **statute**, which determines its core functioning principles. The creator also equips local government cultural institution with resources crucial for its functioning. Important is that Mayor of Gdańsk is able to equip local government cultural institutions with real estates that belongs to the city. Executive power representative may use several legal institutions to accomplish this transfer.

Local government cultural institutions can be also created jointly by the local government units and the inhabitants (or by the local government units and a legal person created by the inhabitants) using the civil contract. This contract

shall regulate particularly the amount of contributions and rights of parties to the agreement.

2.3. Capital companies

In polish legal order we can distinguish two types of capital companies:

- **Limited liability companies** (LLC; "spółka z ograniczoną odpowiedzialnością - sp. z o.o." in polish);
- **Joint-stock companies** (" spółka akcyjna - S.A." in polish).

One of main features of capital companies is their ability to gain **legal personality**. Both LLC and joint-stock companies gain legal personality at the moment of registration in Krajowy Rejestr Sądowy (National Court Register). What makes capital companies different from the previously described legal forms, is the nature of its main organizational act. To create capital company, its stake- or shareholders need to sign an **agreement** that regulates core functioning principles of limited liability or joint-stock companies.

The second main feature of capital companies is **acting through governing bodies**. Governing bodies model ensures **limited personal accountability** of the stake- or shareholders. In both of the capital companies listed above we can distinguish two obligatory bodies:

- Board;
- General Meeting (that can be both annual or extraordinary).

The polish legislator has decided to establish **two-tier bodies model**, which means that besides bodies listed above, our legal system distinguishes two internal control bodies – supervisory board and the audit committee. While having the supervisory board is obligatory for joint-stock companies, stakeholders of limited liability companies can choose if they want to have any internal control body (both

supervisory board or the audit committee). Having any internal control body in LLC is obligatory only under certain conditions.

The creation process of capital companies in Polish legal order is regulated by Polish Code of Commercial Companies. As regards the subject matter of the creation process, few general common principles shall be pointed out:

- Both LLC or Joint-stock companies can be established by one person (natural or legal) or more stake- or shareholders. What's important, capital companies can be also **established (and then managed) by a commune;**
- Both LLC or Joint-stock companies cannot be created by sole proprietorship LLC;
- Polish Code of commercial companies regulates minimum initial capital for capital companies to be legally established:
 - for LLC – 5.000 zł;
 - for Joint-stock company – 100.000 zł.

The contributions to capital companies can be both cash or in kind (with exception of inalienable rights and provision of services and work).

2.4. Association

Association is a organized group of people who work together for a common purpose. Polish act for associations distinguishes four main features of this kind of organizations:

- voluntary character;
- self-governing management model;
- permanent nature;
- non-commercial purpose.

The Polish legislator has decided to create two different types of associations:

- **“Normal” association**, which is characterized by simplified creation procedure and a lack of legal personality;
- **“Registered” association** – due to its perks (**legal personality**, formalized creation procedure and management system) we decided to focus our attention at this type of association.

The functioning of registered association is based on its **statute**, adopted by its creators. Creation of an registered association requires:

- adopting the statute by at least 7 creators;
- choosing the founding committee;
- registering the association in National Court Register.

Associations, just like capital companies, **acts through governing bodies**. As it was written before, governing bodies model ensures **limited personal accountability** of association's creators. What's important, associations can run subsidiary business activities to achieve its statutory goals.

Polish act for association distinguishes three obligatory bodies:

- General Members Assembly;
- Management Board;
- internal control body (most often it's the Audit Committee).

During our work with this analysis, we wanted the process of joining the association to be as unformalized as it can be. Fortunately, according to Ustawa Prawo o Stowarzyszeniach (polish Act for associations) the legal way of acquiring and losing the membership status shall be regulated in in the association's statute. Due to polish law, inhabitants are able to join the association *per facta concludentia* (if only the association's statute allows them to do so), for instance by entering the building or by starting using the real estate's infrastructure.

2.5. Foundation

Foundation can be established for **socially and economically useful goals**, particularly for: healthcare, economical growth, knowledge, culture, etc. Blurred term “socially and economically useful goals” points out that range of purposes for which the foundation can be established is really wide - it should be referred to goals that bring benefits, serve the satisfaction of the common good of the society, or at least an indefinite circle of people, e.g. residents. Goal of the foundation is its constitutive feature, without which the foundation cannot be founded. To achieve its goals, foundations are able to run business activities.

Foundations can be established both by legal or natural person (one or more), but they can't be founded by an unincorporated entity with legal capacity or by a governing body of a legal person. **Two scenarios** shall be considered:

- Foundation is founded by inhabitants themselves;
- Foundation is founded by inhabitants and the City of Gdańsk (as a legal person).

To establish this kind of organization, its founder shall adopt an **founding act** and indicate **contribution** to the foundation. Foundations' main organizational act is a **statute**. Foundations can gain **legal personality** after registration in National Court Register and they **act through governing bodies** too.

City of Gdańsk is able to establish a foundation, but polish act for foundations **forbids to found this kind of organization using public resources** (but it's allowed to make contributions to existing foundation with them). It's crucial to point out that **movable and immovable things (e.g. real estates) don't belong to the public resources category** according to polish law. Despite the fact of being excluded from the public resources category, movable and immovable things still are a municipal property, which shall be used to carry out public tasks.

What's important, despite that foundation founded by a commune has the status of communal legal person, the commune has no rights to manage it. Foundation, while founded, gains the status of separate legal person with its own governing bodies.

2.6. Local initiative

Local initiative provides legal way for inhabitants to cooperate with government and local government units on **performing public tasks**. The list of tasks that can be performed by this organizational form is enumerated. At the local level, residents initiate cooperation by **submitting an appropriate application** to the executive body of the commune. Moreover, further cooperation shall be based on an **agreement** between inhabitants and the commune.

Both parties to the contract (inhabitants and the commune) are able to contribute to the local initiative – but while the inhabitants have such an obligation, the commune is not obliged to do so.

The applicant's obligation to contribute to the project may consist of providing social work, cash or benefits in kind (also the real estate). What's important, the commune can contribute to the local initiative with **movable and immovable things**.

Urban Commons Policy/Regulation Canvas

DEFINING THE URBAN COMMONS (30 minutes)

TYPOLOGY OF RESOURCES

Buildings (Dolna Brama8 – pilot 1, neighborhood house – pilot 2), public space (pilot 3)

minutes)

TYPOLOGY OF USERS

activist, NGOs, citizens, innovators, social entrepreneurs

POLICY ENDS / PUBLIC VALUES

the right to own a city as a common good, internal democracy and participation, and people and environment care,

SCALE

local (neighborhood) -> city scale

URBAN COMMONS GOVERNANCE (60 minutes)

PRINCIPLES

What principles, features, characteristics should urban commons governance mechanisms bear? Self-organization and civic autonomy, openness in management and non exclusivity in use, responsibility and entrepreneurship, *multistakeholder*ship and transparency, mutual trust and informality, sustainability and innovativeness? Other?

- Constitutional common values: respecting human rights: non violence, equality (of sexes),
- Self-organisation and civic autonomy, openness in management and non exclusivity in use, sustainability (more focus on the long term)
- Mix of direct and representative democracy

INTERNAL MANAGEMENT AND SUSTAINABILITY MECHANISMS

What kind of internal decision-making mechanisms should urban commons have? Should they be designed to guarantee their economic sustainability and if so how should economic sustainability be guaranteed?

- Common values understanding
- Coproduction of any regulations
- Democratic, transparent decision making proces (ex. Open assemblies)
- Economic sustainability – fince mix (public funding + private investors + paid offer)

CITY-COMMONS LEGAL TOOL AND PARTNERIAL DIALOGUE METHODOLOGY

Civic Uses Recognition / Collaboration Pacts / Cooperation Agreements / Value Labeling? How should the legal tool strike the balance between rights and obligations among the parties? How shoyld the City identify the Urban Commonneers, through collaborative dialogue, Accreditation, Self - emergence?

Depends on case:

- self organisation + recognition + subsidy (pilot 2 and 3)
- collaborative dialogue (pilot 1)

INSTITUTIONAL ARRANGEMENTS

What kind of resources should the City put in place to enable the urban commons (e.g. internal office, external entity such as a foundation, funding, logistics, training/mentoring, digital tools)? At the central/district/neighborhood level?

- Creating framework (legal entity)
- Financial support (paying bills, or subsidizing, ...)
- Technical support (extraordary maintenance, ...)
- Training and monitoring (creatadministrative working group)
- LAWG (cross departemental

EVALUATION MECHANISM (30 minutes)

Describe the evaluation mechanisms to measure the public value produced by the urban commons, indicators to be used and subdimensions, as well as techniques/process/steps to implement the evaluation.

- Common understanding of evaluation principles
- Impact measurement matrix -> <http://boostimo.org/>

MONITORING (15 minutes)

Describe the monitoring, conflict resolution, and sanctioning mechanisms to be implemented internally by the urban commoners and externally by the city

- Open communications tools
- Reporting about activities
- Regulation check-in
- External mediation (if needed)
- Implementation of Barcelona's community balance tool

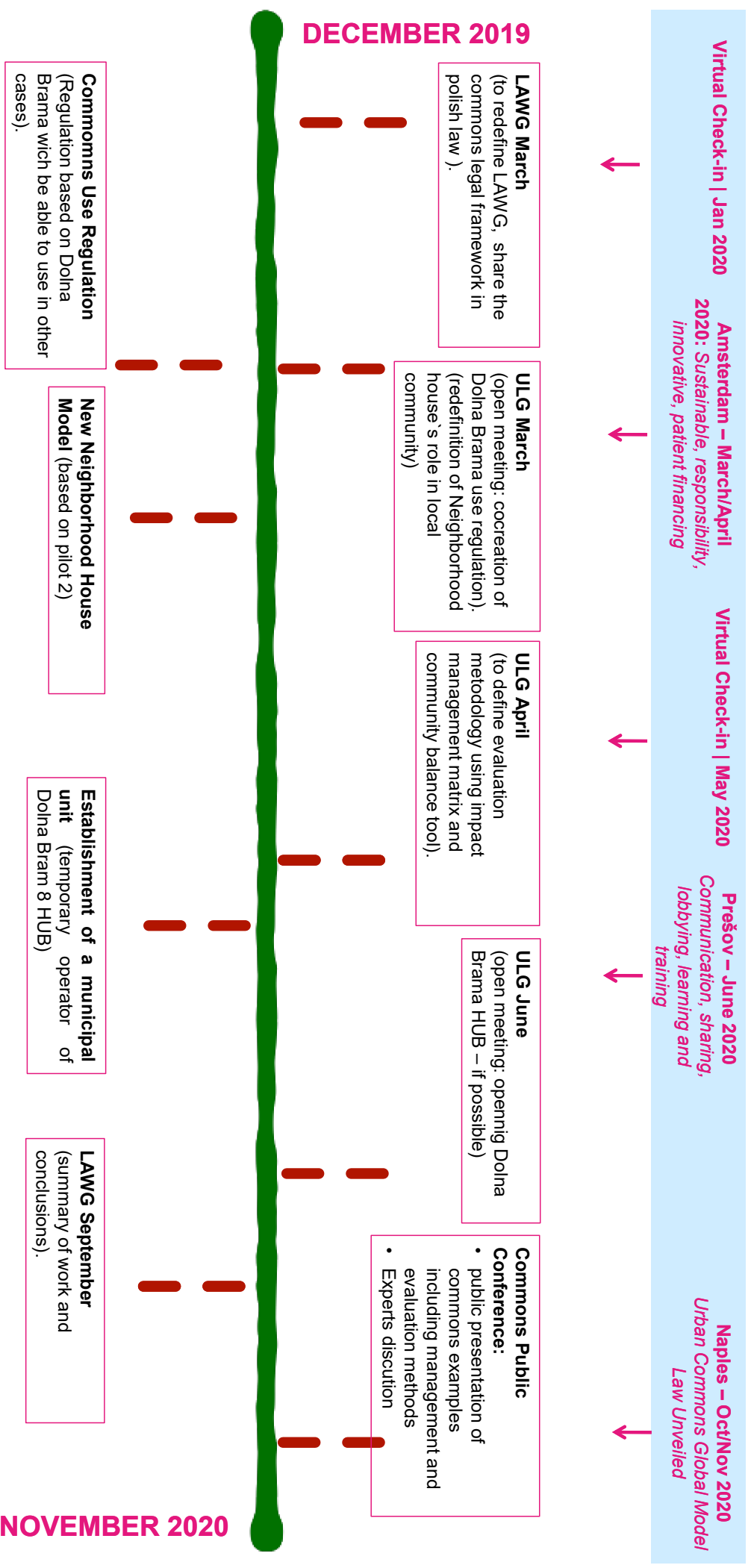
ANY OTHER ELEMENT (15 minutes)

Describe any other element you think it's necessary in the design of a policy or regulation enabling the urban commons

- Commons Publicity
- Creating an environment where the community internalizes the values the commons stand for
- To consolidate the LAWG, but also to spread the conception of urban commons in all civil servant levels, areas and districts of the city council

Urban Commons Policy/Regulation Timeline

Describe your city's policymaking timeline. What's the schedule of ULG and LAWG agenda to co-produce your city policy regulation? Fine tune them with the transnational timeline milestones represented by the virtual check-ins and the transnational meetings. Include a detailed roadmap composed of milestones, ULG meeting plan, experimentalations, transnational meetings, treasure box inputs (30 minutes)



GHENT



European Union
European Regional Development Fund





LEGAL MEMO CITY OF GHENT

Version of January 10th 2020

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1. Introduction

1. On August 22nd 2019, Ariana Tabaku (ULG member), Yoko Gesels (creative lawyer) and Christian Iaione (LE) organized a virtual check-in concerning the Civic eState project. During this virtual check-in, Christian Iaione informed Ariana Tabaku and Yoko Gesels that the City of Ghent (and all other cities involved in the Civic eState project) should write a legal brief of approximately 15-30 pages treating the legal aspects of the Civic eState project. Christian Iaione suggested the abovementioned table of contents of the legal brief and asked to deliver the document before the International Meeting in Gdansk of October 3rd and 4th 2019.
2. Below you can find our legal brief, which we consider to be a work in progress.

2. Existing legal instruments

a. Context

3. In this part of the brief, we will map the existing legal instruments that are used at this moment (August 2019) to support/regulate citizens initiatives and public-civic collaborations/partnerships.
4. At this point in time, the City of Ghent does not have a uniform regulatory framework to support/regulate citizens initiatives and public-civic collaborations/partnerships. However, our city does have:
 - a long tradition in participative approaches;
 - the political will to facilitate participation and cocreation;
 - a number of (legal) instruments to support/regulate citizen initiatives and public-civic collaborations/partnerships.
5. Roughly put, we can divide the abovementioned legal instruments in the following three groups:
 - agreements, e.g.: subsidy agreements, real estate agreements;



- city regulations, e.g. subsidy regulations;
 - permits for the use of public space.
6. We will examine these instruments a bit further, giving examples and presenting some case studies. To this regard we note that the strict division of the different types of legal instruments is purely theoretical: in everyday practice the instruments are often combined.
7. During the virtual check-in of 22nd August 2019, Christian Iaione stressed the importance of the principles of non-exclusivity and self-sustainability when it comes to supporting/regulating citizens initiatives and public-civic collaborations/partnerships. Therefore, these principles will be discussed in some of the case studies below.

b. Agreements

8. In a lot of cases, agreements are used to support/regulate citizens initiatives and public-civic collaborations/partnerships.
9. The notion agreement is used here as a legally binding document that states and explains the formal agreement between two or more different people or groups.
10. The types of agreements that are used to support/regulate citizens initiatives and public-civic collaborations/partnerships are primarily subsidy agreements and real estate agreements.

i. Subsidy agreements

11. Subsidy agreements are agreements between the City of Ghent and a third party that determine an agreed objective and deliverables and the amount of subsidy that can be received for reaching this objective and deliverables. The choice of the beneficiary of the subsidy lies with the City of Ghent, when necessary this choice is based on the results of an open call.
12. Dok is an example where the City of Ghent used the legal instrument of the subsidy agreement to regulate a citizen initiative.

13. Dok is a bottom up initiative of three non-profit organizations (CirQ vzw, Ladda vzw en Democrazy vzw) who made a proposal to the autonomous municipal company of urban development of the City of Ghent (sogent) to temporarily use a large unused terrain at the old port of Ghent (docks). The temporary use they envisioned encompassed a wide variety of functions and events to be organized in cooperation/co-creation with and for the citizens of the City of Ghent.
14. The City of Ghent was open to the ideas and started negotiations. The three non-profit organizations created a new non-profit organization called Dok together in order to start the temporary use of a small part of the unused site in 2011. Since then, the temporary use of the site grew each year, in the space used, variety of activities, number of visitors, ... 2019 will be the last year of the temporary use, given the fact that the site will be developed to become a residential area.



15. The City of Ghent concluded several consecutive subsidy agreements with the non-profit organization Dok, in order to provide Dok with the funds necessary to manage the temporary use of the site. The last subsidy agreement was concluded for the year 2019 (annex 1 – Subsidy agreement Dok 2019). In this subsidy agreement, the City of Ghent grants Dok 105.000 EUR of subsidies for the year 2019. In return, Dok must manage the temporary use of the site and achieve the following **deliverables** set out in the subsidy agreement:

- **Support Group:** Dok should meet up with the support group every two months. The support group monitors the project. The Policy Participation Service organizes the meetings of the support group;
- **Management:** Dok must maintain the grounds (including the cafeteria, front yard, market and showcase) safe, accessible, attractive and appropriate for the activities;
- **Hosting:** Dok accommodates initiatives in the fields of culture, art, sports, ecology and welfare from both nonprofit and from the business world. Dok realizes this using a clearly defined reference and decision matrix. Herein accessibility, participation, artistic innovation, support of a creative urban dynamics, experiment and meeting are the key words. Organizations must be able to use the space for a longer period in time;
- **Co-production and co-ownership:** Dok is a platform on urban dynamics and everything that moves therein. Dok focusses on initiatives from existing networks and helps new networks to emerge. Dok does this in cooperation with intermediates to ensure involvement of various groups and local residents. Dok acts as a catalyst to achieve an inspiring cross-fertilization and offers a platform (frame and physical space) to facilitate new projects that transcend the individual actions of the actors;
- **Communication and public relations:** Dok will communicate activities online (Facebook, website) and offline (through print media with specific attention of spreading it in the neighborhood). Actions are developed to strengthen the activities developed by third parties. This may involve searching new target groups or to work with local residents;
- **Accessibility:** Dok ensures accessibility of the grounds for at least 140 days a year. That 'accessibility' translates into the creation of a park of which individuals or organizations can make autonomous use without Dok necessarily playing an active role in the programming, promotion, etc. Ghent and Sogent give regular tours of the Old Docks. Dok must be freely accessible for these tours.

16. During the virtual check in of August 22nd 2019, Christian Iaione stressed the importance of the principles of principles of non-exclusivity and sustainability. In the Dok case, the principle of non-exclusivity was stressed during the discussions preceding the actual temporary use: e.g. the importance of the site being open to the neighborhood, making sure that the site would not be

claimed by specific groups, ... This principle also was translated in the text of the subsidy agreement (see the deliverables mentioned above), though maybe not as firm as desirable. During the interim interviews and annual evaluations the questions of how many people were reached and exactly were always discussed. Dok kept a very good record of this information. As far as sustainability is concerned, Dok was allowed to carry out commercial activities on the site. In this way Dok could finance the free and public events. In addition, each year they received a large subsidy to set up their activities and to maintain the site.

ii. Real estate agreements

17. Real estate agreements are agreements concluded by the City of Ghent (real estate department) or by the autonomous municipal company of urban development of the City of Ghent (sogent) and third parties concerning the transfer of ownership or the right of use of real estate. There are different types of real estate agreements, e.g. rental agreements, management agreements, occupancy agreements, lease agreements, agreement for the temporary use...
18. Real estate agreements contain provisions regarding:
 - the term/duration of the agreement;
 - the compensation/fee for the use of the building;
 - the costs of utilities: water, gas and electricity;
 - the maintenance costs;
 - the insurances (e.g. fire insurance) and guarantees;
 - ...
19. When real estate agreements are used in the context of citizen initiatives of public-civic collaborations/partnerships, the choice of the contracting party is generally based on the result of an open call. If the City of Ghent decides not to work with an open call, this decision has to be motivated.
20. NEST (New Established State of Temporality) is an example where the City of Ghent used the legal instrument of the real estate agreement to regulate a public-civic collaboration/partnership concerning the temporary use of a public building owned by the City of Ghent.

21. In 2017, the public library of the City of Ghent moved to a new building. The old library building was in need of renovations in order to be used as office space for the city services. Facing a gap in time between the moving date and the starting date of the renovations of 8 months and the risk of squatters taking over the building, the City of Ghent decided to experiment with a public-civic collaboration/partnership concerning the temporary use of the old library building.



22. In order to do so, the City of Ghent started by launching an open call (in this case a call for tender) for the temporary creative use of the old library building. The full text of this open call is available in English (annex 2 – Open call Nest). Below you can read some extracts from the open call:

“The City of Ghent is looking for an operator to temporarily occupy the current library building (the former EGW building) at Graaf Van Vlaanderenplein 40, 9000 Gent.”

“From 1 May 2017 up to and including 31 December 2017, the EGW building will be vacant, since the renovation works at the site are scheduled to start only in early January 2018.

***To deter squatters**, the vacant sites need to be made available to third parties (associations, private individuals etc.) within a short timeframe by means of a **temporary occupation contract**. Once this contract has been signed, it is essential that the site is used temporarily for creative purposes and that it is managed properly. Meticulous and comprehensive management of the building is absolutely essential.”*

*“The City of Ghent favours a **mixture of creative, social, cultural and economic initiatives in line with the building’s historical context**. A few examples are cultural and historical projects, projects by creative artists, exhibitions, neighbourhood initiatives, open meeting spaces, spaces for co-working or for creators, shared meeting rooms, start-ups (possibly with a start-up contract), businesses with sustainable brands, catering establishments selling short-chain/urban produce, possibly also with a focus on social employment, workshops, rehearsal spaces, youth work, social projects and so on.*

The chosen initiative should contribute to boosting the quality of life in the neighbourhood, district and/or city (and beyond). Their added value could be, for example, the prevention of vandalism, squatting or other nuisances, but it should not be limited to this only. Projects that favour a new, dynamic approach will have a definite advantage. The creation of new networks, a participatory approach and a scope that covers several areas of policy will also be seen as providing added value.

The focus is on personal initiative, co-management, commitment and creativity on the part of the operators.”

*“The City of Ghent aims for **mixed use** of the EGW building by **several users**, who are required to submit a **joint application**.”*

“In the negotiation process, based on the written proposals submitted, the Ghent City Council will assign an agreement for temporary occupation, use and management of the available space(s) in the current library building (the former EGW building) at Graaf Van Vlaanderenplein 40, Ghent.

The use and management of these spaces according to the conditions of these specifications is not subject to the Act on Public Contracts (the new Act on Public Contracts and Certain Assignments for Works, Supplies and Services of 15 June 2006 was implemented on 1 July 2013, including the implementation decrees).

The procedure consists of a single phase, i.e. all interested parties can submit a proposal. An expert jury consisting of representatives of the city departments and services then selects the applicants and checks whether their proposals comply with the award criteria. The applicants are then given the opportunity to present their project verbally to the expert jury on Monday 27 March.

Applicants should submit a proposal for temporary use and management of the space(s) as a group.”

23. After the selection procedure, the City of Ghent signed an agreement for the temporary use of the old library with Timelab cooperative company with limited liability. Timelab cooperative company with limited liability then concluded agreements for the temporary use of parts of the old library with ‘pioneers’ which, at their turn, concluded agreements for the temporary use of subparts of the old library with temporary users. This way space was provided for the organization of a wide array of activities/events/... such as a restaurant, a café, a co-working space, a quiet room, workshops, room for theater, dance, movement, debate, lectures, ...
24. Timelab cooperative company with limited liability also was granted a subsidy from the city’s fund of temporary use (2017_CBS_14651 - Toekenning van een subsidie op grond van het subsidiereglement voor Fonds Tijdelijke Invullingen - project 'Nest' (oude stadsbibliotheek) – Goedkeuring). This subsidy was granted on the basis of the subsidy regulation on the fund of temporary use, which will be addressed below.

25. During the virtual check in of August 22nd 2019, Christian Iaione stressed the importance of the principles of principles of non-exclusivity and sustainability. In the NEST case the City of Ghent envisioned a temporary use of a very short duration. Given this fact, less attention was given to the principles of non-exclusivity and sustainability. The temporary use was free of charge, except for the electricity bill. Coming up with the money to pay the electricity was though for the temporary users, who indicated after one year that they were in financial trouble because the energy costs were too high and they did not have enough income from their activities to cover their expenses.

c. City regulations

26. A city regulation can be described as a set of rules created by the City of Ghent to support/regulate certain activities of organizations. Some city regulations support/regulate citizen initiatives, e.g. general regulations and subsidy regulations

i. General regulations

27. The first type of city regulations are general regulations, for example the general internal regulation on the use of rooms and halls owned and managed by the City of Ghent.

28. The objective of this regulation is to make a diversity of rooms and halls accessible to be used by the city citizens, informal associations and other organizations.

29. There are several special regulations on the use of rooms/halls owned/managed by the City of Ghent, depending on the city service responsible or the type of rooms/halls, e.g. there is a special regulation for the use of rooms/halls managed by the Youth Service.

30. The advantages of the regulation on the use of rooms are:

- easy application procedure;
- large range of different types of rooms/halls available;
- low fees or free of charge;
- insurance is covered.

ii. Subsidy regulations

31. The second type of city regulations that support or regulate citizen initiatives are subsidy regulations.

32. Subsidy regulations concern financial incentives to influence citizen behavior in the direction desired by the city administration. These regulations determine:

- who can qualify as a beneficiary;
- the amount of the subsidy or how the amount is calculated;
- the conditions that must be met ;
- the justifications that must be submitted.

33. The City of Ghent has a lot of subsidy regulations that support or regulate citizen initiatives, for example:

- subsidy regulation concerning car-free street initiatives;
- subsidy regulation concerning citizen budget 2016-2018;
- subsidy regulation concerning financial support for actions of inhabitants of the neighborhoods of the City of Ghent;
- subsidy regulation concerning the fund of temporary use.

34. The subsidy regulation concerning the citizen budget and the fund of temporary use are examined a bit further below.

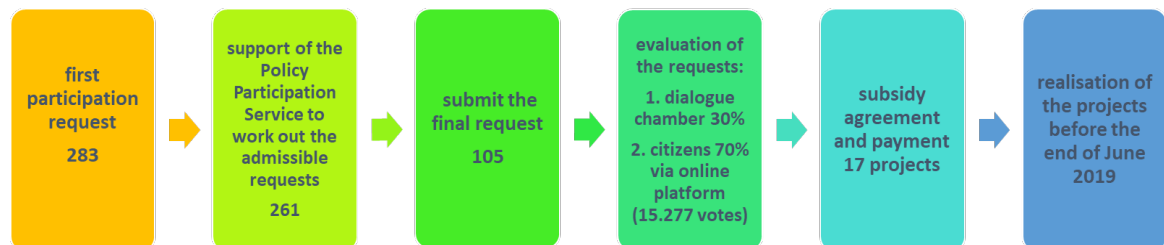
1. Subsidy regulation concerning citizen budget 2016-2018

35. The subsidy regulation concerning the citizen budget was created in 2015. The objective of this regulation was to give the city inhabitants the opportunity to contribute to the creation of the City of Ghent and to address the challenges of their neighbourhoods together.

36. The City of Ghent tried to reach this objective by making subsidies available to citizens:

- 1,35 million EUR, divided over three city parts proportional to the number of inhabitants;
- minimum 20.000 EUR and maximum 150.000 EUR per project.

37. The application procedure for the citizen budget consisted of 6 steps, to be completed within a fixed timeframe:



38. Below you find more information concerning the 6 steps of the application procedure:

- The citizens file their first participation request. 283 requests were filed;
- The Policy Participation Service of the City of Ghent helped the citizens to work out the 261 admissible requests;
- 105 final requests were filed;
- Evaluation of the requests by a Dialogue Chamber good for thirty percent of the final score and the city citizens good for 70 percent of the final score. The Dialogue Chamber was an external organ responsible for the process, constructive dialogue with the actors, the support of the citizens that filed a participation request and the judging of the requests. The Dialogue Chamber was composed of experts with different backgrounds and expertise;
- Signing of the subsidy agreements with the 17 chosen projects;
- Realization of the projects before the end of June 2019.

39. Here, we present some examples of projects that received subsidies:

- **Het Bakhuis (the Baking House)**

Two citizens of the City of Ghent applied for subsidies to build a baking oven in small city park Hof Van Ryhove. Their objective was to create a meeting spot for the neighborhood and a place to (learn to) bake in a traditional way. They received 30.000 EUR of subsidies.



- **Kiosk Monterey**

A non-profit organization in cooperation with neighborhood citizens applied for subsidies to restore a neglected 19th century music kiosk in a city park, in order to organize cultural and musical events in spring and summer. They received 45.550 EUR of subsidies.



- **Nomadic Trees**

Two citizens of the City of Ghent applied for subsidies to make mobile modules with native trees in order to create a travelling forest providing more green and a meeting and resting point for the city citizens. They received 110.000 EUR of subsidies.



40. In March 2018, the Policy Participation Service of the City of Ghent carried out an assessment of the implementation of the subsidy regulation concerning citizen budget. In the assessment, the applicants, the city administrations and the members of the Dialogue Chamber were questioned.

41. The assessment resulted in a positive evaluation, with a series of learning points and suggestions to take into consideration for the future, e.g.:

- importance of clear communication (e.g. co-creative philosophy vs proposals of citizens). For a lot of citizens, the co-creative philosophy of the regulation was not clear from the start. They thought that the objective was that they could ask the City of Ghent to do certain things for the citizens, without participating;
- necessity to communicate/cooperate with other services/departments of the city administration (e.g. clear expectations of all services/departments);
- importance of guidance of the applicants in the process (e.g. budget, permits, insurance, ...).

42. Independently of the assessment by the Policy Participation Service, the question can be asked if the subsidy regulation concerning citizen budget should have paid (more) attention to the long term. What happens to the citizen initiatives after two years?

2. Subsidy regulation concerning the fund of temporary use

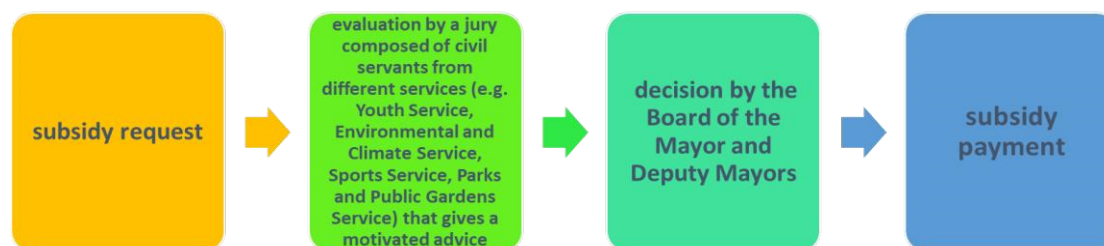
43. The second example of a subsidy regulation that supports citizen initiatives is the subsidy regulation concerning the fund of temporary use that was created in the year 2014 on the basis of previous experiences in the City of Ghent for example Dok (annex 3 – subsidy regulation concerning the fund of temporary use).

44. The objective of this regulation is to stimulate organizers to utilize and manage sites that are temporarily out of use. The City of Ghent aims to reach this objective by making subsidies and other forms of support available to citizens/organizations that want to temporarily manage unused sites.

45. The conditions under which citizens and organizations can be entitled to subsidies from the fund of temporary use are the following:

- approval of the owner of the site;
- the project contributes to the increased quality of life in the neighborhood;
- the self-initiative, co-management, involvement and creativity of the applicants are the point of focus;
- the project has to be realized within two years from the approval.

46. The application procedure for the fund of temporary use consist of 4 steps:



47. Here, we present some examples of projects that received subsidies:

- **Bar Bricolage**

Totum is a non-profit organization that asked for subsidies from the fund of temporary use in order to be able to organize Bar Bricolage on the Houtdoks site, an unused site. Bar Bricolage

is a summer meeting spot for young and old that focusses on upcycling and organizes a diverse program of activities. For the year 2018, Totum received 7.800 EUR of subsidies to organize Bar Bricolage.



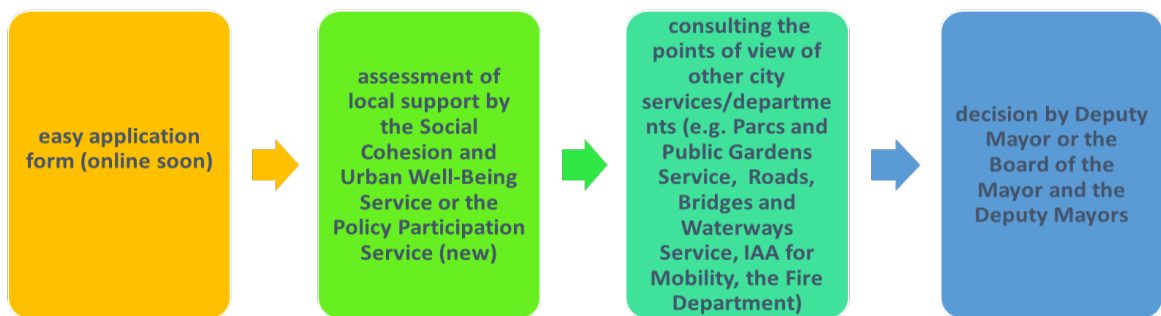
- **Lübeck**

Graal is a non-profit organization that asked for subsidies from the fund of temporary use in order to be able to organize Lübeck at the Lubeckstraat, an unused site which used to be a social housing site. Lübeck is a spring/summer meeting spot for young and old that focusses on creating a quiet shelter where citizens can escape the city and reconnect with nature. For the year 2018, Graal received 38.000 EUR of subsidies to organize Lübeck.



d. Permits for the use of public space

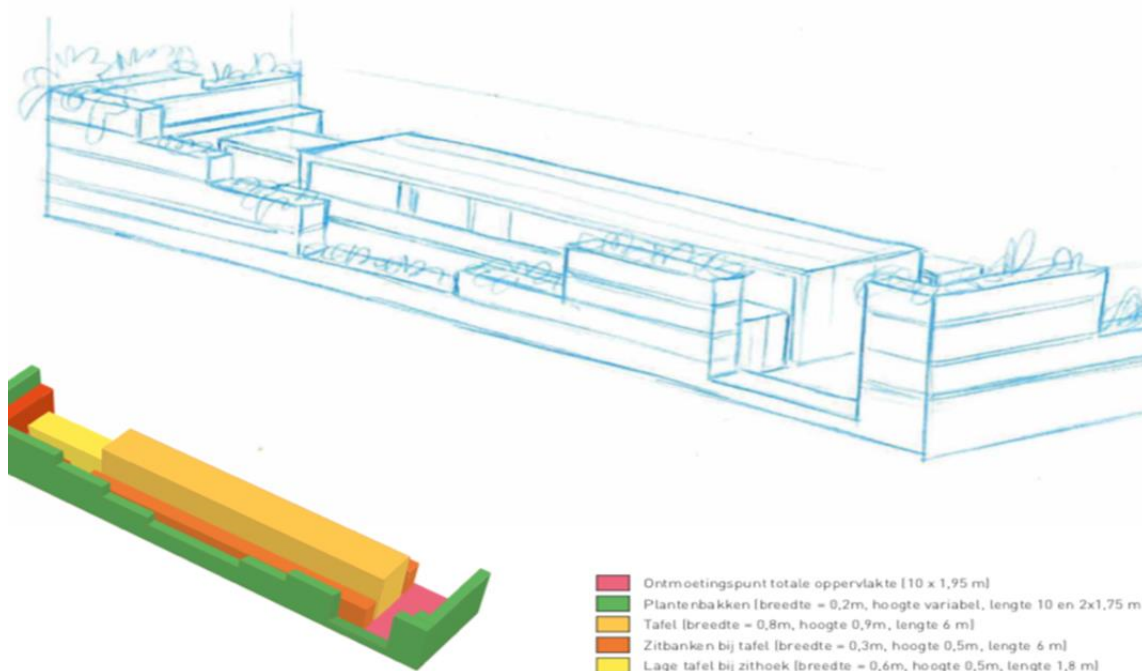
48. Permits for the use of public space are official documents giving someone authorization to use public space for a certain purpose.
49. When the public space is neighboring a building for which a real estate agreement is concluded, the use of the public space will be covered in the real estate agreement.
50. The application procedure is managed by the use of public space service and consists of 4 steps:



51. In relation to other legal instruments uses to support/regulate citizen initiatives, permits for the use of public space are:
- necessary when the use of public space is not covered/regulated by another legal instrument, e.g. a real estate agreement;
 - often an accessory to subsidized initiatives (e.g. Kozijntjesstraat, see below);
 - solution for straightforward citizen initiatives (e.g. placement of flower boxes).
52. The Kozijntjesstraat is an example where the permit for the use of public space was used to support a citizen initiative. A group of citizens, living in (neighborhood of) the Kozijntjesstraat, applied for subsidies under the subsidy regulation “Wijk Aan Zet” (neighbourhood’s turn) in order to be able to buy materials to build and install an picnic bench and planter on a parking spot in their street. The subsidies were granted, so the citizens could buy the materials and start building. For the placement however, they needed a permit for the use of public space in the street.

KOZIJNTJESSTRAAT

Herinrichting van een parkeerplaats tot ontmoetingspunt



3. Stumbling blocks and improvement proposals

53. It is clear that when applying the existing legal instruments to support/regulate citizens initiatives and public-civic collaborations/partnerships, the City of Ghent comes across a number of stumbling blocks:

- **Administrative and regulatory clarification and simplification**

The City of Ghent uses a lot of different legal instruments to support and regulate citizen initiatives and public-civic collaborations/partnerships. This creates a complex situation in which the City of Ghent needs to help citizens/civil servants to find their way. It is clear that the city of Ghent needs to evaluate the existing instruments and needs to work on the administrative and regulatory clarification and simplification;

- **Multidisciplinary team for citizen participation and public-civic collaborations/partnerships**

A lot of city services play a role in citizen initiatives and public-civic collaborations/partnerships. This makes it necessary to share information/knowledge and to work together, maybe even to create a multidisciplinary team for citizen participation and public-civic collaborations/partnerships on the city level?;



- **Strengthening the citizens initiatives and enhance their sustainability**

There might be a lack of empowerment of the citizens and a long term vision. The City of Ghent needs to think about how she can contribute to strengthening the citizens initiatives and enhance their sustainability by supporting their growth, enabling them in order to ensure the long term impact of the initiatives. The City of Ghent needs to search alternatives of financial aid, new business models, coaching in civic entrepreneurship, ...

- **Create solutions that guarantee a higher level of inclusiveness**

The City of Ghent feels that currently a lot of the citizen initiatives and public-civic collaborations/partnerships are focused mainly on the white middle class. The City of Ghent wants to tackle this situation and create solutions that guarantee a higher level of inclusiveness.

- ...

4. Relation to the legal instruments of other cities in the network

54. In August 2019, the following full texts in English of the legal instruments of other cities (in the Civic eState project) were uploaded on the Basecamp:

- The Declaration of Urban Civic and Collective Use of Ex Asilo in the City of Naples;
- The Agreement between the City of Barcelona and the Can Batllo Self-Managed Community and Neighbourhood Space Association in the City of Barcelona;
- The Schedule of Clauses Regulating the Concession for Private Use of the Public Domain of the properties located in the Can Batllo-Magoria Area to the Can Battlo Self-Managed Community and Neighbourhood Space Association in the City of Barcelona;
- The Community Balance Questions Guide of the City of Barcelona;
- The Regulation on Collaboration between Citizens and the City for the Care and Regeneration of Urban Commons of the City of Bologna.

55. The abovementioned legal documents will be discussed below. More precisely we will extract the parts that we think can be valuable for us and try to explain how they (can) relate to the legal instruments in the Country of Belgium/City of Ghent.

a. The Declaration of Urban Civic and Collective Use of Ex Asilo in the City of Napels (annex 4)

56. The Declaration of the City of Napels contains the following dispositions:

- In the **preamble**:
 - It refers to a definition of the term **“common good”**: *“A good belongs to the category of “common good” when it embodies benefits functional to the **exercise of fundamental rights**, as well as to the **free development of the person**.”*
 - It states that a common good *“shall be characterized by a **type of govern** getting inspiration by, and implementing, **forms of direct participation** of the relevant communities to the **care and management** of the good.”*
 - And that *“the **entitlement** to such good, notwithstanding its property, shall be considered as **“diffused”**; the whole discipline of the property in the Italian Constitution is linked to the notion of “social utility”, the City Council of Napels, with resolution No. 24 of September 22nd 2001, has introduced in the Statute of the Municipality the juridical category of “common good” within the “Fundamental aims and values” of the Statute itself;”*
 - It refers to *“civic uses”* as the *“most ancient form of collective use of goods destined to public enjoyment and use”*
 - It further states that collective use of a building (which is a common good) is *“ruled by a “Declaration of Urban Civic and Collective Use””*
 - And that this *“establishes a **“special” public regime** (...) in the meaning that the public good in question (...) is **administered directly by the community**, through deliberation and organizational forms based on **models of participatory democracy**”*
- In the **general dispositions**:
 - Article 1: the building Ex Asilo is recognized as a *“common good”*
 - Article 2: *“The present declaration (...) rules the use of spaces (...) ensuring usability, inclusiveness, fairness, accessibility and self-government, in order to ensure the preservation of the building as a common good for future generations and preserve the rights to civic use recognized to the community of reference. It also determines the organizational structure and the functions of the different bodies of self-government to allow an experimental management of the building, inspired by the most advanced forms of participatory democracy and open to the creative dynamic of the process of self-government.”*
 - Article 3: Participation is free. Access does not require registration except for those organizing activities;
 - Article 4: Inhabitants are all those involved in the life, care and management. They enjoy full rights of participation to the decision making processes. Guests are those



who request a space for temporary use. Inhabitants and guests sign a document of co-responsibility. Users are those who take part in activities;

- Article 5: inhabitants and guests are registered;
- Article 6: all parties must assume a responsible attitude;
- Article 7: *“The declaration intends to assure the development and the streamlining of shared decision-making practices that ensure the objective of an effective and democratic participation to the choices concerning the use of the spaces of l’Asilo. For this purpose, practices of management of the community of reference are articulated in the following moments:*
 - *Assembly (govern and management)*
 - *Programming Thematic Tables*
 - *Board of Trustees”*
- Article 8, 9: The assembly form is adopted to decide, discuss and develop the schedule of activities. It articulates in:
 - Assembly of Management that discusses the ordinary management at least 2 times a month;
 - Assembly of Govern that discusses the general guidelines of the activities at least once every three months;
- Article 10: at the beginning of the Assembly, the agenda is read;
- Article 11: programming of the thematic tables;
- Article 12: the guarantors committee of 7 members is the guarantor of last resort in case of disputes and quarrels;
- Article 13: the Assembly of Govern can delegate to specific legal entities;
- Article 14: **“Guarantees of access and collective use.** *The overriding principle in the programming of activities is the **non-exclusive use of any part of the property**, as turn-taking and the guarantee of use, access and usability of the space by the parties is the guiding principle of the whole urban civic use system.”*
“Both individuals and collective entities of any legal form, may propose activities according to the rules of this declaration, with the exception of electoral propaganda and related initiatives, for profit activities and, unless otherwise established by the Assembly, although meritorious initiatives that can no be included in the artistic and cultural field.”
- Article 15: **principles of cooperation and co-management**
- Article 16: any activity must be proposed to the Assembly;
- Article 17: decisions are taken by **consensus**;
- Article 18: procedure to amend the convention;
- Article 19: activities must stimulate the growth and the enhancements of the needs of the community and its individuals;
- Article 20: **“Financial resources.** *City (...) recognizing the high social and cultural value, as well as the positive economic externalities generated by the use of a civic common good (...) provides, within the limits of resources available, the hiring of management charges and what is necessary to ensure a safe environment for the carrying out of the activities and the protection of the property by preventing vandalistic damages”;*
- Article 21: **“Economic management.** *The economic management is based on the principle of transparency. (...) The activities (...) are not for profit and they are based on voluntary contributions (...).”*
- Article 22: **“Economic and financial support sources.** *For the realization and the carrying out of the activities the inhabitants of the community can:*
 - *Resort to forms of self-financing such as fundraising and crowd funding;*
 - *Establish agreements with other bodies or associations to finance specific initiatives or certain activities;*

- *Raise public and private funds also through the creation of necessary legal instruments;*
- *Accept donations, sponsorships (...)*
- Article 23: ***“Ecology and eco-compatibility. The activities promoted by the community promote principles of energy saving and rationalization, minimum production of waste, reuse and recycling of materials, care of green areas and sowing of uncultivated land.”***

57. The fact that Naples disposes of a definition of the term “common good” is very interesting because it is clear that this definition forms the base of all the design principles concerning (the public-civic management of) common goods. The City of Ghent lacks a definition of the term “common good” and we believe that this fact on its own creates a lot of stumbling blocks when it comes to the creation of public-civic management structures.

58. It is also interesting to see that the regulation is attached to a building, regulating the (public-)civic use/management of the building, without an agreement being signed between different contracting parties. In the City of Ghent, when the civic use of a public building is organized, a real estate agreement is always concluded between the city and its citizens.

b. The Agreement between the City of Barcelona and the Can Batllo Self-Managed Community and Neighbourhood Space Association in the City of Barcelona (annex 5) and the Schedule of Clauses Regulating the Concession for Private Use of the Public Domain (annex 6)

59. **The agreement between the City of Barcelona and the Can Batllo Self-Managed Community and Neighbourhood Space association contains the following following dispositions:**

- In the **preamble**:

“1. Barcelona City Council promotes the “Civic Heritage for Community Use and Management Programme” to support, promote and consolidate community use and management of municipal public assets under an institutional and legislative framework that enables the recognition and promotion of citizen experiences of community use of public assets.

2. This programme is intended to establish the definition of some common criteria that give coherence and transparency to the various municipal actions in relation to the use and management of public heritage with citizen participation.

3. These criteria or guiding principles are meant to enable the participatory, open and social use of collective resources that have to be democratically managed on a community basis by entities and projects that pursue the common good to be defined, evaluated and justified.



4. Barcelona City Council has accordingly developed an instrument defined as community balance, which combines the necessary evaluation tools, notably questionnaires and indicators, for the continuous improvement of projects by defining, evaluating and justifying them for the participatory, open and social use required for implementation in the public domain and which highlights the community impact and social return of said projects."

- In the **general dispositions**:

"1. Barcelona City Council is the owner, among others, of the buildings and properties on the Can Batlló-Magòria site (...).

2. The Can Batlló Self-Managed Community and Neighbourhood Space Association declares its commitment to continued community management, revitalisation and uses of this space by means of the Can Batlló Project, in accordance with Civic Heritage values and criteria and by producing the Community Balance (annexe 4), for the purpose of which a detailed description of the project is attached (Annexe 4).

(...)

4. This document incorporates the concept of Social Return Evaluation (Annexe 3) in order to quantify the value generated by the collective efforts and voluntary contribution of citizens in the gradual regeneration of Can Batlló site spaces after a long period of decay.

5. In order to maintain the continuity of the project that the Can Batlló Self-Managed Community and Neighbourhood Space is implementing in these spaces, bearing in mind their urban planning and legal classification in the municipal inventory as municipal public assets, and given the applicability of the concessionary possibilities in the legal form applied, Barcelona City Council is opting for the concession of private use of a public asset (...)

6. As a result of its choosing this option, the Barcelona City Council Heritage Services drew up the Schedule of Clauses regulating the concession (Annexe 1), establishing the bilateral obligations and ensuring social and participatory use of this resource and collective, citizen, community management in pursuit of the common good.

7. The Civic Heritage Board, a collegiate municipal body responsible for coordinating the assignment of municipal assets to non-profit entities, meeting on 15 November 2018, evaluated and decided in favour of granting private use of publicly owned spaces to the Can Batlló Self-Managed Community and Neighbourhood Space Association, with the aim of maintaining and developing the existing project managed by this entity, given this project complies with the criteria of the Civic Heritage for Community Use and Management Programme."

(...)

11. In accordance with Article 107.1 of Act 9/2017, of 8 November, on Public Sector Contracts, provision of definitive guarantee to the concession holder has been waived."

- In the **clauses**:

- Article 3: the term of the concession shall be **30 years**

- Article 4: *“Given the concession holder’s legal personality – a non-profit entity – and the purpose of the concession, the concession holder shall pay an **annual social rent of €650** following the signing of the concession.”*
- Article 5: *“Any costs or taxes that result from the award of the concession shall be borne by the concession holder.”*
- Article 7: *“The Can Batlló Self-Managed Community and Neighbourhood Space Association undertakes to draw up the Community Balance every two years and report its results to the City Council, as well as all the information requested by the City Council regarding the project’s governance and activities.
Both parties undertake to set up the Concession Coordinating and Monitoring Committee, with parity between City Council and Can Batlló members, as the main forum for monitoring the project and its development.
The City Council shall meet utility costs up to some previously agreed limits based on economic and environmental sustainability, and undertakes to renovate any spaces currently not in a fit state to be used, in the terms that derives from Clause 11 of the Schedule governing the concession.
Both parties undertake to ensure Civic Heritage criteria are complied with and the Can Batlló concession space is a space open to any city resident or organisation.”*

60. The clauses in the preamble of the agreement are particularly interesting for the City of Ghent because they refer to a Civic Heritage for Community Use and Management Program to support, promote and consolidate community use and management of municipal public assets under an institutional and legislative framework that enables the recognition and promotion of citizen experiences of community use of public assets. It is stated explicitly that the program is intended to establish the definition of some common criteria that give coherence and transparency to the various municipal actions in relation to the use and management of public heritage with citizen participation. As mentioned above, the City of Ghent lacks (a similar program and) clear definitions.

61. **The Schedule of Clauses Regulating the Concession for Private Use of the Public Domain contains the following following articles:**

- Article 7: ***“Liability and insurance policies***
The concession shall only have effect between Barcelona City Council and the concession holder and may not be invoked by the latter to avoid or reduce the liabilities that arise from the work for renovating and adapting the space to its purpose and subsequent management. The concession holder shall be liable, under the legal regulations that apply, for any damage and loss that may be caused to third parties or the City Council itself as a consequence of the property's renovation and adaptation work, occupation and use, of the state of conservation and functioning of the facilities and services, of the activities carried out there and of any breach of mandatory rules and, in general, as a consequence of any accident whatsoever that may occur, regardless of what may have caused it, even if this is an external cause outside the control of the concession holder. By contrast, the City Council shall enjoy full indemnity, regarding which the concession holder shall not be subject, in its employment relationship, to any possible criminal liabilities.

The concession holder shall take out an insurance policy against fire, explosion, water and other risks of material damage which shall cover at all times the real and up-to-date value of the premises and their facilities, so that the indemnities arising in the event of an accident shall fully cover their reconstruction and repair.

The concession holder shall also have to take out an insurance policy, at its own expense, that covers third-party civil liability arising from the occupation and use of the buildings. In any event, the liability cover shall have to include spaces subject to occupation and which are effectively used by the Association."

- Article 8: **"Guarantee"**

The concession holder, given its status as a non-profit entity, the project's social and community nature and the concession's purpose, is not required (...) to provide a definitive guarantee."

- Article 9: **"Delivery and return terms and conditions"**

- Article 10: **"Work and facilities"**

- Article 11: **"Utilities"** (divided between the city and the concession holder)

- Article 12: **"Rights and duties of the concession holder"**

- Article 13: **"Rights and duties of the city council"** (bears the costs of the wholesale refurbishment, renovation and major maintenance)

- Article 14: **"Concession coordinating and monitoring committee"**

The main function of this body shall be to supervise the smooth running of the concession and the project, as well as to monitor its development, based on the evaluation reports presented by the entity.

(...)

This Coordinating and Monitoring Committee shall comprise the following members:

- *City Council representatives: a political representative from the district, a technical representative from the district and a representative of the "Civic Heritage for Community Use and Management" Programme.*

- *A maximum of three of the entity's representatives"*

- Article 15: **"Termination and return"**

- (...)

62. In the Schedule of Clauses Regulating the Concession for Private Use of the Public Domain we can detect a clear parallel with the way the City of Ghent operates to formalize the public-civic management of a building belonging to the city in the form of a real estate agreement. This parallel allows the City of Ghent to compare the content of the articles of the real estate agreement, which is a source of inspiration.

c. The Community Balance Questions Guide of the City of Barcelona (annex 7)

63. The Community Balance is a self-diagnostic tool that organizations use to assess how they operate in relation to different environmental, social, and good governance questions. It was co-



produced between the Barcelona City Council, the Solidarity Economy Network and various community projects.

64. It is not entirely clear for us how the tool of Community Balance results in an evaluation (of social return). We would like to receive some further explanation. After asking, our colleagues from Barcelona sent us a copy of the Social Return Evaluation of the Can Battlo Self-Managed Community and Neighbourhood Space association.

d. The Regulation on Collaboration between Citizens and the City for the Care and Regeneration of Urban Commons of the City of Bologna (annex 8)

65. The Regulation on Collaboration between Citizens and the City for the Care and Regeneration of Urban Commons of the City of Bologna contains the following following dispositions:

- Title I - General provisions
 - **Article 1 : Purpose, subject and scope**
"1. This Regulation, in line with the provisions of the Italian Constitution and the Municipal Statute governs the forms of collaboration among citizens and the City of Bologna for the care and regeneration of urban commons. (...)"
 - **Article 2 : Definitions**
*"(...) **Urban commons**: the goods, tangible, intangible and digital, that citizens and the Administration, also through participative and deliberative procedures, recognize to be functional to the individual and collective wellbeing , activating consequently towards them, pursuant to article 118, par. 4, of the Italian Constitution, to share the responsibility with the Administration of their care or regeneration in order to improve the collective enjoyment. (...) **Shared management**: care interventions of urban commons carried out jointly by citizens and administration with continuity and inclusivity.(...)"*
 - **Article 3 : General principles**
*"1. The collaboration among citizens and Administration is based on the following values and general principles: **a) Mutual trust** (...); **b) Publicity and transparency** (...); **c) Responsibility** (...); **d) Inclusiveness and openness**: the interventions of care and regeneration of the commons must be organised in order to allow any interested citizens to join the activities at any time; **e) Sustainability**: the Administration, in the exercise of discretion in making decisions, verifies that the collaboration with citizens does not cause greater costs than benefits, and that it does not determine negative consequences on the environmental equilibrium; **f) Proportionality** (...); **g) Adequacy and differentiation** (...); **h) Informality**: the Administration demands that the partnership with the citizens takes place in accordance with the requested formalities only when it is provided for by law. In the rest of the cases it ensures flexibility and simplicity in the relationship, as long as it is possible to guarantee the respect of the public ethic, as it is regulated by the code of conduct of the public sector employees, and the respect of the principles of impartiality, efficiency, transparency and judicial certainty; **i) Civic autonomy**: the Administration acknowledges citizens' own initiative*



and prepares any the necessary measures to pledge its effective exercise by all active citizens.”

- **Article 4 : Active citizens**
*“1. The intervention of care and regeneration of urban commons, as a tangible manifestation of participation in community’s life and instrument for the full development of the human being, is **open to everyone**, without the necessity of any title of legitimation . (...)”*
- **Article 5 : Collaboration Agreement**
*“1. The **Collaboration agreement** is the instrument by which the City and active citizens agree upon everything is necessary in order to realize interventions of care and regeneration of the commons. 2. The **content of the agreement** varies according to the degree of complexity of the agreed intervention and to the duration of the collaboration. The agreement, with regards to the specific need of regulation that the collaboration required, defines in detail: (...)”*
- **Article 6: Intervention on public spaces and buildings**
“The collaboration with the active citizens can entail different levels of intensity of the intervention on public spaces and buildings, and in particular: the occasional care, the constant and continuous care, the shared management and the regeneration. (...)”
- **Article 7: Promotion of social innovation and collaborative services**
- **Article 8: Promotion of the urban creativity**
- **Article 9: Digital innovation**
- **Title II - Procedural provisions**
 - **Article 10 : General provisions**
 - **Article 11 : Collaboration proposals**
- **Title III - Interventions of care and regeneration of urban commons**
 - **Article 12: Occasional care intervention**
 - **Article 13: Shared management of public spaces**
 - **Article 14: Shared management of private spaces for public use**
 - **Article 15: Interventions of regeneration of public spaces**
- **Title IV – Interventions of care and regeneration of buildings**
 - **Article 16 : Buildings identification**
“1. The municipal government, on the basis of the addresses approved by the municipal board also as an outcome of participatory and deliberative procedures, periodically identifies within the real estate of the City the buildings in state of partial or total disuse or decay which, by location, structural properties and functional destination, are suitable for care and regeneration interventions to be performed by collaboration agreements between citizens and the City. (...)”
 - **Article 17 : Buildings shared management**
“1. The collaboration agreements having as their object the care and regeneration of buildings provide the shared management of the asset by active citizens, also constituted in association, consortium, cooperative, local or neighborhood foundation, for free and with permanent constraint of destination to shared care interventions disciplined in the agreements. 2. The shared management guarantee the collective fruition of the good and the opening for every citizen willing to collaborate to the care and regeneration interventions of the good or to the activities provided to in paragraph 1. 3. The duration of the shared management normally does not exceed nine years. Longer periods can eventually be agreed on the base of the requested financial commitment for works of building restoration of the real estate. 4. The collaboration agreements discipline the maintenance costs and the eventual works of building restoration in charge of the active citizens. Potential improvements



or additions must be realized without costs for the administration and are retained by it.”

- **Title V – Training**

○ **Article 18 : Purposes of training**

« 1. The City acknowledges training as a means able to direct and support those acts that are necessary to transform needs emerging from the collaboration between citizens and public administrations into opportunities for change. 2. Training is intended both for active citizens and for employees and managers of the City, and may involve both categories at the same time. (...) »

○ **Article 19 : The role of schools**

- **Title VI – Forms of Support**

○ **Article 20 : Exemptions and relief from levies and local taxes**

○ **Article 21: Access to municipal areas**

○ **Article 22: Raw materials and Personal Protection Equipment**

○ **Article 23: Assistance in planning**

○ **Article 24: Financial resources for the reimbursement of direct costs**

« (...) 4. The collaboration agreement identifies the maximum amount of municipal support and the modalities of delivering. (...) 6. The costs may be reimbursed if defined as follows: a) purchase or rental of instrumentals goods, raw materials and personal protective equipment necessary for the conduct of the activities; b) insurance policies; c) costs related to services necessary for the organizations, coordination and training of citizens. (...) »

○ **Article 25: Self-financing**

« (...) 2. The collaboration agreement may provide: a) the possibility for active citizens to use, at concessional terms, municipal spaces for the organization of initiatives of self-financing; b) the possibility to convey the image of possible donors involved by the citizens; c) support and endorsement of the City to initiatives of fundraising through the dedicated telematics platforms. (...) »

○ **Article 26: Forms of recognition for the actions undertaken**

○ **Article 27: Administrative facilities**

- **Title VII - Communication, transparency and evaluation**

○ **Article 28 : Collaborative communication**

« 1. The City, in order to foster the entrenchment of collaboration with citizens, makes use of all the available communication channels to inform about the opportunity of contributing to the conservation and restoration of the urban commons . 2. The City recognizes the civic network as the natural habitat for raising and developing a collaborative partnership with citizens and among them. 3. The collaborative partnership aims in particular at: a) Permitting the citizens to improve the quality of information, by enriching them with the different experiences available. b) Favoring the consolidation of a network of relations among citizens based on the promotion and sharing of experiences and instruments. c) Mapping subjects and interventions of care and regenerations of the commons in order to facilitate active citizens in identifying sites for intervention. 4. In order to comply with the provisions laid down in the previous paragraph; the City makes available to all citizens: a) A set of tools and instruments to communicate and propose, such as the civic network and the civic medium. b) Open source license for data, infrastructures and digital platform. c) Mentoring program upon the use of collaborative communication channels, also favoring support among groups. »

○ **Article 29: Tools to foster access to collaboration opportunities**

○ **Article 30: Accounting, measurement and evaluation of collaboration activities**

- **Title VIII - Liability and Surveillance**

○ **Article 31 : Risk Prevention**



« Based on the assessments carried out, active citizens should be provided with information about the existing specific risks in the environments where they operate for the care and regeneration of urban commons and about the prevention and emergency measures taken or to be taken. »

- **Article 32 : Liabilities**

« 1. The collaboration agreement timely indicates and regulates the tasks of care and regeneration of urban commons agreed between the administration and citizens and the related responsibilities. (...) »

- **Article 33 : Conciliation attempt**

« 1. If disputes arise among parties to the collaboration agreement or between parties and third parties conciliation may be attempted before a Committee composed of three members, one appointed by active citizens, one by the Administration and one by mutual agreement or, in case of disputes with third parties, by the latter. (...) »

- **TITLE IX – Final and transitional provisions**

- **Article 34: Interpretative clauses**

- **Article 35: Entry into force and experimentation**

« (...) 2. The provisions of this Regulation are subject to an experimentation period of one year. (...) »

- **Article 36 : Transitional provisions**

66. We find the Bologna Regulation particularly inspiring because it provides an important number of definitions of commons, active citizens, ... on the one hand and on the other hand an extensive framework of uniform rules/guidelines that can be followed when organizing public-civic management of commons. We feel that creating this type of regulation would be a big step forward for our city in the organisation of public-civic management of commons.

5. Pilot projects of the City of Ghent

67. According to the transfer plan guidelines of the Civic eState Project, cities have to carry out pilot (micro-)projects and experimentation rounds that will allow them to practice with the good practice transfer.

a. Pilot project#1: Saint Joseph Church

i. Context

68. The City of Ghent identified the Saint Joseph Church as a pilot project. This church is located in the Rabot-Blaisantvest neighborhood which is one of the poorer neighborhoods of the City of Ghent. The church was officially desecrated in 2018 and ceased to be a place of worship. Since then, except for some secondary use, the building is not used to its full potential.
69. The City of Ghent purchased the building in 2019 and wants to give it a new purpose, in the form a public-civic management of the building. This project presents a series of challenges not least given the fact that the building classified as a protected monument.

ii. Legal instruments (to be) used in the pilot project and knowledge transferred to the pilot project

70. In order to realize the project of the public-civic management of the building, the City of Ghent will use several legal instruments: first an open call to find a manager will be launched and then a real estate agreement will be closed between the manager and the City of Ghent.
71. At this moment in time, September 2019, the City of Ghent is in the process of writing the text of the **open call**.
72. This process was started by the Policy Participation Service of the City of Ghent. This Service organized several informal participation rounds (Urbact Local Groups **ULG's**) with the citizens and organizations of the Rabot-Blaisantvest neighborhood to talk with them about the Saint Jozef Church. The citizens and organizations were:
- informed about the plans of the City of Ghent for the public-civic management of the building;
 - given the opportunity to visit the building;
 - given the opportunity to express their wishes and give their input on how they envisioned the public-civic management;

- asked to think about and debate about some concrete questions concerning the public-civic management of the building.



73. The Policy Participation Service used the input of the citizens and organizations of the Rabot-Blaisantvest neighborhood as a source of inspiration for the text of the open call.

74. The actual writing of the text of the open call is done by a cross-departmental multidisciplinary team (part of the **LAWG**) of the City of Ghent:

- Policy Participation Service:
 - Josefien Maes, neighbourhood manager of the Rabot-Blaisantvest neighbourhood;
 - Eleke Langerart, manager of the Civic eState project;
- Real Estate Service:
 - Nele Broekaert, legal professional/city creative lawyer in the Civic eState project;
 - Melissa Galle, legal support;
- Urban Development Service:
 - Maurits Vandegehuchte, urban development specialist;

- Sofie Lagaisse, communication specialist;
 - Legal Service:
 - Yoko Gesels, city creative lawyer in the Civic eState project.
75. Ariana Tabaku (ULG member) and Yoko Gesels (city creative lawyer) discussed this with Christian Iaione (LE) on August 22nd 2019 during a **virtual check-in**. Christian Iaione asked the City of Ghent to pay specific attention to the **principles of non-exclusivity and sustainability**, not only in the pilot project, but also in the regulation to be drafted at the city level by the end of the Civic eState Project.
76. Yoko Gesels communicated Christian Iaione's input to the cross-departmental multidisciplinary team responsible for writing the text of the open call. This resulted in a team discussion on how the principles of non-exclusivity and sustainability must be interpreted.
77. On the principle of **non-exclusivity**, consensus was quickly reached. The team agreed that non-exclusivity means that the public-civic management of the building should ensure the possibility for all those interested to participate in the project at any moment in time. Several members of the team however, stretched the importance of making longer term agreements with citizens and organizations possible in order to assure continuity in the building, next to openness.
78. On the principle of **sustainability**, there was more discussion. One member of the team pointed out that on the level of the city politics, voices are rising that demand 100% self-sustainability. Other members of the team believe that 100% self-sustainability is not possible and not even desirable. It became clear that consensus should be found in the middle. The example of the usefulness **Community Balance Tool of Barcelona** was discussed. In the City of Ghent, the social return of citizen participation is not measured (in economic terms). The team is aware of the fact that measuring the social return of citizen participation can be an important tool to justify the City's investments (e.g. in the form of subsidies) in public-civic management.
79. As to be expected, the pilot project of the public-civic management of the Saint Jozef Church is coming across some **stumbling blocks**. Mid-September 2019 a meeting took place between the city administration and the city politicians concerning city development, during which the project was discussed. The building needs to be renovated in order for it to be ready to be used to its full potential. Therefore, the Policy Participation Service decided to phase the task of the building

in that sense that the content of the task of the manager follows the state of the renovations. This system is explained in the text of the open call. At this moment, September 2019, it is not clear yet if the city politicians will provide the money necessary to complete the three phases of the renovation/management envisioned in the open call. The final financial decisions will be taken with the conclusion of the **financial multiannual plan of the city which is on the agenda end of October 2019**. Furthermore, the politicians remarked that the **participation rounds concerning the Saint Joseph Church were organized to early in the process**, given the fact that the financial discussions have not yet been finalized. For this reason, we decided not to organize further ULG's before the financial multiannual plan of the City of Ghent is concluded.

80. At the end of October 2019, the City of Ghent decided to provide the funds necessary for the first phases of the public-civic management of the Saint Jozef Church.

b. Pilot project#2: Exemption of taxes for the use of public space for citizen and neighbourhood initiatives

i. Context

81. The City of Ghent identified the tax regulation on the use of public space as a second pilot project. As we have seen higher in this memo, citizens who want to use the public space can ask the city for a permit for the use of public space. The procedure to obtain the permit is straightforward and should not refrain citizens from taking initiative. However, up until today, October 2019, the person using public space, must also pay taxes for this use. It has been brought to the attention of the city that the latter can be a reason for citizens not to take an initiative.

ii. Legal instruments (to be) used in the pilot project and knowledge transferred to the pilot project

82. Recently, the Service for the use of public space was asked to review the Tax Regulation on the Use of Public Space 2020-2025. Given the fact that the coordinator of the Service for the use of public space, Michiel Bonte, is a member of the Ghentian LAWG, he is informed about the Civic eState project. After receiving this question, he took contact with the Legal Service, more precisely Yoko Gesels, city creative lawyer, to discuss the case. He proposed to insert an exemption from taxes on the use of public space for citizen and neighborhood initiatives in Tax

Regulation on the Use of Public Space 2020-2025 with the purpose to create a financially more friendly environment for citizens taking initiative on the public space.

83. The formulation of the exemption was proposed as follows:

“Are exempted from taxes:

- (...)
- *Permitted uses of the public space in the context of citizen or neighbourhood initiatives or other project meant to enhance social cohesion and are not associated with any form of commercial interest.”*

84. The Financial Department of the City of Ghent agreed to the abovementioned formulation of the exemption. The Regulation has been approved by the City Council.

85. The next step is to discuss how this regulation can be used as an example for future (tax) regulations. A meeting has been organised on January 13th 2020.

86. This pilot illustrates that participating in the Civic eState project and forming the LAWG on the city administration level creates a cross-departmental awareness for the subjects discussed in the project and therefore facilitates the creation of new rules.

87. In this case, a parallel can be found with the Regulation on Collaboration between Citizens and the City for the Care and Regeneration of Urban Commons of the City of Bologna (annex 8) which also mentions exemption from taxes as a means to support citizens initiatives.

6. Annexes

1. Subsidy agreement Dok 2019
2. Open call Nest
3. Subsidy regulation concerning the fund of temporary use
4. Declaration of Urban Civic and Collective Use of Ex Asilo in the City of Napels
5. Agreement between the City of Barcelona and the Can Batllo Self-Managed Community and Neighbourhood Space Association in the City of Barcelona
6. Schedule of Clauses Regulating the Concession for Private Use of the Public Domain Can Batllo in the City of Barcelona

7. Community Balance Questions Guide of the City of Barcelona
8. Regulation on Collaboration between Citizens and the City for the Care and Regeneration of Urban Commons of the City of Bologna



Urban Commons Policy/Regulation Canvas = experimental phase in Ghent/testcase St-Joseph-church

DEFINING THE URBAN COMMONS (30 minutes)

TYPOLOGY OF RESOURCES

Material (buildings, public space, ...)

TYPOLOGY OF USERS

Everyone that uses the resource (unlimited)

POLICY ENDS / PUBLIC VALUES

Ownership by the citizens, participation, transparency (open data), social cohesion, ...

SCALE

Scale depends on the resource, e.g. pilot St-Joseph = micro (neighbourhood)scale

URBAN COMMONS GOVERNANCE (60 minutes)

PRINCIPLES

What principles, features, characteristics should urban commons governance mechanisms bear? Self-organization and civic autonomy, openness in management and non exclusivity in use, responsibility and entrepreneurship, *multistakeholder*ship and transparency, mutual trust and informality, sustainability and innovativeness? Other?

- Constitutional values: respecting human rights: non violence, equality (of sexes)
- Self-organisation and civic autonomy, openness in management and non exclusivity in use, sustainability (more focus on the long term)
- Direct democracy (separate from the local government)

=> *Now our focus is on finishing the open call and finding the right method to choose a good operator*

for the church – while respecting all these principles

CITY-COMMONS LEGAL TOOL AND PARTNERIAL DIALOGUE METHODOLOGY

Civic Uses Recognition / Collaboration Pacts / Cooperation Agreements / Value Labeling? How should the legal tool strike the balance between rights and obligations among the parties? How should the City identify the Urban Commoners, through collaborative dialogue, Accreditation, Self - emergence?

How do we create dialogue between city and community? Self organisation + recognition (Madrid, Bologna) OR collaborative dialogue (Gdansk) OR value labelling (Barcelona)
All methodologies can be used, depending on the context. Open framework.

EVALUATION MECHANISM (30 minutes)

Describe the evaluation mechanisms to measure the public value produced by the urban commons, indicators to be used and subdimensions, as well as techniques/process/steps to implement the evaluation.

- Lack of evaluation mechanisms
- In need of evaluation mechanisms
- ? Maybe parties should agree upon third party evaluator they both have trust in? (ex: academic, or public procurement call to ask to create an evaluation framework)

MONITORING (15 minutes)

Describe the monitoring, conflict resolution, and sanctioning mechanisms to be implemented internally by the urban commoners and externally by the city

- Open communications tools
- Reporting about activities
- Are principles being carried out
- Remark: monitoring and sanctioning tools can not be to strict (risk of discouragement), it should be proportional to the amount of sponsorship by the government

INTERNAL MANAGEMENT AND SUSTAINABILITY MECHANISMS

What kind of internal decision-making mechanisms should urban commons have? Should they be designed to guarantee their economic sustainability and if so how should economic sustainability be guaranteed?

- Democratic, open decision making process, but the government does not dictate how this process must be organised (ex. St Joseph: together with local ULG and neighbourhood, we'll put together a jury)
- Sustainability is important, therefore short and long term plans including budget plans should be made and evaluated.

INSTITUTIONAL ARRANGEMENTS

What kind of resources should the City put in place to enable the urban commons (e.g. internal office, external entity such as a foundation, funding, logistics, training/mentoring, digital tools)? At the central/district/neighborhood level?

- Financial support (paying bills, or subsidizing, ...)
- Technical support (extraordinary maintenance, ...)
- Training and monitoring (creating a learning environment, sharing knowledge)
- LAWG (cross departmental administrative working group)

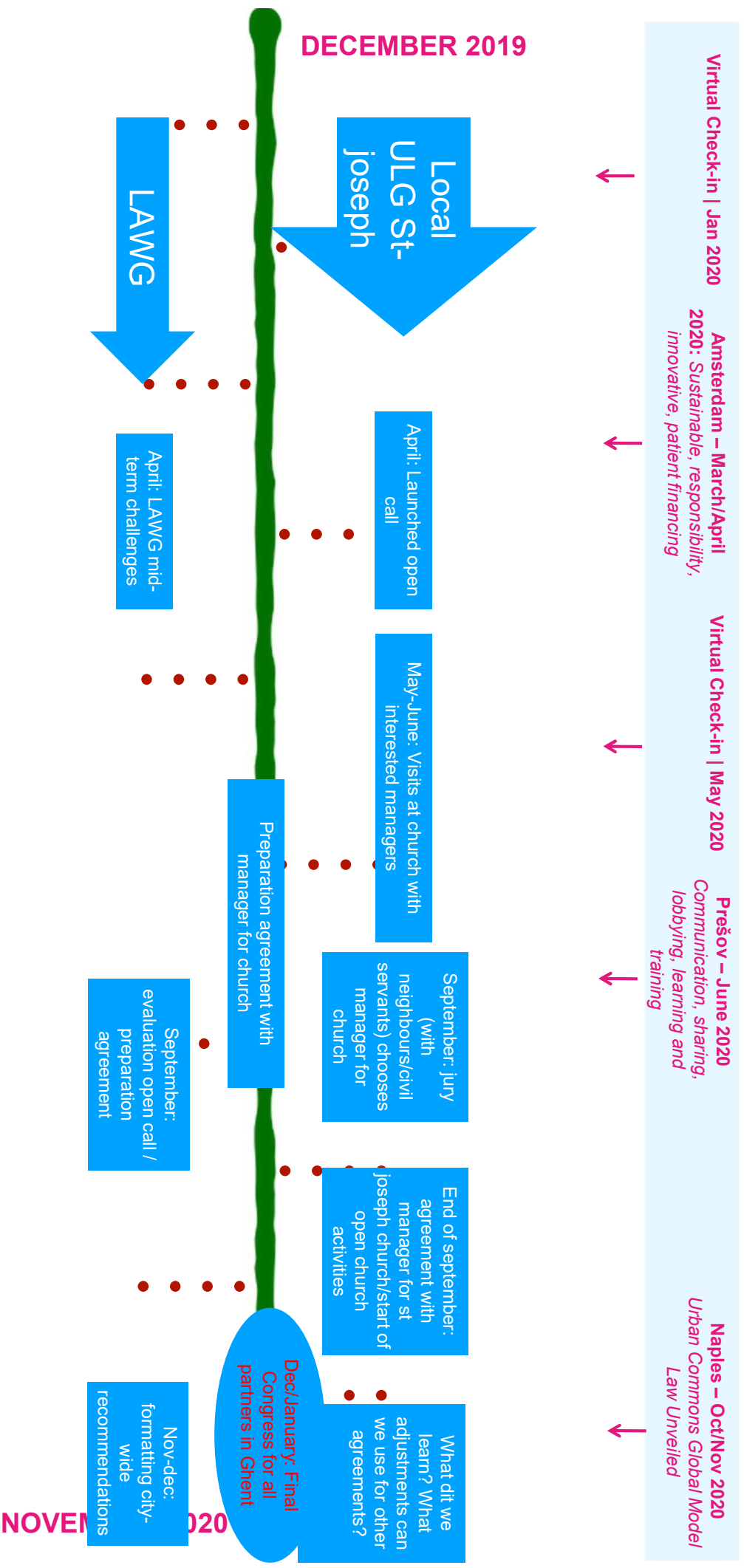
ANY OTHER ELEMENT (15 minutes)

Describe any other element you think it's necessary in the design of a policy or regulation enabling the urban commons

- Publicity on behalf of the government regarding commons
- Public-community partnership support desk (expertise is very important)
- Creating an environment where the community internalizes the values the commons stand for

Timeline Pilot St-Joseph/regulation canvas

Describe your city's policymaking timeline. What's the schedule of ULG and LAWG agenda to co-produce your city policy regulation? Fine tune them with the transnational timeline milestones represented by the virtual check-ins and the transnational meetings. Include a detailed roadmap composed of milestones, ULG meeting plan, experimentalations, transnational meetings, treasure box inputs (30 minutes)



IASI

DRAFT LEGAL MEMO

CITY OF IASI

January 2020

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1. Introduction

The goal of Iasi, as partner in Civic eState project, is to find ways of valorizing common urban assets, by involving local stakeholders and civil society in their administration. Thus, the transfer of the good practice aims to improve the degree of awareness of the local associations, stakeholders and informal groups regarding the role of civic patrimony in Iasi.

In order to transfer, with appropriate adaptations and improvements, the good practices of project partners in the management of urban goods, we have started, within our LAWG, to identify and discuss the legal context and barriers regarding property, involvement of civil society and co-administration of urban assets. This first step will help us to substantiate the debates and discussions with stakeholders regarding the object of our transfer process.

2. Existing legal instruments



The governance of urban commons at the level of Iași Municipality becomes a challenge from the perspective of:

Identification and capitalization of legal formulas and instruments

Identification of co-design formulas

Identification and construction of public-private co-management formulas

Building public policy strategies in this field

At the level of the local public administration, the legislative context that may generate such co-management formulas regarding the governance of the common assets aims at:

- European legislative framework (directives, decisions, regulations, etc.)
- national legislative framework (laws, government decrees, orders of ministers, etc.)
- local normative dimension (local council decisions, provisions, etc.)

The challenge for Iași Municipality mainly involves the national dimension of legislation that constrains the local administrative level from the perspective of regulation.

The national legislative framework governing the possibility of co-management at the level of the public administration, involves the following laws:

- a. Administrative Code - 2019 (replacing the Local Public Administration Law 215/2001)
- b. Law 350/2005 on the regime of non-refundable grants for non-profit activities of general interest
- c. Law 350/2006 of young people
- d. Law 233/2016 on public-private partnership

a) Administrative Code - 2019

- Regulates the possibility of collaborations and partnerships between local public administration and other community actors in the provision of goods and services of general interest, highlighting the domains or certain types of goods and services, as well as the possibility of association with other actors of the public/private field.
- It does not specify clearly the way in which this association can be achieved but uses the term "financing", and speaks only about the role of the local public administration of a public service and public goods provider **without taking into account the co-management formulas**.

b) Law 350/2005 on the regime of non-refundable grants for non-profit activities of general interest

- Law 350/2005 identifies the formula of cooperation between the local public administration and non-governmental organizations, as structures generating nonprofit activities of general interest, **only in the form of financing**. The law does not mention other forms of co-management of public or common goods or services. From this point of view, Iasi Municipality cooperates with the NGOs, which annually and multiannually finances about 50-60 projects of public interest, in the following areas:
 - a. Culture
 - b. Social-health-education-environment
 - c. Youth
 - d. Transparent and participatory governance.

Also, Iasi Municipality adopted through local normative formulas some regulations on the regime of these non-reimbursable grants, such as:

- Local Council Decision no. 8 of January 31, 2019 regarding the modification, completion and approval of the Regulation regarding the financing of civil society projects in Iasi, based on the Law 350/2005.

- Regulation on the procedure and criteria for evaluation, selection and financing of projects in the field of written culture, adopted by Local Council Decision.
- Law 350/2005 also **limits funding to "nonprofit activities"**, any other intervention or profit generating investment being outside the law. Law 350/2005 also states that funding can only be done for "actions or programs".
- Furthermore, Law 350/2005, in conjunction with Law 350/2006, is subject to European legislation on State aid, in the sense of excluding once again the economic activity, generating profit from the beneficiaries - partners of the local public administration in such financing contracts.

c) Law 350/2006 of young people

Youth policies are based on the following general principles: fostering cooperation between central and local public authorities and institutions with non-governmental youth structures through the establishment of consultative councils of non-governmental and youth organizations from each local or central public authority or institution that manages funds for youth.

The local and county public administration authorities provide the institutional framework and the necessary conditions for the participation of young people in decision-making in the youth field.

In all issues concerning the youth, the local councils of the communes and the towns have the obligation to organize consultation procedures with the non-governmental youth organizations, established at the level of the respective territorial-administrative unit.

- At the level of Iasi Municipality, the formulas for managing these types of youth policies are carried out in collaboration with the non-governmental youth organizations, in the light of the Law 350/2005, **in the form of financing forms**, through financing contracts concluded between local authority and non-governmental organizations.

d) Law 233/2016 on public-private partnership

- Despite the current legal framework, which proves to be more current and more adapted to the economic requirements than the previous normative acts, there are still no such projects in Romania, and **there are doubts about the effective, real possibility of the**

public authorities to implement public-private partnerships, observing a relatively low desire for private players to get involved in such novelty projects for our country.

- Furthermore, Government Emergency Ordinance no. 39/2018 refers to Law no. 98/2016 on public procurement, Law no. 99/2016 on sector acquisitions, as well as to Law no. 100/2016 on works concessions and service concessions, which at local level implies their more frequent use than the legislation of the public-private partnership, which is changing.

3.Relation to the legal instruments of other cities in the network

The Declaration of Urban Civic and Collective Use of Ex Asilo in the City of Naples

Naples disposes of a definition of the term “common good”, that is the base of all the principles concerning the public-civic management of common goods. City of Iasi lacks a definition of the term “common good” and this fact generates a lot of difficulties regarding the creation of public-civic management structures.

Another aspect to be mentioned is the regulation of the public-civic use/management of the building, without an agreement signed between the contracting parties, which is not the case of Iasi.

The Agreement between the City of Barcelona and the Can Batllo Self-Managed Community and Neighbourhood Space Association in the City of Barcelona

In Barcelona, it is established a Civic Heritage for Community Use and Management Program to support the community use and management of municipal public assets under an institutional and legislative framework that enables the citizen participation to community use of public assets. In relation to this context, the City of Iasi does not have a similar conceptual and practical framework.

The Regulation on Collaboration between Citizens and the City for the Care and Regeneration of Urban Commons of the City of Bologna

Bologna Regulation is very useful, giving us some ideas and providing a series of definitions and a framework of principles that can regulate the public-civic management of commons.

4.Pilot project in the city of Iasi

The asset identified by the City of Iasi for the transfer process is a former high-school canteen.

It's a partially occupied space, fact that represents an inconvenient for the pilot project progress. The Municipality plan to empty it, and to carry out some rehabilitation works in order to use it to its full potential, but for now we are facing administrative and financial issues.

Regarding the functionality of this space, the intention of the Municipality, following the discussions within ULG, is to use the building as a Municipal Robotics Center for children and young people.



This process has been initiated by Iasi Municipality, which have organized informal ULG meetings with NGOs, knowledge and private sector representatives. The ULG members have been informed regarding Civic eState project and transfer process, about the plans of the City of Iasi for the public-civic / public-private management of the building, and asked to think about different aspects concerning the public-private / public-civic management of the building.



5.Conclusion

We can see that the form of co-governance proposed by our partners within the project is not common in our country/city. In this context, Iasi will have to take some steps in the direction of substantiation of public-private/public-civic partnership legal instruments, which must go beyond the classic model of the concession agreement of a space / building made available by the Municipality.

The steps that Iasi Municipality proposes follow the above-mentioned strategic / long term directions:

- a. Identify new stakeholders to be involved in possible public-private / public-civic partnerships;
- b. Create a meeting calendar with all the actors directly involved, including the administrative actors, with the role of highlighting those elements needed at the administrative level in terms of possibility to implement such partnerships and the correlation with the legislation.
- c. Public debate on the normative framework of public-private / public-civic partnerships;
- d. Substantiation of the methodology of the public-private / public-civic partnership law, legal instruments that go beyond the classic model of the concession agreement of a space / building made available by the Municipality;
- e. Create a pilot project for co-management of urban assets.

We must also mention that there are some difficulties/obstacles to take into account, generating a series of risks for the transfer in the next phase of the project, such as:

- the gap between the legal conditions and principles stated by the documents representing good practices examples from the cities having large experience on this field (Naples, Barcelona, Bologna) and the Romanian legislation
- no community lawyer within the ULG structure
- difficulties encountered regarding the direct dialogue/collaboration with citizens; in the local context practice, the decision making process is commonly oriented top - down (generally, the local administration takes initiatives, these being accepted or not by the citizens, not vice versa)

- unavailability of the public asset which is object of the experimentation pilot
- insufficient involvement of some categories of stakeholders
- difficulties to identify funding mechanisms

Urban Commons Policy/Regulation Canvas

DEFINING THE URBAN COMMONS (30 minutes)

TYPOLOGY OF RESOURCES

- buildings, public spaces
- social actions, culture, knowledge, data

TYPOLOGY OF USERS

Local community (public, civic, private, knowledge sector)
Unlimited - everyone who uses the resources

POLICY ENDS / PUBLIC VALUES

co-management of resources by the community, reactivation of local resources / co-participation, social cohesion ...

SCALE

The scale can be the whole city, the neighborhood
It depends on the type of resource/initiative: buildings, public space, knowledge, data

PRINCIPLES

URBAN COMMONS GOVERNANCE (60 minutes)

INTERNAL MANAGEMENT AND SUSTAINABILITY MECHANISMS

What principles, features, characteristics should urban commons governance mechanisms bear? Self-organization and civic autonomy, openness in management and non exclusivity in use, responsibility and entrepreneurship, *multistakeholder*ship and transparency, mutual trust and informality, sustainability and innovativeness? Other?

- Self-organisation, civic autonomy, openness in management, non exclusivity in use, responsibility, multistakeholdership, mutual trust, sustainability, transparency

What kind of internal decision-making mechanisms should urban commons have? Should they be designed to guarantee their economic sustainability and if so how should economic sustainability be guaranteed?

- Democratic, open decision-making process - decisions must be made by consensus in open assemblies, the mechanism being established through a general regulation framework.
- Economic sustainability must be guaranteed, therefore plans of activities and budget should be made and monitored.

CITY-COMMONS LEGAL TOOL AND PARTNERIAL DIALOGUE METHODOLOGY

Civic Uses Recognition / Collaboration Pacts / Cooperation Agreements / Value Labeling? How should the legal tool strike the balance between rights and obligations among the parties? How should the City identify the Urban Commonsers, through collaborative dialogue, Accreditation, Self - emergence?

All methodologies can be used, depending on the context. Open framework.
Collaborative dialogue between city administration and community is more appropriate.
Self-emergence + Recognition or Value labelling are difficult to put in place within the local context.

What kind of resources should the City put in place to enable the urban commons (e.g. internal office, external entity such as a foundation, funding, logistics, training/mentoring, digital tools)? At the central/district/neighborhood level?

- Internal office - LAWG (cross departmental administrative working group)
 - Funding - paying invoices, subsidizing / Self-financing, voluntary contributions, sponsorships ...
 - Technical support - rehabilitation, maintenance
 - Training/mentoring - creating a learning environment, sharing knowledge
- Scale: city level

INSTITUTIONAL ARRANGEMENTS

EVALUATION MECHANISM (30 minutes)

Describe the evaluation mechanisms to measure the public value produced by the urban commons, indicators to be used and subdimensions, as well as techniques/process/steps to implement the evaluation.

- Evaluation framework to create
- Identify possible indicators to measure different dimensions of the public value - ex.: number of community's meetings, number of community participants/users to the activities, number of events organized (trainings, seminars), sustainability indicators

MONITORING (15 minutes)

Describe the monitoring, conflict resolution, and sanctioning mechanisms to be implemented internally by the urban commonsers and externally by the city

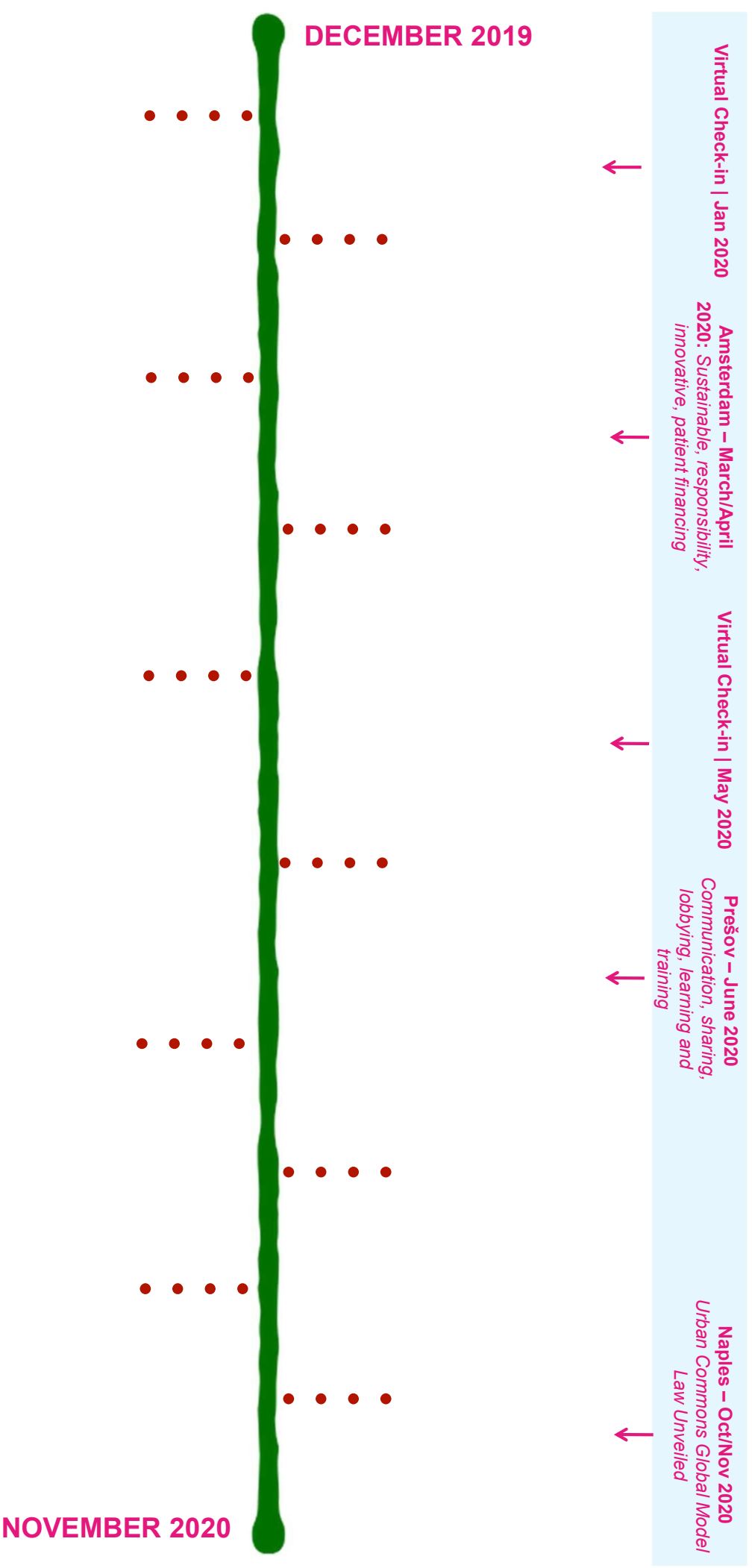
- Monitoring by reporting activities carried out
- Conflict resolution and sanctioning tools must be flexible, not very restrictive, because of the risk of discouragement

ANY OTHER ELEMENT (15 minutes)

Describe any other element you think it's necessary in the design of a policy or regulation enabling the urban commons

Urban Commons Policy/Regulation Timeline

Describe your city's policymaking timeline. What's the schedule of ULG and LAWG agenda to co-produce your city policy regulation? Fine tune them with the transnational timeline milestones represented by the virtual check-ins and the transnational meetings. Include a detailed roadmap composed of milestones, ULG meeting plan, experimentalns, transnational meetings, treasure box inputs (30 minutes)



PRESOV

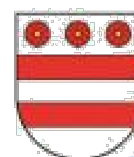
REGULATION OF COOPERATION BETWEEN SELF-GOVERNMENT AND OTHER ENTITIES IN THE USE OF ABANDONED REAL ESTATE OWNED BY THE CITY OF PREŠOV

**Preparatory legal analysis
for the Legislative
and communication framework
of simplified user access
to abandon and unused real estate
owned by the city of Prešov**

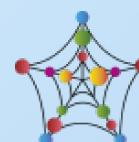
Prepared by:

**Mgr. Peter Formela
and LAWG Prešov team**

In Prešov 2020



MESTO PREŠOV



**CIVIC
eState**

Pooling Urban Commons

This document is prepared in order to clarify and define the legal basis for the prepared and communicated steps of preparation of the Legislative and Communication Framework for Simplified User Access to Real Estate owned by the City of Prešov. The document maps the current legislative and socio-political situation in the field of management of city property, as well as the participation of private persons in the performance of property and legal activities of the city.

Obsah

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Version 2.02, direct translation from slovak language without final language corrections

1. Introduction

The situation with unauthorized use of real estate is not in a critical state in the city of Prešov, therefore, in terms of preparation, the need for action is neither high nor urgent. However, this does not mean that the solution of this issue at the self-governing level is not topical and many other areas are connected to this issue, the progress of which can be accelerated in the process of preparation of areas of interest within this project.

In terms of Slovak legislation, self-government has many specifics compared to other countries of the European Union, which are based on its historical and political development, especially after 1989. Such specifics are, for example, the separation of legislative and executive power, which is a certain element of mutual control over public financial property.

Regarding the real situations of using foreign real estate, the development of urbex and squatting in Slovakia is not yet very well known. Today, two groups of squatters are monitored in Slovakia, about ten people performing and promoting urbex, but countless properties that are used without the owner's consent by homeless people (not squatters) or the Roma minority. Unlike squatting, these users do not have a positive attitude towards real estate and their presence does not increase the quality of inhabited real estate, but their acquisition, consequently use without adequate maintenance. There are no known forms of squatting and urbex in Prešov, the occurrence of illegal housing is not uncommon. We do not register this type of use on real estate owned by the city, which does not mean that it does not occur.

In the context of prevention and assistance with the protection of the population against poverty, as well as in the field of education and awareness, the activities of the third sector, civic or non-profit associations and community organizations are essential. A promising aspect of the work on the URBACT project may also be the involvement of these entities in the process of preparing the legislative regulation of the issue, as well as secondarily in the preparation of real outputs in the form of adjusting the participation of these entities in other public life activities in the city.

2. Related legislation

Slovak legislative framework does not provide a comprehensive regulation within the relevant areas within the laws, but in part it also transfers competences for its solution to local governments, which can regulate specific procedures in their own competence within generally binding regulations and internal regulations, directives and principles.

Legislation within this issue regulates the management of city property as a change in ownership or user rights to movable and immovable property and other property rights. For us, the right of use without a change of owner is essential. This means that the real estate or movable property will remain the property of the city, but the use by third parties will be regulated by a separate legal act, and thus by an agreement on the lease, use or management of this real estate. The Slovak legislation does not allow for foreign usage rights and strictly takes into account the conditions of such use, which must be clear and obvious and written in writing through a contractual obligation. Oral agreement or use without a contract is not possible and is a criminal offense (in a separate section).

Legislation governing the use of urban real estate

Act no. 369/1990 Coll. on municipal establishment - regulates the basic competencies of the city as a self-governing entity, its administrative division and competence of activities. It regulates which legal activities are delegated to the decision of the city.

Act no. 138/1991 Coll. on municipal property - regulates the basic principles of disposing of municipal property / city. In order to increase legal certainty, the process of dealing with city property has become multi-instance, ie. Any form of alienation or assignment of property or use rights is not only within the competence of one person (statutory), but is subject to a more administratively demanding approval process. At the same time, however, it gives the possibility to put the city's property under the administration of another person, while the simplest way is to manage the entity with the city's property participation, which can subsequently put the given property into use by third parties within business activities.

The principles of property management of the city of Prešov - regulate the basic principles of dealing with financial and other property rights, and are binding for all inhabitants of the city and for all entities with property participation of the city or with the right to perform financial operations. There is a specific adjustment of the procedures that are required for the validity of the act of dealing with the property values of the city.

General binding regulation of the city of Prešov no. 12/2015 on local fees and taxes - regulates the creation and payment of real estate tax and tax for the use of public space, and thus that the taxpayer is the end user of the property, which pays on the basis of the filed tax return, if the payer is not the property owner.

Illegal use and penalties for it

In the case of unauthorized use of municipal real estate, there is a risk of action against this illegal activity in accordance with the provisions on unauthorized use of another's property arising from the Criminal Code:

Act no. 300/2005 Criminal Code

"§ 215 (1) Whoever seizes a foreign thing of small value with the intention of temporarily using it or who causes minor damage to foreign property by temporarily using the thing entrusted to him, shall be punished by imprisonment for up to one year."

Legal regulations governing the cooperation of local governments with other persons and institutions

Act on Municipal Establishment no. 369/1990 Coll. - regulates the possibility of independent decision-making on the association of the municipality, the performance of activities within other entities of the private sphere, business companies, civic associations and other special-purpose organizations.

Development documents of the city of Prešov

Prešov City Development Program - is a basic program document that serves as a planning basis for the activities of the city office and for budget planning. It contains the basic objectives, their components, and sets out the preparation of tools to achieve them, which are reflected in the action plan. Specifically, two goals are essential for our purpose:

Point 6 - Social welfare - is also partly focused on Community cooperation and partnerships, which could become a professional guarantor of cooperation in some sectors of social coexistence.

Point 10 - Effective administration - the requirement of this goal is to create the most appropriate system of processes in public administration, which will reduce bureaucratic administrative procedures as much as possible and simplify citizens' access to individual services within self-governing activities. The project focus within URBACT also addresses secondarily this question, how to simplify and make available the issue of the use of urban real estate as much as possible in the conditions of a complex bureaucratic process of municipal self-government.

Community plan of social services - basic strategic material for the development of self-government in the social area, contains some tools that can be used in the preparation of the legislative framework of the project, such as the legal basis for creating partnerships in accordance with the *Social Services Act no. 448/2008 Coll.*

"§ 4 Partnership

(1) A partnership pursuant to this Act is a grouping of persons created for the purpose of implementing projects or programs for the prevention or mitigation of adverse social situations of natural persons or for resolving these situations and projects or programs of community work. The partnership can be created mainly by the municipality, the higher territorial unit, the office of labor, social affairs and the family, the representatives of the community and another person.

(2) The members of the partnership enter into a written agreement on the creation of a partnership for the implementation of the project or program under paragraph 1, which contains in particular the partnership members, the duration of the partnership, the purpose of the partnership, rights and obligations of partnership members.

(3) A community under this Act is a group of persons living in a certain grouping determined mainly by a street, a city district, a municipality, a city and which is united by common interests, values and goals."

This is the only legal regulation on cooperation between self-government and the non-public sector within an official partnership supported directly by legal regulation. The self-government, as an independent legal entity, is entitled to join trade or interest associations, but only if the degree of efficiency and economy is taken into account. For this reason, it is unlikely that the municipality would be a member of a non-profit or foundation company.

However, this fact may not apply to companies in which the municipality has an ownership interest and these companies generate a profit that has and can be used to create activities of a charitable, non-profit or endowment nature.

3. Baseline

There is no direct legislative regulation to address the issue of simplified use of real estate in the conditions of the Slovak legal system, as mentioned above. The process of obtaining a long-term right to use real estate owned by the local government is lengthy and bureaucratic.

However, the existence of a higher goal, which would create a moral or social need to legalize the right of use, can occur, especially with pressure from below, ie from the population. This is represented by citizens' associations in the form of communities, civic associations or other non-governmental or non-profit organizations. As they have legal personality, they can be considered as participants in legal proceedings in terms of

contact with the local government. For individuals (natural persons), this format can be partially excluded, due to the protection of their subjective rights and the impossibility of eliminating conflicts of interest, which cannot stand in the assessment of efficiency and economy of public finances, although the motive may be moral or socially acceptable. In this case, the procedure we are proposing cannot be used.

In the event that there is a need to legalize unauthorized use, in the conditions of the city of Prešov, real estate without official function is put into the administration of a company with 100% participation of the city, whose task is to use these properties as efficiently as possible to obtain a reasonable profit. Orientation to this method of real estate management is the starting point for solving the issue.

4. Proposed solution

The key to this form of the legal nature of use is to incorporate the foreign use of abandoned or unused real estate by a model of participation into the management principles of these municipal organizations. These principles are the basic power of attorney for similar acts. The condition is to determine the subjectivity of the counterparty, and thus here enter into the process of the organization, civic associations or community associations, which must have legal personality. This organization shall assume the guarantees arising from the management of the property for the persons who inhabit and increase the property.

The procedural procedure would be as follows:

1. Property owned by the city would be used or there would be interest in its use by individuals - natural persons
2. The manner of use would not in any way conflict with the interests of the city or city society
3. Users would create an organization (association, foundation, etc.) or would address one of the organizations operating in Slovakia with the appropriate focus, which would cover their activities
4. The user organization and the municipal company would conclude a simple contract of use for a certain period of time and by fulfilling certain conditions under which the property could be used for a longer period, or the conditions for submitting a proposal to transfer the property to users
5. The organization would meet the conditions of use and the contract with the municipal organization would be extended, or the conditions of the transfer agreed
6. Legalization of use would culminate in the transfer of the property to standard long-term use or ownership

In this way, we can imagine the simplest and most capable legal way of using such real estate, which is also based on the legal assumptions in the previous point. In the standard system, there could be a situation where the transfer of user rights could take so long that the level of illegality of the previous proceedings would be unbearable.

At all times, we assume that the use of the property is unforeseen by the city in advance. It is different in the question if the city would be interested in the use of unused real estate. For this type of use, separate project plans are set aside without the possibility of long-term use or transfer to the ownership of the user in the current principles of management of the city of Prešov. However, for long-term use, the process outlined above may be applicable and its use is therefore desirable.

5. Optimal solution

It should be noted that currently the support of such projects by the municipality or the state is minimal, which is reflected in the fact that these cases have been few in Slovakia so far (not counting cases of eviction of illegal residents who devalued the property - drug addicts and Roma minority). For this reason, too, the main motivating element of such cooperation for moving processes for legislative clarification of this issue is missing. However, this does not prevent local governments or the state from preparing for such situations in advance. A very positive tool is the use of communication within the URBACT Local group, which created this project and stirred up a discussion about this, but also about other cooperation projects with the local government. Therefore, for the future after the project, it is advisable to set the optimal solution for such situations.

From our point of view, one organization covering all similar projects - the foundation - would be a great organizational help not only in the very process of legalizing the use or maintaining the conditions of such use, but also on the side of financing, political and economic lobbying. She could be in charge of all components of our project issues - organizational and management, legal, economic or administrative. In addition to this project, it is obvious that it would also cover other foundation, community or social activities of the city and coordination with other associations and organizations operating in the city of Prešov and the surrounding area. This foundation should also take over some of the rights of other municipal companies. However, this issue needs to be thoroughly addressed and their preparation sensitively adjusted, as it is a sensitive political, economic as well as organizational-relationship issue, which may discourage many during the initial survey.

We are based on the belief that self-governing competencies are not flexible enough to create suitable conditions for such unexpected or unforeseeable situations. Municipalities

also do not have the appropriate staff and experience staff to adequately address these issues. Participation with communities, foundations, non-profit and non-governmental organizations and civic associations is the best starting point for further development. Such a system can bridge the narrow line between social development and the criminal consequences of using another's property. Thanks to communication within the URBACT Civic eState project, we also find new solutions.

6. New legislative process

The Slovak legal system is still waiting for a revision of the Civil Code, which dates back to 1964 with a major revision after 1989 (Gentle Revolution). This major amendment should be followed by all sub-processes. The removal of controversies related to the adoption of the principle of 'superficio solo credit' should also lead to the regulation of the short-term right to use real estate and the adoption of an appropriate framework in our issue as well. The city of Prešov, as a representative of the largest region, will participate in the creation of new legislation through official experts and also representatives of the university, with which we have excellent cooperation in the project. Until the end of the project, it is not possible to anticipate resolving this issue, but as a long-term goal, this project is extremely important and beneficial for the material and procedural part.

7. Final Challenge

The legislative framework of Slovakia is strict, it is based on the historical development of social needs, as well as knowledge from practice, both positive and negative. For the goals of the project, the situation is an immense challenge, but not impossible and unsolvable. The whole team believes that in the coming months, not only the legal, but also a sufficient social and communication framework will be prepared for the preparation and launch of the revival of the participation of self-government and social community partners in such and similar projects.

*For the entire team of the Legal and
Administrative Group of the URBACT project in the
city of Prešov*

Peter Formela

**head of the LAWG group and main
coordinator of the URBACT Civic eState
project in the City of Prešov**

Urban Commons Policy/Regulation Canvas

DEFINING THE URBAN COMMONS (30 minutes)

TYPOLOGY OF RESOURCES

Buildings (cultural, educational, ex-industrial) and public spaces
Environment (energy, water, greenlands)
Social resources – Food, social help, culture and arts

TYPOLOGY OF USERS

Everyone that uses the resource
Cultural community on city level and local communities, active on social political issues on neighbourhood level and urban agriculture and energy
Small investors in the fields of IT culture
Non-government organisations / Non-profitable organisations

POLICY ENDS / PUBLIC VALUES

Job creation, social collision, environmental/energy transition, revitalisation/reactivation of public assets and local resources in general, PR and attractive tourism for the city, publicity for the users, stimulate the democracy and self-organisation, creating more public values as a model/ideal for possible users

SCALE

City, neighbourhood

PRINCIPLES

What principles, features, characteristics should urban commons governance mechanisms bear? Self-organization and civic autonomy, openness in management and non exclusivity in use, responsibility and entrepreneurship, *multistakeholder*ship and transparency, mutual trust and informality, sustainability and innovativeness? Other?

Direct democracy and common consensus in decisions
Diversity
Accountability
Exclusion of the political tasks – autonomy from the political level

URBAN COMMONS GOVERNANCE (60 minutes)

INTERNAL MANAGEMENT AND SUSTAINABILITY MECHANISMS

What kind of internal decision-making mechanisms should urban commons have? Should they be designed to guarantee their economic sustainability and if so how should economic sustainability be guaranteed?

Consensual decisions – no majority rule
General regulations of political independence – autonomous from the political level
Remote circular economy
Find and design administrative/legal tool to allow informal communities to act as a economic entity
Added values in reinvesting of the commons
Self-monitoring and developing to create the best practice

CITY-COMMONS LEGAL TOOL AND PARTNERIAL DIALOGUE METHODOLOGY

Civic Uses Recognition / Collaboration Pacts / Cooperation Agreements / Value Labeling? How should the legal tool strike the balance between rights and obligations among the parties? How should the City identify the Urban Commoners, through collaborative dialogue, Accreditation, Self - emergence?

Design administrative/legal tool to allow informal communities to act as a economic entity
Civic users regulations, Policy rules, Generally Binding Regulations, General Principles and criterias

INSTITUTIONAL ARRANGEMENTS

What kind of resources should the City put in place to enable the urban commons (e.g. internal office, external entity such as a foundation, funding, logistics, training/mentoring, digital tools)? At the central/district/neighborhood level?

External company / private entity
Administrative unit - multidisciplinary (more focuses)

EVALUATION MECHANISM (30 minutes)

Describe the evaluation mechanisms to measure the public value produced by the urban commons, indicators to be used and subdimensions, as well as techniques/process/steps to implement the evaluation.

- Lack of evaluation mechanisms
- Reporting about activities
- Reporting about citizen involvement and participation in the organization
- Reporting about externalities for the benefit of the unorganized community
- Parties should agree upon third party evaluator they both have trust in

MONITORING (15 minutes)

Describe the monitoring, conflict resolution, and sanctioning mechanisms to be implemented internally by the urban commoners and externally by the city

- Open communications tools
- Are principles being carried out
- Remark: monitoring and sanctioning tools can not be to strict, it should be proportional to the amount of sponsorship by the government
- Monitoring by reporting activities carried out
- Conflict resolution and sanctioning tools must be flexible, not very restrictive, because of the risk of discouragement

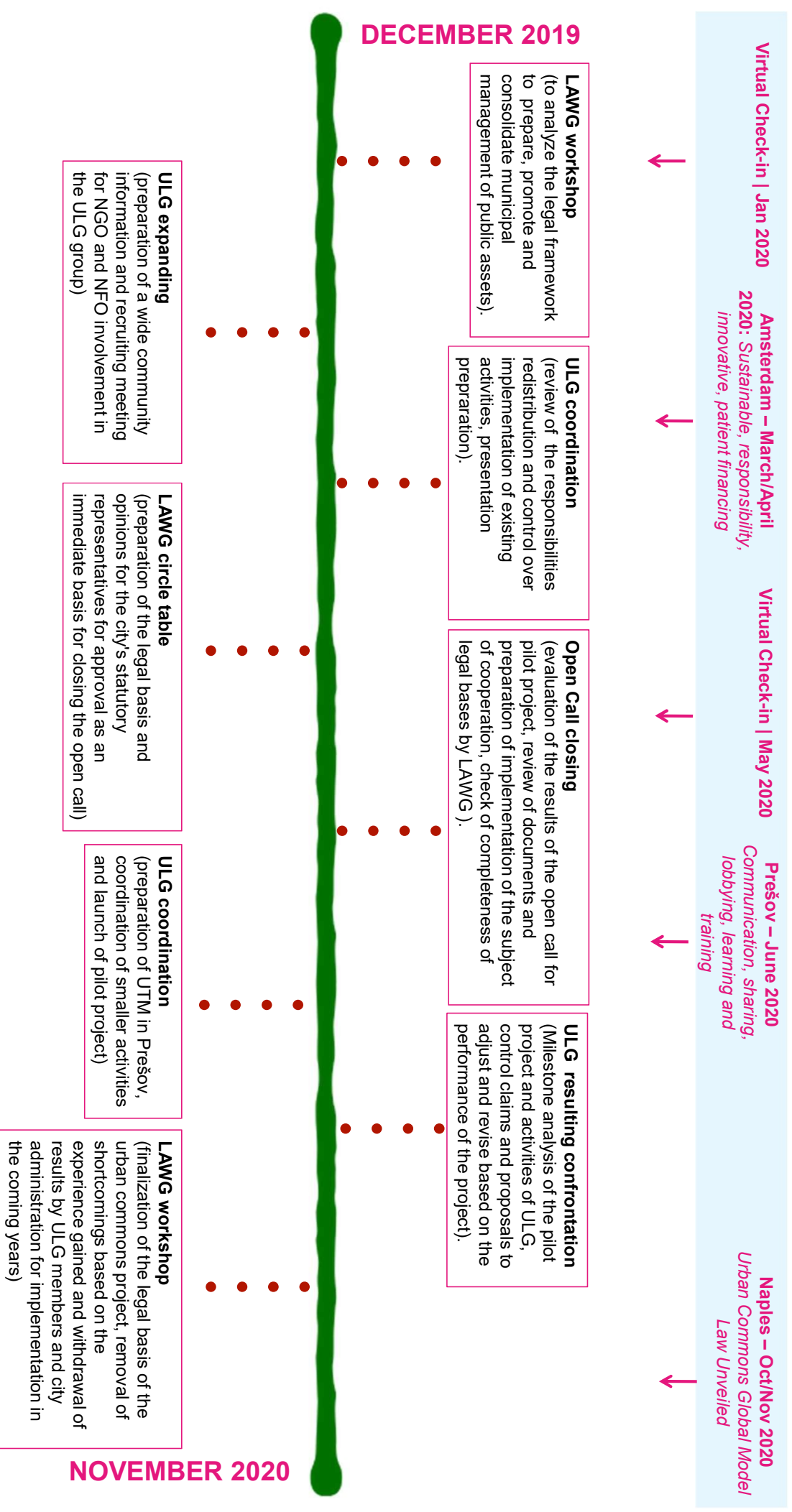
ANY OTHER ELEMENT (15 minutes)

Describe any other element you think it's necessary in the design of a policy or regulation enabling the urban commons

- Publicity on behalf of the government regarding commons
- Public-community partnership support desk (expertise is very important)
- Creating an environment where the community internalizes the values the commons stand for
- It is very important to value the positive of public-community collaboration relations for citizens, over public-private relations.

Urban Commons Policy/Regulation Timeline

Describe your city's policymaking timeline. What's the schedule of ULG and LAWG agenda to co-produce your city policy regulation? Fine tune them with the transnational timeline milestones represented by the virtual check-ins and the transnational meetings. Include a detailed roadmap composed of milestones, ULG meeting plan, experimentalations, transnational meetings, treasure box inputs (30 minutes)



City of Prešov