



➤ Land Value Capture for Social Benefits:
Comparing Toronto and São Paulo

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Introduction

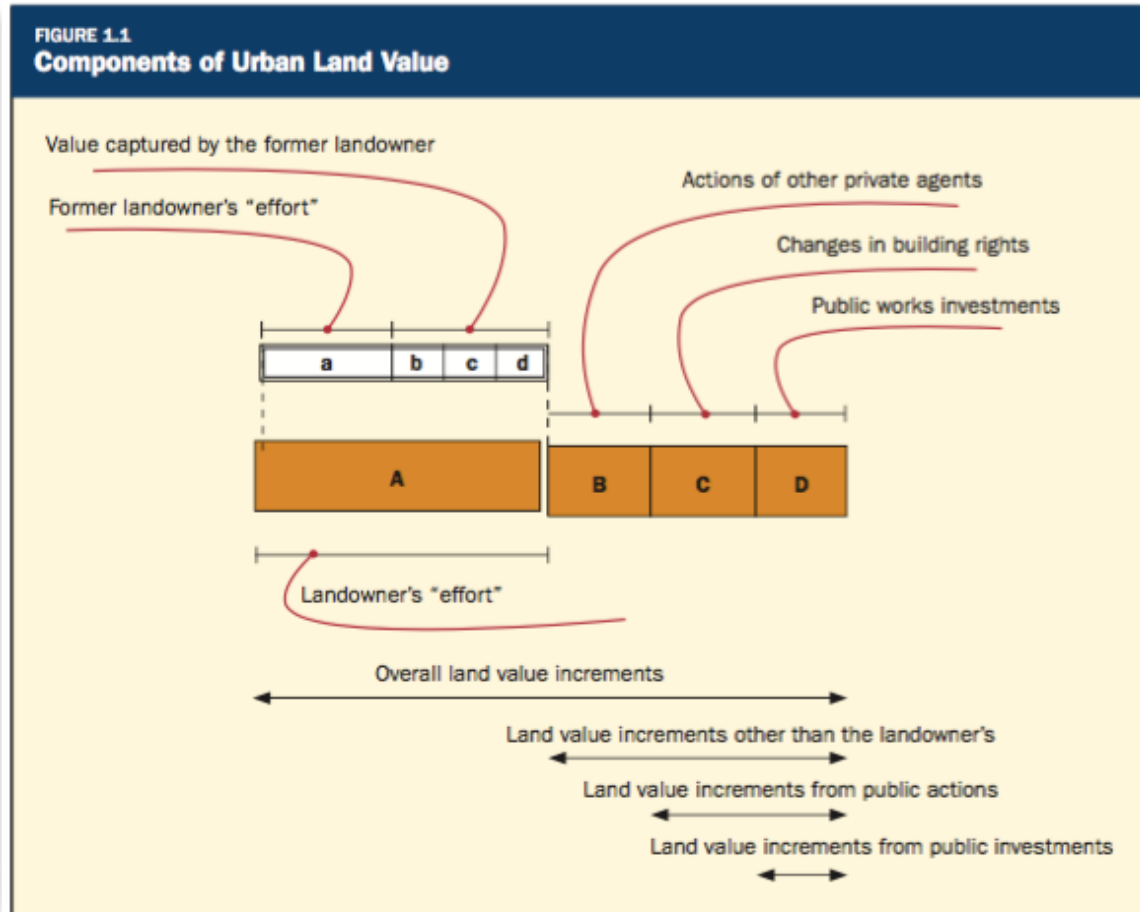


Niterói, Brazil

- Came to this topic via work on the Statute of the City in Brazil
- The case for my doctoral work (Niterói) applied a similar tool (*Outorga Onerosa do Direito de Construir*, OODC) to Section 37 in Toronto
- Provided food for thought on the planning process in Toronto

What is land value capture (LVC)?

- Recovery by the public of the land value increments or 'windfalls' generated by actions other than the landowner's direct investments
- Divert part of that increase to serve the common good rather than private interests
- Examples include taxes, fees, exactions or improvements to benefit the community
- Similar practices used globally



The project

Compare two cases of land value capture (LVC) to:

- Understand the effectiveness, challenges & benefits of LVC to generate urban financing while promoting social equity
- Explore where funds are allocated & the politics behind such decisions
- Understand who benefits from such decisions
- Improve practices in both cases

METHODOLOGY

- Interviews
- Toronto: city database of Section 37 benefits
- São Paulo: OODC benefits raised & spending



Why compare the cases?

- Transferability & replicability: Both types of regimes can benefit from looking to other cases for inspiration, global north & global south
- Cases draw on similar rationales & motivations
- Cases provide a juxtaposition



Two cases: Toronto & São Paulo



Toronto: Section 37

- Ontario's *Planning Act*: cities can secure benefits from developers in return for densities exceeding zoning by-law restrictions
- Cash or in-kind contributions
- Benefits are negotiated, case-by-case basis, role of councillors, highly politicized
- Benefits must be located close to original developments

São Paulo: Outorga Onerosa do Direito de Construir (OODC)

- Developers trade higher than permitted density for financial compensation
- Governed by São Paulo's 2014 master plan
- Calculation based on a formula
- Benefits negotiated by a council & located throughout the city
- Given São Paulo's size, generates large resources

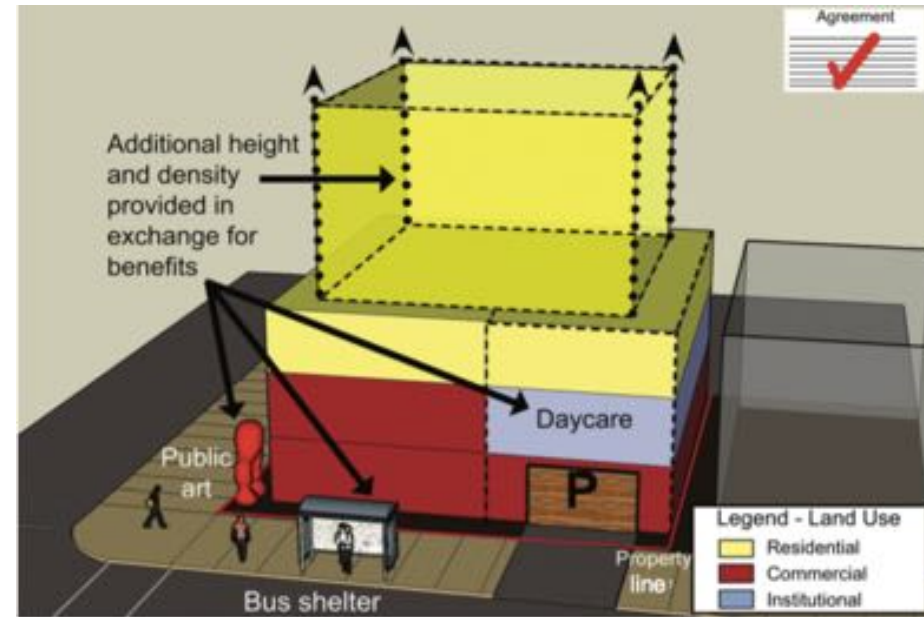


Section 37 of the *Planning Act*

Section 37

- (1) Authorizes increases in the height & density of development in exchange for the provision of “facilities, services or matters” set out in the by-law
- (2) There must be an Official Plan in effect including bonusing provisions for the authorization of height & density increases
- (3) When an exchange occurs, the owner enters into an agreement with the municipality

Planning Act does not specify what types of ‘facilities, services or matters’ can be requested



Section 37 exchanges height & density for community benefits

Section 37 Implementation Guidelines

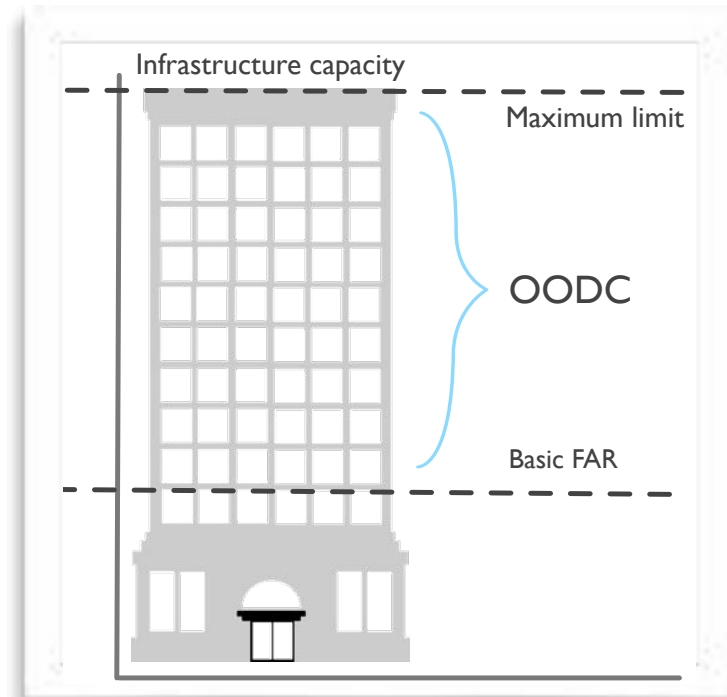
- 2.1 Proposed development must represent good planning
- 2.2 Community benefits & the increase in height/density set out in the zoning by-law
- 2.3 Community benefits should be specific capital facilities, or cash contributions to achieve specific capital facilities
- 2.4 An appropriate geographic relationship between increase in height/density & secured community benefit
- 2.5 No formula (rather, a negotiated process)
- 2.6 Community benefits listed in the Official Plan, but “this list is not exhaustive”



OODC Precedents in Brazil

OODC: one of the urban policy tools of the Statute of the City (2001)

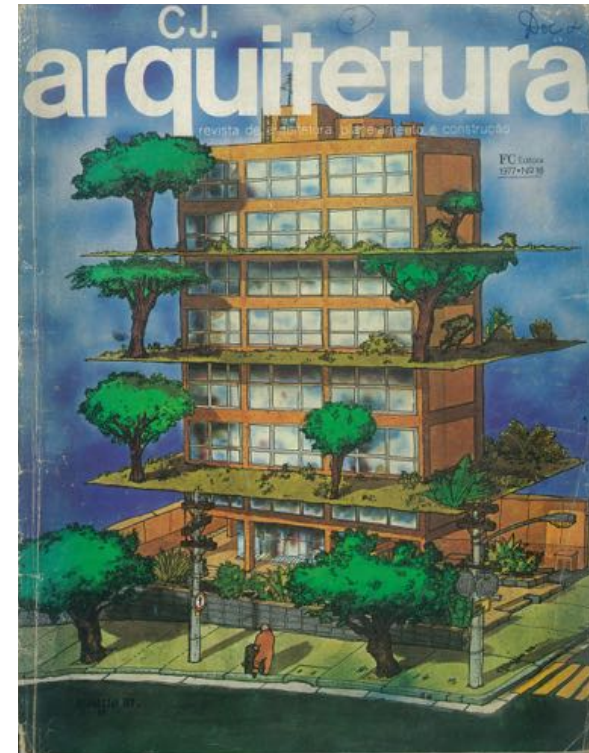
- Regulates charges for additional building rights
- Premised on a separation between the **right to property & the right to build**, which can be regulated and sold by the state
- Additional development rights in exchange for urban improvements of social interest to the community
- Developers' property rights are limited to a basic floor area ratio (FAR) different from the maximum that the area could support
- Buildings constructed on land greater than the FAR in the master plan are considered 'created land,' or *solo criado*



An illustration of OODC

OODC: Historical precedents

- Mid-1970s: ideas among academics about how to separate the right to build from property rights
- Conceptual idea was then called *solo criado* (created ground)
- Inspired by international experiences: US transfer of development rights (TDR), French *plafond legal de densité* (legal density ceiling)
- 1976: Embu Charter, 3 principles emerged:
 - basic FAR
 - transfer of the right to build
 - proportionality between public & private land
- 1980s: first variants of OODC applied before the approval of the Statute

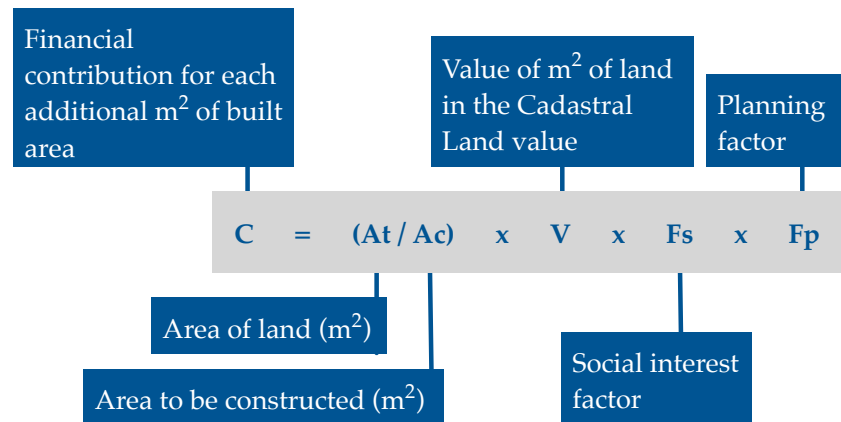


São Paulo's experience with OODC

- Used since 2002 through its inclusion in the master plan
- Current master plan dates from 2014
- Biggest change in 2014 was to establish a basic FAR of 1 for the entire city
- Also includes a Planning Factor (Fp) and Social Factor (Fs)

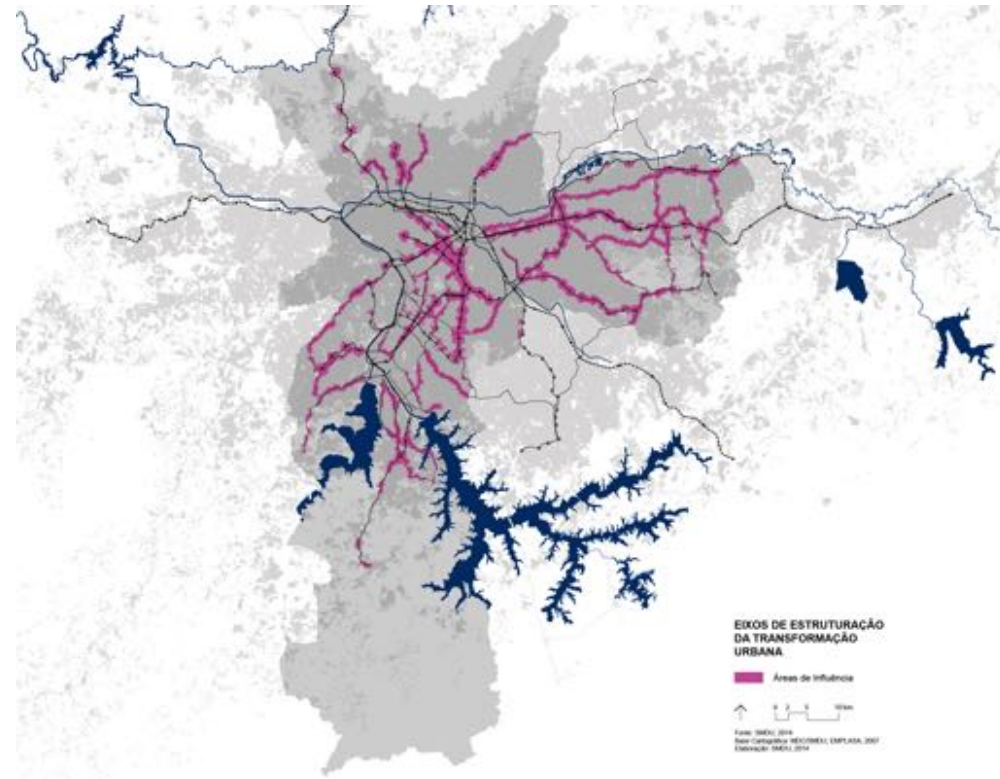
“The adoption of a basic FAR = 1 for the whole city defines that additional construction potential of land belongs to society and the gains should revert to the community. Thus, the funds raised from the sale of building potential for enterprises that build above the basic FAR should be invested in urban improvements throughout the city.”

2014 São Paulo master plan

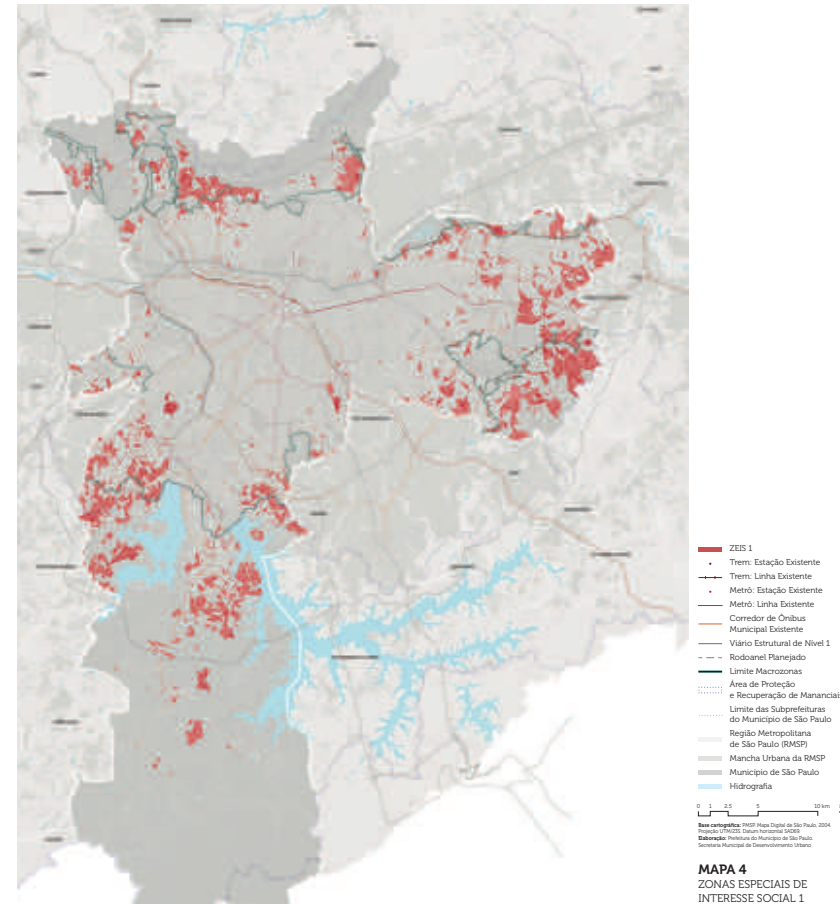


OODC formula (2014 master plan)

São Paulo's experience with OODC



Axes of Development of Urban Transformation



Special Zones of Social Interest

The governance of OODC

Master plan updated in 2014



Urban Development Fund (FUNDURB)



Social interest works

FUNDURB Management Council



50% civil society



50% public sector

- Social housing
- Public transport, bike lanes, pedestrian system
- Environmental conservation units
- Neighbourhood plans
- Urban and social tools
- Public spaces
- Green areas
- Cultural heritage

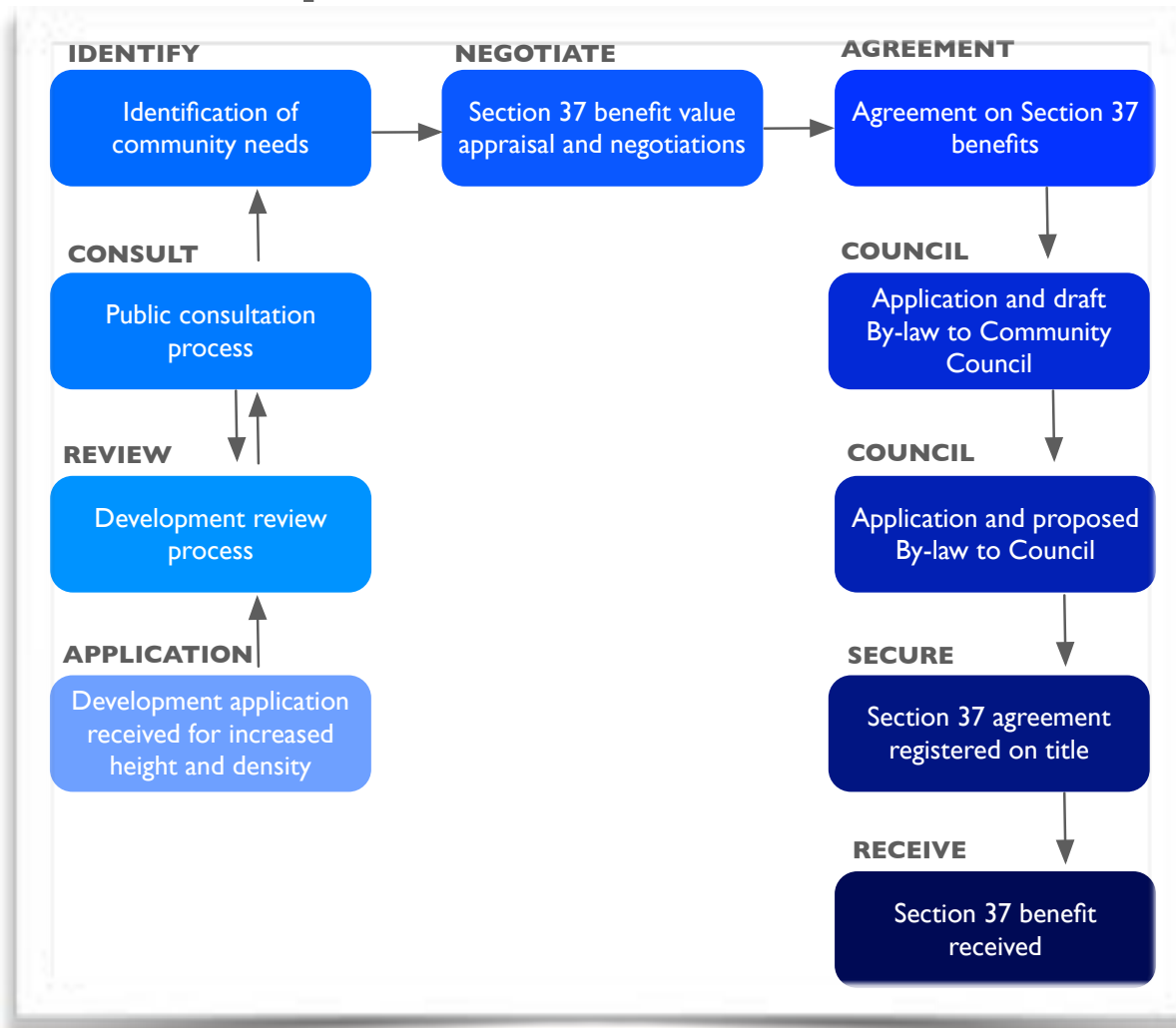
Plano Diretor Estratégico do Município de São Paulo

Lei nº 16.050, de 31 de julho de 2014

Texto da lei ilustrado

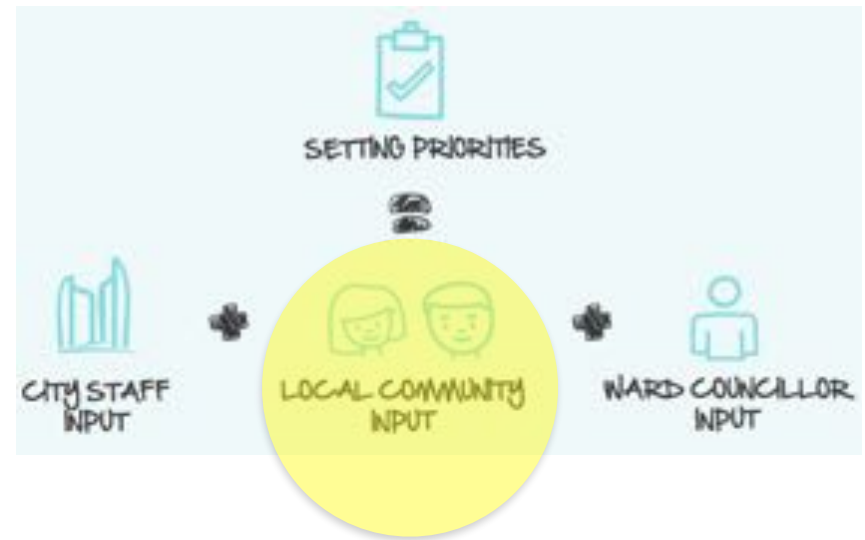
PREFEITURA DE SÃO PAULO

The Section 37 process

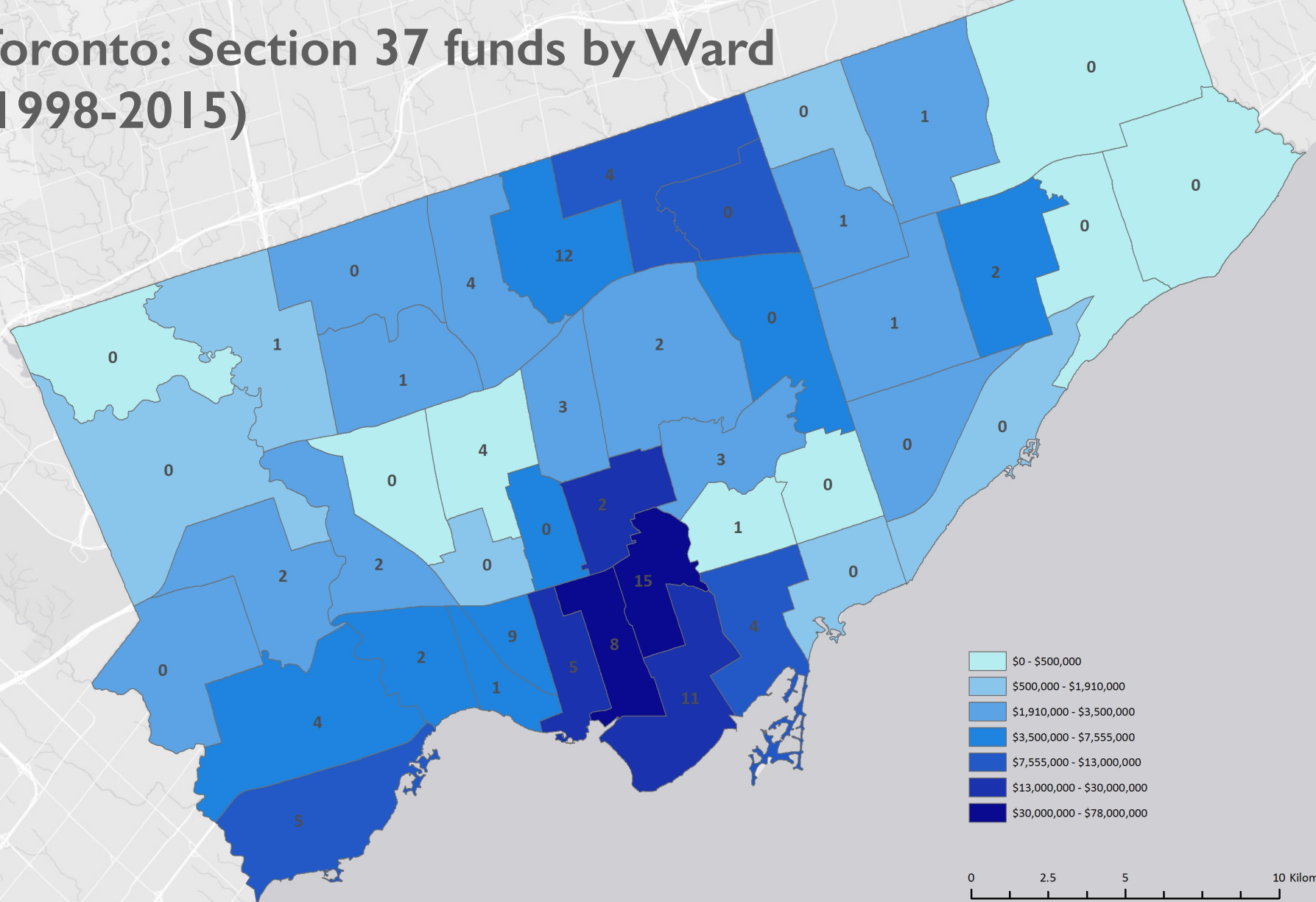


Section 37: Who is involved?

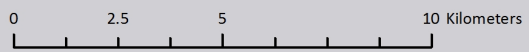
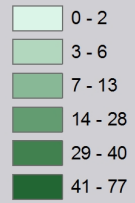
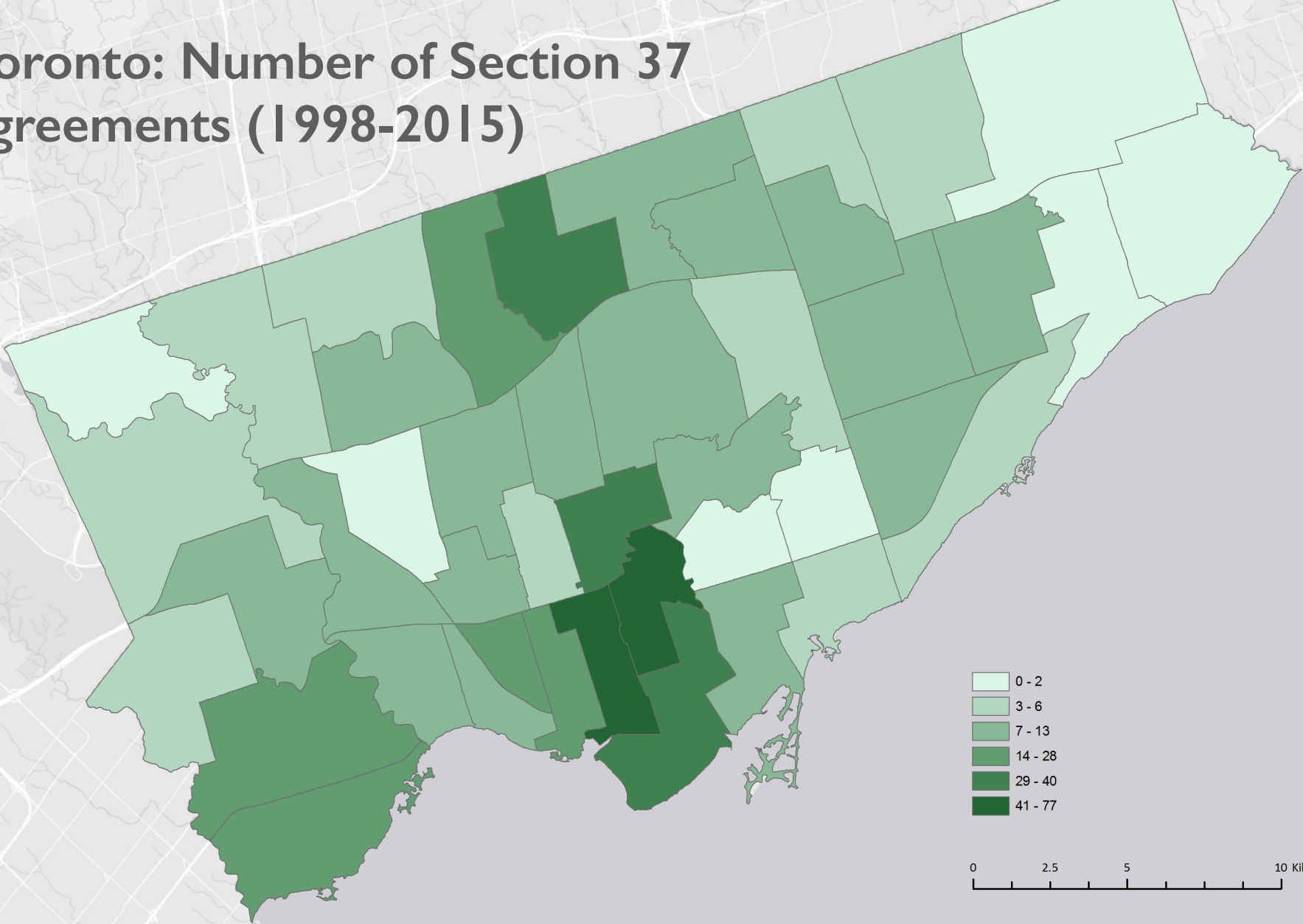
- The Ward Councillor should always be consulted
- City Planning staff should always be involved
- *What about community input?*



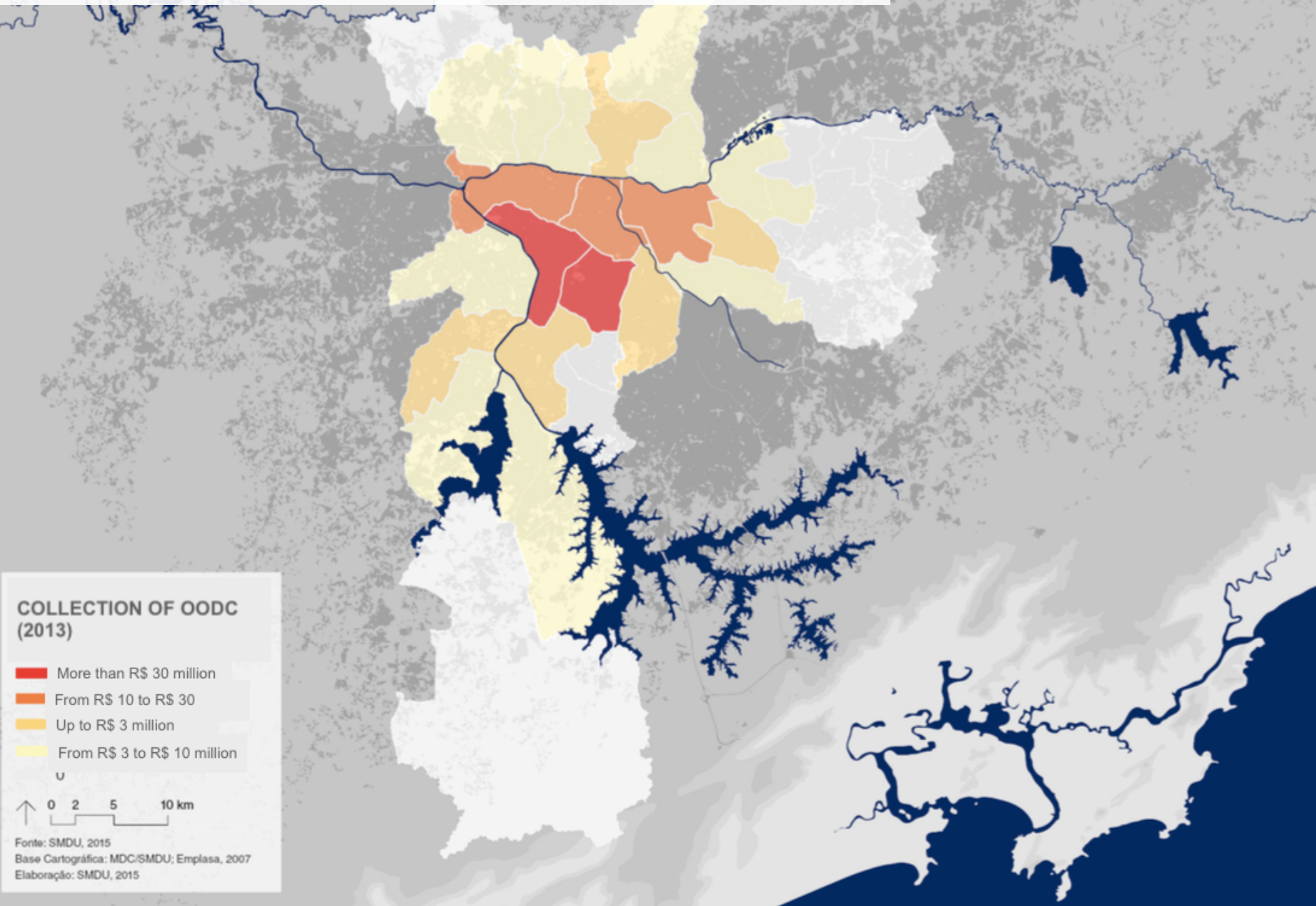
Toronto: Section 37 funds by Ward (1998-2015)



Toronto: Number of Section 37 agreements (1998-2015)

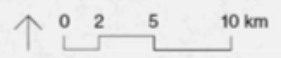


São Paulo: Collection of OODC (2013)



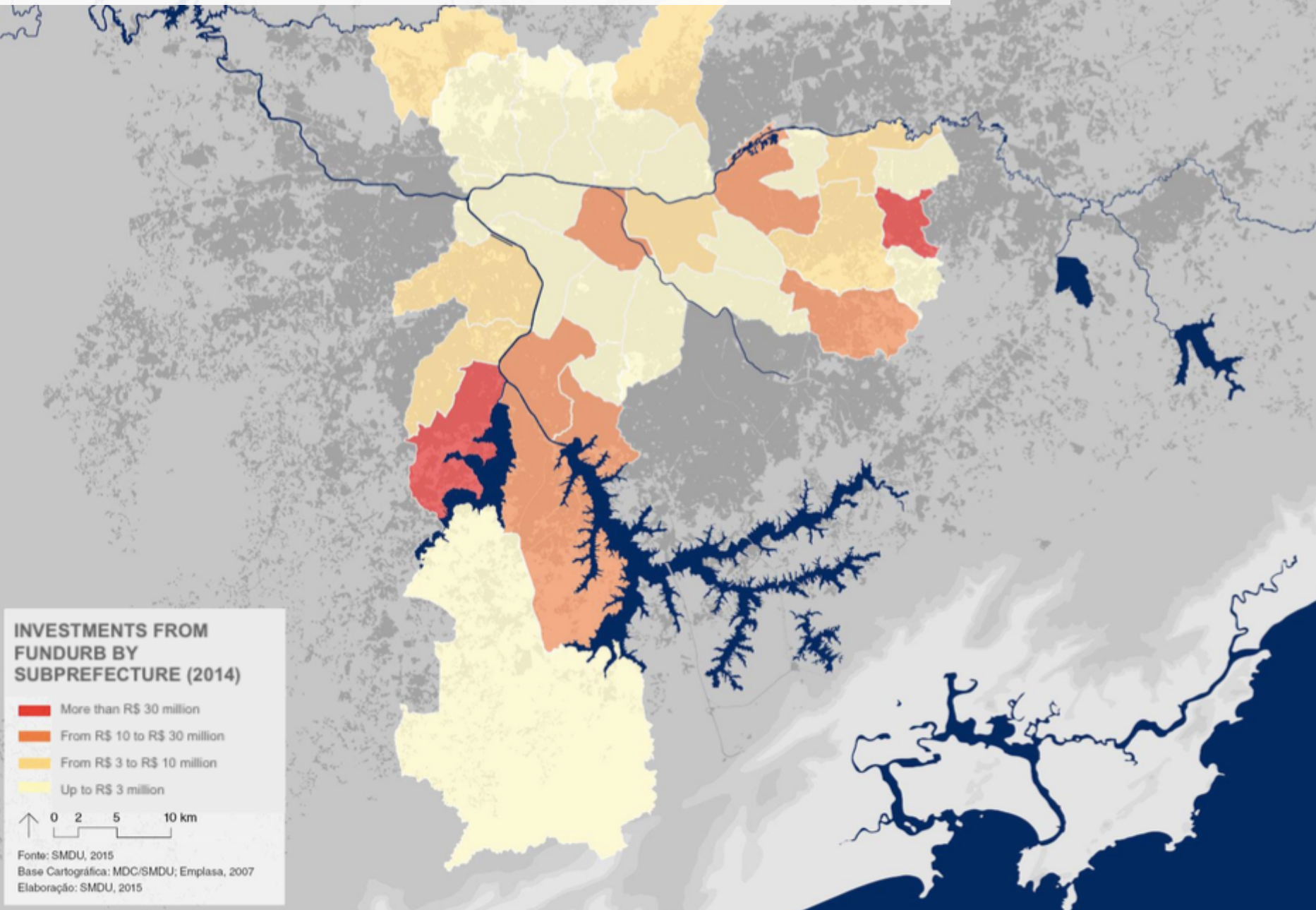
COLLECTION OF OODC (2013)

- More than R\$ 30 million
- From R\$ 10 to R\$ 30
- Up to R\$ 3 million
- From R\$ 3 to R\$ 10 million



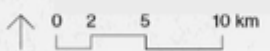
Fonte: SMDU, 2015
Base Cartográfica: MDC/SMDU; Emplasa, 2007
Elaboração: SMDU, 2015

São Paulo: FUNDURB Investments (2014)



INVESTMENTS FROM FUNDURB BY SUBPREFECTURE (2014)

- More than R\$ 30 million
- From R\$ 10 to R\$ 30 million
- From R\$ 3 to R\$ 10 million
- Up to R\$ 3 million



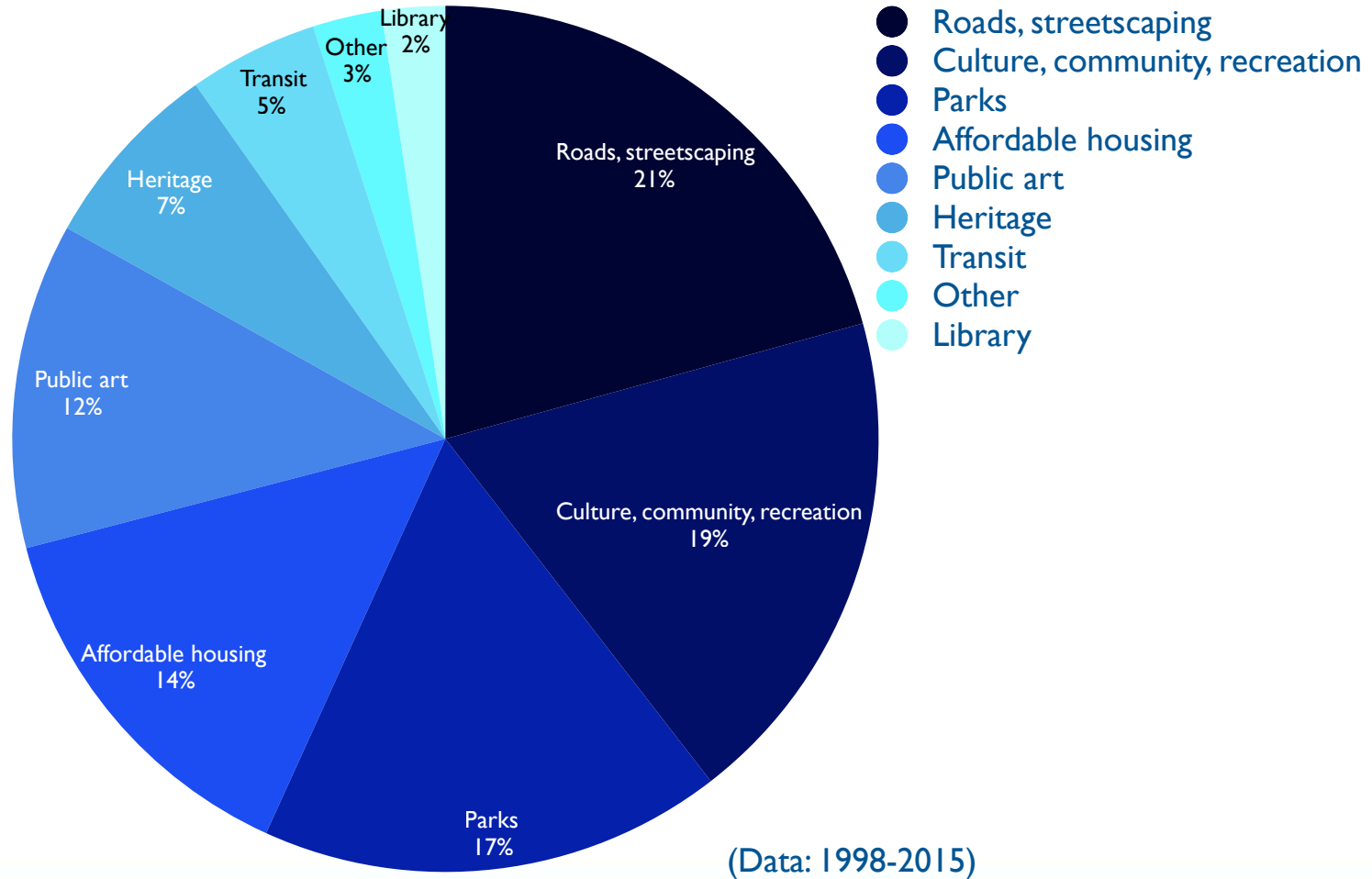
Fonte: SMDU, 2015
Base Cartográfica: MDC/SMDU; Emplasa, 2007
Elaboração: SMDU, 2015

Section 37: What are the benefits?

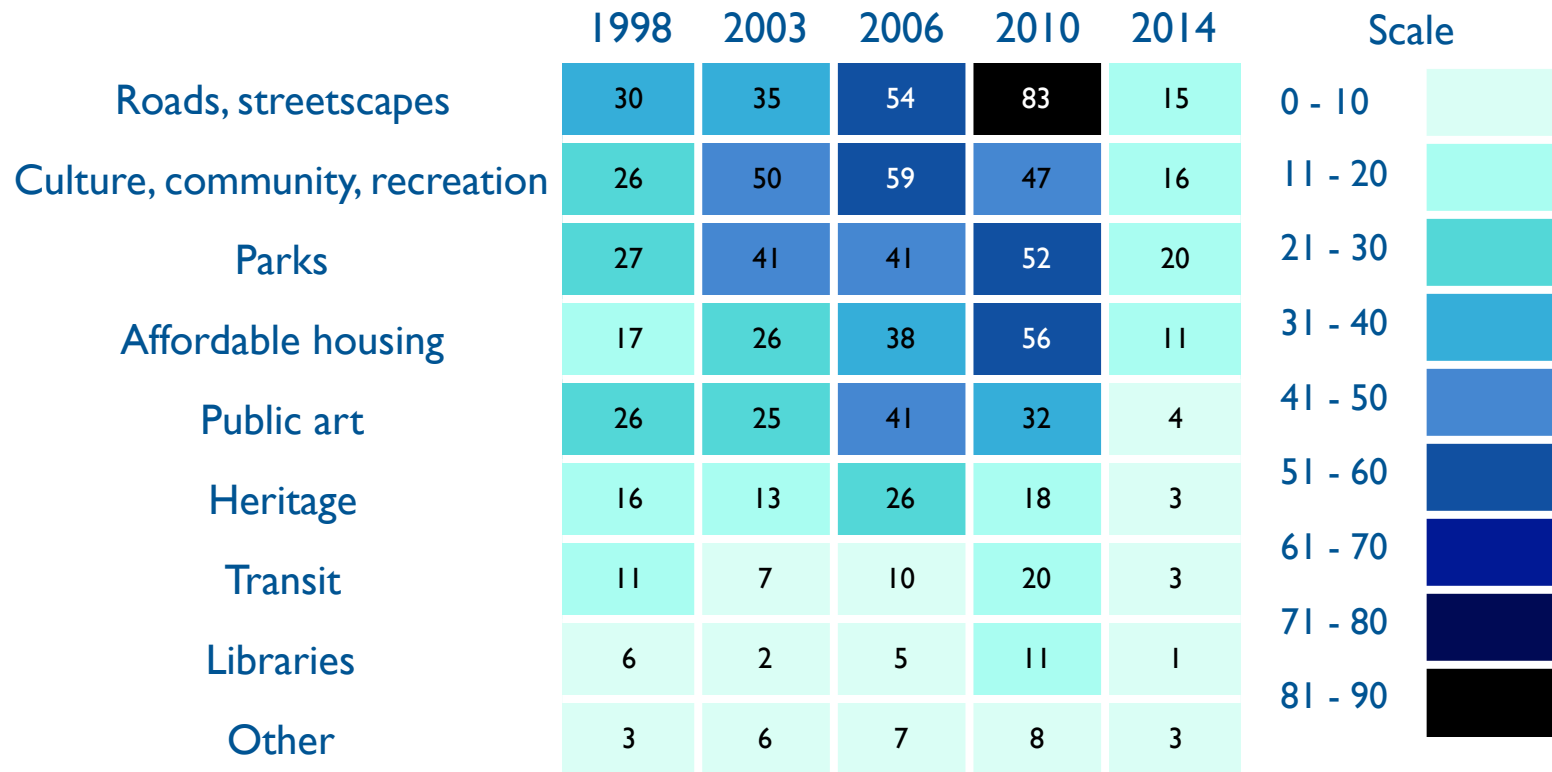
- a) Heritage resources
- b) Childcare facilities
- c) Public art
- d) Other non-profit arts, cultural, community or institutional facilities
- e) Parkland/parkland improvements
- f) Public access to ravines/valleys
- g) Streetscape improvements
- h) Rental housing to replace demolished housing or preservation of existing housing
- i) Purpose build rental housing
- j) Rented residential condominium units
- k) Local improvements to transit facilities
- l) Land for other municipal purposes
- m) Other local improvements



Toronto: Section 37 benefits

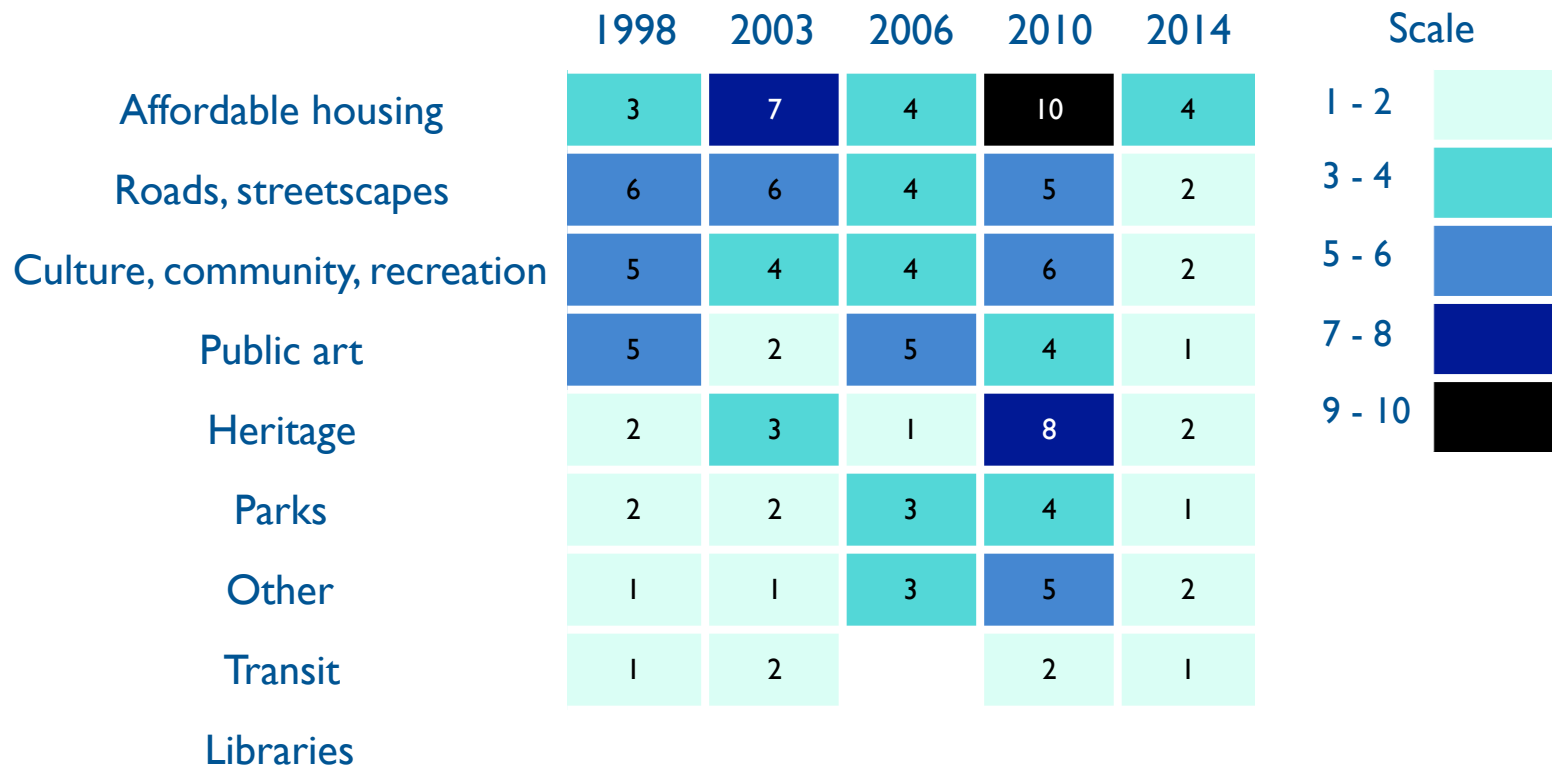


Toronto: Section 37 benefits by type



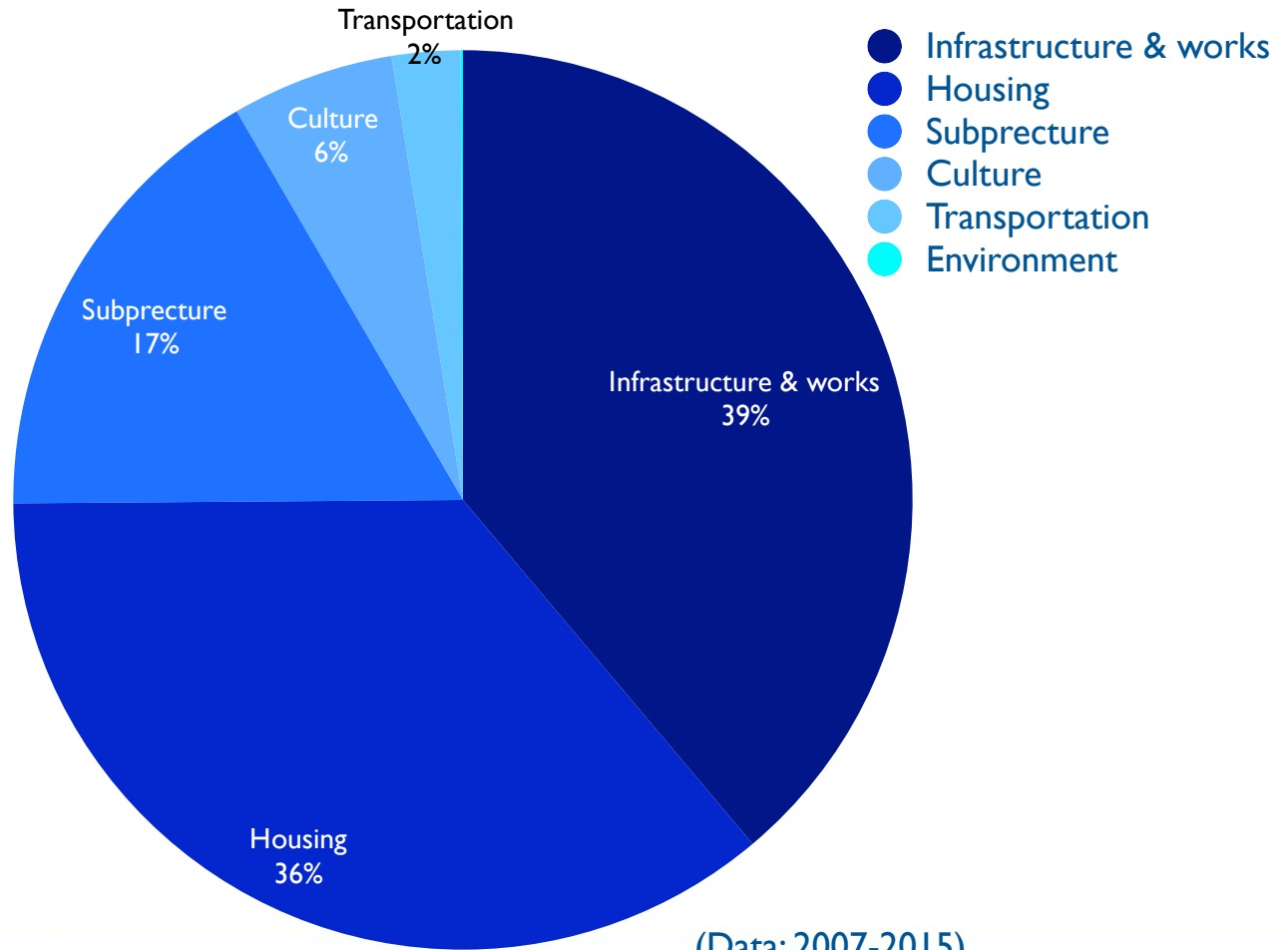
(Data: 1998-2015)

Toronto: Section 37 in-kind benefits by type

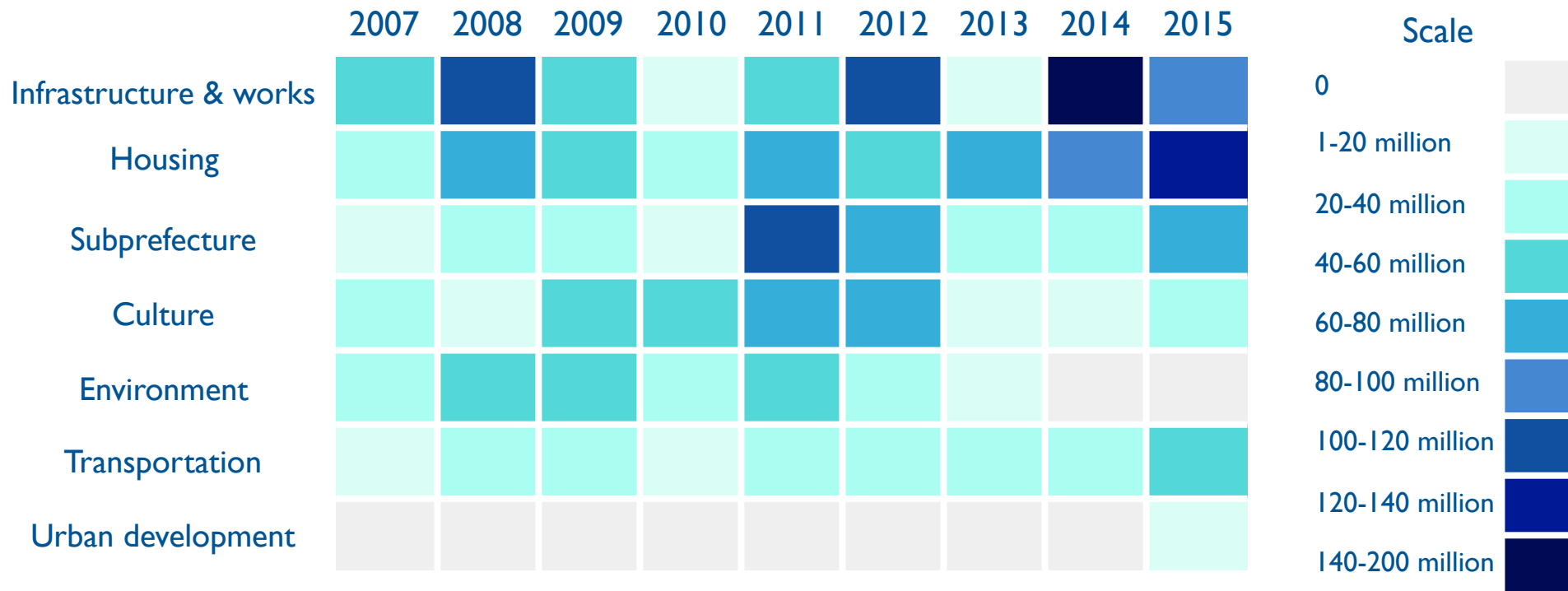


(Data: 1998-2015)

São Paulo: OODC benefits



São Paulo: OODC benefits by type



Funds in \$ Reais
(Data: 2007-2015)

Comparing Toronto & São Paulo

	Toronto	São Paulo
<i>Legislation</i>	Ontario <i>Planning Act</i>	Master plan (2014); Statute of the City
<i>Rationale</i>	Good planning	<i>Solo criado</i> ; separation of right to property & right to build
<i>Equity objectives?</i>	Yes	Yes
<i>Form of benefits</i>	Cash or in-kind	Funds deposited into FUNDURB
<i>Decision-making process</i>	Negotiation (politics)	Decided in FUNDURB, even split between civil society & public sector; formula-based (bureaucracy)
<i>Benefit location</i>	Close to developments, primarily downtown	Throughout the city
<i>Scope of benefits</i>	Ward-based	Pooled
<i>Average funds/year</i>	CAD\$22,747,929	CAD\$57,849,764

Summary & highlights

- **Align benefits to planning objectives**
 - *Toronto*: ambiguity of the process for deciding about benefits
 - *São Paulo*: process is more participatory, but also likely that benefits don't sufficiently align with planning objectives
- **Challenges with vague requirements for benefits**
 - *Toronto*: 13 benefit categories in the guidelines, but outliers are common
 - *São Paulo*: steps made to prioritize housing & transportation recently
- **Prioritize investments for areas of the city in need**
 - *Toronto*: need to target benefits that contribute to social equity
 - *São Paulo*: master plan focuses on the social function of property, right to the city, equity, social inclusion. Need to target investments in poor areas of the city
- **Consider pooling approach in Toronto**