

# The Advent of Basic Autonomy Ordinances (“Jichi Kihon Jorei”) as New “Municipal Ordinance” Legislation in Japanese Municipal History Since the Year 2000

MAEYAMA Soichiro

※ Explanatory note for translation is at the end of the article

## **I Emergence of Basic Autonomy Ordinances (BAO) in the paradigm shift of intergovernmental relations of Government-Municipalities.**

### **Impact from the government (OLLD) vs. impact from the municipality (BAO) since 2000.**

Since the year 2000, there have occurred two main social changes in Japan.

One is the impact of the “Omnibus Law for Local Devolution” (Chiho Bunken Ikkatu Ho 地方分権一括法)—OLLD—that passed the House of Representatives and the House of Councillors in 1999 and was enforced from April 1, 2000. Its main purpose was to cut the central ministries’ persistent and strong control over municipalities<sup>1</sup> in order to increase devolution and to fasten the power of municipalities<sup>2</sup>. The starting point was when young Congress members met and proposed the devolution in the 1990s. Treating 457 existing laws, the main issue was to abolish the system of agency delegated functions (“Kikan Inin Jimu” 機関委任事務) that has been imposed by central ministries on each municipality. While imposing this system, the central government has provided a “tax allocation grant” (Chiho koufu kin 地方交付金) and subsidies to each municipality along with requirements about how to use those monies, as means of exerting control over those municipalities. These funds represent about 70% of each municipality’s total budget<sup>3</sup>. Therefore this act has historical significance in modern Japanese legal history, because the abolition of agency delegated functions means the establishment of local government instead of local bodies under the central government in hierarchical inter-governmental relations. More precisely, hierarchical relations between central “government”

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<sup>1</sup> There are 5 main policies: (a) Clarification of the respective roles of central and local “government”; (b) Abolition of the system of agency delegated functions (ADFs); (c) Re-examination of central government intervention; (d) Promoting devolution of authority; (e) Curbing regulatory obligations.

<sup>2</sup> Its title is “地方分権の推進を図るための関係法律の整備等に関する法律” (Chiho Bunken no suisin o hakaru tame no kanren horitu no seibi to ni kansuru houritsu), literally “law concerning adjustment of laws related to promotion for local devolution”. The abbreviation is “地方分権一括法” (Chiho Bunken Ikkatu Ho). It means Omnibus Law for Local Devolution, and is more commonly used.

<sup>3</sup> Recently, especially in non-metropolitan areas, the self revenue percentage of municipalities is being reduced to about 20%.

and municipalities with no power. The effect seems limited to some extent in the power struggle between both the Cabinet and the prefectural governments (“ken”: 県) as well as the Cabinet and ministries, but there has occurred a ground-breaking change within the intergovernmental relations in Japan.

The other is the impact of “Jichi Kihon Jorei” (自治基本条例), Basic Autonomy Ordinances—BAO—that has appeared in progressive cities since 2001. The first case was a small city named Niseko City on the Island of Hokkaido. Compared to the “top-down” making process of OLLD and other laws, that of BAO has been “bottom-up”, which is a completely different setting from the state law system. There has occurred social change “from the inside” at the municipal level.

“New residential citizen activity movement” has been the basis of these two developments (Maeyama, 2009).

### **Purpose of the article**

This article aims at providing the social meaning of BAO, examining the phases concerning:

- 1) The starting and developmental process of BAO and its related ordinances.
- 2) In order to attempt to classify BAO and its related ordinances, the in-depth-observation (extract-analysis) of BAO ordinance, conducted.

The prototype of Basic Autonomy Ordinances, “Jichi Kihon Jorei” came from a research group consisting of local cities’ staff 1990s. Therefore the BAO, is a municipal legislation notably defect from the National Law system. Next we should look at the evolutionary process of BAO.

### **Confusion in the beginning**

It is necessary to start with the explanation of the confusing situation in the years just after BAOs emerged.

I think this “confusing” situation itself is the other side of the coin of municipality-started ordinance. As I will mention later, BAO was envisioned by a research group of local cities’ staff. And in this discussion no ministries, including ministry of Justice were not involved. So it emerged as a not-stereotypical ordinance that follow the law drafted by some ministry and then passed in Houses.

BAO has sometimes the name of “Machizukuri”, like Machizukuri Ordinance (Machizukuri Jorei), and Partnership Machizukuri Ordinance (Kyodo no Machizukuri Jorei) etc. The intention of using the word “Machizukuri” makes it seem that City Basic Autonomy Ordinance should be the basic rule for both municipality management as well as locality management.

“Machizukuri” literally means “creation of locality”. (“machi”=town or locality, and

“zukuri”=creation). But many broader contexts have been woven or added into this word, such as urban planning, the vitalization of locality, housing construction by developers, increasing safety within localities, making it easier for youth to live and work locally, and so on. To say that it is a “buzz word”, as is sometimes mentioned, may seem not so improper in this case. If we want to attempt a definition, we could say it is “the process and efforts to solve the social problems within a locality as to public facilities/hardware aspect as well as networking/software aspect”. But nowadays “machizukuri” is commonly used broadly with many meanings and contexts.

In the first years after the BAO emerged in 2001, it seemed very confusing. There were many laws and ordinances that included the word “machizukuri” in their titles. Within national laws, three laws are commonly called “The Three Machizukuri Laws”. First, there is the Urban Planning Act (Toshi Keikaku Ho) which treats zoning. Second is the Large-Scale Retail Stores Location Law (Daikibo Kouritenpo Ritchi Ho) that regulates the shop-opening of huge stores, in terms of social regulation and the environment. Third is the Act on Improvement and Vitalization in Urban Centers (Chusin Sigaichi Kasseika Ho) that promotes the vitalization of urban centers that face local recession and closing businesses.

Being affected by the laws above, some city ordinances that regulate land deals also have the name “machizukuri ordinance”, like the Kamakura City “Machizukuri Ordinance” that regulates land sales and development of areas more than 5000 square meters.

Even worse is that some ordinances in other realms also have the same word “machizukuri” in their titles. Tokyo (Tokyo prefecture) now has the Security and Safety Machizukuri Ordinance (Ansin Anzen Machizukuri Jorei), containing the regulations for crime prevention in housing areas, parks, commercial zones, and safety guard at schools. Saitama City also has the “Gender Equality Machizukuri Ordinance” (Danjo Kyodo Sankaku no Machizukuri Jorei), and Utsunomiya City has the “Welfare Machizukuri Ordinance” (Fukusi no Machizukuri Jorei).

When BAO emerged in this situation, it tended to give the public a very confusing impression and understanding, in terms of two aspects: the title and its unprecedented contents.

In particular for local planning divisions of cities, as for BAO and its related ordinances, some imaged the ordinance just as “citizen participation” within Machizukuri. Others understood the ordinance as a type of “municipality reform”, etc. As there had never been any ordinance such as this in-the past, it was not surprising for such a confused reaction.

### **Explosive increase of BAO's**

As we will see later, BAO's and related ordinances increased dramatically in the years after the advent of the BAO in Niseko. Investigation, conducted by myself, revealed that March 2009, there are 249 BAOs and related ordinances. Within just a few years, cities (“Shi”, “Cho”, “Son”) have launched into the new realm of municipal ordinance. 14% of cities already have BAO's and related ordinances. We should be aware that this change has taken place in

just 8 years. As the number of BAOs increased, over the years individual types of BAO's began to emerge.

**Undeveloped picture of theories**

At present we seem to have no established theory about BAOs and related ordinances. Kisa's book is an elemental reference which brought about the beginning of BAO's, and the Niseko BAO and its commentary have been an example text for many cities.

There are some practitioners who discuss about the "how to" of drafting of a BAO, such as Keiichi Matsushita (2007). Akira Fukushi also provides us with a rational explanation about BAO.

Mr. Fukushi also says that there is not there is not yet a standardized definition for BAO. And according to his explanation (2004), there are two way of thinking about BAO's :

- 1) If an ordinance does not have any provisions concerning city councils (if it only includes provisions about municipal administration), it is not BAO. According to this, City Council Basic Ordinance plus Basic Administration Ordinance is BAO (Masaru Kanbara, 2001).
- 2) A different way to look at BAO is that if it does not have provisions about city council, it is a BAO. Requirements for BAO are ideals and principles of municipal management as well as normative rules that precede over other ordinances (Kisa, 2003).

For a clearer theoretical view, practical observation is necessary.

**Assumption of classification concerning BAO-related ordinances**

Before an analysis, it is necessary to have an assumed classification, as described in the explanations for each type of ordinance in the table below.

Table A

<p>Basic Autonomy Ordinance (BAO) :</p> <p>— Basic Administration Ordinance :</p> <p>— Basic City Council Ordinance :</p> <p>— Residents' Participation Ordinance :</p> <p>    — "Citizen Activity &amp; Non-Profit Organization Promotion Ordinance"</p>	<p>stipulates the ideals and principles of Autonomy (autonomy of residents and that of the municipal body). It stipulates the basic thinking and devices for management of the city administration, the city council, as well as for the "layout for local governance".</p> <p>stipulates the ideals and principles of the administrative management of city.</p> <p>stipulates the ideals, principles, rules that are necessary for the activation and enhancement of city council and its members.</p> <p>stipulates the way of promotion and method for citizens' public participation.</p>
<p>Classification concerning the ordinances related to City Basic Autonomy Ordinance</p>	

## II Developmental Process of BAOs

### Background for the establishment of BAO - Originating from local cities-staff meetings.

One fundamental question is how BAO, a new type of ordinance called “municipality ordinance”, could occur in the so-called “top-down” circumstances of that time. In Japan during the 60s or so years of Liberal Democratic Party’s regime/LDP=Ministries amalgam regime, the legislation had lost its flexibility and never had the sense of self-legislation at the municipal level. For example, each city had been required to obey not only the law passed in the Houses, but also many regulations set by the Ministries. As for the regulation for parks, cities were supposed to obey the regulation decided by the Ministry of Land, Infrastructure, Transport and Tourism. Each city had to install equipment in the playground at parks, obeying the standardized regulations the Ministry had made for park layouts. Equipments such as climbing bars were to be set in the same way in all cities throughout Japan. Icy cities in Hokkaido, and areas where it never snows such as Okinawa, were required to have the exact same layout. Each city was not allowed to make their own regulations nor their own ordinances. That stark and stiff sense of legislation was maintained.

“The Omnibus Law for Local Devolution” (Chiho Bunken Ikkatu Ho) was enforced from April of 2000. But as for intergovernmental relations—the change was limited compared to the intention. Reallocation of power and financial resources was limited due to the power struggle between Ministries and municipalities, though the Koizumi cabinet (LDP : 2001-2006) tried the Trinity Reform which included the transfer of tax revenue sources to municipalities, reduction of subsidies, reduction of grant-in-aid monies that were criticized as “controlled subsidies”<sup>4</sup>.

On the other hand, compared to OLLD at the national level, it has been the BAO has been efficient in shifting the situation to the regulation-making/legislation-making in municipalities. The starting point was a research meeting consisting of cities’ staff, named the “Hokkaido Chihojichi Ho Kenkyukai” (Hokkaido Local Government Act Research Meeting). In July of 1992 Professor Shigeo Kisa of Hokkaido University, who was interested in some emerging cases such as that in Kawasaki city, made a proposal to the members “why don’t we prepare and provide some schemes for new municipal-based legislation.”. They then started the “BAO project”. The members had felt frustration that the “local devolution reform” did not progress. Therefore, the members organized the “BAO project” and started their BAO draft work.

In 1999, after 8 years and having held 20 meetings, the group proposed the “Scheme for BAO”. And during that term one member of the meeting, Mr. Osaka, ran for mayor in Niseko Town. The trial for the first BAO in Japan accelerated after he won the Mayor’s office.

Niseko Town started their work for establishing the ordinance framework of BAO in December 1998. And through staff working groups, residents’ meetings, symposia, explana-

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<sup>4</sup> The Japan Times, 2007, “The pursuit of decentralization” (May 1, 2007)

tions to city council members, and staff-supervisors meetings the ordinance draft was completed. Finally on December 12, 2000 the ordinance was passed by the city council. 10 council members were in favor, 5 were against. This was the first establishment of BAO.

Kisa mentioned :

*After World War II the importance of the “local autonomy” has been strongly aware of so many times. But we could not have the ordinance that was expected as the symbol of it. That is BAO, “Jichi Kihon Jorei”, the so called “Constitution of Municipalities”. Niseko City (“Town”) has tried to be an active “Information Sharing City”, and is now seeking to establish that ordinance.*

(Shigeo Kisa, Seiji Osaka, *Constitution of My City. The Trial of Niseko (Watashi no Machi no Kenpo. Niseko no Chosen)*, Nihon Hyoron Sha)

### **Development of BAOs**

According to the survey now the current number of BAOs is 163 ; there are 57 Residents’ Participation Ordinances, 59 Administration Basic Ordinances, and 32 Basic City Council Ordinances. At present 14% of cities (about 1,700) have executed the BAO-related ordinances.

As mentioned, in the April of 2000, the Omnibus Law for Local Devolution was passed. For the first time in Japanese legal history the system of agency delegated functions (“Kikan Inin Jimu”) was prohibited that have been imposed by central Ministries to each municipality. It was the most dramatical change since the Meiji Restoration (1869), and marked the starting point of modern state system in Japan. Also during the years of 2000–2005 the city-merger (consolidation) promotion movement was strongly driven by the Japanese Government (Ministry of Home Affairs)<sup>5</sup>. This pressure was so strong that each city was forced to decide to merge or not to merge with other city/cities. In either case there came about discussions about “what should our city do from here”, “what is our city’s symbol”. Fiscal data of each municipality and assumed data about incoming services and taxes were provided to the city merger councils (Sichoson Gappei Kyogikai 市町村合併協議会). Some cities mergers were with two cities, some cities mergers were with more than 10 cities. A city merger council tended to consist of about 100 committee members who came from each city.

Confronted with this situation, which represents a paradigm shift, this was the turning point. By contrast to the traditional attitude of municipality-staff, they just now started to consider the issue of municipal management, think about their own income sources, develop a strong sense of controlling the number of workers, organizational change from hierarchy to staff-participatory group formation “decentralized government”) and so on.

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<sup>5</sup> In 2000 the number of cities was about 3,000. At present (2009) it is about 1,700. (Kiyotaka YOKOMICHI, 2006)

In this situation it was natural that in many city mayors, city council members and residents accepted the idea of BAO as the symbol of the “independent” city.

Table 1 shows the numbers of BAO and their related ordinances.

This tells us that after the first establishment of BAO in Niseko City (Town), the numbers of BAOs and the related ordinances increased national-wide. During the 21<sup>st</sup> Century BAOs have been passed and enforced, and have overall positive compositions and effects as far as representing the actual needs and wants of local communities. Put together they might be called the “Municipal Legislation of 21<sup>st</sup> Century”. In other words BAOs are becoming the “standard norm” in local legislation.

Table 2 shows the different situations of each ordinance. In 2000, BAOs and Residents’ Participation Ordinances showed a similar increase. But since 2004 Residents’ Participation

Table 1 Numbers of BAO and Related Ordinances (1)

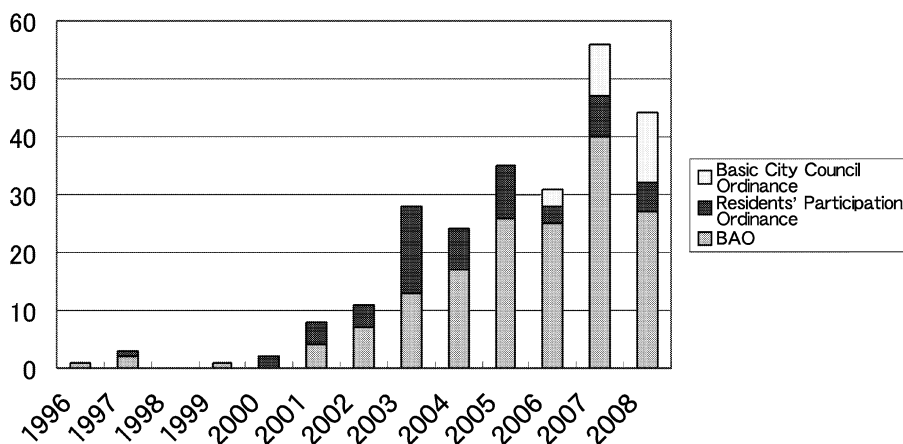


Table 2 Number of BAO and Related Ordinances (2)

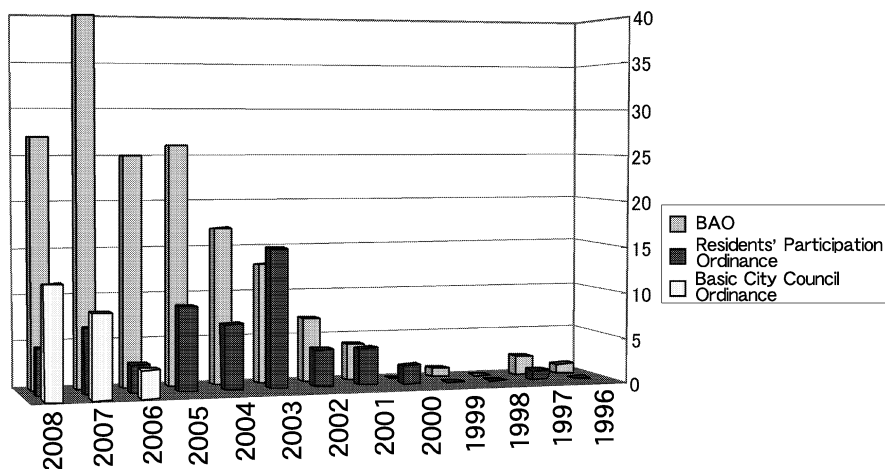
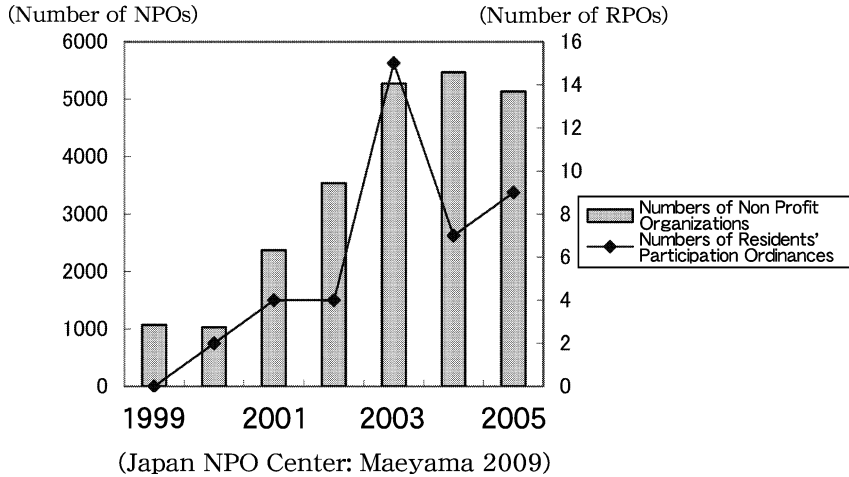


Table 3 Numbers of Residents' Participation Ordinances, and that of Non-Profit Organizations



Ordinance stopped the increase. On the other hand BAO did not stop increasing speed, continuing.

**Differentiation and Derivation of Residents' Participation Ordinance from BAOs.**

Why Residents' Participation Ordinance increased at first, and then stop the speed in 2004. And why did BAOs continue the increase ?

At first, both ordinances the concept of “residents' participation” as their basis. And due to the impact of the Act to Promote Specified Non-profit Activities (March 1998) there was an NPO boom in Japan. Many NPOs were established, and registered to prefectures. This affected the enforcement of Residents' Participation Ordinances. And along with the slight down curve of NPOs, the number of Residents' Participation Ordinances showed simultaneous slowdown.

Residents' Participation Ordinances started to differentiate from BAOs, though they had been considered a type of BAOs at the beginning.

**III Elements of BAOs**

As mentioned, in the early years of the 2000s BAOs and related ordinances were not considered independent ordinances. Nevertheless, as BAOs and related ordinances have increased, these ordinances seemed to have the appearance of purpose-oriented ordinances. Ordinance that have provisions for the management of City Council, or ordinances that have provisions for the management of city administration are viewed as independent ordinances.



**(1) BAO (Mainstream)**

As for the differing titles of BAOs there are: “Jichi Kihon Jorei” (Basic Autonomy Ordinance : City of Fujimi, Tama, Aikawa, Suginami-Ku(Ward)), “Machizukuri Kihon Jorei” (Locality Planning Basic Ordinance : City of Niseko, Takarazuka, and Kiyose etc.), “Kyodo no Machizukuri Kihon Jorei” (Coproduction Locality Planning Ordinance : Hachinohe City).

At present, there are 157 BAOs (As of May 2009).

**Common Framing**

Table 4 provides framings of ordinances. In particular, 3 BAOs established in the early 2000s are chosen as prototypic ones.

Table 4 Framing of BAOs (Mainstheam)

	Kashiwazaki City (Niigata) Population 86,123 “Basic Locality Planning Ordinance with Citizen Participation” Executed Oct. 1, 2003	Takarazuka City (Hyogo) Population 217,278 “Basic Locality Planning Ordinance” Executed April 1, 2002	Niseko Town (Hokkaido) Population 4,570 “Basic Locality Planning Ordinance” Executed April 1, 2001
Preamble	1. traits of the city ; vision, reason for establishment 2. background ; basic concept 3. primal purpose of autonomy 4. normative position of this ordinance	1. traits of the city ; vision, reason for establishment 2. background ; basic concept 3. primal purpose of autonomy	1. traits of the city ; vision, reason for establishment 2. background ; basic concept 3. primal purpose of autonomy ; information sharing
Purpose	(Article 1) 1. purpose of establishment (basic principle for locality planning with citizen participation) ; realization of autonomy	(Article 1) 1. purpose (ordaining the principle for coproduction/ partnership local planning ; realizing of vigorous local society)	(Article 1) 1. purpose (ordaining the rule concerning locality planning ; manifestation of citizens’ rights and duties : realizing autonomy)
Definition of Terms	(Article 2) “machizukuri”, “citizen”, “city”, “Kyodo (coproduction)”, “participation”, “community”		
Positioning of the Ordinance	(Article 3) 1. normative position	(Article 183) 1. normative position	(Article 43) 1. normative position (Article 44) 1. promotion of establishment of comprehensive BAO ; schematization with other ordinances

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Basic Ideal of Local Planning (Machizukuri)	<p>1. direction of locality planning (realization of citizens' happiness; promotion and enjoying the result of coproduction) (Article 5)</p> <p>2. citizens as main element of governance (Article 6)</p> <p>3. purpose of locality planning</p> <ul style="list-style-type: none"> <li>a. fundamental human rights</li> <li>b. education, adult education</li> <li>c. welfare and health</li> <li>d. sound growth of children, history</li> <li>e. economy, industry</li> <li>f. nature, environment</li> </ul>	<p>(Article 2)</p> <p>1. direction of locality planning (coproduction between citizen and city government)</p> <p>2. purpose of locality planning</p> <ul style="list-style-type: none"> <li>a. health, safety</li> <li>b. sound growth of children</li> <li>c. human rights, culture</li> <li>d. nature, environment</li> <li>e. area activities</li> </ul>	
Right to participate	<p>(Article 7)</p> <p>rights to participate in local planning, prohibition of censure participants or non-participants</p>	<p>(Article 6)</p> <p>rights and duties of citizens</p> <ul style="list-style-type: none"> <li>1. protection of citizens' right-to-know</li> <li>2. protection of citizens' right-to-participate in local planning</li> </ul>	<p>(Article 5)</p> <p>principles of participation</p> <ul style="list-style-type: none"> <li>1. protection of right-to-participate in any process of government</li> </ul> <p>(Article 10)</p> <ul style="list-style-type: none"> <li>1. principle of citizens as “main element in local governance”; right-to-participate in it</li> <li>2. protection or equality for participation in local planning.</li> <li>3. prohibition against city government's intervention to residents' activities.</li> <li>4. prohibition of censure participants or non-participants</li> </ul> <p>(Article 11)</p> <ul style="list-style-type: none"> <li>1. protection for juvenile's right for participation in local planning</li> </ul> <p>(Article 13)</p> <p>efforts to promote local planning for expansion of residential autonomy</p>

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			(Article 25) citizen participation in government’s processes such as planning, implementation, evaluation, duty for providing information
Devices for Coproduction/ Partnership	(Article 8) Citizen and the City, equal bearers for “the responsibility of the public welfare” 1. citizens and the city should cope with locality planning as the equal partners		
Principle of Information Sharing	(Article 9) 1. principle of information sharing ; protection of citizens’ information acquisition 2. principle of “disclosure of information”	(Article 8) 1. principle of information sharing between citizens and the city (Article 9) 1. principle of “disclosure of information” (Article 10) 1. duty for protection of information concerning individuals	(Article 2) 1. principle of information sharing (Article 3) 1. principle of information acquisition (Article 7) 1. principle of information disclosure 2. principle of disclosure of meetings 3. principle of public hearing devices (Article 9) 1. duty for protection of information concerning individuals
Role and Definition of Community	(Article 12) citizens’ objective participation in community		(Article 14) definition of community 1. organization of neighborhood bodies which help each residents’ QOL (Article 15) role of residents in community citizens should help develop community (Article 16) respect for voluntary attitude of/for community ; the city’s duty to assist

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Role/Duty of the City	(Article 13) principle for citizens’ participation 1. the city’s effort to promote citizens’ participation in locality planning	(Article 3) 1. promotion of the locality planning 2. principle of voluntary locality planning, that of coproduction 3. principle of promotion for neighborhood activity ; that of coproduction 4. principle of assistance for voluntary locality planning in neighborhoods	
Duty of City Council	(Article 14) 1. role to properly reflect citizens’ intention 2. role to check over and control over city administration ; role to report to citizens 3. role to reform the city council itself as functional and open for citizens		
Duty of Mayor	(Article 15) 1. duty to fairly and faithfully implement city administration on the basis of citizens’ entrustment. 2. supervise city staff properly	(Article 4) 1. guarantee of rights-to-know and rights-to-participate in locality planning 2. duty to establish the devices for coproduction in locality planning 3. human resource development for city staff	(Article 17) 1. duty to fairly and faithfully implement city administration on the basis of citizens’ entrustment.
Duty of Administration ; Duty of City Staff	(Article 16) 1. the city’s duty to fairly and faithfully implement city administration and functional organization. 2. city staff duty to conduct self-education and participate in locality planning	(Article 5) 1. duty to conduct fair and efficient duty assignment 2. compliance to basic idea of locality planning 3. city staff duty to conduct self-education	(Article 19) 1. duty to conduct fair and efficient duty assignment 2. efforts to promote citizens’ mutual linkage (Article 20) organization of the city should be functional, flexible, and correspond to the socio-economical situation

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Role and Duty of Citizens	(Article 11) 1. citizens’ active participation effort in locality planning 2. business’ understanding and promotion for social participation activities	(Article 6) citizens’ duty to comply to the basic idea of locality planning, and positive participation	(Article 12) 1. comprehensive recognition about the subjective role in locality planning
Accountability the Public Comment	(Article 17) 1. accountability of local government to inform citizens about planning	(Article 7) 1. accountability of local government to inform about policies and programs	(Article 4) 1. accountability of government to inform about policies and programs (Article 6) 1. clear articulation about the city’s decision process; promotion for citizens’ understanding (Article 27) 1. important plans ordained by comprehensive plan should be announced beforehand; public hearing 2. announce results of public hearings that request comments
Open Recruitment	(Article 18) required public recruitment system for city committee members		(Article 21) required public recruitment system for city committee members
Comprehensive Plan; Evaluation; Fiscal Management	(Article 19) 1. Implementation of policies should be based on first and second scheme that is drawn up by citizen participation 2. each program should be governed by comprehensive plan 3. compulsory evaluation 4. sound fiscal management based on comprehensive plan and evaluation	(Article 12) comprehensive city management 1. comprehensive management of city government for realization of basic ideals (local planning), on the basis of citizens’ needs (Article 14) comprehensive plan 1. city management based on comprehensive plan 2. proper management of comprehensive plan 3. programs under comprehensive plan	(Article 26) 1. duty to make comprehensive plan for systematic implementation of programs 2. plans should follow the comprehensive plan (Article 28) 1. budget compilation and implementation based on comprehensive plan (Article 29) 2. information and accountability for citizens about budget compilation

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		(Article 15) evaluation 1. obligatory evaluation (Article 16) Finance 1. fiscal management based on comprehensive plan and evaluation; compulsory announcement of finances	(Article 30) compulsory plan for budget implementation (Article 31) effort to adjust accounting documents for smooth evaluation (Article 32) compulsory plans for property management (Article 33) Announcement of fiscal situation (Article 34) obligated implementation of evaluation (Article 35) obligated effort to improve evaluation method
Poll of Citizens	(Article 20) 1. standard for implementation of “citizen voting”	(Article 17) 1. implementation of “citizen voting”	(Article 36) 1. implementation of “citizen voting” (Article 37) 1. concerning the procedures to develop each ordinance for each matter; convention about handling the results
Revision	(Article 21) compulsory revision corresponding to the socio-economical situation		(Article 45) revision every 4 years
Coalition (Other public bodies)		(Article 13) promotion for mutual assistance, coalition with other municipalities etc.	(Article 38) mutual assistance, coalition with individuals, bodies out of the city (Article 39) wide-area coalition with other cities, central government etc. (Article 40) coalition in international relation

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Administrative Procedures		(Article 11) 1. improve the administrative procedures for fair and transparent city management, guarantee for citizen’s rights and profits	(Article 24) develop ordinances concerning administrative sanction, administrative guidance and notification
Response to Opinion, Demands and Complaints			(Article 22) 1. obligatory research and response to opinion, demand and complaints 2. accountability of the city about guarantee-system for citizens’ right concerning opinion, demands and complaints ; compulsory response-documents (Article 23) organization for relief of citizens’ disadvantage is established by the city
Procedure to Establish Ordinance			(Article 42) principle of citizens’ participation to establishment, improvement, repeal of the ordinance

When we extract the common framing elements, 20 subjects are recognized, including the preamble :

Preamble ; Purpose ; Definition of Terms ; Positioning of the Ordinance ; Basic Ideal of Local Planning (Machizukuri) ; Right to Participate ; Devices for Coproduction/Partnership ; Principle of Information Sharing ; Role and Definition of Community ; Role/Duty of the City ; Duty of City Council ; Duty of Mayor ; Open Recruitment ; Comprehensive Plan ; Evaluation ; Fiscal Management ; Poll of Citizens ; Revision ; Coalition (Other Public Bodies) ; Administrative Procedures ; Response to Opinion, Demands and Complaints ; Procedure to Establish Ordinance

Table 5 shows the subjects and the cluster extracted from them. Looking at this, we recognize how different the BAO is from traditional national legislation such as the Local Government Act (Chiho Jichi Ho), one of the famous national laws that comprehensively treats mainly the organization, authority, city council personnel, municipality-administration, the

Table 5

Cluster	Common Framing in BAOs
1) purpose	purpose (direction of municipality management, of locality management)
2) local governance and co-production/partnership	basic ideal of local planning (Machizukuri)
	right to participate (local planning)
	devices for coproduction/partnership (promoting neighborhoods, promoting voluntary association)
	role and definition of community
3) information sharing	principle of information sharing (guarantee ; devices)
	accountability (public comment)
4) rights of citizens	poll of citizens
	subsistence-right ; rights for youth
5) role, duty of local actors (collaboration of sectors)	role/duty of the city
	duty of city council
	duty of mayor
6) Reinventing municipality governance	open recruitment (committee)
	comprehensive plan ; evaluation ; fiscal management
	coalition with other public bodies
	administrative procedures
	response to opinion, demands and complaints
7) procedure concerning ordinance	revision
	procedure to establish ordinance

mayor etc, and that does not contain any citizen input such as “public comments” or coproduction.

**Establishment of BAO from the impact of paradigm shift on municipalities**  
 —“autonomy”, “policy legal work”—

Looking at table 5 above the recent paradigm-shift in municipalities and localities should be taken notice of.

As to the conception of local government, a change has occurred. Cities had been perceived as one branch of central government. But in the 1990s the problems dealing with hierarchical institutional fatigue were broadly recognized. Even the Ministry of Local Affairs recognized the this issue. They revealed their position with the publishing of OLLD in 1999, and when they began the national endeavor for cities-merger 2000-2005. The image has changed tremendously at the national level as well as at the local level. Related to the image



of “cities as a branch of central government”, in each city, city–authority was perceived as the only sector that took care of all spheres within the locality. “Autonomy” meant just the autonomy of the city government’s authority. On the other hand, after 1999/2000 all citizens and voluntary associations (NPOs, workers’ cooperatives) have become understood as the elements that support the locality. In particular the “Act to Promote Specified Nonprofit Activities” (1998 : so-called NPO Act) promoted a more concrete understanding and image. Not only the city, but also non-profit organizations were able to commit themselves more to specialized fields such as managers of “public” facilities as well as to the policies of welfare, planning the master plan of the city. Therefore the concept of “autonomy” turned from one entity (city authority) into plural substances : “autonomy of city” and “residential autonomy”<sup>6</sup>.

When Kisa and his group initiated the BAO, some scholars, including Kisa, promoted one concept for a new type of policy making, corresponding to this shift : “Policy Legal Work” (seisaku homu 政策法務). In contrast to traditional bureaucratic legal work, citizens were not involved in policy making, nor legislation. On the other hand “Policy Legal Work” is conceived as the legal work that helps legislation in the proper realization of policies that are directly beneficial and useful to the issues and problems of locality (Kisa 1998). This new legal concept has been strongly connected with new “authority” conception.

### **Symbiotic setting of sectors as the fundamental factor of BAO**

When speaking of BAOs, this new image of “autonomy” at the national and local levels (the level of public), has influenced the framing of BAOs.

Foremost, it ordains who is in charge of the area problems within each role. It also ordains how it is implemented, and in what way this process is decided. *Id est*, BAO stipulates the ground principles for municipal and locality management, as well as the “role and duty” of each sector as well.

In BAOs, as shown in Table 4 and Table 5, the positioning of each sector in the locality, “residents–municipality (and mayor)–city council” (and in some BAOs, adding “–business”) is configured organically in the way (1) Role and Duty of Residents (Citizens), (2) Role and Duty of Mayor and Municipality, (3) Role and Duty of City Council.

The common perception that “Residents–municipality–city council” (and “–business”) is required to “go in the same direction, collaborating and performing each role” is where to begin. In terms of the essence of the legal aspects of this ordinance, BAO, it would be proper to say : the organic setting of sectors (citizens–city–city council) for the same direction/goal is the main pillar of BAO. (Cluster No. 5 in Table 6).

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<sup>6</sup> In the Japanese Constitution Article 92 says, “Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy”. This principle of local autonomy consists of “local public entities’ autonomy” and “residential autonomy”. It is significant that the phrase seems to substantialize itself after 1998/2000.

### **Information sharing**

Thereof “information sharing” is inevitable. In order to “go in the same direction, collaborate and performe each role”, the information sharing from the administrative part of the city and the city council that have fundamental information is par for the course. And opinions such as “public comments” and advocacy from citizens to the city and city council become necessary. Consequently, “information sharing” becomes “second pillar” of BAO (Cluster No. 3 in Table 5). In particular, during the process of creating the Niseko BAO, the provisions about information sharing were discussed in depth and carefully set, it had considerable influence as a model to other BAOs in this respect.

### **“Kyodo” (Coproduction)**

Obviously, the next issue would be about how each sector can work collaborately. Based on the new “autonomy” concept, “kyodo”(協働) is adopted for the method. “kyodo” is conceived as “coproduction”, which was proposed by V. Ostrom (Ostrom 1977), and means “to coproduce the public services, public goods with the citizen’s sector and governmental sector (the city)”. Specific skills such as methods for neighborhood planning, neighborhood plans (residential plans that are expected to be adopted by city’s comprehensive plan), neighborhood councils, matching funds (Diers 2005 ; Levy 2003), and the promotion of “chonaikai” (traditional and common grassroots associations in Japan) (Yoshiwara ; Pekkanen). “Kyodo” includes “citizen public participation” as well.

The word “kyodo” grew from the new residential movement in late 1970s to the 1980s in Takarazuka (Hyogo prefecture), Kochi (Kochi prefecture). Compared to the traditional chonaikai associations, they have tended to be quite active and have not been so confrontational. Their starting point was during the residential development boom near metropolitan areas such as Tokyo and Osaka at a period of high economic growth. The residents, mainly employees of companies in the metropolitan area, discovered that their housing situation posed many problems such as establishing bus routes, abolishing pachinko shop (a type of casino), and so on. They and their city tended to act for resolving such problems and sometimes and their cities achieved new skills in creating neighborhood plans (“community plan”). In Japan this new residential movement contributed to raise the kyodo concept (Maeyama 2009a) in the background.

Related to the “kyodo” concept, the new way “going in the same direction, collaborating and performing each role” means a symbiotic relational setting between “citizen-city-city council” towards a common goal. This is the main pillar for supporting the local governance that BAOs work to realize.

To complete this system, on one side “information sharing” is needed as one supporting pillar, and “methods for the collaboration” between symbiotic collaboration between sectors and the concept of “kyodo” (coproduction) are needed as second supporting pillars (Cluster No. 2 and 3 in Table 5).

As for the framing of BAO for administrative management and organization, this setting

is strongly related to the paradigm of the power, organization and procedures of city government. For example, the committees are supposed to be open to the public for recruiting and information sharing now. The comprehensive plan is also supposed to include citizen’s participation in this scheme-making process. Additionally, evaluation, administrative procedures, response to citizens’ demands and complaints are premised as “reinventing government” (Cluster No. 6 in Table 5).

BAO has established a completely different legislation from the traditional “nationally initiated” legislation.

Table 6

Main Pillar	Symbiotic relational setting between “citizen-municipality-city council” for a common goal
First Supporting Pillar	Information sharing
Second Supporting Pillar	Kyodo (Coproductio)

## (2) Other related ordinances

### 1. Citizen Participation Ordinance

There are 59 Residents’ Participation Ordinances as of March 2009. The first one was the “Citizen Participation Ordinance” of Mino City (Osaka prefecture), 1997. The second is that of Kanazawa City (Kanagawa prefecture) 2000. As to the titles, the naming is varied: “Machizukuri Citizen Participation Ordinance” in Konagai (Nagano), “Citizen Participation Ordinance” in Tomakomai (Hokkaido), (Nabari (Mie), Takarazuka (Hyogo)), “Citizen Kyodo Promotion Ordinance” in Yokosuka (Kanagawa), Kure (Hiroshima), “Ordinance for Promotion of Citizen Participation in Administration Activity” Ishikari (Hokkaido), “Machizukuri Ordinance for Partnership Between Citizens and Municipality” Kochi (Kochi).

Table 7 is the extracted framing through the same operation with Table 4 and 5.

Table 7

Purpose
Definition
Basic Ideals about the Promotion of Citizen Participation
Role and Duty of Mayor/Administration for Citizen Participation
Role and Duty of Citizens
Assistance for Citizens’ Activity
Principle of Open Meetings
Open Recruitment for Committee Members

Here we can clearly see the special-purpose of “Citizen Participation”. It is more obvious when we see the contents of recent citizen participation ordinances such as Usui City in Chiba or Tomakomai City in Hokkaido :

Usui City (Chiba) “Citizen Participation Ordinance” (Nov. 1, 2004)

Chapter 1	Purpose
Chapter 2	Method for Citizen Participation (1. General 2. Committee 3. Public Comment 4. Questionnaire Research 5. Opinion-Exchange Meeting 6. Workshop 7. Poll of Residents 8. Other Methods)
Chapter 3	Formation for Promotion
Chapter 4	Miscellaneous

Tomakomai City (Hokkaido) “Citizen Participation Ordinance” (Sept. 19, 2008)

Chapter 1	Purpose
Chapter 2	Procedures for Citizen Participation (1. General Rule 2. Procedures for Policy Making 3. Procedures for Citizen Submission of Opinions)
Chapter 3	System for Policy Advocacy from Citizens
Chapter 4	Miscellaneous

Cities tend to establish citizen participation ordinances based on the following criteria :

1. It leads to build open systems such as public comment, public occasion for citizens to comment on cities’ programs.
2. It leads to build a city’s fund, and citizen activity (NPO) centers as well.
3. It will help them promote NPOs.

In such a case it is often the implicit intention to utilize them as the “designated manager” of public facilities such as libraries, community centers, and such.

The situation in Usui’s and Tomakomai’s cases shows that citizen participation ordinances in recent years shaped themselves according to the specific purpose for the concrete programs described above.

It is interesting that related ordinances that include citizen participation ordinances share the idea of the symbiotic setting of sectors for the same direction (“going in the same direction, collaborating and performing each role”) with BAO. In addition, it is more interesting that the related ordinances, especially citizen participation ordinances, have their own specific missions. The citizen participation ordinances the mission to build policy-participation procedures (“public comment”), and to build the circumstances to let citizen sector (NPOs) work for “public issues.” This observation verifies the validity of our assumption (Table A).

## 2. Basic City Council Ordinance

Basic City Council Ordinances are relatively new. As the first pilot case the “Basic City

Council Ordinance” of Kuriyama City (Hokkaido), established on May 18, 2006. Just after that, some other cities followed : the “Basic Prefecture Council Ordinance” of Mie prefecture was established on December 20, 2006, the “City Council Basic Ordinance” of Iga City (Mie prefecture) on Feb 20, 2007, that of Kyotango City (Kyoto) on April 1, 2008.

The trial of Kuriyama was the result of the 4 years of discussion and study by the Kuriyama City Council, the city mayor, and scholars. Kuriyama City Council was forced to examine its reform for an “open city council”, confronting the hard social situation and the serious input from residents. Kuriyama, a small city with a population of only about 15,000, has been confronting the socio-economical “shrinking” surge, hard financial squeeze, declining population, and an aging demographic composition. The city council itself was forced to correspond to a budget cut, reduction of city council members (from 18 to 13), and other cuts at that time. Intriguingly, the city council had provided residents with a “city council debrief session for residents.” This was the starting point of their reform.

It is also intriguing that Mr. Hashiba, the chairman of the Kuriyama City Council, as well as Mayor Tsubakihara and Mr. Nakao, the director of the city council office were all so active. Based on the opinions from citizens in the session, they succeeded in allowing the city council establish the city council basic ordinance with the following inclusions mainly from the point of view of interaction between city council and citizens-Kyodo (Kambara et al 2006) :

- compulsory meeting with main agencies (business etc) and citizens.
- compulsory “city council debrief session for residents”
- “Yes or No” actions of council members should be open to the public/press
- “right to ask questions back to city council members” for the mayor
- compulsory exhibition of documents about policy making process
- promotion for positive and frequent discussion among council members.
- guarantee of transparency about council members’ “policy investigation budget” use.

Thus the ordinance had the following inclusions :

Table 8

Preamble
Purpose
Activity principle of city council and its members
Relationship between residents and city council
Relationship between mayor/municipality and city council=for good discussions
Amplification of discussion
Activity of committee
Policy investigation budget
Strengthen city council office
Political morality, position and treatment
Supplementary provision
Normative matter concerning city council

This sort of ordinance came into existence through this “self-sworn trial” without any model nor any advice/intervention from the Japanese central government at the time. The title “Basic City Council Ordinance” was named by Dr. Kanbara, scholar who was committed to and promoted this direction (Kanbara et al 2008). As to “normative matter”, city council basic ordinance is under BAO.

BAO started from the “self-sworn” endeavors in local spheres. In addition, citizen participation ordinances and basic city council ordinances have grown up from local “self-sworn” endeavors, each with its own ultimate goal.

#### IV Findings

Theoretical classification about BAO and related ordinances, municipal legislation based on paradigm shift of municipalities was tried 1) through the observation of their development process and 2) thorough the analysis work of their inclusions. As a result we now have 6 findings :

- (1) According to the data, the Basic Autonomy Ordinance (BAO), citizen participation ordinance, and city council basic ordinance have increased dramatically in 8 years since 2001, just after Niseko’s initial establishment. The established number of this sort is 257.14% of all Japanese cities. Though there are different patterns and tendencies in each ordinance, BAO and related ordinances are becoming “standard” in Japanese municipalities. This is the first experience in Japanese municipal history.
- (2) BAO started from a small local research group of cities’ staff members. Without any advice or intervention from any national ministries of the Japanese Government, Niseko, a small city adopted the “municipality legislation” concept.
- (3) The conception of BAOs is strongly interwoven with the new shift in the understanding of “autonomy” (from governmental autonomy to residential autonomy). The new thought “Kyodo”-coproduction, born in the 1980s and 1990s, is harmonious with the new autonomy concept, and is being used in BAOs.

In particular, the new concept of “policy legal work” (direct legal policy making in legal work in such a way that solves problems in the locality), and the concept of “municipal legislation” (legislation by the local municipality itself) is encouraging to promote establishing BAOs.

- (4) We identified the fundamental framework of BAOs by extracting analysis of the components and implications, and observed that it has the essential purpose for the symbiotic setting of sectors (citizens-city-city council) for the same direction/goal. Side supporting pillar, “information sharing” is inevitable basis for the setting of sectors. And in terms of method for the “collaboration” between sectors the concept “kyodo” (coproduction) becomes another side supporting pillar.

EXPLANATORY NOTES FOR TRANSLATION

Translated term	Japanese pronunciation	Japanese term
Act on Improvement and Vitalization in Urban Centers	Chusin Sigaichi Kasseika Ho	中心市街地活性化法
Act to Promote Specified Nonprofit Activities	Tokutei Hieiri Katsudo Sokushin Ho	特定非営利活動促進法
Basic Administration Ordinance	Gyosei Kihon Jorei	行政基本条例
Basic Autonomy Ordinance (BAO)	Jichi Kihon Jorei	自治基本条例
Basic City Council Ordinance	Shi/Cho[Machi]/Son[Mura]	市/町/村
City	Gikai Kihon Joeri	議会基本条例
city merger councils	Sichoson Gappei Kyogikai	市町村合併協議会
Hokkaido Local Government Act Research Group	Hokkaido Chihojichi Ho Kenkyukai	北海道地方自治法研究会
Large-Scale Retail Store Location Law	Daikibo Kouritenpo Ritchi Ho	大規模小売店舗立地法
Local Government Act	Chiho Jichi Ho	地方自治法
locality planning	machizukuri	まちづくり
municipal legislation	jichi rippo	自治立法
Omnibus Law for Local Devolution (OLLD) ※	Chiho Bunken Ikkatu Ho	地方分権一括法
Law Concerning Adjustment of Laws related to Promotion for Local Devolution (=OLLD) ※	Chiho Bunken no Suisin o Hakaru Tame no Kanren Horitsu no Seibi to ni Kansuru Houritsu	地方分権の推進を図るための関係法律の整備等に関する法律
policy legal work	seisaku homu	政策法務
residents’ Participation Ordinance	Jumin Sanka Jorei	住民参加条例
System of agency delegated functions	kikan inin jimu	機関委任事務
tax allocation grant	chiho koufu kin	地方交付金
Urban Planning Act	Toshi Keikaku Ho	都市計画法

- (5) Recently as another “self-sworn” ordinance, a municipality-born ordinance, the city council basic ordinance was born out of the very process of city council reform that received stimulus particularly from citizen input in areas of difficult socio-economical circumstances.
- (6) As to the discussion about the characteristics of BAO and its related ordinances, when we examine their background and composition, we were able to recognize : BAO has its normative position over other ordinances, including citizen participation ordinance, Nevertheless we recognized that citizen participation ordinances and city council basic ordinances, with a common “self-sworn” origin, have each its own distinctive traits, and its own mission statement during this development process.

This research was strongly stimulated by this new paradigm shift.

[The next step in this process would be to further study : the developing movement where BAO drafts are written by the citizens in some more progressive cities.]

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