

Republic of the Philippines
PROVINCE OF NEGROS ORIENTAL
City of Bayawan
Office of the Sangguniang Panlungsod

EXCERPT FROM THE MINUTES OF THE REGULAR SESSION HELD BY THE CITY COUNCIL OF BAYAWAN, NEGROS ORIENTAL ON SEPTEMBER 18, 2012 AT 2 O'CLOCK PM AT THE SP SESSION HALL.

RECORD OF ATTENDANCE

Hon. Ismael P. Martinez	(Presiding Officer)	Present
Hon. Victoriano D. Alabastro		Present
Hon. Ernesto T. Tijing		Present
Hon. Mark Anthony A. Duque		Present
Hon. Francis Floyd B. Araula		Present
Hon. Peter Paul F. Renacia		Present
Hon. Alex D. Tizon		Present
Hon. Danilo G. Lamis		Present
Hon. Mark Fidencio L. Aurelia		Present
Hon. Sharlou F. Jamin		Present
Hon. Luis J. Sumalpong		Present
Hon. Jonas M. Trias	(ABC Vice President)	Present
Hon. Alsheiba M. Tanasan	(SK Fed. Pres.)	Present

RESOLUTION NO. 784

“WHEREAS, the 1987 Constitution of the Republic of the Philippines declares that the State shall protect and promote the right to health of the people and instill health consciousness among them;

“WHEREAS, the Republic of the Philippines, under the Framework Convention on Tobacco Control (FCTC) to which she is a party, determined to give priority to the right to protect public health and to promote measures of tobacco control based on current and relevant scientific, technical and economic considerations, and agreed to implement the measures provided in the treaty;

“WHEREAS, the Local Government Code of 1991 (Republic act No. 7160) accords every local government unit power and authority to promote the general welfare within its territorial jurisdiction, including the promotion of health and safety of its constituents;

“WHEREAS, the Philippine Clean Air Act of 1991 (Republic Act No. 8749) declares the right of every citizen to breathe clean air, prohibits smoking inside enclosed public places including public vehicles and other means of transport, and local government units to implement this provision;

“WHEREAS, the Tobacco regulation Act of 2003 (republic Act No. 9211) prohibits smoking in certain public places whether enclosed or outdoors; prohibits the purchase and sale of cigarettes and other tobacco products from and to minors and in certain places frequented by minors; imposes bans and restrictions on advertising, promotion and sponsorship activities of tobacco companies, and directs local government units to implement these provisions;

“WHEREAS, scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability; lead to devastating health, social, economic and environmental consequences; and places burdens on families, on the poor, and on national and local health systems;

“WHEREAS, an increasing number of Filipinos die each year of tobacco-related diseases such as stroke, heart disease, and various cancers, among others;

“WHEREAS scientific evidence has shown that there is no safe level of exposure to tobacco smoke; that effective measures to protect from exposure to it requires the total elimination of smoking and tobacco smoke; and that approaches other than 100% smoke-free environments, including ventilation, air filtration and the use of designated smoking areas (whether with separate ventilation systems or not) have repeatedly been shown to be ineffective;

“WHEREFORE, on motion of Honorable Councilor Mark Fidencio Aurelia and duly seconded by Honorable Councilor Duque, the Council

“RESOLVED, To enact, as it hereby enacts the following Ordinance, to wit:

ORDINANCE NO. 31

AN ORDINANCE PROHIBITING THE USE, SALE, DISTRIBUTION AND
ADVERTISEMENT OF CIGARETTES AND OTHER TOBACCO PRODUCTS
IN CERTAIN PLACES, IMPOSING PENALTIES FOR VIOLATIONS THEREOF
AND PROVIDING FUNDS THEREFORE AND FOR OTHER PURPOSES

Be it ordained that:

Section 1. Title. – This Ordinance shall be known as the “Smoke Free Bayawan Ordinance”.

Section 2. Purpose – It is the purpose of this Ordinance to safeguard public health and ensure the well being of all its constituents by protecting them from the harmful effects of tobacco.

Section 3. Coverage – This Ordinance shall apply to all persons, whether natural or juridical, whether resident or not, and in all places, found within the territorial jurisdiction of Bayawan City LGU.

Section 4. Definition of Terms – As used in this Ordinance, the terms below shall have the meanings ascribed to them in this section. Any words or terms not define shall be given their plain and customary meanings, unless the context requires, and shall be interpreted in a manner consistent with the purpose and spirit of this Ordinance.

- a. **Advertising and promotions** means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.
- b. **Civil society organization (CSO)** refers to a legally constituted voluntary civic and social organization but not limited to, charities, development non-governmental organizations (NGOs), community groups, women’s organizations, faith-based organizations, professional associations, coalitions and advocacy groups. As used in this Ordinance, CSO does not include organizations or associations related to or connected with the tobacco industry in any way.
- c. **Enclosed or partially enclosed** means being covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, wall or sides, and regardless of whether the structure is permanent or temporary.
- d. **Graphic health warnings** refers to warnings or notices that are composed of pictures depicting the hazardous effects of tobacco use and/or second hand smoke, and accompanying textual warning to the same effect.
- e. **Minor** refers to any persons below eighteen (18) years old.
- f. **Outdoor advertisement** refers to any sign, model, placard, board, billboard, banner, bunting, light display, device, structure or presentation employed outdoors wholly or partially to advertise or promote a tobacco product to the public.
- g. **Point-of-sale** refers to any location at which an individual can purchase or otherwise obtain tobacco products.
- h. **Public conveyances** refers to modes of transportation servicing the general population, such as, but not limited to, ship, jeepneys, buses, taxicabs, V-hires, tricycles and other similar vehicles.
- i. **Public Places** , means all places, fixed or mobile such as, but not limited to, playgrounds, sports grounds or centers, church grounds, health/hospital compounds, transportation terminals, markets, parks, resorts, walkways, entrance ways, waiting areas, and the like and all establishments that obtain business permits from the city government.
- j. **Second-hand smoke** means the smoke emitted from the burning end of a cigarette or from other tobacco products usually in combination with the smoke exhaled by the smoker.
- k. **Smoking** means being in possession or control of a lit tobacco product regardless of whether the smoke is being actively inhaled or exhaled.

Handwritten signatures and initials in black ink on the left margin of the page. There are two distinct signatures, one above the other, and some smaller initials or marks.

- l. **Tobacco Products** means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing, such as cigarettes and cigars.
- m. **Workplace** means any place used by people during their employment or work, whether done for compensation or voluntarily, including all attached or associated places commonly used by the workers in the course of their work (for example, corridors, elevators, stairways, toilets, lobbies lounges). Government vehicles used in the course of work are considered workplaces.

Section 5. Prohibited Acts – The following acts declared unlawful and prohibited by this Ordinance:

- a. Smoking in enclosed or partially enclosed public places, workplaces, public conveyances, or other public places, as defines in Section 4.
- b. Selling or distributing tobacco products in a school, public playground or other facility frequented by minors, or within 100 meters from any point in the perimeter of these places.
- c. Selling or distributing tobacco products to the minors.
- d. Purchasing of tobacco products using minors.
- e. Placing cinema and outdoor advertisements of tobacco products.
- f. Placing, posting, or distributing advertising materials of tobacco products, such as leaflets, posters and similar materials, outside the premises of point-of-sale establishments.
- g. Conducting activities that will promote tobacco products.

Section 6. Duties and Obligations.

All Registered Owners/Proprietors of establishments shall be responsible for the following:

- a. Prominently post and display “No Smoking” signages in the location most visible to the public in the areas where smoking is prohibited, including vehicles. At the very least, “No Smoking” sign must be posted at the entrance to the area. The “No Smoking” sign shall be at least 8 x 16 inches in size and the international No Smoking symbol shall occupy no less than 70% of the signage. The remaining lower 30% of the signage shall show the following information:

[international No Smoking symbol]

STRICLY NO SMOKING

as per ORDINANCE NO. _____

Violators can be fine up to P_____

Report violations to _____

[hotline number optional]

- b. Remove from the places where smoking is prohibited all ashtrays and any other receptacles for disposing of cigarette refuse.
- c. For persons-in-charge of schools, public playgrounds or other facilities frequented by minors, post the following statement in a clear and conspicuous manner:

**SELLING OF TOBACCO
PRODUCTS NOT ALLOWED WITHIN 100
METERS FROM [SCHOOL/ETC.] PERIMETER**

- d. For persons-in-charge of point-of –sale establishments, post the following statement in a clear and conspicuous manner:

**SALE/DISTRIBUTION OF TOBACCO
PRODUCTS TO MINORS IS NOT ALLOWED**

- e. Ensure that all employees in the establishment are aware of this Ordinance and the procedure and measures for implementing and enforcing it.
- f. Allow inspectors acting under Sections 14 and 15 hereof and representatives of the designated civil society organization under Section 16 entry in to the establishment during regular business hours for the purpose of inspecting its compliance with this Ordinance.

Section 7. Persons Liable. – The following persons shall be liable under this Ordinance:

- a. Any person who commits any of the prohibited acts stated in Section 5 hereof
- b. Persons-in-charge who knowingly allow, abet, or tolerate the prohibited acts enumerated in Section 5, or who otherwise fail to fulfill the duties and obligations enumerated in Section 6 hereof

Section 8. Penalties. – The following penalties shall be imposed on violators of this Ordinance:

- a. *Violation of Section 5 (a)* - P 500.00
- b. *Violation of Section 5 (b), (c), and (d)* - P1,000.00
- c. *Violation of Section 5 e. f. g.*
 - i. First Offense P1,500.00
 - ii. Second Offense P3,000.00
 - iii. Subsequent Offenses P5,000.00

Revocation of business license or permit (in case of a business entity or establishment) or of franchise or license to operate (in case of a public conveyance)

- a. **Suspension of License.** The license to operate of any establishment or of any public conveyance covered by this Ordinance shall be suspended for at least one (1) week but not more than one (1) month upon:
 - 1) Failure of the establishment or public conveyance to cease and desist the violation stated in the Citation Ticket within ten (10) calendar days of its issuance, regardless of whether or not the Citation Ticket was accepted
 - 2) Failure of the establishment or public conveyance to pay the fine indicated in a Citation Ticket within ten (10) calendar days of its issuance, regardless of whether or not the Citation Ticket was accepted.

The suspension shall be lifted upon proof of compliance with the cease-and-desist order or payment of fine stated in the Citation Ticket.

- a. **Subsidiary Imprisonment.** In case a violator was unable to pay or unwillingly did not pay the fines imposed within 5 days, he or she may suffer a subsidiary imprisonment at a rate of PHP100.00 /day.

Section 9. Citation Ticket System. – Violators of this Ordinance shall be informed of their violation and the penalty associated with such violation by means of a Citation Ticket System with the following guidelines:

- a. Official booklets of Citation Tickets shall be issued by the Health Office to duly authorized enforcers within ninety (90) calendar days of the effectivity of this Ordinance.
- b. A Citation Ticket shall be issued to the person/s liable for any violation of this Ordinance upon finding of the violation by duly authorized enforcers.
- c. A Citation Ticket shall contain the following information:
 - 1) a checklist of the violations under this Ordinance
 - 2) the fines associated with each violation
 - 3) due date for compliance with the obligations imposed by the ticket
- d. When a Citation Ticket is issued to a violator, the violator shall report to the City Health Officer or the duly authorized representative within three (3) regular business days after such issuance, where he or she shall pay the fine imposed or the subsidiary imprisonment of PHP100.00 per day.

- e. The Health Office shall keep a duplicate of all Citation Tickets issued to violators as well as all other records of violations of this Ordinance.

Section 10. Smoking Cessation Program. – The Health Officer, with the assistance of the Health Education and Promotion Officer and the CSO representative designated under *Section 16* hereof, shall develop and promote a Smoking Cessation Program and encourage the participation therein of public and private facilities which may be able to provide for its requirements. Smokers who are willing to quit and/or those found violating this Ordinance may be referred to the Smoking Cessation program and its facilities.

ENFORCEMENT

Section 11. Smokefree Task Force. – A Task Force shall be created to aid in the implementation, enforcement and monitoring of this Ordinance as well as to conduct educational awareness campaigns, information dissemination programs, and capacity building programs, that will inform the constituents and train enforcement officers.

The Task Force shall be composed of the following:

- a. Health Officer
- b. Health Education and Promotion Officer
- c. Legal Officer
- d. Information Officer
- e. Building Officer/Engineering
- f. Business Permits and License Officer/Fire Officers

- a. Representative of the civil society organization (CSO) designated by the Health Officer under Section 16 hereof

- g. Representative of the Philippine National Police (PNP)/City Public Safety Office (CPSO)
- h. SP Committee on Health
- i. Treasurer's Office

Section 12. Duties and Responsibilities of the Task force. – Other than (1) receiving, reviewing and processing reports of and complaints for violations of this Ordinance and (2) deputizing enforcers under *Section 13 to 16* hereof, the Task Force shall have the following respective duties and responsibilities:

- a. The Health Officer shall:
 - 1) Issue official Citation Tickets to the enforcers
 - 2) Assign a hotline or any other number to which violations of this Ordinance may be reported by telephone call or by SMS, and a person to operate the line and record reports
 - 3) Serve as the overall coordinator among all the [Bayawan] offices involved in the implementation of the Ordinance
 - 4) Act as agent of the Treasurer in collecting and receiving fines paid by violator
 - 5) Make tobacco control, including the implementation and enforcement of this Ordinance, a part of the health program to be proposed for funding by the general budget of the city.
 - 6) Develop a criteria within 90 days after approval of the ordinance in choosing CSO in deputizing civilians for enforcement subject however, to the approval of the Sangguniang Panlungsod.
 - 7) Develop a set of guidelines for the reward system in the implementation of this ordinance
- b. The Health Education and Promotion Officer shall:
 - 1) Develop and produce information education and communication materials on the harms of second-hand smoke as well as on the provisions of this Ordinance
 - 2) Encourage constituents of Bayawan to monitor and report violations of this Ordinance
 - 3) Assist the Health Officer in developing and promoting a smoking cessation program

c. The Legal Officer shall:

- 1) Assist the Health Officer in reviewing reports of and complaints for violations of this Ordinance and in determining liability
- 2) Provide legal assistance to the enforcers of this ordinance

d. The Building Officer shall:

1. Conduct, together with the Health Office or on its own inspection activities as provided in this Ordinance.
2. Determine whether or not enclosed or partially enclosed public places, workplaces or other public places comply with the requirements of this Ordinance

e. The Information Officer shall:

- 1) Print the Citation Tickets and copies of this Ordinance for distribution to the public
- 2) Make a primer summarizing the provisions of this Ordinance
- 3) Publicize activities related to the implementation and enforcement of the Ordinance

f. The Business Permits and License Officer/Treasurer shall;

- 1) Order the suspension or revocation of permits and licenses of establishments found to have violated this Ordinance, subject to the provisions of *Section 8* hereof
- 2) Deny renewal of permits and licenses of violators of this Ordinance

. The CSO Representative shall:

- 1) Assist in preliminary inspections and in monitoring violations of this Ordinance
- 2) Assist in promoting awareness of this Ordinance and in encouraging public support and participation in its implementation and enforcement
- 3) Assist in developing and promoting a smoking cessation program
- 4) Assist in developing and conducting orientation seminars and training seminars for enforcers

g. Assist in evaluating the performance of the Task Force and the effectiveness of the implementation and enforcement of this Ordinance

h. The PNP /CPSO/FIRE representatives shall:

- 1) Apprehend violators in accordance with the provisions of this Ordinance
- 2) Assist [LGU] officials and deputized civilians in apprehending violators and in
- 3) filing the appropriate complaints

Section 13. Enforcement on Individuals. - Members of the PNP, deputized Task Force, concerned citizens shall apprehend and issue Citation Tickets against persons caught smoking in places where such is prohibited. They shall forward copies of the tickets they issued to violators to the Health Officer and duly authorized representative regularly, at least thrice a week.

Section 14. Enforcement on Public Conveyances. - Members of the PNP and/or persons duly deputized by the Task Force shall inspect public conveyances during their regular hours of operation and shall issue Citation Tickets upon discovery of any violation of this Ordinance. They shall forward copies of the tickets they issue violators to Health Officer regularly and duly authorized representative, at least thrice a week.

Section 15. Enforcement on Establishments. -Ninety (90) calendar days after the effectivity of this Ordinance, an inspection team composed of representatives from the Health Officer and duly authorized representative, the Engineer's Office, and the Permits and License Office, shall conduct inspections of establishments and buildings to determine their compliance with the provisions of this Ordinance.

Regular inspection shall thereafter be conducted at least once every month or simultaneously with other regular inspections done by the (LGU), whichever is more frequent, during normal hours of operation of the establishment.

The inspection team shall issue a Citation Ticket against the establishment upon finding of non-compliance with or of any violation of this Ordinance. A Citation Ticket may be issued for each day that the establishment is found to be non-compliant.

Re-inspection of the establishment shall be done on any day after the issuance of the Citation Ticket, but in no case more than ten (10) calendar days after such issuance. If the establishment fails to comply with the obligations stated in the Citation Ticket upon re-inspection, the inspection team shall recommend the suspension of the license to operate of the establishment, consistent with Section 8 (d) In the course of inspection, the inspection team may apprehend individual violators and request the assistance of the PNP in doing so.

Section 16. Civilian Participation in Enforcement. – Within thirty (30) calendar days from the effectivity of this Ordinance, the Health Office shall designate, with the approval of the Office of the Local Chief Executive, a civil society organization (CSO) to discharge the duties and responsibilities enumerated in Section 12 (g) hereof.

The Task Force may deputize qualified civilians to serve as enforcers of this Ordinance.

Any person can file with the Task Force a report of or complaint for any violation of this Ordinance.

In case of an individual violator who, despite fair warning, refuses to stop smoking where such is prohibited, a civilian can effect a citizen's arrest pursuant to Section 5 and 9, Rule 113 of the Revised Rules of Criminal Procedure and seek assistance from the PNP in doing so.

INFORMATION CAMPAIGN

Section 17. Information Dissemination. – Within Sixty (60) calendar days of the effectivity of this Ordinance, the Health Office shall:

- a. In coordination with the Office of the [LCE]:
- 1) Provide at least Two (2) copies of this Ordinance to every PNP station or precinct in the city;
 - 2) Provide a primer on this Ordinance for every member of the PNP member in the city; and
 - 3) Conduct lectures to brief members of the PNP members of the provisions of this Ordinance and of their responsibilities with respect to its enforcement.
- b. In coordination with the Permits and Licenses Office, give a copy of this Ordinance and its primer to all existing establishments that are licensed to operate and open to the public, as well as to those applying for a new license to operate.
- c. In coordination with the Information Office, give a copy of this Ordinance and its primer to all public utility vehicle operators in the city.

Section 18. Public Billboards, Notices in Barangays. – Upon effectivity of this Ordinance, the Engineer's Office shall put up billboards in conspicuous places in the city to notify the public of the restrictions and sanctions imposed by the ordinance. The Information Office shall immediately issue for dissemination at the barangay level notices regarding the obligations of persons under the ordinance.

Section 19. Conduct of Orientation Seminars and Trainings. – Within Sixty (60) calendar days from the effectivity of this Ordinance and periodically thereafter, the Health Officer, with the assistance of the Health Education and Promotion Officer and the CSO representative designated under Section 16 hereof, shall develop and conduct a series of orientation seminars and trainings for the enforcers of this Ordinance, at least one for each group, including but not limited to, deputized enforcers like barangay health workers and the barangay tanod, and the local PNP.

FINANCING

Section 20. Funding. – An initial funding to defray the expenses necessary for or incidental to the implementation of this Ordinance in the amount of PHP500,000.00 shall be sourced from the [LGU] fund and is hereby allocated. Every year thereafter, at least PHP200,000.00 shall automatically be included in the Annual Budget of the city for the implementation and enforcement of this Ordinance, based on the city's plans and programs.

The above expenses include, but are not limited to:

- a. Costs of printing copies of this Ordinance, the Citation Tickets, and information, education and communication materials pertaining to tobacco control
- b. Costs of inspection and enforcement by the Smoke Free Task Force, including allowances for meals and transportation, the amounts of which shall be set by the Office of the Chief Executive.
- c. Incentive or reward for private citizens who report violations of this Ordinance
- d. Institution and operating expenses of the smoking cessation program and facility
- e. Other expenses associated with the implementation and enforcement of this Ordinance

Section 21. Repealing Clause. – All ordinances contrary to or inconsistent with this Ordinance are hereby repealed or modified accordingly.

Section 22. Separability Clause. – If any part or provision of this Ordinance is declared unconstitutional or invalid, the same shall not affect the validity and effectivity of the other parts or provisions hereof.


Section 23. Effectivity Clause. – This Ordinance shall take effect Fifteen (15) days after its publication in a newspaper of local or general circulation or posting in at least Two (2) conspicuous places in the city.

“Enacted.”


* * *

I hereby certify to the correctness of the foregoing resolution.

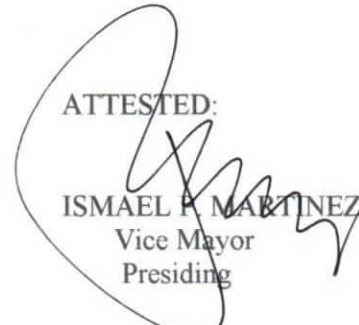
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JULIUS T. ESPARTERO
Secretary to the Sangguniang Panlungsod

APPROVED: 001 1 1 2012


RENE G. GAUDIEL
Mayor

ATTESTED:


ISMAEL F. MARTINEZ
Vice Mayor
Presiding

Copy For:

- The Honorable Provincial Board, Dumaguete City