

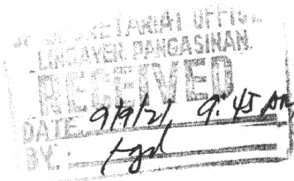


Republic of the Philippines
Province of Pangasinan
Office of the Provincial Legal Officer
Capitol Compound, Lingayen, Pangasinan



Atty. Geraldine U. Baniqued
Provincial Legal Officer

September 3, 2021



ATTY. VERNAT T. NAVA-PEREZ
Secretary to the Sangguniang Panlalawigan
Lingayen, Pangasinan

Dear Atty. Perez:

This is with reference to your 1st indorsement requesting legal opinion and recommendation on Ordinance No. 104, S-2021 of the Sangguniang Bayan of Lingayen, Pangasinan, entitled: **"APPROVING THE INTEGRATED PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF THE MUNICIPALITY OF LINGAYEN, PROVINCE OF PANGASINAN."**

The subject enactment finds support in the following provisions of Republic Act No. 7160, also known as the Local Government Code of 1991, to quote:

Section 447. Powers, Duties, Functions and Compensation. - (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code x x x

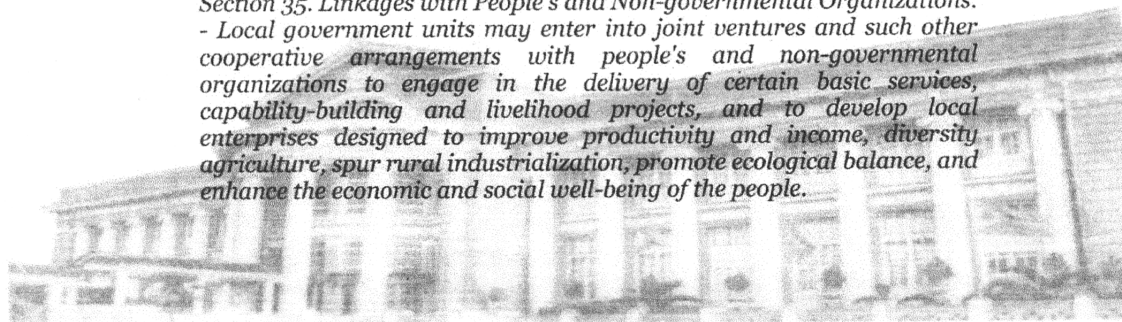
Section 22. Corporate Powers. - (a) Every local government unit, as a corporation, shall have the following powers:

(5) To enter into contracts; x x x

(d) Local government units shall enjoy full autonomy in the exercise of their proprietary functions and in the limitations provided in this Code and other applicable laws.

Section 18. Power to Generate and Apply Resources. - Local government units shall have the power and authority x x x to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals.

Section 35. Linkages with People's and Non-governmental Organizations. - Local government units may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversity agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people.



The government is mandated to implement projects towards national growth and development. Such a task is so arduous that the 1987 Constitution recognizes the indispensability of private sector participation therein. This recognition paved the way for legislations, e.g. the BOT Law and the Government Procurement Reform Act, which on one hand, provides incentives for the participation of the private sector in government projects; and on the other, establishes a standard procedure to regulate the same. Local government units, with its public and proprietary functions under R.A. No. 7160, are empowered to enter into agreements with private sectors with the goal of local economic development and more efficient delivery of basic services.

However, as a matter of observation, it appears that the present ordinance is not consistent with the latest recommended guidelines under DILG Memorandum Circular No. 2016-120 with amendments from DILG-PPPC Joint Memorandum Circular 2019-01. The said Circulars prescribe the Guidelines for the Implementation of the Public-Private Partnership for the People Initiative for Local Governments (LGU P4), which is an update on the previous PPP program for LGUs. In contrast with the present ordinance, the said Circulars contain additional methods of procurement such as competitive and limited negotiations, rehabilitate-release-and-transfer (RLT), rehabilitate-and-transfer (RT), and rehabilitate-transfer-and-operate (RTO). Also contained are additional requirements for PSPs and further procedure for the execution of the LGU P4 contract, among others. Thus, without intent to question the wisdom behind the subject ordinance, it is humbly recommended that DILG MC 2016-120 and DILG-PPPC JMC 2019-01 be duly considered by the sanggunian of origin.

As to the effectivity of the present ordinance, reminder of the requirements under Section 59 (a) of the Local Government Code, is humbly made, viz:

Section 59. Effectivity of Ordinances or Resolutions. - (a) Unless otherwise stated in the ordinance or the resolution approving the local development plan and public investment program, the same shall take effect after ten (10) days from the date a copy thereof is posted in a bulletin board at the entrance of the provincial capitol or city, municipal, or barangay hall, as the case may be, and in at least two (2) other conspicuous places in the local government unit concerned.

Based on the submitted documents, there is yet no proof of compliance with the abovesaid posting requirement of law. The subject ordinance is deemed ineffectual in the meantime. Compliance is therefore enjoined, and proof thereof be submitted to the Sangguniang Panlalawigan.

Premises considered, undersigned is of the opinion that the enactment of the subject ordinance is within the conferred powers of the sanggunian of origin, subject to compliance with the posting requirement of law. With due respect, consideration of the above observation is likewise humbly recommended.

Respectfully yours,


GERALDINE UBANA-BANIQUED



Republic of the Philippines
PROVINCE OF PANGASINAN
Lingayen
www.pangasinan.gov.ph

OFFICE OF THE SANGGUNIANG PANLALAWIGAN SECRETARY

September 10, 2021

HON. JUDY DL. VARGAS-QUIOCHO
Presiding Officer/Vice Mayor

THE HONORABLE MEMBERS
SANGGUNIANG BAYAN
Lingayen, Pangasinan

Through: **GINA A. FLORES**
Sangguniang Bayan Secretary

Dear Sirs/Mesdames:


This refers to your **Ordinance No. 104, S-2021** entitled "APPROVING THE INTEGRATEC PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF THE MUNICIPALITY OF LINGAYEN, PANGASINAN".

Please be informed that subject ordinance was referred to the Provincial Legal Officer, for review and recommendation to the Board.

Relative thereto and upon the instruction of SP Member Noel C. Bince, Chairman – Committee on Laws and Ordinances of the Sangguniang Panlalawigan of Pangasinan, we are returning your Ordinance No. 104 S-2021, to enable you comply with observations stated in the attached opinion of the PLO dated September 3, 2021.

My warm regards.

Very truly yours,

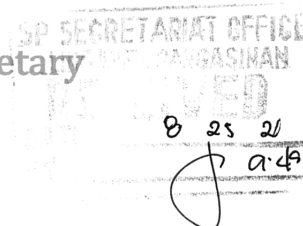

VERNA T. NAVA-PEREZ
Secretary to the Sanggunian

NCB/VTNP/avb/Letters to the LGUs



Republic of the Philippines
MUNICIPALITY OF LINGAYEN
Province of Pangasinan

Office of the Sangguniang Bayan Secretary




1st ENDORSEMENT

August 24, 2021

Respectfully forwarded to the Provincial Board of Pangasinan, thru the SP Secretary, the attached Ordinance No. 104, S-2021, entitled, "*Approving the Integrated Public-Private Partnership (PPP) Code of the Municipality of Lingayen, Province of Pangasinan*", approved by the Sangguniang Bayan of Lingayen during its Regular Session held on August 9, 2021, for review and ready reference.

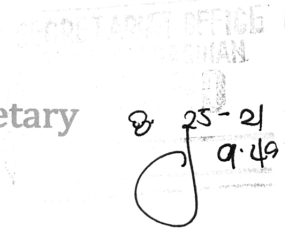
Attached herewith are the minutes and attendance of Public Hearing and Certificate of Posting.


GINA A. FLORES
Secretary to the Sanggunian



Republic of the Philippines
MUNICIPALITY OF LINGAYEN
Province of Pangasinan

Office of the Sangguniang Bayan Secretary



CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that Ordinance No. 104, S-2021, entitled, "*Approving the Integrated Public-Private Partnership (PPP) Code of the Municipality of Lingayen, Province of Pangasinan*", has been posted in the Municipal Bulletin Board of Lingayen, Pangasinan in pursuance to Section 59, par. b of R.A.7160, otherwise known as the Local Government Code of 1991.

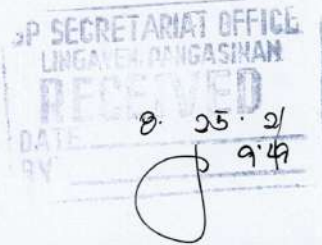
This 24th day of August, 2021 at Lingayen, Pangasinan.


GINA A. FLORES
Secretary to the Sanggunian



Republic of the Philippines
MUNICIPALITY OF LINGAYEN
Province of Pangasinan

Office of the Sangguniang Bayan



EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE
SANGGUNIANG BAYAN OF LINGAYEN, PANGASINAN HELD ON AUGUST 09, 2021
VIA ZOOM.

PRESENT : VICE-MAYOR JUDY DL. VARGAS-QUIOCHO

SBM Mac Dexter G. Malicdem

SBM Jay Mark Kevin D. Crisostomo

Presiding Officer

SBM Jonathan Carl R. Arcinue

SBM Ramon Anselmo M. Cuaresma

SBM Sheila V. Castañeda

SBM Randall Q. Bernal

SBM Ricardo R. Ferrer

SBM Jasper S. Pasion

SBM Darwin B. Jimenez –

ABC President

SBM Gabriel Ivan C. Tuazon –

SKF President

ABSENT: None

Authored by: *SB Member Jay Mark Kevin D. Crisostomo*

EXPLANATORY NOTE

WHEREAS, under Section 20, Article II of the 1987 Constitution, the “State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments”;

WHEREAS, the private sector participates in infrastructure, development and social service-related projects of the State and Local Government Units (LGUs) through what is popularly known as Public-Private Partnerships (PPPs);

WHEREAS, the Department of the Interior and Local Government (DILG) Legal Opinion No. 8, S-2014 declared that “there is no specific statute on PPP nor guidelines on joint ventures for local governments” and that a “duly enacted local legislation (PPP Code) must be complied with in undertaking (its) PPP projects”;

WHEREAS, according to the Department of Justice (DOJ) Opinion No. 18, S-2012, “xxx local governments may enact their own Public-Private Partnership (PPP) Code or omnibus ordinance outlining among others, all applicable modalities. xxx A local government, through an enabling ordinance, is free to act to address local concerns, even without an enabling ordinance, provided no statute will be infringed”;

WHEREAS, in legal Opinion No. 10, S-2014, the DILG affirmed the above-quoted DOJ Opinion and further said that, “the LGUs’ discretion xxx is consistent with the state policy of local autonomy and is in line with the operative principle of decentralization and the national goal of propelling social and economic growth and development through the active participation of the private sector”;

WHEREAS, in furtherance of and consistent with local autonomy, fiscal autonomy, the principle of subsidiarity, public good and welfare, general welfare, and full autonomy over proprietary powers, the municipality is free, provided no statute is violated, to adopt its definition of a PPP undertaking and prescribe the requirements,

procedures and conditions for Municipality PPPs, and incorporate these in an operative framework; and

WHEREAS, having a framework in ordinance form will ensure and facilitate consistency, integrity, reliability, sustainability, accountability, transparency, and enforceability;

WHEREFORE, on motion of SBM Jay Mark Kevin D. Crisostomo, duly seconded by SBM Ramon Anselmo M. Cuaresma, be it:

RESOLVED AS IT IS HEREBY RESOLVED, to pass and approve this corresponding ordinance.

ORDINANCE NO. 104, S-2021

APPROVING THE INTEGRATED PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF THE MUNICIPALITY OF LINGAYEN, PROVINCE OF PANGASINAN.

BE IT ORDAINED by the Sangguniang Bayan of LINGAYEN, PANGASINAN in session assembled that:

CHAPTER I

Basic Principles and Definitions

Section 1. Short Title. – This Ordinance shall be otherwise known as “*A MUNICIPAL CODE PURSUING A PUBLIC-PRIVATE PARTNERSHIP (PPP) APPROACH TOWARDS DEVELOPMENT, PROVIDING FOR THE PROCEDURE FOR SELECTING THE PRIVATE SECTOR PROPONENT, ADOPTING A CONTRACT MANAGEMENT FRAMEWORK, AND PROVIDING APPROPRIATIONS AND FOR OTHER PURPOSES.*”

Section 2. Declaration of Policy –

- (a) It is hereby declared as a policy that the Municipality of LINGAYEN shall advance the public good and general welfare and promote the interest of the community and the municipality within the framework of sustainable and integrated development, and effective constructive engagement and meaningful people's participation in local governance.
- (b) PPPs shall be pursued by the Municipality consistent with and in furtherance of the core service and development areas, to wit:
 - Promotion of a healthy public-private collaboration in the implementation of educational, agro-industrial and commercial programs and projects;
 - Delivery of holistic quality healthcare services and adequate health service facilities;
 - Improvement of the standards of instruction among educational institutions;
 - Maintenance of a progressive Municipality with an investment-friendly socio-economic plan;
 - Development of an agro-eco-tourism destination with a strong participation of every barangays, local government agencies, non-government organizations and civil society.
 - Creation of programs and projects for infrastructure development which will regulate and improve transportation, power, water and communication facilities and cater to the needs of constituents.

- Increase awareness on environmental stewardship and community-based disaster preparedness plans for a disaster-resilient community;
- Maintenance of public safety and peace and order throughout the community; and
- Have a master plan and an adequate budget for modern facilities while anchored on core values of political maturity, dynamism and responsive leadership.”

Section 3. Operative Principles. – The accomplishment of the stated policy shall be guided by the following principles:

- (a) The Municipality, pursuant to Section 1, 2 and 5, Article X of the 1987 Constitution is a territorial and political subdivision which enjoys local autonomy and fiscal autonomy. Under Section 3, Article X of the 1987 Constitution, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities.
- (b) The general welfare and the public good shall always be promoted and that transparency, public accountability and social accountability mechanisms and approaches shall be integrated in PPPs from inception to implementation.
- (c) The Municipality exists and operates in its governmental and proprietary capacities thereby making the municipality an agent of and is therefore accountable to the State and its community. The role of the Municipality both as a regulator of a business and as implementor of a proprietary undertaking must be clearly delineated.
- (d) The Municipality must develop into a self-reliant community, and as such is in a better position to address and resolve matters that are local in scope. The Municipality is under the supervision of the President and under the control of Congress.
- (e) Under Section 18 of the Republic Act No. 7160 of the Local Government Code of 1991 (1991 LGC), the municipality may to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive developmental or welfare purposes.
- (f) Under Section 22 (c) of the 1991 LGC no contract may be entered into by the Mayor on behalf of the Municipality without prior authorization by Sangguniang Bayan. The participation of the sanggunian is indispensable in the adoption and implementation of a PPP arrangement.
- (g) Under Section 22 (d) of the 1991 LGC, the Municipality enjoys full autonomy in the exercise of its proprietary functions and shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers, necessary, appropriate, or incidental for its efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare.
- (h) Under Section 25 (b) of the 1991 LGC, the Municipality may collaborate or cooperate with other local governments, national government agencies,

government-owned and controlled corporations, government instrumentalities and government corporate entities for the implementation of local projects.

- (i) Under 129 of 1991 LGC and other statutes, the Municipality has been given the responsibility and mandate to exercise developed and delegated powers.
- (j) The Municipality under Section 106 of 1991 LGC, is mandated to draw up and implement a comprehensive multi-sectoral development plan. PPPs shall be pursued by the municipality consistent with its infrastructure, development, investment, environmental and governance framework embodied in relevant policies, plans, ordinances and codes.
- (k) The Municipality as a partner in a PPP arrangement, may provide equity, subsidy or guarantee and use local funds; and the usage thereof for a PPP project shall be considered for public use and purpose.
- (l) Under Sections 34, 35 and 36 of the 1991 LGC and in the exercise of its powers, the Municipality may enter into joint ventures and such other cooperative arrangements with people's and non-governmental organizations to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people; provide assistance, financial or otherwise to such people's and non-governmental organizations for economic, socially-oriented environmental, or cultural projects to be implemented within its territorial jurisdiction.
- (m) The Municipality, under Section 3 (l) of the 1991 LGC, is duty-bound to ensure the active participation of the private sector in local governance.
- (n) The right of the people to information on matters of public concern is guaranteed under Section 7, Article III of the 1987 Constitution. Furthermore, it is the policy of the State to allow full public disclosure of all its transactions involving public interest such as PPPs under Section 28, Article II of the 1987 Constitution.
- (o) The people's right to effective and reasonable participation and public trust provision under Section 16, Article XIII and Section 1, Article XI, respectively, of the 1987 Constitution guarantee and empower civil society groups to have effective and meaningful participation in the regulation and management of PPP projects.

Section 4. Rationale for PPP – PPPs shall be promoted to provide more, better, affordable and timely services to the community. In pursuing PPPs, the Municipality shall be guided by the following reasons and drivers:

- (a) PPPs shall be undertaken in furtherance of the Municipality development and physical framework plan.
- (b) PPP is an essential part of the overall infrastructure reform policy of the Municipality. By encouraging performance-based management of the delivery of the public services applying commercial principles and incentives whenever possible, by introducing competition in and for the market, and by involving users and stakeholders in the decision-making process, infrastructure and regulatory reform shall be achieved.
- (c) PPPs should be adopted to address a pressing and urgent or critical public need. Under the principle of "Additionality," the increased economic benefits to

consumer welfare of having needed public services and infrastructure accessible now because of the PPP, rather than having to wait until the municipal could provide the public services much later. PPP would also encourage the accelerated implementation of local projects.

- (d) PPPs can be adopted to avoid costs and public borrowing. By contracting with the private sector to undertake a new infrastructure project, scarce municipal capital budgets can be directed to other priority sectors such as social services, education, and health care.
- (e) PPPs allow for technology transfer, and improved efficiency and quality of service. These could be valuable contribution of the private sector in local governance.
- (f) PPPs should be feasible and affordable, demonstrating the need for the project, broad level project costs estimation, and indicative commercial viability. The assessment and affordability shall be the cornerstone for all PPP projects, both to the city and the general public.
- (g) PPP Projects should be bankable. High participation costs, unreasonable risk transfer or lengthy and complex contract negotiations must be avoided. A cost recovery pricing policy attractive to the private sector must be in place; provided that the same will not be disadvantageous to government and public interest.
- (h) PPP Projects should provide value-for-money and good economic value as far as practicable, including allocation of risks to the party best able to control, manage, mitigate or insure these risks, and maximization of the benefits of private sector efficiency, expertise, flexibility and innovation.
- (i) PPP Projects must provide economic and social benefits and should be evaluated on this basis rather than on purely financial considerations. The Municipality remains responsible for services provided to the public, without necessarily being responsible for corresponding investment.
- (j) PPP Projects must give consideration for empowerment of Filipino citizens as a strategy for economic growth and sustainability and thus provide for the participation of local investors to the furthest extent practicable given the nature of the project. The Municipality shall also ensure the hiring and employment of local labor in PPP venture.
- (k) Procurement of PPP Projects must be competitive and must be undertaken through open competitive bidding. Competition must be legitimate, fair and honest. In the field of government contract law, competition requires, not only bidding upon a common standard, common basis, upon the same thing, the same subject matter, the same undertaking, but also that is be legitimate, fair and honest; and not designed to injure or defraud the government. Where competitive bidding cannot be applied, a competitive process ensuring both transparency and economically efficient outcome must be employed.
- (l) The regulation of the PPP shall be pursuant to the PPP contract and exercised by the appropriate regulatory authority. A duly executed and legal PPP Contract shall be respected and not impaired, and shall be binding on the successor administration pursuant to the provision on corporate succession.
- (m) To provide efficient public service, the Municipality must ensure, through stronger performance management and guidance, proper implementation of PPP contracts that will result in value for money, on-time delivery of quality services to

the public, achievement of government policy goals, all within sustainable and integrated development.

Section 5. Definition of Terms. – As used in this Code, the following terms shall mean:

(a) **Build-Operate-Transfer Law Scheme** – Under Republic Act No. 6957 as amended by RA No. 7718, the following are the BOT variants:

- (i) **Build-and –Transfer (BT)** – A contractual arrangement whereby the Private Sector Proponent (PSP) undertakes the financing and construction of a given infrastructure or development facility, and after its completion, turns it over to the Municipality, which shall pay the PSP, on an agreed schedule its total investment expended on the project, plus a Reasonable Rate of Return thereon.
- (ii) **Build-Lease-and –Transfer (BLT)** – A contractual arrangement whereby a PSP is authorized to finance and construct an infrastructure or development facility and upon its completion, turns it over to the Municipality on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the Municipality.
- (iii) **Build-Operate-and-Transfer (BOT)** – A contractual arrangement whereby the PSP undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The PSP operates the facility over a fixed term, during which it is allowed to charge facility users appropriate tolls, fees, rentals and charges not exceeding those proposed in its bid, or as negotiated and incorporated in the contract, to enable the PSP to recover its investment, and its operating and maintenance expenses in the project. The PSP transfers the facility to the Municipality at the end of the fixed term which shall not exceed fifty (50) years. This build, operate and transfer contractual arrangement shall include a supply-and-operate scheme, which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Municipality so requires, operates the facility, providing, in the process, technology transfer and training to Filipinos nationals.
- (iv) **Build-Own-and Operate (BOO)** – A contractual arrangement whereby a PSP is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the PSP is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users. Under this project, the proponent who owns the assets of the facility may assign its operation and maintenance to a facility operator. The divestiture or disposition of the asset or facility shall be subject to relevant rules of the Commission on Audit (COA).
- (v) **Build-Transfer-and-Operate (BTO)** – A contractual arrangement whereby the Municipality contracts out the construction of an infrastructure facility to a PSP such that the contractor builds the facility on a turnkey basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the municipality. The PSP, however, operates the facility on behalf of the Municipality under an agreement.

- (vi) **Contract-Add-and-Operate (CAO)** – A contractual arrangement whereby the PSP adds to an existing infrastructure facility which it is renting from the Municipality and operates the expanded project over an agreed franchise period. There may or may not be a transfer arrangement with regard to the added facility provided by the PSP.
 - (vii) **Develop-Operate-and-Transfer (DOT)** – A contractual arrangement whereby favorable conditions external to a new infrastructure project to be built by a PSP are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates, such as higher property or rent values.
 - (viii) **Rehabilitate-Operate-and-Transfer (ROT)** – A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish, operate and maintain for a franchise period at the expiry of which the legal title to the facility is turned over to the Municipality.
 - (ix) **Rehabilitate-Own-and-Operate (ROO)** – A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.
- (b) **Competitive Challenge or Swiss Challenge** – An alternative selection process wherein third parties or challengers shall be invited to submit comparative proposals to an unsolicited proposal. Accordingly, the PSP who submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offers given by a comparative PSP.
- (c) **Competitive Selection or Bidding or Open Competition** – Refers to a method of selection or procurement initiated and solicited by the Municipality, based on a transparent criterion, which is open to participation by any interested party.
- (d) **Concession** – A contractual arrangement whereby the financing and construction of a new facility and/or rehabilitation of an existing facility is undertaken by the PSP after turnover thereof to it, and includes the operation, maintenance, management and improvement, if any, of the facility for a fixed term during which the PSP generally provides service directly to facility users and is allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges from them. The Municipality may receive a concession or franchise fee during the term of the contract and/or other consideration for the transfer, operation or use of any facility. There may be a transfer of ownership of the asset or facility after the concession period has ended subject to rules of the COA.
- (e) **Corporatization** – Refers to transformation of a public entity or quasi-municipal corporation established by the Municipality into one that has the structure and attributes of a private corporation, such as a board of directors, officers and shareholders and having it registered with the Securities and Exchange Commission as a stock corporation. The process involves the establishment of a distinct legal identity for the company under which the Municipality role is clearly identified as owner; segregation of the company's assets, finances, and operations from other LGU operations; and development of a commercial orientation and managerial independence while remaining accountable to the government or electorate.

- (f) **Cost Sharing** – This shall refer to the Municipality portion of capital expenses associated with the establishment of an infrastructure development facility such as the provision of access infrastructure, right-of-way, and any partial financing of the project.
- (g) **Credit Enhancement** – This shall refer to direct and indirect support to a development facility by the PSP and/or Municipality, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the PPP contract. Credit enhancements are allocated to the party that is best able to manage and assume the consequences of the risk involved. Credit enhancements may include but are not limited to government guarantees on the performance or the obligation of the LGU under its contract with the PSP, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the Municipality assumes full or partial responsibility for or assists in maintaining the financial standing of the PSP or project company in order that the PSP/project company avoids defaulting on the project loans, subject to fulfilment of the PSP/project company of its undertakings and obligations under the PPP contract.
- (h) **Development Projects** – Projects normally financed and operated by the Municipality, but which will now be wholly or partly financed, constructed and operated by the PSP; projects that will advance and promote the general welfare; and other infrastructure and development projects as may be authorized by the Municipality.
- (i) **Direct Municipality Equity** – Refers to the subscription by the Municipality of shares of stock or other securities convertible to shares of stock of the special purpose vehicle or single-purpose project company, whether such subscription will be paid by money or assets.
- (j) **Direct Municipality Guarantee** – Refers to an agreement whereby the Municipality guarantees to assume responsibility for the repayment of debt directly incurred by the PSP in implementing the project in case of a loan default.
- (k) **Direct Municipality Subsidy** – Refers to an agreement whereby the Municipality shall: (a) defray, pay or shoulder a portion of the PPP project cost or the expenses and costs in operating and maintaining the project; (b) condone or postpone any payments due from the PSP; (c) contribute any property or assets to the project; (d) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and/ or (e) waive charges or fees relative to the business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the PSP or operator for such payment, contribution or support.
- (l) **Divestment or Disposition** – Refers to the manner or scheme of taking away, depriving, withdrawing of title to a property owned by the Municipality and vesting ownership thereof to a PSP.
- (m) **Feasibility or Project Study (FS)** – A study, full or pre-feasibility study or business case prepared by the LGU in a competitive selection or a PSP when submitting an unsolicited proposal, containing or indicating a needs analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, human resource assessment, bankability assessment, legal viability assessment, PPP mode selection, market testing if relevant, indicative transaction implementation plan, and draft PPP contract. The

study may be supported by the results of the appropriate “willingness-and-ability-to-pay” survey.

- (n) **Franchise** – Refers to the right or privilege affected with public interest which is conferred upon a PSP, under such terms and conditions as the Municipality may impose, in the interest of public welfare, security and safety.
- (o) **Joint Venture (JV)** – A contractual arrangement whereby a PSP or group of private sector entities on one hand, and the Municipality on the other hand, contribute money/capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing. The Municipality shall be a minority equity or shareholder while the PSP shall be a majority equity or shareholder. Each party shall be entitled to dividends, income and revenues and will bear the corresponding losses and obligations in proportion to its share. Parties to a JV share risks to jointly undertake an investment activity in order to accomplish a specific, limited or special goal or purpose with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transferring ownership of the investment activity to the PSP under competitive market conditions. It involves a community or pooling of interests in the performance of the service, function, business or activity, with each party having a right to direct and govern the policy in connection therewith, and with a view of sharing both profits and losses, subject to agreement by the parties.
- (p) **Lease or Affermage** – A contractual arrangement providing for operation, maintenance and management services by the PSP, including working capital and/ or improvements to an existing infrastructure or development facility leased by the PSP from the Municipality for a fixed term. Under a lease, the PSP retains revenue collected from the customers and makes a specified lease payment to the Municipality. Under an affermage, the parties share revenue from customers wherein the PSP pays the contracting authority an affermage fee, which varies according to demand and customer tariffs, and retains the remaining revenue. The Municipality may provide a purchase option at the end of the lease period subject to the rules of the COA.
- (q) **Management Contract** – A contractual arrangement involving the management or provision by the PSP of operation and maintenance or related services to an existing infrastructure or development facility owned or operated by the Municipality. The project proponent may collect tolls/fees/rentals and charges which shall be turned over to the Municipality and shall be compensated in the form of a fixed fee and/or performance-based management or service fee during the contract term.
- (r) **Negotiated Projects** – Refers to instances where the desired project is the result of an unsolicited proposal from a PSP or, where the Municipality has failed to identify an eligible private sector partner for a desired PPP activity when there is only qualified bidder after subjecting the same to a competitive selection or bidding.

(s) New Technology – Refers to having at least one of the following attributes:

- (i) A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce implementation of construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations, or reduce negative environmental impact or social/economic disturbances or disruptions during either the project implementation/construction phase or the operation phase; or
- (ii) A process for which the project proponent or any member of the proponent joint venture/consortium possesses exclusive rights, either world-wide or regionally; or
- (iii) A design, methodology or engineering concept for which the proponent or a member of the proponent consortium or association possesses intellectual property rights.

(t) Private Sector Proponent (PSP) – refers to the private sector entity which shall have contractual responsibility for the project and which shall have an adequate track record in the concerned industry, as well as technical capability and financial base consisting of equity and firm commitments from reputable financial institutions, to provide, upon award, sufficient credit lines to cover the total estimated cost of the project to implement the said project.

(u) Public-Private Partnerships (PPP) – PPP is a form of legally enforceable contract between the Municipality and a PSP, requiring new investments from the PSP and transferring key risks to the PSP in which payments are made in exchange for performance, for the purpose of delivering a service provided or intended to be provided by the Municipality. PPP shall also include dispositions of an asset, facility, project owned, or entity created by the Municipality to a PSP; procurement of a service; assumption by a PSP of a proprietary function of the Municipality grant of a concession or franchise to a PSP by the Municipality; or usage by the PSP of public property owned or possessed by the Municipality.

Alternatively, a PPP is a legally enforceable contract where each party assumes specified functions, bears certain risks, provides contribution or renders some obligation, and earns benefits and revenues from the PPP arrangement.

(v) PPP Contract – Whenever appropriate, the PPP Contract shall contain the Perambulatory Clauses or Whereas Clauses, Party Clause, Rules of Interpretation, Nature of the PPP, Term of the Project, Contract Objective, Performance Bonds, Key Performance Indicators, Risk Allocation, Rights, Payment to PSE or PSP, Tariff Scheme, Subsidy or Support Mechanism, Insurance Requirements, Delay Provisions, Force Majeure, Governmental Action, Government and Public Sector Entity (PSE) Warranties, PSP Warranties, Change in the Law, Regulatory Regime, Variations, Termination, Indemnification, Intellectual Property, Claims, Financial Security, Dispute Resolution, Step-in Rights, Changes in the Composition of the PSP/Service Provider, Partnership Management, Compliance with all Laws, Personnel, Conditions Precedent, among others.

(w) Reasonable Rate of Return (RROR) – refers to the rate of return that a PSP shall be entitled to, as determined by the PPP Regulatory Authority taking into account, among others, the prevailing cost of capital (equity and borrowings) in

the domestic and International markets, risks being assumed by the PSP and the level of Municipality undertakings and contributions extended for the project.

(x) **Service Contract** – A contractual arrangement whereby the PSP shall provide a particular service to the Municipality involving the Municipality proprietary authority or to entities or corporation created by the Municipality. The PSP shall be entitled to be paid a fee per unit of work done during the term of the contract.

(y) **Unsolicited Proposal** – Refers to project proposals submitted by a PSP to the Municipality to undertake Development Projects without a formal solicitation issued by the Municipality.

(z) **Value for Money (VfM)** – Refers to the concept that over the whole-life of a project finance-PPP Project, government's total expenditures (i.e., its payments to the private sector), adjusted for the risks that have been transferred to the private sector, will be less, on a Net Present Value (NPV) basis, than if the government will perform the services itself. VfM considers monetary and non-monetary factors such as: (i) risk transfer; (ii) reduced whole life costs; (iii) speed of implementation; and (iv) quality and reliability of service.

(aa) **Viability Gap Funding (VGF)** – Refers to an explicit subsidy that is performance-driven (i.e., based on private party achieving measurable outputs) and targeted to socio-economically disadvantaged users or groups of users; or any financial support in the form of grants or assistance, one time or deferred, to infrastructure projects undertaken through PPPs with a view to make them commercially viable.

Section 6. Rules of Interpretation – This Code and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives set forth in Section 2, 3 and 4 hereof.

Section 7. Authorities –

(a) This Code is being adopted pursuant to the Municipality constitutional and statutory authorities enumerated under Section 3 hereof; and when not inconsistent with the relevant laws aforementioned, shall govern the adoption and implementation of the PPP Modalities.

(b) In pursuing BOT and its Variants, the Municipality shall comply with Republic Act No. 6957 as amended by RA No. 7718 (BOT Law) and its Implementing Rules and Regulations.

(c) In entering into Management and Service Contracts, the Municipality shall comply with Republic Act 9184 or the Government Procurement Reform Act (GPRA) and its Implementing Rules and Regulations.

(d) For Dispositions, COA Circular No. 89-296 (January 27, 1989) shall govern.

(e) For Corporatization, the incorporation of the corporation must be done in accordance with the Corporation Code of the Philippines.

(f) For Joint Ventures, the Law on Partnerships of the Civil Code of the Philippines shall be applicable.

(g) For Leases and Affermages, the Law on Leases of the Civil Code of the Philippines may be referred to.

CHAPTER II

PPP Projects and PPP Modalities

Section 8. PPP Projects –

- (a) The Municipality , through the appropriate and viable PPP mode, may undertake Development Projects, including but not limited to, power plants, highways, ports, airports, canal, dams, hydropower projects, water supply, sewerage, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, social services, sewerage, drainage, dredging, mining, prisons, and hospitals. The Municipality can also undertake PPPs for any of the devolved activities under Section 17 of the 1991 LGC.
- (b) The determination of the appropriateness and viability of the PPP mode shall be specified, explained and justified in the feasibility or project study weighing all the relevant value drivers and reasons for pursuing a PPP project.
- (c) Parties to PPP arrangement shall undertake an activity in order to accomplish either an integrated or multi-use arrangement or specific goal or purpose with the end view of serving the public good or generating revenues.

Section 9. List of Priority Projects – The Municipality shall identify specific priority projects that may be undertaken under any of the PPP Modalities defined under Section 10 hereof.

Section 10. PPP Modalities – In undertaking a specific PPP Project, the Municipality may adopt and pursue any of the following 16 PPP Modalities and provide for other modalities not inconsistent with law:

- (a) Build-and-Transfer (BT);
- (b) Build-Lease-and-Transfer (BLT);
- (c) Build-Operate-and Transfer (BOT);
- (d) Build-Own-and –Operate (BOO);
- (e) Build-Transfer-and-Operate (BTO);
- (f) Contract-Add-and-Operate (CAO);
- (g) Develop-Operate-and-Transfer (DOT);
- (h) Rehabilitate-Operate-and-Transfer (ROT);
- (i) Rehabilitate-Own-and-Operate (ROO);
- (j) Concession Arrangement;
- (k) Joint Ventures (JV);
- (l) Lease or Affermage;
- (m) Management Contract;
- (n) Service Contract;
- (o) Divestment or Disposition;
- (p) Corporatization; and
- (q) Any other modality akin to any of the above or features thereof which falls under the alternative definition of a PPP under Section 5 (u) hereof.

Section 11. General Requirements – These are the general requirements for the Municipality in entering into PPPs:

- (a) Undertaking a PPP for a development Project must be premised on any or all of the reasons and drivers mentioned in Section 4 hereof.
- (b) Projects included in the List of Priority Projects shall not be eligible for unsolicited proposals under any of the BOT variants, unless involving a new concept or technology; provided, that for any of the other PPP Modalities, unsolicited proposals may be accepted even if the project is included in the List of Priority Projects or whether the same features a new concept or technology or not.
- (c) The prohibition for extending Direct Municipal Guarantee, Direct Municipal Subsidy and Direct Municipal Equity only applies to unsolicited proposals for BOT variants under Republic Act No. 6957 as amended by RA No. 7718.
- (d) For BOT variants that will be subjected to bidding, Concession Arrangements, Leases or Affermage, Management and Service Contracts, and Joint Ventures, the Municipality may provide Direct Municipal Guarantee, Direct Municipal Subsidy, Direct Municipal Equity, or Viability Gap Funding; provided, that the Municipality can use a portion of its general fund, its development fund comprising 20% of its' annual share in the Internal Revenue Allotment, and/or its equitable share in the proceeds of the utilization and development of the national wealth found within its territory for its purpose; provided further, that any amount used for subsidy or equity for a PPP project shall be deemed for development purposes and for the direct benefits of the inhabitants pursuant to Sections 287 and 294 of the 1991 LGC respectively.
- (e) For all PPP Modalities, the Municipality may provide Credit Enhancements and Cost-Sharing schemes.
- (f) Official Development Assistance (ODA) as defined in R.A. 8182, otherwise known as the ODA Act of 1996, as amended by R.A. 8555, may be availed of for PPP projects where there is difficulty in sourcing funds; provided, that ODA financing shall not exceed 50% of the project cost, with the balance to be provided by the PSP.
- (g) Any subsidy to the constituents that will be extended by the Municipality must be targeted, transparent and efficiently administered.
- (h) Each PPP Modality adopted for a specific PPP project must specifically provide and adopt a tariff-mechanism such as but not limited to cash-needs, price cap, revenue cap, rate of return, hybrid of the foregoing, or any other appropriate scheme.
- (i) For negotiated contracts for BOT variants for public utility project which are monopolies, the rate of return on rate base shall be determined by existing laws, which in no case shall exceed twelve per centum (12%).
- (j) In case of a project requiring a franchise or license to operate, the winning PSP shall automatically be granted by the Municipality, the franchise or license or permit to operate and maintain the facility, including the collection of tolls, fees, rentals, and other charges in accordance with the schedules stipulated in the PPP contract. The original franchise period as stipulated in the contract agreement may be extended, as may be authorized by the Municipality, provided that the total franchise period shall not exceed fifty (50) years.

- (k) The Municipality shall have the option to form or allow the formation of a special purpose vehicle or single-purpose project company to implement the PPP project as may be appropriate under the chosen PPP Modality.
- (l) In participating in PPPs, the Municipality may, subject to Sections 16,17,18,19 and 20 of the 1991 LGC, exercise police power, perform devolved powers, power to apply and generate resources, expropriate and reclassify and enact or integrate zoning ordinances.
- (m) The Municipality shall prescribe and impose Procurement Ethics to be followed by the Municipality and all bidders based on the principles of honesty, integrity, probity, diligence, fairness, trust, respect and consistency for all PSPs, and bidders.
- (n) In a JV or appropriate modality, the co-ventures or parties to a JV shall contribute money, capital, services, personnel, assets including equipment, land, intellectual property or anything of value, or a combination of any or all of the foregoing to the JV arrangement. The contribution of the Municipality shall be subject to third party independent valuation. Further:
 - (i) The Municipality may allocate a portion of its Internal Revenue Allotment, Real Property Tax, Development Fund, Regular Funds, proceeds from the utilization and development of its national wealth, Special Education Fund when the JV project is education-related, Calamity Fund when the JV project is calamity- or reconstruction-related, and special funds, if appropriate, as its contribution or share in the JV activity. These may be the actual or current funds, or future or monetized value of these funds of the Municipality.
 - (ii) The Municipality may contract a loan, avail Official Development Assistance, secure grants, issue bonds, debentures, securities, collaterals, and notes the proceeds of which can be earmarked for the JV activity.
 - (iii) On the part of the Municipality, in addition to the foregoing contributions, it may extend goodwill, grant a franchise, concession, usufruct, right-of-way equity, subsidy or guarantee, provide cost-sharing and credit enhancement mechanisms,
 - (iv) Exercise police power, give tax incentives or tax holidays, perform devolved powers, expropriate and reclassify and enact or integrate zoning ordinances.
 - (v) The Municipality shall be a minority equity or shareholder while the PSP shall be majority equity or shareholder, except in the case where fifty per cent (50%) of the outstanding capital stock or contribution is owned or made by the Municipality. A reasonable percentage of the equity to be provided by the PSP should come from its own resources and not borrowed. Any cost avoidance or substantial savings that will be made by the Municipality because of and directly attributable to the JV activity may be factored in the computation of the respective shares of the Municipality and the PSP.

- (vi) The share of its JV party shall be set as fixed or determinable percentages or values either based on an overall or across-the-board assignments of contributions, revenues, profits, losses, risks and functions; or on specific assignment of contributions and functions to each JV party, provided that, the agreed percentage share is maintained and that joint governance is ensured where the Municipality shall have representation in the governing structure based on in proportionate share at the minimum.
 - (vii) Subject to the terms of the competitive selection process and agreement of the parties, the Municipality may be entitled to a share greater than its contribution or equity.
 - (viii) Each party shall be entitled to dividends, profits, income and revenues and will bear the corresponding risks, losses and obligations in proportion to its share, either based on gross or net revenues or income, unless the parties agree, that the Municipality will have a greater share in the dividends, profits, income and revenues and/or bear risk lower risk and percentage loss than what it contributes to the JV arrangement.
 - (ix) For as long as the Municipality is involved in the JV undertaking, the PSP shall not sell/transfer its interest in the JV Company without the express written consent of the Municipality.
 - (x) The share or equity of the Municipality in the JV arrangement may be advanced, in full or in part, by the PSP where the PSP shall be paid from the future revenues due the Municipality either by set-off or actual payment.
 - (xi) The JV activity may, subject to the terms of the competitive selection process, include the divestment, disposition or transfer of ownership of the JV activity, equity, asset or project to the PSP or JV partner. The divestment or disposition may take place at the end of the JV period or before the term ends.
- (o) Procurement made by the Municipality using public/city funds shall be subject to the GPRA and its Revised Implementing Rules and Regulations. Procurement made by the PSP using private funds shall not be covered by said statute.
- (p) The revenues, funds, expenditures and contributions of the Municipality shall be subject to the audit examination by the COA, revenues, funds, expenditures and contributions of the PSP shall be subject to audit by a private auditing firm.
- (q) Any subsidy, guarantee, equity or contingent liability assumed or given by the Municipality must be reflected, disclosed and recognized in the annual appropriations of the Municipality.

Section 12. Government-to-Government Joint PPP Undertakings – The Municipality by mutual agreement in a Government-to-Government arrangement with other local governments, national government agencies, government-owned and-controlled corporations, government instrumentalities and government corporate entities, may implement PPP Projects for projects located within the municipal territory or those projects that will benefit the Municipality and its community even if the project site is outside the municipal territory; provided, that the collaborating or partner

government entity jointly undertakes with the Municipality the selection of the PSP using the appropriate PPP Modality.

CHAPTER III

PPP Procedures and PPP Contract

Section 13. PPP Procedures – The following procedures shall apply:

- (a) For BOT variants, the Municipality must comply with the procedures set forth in Republic Act No. 6957 as amended by RA No. 7718 and its Implementing Rules and Regulations.
- (b) For Management and Service Contracts, the Municipality shall comply with Republic Act No. 9184 or the Government Procurement Reform Act and its Implementing Rules and Regulations.
- (c) For Concessions, Joint Ventures, and Leases or Affermage, the procedures specified herein shall govern.
- (d) For Divestment or Disposition of a property, COA Circular No. 89-296 (January 27, 1989) shall be applicable.
- (e) For the Divestiture of a subsidiary or corporation incorporated by the Municipality under Corporation, the sale may be pursued via a public offering or through a public auction or other relevant schemes under COA Circular No. 89-296 (January 27, 1989).
- (f) If the Municipality opts to select a PSP using either Competitive Selection or Competitive Challenge, the Municipality in the Competitive Selection and the PSP in the Competitive Challenge approach must prepare and submit a Feasibility or Project Study. The costs of preparing the Feasibility or Project Study may be reimbursed by the winning PSP to the Municipality under the Competitive Selection mode.
- (g) All recommendations of the PPP Selection Committee shall be submitted to the Mayor for consideration and approval.
- (h) All PPP Contracts must be signed by the Mayor with prior authorization by the Sangguniang Bayan.
- (i) After the signing of the PPP Contract by the Mayor, the PPP-SC shall issue the Notice of Award to the PSP.
- (j) While the PPP Contract is already valid, perfected and enforceable, it may be submitted for judicial, executive or administrative confirmation from the courts or appropriate government institutions.

Section 14. PPP Selection Committee

- (a) There is hereby created a PPP Selection Committee (PPP-SC) for purposes of selecting a PSP for a specific PPP Project. The PPP-SC shall be composed of the following:
 - (i) Chairperson – Municipal Administrator;
 - (ii) Secretary – Municipal Accountant;

- (iii) The Municipal Treasurer;
- (iv) The Municipal Planning and Development Coordinator;
- (v) The Chairman, Committee on Trade, Commerce, Industry and Tourism, and Committee on Eng'g & Public Works; and
- (vi) Two (2) representatives from and chosen by the accredited civil society groups, people's and non-governmental organizations who are members of the Municipal Development Council.

A quorum of the PPP-SC shall be composed of a simple majority of all voting members. The Chairperson shall vote only in case of a tie.

The PPP-SC with the approval of the Mayor may invite provisional non-voting members from the national government agencies, regulatory agencies, NEDA, DILG, and the private sector to observe in the proceedings of the PPP-SC and form a support staff composed of employees and staff of the Municipality.

- (b) The PPP-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the Feasibility or Project Study and selection/tender documents; determination of the minimum designs, performance standards/specifications, economic parameters and reasonable rate of return or tariff-setting mechanism appropriate to the PPP Modality; drafting or evaluation of the PPP contract; publication of the invitation to apply for eligibility and submission of proposals or comparative proposals; defining the eligibility requirements, appropriate form and amount of proposal securities and schedules of the selection and challenge processes; pre-qualification of prospective PSPs, bidders or challengers; conduct of pre-selection conferences and issuance of supplemental notices; interpretation of the rules regarding the selection process; conduct of the selection or challenge process; evaluation of the legal, financial and technical aspects of the proposals; resolution of disputes between PSPs and challengers; defining the appeals mechanisms; and recommendation for the acceptance of the proposal and/or for the award of the contract.

Section 15. Competitive Selection

- (a) The Competitive Selection procedure shall consist of the following steps: advertisement, issuance of instructions and tender documents, conduct of pre-bid conferences, eligibility screening of prospective bidders, receipts and opening of bids, posting of proposal securities, evaluation of bids, post-qualification, and award of contract.
- (b) The Mayor shall approve the tender documents and the draft PPP Contract before they are issued to the prospective PSPs/bidders.

Section 16. Limited Negotiations – Where the Municipality has failed to identify an eligible PSP for a desired PPP activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding or where the desired PPP project is subject to an unsolicited proposal from a PSP, limited negotiations may take place. The negotiations will cover all the technical and financial aspects of the PPP project or activity; provided that the minimum designs, performance standards/specifications and economic parameters stated in the Feasibility or Project Study and Terms of Reference for the Competitive Selection are complied with. The

Municipal Mayor shall approve the terms of the Limited Negotiations prior to the award of the contract to the PSP.

Section 17. Competitive Challenge – The Competitive Challenge process shall be divided into three (3) Stages, described as:

Stage 1. Unsolicited Proposal – The steps are:

- (i) A PSP submits an unsolicited proposal accompanied by a Feasibility or Project Study to the Municipality for a projected PPP Project.
- (ii) The PPP-SC shall make an initial evaluation of the proposal and determination of the eligibility of the PSP.
- (iii) Upon completion of the initial evaluation, the Municipal Mayor, upon recommendation of the PPP-SC, shall either issue a certificate of acceptance or non-acceptance of the proposal for purposes of detailed negotiations.
- (iv) If there is more than one unsolicited proposal submitted for the same PPP Project, the Municipal Mayor, upon recommendation of the PPP-SC, may reject all proposals and pursue competitive selection, or accept the unsolicited proposal that is complete and provides the greater advantage and benefits to the community and revenues to the municipal.
- (v) The Mayor shall, upon recommendation of the PPP-SC, shall issue the Notice of Primary Proponent to the qualifying PSP.

Stage 2. Detailed Negotiations – The steps are:

- (i) The parties shall negotiate and agree on the terms and conditions of the PPP Project concerning its technical and financial aspects.
- (ii) Once negotiations are successful, the parties shall issue a joint certification stating that an agreement has been reached and specifying the eligibility of the PSP and the technical and financial aspects of the PPP Project as agreed upon.
- (iii) The issuance of the certification commences the activities for the solicitation for comparative proposals.

In the event that the Original Proponent has an exclusive franchise, right or concession, such as a power service contract, water rights, or mining contracts/rights vested, granted or awarded by the responsible national government agency, or ownership over real, personal or intellectual property, without which the JV project or activity cannot be undertaken without the participation or consent of the Original Proponent-Franchise Holder, subjecting the unsolicited proposal to challenge under Stage 3 hereof need not be undertaken. In which case, the Competitive/Swiss Challenge process is deemed complete.

- (iv) However, should negotiations not result to an agreement acceptable to both parties, the Municipality shall have the option to

reject the proposal by informing the PSP in writing stating the grounds for rejection and thereafter may accept a new proposal from other PSPs, decide to pursue the proposed activity through other PPP Modalities or subject the PPP Project to a Competitive Selection.

Stage 3. Competitive or Swiss Challenge Proper – The steps are:

- (i) The PPP-SC shall prepare the tender documents. The eligibility criteria used in determining the eligibility of the private sector entity shall be the same as those stated in the tender documents. Proprietary information shall, however, be respected and protected, and treated with confidentiality. As such, it shall not form part of the tender and related documents.
- (ii) The Municipal Mayor shall approve all tender documents including the draft contract before the publication of the invitation for comparative proposals.
- (iii) The PPP-SC shall publish the invitation for comparative proposals.
- (iv) The PSP or original Proponent shall post the proposal security at the date of the first day of the publication of the invitation for comparative proposals in the amount and form stated in the tender documents.
- (v) In the evaluation of the proposals, the best offer shall be determined to include the original proposal of the PSP. If the Municipality determines that an offer made by a comparative PSP or challenger other than the negotiated terms with original proponent is superior or more advantageous to the Municipality than the original proposal, the PSP who submitted the original proposal shall be given the right to match such superior or more advantageous offer. Should no matching offer be received within the stated period, the PPP Project shall be awarded to the comparative PSP submitting the most advantageous proposal. If a matching offer is received within the prescribed period, the PPP shall be awarded to the original proponent. If no comparative proposal is received by the Municipality, the PPP Project shall be immediately awarded to the original proponent.
- (vi) In the event that the Original Proponent is not able to match the superior offer of the challenger, the winning challenger shall reimburse, within 30 days from issuance of the notice of award, the original proponent the cost of preparing the project study, provided, that this reimbursement arrangement and the cost of preparing of the project study are expressly stated in the terms of reference for the competitive challenge, and that the PPP-SC has determined that the cost is reasonable.

Section 18. Schedules and Timelines. - The Municipality shall have the authority to adopt and prescribe the appropriate schedules and timelines for each PSP

selection process: provided, that the periods are reasonable and will not undermine free competition, transparency and accountability.

Section 19. PPP Contract

- (a) The PPP Contract shall be signed by the Municipal Mayor on behalf of the Municipality with the prior authorization or ratification by the Sangguniang Bayan, and duly authorized representative of the PSP.
- (b) The direct and ultimate beneficiary of any PPP Contract shall be the constituents of the Municipality.
- (c) The principal PPP Contract shall describe the PPP Project, the rights, functions, obligations and responsibilities of and risks assumed by each of the contracting party, dispute mechanism and all other provisions enumerated under Section 5 (v) hereof.
- (d) The other ancillary contracts may include insurance; loan agreements; bonds; guarantee arrangements; equity arrangements; operations and maintenance contracts; and engineering, procurement and construction (EPC) contracts.

CHAPTER IV

Regulation and Contract Management

Section 20. PPP Regulatory Authority's Mandate.- The PPP Regulatory Authority (PPP-RA) created under this Code shall be tasked with performing contract management functions, such as partnership management (i.e., corporate governance, communication and information sharing, and dispute resolution), performance or service delivery management (i.e., risk management and performance management), and contract administration (i.e., variation management, contract maintenance and financial administration), for all PPP arrangements entered into by the Municipality. Aside from these, the PPP-RA shall be responsible for setting and monitoring the tariff, and administering the subsidy pursuant to the PPP contract.

Section 21. Composition of the PPP Regulatory Authority

- (a) The membership of the PPP-RA shall be composed of the following:
 - (i) Chairperson- The Municipal Mayor or the Municipal Administrator if so, designated by the Mayor;
 - (ii) Vice Chairperson- Municipal Vice Mayor or a member of the Sangguniang Bayan to be chosen by the Sanggunian;
 - (iii) Two (2) representatives of the Sanggunian;
 - (iv) Municipal Engineer;
 - (v) Municipal Treasurer;
 - (vi) Municipal Planning and Development Coordinator; and
 - (vii) Two (2) representatives from and chosen by the accredited civil society groups, people's and non-government organizations who are members of the Municipal Development Council. These

representatives shall not be the same representative in the PPP-SC.

- (b) For projects covered by government-to-government joint PPP undertakings, the collaborating or partner government entity shall have one (1) representative in the PPP-RA, provided that such representative shall only sit in meetings of the PPP-RA, or portions thereof, and have a vote only on matters directly affecting the PPP project covered by such joint PPP undertaking. For this purpose, government-to-government joint PPP undertakings means such mutual agreement entered into by the Municipality with other local government, national government agencies, government-owned and controlled corporations, governments instrumentalities and government corporate entities, for the implementation of PPP projects that will benefit the and its community even if the projects site is outside the municipal territory.
- (c) The PPP-RA may appoint a contract manager for a PPP project depending on the PPP contract value, complexity and associated risks. The contract manager shall have necessary management skills and technical knowledge of the goods, services or works to be provided under the PPP contract. The PPP-RA shall determine the manner and source of payment for the contract manager's compensation, provided that if a regular employee of the Municipality is appointed as contract manager, he/she shall not receive additional compensation for such appointment. The contract manager shall have a vote on matters directly affecting the PPP project that he/she is managing.
- (d) A quorum of the PPP-RA shall be composed of a simple majority of all voting members. The Chairperson shall vote only in case of a tie.
- (e) The PPP-RA with the approval of the Municipal Mayor may invite third party experts to attend its meetings to act as advisors and observers. Such third-party experts may represent national government agencies, regulatory agencies, the NEDA, the PPP Center, the DILG, private sector, non-governmental organizations and civic groups.
- (f) The PPP-RA may form a support staff composed of employees and personnel of the Municipality. The PPP-RA may also engage consultants hired pursuant to law.

Section 22. Contract Management Manual -

- (a) The Municipal Engineer, Municipal Treasurer and Municipal Planning and Development Coordinator and one of the civil society representatives of the PPP-RA, acting as the PPP-RA Manual Committee (PPP-RA-MC), shall jointly prepare a contract management manual for each executed PPP contract, which shall serve as a guide to the Municipality and its personnel in ensuring a consistent, high quality contract monitoring process that is specific for such PPP contract.
- (b) The contract management manual in (a) shall be submitted to the PPP-RA for approval within twenty-one (21) days from the execution of a PPP contract, provided that, for outstanding PPP contracts concluded prior to effectivity of this code, the contract management manual shall be submitted to the PPP-RA within one-hundred and twenty (120) days from the effectivity of this Code and the provisions of this Code shall apply *mutatis mutandis*.

- (c) The PPP-RA may accept, reject, or order the revision of the contract management manual at any time during the life of the PPP project, provided that any revision subsequent to the first acceptance of the contract management manual at the inception of the PPP project shall require written notice to the PSP and opportunity to be heard.
- (d) If the contract management manual has not been approved by the PPP-RA within seven (7) days from its submission as provided in paragraph (b), the same shall be deemed issued and approved by the PPP-RA for all purposes.
- (e) The PPP-RA shall evaluate each contract management manual quarterly, which shall be amended as may be necessary. Any amendment to the contract management manual shall be effective upon the approval of the PPP-RA.
- (f) The PPP-RA, all throughout the life of the PPP Contract, shall present, make available and explain, before and after any material action is taken, all relevant information regarding the implementation of the PPP Contract, the submission of the PSP and action taken by the PPP-RA, to the Municipal Development Council.

Section 23. Contents of the Contract Management Manual – Each contract management manual shall include the following information:

- (a) A description of the PPP project and its history;
- (b) A summary of the key terms of the PPP contract;
- (c) Roles and responsibilities of each member of the PPP-RA and other Municipal personnel and contractors, as applicable, who are involved in the PPP project;
- (d) Roles and responsibilities of key personnel of the PSP;
- (e) Details of the post-award conference;
- (f) Partnership management procedures;
- (g) Performance or service delivery management;
- (h) Contract administration; and
- (i) Project closeout procedures.

Section 24. Award Conference -

- (a) Immediately after the PPP contract is awarded, the PPP-RA Chairperson shall call a post-award to ensure that the Municipal and PSP have a clear and mutual understanding of the terms and conditions of the PPP contract, and to determine the responsibilities of parties. Notice of the post-award conference shall be sent by the PPP-RA Chairperson at least five (5) working days before the scheduled date thereof.
- (b) The post-award conference shall be attended by the members of the PPP-RA, such employees and contractors of the Municipality who will be involved in the management of the PPP contract, and key personnel of the PSP.
- (c) The PPP-RA Chairperson shall preside at the post-award conference, and shall appoint secretary of the conference from the Municipal personnel present.

- (d) The minutes of the conference shall be sent to each participant within five (5) days of the adjournment of the conference.

Section 25. Personnel and Training Requirements -

- (a) The contract management manual shall identify the municipal personnel involved in contract management, the specific roles and responsibilities of each, and the skills and technical knowledge required to perform their functions.
- (b) Independent contractors may be engaged in the absence of the qualified municipal personnel, provided that, except in the case of contract managers engaged in accordance with Section 8 (c), contractors may only be engaged for a period not exceeding three (3) years from the effective date of the PPP contract. Such contractor shall:
 - (i) Have at least two (2) understudies; and
 - (ii) Provide a training program for the municipal personnel in his field of specialization, with such training being done regularly during office hours.
- (c) During the contract life, the municipal personnel shall undergo such continuous training on contract monitoring to ensure that the municipality is equipped to monitor reliably and the PSP's performance over the entire life of the PPP contract.

Section 26. Partnership Management. - Each contract management manual shall identify processes to ensure accountability and manage the relationship between the Municipality and the PSP, and shall describe:

- (a) Each party's governance structure, including the overall system of institutional structures, operating rules, compliance mechanisms and accountability procedures;
- (b) Guidelines on communication and information sharing between the Municipality and the PSP, including reporting requirements, frequency and purpose of regular meetings, record-keeping of all exchanges, and the acceptable modes of correspondence between them; and
- (c) The process of resolving disputes between the parties, identifying, among others, the different levels of dispute resolution, offices and officials involved, timetable for resolving such disputes, and possible actions to compel a party to adequately comply with contractual terms.

Section 27. Performance or Service Delivery. - The contract management manual shall identify measures to ensure that the services or goods provided by the PSP are in accordance with the standards and prices agreed in the PPP contract. Such measure shall include:

- (a) An identification of risks under the PPP contract, the timetable for resolving such risks when they arise, contingency plans that ensure immediate resumption of services in the event of an interruption of service delivery by the PSP, and penalties for failing or refusing to resolve them, provided that a separate risk mitigation plan shall be developed and periodically reviewed and updated throughout the life of the contract for contracts with significant risks;

- (b) Clear and demonstrate key performance indicators that demonstrate evidence of poor, satisfactory or non-performance by the PSP, taking into consideration the cost and value obtained, performance and customer satisfaction, delivery improvement, delivery capability, benefits realized and relationship strength and responsiveness;
- (c) A performance management plan and performance monitoring system that will be used by the Municipality to monitor affordability, service delivery, value for money, quality, and performance improvement, which shall in all cases include:
 - (i) A timetable and start and end date for each performance component, including milestones with accompanying timeframes, dependencies, required or desired outcomes, and acceptable performance levels;
 - (ii) Requirements and standards to be used to monitor PSP performance;
 - (iii) Procedures and guidelines for measuring customer satisfaction and mechanisms to solicit end user feedback;
 - (iv) Submission of regular, accurate and timely reports by the PSP, municipal personnel or the contract manager, as applicable, to the PPP-RA detailing performance monitoring efforts and the types of information that should be included in such reports;
 - (v) Municipal access to PSP records to allow municipal personnel to verify the information that the PSP reports to them and to ensure that funds are expended properly;
 - (vi) Random inspection of PSP records and on-site monitoring visits; and
 - (vii) Regular meetings with the PSP to review progress, discuss problems and consider necessary changes.
- (d) A performance review and corrective action system that apply to non-compliance or breach of contract, and penalties for non-performance and bonuses for good performance.

Section 28. Contract Administration. – The contract management manual shall lay down a contract administration system, which shall include:

- (a) systems and procedure for variation management, the roles and responsibilities of Municipal personnel, reportorial requirements for each event of proposed or successful contract variation;
- (b) a system for contract maintenance, identifying key contract deliverables and schedules, as well as trigger events; and
- (c) systems and procedures for financial administration, including an estimate of the resources that the Municipality will devote thereto, systems and procedures to make and receive financial payments, and rules for keeping records of financial transactions in accordance with the requirements of the contract.

Section 29. Closeout Procedures. – Formal, written closeout procedures shall be included in contract management plan to ensure that all goods and services have been delivered satisfactorily, all properties are disposed accordingly, all Municipal properties are returned, and all amounts due under PPP contract have been paid.

Section 30. Post-Contract Review. – A post contract review shall be conducted at the end of the contract period, which shall include a post-contract analysis, evaluation and reporting of the PPP project, the PSP's performance, and the municipal contract management system. The post-contract review shall likewise include a financial audit of the entire PPP project and determination of lessons learned. Municipal policies and procedures shall be updated where required. Notwithstanding the requirement herein, if the PPP contract is subject to renewal or extension, the post-contract review shall be conducted within a reasonable time before the deadline for such renewal or extension.

Section 31. Document Control. – The PPP-RA shall act as the administrator of documents and correspondence relating to the PPP project and PPP contract. The contract management manual shall:

- (a) identify the documents and correspondences that must be retained by the PPP-RA;
- (b) require that all such documents be kept in both electronic and paper format during contract life or such longer period as may be required under applicable law; and
- (c) lay down the protocol for document storage, logging, accountability, disclosure and access by the parties and the public.

CHAPTER V

Accountability, Information, Education and Monitoring

Section 32. Code of Conduct. – Before commencing their functions, each member of the PPP-SC and PPP-RA and contract manager shall sign a Code of Conduct, which shall guide each member in the performance of their duties as such.

The Code of Conduct shall require each member to, among others:

- (a) act at all times in accordance with relevant legislation and regulations;
- (b) act at all times with fidelity, honesty, integrity and in the best interests of the Municipality and its constituents;
- (c) recognize the public's right to access to information in accordance with law;
- (d) not misuse his or her position and privileges of a member of the PPP-SC and PPP-RA, whether or not such will prejudice the interest of the public, the PSP, or any third person;
- (e) to take the utmost care in ensuring reasonable protection of the records of each PPP project, and not to disclose any confidential and proprietary information to persons without a need to know such information, or in violation of any non-disclosure requirements under law or contract;
- (f) carry out his or her duties with the skill and care expected from a person of knowledge and experience, and to exercise prudent judgment;
- (g) forthwith report to the appropriate authorities any act of negligence, fraud, corruption, misuse of government funds, failure or refusal to perform duties, or any other act which may constitute a crime or offense, or which is prejudicial to the public interest, in the selection of PSP and implementation of a PPP contract;

- (h) forthwith declare any personal or business interest that he or she, or any of his or her relatives within the fourth degree of affinity or consanguinity, may have in any business of a PSP, in which case, the official or representative shall no longer be a member of the PPP-SC and PPP-RA;
- (i) forthwith declare any conflict of interest, insofar as the PPP Project concerned, that he or she may have or will have, in which case, the official or representative shall no longer be a member of the PPP-SC and PPP-RA;
- (j) not vote or act in a particular way on any matter in consideration of any offer, promise, gift or present, from a member of the public, government, a political party, social group or non-governmental organization, or any stakeholder or potential stakeholder;
- (k) not receive any gift or anything else of value which is or maybe viewed as aimed at influencing or directing his or her vote or actions; and
- (l) to disclose immediately to the PPP-SC or PPP-RA as the case may be, any attempted inducement that may be construed as aimed at influencing or directing his or her acts as a member of the PPP-SC and PPP-RA.

Section 33. Disciplinary Action. – Violation of this Code and the Code of Conduct insofar as the elective officials are concerned shall constitute a ground for disciplinary action or amount to loss of confidence under the 1991 LGC and relevant laws, and with regards to local appointive officials, such violation shall render them administratively liable. Officials may also be rendered criminally liable under applicable laws and ordinances. Representatives of the PSP shall be held liable for damages, offenses and crimes depending on the nature of their participation and involvement in the unlawful act or omission.

Section 34. Liability. – The Municipality and its officials, in undertaking a PPP project, selecting a PSP and Implementing a PPP contract, shall not be exempt from liability for death or injury to persons or damage to property.

Section 35. Social Accountability. – The Municipality shall ensure, promote and eliminate all obstacles to social accountability and allow and enhance constructive engagement between citizens' groups, academe, consumers, rate-payers, general public, Municipal, national government agencies, regulatory agencies and PSP.

Section 36. Transparency and Right to Information. - The PPP Contract, feasibility or project studies, bidding documents, terms of reference, results of PSP selection process, Code of Conduct, Contract Management Manual, minutes of the post-award conference, PPP-RA and PPP-RA-MC, and other relevant documents and instruments shall be posted in two conspicuous places of the Municipality and uploaded in a dedicated website of the PPP-RA which can be freely accessed by the public. The Municipality shall also implement a strategic communication plan addressed to all stakeholders.

Section 37. Capability Building Program

- (a) The Municipality shall design and implement a continuing education and capacity-building program on PPP's for its officials, and the members of the PPP-SC and PPP-RA.

- (b) The Municipality shall also undertake a comprehensive and sustained education and governance campaign aimed at informing all stakeholders and civil society organizations about PPP's ventures of the Municipality and allowing them to participate in the overall PPP program of the Municipality. The program shall include strategic and annual evaluation and planning sessions, workshops, seminars, focus-group discussions on PPPs, market opportunities, projects, management of contracts and regulation of PPPs and other PPP-related topics.
- (c) The Municipality may tap consultants to assist them in implementing PPPs and in building capability for PPPs.

Section 38. Monitoring and Governance Audit Program. – The Municipality, in order to ensure transparency and accountability, shall encourage civil society organizations, people's and non-governmental organization and civic aggrupation's to establish a PPP monitoring, evaluation and governance audit body functionally and fiscally independent from the Municipality and other government institutions.

Section 39. Technical and Financial Assistance. – The DILG, Department of Finance, Department of Budget and Management, NEDA and the PPP Center shall extend technical and financial assistance to the Municipality and such assistance shall be embodied in a memorandum of understanding or agreement.

CHAPTER VI

Final Provisions

Section 40. Appropriations. – To carry out the provisions of this Code, the amount of One Hundred Fifty Thousand Pesos (P150,000.00) shall be appropriated. Thereafter, such sums as may be necessary for the continuous implementation of this Code shall be included in the annual budget of the Municipality.

Section 41. Alternative Dispute Resolution. - All PPP contracts of the Municipality shall include a provision on the use of Alternative Dispute Resolution (ADR) mechanisms in resolving disputes arising from the PPP contract. All controversies in connection with PPP undertakings and projects of the Municipality shall likewise be addressed using ADR.

Section 42. Implementing Rules. – While this code and the provisions hereof are already operative upon the Code's effectivity, the Municipal Mayor may issue the appropriate and relevant rules and regulations for the proper implementation of the Code or its provisions, including the issuance of relevant mechanisms to insure competition, manuals, guidelines, sample contracts and bid documents, PPP indexes and comparators and performance scorecards.

Section 43. Application of other PPP Laws and Regulations. – Whenever relevant and appropriate as determined by the Municipal Mayor and in the absence of a specific provision to the contrary, upon recommendation of the PPP-SC and PPP-RA as the case may be, the BOT Law and its IRR, the GPRA, Executive Order No. 301 (26 July 1987), COA Circular No. 89-296 (January 27, 1989), and their applicable rules and regulations, and the JV Guidelines adopted by the NEDA, either the 2008 or 2013 version, shall apply in a suppletory manner.

Section 44. Separability Clause. If, for any reason, any section or provision of this Code or any part thereof, or the application of such section, provision or portion is declared invalid or unconstitutional, the remainder thereof shall not be affected by such declaration.

Section 45. Repealing Clause. – All ordinances and resolutions or parts thereof inconsistent with the provisions of this Code are hereby repealed or modified accordingly.

Section 46. Effectivity. –This Code shall take effect fifteen (15) days after its publication and posting in two conspicuous places within the Municipality.

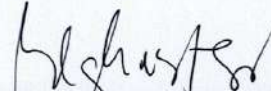
UNANIMOUSLY ENACTED. August 09, 2021.

ATTESTED:


GINA A. FLORES
Secretary to the Sanggunian

CERTIFIED CORRECT:

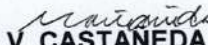

JUDY D. VARGAS-QUIOCHO
Presiding Officer


MAC DEXTER G. MALICDEM
Sangguniang Bayan Member


JAY MARK KEVIN D. CRISOSTOMO
Sangguniang Bayan Member



JONATHAN CARL R. ARCINUE
Sangguniang Bayan Member

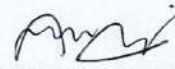

RAMON ANSELMO M. CUARESMA
Sangguniang Bayan Member


SHEILA V. CASTANEDA
Sangguniang Bayan Member


RANDALL Q. BERNAL
Sangguniang Bayan Member


RICARDO R. FERRER
Sangguniang Bayan Member


JASPER S. PASION
Sangguniang Bayan Member


DARWIN B. JIMENEZ
Sangguniang Bayan Member
Association of Barangay Captains (ABC) President


GABRIEL IVAN C. TUAZON
Sangguniang Bayan Member
Sangguniang Kabataan Federation (SKF) President

APPROVED:


LEOPOLDO N. BATAOIL
Municipal Mayor

07-19-2021

COMMITTEE MEETING / PUBLIC HEARING
By: Committee on Appropriation and Finance
and Laws

PRESENT:

VM JUDY DL. VARGAS-QUIOCHO - P.O. -

SBM MAC DEXTER G. MALICDEM -

SBM JAY MARK KEVIN D. CRISOSTOMO -

SBM JONATHAN CARL R. ARCINUE -

SBM RAMON ANSELMO M. CUARESMA -

SBM SHEILA V. CASTAÑEDA -

SBM RANDALL Q. BERNAL -

SBM RICARDO R. FERRER -

SBM JASPER S. PASION -

ABC DARWIN B. JIMENEZ -

Liga President

SK GABRIEL NAN C. TUZON -

SK Federation President

ALSO PRESENT:

GRACE FERNANDEZ SANCHEZ UNGAAN

MARILYN L. DELA CRUZ

DOMINIQUE C. EVANGELISTA

MR. ROBERTO SYLIN - Mun. Administrator -

ARCH. NELCO PAUL COQUA - MUN. PLANNING OFFICER -

JEANE IRAYDA GOMEZ - MUN. BUDGET OFFICER -

Republic of the Philippines
MUNICIPALITY OF LINGAYEN
Province of Pangasinan

OFFICE OF THE SANGGUNIAN BAYAN SECRETARY

JOURNAL OF THE PUBLIC HEARING OF DRAFT ORDINANCE NO. 81, S-2021, ENTITLED, "APPROVING THE INTEGRATED PUBLIC-PRIVATE PARTNERSHIP (PPP) CODE OF THE MUNICIPALITY OF LINGAYEN, PROVINCE OF PANGASINAN" HELD ON JULY 19, 2021 AT THE SANGGUNIAN BAYAN SESSION HALL.

PRESENT: Vice Mayor Judy DL. Vargas-Quiocho
SBM Mac Dexter G. Malicdem
SBM Jay Mark Kevin D. Crisosotmo
SBM Ramon Anselmo M. Cuaresma
SBM Randall Q. Bernal
SBM Jasper S. Pasion
SBM Gabriel Ivan C. Tuazon- SK President

ALSO PRESENT: Atty. Dominique C. Evangelista - Municipal Legal Officer
Mrs. Marilyn Dela Cruz – DILG Officer-Lingayen
Mr. Roberto Sylim – Municipal Administrator
Arch. Nelco Paul P. Coquia - MPDC
Mrs. Jeanne Irayda Gomez – Municipal Budget Officer

SBM Jay Mark Kevin D. Crisostomo: Good morning. We have here the presence of our DILG Officer, Ma'am Marilyn Dela Cruz and of course, our Municipal Legal Officer, Atty. Dominique C. Evangelista, we also have here representative from Save More, if you are to ask me bakit po may Save More dahil this is Private-Public Partnership Ordinance which is sila po ang nasa business sector, representative ng business sector, so I hope Ma'am you can give us your ample time dahil medyo mahaba-haba yung ordinance pero we will try our best to shorten and explain those questions na pwede nilang i-raise ano po? So, technically speaking PPP Ordinance is a guideline for the LGU and the private sector to come into an agreement or to a contract. So, when we say contract this is meeting of the minds, an agreement of 2 or both parties. Of course, we will always make sure that this ordinance will not be disadvantageous to the LGU especially to the people of Lingayen. So, if you were to check the ordinance which we already provided last week, if you are going to browse the ordinance this is always focused on the general welfare of the people. So, you will see/read a lot of terms there that indicates for the general welfare of the people of Lingayen. So, technically, this ordinance is really an advantage to the LGU, and at the same time, it will boost our economic system especially that the Mayor is targeting for cityhood for Lingayen and I think this is the last year before the implementation of the amendments of the cityhood for the nation, for the entire country because there is this Republic Act mandating the--- I mean, on how are we going to qualify as a city, nag-increase ang IRA, requirement, nag-increase ang population. Just a briefer for the said ordinance. The title of this ordinance is Draft Ordinance No. 81, S-2021, "approving the integrated Public-Private Partnership (PPP) Code of the Municipality of Lingayen, Province of Pangasinan", short title pero long, this Ordinance shall be otherwise known as "Municipal Code pursuing a Public-Private Partnership (PPP) approach towards development providing for the procedure for selecting the private sector proponent, adopting a contract management framework and providing appropriations and for other purposes. Dito pa lang sa short title natin makikita niyo dito approach development providing the procedures for selecting private sector proponent. So, these are the declaration of policies, if I may suggest to my colleagues, ang isa sa mga pinaka-importanteng part ng Code because here we will see on how are we going to choose, which private company are we going to select so our main concern here if I am not mistaken is on letter F - tingin ko po ah, sa Sangguniang Bayan this is our concern kaya may I jump in to this portion, Section 3, I'm sorry. So, F under Section 22 of the 1991 Local Government Code - no contract maybe entered into by the Mayor on behalf of the municipality without prior authorization by the Sangguniang Bayan. So, that alone is a manifestation that this code does not remove the

authorization, authority of the Sangguniang Bayan to exercise its power in monitoring as a check and balance of the Local Government Unit because it is stated in this policy, the Mayor or the Executive cannot go into an agreement without priorly seeking the Sangguniang Bayan ordinance or resolution approving the said project. So, before I continue may I acknowledge the presence of our Municipal Administrator, Sir Robert Sylim, good morning. Sir Administrator, nandito na po tayo sa Section 3, actually we jump into Section 3 which is the main function of the Sangguniang Bayan because I was discussing a while ago Sir that the purpose of the Code is to ensure on how are we going to properly choose our Private-Public Partnership in the progress of the LGU. So, that's why I emphasized this portion, F of Section 3 Sir, it's because as stated in the Local Government Code the Mayor on behalf of the municipality without prior authorization from the Sangguniang Bayan cannot enter into a Private-Public Partnership ensuring that the Sangguniang Bayan will not remove its functions/powers as a legislative department in order for the LGU to enter into an agreement Sir. So as you go by the said ordinance, you will see there different functions, so this is a very long ordinance but again I will try to make it shorter and if you have questions, you can raise them kasi we provided you naman with the copy this 2 weeks prior, so we would not consume that much of time but I will make sure to pin point those important things that we should know concerning the said ordinance. So, I hope that you read the ordinance that we re provided to you, but if you have questions please do raise it right now; your concerns or clarifications so that we can proceed on the said matter. So, again Section 4 - Rationale for PPP - PPP's shall be promoted to provide more, better, affordable and timely services to the community. In pursuing PPP's, the municipality shall be guided by the following reasons and drivers: so ito po yung mga yun, PPP's shall be undertaken in furtherance of the Municipality's development and physical framework plan. PPP is an essential part of the over-all infrastructure reform policy of the Municipality. By encouraging performancebased management of the delivery of the public services applying commercial principles and incentives whenever possible by introducing competition in and for the market and by involving users and stakeholders in the decision-making process, infrastructure and regulatory reform shall be achieved. So, ito upong agreement ng government at saka ng private sector. So, adopt to address a pressing and urgent or critical public need can be adopted to avoid costs and public borrowing, allow technology transfer, improved efficiency and quality of services. PPP's should be feasible and affordable, of course it should be bankable. PPP's should provide value-for-money and good economic value as far as practicable including allocation of risk. PPP projects must provide economic and social benefits and should be evaluated on this basis rather than on purely financial considerations. PPP projects must give consideration for empowerment of filipino citizens pero of course focusing in Lingayen. Procurement of PPP Projects must be competitive and must be undertaken through open competitive bidding. I think with this, our very able Administrator kayang-kayang i-implement ito Sir. And the regulation of PPP shall be pursuant to the PPP contract and exercised by the appropriate regulatory authority. Again, we will call on this also because we will be providing the authority, the Sangguniang Bayan will provide the Local Chief Executive the authority to enter into an agreement pursuant to Local Government Code to provide efficient public service. The municipality shall ensure through stronger performance management and guidance, proper implementations of PPP contract. So, Section 5 - definition of terms - itong mga ito medyo technical ito, honestly speaking, I am not well-versed on this matter and maybe if anyone is well-versed baka pwede tayong i-guide, there is a definition kaya yun ang mag-ga-guide sa atin. So, before I proceed, may I first acknowledge the presence of Councilor Jasper, good morning Sir, so we have here, Built and Transfer, Build-Lease and Transfer, Build-Operate and Transfer - to be honest, ito lang po yung familiar po ako, build, operate and transfer which has been a practice sa atin di ba? Kapag meron tayong ginawang project, ipapa-build natin sa contractor, Sir Jasper please guide me also tapos yun na hindi lang po ako sigurado kung na-follow po yung program of work, itra-transfer na po sa atin para sabihin na may completion na yung project. Next po is Build-Own and Operate, Build-Transfer and Operate - Under RA 6597 as amended by RA No.7718, build and transfer, so build, lease and transfer, ito yung mga bagong amendments, competitive and open competitive building, concession, corporation, cost sharing - this shall refer to the municipality's portion of capital expenses associated with the establishment of an infrastructure development facility such as the provision of access infrastructure, right of way and any partial financing of the project. So, of course, there is no development if the LGU would not also give its part as a partner; at least,

ang makikita natin ditto, like for example, right of way or any means na pwedeng i-share ng LGU for the improvement of the said PPP. Credit enhancement - ito ay isa sa mga kailangan, pwede tayong mag-loan kung kakailanganin, development projects, direct municipality equity, direct municipality guarantee, direct municipality subsidy, divestment or disposition, feasibility or project study. Dito ba sa feasibility or project study - ano po ang normally na ginagawa natin? Is it the private sector who will do the feasibility or the LGU?

Mr. Roberto DG. Sylim: It's either the partner, sometime we commission a group or a team that will provide us the feasibility study.

SBM Jay Mark Kevin D. Crisostomo: Thank you Sir, at least medyo clear, so ito ay mga definitions lang and it's also not in the ordinance who will provide no? Franchise, joint venture naririnig na natin itong mga ito, lease or affermage, management contract, negotiated projects, new technology, private sector proponent ito ang madalas nating mababasa, private sector proponent - because this refers to an individual who will make an agreement to the local government unit that's why it makes it PPP, so madalas nating mababasa ito pero makikita niyo na lang is PSP or private sector proponent. PPP Contract whenever appropriate or the PPP contract shall contain the Perambulatory Clauses or Whereas Clauses.

SBM Randall Q. Bernal: Excuse Mr. Sir Author, before we push on continuing of the explanation, may question lang ako, i-sho-short ko lang, if I may ask also our lawyer to explain further, ordinansa po itong pinapasa natin? Ordinansa, ngayon Public and Private Partnership Code, question ko, kagaya ng nabasa ko nung pinakita mong una, private sector proponent, saka yung kanina yung contract, build, operate and private partnership code. Question ko, kagaya ng nabasa ko nung unang pinakita mo yung private sector proponent at saka yung contract, built, operate and transfer, ngayon po Sir Author, ano po ang magiging obligasyon nung mga pribadong sektor sa bayan natin pag sakaling naipasa yan kasi ordinansa yan eh, ano ang magiging obligasyon ng pribadong sektor?

SBM Crisostomo: Of course, before we can identify the obligations no, Councilor Bernal?

SBM Bernal: Next question para sabay-sabay na kasi even without this ordinance nakakagawa naman tayo ng contract with the government sa pribado yung built, operate and transfer, bakit kailangan pa nating maglagay ng isang ordinansa na parang bumubuo sa mga agreements mamaya so yun lang po ang gusto kong malinawan.

SBM Crisostomo: Based on my understanding sa ordinance ano, that's a good point, but first and foremost why we are passing this ordinance is that we have a memorandum from DILG, tama ba Ma'am DILG that they are asking the LGU to make a PPP Code? Secondly, I don't think we had already an existing PPP projects in the LGU? One of the reason is that because we don't have the guidelines/policy that could help us through on how are we going to enter into a public-private partnership and one thing is for sure, if a private company has no assurance before entering into LGU investing their money without the policy that they will be insured of their protection clauses also, I think they are also afraid to invest their fundings. But for the benefit, iba-iba po kasi, because prior to them agreeing to a partnership, we will also see on how are we going to give our side and sa side po nila kaya dun sa contract ito po ay guidelines lang po on how are we going to make contracts, may mga specific percentage kung magkano yung makukuha pero depende pa rin po sa magiging agreement ng both parties like si A-LGU, si B ganito ang gusto niya, ganito ang gusto ng LGU, maybe upon deliberation they can meet into an agreement na okay na, ganito ang sharing natin, ganito ang procedure, based pa rin sa ating PPP Code.

SBM Bernal: So, paano yung mga naunang contract na Attorney? Kasi before the passage of this ordinance, we have already several contracts with the private sector for example yang building ng SaveMore, building ng 3 Kings, building ng Magic, nag-exist po ang mga yan Sir Administrator without the ordinance, nandun lahat yung mga agreement nila, clause by clause, kaya kung magiging guidelines natin yan, saan ba kinuha yung mga naunang contract Attorney?

Atty. Dominique C. Evangelista: Well, Councilor at present ho meron tayong 2 primary governing laws as regards Private-Public Partnership, number 1, is the Government Procurement Reform Act, RA 9184 and the second one RA6957 as amended by RA 7718 yun po yung Build, Operate and Transfer Law kaya kahit wala po itong ordinance na ito actually basta susundin natin yung dalawang batas na yun Government Procurement Reform Act and yung Phil. Build, Operate and Transfer as amended ay hindi po tayo magkakamali. Yung mga procedures po dun at saka safeguards para ma-ensure na anumang contract entered into by the Local Government is for the benefit and best interest of the public and the local government.

Mr. Robert DG. Sylim: Yeah, tama po yun. In addition, actually napakatagal na yung law na BOT, it has been existing many years ago so karamihan na nangyari before ay covered by that law and of course yung Procurement Law na na-enact many years also, now nag-create sila ng bagong partnership with the private sector, panahon yata ni Pres. Noynoy Aquino, itong PPP to expand yung provisions ng partnership between the public and the private kasi unang-una kasi naintindihan natin na may mga areas na hindi tayo mahusay, the government agencies are not good in managing for instance it involves business, hindi tayo marunong mag-ano niyan, so we expand and we try to put it in a bigger umbrella for the PPP and then under that umbrella ngayon is the BOT kaya itong BOT ay sub-chaired na ngayon sa PPP, so nakalagay pa rin dun, kinover lang siya sa other bigger umbrella which is now the PPP. Ito wala pa tayong ordinance na ito.

SBM Randall Q. Bernal: Okay I understand now.

SBM Jay Mark Kevin D. Crisostomo: Okay, before we proceed we acknowledge first the DILG Officer.

Mrs. Marilyn Dela Cruz: In addition to that Sir, there is also DILG MC-2016-120 which is the implementing guidelines for the PPP actually it's PPPP, it's 4P's, Public-Private Partnership for the People, yung ang kwan ng MC natin, siguro nagamit ito before kung kaya meron na tayong existing na BOT sa mga ano natin.

SBM Crisostomo: And to add on that, if I may recall the Regional DILG Officer invited us, if I am not mistaken, I'm with Sir Admin and Councilor Cuaresma that time, we attended series of trainings concerning on how are we going to conduct, implement or do some PPP project, unfortunately, it was mentioned there no one in Region I has an existing PPP project po, yun ang sinabi nila, tama ba Tito Bert? Okay, so thank you for that good question Councilor Randall, please do raise your question so that we could help in answering those prior to passing this ordinance. Again, if we may proceed no, service contract - a contractual arrangement, unsolicited proposal - of course, this is familiar to us, value for money. Section 6 - Rules of Interpretation - this Code and the provisions hereof shall be liberally interpreted to accomplish the policy and objectives set forth in Section 2, 3 and 4 hereof. Authorities - this Code is being adopted pursuant to the Municipality's constitutional and statutory authorities enumerated under Section 3, in pursuing BOT and its variants. So, sa chapter III, PPP projects and PPP Modalities - the Municipality through the appropriate and viable PPP mode may undertake Development Projects including but not limited to power plants, highways, etc, ito yung mga pwede nating i-enter into PPP. The municipality shall identify specific priority projects that may be undertaken under any of the PPP Modalities. PPP Modalities - in undertaking a specific project, the municipality may adopt and pursue any of the following 16 PPP Modalities. So, ito po yung mga terms na ginamit natin. General requirements - these are the general requirements for the municipality in entering into PPP's.

SBM Bernal: Approved na yan, wag na nating patagalin pa.

SBM Crisostomo: Okay if there are no more questions, may I move for the-- yes Councilor Jasper?

SBM Jasper S. Pasion: Mr. Proponent, may I ask paano magiging beneficial ito sa mga private sector?

SBM Jay Mark Kevin D. Crisostomo: Paano siya magiging beneficial? First and foremost, they will enter of course ang mga businesses natin pupunta sila sa mga areas which they think na beneficial sa kanila, una, ano ang magiging basis nila? They will conduct a feasibility study, they will identify kung feasible ba yung project, so that alone makes them a beneficiary of the project. So, if there are no more questions? Any inputs na lang siguro? Yes, Councilor Cuaresma.

SBM Ramon Anselmo M. Cuaresma: Actually, tama yung question ni Councilor Jasper this can help the private sector and also can show them a way upon investing kasi parang may nabasa ako dito Section 3-letter K, so kung wala ka sa Region I siguro magkaroon tayo ng isang basis para makita natin na talagang win-win for both local and private.

SBM Crisostomo: Actually, if I am not mistaken yung Prime Water formerly known as LIWAD, they are claiming that the agreement they entered was a PPP project, if you can recall that several times in the Sangguniang Bayan, di ba? It was actually parang PPP but it was not, it was just an agreement, ang naka-enter sa kanila was not the LGU but the LIWAD itself, LIWAD to Prime Water so I am not really sure if that will fall on PPP project but then may I ask our Legal Officer for an advise Sir?

Atty. Dominique C. Evangelista: If I am not mistaken Mr. Chair yung Liwad is a public corporation, if they enter into an agreement with Prime Water thru their facilities etc, ito pong binasa niyo which I am not present during the hearing, can be considered public-private partnership. Actually, marami pong modalities yan basta may partnership yung public corporation including local government units in any private entity for the supplying services and facilities and additional po dun sa question ni Councilor Jasper, malaking tulong po ito dahil it will ensure a level-play field among all private enterprises who are interested in partnering the local government.

SBM Crisostomo: Thank you Attorney.

SBM Jasper S. Pasion: So, Mr. Author hindi naman kailangan na private person to enter into a PPP di ba?

SBM Crisostomo: Depende rin sa project kasi if the project kumbaga yung practices natin sa LGU, no need for that, but for a certain private sector who wants to enter into a PPP with the LGU, of course.

SBM Pasion: So, hindi naman siya required na ano talaga?

SBM Crisostomo: This is a guideline also, guidance din, of course gusto mong mag put-up ng business mo.

SBM Cuaresma: Papaano natin maqua-qualify?

SBM Pasion: Ang best example ay SM or yung mga malalaking Company.

SBM Cuaresma: Because the property belongs to the LGU.

SBM Crisostomo: There are instances that belongs to the LGU, it may not kaya depende pa rin.

SBM Cuaresma: Kung private naman yan, private property and wala naman silang kailangang i-transact with the LGU, then there's no need for PPP. Siguro ang concern lang natin dito kapag government property, LGU property, dun lang natin iqua-qualify as PPP.

SBM Crisostomo: Yeah I think so, I got the point.

SBM Cuaresma: What if yung parang sa Prime ba yun, it's a service.

SBM Jay Mark Kevin D. Crisostomo: Yun nga, inexplain ni Atty. Dominique kanina, it will fall on PPP but before we proceed, we acknowledge first the presence of our Presiding Officer, VM Judy Vargas, good morning Ma'am. Yes po Attorney.

Atty. Dominique C. Evangelista: Yun po kasing PPP usually ang nag-e-enter nito local government unit kung kulang po sila sa pundo; halimbawa, gusto mong magpatayo ng market or airport walang pundo, papasok dyan ang San Miguel halimbawa, kami ang magpupundo, kami ang gagawa ng airport, i-operate namin for 50 years afterwards we will transfer it to LGU, parang ganun po yun eh, yun yung BOT. Yun pong other modalities ng BOT sinama na sa batas with amendment RA 7718, yun yung other build and transfer. Ang intindi ko kasi kung kulang sa pundo ang gobyerno ang mga big corporations meron silang pampagawa ng public market, yung nasa listing power plant, airport, kung hindi priority ng gobyerno yan, gusto nilang magkaroon ng powerplant or airport ganyan, market, they can enter into a PPP with legal procedures.

SBM Crisostomo: Okay, thank you for the enlightenment Attorney. Any questions ho?

SBM Jasper S. Pasion: So, in short kung a certain person or a private person ay magpapatayo ng isang school ganun, he may or may not enter into a PPP unless--

SBM Ramon Anselmo M. Cuaresma: LGU initiates.

SBM Crisostomo: Technically, ganun siguro kung tayo siguro ang mag-e-enter into that since it is a LGU.

SBM Randall Q. Bernal: Sir, once na naipasa natin yang ordinance na yan, hindi na maalís yan, dun sa question ni Councilor Jasper, mag-e-enter into contract kung pwe-pwedeng wala yan di ba?

SBM Pasion: Kung kailangan pang, kunwari magpapatayo siya ng school which is under here PPP projects, eh kailangan pa ba I mean?

SBM Crisostomo: Not necessarily, as long as you do not violate the existing laws.

SBM Bernal: Yung private gagawa ng private school, contractor lang yun, walang agreement, yung ginagawa niyang building funded by the government pa rin.

SBM Pasion: No, private fundings.

SBM Crisostomo: Out na tayo dun.

SBM Bernal: Kung walang pag-aari ang government dun, hindi mag-aapply yan, ang purpose lang kasi dyan basta pag may pag-aari ang government, may masusunod na guidelines, pinalawak yung dating mga batas.

SBM Cuaresma: Suggestion lang siguro, kasi if ever this will be approved, we will be the first in Region I but if we can get from other cities/municipalities a sample of their PPP para ma-check nating mabuti.

SBM Crisostomo: From Regional DILG from Ma'am Jopay if I am not mistaken, Regional Director from this field, we will seek some advice and give us a background or copy if there is already an existing, alam ko ang Urdaneta 2020 nakapag-passed and nakapag-approved na ng PPP if I am not mistaken but I will check on that pa rin. Okay, so any questions po? There are no more questions? Anyway, this is just a public hearing, you still have time to browse your copies po and then check kung ano pa yung possible na pwede pang ayusin. Because of course we will always open the book of this Code for the betterment of course LGU, the people that we

serve. So, if there are no more questions to the said ordinance, mahaba-haba talaga ito talaga, kaya sabi ko kay Sec. pabigyan kayo ng copies. So, ito po yun.

SBM Ramon Anselmo M. Cuaresma: Yun lang sa akin Mr. Proponent, kung makakuha ng copy.

SBM Jay Mark Kevin D. Crisostomo: Yes po, Asst. Secretary please remind me of that kasi ako po personally ang gagawa nun.

SBM Randall Q. Bernal: Sir Author base sa aking pagkakaintindi sa sinasabi ni Konsi Rasel dahil tayo ang kauna-unahang magpapasa nito sa buong Region I, Konsi tama po ba?

SBM Crisostomo: We will confirm on that? Kasi ang narinig ko meron na ang Urdaneta, itse-tsek ko po.

SBM Bernal: So, ito ba ay parang nag-aalangan kung ito ba ay successful or ano yung sa mga nauna na so ibig sabihin that will stand as pending muna for the approval, hintayin muna natin ang ano, tama po ba Councilor Rasel? Kunwari i-pending muna ang pag-approve dito?

SBM Cuaresma: Sa akin naman okay lang as long as makita natin na it will be a win-win situation for both LGU and private.

SBM Bernal: Paano nga kung tayo nga ang kauna-unahan?


SBM Cuaresma: It's okay, maganda nga na maipasa natin ito eh.

SBM Bernal: Ipapasa pa rin natin?

SBM Cuaresma: Ipapasa pa rin natin.

SBM Crisostomo: I will also give you an assurance, I'll do my best to give you an assurance that this will be very beneficial to the LGU. So, ano we will work on it? And of course, the DILG will also guide us because this is also one of long overdue measures that the DILG is waiting the LGU to implement. I think tama rin yung point ni Councilor Cuaresma, if ever if tayo ang kauna-unahan, our LGU is compliant to the DILG Memo Circular that they are giving to us especially in Sangguniang Bayan. So, if there are no more questions, may I request that this Draft Ordinance be approved on this public hearing and later on if you still have questions, we still have the second reading of the ordinance na I am hoping and praying na i-throw natin yung questions dun and help us really build this Code kasi ako honestly speaking I am not really that well-versed on the ordinance, pero I am trying my best to study and to learn about this. So, since this is an ordinance of the Local Government, help us, help me to understand more kung ano yung PPP Code kaya again, I am reiterating prior to this committee hearing/public hearing 2 weeks before we provided you the copies kasi talagang mahaba yung code and we really need that time to study the Code. So, if there are no more questions, thank you for attending this public hearing and the public hearing is now adjourned. Thank you so much.

CERTIFIED CORRECT:


GINA A. FLORES
Secretary to the Sanggunian

APPROVED:


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Vice Mayor


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