

Republic of the Philippines
PROVINCE OF LEYTE
Palo, Leyte

SANGGUNIANG PANLALAWIGAN

OPPOSITION

TO

PROVINCIAL ORDINANCE NO. 20230, Series of 2023



Prefatory Statement

Article II, Section I of the 1987 Constitution provides that: “The Philippines is a democratic and Republican State. **Sovereignty resides in the people and all government authority emanates from them**”.

This provision of the Constitution emphasizes the point that WE, elected public officials, are mere servants and agents of the Sovereign Filipino people. As mere agents, we are not supposed to deprive our principal the “use of Provincial Roads, whether paved or unpaved” (as so provided in Section 2 of the subject ordinance) on the plain excuse that its use by more than 17,000 kilograms in weight of the equipment would cause “material damage” through cracks and potholes that would shorten the “useful life of the concrete roads”. Roads, just like clothes, are to be used and not preserved. Taxes are collected precisely to insure their replacement by thicker quality roads.

Neither can WE overburden our principals with a “civil penalty of Five Thousand (5,000.00) Pesos per meter” of the provincial road that is traversed, and

a criminal action as so provided in Section 4 of the proposed ordinance, because under **Section 22, Article XII** of the Constitution, as implemented by **Section 3(e) of RA 3019, as amended** (otherwise known as the Anti-Graft and Corrupt Practices Act) those who will vote for the passage of the subject ordinance are the ones to suffer both civil and criminal liability – they being violators of **Sections 1, 12, 13 and 19, Article XII** of the Constitution as hereinafter discussed.

It is at the back drop of the foregoing that I, as the elected Municipal Mayor of Villaba, Leyte will discuss the legal infirmities of Resolution No. 2023 “approving on Third and Final Reading, Provincial Ordinance No. 20230”.

The Proposed Ordinance violates Twelve provisions of the Constitution.

Construction of roads, provincial roads included, has repeatedly been promised by provincial candidates to ensure their election. They would even explain that roads and other infrastructure projects are where the people’s taxes are being spent. It is therefore deceitful, amounting to **political estafa**, to penalize road users, civilly and criminally, for using provincial roads with vehicles of more than 17,000 kilograms in weight.

Besides, **twelve (12) provisions of the 1987 Constitution** guarantee the use of said road by private vehicle owners and contractors, viz:

1. **Section 4, Article II** of the Constitution explicitly mandates provincial elective officials to serve the people through their constructing vital and important provincial roads, it being the “**prime duty of the Government**”;
2. **Section 5, Article II** of the Constitution explains that “the **promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy**”. Construction of provincial roads as

promised by elected provincial officials are indeed blessings of democracy.

3. **Section 9, Article II** of the Constitution mandates:

“Sec. 9. The State **shall promote** a just and dynamic social order that will **ensure the prosperity** and independence of **the nation** and **free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.**”

Indeed, provincial roads that are constructed “ensure prosperity and independence of the nation”. They free the people from poverty, provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

4. Construction of provincial roads is in compliance with the mandate in **Section 10, Article 11** of the Constitution that “The State shall promote social justice in all phases of national development”.

5. **Section 2** of the proposed ordinance, to the extent that it limits the prohibition in the use of Provincial roads to the **private sector** “owners of private vehicles/equipment and/or vehicles/equipment used by private contractors”, **contravenes Section 20, Article II** of the Constitution, viz:

Sec. 20 – The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

6. Additionally, such class legislation violates **Section 1, Article III** of the Constitution which mandates that the private sector vehicle owners be

NOT “denied the equal protection of the laws”. The protection in laws given to Government vehicles is the measure of protection that private vehicle owners shall enjoy. It is thus anomalous for the Provincial Government of Leyte (which merely collects the taxes from the Private Sector vehicle owners) to use without any penalty the provincial roads constructed out of Private Sector vehicle owner’s funds, while the latter is to be penalized by Section 4 of the proposed ordinance for their using the roads that have been built out of their own funds.

7. The proposed ordinance is counterproductive. It violates **Section 21, Article II** of the Constitution which mandates that “(t)he state **shall promote comprehensive rural development**” . Private vehicle owners are being told on the one hand, to pay taxes on time because they are the principal sources of funding in the construction of provincial roads, the key to rural development, only to be penalized on the other hand, via Section 4 of the proposed ordinance, for their use of said road. In any case, it is a deterrent to rural development.
8. The prohibition in Section 2 and penalty clause in Section 4 of the proposed ordinance made said ordinance confiscatory without due process of law. It is thus violative of **Section 1, Article III** of the Constitution which prohibits the Province of Leyte from depriving the private sector vehicle owners of “Five Thousand (P5,000.00) Pesos per meter traversed” **without due process of law**.
9. Provincial roads are envisioned to become economic generators in the countryside. It is for said reason that **Section 1, Article XII** of the Constitution mandates that the state shall promote industrialization and full employment. In pursuit of said goal all sectors of the economy, private contractors and private vehicle owners included, are supposed to be given “**optimum opportunity to develop**, through bigger trucks that ironically, are now being prohibited to traverse

provincial roads by the proposed ordinance. Its being unconstitutional cannot be overemphasized.

10. **Section 12, Article XII** of the Constitution mandates that the state shall promote preferential use of domestic materials and locally produced goods, and adopt measures that make them competitive. Constructions of Provincial roads that will be compatible with bigger and heavier trucks/equipment would therefore be in order. The proposed ordinance of the Province of Leyte is thus unconstitutional in such regard.

11. Provincial roads of Leyte are supposed to be the core of a general welfare-based trade policy that assures improved economic welfare of component Municipalities. Improved and heavier transportation equipment are supposed to be compelling reasons why provincial roads should be improved in quality and in thickness. They, more importantly, must be used and well-maintained. NOT using them is not an alternative because their **NON-USE** will only insure stagnation in economy and welfare. On another count, therefore, the proposed ordinance is unconstitutional for being violative of **Section 13, Art XII** of the Constitution.

12. **Section 19, Article XII** of the Constitution prohibits all forms of “**restraint of trade**”. Restraining the growth of sand and gravel traders through their use of bigger and more efficient heavy trucks/equipment, is a form of restraint of trade that favors small truck owners and traders. The proposed ordinance, through Sections 2 and 4 thereof, is therefore unconstitutional.

Pertinently, **Section 22, Article XII** of the Constitution provides that “**Acts which circumvent or negate any of the provisions of the Article shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law.**”

Implementing the aforementioned Constitutional provisions are **Sections 3 and 3(e)** of **R.A. 3019** (as amended) otherwise known as the Anti-Graft and Corrupt Practices Act. **Section 3** warns that:

*“Sec. 3. - Corrupt practices of public officers – In addition to acts or omissions of public officers already penalized by existing law, **the following shall constitute corrupt practices** of any public officers and are hereby declared to be unlawful”;*

while **Section 3(e)** explicitly considers the **“Causing (of) any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.”**

Finally, **Section 9 of RA 3019** provides that:

*“Sec. 9 – Penalties for violations – (a) Any public officer or private person committing any of the unlawful acts or omission enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with **imprisonment** for not less than six years and one month nor more than fifteen years, **perpetual disqualification** from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.”* (emphasis supplied)

Those who will vote for the passage or approval of the subject ordinance will consequently suffer criminal, civil and administrative liability for the illegal acts they commit.

**The proposed Ordinance is violative
of Republic Act 7160, its alleged
Legal basis.**

The last whereas clause of the proposed ordinance claims that the same has been crafted on the basis of Section 155 of Republic Act No. 7160. Yet, as hereinafter explained, the subject ordinance appears to be violative of the law it invokes, viz:

1.) **Section 155 of R.A. 7160** provides:

“Section 155. Toll Fees or Charges. – The sangguniang concerned may prescribe the terms and conditions and fix the rates for the imposition of toll fees or charges for the use of any public road, pier, or wharf, waterway, bridge, ferry or telecommunication system **funded and constructed by the local government unit concerned**. Provided, That no such toll fees or charges shall be collected from officers and enlisted men of the Armed Forces of the Philippines and member of the Philippine National Police on mission, post office personnel delivering mail, physically-handicapped, and disabled citizens who are sixty-five (65) years older.”(emphasis supplied)

Significantly, the last whereas clause of the proposed ordinance admits that the prohibition in Section 2 thereof will apply only to roads “**funded and constructed by the local government unit**”.

In this regard, I secured a Certification from the current Leyte Third District Engineer, Cesar V. Makabenta (Annex “A” hereof) enumerating twelve (12) vital Provincial Roads in the Third District of

Leyte which were constructed, mainly, out of National Government Funds. It is therefore imperative that a reconciliation be first made between the Leyte Provincial Engineer and the Third Leyte Engineering District Engineer before a deliberation on the proposed ordinance is made.

- 2.) “Section 133(e) of RA 7160 **prohibits** “Taxes, fees and charges and other **impositions upon goods** carried into or out of or **passing through**, the territorial jurisdiction of local government units **in the guise of charges** for wharfage, tolls for bridges or **otherwise**, or other taxes, **fees or charges in any form whatsoever upon such goods or merchandise.**”(emphasis supplied)

The penalty in Sec. 4 of the subject ordinance is actually an “imposition upon goods carried into or out of, or **passing through in the guise**” of a penalty “**upon such goods or merchandise**”, an imposition that is prohibited by **Sec. 133 (e) of R.R. 7160**.

3. **Section 130 of RA 7160** moreover provides:

“**Section 130 – Fundamental Principles.** – The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

- a) Taxation shall be uniform in each local government unit;
- b) Taxes, **fees, charges and other impositions shall:**
 - 1.) be **equitable** and **based** as far as practicable on the **taxpayer’s ability to pay**;
 - 2.) be levied and collected only for **public purposes**;
 - 3.) **not be unjust, excessive, oppressive, or confiscatory**;

4.) **not be contrary to law, public policy, national economic policy, or in restraint of trade;**

xxx

xxx

xxx”

Comparatively, the **disguised** fees or charges in the proposed ordinance are:

1. **iniquitous** as it is **not based** on the vehicle **owner’s ability to pay**;
2. **illegal** because it is being collected **NOT for public purposes**;
3. **unjust** because the private vehicle/equipment owner is penalized with Five Thousand (5,000.00) Pesos per meter of the road traversed even if it was **NOT established** that it was his use of the provincial road that exclusively caused the crack, pothole or damage to the road;
4. **excessive** because it ignores the fact that any crack, pothole or damage in a road happens after years of use thereof. To penalize the last private vehicle/equipment user with Five Thousand (P5,000.00) Pesos per meter of the road traversed would accordingly be excessive;
5. **oppressive** because the “Five Thousand (P5,000.00) Pesos penalty imposed by Section 4 of the proposed ordinance is not proportionate to the limited time which the penalized private vehicle/equipment used in traversing said provincial road; and
6. **confiscatory** because the entry bond required in the last paragraph of Section 2 of the proposed ordinance is not anchored on foreseen damage that may be attributed exclusively to the private contractor doing government construction projects or other government activities along or near or within the vicinity of a provincial road. Since the private contractor’s posting of a right to enter bond does **not** give him the right to exclusively use the provincial road, a possibility then exists that his “bond” will be confiscated on account of the damage to the provincial road caused by a Third Party.

Lastly, the proposed ordinance is (a) **contrary to law** as it violates not only twelve provisions of the constitution, it likewise violates, as earlier discussed, the Local Government Code the basis of its issuance; (b) **it is contrary to the public policy and national economic policy** laid down in **Executive Order No. 41** as hereinafter discussed; and (c) the proposed ordinance is in **restraint of trade** because as earlier discussed, it restrains the use of provincial roads by big truck/equipment private owners in favor of light vehicle owners, a scheme that violates **Sec. 19 Article XII** of the Constitution **which prohibits all forms of restraint of trade.**

EXECUTIVE ORDER NO. 41, prohibits as a matter of policy the collection of fees “imposed upon all motor vehicle transporting goods and passing through any local public roads constructed and funded by said LGU’s.

Executive Order No. 41, dated September 25, 2023 (Annex “B” hereof) urges strongly (in Section 1, Second paragraph thereof) all LGU’s to suspend or discontinue the collection of fees, such as but not limited to, sticker fees, discharging fees, delivery fees, market fees, toll fees, entry fees, or Mayor’s Permit fees, that are imposed upon all motor vehicles transporting goods and passing through any local public roads constructed and funded by said LGUs. It mandates in Section 2 thereof the Evaluation by the DILG, DTI, DOTR, DPWH, the Anti-Red Tape Authority, and Department of Finance to ensure that such ordinances are consistent with RA 7160 and the policies laid down in the Whereas Clauses of Executive Order No. 41, viz:

“WHEREAS, reducing transport and logistics costs is one of the pillars of the 8-Point Socioeconomic Agenda of the Administration, and ensuring the efficient movement of goods across the regions is one of the strategies for revitalizing local industries under the Philippine Development Plan 2023 to 2028;

“WHEREAS, in order to uphold the welfare and advance the best interest of the Filipino people, it is the overarching policy of the Administration to consolidate all essential components within the value and supply chain, and reduce the costs of food logistics, which play a pivotal role in effectively tempering the inflation rate in the country; and

“WHEREAS, building a robust and collaborative partnership between the National Government and LGU’s is essential in effectively addressing the impacts of inflation and promoting economic prosperity across all region;” (emphasis supplied)

Section 3 of the Executive Order further embodies sanctions, viz:

“Section 3. Sanctions. Failure to comply with the directives under this Order shall be a ground for the imposition of administrative or disciplinary sanctions against any erring public official and employee, as provided under relevant laws, rules and regulations, without prejudice to other criminal, civil or other related liabilities under existing laws. For this purpose, and consistent with its mandate of assisting the President in the supervision of local governments, the DILG shall take appropriate actions to ensure that the LGUs shall act within the scope of their prescribed authorities under Sections No. 133(e), 153 and 155 of RA No. 7150.” (emphasis supplied)

It consequently behooves the Honorable Sangguniang Panlalawigan of Leyte to suspend deliberation on, and eventually abort the passage of Provincial Ordinance No. 20230, Series of 2023.

Respectfully submitted.

A handwritten signature in black ink, appearing to be 'CGV', with a long horizontal stroke extending to the right.

ENGR. CARLOS G. VELOSO
Municipal Mayor
Villaba, Leyte



CERTIFICATION




This is to CERTIFY that the following Road Sections listed below are not included in the Inventory of National Road within the 3rd District of Leyte:

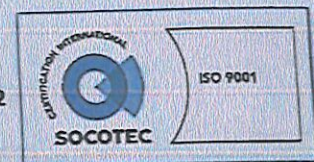
1. Campokpok-Butason-Cuta Road
2. Calubian-Jubay-Daja Road
3. Casilion-San Francisco-Cabungahan Road
4. Cabungaan-Caigit Diversion Road
5. Crossing-Cagnocot-Iligay-Tabunok Road
6. Cuta-Consuegra Road
7. Calaguise-Poblacion Road
8. Bugabuga-Jalas-Abijao Road
9. Consuegra-Tapol Road
10. Tigbawan-Parasan-Palid II-Busay Road
11. Capiñahan-Cabungaan-San Jose-San Miguel Road
12. Petrolio-Dulao-Kawayanan-Villanueva Road

Given this 18th day of October 2023 at the DPWH, Leyte 3rd District Engineering Office, Brgy. Suba, Villaba, Leyte.


CESAR V. MAKABENTA, D.M.
District Engineer

RO8.12.1 EBS

 Website: www.dpwh.gov.ph
 Tel. No(s): (053)552-0036/66611/66612
 Email: leyte3.planning@gmail.com





Annex "B"

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 41

PROHIBITING THE COLLECTION OF PASS-THROUGH FEES ON NATIONAL ROADS AND URGING LOCAL GOVERNMENT UNITS TO SUSPEND THE COLLECTION OF ANY FORM OF FEES UPON ALL TYPES OF VEHICLES TRANSPORTING GOODS UNDER SECTION 153 OR 155 OF REPUBLIC ACT NO. 7160 OR THE "LOCAL GOVERNMENT CODE OF 1991"

WHEREAS, the President exercises general supervision over local government units (LGUs) pursuant to Section 4, Article X of the Constitution;

WHEREAS, Section 5, Article X of the Constitution grants LGUs the power to create their own sources of revenue and to levy government taxes, fees or charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy;

WHEREAS, under Section 153 of Republic Act (RA) No. 7160 or the "Local Government Code of 1991," as amended, LGUs may impose and collect reasonable fees and charges for services rendered;

WHEREAS, pursuant to Section 155 of RA No. 7160, a local *sanggunian* may prescribe the terms and conditions, and fix the rates for the imposition of toll fees or charges for the use of any public road, pier or wharf, waterway, bridge, ferry or telecommunications system funded and constructed by the LGU concerned;

WHEREAS, Section 133(e) of RA No. 7160 provides that the taxing powers of local governments shall not extend to the levy of taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of LGUs in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;

WHEREAS, the unauthorized imposition of pass-through fees has a significant impact on transportation and logistics costs, which are often passed on to consumers, who ultimately bear the burden of paying for the increase in prices of goods and commodities;

WHEREAS, reducing transport and logistics costs is one of the pillars of the 8-Point Socioeconomic Agenda of the Administration, and ensuring the efficient movement of goods across the regions is one of the strategies for revitalizing local industries under the Philippine Development Plan 2023 to 2028;

WHEREAS, in order to uphold the welfare and advance the best interest of the Filipino people, it is the overarching policy of the Administration to consolidate all essential components within the value and supply chain, and reduce the costs of food logistics, which play a pivotal role in effectively tempering the inflation rate in the country; and

WHEREAS, building a robust and collaborative partnership between the National Government and LGUs is essential in effectively addressing the impacts of inflation and promoting economic prosperity across all regions;

NOW, THEREFORE, I, FERDINAND R. MARCOS, JR., President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby order:

Section 1. Pass-Through Fees for the Use of National and Local Roads. All LGUs are prohibited from collecting toll fees and charges upon all motor vehicles transporting goods or merchandise, while passing through any national roads and such other roads not constructed and funded by LGUs pursuant to Section 155 of RA No. 7160.

In the interest of public welfare, all LGUs are further strongly urged to suspend or discontinue the collection of fees, such as but not limited to, sticker fees, discharging fees, delivery fees, market fees, toll fees, entry fees, or Mayor's Permit fees, that are imposed upon all motor vehicles transporting goods and passing through any local public roads constructed and funded by said LGUs.

Section 2. Evaluation of Ordinances. Within thirty (30) days from the effectivity of this Order, the DILG shall secure copies of existing ordinances of all LGUs on the collection of pass-through fees imposed upon motor vehicles, including those issued pursuant to Sections 153 and 155 of RA No. 7160, and shall evaluate the same together with the Department of Trade and Industry (DTI), Department of Transportation (DOTr), Department of Public Works and Highways (DPWH), Anti-Red Tape Authority (ARTA) and Department of Finance (DOF), to ensure that such ordinances are consistent with RA No. 7160.

Section 3. Sanctions. Failure to comply with the directives under this Order shall be a ground for the imposition of administrative or disciplinary sanctions against any erring public official or employee, as provided under relevant laws, rules and regulations, without prejudice to other criminal, civil or other related liabilities under existing laws. For this purpose, and consistent with its mandate of assisting the President in the supervision of local governments, the DILG shall take appropriate actions to ensure that the LGUs shall act within the scope of their prescribed authorities under Sections No. 133(e), 153 and 155 of RA No. 7160.

Section 4. Reports. The DTI and DILG shall jointly submit reports to the Office of the President, through the Office of the Executive Secretary, on the compliance of LGUs with the foregoing provisions of this Order.

Section 5. Implementing Guidelines. Within thirty (30) days from the effectivity of this Order, the DTI, DILG, DOTr, DPWH, ARTA and DOF shall jointly formulate and issue guidelines as may be necessary, or amend/consolidate existing rules, regulations or issuances as may be appropriate, for the effective implementation of this Order.

Section 6. Funding. The funds necessary for the implementation of this Order shall be charged against the current and available appropriations of concerned agencies, subject to pertinent budgeting, accounting, and auditing laws, rules and regulations. Thereafter, the funding requirements for succeeding years shall be included in the annual General Appropriations Act, subject to the usual budget preparation process.

Section 7. Separability. If any part or provision of this Order is held unconstitutional or invalid, other parts not affected thereby shall continue to be in full force and effect.

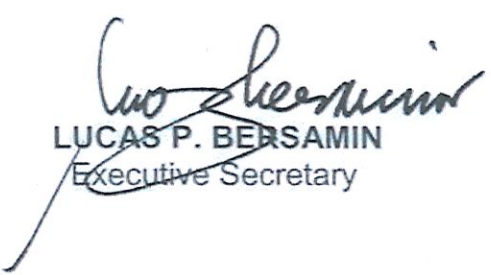
Section 8. Repeal. All other orders, guidelines, rules, regulations and issuances, or parts thereof, which are inconsistent with the provisions of this Order are hereby repealed or modified accordingly.

Section 9. Effectivity. This Order shall take effect immediately upon its publication in the Official Gazette or a newspaper of general circulation.

DONE, in the City of Manila, this 25th day of September in the year of our Lord, Two Thousand and Twenty-Three.




By the President:


LUCAS P. BERSAMIN
Executive Secretary

Office of the President
MALACAÑANG RECORDS OFFICE
CERTIFIED COPY

ATTY. CONCEPCION ZERY E. FERROLINO-ENAD
DIRECTOR IV
9-28-2023

