

EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE ELEVENTH  
SANGGUNIANG PANLUNGSOD NG ORMOC HELD AT THE HONORABLE  
PLACIDO ENECIO HALL, SANGGUNIANG PANLUNGSOD  
BUILDING ON SEPTEMBER 25, 2008

PRESENT:

Hon. Nepomuceno P. Aparis I,  
Hon. Sotero M. Pepito,  
Hon. Demosthenes F. Tugonon,  
Hon. Ruben R. Capahi,  
Hon. Mariano Y. Corro,  
Hon. Fe S. Lladoc,  
Hon. Filomeno P. Maglasang,  
Hon. Rafael C. Omega, Jr.,  
Hon. Fernando P. Parrilla,  
Hon. Jose C. Alfaro, Jr.,  
Hon. Lea Doris C. Villar,

Vice Mayor & Presiding Officer  
City Councilor, Assist. Floor Leader  
City Councilor  
City Councilor  
City Councilor  
City Councilor  
City Councilor  
City Councilor  
City Councilor  
City Councilor  
Ex-Officio City Councilor,  
Chapter President, Liga ng mga Barangay ng Ormoc  
Hon. Corinne M. Corro, Ex-Officio City Councilor, SK Federation President

ABSENT:

Hon. Claudio P. Larrazabal, (On Leave), City Councilor, Floor Leader

PREFATORY STATEMENT

Paradoxically the most common objects of concern are the most invaluable, if not priceless. Commonsense is undeniably very basic yet, is very uncommon. Love is an ordinary feeling yet this many splendored thing is incomparable. Our fragile ecosystem is all around us yet we disregard her to destruction. Water is found, in many places and easy to source out yet it is becoming a rare commodity. Unfortunately however, nobody complains or remonstrates and makes a public issue whenever there is an extravagant or unrestrained extraction of water. Perhaps, because water is so commonplace, that people take it for granted.

It is said that the next World War will be fought not because of oil but because of water ... or the lack of it. In the planet which is seventy-five percent water and only twenty-five percent landmass, clean and safe drinkable water is becoming an expensive "luxury".

The Agenda 21 Chapter 4 of the Rio Earth Summit states that "... the major cause of the continued deterioration of the global environment is the unsustainable pattern of consumption and production, particularly in industrialized countries .... Achieving the goals of environmental quality and sustainable development will require efficiencies in production and changes in consumption patterns in order to emphasize optimization of resource use and minimization of wastes".

We often ask what is sustainable production and consumption. When is excessive, excessive or wanton, wanton...? During the Oslo Ministerial Round Table last February 1995 they observed that it is "The (production) and use of goods and services that respond to the basic human needs and bring better quality of life, while minimizing the use of natural resources, ..., so as not to jeopardize the needs of the future generation." This pronouncement is definitely an admonition against voluminous and wasteful use of the natural resources, in this particular case, water.

There is a dilemma and a tug-of-war between commercial, industrial and developmental consumption on one side vis-a-vis conservation and exploitation of natural resources without destroying the ecological balance of the area thus maintaining ecological harmony and balance. These are the two horns of the issue the city has to grapple.



The Local Government as a body politic and a corporate entity is endowed with powers to be exercised by it in accordance with the law; as such, it shall exercise powers as a political subdivision of the national government. As a public corporation, it has the dual function: governmental and proprietary. The governmental functions are those that concern the health, safety and advancement of the public good or welfare as affecting the public in general.

The General Welfare Clause (Section 16) of the Local Government Code provides that "Every Local Government shall exercise powers expressly granted and those necessarily implied therefrom; within their respective territorial jurisdiction to ensure and support among other things the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology,"....

This police power is granted to the City in order to protect the community and the constituents. While police power is lodged primarily on the national legislature congress has delegated it to the local government units. Section 16 of RA 7160 empowers the Sangguniang Panlungsod to enact ordinances, approve resolution, and appropriate funds for the general welfare of the City as the case may be, and its inhabitants in the proper exercise of its corporate powers as provided for under the Code (Aralar, Reynaldo. Local Government Code of 1991. Annotations and Jurisprudence 2005 Ed. p.26).

In the case of Acebedo Optical Company Inc. vs. the Court of Appeals, the Supreme Court said that: "The delegation of police powers to the Local Government Unit is embodied in the General Welfare Clause of the Local Government Code of 1991. Moreover, police power is essentially regulatory in nature and the power to issue licenses or grant business permits, if exercised for and not revenue raising purposes is within the ambit of the power". This is further enunciated in the case of Procter and Gamble Philippines vs the Municipality of Jagna (SCRA 894). "The scope of police power has been held to be so comprehensive as to encompass almost all matters affecting the health safety, peace, order, morals, comfort and convenience of the community. Police power which is essentially regulatory in nature and not revenue raising is within the ambit of this power.

The authority of the City Mayors to issue or grant licenses and business permits is beyond cavil. It is provided for by law".

It further states that the power to issue licenses and permits necessarily include the corollary power to revoke, withdraw and cancel the same. And the power to revoke and cancel likewise includes the power to restrict through imposition of certain conditions. (Aralar, Reynaldo, Local Government Code of 1991. Annotations and Jurisprudence 2005 Ed. p. 31).

This exercise of the General Welfare Clause and the police power aptly supports the implementation of the doctrines enunciated in the Philippine Constitution; Article 11 Section 15 states that: "The state shall protect and promote the right of the people to a balanced and healthful ecology in accordance with the rhythm and harmony of nature". This provision of the constitution was succinctly interpreted in the case of Oposa vs. Factoran when the Supreme Court said that: "Nature means the created world in its entirety. Such rhythm and harmony includes the judicious disposition, utilization, management renewal and conservation of the natural resources to the end that their exploitation, development and utilization be equitably accessible to the present as well as the future generation".

This responsibility is mandated to the Local Government by the General Welfare Clause. The importance of this mandate becomes more significant with the present global situation and climate change which is resulting in global warming.... drought in some places, flooding in others, and sea level rising all over the world all of which definitely affects the aquifer and the groundwater in most instances. The response to this is our "Inter-generational" responsibility.



WHEREFORE, FOREGOING PREMISES CONSIDERED, on motion of City Councilor Jose C. Alfaro, Jr., Chairman, Committee on Natural Resources and Environmental Control, severally seconded by City Councilors Ruben R. Capahi, Fernando P. Parrilla and Sotero M. Pepito; be it

RESOLVED, to adopt:

ORDINANCE NO. 149

AN ORDINANCE IMPOSING REGULATORY FEE ON THE EXTRACTION OF WATER FOR SUSTAINABILITY AND REQUIRING THE CONCERNED ESTABLISHMENT TO SET UP ENVIRONMENTAL GUARANTEE FUND.

BE IT ORDAINED, by the Eleventh Sangguniang Panlungsod ng Ormoc in regular session assembled, that:

SECTION I. This Ordinance shall also be known as an ordinance imposing regulatory fee(s) on the extraction of water for industrial, institutional (schools and/or hospitals and the like) or commercial uses, for the purpose of sustainability of the water resources.

SECTION II. The primary purpose of this ordinance is to regulate the extraction of water from the aquifer and other subterranean sources within the jurisdiction of Ormoc City thus conserving its underground waters and protecting it from wanton use, thereby preserving the harmony of nature and development and seeing to it that the generations to come will still enjoy the abundance of the sweet water of Ormoc.

The strict observance of this ordinance is paramount in order to protect the underground water system of Ormoc and to prevent the danger of saline intrusion and soil subsidence which are inevitable consequences of unmitigated extraction of water.

Funds generated out of this regulatory ordinance shall go to the general funds of the City, and may be used to rehabilitate the watershed or improve the water system of Ormoc.

The host barangay where the water is extracted shall get 40% of the regulatory fee collected. Said barangay shall use their share exclusively for the improvement and maintenance of their water system/artesian wells.

SECTION III. Definition of Terms

For the purpose of this ordinance the following terms shall mean:

1. Aquifer - the layer of permeable rock, sand or gravel through which groundwater flows containing enough water to supply wells and springs.
2. Commercial Purpose - the extraction of water by a private entity for the purpose of utilizing the same for sale either directly or in bottled form, or the utilization of water for a swimming pool, wading pool, jacuzzi for rent and for other similar uses.
3. Environment - Surrounding air, water (both ground and surface), land, flora, fauna, humans and their interrelations. (DAO 2003-30)



4. Environmental Guarantee Fund (EGF) - fund to be set up by a project proponent which shall be readily accessible and disbursable for the immediate clean-up or rehabilitation of areas affected by damages in the environment and the resulting deterioration of environmental quality as a direct consequence of a project's construction, operation or abandonment. It shall likewise be used to compensate parties and communities affected by the negative impacts of the projects, and to fund community-based environment related projects including, but not limited to, information and education and emergency preparedness programs. (DAO 2003-30)
5. Environmental Monitoring Fund (EMF) - fund that a proponent shall set up after an ECC is issued for its project or undertaking, to be used to support the activities of the multi-partite monitoring team, it shall be immediately accessible and easily disbursable. (DAO 2003-30)
6. Free Flowing - the drawing of water from the aquifer or from whatever subterranean or underground sources without mechanical aid.
7. Government Water Utility - the extraction of water for public utility or for the purpose of providing water to the community by the government or by any instrumentality thereof.
8. Industrial Purpose - the extraction of water for the purpose of utilizing the same for industrial activities, for its operation, or as a principal or as an important ingredient of the products they are producing.
9. Project or Undertaking - any activity, regardless of scale or magnitude, which may have significant impact on the environment. (DAO 2003-30)
10. Proponent - any natural or juridical person intending to implement a project or undertaking. (DAO 2003-30)
11. Saltwater/Saline Intrusion - the phenomenon which occurs when there is overdraw of water from the aquifer. Since nature abhors vacuum, sea water penetrates into the spaces left by the fresh water which results to ground water salination.
12. Subsidence - the sinking of land level; the sinking down of land resulting from shifts or human activity.
13. Water Extraction - the drawing of water from the aquifer or from whatever subterranean or underground sources with mechanical aid or other artificial means.
14. Water Mining - Same as water extraction.

#### SECTION IV. General Provisions

1. a. Any person, whether natural or juridical, who intends to extract or mine water from within the jurisdiction of Ormoc City for industrial, commercial or institutional use, is required to register with the City Waterworks Office, for monitoring purposes and in accordance with Tax Ordinance No. 96-01 specifically section 8b which says "Persons who intend to extract water within Ormoc City for any purpose shall pay a regulatory permit fee in accordance with the following schedule to the Office of the City Treasurer which shall be paid within 30 days after its completion". In this case, when the activity becomes operational.



50 mm O (2"O)	P10.00/linear meter
63 mm O (2 1/2")	P20.00/linear meter
75 mm O (3"O)	P30.00/linear meter
100 mm O (4"O)	P40.00/linear meter
125 mm O (5"O or bigger)	P50.00/linear meter

- b. The extractor/proponent shall be required to submit a monthly report of the true volume of extraction of the preceding month, to be submitted within the first ten days of the month immediately succeeding.
  - c. Extractor/proponent shall be required to install prior to its operation, a device to measure the volume/quantity of the water extracted.
  - d. Authorized personnel from the Ormoc Waterworks Services Administration (ORWASA) shall have visitatorial powers during office hours to strictly enforce this ordinance.
  - e. Any person currently extracting water from the aquifer of Ormoc for the purposes covered by the requirements/prohibitions of this ordinance shall register their extraction within 30 days from the effectivity hereof and pay the required regulatory fee.
2. The extractor/proponent shall pay a corresponding regulatory fee for the extraction of water which shall be on a graduated scale based on the daily average of volume or quantity of the water extracted which shall be as follows and to be paid at the time of the submission of the report.

INSTITUTIONAL		COMMERCIAL/INDUSTRIAL	
0 - 40 cu.m./day	Free	0 - 40 cu.m./day	Free
> 40 - 80 cu.m./day	P0.05/cu.m.	> 40 - 80 cu.m./day	P0.25/cu.m.
> 80 - 120 cu.m./day	P0.10/cu.m.	> 80 - 120 cu.m./day	P0.40/cu.m.
> 120 - 160 cu.m./day	P0.20/cu.m.	> 120 - 160 cu.m./day	P0.55/cu.m.
> 160 - 200 cu.m./day	P0.30/cu.m.	> 160 - 200 cu.m./day	P0.70/cu.m.
> 200 - 240 cu.m./day	P0.40/cu.m.	> 200 - 240 cu.m./day	P0.85/cu.m.
> 240 - 280 cu.m./day	P0.50/cu.m.	> 240 - 280 cu.m./day	P1.00/cu.m.
> 280 - 320 cu.m./day	P0.60/cu.m.	> 280 - 320 cu.m./day	P1.15/cu.m.
> 320 - 360 cu.m./day	P0.70/cu.m.	> 320 - 360 cu.m./day	P1.30/cu.m.
> 360 - 400 cu.m./day	P0.80/cu.m.	> 360 - 400 cu.m./day	P1.45/cu.m.
> 400 cu.m./day	P5.00/cu.m.	> 400 cu.m./day	P5.00/cu.m.

3. Said proponent shall also be required to put up an Environmental Guarantee Fund to answer for any environmental degradation or upsets due to the water extraction and as provided for in DAO 96-37 and DAO 2003-30 Re: Administrative Order strengthening the implementation of the Environmental Impact Statement (EIS) System.

The proponent shall also be required to put up an environmental monitoring fund to answer the cost of the monitoring activities which shall be done to monitor the operation of the proponent.

4. Government water utility(ies) may it be national, provincial or local are exempt from paying the above regulatory fee. However, these institutions are still required to submit a monthly extraction report for the purpose of monitoring.



SECTION V. Prohibited Acts. No person shall be allowed to develop nor start the development of an area for the purpose of putting up water extraction facilities neither shall such person be allowed to construct any building in relation to such water drilling activities without first registering the proposed drilling or water extraction with the Ormoc City Waterworks Office and other permits required by the local government as well as the national government.

SECTION VI. Penalties.

1. Any person who fails to comply with the requirements of Section V shall be denied the issuance of any permits necessary to the aforementioned activity or business, for a minimum of one year and a maximum of two years from the date of such violation, without prejudice to the filing of appropriate charges by the City Legal Counsel, in the proper court, for a penalty of imprisonment of not more than one year.

Conducting any of the aforementioned activities without the necessary business permits or violation of any of the conditions set forth in the business permit shall result in the issuance of cease and desist order to operate by the City Mayor resulting to the closure of the said operation and or the establishment.

2. Any person who fails to submit the required monthly report shall pay an administrative fine of P500.00 for every month of delay, said fine shall be paid to the City Treasurer or his representative who shall issue a corresponding receipt.

For failure to comply with the provision of paragraph 2 section VI for at least 3 consecutive months may cause the cancellation of the business permit resulting in the closure of the said establishment.

SECTION VII. Separability Provision. If, for any reason or reasons, any part or provision of this Ordinance shall be held to be unconstitutional or invalid, other parts or provision hereof which are not affected thereby, shall continue to be in full force and effect.

SECTION VIII. Repealing Clause. Any ordinances, and/or executive orders inconsistent herewith, are hereby amended or repealed.

SECTION IX. Effectivity. This Ordinance shall take effect immediately upon its approval.

SECTION X. For purposes of complying with the provisions of Section 511 of RA 7160, otherwise known as the Local Government Code of 1991, a copy of this ordinance shall be posted at conspicuous places in the City Hall for a minimum period of three (3) consecutive weeks and published once in a newspaper of general circulation in Ormoc City.

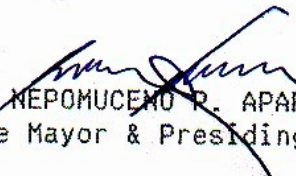
ENACTED, September 25, 2008.

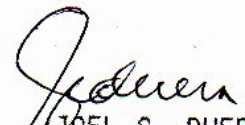
RESOLVED, FURTHER, to furnish copies of this ordinance each to the Honorable City Mayor Eric C. Codilla, the City Administrator, the City Treasurer, the City Auditor, and others concerned, -all in Ormoc City;

CARRIED UNANIMOUSLY.


I HEREBY CERTIFY to the correctness of the foregoing ordinance.

ATTESTED:

  
NEPOMUCENO P. APARIS I  
Vice Mayor & Presiding Officer

  
JOEL S. DUERO  
Secretary to the  
Sangguniang Panlungsod

APPROVED:

  
ERIC C. CODILLA  
City Mayor

9/29/08  
(Date)