

REPUBLIKA NG PILIPINAS
SANGGUNIANG PANLUNGSOD
LUNGSOD NG ORMOC



EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE
FOURTEENTH SANGGUNIANG PANLUNGSOD NG ORMOC HELD
AT THE SANGGUNIANG PANLUNGSOD SESSION HALL,
ORMOC CITY HALL BUILDING
ON OCTOBER 03, 2017 IN LIEU OF
OCTOBER 05, 2017

PRESENT:

Vincent L. Rama,	(Temporary Presiding Officer),
	SP Member, Asst. Majority Floor Leader
Rolando M. Villasencio,	(Acting City Vice Mayor),
	SP Member, Majority Floor Leader
Eusebio Gerardo S. Penserga,	SP Member
Gregorio G. Yrastorza III,	SP Member
Nolito M. Quilang,	SP Member
John Eulalio Nepomuceno O. Aparis II,	SP Member
	Minority Floor Leader
Lea Doris C. Villar,	SP Member, Asst. Minority Floor Leader
Mariano Y. Corro,	Ex-Officio SP Member
	Chapter President, Liga ng mga Barangay ng Ormoc

ON OFFICIAL BUSINESS:

Leo Carmelo L. Locsin, Jr.,	(Acting City Mayor),
	Vice Mayor & Presiding Officer
Tomas R. Serafica,	(O.B. – Within Ormoc City), SP Member

ON LEAVE:

Mario M. Rodriguez,	SP Member, Presiding Officer "Pro-Tempore"
Benjamin S. Pongos, Jr.,	SP Member

PREFATORY STATEMENT

WHEREAS, Article II, Section 15, of the Philippine Constitution provides: "The State shall protect and promote the right to health of the people and instill health consciousness among them";

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

WHEREAS, upon the passage of Republic Act 9211 otherwise known as the "Tobacco Regulation Act of 2003" there is a need to review and revise Ordinance #35, otherwise known as the Anti Smoking Ordinance of Ormoc City;

WHEREAS, Section 39 of RA 9211 explicitly provides that all ordinances which are inconsistent with Tobacco Regulation Act are repealed or amended accordingly and Title VI Rule II, Section 2 of its Implementing Rules and Regulations provides city and municipal mayors, building officials and police with the responsibility of ensuring full compliance with its tenets;

WHEREAS, DILG Memorandum Circular No. 2004-85 enjoins all local chief executives and local offices to cause immediate enactment of ordinances to regulate smoking in public places in accordance with the provision of RA 9211 and its Implementing Rules and Regulations;

WHEREAS, Republic Act 8749 otherwise known as the Philippine Clean Air Act of 1999 declares the right of every citizen to breath clean air, prohibits smoking inside enclosed public places including public vehicles and other means of transportation and other public places and directs local government units to implement its provisions;

WHEREAS, pursuant to the exercise of its police power Section 16 and 177 of the Local Government Code of 1991, it is the duty of the City of Ormoc to adopt ordinances necessary to fully provide for and protect the health, safety, comfort, convenience and general welfare of the community and its inhabitants;

WHEREAS, President Rodrigo Duterte issued EO #26 on May 16, 2017 entitled "Providing for the Establishment of Smoke-Free Environments in Public and Enclosed Places" mandating that henceforth smoking in public places will only be allowed in Designated Smoking Areas, prohibiting minors from smoking, buying or selling cigarettes and prohibiting the advertising of cigarettes and other tobacco products.

WHEREAS, DILG Memorandum Circular #2017-90 issued on July 20, 2017 strongly enjoins all local government units to exercise their powers for the efficient and effective implementation of EO #26 thus promoting the general welfare of their constituents pursuant to Section 16 of the Local Government Code of 1991;

WHEREAS, to fully protect the public health and welfare, there is a need to pass a comprehensive local ordinance which will regulate smoking in public places and conveyances in accordance with existing laws, prohibit smoking by minors and the sale of all tobacco products and all its derivatives including electronic cigarettes thereto, and prohibit the advertisement of and promotional activities related to all tobacco products;

NOW, THEREFORE, on motion of SP Member Eusebio Gerardo S. Penserga, Vice-Chairman, Committee on Health & Sanitation, severally seconded by SP Members Rolando M. Vilasencio, Gregorio G. Yrastorza III, Nolito M. Quilang, Lea Doris C. Villar, John Eulalio Nepomuceno O. Aparis II and Mariano Y. Corro; be it

RESOLVED, to enact:

ORDINANCE NO. 047

AN ORDINANCE REVISING ORDINANCE NO. 35 SERIES OF 1993 OTHERWISE KNOWN AS "ANTI-SMOKING ORDINANCE OF ORMOC CITY".

BE IT ORDAINED, by Sangguniang Panlungsod of Ormoc City, That:

SECTION 1. TITLE – This Ordinance shall be known as the "COMPREHENSIVE ANTI-SMOKING ORDINANCE OF ORMOC CITY"

SECTION 2. DECLARATION OF POLICY – It is the policy of the City of Ormoc to promote the health and welfare of its citizens. Towards this end, it is the purpose of this Ordinance to safeguard public health and ensure the physical well being of its inhabitants as well as those who sojourn in its territorial jurisdiction from the inimical effects of smoking and second-hand smoke and to promote right to health and instill health consciousness among its constituents. The City recognizes that cigarettes and other like products contain hazardous and addictive substances and are therefore dangerous to the health of the public when used. The City shall take special measures to protect minors from procuring, trying, and becoming addicted to the vice of smoking.

SECTION 3. DEFINITION OF TERMS –

- a) "Advertisement" – refers to any visual and/or audible message disseminated to the public about or on a particular product that promotes and gives publicity by words, designs, images or any other means through broadcast, electronic, print or whatever form of mass media, including outdoor advertisements, such as but not limited to signs and billboards. For the purpose of this Ordinance, advertisement shall be understood as tobacco advertisement.
- b) "Buying" – refers to the act of purchasing or acquiring a material or item of value from one person to another for monetary or for any other consideration.
- c) "Cigarette" – refers to any roll or tubular structure which contains finely cut tobacco or its derivatives, cured and intended to be burned or heated under any conditions or use; considerably smaller than most cigars and usually wrapped in thin paper; the term shall likewise include Electronic Device Systems, shisha, and the like.
- d) "Designated Smoking Area" (DSA) – refers to an area of a building or conveyance where smoking may be allowed, which may be in an open space or separate area with proper ventilation subject to the specific standards provided in the E.O No. 26 series of 2017.
- e) "Electronic Device System" – refers to any device such as electronic nicotine device systems, electronic cigarettes and similar devices, whether or not used to deliver nicotine to the user, that resembles the outward appearance of real smoking products, including e-cigarettes and the like.
- f) "Enclosed" – refers to being covered by a roof or other structure serving the purpose of a roof, and having one or more walls or sides, wherein the openings on the walls or sides have an aggregate area that is less than half of the total wall space, regardless of the type of material used for the roof, wall or sides, and regardless of whether the structure is permanent or temporary. Doors and windows that can be opened and shut shall not be considered as openings under this paragraph. The enclosed character of a building or conveyance shall attach to all its areas, including open spaces.
- g) "Minor" – shall refer to any person below eighteen (18) years of age.
- h) "Non-Smoking Buffer Zone" – is a ventilated area between the door of a DSA not located in an open space and the smoke-free area. There shall be no opening that will allow air to escape from such Non-Smoking Buffer Zone to the smoke-free area, except for a single door equipped with an automatic door closer. Such door is distinct from the door of the DSA, which shall be at least two (2) meters away from the other.
- i) "Open spaces" – refer to those areas forming part of a building or conveyance, which are not covered by a roof or similar structure.

- j) "Person" – refers to an individual or juridical person such as partnership, corporation or any other business or legal entity.
- k) "Person-in-Charge" – refers to the president/manager in case of a company, corporation, partnership or association; the owner/proprietor/operator in case of a single proprietorship; the administrator in case of government or private property, facility, office or building; the owner, driver, operator, conductor or captain of a public conveyance; the city/municipal school superintendent, school president, dean or principal in case of schools.
- l) "Point-of-Sale" – refers to any location at which an individual can purchase or otherwise obtain tobacco products, excluding itinerant/ambulant vendors.
- m) "Public Buildings" – refer to enclosed or partially enclosed building structures owned by the government or owned by private persons but used, rented or occupied by the government or any of its instrumentalities, or any enclosed or partially enclosed building used or controlled exclusively for public purposes by any department or branch of government;
- n) "Public Conveyances" – refer to the modes of transportation servicing the general population such as, but not limited to, airplanes, buses, taxi cabs, vans for hire, ships, pumpboats, public utility jeepneys (PUJs), light trail transits, multi-cabs, tricycles, trisikads and other similar vehicles;
- o) "Public Places" – refer to all places, fixed or mobile, that are accessible or open to the public or places for collective use, regardless of ownership or right to access, including, but not limited to, establishments that provide food and drinks, accommodation, merchandise, entertainment or other services. The term also includes outdoor spaces where facilities are available for public use or where a crowd of people would gather, such as, but not limited to, playgrounds, sports grounds or centers, churches and church grounds, hospitals, transportation terminals, markets, parks, open space establishments, resorts, walkways, sidewalks, entrance ways, waiting areas and the like.
- p) "Retailer" – refers to any person or entity that sells tobacco products to individuals for personal consumption. These include not only legal entities, but also sari-sari stores and sidewalk vendors who sell, among others, cigarettes and other tobacco products.
- q) "Selling" – refers to the act of transferring ownership of a material or item of value from one person to another for monetary and for any other consideration.
- r) "Schools" – refer to institutions that provide instruction and education, such as playschools, elementary schools, high schools, colleges and universities. The term shall include those parts/branches/properties of educational institutions that are utilized as areas or centers of youth activities;

- s) "Shisha" – also known as waterpipe, nargeela, argeel, hookah or any other name, refers to a device or instrument or any part thereof, including its juice, which may have a single or multi-stemmed pipe for smoking, whether or not the same delivers nicotine to the user, in which the smoke is passed through a water basin before inhalation.
- t) "Smoking" – refers to the act of possession or control of a lit tobacco product including vapes, pipes, electronic smoking devices and other similar devices regardless of whether the smoke is being actively inhaled or exhaled.
- u) "Tobacco" – refers to the agricultural components derived from the tobacco plant which are processed for use in the manufacture of cigarettes and other tobacco products.
- v) "Tobacco Products" – refer to any product that consists of loose tobacco that contains nicotine and intended for use as a cigarette, including any product whether containing tobacco or not but intended for smoking or oral or nasal use.
- w) "Vending Machine" – refers to any self-service facility or machine which sells or distributes products, refreshments, merchandise and other items for consumption, such as but not limited to coffee, soft drinks, liquor, juice, bread, junk foods, or cigarettes and other tobacco products.
- x) "Workplaces" – refer to any area, permanent or temporary, in which a person performs duties related to employment or work, regardless of whether the work is done for compensation or on a voluntary basis, and includes private offices, common areas and any other area which generally is used or frequented during the course of employment or work. Company-owned vehicles used for transporting employees and guests or any vehicle used in the course of work are considered workplaces.

SECTION 4. PROHIBITED ACTS – The following acts are declared unlawful and prohibited:

- a) Smoking within enclosed public places and public conveyances, whether stationary or in motion, except in DSAs fully compliant with the requirements of this Ordinance;
- b) For any person to sell, distribute or purchase tobacco products to and from minors;
- c) For a minor to smoke, sell or buy cigarettes or any other tobacco products;
- d) Ordering, instructing, compelling or allowing a minor to use, light up, buy, sell, distribute, deliver, advertise or promote tobacco products;
- e) Selling or distributing tobacco products in a school, public playground, youth hostels, or recreational facilities for minors, including those frequented by minors or within One Hundred (100) meters from any point of the perimeter of these places;

- f) Placing, posting, displaying or distributing advertisements and/or promotional materials of tobacco products, such as but not limited to leaflets, posters, display structures and other materials within One Hundred (100) meters from the perimeter of a school, public playground, and other facilities frequented particularly by minors, hostel and recreational facilities for minors, including those frequented by them, or in an establishment when such establishment by its location or nature is prohibited from selling tobacco products;
- g) Placing any form of tobacco advertisement outside of the premises of point-of-sale retail establishments;
- h) Placing any stall, booth and other display concerning or involving tobacco promotions to areas outside the premises of point-of-sale locations or adult-only facilities;
- i) Use of Electronic Device Systems, e-cigarettes, shishas, or vapes;
- j) For Persons-in-Charge:
 - 1. To allow, abet or tolerate smoking in places outside of DSAs fully compliant with the requirements provided in Section 5 of this Ordinance; and
 - 2. Failure to comply with their duties and obligations as provided in Section 6 of this Ordinance.

SECTION 5. STANDARDS FOR DESIGNATED SMOKING AREA – All DSAs shall strictly comply with the following standards:

- a) There shall be no opening that will allow air to escape from the DSA to the smoke-free area of the building or conveyance, except for a single door equipped with an automatic door closer, provided that, if the DSA is not located in an open space, such door shall open directly towards a Non-Smoking Buffer Zone as defined in this Ordinance;
- b) The DSA shall not be located within ten (10) meters from entrances, exits, or any place where people pass or congregate or in front of air intake ducts;
- c) The combined area of the DSA and the Buffer Zone shall not be larger than Twenty Percent (20%) of the total floor area of the building or conveyance, provided that in no case shall such area be less than ten (10) square meters;
- d) No building or conveyance shall have more than one DSA;
- e) The ventilation system for the DSA other than in an open space and for the Buffer Zone shall be independent of all ventilation system servicing the rest of the building or conveyance;
- f) Minors shall not be allowed inside the DSA and the Buffer Zone;
- g) The DSA shall have the following signages highly visible and prominently displayed:
 - 1) "Smoking Area" signage;
 - 2) Graphic health warnings on the effects of tobacco use; and
 - 3) Prohibition on the entry of persons below eighteen (18) years old.
- h) Other standards and specifications to better ensure a smoke-free environment as may be prescribed by the Inter-Agency Committee-Tobacco under Republic Act No. 9211, provided that such standards and specifications are consistent with this Ordinance and that persons-in-charge are given sixty (60) days to comply.
- i) However, there shall be no DSAs in the following public places:
 - 1) Centers of youth activity such as playschools, preparatory schools, elementary schools, high schools, colleges and universities, youth hostels and recreational facilities for minors;
 - 2) Elevators and stairwells;

- 3) Locations in which fire hazards are present, including gas stations and storage areas for flammable liquids, gas, explosives or combustible materials;
- 4) Within the buildings and premises of public and private hospitals, medical, dental and optical clinics, health centers, nursing homes, dispensaries and laboratories; and
- 5) Food preparation areas.

SECTION 6. DUTIES AND OBLIGATIONS OF PERSONS-IN-CHARGE -

Persons-in-Charge shall:

- a) Prominently post and display the "No Smoking" signage, in the locations most visible to the public in the areas where smoking is prohibited. At the very least, the "No Smoking" signage must be posted at the entrance to the area, which shall be at least Eight by Eleven (8x11) inches in size, where the symbol shall occupy no less than Sixty Percent (60%) of the signage, while the remaining Forty Percent (40%) of the signage shall show pertinent information regarding the Ordinance;
- b) Comply with the requirements in Section 5 herein regarding signages for DSAs;
- c) Prominently post and display the "No Smoking" signage in the most conspicuous location within the public conveyance. At the very least, a three and a half (3.5) square inch "No Smoking" signage shall be placed on the windshield and a ten (10) square inch "No Smoking" sign at the back of the driver's seat;
- d) Remove from the places where smoking is prohibited all ashtrays and other receptacles for disposing of cigarette refuse;
- e) Remove from his/her establishment/structure any and all advertisements pertaining to any tobacco or tobacco-related products or promoting the use and/or consumption thereof;
- f) For those in charge of schools, public playgrounds, youth hostels and recreational facilities for minors, including those frequented by minors, post the following statement in a clear and conspicuous manner: "SELLING, ADVERTISING AND PROMOTING CIGARETTES OR OTHER TOBACCO PRODUCTS NOT ALLOWED WITHIN 100 METERS FROM ANY POINT IN THE PERIMETER OF (NAME OF SCHOOL/PLAYGROUND/FACILITY FOR MINORS)";
- g) For those in charge of schools, public playgrounds, youth hostels and recreational facilities for minors, including those frequented by minors, to report to the Ormoc City Anti-Smoking Task Force any tobacco product selling, advertising and/or promotion located within one hundred (100) meters from its perimeter;
- h) For those in charge of point-of-sale establishments, post the following notice, together with a graphic/picture-based health warning on the health consequences of tobacco use, as prescribed by the Department of Health, in a clear and conspicuous manner: "SALE/DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS IS UNLAWFUL";
- i) Establish internal procedures and measures through which this Ordinance shall be implemented and enforced within the area of which he or she is in charge, including compliance with smoking, sales, distribution, advertising and promotion restrictions; warning and requesting violators to stop smoking and/or leave the premises; and in the event of refusal to comply, reporting the incident to the City Health Office, the nearest peace officer, or to any member of the Ormoc City Anti-Smoking Task Force;

- j) Ensure that all employees in the establishment are aware of this Ordinance and the procedures and measures for its implementation and enforcement;
- k) For all signages required above, provide for versions of them in Bisaya and in English.

SECTION 7. PENALTIES –

- a) For the first offense, a fine of not less than Five Hundred Pesos (Php500.00) but not more than One Thousand Pesos (Php1,000.00);
- b) For the second offense, a fine of not less than One Thousand Pesos (Php1,000.00) but not more than Three Thousand Pesos (Php3,000.00) and if the violator is a business entity, suspension of business permit;
- c) For the third and subsequent offenses, a fine of not less than Three Thousand Pesos (Php3,000.00) but not more than Five Thousand Pesos (Php5,000.00) and if the violator is a business entity, revocation of business permit.

If the violation is by an establishment or business entity, the owner, president, manager, or them most senior officers thereof shall be held liable for the offense.

If a minor is caught selling, buying or smoking cigarettes or any other tobacco product, the provisions of RA 9344 otherwise known as the "Juvenile Justice and Welfare Act of 2006", shall apply. If the violating minor is fifteen (15) years old and below, or is above fifteen (15) but below eighteen (18) years old but acted without discernment, his parents or guardian, as the case may be, shall be made liable under this Ordinance.

If the violation is against Section 4(f), (g) and (h) of this Ordinance, the penalties provided for in Section 32(c) of RA 9211 shall apply.

The violator may elect to pay an administrative fine of Five Hundred Pesos (Php500.00) for the first offense, One Thousand Pesos (Php1,000.00) for the second offense and Three Thousand Pesos (Php3,000.00) for the third offense directly to the Office of the City Treasurer by presenting the citation ticket issued by the OAST or PNP within three (3) days from the date of apprehension. After the lapse of three (3) days from the date of apprehension without payment of the administrative fine to the Office of the City Treasurer, the case may be filed against the violator in court.

SECTION 8. CREATION OF THE ORMOC CITY ANTI-SMOKING TASK FORCE (OAST) – The City Mayor may create Ormoc City Anti-Smoking Task Force to monitor and implement the provisions of this Ordinance, the composition of such shall be subject to his discretion.

SECTION 9. DISSEMINATION OF INFORMATION –

- a) The Liga ng mga Barangay and Barangay officials are required to disseminate this Ordinance within their respective territorial jurisdictions.
- b) School officials and the Parents and Teachers Associations (PTAs) in their respective school campuses are likewise required to disseminate this Ordinance. They shall report violation/s hereof to the school's disciplinary committee or guidance counselor and furnish copy thereof to the OAST.

SECTION 10. INSPECTION TEAM – An inspection team composed of personnel from the City Health Department, the OAST, and CENRO shall inspect establishments, working places, schools, buildings and the like to determine and ensure compliance with this Ordinance. They shall report their findings to the OAST Chairman who shall in turn make the necessary recommendations to the Mayor.

SECTION 11. RESPONSIBLE AGENCIES –

- a) The OAST shall report and serve notice of violations hereof and forward the same to the City Legal Office for proper action.
- b) Punong Barangays and Barangay Officials shall pass a Resolution adopting this Ordinance and are mandated to assist the Police to apprehend violator/s hereof.
- c) The City Legal Office shall assist the apprehending officers in reviewing reports of violations and file appropriate charges in Court for violations of this Ordinance if warranted.
- d) The Business Permits and Licensing Office shall order the suspension or revocation of permits and/or licenses of establishments found to be in violation of this Ordinance, subject to the provision of Section 7 (b) and (c) hereof and to deny renewal of permits for non-payment of fines.
- e) The PNP City Director shall order all precinct commanders to implement this Ordinance, apprehend violators thereof, issue the appropriate citation tickets upon violation, and to submit monthly reports of apprehension to the OAST. On duty and uniformed OCPD personnel shall not smoke in public. Violation hereof will subject the erring OCPD personnel to appropriate administrative sanctions.

SECTION 12. SEPARABILITY CLAUSE – If, for any reason, any part or provision of this Ordinance be declared unconstitutional or invalid, the other parts or provisions hereof not affected shall continue to be in full force and effect.

SECTION 13. REPEALING CLAUSE – Any ordinance, resolution or any order or part/parts thereof which are inconsistent with the provisions of this Ordinance are hereby amended, repealed or modified accordingly.

SECTION 14. EFFECTIVITY – This Ordinance shall take effect thirty (30) days after its publication in a newspaper of local or general circulation and posting in at least two (2) conspicuous places in the City.

ENACTED, October 03, 2017.

RESOLVED, FURTHER, to furnish copies of this Ordinance one each to the City Mayor Richard I. Gomez; the City Administrator, Mr. Vincent L. Emnas; the City Legal Officer, Atty. Jasper M. Lucero; the City Budget Officer; the OIC-City Accountant; the City Treasurer; the City Auditor; the City Health Department; the OIC-City Director, DILG, Engr. Jeremy D. Bagares; the Office of the Liga ng Mga Barangay ng Ormoc; to the One Hundred Ten (110) Barangays of Ormoc City and other offices concerned;

CARRIED UNANIMOUSLY.




Ord. No. 047

I HEREBY CERTIFY to the correctness of the above ordinance.


MARIA ANTONIETA G. CO HAT
(OIC – SP Secretary)
Supervising Administrative Officer

ATTESTED:


VINCENT L. RAMA
(Temporary Presiding Officer)
SP Member
Asst. Majority Floor Leader

APPROVED:


RICHARD I. GOMEZ
City Mayor

11 OCT 2017

(Date)