



Republic of the Philippines  
Province of Ilocos Norte  
**MUNICIPALITY OF SAN NICOLAS**

## OFFICE OF THE SANGGUNIANG BAYAN

EXCERPTS FROM THE MINUTES OF THE FIRST REGULAR SESSION OF THE  
12<sup>TH</sup> SANGGUNIANG BAYAN OF THE MUNICIPALITY OF SAN NICOLAS, ILOCOS NORTE  
HELD AT THE MUNICIPAL SESSION HALL ON THE 2<sup>ND</sup> DAY OF OCTOBER, 2023  
AT 10:30 O'CLOCK IN THE MORNING.

**PRESENT:**

Hon. Napoleon L. Hernando	Vice-Mayor/Presiding Officer;
Hon. Luciano R. Caraang	Member;
Hon. Erico R. Ruiz, Jr.	Member;
Hon. Chona P. Hernandez	Member;
Hon. Jessie Julito P. Pumaras, Sr.	Member;
Hon. Norberto S. Dadiz, Jr.	Member;
Hon. Juanito P. Ulep, Jr.	Member;
Hon. Cesar R. Agustin	Member;
Hon. Jorge Cesar T. Palafox	Member/Liga ng mga Barangay President.
Hon. Inno Ma. Angelo Paulo O. Hernando	Member/PPSK President.

**ON OFFICIAL-LEAVE:**

Hon. Moera Joy N. Galing-Luna	Member.
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**ABSENT:**

None.

**“RESOLUTION NO. 2023-255**

**A RESOLUTION EARNESTLY REQUESTING THE SANGGUNIANG PANLALAWIGAN TO RECONSIDER ITS FINDINGS OF INVALIDITY OF MUNICIPAL ORDINANCE NO. 2022-15 OF THE MUNICIPALITY OF SAN NICOLAS, ENTITLED: “AN ORDINANCE ESTABLISHING A PROPER SEWAGE TREATMENT AND SEPTAGE MANAGEMENT SYSTEM IN THE MUNICIPALITY OF SAN NICOLAS, ILOCOS NORTE AND PRESCRIBING PENALTIES FOR VIOLATIONS THEREOF”**

**WHEREAS**, on November 18, 2022, the Office of the Sangguniang Panlalawigan of Ilocos Norte, as recommended by its Committee on Health and Sanitation, declared the Municipal Ordinance No. 2022-15 of the Municipality of San Nicolas, entitled: “*AN ORDINANCE ESTABLISHING A PROPER SEWAGE TREATMENT AND SEPTAGE MANAGEMENT SYSTEM IN THE MUNICIPALITY OF SAN NICOLAS, ILOCOS NORTE AND PRESCRIBING PENALTIES FOR VIOLATIONS THEREOF*” as “*not valid*”

**WHEREAS**, as per Committee Report of the Provincial Committee on Health and Sanitation, the declaration of invalidity was based on the ground that the provisions of Sections 13(a) and (b), and Section 15 of the aforesaid Municipal Ordinance are repugnant to the Constitution. The Committee even added that the ordinance failed to provide adequate warning to those subjects of its prohibitions and the proper standards for its adjudication;

**WHEREAS**, the Sangguniang Bayan of San Nicolas is in the humble view that the adoption of Municipal Ordinance No. 2022-15 by the Sangguniang Bayan of San Nicolas is well-within its given authority pursuant to the general welfare clause and the delegated functions as defined and provided for by the Local Government Code and other pertinent existing laws and well-settled principles of equity and justice;

**WHEREFORE**, on unanimous consensus of all Members present, be it –

**RESOLVED, AS IT IS HEREBY RESOLVED**, to request Sangguniang Panlalawigan to reconsider its findings on Municipal Ordinance No. 2022-15 of the Municipality of San Nicolas, entitled: “*AN ORDINANCE ESTABLISHING A PROPER SEWAGE TREATMENT AND SEPTAGE MANAGEMENT SYSTEM IN THE MUNICIPALITY OF SAN NICOLAS, ILOCOS NORTE AND PRESCRIBING PENALTIES FOR VIOLATIONS THEREOF*” *on the basis of the grounds/ arguments:*

**I. THE LEGALITY OF SECTION 13 (a) and (b) OF THE ORDINANCE.**

It is respectfully recommended that the word "refusal" be maintained in section 13 (a) and (b). This is for simple sound reasons.

One, it puts precise context to the intention of the ordinance in making the desludging mandatory. This unmistakable intention of the ordinance controls. It cannot be prevailed upon by an overly rigid "literal" connotation. With the Ordinance making the desludging as mandatory, it necessarily presupposes that there is a continuing offer on the part of the desludging entity or service provider to perform that service. There can be no occasion for the ordinance to make it mandatory absent an available desludging facility or system continuously in place. The offer to periodically desludge always comes from the desludging service provider, and never on the part of owner of the septic tank. Thus, there is no debate as to from whom the offer or initiative to desludge comes. The only obligation of the concerned constituent/concessionaire is to comply to the required periodic desludging.

The word "refusal" is truly more accurate and fitting given the intention of the ordinance. To "refuse" means to reject something coming from another party. To "fail" simply implies to omit to perform a positive duty. Thus, the word "failure" may even be more apt to ascribe with duty to provide the desludging service and facility. On the other hand, the word "refusal" is truly more suitable to qualify the rejection to comply with the mandatory desludging.

With these considerations, it is precisely the unjustified overt act of the concerned constituent of "refusal" to comply with the periodic desludging or to connect to available sewer lines which is penalized by the ordinance as opposed to a mere passive act of "failure" or "omission" to comply.

**A. Section 15 of the Ordinance.**

**1) As to who is liable:**

Cognizant with the observations of the SP, we respectfully recommend the following modifications:

Section 15. Penalties. The declared, registered or established owner/s of the residential, commercial, industrial, governmental, and institutional structures or buildings that refuses or fails to comply with the provisions of this Ordinance shall directly incur the following fines and penalties for every violation.

This proposal underscores the continuing responsibility incumbent upon the building or property owner/s to see to it that their building is compliant with the building specifications and waste disposal and management system in accordance with the mandatory desludging under the ordinance.

**2) Forms of penalty and manner of imposition:**

The water district respectfully recommends that the provisions in Section 15 (a) and (b) be maintained.

Firstly, contrary to the reasoning of the SP in rejecting it, there is nothing in the Local Government Code (LGC) which prohibits the imposition of a progressive penalty (*i.e., first offense, second offense, etc.*). In fact, a progressive penalty is even more in line with the "reformatory" purpose of our penal or punitive policies.

The increasing fines should not be summed up in relation with the P 2,500 maximum fine which the municipality may imposed under Section 447 of the LGC. Subsequent violation/s of the same offender is/are treated as distinct from the earlier violation/s. The increasing penalty is only meant to discourage repeated violations of the ordinance by the same offender by imposing a graver penalty of a higher amount of fine which, in no case, exceeds the ceiling of P 2, 500 for every single violation.

Secondly, while the LGC does not mention the imposition of environment-related "community service", it does not also prohibit it. *What the law does not prohibit is allowed.* Aside from this, the rendition of "community service" as an additional or alternative penalty is now accepted and allowed even for violations of penal statutes. This is best illustrated by the recent enactment of R.A. No. 11362 or the "Community Service Act" which authorizes the imposition of community service in lieu of the imprisonment terms of *arresto mayor* and *arresto menor* under the Revised Penal code. There is thus no reason to disallow or discourage the imposition in the Ordinance of environment-related "community service" as alternative or additional penalties for its violation.

## II. DECLARATION OF INVALIDITY OF THE WHOLE ORDINANCE

Assuming *arguendo* only that the SP can validly declare the provisions of the Sections 13(a)(b) and 15 of the subject ordinance as invalid, we invoke the provision of the Ordinance which says that:

*"SECTION 16. Separability Clause. In the event that any part or provision of this Ordinance is held unconstitutional or invalid, other parts or provisions not otherwise affected shall remain in full force and effect."*

Thus, Section 16 safeguards the ordinance from being branded invalid in its entirety by reason that some part thereof was held invalid. In doing so, the other provision which were not affected will remain valid and to avoid the unnecessary used of time, effort and government resources in enacting a new ordinance which can be detrimental in the efficiency of public service.

## III. LIMITED POWER OF REVIEW OF THE SANGGUNIANG PANLALAWIGAN.

Under the Local Government Code, the only ground for a Sangguniang Panlalawigan to declare a Municipal Ordinance invalid is if it finds that such resolution or ordinance is *ultra vires* or it is beyond the power conferred upon the Sangguniang Bayan concerned. Definitely no other ground is legally acceptable.

With all due respect, the grounds upon which the SP declared the invalidity of the subject has no leg to stand. Paragraph (c), Section 56 of the Local Government Code of 1991 is enlightening, thus:

***(c)If the Sangguniang Panlalawigan finds that such an ordinance or resolution is beyond the power conferred upon the Sangguniang Panlungsod or Sangguniang bayan concerned, it shall declare such ordinance or resolution invalid in whole or in part. The Sangguniang Panlalawigan shall enter its action in the minutes and shall advise the corresponding city or municipal authorities of the action it has taken.***

The Committee humbly invokes the ruling of the Supreme Court in the case of *Moday vs. CA (G.R. No. 107916, 20 February 1997)* citing *Velasco vs. Blas (G.R. No. L-30456, 20 July 1982)* to wit:

***"The only ground upon which a provincial board may declare any municipal resolution, ordinance, or order invalid is when such resolution, ordinance or order is 'beyond the power conferred upon the council or president making the same'.*** Absolutely, no other is recognized by the law. A strictly legal question is before the provincial board in its consideration of a municipal resolution, ordinance or order. The provincial (board's) disapproval of any resolution, ordinance or order must be premised specifically upon the fact that such resolution, ordinance, or order is outside the scope of the legal powers conferred by law. ***If a provincial board passes these limits, it usurps the legislative functions of the municipal council, or president. Such has been consistent course of executive authority.***

It is clear from the foregoing that the only ground to declare an ordinance or resolution invalid, in whole or in part, is when the same is beyond the power conferred upon the sangguniang panlungsod or sangguniang bayan concerned. Thus, as the Municipal Ordinance No. 2022-15 establishing the proper sewerage system of the municipality is well within the powers of the Sangguniang Bayan to enact as enshrined in the general welfare clause of the Local Government Code and the Constitution. We are of the view that the Sangguniang Panlalawigan has exceeded its authority and unquestionably usurped the Sangguniang Bayan's legislative functions when it declared null and void the ordinance on grounds other than what the law provides for the invalidity of a legislative act.

All told, to our humble view, we most respectfully believe that the subject legislation should not have been declared invalid for such strict interpretations which gives a whole different meaning that deviates too far from the main intention of the legislator of the ordinance. We believe that the same was enacted within the power conferred by law to the Sanggunian and is consistent with the constitution, statutes, good customs and public policy.

Furthermore, an ordinance enacted by the local legislative bodies like the herein Sangguniang Bayan **enjoys the presumption of validity** unless there is a clear showing that such is inconsistent with existing laws and obtaining national policies. Interestingly, the matter of validity of legislative enactments may be threshed out in the proper **judicial proceeding**, as **only courts are empowered by law to finally determine the validity of a legislative measure**.

Thus, it is our humble view that the said Ordinance is consistent with laws and declared national policy; hence, the said Municipal Ordinance No. 2022-23 of the Municipality of San Nicolas, entitled: "AN ORDINANCE ESTABLISHING A PROPER SEWAGE TREATMENT AND SEPTAGE MANAGEMENT SYSTEM IN THE MUNICIPALITY OF SAN NICOLAS, ILOCOS NORTE AND PRESCRIBING PENALTIES FOR VIOLATIONS THEREOF" is earnestly prayed that it should be declared as VALID and thereby be APPROVED.

**RESOLVED FURTHER**, to plea from the Sangguniang Panlalawigan to conduct a clarificatory hearing on a date most convenient to the Honorable Body wherein the Sangguniang Bayan of San Nicolas may orally thresh out and explain the merits of its propositions and plea.

**RESOLVED FINALLY**, to transcribe this resolution and immediately furnish the Sangguniang Panlalawigan for appropriate consideration.

On motion of Member Erico P. Ruiz, Jr., duly seconded, foregoing resolution was unanimously approved.

**UNANIMOUSLY APPROVED."**

Voting on the foregoing resolution was as follows:

- AYES : Members Caraang, Ruiz, Jr., Hernandez, Pumaras, Sr., Dadiz, Jr., Ulep, Jr., Agustin, Palafox and Hernando, I.
- NAYS : None.
- ABSTAINED : None.

I hereby attest to the correctness of the foregoing resolution.

**ENRIQUE P. ULEP, JR.**  
Secretary to the Sangguniang Bayan I

**CERTIFIED TRUE AND CORRECT:**

**NAPOLEON L. HERNANDO**  
Vice-Mayor/Presiding Officer

**APPROVED:**

**ANGEL MIGUEL L. HERNANDO**  
Municipal Mayor  
Approved on: October 16, 2023