

Republic of the Philippines
Province of Cagayan
TUGUEGARAO CITY

NINTH CITY COUNCIL

COMMITTEE REPORT NO. 001-2025

October 21, 2024

Submitted by: COMMITTEE ON RULES, LAWS AND ETHICS

PRESENT:

| | |
|-----------------------------------|----------------------------------|
| HON. MARC ALDOUS C. BACCAY | - Chairman, Rules |
| HON. JUDE T. BAYONA | - Vice Chairman, Rules/ via zoom |
| HON. GRACE B. ARAGO | - Member, Rules/ via zoom |

RESOURCE PERSONS:

| | |
|------------------------------------|------------------------------------|
| Mr. Buenaventura F. Lagundi | - City Treasurer |
| Atty. Leah Vargas | - City Legal Office Representative |
| Atty. Monique De Leon | - City Legal Office Representative |

GUEST:

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| Hon. Tirso V. Mangada | - Sponsor |
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SUBJECT:

Letter of the Secretary to the Sangguniang Panlalawigan, Ms. Rosalinda P. Callang, returning City Ordinance No. 24-09-2024 *Prescribing Guidelines on the Imposition of Local Business Tax, Fees and Charges to Service Contractors* and City Ordinance No. 32-09-2019 *Otherwise Known as the Tuguegarao City Revised Cockfighting Ordinance of 2005* for lack of compliance with public hearing.

FOR THE PRESIDING OFFICER:

The Members of the Committee met and deliberated on the Letter of the Secretary to the Sangguniang Panlalawigan, Ms. Rosalinda P. Callang, returning City Ordinance No. 24-09-2024 *Prescribing Guidelines on the Imposition of Local Business Tax, Fees and Charges to Service Contractors* and City Ordinance No. 32-09-2019 *Otherwise Known as the Tuguegarao City Revised Cockfighting Ordinance of 2005* for lack of compliance with public hearing. The Committee respectfully submits the herein Committee Report and has the honor to report to this August body in session the following findings and recommendations.

FINDINGS AND RECOMMENDATIONS:

1. City Ordinance No. 24-09-2024 entitled: An Ordinance Prescribing the Guidelines on the Imposition of Local Business Tax, Fees and Charges to Service Contractors is only adopting the Local Finance Circular No. 001-2022 issued by the Department of Finance.

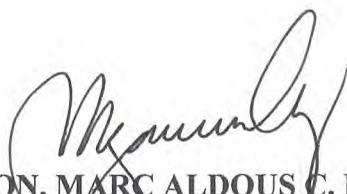
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Ref. No. _____

Since Local Finance Circular No. 001-2022 does not impose new fees or taxes, the council's adoption of it does not necessitate a public hearing, as there are no significant financial implications for the stakeholders involved.

2. As for City Ordinance No. 25-09-2024 *Amending Section 14(a) of City Ordinance No. 32-09-2019 Otherwise Known as the Tuguegarao City Revised Cockfighting Ordinance of 2005*, the ordinance requires a public hearing due to the proposed imposition of fees, which can significantly impact the community. Public hearings ensure transparency and allow the constituents to voice their opinions, concerns, or support regarding the fees. This process is essential for fostering public involvement and ensuring that the decision-making reflects the needs and views of the community.
3. The Committee on Rules, Laws and Ethics further recommends that the referral regarding City Ordinance No. 25-09-2024 *Amending Section 14(a) of City Ordinance No. 32-09-2019 Otherwise Known as the Tuguegarao City Revised Cockfighting Ordinance of 2005* be forwarded to the Committee it was originally referred to, to conduct a Public Hearing.

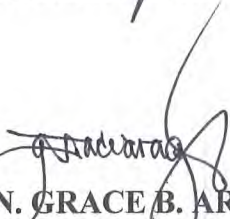
Respectfully submitted:



HON. MARC ALDOUS C. BACCAY
Chairman, Committee on Rules, Laws and Ethics



HON. JUDE T. BAYONA
Vice Chairman, Committee on Rules, Laws and Ethics



HON. GRACE B. ARAGO
Member Committee on Rules, Laws and Ethics



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LEGAL OPINION NO. 16, Series of 2024

FOR: HON. MARC ALDOUS C. BACCAY
City Councilor
Chairman, Committee on Rules, Laws, and Ethics

FROM: ATTY. RODERICK S. IQUIN
OIC - City Legal Officer

DATE: October 22, 2024

Dear Hon Baccay:

Greetings!

Upon careful review of the letter from the Secretary to the Sangguniang Panlalawigan, Ms. Rosalinda P. Callang, it is evident that the subject ordinances, namely: **City Ordinance Nos. 24-09-2024 and 25-09-2024**, have been returned due to non-compliance with the procedural requirements mandated by the Local Government Code of the Philippines (**Republic Act No. 7160**).

Specifically, the issue at hand concerns the failure to conduct a public hearing prior to the enactment of ordinances that impose local taxes, fees, or charges, as required under Section 186 of the Local Government Code.

Section 186 of the Local Government Code states that:

SECTION 186. Power To Levy Other Taxes, Fees or Charges. - Local government units may exercise the power to levy taxes, fees, or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose. (Emphasis Ours)*

This provision is intended to ensure transparency, due process, and public participation in the legislative process, particularly when it involves the imposition of taxes, fees, charges, and other financial burdens on constituents.



In this case, the ordinances in question appear to have been enacted or proposed without adhering to this mandatory requirement. Here, the Sangguniang Panlalawigan rightfully exercised its review powers under Section 56 of the Local Government Code, which grants provincial councils the authority to review ordinances passed by component cities and municipalities to ensure compliance with existing laws. This action aligns with its duty to ensure that local legislative measures are not only lawful but also procedurally sound.

Ordinances affecting public welfare, particularly those imposing taxes, should strictly comply with the procedural requirements of the law to ensure fairness, accountability, and transparency. Thus, failure to conduct public consultations invalidates such ordinances, as it deprives affected parties of their right to be heard.

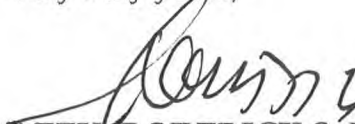
Given the procedural deficiencies noted, it is recommended that the City Council of Tuguegarao promptly submit proof of compliance with the public hearing requirement under Section 186 of the Local Government Code. If no such hearing was conducted, the Honorable Members must schedule and conduct the requisite public hearings and re-enact the ordinances following the proper legal process. Until such compliance is demonstrated, the ordinances should not be enforced, as doing so would expose the local government to legal challenges that may invalidate the ordinances in their entirety.

Moreover, any attempt to implement the ordinances without rectifying this procedural defect could result in serious legal consequences, including the potential for injunctions, as the public could challenge the legality of the ordinances on the grounds of due process violations.

The City Ordinances in question cannot be legally enforced until full compliance with the procedural requirements of the Local Government Code is met. Specifically, the lack of public hearings renders the ordinances procedurally defective, and this defect must be cured before the ordinances can be validated by the Sangguniang Panlalawigan. The City Council should take immediate steps to rectify this non-compliance by conducting the required public hearings and providing the necessary documentation to the Sangguniang Panlalawigan for further action. Thank you!

This Legal Opinion aims to offer guidance by examining the pertinent legal aspects of the matter at hand. Its purpose is to aid the requesting office in decision-making by providing relevant insights. However, it should not be construed as a definitive or final ruling on the subject. Supplementary inquiry can facilitate well-informed choices that appropriately address the specific circumstances of the situation.

Very truly yours,


ATTY. RODERICK S. IQUIN
OIC - CITY LEGAL OFFICER



LOCAL FINANCE CIRCULAR NO. 001 - 2022

**SUBJECT : GUIDELINES ON THE IMPOSITION OF LOCAL BUSINESS TAX,
FEES AND CHARGES TO SERVICE CONTRACTORS**

Section 1. Rationale and Objectives. This Circular is issued to address the concerns of taxpayers and local government units (LGUs) in the issuance of Mayor's or Business Permit and the imposition of local business tax, fees and charges to service contractors, in case there is no branch or sales office of such service contractor where its personnel are temporarily deployed to provide outsourced services to its client, including employees who are in a telecommuting or in a work-from-home (WFH) arrangement.

The objectives of this Circular are: (i) to clarify that a service contractor, providing temporary or outsourced personnel, in conjunction with the performance and fulfillment of its contractual obligation in an LGU where it has no branch or sales office, shall not be liable for a Mayor's or Business Permit Fee; and (ii) to ensure uniform application by cities and municipalities of the regulation and imposition of local business tax, fees and charges on a service contractor providing temporary and outsourced personnel.

Section 2. Legal Bases. This Circular is issued on the following legal bases:

2.1 Sections 147¹ and 151² of Republic Act (RA) No. 7160, or the Local Government Code of 1991 (LGC), as implemented by Articles 233³

¹ **Section 147. Fees and Charges.** – The municipality may impose and collect such reasonable fees and charges on business and occupation and, except as reserved to the province in Section 139 of this Code, on the practice of any profession or calling, commensurate with the cost of regulation, inspection and licensing before any person may engage in such business or occupation, or practice such profession or calling.

² **Section 151. Scope of Taxing Powers.** - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this code. The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

³ **Article 233. Fees and Charges.** — The municipality may impose and collect such reasonable fees and charges on businesses and occupations and, except as reserved to the province in Article 229 of this Rule, on the practice of any profession or calling before any person may engage in such business or occupation, or practice such profession or calling provided that such fees or charges shall only be commensurate to the cost of issuing the license or permit and the expenses incurred in the conduct of the necessary inspection or surveillance.

No such fee or charge shall be based on capital investment or gross sales or receipts of the person or business liable therefore.

and 244⁴ of the Implementing Rules and Regulations (IRR) of the LGC, respectively, provide that municipalities and cities may collect such reasonable fees and charges on business and occupations, which should be commensurate to the cost of issuing the license or permit and the expenses incurred in the conduct of the necessary inspection or surveillance;

2.2 Section 150 (a)⁵ of the LGC, as implemented by Article 243 (b)⁶ of its IRR, provide that businesses maintaining a branch or sales office elsewhere shall record the sales made in the branch or sales office in the LGU where the sale or transaction is made, and taxes shall be paid to the LGU where the said branch or sales offices is located. In the absence of any branch or sales office in the LGU where the sale or transaction is made, the sale shall be recorded in the principal office and taxes due thereon shall accrue and shall be paid to such LGU where the principal office is located; and

2.1 Article 287 of the IRR of the LGC authorizes the Secretary of Finance to formulate and prescribe procedures and guidelines under Rule XXX (Local Taxation), and Section 2, paragraph 3 of Executive Order (EO) No. 292, s. 1987 mandates the Department of Finance to supervise the revenue operations of all LGUs.

Section 3. Coverage. This Circular prescribes the guidelines applicable to cities and municipalities on the imposition of local business tax, fees and charges to a service contractor providing temporary and outsourced personnel for its clients.

⁴ **Article 244. Common Revenue-Raising Powers.** — Provinces, cities, municipalities, and barangays: (a) May impose and collect fees and service or user charges for any service rendered by LGUs in an amount reasonably commensurate to such service provided that no service charge shall be based on capital investments or gross sales or receipts of the persons or business liable therefore.

(b) Shall exercise the power to collect charges for services rendered by LGUs in connection with the operation of public utilities owned, operated, and maintained by them at rates to be fixed by the sanggunian concerned.

⁵ **Section 150. Situs of the Tax.** - (a) For purposes of collection of the taxes under Section 143 of this Code, manufacturers, assemblers, repackers, brewers, distillers, rectifiers and compounders of liquor, distilled spirits and wines, millers, producers, exporters, wholesalers, distributors, dealers, contractors, banks and other financial institutions, and other businesses, maintaining or operating branch or sales outlet elsewhere shall record the sale in the branch or sales outlet making the sale or transaction, and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located. In cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.

⁶ **Article 243. Situs of Tax.** - xxx...

(b) Sales Allocation —

(1) All sales made in a locality where there is a branch or sales office or warehouse shall be recorded in said branch or sales office or warehouse and the tax shall be payable to the city or municipality where the same is located.

(2) In cases where there is no such branch, sales office, or warehouse in the locality where the sale is made, the sale shall be recorded in the principal office along with the sales made by said principal office and the tax shall accrue to the city or municipality where said principal office is located. xxx...

Section 4. Definition of Terms. For purposes of this Circular, the following terms shall mean as follows:

- 4.1 **Administrative Office** refers to offices that house office departments such as, but not limited to, treasury, internal audit, administration, purchasing, and finance. It is neither a branch, sales, or project office and does not operate any aspect of its business or primary purposes nor does it handle the invoices or records of sales to its customers, nor are there any transactions or sales made thereat;
- 4.2 **Branch or Sales Office** refers to a fixed place in a locality that conducts operations of the business as an extension of the principal office. A warehouse, which accepts orders and/or issues sales invoices independent of a branch with a sales office shall be considered as a sales office⁷;
- 4.3 **Charge** refers to the pecuniary liability, as a rent or fees against a persons or property in exchange for the use or utility of a facility or service of the government⁸;
- 4.4 **Fee** refers to a charge fixed by law or ordinance for the regulation or inspection of a business or activity⁹;
- 4.5 **Principal Office** refers to the head or main office of the business appearing in the pertinent documents submitted to the Securities and Exchange Commission, or the Department of Trade and Industry, or other appropriate agencies, as the case may be¹⁰;
- 4.6 **Project Office** refers to an office used in administering the project or construction being undertaken in pursuit of the business which may not be a fixed place but one that may be transferred from one project site to another;
- 4.7 **Service Contractor** refers to persons, natural or juridical, not subject to professional tax under Section 139 of the LGC, whose activity consists essentially of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such

⁷ Article 243(a)(2) of the IRR of the LGC

⁸ Section 131(g) of the LGC

⁹ Section 131(l), LGC

¹⁰ Article 243(a)(1), IRR of the LGC of 1991

contractor or his employees¹¹, which includes, but is not limited to housekeeping, janitorial, messengerial, mailing, custodial management services, plant operations and maintenance management services, clinical equipment, repair and maintenance services, laundry and linen distribution management services, grounds care management services, security services, transportation services, electrical, plumbing and mechanical services;

- 4.8 **Telecommuting** refers to a work from an alternative workplace with the use of telecommunications and/or computer technologies¹²;
- 4.9 **Temporary** refers to that which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration¹³;
- 4.10 **Outsourced** means to procure something, such as some goods or services needed by a business or organization from outside sources and especially from foreign or nonunion suppliers, or to contract for work, jobs, etc., to be done by outside or foreign workers¹⁴; and
- 4.1 **Work-from-home (WFH)** refers to an output-oriented work arrangement that authorizes the worker to produce outputs/results and accomplishments outside of the office.¹⁵

Section 5. Guidelines on the Imposition of Local Business Tax, Fees and Charges to a Service Contractor

5.1 Local Business Tax (LBT)

- 5.1.1 All sales or transactions made by a service contractor in an LGU where there is no branch or sales office shall be recorded in its principal office, and the LBT due thereon shall be paid to the LGU where its principal office is located;
- 5.1.2 All sales or transactions made by a service contractor in an LGU where it has a branch or sales office shall be recorded in the

¹¹ Article 220 (h), IRR of the LGC of 1991

¹² Section 3, RA No. 11165

¹³ Black's Law Dictionary, Fourth Edition

¹⁴ Merriam-Webster. (n.d.). Outsource. In Merriam-Webster.com dictionary. Retrieved August 25, 2022, from <https://www.merriam-webster.com/dictionary/outsource>

¹⁵ Civil Service Commission Memorandum Circular No. 10, s. 2020 dated 07 May 2020

said branch or sales office, and the LBT due thereon shall be paid to the LGU where such branch or sales office is located;

5.1.3 Personnel deployed by a service contractor to its client shall not be liable to pay LBT to the LGU where it is being deployed; and

5.1.4 Employees who are telecommuting or in a WFH arrangement shall not be liable to pay LBT to the LGU where it is telecommuting or working-from-home.

5.2 Mayor's or Business Permit Fee

5.2.1 **Imposition of Mayor's or Business Permit Fee.** Service contractor maintaining a principal office, branch or sales office, project office, administrative office, and other similar offices in relation to its business shall be liable to pay the Mayor's or Business Permit fee, as provided under a duly enacted ordinance of the LGU concerned.

5.2.2 **Mayor's or Business Permit Fee.** Service contractor providing temporary and outsourced personnel, including personnel who are in a telecommuting or in a WFH arrangement, for its client in an LGU where it does not maintain any office, shall not be liable to pay Mayor's or Business Permit Fee.

5.3 **Occupation Permit Fees.** Cities and municipalities, where temporary and outsourced personnel are deployed by the service contractor, may impose and collect occupation fees on every personnel who will be engaged in the practice of the occupation or calling not requiring government examination.¹⁶ The concerned service contractor shall annually submit the list of outsourced personnel deployed in the LGU for purposes of collecting occupation permit fees.

While temporary and outsourced personnel who are in a telecommuting or in a WFH arrangement may be subject to occupation fees where its principal or branch office is located.

However, individuals who already paid their professional tax in their respective principal offices, as provided in Section 139¹⁷ of

¹⁶ Section 147, LGC of 1991

¹⁷ Section 139. *Professional Tax.* – xxx...

the LGC, are exempted from the imposition and collections of occupation fees.

- 5.4 **Other Fees and Charges.** The principal office, branch or sales office, project office, and administrative office of a service contractor are subject to the regulation and imposition of fees and charges by the city or municipality where such offices are located to recover the cost of services that the LGU may render as a function of regulation and/or service provision, and as may be provided under a duly enacted local ordinance.¹⁸

Section 6. Compliance Monitoring. Cities and municipalities are enjoined to comply with the provisions herein established. The Bureau of Local Government Finance (BLGF) shall monitor the compliance of the LGUs, through the concerned local treasurers, and provide the necessary technical assistance to local governments for the purpose.

Section 7. Separability Clause. If any provision, section or part of this Circular shall be suspended, revoked or declared invalid by a competent authority, all other provisions, sections, or parts hereof not affected thereby shall continue to be in full force and effect.

Section 8. Repealing Clause. All opinions, rulings and issuances that are contrary to or inconsistent herewith are hereby repealed or modified accordingly.

Section 9. Effectivity. This Circular shall take effect fifteen (15) days after its filing with the Office of the National Administrative Register of the University of the Philippines Law Center.



BENJAMIN E. DIOKNO
Secretary of Finance

SEP 01 2022

(b) Every person legally authorized to practice his profession shall pay the professional tax to the province where he practices his profession or where he maintains his principal office in case he practices his profession in several places: Provided, however, That such person who has paid the corresponding professional tax shall be entitled to practice his profession in any part of the Philippines without being subjected to any other national or local tax, license, or fee for the practice of such profession.

¹⁸ Section 147, LGC of 1991