

Republic of the Philippines PROVINCE OF CAGAYAN Tuguegarao City



NINTH CITY COUNCIL

EXCERPTS FROM THE MINUTES OF THE 127th REGULAR SESSION OF THE NINTH CITY COUNCIL OF TUGUEGARAO CITY, CAGAYAN HELD ON FEBRUARY 25, 2025 (TUESDAY), 9:00 A.M., AT THE SANGGUNIANG PANLUNGSOD SESSION HALL

PRESENT:

Hon. Jude T. Bayona

Hon. Mark Angelo B. Dayag

Hon. Ronaldo S. Ortiz

Hon. Imogen Claire M. Callangan

Hon. Gilbert S. Labang

Hon. Karina S. Gauani-Viernes

Hon. Arnel T. Arugay

Hon. Grace B. Arago

Hon. Tirso V. Mangada

Hon. Marc Aldous C. Baccay

Hon. Restituto C. Ramirez

Hon. Cerene Pearl T. Quilang

Sangguniang Panlungsod Member/Temporary Presiding Officer

Sangguniang Panlungsod Member

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Sangguniang Panlungsod Member (via Teleconferencing)

Sangguniang Panlungsod Member

Sangguniang Panlungsod Member (via Teleconferencing)

Sangguniang Panlungsod Member

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Ex Officio Member

-do-

ABSENT:

Hon. Bienvenido C. De Guzman II Hon. Maria Rosario B. Soriano

Hon. Mary Marjorie P. Martin-Chan

City Vice Mayor (on Official Business)

Sangguniang Panlungsod Member (on Leave)

Sangguniang Panlungsod Member (on Official Business)

CITY RESOLUTION NO. 146-09-2025

RESOLUTION ADOPTING AND APPROVING THE COMMITTEE OF THE WHOLE (INVESTIGATING BODY) REPORT/DECISION ON ADMINISTRATIVE CASE NO. 02-2024 TITLED: "VERIFIED AND NOTARIZED COMPLAINTAFFIDAVIT OF MS. MARIVIC MAGGAY AGAINST PUNONG BARANGAY AARON BINARAO AND BARANGAY KAGAWAD REMALYN ADDUN OF UGAC SUR FOR ABUSE OF AUTHORITY/CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, OPPRESSION"

WHEREAS, on January 08, 2024, a decision on Administrative Case No. 02-2024 has been rendered by the Committee of the Whole, a copy of which is hereto attached and made an integral part of this Resolution;

WHEREAS, the Ninth City Council acting as collegial administrative body rendered a decision based on the merits of the case presented taking into considerations the weight of the evidence submitted and the applicable existing laws and jurisprudence.

WHEREAS, the findings, issues and decision in the afore-quoted Administrative Case No. 02-2024 titled: "Verified and Notarized Complaint-Affidavit of Ms. Marivic Maggay against Punong Barangay Aaron Binarao and Barangay Kagawad Remalyn Addun of Ugac Sur for Abuse of Authority/Conduct Prejudicial to the Best Interest of the Service, Oppression" are in accordance and pursuant to law and jurisprudence";

WHEREAS, on joint motion, this Resolution adopting and approving the aforementioned Committee of the Whole (Investigating Body) Report/Decision on Administrative Case No. 02-2024 dated January 08, 2024 is hereby adopted and approved.

NOW, THEREFORE, RESOLVE, as it is hereby RESOLVED, to approve the Resolution of the Committee of the Whole/Investigating Body) in its Committee Report/Decision dated January 08, 2024 on Administrative Case No. 02-2024 titled: "Verified and Notarized Complaint-Affidavit of Ms. Marivic

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Maggay against Punong Barangay Aaron Binarao and Barangay Kagawad Remalyn Addun of Ugac Sur for abuse of authority/ conduct prejudicial to the best interest of the service, oppression".

On motion of Hon. Baccay and with the abstention of Hon. Arugay, CITY RESOLUTION NO. 146-09-2025 was APPROVED.

X-X-X

I HEREBY CERTIFY TO THE CORRECTNESS OF THE FOREGOING:

ATTY. GINNE T. VILLACORTE

Local Legislative Staff Officer V

OIC - Assistant Secretary to the Sanggunian

ATTESTED:

HON. JUDE T BAYONA Temporary Presiding Officer Date:

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REPUBLIC OF THE PHILIPPINES

PROVINCE OF CAGAYAN TUGUEGARAO CITY

NINTH CITY COUNCIL

MARIVIC MAGGAY, Complainant,

-versus-

ADM. CASE No. 02-2024 For: Abuse of Authority/ Conduct Prejudicial to the Best Interest of the Service, Oppression

AARON BINARAO and REMALYN ADDUN,

Respondents.

X-----X

Complainant Marivic Maggay, filed her complaint- affidavit against Brgy. Chairman Aaron Binarao (Brgy. Chairman Binarao) and Brgy. Sangguniang Member Remalyn Addun of Ugac Sur, with the Office of the S.P. Secretariat, on February 7, 2017 which was received by the said office on the same date.

DECISION

A barangay utility worker is an employee of the barangay appointed by the Barangay Chairman. The following provision of the Local Government Code of 1991 governs the appointment and dismissal of those who are appointed by the Punong Barangay;

SECTION 389. Chief Executive: Powers, Duties, and Functions. - (xxx)

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

(xxxx)

(5) Upon approval by a majority of all the members of the Sangguniang barangay, appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials;

From the foregoing, the appointment by the Punong Barangay of appointive barangay officials requires the approval of a majority of all the members of the Sangguniang barangay. However, unlike the Barangay Treasurer and the Barangay Secretary which have specific provisions that governs their removal, the barangay utility worker is sui generis. Although appointed by the Punong Barangay, a barangay utility worker is not covered by the foregoing provisions.

In the case of Ramon Alquizola, et. al., vs. Gallardo Ocol, et. al.1, the court held that:

¹ G.R. No. 132413, August 27, 1999

Aside from what may be implicit in Section 389, there is no other provision in the Local Government Code that treats of the power of the Punong Barangay to remove the barangay secretary, the barangay treasurer, or any other appointive barangay official from office. The duration of the term of office of these barangay officials have not been fixed by the Local Government Code. Where the tenure of the office is not fixed by law, it is a sound and useful rule to consider the power of removal as being an incident to the power of appointment. Elsewise stated, the power to remove is deemed implied in the power to appoint.

The Code explicitly vests on the punong barangay, upon approval by a majority of all the members of the sangguniang barangay, the power to appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials. (xxx)

Verily, the power of appointment is to be exercised conjointly by the punong barangay and a majority of all the members of the sangguniang barangay. Without such conjoint action, neither an appointment nor a replacement can be effectual

However, the said provisions governing appointive officials did not specifically state the inclusions of Barangay Utility Workers. By Statutory construction, we cannot simply infer from the said provisions that the Utility Workers can be removed in the same manner.

It has been a long-standing practice in the Barangay Level that hiring of Utility Workers are subject to the sole discretion of the Punong Barangay. Distinct from the nature of Barangay Treasurer and Barangay Secretary, Utility workers provides a different type of support. They provide service aide which include waste management, maintenance of Public-Utilities, and all other services that tends to provide additional support to the Barangay Officials.

While looking at factual antecedents of the case and the result of further investigation, it can be concluded that the process of her removal must be done in the same manner that the said employee was hired. The doctrine of necessary inference entails that the power to appoint carries with the power to remove. In this instant case, the petitioner was appointed by the Punong Barangay alone and through his discretion, it can be inferred that the removal may be made in the same manner.

While Ms. Maggay has failed to raise as issue in her complaint- affidavit the procedural aspect of her dismissal from service, this Body cannot render a decision on this case without making a discussion on the above- cited provision of the Local Government Code of 1991.

It bears stressing that Brgy. Chairman Binarao admitted that Ms. Maggay was dismissed from service and that he never denied in his counter- affidavit the manner on how Ms. Maggay was dismissed from service, as stated in her complaint- affidavit. In fact, it was even stated in their counter- affidavit, particularly paragraph 3a thereof, that Ms. Maggay is indeed a responsible barangay utility worker.

In his counter- affidavit, Brgy. Chairman Binarao has cited multiple complaints from other employees of the baranagay relative to the complainant's negative attitude, as among his reasons in removing Ms. Maggay as Barangay Utility Worker. However, he failed to present evidence that indeed there were complaints against Ms. Maggay's attitude and that he has acted on those complaints. It is worth noting, however, that the Respondents in their Counter-Affidavit attached affidavits of witnesses (Annex 1 and Annex 2) attesting to the toxic behavior of the Complainant towards residents and barangay officials of Brgy. Ugac Sur.

With the foregoing considerations, the act of Brgy. Chairman Binarao and Sangguniang Barangay member Addun alone does not constitute abuse of authority, conduct prejudicial to the best interest of service and oppression.

Abuse of Authority has been defined in DILG Legal Opinion No. 11, s. 2006 as a denial of justice when discretion, by virtue of one's position, has not been justly and properly exercised and it signifies the use of that discretion in such a way as to deprive a person of his right or of the remedy to protect or enforce such right. There is thus a necessity for actual investigation to determine whether or not discretion by virtue of one's official position has been justly exercised.

Absent any finding that the discretion of Brgy. Chairman Binarao has been unjustly exercised when she terminated Ms. Maggay, he cannot be charged of Abuse of Authority.

Also, in Hon. Paquito Ochoa, et. Al,. vs. Atty. Dy buco², the court has defined Grave Abuse of Authority and Oppression "as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury constituting an act of cruelty, severity or excessive use of authority.

In the case of Cruz vs. Pandacan Hikers et.Al.³, the court has held that the administrative offense of conduct prejudicial to the interest of the service is committed when the questioned conduct tarnished the image and integrity of the officer's public office; the conduct need not be related or connected to the public officer's official functions for the said officer to be meted the corresponding penalty.

It further stated that the basis for such liability is Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, particularly Section 4 (c) thereof, which ordains that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to public safety and public interest.

In the case of Office of the Ombudsman vs. Caberoy⁴, the court has defined oppression "as grave abuse of authority, which is a misdemeanor committed by a public officer, who under color of his office, wrongfully inflict upon any person any bodily harm, imprisonment, or other injury. It is an act of cruelty, severity, or excessive use of authority."

To be held administratively liable for Oppression or Grave Abuse of Authority, there must be substantial evidence presented proving the complainant's allegations.⁵

Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. ⁶

Upon perusal of the pertinent documents it shows that the petitioner has only presented self-serving testimony which does not suffice to hold said respondents liable for Gross Misconduct, Conduct Prejudicial to the Best Interest of the Service and Abuse of Authority.

There was no substantial evidence presented against the respondents to show that they have acted with grave abuse of authority, conduct prejudicial to the best interest of service and oppression.

Consequently, the Ninth (9th) City Council acting as collegial Administrative Body, can only decide base on the merits of the case and on the weight of the evidence presented. It cannot rule merely based on the allegations presented in the complaint. Although in administrative cases, the quantum of evidence required is merely substantial, this does not deviate from the basic principle

² G.R. No. 216634, October 14, 2020

³ G.R. No. 188213, January 11, 2016

⁴ G.R. No. 188066, October 22, 2014, citing Romero vs. Villarosa, Jr., A.M. No. P-11-2913, April 12, 2011, 648 SCRA 32

⁵ Office of the Ombudsman vs. Caberoy, G.R. No. 188066, October 22, 2014, citing Nedia vs. Judge Lavina, 508 Phil. 9, 19 (2005)

⁶ Office of the Ombudsman vs. Caberoy, G.R. No. 188066, October 22, 2014, citing Miro vs. Mendoza Vda. De Erederos, G.R. Nos. 172532 and 172544-45, November 20, 2013, 710 SCRA 371, 388

that there must be sufficiency of evidence in character, weight, or amount, as will legally justify the judicial action demanded or prayed by the parties.

WHEREFORE, Premises considered, it is the recommendation of the Committee of the Whole (Investigating Body) that based on the foregoing facts and applicable laws, the administrative case for Abuse of Authority/ Conduct Prejudicial to the Best Interest of the Service, Oppression filed against **RESPONDENT AARON BINARAO** is hereby **DISMISSED** for lack of merit.

As to Respondent **REMALYN ADDUN**, Sangguniang Barangay Member, the Committee of the Whole finds no basis in holding her liable for the offenses being charged against her. Hence the administrative body recommends for the **DISMISSAL** of the said complaint.

CO	ORDERED.
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Tuguegarao City, Cagayan. January 8, 2025

HON. BIENVENIDO C. DE GUZMAN II City Vice Mayor/Chairman

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HON. MARK ANGELO B. DAYAG Member	HON. MARIA ROSARIO B. SORIANO Member
HON. RONALD'S. ORTIZ HON	MARY MARJORIE P. MARTIN-CHAN Member
HON. IMOGEN CLAIRE M. CALLANGAN Member	HON. GILBERTS. LABANG Member
HON. JUDE T BAYONA	HON. KARINA S. GAUANI-VIERNES
Member Member	Member
HON. ARNEL T. ARUGAY Member	HON. GRACE B. ARAGO Member
HON. TIRSO V. MANGADA Member	HON. MARC ALDOUS C. BACCAY Member
HON. RESTITUTO C. RAMIREZ Member	HON. CEREME PEARL T. QUILANG Member