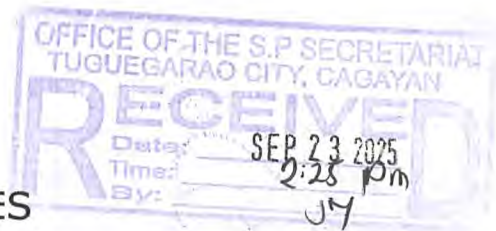


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REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA

**HON. MAILA ROSARIO S.
TING-QUE,**
Petitioner-Appellee,

-versus-

CA-G.R No. CV-125375

**SANGGUNIANG
PANLUNGSOD OF
TUGUEGARAO CITY,**
Respondent-Appellant.
X-----X

COMMENT

The **OFFICE OF THE SOLICITOR GENERAL (OSG)**, in compliance with Notice dated April 14, 2025, respectfully submits this comment in lieu of its appellant's brief.

STATEMENT OF THE FACTS AND OF THE CASE

1. On March 21, 2005, appellant Sangguniang Panlungsod of Tuguegarao City passed City Ordinance No. 01-2005, or *the Tuguegarao City Public Market Code of 2005*.¹

2. On June 7, 2022, the appellant passed City Ordinance No. 43-08-2022 or *an Ordinance Amending Sections 17, 22, 23, and 26, Chapter IV and Sections 2.3 and 2.5 of the Contract of Lease of City Ordinance No. 23-2018, Otherwise known as the Amended Tuguegarao City Market Code of 2005*. City Ordinance No. 43-08-2022 was approved on June 10, 2022.²

¹ RTC Resolution dated May 31, 2014, p. 1; Petition dated April 2023, p. 3; Annex "A" of the Petition (City Ordinance No. 01-2005).

² RTC Resolution dated May 31, 2014, p. 2; Petition, *supra*, pp. 2-3; Annex "B" of the Petition (City Ordinance No. 43-08-2022).

3. Subsequently, appellee Maila Rosario S. Ting-Que, Mayor of Tuguegarao City, filed before the Regional Trial Court (RTC) of Tuguegarao City a petition for declaratory relief seeking to nullify Section 1 of City Ordinance No. 43-08-2022 for being contrary to Republic Act (RA) No. 7160, *the Local Government Code*.³

4. On August 14, 2023, the OSG filed its comment on the petition, in compliance with Order dated June 1, 2023 of the RTC of Tuguegarao City.⁴

5. On May 31, 2024, the RTC of Tuguegarao City granted the petition for declaratory relief and declared Section 1 of City Ordinance No. 43-08-2022 void. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the petition is granted and Section 1 of City Ordinance No. 43-08-2022 is declared invalid for being *ultra vires*.⁵

6. Aggrieved, the appellant filed the present appeal alleging that the trial court erred in granting the petition for declaratory relief.

7. On April 14, 2025, this Honorable Court ordered the OSG to file its appellant's brief.

8. Considering that in a petition for declaratory relief, the OSG is only notified to be heard on the matter, it respectfully submits this comment, in lieu of its appellant's brief.⁶

³ Petition, *supra*, pp. 16-18.

⁴ Comment dated August 13, 2023.

⁵ RTC Resolution, *supra*, p. 72.

⁶ Under Section 3, Rule 63 of the Rules of Court, in action for declaratory relief, the Solicitor General is notified to be heard but not to represent any party. Thus:

Section 3. Notice on Solicitor General. — In any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation, the Solicitor General shall be notified by the party assailing the same and shall be entitled to be heard upon such question.

DISCUSSION

THE CITY MAYOR RETAINS
SUPERVISION AND
CONTROL OVER THE
PUBLIC MARKETS.

9. In nullifying Section 1 of City Ordinance No. 43-08-2022 amending City Ordinance No. 01-2005,⁷ the trial court determined that the appellant essentially vested the exercise of an executive power to the members of the Sanggunian Panlungsod.

10. The City Mayor, however, retains supervision and control over the public market. Section 1 of the assailed city ordinance replaced the City Mayor as the chairman of the market committee to the City Administrator. It created the position of vice-chairman position and provided that the Chair on Agriculture and Food, Market and Livestock Auction Center as vice-chair, and added the Chair of the Committee on Ways and Means as member. Thus:

Section 1. First Paragraph of Section 17, Chapter IV on Awarding of Stalls is hereby amended to read as follows:

There is hereby created a permanent MARKET COMMITTEE to be composed of the following:

- | | | |
|------------|---|--|
| Chair | : | City Administrator |
| Vice Chair | : | Chair, Committee on Agriculture and Food, Market and Livestock Auction Center |
| Members | : | <ul style="list-style-type: none">- Chair, Committee on Ways and Means- City Treasurer- Market Administrator- President, Market Vendors Association for Tuguegarao City Public Market (Don Domingo)- President, Multi-Purpose Cooperative for Tuguegarao City Commercial Center- Two other members from the |

⁷ Tuguegarao City Market Code of 2005.

Sangguniang Panlungsod to be
voted upon in plenary by the City
Council

Section 17 (2) shall read: Certify to the City Mayor the
result thereof for the award of the stall.

Section 17 (5) shall read: the Chairman is not allowed
to vote, except to break a tie in case there is a violation on
any matter to be decided by the Tuguegarao City Market
Committee.

11. The appointment of the City Administrator did not
remove the supervision and control of the public market from
the City Mayor.

12. Pertinently, the Local Government Code (LGC)
provides that local government units shall discharge the
functions for the efficient basic services, including the public
market:

Section 17. *Basic Services and Facilities.* -

(a) Local government units shall endeavor to be self-
reliant and shall continue exercising the powers and
discharging the duties and functions currently vested
upon them. They shall also discharge the functions and
responsibilities of national agencies and offices devolved
to them pursuant to this Code. Local government units
shall likewise exercise such other powers and discharge
such other functions and responsibilities as are
necessary, appropriate, or incidental to efficient and
effective provisions of the basic services and facilities
enumerated herein.

(b) Such basic services and facilities include, but are
not limited to, the following:...

(2) For a Municipality:...

(ix) Public markets, slaughterhouses and
other municipal enterprises;...

4) For a City:

All the services and facilities of the municipality and
province, and in addition thereto, the following:

13. Relatedly, Section 455 of the LGC provides that City Mayor exercises general supervision and control over all services of the city by ensuring the delivery of basic services under Section 17 of the Code, which includes the public market:

Section 455. Chief Executive; Powers, Duties and Compensation.

(a) The city mayor, as chief executive of the city government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

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

(1) Exercise general supervision and control over all programs, projects, services, and activities of the city government. and in this connection, shall:..

(4) Ensure the delivery of basic services and the provision of adequate facilities as provided for under Section 17 of this Code and...

14. Thus, the Tuguegarao Market Code of 2005 vests in the City Mayor the power of supervision, administration, and control of public markets, to wit:

Section 7. CITY MAYOR – The City Mayor shall exercise direct and immediate supervision and control over the public market and the personnel thereof, including those duties concerning the maintenance, upkeep, peace and order of the market premises in accordance with laws, local ordinances and other rules and/or regulations pertinent thereto.

15. The Tuguegarao Market Code also created a Market Committee tasked with the following duties:

CHAPTER IV AWARDING OF STALLS

Section 17: MARKET COMMITTEE...

The Committee shall have the following duties:

1. Conduct the drawing of lots and opening for the adjudication of vacant or newly- constructed stalls or booths in the public market,

2. Certify to the City Mayor for the result thereof,

3. Adjudicate the transfer of stallholders from one section to another, or from one stall to another, and;

4. Recommend to the City Mayor such measures or actions as maybe necessary in the resolution of problems in connection with the occupancy of stalls, booths or spaces in the public market.

16. The removal of the City Mayor as chairman of the market committee in the assailed ordinance did not remove the mayor's power of supervision and control over the public markets.

17. Under the Administrative Code, supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs.⁸

18. Pursuant to the city ordinance of Tuguegarao City, the City Mayor retains supervision and control of public markets.⁹ Even the market committee is tasked to recommend to the City Mayor such measures and actions necessary for the resolution of problems in connection with the occupancy of stalls, booths or spaces in the public market.¹⁰ In addition, the following provisions of the Tuguegarao City Market Code of 2005 showed that the City Mayor retains the power of control of supervision over the public markets:

⁸ Chapter 7, Book IV, E.O. No. 292, Administrative Code of 1987.

⁹ Section 7 of City Ordinance No. 01-2005.

¹⁰ Section 17(4) of City Ordinance No. 01-2005.

Section 42. LIMITATIONS. Stallholders shall not be allowed to occupy stalls or spaces other than those leased to them, and it shall be the duty of the Market Master or his authorized representative to see to it that the stallholders do not occupy stalls or spaces.

No stallholder/person in the Tuguegarao public market shall construct, repair, renovate or undertake any kind of construction of stalls without first **securing a permit therefor from the City Mayor**. Stalls constructed/repared or renovated in violation of this section **may summarily be removed or destroyed by the City Mayor** or his agents and/or employees.

Section 46. ABANDONED STALLS/ARTICLES. Any stall/booth in the city market which have been closed for thirty (30) consecutive days shall be **automatically closed by the City Mayor**.

Any articles abandoned in the city market in violation of any provisions of this code shall be deemed a nuisance, and it shall be the duty of the Market Master and his subordinates to take custody thereof. In case the articles are claimed within twenty four (24) hours thereafter, they shall be returned to their owners upon payment of actual expenses incurred in their safekeeping unless they have so deteriorated as to constitute a menace to public health, in which case, they shall be **disposed of in the manner directed by the City Mayor**, who may also, at **his discretion, cause the criminal prosecution of the guilty party, or merely warn him against future violation**. If the articles have not deteriorated and are not claimed within the time herein fixed, said articles shall be sold at public auction, and the proceeds thereof disposed of in accordance with law...

CHAPTER VII PENAL PROVISIONS

Section 74. CANCELLATION OF CONTRACT OF LEASE AND EJECTMENT. Likewise, any stallholder or Lessee, who habitually fails to pay the monthly or daily fees herein prescribed or such other regulatory fees mandated by this Ordinance and by other existing laws and ordinances, or violates any provision of this code shall be sufficient cause for the revocation of his lease right and his ejectment from the market stall or space so occupied. **The revocation or cancellation of such lease right maybe effected by the City Mayor** after observance of due process.

19. The City Mayor therefore retains supervision and control over the public markets.

20. Consequently, the assailed city ordinance did not place the executive function of the market committee under the legislative department of Tuguegarao City by the inclusion of members of Sangguniang Panlungsod.

21. Under the assailed resolution, the Chair of the Committee on Agriculture and Food, Market and Livestock Auction Center shall serve as the Vice Chairman and the Chair of the Committee on Ways and Means was added as a member of the market committee in addition to the two members of the Sangguniang Panlungsod who were already members under the old ordinance.

22. In fine, the Chair of the Committee on Agriculture and Food, Market and Livestock Auction Center and the Chair of the Committee on Ways and Means holds position in the market committee in relation to their primary function as allowed under Section 94 of the LGC:

Section 94. Appointment of Elective and Appointive Local Officials; Candidates Who Lost in an Election. - (a) No elective or appointive local official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no elective or appointive local official shall hold any other office or employment in the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

PRAYER

The Office of the Solicitor General consequently prays that the instant comment be deemed a sufficient **COMPLIANCE** with Notice dated April 14, 2025.

Makati City, September 8, 2025.

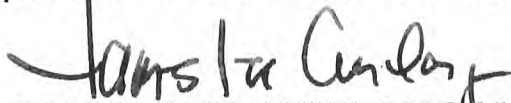
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X-----X

EXPLANATION

Service on the other parties is being done by registered mail due to distance.



LILIAN C. ABENOJAR
Senior State Solicitor

VERIFIED DECLARATION

I, **LILIAN C. ABENOJAR**, hereby declare that the documents hereto submitted electronically in accordance with the Guidelines on Submission of Electronic Copies of Pleadings and other Court Submissions Being Filed Before the Lower Courts is /are complete and true copy/ies of the documents filed by personal filing with the CA-Manila.

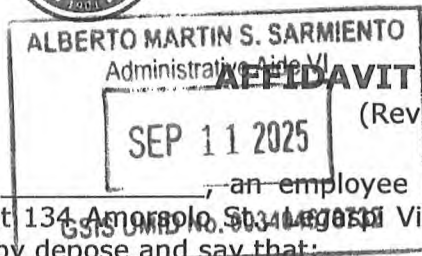

LILIAN C. ABENOJAR
Senior State Solicitor
11 SEP 2025

SUBSCRIBED AND SWORN to before me on this 11 SEP 2025,
affiant exhibiting her competent evidence of identity: Employee
No. 2008-11001.


GIFT S. MOHAMETANO
State Solicitor I



Republic of the Philippines
OFFICE OF THE SOLICITOR GENERAL



AFFIDAVIT OF SERVICE AND FILING

(Revised as of March 2024)

I, Alberto Martin S. Sarmiento, an employee of the OFFICE OF THE SOLICITOR GENERAL, with office address at 134 Amoroso St., Village Makati City, after being sworn to in accordance with law, hereby depose and say that:

On, _____, I served and filed the following pleading, motion, paper, or other court submission:

NATURE OF PLEADING

COMMENT

In case no. **CA-G.R No. CV-125375**, entitled **HON. MAILA ROSARIO S. TING-QUE v. SANGGUNIANG PANLUNGSOD OF TUGUEGARAO CITY** pursuant to Sections 3, 4, 5, 6, 7, 8, and 9, Rule 13 of the Rules of Court, as amended by Supreme Court Administrative Matter (A.M.) No. 19-10-20-SC 2019, entitled the *"Proposed Amendments to the 1997 Rules of Civil Procedure."*

A. By electronic mail or other electronic means to:

A. Electronic service -

☐ By serving a Portable Document Format (PDF) copy.

B. Electronic filing -

☐ By filing a Portable Document Format (PDF) copy.

B. By registered or ordinary mail to:

ATTY. MAT J. MOLINA

Molina Law Office
2/F Josh Building, Maharlika Highway
Caggay, Tuguegarao City
Email: molina_mat@yahoo.com

BIENVENIDO C. DE GUZMAN II

3rd Floor, Vice-Mayor's Office
City Hall Building, Enrile Boulevard
Tuguegarao City

SANGGUNIANG PANLUNGSOD OF TUGUEGARAO CITY

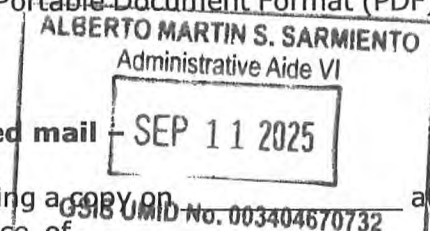
City Hall
Enrile Boulevard, Carig Sur
Tuguegarao City

A. Registered mail -

☒ By depositing a copy on _____ at the Post Office of _____, as evidenced by Registry Receipt No. _____ hereto attached and indicated after the names of the addressees, and with instruction to the postmaster to return the mail to the sender after (10) days if undelivered

B. Ordinary mail -

☐ By serving a copy through ordinary mail on _____



C. By accredited courier to:

☐ By depositing a copy at _____ an accredited courier, on _____

D. By personal service or filing to:

A. Personal service -

☐ By delivering a copy to the party or his or her counsel of record or their authorized representative named in the appropriate pleading _____ or _____ motion _____ on _____, OR

☐ By leaving a copy in his/her office with his or her clerk or with a person having charge thereof on _____, OR

☐ By leaving a copy at the party's or counsel's last known residence with a person of sufficient age and discretion residing therein.

B. Personal filing -

☒ By submitting or filing the original to the court/tribunal.

COURT OF APPEALS
manila

Makati City, Philippines



SUBSCRIBED AND SWORN to before me this _____ of _____ at Makati City, Philippines. Affiant exhibiting to me his or her _____ issued on _____ at _____ City.


GIFT S. MOHAMEDTANO
STATE SOLICITOR
Officer Administering Oath, OSG