

Republic of the Philippines
Province of Bukidnon
CITY OF MALAYBALAY

* * *

Office of the Sangguniang Panlungsod

EXCERPT FROM THE MINUTES OF THE 16TH REGULAR SESSION FOR CY 2017 OF THE 7TH SANGGUNIANG PANLUNGSOD OF THE CITY OF MALAYBALAY, BUKIDNON HELD AT THE SP SESSION HALL ON MAY 9, 2017.

PRESENT: Hon. City Vice Mayor Roland F. Deticio
Hon. City Councilor Jay Warren R. Pabillaran
Hon. City Councilor Lorenzo L. Dinlayan, Jr.
Hon. City Councilor Hollis C. Monsanto
Hon. City Councilor Rendon P. Sangalang
Hon. City Councilor Anthony Canuto G. Barroso
Hon. City Councilor Provo B. Antipasado, Jr.
Hon. City Councilor Jaime P. Gellor, Jr., Temporary Presiding Officer
Hon. City Councilor Louel M. Tortola
Hon. City Councilor Manuel M. Evangelista, Sr.
Hon. City Councilor Bede Blaise S. Omao-Maghilum

ABSENT : Hon. City Councilor George D. Damasco, Sr. (On Leave)
Hon. City Councilor Nicolas C. Jurolan (Official Business)

ORDINANCE NO. 885
Series of 2017

Sponsored by: Hon. Rendon P. Sangalang
Hon. Provo B. Antipasado, Jr.

AN ORDINANCE REVISING THE SMOKE-FREE ORDINANCE OF THE CITY OF MALAYBALAY

WHEREAS, the 1987 Constitution of the Republic of the Philippines declares that the State shall protect and promote the right to health of the people and instill health consciousness among them;¹

WHEREAS, the Republic of the Philippines, under the World Health Organization Framework Convention on Tobacco Control (FCTC) to which she is a party, 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,¹ and agreed to implement the measures provided in the treaty;

WHEREAS, the Local Government Code of 1991 (Republic Act No. 7160) accords every local government unit power and authority to promote the general welfare within its territorial jurisdiction, including the promotion of health and safety of its constituents;¹

¹ Article II, Section 15.

WHEREAS, the Philippine Clean Air Act of 1999 (Republic Act No. 8749) declares the right of every citizen to breathe clean air,² prohibits smoking inside enclosed public places including public vehicles and other means of transport, and directs local government units to implement this provision;³

WHEREAS, the Tobacco Regulation Act of 2003 (Republic Act No. 9211) prohibits smoking in certain public places⁴ whether enclosed or outdoors in certain places; prohibits the purchase and sale of cigarettes and other tobacco products to and by minors and in certain places frequented by minors;⁵ imposes bans and restrictions on advertising, promotion and sponsorship activities of tobacco companies;⁶ and directs local government units to implement these provisions;

WHEREAS, the Civil Service Commission Memorandum (CSC) Circular No. 17 series of 2009 prohibits smoking in premises, buildings, and grounds of government agencies providing health, education or social welfare and development services such as hospitals, health centers, schools and universities and colleges; provides for specific requirements for designated smoking areas;

WHEREAS, the Land Transportation Franchising and Regulatory Board (LTFRB) Memorandum Circular 2009-036 provides that drivers and operators of public utility vehicles are responsible for preventing smoking in public conveyances and posting specified "No Smoking" signs in their vehicles;

WHEREAS, the City of Malaybalay recognizes that local governments must act with urgency to denormalize the culture of smoking and tobacco consumption through comprehensive and proven effective tobacco control measures;

WHEREAS, the Civil Service Commission-Department of Health Joint Memorandum Circular No. 2010-01 prohibits government officials and personnel from interacting with the tobacco industry and those representing their interests unless strictly necessary to effectively regulate, control, or supervise them, and its guidelines shall be adhere to strictly;

WHEREAS, the City of Malaybalay recognizes the fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy, and realizes the need to be alert, be informed and neutralize any efforts by the tobacco industry to undermine, challenge or subvert tobacco control efforts through bribery, intimidation and interference in local health policy implementation;

WHEREAS, scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability; lead to devastating health, social, economic and environmental consequences; and places burdens on families, on the poor, and on national and local health systems;⁷

WHEREAS, the enjoyment of the highest attainable standard of health is a fundamental right of every human being, and that public health takes precedence over any commercial or business interest;

WHEREAS, an increasing number of Filipinos become afflicted with and die each year of tobacco-related diseases such as stroke, heart disease, emphysema, various cancers, and nicotine addiction, among others, and both the public and workers in facilities where smoking is allowed are most at risk from these and other tobacco-related diseases;

WHEREAS, scientific evidence has shown that there is no safe level of exposure to tobacco smoke; that effective measures to protect from exposure to it, under *Article 8* of the FCTC, requires the total elimination of smoking and tobacco smoke; and that approaches other than 100% smoke-free

² Preamble.

³ Section 16.

⁴ Section 4.

⁵ Section 24.

⁶ See Section 5.

⁷ See Sections 9 to 12.

⁸ See Sections 13 to 27.

⁹ Preamble, FCTC; Article 8.1, FCTC.

environments, including ventilation, air filtration and the use of designated smoking areas (whether or not with separate ventilation systems) have repeatedly been shown to be ineffective;¹⁰

WHEREAS, the WHO stated that evidence suggests that exhaled e-cigarette aerosol increases the background air level of some toxicants, nicotine and particles. Reports show other harms in terms of electrical or mechanical malfunctions such as explosions or leakage, as well as accidental ingestions of the e-liquid or e-juice. Its other potential risks, in addition to addiction to nicotine, has not been fully determined and may pose further threat to public health.

WHEREAS, it is well documented that tobacco advertising, promotion and sponsorship (TAPS) increase tobacco use, and that comprehensive bans on TAPS decrease tobacco use. Studies show that minors exposed to TAPS are also likely to initiate tobacco use. While it is the main thrust of RA 9211 to regulate and subsequently ban all tobacco advertisements and sponsorships¹¹, the provisions only provided a transition by way of partial bans and restrictions, and still continue to expose minors to tobacco advertising and promotions, often at point-of-sale and outdoors. An effective ban on tobacco advertising, promotion and sponsorship should, as recognized by Parties to the FCTC in *Articles 13.1* and *13.2*, be comprehensive and applicable to all tobacco advertising, promotion and sponsorship.¹²

WHEREAS, in order to minimize ease of access and affordability of tobacco products, particularly to minors, and in order to provide a more supportive environment for those who are attempting to quit tobacco use, there is a need to strengthen existing measures on access restriction, including the regulation of sales, distribution and availability, and those prescribed under *Article 16* of the FCTC.¹³

NOW THEREFORE, BE IT ENACTED, AS IT IS HEREBY ENACTED, BY THE SANGGUNIANG PANLUNGSOD, IN SESSION ASSEMBLED, BY VIRTUE OF THE POWERS VESTED IN IT BY LAW, THAT:

Section 1. Title. – This Ordinance shall be known as the “Revised Comprehensive Smoke-Free Ordinance of the City of Malaybalay.”

Section 2. Purpose. – It is the purpose of this Ordinance to safeguard public health and ensure the well-being of all its constituents by protecting them from the harmful effects of smoking and tobacco consumption, reduce potential exposure to tobacco marketing and advertising, restrict its accessibility, and provide support and a conducive environment for tobacco users to quit.

Section 3. Coverage. – This Ordinance shall apply to all persons, whether natural or juridical, whether resident or not, and in all places, found within the territorial jurisdiction of the City of Malaybalay.

Section 4. Definition of Terms. – As used in this Ordinance, the terms below shall have the meanings ascribed to them in this section. Any words or terms not defined shall be given their plain and customary meanings, unless the context requires otherwise, and shall be interpreted in a manner consistent with the purpose and spirit of this Ordinance.

- a. **Advertising and promotion** - means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.¹⁴ For purposes of this ordinance, it shall likewise apply to Electronic Nicotine Delivery Systems (ENDS).
- b. **Civil Society Organization (CSO)** - refers to a legally constituted voluntary civic and social organization or institution created with no participation of government, including but not limited to, charities, development non-governmental organizations (NGOs), community groups, women's organizations, faith-based organizations,

¹⁰ Principle 1 (paragraph 6), FCTC (Article 8) Guidelines on Protection from Exposure to Tobacco Smoke.

¹¹ Section 3 (c), RA 9211

¹² FCTC Guidelines for Article 13 (Tobacco Advertising, Promotion and Sponsorship)

¹³ FCTC Article 16.

¹⁴ Article 1 (c), FCTC.

professional associations, coalitions and advocacy groups duly recognized by the Office of the Mayor. As used in this Ordinance, CSO does not include organizations, or associations related to, or connected with, or front groups of the tobacco industry.

- c. **Designated Smoking/Vaping Area** - refers to an outdoor space, duly approved by the City Health Officer, where smoking and/or vaping, may be allowed without violating this ordinance, that meets the following requirements¹⁵:

- 1) It shall be located in an open-space outside the building with no permanent or temporary roof or walls in an outdoor area.
- 2) It is not located in or within ten (10) meters from entrances, exits, or any place where people pass or congregate.¹⁶
- 3) It shall not have an area larger than 10 square meters.
- 4) Food or drinks are not served in the designated smoking/vaping area.
- 5) No building shall have more than one designated smoking/vaping area.
- 6) Minors or persons below the age of 18 shall not be allowed inside.
- 7) The designated smoking/vaping area has the following signage highly visible and prominently displayed:
 - a) "Smoking Area"/"Vaping Area" signage with message showing "Minors not allowed within these premises"
 - b) Graphic health warnings on the effects/harms of tobacco/vape use or exposure
 - c) Information on cessation hotline and/or cessation clinic/services.
- 8) It shall not be located in places where absolute smoking bans are in effect, such as, but not limited to: centers of youth activity such as playschools, preparatory schools, elementary schools, high schools, colleges and universities, youth hostels and recreational facilities for persons under eighteen (18) years old; elevators and stairwells; locations in which fire hazards are present, including gas stations and storage areas for flammable liquids, gas, explosives or combustible materials; within the buildings and premises of public and private hospitals, medical, dental, and optical clinics, health centers, nursing homes, dispensaries and laboratories; food preparation areas; public conveyances and in enclosed, partially enclosed and outdoor areas of transport terminals that are near entrances and exits or where people pass or congregate; within the buildings of all government facilities and premises of all offices of the Department of Health, Department of Education, Commission on Higher Education, Department of Social Welfare and Development and the Civil Service Commission, and shall likewise include parks, plazas, playgrounds, sports and recreational facilities, and other facilities where an absolute smoking ban is imposed under special laws, administrative and executive orders, memorandum circulars and related policies.

- d. **Electronic Nicotine Delivery Systems (ENDS)** - [which shall include **Electronic Non-Nicotine Delivery Systems (ENNDS)** for purposes of this regulation] means any device

¹⁵ Adopted from Guideline No. 3, CSC Memorandum Circular No. 17_2009, and can serve as standard for public places and workplaces in the LGU that are not owned or used by a government office/agency.

¹⁶ The ten (10) meter buffer distance required for government facilities/premises under CSC M.C. 17_2009 that are allowed to have outdoor DSA may be replicated for standardizing DSA locations in other public places/workplaces, where smoking/vaping is not absolutely banned.

such as electronic cigarettes (e-cigarettes), electronic shisha (e-shisha), and other similar devices, whether or not it is used to deliver nicotine and other components to the user through the act of **vaping** that resemble the act of smoking or the outward appearance of smoking products.

- e. **Enclosed or partially enclosed** - means being covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, wall or sides, and regardless of whether the structure is permanent or temporary.¹⁷
- f. **Minor** - refers to any person below eighteen (18) years old.
- g. **Outdoor advertisement** - refers to any sign, model, placard, board, billboard, banner, bunting, poster, streamer, paint-on, light display, device, structure or representation, employed outdoors or visible from outside, wholly or partially to advertise or promote a tobacco product or ENDS to the public.
- h. **Person-in-charge** - refers to: *in case of public places, public outdoor spaces, workplaces*, and point-of-sale, the president/manager in case of a company, corporation, partnership or association, the owner/proprietor/operator in case of a single proprietorship, or the administrator in case of government property, facility, office or building; *in case of public conveyances*, the owner, driver, operator, conductor, or captain of the public conveyance; *in case of schools*, the city/municipal schools superintendent, school president, dean or principal.
- i. **Point-of-sale** - refers to any location at which an individual can purchase or otherwise obtain tobacco products and/or ENDS.¹⁸
- j. **Public conveyances** - refers to modes of transportation servicing the general population, such as, but not limited to, elevators, airplanes, ships, jeepneys, buses, taxicabs, rideshare service vehicles, trains, light rail transits, tricycles and other similar vehicles.¹⁹
- k. **Public places** - means 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, schools, workplaces, government facilities, establishments that provide food and drinks, accommodation, merchandise, professional services, entertainment or other services. It also includes outdoor spaces where facilities are available for the public or where a crowd of people would gather, such as, but not limited to, playgrounds, sports grounds or centers, church grounds, health/hospital compounds, transportation terminals, markets, parks, resorts, walkways/sidewalks, entrance ways, waiting areas, and the like.²⁰
- l. **Second-hand smoke** - means the smoke emitted from the burning end of a cigarette or from other tobacco products usually in combination with the smoke exhaled by the smoker.²¹
- m. **Smoke free air** - (for purposes of this ordinance) is air that is 100% free from tobacco smoke. This definition includes, but is not limited to, air in which tobacco smoke cannot be seen, smelled, sensed or measured.²²
- n. **Smoking** - means being in possession or control of a lit tobacco product regardless of

¹⁷ Paragraph 19 (definition of "indoor" or "enclosed"), Article 8 FCTC Guidelines.

¹⁸ Section 4 (k), RA 9211.

¹⁹ Section 4 (m), RA 9211.

²⁰ Paragraph 18, Article 8 FCTC Guidelines.

²¹ Paragraph 15, Article 8 FCTC Guidelines.

²² Paragraph 16, Article 8 FCTC Guidelines.

whether the smoke is being actively inhaled or exhaled.²³

- o. **Sponsorship** - means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.²⁴
- p. **Tobacco Products** - mean products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing, such as but not limited to cigarette, cigar, pipe, shisha/hookah and chew tobacco.²⁵
- q. **Tobacco Industry** - refers to organizations, entities, associations, and individuals that work for or on behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, wholesale distributors, importers of tobacco products, tobacco retailers, front groups and any other individuals or organizations, including, but not limited to lawyers, scientists and lobbyists that work to further the interests of the tobacco industry²⁶ that compete with those of tobacco control.
- r. **Tobacco Industry Interference** - refers to a broad array of tactics and strategies used by the tobacco industry to interfere with the setting and implementation of tobacco control measures.
- s. **Vaping** - refers to the act of inhaling and exhaling vapor produced by any Electronic Nicotine Delivery System (ENDS)/Electronic Non-Nicotine Delivery System (ENNDS) or other electronic device whether or not it is used to deliver nicotine to the user, and mimics the act of smoking.
- t. **Workplace** - means any place used by people during their employment or work, whether done for compensation or voluntarily, including all attached or associated places commonly used by the workers in the course of their work (for example, corridors, elevators, stairwells, toilets, lobbies, lounges). Vehicles used in the course of work are considered workplaces.²⁷

Section 5. Prohibited Acts. – The following acts are declared unlawful and prohibited by this Ordinance:

- a. Smoking or vaping in enclosed or partially enclosed public places, workplaces, public conveyances (whether mobile or stationary), or other public places, such as those enumerated under **Section 4 (k)**, except in Designated Smoking/Vaping Areas duly approved and fully compliant with the requirements under **Section 4 (c)**;
- b. For persons-in-charge to allow, abet or tolerate smoking or vaping in places enumerated in the preceding paragraph, outside of approved Designated Smoking/Vaping Area under **Section 4 (c)**;
- c. Selling or distributing tobacco products and/or ENDS to minors;
- d. Purchasing tobacco products and/or ENDS from minors;
- e. Ordering, instructing or compelling a minor to use, light up, buy, sell, distribute, deliver, advertise or promote tobacco products and/or ENDS;
- f. Selling or distributing tobacco products and/or ENDS in a school, public playground or other facility frequented by minors, offices of the Department of Health (DOH) and attached agencies, hospitals and health facilities, or within 100 meters from any point in the

²³ Paragraph 17, Article 8 FCTC Guidelines.

²⁴ Article 1 (c), FCTC.

²⁵ Article 1 (f), FCTC.

²⁶ CSC-DOH Joint Memo Circular 2010-01.

perimeter of these places;²⁷

- g. Selling of tobacco products and/or ENDS within premises of a government facility, and establishments that provide food, accommodation and entertainment;²⁸
- h. Selling tobacco products and/or ENDS without a city permit to sell tobacco products or ENDS;
- i. Selling of tobacco products and/or ENDS as individual pieces or per stick, or in tobacco product packs containing less than 20 sticks/pieces;
- j. Selling tobacco products and/or ENDS removed from its original product packaging or without the proper government-regulated and approved health warning;
- k. Selling tobacco products and/or ENDS by ambulant or street vendors, including other mobile or temporary stalls, kiosks, stations or units;
- l. Selling or distributing of sweets, snacks, toys or any other objects in the form of tobacco products and/or ENDS, or bearing resemblance to their logo/indicia/packaging;²⁹
- m. Placing cinema or outdoor advertisements of tobacco products and/or ENDS;
- n. Placing, posting, displaying or distributing advertisement and promotional materials of tobacco products or ENDS, such as but not limited to leaflets, posters, display structures and other materials within an establishment when such establishment or its location is prohibited from selling tobacco products and/or ENDS;
- o. Placing, posting, displaying or distributing advertisement and promotional materials of tobacco products or ENDS, such as but not limited to leaflets, posters, display structures and other materials that show a tobacco/ENDS brand's name (including company name), logo or indicia, such as in a point-of-sale establishment, where minors are allowed entry;
- p. Conducting promotional activities, campaigns, events, product sampling, and the like, where the establishment or its location is prohibited from selling or unauthorized to sell tobacco products and/or ENDS, and/or where minors are allowed entry;
- q. Displaying and placing tobacco products and/or ENDS in open store shelves/racks, except in enclosed, opaque and single-colored storages/containments;
- r. Facilitation, participation or partnership engaged by any government official or personnel, regardless of employment status (permanent, casual, contractual, job order, consultant or special appointment) in any form of contribution, sponsorship or corporate social responsibility (CSR) activity, event, program or project by a tobacco company, tobacco industry front groups, or any representation working to protect tobacco industry interests, executed for or within the territorial jurisdiction of the City of Malaybalay with the aim, effect or likely effect of promoting a tobacco product and/or ENDS, its use either directly or indirectly.

Section 6. Duties and Obligations of Persons-in-Charge. – Persons-in-charge shall:

- a. Prominently post and display the “No Smoking” signage, which may include a “No Vaping” symbol illustrated separately or combined, in the locations most visible to the public in the areas where smoking and vaping is prohibited. At the very least, the “No Smoking” and “No Vaping” signage must be posted at the entrance to the area, which shall be at least 8 x 11 inches in size, where the symbol/s shall occupy no less than 60% of the signage. The

²⁷ Paragraph 20, Article 8 Guidelines.

²⁸ Section 10, RA 9211 and Chapter V, No. 2 (b) of DOH AO 2009-0010.

²⁹ Section 7, Davao City Ordinance 0367-12.

³⁰ Article 16 (c), FCTC.

remaining 40% of the signage shall show the following information:

Ex.:



STRICTLY NO SMOKING AND NO VAPING

As per ORDINANCE NO. _____

Violators can be fined up to _____

Report violations to [Hotline Number]

As for the Designated Smoking/Vaping Area, after complying with the specifications in *Section 4 (c)*, prominently display the following elements in the signage:

"DESIGNATED SMOKING/VAPING AREA" or "SMOKING/VAPING AREA"

"Minors not allowed within these premises"

[place Graphic/Picture-Based Health Warning on
the effects of tobacco use within the signage]

[*if available*, place number of Smoking Cessation Hotline]

- b. Prominently post and display the "No Smoking" and "No Vaping" 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" and "No Vaping" signage shall be placed on the windshield and a ten (10) square inch "No Smoking" sign at the driver's back seat;
- c. Ashtrays and any other receptacles for disposing of cigarette or other tobacco product refuse must be provided in the approved Designated Smoking/Vaping Areas, and shall be removed from all places where smoking/vaping is prohibited;
- d. For persons-in-charge of government premises intending to establish a Designated Smoking/Vaping Areas (DSAs/DVAs), secure a certification/permit from the duly authorized officer or representative of the Civil Service Commission; while for persons-in-charge of commercial establishments/buildings or other non-government facilities intending to establish a DSA/DVA, to secure a certification/permit from the Building/Engineering and Health Officers, after complying with the requirements for a DSA/DVA, as stated in *Section 4 (c)*;
- e. For persons-in-charge of schools, public playgrounds or other facilities frequented by minors, offices of the DOH and attached agencies, hospitals and health facilities, post the following statement in a clear and conspicuous manner:

**SELLING, ADVERTISING AND PROMOTING CIGARETTES OR OTHER TOBACCO PRODUCTS
INCLUDING E-CIGARETTES NOT ALLOWED WITHIN 100 METERS**

FROM ANY POINT IN THE PERIMETER OF

[name of SCHOOL / PLAYGROUND / FACILITY FOR MINORS / HEALTH FACILITY / ETC.]

- f. For persons-in-charge of schools, public playgrounds or other facilities frequented by minors, offices of the DOH and attached agencies, hospitals and health facilities, report to the Smoke Free Task Force any tobacco product/ENDS selling, advertising and/or promotion located within 100 meters from its perimeter;
- g. For persons-in-charge of establishments intending to sell tobacco products and/or ENDs, secure a permit to retail/wholesale from the Business Permits and Licensing Office;
- h. For persons-in-charge of approved 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 City of Malaybalay Health Office, in a clear and conspicuous manner:

**SALE/DISTRIBUTION OF TOBACCO PRODUCTS
AND E-CIGARETTES TO MINORS IS UNLAWFUL**

- i. For persons-in-charge of point-of-sale establishments, remove all forms of tobacco or ENDs advertisement/promotions paraphernalia deemed prohibited by this Ordinance;
- j. For persons-in-charge of point-of-sale establishments, secure approval from the City/Municipal Health Office for storages or containments of tobacco products and/or ENDs. Only a listing of available tobacco and/or ENDs brands/variants sold at the point-of-sale establishment are allowed to appear outside of the storage or containment, where such listing shall only be written/printed in any plain font, and devoid of any recognizable product or brand typefaces, logo, indicia or markings. Such list shall not occupy more than (25%) of the exposed side of the storage or containment;
- k. For persons-in-charge of point-of-sale establishments, ensure that storages or containments of tobacco products and/or ENDs are only opened by a store personnel/manager at the counter during actual purchase by an adult customer, or when being replenished, cleaned or inspected;
- l. Establish internal procedure and measures through which this Ordinance shall be implemented and enforced within the area of which he or she is in charge. This includes compliance to the sales, distribution, advertising and promotions restrictions, i.e. warning smoking/vaping violators in banned areas and requesting them to stop smoking/vaping, and if they refuse to comply, asking them to leave the premises, and if they still refuse to comply, reporting the incident to the City Health Office, the nearest peace officer, or to any member of the Smoke Free Task Force through its hotline or by other means;
- m. Ensure that all the employees in the establishment are aware of this Ordinance and the procedure and measures for implementing and enforcing it;
- n. Allow inspectors acting under *Sections 14 and 15* hereof, which may include other members of the Task Force and the designated civil society organization under *Section 16*, entry into the establishment or public conveyance during regular business hours for the purpose of inspecting its compliance with this Ordinance;
- o. For all signage required to be posted under (a), (b), (e), and (h) above, provide for versions of them in the local dialect or in English;

Section 7. Persons Liable. – The following persons shall be liable under this Ordinance:

- a. Any person or entity who commits any of the prohibited acts stated in **Section 5** hereof;
- b. Persons-in-charge who knowingly allow, abet, authorize or tolerate the prohibited acts enumerated in **Section 5**, or who otherwise fails to fulfill the duties and obligations enumerated in **Section 6** hereof;
- c. If the violator is a minor, the enforcer of this Ordinance shall report the incident to the school principal/dean exercising jurisdiction over the minor-offender where he shall be required to comply with disciplinary measures under the school where he/she is enrolled, and/or to the City Social Welfare and Development Office for appropriate action or intervention, pursuant to Republic Act 9344. Should the school have no policy for offenses committed by their pupils outside school premises or if the minor is an out-of-school youth, the enforcer shall present the minor to the City Social Welfare and Development Office, which may likewise involve the parents or guardians and/or a Barangay Official where the minor is a resident.

Section 8. Penalties. – The following penalties shall be imposed on violators of this Ordinance:

a. **Violation of Section 5 (a), (b) Smoking or Vaping and Section 6**

- | | |
|------------------------------------|--------------|
| i. First Offense | - P 500.00 |
| ii. Second Offense | - P 1,000.00 |
| iii. Third and Subsequent Offenses | - P 2,500.00 |

Suspension or revocation of business license or permit may be prescribed (in case of a business entity or establishment), if applicable.

b. **Violation of Section 5 (c) to (q) Sales/Access Restriction and Advertising and Promotions Ban**

- | | |
|------------------------------------|--------------|
| i. First Offense | - P 2,000.00 |
| ii. Second Offense | - P 3,000.00 |
| iii. Third and Subsequent Offenses | - P 5,000.00 |

Suspension or revocation of business license or permit may be prescribed (in case of a business entity or establishment), if applicable.

c. **Violation of Section 5 (r). Sponsorship/Contribution/Partnership with the Tobacco Industry Involving Government Officials/Personnel**

Apply Rules and Sanctions as prescribed by the CSC-DOH Joint Memorandum Circular 2010-01 pursuant to RA 3019, RA 6713, and the Revised Penal Code (1932).

- d. **Revocation or Suspension of License/Permit.** The license/permit to sell (tobacco products/ENDS) or to operate of any establishment or of any public conveyance covered by this Ordinance shall also be suspended for at least one (1) week but not more than one (1) month, or revoked, should the same fail to perform the necessary action within fifteen (15) days upon receipt of violation notice or fail to pay within seven (7) working days the corresponding penalty as stated in the Citation Ticket for the violation committed. Should

the license/permit found to be in violation of this ordinance, fall outside of the jurisdiction of the respective Local Government Unit (LGU), the recommendation for revocation or suspension of license/permit shall be forwarded to the appropriate LGU, agency or governing body. The suspension or revocation of the license/permit of the erring establishment or public conveyance shall only be lifted once all the requirements set forth upon re-inspection and evaluation of the Health Office, Building/Engineering Office, Business Permits and Licensing Office and/or the appropriate agency or governing body has been fully complied with. Any Task Force member may recommend the revocation or suspension of license or permit of an erring establishment to the appropriate office.

- e. **Community Service.** If a violator is unable to pay the fines imposed, he or she may choose to render community service within the city/municipality. For every hour of community service rendered, his/her outstanding fine shall be reduced by an amount equivalent to triple the hourly minimum wage (or other computations/fixed amount per hour for the total number of hours needed to be rendered) in the city/municipality.
- f. **Confiscation or Removal.** Tobacco products, ENDS and their advertising/promotions paraphernalia associated with any violation of the prohibited acts in this ordinance may be subject to confiscation and/or removal.
- g. **No Contest Provision.** Persons liable who have been apprehended or cited for violation of any of the prohibited acts of this Ordinance, except for Section 5 (r), and who do not wish to contest the violation, and is willing to pay voluntarily the administrative penalty imposed upon him/her for the first and second offenses enumerated in Section 8 a. and b. prior to the filing of formal charges with the proper court shall be allowed to pay the penalty with the City Treasurer's Office, within five (5) regular business days from apprehension, to avoid being criminally prosecuted. Otherwise, the case shall be prosecuted in court. The "No Contest Provision" can no longer be availed for third and subsequent offenses. The proceeds from payment of the herein penalties imposed shall be subject to the provision on Funding in Section 20 of this Ordinance.
- h. **Subsidiary Imprisonment Provision.** Subsidiary imprisonment may be imposed by the court in the event that the offender, who is found guilty of violating the provisions of this Ordinance, is unable to pay the fine which he is sentenced to pay.

Section 9. Citation Ticket System. – Violators of this Ordinance shall be informed of their violation and the penalty associated with it by means of a Citation Ticket System with the following guidelines:

- a. Official booklets of Citation Tickets shall be issued by the Treasurer to duly authorized enforcers within ninety (90) calendar days of the effectivity of this Ordinance.
- b. A Citation Ticket shall be issued to the person/s liable for any violation of this Ordinance upon finding of the violation by duly authorized enforcers.
- c. A Citation Ticket shall contain the following information:
 - 1) checklist of the violations under this Ordinance;
 - 2) the fines associated with each violation;
 - 3) option to render community service in case violator is unable to pay fine;
 - 4) due date for compliance with the obligations imposed by the ticket.
- d. When a Citation Ticket is issued to a violator, the violator shall report to the Treasurer's Office or its duly authorized collecting agent, within five (5) regular business days after such issuance, where he or she shall either pay the fine imposed or render community

service under *Section 8 (d)* hereof.

- e. The Treasurer's Office shall keep a duplicate of all Citation Tickets issued to violators as well as all other records of violations of this Ordinance.

Section 10. Smoking Cessation Program. – The City Health Officer, with the assistance of the Health Education and Promotion Officer, or other members of the Smoke Free Task Force, which includes the CSO representative designated under *Section 16* hereof, shall develop, promote and implement a Smoking Cessation Program and encourage the participation therein of public and private facilities which may be able to provide for its requirements. Smokers who are willing to quit and/or those found violating this Ordinance may be referred to the Smoking Cessation program and its facilities.

ENFORCEMENT

Section 11. Smoke-free Task Force. – A Task Force shall be created to aid in the implementation, enforcement and monitoring of this Ordinance, and to protect the same from tobacco industry interference at all times, as well as to conduct educational awareness campaigns, information dissemination programs, and capacity building programs, that will inform the constituents and train enforcement officers.

The Task Force chaired by the Mayor shall have the following as members and may designate a vice-chair to serve as overall coordinator:

- a. Health Officer;
- b. Health Education and Promotion Officer/or equivalent designate;
- c. Building/Engineering Officer;
- d. Legal Officer;
- e. Information Officer;
- f. Business Permits and Licensing Officer;
- g. Representative/s of one or more civil society organizations (CSO) designated by the Health Officer, under Section 16 hereof;
- h. Philippine National Police (PNP) Chief of Police;
- i. Treasurer;
- j. Environment and Natural Resources Officer (ENRO) from the LGU or from DENR;
- k. Representative/s from DepED, CHED and/or academic institution;
- l. Local President of the Liga ng mga Barangay ng Pilipinas;
- m. Public Order and Safety Officer;
- n. Social Welfare and Development Officer
- o. Human Resources Management Officer
- p. City Administrator
- q. Coordinator of the Task Force Unit or Office (*if other than the above officers*)
- r. Other member/s identified by the chair or vice-chair (whose specific function in the LGU and role may serve to effectively implement this Ordinance)

The Task Force shall not include as its member any person or entity upholding or accommodating tobacco industry interests or is connected in any way to the tobacco industry, in order to protect the primary health objectives of this Ordinance from any and all interests prejudicial to tobacco control policies and to preserve its integrity. No member of the Task Force shall also receive for himself or for other individuals, beneficiaries or groups, any contribution or compensation, directly

or indirectly, whether financial or otherwise, from the tobacco industry. Non-compliance of this provision, governing the Task Force, shall serve as grounds for the removal of the erring Task Force member/s. If the erring Task Force member is likewise a public officials or government personnel, he/she shall also be subject to sanctions prescribed under the CSC-DOH Joint Memorandum Circular 2010-001.³¹

Section 12. Duties and Responsibilities of the Task Force.— Other than (1) receiving, reviewing and processing reports and complaints, serving of citations and notices, and filing of appropriate charges for violations under this Ordinance (2) attending regular Task Force meetings, and (3) deputizing enforcers under *Sections 13 to 16* hereof, and enforcing the other provisions of this Ordinance, the Task Force, headed by the Mayor, shall have the following respective duties and responsibilities:

a. The Health Officer shall:

- 1) Make tobacco control, including the implementation of this Ordinance, a part of the health program and propose funding under the general budget of the LGU;
- 2) Establish baseline (preferably) annual data on tobacco use prevalence and other related studies, and recommend further action on the findings of such data;
- 3) Monitor, together with the Sanitary Inspector, Enforcers and/or Task Force members, the compliance of this Ordinance in public places, establishments, conveyances, point-of-sale, and including the approval/disapproval of permits in Designated Smoking/Vaping Areas (DSAs/DVAs) as well as permits/licenses for tobacco/ENDs point-of-sale;
- 4) Facilitate, together with the Sanitary Inspector, Enforcers and/or Task Force members, the serving of notices, imposition of fines, suspension, or revocation of permits/licenses for violations;
- 5) Assign a hotline or any other number and email address to which violations of this Ordinance may be reported by email, phone call or SMS, or other means, and a person to operate the line and record reports, while another hotline may be assigned for accepting calls or messages for Smoking Cessation counseling;
- 6) Develop, promote and implement a Smoking Cessation Program, stated in *Section 10*;
- 7) Assist hospitals and other health facilities including any office of the DOH within the LGU, together with the Sanitary Inspector, Enforcers and/or Task Force members, in the monitoring of tobacco/ENDs products' sales, advertisements and promotions within 100 meters from the perimeter of schools, public playgrounds, facilities frequented by minors and health facilities.

b. The Health Education and Promotion Officer shall:

- 1) Develop and produce information, education and communication materials and conduct activities on Tobacco Control, such as the harms of smoking and second-hand smoke, as well as on the provisions of this Ordinance;
- 2) Encourage constituents to monitor and report violations of this Ordinance;
- 3) Assist the Health Officer in developing, promoting and implementing a Smoking Cessation Program.

c. The Building/Engineering Officer shall:

- 1) Conduct, together with the Health Office or on its own, inspection activities as provided in this Ordinance;
- 2) Determine whether or not enclosed/partially enclosed public places, workplaces, other public places, and point-of-sale establishments, comply with this Ordinance;

³¹ See CSC-DOH Joint Memorandum Circular 2010-001

- 3) Recommend the approval, suspension or revocation of licenses/permits for establishments/facilities, in compliance with this Ordinance.

d. The Legal Officer shall:

- 1) Assist the Task Force in reviewing reports of and complaints for violations of this Ordinance and in determining liability or appropriate cases to file;
- 2) Extend any legal assistance and/or file cases on matters pertaining to this Ordinance.

e. The Information Officer shall:

- 1) Assist in disseminating information pertaining to all aspects of this Ordinance including the printing and distribution of copies of this Ordinance to the public;
- 2) Make a primer summarizing the provisions of this Ordinance, and facilitate the development of related information materials and required signage;
- 3) Publicize activities and reports related to implementation and enforcement.

f. The Business Permits and Licenses Officer shall:

- 1) Order the suspension or revocation of licenses/permits of establishments found to have violated this Ordinance, subject to the provisions of **Section 8** hereof;
- 2) Deny renewal of licenses/permits of repeat violators of this Ordinance;
- 3) Establish procedure for identifying, informing and marking establishments covered by the 100-meter ban on sale, distribution and advertising of tobacco products and ENDS.

g. The CSO Representative/s shall:

- 1) Assist in inspections and in monitoring violations of this Ordinance;
- 2) Assist in promoting awareness of this Ordinance and in encouraging public support and participation for its implementation and enforcement;
- 3) Assist in promoting and, if capable, implementing a Smoking Cessation Program;
- 4) Assist in developing and conducting orientation and training seminars for enforcers;
- 5) Assist in evaluating the performance of the Task Force and the effectiveness of the implementation and enforcement of this Ordinance.

h. The PNP Chief of Police shall:

- 1) Direct the Local PNP in the orderly enforcement of this Ordinance;
- 2) Ensure apprehension of violators in accordance with the provisions of this Ordinance and other rules and procedures of engagement;
- 3) Assist Task Force members, LGU officials and deputized civilians in apprehending violators and in filing the appropriate complaints when necessary;
- 4) Assist in promoting awareness of this Ordinance and in encouraging public support and participation in its implementation and enforcement;
- 5) Employ the assistance of other members of the Task Force and other police enforcers, such as those from other LGUs, during enforcement when coordination is necessary;
- 6) Refer minors caught in violation of this Ordinance to the Social Services and Development Office and/or to the school authorities where the minor is enrolled;
- 7) Use the Citation Tickets during apprehensions and maintain a record or log of

violations/apprehensions made within particular periods, for purposes of reporting.

i. The Treasurer shall:

- 1) Facilitate the printing and reprinting of Citation Tickets;
- 2) Issue booklets of the Citation Tickets to the LGU enforcers and other deputized enforcers, as appropriate;
- 3) Collect/receive fines paid by violators and submit reports on its collection;
- 4) Designate collection agents and guidelines for collections as necessary to assist in efficient collection of fines from the City;
- 5) Facilitate the release and allocation of funds, and the remuneration of enforcers share in accordance with the provision for the sharing of proceeds, derived from the collection of fines, penalties, generated resources and appropriated budget.

j. The Environment and Natural Resources Officer shall:

- 1) Assist in promoting awareness of this Ordinance as a component in the protection and conservation of the environment and in encouraging public support and participation in its implementation and enforcement;
- 2) Assist in inspection and monitoring violations of the Ordinance on its own or with any other member of the Task Force;
- 3) Conduct timely monitoring of air, water, soil quality and other studies pertinent to determining levels of exposure to tobacco smoke, ENDS vapor, residues, byproducts and litter, among others;
- 4) Provide expertise in the application and management of appropriate technologies to avert environmental/health risks, accidents and damage posed by tobacco smoke, ENDS vapor, residues, by-products, disposal and litter, among others.

k. The Representative from DepED, CHED and/or Academic institution shall:

- 1) Implement the Department/Commission Orders on the integration of tobacco control education into the school curricula;
- 2) Ensure strict compliance of the Memos and Orders on the protection of the bureaucracy from Tobacco Industry interference as per FCTC Article 5.3;
- 3) Ensure strict compliance of schools in enforcing 100% smokefree campuses and school facilities including the schools' vehicles;
- 4) Assist in the monitoring of tobacco/ENDS products' sales, advertisements and promotions within 100 meters from the perimeter of schools, public playgrounds and facilities frequented by minors;
- 5) Ensure the posting in clear and conspicuous manner "No Smoking" signs, and notices for the sales ban of Tobacco Products within 100 meters from the perimeter of schools, public playgrounds, facilities frequented by minors and health facilities.

l. The Local President of the *Liga ng mga Barangay ng Pilipinas* shall:

- 1) Assist in promoting awareness of this Ordinance in encouraging public support and participation in its implementation and enforcement;
- 2) Coordinate with all Barangay Captains and the PNP, or other members of the Task Force, in monitoring violations of the Ordinance within their jurisdictions;

- 3) Provide the necessary coordination among the Barangay Health Workers, *Kagawads* and *Tanods* and other enforcers (i.e. Coast Guards) for the implementation of activities pertinent to the Ordinance;
- 4) Assist in the facilitation of and referrals to the Smoking Cessation Program at the Barangay Level, if applicable.

m. The Public Order and Safety Officer shall:

- 1) Assist in promoting awareness of this Ordinance in encouraging public support and participation in its implementation and enforcement;
- 2) Monitor compliance in public places, establishments, conveyances, point-of-sale, Designated Smoking/Vaping Areas (DSAs/DVAs), together with other members of the Task Force;
- 3) Coordinate with enforcers and/or Task Force members regarding the imposition of fines, suspension or revocation of licenses/permits for violations;

n. The Social Welfare and Development Officer:

- 1) Assist in the enforcement of this Ordinance when minors are involved;
- 2) Provide the necessary interventions for minors implicated in violations.

o. The Human Resources and Management Officer or equivalent officer/LGU point-person for the Civil Service Commission:

- 1) Oversee the strict implementation of smoke-free government facilities;
- 2) Evaluate for approval the proper establishment of Designated Smoking/Vaping Areas in government facilities where it may apply;
- 3) Oversee the strict implementation of policy preventing Tobacco Industry Interference, pursuant to the CSC-DOH Joint Memorandum Circular 2010-01;
- 4) Monitor, supervise and report on all concerns pertaining to Tobacco Industry activities, communications, and other related concerns;
- 5) Assist in matters related to tobacco control policies as it applies to the performance of functions and duties affecting government officials/personnel.

p. The City Administrator:

- 1) Assist the Mayor in overseeing the implementation and enforcement of this Ordinance, in close coordination with other members of the Task Force;
- 2) Provide regular updates to the Mayor as to the status of implementation and enforcement of the Ordinance.

q. The Coordinator, in case of a separate Coordinating Unit or Office of the Task Force, under the authority of the Mayor:

- 1) Perform any of the functions assigned to it by the Mayor pertaining to the implementation, enforcement and promotion of this Ordinance;
- 2) Coordinate with any/all members of the City Task Force as necessary, facilitate trainings, assist in enforcement/promotion/monitoring/research, and attend to any related function as required/instructed by the Mayor;
- 3) Provide regular updates to the Mayor as to the status of implementation of Tobacco Control in the LGU and of the Ordinance.

Section 13. Enforcement on Individuals. – Members of the PNP and/or persons duly deputized by the Mayor/Task Force shall apprehend and issue Citation Tickets against persons found in violation or have failed to comply with any provision enumerated under Sections 5 and 6 hereof. They shall forward copies of the tickets they issue violators to the Treasurer's Office regularly or per week. If the violator is a minor (person below 18), he or she must be turned over for dispensation of appropriate action to the nearest Social Welfare and Development Officer or its appointed designates, subject to RA 9344 (Juvenile Justice and Welfare Law), and/or to the school authorities at the school where the minor is enrolled, and/or to the Barangay Office where the minor is a resident, and where the parents or guardians maybe called.

Section 14. Enforcement on Public Conveyances. – Members of the PNP and/or persons duly deputized by the Task Force shall inspect public conveyances during their regular hours of operation and shall issue Citation Tickets upon discovery of any violation of this Ordinance. They shall forward copies of the tickets they issue violators to the Treasurer's Office regularly or at least once a week.

Section 15. Enforcement on Establishments. – Ninety (90) calendar days after the effectivity of this Ordinance, an inspection team composed of representatives from the Health Office, Engineer's Office, Permits and Licenses Office, and other members of the Task Force, shall conduct inspections of establishments and buildings to determine their compliance with the provisions of this Ordinance.

Regular inspection shall thereafter be conducted at least once every month or simultaneously with other regular inspections done by the appropriate Municipal office or department, whichever is more frequent, during normal hours of operation of the establishment.

The inspection team shall issue a Citation Ticket against the establishment upon finding of non-compliance with or of any violation of this Ordinance. A Citation Ticket may be issued for each day that the establishment is found to be non-compliant.

Re-inspection of the establishment shall be done on any day after the issuance of the Citation Ticket, but in no case more than ten (10) calendar days after such issuance. If the establishment fails to comply with the obligations stated in the Citation Ticket upon re-inspection, the inspection team shall recommend the suspension of its license/permit, consistent with **Section 8 (e)** hereof.

In the course of inspection, the inspection team may apprehend individual violators and request the assistance of the PNP in doing so.

Section 16. Civilian Participation in Enforcement. – Within thirty (30) calendar days from the effectivity of this Ordinance, the Task Force/Health Office shall designate, with the approval of the Office of the Mayor, one or more civil society organizations (CSO), not connected/represents interests of the Tobacco Industry, to discharge the duties and responsibilities enumerated in **Section 12 (g)** hereof.

The Mayor may deputize qualified civilians to also serve as enforcers of this Ordinance. Any person can file with the Task Force a report or complaint, or present evidence for any violation of this Ordinance, or be assigned other duties pursuant to the attainment of its effective implementation.

INFORMATION CAMPAIGN

Section 17. Information Dissemination. – Within sixty (60) calendar days of the effectivity of this Ordinance, the Task Force shall:

a. In coordination with the Office of the Mayor:

1) provide at least two (2) copies of this Ordinance to every PNP station or precinct in the

jurisdiction of the respective LGUs;

- 2) provide a primer on this Ordinance for every officer of the PNP/deputized enforcers; and
 - 3) conduct lectures to brief officers of the PNP and other enforcers, the provisions of this Ordinance and of their responsibilities with respect to its enforcement.
- b. In coordination with the Permits and Licenses Office, provide a copy of this Ordinance and its primer to all existing establishments that are licensed to operate, as well as to those applying for new licenses or permits to operate, and/or permits to sell tobacco/ENDS products.
 - c. In coordination with the Information Office, provide a copy of this Ordinance and its primer to all public utility vehicle operators plying within and through the territorial jurisdiction of [name of LGU], and for other sectors as necessary.

Section 18. Public Billboards, Notices in Barangays. – Upon effectivity of this Ordinance, the Engineer's Office shall put up billboards in conspicuous places within the LGU to notify the public of the restrictions and sanctions imposed by the ordinance. The Information Office shall also immediately issue for dissemination at the barangay level notices on obligations of persons under the ordinance.

Section 19. Conduct of Orientation Seminars and Trainings. -- Within sixty (60) calendar days from the effectivity of this Ordinance and periodically thereafter, the Health Officer, with the assistance of the Health Education and Promotion Officer, and the CSO representative designated under **Section 16** hereof, with other members of the Task Force, shall develop and conduct a series of orientation seminars and trainings for the enforcers of this Ordinance, at least one for each group, including but not limited to, deputized enforcers like *barangay* health workers, *barangay tanods*, and the local PNP.

FINANCING

Section 20. Funding. – An initial funding to defray the expenses necessary for or incidental to the implementation of this Ordinance and Tobacco Control Program of the City of Malaybalay in the amount of Three Hundred Thousand (Php300,000.00) pesos shall be sourced from the fund of the City Government, and is hereby allocated. Every year thereafter, at least Five Hundred Thousand (Php500,000.00) pesos shall automatically be included in the Annual Budget of the city for the implementation and enforcement of this Ordinance and the city's/municipality's Tobacco Control Program.

The initial funding, annual budget appropriated for this purpose, and funds generated from other sources, such as, but not limited to, the proceeds from administrative penalties, shall be placed in a Trust Fund, specifically intended to defray expenses and operationalize activities of this Ordinance and the city's/municipality's Tobacco Control Program. The Task Force shall be empowered to determine how the Trust Fund is to be utilized in furtherance of this Ordinance, subject however to the usual government accounting and auditing procedures.

The above expenses include, but are not limited to:

- a. Cost of printing copies of this Ordinance, the Citation Tickets, and information, education and communication materials pertaining to tobacco control;
- b. Cost of regular or periodic meetings of the Smoke Free Task Force;
- c. Cost of inspection and enforcement by the Smoke Free Task Force, including allowances for meals and transportation, the amounts of which shall be set by the Office of the Mayor;
- d. Remuneration for the apprehending enforcer's share of the proceeds from penalties paid;