

REPUBLIKA NG PILIPINAS
TANGGAPAN NG SANGGUNIANG PANLUNGSOD
LUNGSOD NG BAKOLOD

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CITY ORDINANCE NO. 454
December 19, 2007

AN ORDINANCE LAYING DOWN BASIC POLICIES, GUIDELINES, RULES AND PROCEDURES FOR THE PROTECTION OF THE RIGHTS OF THE OWNERSHIP BY THE CITY OVER THE RECLAMATION PROJECT, PORT AND PORT OPERATIONS AT THE RECLAMATION OF BACOLOD CITY, AND PROVIDING FOR THE CONTINUATION AND COMPLETION OF THE UNFINISHED RECLAMATION PROJECT, AND THE RUNNING OF PORT OPERATIONS THEREAT, ENLISTING THE AID OF PERTINENT GOVERNMENT AGENCIES FOR THIS PURPOSE.

WHEREAS, the City of Bacolod is possessed with clear and unmistakable power and authority to reclaim its foreshore land and build itself port and harbor facilities in said reclaimed lands, either by administration (that is, by itself) or by contract with private contractors, by virtue of the following legislative authorization:

RA 161, series of 1947, otherwise known as the "Hilado Law", authorizing the reclamation of foreshore lands by the City of Bacolod and to provide proper and adequate docking and harbor facilities for inter-island and ocean-going vessels;


RA 1132, series of 1954, authorizing Bacolod City to contract indebtedness and issue bonds not exceeding P6M to finance the reclamation of its foreshore land;

RA 1899, series of 1957, authorizing reclamation of foreshore lands by chartered cities and municipalities; (Bacolod became a chartered City last June 18, 1938);

RA 2264, (series of 1959) the Local Autonomy Law, which further strengthened the power of chartered cities to undertake reclamation and infrastructure projects, including ferried, wharves and piers, whether by administration or contract;

RA 7160, otherwise known as the Local Government Code, particularly in **Section 17 (4)** therefore which authorizes cities to establish "adequate communication and transportation facilities", and **Section 458, 5 (iii)**, which authorizes "the establishment, maintenance, and operation by the city government of ferries, wharves, and other structures intended to accelerate productivity related to marine and seashore or offshore activities";

WHEREAS, the Sangguniang Panlungsod especially and particularly is empowered in **Section 458, 3 (vii)**, "upon approval by majority vote of all the Members of the Sangguniang Panlungsod: x x x (to) **ESTABLISH, CONSTRUCT, OPERATE AND MAINTAIN FERRIES, WHARVES, x x x**"



WHEREAS, moreover, Cities also have the powers of the province, among which, as provided for in Section 17, 3 (vii) of RA 7160, in relation to subsection (4) of the same, is to provide basic services or facilities and undertake projects such as "reclamation projects";

WHEREAS, the City of Bacolod, pursuant to the earlier mentioned Republic Act 141, in relation to the then Local Autonomy Act (RA) 2264), passed City Ordinance No. 70 in December 16, 1960, calling for a bid, without cost to the City, for the reclamation of its foreshore land and the construction of port and harbor facilities thereon;

WHEREAS, the Bacolod Real Estate Development Corporation (BREDCO), was awarded that bid by virtue of City Ordinance 157, series of 1961 (dated June 01, 1961), which stipulated the terms and conditions for the exclusive exercise of that right and privilege;

WHEREAS, pursuant to the said City Ordinance 157, the City and BREDCO entered into an "Agreement" dated December 07, 1961 (docketed as Doc. No. 326 of Page No. 67, Book No. 1, series of 1961 of the notarial records of Atty. Enrique Olmedo), which was amended in 1966 by an "Extension and Revision of Agreement" dated July 20, 1966 with the International Construction Corporation, (docketed as Doc. No. 129, of Page No. 83, Book No. VI, Series of 1961 of the notarial records of Atty. Juan M. Hagad);

WHEREAS, in 1995, the contract was comprehensively amended, resulting in the CRRA (Comprehensive Revised Reclamation Agreement) dated March 16, 1995, (Doc. No. 25, Page No. 57, Book No. LXIV, s. of 1995 of the notarial records of Atty. Rodolfo Magbanua), supplemented in 1998 by a Memorandum of Understanding, and by a tripartite Memorandum of Agreement in 2000 between the City, BREDCO and PEA, now the PRA (Philippine Reclamation Authority) dated May 18, 2000 (Doc. No. 147, Page No. 31, Book No. X, Series of 2000 of the notarial records of Salvador Bunye of Makati);

WHEREAS, the Sangguniang Panlungsod agreed to formally constitute itself as a Committee of the Whole last January 18, 2005 to conduct a review of the CRRA, and approved the ground rules for a conduct of said review, per SP Res. Number (special numbering or docketing system relative to the review) 01, Series of 2005 dated February 15, 2005; consequently, a comprehensive review of the CRRA and all related matters was undertaken by in pursuant thereto;

WHEREAS, said review lasted till June 2005;

WHEREAS, pursuant to said review, certain violations were noted to have been committed by BREDCO, as expressed by SP Resolution No. 26, dated June 07, 2005;

WHEREAS, other resolutions of similar or related import were also passed;

Section 3. The City of Bacolod recognizes and appreciates the vision, labor and work of BREDCO in undertaking at present some 179.83 hectares of reclaimed foreshore land, 1,200 lineal meters of port and port facilities at the reclamation area of Bacolod City.

Section 4. Present conditions, however, after thorough review and due process as explained heretofore, necessitate the taking of measures by the City to preserve and protect its interests and the public good, including the reassertion of its right of ownership over the unfinished reclamation project, the port, and port operations at the reclamation area.

Section 5. That the foregoing notwithstanding, the City shall allow BREDCO to retain its present 70% share of the already reclaimed land as compensation for the work that it has actually done.

Section 6. The City of Bacolod affirms and reaffirms its partnership with the private sector, and intends to continue and finish the reclamation project as originally planned, subject to modification or revision as may be demanded by the changing times, as well as to operate the port at the reclamation area, with the partnership of the private sector.

Section 7. It is likewise the policy and position of the City of Bacolod that the undertaking of the reclamation project and the port operation are ultimately best left in the hands of the private sector.

ARTICLE II. GENERAL POLICY GUIDELINES FOR THE ASSERTION OF THE CITY'S RIGHT OF OWNERSHIP OVER THE UNFINISHED PORTION OF THE RECLAMATION PROJECT, PORT AND PORT OPERATIONS AT THE RECLAMATION AREA.

Section 1. The City of Bacolod, through its executive and legislative branches, in their respective spheres or jurisdiction, in conjunction with one another, shall protect the rights of ownership of the city over the unfinished portion of the reclamation project, port and port operations at the reclamation area of Bacolod City.

Section 2. The City, in taking over the said unfinished portion of the reclamation project, port and port operations at the reclamation area, in order to achieve the objectives of this ordinance, shall observe the proper and latest applicable government rules and regulations on PRE-TAKE OVER preparations, ACTUAL TAKE OVER, and POST-TAKE OVER.

ARTICLE III. THE UNFINISHED RECLAMATION PROJECT, AND RECLAIMED LANDS BEYOND THE AUTHORIZED AREA

Section 1. It is hereby declared the policy direction of the City of Bacolod to take-over the unfinished portion of the reclamation project, so that it will become part of a new arrangement for any new management of the port and port operations at the reclamation area. In this regard, the City shall make the necessary and proper coordination with the Office of the President, the Philippine Reclamation Authority, and all other government offices or institutions as may be

needful or desirable to effect this policy direction according to law, and applicable government rules and regulations.

Section 2. The foregoing action shall not prejudice separate and proper action on illegally reclaimed lands or lands reclaimed beyond the authorized metes and bounds at the reclamation area, which matter shall be separately pursued to the end that the rights of the City of Bacolod over the same shall be given due recognition by the National Government. Along this line, the City shall be guided by PRA Administrative Order No. 2005-01, or other latest government rules or regulations affecting the matter.

ARTICLE IV. PROCEDURE FOR TAKE-OVER OF THE PORT AND PORT OPERATIONS

Phase I. Pre-take over preparations:

Section 1. The City of Bacolod, in taking over its ports and the port operations at the reclamation area, shall be guided by **PPA MEMORANDUM ORDER NO. 21-81, dated November 4, 1981 or its latest amendments, if any.**

Section 2. The City shall confer with the PPA for guidance and/or assistance in the preparation of the pre take-over and actual take-over of port operations at the reclamation area.

Section 3. Any agreement that may be entered into by and between the City and the PPA shall be ratified by the Sangguniang Panlungsod pursuant to law.

Section 4. The operations at the port upon the take-over shall be pursuant to the Agreement entered into by and between the City and PPA, which shall include tariffs, rates, duties, impost, and charges that are at public levels, including the charging of toll fees which shall be entered into between the City and the PPA prior to actual take-over as provided herein.


Phase II. Actual take over of port and port operations

Section 5. After the pre-take over preparations shall have been made pursuant to the foregoing, with proper coordination between the Mayor's Office, the Sangguniang Panlungsod, the PRA, and PPA, the City Mayor shall forthwith issue the necessary Notice of Take Over to BREDCO and all persons and agents acting for and in its behalf.

Section 6. The City, in conjunction with the PRA and the PPA as stated herein, shall forthwith take all necessary legal measures to effect or implement the take-over of the unfinished portion of the reclamation project and port operations at the reclamation area of Bacolod City.

ARTICLE V. REBIDDING

Section 1. Pursuant to the policy of private participation with the government and pursuant to policy positions Nos. 6 and 7 in Article I hereof, which is pursuant to RA 7718, amending RA 6957 ("An act Authorizing the Financing, Construction and Operation and Maintenance of Infrastructure Projects by the Private Sector, and Other Purposes", and pursuant further to City Ordinance No. 70, series of 1960 of the City of Bacolod, the City of Bacolod shall proceed to BID OUT to private contractors or consortium thereof, the remaining reclamation project as well as the port operations at the reclamation area, under the following minimum requirements:

- a. that the bidder categorically recognizes the ownership of the City over the port at the reclamation area of Bacolod City;
 - b. that the sharing system of the income of the port operation shall be guided by industry practice as reflected by pertinent PPA Memo Orders, rules or regulations, especially on cargo handling income as provided for by PPA Memo Order No. 11-95, sharing on wharfage and docking, as provided for in PPA Memo Circular No. 32-95;
 - c. that there be sharing in the toll fees;
 - d. that the share in port operations income shall include the ROLL ON ROLL OFF PORT at the so-called finger port;
 - e. that the share of Bacolod City shall be recognized in the reclaimed land at the finger port, and at the places where the Negros Coliseum now stands;
 - f. that the remaining 61-hectare yet to be reclaimed land shall be pursuant to a development plan that shall include the concept of an industrial park and/or an economic zone, with provisions for the putting up of a BUSINESS CENTER for the City of Bacolod to promote its economic and business welfare and progress;
 - g. that there will be greater accessibility to the public by means of promenading parks or boulevards;
 - h. that the rates of the arrastre, portorage, and other cargo handling activities therein shall as much as possible be along public rates or levels and not along the present rates imposed by BREDCO which are very high;
 - i. that ships and vessels docking at the reclamation port shall provide a certain percentage or space of their cargo or seat availability for indigent residents of Bacolod City, to enable them to transport their dead or ship their patients for medical attention outside from or to the City of Bacolod;
 - j. that the revised development plan shall include proposals on how the City's shares can be maximized for its use or economic benefit;
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- k. that provisions be made for inter-coastal highway, with appropriate facilities or amenities by the sea;
- l. such other features, plans, facilities, or ideas as may be useful and beneficial for the government and people of Bacolod and as would promote its business and economy.

Section 2. Other requirements as provided for by RA 7718, amending RA 6957, shall apply or guide the City in conducting its bid as provided herein.

Section 3. The bidding or rebidding as required in this section shall not be more than sixty (60) days after the take-over by the City as provided herein.

ARTICLE VI. Any matter not covered by this Ordinance and which is necessary to the implementation of the spirit and intent hereof, shall be by contract, resolution, ordinance as the case may be.

ARTICLE VII. This ordinance itself, except matters that may require separate ratification or action as provided herein, shall take effect immediately upon approval hereof according to law.

ARTICLE VIII. Should any part of this ordinance be declared finally by competent authority as null and void or ineffective, the parts not so affected shall continue to be in force and effect, with the objective that the spirit and intent of this ordinance as called for by the historical and factual setting that made it necessary shall be pursued and achieved. Neither shall this ordinance or any part hereof be interpreted as depriving the City of any other remedy as it may be so authorized by law to pursue, separate and distinct from but not incompatible to this ordinance.

CARRIED BY THE VOTE OF:

Affirmative:

Councilors: Greg G. Gasalaya, Homer Q. Bais, Dindo C. Ramos, Al Victor A. Espino, Celia Matea R. Flor, Roberto M. Rojas, Kevin Daniel L. Ramos.

Negative :

Councilors : Jocelle Batapa-Sigue, Wilson C. Gamboa, Jr., Napoleon A. Cordova, Catalino T. Alisbo and Reynold I. Iledan.

Abstention : Councilor Alex A. Paglumotan.

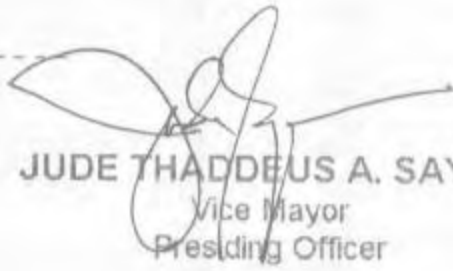
Official Leave : Councilor Diosdado A. Valenzuela.

Author : Councilor Dindo C. Ramos.

Passed : December 19, 2007 (25th Regular Session).

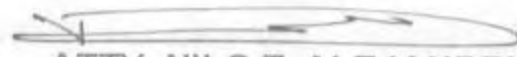
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Comments: Passed.




JUDE THADDEUS A. SAYSON
Vice Mayor
Presiding Officer

ATTESTED:



ATTY. NILO T. ALEJANDRINO
Secretary to the Sanggunian

APPROVED: January 18, 2008.



EVELIO R. LEONARDIA
City Mayor

NTA/HPL/jbz





REPUBLIC OF THE PHILIPPINES
City of Bacolod
OFFICE OF THE CITY LEGAL OFFICER

January 21, 2008

HON. JUDE THADDEUS A. SAYSON
Vice Mayor
Bacolod City

Dear Vice Mayor Sayson,

We are returning herewith the original copy of City Ordinance No. 454, Series of 2007, duly acted upon by the Honorable City Mayor.

Thank you very much.

ALLAN L. ZAMORA
City Legal Officer &
Acting City Administrator



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Republic of the Philippines
OFFICE OF THE VICE MAYOR

HON. JUDE THADDEUS A. SAYSON
3rd Floor, City Hall Building, Bacolod City
Tel No. 433 - 9011 local 222,213 & 212

1/23

2nd INDORSEMENT
January 23, 2008



Respectfully indorsed to Sangguniang Panlungsod through Atty. Nilo T. Alejandrino, SP Secretary, the herein Statement of the City Mayor, Evelio R. Leonardia re: City Ordinance 454 (BREDCO Takeover Ordinance), for information.


JUDE THADDEUS A. SAYSON
Vice Mayor



Republic of the Philippines
OFFICE OF THE CITY MAYOR
Bacolod City

1st Endorsement
22 January 2008

Respectfully endorsed to **Vice Mayor Jude Thaddeus A. Sayson**, the herein Statement of Mayor Evelio R. Leonardia, dated January 22, 2008, RE: City Ordinance No. 454 dated December 19, 2007 on the take over of the BREDCO Reclamation Project (Unfinished Portion Only) and Seaport Operations, for his information.

EVELIO R. LEONARDIA
City Mayor

By Authority of the City Mayor:

ATTY. GOLDWYN V. NIFRAS
Secretary to the Mayor



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This latest review by the Sangguniang Panlungsod was made from January to June, 2005 or a period of 5 months. During this review, the Sangguniang Panlungsod sadly noted various serious violations which they expressed in SP Resolution No. 26 dated June 7, 2005 and other subsequent related resolutions.

Among the major findings were the fact . . .

- that BREDCO had effectively transferred to another corporation, the TOP HARBOR INTERNATIONAL, INC., the exclusive rights previously granted to it by the government - - namely the right to reclaim a portion of the foreshore of Bacolod City and the right to operate the seaport thereat.

(NOTE: In fact, as a consequence of the merger arrangements between BREDCO and TOP HARBOR which merger involved the transfer of reclamation and port operation rights from BREDCO to TOP HARBOR, the corporate existence of BREDCO itself and its business operation as port operator have been put to question on whether both still legally exist.)

- that BREDCO also encumbered its leasehold rights over port operations as collateral for huge loans with the Land Bank of the Philippines;
- that the required payment of the annual rental fees for the lease of the seaport were not faithfully complied with;
- that BREDCO collected toll fees on vehicles entering the seaport area, a right that was not granted to them by the government, considering that road lots in the reclaimed area are owned by the city and not by BREDCO.

All these actions of BREDCO and the other violations noted were done without the knowledge and consent of the Bacolod City government and were considered by the Sangguniang Panlungsod as a serious breach of contract prejudicial to the interest of the city.

It must be clearly understood at this point that a franchise granted by the government exclusively to a specific entity cannot be ceded or transferred by that entity to another party. Such transfer would need a new and separate approval by the government.

The moves of BREDCO to transfer its rights to reclaim and rights to operate the seaport to TOP HARBOR INTERNATIONAL, INC. in effect substituted TOP HARBOR in place of BREDCO. This is an anomalous situation because now, the seaport is being managed and operated by an entity that was not the original grantee of the said franchise. In other words, TOP HARBOR is a "stranger" to the City of Bacolod insofar as the legal decrees and related contracts pertaining to the reclamation and seaport operations are concerned. The City of Bacolod has no contractual obligations with TOP HARBOR and that therefore, TOP HARBOR has no right to manage and operate the seaport which is owned by the City.

On the other hand, the assignment by BREDCO of its leasehold rights over the seaport as collateral for bank loans, without the knowledge and consent of the City which owns the said seaport, exposes such facilities to the risks of foreclosure, possession, control, claims or suits by third parties - - a situation most prejudicial to the interest of the City.

All the contract violations were referred by the Sangguniang Panlungsod to the Office of the City Mayor. By reason of this referral, the CRRA Executive Working Group was formed as a special study group under the Office of the City Mayor to conduct a separate investigation, analysis and evaluation of the findings of the Sangguniang Panlungsod during its review of the Comprehensive Revised Reclamation Agreement otherwise known as the CRRA.

The CRRA Executive Working Group then officially notified BREDCO and TOP HARBOR INTERNATIONAL, INC. on August 1, 2005 of the alleged violations noted by the Sangguniang Panlungsod for their information and reply.

In the reply of BREDCO dated August 7, 2005, it practically denied committing the violations.

However, despite this reply of BREDCO, your city government officials invited BREDCO officials to a dialogue during the Executive-Legislative Caucus on September 5, 2005 during which BREDCO representatives led by Atty. Simplicio Palanca attended.

A second dialogue with BREDCO officials soon followed. Unfortunately, Atty. Palanca was unable to attend this second dialogue. Instead, on September 23, 2005, the Office of the City Mayor received a letter from BREDCO where it admitted committing some lapses and even apologized to the City of Bacolod for such lapses.

Considering the need to consult with other sectors of the community on the matter, the CRRA Executive Working Group thereafter invited former Vice-Mayor Ramiro Garcia and officials of the Bacolod Filipino-Chinese Chamber of Commerce & Industry, Inc. and the Negros Occidental Filipino-Chinese Amity Club to solicit their views and suggestions.

After these consultations, the CRRA Executive Working Group held a series of meetings to deliberate on the options available to the city. It was eventually agreed that there are only two feasible options to explore.

The first option is a **TAKE-OVER**. This take-over option has two concepts. One, is for Bacolod City itself to take over the operations of the seaport since it owns the said port anyway. Second, is for Bacolod City to take over possession of the seaport for purposes of bidding it out to other prospective operators under terms and conditions more favorable to the city. The reason for this temporary take-over is that nobody will bid for the operation of the said seaport if the City is not in possession of the same.

The second option is **RENEGOTIATION**. This option was to cover, among others, the increase of the yearly lease rentals on the seaport, the unauthorized imposition of toll fees, and the share of the City of Bacolod in the reclaimed area.

After careful consideration of the findings of the Sangguniang Panlungsod, the evaluation of the CRRA Executive Working Group, the inputs of private sector groups and individuals who were consulted individually and collectively, and what we believed to be in the best interest of Bacolod City, we opted on October 12, 2005 to go for a **QUALIFIED RENEGOTIATION** to give BREDCO another chance at the bargaining table.

To carry out this **QUALIFIED RENEGOTIATION** option, we recommended that the Office of the City Mayor and the Sangguniang Panlungsod jointly pursue renegotiation with BREDCO for a period of 60 calendar days. Should this renegotiation fail, then the **TAKE OVER OPTION** should be vigorously pursued by the City of Bacolod.

This recommendation was well-received by a majority of the Sangguniang Panlungsod. The Negotiating Panel for the city government with members from the executive-legislative branches thereof was subsequently formed. This Negotiating Panel was authorized to consult with other pertinent government agencies, private sector groups and knowledgeable individuals whom it felt could guide the Negotiating Panel in its deliberations with BREDCO.

Certainly, your city government officials wanted a wise, amicable and equitable solution to the problem. We did not want the seaport operations disrupted in any way knowing how vital it is to our local economy. We did not want to get bogged down in legal conflicts with BREDCO which could take years to resolve. We just wanted a solution mutually beneficial to the city and BREDCO with neither one gaining unfair advantage over the other. We just wanted to see the terms of the contract between the city and BREDCO respected and complied with because those terms and conditions were meant to protect the rights and interests of both parties, and when BREDCO unilaterally took steps that violated the terms of such governing contracts, those actions became inimical to the interest of the people of Bacolod City.

By choosing to renegotiate, both the city and BREDCO would have been able to move on. This option would have also given BREDCO the chance to take the necessary steps to correct its violations as soon as possible and improve further its seaport operations.

To provide a framework for discussion, we asserted that, among others, the following critical areas must be covered in the renegotiation:

- corrective amendments in the provisions of the CRRA must be made;
- the yearly lease rentals for the seaport must be increased to a level that is equitable and fair to the City;
- the City must share in the toll fees being charged by BREDCO;
- penalties corresponding to the extent and dimension of the violations must be imposed.

The 60-day renegotiation officially commenced on January 4, 2006.

In its first meeting, both the City Negotiating Panel and BREDCO agreed to limit the scope of the renegotiation only to the management, operation and increase of the yearly lease rentals of the seaport and other relevant concerns like the toll fees being collected by BREDCO.

A discussion and review were made on the various provisions of the CRRA that have relevance on the management and operation of the seaport.

Then the matter of increasing the yearly lease rentals was taken up. At that time, the prevailing yearly rental was P800,000.00 per contract between the City and BREDCO.

BREDCO offered to increase this yearly rental by P200,000.00 every 5 years but to them, the amount is not to be considered a lease payment but a reimbursement of the administrative costs to be incurred by the City in monitoring the implementation of the CRRA.

This offer was rejected by the City Negotiating Panel for obvious reasons - that it is very low and definitely disadvantageous to the City and that it should continue to be a rental payment because the City owns the seaport while BREDCO enjoys only the right to operate it.

Please remember that when the government granted BREDCO the right to reclaim a part of the foreshore of Bacolod City and to build and operate a seaport there, it was not only to provide Bacolod City with port and harbor facilities needed by its local businessmen and residents but for the City itself to also directly earn a substantial amount from lease rentals on the seaport once it becomes operational and a track record of its income is established. **This was the business deal with BREDCO.** It was never intended that the city was to be merely reimbursed for administrative costs or paid a pittance for lease rentals just because BREDCO reclaimed so much land and built the seaport without funding assistance from the city.

Records of the Philippine Ports Authority in Bacolod City showed that in 2004 alone, BREDCO had a **gross income** from arrastre operations, wharfage and other income in the total amount of slightly over P148 million. Based on this figure, an **annual rental of P1 million** as proposed by BREDCO would be less than peanuts, so to speak.

The City Negotiating Panel in turn haggled for an **annual rental of P17.5 million** which is about **12% of the gross income** of BREDCO for 2004.

BREDCO counter-offered by increasing its offer to **P1.4 million a year** - a figure that was still not acceptable to the City Negotiating Panel. Probably, we would have been willing to scale down our figure of P17.5 million if BREDCO was able to convince us or had shown us their financial statements that at this rental rate, they will already incur operating losses or be forced to default on their bank loans. However, such figures were not relayed to the City Negotiating Panel.

In addition, the city requested for a 60% share of the toll fees being collected by BREDCO considering that the city owns the road lots in the reclaimed area. BREDCO did not respond at all to this request.

In short, the renegotiation **FAILED**. Under such situation, the City Negotiating Panel then recommended for the take-over of the management and operation of the seaport by the City of Bacolod and further recommended the passage of an appropriate city ordinance to set the policy directions for it. This is so because a take-over necessitates a comprehensive plan which will require among others, the creation of an organizational structure and staffing with qualified personnel who understand and know how to manage and operate a harbor and seaport facility. In the absence of such an ordinance from the Sangguniang Panlungsod, the Office of the City Mayor cannot initiate any take-over move.

Such proposal for the take-over of the management and operation of the seaport was anchored firstly, on the various violations of BREDCO of the CRRA as noted by the Sangguniang Panlungsod, which violations todate have remained uncorrected, and the fact that, in the opinion of the City Legal Office, BREDCO has already effectively and unilaterally abandoned its franchise for the reclamation project and seaport operation and such can therefore be construed as a unilateral termination by BREDCO of the CRRA. It would appear therefore, that there is no more contract between the City of Bacolod and BREDCO. In addition, attempts to renegotiate have failed.

What is the purpose of citing the chronology of events regarding this latest review of the CRRA with BREDCO? This is simply to put into proper historical context and perspective the past events that spawned the passage by the Sangguniang Panlungsod of City Ordinance No. 454 dated December 19, 2007. This ordinance mandates that the City of Bacolod take over from BREDCO the unfinished portion of the reclamation project and the seaport operations at the Bacolod reclamation area prior to bidding out these projects to prospective investors and operators at terms more advantageous to the City.

The historical backgrounder is also meant to give our people a better understanding of the various issues related to the CRRA and BREDCO and to let our people know of the efforts we have taken to try to save the relationship with BREDCO. We do not want our people to think that their city government oppresses legitimate business and investments. As far as the City of Bacolod is concerned, we have a business deal with BREDCO covered by legal decrees and contracts and that these contracts were violated to the prejudice and disadvantage of the City of Bacolod. We have also given BREDCO enough opportunities to correct these violations and to renegotiate on terms more equitable for our people.

However, these efforts have failed, leaving us with no more alternative but to approve City Ordinance No. 454 dated December 19, 2007.

This decision was not taken lightly. The recommendation of the City Negotiating Panel for the passage of a take-over ordinance was made in March, 2006 yet. That was almost 2 years ago. Much as we would like to give BREDCO all the leeway it wants on the CRRA, there comes a time when we must also decide in accord with what we believe is right for our city and for the best interest of our people.

I believe that that time has come.

So what happens next?

Considering the far-reaching effects of City Ordinance No. 454, may I summarize in layman's terms what it is all about and how this take-over shall be implemented.

This city ordinance reiterates the fact that the City of Bacolod has clear legal authority to reclaim its foreshore land and to provide for and operate for its own use and benefit port and harbor facilities thereon. That if ever any private entity is authorized to undertake said project for the City Government of Bacolod, it is **only a privilege and not an absolute right** and that this privilege can be enjoyed only if the conditions imposed for such a privilege are complied with.

Considering that the CRRA violations of BREDCO remain uncorrected to date and that under present circumstances, Bacolod City cannot indefinitely continue with the CRRA in "suspended animation", the ordinance declared the need for the city to reassert its ownership over the unfinished portion of roughly 61 hectares of the reclamation project and over the seaport and its operations, and to take separate legal action on the lands reclaimed beyond the authorized limits and boundaries.

On the other hand, insofar as the completed portion of almost close to 180 hectares of the reclamation project is concerned, the ordinance clearly declares that BREDCO shall retain its present 70% share thereof as compensation for the work that it has actually done.

In reasserting its ownership rights over the unfinished portion of the reclamation project and the seaport, the city shall observe the proper and latest applicable government rules and regulations on PRE-TAKE OVER preparations, ACTUAL TAKE OVER, and POST TAKE OVER.

During the pre-take over phase, the city government is supposed to work with and coordinate with the Philippine Reclamation Authority (or PRA), the Philippine Ports Authority (or PPA), and other government agencies on the organizational aspect of the take-over including the drawing up of an agreement on tariffs, rates, duties, impost, and charges that are more at public levels. It is also at this phase that the management team for port operations will be qualified for hiring.

May I make it clear that during this pre-take over phase, the City Government of Bacolod would still welcome any move of BREDCO to go back to the bargaining table with us. We believe these issues with BREDCO can still be resolved there.

Once pre-take over activities are over and done with, then the actual take over phase shall commence with the issuance by the Office of the City Mayor of the necessary NOTICE OF TAKE OVER to BREDCO. Then the city government together with the PRA and the PPA shall take the necessary legal steps to implement the take-over of the unfinished portion of the reclamation project and port operations at the reclamation area of Bacolod City. It is our objective that to the greatest extent possible, seaport operations at the Bacolod Reclamation Area will not be unduly disrupted by reason of this take over.

The bidding or rebidding to private entities of the unfinished portion of the reclamation project and lease of the seaport there shall not be more than 60 days after the take-over by the City. During these bidding or rebidding, BREDCO and TOP HARBOR can freely participate subject to compliance with pre-qualifying conditions that all interested bidders must meet.

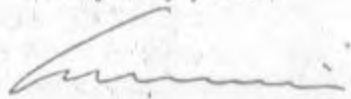
It is expected that the bidding will secure for the City of Bacolod a better deal in so far as lease rentals for the seaport are concerned. We should get more than the P1.4 million per year that was the best offer of BREDCO considering that the seaport has now proven its potential to earn for its operator a minimum gross of P148 million a year as shown from actual experience.

Obviously, City Ordinance No. 454 will not sit well with BREDCO. We understand their position and empathize with their sentiments but then again, for reasons explained earlier, I have to make the hard decisions as your City Mayor and I will not shirk the responsibility and duty to protect the interest of the people of Bacolod.

Certainly, our people deserve a better deal.

Thank you for your kind attention.

Very truly yours,



EVELIO R. LEONARDIA
Mayor of Bacolod City

January 22, 2008

STATEMENT OF MAYOR EVELIO R. LEONARDIA

RE: CITY ORDINANCE NO. 454 dated Dec 19, 2007 ON THE TAKE OVER OF THE BREDCO RECLAMATION PROJECT (UNFINISHED PORTION ONLY) AND SEAPORT OPERATIONS

MY DEAR FELLOW BACOLODNON:

Undoubtedly, one of the major infrastructure facilities and services for any progressive community is a seaport that can accommodate the inflow and outflow of goods and people from and to neighboring islands and even other countries.

Much of the economic and tourism growth of our city has been spurred by the presence of what we call the BREDCO SEAPORT at the Reclamation Area of Bacolod City.

We acknowledge and commend the vision, determination and courage of Atty. Simplicio Palanca and the other stockholders of BREDCO in reclaiming todate almost 180 hectares of foreshore land and the building of 1,200 lineal meters of port and port facilities at this reclamation area.

Presently, there are some 61 hectares of the reclamation project still to be finished. On the other hand, the seaport in the finished portion of the reclamation project has been operating for several years now.

It must be made clear to our people however, that by law, the right to reclaim foreshore lands and the right to build and operate a seaport and harbor belong **only to the government**, which may choose to confer those rights on a private party as a **privilege** under a franchise and subject to faithful compliance by such private party of the terms and conditions that accompany the franchise.

In the case of the reclamation project of Bacolod City, the government conferred the rights to reclaim a portion of the foreshore of Bacolod City and to build and operate a seaport there to BREDCO as a franchise exclusive only to BREDCO. This was to be done at no cost to the city.

In exchange for the rights granted by the government to BREDCO, **the city government was to own 30% (inclusive of road lots and open spaces) of the reclaimed area and any and all seaports that will be constructed there.** For its part, BREDCO was to keep and own 70% of the reclaimed land and be granted the **right to operate the seaport under a lease contract** where BREDCO should pay annual rentals to Bacolod City.

All these are contained in various legislation and bilateral contracts between BREDCO and the Bacolod City government.

Considering that this relationship between BREDCO and Bacolod City is governed by contracts, it was a responsibility of your city government, through the Sangguniang Panlungsod, to review from time to time, how well BREDCO was complying with its obligations under such contracts.