

REPUBLIC
TANGGAPAN NG SA
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For publication

CITY ORDINANCE NO. 09-16-784

September 7, 2016

AN ORDINANCE AMENDING SECTIONS 3, 15, 16, 17, 19, 20, 24, ADDING PROVISIONS ON SECTIONS 21 AND 23 OF CITY ORDINANCE NO. 641, SERIES OF 2013 OTHERWISE KNOWN AS, "AN ORDINANCE REGULATING SMOKING IN PUBLIC PLACES, INCLUDING PUBLIC CONVEYANCES, ADVERTISEMENTS, PROMOTIONS AND SPONSORSHIPS OF TOBACCO PRODUCTS, AND PROVIDING PENALTIES THEREFORE, IN ACCORDANCE WITH THE TOBACCO REGULATION ACT OF 2003 AND ITS IMPLEMENTING RULES, AND FOR OTHER PURPOSES."

WHEREAS, City Ordinance No. 641, Series of 2013 aims to regulate smoking in all public places and conveyances and to ensure the strict enforcement of RA 9211 or the Tobacco Regulation Act of 2003;

WHEREAS, with the recent developments in the City and the imposition of new regulations by the national government, City Ordinance No. 641, series of 2013 needs to be amended to make it more effective;

WHEREAS, it was observed that some of the provisions of the ordinance need to be refined to enhance its enforcement and to prevent indiscriminate smoking in unauthorized places and to stop the proliferation of non-compliant cigarette products;

WHEREAS, the City Government of Bacolod recognizes that the proliferation of non-compliant cigarette products is a serious problem that deprives the government of potential revenue from excise tax collections and has the effect of flooding the market with cheaper cigarettes, thereby making them more accessible to the public, especially the youth;

WHEREAS, the City of Bacolod is aware that due to the illegal nature of these non-compliant cigarette products, they remain unregulated by government and may pose a greater threat to consumers because of their substandard quality;

WHEREAS, the Bureau of Internal Revenue (BIR) Revenue Regulation No. 7-2014 mandates that by December 1, 2014, all importations and removals from the place of production of cigarettes shall be affixed with internal revenue stamps to ensure that the proper excise tax payments have been made before they are introduced into the market;

WHEREAS, the City of Bacolod is aware that the sale or distribution of non-compliant cigarette products is an illicit activity that deprives the government of a large amount of potential revenue from the collection of excise taxes which could have otherwise been used for the benefit of our people.

NOW THEREFORE, BE IT ENACTED, by the Sangguniang Panlungsod of Bacolod City,
That:

Section 1. Section 3 of City Ordinance 641, Series of 2013 is hereby amended as follows:

SECTION 3. Definition of Terms. – As used in this Ordinance:

- a) **Advertisement** – refers to any visual and/or audible message disseminated to the public about or on particular product that promote and give publicity by words, designs, images or any other means through broadcast, electronic, print or whatever form of mass media, including outdoor advertisements, such as, but not limited to, signs and billboards. For the purpose of this ordinance, advertisement shall be understood as tobacco advertisement;
- b) **Advertising** – refers to the business of conceptualizing, presenting, making available and communicating to the public, through any form of mass media, any fact, data or information about the attributes, features, quality or availability of consumer products, services or credit. For purposes of this Ordinance, advertising shall be understood as tobacco advertising. This shall specifically refer to messages and images promoting smoking; the purchase or use of cigarettes or tobacco products; and cigarette or tobacco trademarks, brand names, design and manufacturer's names;
- c) **Celebrity** – refers to any natural person who, by his accomplishments or fame, or by reason of his profession or calling, gives the public a legitimate interest in his doings, affairs, and character. The term includes anyone who has arrived at a position where public attention is focused upon him as a person, such as, but not limited to, actors, athletes and other sports personalities, war heroes, famous inventors and explorers among others.
- d) **Cigarette** – refers to any roll or tubular constructions, which contains tobacco or its derivatives and is intended to be burned or heated under ordinary conditions of use;
- e) **Distributor** – refers to any person to whom a tobacco product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer or common carrier of such product;
- f) **Enclosed area** – refers to an area that is physically separated from adjacent areas by walls or partitions and a roof or ceiling. The walls or partitions must be continuous, interrupted only by doors and windows. The mere presence of a roof or ceiling over the structure, but without walls or partitions surrounding said structure, does not constitute an enclosed area;

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- g) **Infographic Poster** - refers to poster that shows examples of compliant cigarette products, non-compliant cigarette products and the corresponding penalties thereto.
 - h) **Mass media** – refers to any medium of communication which reaches a mass of people. For this purpose, mass media includes print media such as, but not limited to newspapers, magazines, and publications; broadcast media such as, but not limited to, radio, television, cable television, and cinema; electronic media such as but not limited to, the internet. For the purpose of this Ordinance, communications designed to reach persons by private, postal or regular mail, electronic mail (e-mail), and similar means shall not be considered as mass media;
 - i) **Minor** – refers to any person below eighteen (18) years old;
 - j) **Non-compliant Cigarette Products** - refers to cigarette packs that are sold in the domestic market which are either:
 - j. 1. Cigarette packs without any tax stamps, as required by the BIR, or
 - j. 2. Cigarette packs that carry counterfeit or fake tax stamps.
 - k) **Perimeter** – when used in this Ordinance in relation to sale of, and outdoor advertisements for, tobacco products, the term shall refer to any point in the boundaries as indicated in the Original Certificate of Title or Transfer Certificate of Title of the tract of land that is actually used or occupied by a public school, public playground owned by the government or other facility frequented particularly by persons below eighteen (18) years of age who are or are intended to be the principal users or patrons of such facility, whether or not said tract of land is separated by adjacent tracts by a wall or fence;
 - l) **Point-of-Sale** - refers to any location at which an individual can purchase or otherwise obtain tobacco products. For the purpose of this Ordinance, itinerant/ambulant vendors are not covered by the term "point-of-sale";
 - m) **Point-of-Sale Establishment Owners** - refers to any person or legal entity who operates a point-of-sale establishment where cigarette products are sold or distributed.
 - n) **Premises** – refers to a tract of land and the building or buildings thereon, including the open spaces between the buildings located on the same tract of land and within the perimeter of said tract of land;



- o) **Promotion** – refers to an event or activity organized by or on behalf of a tobacco manufacturer, distributor or retailer with the aim of promoting a brand of tobacco product, which event or activity would not occur but for the support given to it by or on behalf of the tobacco manufacturer, distributor or retailer. It may also refer to the display of a tobacco product or manufacturer's name, trademark, logo, etc. on non-tobacco products. This includes the paid use of tobacco products bearing the brand names, trademarks, logos, etc. in movies, television and other forms of entertainment. For the purpose of this Ordinance, promotion shall be understood as tobacco promotion;
- p) **Public conveyances** – refers to modes of transportation servicing the general population, such as but not limited to, elevators, airplanes, buses, taxicabs, ships, jeepneys, light rail transits, tricycles, and similar vehicles;
- q) **Public places** – refers to enclosed or confined areas of all hospitals, medical clinics, schools, public transportation terminals and offices and buildings such as private and public offices, recreational places, shopping malls, movie houses, hotels, restaurants, and the like;
- r) **Smoking** – refers to the act of carrying a lighted cigarette or other tobacco products, whether or not it is being inhaled or smoked;
- s) **Tobacco** – refers to agricultural components derived from tobacco plant, which are processed for use in the manufacture of cigarettes and other tobacco products;
- t) **Tobacco product** – refers to any product that consists of loose tobacco that contains nicotine and is intended for use in cigarette, including any product containing tobacco and intended for smoking or oral or nasal use, Unless stated otherwise, the requirements of this Act pertaining to cigarettes shall also apply to other tobacco products.

Section 2. Section 15 of CO 641, series of 2013 is hereby amended as follows:

SECTION 15. Punishable Acts. – The following acts shall be declared unlawful and prohibited by this ordinance:

Smoking in designated public places where smoking is prohibited;

1. Non-compliance by the owners, proprietors, operators, possessors, managers or administrators of enclosed places open to the general public, public and private workplaces and other places not covered under Section 2 of this Ordinance to establish smoking and non-smoking areas under Section 4 of the same;

2. Selling of tobacco products to or by a minor;
3. Selling of tobacco products within one hundred (100) meters from any point of the perimeter of a school, public playground owned by the government or other facility frequented particularly by minors who are intended to be the principal users or patrons of such facilities;
4. Selling/distributing Non-compliant Cigarette Product.
5. Knowingly purchasing/possessing a Non-compliant Cigarette Product.
6. Non-compliance with the required signage in point-of-sale establishments;
7. Non-compliance with the restrictions on tobacco advertising, print media advertising, outdoor advertising; cinema advertising; television and radio advertising; advertising in audio, video and computer cassettes/discs and similar medium; and advertising in the Internet.
8. Non-compliance with the ban on advertisements; restrictions on tobacco promotions; and ban on naming rights;
9. Non-compliance with the restrictions on sponsorships and ban on sponsorships; and
10. Distribution of samples of tobacco products to minors.

SECTION 3. Additional Penalties. The following provisions shall be added to Section 16 of CO 641, series of 2013, to wit:

- a. The sale or distribution of one (1) pack of Non-compliant Cigarette Product shall constitute one (1) offense:
 1. First offense – P1, 000
 2. Second offense – P3, 000
 3. Third and subsequent offenses – P5, 000
- b. For knowingly purchasing or being in possession of at least one (1) pack of Non-compliant Cigarette Product shall constitute one (1) offense:
 1. First offense – P500
 2. Second offense – P1, 000
 3. Third and subsequent offenses – P2, 000



c. For violations of Sections 5 (a) and 5 (b) of this ordinance:

1. First offense – P500
2. Second offense – P1, 000
3. Third and subsequent offenses – P2, 000

d. Confiscation and Removal. Non-compliant Cigarette Products associated with any violation of this ordinance shall be subject to summary confiscation, removal and destruction.

Section 4. Section 17 of CO 641, series of 2013 shall be amended as follows:

SECTION 17. Citation Ticket System. Violators of this Ordinance shall be informed of their violation and the penalty associated with such violation by means of a Citation Ticket System with the following guidelines:

a. Official booklets of Citation Tickets shall be issued by the Health Office to duly authorized enforcers.

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) A 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; and
- 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 City Treasurer's Office or its duly authorized collection agent, within five (5) working days after such issuance, where he or she shall either pay the fine imposed or render community service.

e. A business permit shall not be issued to any Point-of-Sale Establishment until all of the conditions in the Citation Ticket have been complied with.

- f. The Health Office shall keep a duplicate of all Citation Tickets issued to violators as well as all other records of violations of this Ordinance.

Section 5. Section 19 of CO 641, Series of 2013 is hereby amended as follows:

SECTION 19. Bacolod Anti-Smoking 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.

- a. The Task Force shall be composed of the following:

Chairperson - City Mayor
Vice Chairperson - Vice Mayor

Members:

1. SP Chairman on Committee on Health and Sanitation
 2. City Administrator
 3. City Health Officer;
 4. City Legal Officer;
 5. Public Information Officer;
 6. Head of the Office of Building Official;
 7. Head of the Permits and Licensing Division;
 8. City Treasurer;
 9. City Engineer;
 10. Representative/s of one or more Civil Society Organizations (CSO) designated by the Health Officer under Section 16 hereof;
 11. Representative of the Bacolod City Police Office (BCPO)
 12. Environment and Natural Resources Officer (ENRO);
 13. Liga ng mga Barangay President;
 14. Sangguniang Kabataan Federation President;
 15. Schools Division Superintendent;
 16. Other member/s identified by the City Health Officer (whose specific function in the LGU and role in the effective implementation of tobacco control policies may be considered invaluable)
- b. 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.

Section 6. Section 20 of CO 641, Series of 2013 is hereby amended as follows:

SECTION 20. Duties and Responsibilities of the Bacolod Anti-Smoking Task Force. - Other than (1) receiving, reviewing and processing reports of and complaints for violations of this Ordinance and (2) deputizing enforcers hereof, the Task Force shall have the following respective duties and responsibilities:

a. **City Administrator shall:**

1. Assist the Mayor in overseeing the implementation and enforcement of this ordinance;
2. Provide regular updates to the Mayor as to the status of the implementation and enforcement of this ordinance; and
3. Oversee the destruction of Non-compliant Cigarette Products.

b. **The Health Officer shall:**

- 1) Issue official Citation Tickets to the enforcers;
- 2) Assign a hotline or any other number to which violations of this Ordinance may be reported by telephone call or by SMS, and a person to operate the line and record reports;
- 3) Serve as the overall coordinator among all the Local Government offices involved in the implementation of this Ordinance;
- 4) Develop, promote and implement a Smoking Cessation Program, as stated under Section 18;
- 5) Make tobacco control, including the implementation and enforcement of this Ordinance, a part of the health program to be proposed for funding by the general budget of the City.

c. **The Legal Officer shall:**

- 1) Assist the Taskforce in reviewing reports and complaints for violations of this ordinance; and
- 2) Extend any legal assistance on matters pertaining to this ordinance.
- 3) Encourage constituents of the City to monitor and report violations of this Ordinance;

d. The Head of the Office of the Building Official and City Engineer 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 or partially enclosed public places, workplaces or other public places comply with the requirements of this Ordinance

e. The Public Information Officer shall:

- 1) Develop and produce information, education and communication materials on the harms of second-hand smoke as well as on the provisions of this Ordinance;
- 2) print the copies of Smoking related ordinances for distribution to the public;
- 3) make a primer summarizing the provisions of this Ordinance;
- 4) Publicize activities related to the implementation and enforcement of this Ordinance

f. The Business Permits and License Officer shall:

- 1) Order the suspension or revocation of permits and licenses of establishments found to have violated this Ordinance, subject to the provisions of Section 16 hereof;
- 2) Deny renewal of permits and licenses of violators of this Ordinance
- 3) Ensure that Point-of-Sale Establishment Owners who have been issued a citation ticket have fully complied with all the conditions stated therein before a business permit is issued.

g. The CSO Representative/s shall:

- 1) Assist in preliminary inspections and in monitoring violations of this Ordinance;
- 2) Assist in promoting awareness of this Ordinance and in encouraging public support and participation in its implementation and enforcement;
- 3) Assist in developing, promoting and, if capable, implementing a Smoking Cessation Program;



- 4) Assist in developing and conducting orientation seminars 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 BCPO Representative shall:

1. Ensure the assistance by the PNP in enforcing the provisions of this ordinance;
2. Confiscate Non-compliant Cigarette Products that do not bear any tax stamps, and in the case of cigarette products with counterfeit or fake tax stamps, confiscation shall be done only in the presence of a BIR representative, or the latter's duly authorized representative;
3. Assist Local Government officials and depulized civilians in enforcing the provisions of this ordinance and in filing appropriate complaints, when necessary; and
4. Assist in promoting awareness of this ordinance and in encouraging public support and participation in its implementation and enforcement.

i. The Treasurer shall:

1. Facilitate the printing of the Citation Tickets;
2. Collect/receive fines paid by violators and submit reports on its collection;
3. Designate collection agents and guidelines for collections as necessary to assist in efficient collection of fines; and
4. Facilitate the release and allocation of funds 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 member of the Task Force;



- 3) Conduct periodic monitoring of air, water, soil quality and other studies pertinent to determining levels of exposure to tobacco smoke, residue, byproducts and litter;
 - 4) Provide the expertise in the application and management of appropriate technologies to avert environmental risks and damage posed by tobacco smoke, residue, by-products and litter
- k. The Presidents of the Liga ng mga Barangay and the Sangguniang Kabataan Federation 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 Chairpersons and the PNP 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 (like Coast Guards) for the implementation of activities pertinent to the Ordinance;
 - 4) Assist in the facilitation of referrals for the Smoking Cessation Program at the Barangay Level
 - 5) To develop and promote programs that will deviate the youth away from smoking.
- l. The Schools Division Superintendent shall:
- 1) Assist in promoting awareness of this Ordinance in all elementary and secondary schools of the City;
 - 2) Coordinate with all schools in monitoring violations of the Ordinance within their jurisdictions;
 - 3) Provide the necessary coordination among the teachers and other school authorities for the implementation of activities pertinent to the Ordinance;
 - 4) To develop, promote and initiate programs and projects that will deviate the students away from smoking.

Section 7. Section 24 of CO 641, series of 2013 is hereby amended as follows:

Section 24. Civilian Participation in Enforcement. The Task Force shall designate, with the approval of the Office of the City Mayor, one or more Civil Society Organizations (CSO) to discharge the duties and responsibilities enumerated in the ordinance.

The Task Force may deputize qualified civilians to serve as enforcers of this Ordinance. Members of the PNP and/or persons duly deputized by the Mayor shall apprehend and issue Citation Tickets against any person caught selling, distributing, purchasing or possessing any Non-compliant Cigarette Products and shall confiscate the same.

Any person may file with the Taskforce a report or complaint for any violation of this ordinance, which report or complaint will be promptly acted upon by the Taskforce within (30) working days from receipt of such report or complaint.

Section 8. The following provision shall be added to Section 21 of City Ordinance 641, series of 2013, to wit:

a. **Persons Liable.** The following persons shall be liable under this ordinance:

1. Any person who commits any of the prohibited acts mentioned in Section 5 hereof.
2. Any Point-of-Sale Establishment Owner who knowingly abets, allows or tolerates the commission of any of the prohibited acts mentioned in Section 5 or fails to comply with the duties and obligations enumerated in Section 6 hereof.

Section 9. The following provisions shall be added to Section 23 of City Ordinance No. 641, series of 2013, to wit:

a. **Duties and Obligations of Point-Of-Sale Establishment Owners.** Point-of-Sale Establishment Owners shall:

1. Prominently display an infographic poster in a conspicuous location in a Point-of-Sale Establishment, informing the public to purchase only those cigarette products that bear the necessary tax stamps.
2. Report and turn over to any member of the Task Force on Illegal Cigarette Products any Non-compliant Cigarette Product that is offered to them by any person, wholesaler, agent or representative of cigarette manufacturers or those which may have come into their possession through the normal course of business.

b. **Enforcement on Point-Of-Sale Establishments.** The Taskforce on Illegal Cigarette Products shall conduct inspections of Point-of-Sale Establishments to determine their compliance with the provisions of this ordinance. Regular inspections shall thereafter be conducted at least once a month during normal hours of operation of the Point-of-Sale Establishment. The Taskforce shall issue a Citation Ticket against the Point-of-Sale Establishment Owner upon finding of non-compliance with or any violation of this ordinance. A Citation Ticket may be issued for each day that the establishment is found to be non-compliant or is in violation of this ordinance.

- c. **Destruction of Non-Compliant Cigarette Products.** Within five (5) working days from the time Non-compliant Cigarette Products are seized, the latter shall be destroyed in a manner that will ensure that they can no longer be consumed.

Should there be a court suit, samples of the Non-compliant Cigarette Products seized shall remain in the custody of the City Legal Officer.

Section 10. INCENTIVE OR REWARD PROGRAM ON THE IMPLEMENTATION OF ALL SMOKING REGULATION ORDINANCES OF THE CITY. The apprehending officer or deputized enforcer and any private citizen whose report/complaint leads to the confiscation of Non-compliant Cigarette Products shall each be entitled to five percent (5%) of the corresponding monetary penalty to be imposed against the offender, subject to the usual government accounting and auditing system.

Section 11. TRUST FUND. A trust fund shall be created out of the fines collected in violation of the provisions of this ordinance and in City Ordinance No. 641, series of 2013.

The said fund shall be used solely for the effective enforcement of this ordinance by the Bacolod Anti-Smoking Task Force.

Section 12. REPEALING CLAUSE. All ordinances contrary or inconsistent with this ordinance are hereby repealed.

Section 13. SEPARABILITY CLAUSE. If any part or provision of this ordinance is declared unconstitutional or invalid, the same shall not affect the validity and effectivity of the other parts or provisions hereof.

Section 14. EFFECTIVITY. This Ordinance shall take effect fifteen (15) days from its publication in at least two (2) newspapers of general or local circulation within this City, consistent with the provisions of the Local Government Code.

CARRIED BY THE VOTE OF:

Affirmative :

Councilors :

Caesar Z. Distrito, Cindy T. Rojas, Renecito S. Novero, Em L. Ang, Elmer T. Sy, Ana Marie V. Palermo, Dindo C. Ramos, Bartolome N. Orola, Sr., Sonya M. Verdeflor, Noli B. Villarosa.

Negative :

None.


Official Leave :

Vice Mayor El Cid M. Familiaran.

Absent :

None.

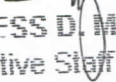
Author : Floor Leader Caesar Z. Distrito.
Passed : September 7, 2016 (10th Regular Session of the 9th Council)
Comments : Passed.
Councilors Wilson C. Gamboa, Jr. and Claudio Jesus Raymundo A. Puenteveffa were not around when this ordinance was passed.


RICARDO L. TAN
Acting Vice Mayor
Presiding Officer


ATTESTED:

ATTY. VICENTE C. PETIERRE III
Secretary to the Sanggunian

By:


MARITESS D. MANAYON
Legislative Staff Officer III

APPROVED: _____

EVELIO R. LEONARDIA
City Mayor 

MDM/RDE/jbz

10 DAYS LAPSED
AS OF OCT 04 2016 