



Republic of the Philippines

DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
DILG-NAPOLCOM Center, EDSA corner Quezon Avenue, West Triangle, Quezon City
<http://www.dilg.gov.ph>

DILG OPINION NO. 35 S. 2018

MR. LUIS B. LIM
735 Dalupan St., Brgy. 399
City of Manila

03 JUL 2018

Dear Mr. Lim:

This has reference to your letter dated 22 March 2018 requesting for this Department's position on the validity of Ordinance No. SP-2140, S-2012 of Quezon City, entitled "*AN ORDINANCE REGULATING THE USE OF PLASTIC BAGS AND ESTABLISHING AN ENVIRONMENTAL FEE FOR ITS USE, PROVIDING MECHANISM FOR ITS RECOVERY AND RECYCLING AND PROVIDING PENALTIES FOR VIOLATION THEREOF*", as amended by Ordinance No. SP-2350, S-2014, entitled "*AN ORDINANCE PROVIDING FOR THE ENVIRONMENTAL PROTECTION AND WASTE MANAGEMENT CODE OF QUEXON CITY*".

Upon perusal of your letter including its attachments (undated Affidavit of Complaint and the subject ordinances), this Department finds that the following are your allegations:

1. The subject ordinances are ultra vires¹; and
2. The responsible officials and the heads of the implementing offices of the ordinance are engaged in corrupt practices.

Foremost, we would like to inform you that duly approved ordinances are presumptively valid acts and thus enjoy the presumption of regularity on the part of the public concerned². An ordinance that has undergone the procedural process for its enactment under the Local Government Code is presumed valid unless declared otherwise by our courts of justice³. Clearly, matters involving question on the validity or constitutionality of a duly enacted ordinance may stand on its own and therefore remain valid until judicially declared as null and void. Thus, **judicial declaration of nullity of ordinance is an available remedy**⁴.

¹ Beyond one's legal power or authority.

² DILG Legal Opinion No. 24, S.2011 dated 14 June 2011

³ DILG Legal Opinion No. 5, S.2018 dated 25 January 2018

⁴ DOJ Opinion No. 87-2012 dated 18 September 2012

Secondly, an action for **declaratory relief**⁵ in assailing the validity and constitutionality of the subject ordinance may also be resorted to if adequate relief is not available through other existing forms of actions or proceedings.

As regards your second query, please be advised that this Department's mandate, by virtue of its delegated power of supervision over local officials is to see to it that they are acting within the bounds of their duty. However, this Department is not clothed with authority to impose disciplinary measures against local elective, as well as appointive officials.

Thus, if it is your belief that the responsible officials (both elective and appointive) has committed corrupt practices, then you may file the corresponding complaint against them with the Office of the Ombudsman for violation of Republic Act No. 3019, otherwise known as the "*Anti-Graft and Corrupt Practices Act*", in accordance with Administrative Order No. 07, Rules of Procedure of the Office of the Ombudsman.

Alternatively for local elective officials, you may also file a complaint against them in the Sanggunian concerned, or for highly urbanized city, in the Office of the President on the grounds enumerated under Section 60⁶ of the Local Government Code (LGC), in accordance with Section 61⁷ thereof.

⁵ *Declaratory relief is defined as an action by any person interested in a deed, will, contract or written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute; and for declaration of his rights and duties thereunder. The only issue that may be raised in such a petition is the question or validity of provisions in an instrument or statute (Province of Camarines Sur vs. CA, et.al., GR No. 175064, September 18, 2009)*

⁶ *SECTION 60. Grounds for Disciplinary Actions. - An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:*

- (a) Disloyalty to the Republic of the Philippines;*
- (b) Culpable violation of the Constitution;*
- (c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;*
- (d) Commission of any offense involving moral turpitude or an offense punishable by at least prison mayor;*
- (e) Abuse of authority;*
- (f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the Sangguniang Panlalawigan, Sangguniang Panlungsod, Sangguniang bayan, and Sangguniang Barangay;*
- (g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and*
- (h) Such other grounds as may be provided in this Code and other laws. An elective local official may be removed from office on the grounds enumerated above by order of the proper court.*

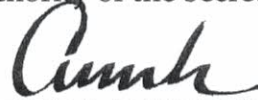
⁷ *SECTION 61. Form and Filing of Administrative Complaints. - A verified complaint against any erring local elective official shall be prepared as follows:*

- (a) A complaint against any elective official of a province, a highly urbanized city, an independent component city or component city shall be filed before the Office of the President;*
- (b) A complaint against any elective official of a municipality shall be filed before the Sangguniang Panlalawigan whose decision may be appealed to the Office of the President; and*
- (c) A complaint against any elective Barangay official shall be filed before the Sangguniang Panlungsod or Sangguniang bayan concerned whose decision shall be final and executory.*

Lastly, you may also bring the matter to the Department of Trade and Industry since this involves businesses.

We hope to have assisted you on the matter.

Very truly yours,
By Authority of the Secretary:



AUSTERE A. PANADERO

Undersecretary



cc: Dir. Maria Lourdes L. Agustin
Regional Director
National Capital Region

Atty. Odilon L. Pasaraba
OIC, BLGS

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