



Republic of the Philippines  
PROVINCE OF LEYTE  
*City of Baybay*  
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## Office of the Sangguniang Panlungsod

### CITY ORDINANCE NO. 04, Series 2017

#### **PUBLIC-PRIVATE PARTNERSHIP (PPP) ORDINANCE OF THE CITY OF BAYBAY, CREATING A PPP REGULATORY AUTHORITY, PROVIDING APPROPRIATIONS THEREOF, AND FOR OTHER PURPOSES.**

**Sponsored by Honorable Vicente G. Veloso**  
**Seconded by Honorable SP Members Jorge V. Rebucas, Filemon F. Avila and**  
**Rodulfo S. Palma, Jr.**

#### **Chapter 1. Basic Principles and Definitions**

Section 1. **Title.** This Ordinance shall be known as the **“PUBLIC-PRIVATE PARTNERSHIP ORDINANCE OF THE CITY OF BAYBAY.”**

Section 2. **Declaration of Policy.** It is the declared policy of the city of Baybay that in order to advance the general welfare and promote the interest of the community within the framework of integrated and sustainable development, and inclusive growth, it shall involve the private sector in effective governance through the PPP mechanism;

Further, that within its development framework, especially in the area of infrastructure, PPP shall be pursued as a mechanism to support development thrusts in health and sanitation, agriculture and food security, education and technology, tourism and livelihood and peace and order.

Section 3. **Mandates and Legal Support.** The implementation of the stated policy is based on the following:

1. The City of Baybay, pursuant to sections 1, 2 and 5, Art. X of the 1987 Constitution, is a territorial and political subdivision enjoying both local and fiscal anatomy. Local autonomy means a responsive and accountable local government unit instituted through a system of decentralization (section 3, Art. X, 1987 Constitution), while fiscal autonomy means that local governments have the power to create their own sources of revenues in addition to receiving their equitable share from national taxes in the form of the Internal Revenue Allotment (IRA) as well as the power to allocate their resources in accordance with their own priorities (LGC, section 129);
2. The city of Baybay operates as a local government unit vested with proprietary capacities thus is accountable to the state and its community. In the exercise of its proprietary functions, the city of Baybay is granted full autonomy, especially those powers that are expressly granted and those necessarily implied therefrom,



including those powers that are necessary, appropriate or incidental to efficient and effective governance, those not otherwise prohibited by law and those which are essential to the promotion of the general welfare (LGC, section 22 d);

3. Section 18 of the LGC empowers the city to acquire, develop, lease, encumber, alienate or otherwise dispose of real or personal property it holds in its proprietary capacity and to apply these assets and resources for productive, developmental and welfare purposes;
4. In the exercise of its devolved and delegated powers stated in sections 16, 17, 19 and 129 of the LGC, the city must delineate and clarify its roles as a regulatory entity or as an implementer of a proprietary undertaking as envisioned in this ordinance;

**Section 4. Guiding Principles.** PPP shall be pursued to provide better but affordable infrastructure projects and timely services to the community. In promoting PPP, the city shall focus on the following principles and drivers:

1. PPP shall be pursued to strengthen and accomplish the development goals of the city as enumerated in its various development and investment plans;
2. PPP projects shall be espoused as a response to a pressing and urgent public need in the model of the EU concept of "additionality," wherein economic benefits can be enjoyed by the target population in the near term because of the opportunity to access funds from private investors rather than having to wait till the city can acquire the financial resources to build the much needed infrastructure;
3. PPP shall be adopted as a better alternative to public borrowing; it allows the leverage of scarce government funds that can then be directed to other priority areas such as social services, education, healthcare and public safety and security;
4. PPP projects shall be feasible and affordable, thus bankable. The assessment of affordability shall be the cornerstone of all PPP projects; they should always provide value for money in delivering to the public improved economic and social benefits;
5. PPP should empower the Filipino by allowing local investors to participate in the undertaking and ensuring and facilitating the hiring and employment of local labour;
6. Procurement of PPP projects should be competitive; in cases where this is not possible, mechanisms shall be formulated to introduce competition in order to ensure transparency and an efficient economic outcome;
7. The city of Baybay, as a partner in the undertaking, may provide equity, subsidy or guarantee and may use local funds for a PPP project intended for public use;
8. The regulation of the PPP shall be pursuant to the PPP contract, and exercised by the appropriate authority; and
9. PPP may become an essential infrastructure reform policy of the city by encouraging performance-based management in the delivery of public service.

**Section 5. Definition of Terms.** As used in this ordinance, the following terms shall mean:

1. **Build-Operate-Transfer Law Schemes.** Under Republic Act No. 6957 as amended by RA No. 7718, the following are the BOT variants:

- 1.1 **Build-and-Transfer (BT).** A contractual arrangement whereby the Project Sector Proponent (PSP) undertakes the financing and construction of a given infrastructure or development facility, and after its completion, turns it over to the city, which shall pay the PSP, on an agreed schedule, its total investment expended on the project, plus a reasonable rate of return;



- 1.2 Build-Lease-and-Transfer (BLT).** A contractual arrangement whereby a PSP is authorized to finance and construct an infrastructure or development facility and, upon its completion, turns it over to the city on a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the city;
- 1.3 Build-Operate-and-Transfer (BOT).** A contractual arrangement whereby the PSP undertakes the construction, including financing, of a given infrastructure facility, and its operation and maintenance. The PSP operates the facility over a fixed term, during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid, or as negotiated and incorporated in the contract, to enable the PSP to recover its investment, and its operating and maintenance expenses in the project. The PSP transfers the facility to the city at the end of the fixed term which shall not exceed fifty (50) years. This build-operate-and-transfer contractual arrangement shall include a supply-and-operate scheme, which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the city so requires, operates the facility, providing in the process, technology transfer and training, to Filipino nationals;
- 1.4 Build-Own-and-Operate (BOO).** A contractual arrangement whereby a PSP is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the PSP is allowed to recover its total investment, operating and maintenance costs plus a reasonable return by collecting tolls, fees, rentals or other charges from facility users. Under this project, the proponent who owns the assets of the facility may assign its operation and maintenance to a facility operator. The divestiture or disposition of the asset or facility shall be subject to relevant rules of the Commission on Audit;
- 1.5 Build-Transfer-and-Operate (BTO).** A contractual arrangement whereby the city contracts out the construction of an infrastructure facility to a PSP such that the contractor builds the facility on a turnkey basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the city. The PSP, however, operates the facility on behalf of the city under an agreement;
- 1.6 Contract-Add-and-Operate (CAO).** A contractual arrangement whereby the PSP adds to an existing infrastructure facility which it is renting from the city and operates the expanded project over an agreed franchised period. There may or may not be a transfer arrangement with regard to the added facility provided by the PSP;
- 1.7 Develop-Operate-and-Transfer (DOT).** A contractual arrangement whereby favourable conditions external to a new infrastructure project, to be built by a PSP, are integrated into the arrangement by giving that entity the right to develop adjoining property and, thus, enjoy some of the benefits the investment creates, such as higher property or rent values;
- 1.8 Rehabilitate-Operate-and-Transfer (ROT).** A contractual arrangement whereby an existing facility is turned over to the PSP to refurbish and operate, with no time limitation imposed on ownership; for as long as the operator is



not in violation of its franchise, it can continue to operate the facility in perpetuity;

2. **Competitive Challenge or Swiss Challenge.** An alternative selection process wherein third parties or challengers shall be invited to submit comparative proposals to an unsolicited proposal. Accordingly, the Private Sector Proponent (PSP) who submitted the unsolicited proposal, or the original proponent, is accorded the right to match any superior offers given by a comparative PSP;
3. **Competitive Selection or Bidding or Open Competition.** Refers to a method of selection or procurement initiated and solicited by the city, based on transparent criteria, which is open to participation by any interested party;
4. **Concession.** a contractual arrangement whereby the financing and construction of a new facility and/or rehabilitation of an existing facility is undertaken by the PSP, after its turnover thereof to the PSP. It includes the operation, maintenance, management and improvement, if any, of the facility for a fixed term during which the PSP generally provides service directly to facility users and is allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges from them. The city may receive a concession or franchise fee during the term of the contract and/or other consideration for the transfer, operation or use of any facility. There may be a transfer or ownership of the asset or facility after the concession period has ended, subject to the rules of the Commission on Audit;
5. **Corporatization.** Refers to transformation of a public entity or quasi-municipal corporation established by the city into one that has the structure and attributes of a private corporation, such as a board of directors, officers, and shareholders, and having it registered with the Securities and Exchange Commission as a stock corporation. The process involves the establishment of a distinct legal identity for the company under which the role of the city is clearly identified as owner; segregation of the company's assets, finances, and operations from other city operations; and development of a commercial orientation and managerial independence while remaining accountable to the government or electorate;
6. **Credit enhancement.** This shall refer to direct and indirect support to a development facility by the PSP and/or city, the provision of which is contingent upon the occurrence of certain events and/or risks, as stipulated in the PPP contract. Credit enhancements are all allocated to the party that is best able to manage and assume the consequences of the risk involved, with the resultant benefit a reduction in the would-be tariff to be paid by the consumers/users. Credit enhancements, which are used on a case-to-case basis, may include, but are not limited to, government guarantees on the performance or the obligation of the city under its contract with the PSP, subject to existing laws on indirect guarantees. Indirect Guarantees shall refer to an agreement whereby the city assumes full or partial responsibility for or assists in maintaining the financial standing of the PSP or project company in order that the PSP/project company avoids defaulting on the project loans, subject to fulfilment of the PSP/project company of its undertakings and obligations under the PPP contract;
7. **Development Projects** – Projects normally financed and operated by the public sector, but which will now be wholly or partly financed, constructed and operated by the PSP; projects that will advance and promote the general



welfare; and other, infrastructure and development projects as may otherwise be authorized by the city.

8. **Direct City Government Equity.** Refers to the subscription by the city of shares of stock or other securities convertible to shares of stock of the special purpose vehicle or single-purpose project company, whether such subscription will be paid in money or other assets;
9. **Direct City Government Guarantee.** Refers to an agreement whereby the city guarantees to assume responsibility for the repayment of a debt directly incurred by the PSP in implementing the project in case of a loan default. As in (6), the resultant benefit here is a reduction in the would-be tariff to be paid by the consumers/users. This guarantee may be used on a case-to-case basis;
10. **Direct City Government Subsidy.** Refers to an agreement whereby the city shall: a) defray, pay or shoulder a portion of the PPP project cost or the expenses and costs in operating and maintaining the project; (b) condone or postpone any payments due from the PSP; (c) contribute any property or assets to the project; (d) waive or grant special rates on real property taxes on the project during the term of the contractual arrangement; and /or (e) waive charges or fees relative to the business permits or licenses that are to be obtained for the construction of the project, all without receiving payment or value from the PSP or operator for such payment, contribution or support;
11. **Divestment or Disposition.** Refers to the manner or scheme of taking away, depriving, withdrawing of title to a property owned by a city and vesting ownership thereof to a PSP;
12. **Feasibility Study.** A study prepared by the city in a competitive selection or a PSP, when submitting an unsolicited proposal containing a needs analysis, affordability assessment, value for money assessment, preliminary risk assessment, stakeholder assessment, human resource assessment, bankability assessment, legal viability assessment, PPP mode selection, market testing if relevant, indicative transaction implementation plan, and draft PPP contract. The study shall be supported by the results of the appropriate "willingness-and-ability-to-pay" survey;
13. **Franchise.** Refers to the right or privilege affected with public interest which is conferred upon a PSP, under such terms and conditions as the city may impose, in the interest of public welfare, security and safety;
14. **Joint Venture (JV).** A contractual arrangement whereby a PSP or a group of private sector entities on one hand, and the city on the other hand, contribute money/capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing. The city may be a minority equity or shareholder while the PSP may be the majority equity or shareholder or any other appropriate equity configuration, as may be decided upon after thorough study. Each party shall be entitled to dividends, income and revenues and will bear the corresponding losses and obligation in proportion to its share. Parties to a JV share risks to jointly undertake an investment activity in order to accomplish a specific, limited or special goal or purpose with the end view of facilitating private sector initiative in a particular industry or sector, with the option of eventually transferring ownership of the investment activity to the PSP under competitive market conditions. It involves a community or pooling of interests in the performance



of the service, function, business or activity, with each party having a right to direct and govern the policy in connection therewith, and with a view of sharing both profits and losses, subject to agreement by the parties;

**15. Lease or Affermage.** A contractual arrangement providing for operation, maintenance, and management services by the PSP, including working capital and/or improvements to an existing infrastructure or development facility leased by the PSP from the city for a fixed term. Under a lease, the PSP retains revenue collected from customers and makes a specified lease payment to the city. Under an affermage, the parties share revenue from customers wherein the PSP pays the contracting authority an affermage fee, which varies according to demand and customer tariffs, and retains the remaining revenue. The affermage fee is typically an agreed rate per every unit sold. The city may provide a purchase option at the end of the lease period subject to rules of the Commission on Audit;

**16. Management Contract.** A contractual arrangement involving the management or provision by the PSP of operation and maintenance or related services to an existing infrastructure or development facility owned or operated by the city. The project proponent may collect toll/fees/rentals and charges which shall be turned over to the city and shall be compensated in the form of a fixed fee and/or performance-based management or service fee during the contract term;

**17. Negotiated Projects.** Refer to instances where the desired project is the result of an unsolicited proposal from a PSP or, where the city has failed to identify an eligible private sector partner for a desired activity when there is only one qualified bidder after subjecting the same to a competitive selection or bidding;

**18. New Technology.** Refers to having at least one of the following attributes:

18.1. A recognized process, design, methodology or engineering concept which has demonstrated its ability to significantly reduce implementation of construction costs, accelerate project execution, improve safety, enhance project performance, extend economic life, reduce costs of facility maintenance and operations, or reduce negative environmental impact or social/economic disturbances or disruptions during either the project implementation/construction phase or the operation phase; or

18.2. A process for which the project proponent or any member of the proponent joint venture/consortium possesses exclusive rights, either world-wide or regionally; or

18.3. A design, methodology or engineering concept for which the proponent or a member of the proponent consortium or association possesses intellectual property rights;

**19. PPP Contract.** Whenever appropriate, the PPP contract shall contain the Preambulatory Clauses or Whereas Clauses, Party Clause, Rules of Interpretation, Nature of the PPP, Term of the Project, Contract Objective, performance Bonds, key Performance Indicators, Risk Allocation, Rights, Payment to PSE or PSP, Tariff Scheme, Subsidy or Support Mechanism, Insurance Requirements, Delay provisions, Force Majeure, Governmental Action, Government and Public Sector Entity (PSE) Warranties, PSP Warranties, Change in the Law, Regulatory Regime, Variations, Termination,



Indemnification, Intellectual Property, Claims, Financial Security, Dispute Resolution, Step-n Rights, Changes in the Composition of the PSP/Service Provider, Partnership Management, Compliance with all Laws, Personnel, Conditions Precedent, among others;

**20. Private Sector Proponent (PSP).** Refers to the private sector entity which shall have contractual responsibility for the project and which shall have an adequate track record in the concerned industry, as well as technical capability and financial base consisting of equity and firm commitments from reputable financial institutions, to provide, upon award, sufficient credit lines to cover the total estimated cost of the project to implement the said project;

**21. Public-Private-Partnership (PPP).** PPP is a form of legally enforceable contract between the city and a PSP, which requires new investments from the PSP and which transfers key risks to the PSP in which payments are made in exchange for performance, for the purpose of delivering a service traditionally provided by the public sector. PPP shall also include disposition of an asset, facility, project owned or entity created by the city to a PSP; assumption by a PSP of a proprietary function of the city; grant a concession or franchise to a PSP by the city; or usage by the PSP of public property owned or possessed by the city;

**22. Reasonable Rate of Return (RROR).** Refers to the rate of return that a PSP shall be entitled to, as determined by the PPP Regulatory Authority taking into account, among others, the prevailing cost of capital (equity and borrowings) in the domestic and international markets, risks being assumed by the PSP and the level of city undertakings extended for the project;

**23. Service Contract.** A contractual arrangement whereby the PSP shall provide a particular service to the city involving its proprietary authority or to entities or corporations created by the city. The PSP shall be entitled to receive a fee per unit of work done during the term of the contract;

**24. Unsolicited Proposal.** Refers to project proposals submitted by a PSP to the city to undertake a development project without a formal solicitation issued by the city;

**25. Value for Money (VFM).** Refers to the concept that over the whole life of a PPP-financed project, government's total expenditures (i.e., its payments to the private sector), adjusted for the risks that have been transferred to the private sector, will be less, on a net Present Value (NPV) basis, than if the government will perform the services itself. VFM considers monetary and non-monetary factors such as: risk transfer, reduced whole life costs, speed of implementation, and quality and reliability of service;

**26. Viability Gap Funding (VGF).** Refers to an explicit subsidy that is performance-driven (i.e., based on private party achieving measurable outputs) and targeted to socio-economically disadvantaged users or groups of users;

**Section 6. Rules of Interpretation.** This ordinance and its provisions shall be liberally interpreted to accomplish the policy and objectives set in Sections 2, 3 and 4.

**Section 7. Authorities.** This ordinance is being adopted in accordance with the constitutional and statutory authorities under section 3 of this ordinance.

1. In pursuing BOT variants, the city shall comply with R.A. 6957 as amended by R.A. 7718 and its IRR;