

2. In entering into management and service contracts, the city shall comply with R.A. 9184 and its IRR;
3. For dispositions, COA circular 89-296 of 1987 shall govern; and
4. This ordinance shall administer in the adoption and implementation of other PPP modalities.

Chapter 2. PPP and Its Modalities

Section 8. PPP Projects. The city, through the appropriate and viable PPP mode, may undertake projects in, but not limited to, power plants, highways, ports, airports, canals, dams, hydropower concerns, water supply, sewerage, irrigation, telecommunications, railroads and railways, transport systems, land reclamation, industrial estates or townships, housing, government buildings, tourism, solid waste management, information technology, education and health, parks (including memorial parks) and recreation.

Section 9. List of Priority Projects. The city shall identify and prepare a list of specific priority projects within six months from the assumption of office of the new city officials that may be undertaken under any of the modalities defined in section 10.

Section 10. PPP Modalities. In undertaking any PPP project, the city may adopt and choose among the sixteen (16) PPP modalities here listed:

1. Build and Transfer (BT)
2. Build, Lease and Transfer (BLT)
3. Build, Operate and Transfer (BOT)
4. Build, Own and Operate (BOO)
5. Build, Transfer and Operate (BTO)
6. Contract, Add and Operate (CAO)
7. Develop, Operate and Transfer (DOT)
8. Rehabilitate, Operate and Transfer (ROT)
9. Rehabilitate, Own and Operate (ROO)
10. Concession Agreement
11. Joint Venture (JV)
12. Lease or Affermage
13. Management Contract
14. Service Contract
15. Divestment or Disposition and
16. Corporatization

Section 11. General Requirements. Undertaking a PPP project must be premised on any or all of the reasons and drivers stated in section 4 of this ordinance.

1. The projects to be implemented by the city under any of the BOT variants costing between twenty to fifty million pesos shall be submitted to the city development council for confirmation; those costing above fifty and two hundred million pesos submitted to the regional development council and those costing above two hundred million pesos to the investment coordination committee of the NEDA;
2. Projects listed as priority under BOT and its variants shall not be subject to unsolicited proposals unless an unsolicited proposal introduces new technology or operating concept. However, those listed under other PPP modalities unsolicited proposals may be accepted whether these feature new technology or operating concept.
3. Prohibitions listed in R.A. 6957 as amended by R.A. 7718 on unsolicited proposals provided with direct government guarantee, direct government subsidy and direct government equity applies only to BOT variants;

4. The city may provide direct government guarantee, direct government subsidy and direct government equity or the so-called viability gap funding to concession agreements, leases or affermage, management and service contracts and joint ventures. Funds for this purpose shall be accessed by the city from the 20% portion of its IRA meant for infrastructure development. The city may also extend credit enhancement for all projects listed under all other PPP modalities. Provided, however, that any support mechanism extended by the city to the PSP shall be targeted, transparent and efficiently managed; and provided further that any support mechanism extended to any PSP shall be incorporated in the tender documents to allow optimum transparency during competitive selection and challenge;
5. In cases where there is difficulty in sourcing funds for a PPP project, official development assistance (ODA) as defined in R.A. 8182 as amended by R.A. 8555, may be availed of but in no case shall the ODA financing exceed 50% of the cost with the balance to be provided by the PSP;
6. Any PPP project falling under any PPP modality shall be required by the city to formulate and adopt a tariff mechanism showing cash needs, price cap, revenue cap, rate of return or any other appropriate mechanism that improves transparency and social acceptability;
7. The city has the option to form a special purpose vehicle through the process of corporatization to implement a PPP project, when deemed necessary, under any chosen PPP modality; and
8. Subject to the limitations set in sections 16, 17, 18 19 and 20 of the LGC, the city may exercise police powers, perform devolution functions, apply and generate resources, expropriate and reclassify real property and provide zoning regulations as part of its active participation in a priority PPP project under any modality classification.

Section 12. **Government-to-Government Joint PPP Undertakings.** The city may implement a PPP project with other local governments, government agencies, GOCC's and government instrumentalities within the territorial boundary of the city or within the territorial boundary of a partner LGU by way of a government to government joint undertaking provided that the city shall have an active role in the selection of the PSP and provided further that the selection process uses the appropriate PPP modality.

Chapter 3. PPP Procedures

Section 13. **PPP Procedures.** The requirements listed in different laws and COA issuances shall govern the procedures in undertaking PPP projects.

1. For BOT variants, the city must comply with the procedure set in R.A. No. 6957 as amended by R.A. No. 7718 and its IRR;
2. For management and service contracts, the city shall comply with R.A. No. 0184 and its IRR;
3. For concessions, joint ventures and leases and affermage, the following procedures shall govern:
 - 3.1 For divestment or disposition of property, COA circular 89-296 of January 27, 1989 shall apply;
 - 3.2 For the divestiture of a subsidiary or corporation incorporated by the city under corporatization, the sale may be pursued via public offering, public auction or other relevant schemes defined in COA 89296;
 - 3.3 If the city opts to select a PSP using the competitive selection or competitive challenge approach, the city must require the submission of a feasibility study;

- 3.4 All recommendations of the selection committee (section 14) shall be submitted for approval by the mayor;
- 3.5 All PPP contracts must be signed by the mayor after prior authorization by the Sangguniang Panlungsod;
- 3.6 After the mayor has signed the contract, the PPP-SC shall issue the notice of award to the PSP.

Section 14. **Selection Committee.** The city Bids and Awards Committee created under the government procurement act shall constitute the PPP Selection Committee (PPP-SC) for purposes of selecting a PSP for a specific PPP project. In addition, one (1) representative from the SP and another from the city development council belonging to the private sector or civil society shall sit as voting representatives.

The PPP-SC may, with the approval of the mayor, invite the public to observe in the proceedings of the PPP-SC.

1. The PPP-SC shall be responsible for all aspects of the pre-selection and selection process, including, among others, the preparation of the feasibility study (which may be outsourced to private consultants as necessary), selection/tender documents; determine the minimum designs, performance standards/specifications, economic parameters and reasonable rate of return or tariff-setting mechanism appropriate to the PPP Modality; drafting or evaluation of the PPP contract; publication of the invitation to apply for eligibility requirements, appropriate form and amount of proposal securities, and schedules of the selection and challenge processes; pre-qualification of prospective PSPs, bidders or challengers; conduct of pre-selection conferences and issuances of supplemental notices; interpretation of the rules regarding the selection process; the conduct of the selection or challenge process; evaluation of the legal, financial and technical aspects of the proposals; resolution of disputes between PSPs and challengers; defining the appeals mechanisms; and recommendation for the acceptance of the proposal and/or award of the contract;
2. The PBAC/PPP-SC shall be assisted by a technical working group composed of representatives of the city government and the private sector to be created by the mayor, the actual composition of which shall be dependent on the nature of the PPP Project;

Section 15. **Competitive Selection.** The competitive selection procedure shall consist of the following steps:

1. Advertisement
2. Issuance of instructions and tender documents
3. Pre-bid conference
4. Eligibility screening of prospective bidders which may take between 15 to 30 working days, receipt and opening of bids, 15 to 30 days also, posting of proposal securities, evaluation of bids (30 to 60 working days), post qualification and award of contract.
5. The mayor needs to approve the tender documents and the draft PPP contract before this is issued to the prospective PSP's/bidders.

Section 16. **Limited Negotiations.** Where the city failed to identify an eligible PSP for a desired project because only one bidder is qualified or the project is the subject of an unsolicited proposal, limited negotiations may take place. The negotiations shall cover the technical and financial aspects of the project and should not exceed thirty (30) working days. Provided, that the minimum design specifications, performance standards and

economic parameters stated in the feasibility study and terms of reference used as benchmarks in the competitive selection are complied with. The mayor needs to approve the terms of the limited negotiations prior to the award of the contract to the PSP.

Section 17. **Competitive Challenge.** The competitive challenge process, divided into three (3) stages, are as follows:

1. Stage 1

- 1.1 A PSP submits an unsolicited proposal accompanied by a feasibility study to the city for a proposed project;
- 1.2 The PPP-SC makes an initial evaluation of the proposal and determines if the project is eligible under the provisions of this ordinance;
- 1.3 When the initial evaluation is completed, the mayor, upon the recommendation of the PPP-SC, issues a notice of acceptance for purposes of detailed negotiations, or reject it;
- 1.4 If there is more than one unsolicited proposal for the same project, the mayor may reject all the proposals and orders competitive selection or accepts the unsolicited proposal determined by the PPP-SC to have complied with all the basic requirements and provides the greater economic and social benefits to the community; and
- 1.5 Steps 1.2 and 1.3 shall not, in the aggregate, exceed sixty (60) working days.

2. Stage 2

- 2.1 The two parties negotiate and agree on the terms and conditions of the project, especially on the technical and financial aspects. This period shall not exceed thirty (30) working days.
- 2.2 If the negotiations are successful, a joint notice is issued stating the eligibility of the PSP, and the technical aspects of the project. This mechanism signals the start of the solicitation process for comparative proposals;
- 2.3 Should negotiations fail, the city may accept new proposals from other interested PSP's, subject the project to competitive selection or choose to pursue the project through other PPP modalities.

3. Stage 3

- 3.1 The PPP-SC prepares the tender documents which shall contain the same eligibility criteria used in determining the eligible PSP. Proprietary information shall be kept confidential and shall not be included in the tender and related documents;
- 3.2 The mayor approves the tender documents and the draft contract before publication of the notice of invitation for comparative proposals which shall be published by the PPP-SC;
- 3.3 The original proponent PSP posts the proposal security on the day of the first publication for the invitation for comparative proposals equal to the amount and form stated in the tender documents;
- 3.4 Challengers are given not more than sixty (60) working days to submit comparative proposals; and
- 3.5 If the city determines that an offer made by a challenger is superior to that of the original proponent, the original proponent is given the right to match such offer. If an offer is made by the original proponent within the prescribed period, the project is awarded to them, otherwise the city awards the project to the challenger.

Section 18. **Schedules and Timelines.** The city shall have the authority to adopt and prescribe the schedules and timelines for each PSP selection process not otherwise stated here; provided that the periods are reasonable and in no way undermine free competition, transparency and accountability.

Chapter 4. Regulation

Section 19. **PPP Regulatory Authority.** There shall be created a PPP Regulatory Authority (PPP-RA) composed of the following:

1. Chairperson - City mayor
2. Vice-Chairperson - Vice-Mayor, who may designate an SP member as his representative
3. City Administrator
4. City Legal Officer
5. City Treasurer
6. City Planning Officer
7. Internal Audit Officer
8. Representative from the business sector or civil society.

Section 20. **Mandate.** The PPP-RA shall perform contract management functions such as partnership management, performance management, risk management, and contract administration for all PPP contracts entered into by the city.

Chapter 5. Final Provisions

Section 22. **Budgetary Requirement.** To carry out the provisions of this ordinance, the amount of two hundred fifty thousand pesos shall be appropriated. Thereafter, such sums as may be necessary for the continuous implementation of this ordinance shall be included in the annual budget of the city.

Section 23. **Implementing Rules.** Although this ordinance and its provisions are operative upon its effectivity, the mayor may issue the appropriate and relevant rules and regulations, including the issuance of relevant mechanisms to ensure transparency and competition (sections 4 and 13), manuals, guidelines, sample contracts and bid documents, PPP indices and performance scorecards which are designed to:

1. Establish criteria for the participation of local investors in the ownership/capitalization of bidders;
2. Establish a set of indicators on what are good performing PPP projects noting that quantitative indicators will make it easier to defend the project in case of questions;
3. Put in place PPP project procurement mechanisms to ensure transparency and an economically beneficial outcome;
4. Lay out in detail the procedures for corporatization since this is a completely new undertaking of the city;
5. Lay out in detail procedures in forming joint venture arrangements;
6. Provide clear standards or metrics on the concept of "value for money"; and
7. Formulate an effective communication plan for all stakeholders.

Section 24. **Application of Other PPP Laws and Regulations.** Whenever relevant and appropriate and upon the recommendation of the PPP-SC, the provisions of R.A. 6957 as amended by R.A. 7718 or the BOT law, R.A. 9184 or the Government Procurement Act, Executive Order 301 of July, 1987, COA Circular 89-296 of January, 1989 and their IRR's, and the Joint Venture Guidelines adopted by the NEDA, shall apply in a suppletory manner.

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(City Ordinance No. 04, s. 20017)


Section 25. Separability Clause. If, for any reason, any section or provision of this ordinance, or the application of such section, provision or portion is declared invalid or unconstitutional, the remainder of this ordinance shall not be affected by such declaration.

Section 26. Repealing Clause. All ordinances and resolutions or their parts inconsistent with the provisions of this ordinance are repealed or modified accordingly.


Section 27. Effectivity. This ordinance shall take effect fifteen (15) days after its publication in a newspaper of general circulation and posting in three (3) conspicuous places in the City of Baybay.

ENACTED, March 27, 2017.

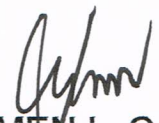
I HEREBY CERTIFY to the correctness of the foregoing ordinance which was duly adopted by the Sangguniang Panlungsod during its regular session held on March 27, 2017.


ATTY. VIVIAN E. VIDALLON
SP Secretary

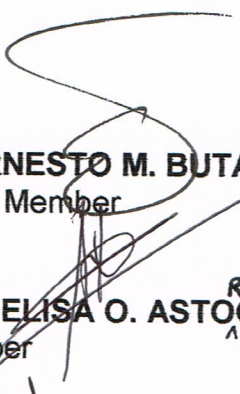
ATTESTED AND CERTIFIED
TO BE DULY ADOPTED:


MICHAEL L. CARI
City Vice Mayor, Presiding Officer

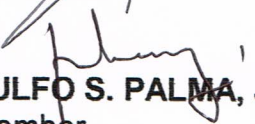
APPROVED BY HER HONOR:


CARMEN L. CARI
City Mayor

With our concurrence:


ATTY. ERNESTO M. BUTAWAN
SP Member

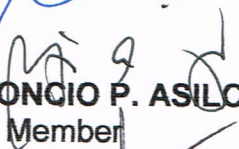

ARTURO ELISA O. ASTOGA
SP Member


RODULFO S. PALMA, JR.
SP Member


ALAN D. FERNANDEZ
SP Member


FILEMON F. AVILA
SP Member



EDGARDO R. OMPOY
SP Member


LEONCIO P. ASILOM, JR.
SP Member


VICENTE VICTOR G. VELOSO
SP Member


DOMINADOR K. MURILLO
SP Member


JORGE V. REBUCAS
SP Member


MANDY G. MUNEZ
President, LIGA Ng Mga Barangay,
Ex-Officio SP Member

