REVIEWER ON LOCAL GOVERNMENT LAW

Alberto C. Agra

(cases as of October 6, 2021)

Table of Contents

Part 1. LOCAL GOVERNMENTS

Nature of Local Government Units

1. Under the 1987 Constitution, local governments or local government units (LGUs) or municipal corporations proper are referred to as "territorial and political subdivisions" *(Section 1, Article X, 1987 Constitution).*

    1.1 An LGU is a public office, a public corporation, and is classified as a municipal corporation proper.

a. The four elements of an LGU are: (1) legal creation; (2) corporate name; (3) inhabitants; and (4) place or territory *(Public Corporations, Ruperto G. Martin, 1985).*

b. They are established for the government of a portion of the State *(Public Corporations, Ruperto G. Martin, 1985).*

c. An LGU can only exercise its powers within its territorial boundary or jurisdiction. Its powers are intramural. As exceptions, an LGU can exercise its powers outside the subdivision (extramural) on three occasions; namely, (1) protection of water supply; (2) prevention of nuisance; and (3) police purposes. *(Public Corporations, Ruperto G. Martin, 1985).* **Forest lands**, although under the management of the DENR, are **not exempt from the territorial application of municipal laws**, for local government units legitimately exercise their powers of government over their defined territorial jurisdiction (*Aquino v. Municipality of Malay, Aklan, G.R. No. 211356, September 29, 2014*).

d. **"Municipal waters"** includes "not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where the boundary lines of the municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen (15) kilometers from it." Although the term "municipal waters" appears in the 1991 LGC in the context of the grant of quarrying and fisheries privileges for a fee by LGs, its inclusion in Book II which covers local taxation means that it may also apply as guide in determining the territorial extent of the local authorities' power to levy real property taxation *(Capitol Wireless Inc. v. Provincial Government of Batangas, G.R. No. 180110, May 30, 2016).*

e. When an LGU consists of one (1) or more islands, territorial jurisdiction can also be exercised over all waters found inland, or in any area that is part of its seabed, subsoil, or continental margin in the manner provided by law *(Republic vs. Provincial Government of Palawan, G.R. No. 170867/G.R. No. 185941, January 21, 2020).*

f. A substantial alteration of the boundaries of a province can only be done through a plebiscite called for the purpose (and cannot be done simply through a law passed by Congress). Thus, R.A. No. 7611 cannot be the basis to prove that the Camago-Malampaya reservoirs are within the Province of Palawan. The area remains under the territorial jurisdiction of the Republic, unless otherwise provided by law. Thus, the Province of Palawan is not entitled to an equitable share in the proceeds of the Camago-Malampaya Natural Gas Project *(Republic vs. Provincial Government of Palawan, G.R. No. 170867/G.R. No. 185941, January 21, 2020).*

g. In boundary dispute adjudication, tribunals must weigh and interpret the evidence presented in a manner which gives full effect to, and is most consistent with, the statute or statutes creating the LGUs involved in the dispute *(Municipality of Isabel, Leyte vs. Municipality of Merida, Leyte, G.R. No. 216092, December 9, 2020)*.

h. American authorities on municipal corporation law have stated that in the determination of LGU boundaries, "due weight should be given to the contemporaneous interpretation of the courts and other lawful authorities and by the population at large residing therein. Maps published by authority of law may [also] be referred to as evidence." *(Municipality of Isabel, Leyte vs. Municipality of Merida, Leyte, G.R. No. 216092, December 9, 2020)*.

1.2 Local governments are administrative agencies and agencies of Government distinguished from the National Government, which refers to the entire machinery of the central government *(Sections 2 [4] and [2], 1987 Administrative Code).* Under the 1987 Administrative Code, an "*Agency of the Government*" refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporations, or a local government or a distinct unit therein.

1.3 Public corporations created by local governments are referred to as quasi-municipal corporations *(Public Corporations, Ruperto G. Martin, 1985).*

1.4 Local governments are distinguished from quasi-corporations. Quasi-corporations are created by the State, either by law or by authority of law, for a specific governmental purpose *(Public Corporations, Ruperto G. Martin, 1985).*

a. A government-owned and -controlled corporation (GOCC) must be organized either as a stock or non-stock corporation. *(MIAA vs. CA, G.R. No. 155650, July 20, 2006).*

   i. A GOCC is vested by law with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it *(MIAA vs. CA, G.R. No. 155650, July 20, 2006).*

   ii. A GOCC created through special charter must meet two conditions, namely: (a) it must be established for the common good; and (b) it must meet the test of economic viability *(Section 16, Article XII, 1987 Constitution).*

   Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

   iii. By definition, **three attributes make an entity a GOCC**: first, its organization as stock or non-stock corporation; second, the public character of its function; and third, government ownership over the same. Possession of all three attributes is necessary to deem an entity a GOCC. *(Funa vs. MECO, G.R. No. 193462, February 4, 2014).*

   iv. In order to qualify as a GOCC, a corporation must also, if not more importantly, be owned by the government *(Funa vs. MECO, G.R. No. 193462, February 4, 2014).*

   v. **Examples of GOCCs** are: GOCCs incorporated under the Corporation Code, subsidiaries of GOCCs, Government Financial Institutions (GFIs), Water Districts, and government-acquired asset corporations *(MIAA vs. CA, G.R. No. 155650, July 20, 2006).*

b. A government instrumentality (GI) is neither a stock nor a non-stock corporation *(MIAA vs. CA, G.R. No. 155650, July 20, 2006).*

   i. A **GI,** which is operationally autonomous, **remains part of the National Government machinery** although not integrated

with the department framework *(MIAA vs. v. CA, G.R. No. 155650, July 20, 2006).*

ii. **Examples of GIs** are: Bangko Sentral ng Pilipinas, Philippine Rice Research Institute, Laguna Lake Development Authority, Fisheries Development Authority, Bases Conversion Development Authority, Philippine Ports Authority, Cagayan de Oro Port Authority, San Fernando Port Authority, Cebu Port Authority, and Philippine National Railways *(MIAA vs. v. CA, G.R. No. 155650, July 20, 2006).*

c. Exception: The Manila Economic and Cultural Office (MECO) was organized as a non-stock, non-profit corporation under the Corporation Code, not owned or controlled by the Republic of the Philippines. The "desire letters" that the President transmits is merely recommendatory and not binding on the corporation. **In order to qualify as a GOCC, a corporation must also, if not more importantly, be owned by the government. Mere performance of functions with a public aspect are not by themselves sufficient** to consider the MECO a GOCC. From its over-reaching corporate objectives, its special duty and authority to exercise certain consular functions, up to the oversight by the executive department over its operations—all the while maintaining its legal status as a non-governmental entity—the Manila Economic and Cultural Office is, for all intents and purposes, *sui generis* *(Funa vs. MECO, G.R. No. 193462, February 4, 2014).*

2. **The character of LGs is two-fold**; i.e., governmental or public, and proprietary or private *(City of Manila vs. Intermediate Appellate Court, G.R. No. 71159, November 15, 1989).*

2.1 **Governmental powers are those exercised in administering the powers of the state and promoting the public welfare** and they include the legislative, judicial, public and political powers of government. Examples are: delivery of sand for a municipal road *(Municipality of San Fernando, La Union vs. Firme, G.R. No. L-52179, April 8, 1991),* local legislation, control over police and abatement of nuisance.

2.2 **Proprietary powers, on the other hand, are exercised for the special benefit and advantage of the community** and include those powers which are ministerial, private and corporate *(Municipality of San*

Fernando, La Union vs. Firme, G.R. No. L-52179, April 8, 1991). Examples are: public cemeteries, markets, ferries and waterworks.

2.3 Therefore, **the purpose of LGs is also two-fold,** i.e., LGs are agents of the State in the exercise of government or public powers, and are agents of the community and people in the exercise of proprietary or private powers *(Lina, Jr. vs. Paño, G.R. No. 129093, August 30, 2001; Magtajas vs. Pryce Properties and Philippine Amusements and Gaming Corporation, G.R. No. 111097, July 20, 1994; Basco vs. Philippine Amusements and Gaming Corporation, G.R. No. 91649, May 14, 1991).*

3. The rule on corporate succession applies to local governments.

   3.1 They have the power of continuous succession under their corporate name. *(Section 22, Local Government Code of 1991 or 1991 LGC).*

   3.2 When there is a **perfected contract executed by the former Governor**, the **succeeding Governor cannot revoke or renounce the same** without the consent of the other party *(Government Service Insurance System vs. Province of Tarlac, G.R. No. 157860, December 1, 2003).*

> *Chapter X, Section 3, 1987 Constitution:*
> *"The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units."*

4. Congress in enacting the 1991 LGC and charters of particular LGs allocates among the different LGs their powers, responsibilities, and resources and provides for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units *(Section 3, Article X, 1987 Constitution).*

   Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers,

responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

4.1 One such power is the **power to appoint officials**. While the Governor has the authority to appoint officials and employees whose salaries are paid out of the provincial funds, this does not extend to the officials and employees of the *sangguniang panlalawigan* because such authority is lodged with the Vice-Governor *(Atienza vs. Villarosa, G.R. No. 161081, May 10, 2005).*

4.2 The authority to appoint casual and job order employees of the *sangguniang panlalawigan* belongs to the Vice-Governor. The authority of the Vice-Governor to appoint the officials and employees of the *sangguniang panlalawigan* is anchored on the fact that the salaries of these employees are derived from the appropriation specifically for said local legislative body. Accordingly, the appointing power of the Vice-Governor is limited to those employees of the *sangguniang panlalawigan*, as well as those of the Office of the Vice-Governor, whose salaries are paid out of the funds appropriated for the *sangguniang panlalawigan (Atienza vs. Villarosa, G.R. No. 161081, May 10, 2005).*

4.3 In allocating local powers, Congress may provide for a system of checks and balances.

a. The system of checks and balances under the current system is statutorily, not constitutionally (unlike the three branches of National Government), prescribed.

b. Under the 1983 Local Government Code, the local chief executive performed dual functions – executive and legislative, he/she being the presiding officer of the *sanggunian*. **Under the 1991 LGC, the union of legislative and executive powers in the office of the local chief executive has been disbanded**, so that either department now comprises different and non-intermingling official personalities **with the end in view of ensuring better delivery of public service and providing a system of check and balance between the two** *(Atienza vs. Villarosa, G.R. No. 161081, May 10, 2005).*

4.4 With the twin criteria of standard and plebiscite satisfied, the delegation to LGUs of the power to create, divide, merge, abolish or substantially alter boundaries has become a recognized exception to the doctrine of non-delegation of legislative powers. The source of the delegation of power to the LGUs under Sec. 6 of the LGC and to the President under Sec. 453 of the same code is none other than Sec. 10, Art. X of the Constitution. **Conversion to a highly-urbanized city is substantial alteration of boundaries** governed by Sec. 10, Art. X and resultantly, said provision applies, governs and prevails over Sec. 453 of the LGC (*Umali vs. COMELEC, G.R. No. 203974, April 22, 2014*).

Types of Local Government Units

1. There are five levels/ kinds of political and territorial subdivisions, namely: (1) Autonomous Regions; (2) Provinces; (3) Cities; (4) Municipalities; and (5) Barangays *(Section 1, Article X, 1987 Constitution).*

Chapter X, Section 15, 1987 Constitution:
"There shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines."

Chapter X, Section 16, 1987 Constitution:
"The President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed."

Chapter X, Section 17, 1987 Constitution:
"All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government."

Chapter X, Section 18, 1987 Constitution:
"The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government

for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws. The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region."

Chapter X, Section 19, 1987 Constitution:
"The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras."

Chapter X, Section 20, 1987 Constitution:
"Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:
(1) Administrative organization;
(2) Creation of sources of revenues;
(3) Ancestral domain and natural resources;
(4) Personal, family, and property relations;
(5) Regional urban and rural planning development;
(6) Economic, social, and tourism development;
(7) Educational policies;
(8) Preservation and development of the cultural heritage; and
(9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region."

Chapter X, Section 21, 1987 Constitution:
"The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the National Government."

1.1 The Constitution identifies two Autonomous Regions, i.e., Muslim Mindanao and Cordilleras that Congress may incorporate.

a. Autonomous Regions consist of provinces, cities, municipalities, and geographical areas which share common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics (*Section 15, Article X, 1987 Constitution*).

b. Autonomous Regions are under the general supervision of the President *(Section 16, Article X, 1987 Constitution).*

c. Section 20, Article X of the 1987 Constitution enumerates the irreducible legislative powers of autonomous regions.

d. Regional peace and order, and defense and security shall be the responsibility of the local police agencies and the National Government respectively *(Section 21, Article X, 1987 Constitution).*

e. Whatever power or authority is not vested on the autonomous regions remains with the National Government *(Section 17, Article X, 1987 Constitution).* Residual regional powers lie with the National Government.

f. **Republic Act No. 6734 or the Organic Act of the Autonomous Region of Muslim Mindanao (ARMM) is constitutional** and is not violative of the Tripoli Agreement since the former is a later enactment. Further, **the Tripoli Agreement must conform with national laws such as the Organic Act.** *(Abbas vs. Commission on Elections, G.R. No. 89651, November 10, 1989).*

g. The **single plebiscite** contemplated by the Constitution and R.A. No. 6734 will be determinative of: (1) whether there shall be an autonomous region in Muslim Mindanao; and (2) which provinces and cities, among those enumerated in R.A. No. 6734, shall comprise it *(Abbas vs. Commission on Elections, G.R. No. 89651, November 10, 1989).*

h. While they are classified as statutes, **the Organic Acts are more than ordinary statutes because they enjoy affirmation by a plebiscite.** Hence, the provisions thereof cannot be amended by an ordinary statute without being approved in a plebiscite *(Disomangcop vs. Secretary of Public Works and Highways, G.R. No. 149848, November 25, 2004).*

i. **Exempt from devolution**, even to the ARMM, **are nationally-funded projects, facilities, programs and services** *(Imbong v. Ochoa, G.R. No. 204819, April 8, 2014).*

j. An act of the Regional Assembly of ARMM cannot amend the Organic Act nor can it amend the 1991 LGC. The 1991 LGC and the

1987 Administrative Code cannot amend the Organic Act *(Pandi vs. Court of Appeals, G.R. No. 116850, April 11, 2002).*

k. **The Autonomous Region of the Cordilleras has not been incorporated** since in the plebiscite held, the creation has been rejected by all the covered provinces and city, save one province. **There can be no autonomous region consisting of only one province** *(Badua vs. Cordillera Bodong Administration, G.R. No. 92649, February 14, 1991; Ordillos vs. Commission on Elections, G.R. No. 93054, December 4, 1990).*

l. **However, the President can create the Cordillera Administrative Region (CAR).** The Executive Order does not create the autonomous region for the Cordilleras. The CAR: (1) is not a territorial and political subdivision; (2) is not a public corporation; (3) does not have a separate juridical personality; (4) is subject to control and supervision of the President; and (5) is merely a regional consultative and coordinative council *(Cordillera Broad Coalition vs. Commission on Audit, G.R. No. 79956, January 29, 1990).*

1.2 There are three sub-types of cities, namely: (1) highly-urbanized (HUC); (2) independent cities; and (3) component cities (CC).

> *Chapter X, Section 12, 1987 Constitution:*
> *"Cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be independent of the province. The voters of component cities within a province, whose charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials."*

a. The highly-urbanized cities and independent component cities are not under the supervision of provinces and their voters are not qualified to vote for provincial officials *(Section 12, Article X, 1987 Constitution; Section 29, 1991 LGC).* These cities are under the direct supervision of the President *(Section 25, 1991 LGC)* and are independent of provinces.

b. In accordance with Section 12 of Article X of the 1987 Constitution, cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be independent of the province, but the voters of component cities within a

province, whose charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials. Hence, all matters relating to its administration, powers and functions were exercised through its local executives led by the City Mayor, subject to the President's retained power of general supervision over provinces, HUCs, and independent component cities pursuant to and in accordance with Section 25 of the 1991 Local Government Code, a law enacted for the purpose of strengthening the autonomy of the LGUs in accordance with the 1987 Constitution. *(Rama vs. Moises, G.R. No. 197146, December 6, 2016)*.

a.1. **An HUC is not subject to provincial oversight because the complex and varied problems in an HUC due to a bigger population and greater economic activity require greater autonomy.** The provincial government stands to lose the power to ensure that the local government officials act within the scope of its prescribed powers and functions, to review executive orders issued by the city mayor, and to approve resolutions and ordinances enacted by the city council. The province will also be divested of jurisdiction over disciplinary cases concerning the elected city officials of the new HUC, and the appeal process for administrative case decisions against barangay officials of the city will also be modified accordingly. Likewise, the registered voters of the city will no longer be entitled to vote for and be voted upon as provincial officials (*Umali vs. COMELEC, G.R. No. 203974, April 22, 2014*).

c. Component cities are under the supervision of provinces and their voters elect provincial officials *(Section 12, Article X, 1987 Constitution)*.

Creation of Local Government Units

Chapter X, Section 10, 1987 Constitution: *"No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected."*

Chapter X, Section 10, 1987 Constitution:
"The Congress may, by law, create special metropolitan political subdivisions, subject to a plebiscite as set forth in Section 10 hereof. The component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executives and legislative assemblies. The jurisdiction of the metropolitan authority that will hereby be created shall be limited to basic services requiring coordination."

1. Only Congress and, by authority of law, local legislative councils, can create specific LGs. Creation is a legislative act. The enabling law is referred to as the charter of the LGU.

    1.1 The **President or the Executive Branch of Government** has **no power to create local governments** *(Camid vs. Office of the President, G.R. No. 161414, January 17, 2005).*

        a. Municipalities created by executive fiat but whose existence were not judicially nullified and which continue to operate and exist after 1992 are considered regular municipalities. **The 1991 LGC is** thus **a curative legislation**. **If judicially annulled in a quo warranto case, the 1991 LGC will have no curative effect** *(Section 442[d], 1991 LGC).*

        b. An LGU created by executive fiat which operated or functioned without interruption for a considerable length of time is considered a **municipality by prescription** *(Municipality of Jimenez vs. Baz, G.R. No. 105746, December 2, 1996).*

    1.2 Congress can provide for the incorporation of Autonomous Regions identified under the 1987 Constitution. It has no power to create other Autonomous Regions other than in Muslim Mindanao and Cordilleras.

        a. The Organic Act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws *(Section 18, Article X, 1987 Constitution).*

b. The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region *(Section 18, Article X, 1987 Constitution).*

The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multi-sectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

c. The 1987 Constitution (Section 19, Article X) sets a timeframe for the passage of the organic acts for the two identified autonomous regions.

The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

d. **The President cannot create a "state"**; i.e., Bangsamoro Juridical Entity established under a Memorandum of Agreement, whose relationship with the government is characterized by shared authority and responsibility. It is a state in all but name as it meets the **criteria of statehood**: (1) a permanent population; (2) a defined territory; (3) a government; and (4) a capacity to enter into relations with other states *(Province of North Cotabato vs. Government of the Republic of the Philippines Peace Panel on Ancestral Domain, G.R. No. 183591, October 14, 2008).*

e. While the **power to merge administrative regions** is not provided for expressly in the Constitution, it is a power which has traditionally been lodged with the President to facilitate the exercise of the **power of general supervision over local governments.** The **power to transfer a regional center** is also an executive function. This power of supervision is found in the Constitution as well as in the Local Government Code of 1991 (*Republic vs. Bayao, G.R. No. 179492, June 5, 2013*).

1.3 Congress can create provinces, cities, municipalities and barangays subject to the criteria specified under the 1991 LGC *(Section 10, Article X, 1987 Constitution)* and special laws such as Republic Act No. 9009 which pertains to the conversion of municipalities to component cities.

No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

a. Congress, by special law, can provide for different requirements other than those specified in the 1991 LGC *(League of Cities of the Philippines v. Commission on Elections, G.R. Nos. 176951, 177499 and 178056, April 12, 2011).*

b. The **implementing rules and regulations cannot provide different requirements other than what is provided by law. Exemption** by administrative regulation **from land requirement** when the province to be created is composed of one or more islands is **invalid** *(Navarro vs. Ermita, G.R. No. 180050, April 12, 2011).*

c. The *sangguniang panlalawigan* and *sangguniang panlungsod* can create barangays *(Section 6, 1991 LGC)*. The *sangguniang bayan* has no such authority under the 1991 LGC.

1.4 An LGU is deemed created on the day its charter takes effect.

a. It is deemed incorporated on the day the charter is approved by a majority of the votes cast in a plebiscite in the political units

directly affected *(Section 10, Article X, 1987 Constitution; Section 10, 1991 LGC)*.

i. **When a municipality is split into two, all the barangays of the original municipality must vote.** The **plebiscite electorate includes those who will be economically dislocated** and is based on plurality of units *(Padilla vs. Commission on Elections, G.R. No. 103328, October 19, 1992)*.

ii. **A plebiscite is required when a municipality is converted into an independent component city and when the latter is later converted to a component city** as there was an "upgrade" and "downgrade" particularly insofar as taxes and supervision are concerned *(Miranda vs. Aguirre, G.R. No. 133064, September 16, 1999)*.

iii. **A boundary dispute presents a prejudicial question to a plebiscite** and thus must be resolved prior to the conduct of any plebiscite *(City of Pasig vs. Commission on Elections, G.R. No. 125646, September 10, 1999)*.

iv. **The Commission on Elections,** not the regular courts, **has jurisdiction over plebiscite protest cases** *(Buac vs. Commission on Elections, G.R. No. 155855, January 26, 2004)*.

b. The corporate existence of an LGU shall commence upon the election and qualification of its chief executive and a majority of the members of its *sanggunian*, unless some other time is fixed therefor by the law or ordinance creating it *(Section 14, 1991 LGC)*.

2. The requirements for creation of local governments are: (1) population; (2) income; and (3) land area.

2.1 Under the 1991 LGC, these are specific requirements for every type or level of LGU *(Sections 461, 450, 442, 386, 1991 LGC)*:

Requirement	*Province*	*City*	*Municipality*	*Barangay*
Income	20 million	20 million CC 50 million HUC 100 million M to CC	2.5 million	---

Requirement	*Province*	*City*	*Municipality*	*Barangay*
Population	250,000	150,000 CC 200,000 HUC	25,000	2,000 5,000 Metro
Land Area	2,000 km^2	100 km^2	50 km^2	Contiguous

2.2 For purposes of creation, only the land area is material. The law is clear.

a. The aggregate territory which includes waters is not the criteria for creation under the 1991 LGC *(Section 131 [r])*.

b. A **charter** states the **boundaries** of the local government. **Areas or barangays not mentioned are excluded** *(Municipality of Nueva Era vs. Municipality of Marcos, G.R. No. 169435, February 27, 2008)*.

2.3 A charter need <u>not</u> mention the **population census** *(Tobias vs. Abalos, G.R. No. 114783, December 8, 1994)*.

2.4 Failure to state the **seat of government** in the charter is <u>not</u> fatal *(Samson vs. Aguirre, G.R. No. 133076, September 22, 1999)*.

2.5 **Income** under the 1991 LGC pertains to **all funds of the LGU including the Internal Revenue Allotment** *(Alvarez vs. Guingona, G.R. No. 118303, January 31, 1996)*. ***<u>However</u>***, under R.A. 9009 which deals with the ***<u>conversion</u>*** **of a municipality to a component city**, the ***<u>funds must be internally-generated.</u>***

2.6 The requirements for the creation of a component city and an independent component city are the same.

2.7 Depending on the type of LGU created, the presence of all the requirements of Population (P), Land Area (LA) and Income (Y) may vary *(Sections 461, 450, 442, 386, 1991 LGC)*:

Barangay	P and LA	Municipality	P and LA and Y
City	P and Y, or Y and LA	HUC	P and Y
Province	P and Y, or Y and LA		

3. When a municipality is converted to a city, the latter acquires a **distinct legal personality** from the former. There is **material change in the political and economic rights** of the two LGs *(Latasa vs. Commission on Elections, G.R. No.*

154829, December 10, 2003). An examination of charters of LGUs would however reveal that **municipal ordinances, debts, assets and properties are transferred to and absorbed** by the city.

Part 2. LOCAL AUTONOMY

Chapter X, Section 2, 1987 Constitution: *"The territorial and political subdivisions shall enjoy local autonomy."*

Unitary, not Federal, Form

1. The form of LGU bureaucracy is **unitary**, not federal *(Magtajas vs. Pryce Properties and Philippine Amusements and Gaming Corporation, G.R. No. 111097, July 20, 1994).* Political history, the fact that there is no mention of federal form of government in the Constitution, jurisprudence, reference to subdivisions and not states in the Constitution where LGUs have no claim against the State, and the supervisory authority of the President over LGUs establish the current unitary form of government.

    1.1 LGs as political and territorial subdivisions are units of the State. Being so, **any form of autonomy granted to LGs will necessarily be limited and confined within the extent allowed by the central authority** (*Magtajas vs. Pryce Properties and Philippine Amusements and Gaming Corporation, G.R. No. 111097, July 20, 1994).*

    1.2 **LGs are not sovereign units within the State.** They are not empires within an empire *(Lina, Jr. vs. Paño, G.R. No. 129093, August 30, 2001; Magtajas vs. Pryce Properties and Philippine Amusements and Gaming Corporation, G.R. No. 111097, July 20, 1994).*

    1.3 Autonomy does **not** contemplate making **mini-states** out of LGs *(Ganzon vs. Court of Appeals, G.R. No. 93252, August 5, 1991)*, although in one case, the Supreme Court cited Jefferson when he said that "(m)unicipal corporations are the **small republics** from which the great one derives its strength" *(Philippine Gamefowl Commission v. Intermediate Appellate Court, G.R. No. 72969-70, December 17, 1986)*.

    1.4 The 1987 Constitution does not contemplate any state in this jurisdiction other than the Philippine State, **much less does it provide for a transitory status that aims to prepare any part of Philippine territory for independence** (*Province of North Cotabato vs.*

Government of the Republic of the Philippines Peace Panel on Ancestral Domain, G.R. No. 183591, October 14, 2008).

1.5 Federalism implies some measure of decentralization, but unitary systems may also decentralize. **Decentralization differs intrinsically from federalism** in that the sub-units that have been authorized to act (by delegation) do not possess any claim of right against the central government *(Disomangcop vs. Secretary of Public Works and Highways, G.R. No. 149848, November 25, 2004).*

1.6 Local autonomy granted to LGUs does not completely sever them from the national government or turn them into impenetrable states. Autonomy does not make local governments sovereign within the state. Thus, notwithstanding the local fiscal autonomy being enjoyed by LGUs, they are still under the supervision of the President and may be held **accountable for malfeasance or violations of existing laws** (*Villafuerte v. Robredo, G.R. No. G.R. No. 195390, December 10, 2014*).

Local Autonomy

1. All LGUs enjoy local autonomy. This is a constitutional right *(Section 2, Article X, 1987 Constitution)* which cannot be taken away save in a constitutional revision.

   The territorial and political subdivisions shall enjoy local autonomy.

   1.1 This right is anchored on a constitutional state policy *(Section 25, Article II, 1987 Constitution).*

   The State shall ensure the autonomy of local governments.

   1.2 This policy is mirrored in the 1991 LGC [Section 2(a)]. This statute provides that, "It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process

of decentralization shall proceed from the national government to the local government units.

2. Local autonomy means a **more responsive and accountable local government structure** instituted through a **system of decentralization** *(Section 3, Article X, 1987 Constitution; Section 2[a], 1991 LGC; Ganzon vs. Court of Appeals, G.R. No. 93252, August 5, 1991).*

    2.1 Under a unitary set-up, local autonomy does not mean absolute self-governance, self-rule or self-determination *(Public Corporations, Ruperto G. Martin, 1985).* Local autonomy may mean qualified or limited yet broad governance. LGs cannot exercise a power contrary to the 1987 Constitution, the 1991 LGC, statutes, and their respective charters.

    2.2 Autonomy is not meant to end the relation of **partnership and interdependence** between the central administration and LGUs, or otherwise, to usher in a regime of federalism *(Ganzon vs. Court of Appeals, G.R. No. 93252, August 5, 1991).*

    2.3 Local autonomy is intended to provide the needed impetus and encouragement to the development of local political subdivisions as **self-reliant communities** *(Philippine Gamefowl Commission v. Intermediate Appellate Court, G.R. No. 72969-70, December 17, 1986).*

    2.4 Local autonomy also grants local governments the **power to streamline and reorganize.** This power is inferred from Section 76 of the Local Government Code on organizational structure and staffing pattern, and Section 16 otherwise known as the general welfare clause. Local autonomy allows an interpretation of Secs. 76 and 16 of the LGC as granting a city the authority to create its organization development program. (*City of General Santos vs. COA, G.R. No. 199439, April 22, 2014*).

    2.5 The intent of local autonomy to provide the needed impetus and encouragement to the development of local political subdivisions as "self-reliant communities" could be blunted by **undue interference by the national government in purely local affairs** which are best resolved by the officials and inhabitants of such political units (*Belgica v. Ochoa, G.R. No. 208566, 19 November 2013, citing Philippine Gamefowl Commission v. IAC, G.R. No. 72969-70, December 17, 1986*).

2.5.1 **Legislators, who are national officers, who intervene in affairs of purely local nature through the "Pork Barrel" system**, despite the existence of capable local institutions such as local legislative councils and local development councils, **subvert genuine local autonomy** *(Belgica, et..al., v. Ochoa, et. al., G.R. 208566, November 19, 2013).*

2.6 There shall be a continuing mechanism to enhance local autonomy not only by legislative enabling acts but also by administrative and organizational reforms *(Section 3[h], 1991 LGC).*

3. There are **two levels of decentralization**. Local autonomy is either decentralization of administration or decentralization of power *(Limbona vs. Mangelin, G.R. No. 80391, February 28, 1989).*

3.1 There is **decentralization of administration** when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments more responsive and accountable, and ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress. *(Limbona vs. Mangelin, G.R. No. 80391, February 28, 1989).*

3.2 **Decentralization of power**, on the other hand, involves an abdication of political power in favor of local government units declared to be autonomous. The autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities *(Limbona vs. Mangelin, G.R. No. 80391, February 28, 1989).*

Decentralization of Administration	*Decentralization of Power*
Delegation of administrative and regulatory powers	Abdication of political power
Relieves state from burden of managing local affairs	Chart own destiny
Executive supervision	Executive supervision; minimal intervention
Accountability to central government	Accountability to people; self-immolation
Applies to provinces, cities, municipalities and barangays	Applies to autonomous regions

3.3 The constitutional guarantee of local autonomy in the Constitution Art. X, Sec. 2 refers to the **administrative autonomy** of local government units or, cast in more technical language, the **decentralization of government authority**. It does not make local governments sovereign within the State. Administrative autonomy may involve devolution of powers, but subject to limitations like following national policies or standards, and those provided by the Local Government Code, as the structuring of local governments and the allocation of powers, responsibilities, and resources among the different local government units and local officials have been placed by the Constitution in the hands of Congress under Section 3, Article X of the Constitution (*League of Provinces of the Philippines vs. DENR, G.R. No. 175368, April 11, 2013*).

4. The ARMM enjoys political autonomy *(Limbona vs. Mangelin, G.R. No. 80391, February 28, 1989; Cordillera Broad Coalition vs. Commission on Audit, G.R. No. 79956, January 29, 1990).* **The creation of autonomous regions contemplates the grant of political autonomy** i.e., an autonomy which is greater than the administrative autonomy granted to (other) LGs *(Disomangcop vs. Secretary of Public Works and Highways, G.R. No. 149848, November 25, 2004).*

   4.1 **Regional autonomy** is the degree of self-determination exercised by the LGU vis-à-vis the central government. Regional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with least control and supervision from the central government *(Disomangcop vs. Secretary of Public Works and Highways, G.R. No. 149848, November 25, 2004).*

   4.2 The aim of the 1987 Constitution is to extend to the autonomous peoples, the people of Muslim Mindanao in this case, the **right to self-determination**, i.e., a right to choose their own path of development; the right to determine the political, cultural and economic content of their development path within the framework of the sovereignty and territorial integrity of the Philippine Republic *(Disomangcop vs. Secretary of Public Works and Highways, G.R. No. 149848, November 25, 2004).*

5. The Executive Department violates local autonomy when it ignores the **statutory authority of province to nominate budget officials** *(San Juan vs. Civil Service Commission, G.R. No. 92299, April 19, 1991).*

6. The essence of the express reservation of power by the national government in Sec. 17 of the LGC is that, **unless an LGU is particularly designated as the implementing agency, it has no power over a program for which funding has been provided by the national government under the annual general appropriations act, even if the program involves the delivery of basic services within the jurisdiction of the LGU.** A complete relinquishment of central government powers on the matter of providing basic facilities and services cannot be implied as the Local Government Code itself weighs against it**. Local autonomy is not absolute.** The national government still has the say when it comes to national priority programs which the local government is called upon to implement. There is no undue encroachment by the national government upon the autonomy enjoyed by the local governments if the wording of the law is not mandatory upon LGUs *(Imbong v. Ochoa, G.R. No. 204819, April 8, 2014).*

7. Where a law is capable of two interpretations, one in favor of centralized power and the other beneficial to local autonomy, the **scales must be weighed in favor of autonomy** *(San Juan vs. Civil Service Commission, G.R. No. 92299, April 19, 1991).*

8. Consistent with the declared policy to provide local government units genuine and meaningful local autonomy, **contiguity and minimum land area requirements for prospective local government units should be liberally construed** in order to achieve the desired results (*Navarro vs. Ermita, G.R. No. 180050, April 12, 2011*).

9. LGUs have broad powers in the following areas: (1) Police Power; (2) Power of Taxation; (3) Power to Impose Fees and Charges; (4) Sources of Local Revenues; (5) Corporate Powers; and (6) Local Legislation. The 1991 LGC in these areas does not provide an exclusive listing of powers. It may be said that LGUs have residual powers. This is consistent with the liberal view of autonomy which provides that LGUs can exercise: (1) those powers expressly given to them; (2) those powers implied from the express powers; (3) those powers not given to the National Government or any governmental agency or instrumentality by law; (4) those powers not prohibited or forbidden by the Constitution and statutes; (5) provided the powers are necessary for the carrying out of the mandates and duties entrusted to LGUs with the end in view of promoting the general welfare in response to local concerns and as agents of the communities.

   A local government unit may exercise its **residual power to tax** when there is neither a grant nor a prohibition by statute (*Alta Vista Golf and Country Club vs. City of Cebu, G.R. No. 180235, January 20, 2016).*

10. Because of local autonomy, the mandate to protect the general welfare, and concept of subordinate legislation, LGUs:

    a) Can prohibit an activity that is not prohibited by statute;
    b) Cannot allow or regulate an activity that is prohibited by statute;
    c) Can regulate an activity not regulated by statute; and
    d) Can regulate an activity that is regulated by statute provided, the ordinance is not inconsistent with the statute.

11. Section 3(b) of P.D. No. 198 [*"(b) Appointing authority. The person empowered to appoint the members of the Board of Directors of a local water district, depending upon the geographic coverage and population make-up of the particular district. In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located. If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governors then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists."]* should be partially struck down for being repugnant to the local autonomy granted by the 1987 Constitution to LGUs, and for being inconsistent with R.A. No. 7160 (1991 Local Government Code) and related laws on local governments *(Rama vs. Moises, G.R. No. 197146, December 6. 2016)*.

Devolution and Deconcentration

1. Devolution refers to the act by which the national government confers power and authority upon the various LGs to perform specific functions and responsibilities *(Section 17[e], 1991 LGC)*. The national government shall, six (6) months after the effectivity of the 1991 LGC, effect the deconcentration of requisite authority and power to the appropriate regional offices or field offices of national agencies or offices whose major functions are not devolved to LGUs *(Section 528, 1991 LGC)*.

    1.1 The power to regulate and responsibility to deliver basic services are the functions devolved to LGs. Examples are *(Section 17[e], 1991 LGC)*:

National Government	*Basic Services*	*Regulatory Powers*
Department of Agriculture	Agricultural extension and on-site research	Inspection of meat products

National Government	*Basic Services*	*Regulatory Powers*
Department of Environment and Natural Resources	Community-based forestry projects	Enforcement of environmental laws
Department of Health	Health and hospital services	Quarantine
Department of Transportation and Communications		Operation of Tricycles
Department of Public Works and Highways	Public works locally funded	Enforcement of National Building Code

1.2 Devolution shall also include the transfer to LGUs of the records, equipment, and other assets and personnel of national agencies and offices corresponding to the devolved powers, functions, and responsibilities *(Section 17 [l], 1991 LGC)*. Devolved personnel (former employees of the national government) may be reappointed by the city mayor *(Plaza vs. Cassion, G.R. No. 136809, July 27, 2004)*. Thus, the **four components of devolution** are: transfer of authority to deliver basic services, regulatory powers, assets and personnel.

2. **Devolution is a legislative act.** As to what state powers should be decentralized and what may be delegated to LGs remains a matter of policy, which concerns wisdom. It is therefore a political question *(Basco vs. Philippine Amusements and Gaming Corporation, G.R. No. 91649, May 14, 1991)*. Any provision on a power of an LGU shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers *(Section 5 [a], 1991 LGC)*.

3. There are **two levels of decentralization**, i.e., administrative decentralization or deconcentration, and political decentralization or devolution *(Disomangcop vs. Secretary of Public Works and Highways, G.R. No. 149848, November 25, 2004; Sections 17 and 528, 1991 LGC)*.

Administrative Decentralization	*Political Decentralization*
Deconcentration	Devolution
Powers to be transferred not specified	Powers to be transferred are specified

Administrative Decentralization	*Political Decentralization*
Transfer is from national government agencies to its field offices	Transfer is from national government agencies to local governments
Transfer is mandatory	Transfer is mandatory on the devolving national government agency and the receiving local government
Administrative in character	Powers, responsibilities, personnel and resources
6-month deadline from January 1, 1992	6-month deadline from January 1, 1992

4. Devolution entails the transfer of powers from national government agencies (transferor; source of power) to LGs (transferee; recipient of powers). Powers not devolved are retained by or remain with the relevant national government agency.

    4.1 The **regulatory functions of the National Pollution Control Commission** were devolved to LGs. Pursuant to such devolution, LGs may conduct inspections at reasonable times, without doing damage, after due notice to the owners of buildings, to ascertain compliance with noise standards under the laws and order compliance therewith, or suspend or cancel any building permits or clearance certificates after due hearing *(AC Enterprises vs. Frabelle Properties Corporation, G.R. No. 166744, November 2, 2006).*

    4.2 The **power to issue permits and locational clearances for locally-significant projects** is now lodged with cities and municipalities with comprehensive land use plans. The **power** of the Housing Land Use Regulatory Board (HLURB) **to issue locational clearance** is now limited **to projects considered to be of vital and national or regional economic or environmental significance.** The **power to act as appellate body over decisions and actions of local and regional planning and zoning bodies and deputized officials of the board** was retained by the HLURB. *(Iloilo City Zoning Board of Adjustment and Appeals vs. Gegato-Abecia Funeral Homes, Inc., G.R. No. 157118, December 8, 2003).*

    4.3 Cities now have the **power to regulate the operation of tricycles-for-hire and to grant franchises for the operation thereof**. The devolved power pertains to the franchising and regulatory powers exercised

by the Land Transportation Franchising and Regulatory Board (LTFRB) and not its **function to grant franchises to other vehicles**, and not the functions of the Land Transportation Office relative to the **registration of motor vehicles and issuances of licenses for the driving thereof** *(Land Transportation Office vs. City of Butuan, G.R. No. 131512, January 20, 2000).*

4.4 The Department of Environment and Natural Resources retains the **power to confiscate and forfeit any conveyances utilized in violation of the Forestry Code or other forest laws, rules and regulations** *(Paat vs. Court of Appeals, G.R. No. 111107, January 10,1997).*

4.5 The **authority to grant franchises for the operation of jai-alai frontons** lies with Congress, while the **regulatory function** is vested with the Games and Amusement Board *(Lim vs. Pacquing, G.R. No. 115044, January 27, 1995).*

4.6 **Exempt from devolution**, even to the ARMM, **are nationally-funded projects, facilities, programs and services.** The plenary power of Congress cannot be restricted on matters of common interest *(Imbong v. Ochoa, G.R. No. 204819, April 8, 2014).*

4.7 **Control and regulation of ground water** under the Water Code is vested with the National Water Resource Board, not with LGUs. (*City of Batangas vs. Philippine Shell Petroleum Corporation, G.R. No. 195003, June 7, 2017*).

4.8 Even if the National Building Code imposes minimum requirements as to the construction and regulation of billboards, the Davao City Government may impose stricter limitations because **its police power to do so originates from its charter** and not from the National Building Code *(Evasco vs. Montañez, GR No. 199172, February 21, 2018).*

Executive Supervision

Chapter X, Section 4, 1987 Constitution: *"The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions."*

1. The State shall ensure the autonomy of local governments *(Section 25, Article II, 1987 Constitution)*.

2. The 1987 Constitution defines and prescribes the relationship between the President and the Executive Branch, and local governments. The relationship is one of supervision, not control.

    2.1 The President exercises direct supervision over autonomous regions, provinces outside autonomous regions, highly-urbanized cities, and independent component cities.

    2.2 The President exercises general or indirect supervision over provinces within autonomous regions, component cities and municipalities, and barangays.

    2.3 Provinces exercise direct supervision over component cities and municipalities, and indirect supervision over barangays.

    2.4 Cities and municipalities exercise direct supervision over barangays.

    To illustrate, the President can suspend an erring provincial governor (outside AR) but has no authority to suspend an erring barangay official. The provincial governor can suspend an erring mayor of a component city/ municipality but cannot suspend an erring barangay official.

3. The President or the "higher" local government has **no power of control** over LGs and "lower" LGs, respectively *(Drilon vs. Lim, G.R. No. 112497, August 4, 1994; Social Justice Society vs. Atienza, G.R. No. 156052, February 13, 2008; Leynes vs. Commission on Audit, G.R. No. 143596, December 11, 2003)*.

    3.1 **Control** is the **power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his/her duties and to substitute the judgment of the former for the latter.** An officer in control lays down the rules in the doing of an act. It they are not followed, he/she may, in his/her discretion, order the act undone or re-done by his/her subordinate or he/she may even decide to do it himself/herself *(Drilon vs. Lim, G.R. No. 112497, August 4, 1994; Social Justice Society vs. Atienza, G.R. No. 156052, February 13, 2008; Leynes vs. Commission on Audit, G.R. No. 143596, December 11, 2003)*.

3.2 **Supervision** is the **power of a superior officer to see to it that lower officers perform their functions in accordance with law.** The supervisor or superintendent merely sees to it that the rules are followed, but he/she himself/herself does not lay down such rules, nor does he/she have the discretion to modify or replace them. If the rules are not observed, he/she may order the work done or re-done but only to conform to the prescribed rules. He/she may not prescribe his/her own manner for the doing of the act. He/she has no judgment on this matter except to see to it that the rules are followed *(Drilon vs. Lim, G.R. No. 112497, August 4, 1994; Social Justice Society vs. Atienza, G.R. No. 156052, February 13, 2008; Leynes vs. Commission on Audit, G.R. No. 143596, December 11, 2003).*

Supervision	*Control*
○ Overseeing ○ Ensure that supervised unit follows law/ rules ○ Allows interference if supervised unit acted contrary to law ○ Over actor and act ○ There must be a law ○ Only involves questions of law (declare legal or illegal); not wisdom or policy	○ Lays down rules in doing of an act ○ Impose limitations when there is none imposed by law ○ Decide for subordinate or change decision ○ Substitute judgment over that made by subordinate ○ Alter wisdom, law-conforming judgment or exercise of discretion ○ Discretion to order act undone or re-done ○ Prescribe manner by which act is done

4. **Supervision** involves the power to review of executive orders and ordinances, i.e., declare them ultra vires or illegal *(Sections 30, 56 and 57, 1991 LGC)*; the power to discipline (Section 61, 1991 LGC); the power to integrate development plans and zoning ordinances *(Sections 447, 458 and 467, 1991 LGC)*; the power to resolve boundary disputes *(Section 118, 1991 LGC)*; the power to approve leaves *(Section 47, 1991 LGC)*, accept resignations *(Section 82, 1991 LGC)* and fill-up vacancies in the *sanggunian (Section 44, 1991 LGC)*; and the power to augment basic services *(Section 17, 1991 LGC).*

5. An LGU can:

5.1 **Grant and release the disbursement for the hospitalization and health care insurance benefits of provincial officials and employees** without any prior approval from the President since there is no law requiring prior approval. Further, Administrative Order No. 103 does not cover local governments *(Negros Occidental vs. Commission on Audit, G.R. No. 182574, September 28, 2010).*

5.2 **Provide allowances to judges**, subject to availability of local funds. The Department of Budget of Management cannot impose a cap on the allowance since there is no law which limits the amount, otherwise, this will amount to control *(Leynes vs. Commission on Audit, G.R. No. 143596, December 11, 2003).*

5.3 **Provide for additional allowances and other benefits to national government officials stationed or assigned to a municipality or city**, provided that the grant of benefits does not run in conflict with other statutes *(Villarena vs. Commission on Audit, G.R. No. 145383-84, August 6, 2003).*

5.4 **Enact tax ordinances**, subject to review by the Secretary of Justice to ascertain the constitutionality or legality thereof. The Secretary however, has no the right to declare the tax measure unjust, excessive, oppressive or confiscatory, or direct the substitution of provisions since this will amount to control *(Drilon vs. Lim, G.R. No. 112497, August 4, 1994).*

5.5 **Expropriate agricultural land** without securing approval from the Department of Agrarian Reform (DAR) since there is no law which requires this. DAR's authority is confined to the conversion of agricultural lands *(Camarines Sur vs. Court of Appeals, G.R. No. 175604, September 18, 2009).*

5.6 **Reclassify lands from residential to non-agricultural lands** without DAR approval as there is no law mandating such approval *(Pasong Bayabas Farmers Association vs. Court of Appeals, G.R. No. 142359 / 142980, May 25, 2004).*

5.7 **Elect representatives to the National Liga ng mga Barangay**, as the Department of Interior and Local Government (DILG) cannot appoint an interim caretaker to manage and administer the affairs of the Liga without violating local autonomy *(National Liga ng mga Barangay vs. Paredes, G.R. Nos. 130775/ 131939, September 27, 2004).*

5.8 **Privatize the administration of parking for environmental and peace and safety reasons**, both of which are within its powers under Sec. 458(A)(5)(v) and (vi) of the LGC. By delegating governmental functions in terms of regulating the designation and use of parking spaces, as well as the collection of fees for such use, the privatization contract takes the essential character of a franchise because what is being privatized is a government-monopolized function *(Sangguniang Panlungsod ng Baguio City v. Jadewell Parking Systems Corp., G.R. No. 169588, October 7, 2013)*.

5.9 **Grant and release hospitalization and health care insurance benefits to its officials and employees who were sickly and unproductive due to health reasons**. This criteria negates the position that the benefits provide for supplementary retirement benefits that augment existing retirement laws. Local autonomy allows an interpretation of Sections 76 and 16 as granting petitioner city the authority to create its organization development program *(City of General Santos vs. Antonino-Custodio, G.R. No. 199439, April 22, 2014)*.

6. However, an LGU cannot:

6.1 **Go beyond the requirements set forth in the Cockfighting Law** despite the fact that cockfighting is a devolved power. Further, the Cockfighting Law has not been repealed *(Tan vs. Perena, G.R. No. 149743, February 18, 2005)*.

6.2 **Authorize the city administrator to act on violations of the National Building Code** since under the law, only the city engineer, as the building official, has the exclusive authority to act on matters relating to the issuance of demolition permits or the revocation or suspension thereof *(People of the Philippines vs. Sandiganbayan, G.R. No. 144159, September 29, 2004)*. It is the Building Official, and not the City Mayor, who has the authority to order the demolition of the structures under the National Building Code of the Philippines. Moreover, before a structure may be abated or demolished, there must first be a finding or declaration by the Building Official that the building/structure is a nuisance, ruinous or dangerous. *(Alangdeo vs. City Mayor of Baguio, G.R. No. 206423, July 1, 2015)*

6.3 **Regulate the subscriber rates charged by Cable Television operators within its territorial jurisdiction** since this power is vested with the National Telecommunications Commission (NTC) to the

exclusion of other bodies *(Batangas CATV vs. Court of Appeals, G.R. No. 138810, October 20, 2004).*

6.4 In the absence of constitutional or legislative authorization, **grant franchises to cable television operators** as this power has been delegated to the NTC *(Zoomzat vs. People of the Philippines, G.R. No. 135535, February 14, 2005).*

6.5 **Order a donation of delineated roads and streets without just compensation.** Section 50 contemplates roads and streets in a subdivided property, not public thoroughfares built on a private property that was taken from an owner for public purpose. A public thoroughfare is not a subdivision road or street. Delineated roads and streets, whether part of a subdivision or segregated for public use, remain private and will remain as such until conveyed to the ·government by donation or through expropriation proceedings. An owner may not be forced to donate his or her property even if it has been delineated as road lots because that would partake of an illegal taking. He or she may even choose to retain said properties. If he or she chooses to retain them, however, he or she also retains the burden of maintaining them and paying for real estate taxes. When the road or street was delineated upon government request and taken for public use the government has no choice but to compensate the owner for his or her sacrifice, lest it violates the constitutional provision against taking without just compensation (*Hon. Alvin P. Vergara, in his capacity as City Mayor of Cabanatuan City vs. Lourdes Melencio S. Grecia, G.R. 185638, August 10, 2016*).

6.6 The declaration of the entirety of Marcos Alvarez Avenue as a public road despite the fact that the subject lots are privately-owned is an act of unlawful taking of private property. The taking of privately-owned property without just compensation amounts to confiscation which is beyond the ambit of police power. Regardless of the enactment of City Ordinance No. 343-97 for the benefit of the public particularly the residents of Las Piñas and Cavite, the constitutional prohibition on the taking of private property for public use without just compensation prevents the City of Las Piñas from doing so. Since City Ordinance No. 343-97 in effect deprived SRA of its ownership over the subject lots without just compensation, the CA correctly upheld the RTC ruling that declared City Ordinance No. 343-97 unconstitutional. *(Equitable PCI Bank, Inc. vs. South Rich Acres, Inc., G.R. No. 202384/G.R. No. 202397, May 4, 2021).*

7. Insofar as the President, Executive Branch, National Government Agencies and Quasi-Corporations are concerned:

   7.1 **The President has the power to discipline erring local elective officials.** The power to discipline is not incompatible with supervision *(Joson vs. Torres, G.R. No. 131255, May 20, 1998)*. Supervision and investigation are not inconsistent terms. Investigation does not signify control, a power which the President does not have *(Ganzon vs. Court of Appeals, G.R. No. 93252, August 5, 1991)*.

   7.2 **The Philippine Amusement and Gaming Corporation (PAGCOR) can set up casinos even without the approval of the LGs** as the charter of PAGCOR empowers it to centralize gambling *(Magtajas vs. Pryce Properties and Philippine Amusements and Gaming Corporation, G.R. No. 111097, July 20, 1994)*.

   7.3 **The Laguna Lake Development Authority (LLDA),** pursuant to its charter, **can order the dismantling of fishpens.** Laguna de Bay therefore cannot be subjected to fragmented concepts of management policies where lakeshore LGs exercise exclusive dominion over specific portions of the lake water *(Laguna Lake Development Authority vs. Court of Appeals, G.R. No. 120865-71, December 7, 1995)*.

   7.4 **The LLDA,** pursuant to its mandate, **can issue cease and desist orders against LGs to stop the dumping of its garbage in an open dumpsite** *(Laguna Lake Development Authority, G.R. No. 110120, March 16, 1994)*.

8. In resolving conflicts between the National Government Agencies (NGAs), government-owned and -controlled corporations (GOCCs), and government instrumentalities (GIs) on one hand and LGUs on the other, the Supreme Court has ruled in favor of the former and latter applying the following reasons:

In favor of NGAs, GOCCs and GIs	*In favor of LGUs*
○ Law is clear and categorical ○ Integration of concerns and policies at the national/ regional/ inter-LGU levels ○ Centralization ○ Avoid fragmentation ○ Mandate exclusive under Charter/ law	○ Local autonomy ○ Local concern/ issue ○ 'Isolated' issue ○ No law will be violated ○ Amounted to control, not just supervision, if NGA/ GOCC/ GI prevails

○ Implied repeals not favored ○ Instrumentalities of the State ○ National or cross-boundary concerns are best addressed by NGAs/ GOCCs	○ Express repeal; Conclusive implied repeal ○ Beyond powers of NGA/ GOCC ○ Local concerns are best addressed by LGUs (i.e., Principles of Subsidiarity and Stewardship)

Legislative Control

1. The State shall ensure the autonomy of local governments *(Section 25, Article II, 1987 Constitution).*

2. Congress retains control of the LGUs although in a significantly reduced degree now than under previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. **The National Legislature is still the principal of the LGs**, which cannot defy its will, or modify or violate its laws *(Magtajas vs. Pryce Properties and Philippine Amusements and Gaming Corporation, G.R. No. 111097, July 20, 1994).*

3. Under the 1987 Constitution, Congress has the power to:

    3.1 **Allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units** *(Section 3, Article X, 1987 Constitution).*

    3.2 **Prescribe guidelines and limitations on sources of local government revenues and local power to levy taxes, fees, and charges** provided these are consistent with the basic policy of local autonomy *(Section 5, Article X, 1987 Constitution).*

    Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

    3.3 **Determine the just share in the national taxes of local governments** *(Section 6, Article X, 1987 Constitution).*

Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

3.4 **Provide the manner by which local governments receive their equitable share in the proceeds of the utilization and development of the national wealth within their respective areas** *(Section 7, Article X, 1987 Constitution).*

Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

3.5 **Set the term limits of barangay officials** *(Section 8, Article X, 1987 Constitution)*. Under R.A. No. 9164, the current term of office of elective barangay officials is three years.

The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

3.6 **Prescribe the manner by which sectoral representatives shall be installed in local legislative bodies** *(Section 9, Article X, 1987 Constitution).*

Legislative bodies of local governments shall have sectoral representation as may be prescribed by law.

3.7 **Define the criteria for the creation, division, merger, abolition and substantial alteration of boundaries of local governments** *(Section 10, Article X, 1987 Constitution).*

3.8 **Establish special metropolitan political subdivisions** *(Section 11, Article X, 1987 Constitution).*

The Congress may, by law, create special metropolitan political subdivisions, subject to a plebiscite as set forth in Section 10 hereof. The component cities and municipalities shall retain their basic autonomy and shall be entitled to their own local executives and

legislative assemblies. The jurisdiction of the metropolitan authority that will hereby be created shall be limited to basic services requiring coordination.

3.9 **Pass the organic act of the autonomous regions** *(Section 18, Article X, 1987 Constitution).*

3.10 **Provide for exemption to devolution** such as nationally-funded projects, facilities, programs and services since the power of Congress to legislate on all matters of common interest is plenary *(Imbong v. Ochoa, G.R. No. 204819, April 8, 2014).*

4. Congress exercises control over the properties of LGs.

4.1 Article 424 of the Civil Code lays down the basic principles that **properties of the public dominion devoted to public use and made available to the public in general** are outside the commerce of men (persons) and cannot be disposed of or leased by the LGU to private persons *(Macasiano vs. Diokno, G.R. no. 97764, August 10, 1992).*

4.2 Pursuant to the Regalian doctrine, any **land that has never been acquired through purchase, grant or any other mode of acquisition** remains part of the public domain and is owned by the State. LGs cannot appropriate to themselves public lands without prior grant from the government *(Rural Bank of Anda vs. Roman Catholic Archbishop of Lingayen-Dagupan, G.R. No. 155051, May 21, 2007).*

4.3 A **lot comprising the public plaza** is property of public dominion; hence, not susceptible to private ownership by the church or by the municipality *(Roman Catholic Bishop of Kalibo, Aklan vs. Municipality of Buruanga, Aklan, G.R. No. 149145, March 31, 2006).*

4.4 A city can validly **reconvey a portion of its street that has been closed or withdrawn from public use** where Congress has specifically delegated to such political subdivision, through its charter, the authority to regulate its streets. Such property withdrawn from public servitude to be used or conveyed for any purpose for which other property belonging to the city may be lawfully used or conveyed. *(Figuracion vs. Libi, G.R. No. 155688 November 28, 2007)*

4.5 The **conversion of the public plaza into a commercial center** is beyond the municipality's jurisdiction considering the property's nature as one for public use and thereby, forming part of the public dominion. Accordingly, it cannot be the object of appropriation either by the State or by private persons. Nor can it be the subject of lease or any other contractual undertaking (*Land Bank of the Philippines v. Cacayuran, G.R. No. 191667, April 17, 2013; In an Amended Decision dated April 22, 2015, the Second Division set aside the decision and remanded the case.)*

Part 3. POWERS OF LOCAL GOVERNMENTS

Delegation and Interpretation of Powers

1. LGs have constitutional, statutory and jurisprudential powers.

   1.1 The sources of powers of LGs are the 1987 Constitution, the 1991 LGC, statutes, charters of LGs and jurisprudence or case law.

   1.2 The power to tax is a constitutional *(Section 5, Article X, 1987 Constitution)* and statutory power *(Section 18, 1991 LGC)*. Other than the 1991 LGC, Republic Act No. 7305 or the Magna Carta for Public Health Workers, Republic Act No. 7883 or the Barangay Health Workers' Benefits and Incentives Act of 1995, among others, are the statutes that govern LGs. The Supreme Court in the case of Pimentel vs. Aguirre (G.R. No. 132988, July 19, 2000) declared that LGs have fiscal autonomy.

   1.3 Constitutional powers cannot be repealed or modified by Congress save in a constitutional amendment. Statutes can be repealed or modified by Congress. Powers defined or interpreted by the Supreme Court can be re-defined and re-interpreted by it.

   1.4 There are other classifications of LGU powers: (1) governmental (e.g. power to legislate) and proprietary (e.g. operating a public market); (2) codal-1991 LGC (e.g. power to close local roads) and non-codal (e.g. power of operational control over police under Republic Acts Nos. 6975 and 8551; devolution of training services under the Technical Education and Skills Development Authority pursuant to Republic Act No. 7796); (3) state-delegated (e.g. police power) and devolved (e.g. barangay daycare centers); (4) express (e.g. power to create an office) and implied (e.g. power to abolish that office; (5)

executive (e.g. power to veto an ordinance) and legislative (e.g. power to enact an ordinance); (6) general legislative (e.g. power to issue business permits) and police power proper (e.g. power to impose a curfew); (7) intramural (e.g. power of eminent domain) and extramural (e.g. police purposes); (8) mandatory (e.g. power to deliver basic services as part of devolution) and discretionary (e.g. power to expropriate a piece of property); (9) internal (e.g. power to adopt the *sanggunian* internal rules of procedure) and external (e.g. power to enact a zoning ordinance); and (10) specific to an LGU (e.g. power to legislate) and inter-LGU (e.g. power to enter into a collaborative alliance with other LGs).

2. Congress "allocates among the different local government units their powers, responsibilities, and resources, and provides for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units" *(Section 3, Article X, 1987 Constitution).*

3. The following are the rules of interpretation of the powers of LGs:

    3.1 Where a law is capable of two interpretations, one in favor of centralized power and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy *(San Juan vs. Civil Service Commission, G.R. No. 92299, April 19, 1991).*

    3.2 Any provision on a power of an LGU shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower LGU *(Section 5[a], 1991 LGC).*

    3.3 Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the LGU concerned *(Section 5[a], 1991 LGC).*

        a. Considering that the powers of the Department of Energy regarding the "Pandacan Terminals" are not categorical, any **doubt as to the validity of a zoning ordinance disallowing the maintenance of such terminals** must be resolved in favor of the ordinance's validity. *(Social Justice Society vs. Atienza, G.R. No. 156052, February 13, 2008)*

        b. While the **law did not expressly vest on provincial governments the power to abolish that office,** absent however, any contrary provision, that authority should be deemed embraced by

implication from the power to create it *(Javier vs. Court of Appeals, G.R. No. L-49065, June, 1, 1994).*

c. The provision in the city charter on the local power to **provide for the maintenance of waterworks for supplying water to the inhabitants of the city** does not carry with it the **right and authority to appropriate water.** *(Buendia vs. City of Iligan, G.R. No. 132209, April 29, 2005)*

d. Statutes conferring the **power of eminent domain** to political subdivisions cannot be broadened or constricted by implication *(Province of Camarines Sur vs. Court of Appeals, G.R. No. 175604, September 18, 2009).*

3.4 In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the LGU enacting it, and liberally in favor of the taxpayer. Any tax exemption, incentive or relief granted by any LGU pursuant to the provisions of this Code shall be construed strictly against the person claiming it *(Section 5[b], 1991 LGC).*

3.5 The premise is that no presumption of regularity exists in any administrative action which results in depriving a taxpayer of his property; due process of law must be followed in tax proceedings, because a sale of land for tax delinquency is in derogation of private property and the registered owner's constitutional rights *(Cruz vs. City of Makati, G.R. No. 210894, September 12, 2018)*.

3.5 The general welfare provisions in the 1991 LGC shall be liberally interpreted to give more powers to LGs in accelerating economic development and upgrading the quality of life for the people in the community *(Section 5[c], 1991 LGC).*

a. The liberal interpretation of the general welfare clause supports the stance that **a city can grant early retirement benefits to its employees** since such benefit does not violate the rule against the proliferation of retirement benefits *(City of General Santos vs. Antonino-Custodio, G.R. No. 199439, April 22, 2014).*

3.6 Rights and obligations existing on the date of effectivity of the 1991 LGC and arising out of contracts or any other source of presentation involving an LGU shall be governed by the original terms and conditions of said contracts or the law in force at the time such rights were vested *(Section 5[d], 1991 LGC).*

3.7 In the resolution of controversies arising under the 1991 LGC where no legal provision or jurisprudence applies, resort may be had to the customs and traditions in the place where the controversies take place *(Section 5[e], 1991 LGC).*

3.8 In interpreting **statutory provisions on municipal fiscal powers**, doubts will have to be resolved in favor of municipal corporations *(San Pablo City vs. Reyes, G.R. No. 127708, March 25, 1999).*

3.9 In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the LG enacting it, and liberally in favor of the taxpayer. Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of 1991 LGC shall be construed strictly against the person claiming it. *(Section 5[b], 1991 LGC)*

3.10 Section 206 of the LGC categorically provides that every person by or for whom real property is declared, who shall claim exemption from payment of real property taxes imposed against said property, shall file with the provincial, city or municipal assessor sufficient documentary evidence in support of such claim. The burden of proving exemption from local taxation is upon whom the subject real property is declared. By providing that real property not declared and proved as tax-exempt shall be included in the assessment roll, the above quoted provision implies that the local assessor has the authority to assess the property for realty taxes, and any subsequent claim for exemption shall be allowed only when sufficient proof has been adduced supporting the claim. Thus, if the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon *(National Power Corporation vs. The Provincial Treasurer of Benguet, G.R. No. 209303, November 14, 2016).*

Police Power

1. **Police power** is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people. **The State, through the legislature, has delegated the exercise of police power to LGUs, as agencies of the State.** This delegation of police power is embodied in Section 16 of the 1991 LGC,

known as the General Welfare Clause *(Fernando v. St. Scholastica's College, G.R. No. 161107, March 12, 2013).*

1.1 Police power of LGs is a statutory delegated power under Section 16 of the 1991 LGC. The **general welfare clause** is the delegation in statutory form of the police power of the State to LGs *(Manila vs. Laguio, G.R. No. 118127, April 12, 2005; Ermita-Malate Hotel and Motel Operations Association, Inc., vs. Mayor of Manila, G.R. No. L-24693, July 31, 1967).*

1.2 Section 16 of the 1991 LGC states: "Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants."

2. For a **valid exercise of police power**, **two requisites** must concur: (1) Lawful Subject (i.e., substantive due process; equal protection; public interest requires interference); *and* (2) Lawful Method (i.e., procedural due process; reasonable means to achieve the purpose) *(Lucena Grand Central Terminal vs. JAC Liner, G.R. No. 148339, February 23, 2005).*

2.1 An LGU is considered to have properly exercised its police powers only when the following **requisites** are met: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and are not unduly oppressive upon individuals. The first requirement refers to the equal protection clause, and the second to the due process clause of the Constitution *(Parayno vs. Jovellanos, G.R. No. 148408 July 14, 2006; Lucena Grand Central Terminal vs. JAC Liner, G.R. No. 148339, February 23, 2005; (Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015).*

2.2 The **power to establish zones for industrial, commercial and residential uses** is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality *(Social Justice Society vs. Atienza, G.R. No. 156052, February 13, 2008).*

2.3 A municipality failed to comply with the due process clause when it passed a **Resolution ordering the closure/transfer of a gasoline station** where it did not even attempt to determine if there was an actual violation of a zoning ordinance *(Parayno vs. Jovellanos, G.R. No. 148408 July 14, 2006).*

2.4 An **ordinance aimed at relieving traffic congestion** meets the first standard. However, **declaring bus terminals as nuisance *per se* or public nuisances and ordering their closure or relocation** contravenes the second standard. Terminals are not public nuisances. Their operation is a legitimate business which, by itself, cannot be said to be injurious to the rights of property, health, or comfort of the community *(Lucena Grand Central Terminal vs. JAC Liner, G.R. No. 148339, February 23, 2005).*

2.5 Generally, LGUs have no power to declare a particular thing as a nuisance unless such a thing is a nuisance *per se*. **Despite the hotel's classification as a nuisance *per accidens*, however, the LGU may nevertheless properly order the hotel's demolition.** This is because, in the exercise of police power and the general welfare clause, property rights of individuals may be subjected to restraints and burdens in order to fulfil the objectives of the government. (*Aquino v. Municipality of Malay, Aklan, G.R. No. 211356, September 29, 2014*).

2.6 **Demolitions and evictions may be validly carried out even without a judicial order in the following instances:** (1) when the property involved is an expropriated property xxx pursuant to Section 1 of P.D. No. 1315; (2) when there are squatters on government resettlement projects and illegal occupants in any homelot, apartment or dwelling unit owned or administered by the NHA pursuant to Section 2 of P.D. No. 1472; (3) when persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways and other public places such as sidewalks, roads, parks and playgrounds, pursuant to Section 28(a) of R.A. No. 7279; (4) when government infrastructure projects with available funding are about to be implemented pursuant to Section 28(b) of R.A. No. 7279 *(Kalipunan ng Damayang Mahihirap, Inc. vs. Robredo, G.R. No. 200903, July 22, 2014).*

2.7 If the enforcement of a writ of execution would be limited to one option out of three provided in the LGC (i.e., demolition of the structures), it is not due to any defect in the writ itself, but to the circumstances of the case and the situation of the parties at the time of execution. Thus, the writ would still be valid *(Vargas vs. Cajucom, G.R. No. 171095, June 22, 2015).*

2.8 An anti-obscenity ordinance cannot be falsely attacked for overbreadth, because obscenity is not protected speech. The overbreadth doctrine finds special and limited application only to free speech cases, not obscenity prosecution. Laws that regulate or proscribe classes of speech falling beyond the ambit of constitutional protection cannot, therefore, be subject to facial invalidation because there is no "transcendent value to all society" that would justify such attack" *(Madrilejos vs. Gatdula, G.R. No. 184389, Sept. 24, 2019).*

3. According to *Fernando v. St. Scholastica's College (G.R. No. 161107, March 12, 2013)*, to successfully invoke the exercise of police power as the rationale for the enactment of an ordinance and to free it from the imputation of constitutional infirmity, **two tests** have been used: (1) the rational relationship test, and (2) the strict scrutiny test.

3.1 The **rational basis test** has been applied mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered.

a) Under the rational relationship test, an ordinance must pass the following requisites: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise, and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. In short, there must be a concurrence of a lawful subject and lawful method. Lacking a concurrence of these two requisites, the police power measure shall be struck down as an arbitrary intrusion into private rights and a violation of the due process clause.

Thus, this test is not complied with when an ordinance requires that a private owner demolish a wall or build a fence with a setback for the purpose of allowing the general public to use the property of the private owner for free depriving the owner of exclusive use. Compelling the respondents to construct their fence in accordance with the assailed ordinance is, thus, a clear encroachment on their right to property, which necessarily includes their right to decide how best to protect their property. An LGU may not, under the guise of police power, permanently divest owners of the beneficial use of their property solely to preserve or enhance the aesthetic appearance of the community.

b) A substantially overinclusive or underinclusive classification tends to undercut the governmental claim that the classification serves legitimate political ends. The ordinance prohibiting aerial spraying is underinclusive since the occurrence of pesticide drift is not limited to aerial spraying but results from the conduct of any mode of pesticide application, and may bring about the same inconvenience, discomfort and alleged health risks to the community and to the environment. It is overinclusive because its implementation will unnecessarily impose a burden on a wider range of individuals than those included in the intended class based on the purpose of the law. The ban is too broad because the ordinance applies irrespective of the substance to be aerially applied and irrespective of the agricultural activity to be conducted. Where overinclusiveness is the problem, the vice is that the law has a greater discriminatory or burdensome effect than necessary. In this light, an ordinance is void for carrying an invidious classification, and for thereby violating the Equal Protection Clause (*City Government of Davao vs. Court of Appeals, G.R. 189305, August 16, 2016*).

3.2 Applying **strict scrutiny**, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.

3.3 The **precautionary principle** shall only be relevant if there is concurrence of three elements, namely: uncertainty, threat of environmental damage and serious or irreversible harm. In situations where the threat is relatively certain, or ·that the causal link between an action and environmental damage can be established, or the probability of occurrence can be calculated, only preventive, not

precautionary measures, may be taken. Neither will the precautionary principle apply if there is no indication of a threat of environmental harm, or if the threatened harm is trivial or easily reversible. The only study conducted to validate the effects of aerial spraying appears to be the *Summary Report on the Assessment and Fact-Finding Activities on the Issue of Aerial Spraying in Banana Plantations*. Yet, the fact-finding team that generated the report was not a scientific study that could justify the resort to the precautionary principle. (*City Government of Davao vs. Court of Appeals, G.R. 189305, August 16, 2016*).

3.4 The precautionary principle is one of the key features introduced in the RPEC wherein the burden of proof is shifted to the proponent of a project to dispel concerns regarding potential harmful impacts of a project to the environment. It is not meant to apply to all environmental cases. **Essential to the application of the precautionary principle is the presence of scientific uncertainty**. It cannot be applied if the threat was not established and the volumes of data generated by objective and expert analyses ruled out the scientific uncertainty of the nature and scope of the anticipated threat *(Villar vs. Alltech Contractors, Inc., G.R. No. 208702, May 11, 2021)*.

4. The general welfare clause has **two branches** *(Rural Bank of Makati vs. Municipality of Makati, G.R. No. 150763 July 02, 2004)*.

4.1 The first, known as the **general legislative power**, authorizes the local legislative council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the local legislative council by law *(Rural Bank of Makati vs. Municipality of Makati, G.R. No. 150763 July 02, 2004)*. An example would be the abatement of a nuisance as this is an explicit power under the 1991 LGC *[Sections 447 (a)(4)(ii) and 458 (a)(4)(ii)]*.

4.2 The second, known as the **police power proper**, authorizes the local government to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property *(Rural Bank of Makati vs. Municipality of Makati, G.R. No. 150763 July 02, 2004)*. An example would be the imposition of curfew.

5. The power to legislate under the General Welfare Clause is not meant to be an invincible authority. In fact, *Salaveria* and *Abendan* emphasized the reasonableness and consistency of the exercise by the local government units with the laws or policies of the State. More importantly, because the police power of the local government units flows from the express delegation of the power by Congress, its exercise is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the terms used in granting the power should be construed against the local legislative units. Judicial scrutiny comes into play whenever the exercise of police power affects life, liberty or property. The presumption of validity and the policy of liberality are not restraints on the power of judicial review in the face of questions about whether an ordinance conforms with the Constitution, the laws or public policy, or if it is unreasonable, oppressive, partial, discriminating or in derogation of a common right. The ordinance must pass the test of constitutionality and the test of consistency with the prevailing laws (*City Government of Davao vs. Court of Appeals, G.R. 189305, August 16, 2016*).

6. In the exercise of police power, an LGU can:

    3.1 **Issue zoning classification**. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribed, defines and apportions a given political subdivision into specific land uses as present and future projection of needs *(Pasong Bayabas Farmers Association vs. Court of Appeals, G.R. Nos. 142359/ 142980, May 25, 2004).*

    3.2 **Prohibit the expansion of a hospital** based on the approval of a new zoning ordinance identifying another zone for hospitals, but which allows existing structures to continue in their present location *(Delfino vs. St. James Hospital, Inc., G.R. No. 166735, November 23, 2007).*

    3.3 **Restrict the use of property** since contractual restrictions on the use of property could not prevail over the reasonable exercise of police power through zoning regulations *(United BF Homes vs. City Mayor of Paranaque, G.R. 41010, February 07, 2007; Ortigas & Co. vs. Feati Bank and Trust Co., G.R. No. L-24670, December 14, 1979).*

    3.4 **Regulate the construction of warehouses wherein inflammable materials are stored** where such warehouses are located at a distance of 200 meters from a block of houses and not the construction *per se* of a warehouse *(Tatel vs. Municipality of Virac, G.R. No. 40243, March 11, 1992).*

3.5 **Order the closure and padlocking of a plant causing pollution** when the closure was in response to complaints of residents, after an investigation was conducted, when there was no building permit from the host municipality, and when the temporary permit to operate by the National Pollution Control Commission has expired *(Technology Developers, Inc. vs. Court of Appeals, G.R. No. 94759, January 21, 1991).*

3.6 **Regulate the installation and maintenance of a telecommunications tower**. In the exercise of its police power, it does not encroach on NTC's regulatory powers (*Smart Communications vs. Municipality of Malvar, Batangas, G.R. No. 204429, February 18, 2014*).

3.7 **Order the closing and demolition of establishments**. This power granted by the LGC, is not the same power devolved in favor of the LGU under Sec. 17 (b)(2)(ii), as above-quoted, which is subject to review by the DENR (*Aquino v. Municipality of Malay, Aklan, G.R. No. 211356, September 29, 2014*).

3.8 **Order the stoppage of quarrying operations**. In order for an entity to legally undertake a quarrying business, he must first comply with all the requirements imposed not only by the national government (Mines and Geosciences Bureau and DENR), but also by the local government unit where his business is situated (*Province of Cagayan v. Lara, G.R. No. 188500, July 24, 2013*).

3.9 **Supervise and control the collection of garbage within its corporate limits.** Ordinances regulating waste removal carry a strong presumption of validity. Necessarily, LGUs are statutorily sanctioned to impose and collect such reasonable fees and charges for services rendered *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015).*

3.10 **Purchase the property in behalf of the city** (by the City Treasurer), **in the absence of the public in the public bidding.** Reason would dictate that this purchase by the city is the very forfeiture mandated by the law. The contemplated "forfeiture" in the provision points to the situation where the local government ipso facto "forfeits" the property for want of a bidder *(The City of Davao vs. Intestate Estate of Amado S. Dalisay, G.R. No. 207791, July 15, 2015).*

3.11 **Maintain the public order** through the issuance by the Punong Barangay of a barangay protective order under the Anti-Violence against Women and Children Act *(Fua v. Mangrobang, 714 SCRA 428).*

3.12 **Substantiate its defense of the power to regulate businesses** within its territorial jurisdiction *(City of Iloilo vs. Judge Honrado, G.R. No. 160399, December 9, 2015).*

3.13 **Issue a cease and desist order and order the closure of a poultry farm** for failure to apply for and secure the necessary business permit to operate, on account of inability to obtain the required barangay clearance due to complaints of foul odor being emitted by the said farm (*Cayabyab vs. Dimson, G.R. No. 223862, July 10, 2017*).

3.14 **Enact curfew ordinances** narrowly tailored as to ensure minimal constraint not only on the minors' right to travel but also on their other constitutional rights. LGUs may impose curfew on minors if there is compelling reason to promote juvenile safety and prevent juvenile crime (strict scrutiny test) and which would complement parental supervision (*parens patriae*); however, it must provide for the least restrictive means to achieve this interest (provide adequate exceptions that enable minors to freely exercise fundamental rights during curfew hours) and therefore should be narrowly tailored as to ensure minimal constraint not only on the minors' right to travel but also on their other constitutional rights [school, church, legitimate non-school or non-church and civic activities, political rallies, peaceful assemblies]. (*Samahan ng mga Progresibong Kabataan (SPARK) vs. Quezon City, G.R. No. 225442, August 8, 2017*).

2. However, an LGU cannot:

4.1 **Require a private owner to demolish a wall or build a fence with a setback** for the purpose of allowing the general public to use the property of the private owner for free depriving the owner of exclusive use *(Fernando v. St. Scholastica's College, G.R. No. 161107, March 12, 2013).*

4.2 **Prohibit the operation of sauna and massage parlors, karaoke bars, beerhouses, night clubs, day clubs, super clubs, discotheques, cabarets, dance halls, motels, inns or order their transfer or conversion** without infringing the constitutional guarantees of due process and equal protection of laws not even under the guise of

police power *(Ermita-Malate Hotel and Motel Operations Association, Inc., vs. Mayor of Manila, G.R. No. L-24693, July 31, 1967).*

4.3 **Enact an ordinance preventing motels from offering wash rates and renting out a room more than once a day** is an unreasonable exercise of police power where the behavior which the ordinance seeks to curtail (i.e., prostitution, use of illicit drugs) is already prohibited and can be curtailed by applying existing laws *(Whitelight Corporation vs. City of Manila, G.R. No. 122846, January 20, 2009).*

4.4 **Prohibit the operation of nightclubs.** They may be regulated, but not prevented from carrying on their business *(Dela Cruz vs. Paras, G.R. Nos. L-42571-72, July 25, 1983).*

4.5 **Modify the terms of an application for a public assembly permit without indicating how the city mayor arrived at such a decision** against the standard of the clear and present danger test *(Integrated Bar of the Philippines vs. Atienza, G.R. No. 175241, February 24, 2010).*

4.6 **Impose an absolute ban on public assemblies.** A mayor, however, can deny the issuance of a rally permit on the ground of clear and present danger to public order, public safety, public convenience, public morals or public health *(Bayan vs. Ermita, G.R. No. 169838, April 25, 2006).*

4.7 **Regulate the practice of a profession,** like that of optometry, **through the issuance of a permit.** Such a function is within the exclusive domain of the administrative agency specifically empowered by law to supervise the profession, i.e., Professional Regulations Commission and the Board of Examiners in Optometry *(Acebedo Optical vs. Court of Appeals, G.R. No. 100152 March 31, 2000).*

4.8 **Cause the summary abatement of concrete posts** where the posts did not pose any hazard to the safety of persons and property but merely posed an inconvenience to the public by blocking the free passage of people to and from the national road. The post is not nuisance *per se (Telmo vs. Bustamante, G.R. No. 182567, July 13, 2009).*

4.9 **Cause the destruction of quonset building where copra is stored** since this is a legitimate business. By its nature, it cannot be said to be injurious to rights of property, of health or of comfort of the community. If it is a nuisance *per accidens* it may be so proven in a

hearing conducted for that purpose *(Estate Francisco vs. Court of Appeals, G.R. No. 95279, July 26, 1991).*

4.10 **Order the closure of a bank for non-payment of taxes** since the appropriate remedies to enforce payment of delinquent taxes or fees are provided in Section 62 of the Local Tax Code. Closure is not a remedy *(Rural Bank of Makati vs. Municipality of Makati, G.R. No. 150763, July 02, 2004).*

4.11 **Order summary demolition or eviction** if it was not shown that the structures are in danger areas or public areas, such as a sidewalk, road, park, or playground; that a government infrastructure project is about to be implemented; and that there is a court order for demolition or eviction; or when the occupants are neither new squatters nor professional squatters nor members of squatting syndicates as defined in RA No. 7279. *(Alangdeo vs. City Mayor of Baguio, G.R. No. 206423, July 1, 2015)*

4.12 **Demand compliance with an ordinance within an unreasonable period**. Requiring compliance with the consequences of the ban within the (insufficient) three-month period under pain of penalty like fine, imprisonment and even cancellation of business permits would definitely be oppressive as to constitute abuse of police power (*City Government of Davao vs. Court of Appeals, G.R. 189305, August 16, 2016*).

4.13 **Regulate and control the use of pesticides**. The enumerated devolved functions to the local government units do not include the regulation and control of pesticides and other agricultural chemicals (since this is within the jurisdiction of the Fertilizer and Pesticide Authority). An ordinance that regulates and controls the same is therefore *ultra vires*. As a local government unit, the City of Davao could act only as an agent of Congress, and its every act should always conform to and reflect the will of its principal (*City Government of Davao vs. Court of Appeals, G.R. 189305, August 16, 2016*).

4.14 **Control and regulate the use of ground water.** An ordinance that effectively contravenes the provisions of the Water Code as it arrogates unto LGU the power to control and regulate the use of ground water which, by virtue of the provisions of the Water Code, pertains solely to the NWRB (*City of Batangas vs. Philippine Shell Petroleum Corporation, G.R. No. 195003, June 7, 2017*).

4.15 **Enact ordinances with penal provisions imposing reprimand and fines/imprisonment on minors** since they conflict with Section 57-A of the Juvenile Justice and Welfare Act of 2006. (*Samahan ng mga Progresibong Kabataan (SPARK) vs. Quezon City, G.R. No. 225442, August 8, 2017*).

3. No compensation is needed to be paid by the LGU as there is **no compensable taking in the condemnation of private property** under police power. Property condemned under police power is usually noxious or intended for a noxious purpose *(Didipio Earth-Savers' Multi-Purpose Association vs. Gozun, G.R. No. 157882, March 30, 2006).*

   5.1 In the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state. Where a property interest is merely restricted because the continued use thereof would be injurious to public welfare, or where property is destroyed because its continued existence would be injurious to public interest, there is no compensable taking *(Didipio Earth-Savers' Multi-Purpose Association vs. Gozun, G.R. No. 157882, March 30, 2006).*

   5.2 In the exercise of its police power regulation, the state restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public *(Didipio Earth-Savers' Multi-Purpose Association vs. Gozun, G.R. No. 157882, March 30, 2006).*

Eminent Domain

1. Eminent Domain is a statutory power of LGs. The 1991 LGC defines the power and enumerates the requirements, to wit: "A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of

the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property." *(Section 19, 1991 LGC).*

2. The power of eminent domain delegated to LGs is in reality not eminent but "inferior." Congress is still the principal of LGs, and the latter cannot go against the principal's will or modify the same *(Beluso vs. Municipality of Panay, G.R. No. 153974, August 07, 2006).*

3. The power of eminent domain is essentially legislative in nature but may be validly delegated to local government units. The basis for its exercise is granted under Section 19 of Republic Act 7160. No hearing is actually required for the issuance of a writ of possession, which demands only two requirements: (a) the sufficiency in form and substance of the complaint, and (b) the required provisional deposit. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint (*Municipality of Cordova vs. Pathfinder Development Corporation, G.R. No. 205544, June 29, 2016*).

4. Two mandatory requirements should underlie the Government's exercise of the power of eminent domain namely: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated (*Hon. Alvin P. Vergara, in his capacity as City Mayor of Cabanatuan City vs. Lourdes Melencio S. Grecia, G.R. 185638, August 10, 2016*).

5. In the exercise of the power of eminent domain, it is basic that the taking of private property must be for a public purpose *(Section 19, 1991 LGC).*

    3.1 **Public use** is defined as whatever is beneficially employed for the community *(Barangay Sindalan, San Fernando vs. Court of Appeals, G.R. No. 150640, March 22, 2007).*

    3.2 If the intended feeder road will only benefit the residents of a private subdivision, then there is no valid purpose *(Barangay Sindalan, San Fernando vs. Court of Appeals, G.R. No. 150640, March 22, 2007).*

    3.3 The ordinance must show **why the subject property was singled out for expropriation** or **what necessity impelled the particular choice or selection** *(Lagcao vs. Labra, G.R. No. 155746, October 13, 2004).*

6. To justify the payment of just compensation, there must be **compensable taking.** The expropriated property must be **used after taking** *(Didipio Earth-Savers' Multi-Purpose Association vs. Gozun, G.R. 157882, March 30, 2006).*

    4.1 When a property interest is appropriated and applied to some public purpose, there is compensable taking. The deprivation of use can in fact be total and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein. **If, however, in the regulation of the use of the property, somebody else acquires the use or interest thereof,** such restriction constitutes compensable taking *(Didipio Earth-Savers' Multi-Purpose Association vs. Gozun, G.R. 157882, March 30, 2006).*

    4.3 **Ordering a particular type of business to wind up, transfer, relocate or convert to an allowable type of business** in effect permanently restricts the use of property and thus **goes beyond regulation.** Just compensation is therefore required *(Manila vs. Laguio, G.R. No. 118127, April 12, 2005).*

    4.4 The determination of just compensation in eminent domain cases is a judicial function and any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount (*Hon. Alvin P. Vergara, in his capacity as City Mayor of Cabanatuan City vs. Lourdes Melencio S. Grecia, G.R. 185638, August 10, 2016*).

    4.5 Apart from the requirement that compensation for expropriated land must be fair and reasonable, compensation, to be "just", must also be made without delay. Without prompt payment, compensation cannot be considered "just" if the property is immediately taken as the property owner suffers the immediate deprivation of both his land and its fruits or income. The rationale for imposing the interest is to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking. There is a need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. Settled is the rule that the award of interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of

forbearance. This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades (*Hon. Alvin P. Vergara, in his capacity as City Mayor of Cabanatuan City vs. Lourdes Melencio S. Grecia, G.R. 185638, August 10, 2016*).

7. The foundation of the right to exercise eminent domain is genuine necessity and that necessity must be of public character *(Section 19, 1991 LGC)*.

    5.1 Government may not capriciously or arbitrarily choose which private property should be expropriated. The condemnor must show the necessity *(Jesus is Lord Christian School Foundation vs. Pasig, G.R. No. 152230, August 09, 2005; Meycauyan vs. Intermediate Appellate Court, G.R. No. 72126, January 29, 1988).*

    5.2 The claim of the LGU that the piece of property is the "shortest and most suitable access road" and that the "lot has been surveyed as the best possible ingress and egress" must be proven by a showing of a **preponderance of evidence** *(Jesus is Lord Christian School Foundation vs. Pasig, G.R. No. 152230, August 09, 2005).*

    5.3 The right to take private property for public purposes necessarily originates from the necessity and the taking must be limited to such necessity. There is no genuine necessity when taking of private property is done for the benefit of a small community which seeks to have its own sports and recreational facility, notwithstanding the fact that there is a recreational facility only a short distance away *(Masikip vs. City of Pasig, G.R. No. 136349, January 23, 2006).*

8. The enabling instrument for the exercise of eminent domain is an ordinance, not a resolution *(Section 19, 1991 LGC).*

    6.1 A **resolution which merely expresses the sentiment of the municipal council** will not suffice *(Beluso vs. Municipality of Panay, G.R. No. 153974, August 07, 2006; Paranaque vs. VM Realty Corporation, G.R. No. 127820 July 20, 1998).*

    6.2 In a resolution, there is **no positive act** of instituting the intended expropriation proceedings *(Antonio vs. Geronimo, G.R. No. 124779, November 29, 2005).*

6.3 The **enactment of the ordinance** must precede the **filing of the expropriation complaint** *(Saguitan vs. Mandaluyong City, G.R. No. 135087, March 14, 2000).*

9. There must be a valid and definite offer *(Section 19, 1991 LGC).*

7.1 Reasonable efforts must be exhausted in acquiring the property voluntarily *(Jesus is Lord Christian School Foundation vs. Pasig, G.R. No. 152230, August 09, 2005).*

7.2 An LGU has the **burden of proving compliance** with the mandatory requirement of a valid and definite offer to the owner of the property before filing its complaint and the rejection thereof by the latter. It is incumbent upon the condemnor to **exhaust all reasonable efforts** to obtain the land it desires by agreement. **Failure to prove compliance** with the mandatory requirement will result in the dismissal of the complaint *(Jesus is Lord Christian School Foundation vs. Pasig, G.R. No. 152230, August 09, 2005).*

7.3 The **offer must be complete**, indicating with sufficient clearness the kind of contract intended and definitely stating the essential conditions of the proposed contract. An offer would require, among other things, a clear certainty on both the object and the cause or consideration of the envisioned contract. There is **no valid offer when** the letter sent by the LGU to the owner is a **mere invitation to a conference to discuss the project and the price** *(Jesus is Lord Christian School Foundation vs. Pasig, G.R. No. 152230, August 09, 2005).*

10. In the exercise of this power, the Constitution and other pertinent laws must be followed *(Section 19, 1991 LGC).*

10.1 **Private lands rank last in the order of priority for purposes of socialized housing.** Expropriation proceedings are to be resorted to only after the other modes of acquisition have been exhausted under Republic Act. No. 7279, the Urban Development and Housing Act of 1992 (*Estate of Heirs of Late Ex-Justice Jose B.L. Reyes vs. Manila, G.R. No. 132431/ 137146, February 12, 2004; Filstream International vs. Court of Appeals, G.R. No. 125218 / 128077, January 23, 1998).*

10.2 Several requisites must concur before a local government unit can exercise the power of eminent domain, to wit: (1) an ordinance is enacted by the local legislative council authorizing the local chief

executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property; (2) the power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless; (3) there is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws; and (4) a valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted. Further, the above-cited provision also states that the exercise of such delegated power should be pursuant to the Constitution and pertinent laws. R.A. No. 7279 is such pertinent law in this case as it governs the local expropriation of properties for purposes of urban land reform and housing. Thus, the rules and limitations set forth therein cannot be disregarded. These are strict limitations on the exercise of the power of eminent domain by local government units, especially with respect to: (1) the order of priority in acquiring land for socialized housing; and (2) the resort to expropriation proceedings as a means of acquiring it. Compliance with these conditions is mandatory because these are the only safeguards of oftentimes helpless owners of private property against what may be a tyrannical violation of due process when their property is forcibly taken from them allegedly for public use *(City of Manila vs. Prieto, G.R. No. 221366, July 8, 2019)*.

11. The authority of the supervising-higher LGU in exercising its review authority over ordinances of supervised-lower LGU is limited to questions of law/legal questions, i.e., **whether or not the ordinances are within the powers of supervised-lower LGU to enact; whether or not *ultra vires*; and whether or not procedures were followed.** The power to review does not extend to choice of property to be expropriated; otherwise, this would amount to control, not just supervision *(Moday vs. Court of Appeals, G.R. No. 107916 February 20, 1997)*.

12. The approval of the Department of Agrarian Reform (DAR) is not required before an LGU can expropriate an agricultural land *(Province of Camarines Sur vs. Court of Appeals, G.R. No. 175604, September 18, 2009)*.

13. **Judicial review** of the exercise of eminent domain is limited to the following areas of concern: (1) the adequacy of the compensation; (2) the necessity of the taking; and (3) the public use character of the purpose of the taking *(Masikip vs. City of Pasig, G.R. No. 136349, January 23, 2006)*.

    11.1 An expropriation suit is **incapable of pecuniary estimation**. Accordingly, it falls within the **jurisdiction of Regional Trial Courts,**

regardless of the value of the subject property. An expropriation suit does not involve the recovery of a sum of money but involves the government's authority to expropriate *(Bardillon vs. Masili, G.R. No. 146886, April 30, 2003).*

11.2 The **requisites for authorizing immediate entry** in the exercise of an LGU's right of eminent domain are as follows: (1) the filing of a complaint for expropriation sufficient in form and substance; and (2) the deposit of the amount equivalent to 15% of the fair market value of the property to be expropriated based on its current tax declaration. Upon compliance with these requirements, the issuance of a writ of possession becomes ministerial *(Iloilo City vs. Legaspi, G.R. No. 154614, November 25, 2004).*

a. For a **writ of possession** to issue, only **two requirements** are required: (1) the sufficiency in form and substance of the complaint; and (2) the required provisional deposit. No hearing is required for the issuance of a writ of possession. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint *(Iloilo City vs. Legaspi, G.R. No. 154614, November 25, 2004).*

b. The law does not make the determination of a public purpose a condition precedent to the issuance of a writ of possession *(Francia vs. Meycauayan, G.R. No. 170432, March 24, 2008).*

c. The required deposit is based on the property's current tax declaration *(Knecht, Inc. vs. Municipality of Cainta, G.R. 145254, July 17, 2006).*

11.3 The owner of the expropriated property has certain remedies.

a. The owner may file a mandamus case against the LGU in order to **compel its *sanggunian* to enact another appropriation ordinance replacing a previous one which charged the payment for just compensation to a non-existent bank account** *(Ortega vs. City of Cebu, G.R. No. 181562-63, October 2, 2009).*

b. Where a municipality fails or refuses, without justifiable reason, to effect payment of a final money judgment rendered against it, the claimant may avail of the remedy of mandamus in order to **compel the enactment and approval of the necessary**

appropriation ordinance, and the corresponding disbursement of municipal funds therefore *(Makati vs. Court of Appeals, G.R. No. 898998-89, October 01, 1990; Yujuico vs. Atienza, G.R. No. 164282, October 12, 2005).*

c. The non-filing of an expropriation case will not necessarily lead to the return of the property to its owner. **Recovery of possession can no longer be allowed** where the owner was guilty of estoppel and, more importantly, where what was constructed on the property was a public road. What is left to the owner is the **right to just compensation** *(Eusebio vs. Luis, G.R. No. 162474, October 15, 2009).*

Reclassification of Land

1. Reclassification is the act of specifying how agricultural lands shall be utilized for non-agricultural (residential, industrial, commercial) as embodied in the land use plan, subject to the requirements and procedure for land use conversion *(Section 20, 1991 LGC).*

    1.1 Conversion is different from reclassification. **Conversion** is the act of changing the current use of a piece of agricultural land into some other use as approved by the Department of Agrarian Reform (DAR). Accordingly, a mere **reclassification** of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants. He/she has to undergo the process of conversion before he/she is permitted to use the agricultural land for other purposes *(Ros vs. DAR, G.R. No. 132477, August 31, 2005).*

Eminent Domain	*Zoning*	*Reclassification*	*Conversion*
Compensable Taking	Police Power	Administrative	Administrative
Change of Owner (private to LGU)	No change of owner	No change of owner	No change of owner
Any land	Any land	Agricultural to non-Agricultural	Agricultural to non-Agricultural
Change actual use	No change	No change	Change actual use
All LGUs	Originates from Cities/ Municipalities; Province integrates	Cities/ Municipalities	Department of Agrarian Reform

Eminent Domain	*Zoning*	*Reclassification*	*Conversion*
No hearing mandated	No hearing mandated	Public hearing required	No hearing mandated

Public Land vs. Patrimonial Property

1. Properties of local governments are classified as either (a) properties for public use, or (b) patrimonial properties. The capacity in which the property is held by a local government is dependent on the use to which it is intended and for which it is devoted. If the property is owned by the municipal corporation in its public and governmental capacity, it is public and Congress has absolute control over it; but if the property is owned in its private or proprietary capacity, then it is patrimonial and Congress has no absolute control, in which case, the municipality cannot be deprived of it without due process and payment of just compensation *(Sangguniang Panlalawigan of Bataan vs. Congressman Garcia, G.R. No. 174964, October 5, 2016)*.

2. Property registered in the name of the municipal corporation but without proof that it was acquired with its corporate funds is deemed held by it in trust for the State. The grant of autonomy to local governments, although a radical policy change under the 1973 and 1987 Constitutions, does not affect the settled rule that they possess property of the public domain in trust for the State *(Sangguniang Panlalawigan of Bataan vs. Congressman Garcia, G.R. No. 174964, October 5, 2016)*.

3. There is no argument that there must be some sort of a presidential declaration that a piece of land classified under Section 59(d) of the Public Land Act is no longer necessary for public use or public service before it can be leased to private parties or private entities or private corporations. However, we hold that the same need not be exclusively in the form of a presidential proclamation. Any other form of presidential declaration is acceptable. Section 63, in relation to Section 61, of CA 141 gives leeway to the President and the DENR Secretary in choosing the manner, mechanism or instrument in which to declare certain alienable or disposable public lands as unnecessary for public use or public service before these are disposed through sale or lease to private parties, entities or corporations. Hence, all alienable and disposable lands enumerated in Section 59, from (a) to (d), suitable for residence, commercial, industrial or other productive purposes other than agricultural, under Chapter VIII of the same CA 141, must be subject to a presidential declaration that such are exempt from public use or public service before they can be sold or leased,

as the case may be, but such need not be solely through a presidential proclamation. This Court has time and again ruled that to prove that a public land is alienable and disposable, what must be clearly established is the existence of a positive act of the government. This is not limited to a presidential proclamation. Such fact could additionally be proven through an executive order; an administrative action; investigative reports of Bureau of Lands investigators; and a legislative act or a statute *(Eulogio Alde vs. City of Zamboanga, G.R. No. 214981, November 4, 2020)*.

Local Legislation

1. Local legislative power is the power of LGUs through their local legislative councils to enact, repeal, amend, modify ordinances and issue resolutions.

    1.1 Local legislative power shall be exercised by the *sangguniang panlalawigan* for the province; the *sangguniang panlungsod* for the city; the *sangguniang bayan* for the municipality; and the *sangguniang barangay* for the barangay *(Section 48, 1991 LGC)*.

2. Local legislation is referred to as subordinate legislation.

    2.1 Local political subdivisions are able to legislate only by virtue of a valid delegation of legislative power from the **national legislature** except only that the power to create their own sources of revenue and to levy taxes is conferred by the **Constitution itself**. They are mere agents vested with what is called the **power of subordinate legislation**. As delegates of Congress, LGUs cannot contravene but must obey at all times the will of their principal. **An enactment local in origin cannot prevail against a decree,** which has the force and effect of a statute *(Manila vs. Laguio, G.R. No. 118127, April 12, 2005)*.

    2.2 **An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid.** The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe upon the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is **an implied restriction that the ordinances shall be consistent with the general law** *(Batangas CATV vs. Court of Appeals, G.R. No. 138810, October 20, 2004)*.

2.3 The delegate cannot be superior to the principal or exercise powers higher than those of the latter *(Lagcao vs. Labra, G.R. No. 155746, October 13, 2004).*

3.4 A *proviso* in an ordinance directing that the real property tax be based on the actual amount reflected in the deed of conveyance or the prevailing Bureau of Internal Revenue zonal value is invalid not only because it mandates an exclusive rule in determining the fair market value but more so because it departs from the established procedures stated in the Local Assessment Regulations No. 1-92 *(Allied Banking vs. Quezon City, G.R. No. 154126, October 11, 2005).*

3.15 When a law only allows for regulation (curfew) and prohibits imposition of penalties, an ordinance cannot provide for fine, imprisonment, loss of property, right or privilege, and reprimand, but community-based programs such as community service and admonition are permissible. (*Samahan ng mga Progresibong Kabataan (SPARK) vs. Quezon City, G.R. No. 225442, August 8, 2017*).

3. Local legislative acts are referred to as **denominated ordinances**. For an ordinance to be valid, it must not only be within the corporate powers of the LGU to enact and must be passed according to the procedure prescribed by law, it must also conform to the following **substantive requirements**: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable *(Lagcao vs. Labra, G.R. No. 155746, October 13, 2004; Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015).*

4. As jurisprudence indicates, the tests are divided into the **formal** (i.e., whether the ordinance was enacted within the corporate powers of the LGU and whether it was passed in accordance with the procedure prescribed by law), and the **substantive** (i.e., involving inherent merit, like the conformity of the ordinance with the limitations under the Constitution and the statutes, as well as with the requirements of fairness and reason, and its consistency with public policy). *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*

5. In order for an ordinance to be valid, it must not only be within the corporate powers of the concerned LGU to enact, but must also be passed in accordance with the procedure prescribed by law. Moreover, the ordinance (i) must not contravene the Constitution or any statute; (ii) must not be unfair or oppressive; (iii) must not be partial or discriminatory; (iv) must not prohibit, but

may regulate trade; (v) must be general and consistent with public policy; and (vi) must not be unreasonable (*City of Batangas vs. Philippine Shell Petroleum Corporation, G.R. No. 195003, June 7, 2017*).

6. The measure of the substantive validity of an ordinance is the underlying factual basis for which it was enacted. Hence, without factual basis, an ordinance will necessarily fail the substantive test for validity. (*City of Batangas v. Philippine Shell Petroleum Corporation, G.R. No. 195003, 7 June 2017*).

7. Ordinances enacted by LGUs enjoy the **presumption of constitutionality**. To overthrow this presumption, there must be a **clear and unequivocal breach of the Constitution,** not merely a doubtful or argumentative contradiction. In short, the conflict with the Constitution must be shown **beyond reasonable doubt.** When doubt exists, even if well-founded, there can be no finding of unconstitutionality *(Tano vs. Socrates, G.R. No. 110249, August 21, 1997).*

8. An ordinance must muster the test of **constitutionality** and the test of **consistency with the prevailing laws**. If not, it is void. *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*

9. An ordinance carries with it the presumption of validity. **The question of reasonableness, though, is open to judicial inquiry.** Much should be left thus to the discretion of municipal authorities. Courts will go slow in writing off an ordinance as unreasonable unless the amount is so excessive as to be prohibitive, arbitrary, unreasonable, oppressive, or confiscatory. A rule which has gained acceptance is that factors relevant to such an inquiry are the **municipal conditions as a whole** and the **nature of the business made subject to imposition** *(Victorias Milling Co., Inc. v. Municipality of Victorias, G.R. No. L-21183, September 27, 1968; Smart Communications, Inc. v. Municipality of Malvar, Batangas, G.R. No. 204429, February 18, 2014)*.

10. **A void legislative act** such an ordinance granting a franchise to cable television operators, a power vested on the National Telecommunications Commission, **does not confer any right nor vest any privilege** *(Zoomzat vs. People of the Philippines, G.R. No. 135535, February 14, 2005).*

11. Ordinances passed in the exercise of the general welfare clause and devolved powers of LGUs **need not be approved by the devolving agency** in order to be effective absent a specific provision of law *(Tano vs. Socrates, G.R. No. 110249, August 21, 1997).* Otherwise, this would amount to control.

12. The objective adopted by the Sangguniang Panlungsod to promote the constituents' general welfare in terms of **economic** benefits cannot override

the very basic rights to **life, security and safety** of the people (*Social Justice Society vs. Mayor Lim, G.R. No. 187836, November 25, 2014*).

13. [An ordinance] forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights *(Griswold v. Connecticut, 381 U.S. 479 (1965)*.

14. There are **no unlawful disbursements** of public funds when disbursements are made pursuant to a **re-enacted budget.** Money can be paid out of the local treasury since there is a valid appropriation *(Villanueva vs. Ople, G.R. No. 165125, October 18, 2005).*

15. Local legislative councils enact ordinances and issue resolutions.

    14.1 Legislative actions of a general and permanent character shall be enacted in the form of **ordinances**, while those which are of a temporary character shall be passed in the form of **resolutions.** Matters relating to proprietary functions and to private concerns shall also be acted upon by resolution *(Art. 107, Implementing Rules and Regulations of the 1991 LGC)*

Ordinances	*Resolutions*
Equivalent to Law	Expression of Sentiment or Opinion
Public or Governmental	Private or Proprietary
More or Less Permanent	Temporary
As a general rule, must undergo 3 readings	As a general rule, only undergoes 2 readings
All ordinances subject to Veto/ Review	Only some resolutions subject to Veto/ Review (i.e., local development plan and public investment program)
Examples: expropriation, tax, curfew, appropriations, exercise of police power	Congratulatory messages, authorizing local chief executive to sign an agreement

16. LGUs can enter into contracts subject to certain requirements *(Section 22[a][5], 1991 LGC).*

    15.1 Unless otherwise provided in the 1991 LGC, no contract may be entered into by the local chief executive in behalf of the LGU without **prior authorization** by the *sanggunian* concerned. A legible copy of such contract shall be **posted** at a conspicuous place in the provincial

capitol or the city, municipal or barangay hall *(Section 22[c], 1991 LGC)*. Without the council authorization/ ratification, the contract is unenforceable.

15.2 A mayor validly entered into a Contract of Legal Services where the *sanggunian* unanimously passed a resolution authorizing his/her to hire a lawyer of his/her choice to represent the municipality's interest *(Municipality of Tiwi vs. Betito, G.R. No. 171873, July 9, 2010)*.

15.3 The prior authorization may be in the form of an appropriation ordinance passed for the year which specifically covers the project, cost or contract to be entered into by the LGU *(Quisumbing vs. Garcia, G.R. No. 175527, December 8, 2008)*.

15.4 A loan agreement entered into by the provincial governor without prior authorization from the *sangguniang panlalawigan* is unenforceable. The ***sanggunian's* failure to impugn the contract's validity despite knowledge of its infirmity** is an implied ratification that validates the contract *(Ocampo vs. People, G.R. Nos. 156547-51 / 156382-85, February 4, 2008)*.

15.5 The authority of the Punong Barangay to accept a donation on behalf of the barangay is deemed ratified **when through the years, the *sanggunian barangay* did not repudiate the acceptance of the donation and when the barangay and the people of the barangay have continuously enjoyed the material and public service benefits arising from the infrastructure projects put up on the subject property** *(Dolar vs. Barangay Lublub, G.R. No. 152663, November 18, 2005)*.

15.6 A local chief executive has the **authority to file suits for the recovery of funds and property on behalf of the LGU, even without the prior authorization from the *sanggunian***. Nowhere in the enumerated powers and duties of the *sanggunian* can one find the requirement of such prior authorization in favor of the local chief executive for the purpose of filing suits on behalf of the LGU *(City of Caloocan vs. Court of Appeals, G.R. No. 145004, May 03, 2006)*.

15.7 For **local government infrastructure projects**, Regional Trial Courts may issue **provisional injunctive reliefs** against government infrastructure projects **only when** (1) there are compelling and substantial constitutional violations; (2) there clearly exists a right in esse; (3) there is a need to prevent grave and irreparable injuries; (4)

there is a demonstrable urgency to the issuance of the injunctive relief; and (5) when there are public interest at stake in restraining or enjoining the project while the action is pending that far outweighs (a) the inconvenience or costs to the party to whom the project is awarded and (b) the public benefits that will result from the completion of the project. The time periods for the validity of temporary restraining orders issued by trial courts should be strictly followed. No preliminary injunction should issue unless the evidence to support the injunctive relief is clear and convincing. (*Dynamic Builders and Construction Co., Inc. vs. Presbitero, G.R. No. 174201, April 7, 2015)*

15.8 A **municipality is a real party-in-interest** and an indispensable party that stands to be directly affected by any judicial resolution on the case assailing the validity of the loan, considering that: (a) the contracting parties to the loans are the bank and the municipality; and (b) the municipality owns the Public Plaza as well as the improvements constructed thereon, and must therefore be impleaded in the case. *(Land Bank vs. Cacayuran, G.R. No. 191667, April 22, 2015)*

15.9 Liabilities arising from construction contracts of LGUs do not partake of loans or forbearance of money but are in the nature of contracts of service. Hence, the rate of legal interest imposable on the liability to pay for the service is 6% per annum. *(WT Construction, Inc. vs. The Province of Cebu, G.R. No. 208984, September 16, 2015)*

15.10 The terms and conditions of Loan Agreement No. 4833-PH, which is an **executive agreement within the purview of Section 4 of R.A. No. 9184, being a project-based and government-guaranteed loan facility,** were incorporated and made part of the Subsidiary Loan Agreement that was subsequently entered into by Land Bank with the City Government of Iligan. Considering that Loan Agreement No. 4833-PH expressly provides that the procurement of the goods to be financed from the loan proceeds shall be in accordance with the IBRD Guidelines and the provisions of Schedule 4, and that the accessory SLA contract merely follows its principal's terms and conditions, the **procedure for competitive public bidding prescribed under RA 9184 therefore finds no application to the procurement of goods** for the Iligan City Water Supply System Development and Expansion Project *(Land Bank of the Philippines vs. Atlanta Industries, G.R. No. 193796, July 2, 2014).*

17. The local legislative process has the following stages/steps: (1) sponsorship; (2) 1st reading; (3) committee deliberations; (4) committee report; (5) 2nd reading (interpellation and amendments); (6) 3rd readings, attestation; (7) transmittal to local chief executive; (8) approval or veto; (9) publication/ posting; (10) effectivity; and (11) review by the supervising-higher *sanggunian*.

18. A *sanggunian* is a collegial body.

    17.1. Legislation requires the **participation of all its members** so that they may not only represent the interests of their respective constituents but also help in the making of decisions by voting upon every question put upon the body *(Zamora vs. Caballero, G.R. No. 147767, January 14, 2004).*

    17.2 The acts of only a part of the sanggunian done outside the parameters of the legal provisions are legally infirm. All such acts cannot be given binding force and effect for they are considered **unofficial acts done during an unauthorized session** *(Zamora vs. Caballero, G.R. No. 147767, January 14, 2004).*

    17.3 A **majority of all members of the *sanggunian* who have been elected and qualified** shall constitute a **quorum** to transact official business. The determination of the existence of a quorum is based on the **total number of members of the *sanggunian* without regard to the filing of a leave of absence** *(Zamora vs. Caballero, G.R. No. 147767, January 14, 2004).*

    17.4 **A *sanggunian* may provide for a vote requirement different from that prescribed under the law** (i.e., generally, majority vote) for certain (but not all) ordinances as in amending a zoning ordinance. *(Casino vs. Court of Appeals, G.R. No. 91192, December 2, 1991).*

    17.5 The *sanggunian's* **verbal concurrence is not the concurrence envisioned under the law.** The *sanggunian*, as a legislative body, acts through a resolution or an ordinance, adopted in a legislative session *(Montuerto vs. Ty, G.R. No. 177736, October 6, 2008).*

    17.6 There is **nothing** in the language of the law that **restricts** the **matters to be taken up during the first regular session** merely to the adoption or updating of the house rules. A supplemental budget may be passed on the first session day of the sanggunian *(Malonzo vs. Zamora, G.R. No. 137718, July 27, 1999).*

17.7 There is nothing in the law which prohibits the conduct of **three readings of a proposed ordinance** from being held in **just one session day** *(Malonzo vs. Zamora, G.R. No. 137718, July 27, 1999).*

18.8 Absent a law, local legislative councils have **no contempt and subpoena powers** *(Negros Oriental II Electric Cooperative Inc. vs. Sangguniang Panlungsod of Dumaguete, G.R. No. 72492, November 05, 1987).* This is not an inherent power of local councils.

19. Governors and mayors have the power to approve or veto ordinances. The local chief executive may veto any ordinance of the *sanggunian panlalawigan, sangguniang panlungsod,* or *sanggunian bayan* on the ground that it is *ultra vires* or prejudicial to the public welfare, stating his reasons therefor in writing *(Section 55[a], 1991 LGC).*

18.1 The governor or mayor has the power to veto the entire ordinance or particular items thereof. The local chief executive, except the punong barangay, shall have the power to veto any particular item or items of an appropriations ordinance, an ordinance or resolution adopting a local development plan and public investment program, or an ordinance directing the payment of money or creating liability *(Section 55[b], 1991 LGC).*

18.2 The local chief executive may veto an ordinance or resolution only once. The *sanggunian* may override the veto of the local chief executive concerned by two-thirds (2/3) vote of all its members, thereby making the ordinance effective even without the approval of the local chief executive concerned *(Section 55[c], 1991 LGC).*

18.3 The grant of the veto power confers authority beyond the simple act of signing an ordinance or resolution as a requisite to its enforceability. Such power accords the local chief executive the discretion to sustain a resolution or ordinance in the first instance or to veto it and return it with his/her objections to the *sanggunian (Delos Reyes vs. Sandiganbayan, G.R. No. 121215, November 13, 1997).*

18.4 An appropriation ordinance signed by the local chief executive authorizes the release of public funds. The mayor's signature approving the budget ordinance was his/her assent to the appropriation of funds. If he/she did not agree with such allocation, he/she could have vetoed the item *(Caloocan City vs. Allarde, G.R. No. 107271, September 10, 2003).*

18.5 A municipal mayor cannot issue a mayor's permit to operate a cockpit without an enabling ordinance. A **general ordinance empowering a mayor to issue permits cannot be used to justify the issuance of a license.** A **mayor cannot also be compelled to issue such a license** since this would constitute an undue encroachment on the mayor's administrative prerogatives *(Canet vs. Decena, G.R. No. 155344, October 20, 2004).*

20. **Review** is a reconsideration or re-examination for purposes of correction. The power of review is exercised to **determine whether it is necessary to correct the acts of the subordinate** and to **see to it that supervised unit performs the duties in accordance with law** *(Casino vs. Court of Appeals, G.R. No. 91192, December 2, 1991).*

19.1There is a boundary dispute when a portion or the whole of the territorial area of a Local Government Unit (LGU) is claimed by two (2) or more LGUs. The RTC is without jurisdiction to settle a boundary dispute involving barangays in the same city or municipality. Said dispute shall be referred for settlement to the *sangguniang panglungsod* or *sangguniang bayan* concerned. If there is failure of amicable settlement, the dispute shall be formally tried by the *sanggunian* concerned and shall decide the same within sixty (60) days from the date of the certification referred to. Further, the decision of the *sanggunian* may be appealed to the RTC having jurisdiction over the area in dispute, within the time and manner prescribed by the Rules of Court (*Barangay Mayamot, Antipolo City vs. Antipolo City, G.R. No.187349, August 17, 2016*).

20 An LGU has two branches of government, i.e. executive and legislative. The Governor for the Provinces, Mayors for Cities and Municipalities, and the Punong Barangay for Barangays are the local chief executives, while the Vice-Governor and Vice-Mayor are the vice-local chief executives. The 1991 LGC does not provide for the position of Vice-Punong Barangay.

Local Chief Executive	*Vice-Local Chief Executive*
Executive	Legislative and Executive (as vice)
Veto or Approve	Preside over sessions
Appoint Employees of the Executive Branch and Legislative Branch funded by Executive Branch	Appoint Employees of *Sanggunian* and Office of Vice-Mayor funded from *Sanggunian* and OVLCE
Approves Disbursements and Vouchers for Executive Branch	Approves Disbursements and Vouchers for Legislative Branch
Appropriations: May Veto, If approved, must release funds	Enact Appropriations Ordinance

Veto	*Review*
Approve or disapprove	Reconsideration or re-examination for purposes of correction
Intra-LGU (within the LGU)	Inter-LGU (2 LGUs)
Executive Power	Legislative Power
Local Chief Executive	Supervising-Higher Sanggunian
Ultra Vires (beyond the powers of the LGU) or Prejudicial to Public Welfare of law and fact/ wisdom	*Ultra Vires*
Involves question of law and fact/wisdom	Involves question of law only
Period to exercise: Province (15 days); City/ Municipality (10 days)	30 days
No Veto in Barangays	No Review of Provincial Ordinances
Reversal by Override or Judicial Review (reversal by courts)	Judicial Review (reversal only by courts)

21 The 1991 LGC allows for review of certain ordinances.

21.1 The law requires that **a dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file its appeal to the Secretary of Justice within 30 days from effectivity thereof.** In case the Secretary decides the appeal, a **period of 30 days is allowed for an aggrieved party to go to court.** But if the Secretary does not act thereon, **after the lapse of 60 days, a party could already proceed to seek relief in court** *(Reyes et. al. vs. Court of Appeals, G.R. No. 118233, December 10, 1999; Section 187, 1991 LGC).*

21.2 Failure to appeal to the Secretary of Justice within 30 days from the effectivity date of the tax ordinance as mandated by Section 187 of the 1991 LGC is fatal *(Jardine Davies vs. Aliposa, G.R. No. 118900, February 27, 2003).*

21.3 **A taxpayer need not comply with Sec. 187 of the LGC before going to court if he raises only questions of law**, since resolving questions of law, which involve the interpretation and application of laws, constitutes essentially an exercise of judicial power that is exclusively allocated to the Supreme Court and such lower courts the Legislature may establish (*Alta Vista Golf and Country Club vs. City of Cebu, G.R. No. 180235, January 20, 2016).*

21.4 The Department of Budget and Management shall review ordinances authorizing the annual or supplemental appropriations of provinces, highly-urbanized cities, independent component cities, and municipalities within the Metropolitan Manila Area *(Section 326, 1991 LGC).*

21.5 **Ordinances banning the catching of certain species of fishes and corals need not be approved by the Department of Environment and Natural Resources** before they can be effective because in the exercise of devolved power, such approval is not necessary *(Tano vs. Socrates, G.R. No. 110249, August 21, 1997).*

21.6 **The Office of the President, DILG, and other executive departments are not given the power to review ordinances under the 1991 LGC.** To assume such power without statutory authority amounts to control, not just supervision, and thus, unconstitutional.

21.7 **Ordinances and resolutions approving the local development plans and public investment programs** formulated by the local development councils of the Sangguniang Bayan or Sangguniang Panlungsod become **effective after review by the Sangguniang Panlalawigan, posting on the bulletin board, and publication.** (*Land Bank of the Philippines v. Cacayuran, G.R. No. 191667, April 17, 2013; In an Amended Decision dated April 22, 2015, the Second Division set aside the decision and remanded the case.)*

22 The constitutionality and legality of ordinances and resolutions may be raised before the courts on judicial review.

22.1 **A petition for certiorari filed against a *sanggunian* the legality of an ordinance will not lie** since the *sanggunian* does not fall within the ambit of tribunal, board, or officer exercising judicial or quasi-judicial functions. The enactment of an ordinance was done in the exercise of legislative and executive functions of the *sanggunian* and mayor respectively and do not partake of judicial or quasi-judicial functions *(Liga ng mga Barangay National vs. Manila, G.R. No. 154599, January 21, 2004).*

22.2 **The appropriate remedy is a petition for declaratory relief.** The **requisites** of an action for declaratory relief are: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or

ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding. Thus, an action for declaratory relief questioning two resolutions and an ordinance by a *sanggunian panlungsod* is premature where said issuances merely endorsed favorably to the Housing Land Use and Regulatory Board (HLURB) an application to develop a memorial park. The *sanggunian* has not yet acted on the application with finality. The HLURB, being the sole regulatory body for housing and land development, has the final say on the matter. **Under the *doctrine of primary administrative jurisdiction*, courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion, requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact** *(Ferrer, Jr. vs. Roco, Jr., G.R. No. 174129, July 5, 2010).*

22.3 The Supreme Court can only review, revise, reverse, modify on appeal or certiorari final judgments and orders of lower courts in all cases in which the constitutionality or validity of, among other things, an ordinance is in question *(Ortega vs. Quezon City, G.R. No. 161400, September 02, 2005).*

22.4 Without further proof that the local zoning board acted whimsically, or arbitrarily in issuing its resolution, the Court should respect the local zoning board's exercise of discretion. The Court cannot substitute its judgment for that of said officials who are in a better position to consider and weigh the same in the light of the authority specifically vested in them by law. Since the Court has no supervisory power over the proceedings and actions of the administrative departments of the government, it should not generally interfere with purely administrative and discretionary functions of the local government, as in a case where it determines whether or not a "photobomber building" violates a local zoning ordinance *(Knights of Rizal v. DMCI Homes, Inc., G.R. No. 213948, April 25, 2017).*

22.5 It is a general rule that the regularity of the enactment of an officially promulgated statute or ordinance may not be impeached by parol evidence or oral testimony either of individual officers and members,

or of strangers who may be interested in nullifying legislative action *(Reyes et. al. vs. Court of Appeals, G.R. No. 118233, December 10, 1999).*

22.6 A person is real party-in-interest to assail the constitutionality and legality of the ordinances because he is a registered co-owner of a residential property in the city and that he paid property tax which already included the SHT and the garbage fee. He has substantial right to seek a refund of the payments he made and to stop future imposition. While he is a lone petitioner, his cause of action to declare the validity of the subject ordinances is substantial and of paramount interest to similarly situated property owners in the city. *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*

23 Nothing in the LGC allows the creation of another local legislative body that will enact, approve, or reject local laws either through the regular legislative process or through initiative or referendum. (*Marmeto v. COMELEC, G.R. No. 213953, 16 September 2017*).

Other Governmental and Corporate Powers

1. The corporate powers of LGUs are enumerated in the 1991 LGC but the listing is not exclusive.

   1.1 Every LGU, as a corporation, shall have the following powers to: (1) have continuous succession in its corporate name; (2) sue and be sued; (3) have and use a corporate seal; (4) acquire and convey real or personal property; (5) enter into contracts; and (6) exercise such other powers as are granted to corporations, subject to the limitations provided in the 1991 LGC and other laws *(Section 22, 1991 LGC).*

2. Aside from express powers, LGUs also have implied powers (i.e. those powers implied from express powers and state policies).

   2.1 While the law did not expressly vest on LGUs the **power to abolish** that **office**, absent, however, any contrary provision, that authority should be **deemed embraced by implication from the power to create it** *(Javier vs. Court of Appeals, G.R. No. L-49065, June, 1, 1994).*

   2.2 LGUs cannot use public funds for the widening and improvement of privately-owned sidewalks. Under the law, **no public money shall be**

appropriated or applied for private purposes *(Albon vs. Fernando, G.R. No. 148357, June 30, 2006).*

2.3 An LGU must comply with the legal conditions imposed on a donation *(City of Angeles vs. Court of Appeals, G.R. No. 97882, August 28, 1996).*

3. LGUs, aside from relating with supervising and supervised LGUs, may coordinate with other LGUs.

Chapter X, Section 13, 1987 Constitution:
"Local government units may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law."

3.1 In support of such undertakings, the local government units involved may, upon approval by the sanggunian concerned after a public hearing conducted for the purpose, contribute funds, real estate, equipment, and other kinds of property and appoint or assign personnel under such terms and conditions as may be agreed upon by the participating local units through Memoranda of Agreement (Section 33, 1991 LGC).

Chapter X, Section 14, 1987 Constitution:
"The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region."

3.2 Regional development councils and other similar bodies composed of regional representatives from the public sector and non-governmental organizations can be created by the President.

Part 4. FISCAL AUTONOMY AND LOCAL SOURCES OF FUNDS

Chapter X, Section 5, 1987 Constitution:
"Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local

autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments."

Chapter X, Section 6, 1987 Constitution:
"Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them."

Chapter X, Section 7, 1987 Constitution:
"Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits."

Sources of Funds

1. LGUs have constitutional and statutory sources of funds.

    1.1 Under the 1987 Constitution, the sources of funds of local governments are their share in national taxes, equitable share in the proceeds of the utilization and development national wealth, local taxes, fees and charges, other sources of revenues *(Sections 5, 6 and 7, Article X, 1987 Constitution)*.

    1.2 Under the 1991 LGUs raise funds from loans *(Sections 300 and 301, 1991 LGC)*, donations and grants *(Section 23, 1991 LGC)*, float bonds *(Section 299, 1991 LGC)*, exercise of proprietary functions *(Section 22[d]. 1991 LGC)*, and credit-financing schemes such as Build-Operate-Transfer schemes *(R.A. No. 7718 amending R.A. No. 6957)*.

Fiscal Autonomy

1. **Local autonomy** includes both administrative and fiscal autonomy *(Province of Batangas vs. Romulo, G.R. No. 152774, May 27, 2004; Pimentel vs. Aguirre, G.R. No. 132988, July 19, 2000)*.

    1.1 LGUs enjoy fiscal autonomy. The constitutional basis of fiscal autonomy is Section 5, Article X of the 1987 Constitution *(Pimentel vs. Aguirre, G.R. No. 132988, July 19, 2000)*.

    1.2 **Fiscal autonomy** means that LGUs have the: (1) power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the

(2) power to allocate their resources in accordance with their own priorities. (3) It extends to the preparation of their budgets, and local officials in turn-have to work within the constraints thereof *(Pimentel vs. Aguirre, G.R. No. 132988, July 19, 2000).*

1.3 Local fiscal autonomy does not however rule out any manner of **national government intervention by way of supervision**, in order to ensure that local programs, fiscal and otherwise, are consistent with national goals *(Pimentel vs. Aguirre, G.R. No. 132988, July 19, 2000).*

1.4 Fiscal autonomy does **not** leave LGUs with **unbridled discretion in the disbursement of public funds.** They remain accountable to their constituency. Thus, the DILG can issue circulars regarding the full disclosure of local budgets and finances and list of expenses which the internal revenue allotment (IRA) can be used and which requires publication in biddings, since these are mere reiterations of statutory provisions *(Villafuerte v. Robredo, G.R. No. G.R. No. 195390, December 10, 2014).*

1.5 There can be **no genuine local autonomy without fiscal autonomy**. In order for local governments to perform their constitutional and statutory mandates, local governments must have sufficient funds to cover the costs of maintaining the organization, undertaking projects for the general welfare, performing their legal mandates and obligations, delivering basic services and advancing sustainable development, among other responsibilities. On the other hand, fiscal autonomy cannot be realized without local autonomy in terms of usage, setting priorities, and disbursement of local funds. If there were no local autonomy, the exercise of discretion and wisdom on the part of local governments in accessing and utilizing revenues would be unduly clipped.

2. As a consequence of fiscal autonomy:

2.1 The **Department of Budget and Management cannot impose a limitation not found in the law** such as setting a cap on the amount of allowances for judges *(Dadole vs. Commission on Audit, G.R. No. 125350, December 03, 2002).*

2.2 In reviewing tax ordinances, the **Department of Justice can only declare a tax measure unconstitutional and illegal.** The Secretary cannot amend, modify or repeal the tax measure or declare it

excessive, confiscatory or contrary to public welfare *(Drilon vs. Lim, G.R. No. 112497, August 4, 1994).*

2.3 The **restrictive and limited nature of the tax exemption privileges under the 1991 LGC** is consistent with the State policy of local autonomy. The obvious intention of the law is **to broaden the tax base of LGUs to assure them of substantial sources of revenue** *(Philippine Rural Electric Cooperatives Association vs. DILG, G.R No. 143076, June 10, 2003).*

2.4 With the added burden of devolution, it is even more imperative for government entities to share in the requirements of local development, fiscal or otherwise, by paying taxes or other charges due from them *(National Power Corporation vs. Cabanatuan City, G.R. No. 149110, April 09, 2003).*

2.5 In interpreting statutory provisions on municipal fiscal powers, doubts will have to be resolved in favor of LGUs *(San Pablo City vs. Reyes, G.R. No. 127708, March 25, 1999).*

Internal Revenue Allotment

1. LGUs shall have a just share, as determined by law, in the national taxes which shall be automatically released to them *(Section 6, Article X, 1987 Constitution).*

    1.1 At present, all LGUs have a 40% share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year *(Section 284, 1991 LGC).* Of the 40%, provinces and cities are entitled to 23% each; municipalities, 34%; and barangays, 20%. The share of a particular local government shall be based on this formula: population, 50%; land area, 25%; and equal sharing, 25% *(Section 285, 1991 LGC).*

    1.2 Section 286 of the LGC deviates from the Section 6 of Article X of the 1987 Constitution. Art. X Sec. 6 of the 1987 Constitution mentions **national taxes** as the source of the just share of the LGUs while Section 284 of the LGC states that the share of LGUs shall be taken from **national internal revenue taxes** (NIRTs) instead. Congress has exceeded its constitutional boundary by limiting to the NIRTs the base from which to compute the just share of the LGUs. Section 284 has effectively deprived the LGUs from deriving their just share from **other national taxes**, like the customs duties.

Although it has the primary discretion to determine and fix the just share of the LGUs in the national taxes (e.g., Section 284 of the LGC), Congress cannot disobey the express mandate of Section 6, Article X of the 1987 Constitution for the just share of the LGUs to be derived from the national taxes. The phrase as determined by law in Section 6 follows and qualifies the phrase just share, and cannot be construed as qualifying the succeeding phrase in the national taxes. The intent of the people in respect of Section 6 is really that the base for reckoning the just share of the LGUs should include all national taxes. To read Section 6 differently as requiring that the just share of LGUs in the national taxes shall be determined by law is tantamount to the unauthorized revision of the 1987 Constitution *(Mandanas v. Ochoa, G.R. No. 199802, July 3, 2018)*.

The national taxes to be included in the base for computing the just share the LGUs are, but shall not be limited to, the following:

a. The NIRTs enumerated in Section 21 of the NIRC, as amended, to be inclusive of the VA Ts, excise taxes, and DSTs collected by the BIR and the BOC, and their deputized agents;
b. Tariff and customs duties collected by the BOC;
c. 50% of the VATs collected in the ARMM, and 30% of all other national taxes collected in the ARMM; the remaining 50% of the VA Ts and 70% of the collections of the other national taxes in the ARMM shall be the exclusive share of the ARMM pursuant to Section 9 and Section 15 of R.A. No. 9054;
d. 60% of the national taxes collected from the exploitation and development of the national wealth; the remaining 40% will exclusively accrue to the host LGUs pursuant to Section 290 of the LGC;
e. 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products; the remaining 15% shall accrue to the special purpose funds pursuant created in R.A. No. 7171 and R.A. No. 7227;
f. The entire 50% of the national taxes collected under Section 106, Section 108 and Section 116 of the NIRC in excess of the increase in collections for the immediately preceding year; and
g. 5% of the franchise taxes in favor of the national government paid by franchise holders in accordance with Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632 *(Mandanas v. Ochoa, G.R. No. 199802, July 3, 2018)*.

1.3 In the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government (SILG) and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year *(Section 284, 1991 LGC).*

1.4 The **IRA of LGUs:** (1) forms part of the income of local government units; (2) forms part of the gross accretion of the funds of the local government units; (3) regularly and automatically accrues to the local treasury without need of further action on the part of the LGU; (4) is a regular and recurring item of income; (5) accrues to the general fund of the LGUs; (6) is used to finance local operations subject to modes provided by the 1991 LGC and its implementing rules; and (7) is included in the computation of the average annual income for purposes of conversion of LGUs *(Alvarez vs. Guingona, G.R. No. 118303, January 31, 1996).*

1.5 The share of each LGU shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose *(Section 286, 1991 LGC).*

a. The 1987 Constitution is forthright and unequivocal in ordering that the just share of the LGUs in the national taxes shall be automatically released to them. With Congress having established the just share through the LGC, it seems to be beyond debate that the inclusion of the just share of the LGUs in the annual GAAs is unnecessary, if not superfluous. Hence, the just share of the LGUs in the national taxes shall be released to them **without need of yearly appropriation** *(Mandanas v. Ochoa, G.R. No. 199802, July 3, 2018).*

b. The **President cannot withhold 10% of the IRA** without complying with the requirements under Section 284 of the 1991 LGC. This

would be violative of local autonomy and fiscal autonomy *(Pimentel vs. Aguirre, G.R. No. 132988, July 19, 2000).*

c. The **General Appropriation Act cannot place a portion of the IRA in an Unprogrammed Fund only to be released when a condition is met**, i.e., the original revenue targets are realized *(Alternative Center vs. Zamora, G.R. No. 144256, June 8, 2005). Rider*

d. The **provisions in the General Appropriation Act creating the Local Government Special Equalization Fund and authorizing the non-release of the full 40% to all LGUs** are **inappropriate** provisions/riders. Further, an appropriations act cannot amend a substantive law, i.e., 1991 LGC *(Province of Batangas vs. Romulo, G.R. No. 152774, May 27, 2004).*

e. A **"no report, no release" policy may not be validly enforced** against offices vested with fiscal autonomy. The **automatic release provision** found in the Constitution means that LGUs cannot be required to perform any act to receive the "just share" accruing to them from the national coffers *(Civil Service Commission vs. Department of Budget and Management, G.R. No. 158791, July 22, 2005).*

Share in National Wealth Proceeds

1. LGUs shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits *(Section 7, Article X, 1987 Constitution).*

   1.1 LGUs shall have a 40% share of gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction *(Section 290, 1991 LGC).*

   1.2 The host province shall be entitled to 20%; component municipality/ city, 45% (If highly-urbanized or independent city, 65%), and barangay, 35% *(Section 292, 1991 LGC).*

1.3 An LGU's territorial jurisdiction refers to its **territorial boundaries** or to its territory as delimited by law, and not by the exercise of its jurisdiction. That local police maintains peace and order in the area, or that crimes committed within the waters surrounding the province have been prosecuted and tried in its courts, or that the provincial government enforces environmental laws over an area do not determine the extent of its territorial jurisdiction. The territory of LGUs refers to their **land area**, unless expanded by law to include the maritime area. Accordingly, only the utilization of natural resources found within the land area as delimited by law is subject to the LGU's equitable share under Sections 290 and 291 of the Local Government Code. The municipalities of Palawan do not include the continental shelf where the Camago-Malampaya reservoir is located. With the exception of Kalayaan, which includes the seabed, the subsoil and the continental margin as part of its demarcated area (as per P.D. 1596), the municipalities of Palawan are either located within an island or are comprised of islands *(Republic of the Philippines vs. Provincial Government of Palawan, G.R. No. 170867, December 4, 2018)*.

Power of Taxation

1. Each LGU shall have the power to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the LGUs *(Section 5, Article X, 1987 Constitution; Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*

    1.1 The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to **direct authority conferred by Section 5, Article X of the 1987 Constitution**. The exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy *(Mactan Cebu International Airport Authority vs. Marcos, G.R. No. 120082, September 11, 1996)*

    1.2 LGUs have no inherent power to tax except to the extent that such power might be delegated to them either by the basic law or by the statute. Under the now prevailing Constitution, **where there is neither a grant nor a prohibition by statute, the tax power must be**

deemed to exist although Congress may provide statutory limitations and guidelines. The basic rationale for the current rule is to safeguard the viability and self-sufficiency of local government units by directly granting them general and broad tax powers. Nevertheless, the fundamental law did not intend the delegation to be absolute and unconditional; the constitutional objective obviously is to ensure that, while the local government units are being strengthened and made more autonomous, the legislature must still see to it that (a) the taxpayer will not be over-burdened or saddled with multiple and unreasonable impositions; (b) each local government unit will have its fair share of available resources; (c) the resources of the national government will not be unduly disturbed; and (d) local taxation will be fair, uniform, and just. An ordinance imposing a Socialized Housing Tax is not confiscatory or oppressive since the tax being imposed therein is below what the Urban Development and Housing Act of 1992 (UDHA) actually allows. However, a garbage collection fee with differing rates depending on the type of property is unjust and inequitable, since there is no substantial distinction between an occupant of a lot, on one hand, and an occupant of a unit in a condominium, socialized housing project or apartment, on the other hand *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*.

1.3 Under the Local Government Code (LGC), local business taxes are payable for every separate or distinct establishment or place where business subject to the tax is conducted, which must be paid by the person conducting the same. For real property taxes, Presidential Decree (PD) 464 or the Real Property Tax Code, as affirmed by Sections 201 and 247 of the LGC, provides that collection is vested in the locality where the property is situated. The location stated in the certificate of title should be followed until amended through proper judicial proceedings. The IRR of the LGC provides that in case of a boundary dispute, the status of the affected area prior to the dispute shall be maintained and continued for all purposes (*Municipality of Cainta v. City of Pasig, G.R. No. 176703/G.R. No. 176721, 28 June 2017*).

1.4 An LGU is empowered as well to apply its resources and assets for **productive, developmental, or welfare purposes**, in the exercise or furtherance of their governmental or proprietary powers and functions. *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*

1.5 The **list of taxes under Book II of the 1991 LGC is not exclusive**. LGUs may exercise the power to levy taxes, fees or charges on any base or

subject: (1) not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall: (2) not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the: (3) ordinance levying such taxes, fees or charges shall: (4) not be enacted without any prior public hearing conducted for the purpose *(Section 186, 1991 LGC).*

1.6 To pass judicial scrutiny, a **regulatory fee must not produce revenue in excess of the cost of the regulation** because such fee will be construed as an illegal tax when the revenue generated by the regulation exceeds the cost of the regulation. A city ordinance imposing a garbage fee that includes all forms of solid waste is excessive because the authority of a municipality or city to impose fees is limited to the collection and transport of non-recyclable and special wastes and for the disposal of these into the sanitary landfill. *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*

Provinces	*Cities*	*Municipalities*	*Barangays*
Tax on Transfer of Real Property Ownership	Tax on Transfer of Real Property Ownership	Business Tax on Manufacturers	Tax on Stores or Retailers with fixed business establishments
Tax on Business of Printing and Publication	Tax on Business of Printing and Publication	Business Tax on Wholesalers, Distributors, or Dealers	
Franchise Tax	Franchise Tax	Business Tax on Retailers	
Tax on Sand, Gravel and Other Quarry Resources	Tax on Sand, Gravel and Other Quarry Resources	Business Tax on Exporters, and on Manufacturers, Wholesalers and Retailers of Essential Commodities	
Professional Tax	Professional Tax		
Amusement Tax	Amusement Tax		
Annual Fixed Tax for Every Delivery Truck or Van of Manufacturers or Producers, Wholesalers of, Dealers, or Retailers in,	Annual Fixed Tax for Every Delivery Truck or Van of Manufacturers or Producers, Wholesalers of, Dealers, or Retailers in,	Business Tax on Contractors	
		Business Tax on Banks	
		Business Tax on Peddlers	

Provinces	*Cities*	*Municipalities*	*Barangays*
Certain Products Real Property Tax Special Education Fund Levy Ad Valorem Tax on Idle Lands Special Levy on Land Benefited by Public Works	Certain Products Business Tax on Manufacturers Business Tax on Wholesalers, Distributors, or Dealers Business Tax on Retailers Business Tax on Exporters, and on Manufacturers, Wholesalers and Retailers of Essential Commodities Business Tax on Contractors Business Tax on Banks Business Tax on Peddlers Business Tax on all other Businesses Community Tax Real Property Tax Special Education Fund Levy Ad Valorem Tax on Idle Lands Special Levy on Land Benefited by Public Works	Business Tax on all other Businesses Community Tax Real Property Tax for Metro-Manila Municipalities Special Education Fund Levy Ad Valorem Tax on Idle Lands Special Levy on Land Benefited by Public Works	

1.6 While local government units are authorized to burden all such other class of goods with "taxes, fees and charges," excepting excise

taxes, a specific prohibition is imposed barring the levying of **any other type of taxes with respect to petroleum products** (*Petron Corporation v. Tiangco, G.R. No. 158881, April 16, 2008*; *Batangas City vs. Pilipinas Shell Petroleum Corp., G.R. No. July 8, 2015*)

1.7 The *sanggunian* of the municipality or city cannot enact an ordinance imposing **business tax on the gross receipts of transportation contractors, persons engaged in the transportation of passengers or freight by hire, and common carriers by air, land, or water**, when said sanggunian was already specifically prohibited from doing so. Any exception to the express prohibition under Section 133(j) of the LGC should be just as specific and unambiguous (*City of Manila vs. Judge Colet, G.R. No. 120051, December 10, 2014*).

1.8 The Local Government Code exempts BOI-registered pioneer enterprises from the payment of local business taxes (LBTs) for a period of 6 years from the date of registration. The municipality acquired a clear and unmistakable right to collect LBTs upon the expiration of the 6-year period (*Municipality of Alfonso Lista, Ifugao vs. Court of Appeals, Special Former Sixth Division, G.R. No. 191442, July 27, 2016*).

1.9 Local business taxes (LBT) are taxes imposed by local government units on the privilege of doing business within their jurisdictions. To be sure, the phrase "doing business" means some "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit." Particularly, the LBT imposed pursuant to Section 143 (t) is premised on the fact that the persons made liable for such tax are banks or other financial institutions by virtue of their being engaged in the business as such. This is why the LBT are imposed on their gross receipts from "interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium." However, LBT imposed pursuant to Section 143 (t) cannot be applied to a holding company as it is neither a bank nor other financial institution *(City of Davao vs. Randy Allied Ventures, Inc., G.R. No. 241697, July 29, 2019)*.

1.10 The City of Davao acted beyond its taxing authority when it imposed the questioned business tax on AP Holdings, Inc., since it is not a non-financial bank intermediary under Section 131 (e) of the Local Government Code (LGC), Section 22 (W) of the National Internal Revenue Code (NIRC) of 1997 and Section 4101Q.1 of the Bangko

Sentral ng Pilipinas' (BSP) Manual of Regulations for Non-Bank Financial Institutions *(City of Davao vs. AP Holdings, Inc., G.R. No. 245887, January 22, 2020)*.

1.11 Section 187 of the LGC, which outlines the **procedure for questioning the constitutionality of a tax ordinance**, is **inapplicable** when the imposition is not in the nature of taxes, but of **fees** (*Smart Communications vs. Municipality of Malvar, Batangas, G.R. No. 204429, February 18, 2014*).

1.12 The municipality is empowered to impose taxes, fees and charges, not specifically enumerated in the LGC or taxed under the Tax Code or other applicable law (*Smart Communications vs. Municipality of Malvar, Batangas, G.R. No. 204429, February 18, 2014*).

1.13 A local government unit may exercise its **residual power to tax** when there is neither a grant nor a prohibition by statute; or when such taxes, fees, or charges are not otherwise specifically enumerated in the Local Government Code, National Internal Revenue Code, as amended, or other applicable laws (*Alta Vista Golf and Country Club vs. City of Cebu, G.R. No. 180235, January 20, 2016).*

1.14 The **Court of Tax Appeals** has exclusive appellate jurisdiction to review on appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally resolved by them in the exercise of their original or appellate jurisdiction; it has **no jurisdiction over cases involving fees, which are regulatory in nature** (*Smart Communications, Inc. v. Municipality of Malvar, Batangas, G.R. No. 204429, February 18, 2014)*.

1.15 The local franchise tax cannot be imposed on a taxpayer who no longer owned or operated the business subject to local franchise tax, and owned the properties being levied upon by the province (*National Power Corporation vs. Provincial Government of Bataan, G.R. No. 180654, April 21, 2014*).

1.16 Municipalities may only levy taxes not otherwise levied by the provinces. Section 137 of RA 7160 particularly provides that provinces may impose a franchise tax on businesses granted with a franchise to operate. Since provinces have been vested with the power to levy a franchise tax, it follows that municipalities, pursuant to Section 142 of RA 7160, could no longer levy it. Therefore, Section 25 of MO 93-35 which was enacted when Muntinlupa was still a municipality and

which imposed a franchise tax on public utility corporations within its territorial jurisdiction, is ultra vires for being violative of Section 142 of RA 7160. The City cannot seek refuge under Article 236(b) of Administrative Order No. 270 (AO 270) in its bid to declare Section 25 of MO 93-35 as valid. As mere rules and regulations implementing RA 7160, they cannot go beyond the intent of the law that it seeks to implement. The spring cannot rise above its source. Hence, even if Article 236(6) of AO 270 appears to vest municipalities with such taxing power, Section 142 of RA 7160 which disenfranchised municipalities from levying a franchise tax, should prevail. The power to levy a franchise tax is bestowed only to provinces and cities *(MERALCO vs. City of Muntinlupa and Barlis, G.R. No. 198529, February 9, 2021)*.

1.17 Muntinlupa City cannot hinge its imposition and collection of a franchise tax on the null and void provision of Section 25 of MO 93-35. Moreover, Section 56 of the Charter of Muntinlupa City cannot breathe life into the invalid Section 25 of MO 93-35 [which was enacted while Muntinlupa was still a municipality]. Section 56 of the transitory provisions of the Charter of Muntinlupa City contemplates only those ordinances that are valid and legally existing at the time of its enactment. Consequently, Section 56 did not cure the infirmity of Section 25 of MO 93-35 since an ultra vires ordinance is null and void and produces no legal effect from its inception *(MERALCO vs. City of Muntinlupa and Barlis, G.R. No. 198529, February 9, 2021)*.

1.18 A municipality is bereft of authority to levy and impose franchise tax on franchise holders within its territorial jurisdiction. That authority belongs to provinces and cities only. A franchise tax levied by a municipality is, thus, null and void. **The nullity is not cured by the subsequent conversion of the municipality into a city** *(City of Pasig vs. MERALCO, GR No. 181710, March 7, 2018)*.

1.19 The 1991 LGC allows the local government to collect an interest at the rate not exceeding 2% per month of the unpaid taxes, fees, or charges including surcharges, until such amount is fully paid. However, the law provides that the total interest on the unpaid amount or portion thereof should not exceed thirty-six (36) months or three (3) years. In other words, **the city cannot collect a total interest on the unpaid tax including surcharge that is effectively higher than 72%** *(National Power Corporation vs. City of Cabanatuan, G.R. No. 177332, October 1, 2014)*.

1.20 The fact that a separate chapter is devoted to the treatment of real property taxes, and a distinct appeal procedure is provided therefor does not justify an inference that Section 7(a)(3) of R.A. 9282 pertains only to local taxes other than real property taxes. Rather, the term "local taxes" in the aforementioned provision should be considered in its general and comprehensive sense, which embraces real property tax assessments, in line with the precept Generalia verba sunt generaliter inteligencia—what is generally spoken shall be generally understood. Based on the foregoing, **the general meaning of "local taxes" should be adopted** in relation to Paragraph (a)(3) of Section 7 of R.A. 9282, **which necessarily includes real property taxes** (*National Power Corporation vs. Municipality of Navotas, G.R. No. 192300, November 24, 2014*).

1.21 **Setting the rate of the additional levy for the special education fund at less than 1% is within the taxing power of local government units.** It is consistent with the guiding constitutional principle of local autonomy. The option given to a local government unit extends not only to the matter of whether to collect but also to the rate at which collection is to be made. The limits on the level of additional levy for the special education fund under Section 235 of the Local Government Code should be read as granting fiscal flexibility to local government units *(Demaala v. COA, G.R. No. 199752, February 17, 2015)*.

1.22 Submarine or undersea communications cables are akin to electric transmission lines which are "no longer exempted from real property tax" and may qualify as "machinery" subject to real property tax under the 1991 LGC. To the extent that the equipment's location is determinable to be within the taxing authority's jurisdiction, there is no reason to distinguish between submarine cables used for communications and aerial or underground wires or lines used for electric transmission, so that both pieces of property do not merit a different treatment in the aspect of real property taxation *(Capitol Wireless Inc. v. Provincial Government of Batangas, G.R. No. 180110, May 30, 2016)*.

1.23 The **Airport Lands and Buildings are devoted to public use** because they are used by the public for international and domestic travel and transportation. The fact that the MCIAA collects terminal fees and other charges from the public does not remove the character of the Airport Lands and Buildings as properties for public use. **As properties of public dominion, they indisputably belong to the State or the Republic of the Philippines, and are not subject to levy,**

encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale *(Mactan Cebu International Airport vs. City of Lapu-Lapu, G.R. No. 181756, June 15, 2015).*

1.24 By operation of Sec. 151 of the LGC extending to cities the authority of provinces and municipalities to levy certain taxes, fees, and charges, cities may therefore validly levy **amusement taxes on cinemas** subject to the parameters set forth under the law *(Film Development Council of the Philippines vs. City of Cebu et al, G.R. No. 204418, June 16, 2015).* However, amusement taxes may not be levied on golf courses. (*Alta Vista Golf and Country Club vs. City of Cebu, G.R. No. 180235, January 20, 2016).*

1.25 As expressed in Section 14 of RA 9167, it is the remitted revenue coming from the amusement tax on the graded film which serves as the reward to the producers of the graded film contemplated under Section 13. Therefore, if the film is not graded and later exhibited, no reward entitlement exists. Accordingly, this is the reason why Section 14 limits the FDCP's right only to "[a]ll revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of [the LGC] during the period the graded film is exhibited." If the graded film for which the revenue to be realized is yet to be exhibited, the taxes deducted/withheld should go to the LGUs. Conversely, once the graded film is exhibited, all revenue from the amusement tax derived during its exhibition should be remitted to FDCP. To opine otherwise would suppose that FDCP was conferred with taxing authority when it was not. FDCP has a dedicated function to develop the film industry by giving rewards to graded films which are intended to be exhibited. This function is not subserved when the graded film is not at all exhibited to the viewing public. In this sense, FDCP's right to receive the revenue from amusement taxes (meant as an incentive to graded film makers) is therefore contingent on the exhibition of the graded film *(Film Development Council of the Philippines vs. Colon Heritage Realty Corporation, G.R. No. 203754/G.R. No. 204418, November 3, 2020).*

1.26 Taxes levied by LGUs shall accrue exclusively to the LGU and **to earmark, if not altogether confiscate, the income to be received by the LGU from the taxpayers in favor of and for transmittal to the Film Development Council of the Philippines, is repugnant to the power of LGUs to apportion their resources in line with their priorities** *(Film Development Council of the Philippines vs. City of Cebu et al, G.R. No. 204418, June 16, 2015).*

1.27 The expanded jurisdiction of the CTA includes its exclusive appellate jurisdiction to review by appeal the decisions, orders or resolutions of the RTC in local tax cases originally decided or resolved by the RTC in the exercise of its original or appellate jurisdiction. The power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. *(CE Casecnan Water and Energy Company, Inc. vs. The Province of Nueva Ecija, G.R. No. 196278, June 17, 2015)* The CTA has jurisdiction over a special civil action for certiorari assailing an interlocutory order issued by the RTC in a local tax case *(City of Manila vs. Grecia-Cuerdo, G.R. No. 175723, February 4, 2014).*

1.28 An **injunction** case before the RTC is a local tax case. A certiorari petition questioning an interlocutory order issued in a local tax case falls under the jurisdiction of the CTA *(CE Casecnan Water and Energy Company, Inc. vs. The Province of Nueva Ecija, G.R. No. 196278, June 17, 2015).*

1.29 The mayor has the ministerial duty to ensure that all taxes and other revenues of the city are collected, and that city funds are applied to the payment of expenses and settlement of obligations of the city, in accordance with law or ordinance. On the other hand, under the LGC, all local taxes, fees, and charges shall be collected by the provincial, city, municipal, or barangay treasurer, or their duly-authorized deputies, while the assessor shall take charge, among others, of ensuring that all laws and policies governing the appraisal and assessment of real properties for taxation purposes are properly executed. Thus, a **writ of prohibition** may be issued against them to desist from further proceeding in the action or matter specified in the petition *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015).*

1.30 Chapter 3, Title Two, Book II of the LGC of 1991, Sections 226 to 231, 17 provides for the administrative remedies available to a taxpayer or

real property owner who does not agree with the assessment of the real property tax sought to be collected, particularly, the procedural and substantive aspects of appeal before the LBAA and CBAA, including its effect on the payment of real property taxes *(National Power Corporation vs. The Provincial Treasurer of Benguet, G.R. No. 209303, November 14, 2016)*.

1.31 The **socialized housing tax** charged by the city is a tax which is within its power to impose. Aside from the specific authority vested by Section 43 of the UDHA, cities are allowed to exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities which include, among others, programs and projects for low-cost housing and other mass dwellings. The collections made accrue to its socialized housing programs and projects. The tax is not a pure exercise of taxing power or merely to raise revenue; it is levied with a regulatory purpose. The levy is primarily in the exercise of the police power for the general welfare of the entire city. It is greatly imbued with public interest *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*.

1.32 The socialized housing tax imposed by the city is not confiscatory or oppressive since the tax being imposed therein is below what the UDHA actually allows *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*.

1.33 The **garbage fee** is a charge fixed for the regulation of an activity. It is not a tax and cannot violate the rule on double taxation *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015)*.

1.34 Charging the same business a tax on "Manufacturers, Assemblers and Other Processors" and a tax on "Businesses Subject to the Excise, Value-Added or Percentage Taxes under the NIRC" constitutes **double taxation**, and is prohibited *(City of Manila vs. Cosmos Bottling Corporation, G.R. No. 196681, June 27, 2018)*.

1.35 The authority of a municipality or city to impose fees is limited to the collection and transport of non-recyclable and special wastes and for the disposal of these into the sanitary landfill. Barangays, on the other hand, have the authority to impose **fees for the collection and segregation of biodegradable, compostable and reusable wastes from households, commerce, other sources of domestic wastes,**

and for the use of barangay MRFs *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015).*

1.36 For the purpose of garbage collection, there is, in fact, no substantial distinction between an occupant of a lot, on one hand, and an occupant of a unit in a condominium, socialized housing project or apartment, on the other hand. Most likely, garbage output produced by these types of occupants is uniform and does not vary to a large degree; thus, a similar schedule of fee is both just and equitable. Different rates based on the above classification is therefore void *(Ferrer vs. Bautista, G.R. No. 210551, June 30, 2015).*

1.37 Since the **lot** remained in **private** ownership, there is no factual or legal basis to question the **sale** thereof by the local government unit **for tax delinquency** *(Homeowners Association of Talayan Village, Inc. vs. JM Tuason & Co., Inc., G.R. No. 203883, November 10, 2015).*

1.38 Refund is available under both Sections 195 and 196 of the Local Government Code: for Section 196, because it is the express remedy sought, and for Section 195, as a consequence of the declaration that the assessment was erroneous or invalid. Whether the remedy availed of was under Section 195 or Section 196 is not determined by the taxpayer paying the tax and then claiming a refund. What determines the appropriate remedy is the local government's basis for the collection of the tax. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state "the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. No such precondition is necessary for a claim for refund pursuant to Section 196 *(International Container Terminal Services Inc. vs. City of Manila, G.R. No. 185622, October 17, 2018)*.

2. LGUs may not tax national government instrumentalities but may tax government-owned and controlled corporations.

2.1 A government instrumentality is exempt from the local government unit's levy of real property tax. The government instrumentality must not have been organized as a stock or non-stock corporation, even though it exercises corporate powers, administers special funds, and enjoys operational autonomy, usually through its charter. Its properties are exempt from real property tax because they are properties of the public dominion: held in trust for the Republic,

intended for public use, and cannot be the subject of levy, encumbrance, or disposition. **A government-owned and controlled corporation, on the other hand, is not exempt from real property taxes due to the passage of the Local Government Code** *(Manila Waterworks and Sewerage System vs. The Local Government of Quezon City, G.R. No. 194388, November 7, 2018).*

2.2 The **PEZA** is an instrumentality of the national government **exempt from payment of real property taxes** under Section 133(o) of the Local Government Code. As this court said in *Manila International Airport Authority*, "there must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments." Furthermore, the lands owned by the PEZA are real properties owned by the Republic of the Philippines. (*City of Lapu-Lapu vs. Philippine Economic Zone Authority, G.R. No. 184203, November 26, 2014*).

2.3 **Mactan Cebu International Airport Authority** is an instrumentality of the government not a GOCC; thus, its properties actually, solely and exclusively used for public purposes, consisting of the airport terminal building, airfield, runway, taxiway and the lots on which they are situated, are **not subject to real property tax** and the city is not justified in collecting taxes from petitioner over said properties *(Mactan Cebu International Airport vs. City of Lapu-Lapu, G.R. No. 181756, June 15, 2015).*

2.4 **Manila Waterworks and Sewerage System** has been already categorized by the Executive (EO No. 596 s. 2006) and Legislative (RA No. 10149) branches not as a government-owned and controlled corporation but as a Government Instrumentality with Corporate Powers/Government Corporate Entity, and is thus exempt from the payment of real property taxes, except if the beneficial use of its properties has been extended to a taxable person *(Manila Waterworks and Sewerage System vs. The Local Government of Quezon City, G.R. No. 194388, November 7, 2018).*

2.5 One source of the **University of the Philippines'** exemption from tax comes from its character as a government instrumentality. Section 133(o) of the Local Government Code states that, unless otherwise provided by the Code, the exercise of taxing powers of the local government units shall not extend to levy of taxes, fees or charges of any kind on government instrumentalities. However, a combined

reading of Sections 205 and 234 of the Local Government Code, previously quoted above, also provides for removal of the exemption to government instrumentalities when beneficial use of a real property owned by a government instrumentality is granted to a taxable person. Stated differently, when beneficial use of a real property owned by a government instrumentality is granted to a taxable person, then the taxable person is not exempted from paying real property tax on such property. Considering that the subject land and the revenue derived from the lease thereof are used by UP for educational purposes and in support of its educational purposes, UP should not be assessed, and should not be made liable for real property tax on the land subject of this case. Under Republic Act No. 9500, this tax exemption, however, applies only to "assets of the University of the Philippines," referring to assets owned by UP. Under the Contract of Lease between UP and ALI, all improvements on the leased land "shall be owned by, and shall be for the account of the LESSEE [ALI]" during the tenn of the lease. The improvements are not "assets" owned by UP; and thus, UP's tax exemption under Republic Act No. 9500 does not extend to these improvements during the term of the lease *(University of the Philippines vs. City Treasurer of Quezon City, G.R. No. 214044, June 19, 2019)*.

3. LGUs may not tax duly registered cooperatives.

    3.1 Under Section 133(n) of the Local Government Code, the taxing power of local government units shall not extend to the levy of taxes, fees, or charges on **duly registered cooperatives** under the Cooperative Code. The exemption from real property taxes given to cooperatives applies regardless of whether or not the land owned is leased. This exemption benefits the cooperative's lessee. The characterization of machinery as real property is governed by the Local Government Code and not the Civil Code. *(Provincial Assessor of Agusan del Sur vs. Filipinas Palm Oil Plantation Inc., G.R. No. 183416, October 5, 2016)*

Participation in Public Auction/ Biddings

1. The law authorizes the **local government unit** to **purchase** the **auctioned property** only in instances where "there is no bidder" or "the highest bid is insufficient." A **disqualified bidder is not among the authorized grounds** (*Spouses Plaza vs. Lustiva, G.R. No. 172909, March 5, 2014*).

2. The absence of the public in the public bidding impels the City Treasurer to purchase the property in behalf of the city. Reason would therefore dictate that this **purchase by the City is the very forfeiture mandated by the law**. The contemplated "forfeiture" in the provision points to the situation where **the local government ipso facto "forfeits" the property for want of a bidder** *(The City of Davao vs. Intestate Estate of Amado S. Dalisay, G.R. No. 207791, July 15, 2015).*

3. Under the Government Procurement Reform Act, decisions of the **Bids and Awards Committee** shall be protested or elevated to the **head of the procuring entity, who is the local chief executive** *(Land Bank of the Philippines v. Atlanta Industries, 729 SCRA 12).*

Part 5. LOCAL GOVERNMENT OFFICIALS

Legislative Control over Structure

1. The 1987 Constitution does not enumerate the local officials of the five kinds/levels of LGUs.

2. Congress shall provide for the qualifications, election, appointment and removal, term, salaries, and powers and functions and duties of local officials (*Section 3, Article X, 1987 Constitution*). Congress exercises legislative control over structure of LGUs.

Term of Office

> *Chapter X, Section 8, 1987 Constitution:*
> *"The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected."*

1. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected *(Section 8, Article X, 1987*

Constitution). Under R.A. No. 9164, the current term of office of elective barangay officials is three years.

1.1 As summarized in the case of *Abundo v. Vega (G.R. No. 201716, January 8, 2013)*, there is **involuntary interruption of a local government officials' term** in the following instances:

a) When a permanent vacancy occurs in an elective position and the official merely assumed the position pursuant to the rules on succession under the LGC, then his service for the unexpired portion of the term of the replaced official cannot be treated as one full term as contemplated under the subject constitutional and statutory provision that service cannot be counted in the application of any term limit (Borja, Jr.). If the official runs again for the same position he held prior to his assumption of the higher office, then his succession to said position is by operation of law and is considered an involuntary severance or interruption (Montebon).

b) An elective official, who has served for three consecutive terms and who did not seek the elective position for what could be his fourth term, but later won in a recall election, had an interruption in the continuity of the official's service. For, he had become in the interim, i.e., from the end of the 3rd term up to the recall election, a private citizen (Adormeo and Socrates).

c) The abolition of an elective local office due to the conversion of a municipality to a city does not, by itself, work to interrupt the incumbent official's continuity of service (Latasa).

d) Preventive suspension is not a term-interrupting event as the elective officer's continued stay and entitlement to the office remain unaffected during the period of suspension, although he is barred from exercising the functions of his office during this period (Aldovino, Jr.).

e) When a candidate is proclaimed as winner for an elective position and assumes office, his term is interrupted when he loses in an election protest and is ousted from office, thus disenabling him from serving what would otherwise be the unexpired portion of his term of office had the protest been dismissed (Lonzanida and Dizon). The break or interruption need not be for a full term of three years or for the major part of the 3-year term; an

interruption for any length of time, provided the cause is involuntary, is sufficient to break the continuity of service (Socrates, citing Lonzanida).

f) When an official is defeated in an election protest and said decision becomes final after said official had served the full term for said office, then his loss in the election contest does not constitute an interruption since he has managed to serve the term from start to finish. His full service, despite the defeat, should be counted in the application of term limits because the nullification of his proclamation came after the expiration of the term (Ong and Rivera).

1.2 For the **3-term rule** to apply, **two conditions** must concur: (1) the official concerned has been elected for three consecutive terms in the same local government post; and (2) he/she has fully served three consecutive terms. A municipal councilor who was elected for three consecutive terms but who had to assume the position of vice-mayor on his/her second term in view of the incumbent's retirement is *not* deemed to have fully served three consecutive terms *(Montebon vs. Comelec, G.R. No. 180444, April 08, 2008).*

1.3 He/she must also have been **elected to the same position for the same number of times** before the disqualification can apply. The first requisite is absent **when a proclamation was subsequently declared void** since there was no proclamation at all. While a **proclaimed candidate** may assume office on the strength of the proclamation of the Board of Canvassers, he/she is **only a presumptive winner** who assumes office subject to the final outcome of the election protest. The second requisite is not present **when the official vacates the office not by voluntary renunciation but in compliance with the legal process of writ of execution issued by the Commission on Elections** *(Lonzanida vs. Comelec, G.R. No. 135150, July 28, 1999).*

1.4 The **term limit** for elective local officials must be taken to refer to the **right to be elected** as well as the **right to serve in the same elective position.** Consequently, it is not enough that an individual has served three consecutive terms in an elective local office, he/she must also have been elected to the same position for the same number of times before the disqualification can apply. Thus, the term of a vice-mayor who became the mayor by succession is not considered a term as mayor for purposes of the 3-term rule *(Borja vs. Comelec, G.R. No. 133495, September 03, 1998).*

1.5 **Preventive suspension**, by its nature, **does not involve an effective interruption of a term** and should therefore not be a reason to avoid the 3-term limitation. Because it is imposed by operation of law, preventive suspension does not involve a voluntary renunciation; it merely involves the **temporary incapacity to perform the service that an elective office demands**. The best indicator of the suspended official's continuity in office is the absence of a permanent replacement and the lack of the authority to appoint one since no vacancy exists *(Aldovino, Jr. vs. Commission on Elections, G.R. No. 184836, December 23, 2009).*

1.6 A **person who has run for three consecutive terms** may run in a recall election so long as the said candidate is **not running for immediate reelection following his/her three consecutive terms**. Term limits should be construed strictly to give the fullest possible effect to the right of the electorate to choose their leaders. Thus, the 3-term limit for local elected officials is not violated when a **local official wins in a recall election for mayor after serving three full terms as mayor** since said **election is not considered immediate reelection** *(Socrates vs. Comelec, G.R. No. 154512, November 12, 2002).*

1.7 A person who **served for two consecutive terms for mayor and thereafter lost in the succeeding elections**, can run in the next election since the 3-term rule was not violated *(Adormeo vs. Comelec, G.R. No. 147927, February 04, 2002).*

1.8 When it was only upon the favorable decision on his **petition for correction of manifest error** that a candidate was proclaimed as the duly-elected official, he is deemed not to have served office for the full term of three years to which he was supposedly entitled, since he only assumed the post and served the unexpired term of his opponent (*Albania v. COMELEC, G.R. No. 226792, 7 June 2017*).

1.8 A **punong barangay serving his/her third term of office who ran, won and assumed office as *sanggunian bayan* member** is deemed to have voluntarily relinquished his/her office as punong barangay for purposes of the three-term rule *(Bolos vs. Comelec, G.R. No. 184082, March 17, 2009).*

1.9 A **3-term mayor of a municipality converted into a city on the 3rd term of the mayor** cannot seek office as a city mayor in the 1st elections of city officials considering the area and inhabitants of the

locality are the same and that the municipal mayor continued to hold office until such time as city elections are held. There was no involuntary renunciation on the part of the municipal mayor at any time during the three terms. While the city acquired a new corporate existence separate and distinct from that of the municipality, this does not mean that for the purpose of applying the constitutional provision on term limitations, the office of the municipal mayor would be construed as different from that of the office of the city mayor *(Latasa vs. Comelec, G.R. No. 154829, December 10, 2003).*

1.10 A **punong barangay who has served for three consecutive terms when the barangay was still part of a municipality** is disqualified from running for a 4th consecutive term when the municipality was converted to a city because the position and territorial jurisdiction are the same *(Laceda vs. Lumena, G.R. No. 182867, November 25, 2008).*

1.11 In case of **failure of elections involving barangay officials**, the **incumbent officials** shall remain in office in a **hold-over** capacity pursuant to Section 5 of Republic Act No. 9164 *(Adap vs. Comelec, G.R. No. 161984, February 21, 2007).*

1.12 The **two-year period during which a mayor's opponent was serving as mayor** should be considered as an interruption which effectively removed the mayor's case from the ambit of the three-term limit rule. That two-year period is therefore not considered a term for the mayor *(Abundo v. Vega, G.R. No. 201716, January 8, 2013).*

Powers of Local Officials

1. The powers of local government officials are defined under the 1991 LGC.

2. The powers and responsibilities of the Provincial Governor are enumerated under Section 465 of the 1991 LGC. Among others, the Governor shall exercise general supervision and control over all programs, projects, services, and activities of the provincial government; enforce all laws and ordinances relative to the governance of the province; represent the province in all its business transactions and sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the *sangguniang panlalawigan* or pursuant to law or ordinance; ensure that all executive officials and employees of the province faithfully discharge their duties and functions as provided by law and the 1991 LGC; ensure that the acts of the component cities and municipalities of

the province and of its officials and employees are within the scope of their prescribed powers, duties and functions; and ensure that all taxes and other revenues of the province are collected, and that provincial funds are applied to the payment of expenses and settlement of obligations of the province, in accordance with law or ordinance.

3. Only the **Provincial Governor** could competently determine the **soundness of an office order or the propriety of its implementation**, for the Provincial Governor has the power to supervise and control "programs, projects, services, and activities" of the province pursuant to Section 465 of Republic Act No. 7160 (*Ejera vs. Merto, GR No. 163109, January 22, 2014*).

4. The powers and responsibilities of the City/Municipal Mayor are listed under Sections 455 and 444 of the 1991 LGC, respectively. Among others, the Mayor shall exercise general supervision and control over all programs, projects, services, and activities of the municipal government; enforce all laws and ordinances relative to the governance of the municipality; upon authorization by the *sangguniang panglungsod/bayan*, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance; ensure that all executive officials and employees of the city/municipality faithfully discharge their duties and functions; solemnize marriages; ensure that the acts of the city/municipality's component barangays and of its officials and employees are within the scope of their prescribed powers, functions, duties and responsibilities; issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance; and ensure the delivery of basic services and the provision of adequate facilities.

   However, while the authority of city mayors to issue or grant licenses and business permits is granted by the Local Government Code (LGC), which also vests local government units with corporate powers, one of which is the power to sue and be sued, this Court has held that **the power to issue or grant licenses and business permits is not an exercise of the government's proprietary function**. Instead, it is in an exercise of the police power of the State, *ergo* a governmental act *(City of Bacolod vs. Phuture Visions Co. Inc., GR No. 190289, January 17, 2018)*.

5. When an action is defended by the mayor of a municipality, that mayor does not-and neither does he become-a real party in interest. That the mayor is a Muslim is therefore irrelevant for purposes of complying with the jurisdictional requirement under Article 143(2)(b) that both parties be Muslims for the Shari'a District Court to obtain jurisdiction. To satisfy the requirement, it is the real

party defendant, the municipality, who must be a Muslim. Such a proposition, however, is a legal impossibility, since it is not a natural person capable of professing a belief *(Municipality of Tangkal vs. Balindong, G.R. No. 193340, January 11, 2017).*

6. While the authorization of the municipal mayor need not be in the form of an ordinance, the **obligation which the said local executive is authorized to enter into must be made pursuant to a law or ordinance**. The sanggunian must approve and **terms and conditions of the loan agreement** in an **ordinance** (*Land Bank of the Philippines v. Cacayuran, G.R. No. 191667, April 17, 2013; In an Amended Decision dated April 22, 2015, the Second Division set aside the decision and remanded the case.*).

7. The vice-mayor automatically assumes the powers and duties of the mayor in case of the latter's **temporary absence**, such as **when** he is **on official vacation leave and out of the country** and during such time the vice mayor has the legal capacity to file a motion for reconsideration on behalf of the local government unit (*Velasco v. Sandiganbayan, G.R. No. 169253, February 20, 2013*).

8. The powers and responsibilities of the Punong Barangay are enumerated under Section 389 of the 1991 LGC. Among others, the Punong Barangay shall enforce of all laws and ordinances which are applicable within the barangay; promote the general welfare of the barangay; negotiate, enter into, and sign contracts for and in behalf of the barangay, upon authorization of the *sangguniang barangay*; maintain public order in the barangay; call and preside over the sessions of the *sangguniang barangay* and the barangay assembly, and vote only to break a tie; upon approval by a majority of all the members of the *sangguniang barangay*, appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials; administer the operation of the *katarungang pambarangay*; and exercise general supervision over the activities of the *sangguniang kabataan*.

9. The **issuance of a Barangay Protection Order by the Punong Barangay or, in his unavailability, by any available Barangay Kagawad,** merely orders the perpetrator to desist from (a) causing physical harm to the woman or her child; and (2) threatening to cause the woman or her child physical harm. Such function of the Punong Barangay is, thus, **purely executive** in nature, in pursuance of his duty under the Local Government Code to "enforce all laws and ordinances," and to "maintain public order in the barangay. *(Tua vs. Mangrobang, G.R. No. 170701, January 22, 2014)*

Power to Appoint

1. The Local Chief Executive and the Vice-Local Chief Executive have the power to appoint.

    1.1 As a general rule, **appointments made by defeated local candidates after the elections** are **prohibited** to avoid animosities between outgoing and incoming officials, to allow the incoming administration a free hand in implementing its policies, and to ensure that appointments and promotions are not used as tools for political patronage or as reward for services rendered to the outgoing local officials. However, such appointments may be **allowed** if the following **requisites** concur relative to their issuance: (1) The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting; (2) The appointee is qualified; (3) There is a need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety; and (4) The appointment is not one of those mass appointments issued after the elections *(Nazareno vs. City of Dumaguete, G.R. No. 168484, July 12, 2007).*

    1.2 Where a municipal mayor orders the suspension or dismissal of a municipal employee on grounds he/she believes to be proper, but his/her order is reversed or nullified by the Civil Service Commission or the Court of Appeals, he/she has the right to contest such adverse ruling. His/her **right to appeal** flows from the fact that his/her **power to appoint** carries with it the **power to remove.** Being chief executive of the municipality, he/she possesses this disciplinary power over appointive municipal officials and employees *(Dagadag vs. Tongnawa, G.R. No. 161166-67, February 03, 2005).*

    1.3 The city legal officer has no disciplinary authority over the **chief of the Legal Affairs and Complaint Services of the Division of City Schools**. Inasmuch as the said official was appointed by and is a subordinate of the **regional director of the Department of Education, Culture and Sports**, he/she is subject to the supervision and control of said director *(Aguirre vs. De Castro, G.R. No. 127631, December 17, 1999).*

    1.4 **The prohibition on midnight appointments only applies to presidential appointments. It does not apply to appointments made by local chief executives.** Nevertheless, the Civil Service Commission has the power to promulgate rules and regulations to

professionalize the civil service. It may issue rules and regulations prohibiting local chief executives from making appointments during the last days of their tenure. Appointments of local chief executives must conform to these civil service rules and in order to be valid. *(Provincial Government of Aurora vs. Marco, G.R. No. 202331, April 22, 2015)*

Ban on Holding Dual Positions

1. No (local) elective official shall be eligible for appointment or designation in any capacity to any public office or position during his/her tenure *(Section 7[b], Article IX[B], 1987 Constitution).*

    1.1 A **city mayor** cannot be appointed to the position of **chairperson of the Subic Bay Metropolitan Authority** since such office is **not an *ex-officio* post or attached to the office of the mayor**. This provision expresses the "policy against the concentration of several public positions in one person, so that a public officer or employee may serve full-time with dedication and thus be efficient in the delivery of public services *(Flores vs. Drilon, G.R. No. 104732, June 22, 1993).*

    1.2 Pursuant to Section 7(8), Article II of the Guidelines in the Conduct of Electric Cooperative District Elections, ***ex-officio sanggunian* members** are disqualified from becoming **board members of electric cooperatives** *(National Electrification Administration vs. Villanueva, G.R. No. 168203, March 9, 2010).*

Vacancies

1. There are permanent and temporary causes of vacancies in local elective positions under the 1991 LGC. The grounds are:

Permanent	*Temporary*
Death	Leave of absence
Voluntary resignation	Travel abroad
Conviction	Suspension from office
Expiration of term	Preventive suspension
Permanent disability	Sickness
Fills a higher vacant office	Temporary disability
Refuses to assume office	
Fails to qualify	

Removed from office Failure of elections	

1.1 Where a **permanent vacancy** occurs due to **disqualification in the office of mayor**, the proclaimed vice-mayor shall succeed as mayor, pursuant to Section 44 of the 1991 LGC *(Pundaodaya vs. Commission on Elections, G.R. No. 179313, September 17, 2009).*

1.2 When a **mayor is adjudged to be disqualified**, a **permanent vacancy** was created for **failure of the elected mayor to qualify for the office.** In such eventuality, the duly elected vice mayor shall succeed as provided by law. The second placer cannot be declared as mayor *(Toral Kare vs. Comelec, G.R. Nos. 157526 / 157527, April 28, 2004).*

1.3 In case there is a **permanent vacancy** caused by a ***sanggunian* member belonging to a political party,** it shall be the President acting through the executive secretary who shall appoint the replacement, upon the certification and nomination of the political party from where the replaced member comes from, for the *sangguniang panlalawigan* and *sangguniang panglungsod* of a highly urbanized or independent component city. For the *sangguniang panglungsod* of component cities and it shall be the governor who shall make the appointment upon the certification and nomination of the political party from where the replaced member comes from. In case the **vacancy** is caused by a **member who does not come from any political party**, appointment shall be done by the officials mentioned upon the recommendation of the *sanggunian* concerned, without, however, need of the nomination or certification from any political party. For *sangguniang barangay* members, it is the mayor who appoints upon recommendation of the *sangguniang barangay (Farinas vs. Barba, G.R. No. 11673, April 19, 1996).*

1.4 In case of **vacancy in the *sangguniang bayan***, the **nominee of the party under which the member concerned was elected and whose elevation to the higher position created the last vacancy** will be appointed. The last vacancy refers to that created by the elevation of the councilor as vice-mayor. The reason behind the rule is to maintain party representation *(Navarro vs. Court of Appeals, G.R. No. 141307, March 28, 2001).*

1.5 For purposes of succession in the filling up of vacancies under Section 44 of 1991 LGC, the **ranking in the sanggunian** shall be determined on the basis of the proportion of votes obtained by each

winning candidates to the total number of registered voters in each district in the immediately preceding local election, not the number of voters who actually voted *(Victoria vs. Comelec, G.R. No. 109005, January 10, 1994).*

1.6 The **highest-ranking municipal councilor's succession to the office of vice-mayor** cannot be considered a voluntary renunciation of his/her office as councilor since it **occurred by operation of law** *(Montebon vs. Comelec, G.R. No. 180444, April 08, 2008).*

1.7 **Resignations by *sangguniang panlalawigan* members** must submit their letters of resignation to the President or to his/her alter ego, the SILG. The **letter must be submitted, received and acted upon by the supervising officials**, otherwise, there was no valid and complete resignation *(Sangguniang Bayan of San Andres vs. Court of Appeals, G.R. No. 118883, January 16, 1998).*

1.8 When the **Vice-Governor exercises the powers and duties of the Office of the Governor**, he/she **does not assume the latter office**. He/she only acts as the Governor but does not 'become' the Governor. His/her assumption of the powers of the provincial Chief Executive **does not create a permanent vacuum or vacancy in his/her position as the Vice-Governor**. But he/she **does temporarily relinquish the powers of the Vice-Governor**, including the power to preside over the sessions of the *sangguniang panlalawigan (Gamboa vs. Aguirre, et. al., G.R. No. 134213, July 20, 1999).*

1.9 Absence should be reasonably construed to mean **'effective' absence**, i.e., one that renders the officer concerned powerless, for the time being, to discharge the powers and prerogatives of his/her office. There is **no vacancy whenever the office is occupied by a legally qualified incumbent**. A *sensu contrario*, there is a vacancy when there is no person lawfully authorized to assume and exercise at present the duties of the office *(Gamboa vs. Aguirre, et. al., G.R. No. 134213, July 20, 1999).*

Part 6. ACCOUNTABILITY OF LOCAL GOVERNMENT UNITS AND OFFICIALS

Suability and Liability

1. LGUs have the power to sue and be sued *(Section 22 [a][2], 1991 LGC)*. Because of the statutory waiver, LGUs are not immune from suit.

2. LGUs and their officials are not exempt from liability for death or injury to persons or damage to property *(Section 24, 1991 LGC).*

3. The **test of liability of the municipality** depends on whether or not the driver, acting on behalf of the municipality, is performing governmental or proprietary functions. The distinction of powers becomes important for purposes of determining the liability of the municipality **for the acts of its agents which result in an injury to third persons**. Under the 1983 Local Government Code, LGUs are exempt from liability while in the performance of their official functions. Delivery of sand and gravel for the construction of a municipal bridge is in the exercise of the governmental capacity of LGUs *(Municipality of San Fernando, La Union vs. Firme, G.R. No. L-52179, April 8, 1991)*. **Under the 1991 LGC, the distinction found under the 1983 Local Government Code between governmental and proprietary powers has been removed.**

4. No **consent to be sued** and be liable for damages can be implied from the mere conferment and exercise of the power to issue business permits and licenses *(City of Bacolod vs. Phuture Visions Co. Inc., GR No. 190289, January 17, 2018)*.

5. **The OSG may not be compelled to represent local government units.** The LGC vests **exclusive authority upon the LGU's legal officers to be counsels of local government units**. Even the **employment of a special legal officer** is expressly allowed by the law only upon a strict condition that the action or proceeding which involves the component city or municipality is adverse to the provincial government or to another component city or municipality (*OSG vs. CA and Municipal Government of Suguiran, Lanao del Sur, G.R. No. 199027, June 9, 2014*).

Liability of Local Government Units

1. **In the discharge of governmental functions, municipal corporations are responsible for the acts of its officers**, except if and when, and only to the extent that, they have acted by authority of the law, and in conformity with the requirements thereof *(Gontang v. Alayan, G.R. No. 191691, January 16, 2013).*

2. When there is **no malice or bad faith that attended the illegal dismissal and refusal to reinstate** on the part of the municipal officials, they cannot be held personally accountable for the back salaries. The municipal government should disburse funds to answer for the claims resulting from the dismissal *(Civil Service Commission vs. Gentallan, G.R. No. 152833 May 09, 2005).*

3. The LGU is liable for the **illegal dismissal of an appointive employee and the appointment in his/her stead of another, a non-civil service eligible**, whose salaries it thereafter paid. The dismissal by the mayor was confirmed and ratified when the city did not oppose the dismissal and the appointment *(Regis, Jr. vs. Osmeña, Jr., G.R. No. 26785, May 23, 1991).*

4. An LGU is liable for **injuries sustained due to defective roads and manholes**. For liability to arise under Article 2189 of the Civil Code, ownership of the roads, streets, bridges, public buildings and other public works is not a controlling factor, it being sufficient that a province, city or municipality has control or supervision thereof *(Municipality of San Juan vs. Court of Appeals, G.R. No. 121920, August 9, 2005; Guilatco vs. Dagupan, G.R. No. 61516, March 21, 1989).*

5. Inasmuch as the license for the establishment of a cockpit is a mere privilege which can be suspended at any time by competent authority, the **fixing in a municipal ordinance of a distance of not less than two kilometers between one cockpit and another,** is not sufficient to warrant the annulment of such ordinance on the ground that it is partial, even though it is prejudicial to an already established cockpit *(Abad vs. Evangelista, G.R. No. 38884, September 26, 1933).*

6. Given that Presidential Decree No. 1445 and Administrative Circular No. 10-2000 involve a settlement of a claim against a local government unit, the same find no application in a case wherein **no monetary award is actually awarded to petitioner but a mere return or restoration of petitioner's money, arising from an excessive payment of tax erroneously or illegally imposed and received** (*Coca-Cola Bottlers vs. City of Manila, G.R. No. 197561, April 7, 2014*).

7. Mandamus is a remedy available to a property owner when a **money judgment** is rendered in its favor and against a municipality or city (*Spouses Ciriaco vs. City of Cebu, G.R. No. 181562-63, October 2, 2009*).

8. **COA has the authority and power to settle "all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities**." This authority and power can still be exercised by the COA even if a court's decision in a case has already become final and executory. In other words, COA still retains its primary jurisdiction to adjudicate a claim due from or owing to the government or any of its instrumentalities and agencies even after the issuance of a writ of execution (*Special Star Watchman and Detective Agency, Inc. vs. Puerto Princesa City, G.R. No. 181792, April 21, 2014*).

9. That the Province suddenly had no funds to pay for an appointee's salaries despite its earlier certification that funds were available under its 2004 Annual Budget does not affect his appointment, if a **Certification that funds were available was issued at the time of the appointment**. The **appointment remains effective**, and the **local government unit remains liable** for the salaries of the appointee. *(Provincial Government of Aurora vs. Marco, G.R. No. 202331, April 22, 2015)*

10. It is the **City** that **would suffer an injustice if it were to be bound by its officer's suspect actions.** The policy of enabling local governments to fully utilize the income potentialities of the real property tax would be put at a losing end if tax delinquent properties could be recovered by the sheer expediency of a **document erroneously or, perhaps fraudulently, issued by its officers**. This would place at naught, the essence of redemption as a statutory privilege; for then, the statutory period for its exercise may be extended by the indiscretion of scrupulous officers *(The City of Davao vs. Intestate Estate of Amado S. Dalisay, G.R. No. 207791, July 15, 2015)*.

11. The fundamental principles in local fiscal administration provided in the LGC state that no money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law, and that local government funds and monies shall be spent solely for public purposes (*Marmeto v. COMELEC, G.R. No. 213953, 16 September 2017*).

12. It is part of a city's fiscal responsibility to ensure that barangay funds would not be released to a person without proper authority. Barangay funds shall be kept in the custody of the city or municipal treasurer, at the option of the barangay, and any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of the law *(City of Davao v. Olanolan, G.R. No. 181149, April 17, 2017)*.

13. Estoppel does not also lie against the government or any of its agencies arising from unauthorized or illegal acts of public officers *(City of Bacolod vs. Phuture Visions Co. Inc., GR No. 190289, January 17, 2018)*.

Liability of Local Officials

1. The power of supervision is compatible with the power to discipline. The power to discipline does not amount to executive control which is proscribed under Section, 4, Article X of the 1987 Constitution.

1.1 The President's power of general supervision means no more than the **power of ensuring that laws are faithfully executed, or that subordinate officers act within the law**. Supervision is not incompatible with discipline. The power to discipline and ensure that the laws be faithfully executed must be construed to authorize the President to order an investigation of the act or conduct of local officials when in his/her opinion the good of the public service so requires *(Joson vs. Torres, G.R. No. 131255, May 20, 1998).*

1.2 **Jurisdiction over administrative disciplinary actions against elective local officials** is lodged in two authorities: the **Disciplining Authority** and the **Investigating Authority**. The Disciplinary Authority may constitute a Special Investigating Committee in lieu of the SILG. With respect to a provincial governor, the disciplining Authority is the President of the Philippines, whether acting by himself/herself or through the Executive Secretary *(Joson vs. Torres, G.R. No. 131255, May 20, 1998).*

1.3 The **SILG is the Investigating Authority**, who may **act himself/ herself or constitute and Investigating Committee.** The Secretary of the Department, however, is not the exclusive Investigating Authority. In lieu of the Department Secretary, the Disciplining Authority may designate a Special Investigating Committee *(Joson vs. Torres, G.R. No. 131255, May 20, 1998).*

2. The grounds for disciplinary action against local elective officials are: (1) Disloyalty to the Republic of the Philippines; (2) Culpable violation of the Constitution; (3) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty; (4) Commission of any offense involving moral turpitude or an offense punishable by at least *prision mayor*; (5) Abuse of authority; (6) 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*; (7) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and (8) Such other grounds as may be provided in 1991 LGC and other laws *(Section 60, 1991 LGC).*

3. The basis of administrative liability differs from criminal liability. The purpose of **administrative proceedings** is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the **criminal prosecution** is the punishment of crime. However, **the re-election of a public official extinguishes only the administrative, but not**

the criminal, liability incurred by him/her during his/her previous term of office *(Valencia vs. Sandiganbayan, G.R. No. 141336, June 29, 2004).*

5.1 **For an offense to be "committed in relation to the office", the relation has to be such that, in the legal sense, the offense cannot exist without the office.** In other words, **the office must be a constituent element of the crime as defined in the statute**, such as, for instance, the crimes defined and punished in Chapter Two to Six, Title Seven, of the Revised Penal Code. The use or abuse of office does not adhere to the crime as an element; and even as an aggravating circumstance, its materiality arises not from the allegations but on the proof, not from the fact that the criminals are public officials but from the manner of the commission of the crime (*Montilla vs. Hilario, G.R. No. L-4922, September 24, 1951*).

4. An "**administrative offense**" means every act or conduct or omission which amounts to, or constitutes, any of the grounds for disciplinary action *(Salalima vs. Guingona, G.R. No. 117589-92, May 22, 1996).*

4.1 A municipal mayor, vice-mayor and treasurer were guilty of two (2) counts of violation of the Anti-Graft and Corrupt Practices Act where they **knowingly simulated a bidding/canvassing in favor of the mayor's son** *(De Jesus, Sr. vs. Sandiganbayan, G.R. Nos. 182539-40, February 23, 2011).*

4.2 There are **two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of the Anti-Graft and Corrupt Practices Act.** The first mode is <u>if in connection with his/her pecuniary interest in any business, contract or transaction, the public officer intervenes or takes part in his/her official capacity</u>. The second mode is <u>when he/she is prohibited from having such interest by the Constitution or any law</u>. A mayor relative to the issuance of a license to operate a cockpit which he/she owns cannot be held liable under the first mode since he/she could not have intervened or taken part in his/her official capacity in the issuance of a cockpit license because he/she was not a member of the *sangguniang bayan*. Under the 1991 LGC, the grant of a license is a legislative act of the *sanggunian*. However, the mayor could be liable under the second mode. *(Domingo vs. Sandiganbayan, G.R. No. 149175 October 25, 2005; Teves vs. Sandiganbayan, G.R. No. 154182, December 17, 2004).*

4.3 When the **validity of subsequent appointments to the position of Assistant City Assessor has not been challenged,** the city mayor who appointed a person to serve in said position had every right to **assume in good faith that the one who held the position prior to the appointments no longer held the same**. Thus, the city mayor is not liable for violation of Sections 3(a) and 3(e) of the Anti-Graft and Corrupt Practices Act *(Reyes vs. Atienza, G.R. No. 152243 September 23, 2005).*

4.4 There are **two (2) ways by which a public official violates Sec. 3(e) of R.A. No. 3019** in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference. The **accused may be charged under either mode or under both** (*Velasco vs. Sandiganbayan, G.R. No. 160991, February 28, 2005*).

4.5 A prosecution for a violation of Sec. 3(e) of the Anti-Graft Law will lie regardless of whether or not the accused public officer is "charged with the grant of licenses or permits or other concessions" *(Mejorada vs. Sandiganbayan, G.R. Nos. L-51065-72 June 30, 1987)*

4.6 To be criminally liable for violation of Section 3(e) of R.A. 3019, the injury sustained must have been caused by **positive or passive acts** of manifest partiality, evident bad faith, or gross inexcusable negligence. Since the State Auditors even recommended that municipal officials should not pay the claims due to irregularities in the transactions and the patent nullity of the same, it cannot be said that the injury claimed to have been sustained by was caused by any of officials' **overt acts** *(Fuentes vs. Sandiganbayan, G.R. No. 164664, July 20, 2006).*

4.7 The **issuance of a certification as to availability of funds for the payment of the wages and salaries of local officials awaiting appointment by the Civil Service Commission (CSC)** is **not a ministerial function** of the city treasurer. Since the CSC has not yet approved the appointment, there were yet no services performed to speak of, and there was yet no due and demandable obligation *(Altres vs. Empleo, G.R. No. 180986, December 10, 2008).*

4.8 A municipal mayor is mandated to abide by the 1991 LGC which directs that executive officials and employees of the municipality faithfully discharge their duties and functions as provided by law.

Such duty includes **enforcing decisions or final resolutions, orders or rulings of the Civil Service Commission (CSC)**. *(Velasco vs. Sandiganbayan, G.R. No. 160991, February 28, 2005).*

4.9 A municipal mayor is not guilty of violating Section 3(e) of the Anti-Graft and Corrupt Practices Act in issuing a **Memorandum preventing vendors with questionable lease contracts from occupying market stalls** where the said Memorandum applies equitably to all awardees of lease contracts, and did not give any unwarranted benefit, advantage, or preference to any particular private party *(People vs. Sandiganbayan, G.R. No. 153952-71, August 23, 2010).*

4.10 All **heads of offices** have to **rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations**. A public officer cannot be expected to probe records, inspect documents, and question persons before he/she signs vouchers presented for his/her signature unless there is some **added reason why he/she should examine each voucher in such detail**. When an **exceptional circumstance exist which should have prodded the officer**, and if he/she were out to protect the interest of the municipality he/she swore to serve, he/she is expected go beyond what his/her subordinates prepared or recommended *(Leycano vs. Commission on Audit, G.R. No. 154665, February 10, 2006).*

4.11 Municipal employees were guilty of falsification of public documents where they failed to disclose in their Statements of Assets and Liabilities (SALN) their relationship within the fourth civil degree of consanguinity and affinity to the municipal mayor who appointed them to their positions (*Galeos vs. People, G.R. Nos. 174730-37 / 174845-52, February 9, 2011).*

4.12 When a complaint merely alleges that the disbursement for financial assistance was neither authorized by law nor justified as a lawful expense and no **law or ordinance** was **cited that provided for an original appropriation of the amount used for the financial assistance and that it was diverted from the appropriation it was intended for,** the complaint is defective as it does not prove **technical malversation** *(Tetangco vs. Ombudsman, G.R. No. 156427, January 20, 2006).*

4.13 A candidate's **conviction by final judgment of the crime of fencing** is a crime involving moral turpitude which disqualifies such a person

from elective public office under Section 40(a) of the 1991 LGC *(Dela Torre vs. Comelec, G.R. No. 121592, July 5, 1996).*

4.14 A public official, more especially an elected one, should not be onion skinned. Strict personal discipline is expected of an occupant of a public office because a public official is a property of the public *(Yabut vs. Ombudsman, G.R. No. 111304, June 17, 1994).*

4.15 A mayor who **continues to perform the functions of the office despite the fact that he/she is under preventive suspension** usurps the authority of the Office of the Mayor and is liable for violation of Section 13 of the Anti-Graft and Corrupt Practices Act *(Miranda vs. Sandiganbayan, G.R. No. 154098, July 27, 2005).*

4.16 A mayor cannot be held personally liable if his **actions were done pursuant to an ordinance which, at the time of the collection, was yet to be invalidated**. *(Demaala v. COA, G.R. No. 199752, February 17, 2015)*

5. When personal liability on the part of local government officials is sought, they may properly secure the **services of private counsel** *(Gontang v. Alayan, G.R. No. 191691, January 16, 2013).*

6. It would be premature for an LGU to question before the courts an Audit Observation Memorandum issued by the Commission on Audit discussing the impropriety of disbursements of funds due to the absence of a justiciable controversy. **The issuance of the AOM is just an initiatory step in the investigative audit and is not yet conclusive** *(Corales v. Republic, G.R. No. 186613, August 27, 2013).*

7. The **writ** was **directed at the mayor** not in his personal capacity, but **in his capacity as municipal mayor**, so that it is **not irregular whether it was served upon him during his earlier term or in his subsequent one**. *(Vargas vs. Cajucom, G.R. No. 171095, June 22, 2015)*

8. Mandamus will only lie if the officials of the city have a ministerial duty to consider standards for buildings covered by an ordinance. There can be no such ministerial duty if the standards are not applicable to buildings beyond the scope of the ordinance. If there is no law, ordinance, or rule that prohibits the construction of a building outside a historic monument if it is within the background sightline or view of such monument, there is no legal duty on the part of the city to consider the standards set in its zoning ordinance in relation

to the developer's application for a Building Permit, since under the ordinance, these standards can never be applied outside the boundaries of the historical monument's surrounding park. *(Knights of Rizal v. DMCI Homes, Inc., G.R. No. 213948, April 25, 2017)*.

Administrative Proceedings

1. A verified complaint against any erring local elective official shall be prepared as follows: (1) 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; (2) 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 (3) A complaint against any elective barangay official shall be filed before the *sangguniang panlungsod* or *sangguniang bayan* concerned whose decision shall be final and executor *(Section 61, 1991 LGC).*

2. In **administrative** proceedings, **procedural due process** simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. Procedural due process has been recognized to **include the following**: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected *(Casimiro vs. Tandog, G.R. No. 146137, June 8, 2005).*

    2.1 Under the 1991 LGC, an elective local official must be a citizen of the Philippines. One who claims that a local official is not has the burden of proving his/her claim. In administrative cases and petitions for disqualification, the quantum of proof required is **substantial evidence** *(Matugas vs. Comelec, G.R. No. 151944, January 20, 2004).*

    2.2 The **lack of verification** in a letter-complaint **may be waived**, the defect not being fatal. Verification is a formal, not jurisdictional requisite *(Joson vs. Torres, G.R. No. 131255, May 20, 1998).*

2.3 Under Section 61 of the 1991 LGC, 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** *(Balindong vs. Dacalos, G.R. No. 158874, November 10, 2004).*

2.4 The voting following the deliberation of the members of the *sanggunian* in administrative cases does not constitute the decision unless this was embodied in an **opinion prepared by one of them and concurred in by the majority**. Until they have signed the opinion and the decision is promulgated, the councilors are free to change their votes. **No notice of the session** where a decision of the *sanggunian* is to be promulgated on the administrative case is **required** to be given to the any person. The deliberation of the *sanggunian* is an internal matter *(Malinao vs. Reyes, G.R. No. 117618, March 29, 1996).*

Penalties

1. Only the courts can remove a local elective official. The President and higher supervising LGU have no such authority.

   1.1 The Rules and Regulations Implementing the 1991 LGC, insofar as it vests power on the "disciplining authority" to remove from office erring elective local officials, is void. Local legislative bodies and/or the Office of the President on appeal cannot validly impose the penalty of dismissal from service on erring elective local officials. It is beyond cavil that the **power to remove erring elective local officials from service is lodged exclusively with the courts** *(Pablico vs. Villapando, G.R. No. 147870, July 31, 2002).*

   1.2 The *sangguniang bayan* is not empowered to remove an elective local official from office. Section 60 of the 1991 LGC conferred exclusively on the courts such power. Thus, if the acts allegedly committed by a barangay official are of a grave nature and, if found guilty, would merit the penalty of removal from office, the case should be filed with the regional trial court *(Sangguniang Barangay of Don Mariano Marcos, Bayombong vs. Punong Barangay Martinez, G.R. No. 170626, March 3, 2008).*

   1.3 A sangguniang panlalawigan may cause the removal of a municipal mayor who did not appeal to the Office of the President within the reglementary period the decision removing him/her from office *(Reyes vs. Comelec, G.R. No. 120905, March 7, 1996).*

1.4 The President may suspend an erring provincial elected official who committed several administrative offenses for an aggregate period exceeding six months provided that each administrative offense, the period of suspension does not exceed the 6-month limit *(Salalima vs. Guingona, G.R. No. 117589-92, May 22, 1996).*

Preventive Suspension

1. Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. This is not a penalty.

2. The **purpose of the suspension** order is **to prevent the accused from using his/her position and the powers and prerogatives of his/her office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him/her**. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his/her suspension or removal, then he/she is suspended, removed or dismissed. This is the penalty. Not being a penalty, the period within which one is under preventive suspension is not considered part of the actual penalty of suspension. Thus, **service of the preventive suspension cannot be credited as service of penalty** *(Quimbo vs. Gervacio, G.R. No. 155620, August 09, 2005).*

3. A preventive suspension may be **imposed** by the disciplinary authority **at any time**: (1) after the issues are joined, i.e., respondent has filed an answer; (2) when the evidence of guilt is strong; and (3) given the gravity of the offenses, there is great probability that the respondent, who continues to hold office, could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. These are the pre-requisites. However, the failure of respondent to file his/her answer despite several opportunities given him/her is construed as a waiver of his/her right to present evidence in his/her behalf. In this situation, a preventive suspension may be imposed even if an answer has not been filed *(Joson vs. Court of Appeals, G.R. No. 160652, February 13, 2006).*

   3.1 The **rule under the Ombudsman Act of 1989** is different. Ombudsman Act of 1989 does not require that notice and hearing precede the preventive suspension of an erring official. Only **two requisites** must concur to render the preventive suspension order valid. First, there must a prior determination by the Ombudsman that the evidence of respondent's guilt is strong. Second, (1) the offense charged must involve dishonesty, oppression, grave misconduct or neglect in the performance of duty; (2) the charges

would warrant removal from the service; or (3) the respondent's continued stay in the office may prejudice the case filed against him *(Carabeo vs. Court of Appeals, G.R. Nos. 178000/ 178003, December 4, 2009).*

3.2 Section 63 of the 1991 LGC which provides for a 60-day maximum period for preventive suspension for a single offense does not govern preventive suspensions imposed by the Ombudsman. Under the Ombudsman Act, the preventive suspension shall continue **until the case is terminated by the Office of the Ombudsman but not more than six months** *(Miranda vs. Sandiganbayan, G.R. No. 154098, July 27, 2005).*

3.3 Under the 1991 LGC, **a single preventive suspension of local elective officials should not go beyond 60 days**. Thus, the Sandiganbayan cannot preventively suspend a mayor for 90 days *(Rios vs. Sandiganbayan, G.R. No. 129913, September 26, 1997).*

4. **Direct recourse to the courts without exhausting administrative remedies is not permitted.** Thus, a mayor who claims that the imposition of preventive suspension by the governor was unjustified and politically motivated, should seek relief first from the SILG, not from the courts *(Espiritu vs. Melgar, G.R. No. 100874, February 13, 1992).*

4.1 The Judiciary must not intervene because the **office orders** issued by the Provincial Agriculturist both concerned the **implementation of a provincial executive policy**. The matter should have been raised with the Provincial Governor first *(Ejera vs. Merto, G.R. No. 163109, January 22, 2014).*

4.2. A municipal official placed under preventive suspension by a *sangguniang panlalawigan* must file a **motion for reconsideration before the said sanggunian** before filing a **petition for certiorari with the Court of Appeals** *(Flores vs. Sangguniang Panlalawigan of Pampanga, G.R. No. 159022, February 23, 2005).*

4.3 A municipal mayor may file before the Court of Appeals a **petition for certiorari, instead of a petition for review** assailing the decision of the Office of the President which reinstates the preventive suspension order issued by the provincial governor. The special civil action of certiorari is proper to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. **Exhaustion of administrative remedies may**

be dispensed with when pure questions of law are involved *(Joson vs. Court of Appeals, G.R. No. 160652, February 13, 2006).*

4.4 The rule on administrative exhaustion admits of exceptions, one of which is **when strong public interest is involved**. In particular, a local government unit's authority to increase the fair market values of properties for purposes of local taxation is a question that indisputably affects the public at large *(Alliance of Quezon City Homeowners' Association, Inc. vs. The Quezon City Government, G.R. No. 230651, September 18, 2018)*.

Effect of Re-Election

1. An administrative case has become moot and academic as a result of the **expiration of term of office of an elective local official during which the act complained of was allegedly committed**. Proceedings against respondent are therefor **barred by his/her re-election** *(Malinao vs. Reyes, G.R. No. 117618, March 29, 1996).*

   1.1 A **reelected local official** may not be held administratively accountable for **misconduct committed during his/her prior term of office**. The rationale for this holding is that when the electorate put him/her back into office, it is presumed that it did so with full knowledge of his/her life and character, including his/her past misconduct. If, armed with such knowledge, it still reelects him/her, then such **reelection is considered a condonation of his/her past misdeeds** *(Valencia vs. Sandiganbayan, G.R. No. 141336, June 29, 2004).*

   1.2 **A public official cannot be removed for administrative misconduct committed during a prior term since his/her re-election to office operates as a condonation.** To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a person to office, it must be assumed that they did this with knowledge of his/her life and character that they disregarded or forgave his/her fault, if he/she had been guilty of any *(Salalima vs. Guingona, G.R. No. 117589-92, May 22, 1996).*

   1.3 **The electorate's condonation of the previous administrative infractions of reelected officials cannot be extended to that of reappointed coterminous employees.** In the latter's case, there is neither subversion of the sovereign will nor disenfranchisement of the electorate to speak of. It is the populace's will, not the whim of

the appointing authority, that could extinguish an administrative liability *(Salumbides vs. Office of the Ombudsman, G.R. No.180917, April 23, 2010).*

2. A **provincial board member's election to the same position for the third and fourth time, in representation of the renamed district which encompasses 8 out of the 10 towns of the district he formerly represented**, is a violation of the three-term limit rule (*Naval vs. COMELEC, G.R. No. 207851, July 8, 2014*).

Part 7. PEOPLE'S PARTICIPATION

Venues for Popular Participation

1. There are seven venues by which ordinary citizens, non-governmental and people's organizations can participate in local governance. These are: (1) local special bodies; (2) prior mandatory consultation; (3) recall; (4) disciplinary action; (5) initiative and referendum; (6) sectoral representation; and (7) partnership and assistance.

Prior Mandatory Consultation

1. Prior to the implementation of national projects, the prior approval by the LGU and prior consultation with affected sectors are required *(Sections 26 [c] and 27, 1991 LGC).*

    1.1 The **grant of an Environmental Clearance Certificate by the Department of Environment and Natural Resources in favor of National Power Corporation of the construction of a mooring facility** does not violate Sections 26 and 27 of the 1991 LGC. The **mooring facility itself is not environmentally critical** and hence does not belong to any of the six types of projects mentioned in the law. The projects and programs mentioned in Section 27 should be interpreted to mean projects and programs whose effects are among those enumerated in Sections 26 and 27, to wit, those that: (1) may cause pollution; (2) may bring about climatic change; (3) may cause the depletion of non-renewable resources; (4) may result in loss of crop land, rangeland, or forest cover; (5) may eradicate certain animal or plant species; and (6) other projects or programs that may call for the eviction of a particular group of people residing in the locality where these will be implemented. **It is another matter**

if the operation of the power barge is at issue *(Bangus Fry Fisherfolk Diwata Magbuhos vs. Lanzanas, G.R. No. 131442, July 10, 2003).*

1.2 The 1991 LGC requires **conference with the affected communities of a government project.** Thus, before the National Power Corporation energizes and transmits high voltage electric current through its cables in connection with Power Transmission Project which could cause illnesses, the requirements set forth in Section 27 of the 1991 LGC must be followed *(Hernandez vs. National Power Corporation, G.R. No. 145328, March 23, 2006).*

1.3 Under the 1991 LGC, **two requisites** must be met **before a national project that affects the environmental and ecological balance of local communities can be implemented**: prior consultation with the affected local communities, and prior approval of the project by the appropriate *sanggunian*. Absent either of these mandatory requirements, the project's implementation is illegal. The establishment of a dumpsite/landfill by the national government and the Metropolitan Manila Development Authority requires compliance with these requirements *(Province of Rizal vs. Executive Secretary, G.R. No. 129546, December 13, 2005).*

1.4 The requirement of prior consultation and approval under Sections 2(c) and 27 of the 1991 LGC applies only to **national programs and/or projects which are to be implemented in a particular local community.** Lotto is neither a program nor a project of the national government, but of a charitable institution, the Philippine Charity Sweepstakes Office. Though sanctioned by the national government, it is far-fetched to say that lotto falls within the contemplation of the law *(Lina, Jr. vs. Paño, G.R. No. 129093, August 30, 2001).*

1.5 An Environmental Compliance Certificate does not authorize the implementation of the proposed project. It is a planning tool that imposes restrictions that the proponent must diligently observe and duties that it must undertake to ensure that the right to a balanced and healthful ecology is protected. The proponent is expected to secure the pertinent permits and clearances from all concerned government agencies prior to the implementation of the project. The proponent will have to ensure compliance with all the conditions and requirements outlined in the ECC before it may commence the implementation of the proposed project. Noticeably, the conditions in the ECC require securing other permits and clearances that cannot

be obtained without the participation of other stakeholders such as the cities of Parañaque and Las Piñas and PRA. The concurrence of the listed government agencies such as the Department of Health, Department of Labor and Employment, Department of Public Works and Highways, Department of Agriculture, Bureau of Fisheries and Aquatic Resources, and Department of Social Welfare and Development must also be obtained. Considering that the proposed project still has to meet the conditions listed in its ECC before commencing construction, there is no actual or imminent threat of danger demonstrable at this stage of the proposed project *(Villar vs. Alltech Contractors, Inc., G.R. No. 208702, May 11, 2021)*.

Initiative and Referendum

1. Nothing in the LGC allows the creation of another local legislative body that will enact, approve, or reject local laws either through the regular legislative process or through initiative or referendum. The claim that the proposed "sectoral council" will not legislate but will merely "facilitate" the people's exercise of the power of initiative and referendum is rendered unnecessary by the task the COMELEC must assume under the LGC. Section 122(c) of the LGC provides that the COMELEC (or its designated representative) shall extend assistance in the formulation of the proposition (*Marmeto v. COMELEC, G.R. No. 213953, 16 September 2017*).

2. COMELEC commits grave abuse of discretion when it dismisses an initiative petition on the ground that there were no funds allocated for the purpose. It is COMELEC which has the power to determine whether the propositions in an initiative petition are within the powers of a concerned *sanggunian* to enact (*Marmeto v. COMELEC, G.R. No. 213953, 16 September 2017*).

3. The voters have the power of initiative and referendum.

    1.1 Local initiative is the legal process whereby the registered voters of an LGU may directly propose, enact, or amend any ordinance *(Section 120, 1991 LGC)*.

    1.2 Local referendum is the legal process whereby the registered voters of the LGUs may approve, amend or reject any ordinance enacted by the *sanggunian (Section 126, 1991 LGC)*.

    1.3 **Initiative** is resorted to or initiated by the people directly either because the law-making body fails or refuses to enact the law, ordinance, resolution or act that they desire or because they want to

amend or modify one already existing. On the other hand, in a **local referendum**, the law-making body submits to the registered voters of its territorial jurisdiction, for approval or rejection, any ordinance or resolution which is duly enacted or approved by such law-making authority *(Subic Bay Metropolitan Authority vs. Comelec, G.R. No. 125416, September 26, 1996).*

1.4 The application of local initiatives extends to all subjects or matters which are within the legal powers of the *sanggunians* to enact, which undoubtedly includes ordinances and resolutions *(Garcia vs. Comelec, G.R. No. 111230, September 30, 1994).*

Local Special Bodies

1. The local special bodies are the development councils *(Section 106, 1991 LGC)*, school boards *(Section 98, 1991 LGC)*, health boards *(Section 102, 1991 LGC)*, peace and order councils *(Section 116, 1991 LGC)*, and people's law enforcement boards *(R.A. No. 6975)*. People's and non-governmental organizations are represented in these bodies.

2. The **concept of legislator control underlying the "Pork Barrel" system** conflicts with the **functions of the Local Development Councils (LDCs)** which are already legally mandated to assist the corresponding *sanggunian* in setting the direction of economic and social development, and coordinating development efforts within its territorial jurisdiction. Considering that LDCs are instrumentalities whose functions are essentially geared towards managing local affairs, their programs, policies and resolutions should not be overridden nor duplicated by individual legislators, who are national officers that have no law-making authority except only when acting as a body. Under the Pork Barrel system, a national legislator can simply bypass the local development council and initiate projects on his/ her own, and even take sole credit for its execution. *(Belgica, et..al., v. Ochoa, et. al., G.R. 208566, November 19, 2013).*

Partnerships and Assistance

1. Local governments shall promote the establishment and operation of people's and non-governmental organizations to become active partners in the pursuit of local autonomy. Local governments may provide assistance to, financial or otherwise, and may enter into partnership and cooperative arrangements with civil society groups, non-governmental and people's organizations *(Sections 34 -36, 1991 LGC).*

Recall

1. The power of recall or the power to remove a local elective official for loss of confidence shall be exercised by the registered voters of an LGU to which the local elective official subject to such recall belongs *(Section 69, 1991 LGC).*

    1.1 Recall is a **mode of removal of public officer by the people before the end of his/her term of office.** The people's prerogative to remove a public officer is an incident of their sovereign power and in the absence of any Constitutional restraint, the power is implied in all governmental operations. **Loss of confidence as a ground for recall is a political question** *(Garcia vs. Comelec, G.R. No. 111511, October 5, 1993).*

    1.2 The 1-year ban refers to **election where the office held by the local official sought to be recalled shall be contested.** The scheduled barangay election on May 1997 is not the regular election contemplated for purposes of computing the 1-year prohibition for recall of municipal elective officials *(Jariol vs. Comelec, G.R. No. 127456, March 20, 1997).*

    1.3 The 1-year ban **cannot be** deemed to apply to the **entire recall proceedings.** The limitations apply only to the exercise of the power of recall which is vested in the registered voters. So, as long as the election is held outside the one-year period, from assumption to office the local official sought to be recalled, **the preliminary proceedings to initiate a recall can be held even before the end of the first year in office of said local official** *(Claudio vs. Comelec, G.R. No. 140560, May 4, 2000).*

    1.4 A party aggrieved by the issuance of a Commission on Election resolution providing for the schedule of activities for the recall of elective officials should have filed, when he/she had sufficient time, a motion for reconsideration with the Commission pursuant to the rule on exhaustion of administrative remedies *(Jariol vs. Comelec, G.R. No. 127456, March 20, 1997).*

    1.5 The authentication of signatures in a recall petition is done during the determination of the names, signatures and thumbmarks of petitioners, not during the determination of the sufficiency of the

form and substance of the petition *(Sy-Alvarado v. Comelec, February 17, 2015).*

2. Under the 1991 LGC, there are two modes of initiating recall: (1) popular petition by the voters; (2) resolution by the Preparatory Recall Assembly composed of elective officials of the supervised-lower LGU. Under R.A. No. 9244, the second mode was repealed.

Sectoral Representatives

Chapter X, Section 9, 1987 Constitution: *"Legislative bodies of local governments shall have sectoral representation as may be prescribed by law."*

1. There shall be three sectoral representatives in the provincial, city and municipal legislative councils. In addition to the regular members, there shall be one (1) sectoral representative from the women, one (1) from the workers, and one (1) from any of the following sectors: the urban poor, indigenous cultural communities, disabled persons, or any other sector as may be determined by the *sanggunian* concerned within ninety (90) days prior to the holding of the next local elections as may be provided for by law *(Section 41, 1991 LGC).*

    1.1 Section 9 of the 1987 Philippine Constitution provides that "legislative bodies of local government shall have sectoral representation as may be prescribed by law". **The phrase "as may be prescribed by law" does not and cannot, by its very wording, restrict itself to the uncertainty of future legislation.** Such interpretation would defeat the very purpose of immediately including sectoral representatives in the local law-making bodies. **Otherwise, in the interregnum, from the ratification of the Constitution until the passage of the appropriate statute, the sectors would have no voice in the formulation of legislation that would directly affect their individual members** *(Supangan vs. Santos, G.R. No. 84663, August 24, 1990).*