



Rule- and Ordinance-Drafting

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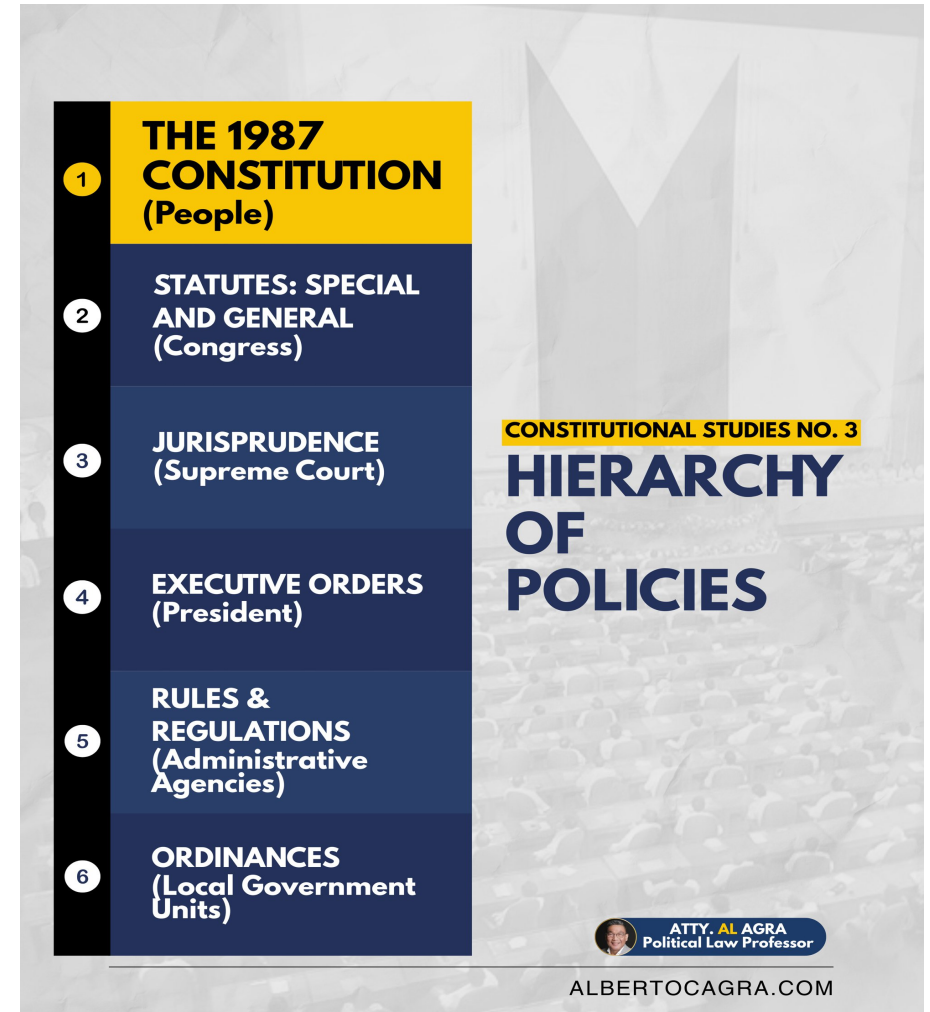
Former Public Servant, Acting Secretary of Justice,
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20 February 2026

Substantive Requirements

Subordinate Legislation

- **2 tests** of valid exercise of subordinate legislation
 1. Germane to objects and purposes of law
 2. Regulation not contradict and must conform with law
- An administrative issuance must comply with these **4 requisites** to be held valid:
 1. Its promulgation must be authorized by the legislature;
 2. It must be promulgated in accordance with the prescribed procedure;
 3. It must be within the scope of the authority given by the legislature; and
 4. It must be reasonable.



Judicial Review of Ordinances

“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**, examine **municipal conditions as a whole.**”

Rule vs. Ordinance

Rules are
anchored on
laws.

Ordinances are
Laws of Local
Application

Rule-Making Process

- Identify **enabling law** + scope.
- Map **stakeholders** and potential objections.
- Draft **problem statement + objectives**.
- Do a **regulatory impact scan**.

Even if not strictly required for all rules, **consultation de-risks** the issuance.

Defensibility pack (“litigation file”)
Keep minutes, attendance, position papers, legal review memo, cost/impact note, versions of draft, and proof of publication/posting

1
Pre-Draft
Stage

2
Drafting
Stage

3
Hearing/
Consult

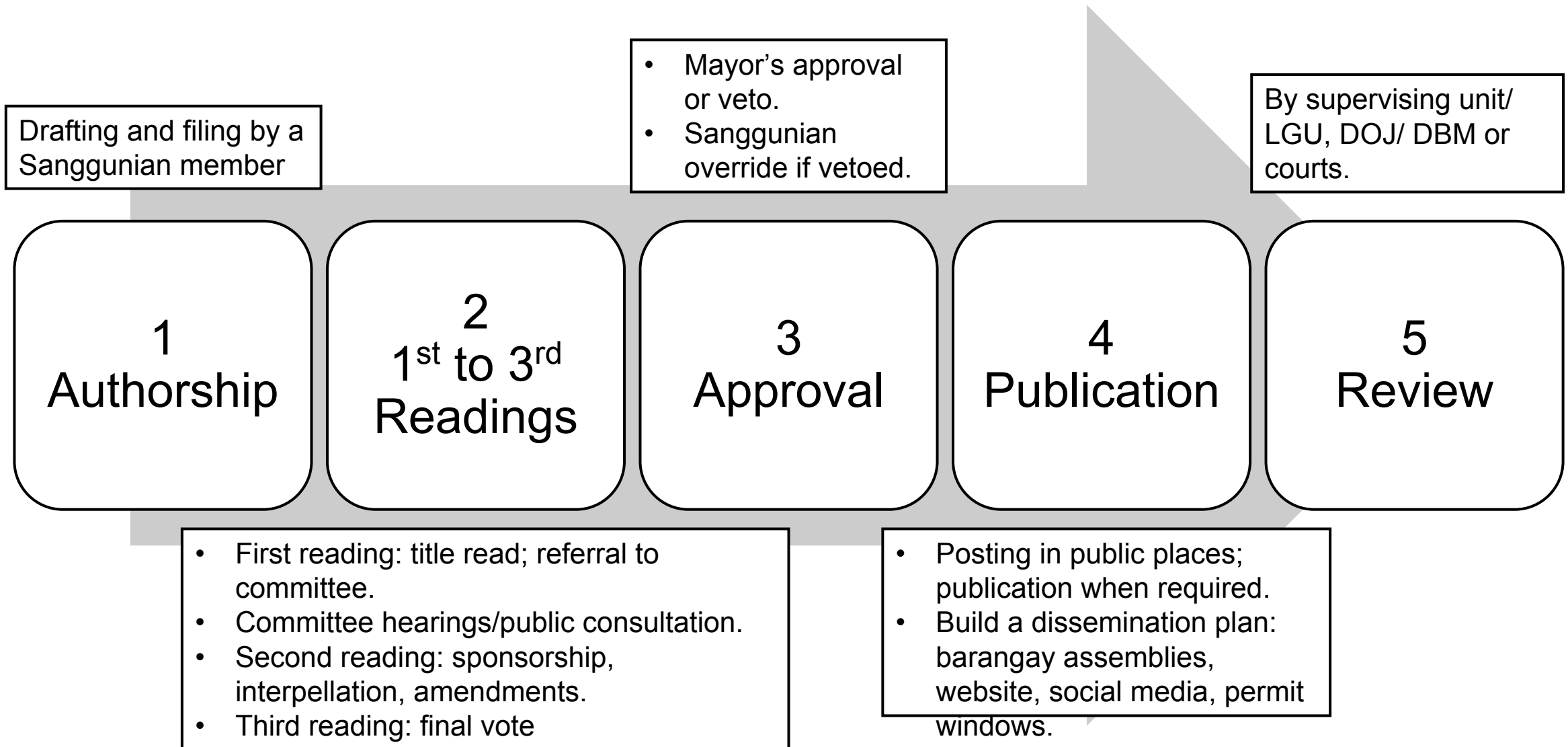
4
Approval/
Adoption

5
Record-
Keeping

- Create **outline** → definitions → operative rules → procedures → sanctions → transitory.
- Integrate **due process** steps for sanctions.
- Build the **forms/annexes** early (permits,

- Ensure correct **authority signature, board resolution**.
- Arrange **publication/posting** and specify **effectivity date**.

Local Legislative Process



Tests

1. Within authority (ultra vires check)
2. Reasonable (not oppressive; not arbitrary)
3. Consistent with Constitution + statutes + national policies
4. Not contrary to public policy
5. Observes due process (especially if penal/fees/sanctions)
6. Proper publication/ posting/ effectivity

Title and Short Title

Importance

- Legal clarity
- Intent
- Reference for litigation
- Safeguard against vagueness or overbreadth
- One subject rule

Functions

- Subject Matter (clear, distinct, neutral, non-argumentative)
- Scope (complete but not overloaded)
- Prevents surprise provisions
- Assists in Statutory Construction
- Guides implementation

Title and Short Title

Good

Implementing Rules and Regulations of Republic Act No. 12345 Regulating Food Establishments

Clear parent law reference

Not so Good

Comprehensive National Food Policy Rules

Does not cite parent statute

Context

Cite studies, reports, and minutes.

Situation

Problem

Urgency

History

Demands

Dialogues

Context

Good

These Rules are issued to operationalize safety standards for food establishments nationwide.

Limited to operationalization

Not so Good

Due to increasing public demand...

Policy expansion beyond statute

Legal Bases

Draft a one-page “legal bases matrix” before writing text.

Constitution

Mandate

Charter

Relevant
Policies

Case Law

Sectoral
Bases

Legal Bases

Good

Pursuant to Section 20 of RA 12345 and consistent with the 1987 Constitution of the Philippines, these Rules are hereby promulgated.

Proper delegation cited

Not so Good

Issued pursuant to the general authority of the Department.

No specific delegation cited

Whereas/ Preambulatory Clause

Like telling a
story.

Context

Legal Bases

Whereas/ Preambulatory Clause

Good

WHEREAS, Republic Act No. 12345 mandates the regulation of food establishments to protect public health;

WHEREAS, Section 20 thereof authorizes the Department of Health to promulgate implementing rules;

Mirrors statutory authority

Not so Good

WHEREAS, food safety is important;

Vague/ No statutory reference

Declaration of Principles/ Policies

Importance

- Anchors the measure in the Constitution or Law
- States values, objectives, and philosophy (the “why”) vs. Hierarchy of Policies
- Guides interpretation and implementation
- Signals constitutional compliance

Functions

- Normative, not operative and decorative
- Clear and precise language
- Establish foundational consistency and legal anchor
- Mention context and solution (relevancy)

Declaration of Principles/ Policies

Good

It is the policy of the State to ensure food safety consistent with RA 12345.

No new policy created

Not so Good

It is declared that all restaurants must close by 9:00 p.m. nationwide.

New substantive restriction not in law

Definition of Terms

Importance

- Clarifies scope
- Limits interpretation
- Prevents enforcement abuse
- Aligns with law
- Reduces constitutional challenge
- Avoids vagueness

Functions

- State genus and differentia (specia)
- Clarify terms, not redefine or contradict
- Do not over-define
- Use of “means” and “includes”
- Avoid circular definitions (repeating terms to be defined)
- Apply cross-references

Definition of Terms

Good

“Food Establishment” means any commercial entity engaged in the preparation or sale of food to the public.

Genus + differentia

Not so Good

“Restaurant” means any place where food is served.

Overbroad/ no genus-differentia precision

Jurisdiction

Rules

- Types: Geographical and Functional
- Anchor jurisdiction on enabling or relevant law/policy
- Take into account “Incidental Jurisdiction”
- Allows for clarification, not expansion
- Include limitation clause

Ordinances

- Define:
- Who?
 - What?
 - Where?
 - When?
 - Sanctions?

Temporal

- Effectivity date
- Retroactivity (?)
- Transitional provisions

Jurisdiction

Good

These Rules apply to all food establishments operating within the Philippines under the supervision of the Department of Health.

Clear personal and territorial scope

Not so Good

Applies to all establishments including those regulated by other agencies.

Jurisdictional overreach

Procedures

Importance

- Outlines the steps, timelines, procedures, redress, and appeal even if the law is silent
- Administrative or Quasi-Judicial Proceedings
- Compliance with reasonableness
- Observe due process

Parts

- Parties
- Caption
- Commencement of actions
- Verification
- Certificate of non-forum shopping
- Modes of service
- Pleadings
- Hearing
- Position Papers
- Evidence
- Decisions
- Execution
- Timelines

Procedures

Good

Applications for compliance certification shall be filed with the Regional Office. Inspection shall be conducted within fifteen (15) days.

Within statutory bounds

Not so Good

Violators shall pay ₱500,000 fine.

IRR cannot create new penalties

Final Provisions

Separability

Repealing

Effectivity

Final Provisions

Good

Effectivity: 15 days after publication in the Official Gazette and Office of the National Administrative Register.

Compliant with publication requirement

Not so Good

Effectivity: Immediately upon signing.

No publication requirement

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**Together, let us learn-unlearn-
relearn.**

Thank you.