



REPUBLICA NG PILIPINAS

**LUNGSOD NG CEBU**

TANGGAPAN NG SANGGUNIANG PANLUNGSOD  
CEBU CITY HALL TEL. NOS. 032-2661542  
412-2817  
254-9004

15TH SANGGUNIANG PANLUNGSOD

3RD SESSION  
REGULAR SESSION NO. 35

EXCERPT FROM THE MINUTES OF THE REGULAR SESSION HELD  
BY THE SANGGUNIANG PANLUNGSOD OF THE CITY OF CEBU  
IN ITS SESSION HALL ON APRIL 6, 2022.

**PRESENT:**

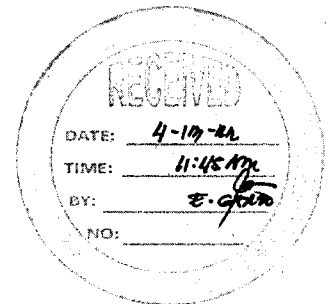
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|----------------------------------|-------|---|
| Vice-Mayor Donaldo C. Hontiveros | ..... | Presiding Officer                           |
| Coun. Eduardo R. Rama Jr.        | ..... | President Pro Tempore                       |
| Coun. Raymond Alvin N. Garcia    | ..... | Majority Floor Leader                       |
| Coun. Phillip S. Zafra           | ..... | 1 <sup>st</sup> Asst. Majority Floor Leader |
| Coun. Joel C. Garganera          | ..... | 2 <sup>nd</sup> Asst. Majority Floor Leader |
| Coun. Nestor D. Archival Sr.     | ..... | Minority Floor Leader                       |
| Coun. Joy Augustus G. Young      | ..... | Asst. Minority Floor Leader                 |
| Coun. Alvin M. Dizon             | ..... | Member                                      |
| Coun. Eugenio F. Gabuya Jr.      | ..... | Member                                      |
| Coun. Jerry L. Guardo            | ..... | Member                                      |
| Coun. Lea O. Japson              | ..... | Member                                      |
| Coun. Prisca Niña O. Mabatid     | ..... | Member                                      |
| Coun. Renato Z. Osmeña Jr.       | ..... | Member                                      |
| Coun. Jocelyn G. Pesquera        | ..... | Member                                      |
| Coun. Jessica P. Resch           | ..... | Member                                      |
| Coun. David F. Tumulak           | ..... | Member                                      |

**ON OFFICIAL BUSINESS:**

- |                               |       |        |
|-------------------------------|-------|--------|
| Coun. James Anthony R. Cuenco | ..... | Member |
|-------------------------------|-------|--------|

**ABSENT (On Leave):**

- |                        |       |        |
|------------------------|-------|--------|
| Coun. Raul D. Alcoseba | ..... | Member |
| Coun. Franklyn O. Ong  | ..... | Member |



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**RESOLUTION NO. 15-2128-2022**

The Sangguniang Panlungsod of the City of Cebu, as moved by Councilor Archival, Sr. and seconded by Councilor Garcia:

RESOLVED, to furnish copies of the Legal Opinion rendered by the City Legal Office (CLO), in response to SP Res. Nos. 15-1768-2022 and 15-1769-2022, respectively, relative to the implementation of the "No Vax No Entry" Policy per Executive Orders 157 and 158 issued by City Mayor Michael L. Rama to Ms. Teresa Ruelas, Mr. Barry Murrell, Ms. Belinda Espiritu, and Ms. Myrla Bantilan, and the Commission on Human Rights (CHR); and

RESOLVED FURTHER, to authorize the Secretary to the Sangguniang Panlungsod to furnish copies of this resolution to Ms. Teresa Ruelas, Mr. Barry Murrell, Ms. Belinda Espiritu, and Ms. Myrla Bantilan, and the Commission on Human Rights (CHR) for their information and guidance.

**CARRIED UNANIMOUSLY.**

(Councilors Tumulak, Osmeña, Jr. and Mabatid were out.)




REPUBLIKA NG PILIPINAS  
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412-2817  
254-9004

(Res. No. 15-2128-2022 dated April 6, 2022)

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I hereby certify the correctness of this resolution.

  
**CHARISSE L. PIRAMIDE**  
Secretary to the  
Sangguniang Panlungsod

ATTESTED:

  
**DONALDO C. HONTIVEROS**  
Presiding Officer

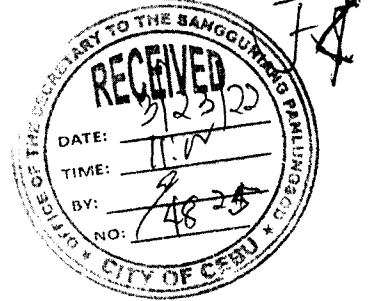
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15-2128-2022  
Archival, Sr. Garcia



Republic of the Philippines  
City of Cebu  
CITY LEGAL OFFICE

Ground Floor, Legislative Bldg., Cebu City Hall, M.C. Briones St., Cebu City  
Tel. No. (032) 253-2604 or 239-7260



To: SANGGUNIANG PANLUNGSOD  
City of Cebu

SUBJECT: LEGAL OPINION ON THE "NO VAX NO ENTRY" POLICY IMPLEMENTED BY THE CITY GOVERNMENT OF CEBU

To the Honorable Sangguniang Panlungsod:

We write in relation to the Sangguniang Panlungsod ("SP") Resolution Nos. 15-1768-2022 and 15-1769-2022 referred to this office requesting for its legal opinion on the implementation of Executive Order ("E.O") Nos. 157 and 158 issued by the City Mayor of Cebu, Michael L. Rama. The presenters during the Citizen's Hour composed of representatives from the "Anti-Covid Vaccine Mandares" Group assailed the validity of the said issuances, for being discriminatory and unconstitutional among others.

For reference, Section 21 of E.O. No. 157, otherwise known as the "Oplan Puyo Gihapon" states, to viz:

Sec. 21. No Vaccination, No Entry Policy in indoor venues and establishments. In general, only COVID-19 fully vaccinated persons, ages 12 and above are allowed to enter close and indoor venues and establishments including malls and department stores. Children 11 years old and below shall not be accommodated and allowed entry in malls and the said venues. Provided, that fully vaccinated minors age twelve (12) to seventeen (17) must be accompanied by a fully vaccinated responsible adult, guardian, or parent. Provided further, that minors entering close and indoor venues for purposes of vaccination shall be allowed.

For this purpose, the presentation of a vaccination card and identification document is required upon entry of the said venues.

Based on the said provision, only those who can present a vaccination card may enter indoor venues and establishments, with the exception of minors, purely for purposes of vaccination. It therefore makes vaccination a prerequisite for entry in indoor venues and establishments. The said E.O. also

sanctions business establishments or businesses with suspension or revocation of business permits upon any violation committed.<sup>1</sup>

*Police power allows local government units to enact policies that would protect the general welfare.*

Before we tackle the issues on constitutionality and validity of the said E.O. it would be well to discuss the legal basis for the issuance of the said policy, that is police power.

Police power is one of the three (3) inherent powers of the state, along with taxation and eminent domain. It has been characterized as “the most essential, insistent, and the least limitable of powers, extending as it does to all the great public needs.” Negatively, it has been defined as “that inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of society.”<sup>2</sup> Based on this power, the state has the right to promote the public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. It has been held that the power to regulate means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.<sup>3</sup>

The exercise of police power has been delegated to local government units by virtue of Section 16 of the Local Government Code of 1991, which provides:

Sec. 21. 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.

Based on the said power, the local government unit can enact and implement ordinances and policies that would promote the health and public

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<sup>1</sup> Section 23, E.O. 157.

<sup>2</sup> *Ermita-Malate Hotel and Motel Operators Association, Inc. v. Mayor of Manila*, L- 24693, July 31, 1967.

<sup>3</sup> *Gerochi v. Department of Energy*, G.R. No. 159796, July 17, 2007.

welfare of its constituents. It could therefore limit the movement and mobility of the public for the promotion of public health and general welfare. Considering the known and recorded adverse effects of Corona Virus Disease 2019 ("COVID-19"), and the number of hospitalizations and deaths the said disease has brought about, the local government has the authority to exercise its police powers in order to curb the adverse effects of COVID-19.

However, being legislative in character, local police power is exercised by the Sanggunian of the local government through the enactment of appropriate ordinances.<sup>4</sup> Thus, the Local Chief Executive, without a valid law or ordinance cannot enact the assailed measure, i.e. "No Vaccination, No Entry Policy".

*There is no law or ordinance prohibiting unvaccinated individuals from entering indoor venues or establishments.*

As of this writing, there is yet no national law making COVID-19 vaccination mandatory. There is also no law or ordinance prohibiting individuals from entering indoor venues or establishments. As of date, the nearest law that the Philippines has requiring mandatory vaccination is Republic Act ("R.A") No. 10152, also known as the Mandatory Infants and Children Health Immunization Act of 2011. Section 3 of the said law mandates basic immunization for all infants and children covering diseases such as Tuberculosis; Diptheria, Tetanus, Pertussis, poliomyelitis, measles, mumps, rubella. Hepatitis-B, H. Infuenza Type B. and "such other types as may be determined by the Secretary Health in a department circular." Aside however from R.A. 10152, there is still no national or local law requiring mandatory vaccination. As such, the citizens are still free to choose whether or not to get vaccinated without compulsion or sanctions.

Considering the absence of any national or local legislation on the matter, there is nothing preventing the SP from enacting an ordinance on the same, provided that these requisites are met: (1) must not contravene the Constitution; (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. It may be argued however, that enacting a local ordinance prohibiting unvaccinated individuals from entry in establishments may violate

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<sup>4</sup> See Dela Cruz v. Paras, 123 SCRA 569, July 25, 1983.

the aforementioned requisites, particularly on requisites (1), (2), (3), and (6) for the reasons discussed below.

*The “No Vax, No Entry Policy may violate the equal protection clause and may be regarded as discriminatory.*

The Citizen’s Hour presenters brought up the issue of constitutionality of the policy as it allegedly violates the equal protection clause provided for in the 1987 Constitution. The 1987 Constitution provides: “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”

The equal protection clause is a specific constitutional guarantee of the Equality of the Person. The equality it guarantees is “legal equality or, as it is usually put, the equality of all persons before the law. Under it, each individual is dealt with as an equal person in the law, which does not treat the person differently because of who he is or what he is or what he possesses.<sup>5</sup> The equal protection clause however permits classification, provided the following requisites are met: (1) the classification must rest on substantial distinctions; (2) must be germane to the purpose of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.

The government may posit that the said requisites are met considering there is a substantial distinction between the vaccinated and the unvaccinated, as unvaccinated individuals are more prone to severe COVID-19 infection that may result to hospitalization and death as compared to vaccinated individuals. Those against the policy may also argue that there is not enough scientific data and evidence to conclude that unvaccinated individuals are more prone to severe infections and death. In finality, this would be up to the courts of justice to decide whether or not there really exists substantial distinction.

It may also be argued that the policy is discriminatory, considering that Section 12 of Republic Act No. 11525, otherwise known as “COVID-19 Vaccination Program Act of 2021” says that vaccine cards shall not be considered as an additional mandatory requirement for educational, employment, and other similar government transaction purposes.

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<sup>5</sup> Bernas, Joaquin, *The 1987 Philippine Constitution, A Comprehensive Reviewer*, 2011.

The "No Vax, No Entry Policy runs counter to City Ordinance No. 2339 which prohibits discrimination based on health status.

The Citizen's Hour presenters also cited City Ordinance No. 2339, known as "Cebu City Anti-Discrimination Ordinance". Under Section 4 of the said Ordinance, it is unlawful for any person, natural or juridical to:

(a) Deny access to public programs and services of any person;

(b) xxx                      xxx                      xxx ;

(c) xxx                      xxx                      xxx ;

(d) xxx                      xxx                      xxx ;

(e) Deny a person's access to and/or use of private and public establishments, facilities, utilities, transportation or services, including housing, that are open to the general public on the basis of disability, age, health status, sexual orientation, gender identity, ethnicity, and notwithstanding the existence of the person's capacity to comply or his/her actual compliance with the requirements set forth in order to access or enter such establishments.

Considering the express provisions in the said ordinance, it would not be prudent for the City to enact policies, regulations, or ordinances that would contradict the said ordinance, especially since Section 5(d) of the same ordinance mandates that the City Government shall ensure that all policies embodied in resolutions, ordinances, codes, and other policy documents are free from discriminatory statements and provisions and undertake necessary amendments of those provisions to effectively eliminate discrimination, stigma, and stereotypes.<sup>6</sup>

In this instance, implementing the "No Vaccination, No Entry Policy" may be considered discriminatory, since it generally prevents entry of unvaccinated individuals in indoor establishments without considering exceptions and other circumstances that prevented them from being vaccinated. Without proper boundaries, the said policy may be considered overbroad as it has no proper delineations and exceptions.

As of this writing, there is already a pending case filed assailing the validity and constitutionality of the said issuances. The same was filed by the so called "CONCERNED CEBUANOS FOR LIFE AND LIBERTY", who are the same presenters herein, with the exception of the Commission on

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<sup>6</sup> Emphasis supplied.

Human Rights. It is now pending before Regional Trial Court ("RTC") Branch 17 of Cebu City, docketed as Civil Case No. R-CEB-22-00496-CR.

In view of the foregoing, it is this humble representation's opinion that the implementation of E.O. No. 157 and 158 is not advised as it may violate some constitutional rights, in the absence of a national law implementing the same. However, with the implementation of the "open all policy" as announced on February 24, 2022 which allows, all establishments and activities to operate regardless of age and vaccination status the said policy has become moot and academic.


It is also submitted that the enactment of ordinance with the said policy should not be carried out in the meantime, in the absence of any national law or policy instituting the same.

March 8, 2022, Cebu City, Philippines.

Respectfully submitted.



ATTY. JOY IVEE O. ONG  
*Handling Legal Officer*



ATTY. EUGENE C. ORBITA  
*Approving Legal Officer*