



Republic of the Philippines
Province of Davao del Sur
MUNICIPALITY OF MAGSAYSAY

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15th Sangguniang Bayan
33rd Regular Session
June 19, 2017



ORDINANCE NO. 10 - 2017

Introduced by: Hon. RAFFIE S. REDOBLADO, SB Member
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Hon. RONIE L. SARANDE *SB Member* Hon. ALLAN P. CARAMPATANA, SB Member
Hon. FRANCISCO E. JOSE, JR, *SB Member* Hon. ROBERTO B. AMBAYAN, *SB Member*
Hon. BERNARDO M. SANGGAY, *SB Member/IPMR* Hon. ALEXANDER L. COSSID, SB Member / ABC Pres

AN ORDINANCE ADOPTING THE REVISED COMPREHENSIVE ANTI-SMOKING ORDINANCE IN THE MUNICIPALITY OF MAGSAYSAY AND PROVIDING GUIDELINES, RULES AND REGULATIONS FOR A SMOKE – FREE MUNICIPALITY AND IMPOSING PENALTIES FOR VIOLATION THEREOF

BE IT ORDAINED by the Sangguniang Bayan of Magsaysay, Davao del Sur in session assembled that;

SECTION I. RATIONALE:

WHEREAS, the 1987 Constitution of the Republic of the Philippines declares that the state shall protect and promote the right to health of the people and instill health consciousness among them;

WHEREAS, Republic Act No. 7160, otherwise known as the Local Government Code of 1991 accords every Local Government Unit the power and authority to promote the general welfare within its territorial jurisdiction, including the promotion of health and safety to its constituents;

WHEREAS, the Republic of the Philippines, one of the parties under the Framework Convention on Tobacco Control (FCTC) is determined to give priority to the right to protect public health and to promote measures of tobacco control based on current and relevant scientific, technical and economic considerations, and agreed to implement the measures provided in the treat;

WHEREAS, it is mandated in Republic Act No. 9211 entitled “AN ACT REGULATING THE PACKAGING, USE, DISTRIBUTION AND ADVERTISEMENT OF TOBACCO PRODUCTS AND FOR OTHER PURPOSES”, otherwise known as Tobacco Regulation Act which was approved and enacted on June 23, 2003 to maintain and sustain a health environment;

WHEREAS, it is declared policy of the State to protect the right of every citizen to breath clean air and prohibits smoking inside vehicles and other means of transportation thereby directs all Local Government Units to implement the provision of Republic Act No. 8749, the Philippine Clean Air Act 1999;

WHEREAS, smoking in all enclosed public/private places and in all public utility buses and jeepneys and all tricycles-for-hire within the territorial jurisdiction of the Municipality of Magsaysay is also prohibited based on the approved Ordinance No. 001, series of 2001 and as provided for in Section 30, Chapter VII of the Sanitation Code of this municipality;

WHEREAS, Memorandum Circular 17, series of 2009 duly issued by the Civil Service Commission on May 29, 2009, directs all Heads of Departments, Bureaus and Agencies of the National Government, Local Government Units, Government Owned and Controlled Corporations with original charters and state universities and colleges to implement the smoking prohibition based on 100% smoke – free environment policy;

WHEREAS, scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, lead to devastating health, social, economic and environmental consequences and places burdens on families, on the poor and on national and local health systems.

SECTION II. TITLE – This Ordinance shall be known as the “Revised Comprehensive Anti-smoking Ordinance in the Municipality of Magsaysay, Province of Davao del Sur”.

SECTION III. PURPOSE – The wealth of a community depends to a great extent on the health of its people to safeguard public health and ensure the well-being of its constituents by protecting them from the harmful effects of smoking and tobacco consumption. Researchers claimed that passive smokers are to ones greatly affected since they inhale two-third percent of the chemicals from tobacco/cigarettes. It is a vital concern of government to protect the health and well-being of our people, hence, this ordinance.

SECTION IV. COVERAGE – This ordinance shall cover to all persons, whether natural or juridical, resident or not, and in all places within the territorial jurisdiction of the Local Government Unit of Magsaysay, Province of Davao del Sur.

SECTION V. COVERAGE – Definition of Terms – As used in this ordinance, the terms below shall have the meaning ascribed to them in this section. Any word or term not defined shall be given their plain and customary meanings, unless the context requires otherwise, and shall be interpreted in a manner consistent with the purpose and spirit of this ordinance.

1. Apprehending Officers refers to the person authorized by this ordinance to apprehend any person who violated the provisions therein, such as but not limited to the members of the PNP.
2. Enforces refer to the governmental department head charged with the regulation and control of the affairs of the community, now chiefly the department established to maintain order, enforce law, and prevent and detect crime.
3. Smoking means being in possession or control of a lit tobacco product regardless of whether the smoke is being actively inhaled or exhaled.
4. Tobacco Industry refers to tobacco manufacturers, wholesale distributors and importers of tobacco products or industry allies and commissioned third parties who benefit from the sale of tobacco products or from tobacco sponsorship that have interest that compete with those of tobacco control.
5. Tobacco Industry Interference refers to a broad array of tactics and strategies used by the tobacco industry to interfere with the setting and implementation of tobacco control measures.
6. Tobacco Products means product entirely or partly made of the tobacco leaf as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing such as “cigarettes and cigars”.
7. Public Places means all places, fixed or mobile, that are accessible or open to the public or places for collective use, regardless of ownership or right to access including but not limited to, establishments that provide food and drinks, accommodation, merchandise, professional services. It also include outdoor spaces where facilities are available for the public or where a crowd of people would gather, such as, but not limited to, playgrounds, sports ground or center, church grounds, health/hospital compounds, transportation terminals, markets, parks, resorts, walkways, entrance ways and waiting areas.
8. Public Conveyances refer to made of transportation servicing to the general population, such as, but not limited to jeepneys, buses, taxicabs, tricycles, trains, ships and other similar vehicles.
9. Minor refers to any person below eighteen (18) years old.
10. Advertising and Promotion means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting either directly or indirectly a tobacco product or tobacco use.
11. Point of Sale refers to any location at which an individual can purchase or otherwise obtain tobacco products.
12. Person-in-charge refers to, in case of public places, public outdoor spaces and work places, the President/Manager; in case of a company, corporation or association the owner/proprietor/operator in case of a single proprietorship, or the administrator in case of government entity, office or building; in case of public conveyance, the owner, driver, operator, conductor, or the captain of the public conveyance.
13. Second hand Smoke means the smoke emitted from the burning end of a cigarette or from other tobacco products usually in combination with the smoke exhaled by the smoker.

SECTION VI. Prohibited Acts – The following acts are declared unlawful and prohibited by this ordinance to wit:

1. Smoking in enclosed or partially enclosed public places, workplaces, public conveyances or other public places as defined in Section IV of this Ordinance.
2. Selling or distributing tobacco products in the school, public playground or other facility frequented by minors or within 100 meters from any point in the perimeter of these places as stated above. Point of sale establishments offering, distributing or selling tobacco products to consumers shall post in a conspicuous area this notice “SALE/DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS IS UNLAWFUL”.
3. Selling or distributing tobacco products to minor.
4. Purchasing tobacco products from minors.
5. Placing outdoor advertisements of tobacco products.
6. Placing, posting or distributing advertising materials of tobacco products, such as leaflets, posters and similar materials outside the premises of point of sale establishments.
7. Refusal to allow the entry of the members of the Anti – Smoking Task Force or its duly deputized enforcers for the purpose of implementing, monitoring, inspecting and enforcing the provisions of this ordinance.

8. Failure to comply with the mandatory duties and obligations stipulated in this Ordinance.
9. Knowingly allowing, abetting, or tolerating smoking any tobacco and the like in any of the places enumerated in this Ordinance, except when smoking is done within the duly approved designated smoking areas.

SECTION VII. DESIGNATED SMOKING AND NON-SMOKING AREAS

For enclosed areas that are open to the general public, private workplaces and other places not covered under the preceding section where a non-smoker may be exposed to tobacco smoke, there shall be provided by head of office, owner, proprietor, manager, or administrator an adequate smoking area in their establishment. Should the establishment adopt a no smoking policy, a signage shall be posted in its main entrance with the following notice “SMOKE FREE ESTABLISHMENT”.

Existing establishments, except for those with a “NO Smoking Policy” who shall not be required to designate a smoking area, shall be given ninety (90) day reglamentary period from effectivity of the ordinance to provide an adequate smoking area.

Failure to construct and/or provide a smoking area shall be sufficient ground for the denial of the renewal or application of the business permit to operate.

It shall be the duty of the head of office, owner, proprietor, manager or administrator to post in a conspicuous place a signage that designates smoking or non – smoking areas.

SECTION VIII. MANDATORY DUTIES AND OBLIGATIONS.

The person-in-charge which refers to the President or Manager in case of a company, corporation or association or partnership or the owner/proprietor or operator in case of single proprietorship, of accommodation and entertainment establishments, whether tourism-accredited or not, workplaces, public buildings, enclosed or partially enclosed public places, public outdoor spaces shall.

- a. Posting and Display of Signage:
 1. Post and display a 8x6 inches in all entrances bearing information that “This is a Non-smoking Establishment”;
 2. Prominently display “No smoking” signs in the most visible locations in the area where smoking is prohibited (main accommodation area, function rooms, bars, cashiers, VIP rooms, comfort rooms), in order to ensure that the public can easily view such signs and be notified.
 3. At the very least, a “No Smoking” sign for new establishments shall be at least 8x18 inches in size and the International No Smoking symbol or logo (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall occupy no less than 50% of the said signage. The remaining lower 50% of the signage shall show the following warning prominently:

NO SMOKING
Ordinance No. 10 – 2017
Report Violation to _____

- b. Remove all ashtrays or any receptacles for dispensing cigarette refuse from Accommodation and Entertainment Establishments, Workplaces, Enclosed or Partially Enclosed Public Places, Public Buildings and other Public Outdoor Spaces,
- c. Ensure that all employees in the establishment are aware of the Ordinance and to provide a procedure informing customers or clients of the provisions of the Ordinance;
- d. Undertake all reasonable steps to ensure strict implementation of the Ordinance and to inform people to refrain from smoking any tobacco product and the like within their establishments except in duly approved designated smoking areas. The person-in-charge or his/her duly authorized represented including the employees concerned shall immediately inform the Anti – Smoking Task Force or its duly deputized enforcers or any law enforcer of the police station of the violation and the violator/s thereof.
- e. Selling cigarettes or any tobacco product shall not be allowed inside the accommodation and entertainment establishments, and public buildings.

Owners, operators and drivers of public conveyances, government – owned and company – owned vehicles used to transport employees and guests are mandated to prominently display “No Smoking: sign in their units, as follows:

1. For jeepneys, the “No Smoking” sign of at least 3.5 sq. inch shall be placed at the back of the windshield and another sign of at least 10 sq. inch shall be placed at the back of the front row seats;

2. For vans and other similar vehicles, the “No Smoking” sign of at least 3.5 sq. inch shall be placed on the glove compartment at the front right side of the taxi windshield and another sign of at least 10 sq. inch shall be placed at the back of the driver’s seat;
3. For buses, the “No Smoking” sign of at least 3.5 sq. inch shall be placed at the back of the windshield and another sign of at least 14 sq. inch shall be placed at the back of the driver’s seat facing the passengers or a similarly prominent area of the bus,
4. For tricycles-for-hire and other type of vehicles, the “No Smoking” sign of at least 3.5 sq. inch shall be placed at the back of the front seat and/or in a prominently location of the vehicle facing the passengers.

SECTION IX. PERSON LIABLE – The following persons shall be liable under this ordinance:

- a) Any person smoking any tobacco product and the like within any of the prohibited places enumerated in this Ordinance, except in duly approved designated smoking areas;
- b) The President or Manager in case of a company, corporation or association or partnership or the owner/proprietor or operator in case of single proprietorship of accommodation and entertainment establishments, enclosed or partially enclosed public places, public buildings, public outdoor spaces or workplaces:
 1. Who Knowingly allows, abets or tolerates and/or fails to report violators of the Ordinance to any member of the Anti – Smoking Task Force or its duly deputized enforcers or any law enforcer or the nearest police station immediately upon commission of the violation; or
 2. Who otherwise fail to fulfill the mandatory duties and obligations as enumerated in this Ordinance.
- c) The operator, driver, conductor or inspector of public conveyances, government – owned or company – owned vehicles who knowingly allows, abets or tolerates and/or fails to warn, advise or report violators of the Ordinance to any member of the Anti – Smoking Task Force or its duly deputized enforcers or any law enforcer or the police station immediately upon commission of the violation or, who otherwise fails to fulfill the mandatory duties and obligations as enumerated above.
- d) Any person who commits any of the prohibited acts stated in Section V hereof;
- e) Persons-in-charge who knowingly allow, abet, or tolerate the prohibited acts enumerated to Section V thereof;
- f) It shall be the duty of the Municipal Engineer being the Building Official of its Municipality to ensure that all establishments have designated smoking areas except for those which have a “No Smoking Policy”

SECTION X. SMOKING CESSATION PROGRAM. The Municipal Health Officer with the assistance of the Health Education Team shall develop, promote and implement a Smoking Cessation Program and encourage the participation of the public and private facilities therein which may be able to provide for its requirements. Smokers who are willing to quit and/or those found violating this Ordinance may be referred to the Smoking Cessation Program and its facilities.

SECTION XI. PENALTIES. The following penalties shall be imposed on violators of this Ordinance:

- a) Violation of Section VI (a)
 1. First Offense - Php 300.00
 2. Second Offense - Php 500.00
 3. Subsequent Offenses - Php1000.00 and Revocation of business license or Permit (in case of a business entity or establishment)
- b) Violation of Section VI (b), (c) and (d)
 1. First Offense - Php 300.00
 2. Second Offense - Php 500.00
 3. Subsequent Offenses - Php1000.00 and Revocation of business license or Permit (in case of a business entity or establishment)
- c) Violation of Section VI (b), (c) and (d)
 1. First Offense - Php 300.00
 2. Second Offense - Php 500.00
 3. Subsequent Offenses - Php1000.00 and Revocation of business license or

Permit (in case of a business entity or establishment or franchise or license to operate in case of a public conveyance)

- d) Suspension of License. The license to operate of any establishment or of any public conveyance covered by this ordinance shall be suspended for at least one (1) week but not more than one (1) month upon.
1. Failure of the establishment or public conveyance to cease and desist from the violation stated in the citation Ticket within ten (10) calendar days of its issuance, regardless of whether or not the Citation ticket was accepted.
 2. Failure of the establishment or public conveyance to pay the fine indicated in a citation ticket within ten (10) calendar days of its issuance, regardless of whether or not the citation ticket was accepted.
The suspension shall be lifted upon proof of compliance with the cease-and-desist order or payment of fine stated in the citation ticket.
 3. Community Service. If a violator is unable to pay the fines imposed, he or she may choose to render community service to the municipality, in the following manners:
First offense – 8 hours of community service
Second offense – 16 hours of community service
Third offense and succeeding offenses – 24 hours of community service
- a) If the violator wants community service instead of a fine during the first offense, he/she shall render it to the barangay where the violation is committed.
- b) If the violator fails to render the community service without justifiable reasons, he/she shall be prosecuted in accordance with this ordinance.

For violators in the case of minors, the parents or guardian shall be held liable for the violation committed.

SECTION XII. SMOKE – FREE ENFORCEMENT TASK FORCE. The Task Force shall be composed of the following:

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| Chairperson | - Local Chief Executive |
| Co – chairperson | - Chief of PNP, Magsaysay Station |
| Vice chairperson | - Municipal Health Officer |
| Co – vice Chairperson | - MENRO |
| Members | - SB Member, Chairperson – Committee on Health |
- Municipal Engineer
 - Municipal Planning & Development Officer
 - Sanitary Inspector
 - President of the BHWs
 - HRM Officer
 - Municipal Treasurer
 - MSWD Officer
 - Health Education Team
 - Punong Barangays of the 22 Barangays
 - Principal or School Head of all Secondary Institutions
 - District Supervisor of the DepEd
 - Principal or School Head of all Elementary Schools

SECTION XIII. CITATION TICKETS SYSTEM

The Citation Ticket shall be issued by the apprehending officer and/or enforcers to violators of any of the provisions of this ordinance. The Citation Ticket shall state, among others the name of the violator and the specific address, the name apprehending officer and/or enforcer and their signatures, the nature of the offense, the provision of the ordinance violated, the date and time the violations were committed and the corresponding administrative penalty. There shall be three (3) copies of the citation ticket. First copy shall be endorsed to the Municipal Treasurer, the second copy to the violator and the third copy shall be retained by the apprehending enforcer.

SECTION XIV. PENAL PROVISIONS

- a) Unless otherwise provided in any section in this ordinance, any person who shall violate, refuse, omit, or neglect to comply with any of the rules and regulations promulgated under this ordinance shall be guilty of misdemeanor and shall be punished by imprisonment of not exceeding sixty (60) days and a fine of One Thousand (Php 1,000.00) Pesos.
- b) Any person who shall interfere with or hinder, or oppose any officer, agent of the municipal government authority, anti – smoking task force team in performance of their duty as such under this ordinance or destroy, displace, or tear down mutilate, deface or alter any notice, regarding the anti – smoking Ordinance shall be guilty of misdemeanor and shall be punished by imprisonment of not exceeding sixty (60) days and a fine of One thousand (Php 1,000.00) Pesos.

- c) Officers and Employees in all officers of the government within the territorial jurisdiction of this municipality who violate any of the provisions of this Ordinance shall likewise be charged for violation of reasonable office rules and regulations under the Omnibus Rules of Book V of Executive Order 292 and among other application offences therein.

SECTION XV. NO CONTEST PROVISION

Persons liable mentioned in this Ordinance who is apprehended or cited for violation and who does not wish to contest the violation and is willing to pay voluntarily the administrative penalty imposed upon him/her prior to the filing of formal charges with the proper court shall be allowed to pay an Administrative Penalty as provided for in this Ordinance to avoid being criminally prosecuted in court. The no contest provision can only be availed once and all proceeds from payment of the herein penalty imposed shall accrue to the Municipal's General Fund.

Smoking cessation counseling in the Municipal Health Center, barangay health center and duly accredited clinics is required after the penalty has been paid. The smoking cessation counselor shall attest the violator had undergone counseling form. After complying with the said requirements, the violator shall return the citation ticket to the Police Station or to the Anti – Smoking Task Force if the deputized enforcer is not a member of the Magsaysay Police Office.

SECTION XVI. SHARING OF PROCEEDS

- a) If the violator commits the offenses in any of the barangays of the Municipality of Magsaysay and was apprehended by the barangay authorities concerned, 30% shall go to the Municipal Government and the 20% of the fine shall go to the enforcer or to the one reported the violation.
- b) The fine shall be paid exclusively to the

SECTION XVII. SEPARABILITY CLAUSE. In the event that any section, paragraph, sentence, clauses and word of this ordinance is declared invalid by court for any reason, other provisions thereof shall not effect or invalidate portions of this ordinance.

SECTION XVIII. EFFECTIVITY. This Ordinance shall take effect upon approval.

ENACTED this 19th of June, 2017 at Magsaysay, Davao del Sur, Philippines

Certified Correct:

DANILO M. OMAGTANG
Secretary to the Sangguninan

Attested:

DONNABEL JOY P. FEROLINO - MEJIA
(Municipal Vice Mayor)
Presiding Officer

Approved:

ARTHUR D. DAVIN, CE
Municipal Mayor

Date: _____