

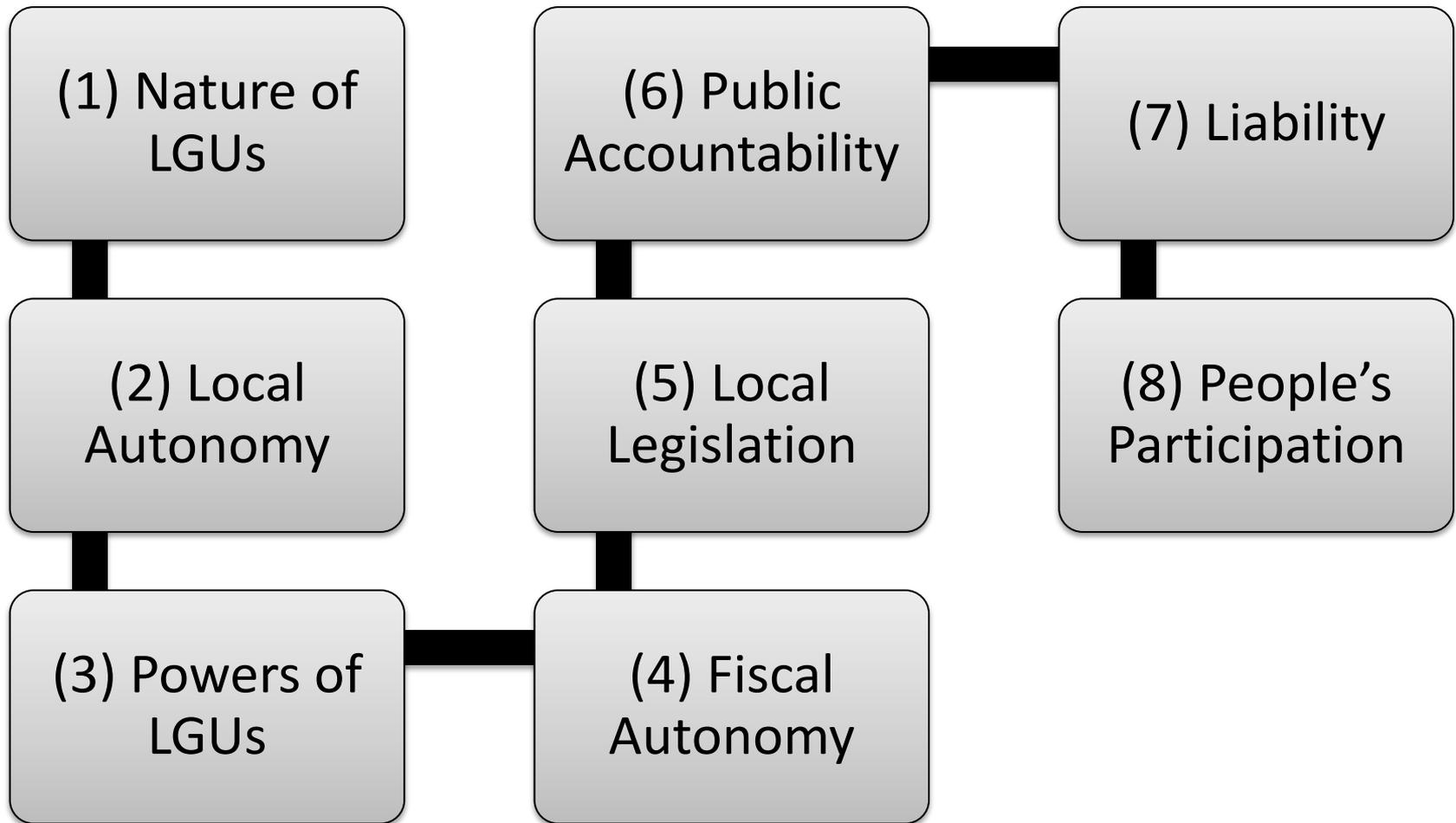
*2016, 2017, 2018, 2019, 2020 and 2021 cases*

# **Reviewer on Local Government Law**

**Alberto C. Agra**

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# Flow



# 1. Nature of LGUs

- LGUs are **Territorial and Political Subdivisions** (of 1 unit), **Public Corporations, Municipal Corporation Proper, Administrative Agencies and Public Offices**
- “Ours is still a **unitary form** of government, not a federal state.” LGUs no claim against the State.
- **Not “*Imperium in Imperio*,”** not Independent Sub-National Units
- **“Not impenetrable states”**; under **supervision** of President and may be held **accountable**; President has general supervision over provinces, HUCs, and independent component cities
- **5 Levels/ Kinds** (Autonomous Regions [only BARMM incorporated], Provinces, Cities [CC, ICC and **HUCs (not under provincial oversight)**], Municipalities and Barangays)

# 1. Nature of LGUs

- **LGU Dual Capacities:** Governmental/ Public (e.g. repair of municipal roads, **issuance of business permits**) and Proprietary/ Private (e.g. waterworks, cemetery, markets) *[distinction relevant: for delegation purposes]*
- **Dual Agency:** LGUs as Agents of the State (in exercise of government powers) and People/Community (in exercise of proprietary powers)
- **Territorial:** **Land area, not maritime area; delimited by law, not by exercise of jurisdiction**
- **Sources of Powers:** Constitution, Law and Charter (No inherent, but have broad, powers; not self-government)
- Legislative, not constitutional, **Separation of Powers**
- **Corporate Succession** (Contractual Obligations); cannot be rescinded unilaterally by next Administration



No. 12  
08.17.22

# Formula for a Valid *No Contact* *Apprehension City* Joint Venture

<b>Authority over Traffic</b>	Under the 1991 Local Government Code (LGC), cities regulate traffic, protect and promote the general welfare, and deliver devolved services such as infrastructure for traffic signals/ control.
<b>Legal Basis for JV</b>	Joint Venture (JV) City Ordinance or a Public-Private Partnership City Ordinance providing for JVs. The 1991 LGC authorizes LGUs to enter into JVs.
<b>JV Defined</b>	A JV is a contractual joint undertaking/ sharing or pooling of resources by way of contributions (cash and/or non-cash) and responsibilities between the City and Private Sector Proponent (PSP)/ JV Partner for a fixed term where parties share in the functions, profits, risks and losses.
<b>Possible Contributions</b>	<i>City:</i> Grants franchise/ concession, assigns personnel, extends assistance, allows use of office space and property, waives taxes/ fees, and undertakes to secure regulatory approval and permits <i>PSP:</i> Provides funding; supplies, installs, operates, repairs, upgrades and maintains equipment
<b>Revenue Share</b>	Based on contributions. City (<50%) should be entitled to a share higher than its contribution.
<b>PSP Selection</b>	Competitive Selection (solicitation/ bidding) or Competitive Challenge (unsolicited proposal)
<b>Fixing of Fines</b>	This power is with the City. Being governmental/ public in nature, it cannot be delegated to/ shared with the PSP/ JV Partner. Fine ≤ Php 5,000 as fixed in a City Ordinance.
<b>Citations</b>	The decision on and issuance of citations, and imposition and collection of fines are governmental/ public functions and cannot be delegated or shared with the PSP/ JV Partner.

# 1. Nature of LGUs: Creation

- **Legislative Act:** Charter (Not by Executive Branch but becomes de jure if State-recognized and No Judicial Dissolution; **President can merge administrative regions**); congressional, not executive, authority to set requirements for specific levels of LGUs other than what is stated in LGC
- **Criteria:** Population, Land Area (**includes DENR-managed forestlands**) and (or) Income (internal [if M to CC] or external); **liberal construction**
- **Distinct Personality:** Municipality when converted to a City
- Failure to identify **Seat of Government** not fatal
- **Plebiscite** (electorate - plurality and economic dislocation; directly affected; upgrade and downgrade; boundary disputes prejudicial question; plebiscite protest cases – Comelec; **conversion to HUC is substantial alteration of boundaries**; substantial alteration requires a plebiscite without which, area remains with the Republic)
- **Assail Existence:** Quo Warranto (5 years)

# 1. Nature of LGUs

<b><i>P/C/M/B</i></b>	<b><i>BARMM</i></b>	<b><i>CAR</i></b>	<b><i>MMDA</i></b>
AA; LGU	AA; LGU	AA	AA
Admin Autonomy	Political Autonomy	Not Enjoy Autonomy	Not Enjoy Autonomy
Police & Legislative Power	Police & Legislative Power	No Police Power; No Legislative	No Police Power; No Legislative
Presidential Supervision	Presidential Supervision	Presidential Control	Presidential Control
Amend by Law	Amend by Law + Plebiscite	Amend by Pres./ Law	Amend by Law

## 2. Local Autonomy

- “means a **more responsive** and **accountable** local government structure instituted through a system of **decentralization**” (relates to dual capacity/ agency)
- “does **not** contemplate making **mini-states** out of LGUs”
- “LGUs xxx form **part of the whole**” (unitary)
- “**Regional autonomy** is the degree of self-determination exercised by the LGU vis-à-vis the central government.”
- “**Autonomy** is either decentralization of administration or decentralization of power.”
- “Decentralization comes in two forms: **deconcentration and devolution.**”
- “Decentralization simply means the **devolution of national administration**, not power, to LGUs.”



No. 10  
06.20.22

# 2 Views on Local Autonomy:

## Centralist and Liberalist

### Centralist View of Local Autonomy

**LGUs can only exercise those powers:**

1. Expressly given/ delegated to them,
2. Necessarily implied from expressed powers,
3. Incidental to expressed powers,
4. Consistent with the Constitution, Laws and LGU Charters, and
5. Consistent with Rules, Policies & Directives issued by National Agencies.

- “Cut-and-paste” and nothing else
- What is not given is withheld
- Restricted and limited

### Liberalist View of Local Autonomy

**LGUs can exercise those powers:**

1. Expressly given/ delegated to them,
2. Necessarily implied from expressed powers,
3. Incidental to expressed powers, and
4. Not inconsistent with the Constitution, Laws and LGU Charters.

- For as long as not prohibited by law & it will serve the general welfare, allowed.
- Broad and enhanced

# 2. Local Autonomy

<b><i>Decentralization of Administration</i></b>	<b><i>Decentralization of Power</i></b>
Delegation of Administrative Powers – Regulatory Powers and Basic Services	Abdication of Political Power
Relieves State from Burden of Managing Local Affairs	Free to Chart own Destiny
Executive Supervision	Executive Supervision Minimal State Intervention
Accountability to Central Government	Accountability to the Constituency; Self-Immolation
Provinces, Cities, Municipalities and Barangays	Autonomous Regions

## 2. Local Autonomy

<b><i>Administrative Decentralization</i></b>	<b><i>Political Decentralization</i></b>
Deconcentration	Devolution
Transfer of Functions: National to Regional	Transfer of Powers: Central to LGUs
Administrative	Powers, Responsibilities and Resources
LGC: Section 528	LGC: Section 17

# 2. Devolution

## Components:

1. Delivery of Basic Services
2. Exercise of Regulatory Powers
3. Personnel
4. Assets, Equipment and Property
  - Administrative autonomy involves devolution subject to limitations – national policies, standards and laws
  - Exempted from devolution are nationally-funded projects, facilities and programs.

- Devolution is **power-specific**. Only those powers enumerated by law are transferred to LGUs. Those not expressly transferred are retained by the NGAs/AAs.
- **Political Question/** Congressional Plenary Power (devolved and to recentralize)
- **Source:** 1991 LGC and other laws
- **Full devolution** due to National Tax Allotment (EO 138-2021)

## 2. Devolution

### Basic Services

- School Buildings (DEPED)
- Hospitals (DOH), *not national hospitals*
- Socialized Housing (NHA)
- Agricultural Extension (DA)
- Day-care Centers (DSWD)
- Community-based Forestry Projects (DENR)

### Regulatory Powers

- Approval of Subdivision Plans (HLURB), *not of national significance*
- Inspection to check compliance with noise standards (Nat'l Pollution Control Comm.)
- Enforcement of Environmental Laws (DENR), *not regulation of pesticides, (Fertilizer and Pesticide Authority)*
- Franchising of Tricycles (LTFRB), *not PUBs/ PUJs, not LTO*
- Inspection of Meat Products (DA)
- *Not franchise for cable TV operations (NTC)*
- *Not control and regulation of the use of ground water (NWRB)*
- Enforcement of National Building Code (DPWH) *(impose stricter requirements under police power)*

## 2. Local Autonomy

<i>Areas</i>	<i>Delegation</i>	<i>Devolution</i>
<i>What is transferred?</i>	State Powers	Power of NGA
<i>Basis of Transfer</i>	Law; Congress	Congress (or President)
<i>Effectivity of Transfer</i>	Immediate; law effectivity	NGA facilitates actual transfer
<i>Examples</i>	Police Power, Tax, Expro, Local Legis	DSWD; DENR; HLURB; LTFRB

# 2. Local Autonomy

- **Congress retains control** of the local government units although in significantly reduced degree
- The Constitution confines the President's power over the LGUs to one of **general supervision**. This provision has been interpreted to exclude the power of control.
- cannot be **“blunted by undue interference by the national government in purely local affairs”** (PDAF)
- The President can only interfere in the **affairs** and activities of a local government unit if he or she finds that the latter has acted contrary to law; **DILG can require full disclosure of budgets and expenses of IRA since required by law**
- “The matter being peculiarly **local in nature**, the municipal council alone is in a better position xxx” (Principle of Subsidiarity); **superior competence** in local matters; **purely local affairs best resolved by the officials and inhabitants of such political units; especially if so authorized by law, and no law is violated and when LGU has discretion as in zoning regulations (“photobomber” building)**

# 2. Local Autonomy

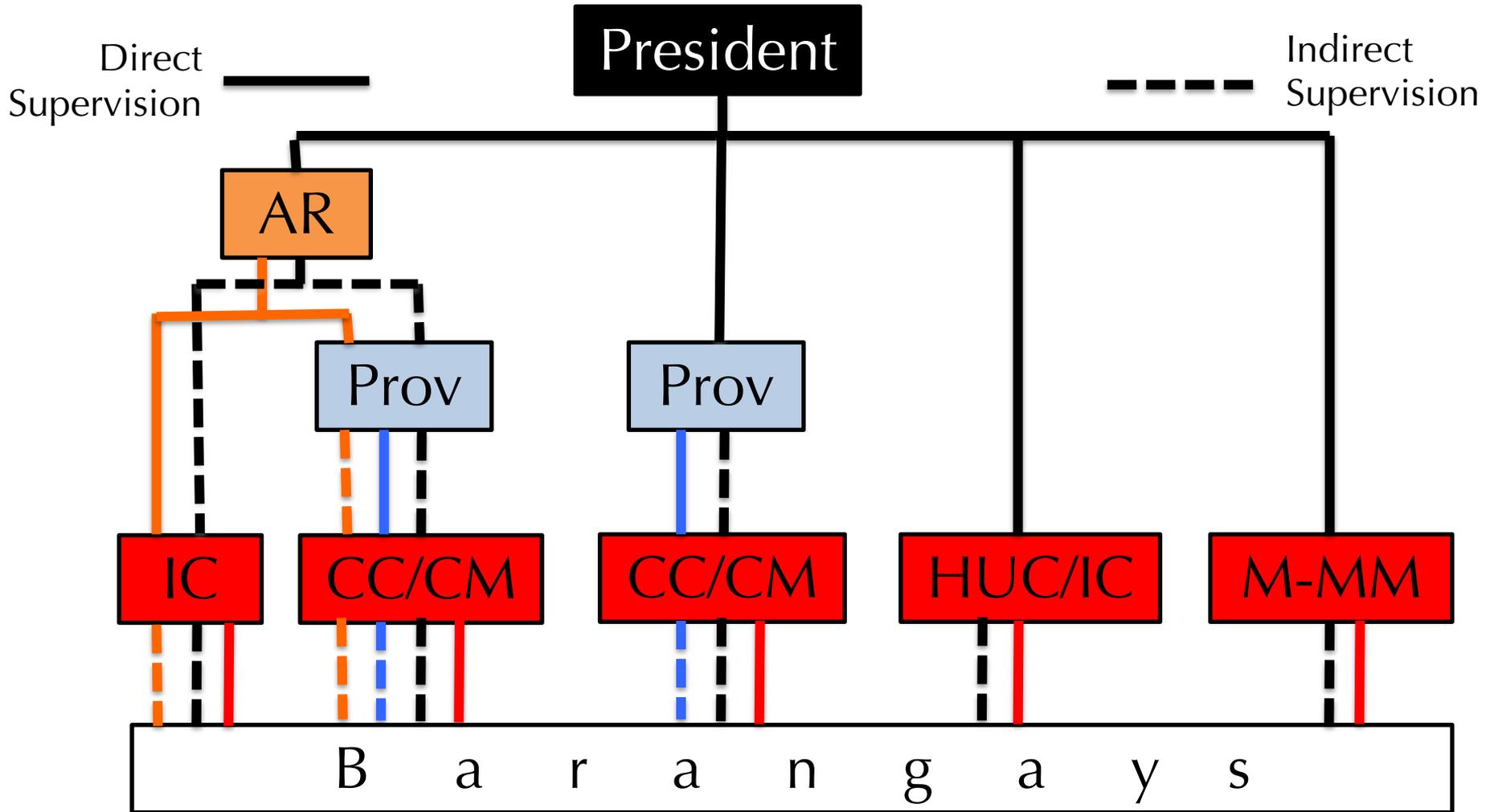
## *Supervision*

- Overseeing
- Ensure that supervised unit follows law/ rules
- Allows interference if supervised unit acted contrary to law
- Over actor (discipline) and act (declare illegal)
- There must be a law, otherwise, control/ undue delegation/ violate local autonomy (Yes - DOJ, DBM; None - OP, DILG, DENR)
- Only involves questions of law (i.e., declare act legal or illegal/ ultra vires), not wisdom/ questions of fact; cannot declare acts against general welfare, excessive, confiscatory

## *Control*

- Lays down rules in doing of an act
- Impose limitations when there is none imposed by law
- Preempts action/ discretion
- Decide for subordinate
- Change decision
- Alter wisdom, law-conforming judgment or exercise of discretion
- Discretion to order act undone or re-done
- Prescribe manner by which act is done

# Hierarchy/ Relationship



# 2. Local Autonomy

## *Executive Supervision*

1. Review of Executive Orders and Ordinances (i.e., can declare illegal)
2. Disciplinary Action
3. Preventive Suspension
4. Integration of Plans/ Zoning
5. Boundary Disputes (city or municipality, not RTC at 1<sup>st</sup> instance, over inter-barangay disputes, appeal to RTC; consider interpretation of population and maps)
6. Approves Leaves/ Resignation
7. Fills up vacancies in council
8. Augmentation of Basic Services

## *Legislative Control*

1. Structure
2. Elective and Appointive Officials
3. Totality of Powers
4. Qualifications
5. Manner of Selection
6. Taxes
7. Nat'l Tax Allotment/ Nat'l Wealth
8. Creation
9. Public Land, either public or private (plaza cannot be converted to a commercial center); owned in its governmental capacity; if no proof that LG corporate funds used; alienable and disposable land can be established by any positive act of Government other than a presidential proclamation

# SK Reform Act of 2015 (2022)

SK:

- SK Officials not related to national and local elective officials
- Develop programs such as student stipends, food, and book and transportation to prevent incidence of out of youth; sports and wellness projects; skills training, summer employment, on-the-job employment, and livelihood assistance; promotion of agriculture, fishery, and forestry enterprises; environment protection; capacity building for grassroots organizations; and program to address “context-specific and intersectional vulnerabilities
- Formulate Comprehensive Barangay Youth Development Plan
- Comply with the government’s accounting and auditing rules and regulations set by the DBM and COA
- Adopt internal rules and procedures
- Set the schedule of their regular meetings

## 2. Local Autonomy

- “Paradoxically, local governments are still subject to regulation, however limited, for the purpose of enhancing **self-government.**”
- National concern “cannot be subjected to **fragmented concepts** of management policies where xxx local government units exercise exclusive dominion over specific portions xxx” (National Dimension Rule; Integration/Centralization)
- “The Local Government Code xxx directs executive officials and employees of the municipality to **faithfully discharge** their duties and functions as provided by law.”
- Grants LGUs power to reorganize and streamline bureaucracy, adopt organization development program
- LGU no power over program funded under GAA even if it involves delivery of basic services in LGU

# 2. Local Autonomy

*In favor of NGA/GOCC/GI if:*

- Integration
- Centralization
- Avoid fragmentation
- Preemption allowed
- National/ Broader Interest
- Mandate exclusive under Charter/ law
- Implied repeals not favored
- Instrumentalities of the State
- National or cross-boundary concerns are best addressed by NGAs/ GOCCs

***National Dimension Rule***

*Main/ Default Rule:  
Follow law.*

*In favor of LGU if:*

- Local autonomy
- Local concern/ issue
- ‘Isolated’ issue
- General Welfare
- No law will be violated
- As agents of communities
- Amounted to executive control
- Express repeal; Conclusive implied repeal
- Rules of interpretation
- Beyond powers of NGA/ GOCC
- Local concerns are best addressed by LGUs (Principles of Subsidiarity and Stewardship)

***Local/ Municipal Dimension Rule***

# 2. Local Autonomy: Conflict Resolution

## *LGU Triumphed vs.*

- **DENR (ordinance)**
- **DBM (allowance, budget officer)**
- COA (RATA)
- DENR (oil depots)
- **DOJ (tax ordinance)**
- **Regulate telecoms tower (NTC)**
- Higher LGU (review)
- **DAR (reclassify, expropriation)**
- **DILG (barangay liga)**
- OP (IRA)
- DOF (RPC/ LGC)
- BOI (6-year exemption)
- **MMDA (subdivision, driver's licenses, dumpsite; terminals; review ordinances)**
- NAPOCOR (voltage cables)
- DSWD (devolved personnel)
- Congress (IRA, amend Organic Act)
- **Province relative to HUC (rotating appointment for water districts)**
- **Zoning/ "Photobomber" building**

## *National Victorious vs. LGUs*

- DENR (forestry laws)
- **LTO/ LTFRB (licensing)**
- HLURB (national projects)
- COA (additional allowance)
- **NTC (cable TV franchise)**
- DAR (conversion)
- GAB (jai alai frontons)
- **LLDA (fishpens, dumpsite)**
- BCDA (creation of Zone)
- PAGCOR (casinos)
- **PCSO (lotto outlets)**
- **PRC (profession)**
- **MMDA (number coding-scheme for buses is within rule-making authority)**
- LWUA (water districts)
- DPWH (city engineer)
- CSC (dismissal)
- OP (discipline)
- Congress (jai alai franchise)



# 2 Views in Resolving Conflicts: Wearing Face Masks

## **View 1:**

**In favor of IATF/ DOH**  
***Mandatory Wearing of***  
***Face Masks in Public***

1. Pandemic is National, not Local.
2. National Government prevails in this case.
3. IATF and DOH have centralized powers.
4. Local autonomy of LGUs has limits.
5. LGUs must follow national policies.

## **View 2:**

**In favor of LGUs (Cebu Province)**  
***Optional Wearing of***  
***Face Masks in Public***

1. LGUs are frontliners.
2. LGUs are in a better position to assess local situations.
3. LGUs enjoy local autonomy.
4. LGUs promote the General Welfare.
5. No law requiring wearing of face masks.
6. The National Government, absent a law, cannot limit the powers of LGUs.

# 2.1 Bayanihan Act

## NG-Defined

LGUs are directed to:

- Act within the letter and spirit of all the rules, regulations and directives by the NG
- Implement standards of CQ consistent with what the NG has laid down for the subject area

## Undefined by NG

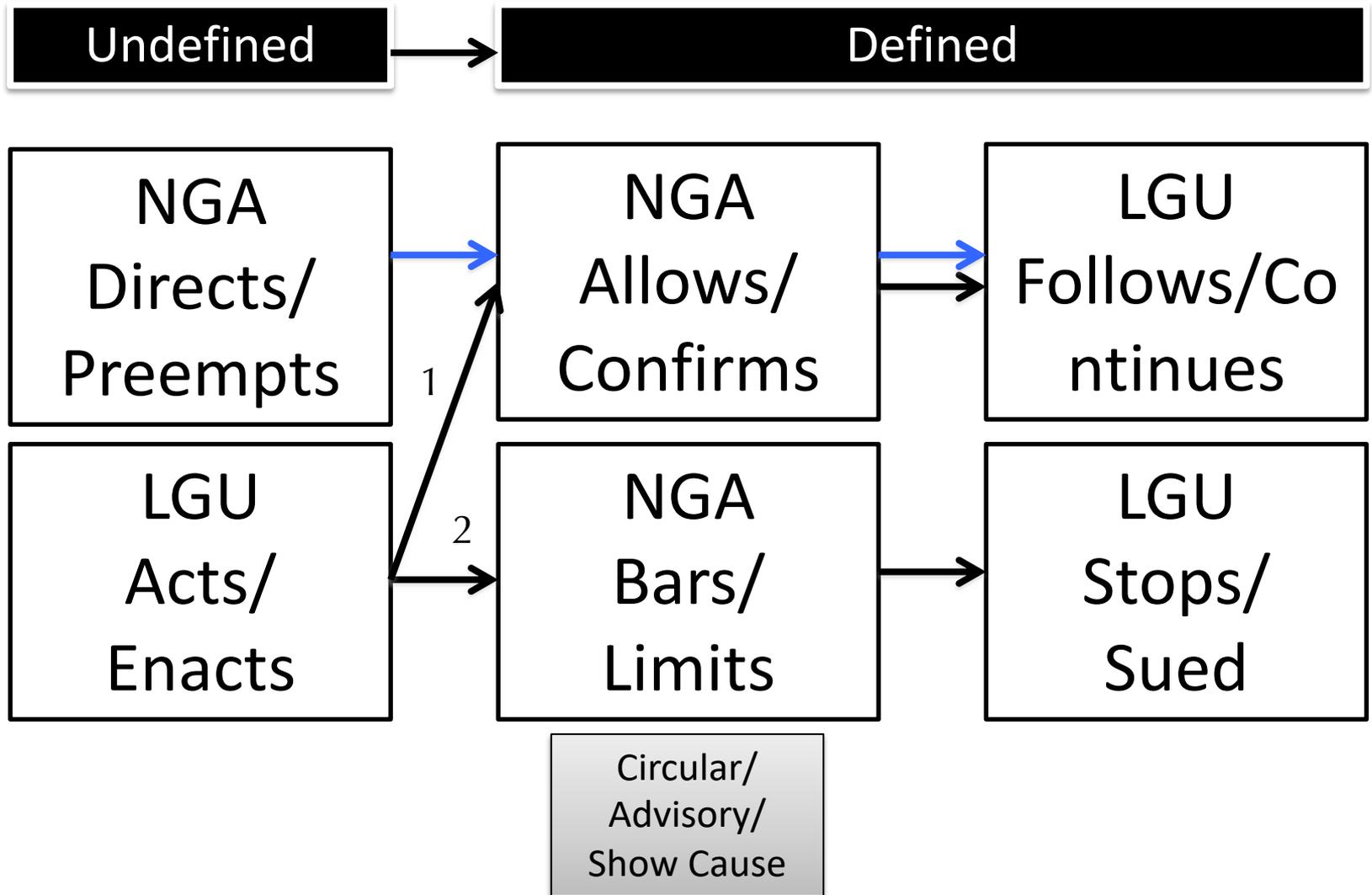
LGUs shall exercise local autonomy, provided, that they:

- Act within the parameters NG has set, and
- Fully cooperate towards a unified, cohesive and orderly implementation of the national policy to address COVID-19.

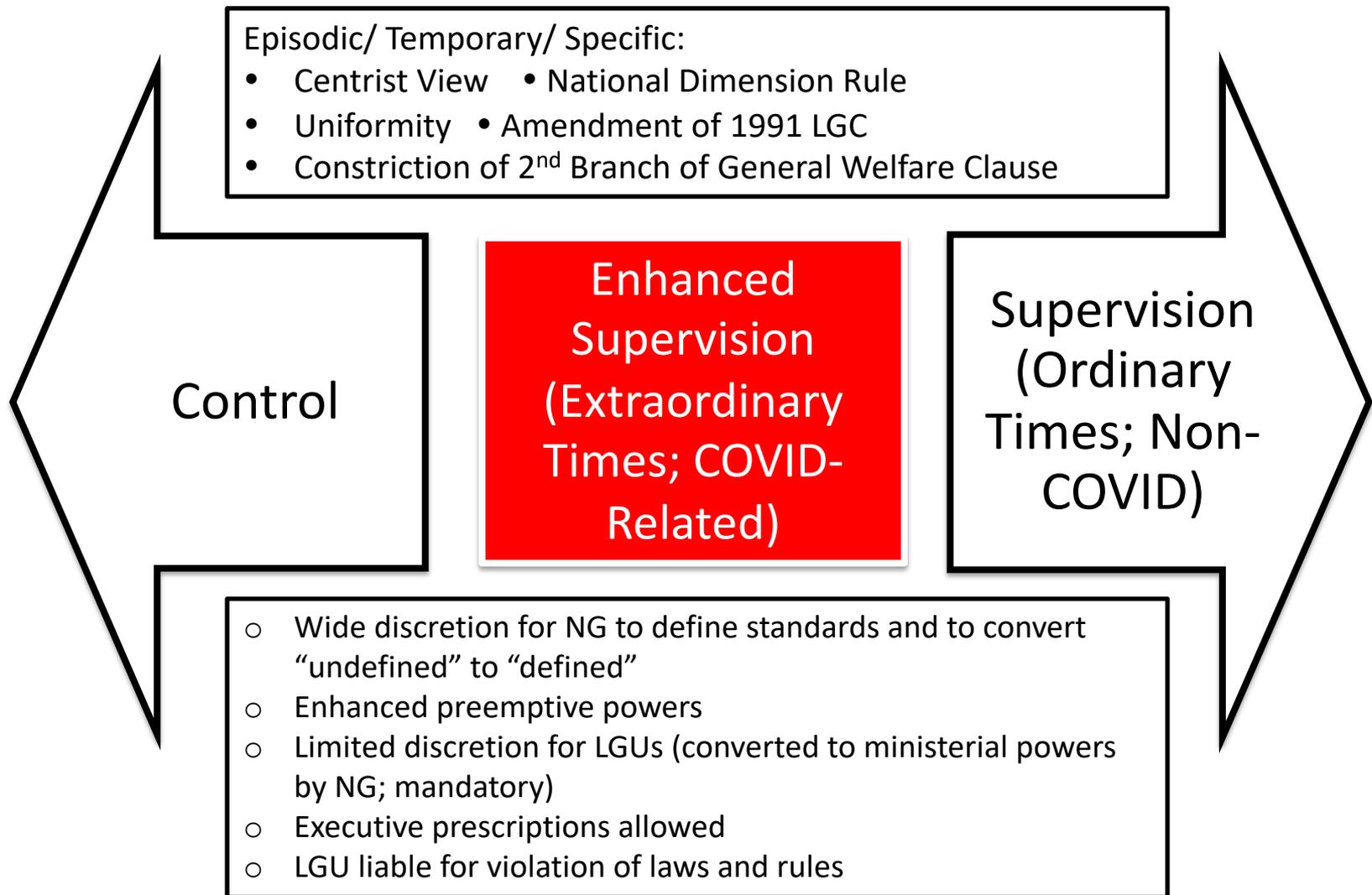
Regardless:

- Non-impairment of Local Autonomy
- Bayanihan Act and Exercise of Powers Listed vs. Other Laws (e.g. 1991 Local Government Code) and Rules, former prevails
- LGU officials must follow quarantine policies and directives, otherwise, penalized
- Only under Bayanihan Act/ COVID-19-related (not all aspects of local governance)

# 2.1 Undefined to Defined



# 2.1 Administrative Relationship



# Amendments to 1991 LGC+

## Regulation

- Bayanihan Act vs. 1991 LGC, former prevails
- Limitations on 2<sup>nd</sup> Branch of General Welfare Clause
  - Quarantine/ Lockdown
  - Closure of Establishments
  - Curfew
  - Coding for Transport
- Regulation of Tricycles
- Ban on Cockfighting
- Traffic Management

## Funds/ Budgeting

- Rescheduling of Local Tax Payments with no penalty
- Expansion of usages for 20% Development Fund
- Mid-Year Realignment of Unexpended Appropriation
- AIP post-release of funds
- Inclusion of COVID-19 related items in budget
- Increase in Calamity Fund
- Relaxed Procurement
- Increase amount of Payment in Advance

# 3. Powers of LGUs

- LGUs not possess **inherent powers** but have **broad powers** because of local autonomy
- LGUs have constitutional and statutory **powers**
- Powers **interpreted** in favor of LGUs (local autonomy; fiscal autonomy; local over national; lower over higher)
- **Liberal** (devolution, fiscal autonomy) and **strict** (**police power**, taxation and **eminent domain**) interpretation

# 3.1 Police Power

- **Delegated** to all LGUs
- **Basis:** *General Welfare Clause* is “the delegation in statutory form of the police power of the State to LGUs”
- **Reason for Delegation:** Dual Agency
- **Hierarchy:** The general welfare in terms of economic benefits cannot override the very basic rights to life, security and safety of the people
- **Breadth:** not over- (greater burden than necessary) or under-inclusiveness (ban on aerial spraying since the occurrence of pesticide drift results from any mode of pesticide application)

# 3.1 Police Power

- **2 Requisites:** (1) Lawful Subject (equal protection; public interest requires interference) *and* (2) Lawful Method (due process; reasonable means to achieve purpose)
- **2 Tests:** Rational Relationship (governmental interest and means) *and* Strict Scrutiny (compelling, not just substantial (2016) – e.g. juvenile safety in curfew)
- **Precautionary principle:** relevant if there is concurrence of three elements, namely: (scientific) 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; application against aerial spraying cannot be solely based on a fact-finding study which is not a scientific study (not meant to apply to all environmental cases)
- **2 Branches:** General Legislative (e.g. abate nuisance, business permit) and Police Power Proper (e.g. issue cease and desist orders)

# 3.1 Police Power

## *Cannot be Done*

1. Prohibit setting up of PCSO lotto outlets
2. Regulate Jai Alai frontons
3. Regulate professions regulated by PRC
4. Operate dumpsites in violation of environmental standards
5. Issue drivers' licenses
6. Register motor vehicles
7. Regulate or Tax jueteng
8. Prohibit the operation or establishment of massage parlors, beerhouses, motels, etc. in a certain area/ road or require conversion to other businesses without just compensation

# 3.1 Police Power

9. Order the closure of a bank not performing illegal activities for non-payment of taxes
10. Padlocking of an establishment without according owner due process
11. Allow 3 cockpits
12. Declare a bus terminal a nuisance per se and order its closure
13. Declare a thing a nuisance per accidens
14. Demolition of a building without court order
15. Declare a gas station as nuisance per se
16. Ban Rallies
17. Lease of public plaza
18. Wanton denial of issuance of mayor's permit

# 3.1 Police Power

19. Mayor not remove oil terminals per ordinance
20. Mayor not release funds when appropriations approved
21. 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
22. Mayor ordering demolition of structures violating National Building Code (Building Official is the one authorized)
23. Order the summary demolition or eviction if it was not shown that the structures are in danger areas or public areas; or when the occupants are neither new squatters nor professional squatters nor members of squatting syndicates as defined in RA No. 7279
24. Order a donation of delineated road without just compensation
25. Demand compliance within an unreasonable period under pain of penalty

# 3.1 Police Power

## *Can be done*

1. Issue a zoning ordinance
2. Prohibit the expansion of a hospital based on the approved a new zoning ordinance
3. Restrict the use of property since contractual restrictions on the use of property could not prevail over the reasonable exercise of police power
4. Declare a thing a nuisance per se
5. Demolish a hotel declared as a nuisance per accidens since property rights can be subject to restraints in order to fulfill objectives of government
6. Order stoppage quarrying operations when operator has not secured provincial permit

# 3.1 Police Power

7. Privatize the administration of parking for environmental and peace and safety reasons
8. Punong barangay can issue barangay protective order (Anti-Violence against Women and Children)
9. Purchase the property on behalf of the city (by the City Treasurer), in the absence of the public in the public bidding
10. 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

# 3.1 Police Power

11. 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
12. Redeem property for tax deficiency notwithstanding fraud committed by officers
13. Supervise and control the collection of garbage

# 3.1 Police Power

14. Impose **curfew** on minors since there is (1) compelling reason to promote juvenile safety and prevent juvenile crime (strict scrutiny test) and complement parental supervision (*parens patriae*); however, it must (2) 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 (3) narrowly drawn to achieve the State's purpose [school, church, legitimate non-school or non-church and civic activities, political rallies, peaceful assemblies])
15. 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
16. Impose **stricter limitations** for the construction and regulation of billboards since the National Building Code only imposes minimum requirements; police power of the City originates from its charter and not from the National Building Code

## 3.2 Eminent Domain

- **Definition:** Taking of Private Property (or LG property held in its proprietary capacity) for a Public Purpose upon payment of Just Compensation
- **Compared to Police Power:** Compensable Taking (can be used after taking/ post-taking benefit; transfer of business; portion of cemetery for indigent and declaring a privately-owned road as public road - ED; zoning - PP)
- Not Inherent; Delegated; **‘Inferior’ Domain**
- **Limitations:** Observance of due process and Payment of just compensation (strict construction)
- **Foundation:** genuine public necessity (not present when others willing to sell; nearby facilities available)
- **Enabling Measure:** Ordinance (Not Resolution)

## 3.2 Eminent Domain

- **LGU Branch:** **Essentially Legislative** but also Executive (filing of expropriation case)
- **Reason** stated in Ordinance
- **Public Purpose** is a continuing requirement
- Sequence: Ordinance **before** Expropriation case
- **RTC** has jurisdiction (incapable of pecuniary estimation)
- Valid and definite **offer** (not just meeting to discuss project and price)
- Comply with Constitution and **Statutes** (e.g. UDHA where private land last option, **follow order of priority**)
- **Immediate Entry:** **Sufficiency in Form and Substance and Provisional Deposit**; Determination of public purpose in a hearing not required
- **Prompt payment** required

## 3.2 Eminent Domain

- **Role of Higher-Reviewing LGU:** Question of Law - Within Scope, Followed Law and Procedure (Not Choice of Property)
- **Role of Courts (RTC):** Necessity, Choice of Property, **Just Compensation**, Requirements, Compel Execution/ Payment
- **Role of NGAs:** DA/ DAR approval not required (agricultural land)

# 3.2 Eminent Domain

<b><i>Eminent Domain</i></b>	<b><i>Zoning</i></b>	<b><i>Reclassify</i></b>	<b><i>Conversion</i></b>
Taking	Police Power	Administrativ	Administrativ
Change of Owner	No Change	No Change	No Change
Any Land	Any Land	Agri to Non-Agri	Agri to Non-Agri
Change in Use of Land	No Actual Change	No Actual Change	Change in Use of Land
All LGUs	(P)/C/M	C/M	DAR

# 4.1 Fiscal Autonomy

- Fiscal autonomy is a **constitutional mandate implied** from Sections 2 and 5, Article X
- “**Local autonomy** includes both administrative and fiscal autonomy.”
- “**Fiscal autonomy** means that local governments have the 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 power to *allocate* their resources in accordance with their own priorities.”
- “It extends to the preparation of their *budgets*, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not.”
- Fiscal autonomy does **not** leave LGUs with **unbridled discretion** in the disbursement of public funds. They remain accountable to their **constituency**; City has **fiscal responsibility** to ensure that barangay funds would not be released to a person without proper authority

# 4.1 Fiscal Autonomy

- “The only way to shatter this culture of dependence is to give the LGUs a wider role in the delivery of basic services, and confer them **sufficient powers to generate their own sources** for the purpose.” (no local autonomy without fiscal autonomy and vice-versa)
- The fundamental principles in local fiscal administration state that no money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law, and that funds and monies shall be spent solely for public purposes
- “The important legal effect of Section 5 (of Article X of the 1987 Constitution) is that henceforth, in **interpreting statutory provisions** on municipal fiscal powers, doubts will have to be resolved in favor of municipal corporations.”
- **NGA** cannot impose limitation when law imposes none. (allowance of judges, RATA)

## 4.2 Power to Tax

- **Nature of Grant:** Constitutional (not merely statutory); Not inherent (subject to qualified congressional control); **not absolute**; but statutory limitations must not be inconsistent with local autonomy
- **Legislative Control:** Congress must still see to it that (a) the taxpayer will not be over-burdened or saddled with multiple and unreasonable impositions; (b) each LGU 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
- **Contrasted with Regulatory Fees:** 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 (e.g. garbage fee)

## 4.2 Power to Tax

- **Object:** “Widen tax base of LGUs”
- **List:** not exclusive (e.g. socialized housing tax); even if no grant since part of residual power provided no prohibition
- **Exclusive Benefit:** shall exclusively accrue to levying LGU; Local taxes cannot be earmarked for non-LGU use
- **Taxes are LGU-specific:** municipality cannot levy franchise tax, only provinces and cities could, even if later on municipality converted into a city and even if so allowed under an administrative order
- **Lifting of Tax Exemption:** removal of the blanket exclusion of instrumentalities and agencies of the national government from the coverage of local taxation

# 4.2 Power to Tax

## Liable

- Meralco (Pre-LGC exemption lifted)
- PLDT (most favored clause is not tax exemption)
- Presidential-created EcoZones
- Since GOCC:
  - PPA
  - NPC
- LRTA (proprietary power; not generally accessible)
- Leased Properties of (beneficial use with taxable person):
  - Lung Center
  - PPA
  - UP (improvements owned by lessee)

## Exempt

- Digitel (Post-LGC exemption)
- Lung Center (charitable institution)
- Subic Ecozone (created by law)
- Since GI:
  - MWSS, unless beneficial use
  - MIAA
  - Mactan Cebu Airport
  - PFDA
  - GSIS
  - PRA
  - UP over assets it owns
- PAGCOR (governmental power)
- Public Domain Properties
  - PPA Ports
  - MIAA Airport
  - Philippine Heart Center

## 4.2 Power to Tax

- **Exemption non-transferable**
- **When cap imposed:** LGUs can levy below cap set by law since LGUs given option
- **Exceptions:** Any exception to the express prohibition under the LGC should be specific and unambiguous
- **Executive Review:** DOJ review mandatory unless pure question of law; DOJ review procedure applies to taxes, not fees

## 4.2 Power to Tax (Specific Taxes)

- **Business tax:** cannot be imposed on condominium corporations since not engaged in business; there is double taxation if same activity is taxed based on business tax on manufacturers and business tax on any other business; **LBT on banks cannot be imposed on holding companies since these are not banks; holdings company not liable since it is not a non-financial bank intermediary**
- **Double Taxation:** no double taxation when franchise tax levied by national government and local government; **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**
- **Petroleum Products:** prohibition on the imposition of tax on petroleum products includes non-imposition of excise tax on petroleum products and business tax on petroleum business
- **Socialized Housing Tax:** not confiscatory since below what the Urban Development and Housing Act allows

## 4.2 Power to Tax (Specific Taxes)

- **Garbage Fee:** excessive if covers all forms of solid waste since law only allows special classes of waste materials
- **Sand and Gravel Tax:** province can only impose on public, not private, lands
- **Cooperatives registered under Cooperative Code:** exemption from real property taxes applies regardless of whether or not the land owned is leased; exemption extends to cooperative's lessee
- **Real Property Tax:** extends to municipal waters; submarine cables are akin to electric transmission lines, hence not exempt; collection is vested in the locality where the property is situated as stated in the certificate of title until amended through proper judicial proceedings
- **Amusement Taxes:** allowed for cinemas, not golf courses; 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

# 4.3 Internal Revenue Allotment (“National Tax Allotment”)

- *Mandanas 2018*: Must include all national taxes, like custom duties, not just internal revenue taxes; the phrase “as determined by law” qualifies the phrase “just share,” not “national taxes”; no need for yearly appropriation (**scope of national taxes**)
- *Alvarez 1996*: IRA part of **income**
- *Pimentel 2000*: Withholding of IRA amounted to control and infringed on fiscal autonomy; Requirements under LGC not followed (**executive withholding**)
- *Batangas 2004*: Placement of IRA in Local Government Special Equalization Fund violative of fiscal autonomy and automatic release provision (**legislative withholding**)
- *ACORD 2005*: **Earmarking** of IRA in Unprogrammed Funds does not conform with automatic release provision; GAA cannot amend LGC since rider (**legislative withholding**)
- *CSC 2005*: ‘**No Report, No Release**’ policy runs counter to automatic release provision (**regulatory withholding**)



# Mandanas v. Ochoa

*G.R. No. 199802, July 3, 2018*

## Base of the Just Share

- Congress has exceeded its constitutional boundary by limiting to the National Internal Revenue Taxes (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.
- The phrase “as determined by law” follows and qualifies the phrase “just share,” and cannot be construed as qualifying the succeeding phrase “national taxes.”

IRA → NTA



# Mandanas v. Ochoa

*G.R. No. 199802, July 3, 2018*

## Automatic Release

- o Just share of the LGUs in the national taxes shall be released to them **without need of yearly appropriation**
- o Inclusion of the just share of the LGUs in the **annual GAAs** is unnecessary, if not superfluous

# 4.4 Other Sources of Funds

## ***Constitutional***

- Equitable Share in Utilization and Development of National Wealth (only over land area, not continental shelf; province has no share if area remains part of Republic absent a plebiscite)
- Fees and Charges
- Other Sources

## ***Statutory***

- Loans
- Grants
- Private Sector Participation
- Bonds and Debentures

# 5. Local Legislation

## *Characterization*

- Delegated Authority (by Constitution and Law)
- Subordinate Legislation (to Constitution and Law – Pass tests of constitutionality and consistency with prevailing statutes; early retirement ordinance not violate law against proliferation of supplementary retirement benefits; conformity with law is one of essential requisites for validity of municipal ordinance such as RA 10630 and PD 603 – City or municipal councils may impose curfew as may be warranted by local conditions; minors caught in violation of curfew ordinances are children at risk)
- Denominated Legislation (must follow procedures)
- Derivative Legislation (from people)
- 2 modes: through the regular legislative process or through initiative or referendum, another legislative body cannot be created

# 5. Local Legislation

## *Rebuttable Presumptions*

- Presumed Valid and Constitutional (substance): To overthrow this presumption, there must be a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative contradiction.
- Sanggunian presumed to have acted with regularity (procedure)

# 5. Local Legislation

## *Local Legislative Bodies*

- Collegial Body (in a session; verbal concurrence not enough)
- Quorum (all elected and qualified)
- Voting Requirement (Majority, exception)
- Integrity of Procedure (parole evidence, oral testimony, burden of proof)
- 1<sup>st</sup> day of Session (Internal Rules of Procedure; Other Matters)
- 3 Readings (possible 3 readings in 1 day)
- No Coercive Powers (must be delegated by law; unlike Congress)
- Tax Ordinances: Notice and Public Hearing
- On Contracts: Prior authorization (ratification); not filing of cases (except when required by law, e.g., eminent domain)
- Penalties: when law only allows for regulation (curfew) and prohibits imposition of penalties, ordinance cannot provide for fine, imprisonment, loss of property, right or privilege, and reprimand, but community-based programs such as community service and admonition permissible

# 5. Local Legislation

<b><i>Ordinances</i></b>	<b><i>Resolutions</i></b>
Equivalent to Law	Expression of Sentiment or Opinion
Public or Governmental	Private or Proprietary
More or Less Permanent	Temporary
GR: undergo 3 readings	GR: undergo 2 readings
All subject to Veto and Review	Only Some subject to Veto and Review

# 5. Local Legislation

## *Why Distinguish?*

- Legality (expropriation; reclassification; approval of terms of loan [amended in 2015])
- Applicable Procedure (veto and review)
  - Ordinances subject to review, published and posted (loan obligation)
  - Authority to sign contract in resolution form but the terms of loan obligations must be authorized in an ordinance (amended in 2015)

# 5. Local Legislation

**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; must have factual basis; ordinances should be read and implemented with related statutory law)

**Tests of Valid Ordinance:** Ordinances must **NOT**:

- contravene Constitution
- be inconsistent with Statutes
- discriminate
- be unreasonable
- be contrary to public policy
- prohibit trade

# 5. Local Legislation

## *Operative Fact*

- “void legislative act xxx” (grant of cable TV franchise) does “not confer any right nor vest any privilege to xxx”
- An ultra vires ordinance is null and void and produces no legal effect from its inception if the basis of the ordinance is a void provision of a Memorandum Order
- 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

# 5. Local Legislation

<b><i>Veto</i></b>	<b><i>Review</i></b>
<b>Intra-LGU</b>	<b>Inter-LGU</b>
<b>Local Chief Executive</b>	<b>Higher Sanggunian</b>
<b>Ultra Vires or Prejudicial to Public Welfare</b>	<b>Ultra Vires Question of Law</b>
<b>Province: 15 days City/ Municipality: 10</b>	<b>30 days</b>
<b>Reversal by Override</b>	<b>Reversal by Judicial Action</b>

# 5. Local Legislation

Local Chief Executive	Vice-LCE/ Sanggunian
Executive; Ministerial to Implement; Veto or Approve	Legislative: Enact, Amend or Repeal
Appoint Employees of Executive Branch	Appoint Employees of Sanggunian/ Office provided Appropriation of Sanggunian
Approves Disbursement Vouchers, Payments, Sign Warrants, Purchase Orders for Operation of Executive Departments	Approves Disbursement Vouchers, Payments, Sign Warrants, Purchase Orders for Operation of Sanggunian
Appropriations: Veto; If Approved, release of Public Funds authorized, <b>authorization not in ordinance</b>	Passage of Appropriations Ordinance; <b>terms of loan obligation in ordinance (amended 2015)</b>
Cockpits: Business Permit	Enabling Ordinance: License

# 5. Local Legislation

- **Role of NGAs:** When there is a Law and only on Questions of Law (i.e. DOJ for tax ordinances [but cannot declare excessive], DBM for appropriation ordinances [not OP, DENR and DILG])
- **Role of Courts:** Declare Invalid, Illegal and Unconstitutional (declaratory relief); 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
- **Contracts:** Prior authorization (unenforceable; may be ratified – acquiescence and benefit e.g. recognition; specific and current appropriation)
- **Effectivity:** Ordinances and resolutions approving the LDPs and PIPs formulated by the LDCs of the Sangguniang Bayan or Sangguniang Panlungsod become effective after review by the Sangguniang Panlalawigan, posting on the bulletin board, and publication

# 6. Public Accountability

- **2 Levels:** Corporate and Personal
- **2 Capacities:** Governmental and Proprietary
- “**faithfully discharge** their duties and functions as provided by law”
- “**Accountable Public Officers**”
- “**Real Party in Interest**” (dismissal and appointment; LGU, not mayor, when case filed by mayor on behalf of LGU)
- Loyalty/ **1-Office Rule** (mayor cannot be GOCC/ GI head even if there is a law)
- Performance of **Constitutional and Statutory Duties** (i.e. midnight appointments not applicable to LGUs but CSC can impose restrictions, termination of barangay treasurer)
- Local chief executives have control over office orders, programs, projects, services, and activities

# 6. Public Accountability

- Subject to **Disciplinary Action** (part of Supervision; Types of Offenses – administrative and penal)
- **2 Authorities:** Disciplining and Investigation
- Enjoys **Fixed Term**; Has Term-Limit
- Subject to **Several Jurisdictions**
- Effect of **Re-Election** on cases (no condonation whether criminal or **administrative**)
- Rule on **Succession** (Acting Capacity, Ranking, Last Vacancy, 2<sup>nd</sup> placer if 1<sup>st</sup> placer not eligible on day 1; **Vice-Mayor automatically assumes powers of mayor when mayor abroad**)
- **Position, not Person:** A writ directed at the mayor is 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

# 6. Public Accountability

## *Term of Office*

- Municipality converted to a City (or barangay in municipality later converted to a city)
- 6 Conditions:
  1. Elected to the Position (councilor - even if renamed district represents 8 of 10 LGUs)
  2. Fully Served the Term (not violate when assume after winning election protest or after favorable action on petition to correct manifest error)
  3. No Actual Break (term is effectively interrupted if administratively dismissed even if subsequently modified considering official did not perform functions of office and vice-LCE assumed the position)
  4. Immediate Reelection
  5. Regular Elections
  6. Involuntary
  7. [Same territory and inhabitants]

# 6. Public Accountability

## Full term even if ...

- Vacation
- LGU conversion
- Suspended
- Under preventive suspension
- Resigned

## Not full term if ...

- Succession
- Won in recall election
- Won in an election protest
- Won in petition for correction of manifest errors

# 6. Public Accountability

***Disciplinary Action:*** Violation of

1. 1991 Local Government Code
2. Anti-Graft and Corrupt Practices Act
3. Revised Penal Code and other Penal Laws
4. Omnibus Election Code
5. Other Special Laws

# 6. Public Accountability

## *Offenses:* Examples

1. Usurpation of Authority (mayor under preventive suspension)
2. Reliance on Subordinates (exception)
3. Technical Malversation (use diverted)
4. Unwarranted Benefits (salary to dismissed employee)
5. Financial or Pecuniary Interest (license to cockpits)
6. Moral Turpitude (fencing)
7. Bad Faith (signing of voucher)
8. Illegal Dismissal (corporate vs. personal liability)
9. Grossly disadvantageous contract
10. COA-approved Disbursements
11. Partial Restitution of Cash Shortage (misappropriation)
12. Onion-skinned Officials
13. Conversion of a plaza to commercial center

# 6. Public Accountability

## *Procedure in Administrative Cases*

- Constitutional Rights of Accused
- Procedural Due Process
- Form of Complaint
- Substantial Evidence
- Notice of Session not required
- Decisions when final and executory
- Stay of Execution
- Rule on Exhaustion of Administrative Remedies
- When appeal
- Effect of filing of Motion for Reconsideration

# 6. Public Accountability

## Suspension as Penalty

- Removal by Courts only, not higher-supervising LGU (exception, not assail higher LGU decision)
- Each administrative offense, 6 months

## Preventive Suspension

- Prerequisites (and exceptions)
- Joinder of issues required (unless repeated demands) if by supervising LGU under LGC (not required if by Ombudsman)
- Grounds supported by evidence
- Period (Higher LGU/  
Sandiganbayan: 60 days;  
Ombudsman: 6 months)
- MR with Higher LGU before Courts
- Authority of President/  
Ombudsman

# 7. Liability

## Personal

- Elective and Appointive
- Malfeasance, Misfeasance, Nonfeasance; Quasi-delict
- Section 60; Crimes
- Depends on degree of participation/ presence of elements

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

## Corporate

- LGU itself
- Monetary: damages, claims, obligations
- Death, injury to persons and property
- Acts - Ordinances/ resolutions; Contracts
- Official corporate act
- Council participation/ ratification
- Higher council approval
- Mandate under law

# 7. Liability (Remedies/ Recourse)

## Personal

1. Criminal case
2. Civil case
3. Administrative case
4. Recall

## Corporate

1. Constitutionality
2. Mandamus
3. Injunction
4. Declaratory Relief
5. Judicial review
6. Review by Higher LGU/ NGA

# 8. People's Participation

1. Recall
2. Mandatory consultation
3. Local special bodies
4. Initiative and Referendum
5. Disciplinary action
6. Sectoral representation
7. NGO/ PO assistance/ partnership

# 8. People's Participation

## Recall

- No Preparatory Recall Assembly, only Popular Petition (RA 9244)
- Loss of Confidence a political question
- Another Petition if Official succeeds to another office
- Recall election only during 2<sup>nd</sup> year of 3-year term
- 1-Year Ban refers to Recall Election
- Meaning of 'Regular Recall Election'

## Mandatory consultation

- Twin requirements (prior approval of sanggunian and prior consultation with affected sectors)
- For ECCs on reclamation, LGUs participation required
- National Projects
- Which harm environment:
  - NPC transmission lines
  - MMDA dumpsite
- Not extend to:
  - NPC mooring facility
  - PCSO lotto

# 8. People's Participation

## Initiative/ Referendum

- initiative (propose, enact and amend) from referendum (approve, amend and reject)
- Covers ordinances and resolutions
- As many proposals in 1 plebiscite per year
- LCE cannot veto
- Sanggunian cannot repeal (6 months); 3/4ths vote amend (6 months to 3 years); simple majority amend (after 3 years)
- No need to create a sectoral council that will facilitate the people's exercise of this power since this task with COMELEC
- COMELEC cannot dismiss petition on account of lack of funds; COMELEC has the power to determine whether the propositions in an initiative petition are within the powers of a concerned *sanggunian* to enact

## Local Special Bodies

- Development, Bids and Awards, School, Health, Peace and Order, People's Law Enforcement Board
- Process: Accreditation of NGOs/ POs/ CSOs then selection



www.albertocagra.com



09175353823



alberto agra



alberto.c.agra@gmail.com

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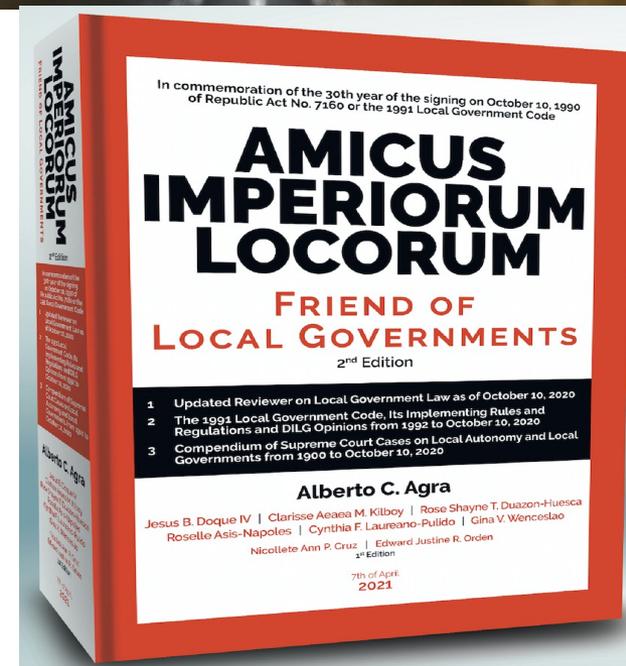


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