



Republic of the Philippines  
Province of Cavite  
City of Bacoor

Filed  
Sept 20, 2023  
4-07

## 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

### COMMITTEE ON FINANCE, BUDGET AND APPROPRIATION

#### COMMITTEE REPORT

NO. FBA-154-S-2023

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**Subject: AN ORDINANCE PRESCRIBING THE PROCEDURE FOR THE FORFEITURE OF RETENTION MONEY UNDER PROCUREMENT CONTRACTS IN FAVOR OF THE CITY GOVERNMENT OF BACCOOR, CAVITE AND IMPOSING PENALTIES FOR VIOLATIONS HEREOF - PCO-2023-115 dated August 29, 2023**

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Referred to this Committee is the above proposed City Ordinance for approval of the 5<sup>th</sup> Sangguniang Panlungsod.

#### **FACTS AND BACKGROUND:**

As provided under Republic Act No. 9184 known as the "Government Procurement Reform Law" the procurement entities in a contract are required to retain a certain percentage of the payments known as "retention money" to secure warranties of supplier and to guarantee indemnity for uncorrected defects and third-party liabilities in infrastructure projects.

To date, the City Government of Bacoor is still maintains in its funds the amount of Php68,340,335.79 representing the unclaimed "retention money" from procurement contracts entered into by the city government for supplies of goods/materials and infrastructure projects some of which are due for release since the year 2010..

It is the position of the city government that to indefinitely holding the said "retention money" under its funds is impractical and a burden, especially when the suppliers or contractors has no intention to claim such money for any unknown reason.

Hence, the proposed city ordinance allowing the City Government of Bacoor to own and utilize said "retention money" by way of forfeiture.



Republic of the Philippines  
Province of Cavite  
City of Bacoor

## 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

### FINDINGS:

A committee hearing was conducted in order that the reasons and justifications for the forfeiture of said "retention money" could be properly heard, clarified and understood. In attendance during the committee hearing, as resource person, were City Treasurer Atty. Edith Napalan, Mr. Abbey Charles Gawaran, OIC-City Accountant, Ms. Elvinia Guerrero, City Budget Officer, Engr. Crisaldo Tigloo, City Engineering Office and Ms. Rhoweno Alcantara, City Planning & Development Coordinating Office.

In the discussions during the hearing, the Committee had noted and gave weight on the following justifications explained by the resource persons, as follows:

- *Item 6.2, Annex E 2016 Revised IRR of RA 9184 states that for infrastructure projects, the total "retention money" shall be due for release upon final acceptance of the works, which is counted one (1) year from project completion;*
- That a significant amount of retention money is still being withheld by the City Government of Bacoor as of September 2023 amounting to Php 68,340,335.79, the oldest being retained from projects in the year 2010, notwithstanding the said retention money was already due for release;
- It is not practical for the City Government of Bacoor to hold the retention money indefinitely, especially when the supplier or contractor does not intend to claim such money anymore;

The Committee members opined that it is not the responsibility of the city government to find and notify the suppliers and contractors regarding their "retention money" after the lapse of one (1) year period when the works are finally accepted for infrastructure projects and warranty period for goods.

The Committee also believes and in consensus that under the principle of **Due Diligence**, it is the sole obligation of the supplier and contractor to demand the release of their "retention money".

Failure of the suppliers and contractors to claim or demand on their own and without any notification for the release of "retention money" in a certain period

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COMMITTEE REPORT FBA-154-S-2023

PCO-2023-115 – AN ORDINANCE PRESCRIBING THE PROCEDURE FOR THE FORFEITURE OF RETENTION MONEY UNDER PROCUREMENT CONTRACTS IN FAVOR OF THE CITY GOVERNMENT OF BACOOR.



Republic of the Philippines  
Province of Cavite  
City of Bacoor

## 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

of time could be meant a waiver and they have stepped on their interest and right over the said "retention money"

### RECOMMENDATION:

In view of the foregoing, the Honorable Members of Committee hereby recommend **TO APPROVE** the City Ordinance allowing the forfeiture of "retention money" which has long been withheld by the City Government of Bacoor amounting to **SIXTY EIGHT MILLION THREE HUNDRED FORTY THOUSAND THREE HUNDRED THIRTY FIVE PESOS AND SEVENTY NINE CENTAVOS (Php 68,340,335.79)** and to form part of the General Fund for utilization in different projects and services, subject to the existing accounting and auditing rules and regulations.

The Committee further recommends to consider the following amendments in the final draft of City Ordinance, particularly the provisions in Section 7, we write:

**"AN ORDINANCE PRESCRIBING THE PROCEDURE FOR THE FORFEITURE OF RETENTION MONEY UNDER PROCUREMENT CONTRACTS IN FAVOR OF THE CITY GOVERNMENT OF BACOOR, CAVITE AND IMPOSING PENALTIES FOR VIOLATIONS HEREOF.**

**X X X**

**SECTION 7. When Retention Money is Deemed Forfeited in Favor of the City Government of Bacoor.** – The failure of the supplier or contractor to claim the retention money within the periods mentioned in Section 6 of this Ordinance, and without further notices, shall be construed as a waiver to collect the said funds. For this purpose, the following procedures shall be strictly observed by the City Government:

1. The Office of the Accounting Services shall immediately notify the City Administrator's Office of the list of suppliers and contractors whose retention money is already due for release.
2. The City Administrator's Office then shall impose and observe the 90 calendar days grace period within which the supplier/s and contractor/s may claim their retention money counting on the date of the final acceptance of the works by the City Government in the



Republic of the Philippines  
Province of Cavite  
City of Bacoor

### 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

case of infrastructure projects, and the lapse of the warranty period of the procured good/s, or in the case of expendable supplies, after consumption thereof

3. If retention money is still uncollected from the City Government of Bacoor after the lapse of 90 calendar days grace period, the subject retention money shall be forfeited in favor of the City Government of Bacoor.

**WE HEREBY CERTIFY** that the contents of the foregoing report are true and correct.

**Signed** this \_\_\_\_ day of September 2023 at the City of Bacoor, Covite.

#### THE COMMITTEE ON FINANCE, BUDGET AND APPROPRIATION

  
HON. ROGELIO M. NOLASCO  
Chairman

  
HON. CATHERINE S. EVARISTO  
Vice Chairperson

  
HON. REYNALDO D. PALABRICA  
Member

  
HON. ADRIELTO G. GAWARAN  
Member

Prepared by:

  
**ROBERTO A. DE GUZMAN**  
Local Legislative Staff Assistant I

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COMMITTEE REPORT FBA-154-S-2023

PCO-2023-115 – AN ORDINANCE PRESCRIBING THE PROCEDURE FOR THE FORFEITURE OF RETENTION MONEY UNDER PROCUREMENT CONTRACTS IN FAVOR OF THE CITY GOVERNMENT OF BACOR.



Republic of the Philippines  
Province of Cavite  
City of Bacoor

Approved  
S. 10/20/2023  
4:07

## 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

### Committee on Finance, Budget and Appropriation

### COMMITTEE HEARING MINUTES

NO. FBA-154-S-2023

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Subject: ***AN ORDINANCE PRESCRIBING THE FORFEITURE OF RETENTION MONEY UNDER PROCUREMENT CONTRACTS IN FAVOR OF THE CITY GOVERNMENT OF BACOR AND THE PROCEDURES HEREOF. PCO-2023-115 dated August 29, 2023.***

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Present:

#### Committee on Finance, Budget and Appropriation

Hon. Coun. Rogelio M. Nolasco - Chairman  
Hon. Coun. Reynaldo Palabrica - Member  
Hon. Coun. Adrielito Gawaran - Member

#### 5<sup>th</sup> Sangguniang Panlungsod Members

Hon. Coun. Alde Joselito Pagulayan - Member  
Hon. Coun. Levy Tela - Member  
Hon. Coun. Alejandro Gutierrez - Member  
Hon. Coun. Simplicio Dominguez - Member

#### Resource Persons:

Atty. Edith C. Napalan - Office of the City Treasury  
Ms. Elvinia S. Guerrero - Office of the City Budget Officer  
Mr. Abbey Charles Gawaran - Office of the City Accountant  
Engr. Crisaldo Tiglao - City Engineering Office  
Ms. Rhowena D. Alcantara - City Planning & Dev. Coord. Office

**Hon. Coun. Nolasco: "AN ORDINANCE PRESCRIBING THE FORFEITURE OF RETENTION MONEY UNDER PROCUREMENT CONTRACTS IN FAVOR OF THE CITY GOVERNMENT OF BACOR AND THE PROCEDURES HEREOF."**

**Hon. Caun. Rogelio M. Nolasco:** "Ipinapakilala ka po ang aking mga kasama sa Committee, Hon. Adrielito Gawaran, Hon. Reynaldo Palabrica at ang aking mga kasama sa Sangguniang Panlungsod Hon. Alejandro Gutierrez,



Republic of the Philippines  
Province of Cavite  
City of Bacoor

## 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

Hon. Levy Tela, Hon. Alde Pagulayan at Hon. Simplicio Dominguez. Pwede pong paki sabi ang inyong pangalan at Department for the record?"

**Hon. Coun. Rogelio Nolasco:** "Pinadalhan natin ng kopya ang Planning, Engineering and other concern Department tungkol po dito sa ating Ordinance na ito, itatanong po natin kung ano ang masasabi ng ating Engineering Department para sa retention."

**Engr. Crisaldo Tiglao:** "Good Afternoon po sa ating lahat, yun pong Ordinance sa pagkakabasa ko ay mayroon pa ho tayong **PHP 68,340,335.79.00 Pesos** na nasa ating City ang hindi malaman kung ito ay nakaligtang singilin or talagang kinalimutan na nila. Mas maganda sigura ay magkaroon ng Ordinance ng sa gayan ay matatawagan natin ang mga supplier para malaman nila na mayroon pa silang retention maney. Three times notice po siguro mas maganda and after that, pwede na po sigurong i forfeit ng City Government."

**Hon. Coun. Nolasco:** "Okey, sa ating Accounting Department ano po ang masasabi nyo sa Ordinansang ito?"

**Mr. Abbey Charles Gawaran:** "Good Afternoon po, tungkol po sa Ordinansang ito, it is stated in Section 6 of this Ordinance that within a period of one (1) year from the date when the retention money is due for release, despite written notifications from the City Government of Bacoor shall be deemed forfeited in favor of General Fund of the City Government of Bacoor. So baka pa pwedeng gawin nating far two (2) years para po hindi sayang."

**Hon. Caun. Nolasco:** "Hindi po ba pwedeng after one (1) year padadalhon natin ng sulat and within six (6) months kung hindi pa rin sila uma action pwede ng i forfeit ng City Government?"

**Mr. Abbey Charles Gawaran:** "Kailangan pang mag stick tayo after one (1) year. Kasi po they have different case po tulad ng specially mga suppliers usually po ang mga nagsusupply ng goods po ang retention po ay 1% wala po silang oras para pa mag process. Kasi po kung 2 years at least we have time, meron po tayang representative for both sides may pagkakataon pa pa silang maayos pera we are still in process far the recommendation po. It is stated in resolution Nasa section 6 po item no. 2. kung mailalagay lang po sa provision kung pwede po tayo far two years sa amin pang deposit meron pa nga po tayong 2010 pa kaya po kung two years, ang report po kasi namin ng Financial meron pa po tayang mga 2020 and 2021 at meron pa po tayong last year. So



Republic of the Philippines  
Province of Cavite  
City of Bacoor

### 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

ang accounting po ang magiging forecast po namin kung ano pa po ang masasabi namin sa mga suppliers."

**Hon. Coun. Palabrica:** "May tanong lang aka, sa contract ba ng City at sa contractor may nakalagay ba doon na specific provision tungkol sa retention?"

**Mr. Abbey Charles Gawaran:** "Yes po, boses po kasi sa security deposit kapag sa expenditures for supplies of goods after 3 months kapag naideliver na nila ang supplies pwede na siyang singilin or pwedeng bawasan after 3 months kapag ang goods ay na consumed na at na deposit sa account. Kapag nasa infrastructure naman po after one (1) year na nakapag turn over pwede na po nilang singilin."

**Hon. Coun. Palabrica:** "That is under the Republic Act? Kung nasa Republic Act yan eh di sana pwedeng i supersede ang Ordinance na nasa Republic Act. So, kung budget ang point dyan, it should be not less than 1-year kasi ma su supersede natin yung Republic Act."

**Mr. Abbey Gawaran:** "Under R.A. No. 9184 po. Ang nangyari po kasi ngayon even given them 3 months for office supplies for 1 year contract hindi agad nila na su supply, kaya hindi agad nila nasingil or nakukuha, kaya ang pinaka sure po natin dito kung after a year na meron pa po silang karapatang makasingil hanggang ang pera nila ay magtagal sa atin pwede na pong mapunta sa atin ang pera nila."

**Hon. Palabrica:** "Ang sinasabi mo may point yun to submit at kung nasa department naman ninyo and allowed transaction from you, after completion of the project, for 3 months doon sa mga expenditures or supplies, dito sa Ordinansa nating ita. I proposed Mr. Chairman kailangan na lang nating ilagay for 90 days so after 3 months kapag hindi nila nasingil ibig sabihin wala na silang interest na kunin pa yung pera tulad ngayon nag accumulate na yung pera from 2010 umabot na ng PHP 68 Million. Yung amount na PHP 68 Million has an effect para doon sa local economy kasi naka standby yung pera hindi na gumugulang or hindi na nagagamit may effect yun sa ekonomiya kaya nasa budget, the main purpose of the government is to boost the economy using the expenditure for the government purposes. Ang punto ko dito sa Ordinance, ilagay na natin dito sa budget hindi tayo pwedeng bumaba sa 3 months na supplies dagdagan na lang natin ng 3 months. Tignan natin ang reaction ng Resource Persons then after 3 months kapag hindi nasingil forfeited na ng local government unit natin pero dapat lang yung provision na iyon ay stipulated



Republic of the Philippines  
Province of Cavite  
City of Bacoor

## 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

doon sa contract na pipirmahan para may personal knowledge about the policy of the government regarding the retention yun lang pa Mr. Chairman. Hihingi lang po aka ng opinion sa ating mga resource person's natin."

**Hon. Adrielito Gawaran:** "Good afternoon po, Engineer meron lang po akong sa inyo itatanong, total eh ang dami ding pera doan sa Engineering eh na po forfeit pa. Kasi sa tingin ko sa road contractor or supplier, once you enter the transaction from City Government di ba nakalagay yung performance bond. Bakit hindi nakukuha yung kanilang performance bond? Ako naisip ka, kayo na po forfeit oy hindi kinukuha yung performance bond halimbawa cable, maynilad na gumagawa sa kalsoda nag pa fund, hindi ba ho? Ngayon kaya nag po fund sila para kung hindi nila matatapas o kaya hindi magawa okey na yun, kasi alam nila may fund sila kaya yung contractors hindi na nila ginagawa kasi sasabihin nila kung sila gagawa madadagdagan po ang gastos nila at mababowasan pa kita nila kaya sa tingin ko kaya hindi na nila kinukuha yung performance fund nila. Tama ba ho Engineer? Yun ang opinion ko."

**Engr. Crisaldo Tiglao:** "Parang ang alam ka po hindi po iyon ang ginagamit na fund, magkaiba po iyon."

**Hon. Coun. Palabrica:** "Performance Bond bumibili sila sa insurance eh. Mr. Chairman, hihingin ka po yung opinion ni Mr. Abbey daan sa sinabi ko kanina. Mabalik po ako kung dagdagan pa pa natin ng 3 months pwede koyang ma stipulate na lang sa kontrata. After 1 year kung hindi mag submit ng retention forfeited na. Pwede ba yun?"

**Mr. Abbey Charles Gawaran:** "Mas maganda po kung ilagay na sa Kontrata para may knowledge sila baka pa kasi isisi sa Accounting Department kung wala na silang masingil. At least transparent po tayo to enter into contract between the Contractor and the LGU. Yun ay pwede na po, kasi negligence on their part."

**Hon. Coun. Palabrica:** "Syempre stipulated na sa contract pipirma sila para may personal knowledge sila. Therefore they have the responsibility to act on provision. Saka hindi na natin kailangang magpadala ng letter, automatic na yun eh. Bakit kailangan pang i remind sila? So, ilalagay notin sa contract after 1 year of completion for the project automatic kapag hindi sila nag submit ng claim inilalagay mo na iyon sa retention therefore, subject for provision of City Government. Pwede Siguro ana?"





Republic of the Philippines  
Province of Cavite  
City of Bacoor

## 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

**Mr. Abbey Gawaran:** "Konsi, regarding po sa retention, kasi alam ni Engineer Cris, once na collection pa far infra after end of 1-year nagpapadala po sila ng notice of Surety Bond or Bank Guarantee ito pa ay isang documents na pwedeng i supersede kada year. Ang tanong pa ilan po bang months ang pwede po nating payagan kasi 1 year lang pa kapag napasa. Kapag within 6 months po ba ang warranty deposits or guarantee deposit pwede pa siyang sumingil? Para align lang po sa mga naniningil sa amin."

**Hon. Coun. Palabrica:** "Kasi kayo sanay sa singilan eh sa inyo lahat dumadaan ang singilan, maybe ibaik ka long yung suggestion."

**Mr. Abbey Gawaran:** "Sir if the infra without bank deposit will be paired far 6 months. Sa that every six months Kung abot pa for 1-year kasi po tignan po natin kung mayroon pong under repair. Kung 3 months kasi masyadong maaga baka hindi abutin ng season. Ang magiging problema po kasi dito yung mataas na construction."

**Hon. Coun. Palabrica:** "We will take note for that para ma discuss natin during the session para mapag usapan namin."

**Mr. Abbey Gawaran:** "Thank you po."

**Hon. Coun. Nolasco:** "Ano po ang masasabi na ating City Planning?"

**Ms. Rhowena Alcantara:** "Sa omin pa ang concern ng Planning hindi naman po ako tutal sa suggestion ni Mr. Abbey tama lang po yung six months after one year magbibigay sila ng notice para kapag hindi nila makuha ang retention mogagamit pa po notin sa ibang program ng City Government. "

**Ms. Elnia S. Guerrero:** "Ang masasabi ko lang po sa Sanggunian tungkol po sa retention ay mapadalan sila ng notice for retention after 1 year at magbigay pa ng grace period for 6 months na kung hindi nila ma claim ang retention will be forfeited at dapat po ay stipulated pa sa contract na kanilang pipirmahan."

**Hon. Coun. Palabrica:** "Mr. Chairman yung pinagusapan natin tungkol sa contract pero meron tayang existing na naka pending na PHP 68 Million imagine kung iyan ay umikat sa ekonomiya natin. So, dalawang issue lang yan kung ano ang magagawa natin sa mga susunod na contract at dito sa pending contract na umabot sa PHP 68 Million na choice eh kosi naso contract iyan na forfeited agad. But we will inform those contractors na mayroon silang



Republic of the Philippines  
Province of Cavite  
City of Bacoor

## 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

pending to established a policy within three months na kung hindi nila maasiakaso ita ay kukunin na natin in favor of the City Government. Padalhan na lang ng isang sulat pa at bibigyan natin ng grace period na 3 months to process at kung hindi nila inasikaso at walang sagot sa sulat natin we will claim it in favor of the City Government. Ganaon na lang siguro.

**Hon. Coun. Rogelio Nolasco:** "Ano po ang masasabi nyo Mam Edith?"

**Atty. Edlith Napalan:** "Yes po Sir, mas makakatulong ito sa City dapat po bigyan sila ng due process tulad ng sinabi ni Councilor Palabrica."

**Hon. Coun. Nolasco:** "Kasi kasalanan nila, pera kung nag iba ng address ang contractor at hindi nila natanggap?"

**Hon. Coun. Palabrica:** "Yun pa isang issue. Paano kung nag iba ng business address yung tao at hindi nila natanggap? pwede pa ba tayong mag publish sa diyaryo na lahat nang may retention dito sa Bacoor ay binibigyan sila ng 3 months para sa retention fund, kapag hindi sila nag comply ay forfeited na? pora kung maghahabol man sila meron tayong ipapakita. Marami naman diyang media channel. Atty. Pwede po ba iyon os a form of notification?"

**Atty. Edlith C. Napalan:** "Sa tingin ko pwede naman po iyon kung hindi tayo magkakaroon ng additional expense sa pag pa publish okey naman pa para maparating sa kanila. Pero kung gagastos po tayo kasi medyo mahal po ang pag papa publish nito eh."

**Hon. Coun. Palabrica:** "Pwede naman sa facebook, may facebook naman toyo anytime pwedeng bumasa. Pero sa tingin ko what is 1 million kung gumastos tayo kasi nasa PHP 68 Million ito? Alam lahat ito ni Atty. Kasi siya ang City Treasurer alam nya ang mga media record issues eh."

**Hon. Coun. Nolasco:** "Thank you. Any other opinion? Yes Engineer."

**Engr. Crisaldo Tiglao:** "Yung doon po sa retention, kasi nakalagay after 1 year so mas in favor kasi sa ating manual operation kung makikita ang mga depekto at ma rerepair agad. Kasi kung masyadong maaga ang retention wala pang masyadong makikitang mga depect sa ating actual operation mahirap habulin. Pero base sa experience namin mas makakabilis kung makakasingil ang contractor."



Republic of the Philippines  
Province of Cavite  
City of Bacoor

## 5<sup>th</sup> SANGGUNIANG PANLUNGSOD

**Mr. Abbey Charles Gawaran:** "Yes yun nga po bago namin na discuss ng BAC pwede na siyang makasingil so gusto ko lang po malinaw sa accounting side po kung ono yung standard natin kung after 3 months or 1 year. Kung 3 months, ba or 6 months ba para maging standard sa part namin."

**Hon. Coun. Palabrica:** "Retention ang pinag uusapan natin."

**Mr. Abbey Charles Gawaran:** "Yes po."

**Mr. Abbey Charles Gawaran:** "Tungkol po sa Section 7 last paragraph pwede pong "The annual report shall be submitted not later than the 15<sup>th</sup> day of December of the inclusive calendar year." Pwede pong must be changed to "End of December" Thank you."

**Hon. Coun. Gutierrez:** "Since there is no other matter to be discussed, I moved for the adjournment of this hearing."

**Hon. Coun. Nolasco:** "Motioned approve."

The Hearing adjourned and close at 4:10 P.M.

Prepared By:

**EDGARDO B. NOLASCO**  
CLERK

Attested By:

**COUN. ROGELIO M. NOLASCO**  
Chairman

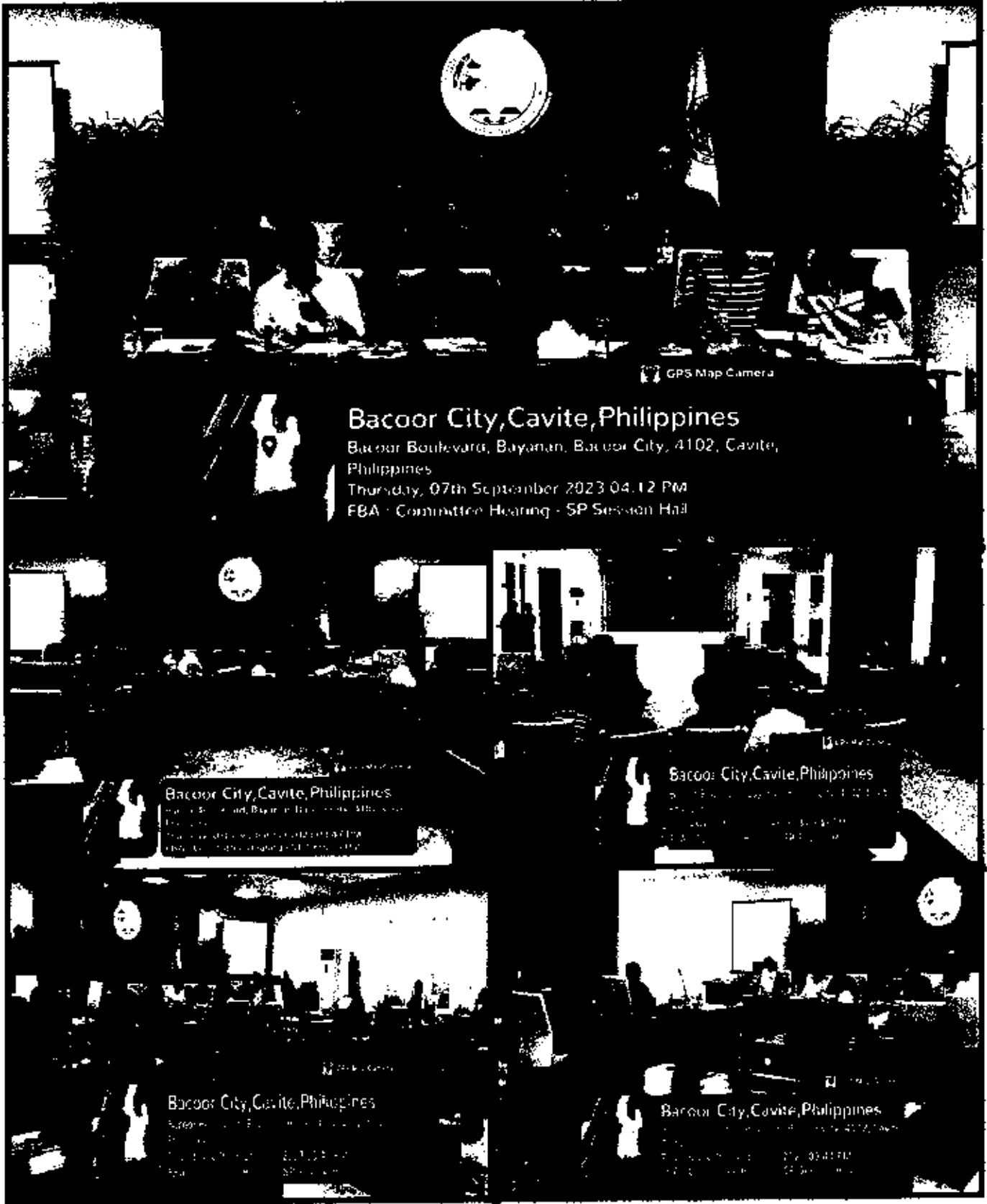






Republic of the Philippines  
Province of Cavite  
City of Bacoor

### 5<sup>th</sup> SANGGUNIANG PANLUNGSOD





Republic of the Philippines  
Province of Cavite  
CITY OF BACOOR

**OFFICE OF THE CITY ADMINISTRATOR**

24 August 2023

**SANGGUNINANG PANLUNGSOD**  
City of Bacoor

Recd  
Aug 24, 2023  
3:41

**THRU: ATTY. KHALID A. ATEGA JR.**  
Secretary  
Sangguniang Panlungsod

**SUBJECT: Endorsement of City Ordinance Prescribing for the  
Forfeiture of Retention Money under Procurement Contracts in Favor  
of the City Government of Bacoor and the Procedures Hereof**

Dear Hon. Councilors,

Greetings!

Upon the direction of the Office of the City Mayor, we have prepared and drafted a City Ordinance Prescribing for the Forfeiture of Retention Money under Procurement Contracts in Favor of the City Government of Bacoor and the Procedures Hereof.

We hereby respectfully endorse the attached Draft City Ordinance for the review and consideration of the Honorable Council.

Your kind and favorable response on this matter would be highly appreciated.

Thank you.

Respectfully,

  
**ATTY. AIMEE TORREFRANCA-NERI**  
City Administrator

**STRIKE**  
AS



**SCAN ME**

**CITY ORDINANCE NO. \_\_\_\_-2023**  
**Series of 2023**

**AN ORDINANCE PRESCRIBING THE FORFEITURE OF RETENTION MONEY  
UNDER PROCUREMENT CONTRACTS IN FAVOR OF THE CITY GOVERNMENT OF  
BACOR AND THE PROCEDURES HEREOF**

**WHEREAS**, Republic Act No. 7160 or the Local Government Code of 1991 and its Implementing Rules, in particular, Sections 17 (a), 18, 22, and 35, empower LGUs to discharge functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provisions of the basic services and facilities, to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals, to enter into contracts and to enjoy full autonomy in the exercise of their proprietary functions, and to enter into joint ventures with the private sector, respectively;

**WHEREAS**, Article 129 of Republic Act 7160, in relation to Article 10, Section 5 of the 1987 Philippine Constitution, provides, "Each local government unit shall exercise its power to create its own sources of revenue and levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments."

**WHEREAS**, the City Government of Bacoor entered, and is continuously entering, into procurement contracts, particularly for goods and infrastructure projects, in accordance with the provisions of Republic Act (RA) 9184, otherwise known as "Government Procurement Reform Act";

**WHEREAS**, Section 62 of 2016 Revised Implementing Rules and Regulations of RA 9184 requires the procuring entity to retain a percentage of the payments, commonly known as "retention money," to secure the warranties of the supplier or contractor under the contract and relevant laws, specifically, to cover defects and other liabilities;

**WHEREAS**, the Supreme Court defined retention money in the case of *Estomo v. Civil Service Commission* (G.R. No. 248971, 31 August 2022) as a form of security that seeks to ensure that the work is satisfactorily done and on schedule. It is part of the contract price being withheld by the procuring entity (*i.e.*, the government) from progress payments due to the supplier or contractor to guarantee indemnity for uncorrected discovered defects and third-party liabilities in infrastructure projects;

**WHEREAS**, for procured goods, the total "retention money" shall be due for release after the lapse of the warranty period, or in the case of expendable supplies, after consumption thereof, provided that the supplies delivered are free from patent and latent defects and all the conditions imposed under the contract have been fully met (*Section 62.1, 2016 Revised IRR of RA 9184*);

**WHEREAS**, for infrastructure projects, the total "retention money" shall be due for release upon final acceptance of the works, which is counted one (1) year from project completion (*Item 6.2 Annex E, 2016 Revised IRR of RA 9184*);

**WHEREAS**, it was discovered that a significant amount of retention money is still being withheld by the City Government of Bacoor, notwithstanding the said retention money was already due for release;



**WHEREAS**, the total amount of retention money secured by the City Government of Bacoor amounted to Php 68,340,335.79, the oldest being retained from projects in the year 2010;

**WHEREAS**, it is not practical for the City Government of Bacoor to hold the retention money indefinitely, especially when the supplier or contractor does not intend to claim such money anymore;

**WHEREAS**, the City Government of Bacoor should be allowed to own the retention money that has been voluntarily or negligently parked as public funds for a prolonged period to be able to utilize such funds for further maintenance and other operating expenses;

**NOW, THEREFORE**, be it **ORDAINED** by the 5<sup>th</sup> Sangguniang Panlungsod that:

**SECTION 1. Short Title.** - This Ordinance shall be known as the "**RETENTION MONEY FORFEITURE ORDINANCE OF 2023**".

**SECTION 2. Objectives.** - This Ordinance aims to provide for a uniform set of rules for the forfeiture of the retention money in all procurement of goods and infrastructure projects in favor of the Government City of Bacoor;

**SECTION 3. Coverage** - This shall apply to all procurement of goods and infrastructure projects covered by Republic Act (R.A.) No. 9184 and contracts wherein there is a provision on retention money.

**SECTION 4. Definition of Terms.** - For purposes of this Ordinance, the following shall be defined as follows:

1. **Contractor** - any person, partnership, corporation, cooperative, or similar entity who is a party to a contract with the City Government of Bacoor for the procured goods or infrastructure projects.
2. **Month** - shall consist of thirty (30) days.
3. **Year** - shall consist of three hundred sixty-five (365) days.

**SECTION 5. Enforcement Offices.** - The Office of the Accounting Services, in coordination with the City Administrator's Office, shall lead the strict implementation and enforcement of this Ordinance. It shall be the duty of the Bids and Awards Committee (BAC) and the concerned end-user or implementing unit to inform the suppliers and contractors of this Retention Money Forfeiture Ordinance. The City Information Office is also responsible for disseminating the information to the public regarding this Ordinance.

**SECTION 6. When Retention Money is Deemed Forfeited in Favor of the City Government of Bacoor.**- The failure of the supplier or contractor to claim the retention money within a period of one (1) year from the date when the retention money is due for release, despite written notifications from the City Government of Bacoor, shall be construed as a waiver to collect the retention money. For this purpose, the following notification procedures shall be strictly observed:

1. The Office of the Accounting Services shall immediately notify the City Administrator's Office of the list of suppliers and contractors whose retention money is already due for release.
2. The City Administrator's Office then shall issue two notifications to the supplier or contractor at their address as indicated in their bid submissions. The two notices must be issued separately, with the second notice sent not earlier than three months but not later than six months from the date when the first notice is issued.

The receipt by the City Government of Bacoor of such written claim for retention money within the one-year prescriptive period, whether as a response to the notices issued by the City Administrator's Office or through their initiative, shall effectively toll the running of the said prescriptive period.

If retention money is still uncollected after the lapse of three (3) months from the City Government of Bacoor's receipt of the written claim, the prescriptive period shall resume counting. Subsequent written claims, if any, shall allow the tolling of periods for another three (3) months.

These contractual provisions shall be deemed written in every procurement contract entered into by the City Government of Bacoor for goods and infrastructure projects.

**SECTION 7. Reporting.** – The Office of the Accounting Services shall submit a quarterly and annual Retention Money Report to the Office of the City Mayor, copy furnishing the City Administrator's Office. The quarterly report shall be submitted not later than 15 days at the end of each quarter (i.e., every April 15, July 15, and October 15). The annual report shall be submitted not later than the 15<sup>th</sup> day of December of the inclusive calendar year. The reports shall contain the following details:

1. List of all completed projects with Reference Number as indicated in the Annual Procurement Plan (APP);
2. The dates when the retention money is due for release: which refers to the date of acceptance of the complete delivery in case of goods and the date of final acceptance (i.e., one year from project completion) in case of infrastructure projects;
3. Indication as to "not yet due," "processed" (ongoing), or "released" retention money, including the amounts thereof;
4. The dates when the retention money is supposed to be forfeited, i.e. 1 year after the dates indicated in number 2 of this Section, considering tolled periods, if any;
5. Other relevant details such as notices issued, claims filed, tolled periods, etc.

**SECTION 8. Nature of the Forfeited Retention Money.** – The forfeited retention money shall be treated as unappropriated savings at the end of the calendar year under the General Fund. In case the funding source is governed by a specific law, regulation, or agreement requiring the return of unutilized funds at the end of the prescribed period, the forfeited retention money shall be remitted back to the specified agency as required therein.

**SECTION 9. Budgetary Requirements.** – The funds needed to implement the Ordinance shall be taken from any available funds of the City Government subject to existing laws and Commission on Audit regulations.

**SECTION 10. Violation and Penalties.** – Any employee of the City Government of Bacoor or any person who worked in connivance with or in conspiracy with the employee of the City Government of Bacoor who shall release or cause the release of the retention money that should have been forfeited in accordance with this Ordinance, shall be liable as follows:

1. *For first-time offenders*, an administrative fine equivalent to thirty percent (30%) of the retention money released to the supplier or contractor.
2. *For second-time offenders*, the penalty of imprisonment of thirty (30) days and an administrative fine equivalent to fifty percent (50%) of the retention money released to the supplier or contractor.
3. *For third-time and succeeding offenders*, the penalty of imprisonment of six (6) months and a fine equivalent to seventy percent (70%) of the retention money released to the supplier or contractor.
4. The administrative fines indicated above shall be without prejudice to administrative sanctions, such as suspension or dismissal from service, after administrative due process. The penalty of imprisonment shall apply after criminal conviction in a court of competent jurisdiction.

For purposes of this Section, the Office of the City Legal Service shall cause the fact-finding investigation and be responsible for filing the appropriate complaint for violation of this Ordinance.

**SECTION 11. Separability Clause.** – If, for any reason, any provision or part of this Ordinance is declared invalid or unconstitutional, other provisions not affected thereby shall remain in full force and effect.

**SECTION 12. Repealing Clause.** – All Ordinances, Resolutions, local Executive Orders, or Administrative Issuances or parts inconsistent with the Ordinance's provisions are hereby repealed, amended, or modified accordingly.

**SECTION 13. Effectivity.** – This Ordinance shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the City of Bacoor;

**ENACTED**, August \_\_, 2023, by a unanimous vote of all the Members of the Sanggunian, there being a quorum.

*I hereby certify that the preceding City Ordinance is true and correct and that the same was duly approved in accordance with law.*

Certified by:

**HON. ROWENA BAUTISTA-MENDIOLA**