



Republic of the Philippines  
Province of Cavite  
CITY OF BACOR

## Office of the Sangguniang Panlungsod

### DISTRICT I

**ABSENT**  
HON. CATHERINE SARINO-EVARISTO  
City Councilor

HON. MICHAEL E. SOLIS  
City Councilor

HON. ADRIELITO G. GAWARAN  
City Councilor

HON. VICTORIO L. GUERRERO, JR.  
City Councilor

HON. ALEJANDRO F. GUTIERREZ  
City Councilor

HON. LEVY M. TELA  
City Councilor

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City Councilor / President Pro-Tempore

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HON. ALDE JOSELITO F. PAGULAYAN  
City Councilor

HON. SIMPLICIO G. DOMINGUEZ  
City Councilor

HON. RAMON N. BAUTISTA  
Liga ng mga Barangay President

**ABSENT**  
HON. MAC RAVENESPIRITU  
SK Federation President

Attested by:  
ATTY. KHALID A. ATEGA, JR.  
Sangguniang Panlungsod Secretary

Certified by:  
HON. REYNALDO D. PALABRICA  
Acting Presiding Officer

Approved by:  
HON. ROWENA BAUTISTA-MENDIOLA  
Acting City Mayor

### CITY ORDINANCE NO. 310-2023 Series of 2023

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

Sponsored by:  
**Hon. Rogelio M. Nolasco**

Co-Sponsored by:  
**Hon. Roberto L. Advincula, Hon. Ramon N. Bautista, Hon. Simplicio G. Dominguez, Hon. Reynaldo M. Fabian, Hon. Adrielito G. Gawaran, Hon. Alejandro F. Gutierrez, Hon. Alde Joselito F. Pagulayan, Hon. Michael E. Solis, and Hon. Levy M. Tela.**

**WHEREAS**, Republic Act No. 7160 ( the "Local Government Code of 1991") and its Implementing Rules, in particular, Sections 17 (a), 18, 22, and 35, empower Local Government Unit 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."





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Sangguniang Panlungsod Secretary

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Acting City Mayor

**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) No. 9184, ("Government Procurement Reform Act");

**WHEREAS**, Section 62 of the 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 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 as of September 2023 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 forfeit the retention money that has been voluntarily or negligently parked as public funds





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for a prolonged period to enable it to use such funds for 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 "**2023 RETENTION MONEY FORFEITURE ORDINANCE OF BACOR CITY**".

**SECTION 2. Objective.** - This Ordinance shall provide the procedures for the forfeiture of retention money provided in all contracts for the procurement of goods and for the construction of infrastructure projects within the City of Bacoor, Cavite in favor of the Local Government of the City of Bacoor, Cavite.

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

**SECTION 4. Definition of Terms.** - For purposes of this Ordinance, the following terms 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 procurement of goods or for the construction of infrastructure projects.
2. Month - shall consist of thirty (30) calendar days.
3. Retention Money- 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.





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4. Year - shall consist of twelve (12) calendar months.

**SECTION 5. Enforcement Offices.** – The Office of the City Accountant, 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 of the City Government to inform the suppliers and contractors of the provisions of this Ordinance. The City Information Office shall be responsible for disseminating relevant information to the public regarding this Ordinance.

### SECTION 6. When Retention Money is Deemed Due for Release. -

1. For infrastructure projects, the retention money is deemed due for release after the issuance of the Certificate of Final Acceptance by City Government of Bacoor through the City Engineering Office. The Certificate of Final Acceptance shall be issued after the lapse of one (1) year from project completion, also known as the defects liability period, as prescribed by R.A. No. 9184 and its IRR.
2. For procurement of goods, the retention money is deemed due for release after the lapse of the warranty period prescribed by R.A. No. 9184 and its IRR. For non-expendable supplies, the retention money is deemed due for release one (1) year after complete delivery of goods. For expendable supplies and services, the retention money is deemed due for release after three (3) months from complete delivery, or upon consumption thereof, or upon complete rendition of services. **Provided** that: the supplies delivered are free from patent and latent defects and all the conditions of the contract have been fully met.

### 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 after one (1) year from the date it is





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due for release, as provided by Section 6 hereof, shall be construed as a waiver to claim and collect such retention money. For this purpose, the following notification 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 issue two (2) written notifications to the supplier or contractor to be sent via registered mail at their address as indicated in their bid submissions. The two notices must be issued separately, with the second notice sent not earlier than 90 calendar days but not later than 180 calendar days from the date when the first notice is issued.
3. For infrastructure projects: The first notice shall be sent not earlier than the issuance of Certificate of Final Acceptance by the City Mayor, or his duly authorized representative, as recommended by the City Engineer. For goods and services: upon issuance of Certificate of Lapse of Warranty by the City Mayor, or his duly authorized representative, as recommended by the head of the end user or implementing office.
4. The receipt by the Office of the City Administrator of a written claim for the retention money from the natural or juridical person who entered into the procurement contract with the City Government within the one-year prescriptive period, whether as a response to the notices issued by the City Administrator's Office or through the contractor's initiative, shall effectively toll the running of the said prescriptive period.
5. If retention money is still uncollected after the lapse of 90 calendar days 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 ninety (90) calendar days.





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### SECTION 8. Inclusion of Provisions on Forfeiture of Retention Money in All Procurement Contracts. –

Consistent with the provisions of R.A. No. 9184 and its IRR, the form of contract agreement shall be as prescribed by the Government Procurement Policy Board. The contractual provisions of this Ordinance shall be deemed incorporated in the said prescribed contract agreement form. In all other instances of government procurement where there is no prescribed form of contract, the applicable provisions in this Ordinance shall be expressly included in the form of contract to be used.

**SECTION 9. Reporting. –** The Office of the City Accountant 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, as defined in Section 6 hereof.
3. Indication as to "not yet due," "processed" (ongoing), or "released" with regard the retention money, including the amounts thereof;
4. The dates when the retention money is supposed to be forfeited; and
5. Other relevant details such as notices issued, claims filed, tolled periods, etc.

### SECTION 10. 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.





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**SECTION 11. Budgetary Requirements.** – The funds needed to implement this Ordinance shall be taken from any available funds of the Office of the City Mayor subject to existing laws and Commission on Audit regulations.

**SECTION 12. 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 of **Five Thousand Pesos (Php 5,000.00)** plus imprisonment for ten (10) to thirty (30) days upon conviction.
2. **For second-time offenders:** an administrative fine of **Five Thousand Pesos (Php 5,000.00)** plus the penalty of imprisonment of thirty (30) to ninety (90) days upon conviction.
3. **For third-time and succeeding offenders:** an administrative fine of **Five Thousand Pesos (Php 5,000.00)** plus the penalty of imprisonment of six (6) months to one (1) year upon conviction.
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 conduct a fact-finding investigation and shall be responsible for filing the appropriate legal action for all violations of this Ordinance.





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Approved by:

**SECTION 13. 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 14. 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 15. Effectivity.** – This Ordinance shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the City of Bacoor, Cavite.

**ENACTED**, on the 11<sup>th</sup> day of September 2023, by a unanimous vote of all the Members of the 5<sup>th</sup> Sangguniang Panlungsod of the City of Bacoor, Cavite 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. REYNALDO D. PALABRICA  
Acting Presiding Officer

Attested by:

ATTY. KHALID A. ATEGA JR.  
Sangguniang Panlungsod Secretary

Approved by:

HON. ROWENA BAUTISTA-MENDIOLA  
Acting City Mayor

Date of Approval: 22 SEP 2023