



Republic of the Philippines
Province of Aklan
MUNICIPALITY OF MALAY

Office of the Sangguniang Bayan



**EXCERPT FROM THE MINUTES OF THE 31ST REGULAR SESSION
OF THE SANGGUNIANG BAYAN OF MALAY, AKLAN (2013-2016)
HELD AT THE SB SESSION HALL, POBLACION, MALAY, AKLAN
ON OCTOBER 7, 2014.**

Present:

Hon. Wilbec M. Gelito, Municipal Vice Mayor, Presiding Officer
SB Member Natalie C. Paderes
SB Member Jupiter Aelred G. Gallenero
SB Member Rowen T. Aguirre
SB Member Frolibar S. Bautista
SB Member Leal B. Gelito
SB Member Manuel S. Delos Reyes
SB Member Abram L. Sualog, Liga President

Absent:

SB Member Danilo G. Delos Santos (on leave)
SB Member Paterno S. Sacapaño, Jr. (on leave)

X

X

X

MUNICIPAL ORDINANCE NO. 337
Series of 2014

**AN ORDINANCE ENACTING THE REVISED ZONING ORDINANCE
OF THE MUNICIPALITY OF MALAY.**

WHEREAS, the implementation of the Malay Comprehensive Land Use Plan (CLUP) would require the enactment of regulatory measures to translate its planning goals and objectives into reality and a Zoning Ordinance is one such regulatory measure which is an important tool for the implementation of the comprehensive land use plan;

WHEREAS, Section 447 of the Local Government Code of 1991 authorizes local government units to enact integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations;

WHEREAS, the recent developments in the Municipality of Malay particularly in Boracay Island and the revision of the 2000-2011 Malay Comprehensive Land Use Plan require the parallel revision of the Zoning Ordinance as its implementing tool;

NOW THEREFORE, the Sanggunian Bayan of Malay, Aklan in a session assembled hereby adopts the following Zoning Ordinance.

ARTICLE I

TITLE OF THE ORDINANCE

SECTION 1. **TITLE OF THE ORDINANCE.** This Ordinance shall be known as the 2013 Revised Zoning Ordinance of Malay, Aklan and shall be referred to as the Zoning Ordinance.

ARTICLE II

AUTHORITY AND PURPOSE

SECTION 2. **AUTHORITY.** This Ordinance is enacted pursuant to the provisions of Section 447 (a)(2) of the Local Government Code (RA 7160) and in conformity with Section 2 of Executive Order (EO) 72, authorizing the Municipality through the Sangguniang Bayan to adopt Zoning Ordinances, subject to the provisions of existing laws and regulations.

SECTION 3. **PURPOSES.** This Ordinance is enacted for the following purposes:

1. Guide, control and regulate future growth and development of Malay, Aklan in accordance with its 2012-2022 Comprehensive Land Use Plan (CLUP).
2. As a principal instrument for enforcing the locational policies and performance standards of the municipality in order to realize the Vision of Malay to become a “premiere international tourist destination city” before 2022.
3. Protect the character and stability of residential, commercial, heritage/tourism, institutional, forestry, agricultural, open space and other functional areas within the locality and promote the orderly and beneficial development of the same.
4. Promote and protect the health, safety, peace, comfort, convenience and general welfare of the inhabitants and tourists in the locality.

SECTION 4. **GENERAL ZONING PRINCIPLE.** This Ordinance is a zoning regulation that is based on the approved 2012-2022 Malay Comprehensive Land Use Plan adopted by the Sangguniang Bayan through SB Resolution 60 and Zoning Ordinance 130 dated June 22, 2000.

SECTION 5. **DEVELOPMENT STRATEGY.** Considering Malay’s geographic location, spatial and physical attributes, the strategy is to sustain Malay as a premier international tourist destination. Boracay Island is the key resource of the municipality’s tourism industry. It’s crystal blue clear water and powdery white sands has to be preserved and protected. Survival of its high quality beachfront is survival of tourism industry in the island and the entire municipality. Beaches in the mainland and other potential tourism sites like the tree park, forests, caves, falls and rivers needs to be protected and maintenance of their amenity value is of paramount importance as tourism destination town.

ARTICLE III

DEFINITION OF TERMS

SECTION 6. **DEFINITION OF TERMS.** The definition of technical terms in the Zoning Ordinance shall carry the same meaning given to them in already approved codes and regulations, such as but not limited to the National Building Code, Philippine Environmental Code, Climate Change Act of 2009 (R.A.9729), and other Implementing Rules and Regulations promulgated by the HLURB. The words, terms and phrases enumerated hereunder shall be understood to have the meaning corresponding indicated as follows:

1. **AGRICULTURAL ZONE** – an area within the municipality intended for cultivation/fishing and pastoral activities e.g. fish, farming, cultivation of crops, goat/cattle raising, etc.

- 2) **BUFFER AREA** – these are yards, parks or open spaces intended to separate incompatible elements or uses in order to control pollution/nuisance and for identifying and defining development areas or zones where no permanent structures are allowed.
- 3) **BUILDING LINE** - the line formed by the intersection of the outer surface of the enclosing wall of the building and the surface of the ground.
- 4) **CEMETERY** – an area set aside for burial of dead bodies.
- 5) **CENTRAL BUSINESS DISTRICT** – areas designated principally for trade, services and business purposes.
- 6) **CERTIFICATE OF NON-CONFORMANCE** – a certificate issued to owners of all uses existing prior to the approval of the Zoning Ordinance which do not conform in a zone as per provision of the said Ordinance.
- 7) **CERTIFICATE OF ZONING COMPLIANCE** - a certification issued to a constructed project that has been allowed under the provisions of this ordinance as well as other standards, rules and regulations on the land use and which is a requirement for an Occupancy Permit application
- 8) **COMPATIBLE USE** – uses or land activities capable of existing together harmoniously enumerated as follows:
 - a. Residential use and parks and recreation
 - b. Residential use and commercial use
 - c. Commercial use and parks and recreation
 - d. Institutional use and parks and recreation
 - e. Institutional use and residential use
 - f. Institutional use and commercial use
 - g. Industrial use and buffer zones
 - h. Industrial use and mangrove zone
 - i. Mangrove zone and forest zone
 - j. Tourism/heritage zones and residential use
 - k. Tourism/heritage zones and commercial use
- 9) **COMMERCIAL GARAGE** - a garage where automobiles and other motor vehicles are housed, cared for, equipped, repaired or kept for remuneration, hire or sale
- 10) **COMPREHENSIVE LAND USE PLAN (CLUP)** - a document embodying proposals for guiding, regulating a locality's spatial and physical growth and/or development.
- 11) **CONFLICTING USES** – uses or land activities with contrasting characteristics sited adjacent to each other e.g. residential units adjacent to industrial plants.
- 12) **CONFORMING USE** – a use which is in accordance with the zone classification as provided for in the Ordinance.
- 13) **EASEMENT** – open space imposed on any land use/activities sited along waterways, road-right-of-ways, cemeteries/memorial parks and utilities.
- 14) **ECO-TOURISM ZONE (ETZ)** – are sites within the municipalities endowed with natural or manmade physical attributes and resources that are conducive to recreation, leisure and other wholesome activities.

- 15) **ENVIRONMENTALLY CRITICAL AREAS** – areas which are environmentally sensitive and are listed in Presidential Proclamation 2146 dated December 14, 1981.
- 16) **ENVIRONMENTALLY CRITICAL PROJECTS** - projects which have high potential for negative environmental impacts and are listed in Presidential Proclamation 2146 dated December 14, 1981.
- 17) **EXCEPTION** – a device which grants a property owner relief from certain provisions of a Zoning Ordinance where because of the specific use would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money.
- 18) **FILLING STATION** - a retail station servicing automobiles and other motor vehicles with gasoline, diesel, LPG and oil only.
- 19) **FLOODING OVERLAY ZONE** – an area within the city identified as prone to flooding hazards and requires specific plans of action in the zoning ordinance in order to address this development challenge.
- 20) **FORESHORE LAND DELIMITATION** – land area as determined by the DENR submerged in water during occurrences of high tide and is visible during low tide and which may have been caused by siltation.
- 21) **GROSS FLOOR AREA (GFA)** – the GFA of a building is the total floor space within the perimeter of the permanent external building walls, occupied by:
 - a. Office Areas;
 - b. Residential Areas;
 - c. Corridors;
 - d. Lobbies;
 - e. Mezzanine;
 - f. Rest rooms or toilets;
 - g. Machine rooms and closets;
 - h. Storage rooms and closets;
 - i. Covered balconies and terraces;
 - j. Interior walls and columns, and other interior features;

BUT EXCLUDING:

 - a. Covered areas used for parking and driveways, including vertical penetrations in parking floors where no residential or office units are present;
 - b. Uncovered areas for aircon (AC) cooling towers, overhead water tanks, roof decks laundry and areas and cages wading or swimming pools, whirlpools or Jacuzzis, gardens, courts or plazas.
- 22) **HIGH DENSITY RESIDENTIAL/MIXED-USE ZONE (R-3/MXD)** – a subdivision of an area principally intended for dwelling/housing purposes with a density of 66 or more dwelling units per hectare.
- 23) **HIGH DENSITY TOURIST COMMERCIAL ZONE (T-3)** - A Zone shall be used primarily for large scale mixed use of commercial developments for tourism related purposes
- 24) **HLURB/BOARD** – shall mean the Housing and Land Use Regulatory Board

- 25) **HUMAN OCCUPANCY** - any portion of any enclosed structure wherein humans principally live or sleep such as mobile homes, permanent residential activities, semi-transient residential activities, health care community facilities, nursing home community facilities, orphanages, family care facilities, group care facilities, or transient habitation.
- 26) **INNOVATIVE DESIGN** - introduction and/or application of new/creative designs and techniques in development projects e.g. mixed use development, new town, planned unit development, etc.
- 27) **INSTITUTIONAL/MIXED-USE ZONE (INZ/MXD)** - an area principally intended for general types of institutional establishments e.g. government offices, schools, hospital/clinics, academic/research, convention centers.
- 28) **LAND USE** - a manner by which land is occupied or utilized
- 29) **LOCATIONAL CLEARANCE** - a clearance issued to a project that is allowed under the provisions of this ordinance as well as other standards, rules and regulations on the land use.
- 30) **LOT** - a parcel of land on which a principal building and its accessories are placed or may be placed together with the required open spaces. A lot may or may not be the land designated as lot on recorded plot.
- 31) **LOW DENSITY COMMERCIAL (C-1)** - an area principally intended for trade, services and business activities ordinarily referred to as the Central Business District
- 32) **LOW DENSITY RESIDENTIAL ZONE (R-1)** - An area principally for housing/dwelling so as to maintain the peace and quiet of the area within the zone with a density of 20 dwelling units and below per hectare
- 33) **LOW DENSITY TOURIST COMMERCIAL ZONE(T -1).** An area intended for small scale tourist establishments for tourism and tourism uses.
- 34) **MANGROVE ZONE** - an area within a city for mangrove purposes
- 35) **MEDIUM DENSITY COMMERCIAL/MIXED-USE ZONE (C-2/MXD)** - an area principally intended for quasi-trade business activities and service industries performing complementary/supplementary functions to principally commercial zone (CBD)
- 36) **MEDIUM DENSITY RESIDENTIAL/MIXED-USE ZONE (R-2/MXD)** - an area principally intended for dwelling/housing purposes with a density of 21 to 65 dwelling units per hectare. Small scale and cottage industry based businesses will be allowed in this zone.
- 37) **MEDIUM DENSITY TOURIST COMMERCIAL ZONE (T-2)** - This area shall be used primarily for medium intensity mixed use and commercial developments for tourism related establishments within the tourism zone which intended to accommodate the development of tourist facilities
- 38) **MITIGATING DEVICE** - a means to grant relief in complying with certain provisions of the ordinance
- 39) **MIXED-USE DEVELOPMENT** - development characterized by two or more significant revenue-producing uses such as retail, office, residential, hotel/motel, entertainment/cultural/recreation that in well-planned projects are mutually supporting

- 40) **NON-CONFORMING USE** – existing non-conforming uses/ establishments in an area allowed to operate in spite of the non-conformity to the provisions of the Ordinance subject to the conditions stipulated in this Zoning Ordinance
- 41) **PARKS AND RECREATION ZONE (PRZ)** – an area designed for diversion/ amusements and for the maintenance of ecological balance of the community
- 42) **PLANNED UNIT DEVELOPMENT (PUD)** – a land development scheme for an area that is comprehensively planned as an entity via unitary site plan which permits flexibility in planning designs, building siting, complementarily of building types and land uses, usable open spaces and the preservation of significant natural land features
- 43) **RECLAMATION ZONE** – the beach or shore areas in the municipality for reclamation which purpose is for the continued beach erosion protection and for tourism purposes.
- 44) **REZONING** – process of introducing amendments to or a change in the text and maps of the Zoning Ordinance. It also includes amendment or change in view of reclassification under Section 20 of RA 7160.
- 45) **SOCIALIZED HOUSING ZONE (SHZ)** – shall be used principally for socialized housing/dwelling purposes for the underprivileged and homeless as defined in RA 7279
- 46) **STRATEGIC AGRICULTURAL FISHERY DEVELOPMENT ZONE (SAFDZ)** – an area reserved for special development programs and activities of the agriculture and fisheries sectors and which is regulated by certain national government policies and issuances.
- 47) **URBAN AREA(S)** – include all barangay(s) or portion(s) of which comprising the Poblacion, Central Business District (CBD) and other built up areas including the urbanizable land in and adjacent to said areas and where at least more than fifty (50%) of the population are engaged in non-agricultural activities. CBD shall refer to the areas designated principally for trade, services and business purposes.
- 48) **URBAN ZONING MAP** – a duly authenticated map delineating the different zones into which the urban area and its expansion area are divided. Walking, cycling, and public transport are the priority nodes of transport, instead of the private cars
- 49) **VARIANCE** – a special permit which grants a property owner relief from certain provisions of Zoning Ordinance where, because of the peculiar, physical surrounding, shape or topographical conditions of the property, compliance on height, area, setback, bulk and/or density would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money
- 50) **WAREHOUSE** – refers to a storage and/or depository of those in business of performing warehouse services for others, for profit
- 51) **WATER ZONE (WZ)** – are bodies of water within the municipal which include rivers, streams, lakes and seas except those included in other zone classification
- 52) **ZONE/DISTRICT** – an area within the municipal for specific land use as defined by man-made or natural boundaries
- 53) **ZONING ADMINISTRATOR** – a municipal employee responsible for the implementation /enforcement of the Zoning Ordinance in a community

- 54) **ZONING ORDINANCE** – a local legal measure which embodies regulations affecting land use.

ARTICLE IV

ZONE CLASSIFICATIONS

SECTION 7. **DIVISION INTO ZONES.** – To effectively carry out the provisions of this Ordinance, the Municipality of Malay particularly Boracay Island, Barangay Caticlan and Poblacion are hereby categorized into the following zones or land uses as shown in the Official Zoning Maps

1. **RESIDENTIAL ZONES:**
 - a. Low-Density Residential (R-1)
 - b. Medium-Density Residential/Mixed-Use Zone (R-2/MXD)
 - c. High-Density Residential/Mixed-Use Zones (R-3/MXD)
 - d. Socialized Housing Zone (SHZ)
2. **COMMERCIAL ZONES:**
 - a) Low Density Commercial Zone (C – 1)
 - b) Medium Density Commercial Zone (C-2)
3. **TOURISM ZONES:**
 - a) Low Density Tourist Commercial Zone (T- 1)
 - b) Medium Density Tourist Commercial Zone (T-2)
 - c) Large Scale Tourist Commercial Zone (T-3)
4. **INSTITUTIONAL ZONES: (IZ)**
5. **PARKS AND OPEN SPACES (POSZ)**
6. **CEMETERY ZONE (CEM)**
7. **TRANSPORTATION AND UTILITIES ZONE (TUZ)**
8. **AGRICULTURAL ZONE (AGZ)**
9. **WETLAND/MANGROVE ZONE (WMZ)**
10. **WATER ZONE (WZ)**
11. **SANITARY LANDFILL (SLF)**
12. **RECLAMATION PROJECT ZONE (CATICLAN TO POBLACION SHORES) (RPZ)**
13. **ECO-TOURISM (ETZ)**
14. **FORESTLAND ZONE (FZ)**
15. **FOREST LAND AND WETLAND WITH TENURED OCCUPANTS ZONE (FWTOZ)**

SECTION 8. **ZONE BOUNDARIES.** The locations and boundaries of the above mentioned various zones into which the Municipality is classified are hereby identified and specified in Annex A.

ARTICLE V

OVERLAY DISTRICTS

SECTION 9. **DIVISION INTO OVERLAY ZONE.** In addition to zones, specific areas within the Municipality are also classified according to Overlay Zones.

1. Flooding Overlay Zone
2. Eco-tourism Overlay Zones
3. Landslide/erosion Overlay
4. Airport Hazard Overlay Zone
5. Northwest Panay Peninsula Overlay Zone
6. Ancestral Lands Overlay Zone
7. Critical Habitat Overlay Zone

These zones shall overlay the zones shown on the official zoning map. In addition to the other requirements of this Ordinance applicable to development in the underlying zoning classifications, compliance with the requirements of Article VII, Overlay Zone Regulations of this Ordinance shall be necessary for all developments occurring within the overlay zones. Conflicts between the requirements of this chapter and other requirements of this Ordinance or any other ordinance shall be resolved in favor of this section except where the conflicting requirement is more stringent and would further the objectives of this chapter. In such cases the more stringent requirement shall be applied.

SECTION 10. OVERLAY ZONE BOUNDARIES. The locations and boundaries of the above mentioned overlay zones into which the municipality is classified are hereby identified and specified in Annex B.

ARTICLE VI ZONING AND OVERLAY ZONES MAPS

SECTION 11. OFFICIAL LAND USE AND ZONING MAP. It is hereby adopted as an integral part of this Ordinance, the Official Land Use and Zoning Map for the whole municipality, wherein the designation, location and boundaries of the zones herein established are shown and indicated. Such official map shall be signed by the local chief executive and duly authenticated by the SangguniangPanlalawigan.

The Official Land Use and Zoning Map shall be drawn to the scale of 1:10,000 M printed in 15 fifteen copies, authenticated with the signatures of the Municipal Mayor and shall be distributed as follows:

1. The National Archives
2. National Library
3. HLURB
4. NEDA Central Office
5. HLURB Regional Office
6. Office of the Municipal Mayor
7. Sangguniang Bayan
8. Municipal Planning and Development Office (2 copies)
9. Office of the Municipal Treasurer
10. Office of the Municipal Assessor
11. Office of the Zoning Administrator
12. Municipal Engineer's Office
13. Municipal Zoning Board of Adjustments and Appeals

To effect transparency and convenience to users, the Official Land Use and Zoning Map must be conspicuously displayed in the following offices:

1. Office of the Municipal Mayor
2. Office the Sangguniang Bayan
3. Office of the Zoning Administrator
4. Municipal Planning and Development Office
5. Office of the Municipal Assessor
6. Office of the Municipal Treasurer

SECTION 12. INTERPRETATION OF THE ZONE/OVERLAY ZONES BOUNDARIES. In the interpretation of the boundaries for any of the zone indicated on the Zoning Map, the following rules shall apply:

1. Where zone boundaries are so indicated that they approximately follow the center of streets or highway, the street or highway right-of-way lines, shall be construed to be the boundaries.
2. Where zone boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be the boundaries.
3. Where zone/district boundaries are so indicated that they are approximately parallel to the center lines or right-of-way lines of streets and highways, such zone boundaries shall be construed as being parallel thereto and at such distance there from as indicated in the zoning map.
4. Where the boundary of a zone follows approximately a railroad line, such boundary shall be deemed to be the railroad right-of-way.
5. Where the boundary of a zone follows a stream, lake or other bodies of water, said boundary line shall be deemed to be at the limit of the political jurisdiction of the community unless otherwise indicated. Boundaries indicated as following shorelines shall be construed to follow such shorelines and in the event of change in the shorelines shall be construed as moving with the actual shorelines.
6. Where a lot of one ownership, as of record at the effective date of this Ordinance, is divided by a zone boundary line, the lot shall be construed to be within the zone where the major portion of the lot is located. In case the lot is bisected by the boundary line, it shall fall in the zone where the principal structure falls.
7. Where zone boundary is indicated as one-lot-deep, said depth shall be construed to be average lot depth of the lots involved within each particular municipality block. Where, however, any lot has a depth greater than said average, the remaining portion of said lot shall be construed as covered by the one-lot-deep zoning district provided the remaining portion has an area less than fifty percent (50%) of the total area of the entire lot. If the remaining portion has an area equivalent to fifty percent (50%) or more of the total area of the lot then the average lot depth shall apply to the lot which shall become a lot divided and covered by two or more different zoning districts, as the case may be.
8. In case of any remaining doubt as to the location of any property along zone, boundary lines, such property shall be considered as falling within the less restrictive zone.
9. The textual description of the zone boundaries shall prevail over that of the Malay Official Zoning Maps.

ARTICLE VII ZONE REGULATIONS

SECTION 13. GENERAL PROVISION. The uses enumerated in the succeeding sections are neither exhaustive nor all-inclusive. The Sangguniang Bayan (SB) as per recommendations from the Local Zoning Board of Appeals (LZBA) shall, subject to the requirements of this Article, allow other uses not enumerated hereunder provided that they are compatible with the uses expressly allowed and provided further that they are not expressly prohibited by this Ordinance.

Allowance of further uses shall be based on the intrinsic qualities of the land and the socio-economic potential of the locality with due regard to the maintenance of the essential qualities of the zone.

Specific uses/activities of lesser density within a particular zone (C-1) may be allowed within the zone of higher density (C-2) but not vice versa, nor in another and its subdivisions (e.g. R-2/MXD, R-3/MXD), except for uses expressly allowed in said zones, such that the cumulative effect of zoning shall be intra-zonal and not inter-zonal.

Developments of Mixed-Use character R3/MXD, C - 1 /MXD and C - 2 /MXD shall have a 70/30 sharing of uses. Where 70% of the development must be of the principal use (e.g. R3/MXD – the principal use is residential) and the other 30% can be of any of the allowed uses within the zone category.

Figure 01: 70 - 30 Sharing of Uses



SECTION 14. BUILDING HEIGHT REGULATIONS. Unless otherwise stipulated in this ordinance, building heights, must conform to height restrictions and requirements of the Civil Aviation Authority of the Philippines (CAAP), the National Building Code, Structural Code, Boracay Building Construction ordinances and other ordinances of the municipality and regulations related to land development and building construction.

SECTION 15. AREA REGULATIONS. Area regulations in all zones shall conform to the minimum requirements prescribed by pertinent existing laws, Building Code and local regulations.

SECTION 16. BUILDABLE AREA REGULATIONS. Buildings or structure shall only be built on buildable land area determined with the required setbacks, easements and /or buffer zones as determined by the National Building Code and other pertinent existing laws, codes and regulations.

SECTION 17. USE REGULATIONS IN LOW DENSITY RESIDENTIAL ZONE (R-1). An R-1 shall be used principally for housing/dwelling so as to maintain the peace and quiet of the area within the zone with a density of 20 dwelling units and below per hectare. The following are the allowable uses:

1. Detached family dwelling
2. Semi-detached family dwelling, e. g. duplex, row house
3. Customary accessory uses like:
 - a) Servants quarter
 - b) Private garage
 - c) Guardhouse, among others
4. Home occupation for the practice of one's profession or for engaging in an in-house business such as dressmaking, tailoring, baking, running sari-sari store and the like, provided that:
 - a) The number of persons engaged by such business/occupation shall not exceed five (5), inclusive of the owner.

- b) There shall be no change in the outside appearance of the building or premises.
 - c) No home occupation shall be conducted in any customary accessory cited above;
 - d) No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood and any need for parking generated by the conduct of such home occupation shall be met off the street and in a place other than in a required front yard.
 - e) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses and which causes visual or audible interference in any radio or television receivers or cause fluctuation in the line voltage off the premises.
5. Home industry classified as cottage industry provide that:
- a) Such home industry shall not occupy more than thirty percent (30%) of the floor area of the dwelling unit. There shall be no change or alteration in the outside appearance of the dwelling unit and shall not be a hazard /nuisance;
 - b) Shall consider same provisions as enumerated in letters c, d, and e of number 4, home occupation, this section.
6. Recreational facilities for the exclusive use of the members of the family residing within the premises, such as:
- a) Swimming pool
 - b) Pelota court
 - c) Others
7. Religious use
8. Multi-purpose/Barangay Hall
9. Pre-school
10. Sports Club
11. Plant nursery
12. Clinic, nursing and convalescing home, health center

SECTION 18. USE REGULATIONS IN MEDIUM DENSITY RESIDENTIAL/MIXED-USE ZONE (R-2/MXD). R-2/MXD zones shall be for medium density housing/dwelling purposes, i.e. 21 to 65 dwelling units per hectare, with support commercial, service and institutional uses on a neighborhood or barangay scale. No building or structure for human occupancy whether public or private shall be higher than twenty one (21.00) meters above highest natural grade line in the property or front sidewalk (main entry) level, mid-rise dwellings are four to seven storeys. Provided however, that such height is in conformance with the height requirement of the CAAP and Building Code.

THE FOLLOWING ARE THE ALLOWABLE USES:

- 1. All uses allowed in R1 Zone
- 2. Semi-detached family dwelling
- 3. Multi-Family Dwelling

4. Residential inn/apartment
5. Boarding/pension houses
6. Dormitory
7. Branch library, art gallery, exhibit area and museum
8. Pre-school, kindergarten school, elementary school, high school (maximum of 12 classrooms)
9. Community/village association office
10. Fire/security station
11. Welfare/charitable institution/rehabilitation center
12. Place of religious worship
13. Utility installation for use of zone/lot occupants
14. Public transport utility facility (operation of public transportation stop/waiting shed, loading/unloading bays, off-road/on-site public parking at an allowable scale to be determined by the Municipal Transportation Regulations Office (MTRO))
15. Customary/Accessory uses like:
 - a. Specialty school/training facility
 - b. Health center/clinic/club, gym
 - c. Club, multi-purpose hall/room
 - d. Dance/voice/music, other specialty studio
 - e. Sports/recreational facility
 - f. Showroom/display
 - g. Convenience retail store (neighborhood service only)
 - h. Restaurant, canteen, other food-serving establishment
 - i. Day care center

Exempted from the imposition of height regulations in R-2/MXD are church structures, covered courts, utility and other structures not covered by the height regulations of the National Building Code and/or the Air Transportation Office.

Piggery, livestock holding pen, poultry and fighting cock farm shall not be allowed in R-2/Mixed-Use Zone.

SECTION. 19. USE REGULATIONS IN HIGH-DENSITY RESIDENTIAL/MIXED-USE ZONE (R-3/MXD). An R-3/MXD shall be used primarily for high-density housing/dwelling purposes i.e. 66 or more dwelling units per hectare and limited complementary/supplementary trade, services and business activities. Enumerated below are the allowable uses:

1. Semi-detached family dwelling e.g. duplex, row house
2. Multi-family dwelling
3. Commercial housing e.g., apartment, apartelle, boarding house, dormitory, pension house, club house, residential inn
4. Branch library, art gallery, exhibit area and museum
5. Pre-school/elementary school, high school, vocational school
6. Home occupation for the practice of one's profession or for engaging an in-house business such as dressmaking, tailoring, baking, running a sari-sari store, provided that:

- a) The number of persons engaged in such business/industry shall not exceed five (5), inclusive of the owner;
 - b) There shall be no change in the outside appearance of the building or premises;
 - c) No home occupation shall be conducted in any customary accessory uses cited above;
 - d) No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood and any need for parking generated by the conduct of such home occupation shall be met off the street and in a place other than in a required front yard;
 - e) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odor, or electrical interference detectable to the normal senses and visual or audible interference in any radio television receivers or causes fluctuation in line voltage of the premises.
7. Home industry classified as cottage industry provided that:
- a. Such home industry shall not occupy more than thirty percent (30%) of the floor area of the dwelling unit in order to maintain its residential use. There shall be no change or alteration in the outside appearance of the dwelling unit and shall not be a hazard/nuisance;
 - b. Allotted capitalization shall not exceed the capitalization as set by the Department of Trade and Industry (DTI); (above ₱150,000 – ₱1.5 M)
 - c. Shall consider same provisions as enumerated in letters c, d and e of Home Occupation of this section.
8. Multi-purpose/Barangay Hall
9. Nursing and convalescing
10. Plant nursery
11. Welfare/charitable institution
12. Public utility facility
13. Fire and security station
14. Office
15. General retail store (not shopping center) e.g. bookstore and office supply shop, car shop, home appliance store, photo shop, flower shop
16. Food markets and shops e.g. bakery, bakeshop, wine store, grocery
17. Personal services shops e.g. beauty parlor, barber shop, sauna bath and massage clinic, dressmaking and tailoring shops
18. Parks, garden, playgrounds, sports-related/recreational center/ establishments e.g. movie house/theater, play court, swimming pool, gymnasium, entertainment/amusement center, billiards hall.
19. Restaurant, canteen or food-serving establishment, if situated in high-rise structure provided that, such restaurant, canteen, or food-serving establishment maybe located on the ground or basement floor

20. Short-term special education/training (e.g. dancing schools, schools for self-defense, driving schools (not allowed in Boracay Island), speech clinics, computer/internet centers) subject to the restrictions imposed by the municipal government
21. Storeroom (but only as may be necessary for the efficient conduct of the business and outside Boracay Island)
22. Embassy/consulate
23. Filling station/service station
24. Convention center and related facilities
25. Messengerial service
26. Janitorial service
27. Security agency
28. Bank, finance, insurance, money exchange service and other financial institutions
29. Radio and television station, media service
30. Building garage/parking building
31. Commercial and job printing
32. Computer/information technology-related activity/service
33. Typing and photo engraving services
34. Repair of optical instruments and equipment and cameras
35. Repair of clocks and watches
36. Manufacture of insignia, badges and similar emblems except metal
38. Transportation terminal/garage e.g. parking structure, loading and unloading facilities
37. Scientific, cultural and academic centers and research facilities except nuclear, radioactive, chemical and biological warfare facilities
38. Place of religious worship/use
39. Accessory uses such as:
 - a. Health Center/clinic/day care center
 - b. Club House/gym/sports/recreation facility
 - c. Utility installation for use of zone/lot occupants
 - d. Guardhouse
 - e. Showroom/display
 - f. Office/school support service
 - g. Servants Quarters Parking Lot/garage facilities

Piggery, livestock holding pen, poultry and fighting cock farm shall not be allowed in R-3/Mixed-Use Zone.

SECTION 20. USE REGULATIONS IN SOCIALIZED HOUSING ZONE (SHZ). An SHZ shall be used principally for socialized housing/dwelling purposes for the underprivileged and homeless as defined in RA 7279. Allowable uses are the following:

1. Resettlement Sites or Relocation Sites
2. On-site housing settlement

SECTION 21. USE REGULATION IN LOW- DENSITY COMMERCIAL ZONE (C - 1).

This zone is intended to provide for a broad range of retail, commercial and business developments which serve the needs of the community in locations convenient and accessible to the community being service by particular service. A C-1 Zone shall be principally intended for trade, services and business activities ordinarily referred to as Central Business District. Within the zone the following uses shall be allowed:

1. **Offices like:**
 - a. Office Condominium
 - b. Office/Residential Condominium Building
2. **General Retail Stores and Shops like:**
 - a. Bookstore and Office Supply Shop
 - b. Grocery/Minimart
 - c. Medical Equipment Store
 - d. Photo Shop
 - e. Flower Shop
 - f. Pet Shop
 - g. Sports Supplies and Accessories Shop
 - h. Gifts and Souvenir Shop
 - i. RTW Shops and/or Boutiques
 - j. Shoe Shops
 - k. Art Gallery Shops
 - l. Second Retail Shops such as:
 - a) Used Clothing
3. **Food Markets and Shops like:**
 - a. Food Mart
 - b. Bakery and Bake Shop
 - c. Restaurant/Eateries
 - d. Fast Food Center
 - e. Grilled/Roasted Food Outlets
 - f. Ice Cream Parlor
 - g. Fruit Stand
 - h. Grocery
 - i. Wine Shop
4. **Personal service shops like:**
 - a. Beauty Parlor
 - b. Barber Shop
 - c. Sauna Bath and Massage Clinic
 - d. SPA Center
 - e. Dressmaking and Tailoring Shops
 - f. Medical Clinic
5. **Recreational Center/Establishments like:**
 - a. Movie House/Theater
 - b. Playcourt e.g. tennis, bowling, billiards
 - c. Swimming Pool
 - d. Day and Night clubs, videoke/karaoke bars, bars and the like
 - e. Other sports and recreational and amusement establishments
6. **Short Term Special Education like:**
 - a. Dancing Schools
 - b. School for self defense
 - c. Driving Schools (not allowed in Boracay Island)
 - d. Music Studios/Schools

7. ***Storerooms but only as may be necessary for the efficient conduct of the business.***
8. ***Commercial condominium (with residential units in upper floors)***
9. ***Commercial housing like:***
 - a. Apartel
 - b. Pension house
 - c. Club House
10. ***Institutional activities such as:***
 - a) Embassy/consulate
 - b) Library and museums
 - c) Convention center and related facilities
 - d) Government offices
 - e) Hospitals/clinics
 - f) Public parks and playground
 - g) Police stations
 - h) Fire stations
 - i) Worships facilities like chapel
11. ***Building garage, parking lot***
12. ***Parks and gardens***
13. ***Parking lots, garage facilities***
14. ***Open air or outdoor sports activities and support facilities***
15. ***Memorial/shrines monuments kiosks and other park structure***
16. ***Sports club facilities, equipment and retail store***
17. ***Other trade, services and business activities such as:***
 - a) Bank and other financial institutions
 - b) Internet Cafés
 - c) Commercial Kitchens
 - d) Radio and television station
 - e) Printing shops and publishing houses
 - f) Pawnshops services
 - g) Repair shops for various technical instruments i.e. clocks, watches, optical instruments, cameras etc.
 - h) Typing, photocopying and engraving services
 - i) Messengerial service
 - j) Security agency
 - k) Janitorial service
 - l) Visitors information center
 - m) Recruitment agency
 - n) Clubhouse
 - o) Booking office
 - p) Advertising office
 - q) Water and Refilling Station

SECTION 22. USE REGULATION IN MEDIUM DENSITY COMMERCIAL/ MIXED USE ZONE (C – 2/ MXD). A C-2 Zone shall be used primarily for medium density mixed used and commercial developments for quasi-trade, business activities and service industries performing complementary/ supplementary functions to principally commercial zone (CBD). Enumerated below are allowable uses:

1. All allowable uses in C-1 are permitted in C-2
2. Medium Scale Department and convenience store

3. Supermarkets
4. Shopping Centers and other commercial activities which generate traffic and require utilities service
5. Transportation Terminals/garage with and without repair
6. Repair of optical instrument and equipment and cameras
7. Repair Shops for transport equipment's i.e. trucks, furnishings
8. Printing/Publishing
9. Machinery display shop/center
10. Gravel and Sand
11. Lumber and Hardware
12. Manufacture of ice/ice blocks, cubes, tubes, crush except dry ice
13. Manufacture of signs and advertising displays (except printed)
14. Welding Shops
15. Machine Shop service operation (repairing/ rebuilding, or custom job orders)
16. Medium Scale Junk Shop
17. Lechon or whole pig roasting
18. Other bakery products and those not elsewhere classified
19. Repacking of food products e.g. fruits, vegetables, sugar and other related products
20. Car park buildings, parking lots, garage facilities
21. Government facility
22. Cultural/educational center
23. General/specialized hospital, medical center
24. Medium scale Shopping center/department store
25. Movie house/ theater
26. Storeroom and warehouse but only as may be necessary for the efficient conduct of the business
27. Institutional activities such as:
 - a) Colleges/ universities (not allowed in Boracay Island)
 - b) Vocational/technical school (not allowed in Boracay Island)
28. Convent, seminary and related uses
29. Commercial job printing
30. Manufacture of insignia, badges and similar emblems except metal
31. Commercial garage
32. Plant nurseries
33. Laundry
34. Billboards/signboard making/advertising shops
35. Heavy equipment sales and services (Not allowed in Boracay Island)

36. Woodworks/furniture shops
37. Steel works such as:
 - a) Window grills fabrication
 - b) Window casement/steel doors
 - c) Steel gate/fence
 - d) Garden/home furniture
 - e) Cut flowers plan accessories
 - f) Other steel fabrication activities
38. Stadium, coliseum, gymnasium
39. Commercial housing like:
 - a) Apartment
 - b) Boarding houses
 - c) Dormitory
 - d) condotels
40. Carnivals & recreation shows
41. Vulcanizing Shop
42. Bag/Shoe Repair
43. Rent a Car Service
44. Junk Shop
45. Repair Shops e.g. house appliance repair shop
46. Off street and multi-level parking area
47. Filling station
48. Funeral parlors/memorial chapel (proposed project for Boracay Island will be subjected to LZBA approval)
49. Hardware and construction supply store
50. Car Shop (Not allowed in Boracay Island)
51. Home appliance store
52. Department Store
53. Other commercial activities not elsewhere classified

SECTION 23. USE REGULATIONS IN TOURIST COMMERCIAL ZONE/LOW DENSITY (T -1). This zone should be for tourism and tourism related uses. Within the zone the following types of establishments shall be allowed following the approved Planning and Urban Design Guidelines as follows:

1. Bars, Restaurants and eateries
2. Food service facilities
3. Commercial kitchens
4. Small scale tourist accommodation establishments:
 - a) Hotels
 - b) Cottages
 - c) Pension house
 - d) Resort
5. Museums
6. Libraries

7. Convention and conference centers
8. Entertainment pavilions for semi enclosed functions
9. Recreation centers such as play courts, sports facilities
10. Cultural and performing arts facilities
11. Diagnostic clinics and emergency aid facilities including pharmacies
12. Banking and finance facilities
13. Internet Cafes
14. Visitor information centers
15. Souvenir shops/Boutiques/Arts & crafts
16. Fire Stations
17. Police Stations
18. Worship facilities like chapels
19. Parks/gardens
20. Resorts
21. Open air or outdoor sports activities and support facilities, including single story kiosks, promenades
22. Memorial/Shrines monuments, kiosks and other park structures
23. Sports Club facilities, equipment rental and sales
24. Government Facility
25. Embassy/Consulate
26. Shopping Center
27. Cultural and performing arts facilities
28. Open air or outdoor sports activities and support facilities
29. Sports club facilities, equipment rental and sale
30. Diagnostic Clinic/health center/emergency aid facilities including pharmacies/ club, gym
31. Museum
32. Beauty parlors and barber shops
33. Spa/massage clinics
34. Tattoo shops
35. Travel agency, tour operator and tourist guide services
36. Tourist information center

No Tourism project or tourism related activities shall be allowed in tourist zone unless developed or undertaken in accordance with the Department of Tourism (DOT) guidelines and standards subject to an environmental impact and vulnerability assessment.

SECTION 24. USE REGULATIONS IN TOURIST COMMERCIAL ZONE /MEDIUM DENSITY (T-2). This zone shall be used primarily for medium intensity mixed use and commercial developments for tourism related establishments within the tourism zone which intended to accommodate the development of tourist facilities. Enumerated below are the allowable uses:

1. All uses in T-1 may be allowed in T-2
2. Amusement and recreation center
3. Aqua-sports/dive shops/ sea sports
4. Medium scale convenience stores
5. Medium scale tourist accommodation establishments
 - a. Hotels
 - b. Cottages
 - c. Resorts
6. Condominium
7. Malls
8. Cultural/educational center
9. General/Specialized hospital, medical center
10. Shopping center/department store (medium scale)
11. Stadium, coliseum, gymnasium
12. Recreation, entertainment, cultural services and similar activities

No Tourism project or tourism related activities shall be allowed in tourist zone unless developed or undertaken in accordance with the Department of Tourism (DOT) or Municipal tourism Office guidelines and standards subject to an environmental impact and vulnerability assessment.

SECTION 25. USE REGULATIONS IN TOURIST COMMERCIAL ZONE/LARGE SCALE (T-3). A Zone shall be used primarily for large scale mixed use of commercial developments for tourism related purposes. Enumerated below are the allowable uses:

1. Shopping Centers and other commercial activities which generate traffic and require utilities services.
2. High Rise Hotels
3. High end tourist accommodation establishments
4. Sports stadiums or sports complex
5. Supermarket (large scale)
6. Malls
7. Condotels

These are subject to studies such as feasibility and traffic assessment.

No Tourism project or tourism related activities shall be allowed in tourist zone unless developed or undertaken in accordance with the Department of Tourism (DOT) or Municipal Tourism office guidelines and standards subject to an environmental impact and vulnerability assessment.

SECTION 26. USE REGULATIONS IN INSTITUTIONAL ZONE (IZ). An I Zone shall be used principally for particular types of institutional establishments e.g. welfare homes, orphanages, home for the aged, rehabilitation and the following uses shall be allowed:

1. Welfare homes, orphanages, boys and girls town, home for the aged and the like
2. Government offices
3. Schools
4. Hospital/clinic
5. Academic/research
6. School for self-defense
7. Driving Schools (Not allowed in Boracay Island)
8. Speech Clinics
9. College/university, cultural educational center (not allowed in Boracay Island)
10. Convent, seminary and related uses
11. Vocational/technical school (not allowed in Boracay Island)

SECTION 27. USE REGULATIONS IN PARKS AND OPEN SPACE ZONE (POZ). A POZ shall primarily be used as an area designed for diversion/ amusements and for the maintenance of ecological balance of the community. The following uses shall be allowed in Parks and Open Space Zones:

1. Parks/playground, Garden, Aviary, Zoo and other nature center, with customary park structures such as park office, gazebo, clubhouse
2. Open air or outdoor sports activities and support facilities, including low rise stadiums, gyms, amphitheaters and swimming pools
3. Golf courses, ball courts, race tracks and similar uses
4. Memorial/Shrines monuments, kiosks and other park structures

SECTION 28. USE REGULATIONS IN CEMETERY (CEM) ZONE. The CEM Zone shall be used primarily for burial and related activities. Enumerated below are the allowed uses:

1. Cemetery, with customary ancillary uses such as cemetery administration, service, and maintenance facilities
2. Memorial Parks, Ossuary, Customary accessory uses such as crypts, chapels, pocket parks, parkways, promenade, parking and toilet facilities
3. Crematorium
4. Columbarium
5. Mausoleum
6. Accessory uses:
 - a. Fire/security station
 - b. Utility installation for use of zone/lot occupants

SECTION 29. USE REGULATIONS IN UTILITIES, TRANSPORTATION AND SERVICES ZONE (UTSZ). An area in the municipality designated for “range of utilitarian/functional uses or occupancies, characterized mainly as a low-rise or medium-rise building/structure for low to high intensity community support functions. Enumerated below are the allowed uses in the UTSZ

1. Public Utility Facility
2. Utility installation for use of zone/lot occupants
3. Parking structure
4. Passenger Terminal/Transit station/depot, transportation infrastructure with the following passenger convenience amenities/facilities:
 - a) Seating/lounge area
 - b) Comfort room facilities
 - c) Food stalls
5. Park, Playground, Garden, aviary, zoo and other nature center
6. Accessory Uses:
 - a) Petrol filling kiosk (also for gasoline, diesel, LPG) with no other retail/service activity, which shall be allowed only within parking area/structures. This Accessory Use shall be subject to applicable government and other safety regulations.
 - b) Fire/Security/Emergency response station
 - c) Tourism Information and Assistance Center
7. Port facilities
8. Airport and heliport facilities
9. All other types of transportation complexes
10. Pumping plants (water supply, storm drainage, sewerage, irrigation and waste water treatment plants
11. Liquid and solid waste management facilities
12. Climate monitoring facilities
13. Telecommunication facilities such as cell (mobile) phone towers
14. All other types of large complexes for public services

SECTION 30. USE REGULATIONS FOR AGRICULTURAL ZONE (AGZ). In AGZ the following uses shall be permitted:

1. Cultivation, raising and growing of staple crops such as rice, corn, camote, cassava and the like
2. Growing of diversified plants and trees, such as fruit and flower bearing trees, coffee, tobacco, etc.
3. Silviculture, mushroom culture, fishing and fish culture, snake culture, crocodile farm, monkey raising and the like
4. Customary support facilities such as palay dryers and rice threshers and storage barns and warehouses
5. Ancillary dwelling units/farmhouses for tillers and laborers
6. Agricultural researchers and experimentation facilities such as breeding stations, fishfarms, nurseries, demonstration farms, etc.

7. Pastoral activities such as goat raising and cattle fattening
8. Home occupation for the practice of one's profession or engaging home business such as dressmaking, tailoring, baking, running a sari-sari store and the like, provided that:
 1. Number of persons engaged in such business/industry shall not exceed five (5), inclusive of the owner;
 2. There shall be no change in the outside appearance of the building premises;
 3. No home occupation shall be conducted in any customary accessory uses cited above;
 4. No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood and any need for parking generated by the conduct of such home occupation shall be met of the street in a place other than the required front yard;
 5. No equipment or process shall be used in such occupation which creates noise, vibration, glare, fumes, odors and electrical interference detectable to the normal senses and visual or audible interference in any radio or television receiver or causes fluctuations in line voltage of the premises.
9. Home industry classified as cottage industry e.g. mat weaving, pottery making food preservation, etc. provided that:
 - a. Such home industry shall not occupy more than thirty (30%) of floor area of the dwelling unit. There shall be no charge or alteration in the outside appearance of the dwelling unit and shall not be a hazard or nuisance;
 - b. Allotted capitalization shall not exceed the capitalization as set by the Department of Trade and Industry (DTI);
 - c. Such shall consider same provisions as enumerated in letters c, d and e of Home Occupation, this section
10. Backyard piggery, holding pen, raising of pigs, goats, cows, carabaos, poultry/fighting cock farm, provided that:
 - a. There shall only be a maximum of 10 heads for livestock and maximum of 500 birds for fowl
 - b. A special permit is secured in consonance with Section 57, Item 12 of this Ordinance.

SECTION 31. USE REGULATIONS IN MANGROVE ZONE (MZ). No development, use or activity shall be allowed other than mangrove plantation in the MZ unless a permit, clearance or license is secured from the Department of Environment and Natural Resources (DENR) and the Municipality of Malay, Aklan.

SECTION 32. USE REGULATIONS IN WATER ZONE (WZ). The utilization of the water resources for domestic and industrial use shall be allowed provided it is in consonance with the development regulations of DENR, provisions of the water code, fishery laws and the revised forestry code of the Philippines, as amended and provided further; that is subjected to an environmental impact assessment prior to the approval of its use.

All beaches in Boracay Island must be preserved and conserved. The 30 meter easement currently prevailing will be retained for all developed beaches. For new development, beach easement will be the entire sandy portion of the beach from the mean high water mark to solid natural ground but not less than 30 meters. Mainland beaches should also be protected from further beach erosion and preserved for tourism activities and expansion sites for tourism and sea water sports activities in Boracay Island.

Swimming beaches must be protected from boats, fuel spillage and organic pollutants, and water should circulate through the area. The following use zones should be established based on the available information on coastal and marine resources, existing resource users, use patterns, and development potential. Water Zone has sub zones namely: Protection Zone, Production Zone, Eco-tourism Zone, Sea Crafts Mooring Zone and Trade and Navigation Zone.

1. **PROTECTION ZONE** -

1.1 **FISH SANCTUARY OR MARINE PROTECTED AREA** – a natural habitat of fishes and other marine species declared by Municipal Ordinance 2001-139 to be reserved for fish shelter and breeding place for the production of marine species and preservation of other form of marine life.

1.2 **GEO-MARINE AQUA PARK** – An area of twenty (20) hectares located at four hundred (400) meters off-shore the long beach from Friday's Beach Resort and One White Beach Resort to Station 1, Barangay Balabag, Boracay Island. Water utilization and activities in the GAP are defined in Municipal 281 series of 2009.

2. **PRODUCTION ZONE**

2.1 **MARICULTURE AND SEaweEDS ZONE** – located perpendicularly to the coastal area of Barangay Poblacion. Mooring and navigation of any seacraft in the area must observed presence of seaweed production and avoid destruction of the same.

3. **ECO-TOURISM ZONE** – Provided and regulated through various Sea Traffic and Marine Preservation and Protection related ordinances to smoothen the various tourist activities and to avoid overlapping and collision.

- 1) Swimming
- 2) Snorkeling
- 3) Paraw Sailing
- 4) Wind Surfing
- 5) Kite Boarding
- 6) Banana Boat Ride
- 7) Diving/Helmet Diving
- 8) Jet Ski
- 9) Para Sailing

4. **SEA CRAFTS MOORING ZONE** – Areas between Cagban and Lorenzo South; Din-iwid and Friday's are designated as mooring areas for all motorboats and sea crafts not beyond eighteen (18) gross tons. Sea crafts beyond twenty (20) gross tons shall moor at Sambiray Port or Caticlan or five hundred (500) meters offshore Angol Point.

5. **NAVIGATION ZONE** – Designated sea lanes for all sea crafts going to and from Boracay Island and Caticlan. Mooring of sea crafts and other tourist activities are prohibited in this zone.

All rivers and creeks in the municipality of Malay must be likewise preserved and protected. Required easement in the Water Code and other pertinent laws must be observed. In land tourism related activities will be allowed in these areas provided that facilities to prevent water contamination be provided. Swimming safe and pollutant free watersports will be also allowed in these areas.

SECTION 33. USE REGULATIONS FOR SANITARY LANDFILL ZONE. This zone is solely intended for the establishment of a sanitary landfill and its related solid waste management facilities in Brgy. Kabulihan.

SECTION 34. USE REGULATIONS RECLAMATION ZONE. This zone is solely intended as an expanded easement in coastlines. Its use shall only be allowed provided it is in consonance with the development regulations of the LGU-Malay and provisions of the water code. Proposed reclamation areas are from Barangay Caticlan to Barangay Poblacion coastal areas.

SECTION 35. USE REGULATIONS IN ECO-TOURISM ZONE. These areas include the other natural and cultural heritage areas where community participation, protection and management of natural resources, culture and indigenous knowledge and practices, environmental education and ethics, as well as economic benefits are fostered and pursued for the enrichment of host communities and satisfaction of the visitors. These include the other tourism attraction in Malay such as cave, forest, rivers, falls, etc. The following uses will be allowed in this zone:

1. Daytime restaurant or commercial eateries
2. Souvenir store
3. Government facilities like comfort rooms, information desk and viewing decks
4. Access road
5. Police assistance center
6. Health assistance centers
7. Passive recreation, walking, picnicking, photography and other appreciative pursuits
8. Active recreation, ridge climbing, tree climbing, mountain biking, forest trekking, botanical tours, nature photography, equestrian activities
9. Approved structures associated with authorized eco-tourism like trails, pedestrian bridges, overhead canopy walkways

No Tourism project or tourism related activities shall be allowed in tourist zone unless developed or undertaken in accordance with the Department of Tourism (DOT) or Municipal Tourism Office guidelines and standards subject to an environmental impact and vulnerability assessment. It has also to pass EIA and DENR clearance.

SECTION 36. USE REGULATIONS IN FOREST ZONE – The various land uses within forestlands must complement each other to promote balance between ecological and economic concerns (e.g., biological diversity and timber production) and to optimize benefits.

The management of forests and forestlands is a shared responsibility between and among the national government, the local governments, the private sector, and local communities.

1) **PROTECTION FORESTS**

Within the Forest Protection Zones, the following activities are prohibited:

- i. Cutting of trees
- ii. Kaingin farming
- iii. Mining (refer to Mining Law new EO 79, 2012)
- iv. Other unsustainable agricultural practices

2) **PRODUCTION FORESTS**

Within the Forest Production Zones, the following activities are permitted:

- i. Planting of trees
- ii. Agro-forestry
- iii. Other activities such fishpond and infrastructure

SECTION 37. INDIGENOUS CULTURAL COMMUNITIES/ INDIGENOUS PEOPLES (ICCs/IPs). The rights of ownership and possession of Indigenous Peoples (ICCs/IPs) to their ancestral domains shall be recognized and protected in conformity with RA 8371 known as “The Indigenous Peoples Right Act of 1997”.

SECTION 38. FORESTLAND AND WETLAND WITH TENURED OCCUPANTS. These areas have tenured occupants but were classified as forestland/wetland on the DENR Land Classification Map and particularly located in Boracay Island. Development of these areas are subject for Environment Management Strategy to be agreed upon by the Land Owner, the DENR, the Barangay concerned and the Municipality of Malay represented by the respective heads of the agency. The natural areas (forest, wetland, and coastal ecosystem including the environmentally critical areas) of Boracay are classified into management zones derived from the ecological and human use values of these ecosystems. The management zonation is based on the following general land use policy areas adopted from the ecological zonation of natural areas;

- Protection Areas
- Sustainable Use Areas
- Recreation Areas
- Multiple Use Areas
- Beach and Buffer Areas
- Roads

The resource and land use prescriptions for the natural areas in Boracay are based on these broad land use categories.

RESOURCE USE PRESCRIPTIONS

- a) ***PROTECTION ZONE.*** The Protection Zone (PZ) consists of the intact old and second-growth forest areas in Barangay Yapak and Manocmanoc including the wetland area in this Barangay. The forest areas in Barangay Yapak also serve as habitats of the short nose, flying fox, and golden crowned fruit bats. This Zone is also the site of the Crystal Cave and the Bat Cave.

The PZ is a highly restricted human use/activity zone where very limited people’s visitation will be allowed. Incursions and clearings in the PZ are illicit/unauthorized and are not sanctioned in anyway.

- b) ***Special Use Zone.*** The Special Use Zone (SUZ) includes the areas within the classified forestland that are sites of existing tourist accommodation facilities in Barangay Yapak. It also comprises of the remaining forestlands in Barangay Balabag and Manocmanoc that have structures for commercial tourism purposes. The SUZ likewise covers those wetland areas in Barangay Balabag and Manocmanoc adjacent to existing built development.

The SUZ, while incorporating tourist accommodation facilities, still contains a variety of forest vegetation communities and wetland habitats, in which the management focus should still be on protecting and maintaining ecosystem functions and the forest and wetlands ecosystems. As such, permitted uses and activities should be those that have very low impact on the forest and wetland environment, and very limited and tightly specified levels of permanent modification in the placement of facilities and structures.

- c) ***RECREATION ZONE.*** The Recreation Zone (RZ) is defined as an area within the classified forestland that have land cover dominated by small tress, brush and shrub vegetation. Situated in Barangay Balabag primarily in the Mt. Luho area, the RZ is either currently idle or is being use for recreation activity, with several sections of the site already modified. Owing to its relative elevation and vantage view of the island and coastal waters, the RZ provides natural attractions and good opportunity for recreational (nature based) purposes.

The RZ requires sound land and resource management activities to ensure there are no impacts on the forest vegetation and overall environment. Management prescriptions shall therefore pay attention to the following considerations:

- Well managed site boundaries
 - Good visitor control on and off the sites
 - Adequate provision of liquid and solid waste disposal (originating from public toilets, accommodation and restaurant facilities, and other activity venues)
 - Adequate control to restrict or limit nutrients and contaminants from entering the surrounding environment
 - Guidelines and control for use of sites (nature of use, permitted and prohibited uses, acceptable performance criteria, levels of use, intensity of development, etc.)
 - Control of visual impacts affecting the immediate and surrounding landscape
 - Guidelines for provision of all structures and landscaping (architecture style, height scale and bulk of structures, car parks, signage, plantings and landscape treatment)
 - Management of visitor numbers, and means of access and egress
- d) **MULTIPLE USE ZONE (MUZ).** The MUZ are areas within the classified forestlands that are partially or significantly modified, cleared and/or with structures mostly for settlement purposes. The MUZ is subject to existing human activities, such as residential, local commercial, and backyard farming/ plantation. The MUZ consists of the existing settlements sites within the classified forestland in Barangay Yapak, Balabag, and Manocmanoc.

The MUZ involves greater emphasis on land use control to limit the expansion and the attendant impacts of settlement development within the classified forestlands and adjacent wetlands. Specific development guidelines for the MUZ can include the following:

- Height restrictions of vertical structures
- Architectural design standards
- Appropriate landscape treatment, including restrictions on the use of inappropriate exotic plant species, retention of existing/remnant natural vegetation, etc.
- Traffic management (access and egress, and parking provision)
- Appropriate scale of development and intensity of activity, according to site context and condition
- Appropriate provision for management of surface run-off, containment of contaminants and surface water (stormwater) treatment;
- Control air emissions
- Appropriate perimeter controls, adequate development boundary setbacks, and buffer treatment (i.e. screening, security, manageable edge, etc.).

- e) **ROADS.** The existing roads and road carriageways including road reserves (to be identified if not already) should be strategically upgraded and maintained to reduce impacts to the flora and fauna resources and their habitats. Any road upgrading or construction of new ones should be covered by the EIA process. This EIA should address specific environmental protection requirements and design limitations, to mitigate potential impacts to the island's natural ecosystems.
- f) **RIDGELINE AND ESCARPMENTS.** Located on the western section of Barangay Balabag, this includes the notable landscape feature with significant slope factor (18-30%), and is adjacent to the classified forestland in the barangay. Because of the instability of its slope, the existing forest and brush vegetation of this area should be enhanced and any built development should be disallowed.
- g) **BEACH AND BUFFER/EASEMENT.** This are is the 30 meter easement along the coastline of Boracay Island as specified in Proclamation 1064 of 2006. As legally defined under the Proclamation, the 30 meter easement is part of the classified forestland and is not subject therefore to alienation. Allowable uses include beach activities including active and passive recreation, walking and other related beach activities. Permanent development (structures) of any kind except those associated with environmental interpretation initiate such as signs, trails, and pedestrian walkways. Landscape of landform modification is disallowed.

ARTICLE VIII

OVERLAY DISTRICT REGULATIONS

SECTION 39. **USE REGULATIONS IN FLOOD OVERLAY ZONE (FO-Z).** It is the intent of this FO-Z to apply special regulation to the use of land in those areas subject to periodic inundation. Such regulation is deemed necessary to protect the public health, safety, and general welfare and to reduce public and private expenditures imposed on the community and its residents by such periodic flooding. These regulations are also intended to reserve areas for the impoundment of water, to stabilize stream flow and to maintain proper ecological balance.

1) **OFFICIAL FO-Z MAP**

The regulations and controls set forth in this article shall be applied within the areas designated as FO-Z on the zoning map and may be viewed upon request at the office of the MPDO; however, nothing contained herein shall prohibit the application of these regulations to lands which can be demonstrated by competent engineering survey to lie within any FO-Z; conversely, any lands which can be demonstrated by competent engineering to lie beyond the FO-Z shall not be subjected to these regulations. Any alterations to the FO-Z shall be so noted as an alteration to the FO-Z on the zoning map.

All development, including new construction, additions, and substantial improvements shall:

- a. No encroachments on floodways shall be done unless a registered professional certifies that the proposed development will not result in any increase in flood levels.
- b. All new construction and additions to any residential or nonresidential structure shall have the lowest floor, together with attendant utility and sanitary facilities, elevated to no lower than (one to three) feet above the base flood elevation

- c. All utilities, including electrical, heating, ventilation, plumbing, air conditioning, and other service facilities, including ductwork, shall be elevated or made of flood resistant materials up to (one to three) feet above base flood elevation, and designed and located to prevent water from entering or accumulating within the components during conditions of flooding
- d. All new buildings and additions to existing buildings must be constructed on foundations that are approved by a licensed professional engineer, or
- e. Where new or replacement water and sewer systems, including on-site systems, are proposed in a flood hazard area the applicant shall provide the zoning officer and the building official with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into systems to avoid contamination during periods of flood.
- f. Structures must be constructed using materials that are resilient to flood damage.
- g. Any development within the overlay zone shall not contribute to the increase of flood levels especially during flood events.
- h. Development activities must be sited and designed to minimize disruption to shorelines and their banks

SECTION 40. **AIRPORT HAZARD OVERLAY ZONE.** Development of structures within the AOZ shall not be constructed, altered or maintained in the regulated air space area except as follows:

1. Any structure or object that would be shielded by existing structures of a permanent character or by natural terrain or topographic features of equal or greater height; and
2. Any air navigation facility airport approach or landing aid aircraft arresting device, or meteorological device approved by the ATO; and
3. Structures necessary and incidental to airport operation

The Airport Hazard Overlay Zone applies to areas surrounding airports. Provisions of this section shall apply to all lands, buildings, structures, natural features and uses located within the Airport Hazard Overlay (AO) Zone Mapas reflected in the Land Use Plan Map and the Zoning Map.

Where the requirements and restrictions imposed by the Airport Hazard Overlay Zone conflict with the requirements of the underlying zone district, the more restrictive requirement shall be applied

ARTICLE IX

GENERAL DISTRICT REQUIREMENTS

SECTION 41. **BUILDING OR STRUCTURE USE.** No building, structure or land shall hereafter be occupied or used and no building or structure or part thereof shall be expanded, reconstructed or structurally altered except in conformity with the provisions of this zoning ordinance.

SECTION 42. **DEVELOPMENT DENSITY.** Permitted density shall be based on the zones' capacity to support development. This includes the densities in the following zones:

1. **RESIDENTIAL ZONES**

- a. Medium Density Residential Mixed (R-2MXD) Zone- allowed density is twenty one (21) to sixty five (65) dwelling units per hectare
- b. High Density Residential Mixed (R-3MXD) Zone – allowed density is sixty six (66) or more dwelling units per hectare
- c. Open space requirement for commercial and tourism zone.
 - For 200 square meters or less - 10 percent of the total area
 - For 1,000 square meters but less than 200 square meters – 20 percent of the total area
 - More than 1,000 square meter but less than 5,000 square meters – 40 percent of the total land area
 - For 5,000 square meters but less than 2 hectares- 50 percent of the total area.
 - For 2 hectares and above - 60 percent of the total land area.

USE OF THE OPEN SPACE SHALL BE LIMITED TO:

- Pool
- Landscaping
- Pathways
- Yard or patio
- Parking Space

OPEN SPACE SHALL NOT BE SUBJECT OF LEASE NOR CAN BE SOLD.

2. **ALL OTHER ZONES** – There is no fixed maximum density but should be based on the planned absolute level of density that is intended for each concerned zone based on the CLUP.

SECTION 43. **HEIGHT REGULATIONS.** Unless otherwise stipulated in this ordinance, building or structure height regulations shall be imposed on the following zones:

1. **RESIDENTIAL ZONES**

- a. **Medium and High Density Residential Mixed (R-2 & R- 3 MXD)** – no building or structure for human occupancy whether public or private shall be higher than fourteen (14) meters above the highest natural grade line in the property or front sidewalk (main entry) level; mid-rise dwelling is three (3) to four (4) storey. Provided clearance from CAAP shall be secured first.
- b. **Tourist Commercial Zone/Large Scale (T-3)** – b1. Mainland Malay- high rise dwelling units of eight or more storey are allowed provided it conforms to the National Building Code, Structural Code prescriptions and CAAP height limitations.
- c. **Boracay Island** - maximum height of buildings and other structures in the Island of Boracay shall conform with Municipal Ordinance No. 131, Series of 2000, 267 Series of 2008 and Municipal Ordinance NO. 328 Series of 2013.
- d. **Exempted from the imposition of height regulations in the residential zones** are towers, church steeples, water tanks, and other utilities and such other structures not covered by the height regulations of the National Building Code and/or the Air Transportation Office. However, the above-mentioned projects/structures should secure prior approval from the Municipal Zoning Administrator or LZBA.

2. **AREAS 15 METERS FROM THE MAIN ROADS IN MAINLAND MALAY** - unless otherwise specified by existing laws or regulations, no buildings shall be allowed to be constructed higher than the 10-meter building height limit or approximately 3-storeys.
3. **IN BORACAY ISLAND, ONLY 14 METERS HIGH BUILDING** is allowed after six (6) meter from the center of the road and 16 to 20 meters building can be built after 12 meters from the center of the main road.
4. **BOTH IN BORACAY AND MAINLAND**, the maximum height of the building that may be constructed from 100 meters and beyond from the 30 meter beach easement shall not exceed 16 meters provided that the lot area shall be 5,000 square meter but less than 2 hectares and 20 meters high provided that the lot area shall be 2 hectares and above.
5. **FOR EXISTING BUILDINGS THAT ARE NON-CONFORMING TO THIS RESTRICTION**, there shall be an imposed development charge that will be determined by the municipal government. Development charges collected will serve as a contribution to the Municipal Government of Malay for the improvement and management of the environment, infrastructure and utilities and better planning of Malay.
6. **AREAS ALONG THE COASTLINES** - in order to pursue a development pattern that will enable more land owners/developers to gain access to views of the coastline, the building height limits and guidelines in Municipal ordinance 131, 267 and 328 shall prevail.

All other Zones – unless otherwise specified by existing national laws or regulations, building heights may be regulated by the Local Zoning Board of Adjustments for zones other than residential, considering environmental and other factors or Cases.

SECTION 44. **AREA REGULATIONS.** Area regulations in all zones shall conform with the minimum requirement of existing codes such as: Subdivision and Condominium Buyers Protective Law and its IRR, Promulgation of Different Levels of Standards and Technical Requirements for Economic and Socialized Housing Project and its revised implementing rules and regulations, National Building Code, Fire Code, Sanitation Code, Plumbing Code, Structural Code, Urban Development and Housing Act, Executive Order No. 648 and other relevant guidelines promulgated by national government agencies concerned.

1. **BUILDING SETBACKS**

a) **RESIDENTIAL BUILDINGS AND STRUCTURES MINIMUM SETBACK:**

	R-2MXD	R-3MXD
Front Yard	3.00 m.	4.00 m.
Rear Yard	2.00 m.	2.00 m.
Side Yard	2.00 m.	2.00 m.

i. *Side Yard Abutments may be allowable on only one side yard provided that:*

1. A fire wall with a minimum height clearance of 1.50 meters from that part of the roof directly attached to it or all sides.
2. There shall be no opening in the party firewall
3. The firewall shall have a minimum fire resistive strength or ratio of two hours as certified by the Architect/Engineer designing the plans.

ii. *Rear Yard Abutment may be allowable provided that:*

1. Abutment does not exceed 39% of the total width of the lot.
 2. All conditions in (i) above are complied with.
 3. That the abutment will not impede the accessibility to the rear yard.
- iii. Front Yard Abutment may be allowed provided that:
1. No wall abuts the street or sidewalks except for the entrance only.

b) **COMMERCIAL BUILDING MINIMUM SETBACKS**

Road Right-of-Way	Front Yard	Side Yards	Rear Yard
20-24 meters	5.00 m.	3.00 m.	3.00 m.
10-19 meters	4.00 m.	2.00 m.	2.00 m.
Below 10 meters	2.00 m.	2.0 m.	2.00m.

1. In Boracay Island, the following road setbacks shall be applied:
 - For less than 200 square meters up to less than 5,000 square meters- 6 meters from the center road.
 - For 5,000 square meters and above – 12.5 from the center of the road.
 - i. Front Yard Abutment may be allowed provided that:
 1. That minimum clearance between the property and the building line is 2.0 meters. Building lines means the line of intersection between the outermost face of the ground floor wall and the ground line.
 2. That the outermost projection of any part of the building does not exceed beyond the property line.
 3. That the adequate provisions for parking and open space are not as specified in a and d following.
 4. That the building shall not create blind corners.
 - ii. Rear and Side Yard Abutments may be allowed provided:
 1. That adequate rotation and open space requirements met as provided for in this section.
 2. That a firewall with a two-hour fire rating with a minimum height clearance of 1.50 meters from that portion of the roof directly attached to it.

2. **PARKING SPACES**

- a. The parking slot, parking area and loading/unloading space requirements shall be based on the National Building Code IRR on the minimum required off-street (Off-RROW) cum On-Site Parking Slot, Parking Area and Loading/Unloading Space Requirements by Allowed Use or Occupancy.
- b. Dimensions of parking slots shall be as follows:
 - i. The size of an average car parking slot must be computed at two point fifty (2.50) m by five (5.00) m for perpendicular or diagonal parking and at two point fifteen (2.15) m by six (6.00) m for parallel parking.

- ii. A standard truck or bus parking/loading slot must be computed at a minimum of three point sixty (3.60) m by twelve (12.00) m.
 - iii. An articulated truck slot must be three point sixty (3.60) m by eighteen (18.00) m which should be sufficient to accommodate a twelve (12.00) m container van or bulk carrier and a long/hooded prime mover.
 - iv. A jeepney or shuttle parking/loading/unloading slot must be computed at a minimum of three (3.00) m by nine (9.00) m.
- c. The proposed parking slots shall be drawn to scale and the total number of which shall be indicated on the plans and specified whether or not parking accommodations are attendant-managed.
 - d. No part of a road, off-street parking space, loading space, or other open space required of any building shall, for the purpose of complying with this Ordinance, be included as part of the yard, open space, off-street parking or loading space similarly required of any adjacent neighboring building. However, this shall not apply to building/s within common party walls or adjacent building lines, in which case, only the yard for the free or non-abutting sides will be required.

SECTION 45. TRAFFIC GENERATORS. All traffic generating buildings and structures allowed in any of the districts must provide for adequate parking spaces for their employees, clients and visitors. Such shall, however, be subject to additional parking requirements as evaluated by the Zoning Administrator based on Presidential Decree No. 1096.

SECTION 46. ROAD SETBACK REGULATION. The following road setback regulations shall be applied:

Zoning Classification	Major Thoroughfare 30 m. & above Diversion/Railways	Secondary Road Below 30m. Provincial	Tertiary Road 6 m. & below Mun./Brgy.
Residential	10M	4 M	2M
Commercial	20M	6 M	4 M
Industrial	30M	25M	10M
Agricultural	20M	20M	7M
Agro-Industrial	30M	25M	10M
Institutional	20M	20M	10M
Park & Recreation	10M	10M	3M
Forest	30M	25M	10M

Source: DPWH

SECTION 47. EASEMENT. No permanent structure shall be constructed within a zone of at least twenty (30) meters from the mean high watermark for shorelines. For rivers, estuaries, creeks it shall be at least three (3) meters from the riverbanks or embankments at urban areas, 20 meters in agricultural areas and 40 meters in forests areas.

No person shall be allowed to stay in this zone longer than what is necessary for space or recreation, navigation, floatage, fishing or salvage. Construction of structures of any kind shall not also be allowed in the easement areas.

SECTION 48. BUFFER REGULATIONS. A minimum buffer of three (3) meters shall be provided along the entire boundary length between two (2) or more conflicting zones allocating 1.5 meters from each side of the zone boundary, as needed. Such buffer strip should be open and not encroached upon by any building or structure and should be part of the yard or open space.

SECTION 49. **SPECIFIC PROVISIONS IN THE NATIONAL BUILDING CODE.** Specific provisions stipulated in the National Building Code (P.D. 1096) as amended thereto relevant to traffic generators, advertising and business signs, erection of more than one principal structure, dwelling or rear lots, access yard requirements and dwelling groups, which are not in conflict with the provisions of the Zoning Ordinance, shall be observed.

SECTION 50. **ADVERTISEMENTS/BUSINESS SIGNS/BILLBOARDS OR STREET GRAPHICS.** Advertising, business signs and billboards to be displayed or put up for public view in any of the districts herein enumerated must comply with existing laws, rules and regulations including local ordinances. Further, they shall not be allowed along scenic areas of parks, recreation zones and heritage zones and obstruct buildings, landmarks or structures of significant heritage, cultural and historic value to the people.

SECTION 51. **ERECTION OF MORE THAN ONE PRINCIPAL STRUCTURE.** In any district where more than one structure may be permitted to be erected on a single lot, the yard and other requirements of this Ordinance shall be met for each structure as though it was to be erected on an individual lot.

SECTION 52. **DWELLING GROUP.** When it is impractical to apply the requirements of these Zoning Regulations to individual building unit in a residential compound, consisting of two or more buildings, a permit for the construction of such compound may be issued, provided, that the plan thereof conform to the following conditions:

1. That the buildings are to be used only for residential purposes and such uses are permitted in the district where the compound is located.
2. That the average lot area per family of dwelling unit in the compound, exclusive of the area used or to be used for streets or driveways, is not less than the lot area per family required in the districts.
3. That there is provided, within the tract on which the residential compound is to be located, an open space for playground purposes with an area equivalent to at least an aggregate area of five (5%) percent of the required lot area per family, but in no case less than one hundred square meters; provided, that where the residential compound is intended for less than ten families, the setting aside of such area for playground purposes may be dispensed with; and provided further, that an open space may be used as part of the yard requirements for the compound; and
4. That there is provided within the tract on which the residential compound is to be erected or immediately adjacent thereto, an adequate private garage or off-street parking area, depending on the needs of the residents and their visitors.

SECTION 53. **POLLUTION CONTROL.** For effective pollution control, all projects that are environmentally critical and those located in environmentally critical areas as determined by the Municipal and Community Environment and Natural Resources Office shall be subjected to compliance with the Department of Environment and Natural Resources-Environmental Impact Statement System (DENR-EIS System-ECC Requirements) rules and regulations before a Locational Clearance is issued.

SECTION 54. **SOCIAL ACCEPTABILITY BY LOT OWNERS AND HOMEOWNERS.** Where a person plans to establish a certain use/activity which will necessarily affect the character of a residential zone in terms of traffic to be generated and/or opening the area to outsiders which may result in loss of privacy of its residents, prior social acceptability by the majority of the immediate lot owners and homeowners shall be secured as one of the requirements for the issuance of a locational clearance for a building permit.

ARTICLE X PERFORMANCE STANDARDS

All land uses, developments or constructions shall conform to the noise, vibration, smoke, dust, dirt and fly ash, odors and gases, glare and heat, industrial wastes, sewage disposal, fire and safety hazards, traffic, off-street parking and loading facilities, storm, drainage, pollution control, and other similar environmental standards of the National Building Code, the Clean Air Act, the Clean Water Act, Ecological solid Waste Management Act and other applicable laws, rules and regulations of this Ordinance Planning and Urban Design Guidelines of the Municipality of Malay shall be also strictly observed with.

SECTION 55. BUFFER YARDS. Aside from providing light and ventilation, buffers can mitigate adverse impacts and nuisances between two adjacent developments. Whenever necessary, buffers shall be required to extend and/or provided with planting materials in order to ameliorate said negative conditions such as, but not limited to, noise, odor, unsightly buildings or danger from fires and explosions. Building setbacks shall be considered as buffer yards. A buffer may also contain barrier, such as a fence, where such additional screening is necessary to achieve the desired level of buffering between various activities.

SECTION 56. ENVIRONMENTAL CONSERVATION AND PROTECTION STANDARDS. It is the intent of the Municipality to protect its natural resources. In order to achieve this objective, all development shall comply with the following regulations:

1. Views shall be preserved for public enjoyment especially in sites with high scenic quality by closely considering building orientation, height, bulk, fencing and landscaping.
2. The utilization of the water resources in Malay shall be allowed provided it is in consonance with the development regulations of the DENR, provisions of the Water Code, the Clean Water Act, Revised Forestry Code of the Philippines, as amended, and whenever necessary, be subjected to an Environmental Impact Assessment (EIA).
3. Land use activities shall not cause the alteration of natural drainage patterns or change the velocities, volumes, physical, chemical, and biological characteristics of storm water and watercourses.
4. All developments shall limit the rate of storm water run-off so that the rate of run-off generated is no more than that of the site in its natural condition. Rainwater harvesting through open, unpaved ground are encouraged.
5. All developments shall undertake the protection of rivers and tributaries from sedimentation and erosion damage.
6. The internal drainage systems of developments shall be so designed as not to increase turbidity, sediment yield, or cause the discharge of any harmful substances that will degrade the quality of the water. Water quality shall be maintained according to DENR DAO No. 34 – Revised Water Usage and Classification/Ambient Water Quality Criteria.
7. Industrial and commercial wastewater effluents shall not discharge into surface and groundwater unless it is scientifically proven that such discharges will not cause the deterioration of the water quality. Effluents shall be maintained according to DENR DAO No. 35 – 91 – Establishing Effluent Quality Standards for Class “C” Inland Waters;
8. Floodplains shall not be altered, filled and/or built upon without proper drainage design and without proper consideration of possible inundation effects on nearby properties.

9. Facilities and operations that cause the emission of dust, dirt, fly ash, smoke or any other air polluting material that may have deleterious effects on health or cause the impairment of visibility are not permitted. Air quality at the point of emission shall be maintained at specified levels according to DAO No. 14 – Clean Air Act.
10. Mature trees or those equal to or greater than twelve (12) inches caliper measured 14 inches above the ground shall not be cleared or cut, unless permitted or is done in accordance with the provisions of the DENR and upon clearance of the Municipal Environment and Natural Resources Office.
11. Notwithstanding the Locational Clearance, no environmentally critical project or project located in environmentally critical areas shall be commenced, developed or operated unless an **Environmental Compliance Certificate (ECC) or Certificate of Non-Coverage**, as the case maybe has been secured.

SECTION 57. **NETWORK OF GREEN AND OPEN SPACES.** Aside from complying with the open space requirements of PD 957, BP 220 and other related issuances, the following shall apply:

1. All residential, commercial, industrial and mixed-use subdivisions are required to provide tree-planted strips along its internal roads having spacing of not more than ten (10) meters.
2. Similar development with total contiguous land areas greater than ten (10) hectares are required to provide, in addition to the above, adequate landscaped forest parks for the use of the occupants and/or the general public.
3. Residential compounds, regardless of total lot area, shall provide an open space for playground purposes. Where the residential compound is intended for less than ten (10) families, the setting aside of such area for playground purposes may be dispensed with, provided, that an open space may be used as part of the yard requirement for the compound. All designated open spaces shall not be converted to other uses.

SECTION 58. **SITE PERFORMANCE STANDARDS.** The Municipality considers it in the public interest that all projects are designed and developed in a safe, efficient and aesthetically pleasing manner. Site development shall consider the environmental character and limitations of the site and its adjacent properties. All project elements shall be in complete harmony according to good design principles and the subsequent development must be visually pleasing as well as efficiently functioning especially in relation to the adjacent properties and bordering streets. Considering that the municipality is a tourist destination, its Planning and Urban Design Guidelines shall be strictly followed.

The design, construction, operation and maintenance of every facility shall be in harmony with the existing and intended character of its neighborhood. It shall not change the essential character of the said area but will be a substantial improvement to the value of the properties in the neighborhood in particular and the community in general.

Furthermore, designs should consider the following:

1. Sites, buildings and facilities shall be designed and developed with regard to safety, efficiency and high tourism standards of design. The natural environmental character of the site and its adjacent properties shall be considered in the site development of each building and facility.

2. The height and bulk of buildings and structures shall be so designed that it does not impair the entry of light and ventilation, cause the loss of privacy and/or create nuisances, hazards or inconveniences to adjacent developments.
3. The capacity of parking areas/lots shall be per the minimum requirements of the National Building Code. These shall be located, developed and landscaped in order to enhance the aesthetic quality of the facility as well as the comfort and safety of the public using such facility. In no case, shall parking areas/lots encroach into street rights-of-way and shall follow the municipality's traffic regulations.
4. Developments that attract a significant volume of public modes of transportation, such as tricycles, jeepneys, buses, etc., shall provide on-site parking for the same. These shall also provide vehicular loading and unloading bays so as street traffic flow will not be impeded.
5. Buffers, silencers, mufflers, enclosures and other noise-absorbing materials shall be provided to all noise and vibration – producing machinery. Noise levels shall be maintained according to levels specified in DENR DAO No. 30 – Abatement of Noise and Other Forms of Nuisance as Defined by Law.
6. Glare and heat from any operation or activity shall not be radiated, seen or felt from any point beyond the limits of the property.
7. No large commercial or advertising billboard, signage and/or pylon, which will be detrimental to the skyline, shall be allowed.

SECTION 59. INFRASTRUCTURE DEVELOPMENT CONTRIBUTION. All developments for public facilities and services shall not cause excessive requirements at public cost and shall not be detrimental to the economic welfare of the community. Private developments including but not limited to PUDs, residential subdivisions, shopping malls, economic zones, etc. should contribute for the provision of related off-site development infrastructure projects such as but not limited to road construction, drainage system, street lighting, sidewalk construction, etc. in close coordination with the Municipal Engineer's Office and the MPDO.

SECTION 60. TRAFFIC IMPACT STATEMENT AND TRAFFIC MANAGEMENT PLAN. Major, high intensity development such as commercial/residential buildings, condominiums, condotels, resorts, hotels, schools, universities, gymnasiums, convention centers, sports centers, cultural centers, theaters, industrial estates and warehouses shall be required to submit Traffic Impact Statement (TIS) and Traffic Management Plan (TMP) which shall form part of the requirements for the Locational Clearance. Other traffic generating developments, as may be determined by the Municipal Planning and Development Office, shall be required to submit the same. Enumerated below are the development projects which are required to submit TIS/TIA and TMP:

1. Residential, resort and hotel developments in excess of 200 units
2. Business developments with Gross Floor Area (GFA) in excess of five thousand square meters (5,000 sq.m.)
3. Warehousing with a GFA of ten thousand square meters (10,000 sq.m.)
4. Developments with a combined generation and attraction greater than 100 vehicles in the highest hour where more than 100 off-street parking spaces are provided.

ARTICLE XI
SUPPLEMENTARY REGULATIONS

SECTION 61. **INNOVATIVE TECHNIQUES OR DESIGNS.** When it is impractical to apply the requirements of these Zoning Regulations to certain developments, the proponent may apply for a permit with the Local Zoning Board of Adjustment (LZBA), on grounds of innovative development techniques, provided, that the following conditions are complied with:

1. The proposed land use will not alter the essential character of the zone, especially its population density, number of dwelling units per hectare, and the dominant land use of the zone.
2. The final development plans that was reviewed and approved by the LZBA must be submitted to the Zoning Administrator for appropriate action.
3. The preliminary plan must generally set forth any existing or proposed arrangements of lots, streets, access points, buffer strips, rail, water, highway or other transportation arrangements and the relationship of the tract of the land involved to surrounding properties.
4. The final plan must, in addition to the above-cited requirements, describe the noise, smoke, odor, vibration, dust, dirt, obnoxious gases, glare and heat, fire hazards, industrial wastes and traffic which may be produced by the development.
5. The area subject to application is a consolidated parcel of land of at least two (2) hectares.
6. In cases of pollutive /hazardous or high category of industries they shall not be allowed in a residential area.

SECTION 62. ADDITIONAL REGULATIONS

1. SANITARY LANDFILLS

- a. Adequate fencing shall be put up to prevent undue scattering of wastes.
- b. Eradication of rats and spraying of flies and the general maintenance of the dumping site shall be the sole responsibility of the proponent.
- c. RA 9003 (Ecological Solid Waste Management Act of 2000) provisions shall at all times be complied with.
- d. Appropriate DENR and other NGA clearances should be secured.

2. RADIO TRANSMITTING STATIONS/TELECOMMUNICATION TOWERS

- a. Clearances and favorable endorsements from the National Telecommunications Commission and the Department of Health shall be secured and submitted as part of the supporting documents to be reviewed by the LZBA.
- b. Structural design of towers should be prepared and signed by licensed structural engineers and similarly submitted.
- c. Radio Transmitting Stations and Telecommunication Towers shall be located within transport and utilities zones.
 - i. The sound maintenance of such stations shall be the exclusive responsibility of the proponent and/or persons operating them.

ii. These stations and towers may be located in some residential zones provided the preceding condition is complied strictly, no interference with or damage to local electrical appliances or other property will likely result, and social acceptability in the form of a barangay clearance and Certificates of Non-Objection signed by residents and lot owners situated within a perimeter radius of the tower that is computed at least equal to the tower's total height are secured.

d. In cases when the tower is to be located or to be installed on top of a building, the perimeter radius shall be determined or computed based on the combined heights of the building and the tower structure.

3. **PRIVATE HELIPORTS**

a. Heliports may be allowed along commercial, industrial or institutional buildings provided safety requirements are complied with.

b. A written authority to operate shall be secured from Aeronautics Administration days before the intended date of operation, and a notice shall be posted or published in at least one of the daily newspapers to determine the proposed landing site.

4. **FILLING STATIONS (GASOLINE, PETROLEUM, LPG, DIESEL)**

a. Designs for filling stations must conform to the standards set by the Department of Energy (DOE).

b. Filling stations shall be located at least twenty (20) meters away from the nearest schools, churches, hospitals and other similar structures/institutions.

c. They shall not constitute safety hazards in a community developed entirely for residential purposes.

d. Buffer strips and adequate firefighting equipment must be provided.

e. Social acceptability in the form of a barangay resolution passed by the host barangay allowing the proposed project and Certificates of Non-Objection signed by residents and lot owners situated immediately adjacent to the proposed site must be submitted to the LZBA.

f. If and when extra services such as car washing, oil changes and other similar activities are opted by filling stations, adequate oil-water separator to treat effluents must be provided.

5. **OPEN STORAGE EXCEPT HAZARDOUS/POLLUTIVE SUBSTANCES**

a. Open storage except hazardous/pollutive substances shall be located within at least two hundred (200) meters away from schools, churches, hospitals and other similar institutions.

b. Their sound maintenance shall be the sole responsibility of the proponent.

6. **ABATTOIR/SLAUGHTERHOUSE**

a. Abattoirs shall be located within reasonable distance from residential and commercial areas as determined by the Municipal Planning and Development Office (MPDO), provided that they shall not be located within the same premises as public markets.

- b. A written authority to operate shall be secured from the local health and sanitation office by the applicant at least 90 days before the intended date of operation, and a notice shall be posted in the Municipal Hall to determine public opposition to the proposed abattoir, if any. Safe and sanitary work procedures, proper solid waste disposal, wastewater treatment, odor control and other pollution abatement in the facility should be adopted.
- c. The proponent shall obtain sworn statements from the owners of land immediately adjacent to the proposed site signifying their conformity or non-conformity to the proposed activity as one of the pre-requisites for the granting of a special use permit.

7. FUNERAL ESTABLISHMENTS, CREMATORIUM AND OTHER ALLIED/SIMILAR SERVICES

- a. Classification shall be as follows:
 - ii. Category I – funeral establishments with chapels, embalming facilities, crematory facilities and offering funeral services
 - iii. Category II – funeral establishments with chapels without embalming and crematory facilities
 - iv. Category III – funeral establishments offering only funeral services from the house of the deceased to the burial place
- b. Funeral establishments are allowed in the following zones:
 - i. Category I – C2
 - ii. Category II – C1, C2 and Institutional Zone
 - iii. Category III – C1, C2 and Institutional Zone
- c. Funeral establishments shall be of minimum radial distance from the following:
 - i. Restaurants, food centers, and other food establishments – at least 25 meters
 - ii. Markets – at least 50 meters
 - iii. Abattoir, schools and hospitals – at least 200 meters
- d. Funeral establishments shall conform with existing laws, rules and regulations such as PD 825 (Providing Penalties for Improper Disposal of Garbage and other Forms of Uncleanliness and for Other Purposes), PD 856 (Code of Sanitation of the Philippines) and other rules and regulations of appropriate agencies.
- e. Category II and III shall have an existing valid contract with a Category I establishment for embalming purposes.

8. CEMETERIES/MEMORIAL PARKS/COLUMBARIUM

- a. Cemeteries and memorial parks shall only be established at the Cemetery Zone and shall conform to the pertinent provisions of the Sanitation Code, Water Code, Executive Order 648, and other pertinent laws, rules and regulations. Columbaria shall be similarly located but may also be located inside the premises of churches and places of worship as defined in the municipal ordinance.
- b. A burial ground shall be at least twenty five (25) meters distance from any dwelling house or shall be fifty (50) meters away from any source of water supply.

- c. It shall not be allowed in environmentally critical areas as defined in Proclamation 2146 and its future amendments
- d. If located near national, primary and secondary roads, and identified as such by the DPWH, a distance of at least twenty five (25) meters from the edge of the Road-Right-of-Way shall be imposed where no burial shall be allowed; provided that it shall conform with the pertinent provisions of the Sanitation Code and Water Code.
- e. It shall be totally enclosed by a perimeter fence of strong materials and all gates provided with a strong door and lock. Perimeter walls shall be at least three (3) meters in height. Where a cemetery is enclosed by a solid reinforced concrete wall at least two (2) meters high, but not exceeding three (3) meters, that is allowed to construct tombs, vaults, mausoleums or other types of sepulchers for the dead up to the walls, otherwise, a clearance of five (5) meters shall be maintained between the perimeter fence and the nearest interment plot.

9. **LAND TRANSPORTATION TERMINALS AND GARAGES**

- a. The location of passenger terminals for public utility jeepneys, busses, shuttle vans, trucks and the like shall be located at the areas duly designated by the Local Government of Malay.
- b. These terminals shall maintain public comfort and convenience facilities and amenities that are prescribed by the existing perimeter boundary ordinance.

10. **WAREHOUSE**

- a. Warehouses shall be classified as follows regardless of whether they are privately or publicly owned:
 - i. **FACTORY-ORIENTED** – this type of warehouse serves two purposes: storage of raw materials and fabricated parts until they are needed for manufacture; and serves as distribution center for finished products
 - ii. **MARKET-ORIENTED** – this is designed to collect the products of one or more manufacturers in or near the market served before shipping the goods short distance to customers
 - iii. **DISTRIBUTION CENTER** – a compromise between market-oriented and factory oriented. It contains goods on move. The objective is to efficiently move large quantities of products into the warehouse and customized orders of products out of the warehouse
 - iv. **BULK STORAGE** – provides tank storage of bulk liquids such as chemicals, oil syrups and molasses. Their services may include filling drums and bulk or mixing on type of chemicals with others to provide new compounds and mixtures.
 - v. **SPECIAL COMMODITY** – provides storage for commodities needing special treatment such as perishable goods, grains, cement, chemicals and many other items requiring controlled temperatures.
 - vi. **CONTAINER YARD/CONTAINER FREIGHT STATION (CY/CFS)** – this is designed for the storage of container/ containerized cargo(es); and extension for the customs zone.

11. PIGGERY, HOLDING PEN FOR PIGS, GOATS, COWS, CARABAOS, POULTRY/FIGHTING COCK FARM

- a. Piggeries, holding pens for pigs, goats, cows, carabaos and poultry/ fighting cock farms shall be allowed only in the Agricultural Zone that is flood-free and with a good drainage system that includes wastewater treatment.
- b. Such piggeries, animal pens and farms shall be located at least 500 meters away from the residential, commercial, and institutional buildings.
- c. Piggeries and holding pens for pigs, goats, cows and carabaos shall be 500 meters away from the major roads and/or highways.
- d. Poultries and fighting cock farms shall be 200 meters away from major roads and/or highways.

12. BASE STATIONS OF CELLULAR MOBILE TELEPHONE SERVICES, PAGING SERVICES, TRUNK LINE SERVICES, WIRELESS COOP SERVICE AND OTHER WIRELESS COMMUNICATION SERVICES

- a. These may be located in the following zones/sites unless there are expressed prohibitions under existing laws and regulations:
 - i. On the ground
 - i.1 Air rights of transportation routes and railroads
 - i.2 Within Commercial, Industrial, Residential, Institutional, Transportation and Utilities Zones
 - i.3 Within Agricultural Zones
 - i.4 Along existing buffer strips
 - ii. On top of existing structures which are structurally sound as attested and signed by duly licensed/registered structural engineer.
- b. These shall conform to the setback requirements of the National Building Code and the DOH and a perimeter fence as per specifications in the DOH radiation protection evaluation report shall be constructed to prevent access of the public to the antenna.
- c. These shall secure social acceptability in the form of a barangay clearance and Certificates of No-Objection signed by residents and lot owners situated within a perimeter radius of the tower that is computed at least equal to the tower's total height. In cases where the tower is to be located or to be installed on top of a building, the perimeter radius shall be determined or computed based on the combined heights of the building and the tower structure.

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 63. PROJECTS OF NATIONAL SIGNIFICANCE. Projects may be declared by the NEDA Board as projects of national significance pursuant to section 3 of EO 72. When a project is declared by the NEDA Board as a project of national significance the locational clearance shall be issued by HLURB pursuant to EO 72.

SECTION 64. **SUBDIVISION PROJECTS.** All owners and/or developers of subdivision projects shall secure a locational clearance prior to securing a development permit pursuant to provisions of PD 957 and its implementing rules and regulations or BP 220 and its implementing rules and regulations in the case of socialized housing projects in accordance with the procedures laid down in EO 71, series of 1993. Development Permits for residential subdivisions and other similar subdivision projects shall be approved by the Sangguniang Bayan upon prior technical reviews by the Zoning Administrator, Municipal Environment and Natural Resources Officer and the Municipal Engineer.

Section 65. **GREEN EASEMENTS.** A green easement along Malay River, Nabaoy River, Napaan River, Putol River, Lupolupo Creek, Banga Creek, and all other natural waterways shall be maintained. A minimum easement of three (3) meters from existing banks of these natural waterways shall be assigned as a green easement that is landscaped or planted with grass, ornamentals and trees and free of built permanent structures. Should there be a change in the existing shoreline or banks of the rivers, the easement shall be construed as moved and adjusted with the actual riverbanks or shorelines.

In order to achieve the objectives of these provisions, any type of construction, alteration and physical development along the green easement must be coursed through the Municipal Planning and Development Office, the Municipal Environment and Natural Resources Office prior to the issuance of other necessary permits and/or clearance. Construction of permanent structures on these easements shall not be allowed.

The maintenance of the green easements shall be the responsibility of pertinent national government agencies, the host Barangay, and/or the Municipal Environment and Natural Resources Office.

SECTION 66. **ROOF GARDENS.** In the absence of areas available for parks, recreation and open spaces, roof gardens are encouraged in accordance with the proposed network of open spaces.

SECTION 67. **ZONING CHARGE AND ZONING BOND.** There is hereby imposed a Zoning Charge and Zoning Bond for all buildings which have outstanding violation/s of the terms and conditions of their building/occupancy permit issued prior to the enactment of this Zoning Ordinance.

For buildings constructed in violation of the height/Floor Area Ratio (FAR) restrictions, the amount of Zoning Charge and Zoning Bond shall be determined by multiplying the excess floor area (the total floor area exceeding the allowable height or density limit) by the demolition cost and further multiplied by the moratorium period, that is:

$$\text{Zoning Charge} = \frac{1}{4} (\text{Excess Floor Area}) \times (\text{Demolition Cost}) \times (\text{Moratorium Period})$$

$$\text{Zoning Bond} = \frac{3}{4} (\text{Excess Floor Area}) \times (\text{Demolition Cost}) \times (\text{Moratorium Period})$$

For buildings constructed in violation of the use and/or other terms and conditions of building/occupancy permit, the amount of the Zoning Charge and Zoning Bond shall be determined by multiplying the moratorium period by regulation/enforcement costs. 75% of the product will be applied to Zoning Bond while the remaining 25% will constitute Zoning Charge.

The LZBA, through appropriate ordinance or resolution, shall set the rates of demolition and/or enforcement costs using the prevailing rates in the industry as reference.

Only bonds issued by the accredited government banks [i.e. Land Bank of the Philippines (LBP), Development Bank of the Philippines (DBP), and Philippine National Bank (PNB)] shall be accepted.

The Zoning Bond will be returned to the building owner, without interest, if the required rectification/compliance has been made prior to the end of the moratorium period; otherwise, the cash shall be forfeited or bond is called upon in favor of the Municipal Government to cover the demolition/enforcement expense.

ARTICLE XIII MITIGATING DEVICES

SECTION 68. EXCEPTIONS, VARIANCES, DEVIATIONS. Exceptions, variances or deviations from the provisions of this Ordinance may only be allowed upon review and approval of the Local Zoning Board of Adjustment (LZBA) and only when the following terms and conditions are existing:

1. VARIANCE

- a. The property is unique and different from other properties in the adjacent locality and because of its uniqueness, the owner/s cannot obtain a reasonable return on the property.
- b. This condition shall include at least 3 of the following provisions.
 - i. Conforming to the provisions of the Ordinance will cause undue hardship on the part of the owner or occupant of the property due to the physical conditions of the property which is not self-created.
 - ii. The proposed variance is the minimum deviation necessary to permit reasonable use of the property.
 - iii. The variance will not alter the physical character of the district or zone where the property for which the variance is sought is located, and will not substantially or permanently injure the use of the other properties in the same district or zone
 - iv. That the variance will not weaken the general purpose of the Ordinance and will not adversely affect the public health, safety or welfare.
 - v. The variance will be in harmony with the spirit of this Ordinance.

2. EXCEPTIONS

- a. The exception will not adversely affect the public health, safety and welfare and is in keeping with the general pattern of development in the community.
- b. The proposed project shall support economic based activities/provide livelihood, vital community services and facilities while at the same time posing no adverse effect on the zone/community.
- c. The exception will not adversely affect the appropriate use or adjoining property in the same district.
- d. The exception will not alter the essential character and general purpose of the district where the exception sought is located

SECTION 69. PROCEDURE FOR GRANTING EXCEPTIONS AND VARIANCES. The procedures for the granting of exception and/or variance are as follows:

1. A written application for an exception or variance shall be filed with the Local Zoning Board of Adjustment (LBA) citing the section of this Ordinance under which the same is sought and stating the grounds thereof.

2. Upon filing of application, a visible project sign, (indicating the name and nature of the proposed project shall be posted at the project site.
3. The Local Zoning Board of Adjustments (LZBA) shall conduct preliminary evaluation on the application.
4. The applicant shall submit to the LZBA an Affidavit of No-objection of the project by the owners of the properties and residents living immediately adjacent to the proposed project site together with the Barangay Resolution favorably endorsing the project, all of which shall be incorporated in the application.
5. In case of objection, or in its own instance, the LZBA shall hold public hearing.
6. At the hearing, any party may appear in person, or by representative. All interested parties shall be accorded the opportunity to be heard and present evidence and/or testimonies.
7. The LZBA shall render a decision within ten (10) days from the last requirement/ document/hearing of the application, exclusive of the time spent for public hearings.

ARTICLE XIV

ADMINISTRATION AND ENFORCEMENT

SECTION 70. LOCATIONAL CLEARANCE AND CERTIFICATE OF ZONING COMPLIANCE. All owners/developers shall secure a Locational Clearance from the Zoning Administrator prior to conducting any construction, repair, renovation, business operation or any other similar activity on their property. Such clearance shall be required for the application of a building permit and a business permit. No occupancy of a building and operation of a business activity within a new building shall be allowed without a Certificate of Zoning Compliance issued by the Zoning Administrator which shall be required for the application of an occupancy permit.

1. The Zoning Administrator shall require the lot plan in a convenient scale and the vicinity map in scale 1:10,000 meters of the activity or construction on the property/land of all owners/developers securing a Locational Clearance or Certificate of Zoning Compliance. However, he may require documents such as but not limited to Certificate of Title, Tax Declaration, Real Property Tax Receipt/Clearance, Vicinity Map, Site Development Plan with technical specification indicating the easement from the road or right of way and the beach, Bill of Materials, Barangay Clearance, document showing a right over land and/or building space or right over the use of the land and/or building space, affidavit showing explanation of some lacking documents and such other documents of similar nature.
2. An Authority to Follow Up/Claim shall be required in case the applicant could not personally follow-up and/or claim the said Locational Clearance and/or Certificate of Zoning Compliance.
3. Payments for application fees for Locational Clearance or Certificate of Zoning Compliance shall be assessed by the Office of the Municipal Zoning Administrator based on the existing local tax ordinance. Official receipt of actual payment shall then be required prior to processing said clearance or certificate.

SECTION 71. PERIOD OF LOCATIONAL CLEARANCE'S OR CERTIFICATE OF ZONING COMPLIANCE'S APPROVAL/DISAPPROVAL. The approval/disapproval of a Locational Clearance or Certificate of Zoning Compliance by the Zoning Administrator shall not be withheld for more than five (5) days from receipt of application. Only application documents with a complete set of required documents will be received and processed. Applications that will require approval by the LZBA will take longer with the required board hearings, possible additional requirements, site inspections and/or barangay consultations or public hearings which will be scheduled at their discretion.

SECTION 72. BUILDING PERMIT AND OCCUPANCY PERMIT. The Local Building Official shall not issue any building permit and occupancy permit without a valid Locational Clearance or Certificate of Zoning Compliance respectively, in conformity with this ordinance. Similarly, no business permit for new businesses shall also be processed without the Locational Clearance and/or Certificate of Zoning Compliance.

SECTION 73. NON-USER OF LOCATIONAL CLEARANCE. Upon issuance of a Locational Clearance or Certificate of Zoning Compliance, the grantee thereof shall have one (1) year within which to commence or undertake the use, activity or development covered by such clearance on his property. Non-use of said clearance or certificate within said period shall result in its automatic expiration, cancellation and the grantee shall not proceed with his project without applying for a new Locational Clearance or Certificate of Zoning Compliance.

SECTION 74. CERTIFICATE OF NON-CONFORMANCE. The owner of the structure or operator of the activity involved shall apply for Certificate of Non-Conformance within six (6) months from the approval of the zoning ordinance by the Sangguniang Panlalawigan. Failure on the part of the owner to register/apply for a Certificate of Non-Conformance after due notice and determination shall be considered in violation of this Zoning Ordinance and is subject to fines/penalties. Upon approval of this ordinance, the Zoning Administrator shall make an inventory of non-conforming structures and immediately notify owners of known existing non-conforming use to apply for a Certificate of Non-Conformance.

1. PROCEDURE

- a. A certificate of non-conformance shall be secured from the Office of the Zoning Administrator
 - i. All requests for such certificate shall state the reasons for non-conformance and accompanied by 1:10,000 vicinity map showing the exact location of the non-conformance use, lot or structure.
 - ii. The request for such certificate shall be acted upon and transmitted to the appropriate parties within five (5) days from the receipt of the request.

SECTION 75. EXISTING NON-CONFORMING USES AND BUILDINGS. The lawful uses of any building, structure or land at the time of adoption or amendment of this Ordinance may be continued, although such uses do not conform with the provisions of this Ordinance, provided:

1. That no such non-conforming use shall be enlarged or extended to occupy a greater land than that already occupied by such use at the time of the adoption of this Ordinance or moved in whole or in part, to any other portion of the lot or parcel or land where such non-conforming use exists at the time of the adoption of this Ordinance.
2. That no such non-conforming use which has ceased operation for more than one (1) year be again revived as non-conforming use.

3. That any non-conforming structure, or structures under one ownership which has been damaged maybe reconstructed and used as before provided that such reconstruction is not more than fifty (50%) of the replacement cost.
 - i. That should non-conforming portion of structure be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provision of this Ordinance.
 - ii. That no such non-conforming use maybe moved to displace any conforming use.
 - iii. That no such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.
 - iv. That should such structure be moved for any reason to whatever distance, it shall thereafter conform to the regulation of the district in which it is moved or relocated.
 - v. In addition, the owner of a non-conforming use shall program the phase-out and relocation of the non-conforming use within reasonable time but not to exceed the period of ten (10) years from the effectivity of this ordinance.

SECTION 76. PERMIT FOR INNOVATIVE DESIGN. Any person who wishes to apply for a permit for innovative design shall secure the appropriate form from the Local Zoning Board of Adjustment (LZBA); provided, that the terms and conditions specified in this article are met.

1. PROCEDURE FOR APPLICATION: INITIATION

- a. The applicant shall submit the form containing the detailed description of the project, together with a vicinity map drawn to the scale of 1:10,000 meters which shows the land use of the adjacent area, approximately a two (2) kilometer radius distance from the proposed site.
- b. Proposed project must be based on the approved Planned Unit Development
- c. Submission of Comprehensive Master Development Plan.
- d. The LZBA shall evaluate the viability of the proposed project in relation to its environmental impact.
- e. The LZBA shall then decide and prescribe such terms and conditions under which the project may be allowed to locate and operate.

SECTION 77. RESPONSIBILITY FOR ADMINISTRATION AND ENFORCEMENT. This Ordinance shall be enforced and administered by the Local Chief Executive through the Zoning Administrator who shall be appointed/designated by the former. The Zoning Administrator must possess the following qualifications:

1. Must be a graduate of Law, Civil Engineering, Architecture, or Urban and Regional Planning from a recognized school or university.
2. Must have a Master's Degree in Public Administration/Management
3. Must have a legal or urban or development planning background.
4. Must have a working knowledge of the Revised CLUP/Zoning Ordinance.

5. Must be a resident of the municipality.
6. In case no Zoning Administrator is appointed, the mayor may designate a Zoning Administrator holding a position not lower than a Division Chief from the Municipal Planning and Development Office

SECTION 78. POWERS AND FUNCTIONS OF THE ZONING ADMINISTRATOR.
Pursuant to the provisions of EO 72 implementing RA 7160 in relation to Sec. 5, paragraph a and d, and Section 7 of Executive Order No. 648 dated 07 February 1981, the Zoning Administrator shall perform the following functions, duties and responsibilities

1. ENFORCEMENT

- a. Act on all applications for all zoning-related certifications and clearances.
 - i. Issue Locational Clearances or Certificates of Zoning Compliance for projects conforming to the zoning regulations and complying with the required documents.
 - ii. Issue Denial Decisions for Locational Clearances or Certificates of Zoning Compliance applications that are non-compliant to any provision of the Zoning Ordinance or other existing city ordinances.
 - iii. Issue Certificates of Land Classification for requesting land owners and concerned stakeholders.
 - iv. Issue the needed Order of Payment for the zoning fees that the applicant should be paying.
- b. Monitor on-going/existing projects and act on violations and non-compliance to the zoning ordinance.
 - i. Conduct site inspections and monitoring visits to on-going/existing projects within the municipality and when warranted, issue Notices of Violation and show cause order to owners, developers, or managers of projects that are violating the zoning ordinance, pursuant to Section 3 of EO 72 and Section 2 of EO 71 and when necessary, refer subsequent actions thereon to the HLURB.
 - ii. Call and coordinate with the Philippine National Police for the enforcement of orders and processes pertinent to the implementation of this ordinance, if necessary.
 - iii. Coordinate with the Municipal Legal Officer for other legal actions/remedies relative to the foregoing.
 - iv. Impose the appropriate fines/penalties for violation of the provisions of the Zoning Ordinance.
 - v. Issue Certificates of Non-conformance for non-conforming projects or uses.
- c. Indorse to the LZBAA for a multi-agency/sectoral review and resolution verified complaints and opposition to any violation of any provision of the Zoning Ordinance or of any clearance or permit issued

2. PLANNING

Coordinate with the Municipal Zoning Review Committee, Municipal Planning and Development Office and the Regional Office of the HLURB regarding any amendments to the zoning ordinance prior to adoption by the Sangguniang Bayan.

SECTION 79. ACTION ON COMPLAINTS AND OPPOSITION. A verified complaint for any violation of any provision of the Zoning Ordinance or of any clearance or permit issued pursuant thereto shall be filed with the LZBAA. Oppositions to applications for Locational Clearances, Variances or Exceptions shall be treated as complaints that shall be dealt with in accordance with the provision of this ordinance.

SECTION 80. FUNCTIONS AND RESPONSIBILITIES OF THE LOCAL ZONING BOARD OF ADJUSTMENT . There is hereby created a Local Zoning Board of Adjustment and Appeals which shall perform the following functions and responsibilities:

1. Meet regularly and/or conduct site inspections and consultations for the review of and issuance of Board Resolutions on the approval or denial of Locational Clearance or Zoning Compliance Certification applications of the following nature:
 - a. Variances
 - b. Exceptions
 - c. Non-Conforming Us
 - d. All application for reclamation projects within the municipality
 - e. Innovative Design/Planned Unit Development.
 - i. Similarly act on appeals for reconsideration of Locational Clearance or Zoning Compliance Certification applications which have been denied by the zoning administrator.
 - ii. Rule on complaints against and opposition to applications, enforcement of the provisions of the Zoning Ordinance, any clearance or permit issued and similar matters as indorsed by the Zoning Administrator.
 - iii. Adopt and maintain a rational decision-making process based on careful deliberation, analyses and evaluation of the members' individual views, technical inputs and if needed, position papers.

Decisions of the Local Zoning Board of Adjustment (LZBA) shall be appealable to the Housing and Land Use Regulatory Board HLURB within the reglementary period prescribed by the latter Board. The LZBA shall serve copies to both parties of the decision within ten (10) days from its approval.

SECTION 81. COMPOSITION OF THE LOCAL ZONING BOARD OF ADJUSTMENTS (LZBA). The following shall compose the Malay Local Zoning Board of Adjustments (LZBA):

1. Municipal Mayor – Chairman
2. Municipal Legal Officer – Co-Chairman
3. SB Chairman, Committee on Land Use
4. Municipal Assessor
5. Municipal Engineer
6. Municipal Planning and Development Coordinator
7. Municipal Environment and Natural Resources Officer
8. Municipal Agrarian Reform Officer
9. A private sector representative appointed by the Municipal Mayor and who represents the association or organization of local practicing architects

10. A private sector representative appointed by the Municipal Mayor and who represents the local real estate association or organization
11. A business sector representative appointed by the Municipal Mayor and who represents a local business club or chamber of commerce

A work unit within the Municipal Legal Office shall act as the secretariat of the Local Zoning Board of Adjustments and Appeals.

SECTION 82. APPLICATION FEE FOR APPEALS. There shall be payment of an application for appeals in accordance with the existing local tax ordinance of Malay, Aklan.

SECTION 83. REVIEW OF THE ZONING ORDINANCE. The Local Zoning Review Committee (LZRC) shall convene at least once a year to review the Zoning Ordinance considering the amendments in the Comprehensive Land Use Plan, based on the following reasons/situations:

1. Change in local development plans
2. Introduction of projects of national significance
3. Partition for rezoning
4. Other reasons which are appropriate for consideration

SECTION 84. COMPOSITION OF THE LOCAL ZONING REVIEW COMMITTEE (LZRC). The Local Zoning Review Committee shall be composed of the following:

1. Municipal Planning and Development Coordinator – Chairman
2. President, Ligangmga Barangays
3. Municipal Assessor
4. Municipal Health Officer
5. Municipal Agriculturist
6. Municipal Engineer
7. Municipal Environment and Natural Resources Officer
8. Schools District Supervisor
9. A private sector representative from a local real estate organization or association
10. A private sector representative from a local association or organization of practicing architects
11. A business sector representative appointed by the Municipal Mayor and who represents a local business club or chamber of commerce

SECTION 85. FUNCTIONS OF THE LOCAL ZONING REVIEW COMMITTEE. The Local Zoning Review Committee shall have the following powers and functions:

1. Review the Zoning Ordinance for the following purposes:
 - a. Determine amendments or revisions necessary in the Zoning Ordinance because of changes that might have been introduced in the Comprehensive Land Use Plan.
 - b. Determine changes, to be introduced in the Comprehensive Land Use Plan in the light of permits given, and exceptions and variances granted.

- c. Determine changes to be introduced in the Comprehensive Land Use Plan because of land use reclassifications approved by the Sangguniang Bayan and land use conversions approved by the Department of Agrarian Reforms
 - d. Identify provisions of the Ordinance that are difficult to enforce, are unworkable, or are no longer practical to implement.
2. Recommend to the Sangguniang Bayan the necessary legislative amendments, and to the Municipal Planning and Development Office the needed changes in the plan as a result of the review conducted.
 3. Furnish a copy of the recommendations to the Housing and Land Use Regulatory Board (HLURB) for their review and approval.

SECTION 86. AMENDMENT TO THE ZONING ORDINANCE. Changes/amendments in the Zoning Ordinance shall be subject to review by the Local Zoning Review Committee (LZRC). Changes in the Zoning Ordinance, as a result of the review by the LZRC shall be treated as an amendment, provided that any proposed amendment to the Zoning Ordinance or provisions thereof shall be subject to public hearing and shall be carried out through a resolution of three-fourths vote of the Sangguniang Bayan. Any amendment shall take effect only after the approval and authentication by the SangguniangPanlalawigan.

ARTICLE XV FINAL PROVISIONS

SECTION 87. PENAL PROVISIONS. Any person violating any provision of this Ordinance, shall, upon conviction, be punished by a fine of not more than two Thousand Five Hundred Pesos (Php 2,500.00) for every violation in addition to the payment of costs or damages that may be incurred by the Municipal Government or any aggrieved person or private entity resulting from the direct effects of the violation/s or by imprisonment for not more than one (1) year or both such fine and imprisonment, at the discretion of the Court.

For continuing offenses, a maximum fine of Two Thousand Five Hundred Pesos (Php2,500.00) shall be imposed for every violation of the provisions of this Ordinance. A continuing offense shall refer to a failure to comply with the provisions of the Ordinance within a period of six (6) months following the Notice of Violation and henceforth until compliance is made.

If the violation is committed by a firm, corporation, or partnership or any other juridical person, the manager, managing partner, director or any other person who actually participated in the violations should be held responsible criminally as provided by this section.

SECTION 88. SUPPLEMENTARY EFFECT OF OTHER LAWS AND DECREES AFTER VIOLATION AND PENALTY. The provisions of this Ordinance shall be without prejudice to the application of other laws, presidential decrees, letters of instruction and other executive or administrative orders vesting national agencies with jurisdiction over specific land areas, which shall remain in force and effect, provided that land use decisions of the national agencies concerned shall be consistent with the Comprehensive land use Plan of the locality.

SECTION 89. **SEPARABILITY CLAUSES.** Should any section or provision of this Ordinance be declared by the Courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid. Any portion thereof not affected by such declaration shall remain in full force and effect. If any provision/s of this Ordinance or any portion thereof maybe found violative of any national laws, rules and regulations, local orders and the like, the same is hereof, declared invalid or null and void; unless modified and/or amended accordingly.

SECTION 90. **REPEALING CLAUSE.** All ordinances, rules or regulations in conflict with the provisions of this Ordinance are hereby repealed; PROVIDED, that the rights that are vested upon the affectivity of this Ordinance shall not be impaired.

SECTION 91. **EFFECTIVITY CLAUSE.** This Ordinance shall take effect upon its approval by the SangguniangPanlalawigan and after compliance with the publication requirements of the Local Government Code.

SECTION 92. **NON-RETROACTIVITY CLAUSE.** All laws relating to this Ordinance shall have no retroactive effect.

SECTION 93. **TRANSITORY PROVISIONS.** No amendment, repeal shall take place within one (1) year upon approval of this Zoning Ordinance. The Municipal Planning and Development Office (MPDO) shall initiate the review, study and update this Ordinance after five years (5) years, restudy and revise it after ten (10) years upon approval of the same and of the Comprehensive Land Use Plan.

ENACTED. FEBRUARY 18, 2014.

APPROVED. OCTOBER 7, 2014.

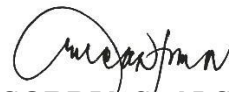
**APPROVED. SP RESOLUTION NO. 226, S. 2015 , dtd. 8-19-15
PUBLISHED. MADYAAS PEN, dtd. 12-17,24 & 31, 2015**

X

X

X

I HEREBY CERTIFY to the correctness of the afore-quoted Municipal Ordinance.



CONCORDIA S. ALCANTARA
Secretary to the Sangguniang Bayan

ATTESTED:



WILBEC M. GELITO
Municipal Vice Mayor
Presiding Officer

APPROVED:



JOHN P. YAP
Municipal Mayor