

decrees and ministerial orders

MINISTRY OF THE INTERIOR AND LOCAL DEVELOPMENT

Decree n° 2007-362 dated 19 February 2007, determining the conditions and the methods of the temporary occupation and of the public service concession in the commune's public domain.

The President of the Republic,

On a proposal from the Minister of the Interior and Local Development,

Having regard to organic law of communes n° 75-33 dated 14 May 1975, all amending and completing texts, and notably organic law n° 2006-48 dated 17 July 2006,

Having regard to the local taxation code promulgated by law n° 97-11 dated 3 February 1997, all amending or completing texts, and notably law n° 2005-106 dated 19 December 2005,

Having regard to decree n° 75-342 dated 30 May 1975, fixing the attributions of the Ministry of the Interior and Local Development as amended by decree n° 2001-1454 dated 15 June 2001,

Having regard to decree n° 98-1428 dated 13 July 1998, fixing the tariff of taxes that the local authorities are authorized to collect, all amending or completing texts, and notably decree n° 2004-80 dated 14 January 2004,

Having regard to the opinion of the Ministers of State Properties and Land Affairs, of Finance and of Equipment, Housing, and Territorial Development,

Having regard to the opinion of the Administrative Court.

Decreases the following :

CHAPTER ONE

The temporary occupation of a commune's public domain

Section one

The detailed rules to agree on the temporary occupation

Article one - The temporary occupation of parts of the commune public domain is granted in a precarious and revocable way by contract concluded between the president of the commune and the beneficiary from the temporary occupation, when the agreement is within the scope of managing the commune's public domain and that the occupation aims to be permanent and requires fixing light installations or equipments on these parts. In this case, the existence of the required authorizations.

To exercise one or more planned activities or to put in place the installations the achievement of which is required

shall be checked before consenting to the request of occupation.

The temporary occupation of parts of the commune's public domain remains, except the cases mentioned in paragraph one of the article herein, subject to the authorization of the president of the concerned commune within the scope of exercising his power of maintaining law and order.

The authorization is granted against paying a fee which will be fixed in accordance with the legislation in force.

Art. 2 - The contract of temporary occupation particularly specifies :

- the location and area of the parts of the commune's public domain object of the temporary occupation,
- the duration of the temporary occupation,
- the planned activity and the installations to be achieved,
- the fees due as a result of the temporary occupation in accordance with the legislation in force or, failing that, the counterpart fixed by the municipal council on the basis of the rental value of the commercial square meter in municipal zones,
- the reception by the beneficiary of parts of the commune's public domain object of the temporary occupation.

Art. 3 - The maximal duration of the temporary occupation contract is limited to one year. Nevertheless, the concerned commune may, at the beneficiary's request, renew the contract in writing

Art. 4 - Any person willing to temporarily occupy a part of the commune's public domain has to present a written request to the president of the concerned commune mentioning the purpose of the occupation, its location and its duration. This request shall be accompanied with the following documents :

- a technical file relating to the required temporary occupation location and the installations to be achieved,
- an explanatory note of the purpose of the occupation determining, if necessary, the activity or activities to be exercised and the installations to be achieved,
- a copy of the national identity card for the natural person or a copy of the by-laws for the legal entities and a copy of the national identity card of its legal representative,
- the required administrative authorizations or the relevant specifications when the purpose of the occupation consists in exercising an activity subjected to these requirements.

Art. 5 - The concerned commune proceeds to the study of the temporary occupation request and answers the

applicant within one month maximum as from the date of lodging his/her request.

If approved, the beneficiary sets his legalized signature to a contract made for this purpose.

Section 2

The conditions of the temporary occupation

Art. 6 - The agreement on the temporary occupation does not exempt the beneficiary from responding to all the requirements and getting the required administrative authorizations to exercise his/her activity, that he/she shall present at any requisition, paying all the resulting fees and taxes.

Art. 7 - The beneficiary from the temporary occupation may use the parts subject of the agreement only for the purpose for which the said agreement was given. Besides, he/she shall only add light installations and equipments that can be dismantled and easily removed any time.

Art. 8 - The beneficiary from the temporary occupation has to use personally the part of the commune's public domain subject of the occupation and has not to transfer the right of user to third parties, no matter who they are, unless they have a prior written authorization from the concerned commune. In this case, the president of the commune concludes directly a contract of temporary occupation with the cessionary.

Art. 9 - The beneficiary from the temporary occupation has to protect the parts of the commune's public domain subject of the occupation and has not to modify their status. He/she shall carry out at his/her own expenses all the necessary repairs ordered by the commune to ensure the safety of the parts of the commune's public domain subject of the occupation, and preserve their status and function, and respect the conditions relating to the hygiene and safety.

Art. 10 - The beneficiary from the temporary occupation has to take all the necessary measures against fire risks, accidents and others. Besides, he/she should, when his/her activity requires that, get a prevention certificate from the civil protection services, mentioning that the safety conditions in the occupied places are met.

Art. 11 - The beneficiary from the temporary occupation, who damages the parts of the commune's public domain subject of the occupation has to repair the damages at his/her own expenses and under the control of the concerned commune. If he/she fails to undertake the necessary reparations within the time limit, it shall be automatically proceeded to by the commune, and be at the beneficiary's expenses.

Art. 12 - The beneficiary from the temporary occupation has to ensure his vicarious liability towards third parties for the damage, which may occur as a result of using the premises. The insurance contract has to include a clause prohibiting its termination without getting the approval of the concerned commune.

Art. 13 - When the purpose of the temporary occupation consists in making signs, supports, indications or any other sign for an advertising purpose, the beneficiary shall keep to the technical conditions fixed by the concerned commune according to specifications elaborated for this purpose in

order to ensure traffic safety, public safety and the protection of urban beauty.

Section 3

The end of the temporary occupation

Art. 14 - The temporary occupation ends upon the expiry of the contract term, unless it is renewed in accordance with the provisions of article 3 of the decree herein.

Art. 15 - The president of the concerned commune may automatically put an end to the temporary occupation for general interest's considerations or at the beneficiary's request.

The president of the concerned commune may also put an end to the temporary occupation in the following cases :

- the exercise by the beneficiary of unauthorized activities or the use of parts of the commune's public domain, the occupation of which is authorized, to exercise an activity not provided for by the contract,

- the non use by the beneficiary of parts of the commune's public domain the occupation of which is authorized or the termination of occupying the parts in a continual way for a period exceeding the third of that of the contract, except for cause majeure or fortuitous event,

- the non payment of the fees due for the temporary occupation,

- the transfer of the right of user of the parts of the occupied commune's public domain to a third party without a prior written authorization from the concerned commune.

- the withdrawal of the authorizations necessary to exercise one or many activities subject of the temporary occupation,

- the infraction to the conditions relating to the hygiene and safety provided for by the legislation in force,

- the non-compliance by the beneficiary from the temporary occupation to the demand of remedying the infraction of his/ her contractual obligations,

- the death of the beneficiary of the temporary occupation,

- the breach of the peace.

Art. 16 - Putting an end to the temporary occupation, in the cases mentioned in article 15 of the decree herein entitles the beneficiary no right to claim compensation.

Art. 17 - The beneficiary from the temporary occupation should, when the temporary occupation is ended, or its duration expires, hand in the parts of the commune's public domain subject of the occupation to the concerned commune in their initial status, after dismantling and removing the fixed installations and equipment.

CHAPTER II

The public service concession in the commune's public domain

Section one

The concession methods

Art. 18 - The commune may entrust through the concession the management and the exploitation of the

public facility in the commune's public domain to a natural person or a legal entity.

When the public service exploitation requires installations, the commune may entrust their achievement to a concessionary within the scope of a public works contract, other than the public service concession.

Art. 19 - The public service concession is granted according to a contract to which is annexed specifications including the specific conditions relating to the concession.

The commune may call in for competitiveness in selecting its contracting partner, without restricting its freedom to choose on the basis of competence and confidence that the latter has.

The contract of public service concession is concluded between the president of the granting commune and the concessionary, and it is approved by the Minister of the Interior and Local Development, after having the opinion of the Minister of Finance.

Art. 20 - The contract of public service concession in the commune's public domain notably stipulates the following :

- the subject of the concession and its duration
- the concession compensation due to the commune and its regulating methods
- the reciprocal rights, duties and guarantees of the co-contracting parties
- the prerogatives of the granting commune consisting in controlling and monitoring the exploitation of the public service and the amendment of the organizing rules and the ensuing compensation conditions, if need be, for the benefit of the concessionary, as well as the right of repurchasing the public service before the contract expiry and the relevant compensation conditions,
- the forfeiture cases by the granting commune of the concessionary's right to exploit the public service determined by the decree herein,
- the future of the buildings, installations and equipment achieved by the concessionary at the end of the concession,

The concession contract shall not include any clause that may give the concessionary, in any way, the right to monopolize the commune's public service.

Art. 21 - The contract term may not be extended at the end of the concession, unless there are reasons of public interests that make the extension necessary :

- there is a necessity to guarantee the financial balance of the act, as a result of the administration's amendment of the concession's conditions during the agreed exploitation period.

The concession term is extended by an additional clause to the contract specifying the conditions of continuing the public service exploitation, and at the concessionary's request.

Section 2

The concession conditions

Art. 22 - The concessionary should use the parts of the commune's public domain in an appropriate way, and

within the purpose for which the public service was granted, and it will be the same for the installations put at its disposal by the granting commune or those added by the concessionary him/herself according to a public works contract in order to exploit the public service. He/she should protect them from any damage, which may affect them as a result of his/her own usage or neglect, or those of his/her employees, and undertake the necessary repairs to remedy the damage.

Art. 23 - The concessionary should ensure the public service continuity and the equal treatment of all the service users.

Art. 24 - The concession agreement does not exempt the concessionary from meeting all the administrative requirements and authorizations necessary to exploit the service or, if necessary, to achieve the installations.

Art. 25 - The concession is granted personally to the concessionary, who should run him/herself and can not yield it to third parties without the prior written approval of the conceding commune.

In this case, the conceding commune should conclude a new contract, including the same terms, with the concessionary who will continue the exploitation for the remaining period of the initial contract.

In case the commune agreement on the transfer of the concession to a third party fails, and the impossibility for the concessionary to continue the exploitation him/herself, the concession contract may be terminated by a common assent of the contracting parties.

Art. 26 - The concessionary has the right to recover directly from the providers the due rental and fees, in accordance with the regulations in force, as a result of the services he/she provides as for the public service exploitation.

Art. 27 - The conceding commune can control the public service exploitation in the parts of the commune's public domain by the concessionary and check the compliance with the concession terms.

Art. 28 - The conceding commune has the right to amend the organizing rules of public service subject of the concession when required by the progress of the service.

Art. 29 - When a financial imbalance of the concession contract occurs as a result of the amendments of the public service organizing rules mentioned in article 28 of the decree herein, the concessionary may, according to his choice, either claim compensation for his/her losses from the conceding commune and continue exploiting the public service, or ask for the termination of the concession contract.

Art. 30 - The conceding commune has the right to repurchase the public service and take back the parts of the commune's public service when the service exploitation through the concession no longer meets the public interest.

In this case, the concessionary is entitled to compensation, which will be determined in accordance with the specifications clauses annexed to the concession contract.

Art. 31 - The conceding commune has the right to deprive the concessionary of his/her right to exploit the commune's public service in the following cases :

- damage to the installations with which he/she exploits the public service, or use them for purposes other than those for which they are meant,

- non payment of the conceding commune dues, for the exploitation of the public service by the concessionary, or non payment of the due fees.

- transfer of the public service exploitation or parts of the commune's public domain to a third party without having the prior written approval of the conceding commune,

- infringement of the administrative requirements by the concessionary, or withdrawal of the administrative authorizations necessary to exploit the public service,

- failure on the part of the concessionary to obey the demand of remedying the infraction of contractual duties.

Art. 32 - The Minister of the Interior and Local Development and the Minister of Finance, each in his respective capacity, shall implement the decree herein which shall be published in the Official Gazette of the Republic of Tunisia.

Tunis, 19 February 2007.

Zine El Abidine Ben Ali