

MINISTRY OF HEALTH

REPUBLIC OF TOGO
Labor – Freedom – Country

DECREE No. 2012-046 / PR
concerning the prohibition of smoking in public places

THE PRESIDENT OF THE REPUBLIC,

In consultation with the Minister of Health;

In light of the Constitution of October 14, 1992;

In light of Law n° 2009-007 of May 15, 2009, concerning the code of public health of the Republic of Togo;

In light of Law n° 2010-017 of December 31, 2010, concerning the production, commercialization, and consumption of cigarettes and other tobacco products;

In light of Law n° 2010-035/PR of May 7, 2010, concerning the nomination of the Prime Minister;

In light of Law n° 2010-036/PR of May 28, 2010, concerning the composition of the government, together with the texts modifying it;

In light of Decree n° 2012-004 /PR of February 29, 2012, concerning the attributions of the Ministers of State and Ministers;

The Council of Ministers having been duly notified, hereby

DECREES:

Article 1: Purpose

Pursuant to Law n° 2010-017 of December 31, 2010, concerning the production, commercialization, and consumption of cigarettes and other tobacco products, it is prohibited to smoke in public places.

Article 2: Scope of application and definitions

The public places in which it is prohibited to smoke include interior or enclosed public places, open or partially open public places, work places and public transport.

These places include those listed in Article 11 of the aforesaid law, notably:

- Schools, universities and learning centers;
- Health care institutions;
- Auditoriums, cinemas, theaters and concert halls;

Unofficial Translation

- Sports fields and venues;
- Libraries;
- Elevators;
- Offices open to the public;
- Government buildings;
- Public transportation vehicles;
- Gas stations;
- Or any other place frequented by the public.

The following definitions shall be understood to apply:

- Public place: any place accessible to the public and for shared use, regardless of whether it is publicly or privately owned, or the terms of access. It applies to an interior or enclosed public place, to an open or partially open public place, to work places and to public transport;
- The term interior or enclosed public place: any space covered by a roof or surrounded on one or more sides by walls or partitions, irrespective of the type of material used to make the roof or the partitions, and of whether it is a permanent or temporary structure.
- Work place: any place used by people in the course of their employed activities, regardless of whether the work is paid or of a voluntary nature.

Work places include not only the place where work is performed, but also all attached places used in common by workers in the context of their employment or voluntary service, including hallways, elevators, stairways, entrance halls, common areas, cafeterias, bathrooms, lounges, dining rooms, as well as external buildings such as sheds or hangars. Vehicles used in the course of work are considered to be work places, and must be duly designated as such.

Work places also include places of residence or accommodation such as prisons and other detention facilities, mental institutions and shelters or rest homes, places of residence serving temporarily as work places.

- Public transportation: this designates all vehicles used for public or shared transportation, whether paid or otherwise.
- Smoking: this designates the simple fact of holding or using a lit tobacco product, whether or not the smoke is actively inhaled or exhaled.

Article 3: Roles and responsibilities of actors

In the implementation of measures for the prohibition of smoking in public places, the Government and its agencies, managers and owners of public places, operators of points of sale of tobacco, managers of establishments or work places, civil society organizations and religious leaders, have specific obligations with regard to raising awareness, reporting infractions, warnings, instituting legal proceedings and follow-up.

The Government and its agencies have the duty to raise public awareness, train health personnel and all other actors in tobacco control, conduct oversight, follow-up and enforcement against violations of the measures promulgated.

All services of regulatory inspection, such as general inspections by health authorities, labor inspectors, as well as inspections by the police and constabulary, are concerned with the enforcement of the measures promulgated.

The means for the implementation of the previous paragraph are to be set by a joint administrative order of the Ministries of Health, Public Safety and Labor.

The owner, manager or any other person occupying such locations is primarily responsible for seeing to it that the law is upheld. In particular, such individuals are obliged to do the following:

- Post the entrance and interior of the facilities and other appropriate places with clear notifications, prominently displayed and accessible to the public, indicating that it is prohibited to smoke there;
- Remove all existing ashtrays from the premises;
- See to the upholding of rules prohibiting smoking;
- Take the necessary measures specified to deter the public from smoking in the establishment. These measures consist of asking people who frequent the premises to abstain from smoking, refusing them service, asking them to leave the premises, and notifying law enforcement authorities or any other competent authority.

The format and content of these measures for notification, as well as mechanisms enabling the public to report violations, are to be determined by administrative order of the Minister of Health, following the opinion of the National Committee for Tobacco Control.

The operator of a point of sale of tobacco must post the prohibition of the sale of tobacco to minors, as well as the warning on the harmful health effects of tobacco. These notices must be installed in a place visible to the public on or near each cash register used for the sale of tobacco.

It is prohibited to remove or alter these notices.

The format and content of such notices are to be specified by administrative order of the Minister of Health.

Organizations of civil society and religious leaders not affiliated with the tobacco industry or with institutions or persons defending the interests of the tobacco industry, have a role to promote health, particularly through information, education and communication to change behavior.

Article 4: Arrangements for places that accommodate smokers

Arrangements for places provided for in Article 12 of Law No. 2010-017 of December 31, 2010, must include closed smoking lounges, rooms for smokers or other kinds of arrangement pursuant to the technical standards that are to be specified by administrative order of the Minister of Health.

The operator may, in some cases, set up a closed smoking lounge for people whom he is accommodating. It should only be used for the consumption of tobacco, and only for persons who are guests of the operators.

Any smoking area must be completely free of any room service, including food, drinks and/or any entertainment that might be provided there. It must be completely closed off, and be equipped with a ventilation system that allows for the direct evacuation of the smoke to outside the building. The door of the smoking lounge must be equipped with a device for closing automatically, so that it is closed after each use.

The quota of rooms for smokers must not exceed 20%, and the rooms must be grouped together.

In establishments for public accommodation or for shared use that do not have arrangements for smokers in accordance with this decree, smokers may not smoke except outside the establishment in question, and in the street beyond a radius of five meters from the establishment in question.

In all cases, no smoking arrangement is authorized for planes and other vehicles.

Article 5: Follow-up and assessment

The national program for tobacco control is taking the measures necessary to ensure follow-up and periodic assessment of the implementation of measures for prohibition set forth in the provisions of this decree.

Article 6: Criminal penalties

Violations of the provisions of this degree are subject to the penalties set forth in Articles 26, 30 and 31 of Law 2010-017 of December 31, 2010.

Government inspection authorities, particularly the enforcement authorities of the general health inspector, labor inspectors, police and constabulary authorities, as well as agents of the Ministry of Commerce, are authorized to ascertain violations of the provisions of this decree.

Over and above the penalties indicated in the 1st paragraph, operating licenses may be withdrawn.

Organizations or associations in good standing that have been operating for at least one (1) year on the date of the facts, and whose statutory purpose is concerned with tobacco control, may, pursuant to Article 20 of Law No. 2010-017 of December 31, 2010 noted above, exercise the rights accorded to civil parties to file civil actions for violations of the provisions herein.

Article 7: Transitory provisions

Persons subject to the provisions of this decree are given a period of nine (9) months counting from its publication to enter into compliance with it.

Article 8: Final provisions

The Minister of Health, the Minister of Tourism and the Minister of Public Safety and Civil Protection are each charged, within the scope of their respective jurisdictions, to execute this decree, which is to be published in the Official journal of the Republic of Togo.

Done in Lomé, on July 11, 2012

[STAMP:] Republic of Togo – The President

The President of the Republic

The Prime Minister

SIGNED

SIGNED

Faure Essozimna GNASSINGBE

Gilbert Fossoun HOUNGBO

The Minister of Tourism

The Minister of Health

SIGNED

SIGNED

Batiennée KPABRE-SYLLI

Professor Kondi Charles AGBA

The Minister of Public Safety
and Civil Protection

SIGNED

Col. Gnama Dokissime LATTA

For amplification

The Secretary General

of the Office of the President of the Republic

[STAMP:] Republic of Togo – Secretary General – Office of the Presidency of the Republic

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[Kwesi Séléagodji] AHOOMEY-ZUNU