



Tonga

**ROYAL TOWN OF NEIAFU ORDINANCE
2010**



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ROYAL TOWN OF NEIAFU ORDINANCE 2010

GOVERNMENT ACT

IN EXERCISE of Our Prerogative, and of the powers conferred by Section 7(a) of the Government Act, His Majesty in Privy Council hereby Ordains as shown hereinafter:

1 Title and Commencement

- (1) This Ordinance may be cited as the Royal Town of Neiafu Ordinance 2010.
- (2) This Ordinance shall come into force on the day it is made and shall remain in force thereafter until it is ratified, amended or rescinded by the Legislative Assembly of Tonga.

2 Interpretation

In this Ordinance, unless the context otherwise requires:-

“**balance date**” means 30th June;

“**charter**” means the Royal Charter by the King dated 24th November 2010 constituting the Royal Town of Neiafu;

“**court**” means the Court of Alderman, the governing body of the town;

“**Crown**” means the Government;

“**Government**” means the Government of the Kingdom of Tonga, sometimes also known as Tonga Government;

“King” means His Majesty King George Tupou V;

“Lord Mayor” means the Lord Mayor of Neiafu for the time being;

“patrimonial interest” means any financial interest whether as a director, employee, shareholder, partner, investor, auditor, legal counsel, or the provider of goods or services;

“person” includes any natural person; and any body of persons corporate or unincorporated; and any Ministry or Office of Tonga Government, including Government entities, enterprises and instrumentalities.

“Neiafu Commercial Livery Company” means the livery company of that name to be constituted by the King before the end of 2010 by Royal Charter;

“Neiafu Professional Livery Company” means the livery company of that name to be constituted by the King before the end of 2010 by Royal Charter;

“town” means the Royal Town of Neiafu constituted by Royal Charter of the King dated 24th November 2010.

3 Royal Town of Neiafu

- (1) The King by Royal Charter dated 24th November 2010 constituted as a body politic and corporate with perpetual succession, the Royal Town of Neiafu, the area of which Town was described in the Appendix to the Royal Charter.
- (2) The town shall have a common seal.
- (3) The town shall be capable of suing and being sued; and, in the exercise of its functions, duties and powers under this Ordinance, it may acquire, hold and dispose of real and personal property or any interest therein and do and suffer all such acts and things as bodies corporate may do and suffer. Without prejudice to the foregoing generality the town has full capacity to carry on or undertake any activity, do any act, or enter into any transaction which it considers necessary or appropriate in the exercise of its functions, duties and powers.
- (4) In the performance of its powers, duties and functions under the charter or this ordinance the town shall act independently and enjoy full autonomy in respect thereof.
- (5) The town is not an entity, enterprise or instrumentality of the Government and as such is not bound by legislation affecting Government, such as the Public Service Act or the Public Finance Management Act.

4 Governance until November 2014

- (1) As specified in the charter the governing body of the town is the Court of Aldermen.

- (2) As specified in the charter the court shall comprise of seven aldermen, one of whom shall be designated Lord Mayor of Neiafu and shall preside over meetings of the court.
- (3) The composition of the court until 30th November 2014 shall be the persons named in the charter. The composition of the court thereafter shall be governed by the provisions of section 5 of this Ordinance.

5 Governance after November 2014

- (1) As from 1st December 2014 the governing body of the town shall be the Court of Aldermen, numbering seven Tongan Subjects in all, elected or appointed as follows :-
 - (a) two gentlemen over the age of 21 years ordinarily resident within the town to be elected by all gentlemen ordinarily resident within the town;
 - (b) two ladies over the age of 21 years ordinarily resident within the town to be elected by all ladies ordinarily resident within the town;
 - (c) two persons over the age of 21 years being members of the Neiafu Commercial Livery Company and elected by the members thereof; and
 - (d) one person over the age of 21 years being a member of the Neiafu Professional Livery Company and elected by the members thereof.
- (2) The term of office of aldermen shall be four years, and they are eligible for re-election or re-appointment from time to time as the case may be.
- (3) The powers of the court shall not be affected by any vacancy in its membership, or by any deficiency in the election or appointment of any member.
- (4) Elections or appointment to the court shall be made in the first half November 2014 and every four years thereafter during the first half of the month of November.
- (5) Within ten days of each election for the Court of Aldermen, the aldermen shall be called to attend a meeting of the court by the Town Clerk at which meeting the first item of business shall be the election of the Lord Mayor. The Town Clerk shall preside at that meeting until the Lord Mayor is elected whereupon he shall vacate the chair to the Lord Mayor who shall hold office as Lord Mayor until a successor is appointed in four years time. An outgoing Lord Mayor shall be eligible for re-appointment.

6 Court of Aldermen

- (1) The governing body of the town is the court.
- (2) Without prejudice to section 5(5) the Lord Mayor shall convene such meetings of the court as he considers expedient for the efficient performance

of the powers, duties and functions vested in the town, provided always that one meeting must be held each calendar month.

- (3) Meetings of the court shall be held at the places, dates and times that the Lord Mayor shall determine.
- (4) Meetings may be held in public or in private as the court from time to time by resolution shall determine.
- (5) The Lord Mayor shall preside at every meeting of the court provided always that in his absence through illness or otherwise he may appoint in writing another of the aldermen to chair meetings in his absence; and in the event that the Lord Mayor makes no such appointment in writing the court shall appoint one of their number to chair any meeting of court in the absence of the Lord Mayor.
- (6) At every meeting of the court the quorum shall be 4 members.
- (7) If no quorum is present within 30 minutes after the time appointed for the meeting then the meeting shall stand adjourned to the next working day, at the same time and place, and at such reconvened meeting the quorum shall be 3 members. If no quorum is present at the reconvened meeting then that meeting is dissolved.
- (8) The Lord Mayor, but not any person chairing a meeting of the court in his absence, shall have a deliberative vote and, in the event of an equality of votes, also shall have a casting vote.
- (9) The Lord Mayor, or any person chairing a meeting of the court in his absence, may give directions regarding the procedure to be followed at or in connection with any meeting of the court.
- (10) Except as provided for in subsection (8) any person chairing a meeting in the absence of the Lord Mayor shall have and may exercise all the powers, functions and duties of that office for the period of the Lord Mayor's absence.

7 Aldermen

- (1) Without prejudice to the provisions of subsection (2) Aldermen shall hold office on a part-time basis.
- (2) The Lord Mayor shall hold office on a full-time or part-time basis as the court from time to time by resolution shall determine.
- (3) Any member of the court may resign his office in writing to the Lord Mayor or the Town Clerk, and any such vacancy shall be filled with the utmost expedition.
- (4) Any vacancy in the court arising from the death or dismissal of a member shall be filled with the utmost expedition.
- (5) Any member of the court, by resolution of the court, may be dismissed but only for :-

- (a) Bankruptcy;
 - (b) Absence from three or more court meetings in any one calendar year;
 - (c) Imprisonment for a period exceeding three months;
 - (d) Gross misconduct; or
 - (e) Failure to comply with the provisions of subsection (6).
- (6) If any member of the court knowingly is taking part, or is to take part, in the consideration or determination by the court of a matter in which the member has a patrimonial interest then the member shall disclose that interest to the court, require that it be recorded in the minutes of the court, and take no further part in the consideration or determination of the matter.
- (7) There shall be paid to members of the court such remuneration by way of fees, salary, or allowances as from time to time may be approved, either generally or in respect of any particular member or member, by resolution of the court.
- (8) When performing their duties as members of the court each member must act:-
- (a) In good faith;
 - (b) With reasonable care, diligence and skill; and
 - (c) With honesty and integrity,
- and any failure so to act may constitute “gross misconduct” for the purposes of subsection (5)(d).

8 Staffing

As provided for in the charter the court may appoint such staff and engage such advisors as they consider necessary, and that upon such terms and conditions as they shall determine by resolution. The Town Clerk shall be the chief executive officer of the town.

9 Finance

- (1) The town shall open at a bank in Neiafu such accounts as are necessary for the exercise of their powers, duties and functions and the court, by resolution, from time to time shall determine the signatories thereof.
- (2) All funds received by the town, or by any member of staff on behalf of the town, shall be paid into one or other of said bank accounts, and a receipt issued to each person from whom such funds were received.
- (3) The withdrawal or payment of funds from any of said accounts shall be authorised by any two of the account signatories and shall be made by way of cheque, periodic payment, bankers’ draft or telegraph transfer, or otherwise as may from time to time be authorised by a prior resolution of the court.

- (4) The town shall keep full and correct accounts of all its financial transactions, assets, liabilities and funds and shall report thereon to the court on a regular monthly basis.
- (5) The financial year of the town shall end with the 30th day of June in each year.
- (6) Within three months after balance date the town shall submit to the court for approval financial statements comprising:-
 - (a) a Statement of Financial Performance;
 - (b) a Statement of Financial Position;
 - (c) a Statement of Cash Flows;
 - (d) a Statement of Changes in Equity; and
 - (e) Notes to the Financial Statements.
- (7) When approved by the court the town shall submit these financial statements for audit to an auditor approved by His Majesty in Council.
- (8) After the audit has been completed a copy of the financial statements of the town, together with the Audit Report thereon, shall be submitted to the court for approval; and when approved a copy thereof :-
 - (a) Shall be laid before His Majesty in Council, His Majesty's Cabinet, and the Legislative Assembly of Tonga;
 - (b) Shall be laid before the Neiafu Professional Livery Company and the Neiafu Commercial Livery Company; and
 - (c) Shall be available for inspection at the head office of the town to all persons ordinarily resident within the town.

10 Funding

- (1) The town, by resolution of the court, may levy a charge for any goods or services which it provides.
- (2) The town, in accordance with a Scheme to be approved by resolution of the court, each year may levy a charge payable by each person ordinarily resident within the town.
- (3) The town, in accordance with a Scheme to be approved by resolution of the court, each year may levy a charge payable by the occupiers of every property within the town, except only private dwelling houses.
- (4) Until such time as the town is finally self-sufficient, a monthly grant in aid shall be made to the town by Government out of public funds.
- (5) The charges referred to in subsections (1) to (3) are not taxes, but in the nature of a price imposed for the goods or services provided by the town.
- (6) In addition, the town may receive funds from any external body, either generally or for a particular purpose.

- (7) The Schemes referred to in subsections (2) and (3) shall be effective on and from 1st July 2011.

11 By Laws

For the more efficient administration of their powers, duties and functions, by resolution of the court, the town may make rules, to be known as By Laws, for the exercise of these powers, duties and functions. Without prejudice to the foregoing generality, such By Laws may:-

- (a) Prescribe fees;
- (b) Prescribe forms;
- (c) Prescribe powers delegated to specified officers of the town;
- (d) Regulate the assets, liabilities and funds of the town;
- (e) Regulate meetings and the proceedings of the court;
- (f) Regulate the compilation of an electoral register;
- (g) Regulate elections or appointments to the court;
- (h) Regulate the employment, disciplining and disengagement of staff consistent with the rules of natural justice;
- (i) Regulate management of the town;
- (j) Enforce Schemes made under sections 10 or 12;
- (k) Declare breach of by laws to be an offence to be prosecuted by the town, and the penalty to be imposed upon conviction;
- (l) Make provision for the performance by the town of its powers, duties and functions, either by the town or by others on its behalf;
- (m) Make provision for any matter necessary to give full effect to the charter and this Ordinance;
- (n) Make provision for any matter that may be convenient for the administration of the town, or that may be necessary or expedient to carry out its powers, duties and function; and
- (o) Regulate procedures, consistent with the rules of natural justice, for dismissal of members of the court.

12 Powers, Duties and Functions

- (1) The town shall carry out its powers, duties and functions effectively, efficiently, timeously and in a financially responsible manner.
- (2) In accordance with a Scheme to be approved by resolution of the court, within the area of the town the town shall assume responsibility for the lighting of

streets, pavements and public areas, and enforce all lighting By Laws applicable to the town.

- (3) The town shall act as the development control authority for all developments within the area of the town and shall assume full responsibility therefor in accordance with a Scheme to be approved by resolution of the court. As development control authority the powers of the town shall include the power to :-
- (a) Prepare a Development Plan for the town, delineating therein zones reserved for industrial, commercial, governmental or tourism activities; residential purposes; open space; sport, performing arts, museums and art galleries; libraries and educational facilities; mixed developments; and any other developments deemed to be of eminent public utility;
 - (b) Make special provision for developments or activities within the town which by reason of noise or smell or otherwise might constitute a nuisance or a hazard;
 - (c) Consider all applications for development control consent within the area of the town and where thought appropriate to grant consent, with or without conditions; and
 - (d) Enforce all development control By Laws applicable to the town.
- (4) The town shall act as the building control authority for all buildings within the area of the town and shall assume full responsibility therefor in accordance with a Scheme to be approved by resolution of the court. As building control authority the powers of the town shall include the power to:-
- (a) Prepare a Building Code for the town;
 - (b) Consider all applications for building control consent within the area of the town and where thought appropriate to grant consent, with or without conditions;
 - (c) Require the repair of buildings which are in a state of disrepair, or the demolition of buildings which are unsafe; and
 - (d) Enforce all building control By Laws applicable to the town.
- (5) The town shall act as land transport authority for the town in accordance with a Scheme to be approved by resolution of the court. As land transport authority the powers of the town shall include the power to:-
- (a) Fix taxi and bus fares;
 - (b) Licence taxi and bus operators;
 - (c) Licence taxi and bus drivers;
 - (d) Conduct driving tests for drivers of taxis, buses and heavy goods vehicles operating within the town;
 - (e) Licence operators of heavy goods vehicles;
 - (f) Licence drivers of heavy goods vehicles;

- (g) Designate taxi stands;
 - (h) Designate bus depots and bus stops;
 - (i) Designate goods vehicle depots;
 - (j) Regulate on-street and off-street parking;
 - (k) Regulate, in the interests of public safety, road signage, road markings, pedestrian crossings, roundabouts, traffic lights, and maximum speed limits;
 - (l) Regulate, in the interests of public safety, the condition of all vehicles permitted to use public roads within the town;'
 - (m) Maintain in a safe state of repair all roads and pavements within the town; and,
 - (n) Enforce all land transport By Laws applicable to the town.
- (6) In accordance with a Scheme to be approved by resolution of the court the town shall act as environment protection authority for its area. As environment protection authority the powers of the town shall include the power to :-
- (a) Require the production of an environmental impact assessment as a pre-condition to exercising any of its powers, duties or functions;
 - (b) Regulate the keeping of animals (including dogs and cats) and the disposal of straying or marauding animals;
 - (c) Regulate activities which create, or are likely to create, a nuisance, a hazard, or a danger to the general public;
 - (d) Ensure the provision of safe drinking water within the town;
 - (e) Make arrangements for the collection, storage and discharge of storm water;
 - (f) Make arrangements for the collection, storage and discharge of wastewater;
 - (g) Make arrangements for the eradication of infestations by pests of any kind whatsoever;
 - (h) Keep the town, and in particular public open spaces and public buildings, well maintained and repaired;
 - (i) Provide for public amenities or events; and
 - (j) Enforce all environment protection By Laws applicable to the Town.
- (7) In accordance with a Scheme to be approved by resolution of the court the town has a general authority to:-
- (a) Undertake commercial activities, either alone or in conjunction with others;
 - (b) Do further or otherwise as might enhance the economic development of the town;

- (c) Do further or otherwise as might enhance the social development of the town;
 - (d) Fund activities which the court considers worthy of support from town Funds;
 - (e) Do further or otherwise as might enhance the facilities of the town or the services it provides; and
 - (f) Enforce all general By Laws applicable to the Town.
- (8) The town shall act as the security authority for the town in accordance with a Scheme to be approved by resolution of the court. As security authority the powers of the town shall include the power to :-
- (a) Maintain law and order within the town;
 - (b) Preserve the peace;
 - (c) Protect life and property;
 - (d) Prevent and detect crime;
 - (e) Make arrangements for crime prevention and road safety education;
 - (f) Provide community support and reassurance;
 - (g) Uphold the Laws of Tonga;
 - (h) Undertake the service and execution of court processes;
 - (i) Participate in land and marine search and rescue operations;
 - (j) Do further or otherwise as may from time to time be prescribed by law; and
 - (k) Enforce all security By Laws applicable to the town.

Any officer engaged in the performance of security duties under this section shall have all the powers vested in a police officer under the Tonga Police Act 2010 or any other police legislation from time to time in force.

- (9) The Schemes referred to in the foregoing subsections shall be effective on and from 1st July 2011.

13 Purpose

The purpose of this Ordinance is as follows:-

- (a) To promote localised democratic control within the area of the town of matters within the purview of the town;
- (b) To establish a single unitary authority to govern the town as provided for in this Ordinance on and from 1 July 2011;
- (c) By said date to abolish the offices of district officer and town officer within the town; and
- (d) To require government to –

- (i) support this reorganisation as provided for in this Ordinance; and to
- (ii) secure any necessary amendments to the Laws of Tonga prior to 30th June 2011.

14 The Crown

- (1) Insofar as may be necessary to give effect to this Ordinance, the Crown is bound thereby.
- (2) In any event as from 1 July 2011 all legislation necessary to give full effect to the charter and to this ordinance, and to invest the town with the powers, duties and functions provided for in this ordinance, shall be deemed to have been passed into effect, and after that date any provision of law to the contrary shall be deemed to have been repealed and to be of no legal effect whatsoever.

15 Review of Decision

- (1) In respect of any decision of the town provision shall be made by the town in their by laws for same to be reviewed by an independent arbitrator in the event of any written objection by anyone demonstrating right, title and interest so to do.
- (2) The decision of the arbitrator may be appealed to the Court of Appeal but only on a matter of law.
- (3) Except as provided for in this section decisions of the town are not subject to review by or appeal to any court of law.
- (4) The independent arbitrator referred to in subsection (1) shall be appointed by His Majesty in Council.

Made at Nuku'alofa this 19th day of November 2010

Hon. Dr. Feleti V. Sevele

Prime Minister of Tonga