



Tonga

**ORDER IN PUBLIC PLACES
(INTOXICATING LIQUOR) ORDER 2015**



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ORDER IN PUBLIC PLACES (INTOXICATING LIQUOR) ORDER 2015

ORDER IN PUBLIC PLACES ACT

IN EXERCISE of the powers conferred by section 6A of the Order in Public Places Act [Cap 37], the Minister responsible for Police makes the following Orders:

1 Short Title

This Order may be cited as the Order in Public Places (Intoxicating Liquor) Order 2015.

2 Definitions and Interpretation

In these orders, unless the contrary intention appears –

“**Act**” means the Order in Public Places Act [Cap 37], as amended;

“**liquor**” means intoxicating liquor as defined in the Intoxicating Liquor Act;

“**offence**” has the same meaning as defined in section 6D of the Act;

“public place” means any public way and any building, place or vessel to which for the time being the public are entitled or permitted to have access either without conditions or upon condition of making any payment and any building or place which is for the time being used for any public or religious meeting or assembly or as an open Court;

“public way” means any road, highway, street, market place, bridge, wharf or other way lawfully used by the public;

“specified day” means a specific day or part of a day identified in these Orders to which the prohibitions and controls of these Orders apply to any specified public place or specified event;

“specified event” means an event identified in these Orders to which the prohibitions and controls in these Orders apply;

“specified period” means a period specified in these Orders and in respect of which prohibitions and controls in these Orders will apply to any specified public place or event;

“specified public place” means a place specified in these Orders and in respect of which the prohibitions and controls in these Orders will apply at any specified time, day or event. It does not include any part of a public place for which a liquor licence has been issued under the Intoxicating Liquor Act.

3 Designation of specified public places, days and times

Specified public places, days and times shall be those described in the Schedule.

4 Designation of specified events and periods

In addition to designating specified public places, days and times, as described in the Schedule, the Minister may order a prohibition of liquor consumption or possession (including while in a vehicle) in a public place for certain specified periods, times or within certain specified public places or areas for specified events. The prohibition shall be notified by public notice.

5 Signage

The Minister shall indicate the location of such specified place by one or more clearly legible notices affixed in one or more conspicuous places on, or adjacent to, the place to which the notice relates, unless it is impractical or unreasonable to do so.

6 Control of liquor

Subject to clauses 9 and 10 of these Orders, the following actions are prohibited:

- (a) the consumption of liquor in a specified public place;
- (b) the bringing of liquor into a specified public place;
- (c) the possession of liquor in a specified public place.

7 Minister may add, amend or delete a specified public place

- (1) The Minister may amend these Orders in accordance with the Act. Amendments may include adding a specified public place to the Schedule, modifying the boundaries of a specified public place already contained in the Schedule or removing a specified public place from the Schedule.
- (2) In addition to this, the Minister may from time to time, by public notice given 14 days in advance, order to include an additional area as a specified public place for a specified day or a specified period related to a specified event or a particular time of the year, and the time period when such orders shall apply.

8 Criteria for adding or modifying a specified public place

Before amending these Orders, the Minister may consider –

- (a) the extend of the problems associated with liquor in the area;
- (b) whether those problems are likely to continue without liquor control;
- (c) other options for addressing those problems, in particular options that may be more appropriate than liquor control;
- (d) due balance between public and private rights;
- (e) the communities views on the proposed ban;
- (f) any other matter the Minister considers relevant.

9 Offences

- (1) It shall be an offence to:
 - (a) bring liquor into any specified public place;
 - (b) possess liquor in or at any specified public place public place (including but not limited to liquor in a container such as bag, parcel or package);or

- (c) consume liquor in or at any specified public place, or during any specified period or event.

10 Exceptions

(1) Licensed premises -

- (a) as provided for in section 6A (2) of the Act, these Orders do not prohibit, in the case of liquor in an unopened bottle or other unopened container:
 - (i) the transport of that liquor from premises that adjoin a specified public place during any period when, under the Intoxicating Liquor Act, it is lawful to sell liquor on those premises for consumption off the premises, provided that the liquor is promptly removed from the specified public place;
 - (ii) the transport of that liquor from outside a specified public place for delivery to premises that adjoin the specified public place, provided the premises are licensed for sale under the intoxicating Liquor Act.
- (b) for the purpose of clarity, this Order does not prohibit the consumption or possession of liquor in a place with a liquor licence which has been issued under the Intoxicating Liquor Act. This includes footpath areas that are licensed as part of those premises and are clearly defined by the placement of tables and chairs outside those premises, and other areas, clearly defined, and identified under an appropriate liquor licence for an event or function at the time of possession or consumption of liquor.

(2) Other premises

In addition to sub-clause (1) above, these Orders do not prohibit, in the case of liquor in an unopened bottle or other unopened container:

- (a) The transport of that liquor from these premises that adjoin a specified public place to a place outside the specified public place by a resident of those premises, provided the liquor is promptly removed from the public place; or
- (b) The transport of that liquor from outside a public place to premises that adjoin a public place by, or for delivery to, a resident of those premises or by his *bona fide* visitors.

11 Special licences

These Orders do not limit any individual or organization (corporate or otherwise) in obtaining a Special Event Licence pursuant to section 4 of the Intoxicating Liquor Act, for any event to be held in a specified public place.

12 Powers of the Police

- (1) Police powers of arrest, search and seizure under these Orders are set out in sections 6B and 6C of the Order in Public Places Act. In summary, the Police may:
 - (a) For the purpose of ascertaining whether liquor is present, search –
 - (i) any person;
 - (ii) a container in possession of a person who is in, or entering, a specified public place; or
 - (iii) a vehicle that is in, or is entering, a specified public place.
 - (b) Seize and remove liquor and its container if the liquor is in a specified public place in breach of these Orders.
 - (c) Arrest a person the Police finds committing an offence.
 - (d) Arrest a person who has refused to comply with a request by a member of the Police to –
 - (i) leave the public place;
 - (ii) surrender to a member of the Police the liquor that, in breach of these Orders, is in the person's possession.
- (2) The Police do not require a warrant to conduct a search to ascertain whether liquor is present in a container or a vehicle. However, prior to exercising the power of search, a person must be informed that they have the opportunity to promptly remove a container or a vehicle containing liquor from a specified public place and the person shall be given a reasonable opportunity to do so.
- (3) For the avoidance of doubt, in circumstances where a person so informed has removed liquor from a public place, and subsequently returns with liquor to that specified public place within a period when it could be reasonably deemed that the person has been informed prior to remove the liquor, these Orders shall not be interpreted as in any way requiring the Police to provide the person with a further opportunity to remove the liquor from the specified public place prior to search.

13 Penalties

Any person who breaches any provision of these Orders commits an offence and is punishable by a fine not exceeding \$5,000 or imprisonment for a term not exceeding 2 years.

14 Forfeiture to the Crown

Liquor or a container seized by Police under these Orders shall be forfeited to the Crown if the person from whom the liquor or container is seized is convicted of breaching these Orders.

Made in Nuku'alofa on this 25 day of June 2015

Hon. Dr. Pohiva Tu'i'onetoa

Minister of Police

SCHEDULE

SPECIFIED PUBLIC PLACES, DAYS AND TIMES

Specified Public Place	Specified days and Times
Nuku'alofa	24 hours/day, 7 days/week
Neiafu	24 hours/day, 7 days/week
Pangai	24 hours/day, 7 days/week
All other public places	10pm – 7am daily