



Occupancy Regulations

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PREAMBLE

The purpose of these occupancy regulations is to set out, within the framework of the domain policy decided by the committee of the Ports of Normandy port authority, the *Syndicat Mixte des Ports de Normandie (Comité Syndical)*, the conditions applicable to the occupancy and private use of land, water bodies, buildings and structures that are part of the maritime and waterways public domain.

Occupancy of property that is part of the public domain must comply with a number of principles set forth in the French General Local Authorities Code (CGCT) and the General Public Property Code (CG3P). Occupancy agreements are granted to **named persons** and on an **at-will and revocable** basis pursuant to Article L2122-3 of the CG3P. Thus, an occupancy agreement grants **temporary** rights, which is why such agreements may not be granted for indefinite periods (Article L2122-2 of the CG3P). Occupancy is subject to **payment of a fee**, pursuant to Article L2125-1 of the CG3P. Finally, the agreements granted do not entail any transfer of real rights in the public domain, as public domain property is **inalienable and imprescriptible**.

An authorisation to occupy a part of the public domain must be recorded in a written document, which may be a unilateral temporary occupancy permit (*autorisation d'occupation temporaire*, AOT) or a bilateral temporary occupancy agreement (*convention d'occupation temporaire*, COT). The holder of such occupancy title, in the form of an AOT or a COT, is referred to hereinafter as the "permit holder".

I METHOD OF GRANTING OCCUPANCY TITLE

Since the SAPIN II Act (No. 2016-1691 of 9 December 2016) was implemented by Order No. 207-562 of 19 April 2017, the granting of permits to occupy the public domain has been the subject of a specific procedure depending on the type of activity to be conducted on the occupied property. A distinction must be made between occupancy for the purpose of conducting an economic activity and other purposes.

A) Granting of occupancy title for non-economic activities

For occupancies of a non-economic nature, title is granted to the permit holder by the port authority without a competitive tendering procedure.

B) Granting of occupancy title for economic activities

1) Prior selection procedure for AOTs granted for economic activities

AOTs (temporary occupancy permits) granted with a view to conducting an economic activity must be the subject of a competitive selection procedure which complies with the principles of impartiality, transparency and publicity, as required by Article L2122-1-1 of the General Public Property Code (CG3P).

- ⇒ **Publication of a prior selection notice, at least on the PORTS OF NORMANDY port authority (*Syndicat Mixte*) website.**
- ⇒ **Selection of bids: by the *Syndicat Mixte* based on the selection criteria.**
- ⇒ **Granting of occupancy title.**

Examples of selection criteria

Criteria relating to the **type of occupancy**:

- Type of activity (correlation with maritime purpose of the public domain),
- Information provided on the planned activity,
- References in the field,
- Visual integration in the maritime environment.

Criteria relating to the **permit holder's capabilities and resources**:

- Technical and human resources,
- Professional references of the staff dedicated to the activity,
- Financial capacity,
- Added value for the port area,
- Jobs created.

ANNEX 1: example of a competitive tender notice

2) Competitive tendering with prior information notice

The General Public Property Code (CG3P) provides for specific situations in which the public entity is only required to publish a prior information notice before issuing an occupancy permit (Article L2122-1-1, paragraph 2 of the CG3P).

The situations concerned are:

- a short-term AOT,
- an AOT concerning a zone where there are no limits on conducting the planned economic activity,
- a spontaneous expression of interest (Article L2122-1-4 of the CG3P).

For these specific cases, a streamlined procedure must be implemented by publishing a prior information notice before granting the AOT.

- ⇒ **Publication of a prior notice, at least on the PORTS OF NORMANDY website.**
- ⇒ **Granting of the AOT.**

ANNEX 2: example of a prior information notice

3) Exemptions with publication of a notice of award

Article L2122-1-3 of the CG3P provides that, in the specific cases listed below, the provisions on competitive tendering and prior selection do not apply. However, the *Syndicat Mixte* must make its granting of the occupancy title public and give the reasons for the exception made.

This applies to the following cases:

- if one person alone is entitled to occupy the public domain in question,
- if the title is granted to a public or private entity over which the *Syndicat Mixte* has management oversight or close control (concession, public service contract, etc.),
- when the initial competitive tendering procedure for the AOT failed to produce a successful bid or no bids were received,
- when the specific characteristics of the property concerned, in particular its geographical, physical, technical or functional characteristics, the specific conditions of its occupancy or use or the specific nature of its intended use justify it with regard to conducting the economic activity,
- if there is an imperative relating to the exercising of public authority or safety that justifies it.

- ⇒ **Publication of an annual notice of award / Granting of the AOT**

4) Exceptions to the competitive tendering process

Finally, Article L2122-1-2 of the CG3P specifies that the competitive tendering and prior selection rules do not apply when:

- the occupancy title is part of an operation giving rise to a competitive procedure,
- if the title is granted under a public procurement contract or forms part of a contractual arrangement that has been subject to a prior selection procedure,
- when justified on the grounds of urgency (in this case, the permit will be granted for a maximum of one year),
- when it concerns the extension of an existing permit without its total term exceeding a period not restricting free competition beyond what is necessary to recoup the investments.

These situations do not require any particular procedure or formalities.

II ADMINISTRATIVE PROVISIONS

1) Occupancy under an AOT or a COT

a) General points

The occupancy application must be sent to the *Syndicat Mixte* in writing. The application must, in all cases, state the activity envisaged and the requested duration and include all useful information allowing the applicant to be identified and its financial capacity assessed. A site plan must be attached. The same applies to all renewal applications.

The occupancy application must include details of everything that the permit holder needs to conduct its activity and must state, in particular, the space needed to receive the public, customers and staff (parking, etc.).

Taxes, contributions and levies of all kinds, including land tax, etc., as well as, more generally, all ancillary costs to which the occupancy title may give rise and, in particular, those relating to registration in the land registry, will be payable by the permit holder.

The demand for payment of the fees will be issued up by the Calvados Departmental paymaster's office (*Paierie Départementale du Calvados*) in the month following the signing of the temporary occupancy permit and for each year thereafter on 2 January.

b) Term

The term of the occupancy is decided by the *Syndicat Mixte*.

If the AOT concerns the conducting of an economic activity, the term of the occupancy permit will be set so as not to restrict or limit free competition beyond what is necessary to recoup the planned investments and ensure fair and sufficient remuneration of the capital invested, in accordance with Article L2122-2 of the CG3P.

It should be noted no public domain occupancy title can be granted for an indefinite period.

c) Schedule of condition

A schedule of condition will be drawn up in the presence of both the *Syndicat Mixte* and the permit holder when the latter takes possession of and when it vacates the premises.

Throughout the term of the occupancy permit, the permit holder will not be able to demand any refurbishment or rehabilitation or have any right of recourse against the *Syndicat Mixte* or claim any compensation or reduction in the fee on any grounds whatsoever, unless it is found that all or part of the plot granted was defective in a way, such as pollution of the site, liable to render it unfit for its intended use.

Subject to the provisions above, the *Syndicat Mixte* will not bear any maintenance or repair costs that might be necessary to allow normal use of the premises.

The permit holder will be obliged to carry out all repairs, subject to the provisions above, however large or small, as well as all the works necessary to maintain the premises in a good state of repair and use, including any buildings or facilities it has itself constructed or installed.

d) Assumption of possession

The permit holder must provide the *Syndicat Mixte* with all administrative documents before taking possession of the premises. This concerns, in particular, insurance certificates and mandatory documents relating to the activity conducted in connection with the occupancy (specific environmental permits, approvals, certificates and authorisations required to meet the regulations in force, etc.).

e) Works carried out by the *Syndicat Mixte*

The permit holder must allow the *Syndicat Mixte* to carry out any works it deems necessary in the premises provided, without any right to claim compensation or a reduction in the fee, regardless of how long said works last. This obligation will apply without restriction to all the works carried out, even those that do not directly concern the premises occupied by the user.

In all cases, except for urgent work required to ensure the safety of people and the property, the *Syndicat Mixte* must give the permit holder 15 days' notice of the beginning of the works.

The *Syndicat Mixte* represents that it cannot guarantee the permit holder against any disturbance that might be caused by third parties and that it disclaims all liability in any incidents of any kind.

f) Works carried out by the permit holder

The permit holder must submit the working drawings for any works it intends to carry out to the *Syndicat Mixte* for its approval. The permit holder must obtain the *Syndicat Mixte*'s written agreement before commencing any works. It should be noted, however, that the occupant is responsible for the works it carries out on the public domain made available to it, in accordance with Article 4 of these Regulations.

For general upkeep and maintenance work, and in proven emergencies, it will be sufficient to inform the *Syndicat Mixte* in advance.

Works carried out by the permit holder must be performed in such a way as to keep to a minimum the disruption caused to other users of the public port domain. The permit holder must comply with all the instructions given to it to this effect by the staff of the *Syndicat Mixte*.

As soon as the works are completed, the permit holder must remove any rubble, earth or stockpiles of material encumbering the public port domain.

Works carried out in connection with this permit will be subject to inspection and approval by the staff of the *Syndicat Mixte*.

⇒ *Fate of the property after the occupancy title expires*

Article L1311-7 of the CGCT provides that "*On the expiry of the occupancy title, any immovable structures, buildings or facilities on the domain property occupied must be demolished, either by the permit holder or at its expense, unless it was expressly provided by the occupancy title that they would remain in place, or unless the competent authority waives the need to demolish them in whole or in part.*

Immovable structures, buildings or facilities for which it has been agreed that they may remain in place then, as of right and free of charge, become the property of the local authorities, groupings of authorities or public institution, outright and free of all liens or mortgages."

g) Cancellation clauses

The occupancy may be brought to an end by a decision of the *Syndicat Mixte* in any of the following cases:

- partial or total withdrawal of the permit on public interest grounds;
- termination for failure to comply with the clauses of the occupancy permit after a notice to perform sent by the *Syndicat Mixte* by registered letter with acknowledgement of receipt has gone unheeded;
- termination as of right by a simple decision of the *Syndicat Mixte* of which the permit holder is notified by registered letter with acknowledgement of receipt, or in the event of the liquidation or placing in receivership of the company or any similar proceedings or the company's dissolution;
- termination if the permit holder no longer holds the authorisations that may be required by currently applicable regulations to carry on the professional activity that was the reason for granting the permit;
- termination if the permit holder's conviction for an offence leads to their being prohibited from exercising the profession corresponding to the activity that was the reason for granting the permit, or to the place of business being closed;
- in the event of the non-payment of the fee within three months of being issued with an order to pay.

In all the cases listed above, no compensation will be payable by the *Syndicat Mixte*.

In the event of termination, regardless of the grounds therefor, fees paid in advance will be retained by the *Syndicat Mixte*, without prejudice to its right to seek the recovery of any outstanding amounts owing to it and its right to require that the permit holder return the facilities to their initial condition.

2) Occupancy without title

In the event of occupancy without a permit or after a permit to occupy hardstandings or buildings has expired or terminated, a fee will be billed by way of occupancy compensation at the standard rate defined in this document plus 25%.

This fee in no way regularises the occupant's situation.

Exceeding the scope of an occupancy permit or agreement amounts to occupancy without title and constitutes a public domain offence (*contravention de grande voirie*), which will be prosecuted as such.

⇒ Application procedure

A notice to vacate the premises occupied will inform the occupant without title that this measure is being applied against it.

Occupancy compensation will be due as of the day when the situation is established and until the premises occupied are vacated and left in their initial condition or the situation is regularised.

Three months after the formal notice to vacate the premises is issued, the *Syndicat Mixte* may evict the user, with the assistance of law enforcement, if necessary.

3) Insurance

Insurance cover for fire, damage, deterioration, loss, theft, etc., is not included in the fee.

The permit holder must take out, with the insurance companies of its choice, under its own responsibility, a suitable policy covering it for the risks of loss, accident, fire, damage, theft, etc.

The permit holder acting directly or on behalf of its insurers must, both for itself and for its insurers, waive all claims against the *Syndicat Mixte* and its insurers for property damage and intangible loss in the event of any incident or damage caused to its property or goods in its custody, malicious intent on the part of the *Syndicat Mixte* and its employees being excepted.

Where there is more than one occupant, each permit holder will pay its own fire insurance premiums, and any surcharges due to hazard-increasing contiguity, without the *Syndicat Mixte* being able to be held liable on any grounds whatsoever. The permit holder creating the aggravated risk must inform the other occupants of its existence.

The permit holder will undertake to take out insurance cover for its own civil liability and to make all claims for theft or damaged caused to it or its vehicles directly.

The permit holder must provide proof that it has met the obligations under this article, said proof being provided in the form of a certificate issued by its insurer or its representative, within one month of signing the temporary occupancy permit, and then on 1 January each year.

4) Liability

The *Syndicat Mixte*'s intervention will be limited to the provision of the space and/or property to the permit holder.

The *Syndicat Mixte* will not bear any responsibility for the surveillance, custody and storage of any goods.

The *Syndicat Mixte* may not be held liable for any loss or damage not resulting from gross negligence on its part or that of its employees.

III FINANCIAL PROVISIONS

1) Domain fee

A domain fee is payable for the occupancy of the premises provided. The amount of this fee, its conditions and method of application are determined in the articles that follow. For the same type of occupancy, certain rates are divided into parts depending on the link with the port domain. Are considered as subject to "port activity" fees: all activities that generate maritime traffic or are closely linked to maritime practices.

⇒ Revision

The fee is revisable annually by a decision of the committee of the *Syndicat Mixte*. The fee is revisable annually by a decision of the committee of the *Syndicat Mixte* or, as applicable, by a specific regulation. The percentage or method of calculation of the revision applicable will be specified in the occupancy permit or agreement.

2) Free occupancy

In certain specific cases, the fee may be waived and the permit holder benefit from free occupancy. Pursuant to Article L2125-1 of the CG3P, free occupancy of the public domain may be granted, in particular, when:

- the purpose of the occupancy is the conduct of a public service activity,
- the purpose of the occupancy is a not-for-profit activity that contributes to the public good,
- the occupancy contributes to the conservation of the public domain.

3) Base prices

Base prices are set by a decision of the committee of the *Syndicat Mixte*. The definitions of the types of occupancy and the units taken into account are detailed below.

It is important that the permit holder take all its needs into consideration when defining with the *Syndicat Mixte* the content of the part of the public domain made available to it. The occupancy must include all of the area it needs to carry out its activity and, in particular, specific perimeters imposed by certain regulations (safety zone, perimeters required by the Environment Code, etc.).

The perimeter must also include the areas needed for access by the public, customers and staff (parking, etc.).

As regards easements restricting the use of the public domain (*non aedificandi* easements), the surfaces will be added to the perimeter covered by the occupancy permit or agreement sqm for sqm. In particular, this concerns certain underground occupancies subject to strict regulations on adjoining perimeters being prohibited from construction or development.

All areas are counted for the calculation of the domain fee.

4) Administrative charges

Administrative charges are applied for any processing of an occupancy permit or agreement (drawing up of a new occupancy permit, renewal of an occupancy permit, rider or amending order, etc.).

Administrative charges apply to temporary occupancy permits and agreements granted for a consideration.

Administrative charges do not apply to free temporary occupancy permits and agreements.

5) Technical weighting

For buildings (schedule of rates for land with buildings), a weighting is applied to the base prices which takes account of the type of property, its geographical location and the condition of the property concerned by the temporary occupancy permit. This technical weighting will be determined by the *Syndicat Mixte* at the time of the drawing up the schedule of condition (see Article I-1-b).

Example:

Occupancy of a port office: €13.52 ex VAT/m² for 30 m², i.e. €405.60 ex VAT

Technical weighting of 0.75 (depending on condition of the property, etc.), i.e. a discount of 25%, therefore a total price of €304.20 ex VAT

6) Type of occupancy

Some examples of types of occupancy:

Landing stages – Pontoons:

This type of occupancy covers all fixed or floating platforms using for mooring, loading or unloading boats and ships. The price will be applied to the square metre of effective surface area.

Buildings:

This type of occupancy is subdivided into four categories:

Workshops and sheds, standard or with specific equipment: this type of occupancy covers all premises intended for a mechanical or manual activity or the storage of equipment.

Offices: this type of occupancy covers all premises intended for a service activity.

Shops: this type of occupancy covers all premises intended for use for the sale of goods.

Housing: this type of occupancy covers all buildings used for residential purposes.

The price will be applied to the square metre of net floor area.

Cables:

This type of occupancy covers all overhead or underground linear facilities transporting electricity, optical fibres and wiring of any nature. The price will be applied to the linear metre of cable. Where there are multiple cables together, the price will be applied to each cable (including ducts laid ready for future use).

NB: if cables restrict the use of the adjoining public domain, an extra area may be added in the calculation of the fee.

Piping:

This type of occupancy covers all types of pipes transporting fluids except pipelines. The price will be applied to the linear metre, whatever the diameter of the piping.

NB: if pipes restrict the use of the adjoining public domain, an extra area may be added in the calculation of the fee.

Hunting huts:

This type of occupancy covers all huts used for hunting in the Orne Bay area. The price will be applied to the square metre of surface area.

Footbridges - culverts:

This type of occupancy covers all structures serving to cross water courses. The price will be applied to the square metre of deck area.

Small individual structures:

This type of occupancy covers small structures or installations occupying a small area of ground (less than 100 square metres). The price will be applied per unit.

Pipelines:

This type of occupancy covers all pipes transporting hydrocarbons and fuel. The price will be applied to the linear metre, whatever the diameter of the piping.

Non-surfaced land:

This type of occupancy covers all enclosed and non-enclosed natural spaces that have not been surfaced. The price will be applied to the square metre of land occupied.

Surfaced land:

This type of occupancy covers all enclosed and non-enclosed surfaced areas. The price will be applied to the square metre of land occupied.

Railway tracks:

This type of occupancy covers all areas used for the passage of trains. The price will be applied to the square metre of land occupied.

Water body - mooring zones:

This type of occupancy covers all water bodies and all areas intended to be equipped with moorings. The price will be applied to the square metre of area occupied.

Water bodies – miscellaneous uses:

This type of occupancy covers occupancies of an area of water for various activities, such as sports or cultural uses, for example. The price will be applied to the square metre of area occupied.

Audiovisual activities:

This type of occupancy covers audiovisual activities taking place on the maritime or waterway public domain, such as documentary or film shoots, taking of photographs, etc.