

BOROUGH OF LONGPORT
R2017-07

**A RESOLUTION ADOPTING RULES AND REGULATIONS FOR BEACH
VENDING, ADOPTING TERMS AND CONDITIONS OF LICENSURE AND
GIVING NOTICE FOR THE AUCTION SALE OF A BEACH VENDING
LICENSE**

WHEREAS, the Board of Commissioners (the "Commission") of the Borough of Longport (the "Borough") have determined that it is in the interest of the Borough to adopt rules and regulations for beach vending in conjunction with Ordinance #2004-28;

WHEREAS, the Commission has further determined that it is in the interest of the Borough to expose for sealed bid auction one (1) exclusive beach vending license (the "License") for the 2017 summer season subject to the Borough's option to extend as set forth in this resolution; and

WHEREAS, the Commission has determined it is in the interest of the Borough to adopt terms and conditions of licensure concerning the issuance of the License.

NOW, THEREFORE BE IT RESOLVED by the Board of Commissioners of the Borough of Longport, County of Atlantic and State of New Jersey as follows:

1. The forgoing recitals are incorporated herein as if set forth herein at length. The notice of the sealed bid auction shall be in content substantially similar to the notice attached to this resolution.

2. The Borough Clerk shall accept sealed bids on or before 1:00 p.m. on **March 9, 2017** ("Bid Due Date") in the Commission Chambers at 2305 Atlantic Ave, Longport, New Jersey for the award of one (1) License which will permit the holder thereof ("Licensee") to sell water and ice cream type products as more particularly described on the attached schedule of products and prices ("Schedule of Products and Prices") on the Borough's beaches between 36th Avenue and 11th Avenue for the 2017 summer season commencing May 01, 2017 and terminating October 13, 2017 ("2017 Vending Season"). No bids will be accepted after 1:00 p.m. on the Bid Due Date. The Borough Commission reserves the right, at its sole and exclusive option, to extend the term of the License granted hereunder to the Licensee to cover (i) the 2018 summer season and if so extended at its sole and exclusive option, (ii) the 2019 summer season under the same terms and conditions as the License is issued for the 2017 Vending Season subject to an increase in the yearly License Fee, as herein after defined, of five (5%) percent for each extension. If the License term is so extended, the Licensee shall post the entire License Fee for that year within ten (10) days of the adoption of the resolution authorizing the extension of the License term. Nothing herein shall require the extension of the License term for any year or preclude the Borough Commission from amending the terms and conditions of the License provided that

the Licensee may decline to accept the extension within five (5) days of the adoption of each resolution authorizing each extension of the License term.

3. The minimum bid which shall be acceptable shall be Thirty-Five Thousand (**\$35,000.00**) Dollars (“Minimum Bid”) which shall be applied on account of the successful bid (the “License Fee”). If the License Fee exceeds the Minimum Bid, then the successful bidder shall pay the balance of the License Fee within five (5) days following the adoption of a resolution awarding the License. The Borough reserves the right to adjourn or cancel the sealed bid auction without prior notice and to reject any and all bids prior to the acceptance of a winning bid by subsequent resolution. The Borough reserves the right to accept the next highest bid in the event the previous highest bid is subsequently rejected for any reason.

4. In order to be eligible to bid each bidder must be an individual and post with the Borough Clerk’s office, no later than 5:00 pm of the last business day prior to the scheduled Bid Due Date, a deposit in the form of a certified check in the amount of Thirty-Five Thousand (**\$35,000.00**) Dollars (“Deposit”) made payable to the Borough. At 1:15 p.m. on the Bid Due Date, the Borough Clerk will open the bids received by 1:00 p.m. on the Bid Due Date and announce the highest bidder (“Successful Bidder”) and that bidder’s deposit shall be retained by the Borough. The deposits of the unsuccessful bidders shall be returned within five (5) days of the Bid Due Date or if the Successful Bidder’s bid or application is rejected/not approved, then to the Successful Bidder within ten (10) days of notice of such rejection/disapproval. Under no circumstances shall interest be due or payable to any bidder.

5. Issuance of the License to the Successful Bidder shall be subject to post bid completion of a license application on a form supplied by the Borough Clerk and confirmation of approval of the application and issuance of the License by Resolution of the Commission. The Successful Bidder may designate up to two (2) additional individuals (“Additional Licensees”) to be approved as Licensees through the application process provided that any such Additional Licensees must be designated in writing simultaneously with the delivery of the Deposit. All references in this resolution to Licensee shall include Additional Licensees, if any. The Commission reserves the right at its sole discretion to accept and issue a license, or reject any or all bids and issue or not issue a license accordingly.

6. The Successful Bidder, and Additional Licensees if applicable, must submit to a background investigation conducted by the Borough Police Department, the results of which shall be used in determining whether or not to approve the license application. The winning bidder shall pay the cost of submission of fingerprints to the State Police for the any background investigation required hereunder. It is estimated that the cost for fingerprinting will be \$55.00.

7. The Licensee shall be subject to the following additional terms, conditions, rules and regulations:

(a) The Licensee may have helpers/employees assist with the sale of approved products on the Borough's Beaches. No more than five (5) helpers/employees, plus one (1) Licensee, if more than one (1) Licensee is approved, may vend on the beach at any one time. Every effort shall be made to employ residents of the Borough as helpers/employees.

(b) The Licensee and the helpers/employees shall wear clean, neat and white clothing at all times while vending on the Borough's beaches, free of commercial advertising, except for promoting products being sold.

(c) The Licensee's helpers/employees are also required to submit to a background investigation by the Borough's Police Department. No helper/employee of the Licensee may begin working on the Borough's beaches until the Borough's Police Chief, in his reasonable discretion, has issued a no negative finding report for such helper/employee.

(d) THE SCHEDULE OF PRODUCTS AND PRICES IS ANNEXED HERETO AND MADE A PART HEREOF. LICENSEE EXPRESSLY AGREES THAT (i) LICENSEE MAY NOT SELL ANY OTHER PRODUCTS THAN THOSE LISTED ON THE SCHEDULE OF PRODUCTS AND PRICES AND (ii) THE MAXIMUM PRICES FOR PRODUCTS TO BE SOLD SHALL NOT EXCEED THE PRICES FOR THE PRODUCTS AS SHOWN ON THE ATTACHED SCHEDULE. THE BOROUGH RESERVES THE RIGHT TO AMEND THE SCHEDULE OF PRODUCTS AND PRICES AT ANY TIME BY RESOLUTION OF THE COMMISSION.

(e) The provisions of Borough ordinances relating to vending on Borough beaches are incorporated herein as if set forth at length herein. To the extent that any of the terms of this resolution expressly conflict with the provisions of said ordinances, the provisions of the ordinances shall prevail, and the remaining terms of this resolution and the rules and regulations shall remain in full force and effect.

(f) Licensee shall comply with all Federal, State, County and Local laws, rules and regulations. Licensee shall register with the Atlantic County Board of Health and provide proof of registration to the Borough by May 1, 2017. Licensee shall allow inspection of its products and equipment by Federal, State, County and Local Officials at any time to insure compliance with the terms of the License.

(g) Licensee shall complete the (i) Disclosure Statement (Public Law 1977, Chapter 33) and (ii) Non-Collusion Affidavit available from the Borough Clerk and deliver same simultaneously with the Deposit.

(h) Containers ("Containers") used by Licensee to transport on the Borough's beaches the approved products to be sold on the Borough's beaches shall be carried or moved on non-motorized wheeled carts substantially similar to those used by past Licensees. Any container to be used is subject to inspection by the Commissioner responsible for Public Works who in his/her reasonable discretion may reject and prohibit the use of such container. Licensee shall not establish any stationary stand or other structure for the sale of products pursuant to the License but shall at all times maintain sales from mobile containers stopping only to consummate individual sales.

(i) Licensee shall cause a copy of the License to be displayed on each Container while such Container is in use on the Borough's beaches. Licensee shall, and shall ensure that its helpers/employees, conduct themselves in a manner that is not offensive, annoying or intimidating. Licensee and its employees are prohibited from using loud bells, whistles or horns to sell their products. Licensee and/or its helpers/employees may employ verbal means to sell their products.

(j) The Licensee shall indemnify and save the Borough harmless from and against any and all losses, suits, cost damages, claim expense actions, liabilities or judgments whatsoever (including attorney's fees) because of accident or injury sustained or alleged to have sustained by any party or parties, person or persons, property or properties occurring in conjunction with the operations under the license or by reason of the use of defective items/services furnished or delivered under the beach vending by or on account of any act of omission or commission of any Licensee, her, his, its, or their agents or employees. In the case of any action being brought against the Borough, the licensee shall immediately take charge of and defend same at her, his, its, or their own cost and expense. The Borough may, if it so desires, defend such action and charge the expense thereof to the licensee. The Licensee is required to carry liability insurance in the minimum amount of \$1,000,000 or other amount approved by the Borough covering and insuring the Borough as aforesaid. The Licensee shall deliver to the Borough a certificate of insurance naming the Borough as an additional insured, with a 30-day cancellation clause prior to the beginning of each vending season but no later than April 15th of each year. A true copy of the insurance policy shall also be delivered to the Borough.

(k) Licensee's license may be terminated or suspended at any time. Reasons for termination or suspension of the License shall include, but not be limited to, the following conduct by Licensee or its helpers/employees: (a) disorderly conduct; (b) conduct demonstrating a state of moral turpitude; (c) making material false statements in the application or background check for the License; (d) violation of the terms and conditions of this resolution; (e) sales of products at an other than approved location or from an unapproved Container; (f) sales of unapproved products; (g) sales in excess of maximum permitted prices; or (h) disposing of debris or boxes in an unapproved manner. Adequate notice and a hearing before a hearing officer appointed by the Borough Mayor shall be given

prior to permanent revocation of the License. A License may be temporarily suspended for good cause prior to a hearing for permanent revocation.

(l) Licensee shall not assign, pledge, lease, rent, sub-lease or sell his/her right, title or interest in the License or any portion thereof during the term of the license, without the prior written approval of the Borough which may be withheld for any reason.

(m) The price of all products for sale shall be prominently posted on the box or container used for the sale of products.

(n) Site Plan approval is required for a storage/distribution location in the Borough of Longport. Licensee shall comply with the Borough of Longport Zoning Ordinance, all Motor Vehicle Laws and regulations and Longport Parking Ordinances with regard to receiving, storing or delivering water and ice cream products. No water or ice cream products shall be received, stored or delivered in a Longport residential zone unless specifically permitted by the Longport Zoning Ordinance.

DATE: January 18, 2017

1-18-17		RECORD OF GOVERNING BODY VOTE ON FINAL PASSAGE				
COMMISSION	AYE	NAY	N.V	A.B.	MOT.	SEC.
RUSSO	XX				XX	
LEEDS	XX					
LAWLER	XX					XX
X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second						

I, Emilia R. Strawder, CMR, Municipal Clerk for the Borough of Longport, Atlantic County, do hereby certify the foregoing to be a true and correct copy of a resolution adopted by the Governing Body of the Borough of Longport at a meeting of said Commission held on January 18, 2017 and said resolution was adopted by not less than a two-thirds vote of the members of the Commission.

Emilia R. Strawder, RMC, Municipal Clerk

SCHEDULE OF PRODUCTS AND MAXIMUM PRICES
FOR VENDING ON LONGPORT BEACHES

<u>Product</u>	<u>Maximum Price</u>
1. Water – small	\$1.50
2. Water – large sport top	\$3.00
3. Single Bar Popsicle	\$2.00
4. Flavored Ice, Double Bar Popsicle, Fudgesicle	\$2.25
5. Italian Water Ice	\$2.25
6. Ice Cream Sandwich	\$1.75
7. Frozen Fruit Bar	\$2.50
7. Specialty premium items such as chipwich, space bar, etc.	\$3.50

THE BOROUGH OF LONGPORT RESERVES THE RIGHT TO AMEND THE
SCHEDULE OF PRODUCTS AND PRICES AT ANY TIME.

BOROUGH OF LONGPORT

NOTICE OF PUBLIC AUCTION FOR THE SALE OF A BEACH VENDING LICENSE 2017 SEASON

PLEASE TAKE NOTICE the Borough of Longport shall conduct a sealed bid auction with bids being open on **March 9, 2017 at 1:00 p.m.** in the Commission Chambers located at 2305 Atlantic Ave, Longport, New Jersey for the award of ONE EXCLUSIVE LICENSE to sell water, ice cream and ice cream related products on Borough of Longport between 36th Avenue and 11th Avenue for a term of one year commencing May 1, 2017 and terminating October 13, 2017 pursuant to Resolution # 2017-07. **THE MINIMUM BID IS \$35,000.00** which shall be applied on account of the winning bid. The successful bidder must make full payment (if successful bid is more than the minimum bid) within 5 DAYS following the adoption of a resolution awarding the license. The Borough of Longport reserves the right to adjourn or cancel the auction without prior notice and to reject any and all bids.

NOTICE IS HEREBY GIVEN THAT VETERANS ARE PERMITTED, IN ACCORDANCE WITH NEW JERSEY STATE LAW, TO VEND ICE CREAM AND ICE CREAM PRODUCTS, IN NON-MOTORIZED VEHICLES, AT THE BEACH BLOCK STREET ENDS OF THE BOROUGH OF LONGPORT.

PLEASE TAKE FURTHER NOTICE that in order to be eligible to bid, each bidder must post a deposit in the form of a certified check in the amount of \$35,000.00 made payable to the Borough of Longport. The deposits of the unsuccessful bidders shall be returned within ten days. Under no circumstances shall interest be due or payable to any bidder. The Resolution authorizing the auction contains additional terms and conditions which are incorporated herein and made a part hereof.