



Notice of Live Auction
Beach Equipment Franchise – North-Section Parcels
\$ 500 Minimum Bid Requirement for each Parcel

A public auction will be held on Wednesday, **December 1, 2021**, at 10:00 a.m., in the Council Chambers of City Hall located at 301 Baltimore Avenue in Ocean City, Maryland. **Registration begins at 9:00 a.m.** A **pre-auction discussion begins at 9:30 a.m.** **Auction begins at 10:00 a.m.** The following north-section beach parcels will be auctioned:

| |
|--|
| 122nd, 123rd and 124th Streets |
| 125th, 126th and 127th Streets |

ON AUCTION DAY, the successful bidder shall:

- (1) Provide satisfactory proof of identity and legal age (i.e. Driver's License or Government-issued Photo ID)
- (2) Pay a One Thousand Dollar (\$1,000.00) **non-refundable** deposit for each successful bid. Please bring cash, cashier's checks or certified checks payable to the Mayor and City Council. **PERSONAL CHECKS NOT ACCEPTED.**

On the dates specified below, the successful bidder shall:

- (1) Submit a personal Credit Report on or before **Monday, December 6, 2021.**
- (2) Sign a statement authorizing the Mayor and Council to make inquiry of personal background, financial and credit worthiness on or before **Monday, December 6, 2021.**
- (3) Pay 20% of the annual fee for each parcel less the \$1,000.00 deposit to the Billing Office in City Hall on or before **Monday, December 6, 2021.**
- (4) Provide a brief plan of management on or before **Monday, December 6, 2021**, clarifying if you will directly oversee the operation or, if not, how day-to-day operations will be handled; providing details of your experience with the beach equipment rental industry; and advising if you have obtained necessary equipment and boxes or of your arrangements to acquire necessary equipment.
- (5) Obtain, at the operator's own expense, comprehensive general liability insurance coverage and products liability insurance coverage in at least the amount of \$1,000,000.00 combined single limit, which insurance coverage shall name the Mayor and City Council as an additional insured, and a certificate of insurance evidencing such coverage shall be furnished to the Mayor and City Council by the operator and be approved by Ocean City's City Clerk before contract endorsement.
- (6) The second-highest bidder will have first right of refusal should the initial successful bidder neglect to meet credit, experience or management requirements. A sealed bid will be conducted if the second-highest bidder declines the award. The Mayor and Council may reject any and all bids for any reason it deems appropriate and may rebid upon such terms, conditions and manner it deems appropriate.
- (7) Sign a three-year contract (2022-2024) for each parcel.

An auction bid packet can be found at <http://oceancitymd.gov/oc/departments/city-clerk/> or email dchavis@oceancitymd.gov to request the information. Please direct questions to 410-289-8842.

BEACH EQUIPMENT RENTAL FRANCHISE FINANCIAL HISTORY

OPERATOR INFORMATION

Name: _____

Address: _____

Phone: _____

Email Address: _____

The source of my funds for the initial franchise payment tendered herewith is as follows:

- A. CREDIT REFERENCES (List at least two (2) with full name, address, telephone number and contact person)

1) _____
Name Address Telephone # Contact Person

2) _____
Name Address Telephone # Contact Person

- B. BANK REFERENCE (List at least one (1) with full name, address, telephone number and contact person)

Name Address Telephone # Contact Person

I do hereby agree to and authorize Mayor and City Council of Ocean City to make inquiry of my personal background, financial and credit worthiness and for the Mayor and Council to obtain a copy of my credit report; and by my signature hereto, I do hereby authorize and empower those listed above as credit references and bank reference to release onto Mayor and City Council of Ocean City any information pertaining to my personal background, financial and credit worthiness.

I do hereby certify that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other Bidder or with any competitor.

I do hereby certify that I have no financial interest, direct or indirect, in any other Ocean City beach equipment rental franchise; and that there are no other persons financially interested, direct or indirect, in this BID, except:

Name Name Name

Signature Signature Signature

I do hereby solemnly declare (or I hereby affirm) under penalties of perjury that the information and statement above are true and correct to my knowledge and belief.

Signature: _____ Date: _____

TOWN OF OCEAN CITY

FIRST TERM: BEACH EQUIPMENT FRANCHISE AGREEMENT

PARCEL: «PARCELS»

THIS FRANCHISE AGREEMENT made this _____ day of _____, 2019, by and between the Mayor and City Council of Ocean City, Maryland, a Maryland municipal corporation, hereinafter called and referred to as the "City" and «First_Name» «Last_Name», hereinafter called and referred to as "Operator," and also doing business as «Business_Name».

WITNESSED: that for and in consideration of the premises, and of the rights herein this agreement granted, and of the sums of money herein this agreement stated, the "City" and the "Operator" do hereby covenant and agree as follows:

THAT the "City" agrees:

1. Beach Equipment shall be defined as beach chairs, beach lounge chairs, umbrellas, boogie boards, surf mats and beach-based back rests. Other items designed and intended for use and rent by the general public as an end-user on a beach, or within the ocean, may be considered as additions by the Mayor and City Council following recommendation by the Mediation Board. Any such equipment addition shall be intended for the day to day use by general beach patrons with demonstrated supporting data firmly identifying said equipment as trending upward in end-user rental and successful use at similar beach destinations.
2. That the operator shall have the right to rent to the PUBLIC, subject to the terms and conditions hereinafter stated, beach equipment on the Public Beach areas of «Parcels» for a term commencing with the date hereof and terminating on the 29th day of October «TERM_ENDS».
3. That as long as the "Operator" performs as herein stated and pays the sums hereinafter in this agreement specified when said sums are due and conducts his business in accordance with the terms of this Franchise Agreement and in accordance with the provisions of Chapter 39 of the Code of the Town of Ocean City (said Chapter 39 hereby being incorporated by reference), and in accordance with the lawfully adopted regulations of the MEDIATION BOARD, the "City" will not grant the right to rent beach equipment to the public on said Parcel to any other person or operator.
4. That provided the "Operator" is not in default or otherwise in violation of any terms of the franchise, said "Operator" shall have an option to renew any franchise(s) for one additional three-year term upon the same terms and conditions of the franchise except that the annual franchise fee shall be 10 percent greater than the annual franchise fee for the initial term. If said "Operator" elects to exercise this renewal option, it must be done in writing to the City Clerk before August 31 of the third year of said initial term.
5. That the "City" acknowledges receipt from the "Operator" which said sum represents 20% of the first annual Franchise fee.

THAT the "Operator" agrees:

1. To pay the annual bid price as follows: 20% of the first annual fee being heretofore paid; an additional 40% of said first annual fee payable on or before July 15th, and the remaining 40% to be paid on or before August 15th. Thereafter, for the remaining years of the term of the annual fee will be paid by paying to the "City" 20% of said annual fee by January 1st of the year prior to the summer season, and 40% on or before July 15th and the remaining 40% on or before August 15th.
2. The "Operator" further covenants and agrees to pay to the "City" the total Franchise fee which is the sum of the annual Franchise fee multiplied by the number of years in the term. The operator agrees to pay the annual franchise fee of \$«M_2016_Annual_including_those_Pending_MC».00 at the times aforesaid and to pay the total sum, in installments as aforesaid, for the remainder of the 3-Year term of this agreement. No request for any extension of time for any payment shall be considered unless made in writing and delivered to the City Manager's office a minimum of 15 days prior to the due date.
3. To comply with all the provisions and conditions of Chapter 39 of the Code of the Town of Ocean City (as from time to time amended by Ordinance) and the regulations heretofore adopted by the MEDIATION BOARD or which may be hereafter lawfully adopted by the MEDIATION BOARD. (A copy of said regulations is attached hereto and is made a part hereof by reference.)
4. The "Operator" by entering into this agreement hereby acknowledges that he has knowledge of the aforesaid Chapter 39 and regulations and hereby expressly waives any and all rights or defenses he might now have or hereafter acquire by reason of the "Operator" not having read or understood the aforesaid Chapter 39 or Regulations.

5. To protect and hold harmless the "City" indemnifying and holding it harmless from any liability from claims arising from the operator's activities at the parcel including attorney fees and related costs of defense.
6. That the "Operator" shall conduct the business of renting beach equipment and shall conduct no other business under the rights granted by this franchise agreement.
7. That any representative of the "City" shall have access to the Parcel at any and all times.
8. That he, the "Operator," shall not conduct or attempt to conduct any beach equipment rental business on any parcel other than the one hereinbefore described.
9. That no alcoholic beverages will be consumed or kept, by the Operator, its agents or employees, within the Parcel hereinbefore described.
10. To post prices as required by the City Code.
11. To operate the business of Beach Equipment rentals at no other location than those specified in Chapter 39 and by the Regulations of the MEDIATION BOARD and to be open for business during the time and times specified in the aforesaid Ordinance.
12. To comply with all Town, County, State, or Federal laws and regulations.
13. That the "City" has not designated the limits of Private Beach property and that the "Operator" hereby assumes the responsibility for trespass, if any, on private property. "No operator shall place any of his rental or other equipment on private property after having been directed not to do so by the private property owner or his agent."
14. That the "Operator" shall be familiar with the provisions of easements, if any, granted in reference to this parcel and agrees to be bound by any limitations or conditions, if any, of any such easements, including but not limited to provisions restricting or limiting the operation of "Operator's" business.
15. That the "Operator" shall be solely responsible for any losses incurred as a result of any Acts of God. That the "City" shall not abate any payments due under this agreement because of any Acts of God. Acts of God shall include but not be limited to: beach erosion; wind, rain, or other adverse weather; fire; earthquake; oil spills or oil on the beaches, etc.
16. That the "Operator" acknowledges any default of a franchise fee for this parcel will result in the revocation of all other beach equipment rental franchise agreements held in Operator's name.
17. That the terms and provisions of any other franchise agreement and negotiations on the price or payments or negotiations in reference to the default of provisions of any other agreement shall have no effect on this Franchise Agreement.
18. The "Operator", by entering into this agreement, understands and agrees that the Town of Ocean City maintains sole authority over use of said parcel(s) and, from time to time, may approve use of parcel(s) for special events or private events and that the approval of events using beach parcel(s) is not an even distribution across parcels with some parcels hosting occurring events more frequently than others. "Operator" further agrees that the potential and real impact of said Town-permitted events is a condition of doing business with the Town of Ocean City, said potential events shall be anticipated and the "Operator" shall hold the Town, Mayor and City Council harmless with no cause for action toward reduction of Town fees and charges or lost revenue.

AS WITNESS the hand and seal of the "Operator" and witness the hands of the Mayor and President of the City Council, with the corporate seal of the municipality affixed hereto as of the day and year first above written.

Diana L. Chavis, City Clerk

Douglas R. Miller, City Manager

Witness

«First_Name» «Last_Name», Operator

REGULATIONS OF THE MEDIATION BOARD

The following regulations are adopted pursuant to the provisions of Chapter 39, Article II of the Code of the Town of Ocean City, Maryland.

REGULATION NO. 1 - QUORUM

Three members of the Mediation Board shall constitute a quorum.

REGULATION NO. 2 - INVESTIGATION

The Board shall have the power to conduct investigations and inspections and may designate the Board's Administrative Assistant.

REGULATION NO. 3 - ADMINISTRATIVE ASSISTANT

The City Clerk of the Town of Ocean City is hereby designated as the Board's Administrative Assistant.

REGULATION NO. 4 - ATTORNEY

The Board may at any time request the presence of an attorney from the office of the City Solicitor at their meetings and may utilize said office for legal services and advice.

REGULATION NO. 5 - SOLICITATIONS

No operator shall solicit on the Boardwalk, in any other operator's parcel, or beyond fifteen feet from stand locations.

REGULATION NO. 6 - STORAGE AND STANDS

Each operator shall be allowed to construct containers and a beach stand. All stands shall be as uniform as possible. The design of said stands and containers shall be subject to the approval of the Mayor and City Council. The container boxes will be no larger than four feet wide, eight feet long, and four feet deep. The A frame rack (stand) shall be no wider at the base than six feet, no longer than eight feet and no higher than six feet. They shall be soundly constructed of wood, painted Ocean City Blue and in good repair. They shall not be located on the Boardwalk. Each operator shall be limited to one (1) stand and four (4) containers at each parcel. All stands and containers shall be located at the street end of each parcel or at the mid-point of the parcel, if there is no street end. Equipment may be stored in said containers and racks at operator's risk.

REGULATION NO. 7 - SIGNS AND ADVERTISEMENTS

Each stand or container is required to have two (2) signs designating the franchisee's name, address and phone number and the rental price list of all items rented at the respective stand identifying the amount per item and the duration of rental. Optional information may include operator's trade name. The design and content of each sign shall be subject to the approval of the Board, but in no event shall a sign exceed dimensions of twenty-four by twenty-four (24 x 24) inches. The required information must be a minimum of one inch (1") block lettering, color black on a white sign surface. The required sign is to be displayed on both the north and south sides of the stand or container. An optional sign of identical designations is also permitted on the east or west side of the stand or container.

REGULATION NO. 8 - COMPLAINTS AND PENALTIES

Complaints must be in writing, in respect to operators from any interested party requesting a hearing in reference to said complaint. Upon receipt of said request, the Board shall refer the alleged violation to the City Clerk who shall cause an investigation for verification of the alleged violation. Upon investigation and upon reasonable belief that the violation exists or did occur, written notification of said violation shall be hand-delivered to the operator or attendant and sent via regular mail to the beach parcel operator. The operator or attendant must sign a copy of the hand-delivered notice to acknowledge receipt. The notice shall advise the operator he has forty-eight (48) hours to correct the violation. If the violation continues, a hearing shall be scheduled within five (5) days. The beach parcel operator shall be notified of such hearing, in writing, both hand-delivered to him or the attendant and sent via regular mail. The hearing conducted by the Board shall be taped or otherwise recorded. Upon such hearing, if the Board concludes that such violation has occurred or

is occurring, the Board may impose a fine of not less than \$25.00 nor more than \$100.00 for each violation or suspend the franchise for up to seven (7) days.

Any party aggrieved by the decision of the Board may appeal the same to the Mayor and City Council. The appeal shall be on the record, and the decision of the Board may be affirmed, reversed or modified. If the beach parcel operator defies the action of the Board (or Mayor and Council, after appeal) or continues the violation, then, in that event, upon verification, the Board shall refer the same to the Mayor and City Council for possible revocation. The Mayor and City Council shall schedule a hearing at a regularly scheduled Council meeting. The beach parcel operator shall be notified, in writing, both hand-delivered to him or the attendant and via regular mail, of the hearing date and the alleged violation(s). Upon such hearing, the Mayor and City Council may further fine, suspend, or revoke the franchise if it determines that the violation(s) or is (are) occurring.

REGULATION NO. 9 - CONDUCT OF HEARINGS

The conduct and procedure of hearings before the Board shall be as follows:

- A. The meeting shall be opened by the Chairman who shall then give a short statement outlining the nature of the complaint being heard and identifying the parties. All parties being heard shall be sworn.
- B. The complaining party shall then be allowed no more than fifteen minutes to address the Board in reference to his complaint.
- C. The operator shall then be allowed no more than fifteen minutes to address the Board in rebuttal.
- D. All points of contention and all questions by either party shall be addressed to the Board. The Board may, if necessary, then request answers from the appropriate party.
- E. Closing statements, if necessary, shall be limited to five minutes each, with the complaining party closing first.
- F. The chairman shall then call the meeting to a close and the Board shall retire, if necessary, and make a finding or defer finding. The parties shall be promptly notified of the actions of the Board.

REGULATION NO. 10 - HARDSHIP

In case of hardship, variations from the exact terms of these regulations may be requested from the Board.

ARTICLE II. - BEACH EQUIPMENT RENTAL

Sec. 39-21. - Title.

This article shall be known as the "Beach Equipment Rental Franchise Ordinance."

(Code 1972, § 26-1; Code 1999, § 39-21)

Sec. 39-22. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Annual bid price means the amount of the bid divided by the number of years of the term.

Beach, private, means the area east of the beach replenishment project line, as defined in section 30-81, and west of the mean high-water mark of the Atlantic Ocean, which is part of a now existing platted lot or lots under exclusive private ownership. The term "private beach" does not include any area east of the easterly boundaries of the platted lots, nor does it include the area within the bed of any street or alley in which Ocean City has an interest, whether by deed, dedication and acceptance thereof, or by dedication without acceptance, nor does it include any area described on a recorded plat as beach, beach area, avenue or like name, nor does it include any privately owned lot over which Ocean City possesses an easement or right-of-way.

Beach, public, includes all areas west of the mean low-water mark of the Atlantic Ocean and east of the easterly boundary line of any privately owned property, and in any event includes all areas east of the now existing boardwalk; all areas east of the westerly right-of-way line of Atlantic Avenue as such avenue is shown on the plat of the Sinepuxent Beach Company of Baltimore City; all the beds of any platted streets east of the aforementioned beach replenishment project line, whether or not prior hereto conveyed to Ocean City or dedicated with or without acceptance; all areas east of the mean high-water mark of the Atlantic Ocean; all areas marked beach, beach area, avenue or like name on any recorded plat of any land within the corporate limits of Ocean City; or any land shown on any such plats as being located between the mean high-water mark of the Atlantic Ocean and the easterly boundaries of any platted lots.

Franchise means the exclusive and sole right to operate a beach equipment business, subject to the provisions of section 39-29.

Franchise area means the area for which an operator is granted a franchise.

Franchise fee means the yearly sum bid by any respective operator for any respective parcel.

Mediation board means the board created and empowered as specified in this article, which board shall have concurrent jurisdiction to regulate the beach equipment rental franchise system, subject to the terms and conditions specified.

Operator means the owner of a franchise, who shall be one or more individuals, each of whom shall acknowledge and sign the BID form pursuant to section 39-23(3). In the event of an assignment or other change in individuals, each new owner shall provide references and acknowledge and sign the BID form.

Private rentor means those rentors who qualify as such under section 39-29.

Reference means credit and bank references, as required in this article. The reference reports are hereby declared to be privileged and confidential, and not subject to public inspection pursuant to section 10-615(1) and section 10-617(d)(3) of the State Public Information Act.

System means the beach equipment rental franchise system.

(Code 1972, § 26-2; Code 1999, § 39-22; Ord. No. 1996-6, 4-15-1996)

Sec. 39-23. - Franchise system.

There is established and created the beach equipment rental franchise system of Ocean City. Such system is established as follows:

- (1) *Division of public beach into parcels.* For the purpose of this article, the area within the corporate limits herein defined as a "public beach" is hereby parceled and subdivided into various parcels, as hereinafter set forth, and each parcel shall be a separate franchise area.
- (2) *Parcel regulations.* Ocean City shall and does hereby restrict the rental of beach equipment within each such parcel to the operator

who holds the franchise for the parcel. No other person shall rent beach equipment within the parcel except the operator or the operator's employees, nor shall any private rentor, as defined in this article, or the rentor's employees, carry on or emplace any beach equipment in such area. These restrictions do not prohibit a patron from renting beach equipment from one parcel's franchisee and placing said equipment upon another parcel.

(3) *Bidding and payment of fees.*

- a. Franchises shall be obtained by a process and procedure of public bidding. The respective operator or potential operator will obtain a franchise by submitting, pursuant to the advertisement as hereinafter described, a sealed bid, on forms provided by the city clerk, which shall identify the parcels being bid. In lieu of the sealed bid process, the Mayor and City Council of Ocean City may conduct a public auction of the franchises in such manner and upon such terms and conditions as it may determine.
- b. Corporations are prohibited from bidding. The bidder must be a natural person.
- c. Each sealed bid shall be presented in the form and the successful bidder at a public action shall present the form, as follows:
 - 1. \$___ per year, for a total of \$___ for the three-year term of the franchise.
 - 2. The source of my funds for the initial franchise payment tendered herewith is as follows:
 - (i) Credit references: (applicant shall list at least two with full names, addresses, telephone number and contact person).
 - (ii) Bank reference: (applicant shall list at least one with full name, address, telephone number and contact person).
 - 3. I do hereby agree to and authorize the Mayor and City Council of Ocean City to make inquiry of my personal background, financial, credit worthiness and my credit report; and by my signature hereto, I do hereby authorize and empower those listed as credit references and bank references to release to the Mayor and City Council of Ocean City any information pertaining to my personal background, financial and credit worthiness, and for the Mayor and City Council of Ocean City to obtain a copy of my credit report.
 - 4. I do hereby certify that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other Bidder or with any competitor.
 - 5. I do hereby certify that I have no financial interest, direct or indirect, in any other Ocean City beach equipment rental franchise, except as fully disclosed and permitted by this chapter of the Code of Ocean City; and that there are no other persons financially interested, direct or indirect, in this BID, except as fully disclosed and permitted by this chapter of the Code of Ocean City (All persons must sign (7)).
 - 6. I do hereby solemnly declare (or I hereby affirm) under penalties of perjury that the information and statement above made are true and correct to my knowledge and belief.
 - 7.

| | |
|--------------------------------|-----------------------|
| " _____ (Name-hand written) | _____ (signature)" |
|--------------------------------|-----------------------|

- d. Each sealed bid shall be accompanied by a cashier's or certified check payable to the Mayor and City Council of Ocean City in the sum of 20 percent of the annual bid price rounded up to the next whole dollar. At a public auction, each successful bidder shall tender a cashier's check or certified check payable to the Mayor and City Council of Ocean City in an amount as advertised prior to the auction for each parcel. The amount tendered by the successful bidder shall be nonrefundable. Within three business days from the date of the auction, the successful bidders shall tender a cashier's or certified check payable to the Mayor and City Council of Ocean City for the difference between the amount tendered at the auction and 20 percent of the successful bid amount. The Mayor and City Council of Ocean City may reject any and all bids for any reason it deems appropriate, and may rebid upon such terms, conditions and matter it deems appropriate.
- e. The successful bidder's 20 percent shall be retained, as the annual franchise fees shall be payable for the first year as follows: 20 percent at the time of bidding, an additional 40 percent of the annual fee on July 15, and the remaining 40 percent of the annual fee on August 15.
- f. For years subsequent to the year of bid, but included in the bid, the first payment of 20 percent of the annual franchise fees for any respective year shall be paid on or before January 1 of said year.
- g. Such advertisement shall indicate the term of years for which a franchise is to be granted for any respective parcel.

- h. Provided the operator is not in default or otherwise in violation of any terms of this article, the operator shall have an option to re franchise for one additional three-year term upon the same terms and conditions of the franchise except that the annual franchise fee shall be ten percent greater than the annual franchise fee for the initial term. If the operator elects to exercise this renewal option, it must do so in writing, to the city clerk before August 31 of the third year of said initial term.

(4) *Franchise areas and terms.* The franchise areas shall be designated as three sections: North Section, Mid Section and South Section.

- a. The North Section shall include all franchise areas from the Delaware-Maryland line to 84th Street as follows:
1. Beginning at the midpoint of the block at 84th Street on the south, extending north to include 85th Street, 86th Street and the midpoint of 87th Street.
 2. Beginning at the midpoint of the block at 87th Street on the south, extending north to include 88th, 89th, 90th Streets and to the north side of 91st Street.
 3. Beginning at the south side of 92nd Street, extending north to include 93rd and to the north property boundary of the 9400 Condominium.
 4. Beginning at the south property boundary of the Flying Cloud Condominium, extending north to include the Pyramid and to the north property boundary of the Plaza Condominium.
 5. Beginning at the south property boundary of the Century I Condominium, extending north to include the English Tower and to the north property boundary of the Marigot Beach Condominium.
 6. Beginning at the south property boundary of the Atlantis Condominium, extending north to include the Quay and to the north property boundary of the Golden Sands Condominium.
 7. Beginning at the south property boundary of the Capri Condominium, extending north to include the Irene and to the north property boundary of the Rainbow Condominium.
 8. Beginning at the south property of the High Point South Condominium, extending north to include the High Point North and to the north property boundary of the Seawatch Condominium.
 9. Beginning at the south property boundary of the Fountainhead Condominium, extending north to include the Carousel Hotel Condominium and to the midpoint of 118th Street.
 10. Beginning at the midpoint of 118th Street, extending north to include 119th Street, 120th Street and to the midpoint of 121st Street.
 11. Beginning at the midpoint of 121st Street, extending north to include 122nd Street, 123rd Street and to the midpoint of 124th Street.
 12. Beginning at the midpoint of 124th Street, extending north to include 125th Street, 126th Street and to the midpoint of 127th Street.
 13. Beginning at the midpoint of 127th Street, extending north to include 128th Street, 129th Street and to the midpoint of 130th Street.
 14. Beginning at the midpoint of 130th Street, extending north to include 131st Street, 132nd Street and to the midpoint of 133rd Street.
 15. Beginning at the midpoint of 133rd Street, extending north to include 134th Street, 135th Street and to the midpoint of 136th Street.
 16. Beginning at the midpoint of 136th Street, extending north to include 137th Street, 138th Street and to the midpoint of 139th Street.
 17. Beginning at the midpoint of 139th Street, extending north to include 140th Street, 141st Street and to the midpoint of 142nd Street.
 18. Beginning at the midpoint of 142nd Street, extending north to include 143rd Street, 144th Street, 145th Street and to the Maryland/Delaware line at 146th Street.
- b. The Mid Section shall include all franchise areas consisting of one block each from the south side of 84th Street to and including all parcels either boundary of which is north of 27th Street.
- c. The South Section shall include all franchise areas consisting of one block, except for the southernmost franchise area which shall be two blocks, from the south side of 27th Street to and including all parcels either boundary of which is north of the Ocean City inlet.

- (5) *Regulation of operators.* All operators shall be mediation board regulated by the terms and provisions of this division and by any regu adopted by the with the approval of the Mayor and City Council of Ocean City.
- (6) *Stands and containers.* Each operator shall be allowed to construct containers and a beach stand. All stands shall be as uniform as possible. The design of the stands and containers shall be subject to the approval of the Mayor and City Council of Ocean City. All stands and containers shall be located as follows: one location at the street end of the parcel or at the midpoint of the parcel, if there is no street end; except for the southernmost and northernmost parcels which shall have two locations, one at each street end; subject, however, to the provisions of section 39-29. Each operator shall be limited to one stand and four containers at each parcel. At the request of the operator and after receiving the recommendations of the beach mediation board, the Mayor and City Council of Ocean City may grant permission for additional stands and containers at parcels. The location of the additional stands and containers on each parcel shall be subject to the approval of the Mayor and City Council of Ocean City.
- (7) *Rentals limited to operators.* There shall be no license issued nor any beach equipment rentals allowed within the corporate limits of Ocean City except by operators of franchises, except as specified in section 39-29.
- (8) Each bid and each franchisee shall deliver to the clerk, at the time of submittal of the bid and each year thereafter, by no later than January 1, an affidavit in the form as follows:

I do hereby solemnly declare, or affirm, under penalty of perjury, that all federal, state, county and municipal taxes, for years prior to and through the current tax reporting period, or due date, have been paid.

| | |
|--------------------------------|-----------------------|
| " _____ (Name-hand written) | _____ (signature)" |
|--------------------------------|-----------------------|

(Code 1972, § 26-3; Code 1999, § 39-23; Ord. No. 1997-2, 3-17-1997; Ord. No. 1998-2, 3-16-1998; Ord. No. 1999-6, 3-15-1999; Ord. No. 2001-1, 2-5-2001; Ord. No. 2001-3, 3-5-2001; Ord. No. 2002-2, 3-12-2002; Ord. No. 2003-7, 3-17-2003; Ord. No. 2006-21, 8-21-2006; Ord. No. 2014-6, 4-7-2014; Ord. No. 2015-27, 11-2-2015; Ord. No. 2017-03, 2-21-2017)

Sec. 39-24. - Mediation board.

- (a) There is hereby established a mediation board consisting of four members. They shall be appointed by the Mayor and approved by the Council. The members of the mediation board shall be appointed for terms beginning and ending with the term of the appointing Mayor, except, that the terms of the members shall not expire until their successors are duly appointed and approved.
- (b) The mediation board shall immediately after appointment select a chairperson and a secretary. Meetings shall be held at the direction of either of these members of the board.
- (c) The duties and powers of the mediation board are as follows:
 - (1) It shall receive complaints, in writing, in respect to operators from any interested party requesting a hearing in reference to the complaint. Upon receipt of the request, the board shall refer the alleged violation to the city clerk who shall cause an investigation for verification of the alleged violation. Upon investigation and upon reasonable belief that the violation exists or did occur, written notification of such violation shall be hand-delivered to the operator or attendant and sent via regular mail to the beach parcel operator. The operator or attendant must sign a copy of the hand-delivered notice to acknowledge receipt. The notice shall advise that the operator has 48 hours to correct the violation. If the violation continues, a hearing shall be scheduled within five days. The beach parcel operator shall be notified of such hearing, in writing, both hand-delivered to the operator or the attendant and sent via regular mail. The hearing conducted by the board shall be taped or otherwise recorded. Upon such hearing, if the board concludes that such violation has occurred or is occurring, the board may impose a fine of not less than \$25.00 nor more than \$100.00 for each violation or suspend the franchise for up to seven days. Any party aggrieved by the decision of the board may appeal the same to the Mayor and City Council of Ocean City. The appeal shall be on the record, and the decision of the board may be affirmed, reversed or modified. If the beach parcel operator defies the action of the board (or Mayor and Council, after appeal) or continues the violation, then, in that event, upon verification, the board shall refer the same to the Mayor and City Council of Ocean City for possible revocation. The Mayor and City Council of Ocean City shall schedule a hearing at a regularly scheduled Council meeting. The beach parcel operator shall be notified, in writing, both hand-delivered to the operator or the attendant and via regular mail, of the hearing date and the alleged violation. Upon such hearing, the Mayor and City Council of Ocean City may further fine, suspend, or revoke the franchise if it determines that the violation did occur or is occurring.

- (2) The mediation board shall advise the Mayor and City Council of Ocean City of all findings handed down by the board in any year prior of advertisements for bids. If the mediation board finds that an operator has violated the terms of this article in two or more instance one year of the operator's term, the mediation board shall recommend that the Mayor and City Council of Ocean City not accept any r from the operator. In such case, after receiving notice that an operator is not recommended, the Mayor and City Council of Ocean City sole option, reject any future bid submitted by the operator; or upon the recombination of the beach mediation board, the Mayor anc Council of Ocean City may revoke or suspend the current license and/or franchise and/or any future bids from the franchise operator
- (3) The mediation board, if deemed warranted by the board, may, subject to the approval of the Mayor and City Council of Ocean City, establish maximum prices above which the operators may not charge for the rental of specific equipment. However, the mediation board should not set the maximum prices unless the board considers the prices for rentals of equipment are so exorbitant as to create a serious public need for price regulation. In any event, maximum prices may not be established until after an advertised public meeting is held in respect to the regulation of prices.
- (4) The mediation board shall receive, open at the designated time at a preannounced open meeting and review for sufficiency each bid and make recommendation of approval of the highest successful bid to the Mayor and City Council of Ocean City.

(Code 1972, § 26-4; Code 1999, § 39-24; Ord. No. 1996-6, 4-15-1996; Ord. No. 2010-47, 1-3-2011)

Sec. 39-25. - Operation of stands generally; duties of operators.

- (a) Operators shall be required to keep all areas within 50 feet of the stand and container location free and clear of all debris and trash of all types.
- (b) No operator shall allow alcoholic beverages to be consumed by the operator's employees while on the beach. No operator shall allow alcoholic beverages at the operator's stand and container location.
- (c) Except as hereinafter provided, no operator shall allow any of the operator's beach equipment to be placed more than ten feet away from the operator's stand on the beach prior to the time the rentor of such equipment is actually on the beach. An operator shall be allowed to preplace ten umbrellas if on a three block parcel or five umbrellas if on a one block parcel. No operator shall preplace any other equipment, and it shall only be placed on the beach when the customer is on the beach. It may remain only so long as the rentor or customer is utilizing the equipment, except that all equipment must be removed prior to 6:00 p.m. Upon the customer's leaving the beach, the operator shall make all efforts to promptly remove the equipment. This subsection shall apply equally to weekly customers.
- (d) No operator shall allow the placement of any of the operator's equipment east of a line established by the beach patrol officer in the operator's respective area; and in the event that no such line is established, no equipment shall be allowed east of the beach patrol officer's stand.
- (e) All operators and their employees shall obey all lawful orders of any police officer or beach patrol officer of Ocean City.
- (f) All operators shall maintain at least one stand at each street end of every parcel in the South Section, and it shall open no later than 10:00 a.m., Monday through Sunday, from June 1 through Labor Day of each year. All operators shall maintain at least one stand at each street end of each parcel in the North Section, and it shall open no later than 10:00 a.m., Monday through Sunday, from June 1 through Labor Day of each year.
- (g) Each stand or container is required to have two signs designating the franchisee's name, address and telephone number and the rental price list of all items rented at the respective stand identifying the amount per item and the duration of rental. Optional information may include operator's trade name. The design and content of each sign shall be subject to the approval of the board, but in no event shall a sign exceed dimensions of 24 by 24 inches. The required information must be a minimum of one-inch block lettering, color black on a white sign surface. The required sign is to be displayed on both the north and south sides of the stand or container. An optional sign of identical designations is also permitted on the east or west side of the stand or container. The stand or container shall be maintained in good condition.
- (h) Sufficient equipment shall be available at each location to properly service the demands of the customers at the location. All equipment shall be maintained in good condition.
- (i) No operator shall place any of the operator's rental or other equipment on private property after having been directed not to do so by the private property owner or the owner's agent.
- (j) No operator shall place any of the operator's rental or other equipment on the beach prior to May 1 of the current year. All rental equipment and beach boxes must be removed by October 1 of the current year. Any equipment not so removed will be subject to removal by Ocean City, at a cost of \$100.00 to the operator, such removal to be at the risk of the operator. Ocean City will not be liable for any loss or damage incurred thereby.

- (k) Storage boxes must be painted and in good repair before being placed on the beach. If not done after notice is given, Ocean City will make repair and a fee will be assessed.
- (l) Operators are required to make repairs to stands, containers and equipment either completely off-site or in the mediate area of the stand or container, but in no event is the operator allowed to make such repairs on the boardwalk, sea wall, public benches or other public areas.
- (m) During the days operators are required to have stands open, the stands shall be opened and staffed from 10:00 a.m. until 5:00 p.m., except in cases of inclement weather which would make beach recreation impractical.
- (n) No operator shall allow the placement of a stand, container, or equipment on a sand dune.
- (o) Operators are allowed to rent up to five cabanas per block. As used herein the term "cabana" means a tent-like nonpermanent structure which has at least one side open when placed in the sand. All cabanas must be placed behind the west edge of the lifeguard stand; and any cabana of a size in excess of 59 inches in width, 44 inches in height and 48 inches in depth must be placed at least 50 feet west of the west edge of the lifeguard stand. No cabana can be rented that exceeds 87 inches in width, 58 inches in height and 68 inches in depth.

(Code 1972, § 26-5; Code 1999, § 39-25; Ord. No. 1996-6, 4-15-1996; Ord. No. 2001-1, 2-5-2001; Ord. No. 2002-2, 3-12-2002; Ord. No. 2010-12, 5-17-2010; Ord. No. 2011-3, 2-22-2011)

Sec. 39-26. - Termination or revocation of franchise; abandoned locations.

- (a) All franchises shall terminate at the expiration of their respective terms, unless otherwise extended by the Mayor and City Council of Ocean City, pursuant to subsection (b) of this section.
- (b) Any franchise may be immediately revoked upon the nonpayment of the franchise fees when due, unless the time period is extended by the Mayor and City Council of Ocean City upon the franchisee's written request prior to the payment due date, and if approved, upon the payment of an extension fee of five percent of the unpaid balance due if payment is made within one to seven days of the due date or ten percent of the unpaid balance due if payment is made within eight to 14 days of the due date. If payment in full of the balance due and the extension fee is not paid by the 14th day following the due date, the Council may terminate the franchise and commence debarment proceedings. In addition, thereto, upon extraordinary circumstances and good cause shown by the franchisee, the Mayor and City Council of Ocean City may grant such other relief as it deems appropriate.
- (c) In the event that any stands are not maintained at the locations within each parcel as required, such locations shall be considered abandoned and may be withdrawn from any such operator's parcel, and the mediation board may, by regulation, allow a new operator to maintain a stand at the abandoned location for the remainder of the current season. The franchise for a parcel, within which a stand has been abandoned, shall terminate as of the end of the season, and such franchise for the parcel shall, after being duly advertised, be reoffered for bids. If a franchise is so terminated and reoffered for bids, the operator shall incur no further liability except as to franchise fees due in the season during which the stand is abandoned and the franchise terminated.
- (d) If it is determined that an operator has caused or allowed any of the operator's beach rental or other equipment to be placed on private property after being notified and/or warned not to do so by the private property owner, the Mayor and City Council of Ocean City may revoke and terminate the operator's franchise, offer the franchise for rebidding and award the franchise to a subsequent high bidder. Any operator whose franchise is revoked or terminated for this reason will not be eligible to bid on any franchises for a period of three years. Any operator whose franchise is so revoked and terminated shall not be entitled to any reimbursement for franchise fees paid prior to such revocation or termination.

(Code 1972, § 26-6; Code 1999, § 39-26; Ord. No. 2000-24, 8-21-2000; Ord. No. 2007-27, 11-19-2007)

Sec. 39-27. - Prohibited acts.

Each of the acts described in this section are prohibited:

- (1) A violation of any of the terms and conditions of this article.
- (2) The rental within the corporate limits of any beach equipment by anyone other than an operator or a private rentor regulated and limited by [section 39-29](#).
- (3) The placing or carrying of beach equipment in public beach areas by persons not operators or employees thereof or the use of some other person.

(Code 1972, § 26-7; Code 1999, § 39-27)

Sec. 39-28. - Provisions relating to limitations of franchise ownership interest.

No operator or any other individual, corporation, partnership or company shall be permitted to hold more than 50 percent of the franchises for parcels within Ocean City. Ownership of a partial interest in other franchises shall, for the purpose of this section, be deemed as ownership of all of that franchise. The term "interest" means interest in partnerships, companies, joint ventures, ownership of stock of corporations and any other type of ownership or interest not specifically mentioned in this section. The 50 percent limitation on holding franchises may be waived by the Mayor and City Council of Ocean City if deemed necessary to serve the public.

(Code 1972, § 26-8; Code 1999, § 39-28; Ord. No. 2008-21, 12-1-2008; Ord. No. 2018-01, 2-20-2018)

Sec. 39-29. - Private rentors.

- (a) *Provisional license.* Any person other than a successful bidder within the corporate limits of Ocean City may apply for a provisional license to rent beach equipment upon paying the license fee provided in subsection (b) of this section and subject to the terms and provisions of subsections (b) and (c) of this section.
- (b) *License fees and applications.*
- (1) The license fees for such private rentors shall be as follows:
 - a. \$500.00 rental fee per year, per each location at which equipment is rented.
 - b. \$10.00 per year, per each umbrella to be rented at each such location.
 - c. \$10.00 per year, per each surf mat to be rented at each location.
 - d. \$5.00 per year, per each chair, backrest or other beach items to be rented at each location.
 - (2) Application for each license shall be made at the office of the city clerk; and the applicant shall provide to the city clerk, prior to the issuance of the license, a notarized statement indicating the following:
 - a. That the number of umbrellas, surf mats, chairs and other items for which the applicant is applying for a license is correct and that, if the applicant adds to the number of such equipment, the applicant will immediately inform the city clerk's office and pay the proper supplemental fee.
 - b. That the applicant will not use, nor allow employees to use, the public beach for the placing of the applicant's equipment.
 - c. That the applicant will utilize only the property owned by the applicant in the conduct of the applicant's business.
 - (3) When a person applies for a license to operate a beach equipment rental business in an area of private beach, the applicant shall first present as a part of the application a copy of the deed in which the applicant is the grantee, and shall include in the notarized statement required by subsection (b)(2) of this section an affirmation that the applicant is the owner of the property. No licenses will be issued for locations on a private beach to anyone other than the owner thereof. Such a license shall be subject to all the provisions of this section.
- (c) *Rules and regulations.*
- (1) No private rentor shall cause or allow the rentor's employees to place any equipment rented from the rentor on the public beach areas.
 - (2) No private rentor shall rent beach equipment within Ocean City without paying the fees and obtaining the license required under subsection (b) of this section.
 - (3) All private rentors shall comply with section 39-25(a)–(e).
 - (4) Cabanas are prohibited from being placed on the beach.
- (d) *Suspension of private rentor's license.* If the mediation board or its duly designated inspector discovers, upon inspection, a quantity of beach equipment on any private rentor's licensed premises in excess of the quantity for which the private license was issued, the mediation board shall immediately recommend to the Mayor and City Council of Ocean City that the license be immediately suspended. the Mayor and City Council of Ocean City may then, at its option, immediately suspend the license.

(Code 1972, § 26-9; Code 1999, § 39-29; Ord. No. 1994-7, 4-4-1994)

Sec. 39-30. - Assignment of franchise.

Assignment of the franchise agreement is prohibited without prior written consent of the city clerk.

(Code 1972, § 26-10; Code 1999, § 39-30)

Sec. 39-31. - Insurance.

- (a) For the protection of the public and the Mayor and City Council of Ocean City, an operator must obtain, at the operator's own expense, comprehensive general liability insurance coverage and products liability insurance coverage in at least the amount of \$1,000,000.00 combined single limit, which insurance coverage shall name the Mayor and City Council of Ocean City as an additional insured, and a certificate of insurance evidencing such coverage shall be furnished to the Mayor and City Council of Ocean City by the operator and be approved by the Ocean City clerk before the operator engages in the rental of beach equipment.
- (b) Additionally, the operator shall execute an indemnity in favor of the Mayor and City Council of Ocean City indemnifying and holding it harmless from any liability from claims arising from the operator's activities at the parcel including attorney's fees and related costs of defense.

(Code 1972, § 26-11; Code 1999, § 39-31; Ord. No. 1996-2, 2-5-1996; Ord. No. 2002-2, 3-12-2002)

Secs. 39-32—39-50. - Reserved.