

BOROUGH OF AVALON
CAPE MAY COUNTY
NEW JERSEY

ORDINANCE No. 799-2020

SUBJECT: AN ORDINANCE AMENDING CHAPTER 10 (LICENSES AND PERMITS) OF THE CODE OF THE BOROUGH OF AVALON PERTAINING TO THE LICENSING OF AUTOCABS (TAXICABS) AND THE LICENSING AND REGULATION OF LOW-SPEED VEHICLES ENGAGED IN THE TRANSPORTATION OF PASSENGERS WITHOUT CHARGING A FEE OR OTHER COMPENSATION

BE IT ORDAINED BY THE BOROUGH COUNCIL, THE GOVERNING BODY of the Borough of Avalon in the County of Cape May and State of New Jersey as follows:

SECTION 1: Chapter 10 (Licenses and Permits) Section 10-14 (Taxicabs) of the Avalon Borough Code ("Code") is hereby amended, supplemented and restated and shall hereafter provide as follows:

ARTICLE ONE

10-14 TAXICABS.

10-14.1 Definitions.

As used in this section:

"Applicant" shall mean an individual over eighteen (18) years of age who seeks to be licensed as a taxicab owner and/or driver with a valid New Jersey driver's license applying in compliance with the terms of this section.

"Autocab" means and includes any automobile or motor car, commonly called taxi, engaged in the business of carrying passengers for hire which is held out, announced or advertised to operate or run or which is operated or run over any of the streets or public highways of this state, and particularly accepts and discharges such persons as may offer themselves for transportation from points or places to points or places within or without the state. [Source N.J.S.A. 48:16-1] (Ord. 799-2020)

"Automobile" includes all motor vehicles except motorcycles. (N.J.S.A. 39:1-1) (Ord. 799-2020)

"Borough" shall mean the Borough of Avalon, in the County of Cape May and the State of New Jersey. (Ord. 799-2020)

"Driver" shall mean any person licensed by the New Jersey Motor Vehicle Commission to operate within the State of New Jersey who drives a registered taxicab within the Borough of Avalon.

"Governing Body" shall mean the Borough Council or Council of the Borough of Avalon. (Ord. 799-2020)

"Licensing Clerk" shall mean the individual who is designated to accept applications for licensing and to issue licenses in accordance with this section.

"Low-speed vehicle" means a four-wheeled low-speed vehicle, as defined in 49 CFR s. 571.3(b), whose attainable speed is more than 20 miles per hour but not more than 25 miles per hour on a paved level surface and which is not powered by gasoline or diesel fuel and complies with federal safety standards as set forth in 49 CFR s. 571.500. (N.J.S.A. 39:1-1) (Ord. 799-2020)

"Motor vehicle" includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles. (N.J.S.A. 39:1-1) (Ord. 799-2020)

“Operation of a Taxicab” shall mean and consist of transporting one (1) or more persons for hire in a taxicab. Accepting a passenger to be transported for hire from a point of departure within the Borough to a designation within or out of the Borough shall be considered operation of a taxicab within the Borough. Such term shall not include accepting a passenger from outside the Borough to be transported to a destination within the Borough. The transportation of any person other than the owner or driver in any motor vehicle bearing a designation using the words "taxi," "taxicab" or "cab" shall be prima facie evidence of operation.

“Owner” shall mean any person in whose name title to any taxicab is registered with the New Jersey Motor Vehicle Commission, or who appears in the Commission's records, or otherwise, to be a conditional vendee or lessee of such motor vehicle or who has any other proprietary interest in a taxicab. Such term shall include an individual, sole proprietorship, partnership, limited partnership, corporation or limited liability company.

“Person” means and includes any individual, copartnership, association, corporation or joint stock company, their lessees, trustees or receivers appointed by any court whatsoever. [Source: N.J.S.A.48:16-1] (Ord. 799-2020)

“Street” means and includes any street, avenue, park, parkway, highway or other public place. [Source: N.J.S.A.48:16-1] (Ord. 799-2020)

“Taxicab”, “Taxi” or “Cab” see definition of **“autocab”** (Ord. 799-2020)

“TNC” or “TNC Company” see **“Transportation Network Company”** (Ord. 799-2020)

“Transportation network company” means a corporation, partnership, sole proprietorship, or other entity that is registered as a business in the State or operates in this State, and uses a digital network to connect a transportation network company rider to a transportation network company driver to provide a prearranged ride. A transportation network company shall not include an individual, corporation, partnership, sole proprietorship, or other entity arranging non-emergency medical transportation for individuals qualifying for Medicaid under P.L.1968, c.413 (C.30:4D-1 et seq.) or Medicare under Pub.L.89-97 (42 U.S.C. s.1395 et seq.) pursuant to a contract with the State or a managed care organization, whereby Medicaid or Medicare funding is used to pay for the non-emergency medical transportation services. (See N.J.S.A. 39:5H-1 et seq.) (Ord. 799-2020)

“Transportation network company driver” or “driver” means a person who receives connections to potential riders and related services from a transportation network company in exchange for payment of a fee to the transportation network company, and uses a personal vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee. (See N.J.S.A. 39:5H-1 et seq.) (Ord. 799-2020)

“Transportation network company rider” or “rider” means a person who uses a transportation network company’s digital network to connect with a transportation network company driver to receive a prearranged ride from the driver using the driver’s personal vehicle. (See N.J.S.A. 39:5H-1 et seq.) (Ord. 799-2020)

“Vehicle” means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles. (N.J.S.A. 39:1-1) (Ord. 799-2020)

10-14.2 Necessity of Municipal Consent; Owner's License and Driver's License Required; Issuing Authority. (Ord. 799-2020)

- a. No autocab shall be operated along any street in the Borough until the owner thereof shall obtain the consent of the Borough Council, the governing body of the Borough, the authority having control of the public streets in the municipality. [Source: NJSA 48:16-2.] [Amended by L.1977, c. 218, s. 1, eff. Sept. 13, 1977]. (Ord. 799-2020)
- b. No person shall operate a taxicab within the Borough unless both the owner and the driver of the taxicab are licensed pursuant to this section. The Borough Council shall be the Issuing Authority of all such licenses. A separate license shall be required for each owner and each driver. (Ord. No. 636-2010 § 2)

10-14.3 Licensing of Taxicab Owners; Procedures.

- a. **Application Information.** An application for a taxicab owner's license shall be filed with the Licensing Clerk of the Borough upon forms provided by the Borough for that purpose. The application shall require disclosure of the following information:
1. Name, address and date of birth of the applicant.
 - (a) If the applicant is a corporation, its name, address of its principal place of business and the name and address of its registered agent must be supplied. In addition, a copy of the Certificate of Incorporation shall be filed with the application.
 - (b) If the applicant is a limited liability company, its name, address of all members and address of the registered agent shall be submitted in addition to a copy of the Certificate of Formation of the limited liability company and a current Operating Agreement.
 - (c) If the applicant is a partnership, the same information required of an individual applicant shall be required for each of the partners.
 2. The applicant will cooperate with any agency authorized by the Borough to complete a background check of the applicant, including any history of commission or violation of any criminal or quasi-criminal statutes, including but not limited to, traffic laws and municipal ordinances.
 - (a) In the event that the applicant is a corporation, the background investigation shall include all officers of the corporation and, if practical, the shareholders.
 - (b) In the event that the applicant is a limited liability company, such background investigation shall include all members.
 - (c) In the event that the applicant is a partnership, such investigation shall be required with respect to each of the partners, whether full partners or limited partners.
 3. The number of vehicles to be operated or controlled by the applicant and the address of the principal place of business and the telephone number. The application shall also describe the make, model, year, and Vehicle Identification Number (VIN) of each vehicle that is to be operated as a taxicab.
 4. The previous experience of the applicant in the transportation of passengers for hire, including the name of any other state or municipality where the applicant has ever been licensed, or is currently licensed, to operate a taxicab and whether said license was ever suspended or revoked or whether an application for the issuance for renewal of a license was ever denied and the reasons for the denial, suspension or revocation.
 5. The names and address of three (3) individuals who are not members of the applicant's immediate family, who can verify the applicant's good character and business and financial responsibility to operate a taxicab.
 6. Any other facts that the applicant believes would have any effect on the decision to grant or deny the license applied for.
 7. A description of the insignia to be placed upon the taxicab, as defined in this section, the location of such insignia and an identification of all other permanent markings that are to be affixed to the motor vehicle designating the same as a taxicab. An applicant may aid in this requirement by submitting, with the application, a color photograph of each vehicle to be used as a taxicab.
 8. The names and addresses of all drivers (other than owners).
 9. Any other information which the Borough Council may prescribe.
- b. **Applications to be Verified.** All applications shall be verified by oath or affirmation. Applications by a partnership shall be verified by all partners, applications by a corporation shall be verified by the president or vice-president and applications by a limited liability company shall be verified by any member.
- c. **Procedure.** Once an application is complete, and the nonrefundable application fee defined in this section is paid, the Licensing Clerk shall transmit the completed application to the Chief of Police, or the approved agency for investigations responsible for the conduct of investigations for each applicant, to be submitted to the Police when completed. (Ord. No. 636-2010 § 3; Ord. No. 666-2012)

10-14.4 Licensing of Taxicab Drivers.

All taxicab drivers shall be licensed in accordance with this section by filing an application with the Licensing Clerk on forms provided by the Borough and complying with the background check procedures set forth in this section. Upon receiving an approval, the taxi driver license card will be issued as set forth in this section. (Ord. No. 636-2010 § 4)

10-14.5 Investigation of Owner Applicant(s) and Driver(s) Applicant(s).

- a. The holder of a license covering a licensed vehicle and a licensed driver hereof shall be responsible for any violations of this section and of the laws of the State of New Jersey. Every licensed driver is the agent, servant and employee of the holder of the license of the vehicle being operated by the licensed driver.
- b. The Chief of Police or his designee or investigating agency shall be responsible for the conduct of an investigation into each applicant for an owner's or driver's taxicab license. Each such applicant shall submit to fingerprinting by the investigating agency. The investigation shall concern all matters stated in the application and shall determine whether the applicant for such license has any criminal record and if so the circumstances of such record including the date, place of such conviction and the nature of the conviction. A report containing the results of such investigation together with the recommendations by the Chief of Police as to whether such license should be granted or denied supported by the reason(s) for such recommendation shall be forwarded to the Licensing Clerk who shall in turn make such report available to the individual members of Borough Council. A copy of the report shall also be sent to the applicant.
(Ord. No. 636-2011 § 5)

10-14.6 Authorization to Release Information.

As a condition of conducting the investigation referred to in this section, each applicant, by submitting an application for a taxi owner's license or taxi driver's license, authorizes the Chief of Police and the Avalon Police Department to release the results of such investigation to the Borough Council, Mayor, Business Administrator, Borough Clerk, Code Enforcement Officer, Borough Solicitor and Licensing Clerk. No such investigation shall be undertaken without such written authorization by the applicant. (Ord. No. 636-2010 § 6)

10-14.7 Issuance of License; Time for Action on Application.

The Borough Council shall, by resolution, act upon the owner's license application within thirty (30) days of the receipt of the investigation report from the Chief of Police. If the Chief of Police recommends granting the license and if the report discloses no reason which would justify denying the license, the Borough Council may proceed to issue the license without a hearing as defined in this section. The applicant owner shall pay the applicable fees to be collected by the Licensing Clerk upon the issuance of the license to the applicant owner. (Ord. No. 636-2010 § 7)

10-14.8 Hearing Required under Certain Circumstances.

If the recommendation of the Chief of Police is to deny the license, or if Borough Council is satisfied that there are reasons which would justify the denial of the issuance of the license separate and apart from the recommendation of the Chief of Police, the applicant owner shall be granted a hearing before Borough Council prior to final determination. The applicant owner shall receive notification of the date and time for such hearing which shall be scheduled within such thirty (30) days from the denial date and such hearing shall be commenced and concluded within the immediately succeeding thirty (30) days. If the applicant owner refuses the opportunity to appear for a hearing, then Borough Council shall proceed to grant or deny the license in the exercise of its discretion. (Ord. No. 636-2010 § 8)

10-14.9 Substitution of Vehicles or Drivers.

- a. An owner may be permitted to substitute a vehicle or driver in the place of the duly licensed vehicle or driver provided, however, written notice of substitution of the vehicle or driver shall have first been filed with the Licensing Clerk and approval given by the Licensing Clerk, which written notice shall consist of the following:
 1. The Borough license number of the vehicle is replaced;
 2. The time and date of replacement;
 3. Reasons for replacement;
 4. The insurance coverage of the vehicle substituted;
 5. In case of a substituted driver, his/her taxicab driver license card issued by the Code Enforcement Officer of the Borough of Avalon.
- b. If such substitution is approved for a vehicle, the Borough issued identification number shall then be identified with the vehicle.
(Ord. No. 636-2010 § 9)

10-14.10 License Term; Fees; Renewal.

- a. **Initial License Term.** The term of a taxicab license under this section shall be from May 1 through April 30 of the following year. A license issued after May 1 shall be valid for the balance of the license term and the fee for that term shall not be prorated.
This term shall be applicable to both owners and drivers, and the respective licenses issued to each. (Ord. 799-2020)
- b. [Deleted by this Ordinance No. 799-2020]
- c. [Deleted by this Ordinance No. 799-2020]
- d. **Fees.; Amendment by Resolution**
 1. The annual license fee for an owner's license shall be fifty (\$50.00) dollars per year or fraction thereof per vehicle plus a nonrefundable application fee for initial application and all subsequent renewals which shall be ten (\$10.00) dollars per application for applicant owner. (Ord. 799-2020)
 2. The annual taxi driver license fee for each driver shall be thirty-five (\$35.00) dollars per year or fraction thereof.
 3. These license fees may be amended by resolution of the Governing Body.
- e. **Renewal.**
 1. A renewal license may be issued upon the applicant owner and applicant driver completing and filing renewal applications and verifying by oath or affirmation that there have been no changes in the information contained in the issuance of the initial applications and that they have continued to comply with all laws of the State of New Jersey relating to the operation of taxicabs and is not in violation of any provision of this section.
 2. A criminal history background check shall be required on renewals of owners and drivers identical to that required of jitney operators pursuant to Sections 10-17.5 and 10-17.6 of this Code. (Ord. 799-2020)
 3. Renewal applications of owners will not require approval by Borough Council. (Ord. No. 636-2010 § 10)

10-14.11 Transferring of Ownership of License.

No ownership of a license shall be transferred unless an application for permission to transfer shall have been made to the Licensing Clerk of the Borough of Avalon, a transfer fee of twenty-five (\$25.00) dollars is paid to the Borough of Avalon and approval of such transfer first obtained from Borough Council. (Ord. No. 636-2010 § 11)

10-14.12 Physical Examination of Owners or Drivers.

Each owner and driver seeking to be licensed to operate or drive a taxicab shall produce a statement from a physician licensed to practice medicine in the State of New Jersey, said certificate shall attest that the person driving the taxicab does not suffer from any vision or hearing impairment or from any other mental or physical condition which would interfere with his ability to operate a taxicab in a safe and effective manner. Such certificate shall be dated within ninety (90) days of the initial application or any renewal application. (Ord. No. 636-2010 § 12)

10-14.13 Display of Taxi Driver's License Card.

The taxi driver's license card issued to a taxi driver shall be issued by the Code Enforcement Officer of the Borough of Avalon after the applicant driver has successfully completed the approval process. The taxi driver's license card shall at all times be prominently displayed and adequately protected in the interior of any taxicab operated by the licensee so that the face thereof shall be at all times in full view and plainly legible to any passenger seated in the rear seat of such taxicab. The taxi driver's license card shall at all times be, and remain, the property of the Borough of Avalon. No taxi driver's license card, other than that of the person actually operating the taxicab at the time, shall be displayed therein. (Ord. No. 636-2010 § 13)

10-14.14 Identification of Taxicabs.

The owner of an autocab shall cause to be displayed on the body of the vehicle the taxi license number issued to that vehicle. The number shall be three inches in height and located in the center of the rear quarter panels on the driver and passenger sides and the rear center line of the trunk of the vehicle. Each autocab shall display on each rear door of the autocab the name of the municipality or municipalities which has issued the autocab a taxi license in letters three inches in height. [Source: NJSA48:16-2.4 Display of tax license number]. L.2011, c.135, s.4. (Ord. 799-2020)

10-14.15 Fares.

The Borough Council reserves the right to establish by resolution the maximum fares for taxi service provided within the Borough. Initially, no provision will be made in this section to set maximum fares. Every taxicab shall have displayed in it, in a manner so as to be easily read by all passengers, a card giving the maximum fares for services provided. The fares may be established from time-to-time by resolution of Borough Council. (Ord. No. 636-2010 § 15)

10-14.16 Liability Insurance.

As a condition for the issuance of a license hereunder, the owner of a taxicab shall file with the Borough Clerk an insurance policy attesting that the taxicab business, owner and/or driver is insured under a policy of comprehensive, general liability insurance with limits of not less than three hundred thousand (\$300,000.00) dollars per occurrence. The Borough Clerk shall issue the Certificate of Compliance, in duplicate, to be filed with the New Jersey Motor Vehicle Commission in accordance with N.J.S.A. 48:16-6. The insurance policy, or an accompanying document, shall obligate the liability insurer to notify the Borough Clerk and Business Administrator of the Borough if any change occurs in the policy or if the policy is terminated or canceled for any reason. (Ord. No. 636-2010 § 16)

10-14.17 Rules and Regulations.

The Borough Council may adopt rules and regulations by resolution pertaining to the licensing of taxicabs, owners and drivers. (Ord. No. 636-2010 § 17)

10-14.18 Revocation of License; Failure to Renew.

Any license issued under this section may be revoked or suspended or any application for renewal may be denied for cause. Before taking any such action, the aggrieved party shall be entitled to a hearing before Borough Council. Cause shall be deemed to be any reason set forth in the Code of the Borough of Avalon for the suspension or revocation of any license as well as for any one or more of the following:

- a. Failure to maintain liability insurance required by this section;
 - b. Failure to comply with the motor vehicle laws of the State of New Jersey;
 - c. Failure to comply with the Code of the Borough of Avalon;
 - d. Suspension or revocation of the applicant's driving privileges in the State of New Jersey;
 - e. Operating a taxicab in a reckless or grossly negligent manner within the Borough or habitually operating a taxicab in a negligent manner within the Borough of Avalon.
 - f. Violation of criminal laws of the State of New Jersey, other States and Federal laws.
- (Ord. No. 636-2010 § 18)

10-14.19 EXCEPTIONS

The provisions of Article One of this section shall not apply to Transportation Network Companies or Transportation Network Company Drivers (such as Uber and similar such companies) as defined in P.L. 2017. C. 026 providing a prearranged ride; a limousine as defined in R.S.48:16-13 or section 2 of P.L.1997, c.356 (C.48:16-13.1), an autobus or jitney as defined in R.S.48:16-23, a motor bus as defined in section 1 of P.L.1991, c.154 (C.17:28-1.5). (Ord. 799-2020)

10:14.20 VIOLATIONS AND PENALTIES

Any person violating the provisions of this section shall, upon conviction, be subject to the penalties set forth in Section 1-5.1 of this Code. Such penalty or penalties shall be in addition to any other penalty set forth in this section. (Ord. 799-2020)

10-14.21 Enforcement

This section shall be enforced by any of the following:

- a. Code Enforcement Officer;
- b. The Chief of Police or any member of the Avalon Police Department, as well as any other official authorized by resolution of the Borough Council to enforce this Code and ordinances of the Borough.
(Ord. No. 636-2010 § 19)

10-14.22 RESERVED(Ord. 799-2020)

10-14.23 RESERVED(Ord. 799-2020)

10-14-24 RESERVED (Ord. 799-2020)

10-14-25 RESERVED(Ord. 799-2020)

NEW ARTICLE TO BE ADDED AS FOLLOWS:

ARTICLE TWO

LOW SPEED VEHICLES

10-14.26 STATEMENT OF PURPOSE AND FINDINGS OF FACT
(Ord. 799-2020)

The Borough Council hereby makes the flowing factual determinations:

Low Speed Vehicles, or LSVs, sometimes and frequently referred to as “golf carts” are being used with increased frequency as personal means of transportation within the Borough.

LSV’s are vehicles within the meaning of the motor vehicle statutes of the state of New Jersey and are required to be registered with the Motor Vehicle Commission in order to be operated on the public streets and thoroughfares.

LSV’s do not meet the definition of autocabs as defined in N.J.S.A. 48:16-1 and, therefore, are incapable of being licensed as autocabs with all of the attendant safeguards that are applicable to autocabs for the health, safety and welfare of the public. As a result, LSV’s are not permitted to be used to transport passengers for hire.

Nonetheless, LSV’s are being utilized for the very purpose of transporting, as passengers, members of the general public. Generally, such use is secondary to the operation of another business which is the principal or primary endeavor such as the advertisement of other third-party businesses, products, or services. In the operation of the principal or primary enterprise, such operators of LSV’s offer free transportation to non-paying passengers wishing to be transported to a designated destination. Operators of such LSV’s also frequently station such vehicles in the vicinity of bars and restaurants as well as other high traffic areas for the purpose of offering transportation services to passengers who request the service. The transportation services are provided free of charge with the primary revenue being generated through adds that are placed upon the LSV.

Some LSVs are equipped with lighted tops or canopies, sometimes with flashing or rotating lights, advertising particular products, businesses, or services. These vehicles pose an imminent danger as they act to distract other motorists as well as to pedestrians and others. As such they pose a danger to the safety of persons and property.

LSV’s which are operated for the purpose described herein are for all intent and purposes a public means of transportation similar to the type of service provided by autocabs and TCNs. The fact that the LSV operator does not charge a fee for the transportation service provided is the principal, if not the sole, distinguishing feature. In other words, by eliminating a fee for service, the LSV operator is able to avoid all of the other safeguards that the State demands of autocabs and TNC Companies for the protection of the public.

This Governing Body is of the firm conviction that the public safety demands that, to the extent that LSVs which are operated in conjunction with, or incidental to, any commercial business or enterprise and offers to transport passengers, even free-of-charge, the same safeguards that are applicable to autocabs and TCNs must be made applicable to LSVs engaged in activities described herein. The public health, safety, and welfare demands nothing less.

Accordingly, every business operation engaged in any business activity which involves the transportation of members of the general public from any location within the Borough to a destination either within or without the Borough, and offers to do so without fee or other consideration, (“business activity” or “activity”) shall comply with the requirements of this Section. Those requirements, by way of overview, require obtaining municipal consent to use the streets of the Borough; the licensing of the business activity; the licensing of both owners and drivers of Low Speed Vehicles engaged in the business activity; mandatory insurance for the business activity and each driver-operator of a LSV; appropriate investigation by the Chief of Police similar to the type of investigation required of autocab owners and drivers; medical certificates attesting to the fitness of all driver-operators; criminal history background checks and other requirements as set forth in this Section.

10-14.27 Necessity of municipal consent before operating Low-Speed Vehicle for transportation of passengers; Application and Procedure; Investigation of Owner-Applicant;

- a. Before any owner of a Low-Speed Vehicle (“LSV”) shall operate any such vehicle, with the intention of transporting members of the general public as passengers, along any street within the Borough, such owner shall first obtain the required municipal consent of the Borough Council, the elective governing body of the Borough. Such consent shall be granted only after a written application is submitted to the Borough Council requesting municipal consent and describing the nature of the business enterprise to be conducted. The applicant shall provide the information to the extent applicable and follow the procedure set forth in Section 10-14.3 of this section. Municipal consent shall be granted only by Resolution of Borough Council.
- b. No municipal consent shall be granted by Borough Council until such time as the applicant has submitted an appropriate application to the Licensing Clerk in accordance with said section and the required referral to the Chief of Police and submits to an investigation by the Chief of Police to the same extent as required of other business enterprises engaged in the transportation of passengers.

10-14.28 Licensing of Owners of Low Speed Vehicles; Procedures.

All owners of LSVs engaged in any business activity described in this Section shall be licensed by the Borough in accordance with this section before commencing the business activity. The licensing of owners shall, to the extent applicable, follow the same procedure established for the licensing of owners of autocabs as set for in Section 10-14.3 of this Chapter. The owner shall undergo a Criminal History Background Check and if the Owner is also to be a driver-operator the owner shall be subject to the same requirements applicable to driver-operators and shall be subject to the same eligibility and disqualification factors for driver-operators as set forth in section 10-14.29 hereof.

10-14.29 Licensing of Drivers – Operators of Low Speed Vehicles; Required Investigation and Criminal History Background Check; Granting or Denial of Municipal License

All drivers-operators of LSVs engaged in the business activity described in this Section shall be licensed by the Borough Council before operating an LSV in furtherance of the business activity. To become licensed, such driver-operator shall:

- File a written application with the Licensing Clerk on forms provided by the Licensing Clerk;
- Produce a medical certification similar to that required by Section 10-14.12;
- Produce a valid driver’s license issued by the State of New Jersey or another state and submit to a driving record check;
- Submit to a Criminal History Background Check.

The Licensing Clerk shall not recommend to Borough Council the issuance of a municipal license to any driver-operator under any of the following circumstances:

- a. The applicant or driver has been convicted of one or more of the following crimes:
 1. In New Jersey, any crime as follows: aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault, or endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether or not armed with or having possession of any weapon enumerated in subsection r. of N.J.S.2C:39-1, a crime pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4, or N.J.S.2C:39-9, or other than a disorderly persons or petty disorderly persons offense for the unlawful use, possession or sale of a controlled dangerous substance as defined in N.J.S.2C:35-2.
 2. In any other state, territory, commonwealth, or other jurisdiction of the United States, as a result of a conviction in a court of competent jurisdiction, a crime which in that other jurisdiction is comparable to one of the crimes enumerated in paragraph (1) of this subsection.
 3. If an applicant or driver who has been convicted of one of the crimes enumerated in paragraph (1) or (2) of this subsection produces a valid certificate of rehabilitation issued pursuant to section 2 of P.L.2007, c.327 (C.2A:168A-8) or, if the criminal offense occurred outside the State, an equivalent certificate from the jurisdiction where the criminal offense occurred, the criminal offense shall not disqualify the applicant or driver from accessing the transportation network company's digital network as a transportation network company driver or from providing prearranged rides as a transportation network company driver. A transportation network company, or a third party designated by the transportation network company, shall take reasonable measures to confirm the validity of the certificate, such as contacting the relevant court or government agency;
- b. The applicant's or driver's driving record check reveals more than three moving violations in the prior three-year period, or one of the following violations in the prior three-year period:
 1. driving under the influence pursuant to R.S.39:4-50;
 2. resisting arrest; eluding an officer pursuant to N.J.S.2C:29-2;
 3. reckless driving pursuant to R.S.39:4-96;
 4. driving with a suspended or revoked license pursuant to R.S.39:3-40; or
 5. a violation committed in any other state, territory, commonwealth, or other jurisdiction of the United States that is comparable to one of the violations enumerated in paragraph (1), (2), (3), or (4) of this subsection;
- c. The applicant or driver is a match in the United States Department of Justice's Dru Sjodin.¹
- d. National Sex Offender Public Website;
- e. The applicant or driver is not a holder of a valid basic driver's license;
- f. The applicant or driver is under 18 years of age.
- g. Upon the driver-operator complying with the requirements of this section, the Licensing Clerk shall recommend to Borough Council the issuance of a municipal license.

10-14.30 Investigation of Applicant.

- a. The holder of a license pursuant to the provisions of this section shall be responsible for the truthfulness and accuracy of all matters set forth in the application and for any violation of the laws of the State of New Jersey or of any other state. Every licensed driver is the agent, servant and employee of the holder of the license of the vehicle being operated by said licensed driver.
- b. The Chief of Police or his designee or investigating agency shall be responsible for the conduct of an investigation into each applicant for a license hereunder. Initial applicants for a license shall submit to a fingerprint background check by the investigating agency. For each of the three years following the initial year that an applicant obtains an LSV license from the Borough, the Borough will conduct a computer-based background check of the applicant through the New Jersey State Police if the applicant applies for another LSV license from the Borough. For example, an initial applicant in 2020 will be required to undergo a full fingerprint background check. In 2021, 2022 and 2023, the applicant's background check will be conducted through the State Police through the computer check. In 2024, the applicant will again undergo a fingerprint background check.

¹ "The **Dru Sjodin National Sex Offender Public Website (NSOPW)** provides an opportunity for jurisdictions to participate in an unprecedented **public safety resource** by sharing public sex offender data nationwide, working collaboratively for the safety of our vulnerable adults and one of our most precious resources—our children" (Quoted from website).

- c. If the applicant is a corporation, limited liability company or partnership, then the following individuals shall be subject to a background check:
 1. In the event that the applicant is a corporation, the background investigation shall include all officers of the corporation and, if practical, the shareholders.
 2. In the event that the applicant is a limited liability company, such investigation shall include all officers of the limited liability and, if practical, the members.
 3. In the event that the applicant is a partnership, such investigation shall be required of each partner, whether full or limited partners.
- d. The investigation shall concern all matters stated in the application and shall determine whether the applicant for such license has any criminal record and if so the circumstances of such record including the date, results of such investigation together with recommendations by the Chief of Police as to whether such license should be granted or denied supported by the reason(s) for such recommendation shall be forwarded to the Licensing Clerk who shall deliver the report to the Borough Clerk. The Borough Clerk shall in turn make such report available to the individual members of Borough Council. A copy of the report shall also be sent to the applicant.

10-14.31 Authorization to Release Information.

- a. As a condition of conducting the investigation referred to in Section 10-14.29, each applicant, by submitting an application for an LSV license, authorizes the Chief of Police and the Avalon Police Department to release the results of such investigation to the Borough Council, Mayor, Business Administrator, Borough Clerk, Code Enforcement Officer, Borough Solicitor and Licensing Clerk.
- b. No such investigation shall be undertaken without such written authorization by the applicant.

10-14.32 Physical Examination of Owners or Drivers.

Each owner and driver seeking to be licensed to operate or drive a LSV to engage in the business activity described in this section shall produce a statement from a physician licensed to practice medicine in the State of New Jersey, said certificate shall attest that the person driving the LSV does not suffer from any vision or hearing impairment or from any other mental or physical condition which would interfere with his/her ability to operate a LSV in a safe and effective manner. Such certificate shall be dated within ninety (90) days of the initial application or any renewal application. (Ord. No. 636-2010 § 12)

10-14.33 Liability Insurance.

As a condition for the issuance of a license hereunder, the owner of a LSV shall file with the Licensing Clerk an insurance policy attesting that the business, the owner and/or driver is insured under a policy of comprehensive, general liability insurance with limits of not less than **ONE MILLION DOLLARS** per occurrence. The insurance policy shall name the Borough of Avalon, its elected and appointed officials as additional insureds. and shall obligate the liability insurer to notify the **Licensing** Clerk and Business Administrator of the Borough 30 DAYS prior notice of the cancellation, non-renewal, or any change in coverage of the policy of insurance.

10-14.34 Rules and Regulations.

The Borough Council may adopt rules and regulations by resolution pertaining to the licensing of LSVs, owners and drivers.

10-14.35 Restrictions on Lighting

Every LSV shall be equipped with the equipment mandated by 49 CFR s. 571.500. The LSV shall not be equipped with or utilize any flashing or rotating lights anywhere on the interior or exterior thereof, which are, or may be, used to attract attention in order to advertise any business, product, or service. The LSV operator/owner shall comply with all the laws and provisions of Title 39 of the New Jersey Statutes which such vehicle is in operation.

10-14.36 Revocation of License; Failure to Renew.

Any license issued under this section may be revoked or suspended or any application for renewal may be denied for cause. Before taking any such action, the aggrieved party shall be entitled to a hearing before Borough Council or its designee. Cause shall be deemed to be any reason set forth in the Code of the Borough of Avalon for the suspension or revocation of any license as well as for any one or more of the following:

- a. Failure to maintain liability insurance required by this section;
- b. Failure to comply with the motor vehicle laws of the State of New Jersey;
- c. Failure to comply with the Code of the Borough of Avalon;
- d. Suspension or revocation of the applicant's driving privileges in the State of New Jersey;
- e. Operating an **LSV** in a reckless or grossly negligent manner within the Borough or habitually operating such a vehicle in a negligent manner within the Borough.
- f. Violation of criminal laws of the State of New Jersey, other States and Federal laws. (Ord. No. 636-2010 § 18)

10-14.37 Identification of LSVs Licensed under this section; Seat Belts

- a. Each LSV operating under this section shall have permanently affixed a permanent insignia which shall be prominently displayed designating such LSV as licensed under this section.
- b. Each LSV shall be equipped with seat belts for the operator and each passenger. Each passenger must have his/her own individual seat and shall have the seat belt affixed when the LSV is moving.
- c. The operator shall not operate the LSV until all passengers are properly seated and secured with seat belts properly affixed.

10-14.38 License Term; Fees; Renewal.

- a. **License term.** The term of a license shall under this section shall be from May 1 through April 30 of the following year. A license issued after May 1 shall be valid for the balance of the license term and the fee for that term shall not be prorated.
- b. **Renewal.**
 1. A renewal license may be issued upon the applicant owner and applicant driver completing and filing renewal applications and verifying by oath or affirmation that there have been no changes in the information contained in the initial applications and that they have continued to comply with all laws of the State of New Jersey relating to the operation of vehicles and that the applicant whether owner or applicant, is not in violation of any provision of this section.
 2. A criminal history records check shall be required on renewals of owners and drivers as specified in this section.
 3. A driving history background check shall be required for all applicants on any renewal application.
 4. Renewal applications of owners will require approval by Borough Council.
- c. **Fees.** The annual license fee for each application shall be \$250.00 plus \$50.00 for each LSV registered and licensed under this section. Each driver-operator shall pay a license fee of \$25.00. The owner or the driver operator shall be responsible for the cost of all background checks required under this section

10-14.39 Exceptions

The provisions of Article Two of this section shall not apply to the following:

- a. The non-commercial use of an LSV for personal use and transportation including the use by the owner, the owner's permissive user and guests.
- b. The commercial use of an LSV by any business or commercial enterprise for deliveries or otherwise and provided that such use does not involve the transportation of one or more passengers who are not employees of or otherwise affiliated with the business or commercial enterprise.
- c. The use of an LSV by a hotel, motel, condominium or other multiple dwelling to transport registered guests or unit owners to or from the beach or any other location within the Borough provided that such service is provided free of charge and included within the amenities offered and provided by such property.

10:14.40 VIOLATIONS AND PENALTIES

Any person violating the provisions of this section shall, upon conviction, be subject to the penalties set forth in Section 1-5.1 of this Code. Such penalty or penalties shall be addition to any other penalty set forth in this section.

10-14.41 Enforcement

The provisions of this Article Two of this Section shall be enforced by the same individuals, or agencies specified in Article One, Section 10-14.21 hereof.

SECTION 2. Rules and Regulations by Borough Council. Borough Council may, by Resolution, make rules and regulations which interpret or amplify any provision of this Ordinance or any of the provisions thereof, for the purpose of administering the same or making the enforcement thereof more effective.

SECTION 3. REPEALER. All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 4. SEVERABILITY. If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect immediately upon final adoption and publication as required by law.

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed on first reading of the Municipal Council of the Borough of Avalon on February 26, 2020. It will be further considered for second reading, public hearing and final adoption at a meeting of said Council to be held on the 11th day of March, 2020 in the Meeting Room of the Municipal Building, Avalon, New Jersey at 4:15 p.m. and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

C. DANIELLE NOLLETT
Borough Clerk