

ORDINANCE 2024-04

ORDINANCE OF THE BOROUGH OF SHIP BOTTOM, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 5.16 OF TITLE 5 OF THE BOROUGH CODE OF THE BOROUGH OF SHIP BOTTOM ENTITLED "AMUSEMENT GAMES"

WHEREAS, the Borough of Ship Bottom ("Borough") is comprised of .71 square land miles and has an estimated year-round population of 1,153 residents; and

WHEREAS, the Borough is often referred to as the "Gateway to Long Beach Island," as it is located at the sole roadway access point to Long Beach Island, an approximately eighteen-mile barrier island home to six municipalities with a total year-round population of approximately 10,000 residents, over the Causeway Bridge; and

WHEREAS, the seasonal population of Long Beach Island is estimated to swell to between approximately 150,000 and 200,000 and additional day-trip and temporary visitors also visit the beaches, parks, retail establishments, businesses, amusement parks, bars, and restaurants located thereon; and

WHEREAS, the Borough is fully developed and has three hotels/motels, three miniature golf courses, two active amusement license businesses, one additional inactive amusement license and family event center for a location granted a use variance by the Land Use Board, and a high density of retail establishments, including furniture, department, and clothing stores, dine-in restaurants, bars and a nightclub, take-out, ice cream, coffee, donut, and breakfast food establishments, and offices, convenience stores, realtors, and contractors, among others; and

WHEREAS, the vast majority of the aforesaid establishments are located in the Shore Commercial and General Commercial Districts on the east-west and north-south access of 8th and 9th Streets and Long Beach Boulevard, respectively; and

WHEREAS, the foregoing development is immediately adjacent to the Borough's residential properties and located on a narrow barrier island between the beach and bay, each of which generate significant visitors and activity throughout the year; and

WHEREAS, the density, parking, traffic, and population issues are significant during the ever-expanding summer and visitor seasons in the Borough and pose a significant threat to the public health, welfare, and safety; and

WHEREAS, following the most recent amusement license application approval, three such permitted amusement business locations shall exist in the Borough, the two existing located on Long Beach Boulevard and the additional location on Long Beach Boulevard in the area of 8th and 9th Streets, which Streets form the sole access point for the Borough and all of Long Beach Island; and

WHEREAS, the target market for establishments with amusement licenses and family recreation businesses are families, young adults, adolescents, and children; and

WHEREAS, the Island as a whole and the Borough have experienced a significant increase in the number of children and young adults gathering in large groups in the evening and nighttime hours and places of amusement are typical locations where such groups congregate; and

WHEREAS, given the limited size of the Borough, the location of the existing and new amusement license, the density of development, the significant vehicular and pedestrian traffic, and the proximity of the residential zones to the various commercial zones in the Borough, the amendment of the amusement licensing regulations are necessary and proper to preserve the common good and the public health, welfare, and safety, and the regulations authorized by law and set forth herein are substantially connected with the public interest designed to be advanced; and

WHEREAS, N.J.S.A. 40:52-1 authorizes municipalities to make, amend, repeal, and enforce ordinances to license and regulate "places of public amusement" pursuant to the police power to protect the general health, welfare, and safety of its citizens; and

WHEREAS, N.J.S.A. 5:8-100, et seq., the Amusement License Gaming Law, authorizes municipalities to regulate and license the owners and operators of any amusement games or games, whether skill or chance or both and whether said game be played and operated with or without

numbers or figures; and

WHEREAS, *inter alia*, the Borough is authorized to charges fees for licenses, set the hours and days of operation for licenses, issue separate licenses for each classified games set forth in N.J.A.C. 13:3-7.9, the Rules of the Office of the Amusement Games Control, except that a single license may be issued for all games classified under Certification No. 2, which are arcade games wherein a single player upon payment of fee is permitted to play a machine or device to obtain a prize or attain to score upon the basis of which a prize is awarded; and

WHEREAS, N.J.S.A. 5:8-102 and N.J.A.C. 13:3-1.1 define “arcade” as a place where a single player may play any one of a number of machines or devices, upon payment of a fee, to attempt to obtain a prize or tickets or tokens redeemable for a prize, or to attempt to attain a score or result upon the basis of which a prize, ticket or token is awarded; and

WHEREAS, as noted, there were two existing and longstanding amusement licenses located in the Borough and the intent of the Borough Code, in part, was to limit the number of amusement game licenses located in the Borough to two; and

WHEREAS, the Land Use Board granted a use variance to the owner of a property located in the General Commercial District for use as a family amusement center and that resolution and the Borough’s licensing regulations have been the subject of ongoing litigation; and

WHEREAS, following litigation in the Law Division and Appellate Division, the Law Division invalidated §5.16.010 of the Borough Code; and

WHEREAS, the Law Division ordered the Borough to review and decide the new application for a amusement license within forty-five days of receipt and the Mayor and Council approved that application subject to certain lawful contingencies relating to a background check and State approval and the Mayor and Council approved the application for amusement license; and

WHEREAS, based upon the foregoing, the Borough seeks to amend and supplement Chapter 5.16 of Title 5 to limit the number of amusement licenses for amusements as authorized and governed by N.J.S.A. 5:8-100, et seq., and N.J.A.C. 13:3-1.1, et seq., to three total licenses and further amend and supplement amusement license regulations as set forth herein; and

WHEREAS, in further support of the regulations set forth herein, the Mayor and Council requested and relied upon the reports prepared by the Chief of Police and the Borough Engineer, who is also a professional planner, which are incorporated herein by reference and copies are available at the office of the Municipal Clerk; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor Council of the Borough of Ship Bottom as follows.

STATEMENT OF PURPOSE

The purpose of the ordinance is to amend Chapter 5.16 of Title 5 of the Borough Code to revise and supplement the regulations of amusement games, arcades, and places of public amusement and limit the number of licenses to three.

SECTION I

Chapter 5.16 is repealed and replaced as follows.

ARTICLE I Amusement Games

§5.16.010 Declaration and amusement area.

It is hereby determined, declared, and found that the Borough constitutes a seashore resort with parts thereof customarily constituting an amusement or entertainment area, according to the customary understanding of the terms in the community, and the parts of what constitutes an amusement or entertainment area are more particularly described as follows: all that area running north and south on and the properties bordering Long Beach Boulevard in the Borough of Ship Bottom.

§5.16.020 License required.

It shall be unlawful for any person to own or operate any amusement game or games, as the terms are defined by the Amusement Games Licensing Law, N.J.S.A. 5:8-100, et seq., whether the game or games be played and operated with or without numbers, names, or symbols without first having obtained a license from the Mayor and Council of to do so. The licenses shall be issued pursuant to and subject to the provisions of Amusement Games Licensing Law and the New Jersey Administrative Code, N.J.A.C. 13:3-1.1, et seq. No municipal license shall become operative unless and until the licensee named therein has procured a state license from the State Commissioner of Amusement Games Control and has affixed the state license certificate to the municipal license certificate.

§5.16.030 Number and scope of licenses.

The number of licensees shall be limited to 3 annual amusement game licenses, each of which may seek approval for the games authorized by the games set forth in N.J.A.C. 13:3-7.9.

§5.16.040 License application.

Each applicant for a license shall file with the Municipal Clerk a written application in the form prescribed by and in accordance with the Amusement Games Licensing Law and the rules and regulations promulgated by the Amusement Games Control Commissioner of the State of New Jersey. Each individual applicant, the officers (including the officers, directors, and stockholders of any corporation holding five percent or more stock of any corporate applicant), as well as the partners or members of any partnership, association, or organization applicant must submit to fingerprinting upon initial application for license. Failure or refusal of any of the above-designated persons to submit to fingerprinting shall be deemed cause for denial of the application. Any fees for fingerprinting and other investigations shall be paid for directly by the applicant. No license shall be issued to any applicant if any person fingerprinted in connection with the application is not of good moral character or have been convicted by a crime as set forth in the New Jersey Administrative Code or New Jersey Statutes. No license shall be issued to any person who has been convicted of crimes or as a disorderly person or for the violation of any municipal ordinance. If any licensee shall be so convicted during any license year, his license for any and all games or machines operated by him shall become void, and he shall not be entitled to the return of license fees.

§5.16.050 License fees and limitations.

The fees for each classification set forth in N.J.A.C. 13:3-7.9, which shall accompany the application for license, shall be as follows.

Amusement Games Certification No. 1 – \$500.00. In this category, there shall be only one game per license.

Amusement Games Certification No. 2 – \$500.00 for the first fifty player positions and an additional \$10.00 for each player position thereafter.

Amusement Games Certification No. 3 – \$500.00. In this category, there shall be only one game per license.

Amusement Games Certification No. 4 – \$750.00. In this category, there shall be only one game per license.

Amusement Games Certification No. 5 – \$750.00. In this category, there shall be only one game per license.

Amusement Games Certification No. 6 – \$500.00. In this category, there shall be only one game per license.

Amusement Games Certification No. 7 – \$500.00. In this category, there shall be only one game per license.

Amusement Games Certification No. 8 – \$500.00. In this category, there shall be only one game per license.

Amusement Games Certification No. 9 – \$750.00. In this category, there shall be only one game per license.

§5.16.060 License period.

Every license shall be valid after being granted from the 1st day of January to the 31st day of December in each calendar year. No matter when issued in the calendar year, full license fees as designated herein shall be paid. There shall not be any apportionment or rebatement of any license fees paid. The regulations and requirements of this Chapter shall apply to the application period beginning for the 2025-year licenses, except that the regulations relating to the limitation to 3 licenses shall immediately apply and the 3 existing licenses shall continue to be valid in 2024.

§5.16.070 Transfer of licenses.

Licenses shall be transferable to any other person, corporation, partnership, or organization in the event of a sale or lease of the premises in which such machines are located or in the event the transferee secures the required land use approvals for the new location, subject to the transferee securing the required approvals for the amusement license pursuant to this Chapter. Transferees shall comply with the application process set forth in this Chapter to secure approval for the license and may be denied the license in accordance with the applicable requirements.

§5.16.080 Renewal of existing licenses.

An existing license under amusement games is defined as a person who possesses a valid license, including the existing licenses at the time this Chapter is adopted, and transferees provided the transferee secures approval for the transferred license in accordance with the applicable requirements. The holder of a license shall have priority over new applicants to renew the license. The priority right, however, will be vacated automatically if the licensee notifies the Municipal Clerk in writing of the licensee's intention not to renew or if the licensee fails to apply for renewal on or prior to the deadline for renewal set by the Municipal Clerk and which shall be no later than November 1 for the subsequent year license term. The foregoing provision shall not give any licensee any property right in or to a license or its renewal and the same shall be subject at all times to the licensing power of the Borough as set forth in the statutes and laws of the State of New Jersey.

§5.16.090 Order of priority and availability of licenses.

If a license becomes available, new applications shall be due on the third Tuesday of November at 9:00 a.m. at the Office of the Municipal Clerk and the applicants shall be ordered in priority of the license by the earliest complete applications received by the Municipal Clerk pursuant to this Article. In the event an application does not comply or is otherwise denied pursuant to this Article, the Municipal Clerk shall process the next application on the priority list by order received.

§5.16.100 Control, supervision, and hours of operation.

The Mayor and Council of shall have and exercise control and supervision over all amusement games held, operated, or conducted under each license, with all the powers authorized or granted to it under the Amusement Games Licensing Law and the rules and regulations of the State Amusement Games Control Commissioner. No licensee shall permit them to be played between 11:00 p.m. and 9:00 a.m. weekdays or between 12:00 midnight and 9:00 a.m. on Sundays, weekends, and national holidays.

§5.16.110 Noise and location of amusement games.

No amusement game for which a license is required herein shall be operated in a manner which will enable it to be heard outside the building in which the amusement machine is located. No amusement game for which a license is required herein shall be permitted to be located outside of a building.

§5.16.120 Disciplinary Proceedings.

Disciplinary proceedings before the Mayor and Council, on a complaint made for a violation of the provisions of Amusement Games Licensing Law and the rules and regulations promulgated by the State Amusement Games Control Commissioner, and by this Chapter, shall be made on charges preferred against the licensee, signed in the name of the Mayor and Council. No hearing shall be held until a five-day notice of the charges preferred shall have been given to the licensee personally or by mailing the notice by registered or certified mail, return receipt requested, addressed to him at the licensed premises, and a reasonable opportunity to be heard thereon afforded to him. The licensee may be represented by an attorney of this state at the hearing. The Mayor and Council may suspend or revoke the license after a hearing on the charges for proper cause or may dismiss the charges.

§5.16.130 Conditional Use Zone

Compliance with this Article is a requirement of the conditional user requirements of the Borough Code. Applicants shall either comply with the conditional use requirements at the time of the application or shall receive conditional use approval pursuant to the Borough Code within six months of the date the license is approved, which approval shall be conditional and contingent upon conditional use approval and the license shall not be used unless and until conditional use approval is received. In the event the conditional use approval is not received within the aforesaid time period, the approval shall be rendered void and the license shall be deemed available.

§5.16.140 Penalties.

In the event that any licensee shall violate any of the provisions of this Chapter or the “Amusement Games Licensing Law,” or the rules and regulations promulgated by the State Amusement Games Control Commissioner, or the terms of the license, such licensee shall be a disorderly person, and if convicted as such shall, in addition to suffering any other penalties which may be imposed pursuant to §1.08 of the Code, forfeit any license issued to him under this Chapter.

SECTION II

All ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION III

If any word, phrase, clause, section, or provision of this ordinance shall be found by any Court of competent jurisdiction to be unenforceable, illegal, or unconstitutional, such word, phrase, clause, section, or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

Effective date.

This ordinance shall take effect after final adoption and publication as required by law.

NOTICE

Public Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at a regular meeting of the Mayor and Council of the Borough of Ship Bottom, County of Ocean, State of New Jersey, held on Tuesday, January 23, 2024, at 6:30 p.m.

Further public notice is hereby given that said ordinance shall be considered for final passage and adoption at a regular meeting of the Mayor and Council to be held on February 27, 2024, at 7:30 p.m. at the Municipal Building, 1621 Long Beach Boulevard, Ship Bottom, New Jersey 08008.

Kristy DeBoer, RMC
Municipal Clerk



CERTIFICATION

I, KRISTY DEBOER, RMC, Municipal Clerk for the Borough of Ship Bottom do hereby certify that the foregoing Ordinance 2024-04 was duly adopted by the Mayor and Council at the meeting held on February 27, 2024, at 6:00 p.m.

Kristy DeBoer, RMC
Municipal Clerk

William Huelsenbeck
Mayor