Ordinance

Ordinance No. 32 OF THE Date..04-22-2015
CITY OF ATLANTIC CITY, N.J. Date to Mayor.....

Approved as to Form and Legality on Basis of Facts Set Forth Factual contents certified to by

Assistant City Solicitor /s/ Karl Timbers Business Administrator /s/ Arthur M. Liston
REVISED 4/22/2015, 5/14/2015, 5/20/2015, and 6/2/2015 and 6/29/2015
Prepared by the City Solicitor's Office

Council Members MALIK & SMALL Present the following Ordinance:

AN ORDINANCE AMENDING CHAPTER 98 OF THE CODE OF THE CITY OF ATLANTIC CITY WHICH REGULATES BOARDWALK TRAMS

Section 1:

City Code Chapter 98 of the Code of the City of Atlantic City shall be amended as follows:

§ 98-3. Director's authority.

A.
The Director of Licensing & Inspection shall have the responsibility and authority of assuring that contract bids and specifications are publicized, submitted and adhered to in all respects and that before any Boardwalk Motorized Tram ~~tram~~ Service ~~operation~~ is undertaken, a legal contract has been ~~signed~~awarded by Council and implemented between the city and the successful bidder.

B.

The Director shall take any Motorized Tram ~~tram~~ out of service which is found to be unsafe, unsanitary or not in a fit condition to properly carry passengers. Said Motorized Tram ~~tram~~ shall remain out of service until such time as it is repaired, cleaned up or put in good condition and received written approval by the Director for its reuse.

C.
The Director, the Director of Planning and Development and the City Engineer shall determine what kinds of vehicles will be designated a Motorized Tram~~tram~~, as well as what kind of vehicle will be utilized and operated as a Motirized Tram~~tram~~. The Director shall give the contractor reasonable notice on any change of types of vehicles to be designated and/or utilized as Motorized Trams~~trams~~.

D.
The Director shall declare all agreements null and void should the contractor fail to abide by all applicable legal ordinances of the City of Atlantic City, as well as the statutes of the State of New Jersey and lawful rules and regulations of the proper officers of Atlantic City. The City Solicitor is authorized to take any legal steps to protect the city's legitimate interest.

~~E.~~
~~The Director shall recommend from an advertised bid procedure an entity to operate trams in the City of Atlantic City. The recommendation will be submitted to the Council in the form of a resolution for the Mayor to have authority to execute an agreement between the city and the successful bidder. Said resolution may be appealed within 10 days to the Council.~~

~~F.~~E.
For the purposes of this chapter, the Director is assigned supervision over the Motorized Trams~~trams~~ while traveling either on the Boardwalk or to or from the warehouse identified at § **98-4G** herein in order to assure the safe, lawful and timely operation of all Motorized Trams~~trams~~.

~~G.~~F.
The Director shall take official cognizance of any and all misconduct, fraud, subterfuge or harmful actions of any contractor or Motorized Tram~~tram~~ driver, whether or not such actions are specifically covered in this chapter.

~~H.~~G.
The Director shall take all prudent and reasonable steps to assure that the terms of this chapter are carried out, both with regard to the appointment and supervision of qualified personnel, including but not limited to the assignment of a Boardwalk Transportation Inspector, as well as the timely promulgation of all necessary department procedures such as (but not limited to) the publication of penalty charts, fines to be levied and all other disciplinary measures to be undertaken by the appropriate department.

§ 98-4. Contractor's responsibilities.

A.
All potential contractors shall submit bids containing prices to be paid to the city in strict accordance with the form of advertisement and the Specifications and Instructions to Bidders as proposed by the Purchasing Office and the City Solicitor's office of Atlantic City. Potential contractors shall present their bids to the city on proposal blanks furnished by the Purchasing Department, filling in all blanks.

B.
Two or more bids under different names are not permissible by one person.

C.
All bids shall be accompanied by a detailed statement of the potential contractor's true financial worth (most recent auditor financial report) as stipulated in the Specifications and Instructions to Bidders.

D.
Contractors shall be responsible for the immediate repair of any Boardwalk damage by and attributable to the operations of the Motorized Tram ~~trams~~. A contractor shall not be responsible for reasonable wear and tear to the Boardwalk.

~~E.~~
~~If free passage of the Boardwalk is encumbered, interrupted or blockaded by the city in such a manner as to prevent the passage of the trams from Connecticut Avenue to Albany Avenue, then the annual base rental herein provided for shall be reduced as follows:~~
~~(1)~~
~~If the trams are prevented from traveling over more than 50% of the tram route, the rental shall be reduced to a sum equal to 1/365 of the annual base rental for each day that the passage is encumbered, interrupted or blockaded.~~

~~(2)~~
~~If the trams are prevented from traveling over less than 50% of the tram route, the rental shall be reduced by a sum equal to 1/365 of the annual base rental for each day that the passage is encumbered, interrupted or blockaded multiplied by the percentage of the tram route so encumbered, interrupted or blockaded.~~

~~F.~~
~~The contractor shall deliver to the Director certificates of insurance in full accordance with all stipulations set down in the signed legal agreement between the city and the contractor. Said stipulations must equal or exceed the requirements set forth in § **92-22** of the City Code of the City of Atlantic City. The contractor shall deliver such insurance certificates at least 21 days prior to the beginning of the first tram operation.~~

E.
Before commencing the contract work, and as a condition precedent for payment, the Contractor shall purchase and maintain insurance, in conformance with the provisions contained in this Contract. This insurance will provide a defense and indemnify the City of Atlantic City its, officers, agents or employees against any such claim, damage, loss or expense that is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use, which arises out of the Contractor's operations under this agreement. This insurance shall apply regardless of whether the operations, actions, derelictions or failures to act from which the claim arises, are attributable to the Contractor, any of its consultants, officers, agents, subcontractors, employees, or anyone directly or indirectly employed by any of them including anyone for whose acts of the aforementioned may be liable by operation of statute, government regulation, or applicable case law or the City of Atlantic City, unless caused by the sole negligence of the City of Atlantic City .

Proof of this insurance shall be provided to the City of Atlantic City before the contract commences as set forth below. In no event shall the failure to provide this proof, prior to the commencement of the work, be deemed a waiver by the City of Atlantic City of Contractor's insurance obligations set forth herein.

In the event that the insurance company (ies) issuing the policy (ies) required by this Contract deny coverage to the City of Atlantic City, the Contractor will defend and indemnify the City of Atlantic City at the Contractor's expense.

Minimum Limits of Liability.

The Contractor must obtain the required insurance with the carrier rated A- VII or better by A.M. Best. The Contractor shall maintain at least the limits of liability as set forth below:

Commercial General Liability Insurance

$ 1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)
$ 2,000,000 General Aggregate
$ 2,000,000 Product/Completed Operations Aggregate

Contractual Liability that will respond to indemnification clause included in the Contract shall be included in the policy. *If the General Liability coverage for this operation is included in a policy that covers other operations or other locations, the General Aggregate shall apply separately to the services included in this contract.*

Workers' Compensation and Employers' Liability Insurance

$ 500,000 Each Accident
$ 500,000 Each Employee for Injury by Disease
$ 500,000 Aggregate for Injury by Disease.

If the Contractor is a Sole Proprietor, Partnership or LLC, Insurance Policy and Certificate must indicate that the proprietor/partners/members are "included".

Umbrella Liability Insurance

$ 4,000,000 per occurrence
$ 4,000,000 Aggregate.

Contractual Liability and the General Aggregate will be included on the same basis as the Commercial General Liability.

Additional Insured Status and Certificate of Insurance.

The City of Atlantic City, along with officers, agents and employees, shall be named as Additional Insureds for Operations on the contractors Commercial General Liability and Umbrella Liability Policy which must be primary and noncontributory with respect to the Additional Insureds.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by the City of Atlantic City is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Contractor, any of its consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

A Waiver of Subrogation Clause shall be added to the General Liability, Automobile and Umbrella policies in favor of the City of Atlantic City, and this clause shall apply to the City of Atlantic City's officers, agents and employees with respect to all projects during the policy term. It should also apply to the Contractor's Workers' Compensation policy if allowed by state law.

Prior to commencement of contract, Contractor shall submit a Certificate of Insurance in favor of the City of Atlantic City and an Additional Insured Endorsement (in a form acceptable to the City of Atlantic City) as required hereunder.

No Limitation on Liability.

In any and all claims against the Additional Insureds by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damage, compensation or benefits payable by or for the Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Cancellation, Renewal and Modification.

The Contractor shall maintain in effect all insurance coverage required under this Contract at the Contractor's sole expense and with insurance companies acceptable to the City of Atlantic City. The policies shall contain a provision that coverage will not be cancelled, not renewed, or a material change until at least thirty(30) days prior written notice has been given to the City of Atlantic City. Certificate of Insurance showing required coverage and written notice must be delivered to the City of Atlantic City prior to commencement of the Contract work. In the event the Contractor fails to obtain or maintain any insurance coverage required under this agreement, the City of Atlantic City may, at its sole discretion, purchase such coverage as desired for the City of Atlantic City's benefit and charge the expense to the Contractor, or, in the alternative, terminate this agreement.

F.
(Reserved)

G.
The contractor shall ~~must~~ maintain an approved location within the corporate limits of the City of Atlantic City for the storage of Motorized Transportation ~~trams~~ when the ~~latter~~ Motorized Trams are not in actual use. Said building is to be subject to the approval of the Director. Should the contractor need to transport the Motorized Tram from the Boardwalk, prior approval shall be required from the Atlantic City Police Department in accordance with the appropriate City Code.

H.
(Reserved).
~~The contractor shall perform all necessary tram functions while providing all required trams, paraphernalia and employees for the lawful operation of said trams.~~

I.
It shall be the responsibility of the contractor to ~~provide that all drivers of trams are duly registered and licensed by the City of Atlantic City and that the fee of $100 per driver is paid annually. The license year shall be April 1 to March 30, inclusive.~~ submit an application for a Business License and License for each vehicle with the Mercantile Section on a form provided by the city and the following is to be attached:

1. Notarized Business License Application with annual fee of $150.00
2. Proof of Insurance(s) and certificate of liability
3. Notarized Vehicle License Application with annual fee of $100.00 per vehicle.

These licenses shall be renewed annually.

J.
The contractor shall not assign any of his contractual obligations or responsibilities, either in whole or in part, to any other operator or subcontractor.

K.
The contractor shall indemnify and save harmless and defend the City of Atlantic City against any loss, financial or otherwise, as a result of any and all liabilities in connection with legal claims, court decisions or judgments resulting from property damage, injury, death or disputes of any kind resulting from the operation of the Motorized Tram. ~~trams.~~

L.
The Motorized Tram is prohibited from operating on the Boardwalk between the hours of 6:00 AM and 10:00 AM. The contractor shall submit a schedule of hours, days and months of operation to the Director. Any changes to this schedule due to special events or conditions (i.e., Atlantic City Airshow, Miss America Parade) shall be submitted thirty (30) days in advance of changes being made and are subject to the approval of the Director.

~~The contractor will not charter the trams to private groups without the prior written approval from the Director. The contractor may arrange for special chartering of the trams with the Director. Ninety-six hours' notice must be given to the Director prior to any charter, as well as the time, route and fee to be paid for the charter.~~

M.
The contractor will not manipulate the regular Motorized Tramtram schedule in any way for the purpose of providing a benefit to any casino, hotel or business at the expense of a competing enterprise. No regular scheduling of the Motorized Tramstrams can be altered without written approval of the Director. No casino, hotel or business enterprise shall receive preferential treatment for the chartering of Motorized Tramstrams or be given Motorized Tramtram service of any kind which unfairly impinges on or adversely affects another casino, hotel or business enterprise.

N.
The contractor shall not charter the Motorized Tram to private groups without the prior written approval from the Director. The contractor may arrange for special chartering of the Motorized Tram with the Director. Four (4) days' notice shall be given to the Director prior to any charter, as well as the time, route and fee to be paid for the charter.

~~The contractor will submit all tram schedules to the Director for his written approval prior to implementation. Tram stops will be located on alternate street ends in each direction of its route. Only those street ends having addresses evenly divisible by 100 are counted for purposes of designating tram stops.~~

O.
All employees shall wear a uniform showing, minimally, their first name for identification purposes. General design shall be approved by the Director whose approval shall not be unreasonably withheld. The contractor shall make certain that all employees possess neat and clean uniforms. ~~The design of the uniform must have the written approval of the Director. No employee shall wear a uniform which might be mistaken for or is the same as any uniform worn by a casino hotel employee~~.

P.
The contractor shall submit to the Director monthly ridership reports. The reports shall be submitted by the fifteenth (15) day after the close of the previous month~~.~~, including daily reports of the passes and revenue collected. Reports are to be cumulative in nature.

The contractor agrees that if special arrangements, including but not limited to discount prices, are made for large blocks of Motorized Tramtram tickets, said arrangements must be offered to all persons and enterprises on an equal basis.

Q.
The contractor shall not permit any advertising, paid or unpaid, on the Motorized Tramstrams, inside or outside.

R.
(Reserved)

S.
(Reserved)

~~Contractors shall heat or otherwise winterize all trams in operation between September 15 and April 15, or as the Director may require.~~

T.
(Reserved)

~~Off-Boardwalk operation of trams is limited to travel to and from the storage facility identified in § **98-4G** of this chapter. Operation of a tram off-Boardwalk for the transport of passengers is specifically prohibited.~~

U.
The terminal points for the Motorized Trams~~trams~~ shall be Garden Pier to the east and Albany Avenue to the west or as designated by the Director.

V.
The contractor must provide the city with a performance and payment bond from a surety company authorized to do business in the city, as well as fulfilling all the other terms and stipulations set forth in the contract.

W.
The contractor agrees to appoint the City Clerk of Atlantic City as its agent for the purpose of accepting service for all suits that may be instituted against them.

X.
The contractor shall provide Motorized Trams~~trams~~ which possess approved and acceptable inflatable tires which will not damage the Boardwalk. The Director, upon the advice and consultation of the City Engineer, shall have the right to require vehicle modifications in any instance relevant to the safe operation of the Motorized Trams~~trams~~ and the protection of the integrity of the Boardwalk.

Y.

The Contractor shall keep informed of and comply with all laws, ordinances and regulations in any manner affecting those engaged or employed in the work in any way affecting the conduct of this work, an all orders or decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency shall be discovered, in relation to any such law, ordinance, regulation, order or decree, they shall forthwith report the same in writing to the City of Atlantic City. Contractor at all times shall observe and comply with and shall cause their agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the city of Atlantic City, their officers and agents against any claim or liability arising from or based upon the violation of any such law, ordinance, regulation, order or decree.

§ 98-5. Motorized Tram operating procedures.

A.
Motorized Tram shall be battery operated and capable of holding a maximum of fifteen (15) passengers. The Gross Vehicle Weight shall not exceed 3200 lbs. per car, with a two car max in multiple unit operation; have a ground clearance of 7" and a Maximum Load of 3000 lbs. per car. Tires shall be inflatable with a minimum 10" height. The Motorized Tram shall have a turning radius of 20' with the ability to navigate vehicle ramps due to the grad and clearance. The Motorized Tram shall also be equipped with Rear and Front Braking System; Head, Tail and Break Lights; Reverse Alarm; Rear View Mirror; Parking Breaks; horn and Public Sound Address System; emergency Cut-Off Switch; Floor should be non-slip; Charging Unit and Side Curtains.

~~No tram shall stand idle or in a stationary position unless it is picking up or discharging passengers, except at the terminal points.~~

B.
No Motorized Tram ~~tram~~ shall exceed the speed of four miles per hour while operating on the Boardwalk.

C.
The motor or power units of the Motorized Trams ~~trams~~ shall be ~~propelled by propane or electricity~~electric. Governors or other approved mechanical devices shall be installed on the power units with the written approval of the Director and the concurrence of the City Engineer in order to ensure compliance with the speed limit.

D.
Off-Boardwalk operation of Motorized Trams~~trams~~ is limited to travel to and from the storage facility identified in § **98-4G** of this chapter. Operation of a Motorized Tram~~tram~~ off-Boardwalk for the transport of passengers is specifically prohibited~~.~~, unless approved by the Director, whose approval shall not be unreasonably withheld.

E.
No Motorized Tram~~tram~~ shall ~~may~~ pass or ride abreast of another Motorized Tram~~tram~~ traveling in the same direction.

F.
Motorized Trams must proceed along the ~~in the second and fourth~~ ribbons of the Boardwalk as directed by City Engineer and the Director. ~~in the five-ribbon section, and the second and third ribbons of the Boardwalk in the four-ribbon section.~~

G.
Motorized Tram shall have a safety sound device which is approved in writing by the Director as well as a first aid packet and fire extinguisher.

~~Grams shall have no sound devices whatsoever unless specifically approved in writing by the Director.~~

H.
Motorized Tram operators shall be courteous to passengers at all times and shall not engage in the use of foul, profane, improper or abusive language.

~~Trams are prohibited from operating on the Boardwalk between 6:00 a.m. and 10:00 a.m.~~

I.
Motorized Tram operators shall not bypass passengers seeking a ride when seats are available.

There shall be a sufficient number of Motorized Trams~~trams~~ operating at any given time to provide adequate service to the public. Such a determination will be made by the Director in consultation with the City Engineer.~~contractor.~~

J.
Motorized Tram fares shall not exceed $2 one way. An all-day fare in the amount of $5 shall be available. The fare shall be prominently displayed on the outside of the vehicle.

K.

Each Motorized Tram shall be operated by two (2) individuals, consisting of one (1) driver and one(1) conductor. The conductor shall collect fares, control ridership, and announce Motorized Tram stops.

§ 98-6. Tram operators and conductors: applications and qualifications.

A.

No person shall operate a Motorized Tram ~~tram~~ unless notarized application is ~~made to the city for a driver's identification permit upon a form provided by the city.~~ submitted to the City's Mercantile Section for a Motorized Tram Operator's License on a form provided by the City and the following is to be attached:

1. Application fee of $100.00 (initial application) – Renewal application fee is $60.00
2. Proof of Citizenship
3. Photo License Fee – $10.00 (replacement of lost or stolen license is $15.00)
4. Finger Print Application fee of $20.00

B.

Operator and Conductor shall submit to testing for addiction for the use of narcotics or intoxicating liquors and shall subject to annual drug testing at a facility selected by the City of Atlantic City at the cost of the Operator and Conductor

~~First-time applicants must be fingerprinted and photographed by the Atlantic City Police Department; renewal applicants may be fingerprinted and photographed at the discretion of the Director.~~

C.

The Motorized Tram license is for a period of one year and shall be renewed annually. Application for renewal shall be submitted two months prior to the expiration of the current license.

~~The contractor shall make certain that all tram operators are registered with the city, that an identification permit has been issued and that the registration fee of $100 has been paid. Identification permits will be good for one year. All permits must be renewed for the following year. A fee of $50 shall accompany all renewal requests.~~

D.

All applicants must be at least 18 years of age. Applicants must be of sound mind and body with proven ability to operate a motor vehicle.

E.

Each operator/~~applicant~~driver shall produce a valid and current New Jersey CDL license with driver's license in his or her name.

F.

(Reserved)

~~Operator/Applicants must not be addicted to the use of narcotics or intoxicating liquors.~~

G.
(Reserved).
~~Applicants must have at least one year of driving experience. Applicants must be prepared to take and pass whatever relevant tests the Director may require.~~

H.
(Reserved)

~~First-time applicants shall produce affidavits of their good character from at least two reputable Atlantic City citizens who have known the applicant personally. In addition, it may be required for the applicant to produce a reference from his or her last employer.~~

I.
The applicant must answer all questions on the application form completely and truthfully and shall sign and swear or affirm to the accuracy of the statements made.

J.
The applicant shall have a written promise of employment from the contractor attached to his or her application.

K.
(Reserved)

~~Tram operators shall be courteous to passengers at all times and will not engage in the use of foul, profane, improper or abusive language.~~

L.
(Reserved)

~~Tram operators shall not bypass passengers seeking a ride when seats are available.~~

M.
Upon the satisfactory fulfillment of all necessary requirements, there shall be issued by the City ~~city~~ to the applicant a Motorized Tram Operator's License ~~tram driver's permit~~ which shall contain the photograph and signature of the ~~tram~~ operator. It shall be unlawful to remove or obliterate any official entry upon said license ~~permit~~. Motorized Tram Operator's License ~~Driver's identification permits~~ shall be valid for One Year ~~up to and including the 30th day of March~~. ~~Permits shall be valid for one year only.~~ The Motorized Tram Operator's License shall be of such form and style as the Director prescribes, with the driver's license number from the State of New Jersey and the word "Operator" appearing clearly thereon, which shall be constantly and clearly displayed on the outside of the driver's coat or shirt when engaged in driving a commercial vehicle. The Motorized Tram Conductor's License shall be of such form and style as the Director prescribes, with the driver's license number from the State of New Jersey and the word "Conductor" appearing clearly thereon, which shall be constantly and clearly displayed on the outside of the driver's coat or shirt when engaged in driving a commercial vehicle. No Motorized Tram ~~tram~~ shall be operated except by a duly licensed person who is wearing such an identification card, conspicuously displayed.

§ 98-7. Affirmative action.

The contractor must comply with all laws of the State of New Jersey, all ordinances of the City of Atlantic City and Executive Order Nos. 2 of 1984 and 1 of 1985, involving affirmative action and minority business participation. Failure to continue in compliance shall be deemed a breach of the agreement.

§ 98-8. Action by City Council.

A.
It is the intention of the City that the Motorized Trams ~~trams~~ be an attraction in the resort, and to that end it is the City's intent that the Motorized Trams ~~trams~~ be aesthetically pleasing and that the theme of the design and appearance of the Motorized Trams ~~trams~~ be consistent with and reflective of the rich history of the Boardwalk and the City.

B.
The City Council of the City of Atlantic City reserves the right to reject the highest responsible bid solely for reasons of aesthetics. In the event that such bid is so rejected, all bids are rejected.

§ 98-9. Violations and penalties.

[Amended 11-25-2008 by Ord. No. 104]
A.
The Director is hereby authorized to establish a penalty chart, stipulating maximum fines to be imposed by City inspectors, including police officers, for violations of this chapter. A fine for a first offense shall not exceed $100; thereafter, a maximum of $2,000.

B.
In the event that the violator wishes to contest the charges and the fine imposed, the matter shall be appealed to the Director.

§ 98-10. Suspension, cancellation and revocation.

The Director may suspend, cancel or revoke the driving permit of any operator for good cause upon notice and opportunity to be heard.

Section 2. All Ordinances or parts of Ordinances inconsistent with any of the terms of this Ordinance are hereby repealed to the extent of such inconsistency or inconsistencies.

Section 3. This Ordinance shall take effect twenty (20) days after first publication thereof after final passage.

ADJOURNED 5-06-2015 ADJOURNED 6-24-2015 ADJOURNED INDEFINITELY 8-12-15
ADJOURNED 5-20-2015 ADJOURNED 7-08-2015
SH July 9, 2015 8:26 AM 7-B

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE ON FINAL PASSAGE

COUNCIL MEMBER	AYE	NAY	N.V	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
DELGADO							MOORE						
MALIK							RANDOLPH						
MANCUSO							SMALL						
MARSH							TIBBITT						
							GILLIAM, PRESIDENT						

X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second

Adopted on first reading at a meeting of the Council of the City of Atlantic City, N.J. on …APRIL 22, 2015……

Adopted on second and final reading after hearing on……

Reconsidered Over

Approved By…/s/……Date……By Council……Ride ____ ____

Mayor Aye Nay

This is a Certified True copy of the Original Ordinance on file in the City Clerk's Office.

…/s/……Rhonda Williams, City Clerk