

TOWN OF EDGARTOWN  
OFFICE OF THE SELECTBOARD  
CONDITIONS FOR  
CHAPPAQUIDDICK FERRYMAN  
LICENSE

This License (License) is granted by The Edgartown Selectboard (The Board) under Massachusetts General Laws, Acts 1962-0534 and Chapter 88 sections 1,2, & 6, to Chappaquiddick Ferry Inc (CFI).

I. PURPOSE:

The License seeks to fill the compelling needs and priorities of the Chappaquiddick Island community and the Town of Edgartown while allowing for a profitable and sustainable operation for CFI.

The intent of the License is to ensure reliable, publicly available transportation between Chappaquiddick Island and Martha's Vineyard Island. The Chappaquiddick Ferry is the lifeline to the residents of Chappaquiddick.

II. TERM:

The Board may revoke such License when necessary, the License may be surrendered by CFI after 120 days written notice to The Board.

On the fifth year anniversary of the initial issuance of the License, and every fifth year anniversary thereafter, the Board, after due public process, which includes a hearing, will review the terms of the License to assure the Purpose (section I of the License) is being met for the Town of Edgartown, the Chappaquiddick community and CFI.

III. FEE:

The license fee shall be Fifty (\$50.00) Dollars per year.

IV. SCHEDULES :

Emergency passage between Edgartown and Chappaquiddick shall be available on an on-call basis 24 hours per day. The Board shall approve all hours of attended operation, after due public process, which includes a hearing on any such change.

V. RATES:

At all times, The Board seeks to balance the need for profitable operations with compelling needs and priorities of the island community; and operate at the highest operational, professional and ethical standards with all constituencies.

All rates are set by The Board after due public process that includes a hearing on any such changes.

The establishment, alteration, reduction, change or modification of a ferry service rate shall be commenced by the filing of a verified written petition with The Board.

Rates are attained by one of the two following methods:

Method One: A petitions that shall be supported by a certified audited financial statement for each of the last two fiscal years and shall include:

- (1) A balance sheet including net worth and retained earnings.
- (2) Profit and loss statements, stating all income and expenses.
- (3) A statement of changes in financial position.

The report of the certified or licensed public accountant shall include a statement that the

examination was made in accordance with generally accepted auditing standards and that the financial statements submitted by the applicant are in accordance with generally accepted accounting principles applied on a consistent basis. This report shall contain a representation and documentary evidence that the accountant or accounting firm has undergone a peer/quality review pursuant to the procedures of the American Institute of Certified Public Accountants within the past five years.

CFI shall maintain adequate accounting records to permit the preparation of the required audited financial statements. Such financial accounting records shall include, but not be limited to, the following records and procedures:

- (1) Inventory controls.
- (2) Passenger fare reconciliation forms.
- (3) Monthly cash receipts journal.
- (4) Periodic summary sales reports.

Financial accounting procedures shall be designed to ensure the reliability and integrity of the accounting records.

- (1) A "disclaimer of opinion" or an "adverse opinion" by the certified or licensed public accountant shall not be acceptable to The Board for purposes of acting on the merits of the petition.
- (2) A "qualified opinion" may be acceptable to The Board, depending on the reason for and significance of those factors leading to this opinion.
- (3) An "unqualified opinion" will be acceptable to The Board, but shall not be conclusive evidence of the adequacy of the petition for the purpose of granting the relief requested.

Upon receipt of a petition for the establishment, alteration, reduction, change or modification of a ferry service rate, The Board is hereby authorized to commence its review of the petition and to issue a report concerning said petition. The Board is hereby authorized to inspect and examine any and all financial accounting records, accounts, books, contracts, documents, papers and procedures connected with the rate-setting process. The Board shall not hold a public hearing upon a petition which contains a request for the establishment, alteration, modification or change of a ferry service rate until 15 calendar days following the filing of the report. The report and recommendation shall be filed with the Town Clerk within 45 days after the petition and supporting financial statements have been filed with the Board.

The Board may make inquiry into any financial transactions between any subsidiary, affiliate or parent firm or corporation of CFI.

Such financial information shall be deemed privileged information and shall not be disclosed to the public except as required by law.

The Board will consider any initial rate, change in rate or fee that will result in an Operating ratio of 90-100%. Operating Ratio (OR), expenses as a percent of revenue, is a common method for expressing profitability for transportation companies. An OR within the range of 90 – 100% has been considered an acceptable ratio. An OR greater than 100% demonstrates that a company is “unprofitable” in terms of revenue generated, if during any one year accounting period the OR exceeds 100% CFI shall apply to The Board for relief per MGL Chapter 88 section 6.

Method Two: A petition without financial disclosure that will be limited to: one time per license period (5 years), for a rate increase that does not exceed ½ of the CPI (for the district customarily used by the ToE) for the period since the last rate increase. Method Two is not the preferred method for obtaining a rate increase and is only offered as an emergency alternative to Method One.

#### VI. Qualifications of “Year Round Residency”

To be considered a Year Round Resident one must:

Provide a notarized affidavit stating that their primary and permanent domicile, per the Commonwealth of Massachusetts' Department of Revenue's definition of domicile, is on Chappaquiddick Island, they are physically on Chappaquiddick for a minimum of 183 days per year, that they have no intent to return to their last place of residency and that they hold a Massachusetts driver's license or Massachusetts ID card with a Chappaquiddick address. (to be confirmed by the notary in the affidavit).

#### VII. FREE PASSAGE:

No Free passage on the ferry is allowed except for bonafide CFI employees in the course of scheduled "on the clock" employment. A ticket, charge account or cash must be presented for passage by all persons, freight and vehicles. Any discounts or free passage offered by CFI will be calculated as full fare revenue in determining OR.

#### VIII. Cut Line Policy and rates

The Board shall determine the cutline policy/rate(s) after due public process, which includes a hearing on any such changes.

#### IX. TRANSFER OF LICENSE:

The license shall not be transferred, except by permission of the Board, which shall not be unreasonably withheld after due public process which includes a hearing.

#### X. Ready Service Performance Standard

Within six months of signing the lease:

- The Town and CFI will develop and implement a mutually agreeable approach to measuring the wait time that a vehicle is waiting in the ferry lines before being transported on the ferry. The measurement is to be made on a real time basis.
  - The Town and the CFI will then develop a mutually agreeable standard of "acceptable wait time" over a mutually agreeable time frame.
- The Town and CFI will develop and implement a mutually agreeable approach to measure the hourly throughput of vehicles traveling to and from Chappaquiddick on a real time basis.
  - The Town and CFI will then develop a mutually agreeable standard of optimal hourly Throughput. This is the hourly maximum throughput that the CFI could achieve under optimal conditions

- The Town and CFI will then develop a mutually agreeable standard of hourly throughput under normal conditions on a seasonal basis, if appropriate.

CFI will be in default in terms of ready service if:

- The actual wait time exceeds the “acceptable wait time for the agreeable time frame”
- And the actual throughput for time period is below the “standard hourly throughput”
- And there are not extenuating circumstances as established by the Town and agreed to by the CFI that prevented the CFI from operating at the Standard hourly throughput including but not limited to:
  - Extreme Weather, Flooding, Seaweed in the slips, current that impede operation
  - Operation of Ferry for official emergency vehicles – Fire, Police and Ambulances
  - Emergency Repair and Inspection of the boats and ramps

## XI. TAKEOVER OF OPERATIONS AND USE OF FERRIES:

### A. Emergency

In the event that the Board determines that public safety and convenience requires the immediate takeover of the operation of the ferries, the Board may vote to do so for up to ten (10) days simply by providing written notice of said vote to CFI in hand or by registered mail to the address appearing on the license (hereinafter "notice to CFI), or by posting a notice in a conspicuous public place at the end of the ferry run.

### B. Town Takeover of Ferries and Option to Purchase.

In the event the Board desires to suspend, or revoke the license, or not to renew the same, for good cause shown, the Board will schedule a public hearing and will provide notice, as specified in Paragraph XI(A) above, at least ten (10) days before said hearing. If, after said hearing, the Board votes to suspend, revoke, or not renew said license, the Board may also vote to operate the ferries for up to ninety (90) days (the "Takeover"). Following any vote to takeover the ferries (either for ten days (as per Section XI(A)), or for ninety days (as per Section XI (B)), the Town shall have the

immediate right to operate the ferries for either ten (10) or ninety (90) days, depending on the Board's vote, under the conditions set forth below:

C. All revenues received during the Takeover will be placed in a separate fund and strictly accounted for. The Town may expend monies from said fund for the normal costs of ferry operations, including the salary/wages of the then-current employees (or any substitute employees necessary to maintain the current number of employees prior to the Takeover), the purchase of fuel, normal repairs, insurance and mortgage payments (which should be kept current if revenues are sufficient to do so). No increase in expenditures, and no payment to the Town for any services or employees' time, will be allowed to be paid from said escrow account.

D. In or within ten (10) days of being notified of the Board vote to suspend, revoke or not renew the license, CFI shall deliver to the Board in writing its opinion of the then-current fair market value of its business, including the ferries, together with the name of its appraiser.

E. The Board shall have ten (10) days from receipt of such submission to notify CFI of its intention either to accept said determination of fair market value (in which event the closing shall proceed in accordance with subsections (g)-(k) below), or to submit in writing to CFI its opinion of the then-current fair market value of CFI's business, including its ferries, and the name of its appraiser. CFI shall have five (5) days from receipt of the Board's action to either agree to the Town's price (in which event the closing shall proceed in accordance with subsections (g)-(k) below) or reject the same. In the event CFI rejects the Town's price, the arbitrators selected by the Board and CFI shall in or within five (5) days designate a third appraiser who shall, in or within ten (10) days of selection, determine the then-current fair market value of CFI's business, including its ferries, and shall submit the same in writing to both parties.

F. The Board shall then have five (5) days from receipt to either reject or accept said price.

G. In the event of acceptance of or agreement with the purchase price, the Board shall schedule a town meeting in or within thirty (30) days to raise and appropriate the funds necessary to effectuate said purchase. The Town meeting votes approval, the closing shall take place in or within twenty (20) days from the date of said vote.

H. Any delay on the part of CFI in complying with the timetables herein, shall extend by an equal number of days the closing and the Town's ability to operate the ferries.

I. CFI warrants that it shall have good and clear marketable title to the ferries and its

business assets and shall Upon demand provide to the Town certification of the same or an assignment of rights from any party who may hold title such that the Town's option to purchase, as contained herein, may be effectuated. CFI further warrants that, upon request, it shall promptly advise the Board of any terms of financing or encumbrances upon the ferries and its business assets.

J. At the end of either the ten (10) day or ninety (90) day period set forth above, CFI shall be entitled to all of the monies remaining in escrow (except such monies as may be withheld to meet enumerated expenses).

K. At the closing, CFI shall convey to the Town all of its right, title and interest in and to the ferries and its business assets free and clear of any and all claims or encumbrances, under the terms of good and sufficient documents of transfer, satisfactory to the Town and counsel for the Town, containing CFI's warranty of title, and shall further assign to the Town all of CFI's right, title and interest in and to the ferries and its business assets free and clear from any and all claims and encumbrances. CFI shall be entitled to use the Such proceeds of sale to clear title at the time of closing. documents of transfer shall be acknowledged and delivered by CFI to the Town at the closing in exchange for a certified check from the Town made payable to CFI, or its assigns, in the amount of the purchase price as of the date of exercise.

Signature pages