

Regulations of Anguilla: /2012

Gazette Dated: 2012

BEACH CONTROL ACT, R.S.A. c. B20

BEACH VENDING REGULATIONS, 2012

Regulations made by the Governor in Council under section 8 of the Beach Control Act R.S.A. c. B20.

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Interpretation

1. In these Regulations—

“Act” means the Beach Control Act, R.S.A. c. B20;

“beach” includes the foreshore and the adjoining land;

“beach equipment” includes chairs, umbrellas, tents and equipment for water sports;

“beach vending business” means a business which carries out one or more of the following activities—

- (a) rental of beach equipment;
- (b) sale of souvenirs, arts and craft and apparel;
- (c) provision of fine art services;

“curator of beaches” means the person appointed under section 2;

“directive” means a directive referred to in sections 14 and 15;

“fine art services” includes photography, painting and drawing;

“permit” means a beach vending permit granted under section 5 of this Act;

“permit holder” means a person to whom a beach vending permit is granted under section 5;

“Permanent Secretary” means Permanent Secretary with responsibility for home affairs;

“restaurant” or “hotel” mean a restaurant or hotel that is situated on, or adjacent to, a beach.

Administration

Appointment of curator of beaches

2. The Director of Lands and Surveys is appointed the curator of beaches for the purposes of these Regulations.

Powers and duties of the curator of beaches

3. (1) Under the direction and supervision of the Permanent Secretary, the curator of beaches shall administer and enforce these Regulations.

(2) Without derogation from the generality of subsection (1), the curator of beaches has the following powers and duties—

- (a) considering and determining applications for permits;
- (b) assigning terms and conditions to a permit;
- (c) determining the duration of a permit;

- (d) investigating possible breaches of terms and conditions of a permit;
- (e) suspending or revoking a permit;
- (f) issuing directives.

Prohibition

Prohibition

4. (1) No person shall operate a beach vending business or offer any goods for sale on any beach without a permit.

(2) No permit holder shall operate a beach vending business other than in accordance with the terms and conditions of the permit.

Beach Vending Permit

Application for permit

5. (1) A person who wishes to operate a beach vending business may make a written application for a permit to the curator of beaches, in such form as the curator of beaches may direct.

(2) An application shall be accompanied by such information as the curator of beaches may require including—

- (a) planning permission under the Land Development Control Act; or
- (b) evidence that an application for planning permission has been made; and

(3) The fee set out in the Schedule is payable in accordance with section 7 in respect of any application for a permit.

(4) The curator of beaches may grant, defer or deny an application made under subsection (1).

Permits for restaurants or hotels

6. (1) For the avoidance of doubt, the proprietor of a restaurant or hotel who operates, or intends to operate, a beach vending business, is required to obtain a permit.

(2) The proprietor of a restaurant or hotel who provides beach equipment free of charge is not required to pay the fee referred to in section 7.

Fees

7. (1) Subject to section 6(2), the fee set out in the Schedule is payable in respect of any application for a permit or variation or replacement of a permit.

(2) The fee referred to in subsection (1)—

- (a) is payable to the Comptroller of Inland Revenue; and
- (b) is non-refundable.

Consideration of application

8. When considering an application for a permit, the curator of beaches may consider the following—
- (a) type of beach vending business;
 - (b) scale of the proposed beach vending business;
 - (c) any facilities that may be utilised in the operation of the beach vending business including—
 - (i) any structure;
 - (ii) loading and unloading bays;
 - (iii) sanitary facilities;
 - (d) environmental and aesthetic impact on the beach;
 - (e) impact on neighbouring properties, including any potential noise, smoke, smell, soot, vibration, waste, dust nuisance or danger;
 - (f) potential impact of increased number of persons and vehicles at the proposed site;
 - (g) access to, from and along the beach;
 - (h) any proposal to erect and display advertisements;
 - (i) proposed hours and days of operation;
 - (j) whether the applicant has the right under the laws of Anguilla to be and remain in Anguilla and to work in Anguilla operating a beach vending business or is exempted from that requirement.

Duration of permit

9. (1) A permit may be granted for such period not exceeding 3 years, as determined by the curator of beaches.
- (2) Notwithstanding the expiry date specified in a permit, if—
- (a) the permit holder makes an application for a new permit in accordance with section 5 not later than 30 days before the expiry of the permit;
 - (b) the permit is not suspended or revoked on the day before its expiry; and
 - (c) no new permit has been issued and no notice of denial has been given in respect of the application;

the permit does not expire until the applicant receives a notice of denial of the application or a new permit is granted, whichever is earlier.

Replacement of permit

10. (1) Where a permit has been lost, damaged or defaced, a permit holder may apply in writing for a replacement and the curator of beaches may issue a replacement.

(2) The fee set out in the Schedule is payable in accordance with section 7 in respect of any application for replacement of a permit.

Variation of permit

11. (1) A permit holder may apply in writing to vary his permit and shall set out the reasons for the variation and the curator of beaches may vary the permit.

(2) The fee set out in the Schedule is payable in accordance with section 7 in respect of any application for variation of a permit.

Terms and conditions of a permit

12. (1) A permit may be granted subject to such terms and conditions as determined by the curator of beaches, which may include the following —

- (a) the maximum number of items of beach equipment which may be offered for rent or displayed when not in use;
- (b) the type and description of beach equipment which may be offered for rent;
- (c) the type and description of goods or services which may be offered;
- (d) the hours of operation of the beach vending business;
- (e) the location in which the permit holder may operate;
- (f) the manner in which beach equipment must be stored when not in use by a customer;
- (g) any other condition the curator of beaches may determine to be appropriate.

(2) The terms and conditions of every permit shall require a permit holder to—

- (a) keep the location in which he is operating clear of litter for the duration of his permit;
- (b) refrain from obstructing access to, from and along the beach or any right of way;
- (c) refrain from harassing any person in the operation of a beach vending business;
- (d) refrain from any activity which may result in the degradation of the beach or any sand dunes;
- (e) comply with any directive issued under sections 14 or 15;
- (f) comply with section 21;
- (g) in the case of a permit which allows rental of beach equipment—
 - (i) subject to paragraph (1)(a), store beach equipment when the equipment is not in use by a customer,
 - (ii) comply with section 13.

(3) A permit holder shall ensure that all of his agents or employees are aware of, and comply with, the terms and conditions of the permit.

- (4) For the purposes of this section “harass” means to—
- (a) use words, gestures and actions that annoy, alarm or abuse a person;
 - (b) insult, taunt or challenge a person in a manner likely to offend;
 - (c) use obscene or profane language to intimidate a person; or
 - (d) disturb or irritate a person, especially by continued or repeated acts.

Identification marks and appearance of equipment

- 13.** (1) A permit holder whose permit allows the rental of beach equipment shall ensure that —
- (a) subject to subsection (2), each item of beach equipment is clearly marked in a way that identifies the permit holder;
 - (b) all beach equipment is clean and in good repair.

(2) Before applying the identification mark referred to in subsection (1) to the beach equipment, the permit holder referred to in subsection (1) shall submit the proposed identification mark to the curator of beaches for approval.

Right of exclusive use

14. (1) Where a proprietor of a restaurant or hotel operates or intends to operate a beach vending business, the proprietor has the exclusive right to operate on the beach adjoining the property on which the restaurant or hotel is located.

(2) Where a permit holder infringes on the right referred to in subsection (1), the curator of beaches may issue a directive requiring the permit holder to remove any structures, goods, equipment, advertisements or other effects that infringe on the right referred to in subsection (1).

(3) Where the permit holder fails to comply with a directive referred to in subsection (2), the curator of beaches may cause any action specified in the directive to be carried out and may require the permit holder to pay the reasonable costs incurred in carrying out such action.

Foul weather directives

15. (1) When a storm alert is issued by the Department of Disaster Management or a weather advisory is issued by the Meteorological Services, the curator of beaches may issue a foul weather directive.

(2) A foul weather directive may require the permit holder to do any one or more of the following—

- (a) secure any structures, goods, equipment, advertisements or other effects;
- (b) remove any temporary structures, goods, equipment, advertisements or other effects from the beach;
- (c) take any other action the curator may consider appropriate.

(3) Where the permit holder fails to comply with a foul weather directive, the curator of beaches may cause any action specified in the directive to be carried out and may require the permit holder to pay the reasonable costs incurred in carrying out such action.

*Complaints, Breach, Suspension and Revocation***Complaint and investigation**

16. (1) Any person who knows or suspects, or has reasonable grounds to suspect, that a permit holder or his agent or employee is in breach of any of the terms and conditions of a permit may make a complaint to the curator of beaches.

(2) On receipt of a complaint under this section, the curator of beaches shall without delay—

- (a) acknowledge receipt of the complaint; and
- (b) subject to subsection (3), give notice to the permit holder of receipt of such complaint.

(3) If the complainant so requests, or if the curator of beaches considers that it is necessary to protect the interests of the complainant or of a third party, the curator of beaches may treat the complaint as confidential.

(4) The curator of beaches may undertake to investigate all matters that he considers necessary to determine the facts relating to the alleged breach.

(5) When investigating a complaint under this section the curator of beaches may request the assistance of any other government department or person as he considers necessary.

(6) Within 14 days of receiving the complaint, the curator of beaches shall report to the complainant on the progress of the investigation and the action, if any, proposed to be taken in respect of the alleged breach.

(7) The curator of beaches may discontinue an investigation if, in his opinion—

- (a) the complaint is frivolous or vexatious or is not made in good faith;
- (b) the subject-matter of the complaint is trivial;
- (c) the conduct or circumstances on which the complaint is based would not constitute a breach; or
- (d) the alleged breach does not require further investigation.

(8) When an investigation is discontinued, the curator of beaches shall—

- (a) prepare a written statement setting out the reasons for discontinuing the investigation; and
- (b) send a copy of the statement to—
 - (i) the complainant, and
 - (ii) if a notice was sent under paragraph (2)(b), to the permit holder whose conduct was investigated.

(9) For the purposes of this section, “complainant” means a person who files a complaint under subsection (1).

Curator may initiate investigation

17. (1) The curator of beaches may decide to undertake an investigation on his own initiative to determine whether the terms or conditions of permit have been breached.

(2) The curator of beaches' powers of investigation when conducting an investigation on his own initiative are the same as in an investigation instituted following a complaint.

(3) The procedures followed in an investigation instituted following a complaint also apply, with such changes as the circumstances require, to an investigation on the curator of beaches' own initiative.

Breach of permit

18. (1) Where the curator of beaches determines that a permit holder or the agent or employee of a permit holder has breached one or more of the terms and conditions of the latter's permit, the curator of beaches may—

- (a) on the first breach, issue that permit holder with a written warning and require the permit holder to remedy the breach within the period specified in the warning;
- (b) on the second breach, suspend the permit for 3 days or for such longer period as may be required to remedy the breach; or
- (c) on the third breach, suspend the permit for 7 days or for such longer period as may be required to remedy the breach.

(2) Where the permit holder, without good reason, commits a fourth breach, the curator of beaches may revoke the permit.

(3) Notwithstanding subsection (1), where, in the opinion of the curator of beaches, the permit holder engages in a breach of such a nature that it would be unreasonable to expect the permit holder to continue operating a beach vending business, the curator of beaches may revoke the permit immediately.

(4) For the purposes of this section, a breach includes a continued breach where the permit holder fails to remedy the breach within the period specified by the curator of beaches.

(5) Where a permit is revoked, the permit holder may be disqualified from operating a beach vending business on any beach for such period as the curator of beaches considers fit not exceeding 5 years.

(6) Where the curator of beaches is considering suspending a permit, the curator of beaches shall give the permit holder an opportunity to put forward reasons as to why his permit should not be suspended.

Notice of intended revocation

19. (1) The curator of beaches shall give the permit holder written notice of revocation before revocation under section 18(2) become effective.

(2) A notice of revocation referred to in subsection (1) shall include the following—

- (a) the grounds for the intended revocation;
- (b) the terms of the intended revocation, including whether the permit holder will be disqualified;
- (c) the day by which any written submissions referred to in subsection (3) should be made;

- (d) the day, time and place where any oral submissions referred to in subsection (3) may be made;
- (e) the day from which the intended revocation is effective.

(3) Where the curator of beaches intends to —

- (a) revoke a permit; or
- (b) revoke a permit and disqualify the permit holder from operating a beach vending business;

the curator of beaches shall give the permit holder an opportunity to put forward written or oral submissions as to why his permit should not be revoked or why his permit should not be revoked and he should not be disqualified.

Obligations on revocation or expiry

20. (1) The permit holder shall vacate the location in which he is operating within 48 hours after —

- (a) the expiry of a permit; or
- (b) the effective date of any revocation made under section 18.

(2) The curator of beaches may extend the time period specified in subsection (1) if in his opinion the circumstances warrant.

(3) When vacating the location in which he is operating, the permit holder shall remove any structures, goods, equipment, advertisements or other effects of the permit holder at the location.

(4) Where the permit holder fails to comply with subsection (3), the curator of beaches may cause the structures, goods, equipment, advertisements or other effects to be removed and may require the permit holder to pay the reasonable costs incurred in such removal.

(5) For the purposes of this section, location in which the permit holder is operating means the location designated pursuant to section 12(1)(e).

Miscellaneous

Identification cards

21. (1) Where a permit is granted, the permit holder and any agent or employee of the permit holder shall be issued an identification card.

(2) An identification card referred to in subsection (1) shall be in the form directed by the curator of beaches and shall include—

- (a) the name and photograph of the person wearing the badge; and
- (b) the name of the permit holder.

(3) During hours of operation, the identification cards must be visibly worn at all times by the permit holder and his employees.

(4) An identification card issued under subsection (1) remains the property of the Government of Anguilla and must be returned promptly on the request of the curator of beaches.

Immunity

22. No action for damages may be commenced against the curator of beaches for anything done or not done in good faith while performing his functions under these Regulations.

Transitional provisions

23. (1) A person who immediately before the date of the commencement of these Regulations was operating a beach vending business may continue to operate that beach vending business without a permit under these Regulations—

- (a) during the period of 30 days beginning with the commencement date; and
- (b) if, within the period referred to in paragraph (a), application is made for a permit, until that application is finally disposed of or withdrawn.

(2) When a person referred to in subsection (1) who is engaged in the rental of beach equipment makes an application referred to in paragraph (1)(b), he shall submit any existing identification mark to the curator of beaches for approval.

(3) Where an identification mark referred to in subsection (2) is not approved by the curator of beaches, he may direct the person referred to in subsection (1) to remove the identification mark or remove the equipment.

Offences and penalties

24. (1) Any person who contravenes sections 4(1) or (2), 20(3) is liable on summary conviction to—

- (a) imprisonment for a term of 12 months or to a fine not exceeding \$50,000 or to both; and
- (b) in the case of a continuing contravention, an additional fine of \$2,000 for each day during which the contravention continues.

(2) Any person who fails to comply with any directive issued under sections 14 or 15 is liable on summary conviction to a fine not exceeding \$50,000.

(3) Any person who contravenes sections 21(3), is liable on summary conviction to—

- (a) a fine not exceeding \$1,000; and
- (b) in the case of a continuing contravention, an additional fine of \$250 for each day during which the contravention continues.

(4) Where a company is guilty of a contravention of subsection (1) or (2), every director, manager, agent and officer of the company in Anguilla who is knowingly a party to the contravention, is liable to the penalty prescribed by subsection (1) or (2).

Citation

25. These Regulations may be cited as the Beach Vending Regulations, 2012.

Commencement

26. (1) Subject to subsection (2) these Regulations come into force on the day of publication in the Gazette.

(2) Section 24 comes into force on the day on which the Act to amend the Beach Control Act enabling the creation of offences by regulation comes into force.

Made by the Governor in Council this day of , 2012.

Alistair Harrison
GOVERNOR OF ANGUILLA

CONSULTATION DRAFT

SCHEDULE
(Sections 7(1), 10(1) and 11(1))

FEES

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
Type of beach vending business	Application for permit	Application for variation	Application for replacement
Rental of beach equipment	\$200	\$100	\$50
Sale of souvenirs, arts and craft and apparel	\$200	\$100	\$50
Provision of fine art services	\$500	\$250	\$50