

**STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

IN THE MATTER OF THE BRIGANTINE)
PADDLE CLUB REQUEST FOR APPROVAL)
UNDER N.J.A.C. 13:2-8.5(A))
_____)

SR 2023-02
SPECIAL RULING GRANTING APPROVAL
UNDER N.J.A.C. 13:2-8.5(A)

BY THE DIRECTOR:

I. Background.

The Division of Alcoholic Beverage Control (“Division” or “ABC”) received a request by the Brigantine Paddle Club (“Club”) for a determination by the Director that it satisfies the eligibility exceptions in N.J.A.C. 13:2-8.5(a). The Club is a 501(c)(7) nonprofit organization with the stated purpose of social interaction, recreation and fellowship among the Paddle Club’s members. The Club requested this determination because it does not meet all of the requirements for qualifying for a Club License pursuant to N.J.S.A. 33:1-12(5) and its implementing regulations, specifically that a club must have been in active operation and in exclusive possession and use of a clubhouse for at least three years continuously immediately prior to its submission of its application for a Club License. The newly formed Club seeks to operate the Club and sell alcohol to its members and their guests at their newly leased location to be constructed at 4401 Atlantic Brigantine Boulevard in Brigantine, New Jersey.

A Club License is a “Class C License” under N.J.S.A. 33:1-12(5) that permits the holder of such license to sell alcoholic beverages for immediate consumption upon licensed premises and only to *bona fide* members of the club and their guests. Under N.J.A.C. 13:2-8.1, a *bona fide* club consists of sixty or more persons, of legal drinking age, operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain. Under N.J.A.C. 13:2-8.3 a *bona fide* club must have been in active operation in New Jersey for at least

three years continuously immediately prior to its submission of its application for a Club License. Moreover, under N.J.A.C. 13:2-8.4, a club must have been in exclusive possession and use of a clubhouse for at least three years continuously immediately prior to the submission of its application for a license. The regulations at N.J.A.C. 13:2-8.5(a) provide exceptions to these requirements for clubs that are duly-credentialed units of a national or state organization and that have a suitable premises.

Since the Brigantine Paddle Club does not satisfy N.J.A.C. 13:2-8.3 and -8.4, it is requesting that the Director find that “satisfactory proof” has been submitted, such that he can find that the eligibility exceptions in N.J.A.C. 13:2-8.5 have been met. For the reasons set forth below, the Director finds that the eligibility exceptions in N.J.A.C. 13:2-8.5 have been satisfied.

II. Application.

The Brigantine Paddle Club has submitted to the Division the following documents in support of its request:

- 1) Letters dated April 11, 2022, May 5, 2022, August 16, 2022 and November 16, 2022 from William J. Kaufmann, Esq., on behalf of the Brigantine Paddle Club;
- 2) Deed for proposed licensed premises, Grantee Brigantine Marina & Paddle Club, LLC, dated December 14, 2020;
- 3) Affidavit dated April 1, 2022 from Michael Sean Scarborough, Trustee and Executive Director of Brigantine Paddle Club, a NJ Nonprofit Corporation with Exhibits A-M attached;
- 4) Exhibit A: Copy of the Certificate of Formation of the Brigantine Paddle Club a NJ Nonprofit Corporation, effective date of filing March 8, 2022, issued by NJ Dept. of the Treasury, Div. of Revenue and Enterprise Services;
- 5) Exhibit B: 12-page ABC Retail Liquor License Application for a new Class C Club License;
- 6) Amended sketch identifying the proposed licensed premises;
- 7) **PERTAINING TO CAPE MAY PADDLE CLUB (“CMPC”), to demonstrate that CMPC is a “national or state order, organization or association which has been in active operation in this State for at least three years continuously immediately prior to the submission of the application.” N.J.A.C. 13:2-8.5(a):**
 - a. Exhibit C: Certificate of Formation dated January 27, 2014, for Cape May Paddle Club, a NJ Nonprofit Corporation, which has been in existence since its formation on January 27, 2014, currently having 310 active adult members;
 - b. Exhibit D: IRS Dept. of the Treasury correspondence dated April 23, 2016, stating

- that Cape May Paddle Club was issued a determination letter in July 2015, recognizing the Club as tax-exempt under IRC Section 501(c)(7);
- c. Notarized Affidavit from M. Sean Scarborough, Trustee and Executive Director of the Cape May Paddle Club, in lieu of a) the July 2015 IRS Determination Letter (which cannot be located), and 2) a more current IRS document than the April 23, 2016 document submitted (Exh. D), attesting to the Club's current nonprofit status, that the Club is in good standing regarding its nonprofit status and that its nonprofit status is not currently revoked; dated September 7, 2022;
 - d. Also in this Notarized Affidavit from M. Sean Scarborough, Trustee and Executive Director of the Cape May Paddle Club, attesting to the fact that the Cape May Paddle Club has been in active operation in New Jersey since its formation on January 27, 2014 which is more than three years continuously immediately prior to the Brigantine Paddle Club's submission of the application for a license, and that the Cape May Clubhouse address since its formation in Jan. 27, 2014, to today has been 124 Rosemans Lane in Cape May, New Jersey, dated September 7, 2022;
 - e. Copy of the Cape May Paddle Club's 2021 IRS Return of Organization Exempt From Income Tax, filed on April 4, 2022, as evidence of the Club's continuing status as a tax-exempt organization;
 - f. Copy of the IRS Jan. 27, 2014 Assignment of EIN 46-4624639 to the Cape May Paddle Club. This EIN matches the EIN on the April 21, 2016 correspondence from the IRS and the Club's 2021 tax return;
 - g. Exhibit E: Bylaws of the Cape May Paddle Club including Article 12 allowing for formation of constituent unit chapters within NJ;
 - h. Exhibit F: Resolution of the Meeting of the Cape May Paddle Club Board of Trustees and Meeting Minutes dated March 8, 2022, stating that the Board of Trustees of the Cape May Paddle Club recognized the **Brigantine Paddle Club** as a duly credentialed enfranchised chapter, constituent unit and Member Club of the Cape May Paddle Club, Inc.;
- 8) Exhibit G: Lease between Brigantine Paddle Club and "Brigantine Marina & Paddle Club, LLC" (Landlord, Michael Sean Scarborough, Managing Member), for premises located at 4401 Atlantic-Brigantine Boulevard, Brigantine, NJ 08203, for use as its clubhouse and club quarters; for a 3-year term commencing Aug. 1, 2022 to July 31, 2025;
 - 9) First Amendment to Lease, dated September 13, 2022, which clarified the areas within the Property which are being leased by Tenant for use as its Club. The licensed premises include the 2 ½ story building and all interior areas of the building, the areas adjacent to the building consisting of an exterior bar area, swimming pool and pool deck;
 - 10) Exhibit L: Architectural renderings of the club quarters to be constructed upon the premises;
 - 11) Copy of publication notice and Certification of Publication in the Atlantic City Press on 8/8/22 and 8/15/22, of Brigantine Paddle Club's application to City Council of Brigantine for a Club License;
 - 12) A copy of the Brigantine Paddle Club Bylaws;
 - 13) The Brigantine Paddle Club's complete list of Officers, including names and addresses;
 - 14) The Brigantine Paddle Club's complete Members list (totaling 64 active adult members) pursuant to N.J.A.C. 13:2-8.1 and N.J.A.C. 13:2-8.7(a), including, name and address of each Member; each Member's filed written application submitted to the Brigantine Paddle Club's appropriate body, as set forth in its Bylaws; and documentation, including the date that the filed written application of each Member is accepted and approved by the Brigantine Paddle

- Club's appropriate body, as set forth in its Bylaws, which must be at least three days subsequent to the filing of the prospective Member's filed written application;
- 15) Wait list of potential Club members including 689 individuals and couples;
 - 16) Cost of Membership Dues, including frequency and anticipated allocation and purpose of the allocations;
 - 17) Proof of Brigantine Paddle Club's notification to the local issuing authority of its intent to seek the requested approval from the Division; and
 - 18) City of Brigantine Municipal Resolution 2022-185, dated September 7, 2022, indicating the issuing municipal authority's support of a Club License being issued to Brigantine Paddle Club and the approval by the Director; and that there is no objection to the issuance of a Club license to the Brigantine Paddle Club by the issuing municipal authority, and members of the public.

III. Legal Analysis.

It is the Director's duty to supervise the manufacture, distribution and sale of alcoholic beverages in a manner that fulfills the public policies and legislative purposes of the Alcoholic Beverage Control Act ("ABC Act"). Of particular relevance to Club Licenses, these policies and purposes include, namely, "to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State" and "to foster moderation and responsibility in the use and consumption of alcoholic beverages." N.J.S.A. 33:1-3.1(b)(1) and (2).

As a threshold matter, after review of the documents submitted, the Division is satisfied that the Brigantine Paddle Club is a *bona fide* Club. It is an organization consisting of at least sixty people of legal drinking age that operates for social or recreational purposes, and not for private gain. See N.J.A.C. 13:2-8.1. Next, the Division must determine whether the Club has submitted "satisfactory proof" that the eligibility exceptions in N.J.A.C. 13:2-8.5(a) have been met. In pertinent part, N.J.A.C. 13:2-8.5(a) provides:

Any constituent unit, chartered or otherwise duly enfranchised chapter or member club of a national or state order, organization or association, ***which is in possession of a suitable premises***, shall not be prevented from obtaining a club license by reason of the fact that the unit, chapter or member club has not been in active operation in this State for at least three years continuously or has not been in exclusive continuous possession and use of a clubhouse or club quarters for the same period of time, provided said unit, chapter or member club obtains from the Director ... ***a certificate stating that satisfactory proof has been submitted to the Director that said unit, chapter of member club has been duly credentialed by a national or state order, organization or association which has been in active operation in this State for at***

least three years continuously immediately prior to submission of the application for a license. [Emphasis added.]

Simply put, to qualify for the exceptions in N.J.A.C. 13:2-8.5(a), the Brigantine Paddle Club must provide satisfactory proof that it is: (1) a duly-credentialed unit, chapter or member club of a national or state organization or association that has been in active operation in New Jersey for at least three continuous years prior to submission of the club license application; and (2) in possession of a suitable premises. Brigantine Paddle Club represents that it qualifies under both exceptions.

First, based on the review of the submissions, the Division concludes that Cape May Paddle Club is a *bona fide* club that has been in active operation in New Jersey for at least three years. See Documents 7(a)-(f), above. The CMPC was formed on January 27, 2014. It has been in continuous operation and sited at 124 Rosemans Lane in Cape May since that time. CMPC currently has 310 active adult members.

In addition, in the March 22, 2022 Resolution 2022-185, the CMPC Board of Trustees resolved that the Brigantine Paddle Club is enfranchised, designated and recognized as a duly credentialed chapter, and a constituent unit and Member Club of the CMPC. See Documents 7(g) and 7(h), above.

Second, to further satisfy the exception, the Brigantine Paddle Club must be in possession of suitable premises. Review of the documents submitted shows that the Brigantine Paddle Club will have a premises located at 4401 Atlantic-Brigantine Boulevard in Brigantine, New Jersey, upon completion of construction. See Documents 8 and 9, above. The Club is currently leasing the to-be-completed premises from Brigantine Marina & Paddle Club, LLC, for a 3-year term commencing August 1, 2022 and ending on July 31, 2025. These premises are to be used and occupied only and for no other purpose than the use and enjoyment of Club Members and guests. The Club represents that the construction is expected to commence upon the issuance of the instant approval even though the Club does not yet have its Club License.

The City of Brigantine supports the application before the Director and the ultimate issuance of a Club License, provided the Brigantine Paddle Club otherwise meets the qualifications for a Club License. Moreover, in addition to the required publication of Brigantine Paddle Club's intent to apply for a Club License, three public meetings were held during which this matter was discussed. No opposition to the application was expressed by any City of Brigantine Council members, members of the public or alcoholic beverage licensees.

IV. Conclusion.

Based on the foregoing, the Division finds that the Brigantine Paddle Club has provided "satisfactory proof" that it meets the eligibility exceptions in N.J.A.C. 13:2-8.5(a). The issuing authority is, therefore, authorized to consider the Brigantine Paddle Club's Club License application for a new Club License for the 2022-2023 license term. The issuing authority may consider granting or denying said application in a reasonable exercise of its discretion, provided that the City of Brigantine conducts a background check investigation of the Club's application and determines the qualifications of Officers and Directors under N.J.A.C. 13:2-8.6.

The relief granted by the Director is based upon the representations and submissions as set forth in the Petitioner's *ex parte* letters. The relief granted is subject to review and/or modification should the factual circumstances warrant.



JAMES B. GRAZIANO
DIRECTOR

DATED: February 17, 2023
JBG/ABC