

Manager's Office
Municipal Building
93 Cottage Street
Bar Harbor, ME 04069



Kevin L. Sutherland
Town Manager
manager@barharbormaine.gov

MEMORANDUM

To: Warrant Committee and Planning Board
cc: Town Council and Senior Staff
From: Kevin Sutherland, Town Manager
Date: August 19, 2022

Re: Citizen Petition – Cruise Ship Disembarkations

I am presenting this information based on conversations with Town staff and my own knowledge and experience with zoning and enforcement ordinances. This is not the Council's voice on the matter, it is that of administration. And while I have expressed, in conversations with some of the members of the Council, the Council as body has not seen this, so I've included this a CC to them. The petition was submitted as a Land Use Ordinance Amendment; therefore, it will be the Warrant Committee and the Planning Board who will make recommendations for this particular article on the warrant.

Background

This winter, while getting my head wrapped around the concerns of cruise in Bar Harbor, I met with the petitioner to understand where he was coming from and explained to him that I was, in part, brought on board by the Council to help steer this in a direction that listened to the expectations of the citizens of Bar Harbor.

I offered, in exchange for information on how the current process works, that he'd share with me a version of the petition before submitting it to the Clerk's office so that we could provide additional feedback and assist him in making it a document that the Town could defend if it were to ever be questioned in court. Unfortunately, we were never afforded a chance to review the proposed language.

With that, I'd like to begin by providing my own feedback on what the petitioner has put forward. This review does not address the legality or invalidity concerns that have been raised, it only points to why it is bad policy and how I believe it would impact the Town's ability to adhere to the requirements suggested.

Feedback and Questions Raised

This citizen petition is an amendment to the Land Use ordinance that attaches disembarking cruise ship persons to a section of our law that is meant to address physical structures (i.e. Flood hazard areas, new construction, alterations, placement of signs, moving or demolition, change of use, etc.) which creates confusion about the permitting process.

For example, section 125-79 which defines the procedure for granting permits talks of applications requiring plans drawn to scale, location and size of new buildings, use of buildings, soil test pits, sewage disposal system, etc. **How do persons or the count of persons, fit into this?**

Further, section 125-79 is meant to address the one-off changes to land use. Not an issue that occurs daily. The new proposed citizen petition language does not provide any guidance on how frequently a permit is required. **Would this be daily? Monthly? Annually? Once? Why is this not an ordinance under law enforcement jurisdiction?**

125-79 H.(3) of the new language requires the Harbormaster to create rules and regulations. It's an extremely vague approach and makes it confusing for staff to know who goes first. **Does the Harbormaster approve anchorage of ships, then the Code Enforcement Officer allow a permit presented by the property owner? Or does property owner submit permit based on a cruise ships request to anchor which is then approved by the Code Enforcement Officer and then allowed to anchor by the Harbormaster?** A Harbormaster should not be creating rules and regulations that other departments have to adhere to, that should be codified by the elected body (Council).

Additional concerns

The added work this petition creates will increase staffing needs. Since cruise is currently an April to November industry in the Northeast and Canada (specifically because Bar Harbor provides the opportunity between these months –which is 8 months or $\frac{3}{4}$ of the year) it will require at least two additional full-time staff in both the Police Department/Harbormaster (to count persons coming from a ship or ships) and from Planning/Code (to address permitting and violations).

Furthermore, because this is a zoning amendment, the violation process is anchored in state statute (30-A) and to go after violations will be a long, expensive, and time-consuming process which isn't efficient.

Our current fee structure is based on the number of passengers a ship can hold, not the number of passengers that actually disembark. For example, a ship that can hold 2,000 passengers will currently pay \$5.21 to the town – or \$10,420. If this petition were to pass, what comes of the fee structure? Will the lines only start paying for those that disembark? 1,000 passengers = \$5,210. That's a 50% cut in revenue when the Town would also be looking to increase staffing to manage the changes in petition to amend the Land Use Ordinance. **Where does the funding come from to cover both the reduction in revenue and the increase in expenditures?** The FY23 budget does not address this and the last three months of the fiscal year would be impacted by this petition.

Conclusion

Without delving into questions of legality or invalidity, I hope the Warrant Committee and the Planning Board see the challenges this citizen petition would place on the administrative and enforcement side of municipal government and would recommend that it ought not to pass.