

TOWN OF BAR HARBOR
Code Enforcement Division

93 Cottage Street, Suite I
Bar Harbor, Maine 04609-1400
Tele. 207-288-3329 Fax 207-288-3032
E-Mail: ceo@barharbormaine.gov

Angela M Chamberlain

Code Enforcement Officer
Building Inspector
Electrical Inspector
Plumbing Inspector

August 5, 2024

Golden Anchor LC
1000 Market Street
Building One, Suite 300
Portsmouth, NH 03801

NOTICE OF VIOLATION

DELIVERED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

**55 West Street – NOTICE OF VIOLATION AND ORDER TO TAKE CORRECTIVE ACTION–
FAILURE TO SECURE NECESSARY PERMITS**

To Whom It May Concern:

The Town of Bar Harbor has determined that your use of the property located at 55 West Street, Bar Harbor, Maine, also known as Tax Map 101, Lot 010-000, (hereinafter the “Property”), is in violation of the Town’s Cruise Ship Disembarkation Ordinance, which went into effect on July 18, 2024.

The Town’s Cruise Ship Disembarkation Ordinance (hereinafter the “CSD Ordinance” and to be codified at Chapter 52)¹, which constitutes the rules necessary to implement Section 125-77H of the Land Use Ordinance, requires that a permit must be obtained from the Code Enforcement Officer (“CEO”) for a Cruise Ship Disembarkation Facility prior to receiving any disembarking Persons from a cruise ship. This CSD Ordinance, a copy of which is attached, constitutes the rules anticipated by and necessary to enforce Section 125-77H of the Town Code.

Section 52-6 of the CSD Ordinance states as follows: “Permit Required: No person may allow or facilitate the disembarkation of Persons from a cruise ship over land or operate a CSDF without having first obtained a permit to operate a CSDF (“CSDF Permit”).”

¹ This Chapter was enacted effective July 18, 2024. However, it has not yet been codified. A copy of the enacted but uncoded draft is attached.

Section 52-5 of the CSD Ordinance defines person as follows: "'Persons" means passengers of cruise ships and not those persons covered by 33 C.F.R. § 105.200 and 33 C.F.R. § 105.237 (titled "System for seafarers' access"), namely, "vessel personnel," "vessel crew," "seafarers assigned to a vessel," "pilots," and "representatives of seafarers' welfare and labor organizations" (collectively, "Crew"). The word "person" (i.e. not capitalized) shall have the meaning provided by § 125-108 of the Town Code."

Section 52-5 of the CSD Ordinance defines a Cruise Ship Disembarkation Facility ("CSDF") as follows: "a public or private property, or a public or private structure, used for disembarkation of persons arriving on land from cruise ships."

On or about July 25, 2024, it was observed that individuals meeting the definition of "Person" under the CSD Ordinance disembarked from a cruise ship on your Property without the property owner having first obtained a CSDF Permit as required by the Ordinance.

These actions are in violation of Chapter Section 52-6 of the CSD Ordinance and Section 125-77H of the Land Use Ordinance. Such violations are a nuisance in violation of Chapter 125-99. See Section 125-77H and 125-101B for possible maximum fines.

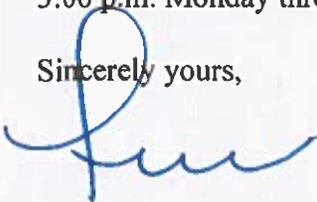
You are hereby ordered to take the following corrective action: within thirty (30) days from the date of this letter you must submit an application to allow for the disembarkation of individuals meeting the definition of Person under the CSD Ordinance. Failure to apply for the applicable permits within 30 days will result in further enforcement action.

In addition to the CSD Ordinance, I have included copies of Section 125-77H, the Cruise Ship Disembarkation Facility permit application, and the Cruise Ship Disembarkation permit application for your use.

Pursuant to Section 125-103, "the Board of Appeals may, upon written application of an aggrieved party received by the Planning Department within 30 days of any decision or enforcement action by a municipal body or official who or which interprets this chapter, hear appeals from such decision."

If you have any questions about this letter, please contact me at 207-288-3329 between the hours of 8:30 a.m. - 5:00 p.m. Monday through Friday.

Sincerely yours,



Angela M. Chamberlain
Code Enforcement Officer

Cc: Building Permit File
Eben Salvatore
P. Andrew Hamilton, Esq.
Stephen Wagner, Esq.
Town Council Members ✓
James Smith, Town Manager

**TOWN OF BAR HARBOR
Code Enforcement Division**

93 Cottage Street, Suite I
Bar Harbor, Maine 04609-1400
Tele. 207-288-3329 Fax 207-288-3032

VIOLATION REPORT

Tender Dock where the violation occurred:

55 West Street (Tax Map 101, Lot 010-000)

Property Owner:

Golden Anchor, LC

Property Owner Mailing Address:

1000 Market Street
Building One, Suite 300
Portsmouth, NH 03801

Date of Violation: July 25, 2024

Time: 10:30 am

Witnesses to the violation:

1. Angela Chamberlain, Code Enforcement Officer
2. Chris Wharff, Harbor Master
3. _____

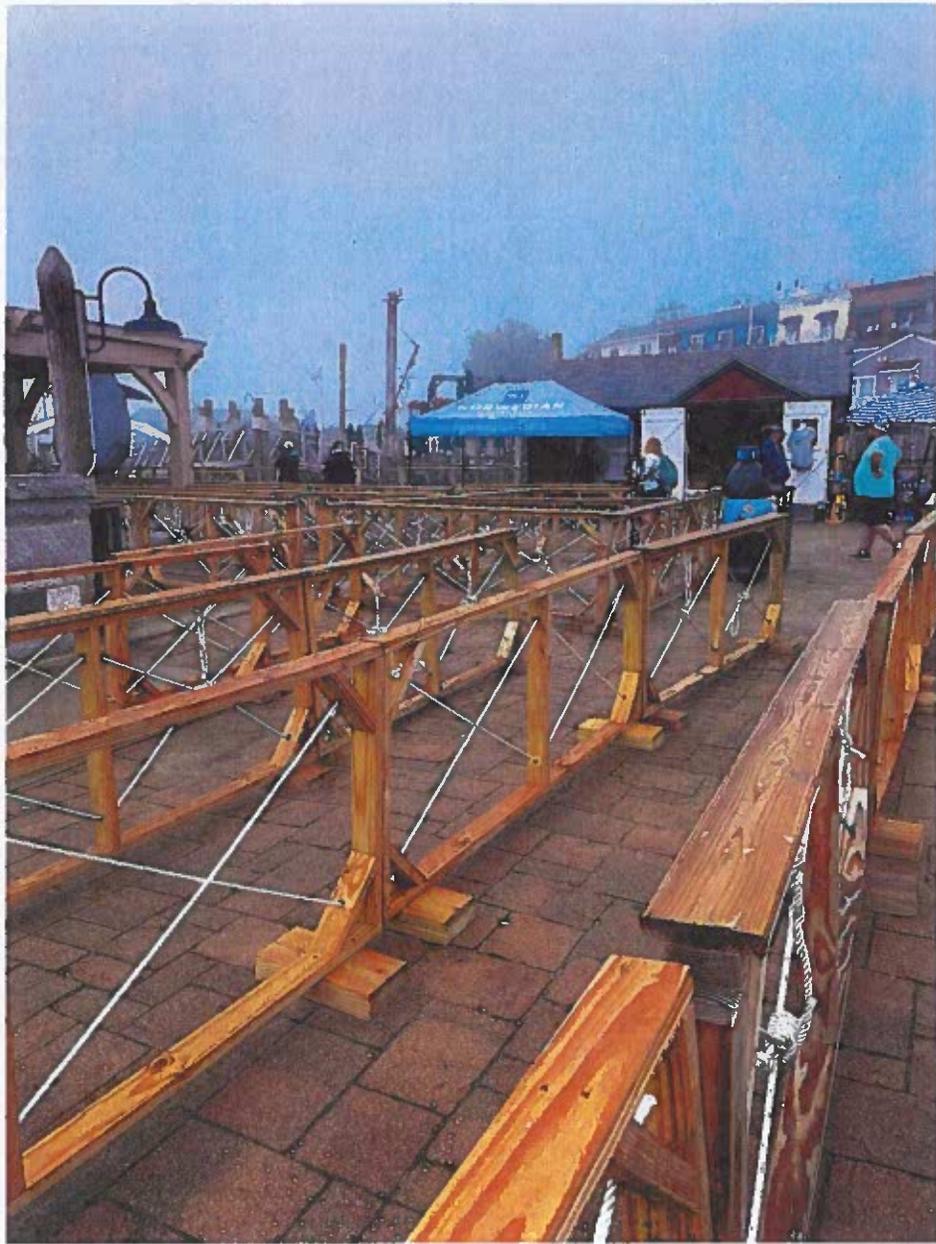
Number of Persons who disembarked over the limit: _____

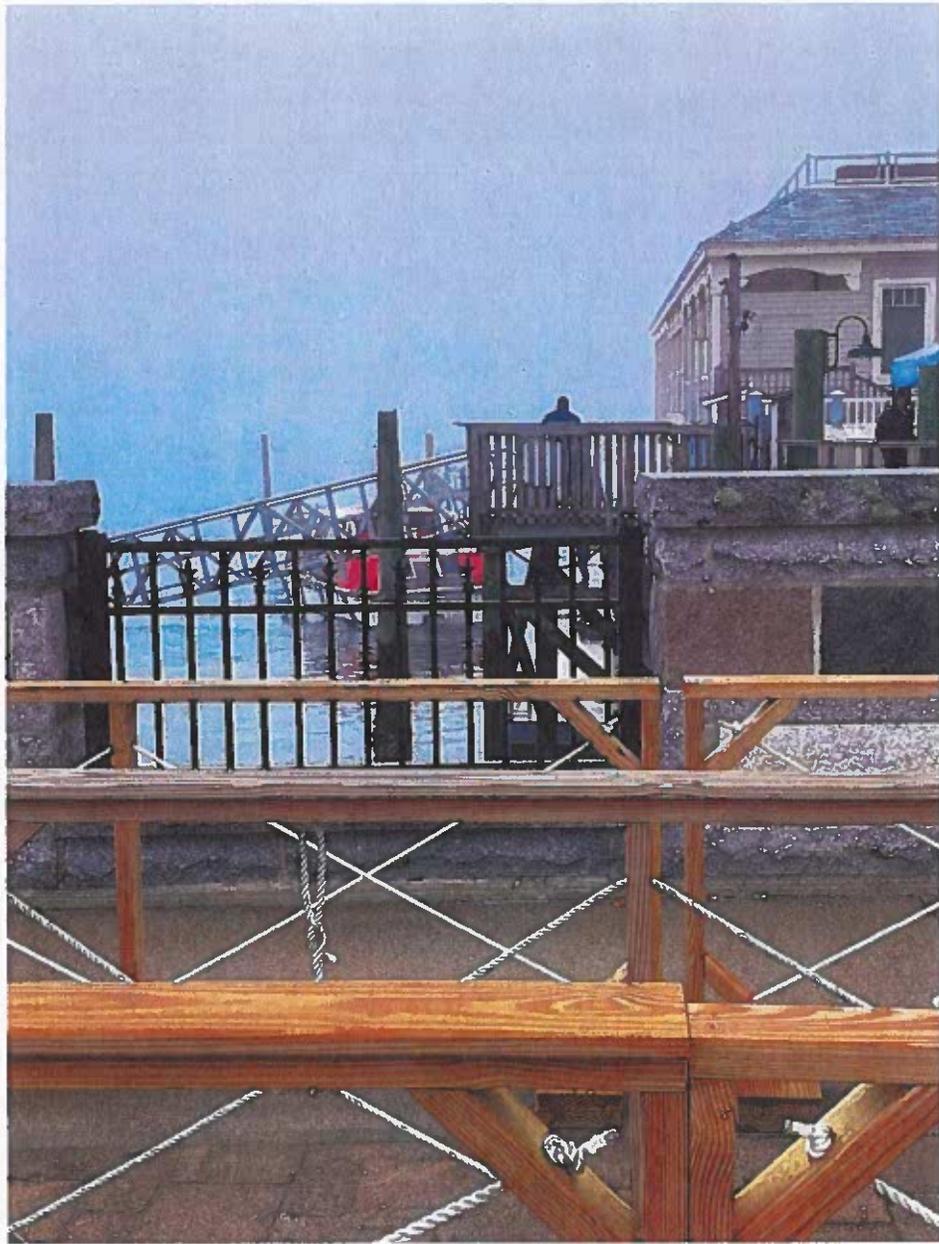
Other pertinent information:

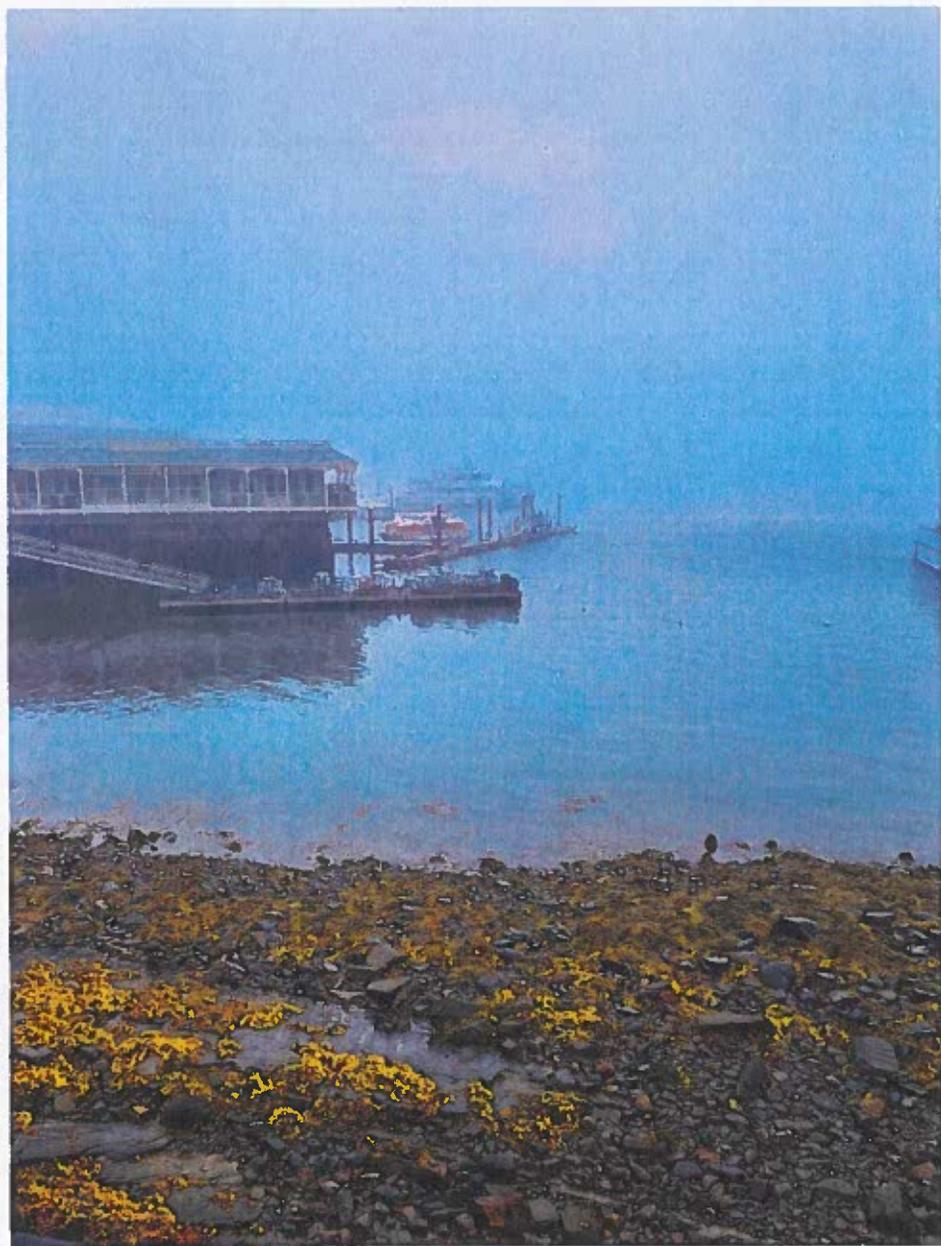
Tenders were arriving at the dock and we witnessed passengers being unloaded from the tenders onto the dock. Norwegian tents were set up on the site for the Norwegian GEM.

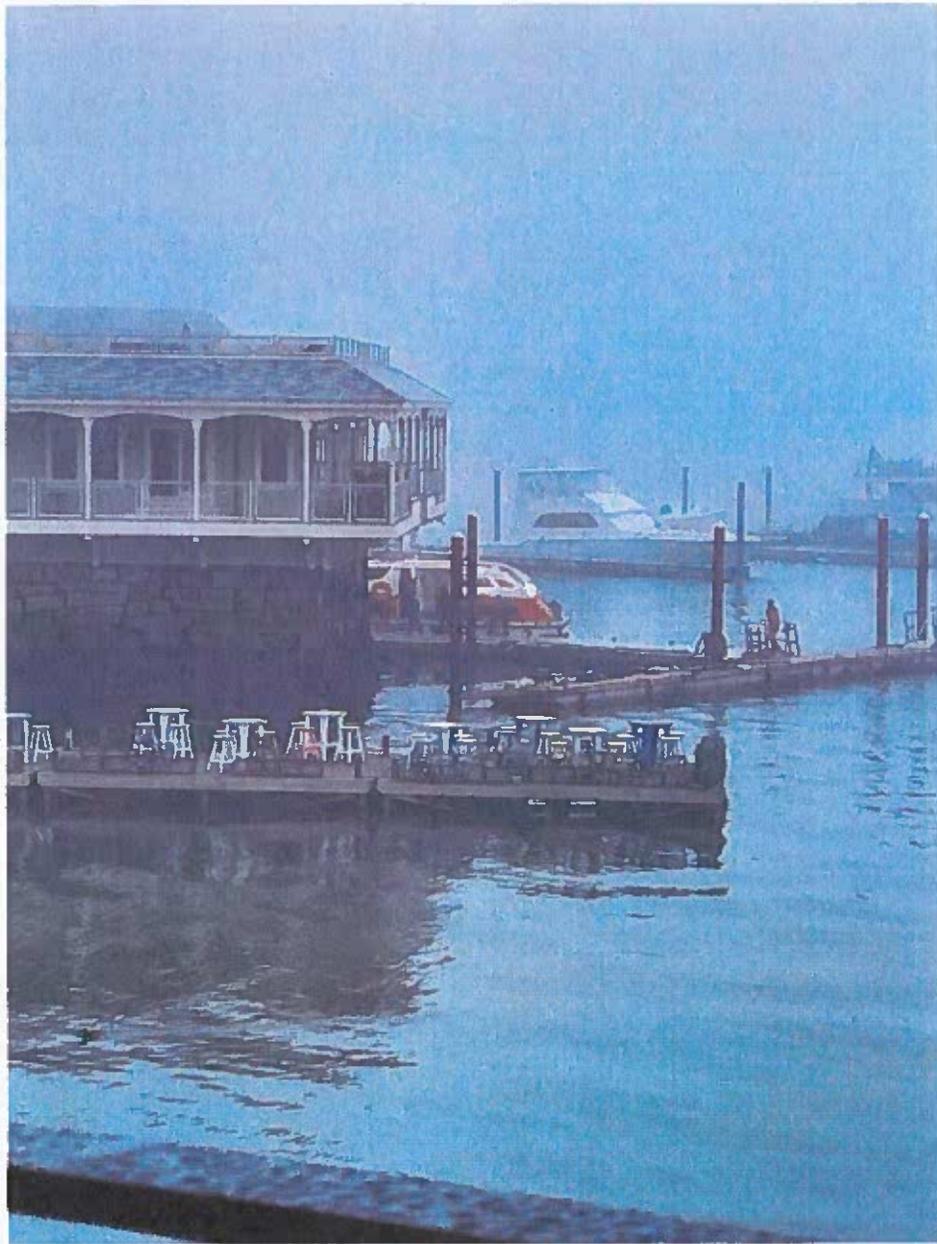
The Code Enforcement Department does not have any pending Cruise Ship Disembarkation Facility Permit or Cruise Ship Disembarkation Permit applications on file for this property.

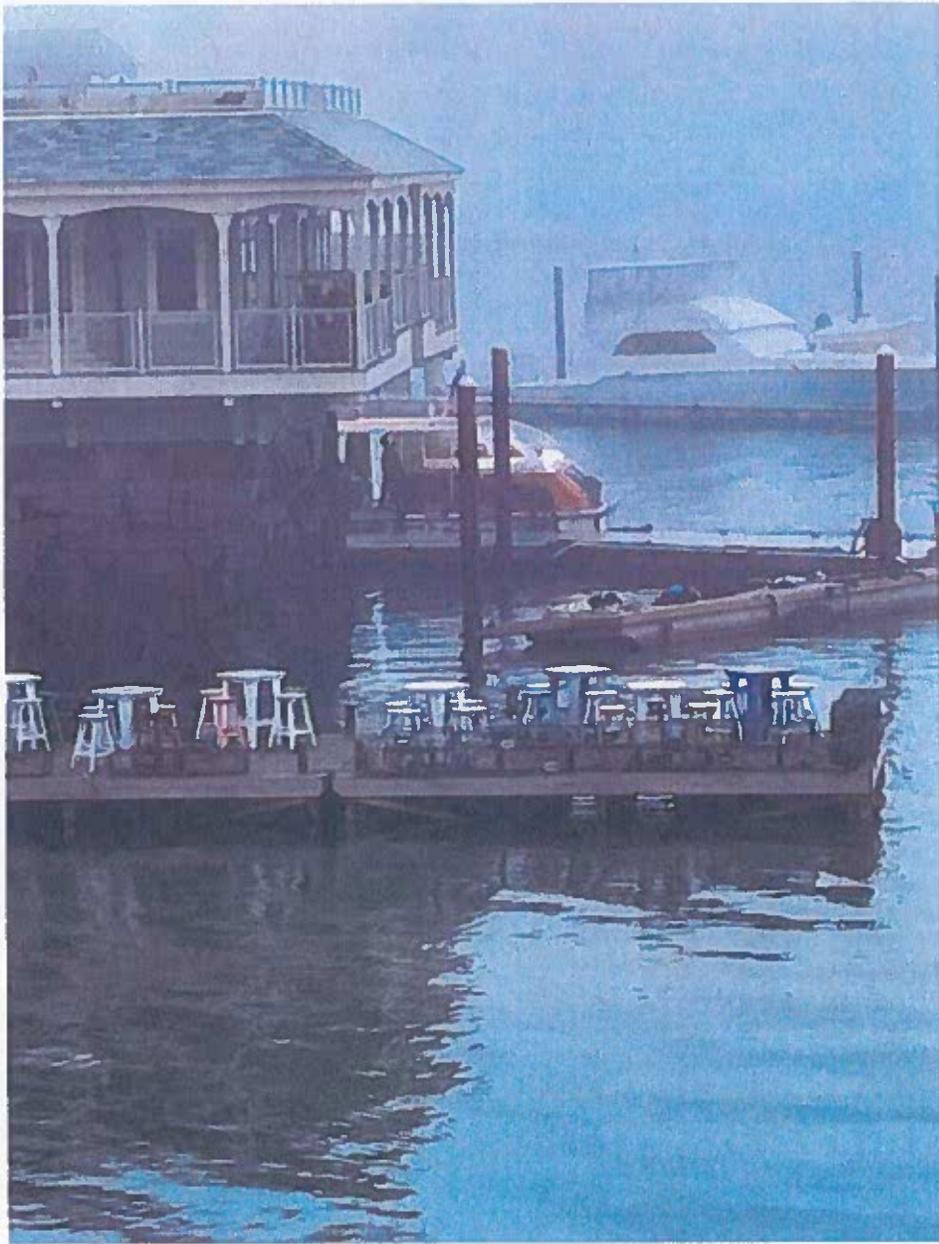
Report prepared by Angela Chamberlain, Code Enforcement Officer.

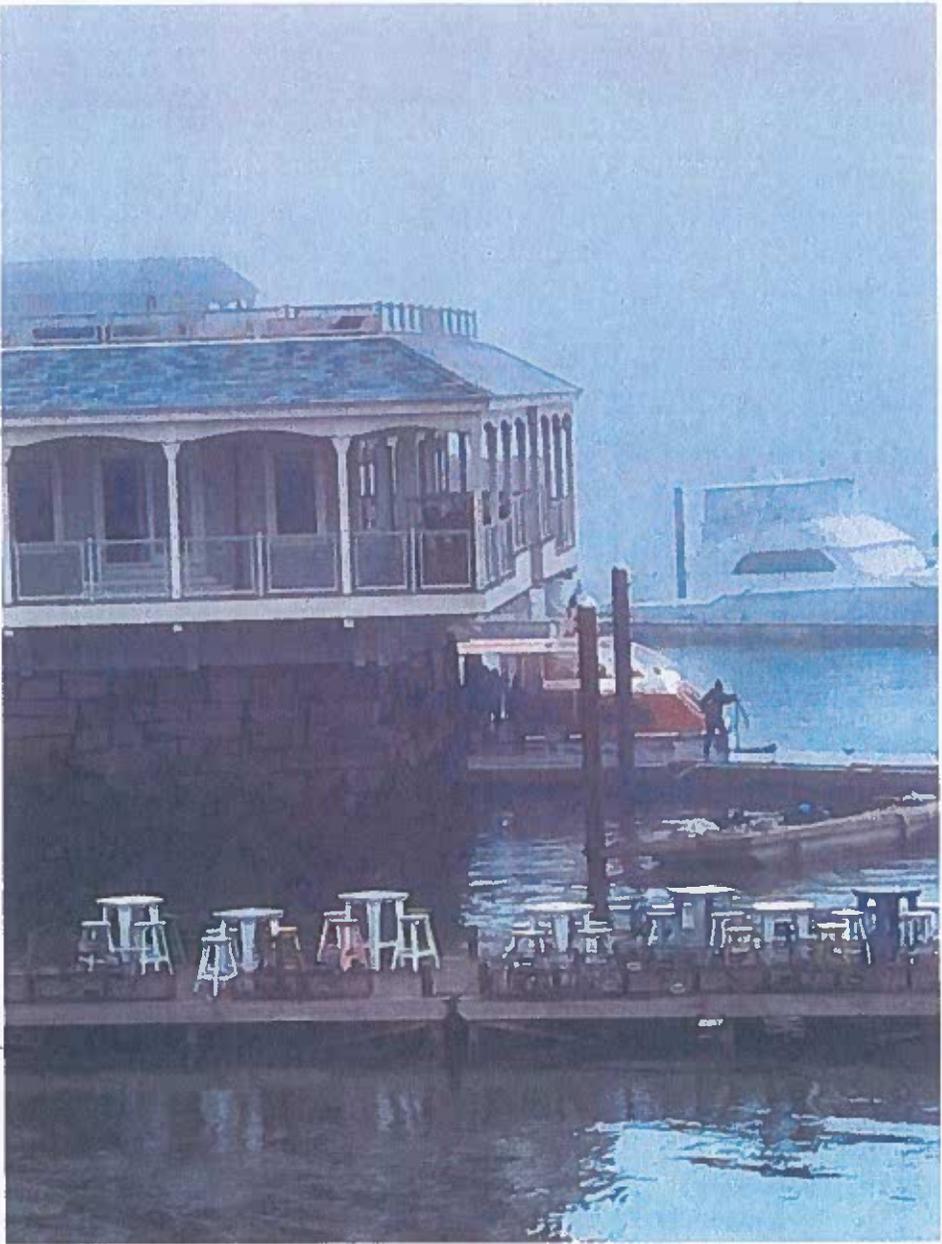












On Tuesday, June 18, 2024, the Bar Harbor Town Council adopted the following amendment to the Municipal Code. The amendment takes effect July 18, 2024. A copy has been filed with the Town Clerk.

Cruise Ship Disembarkation Ordinance Amendment

Town of Bar Harbor

2024-06

An amendment to enact Chapter [###]: Cruise Ship Disembarkation

The Town of Bar Harbor hereby ordains that Chapter [###]: Cruise Ship Disembarkation, is enacted as follows:

[Please Note: Old Language is ~~stricken~~. New language is underlined.]

Chapter [###]. Cruise Ship Disembarkation

§ [###]-1. Purpose:

The purpose of this Chapter is to govern the disembarkation of Persons to docks or land within the Town from cruise ships and implement the purpose and intent of § 125-77(H) of the Town Code, as well as the promotion of the health, safety, and general welfare of the present and future inhabitants of the Town in a manner that serves to balance the interests of the general public and those of individual property owners.

§ [###]-2. Authority:

Under federal, state and local law, the Town has regulatory authority over disembarkation of Persons into the Town. This Chapter is adopted pursuant to the Town's home rule powers as provided for in Article VIII, Part Second, of the Maine Constitution, 30-A M.R.S. §§ 2101 et seq.

§ [###]-3. Validity and Severability:

If any section, subsection, clause, or phrase of this Chapter shall be found to be invalid or unconstitutional, such invalidity shall not affect the remaining provisions of this Chapter, and to that end the provisions of this Chapter are hereby declared severable.

§ [###]-4. Administration:

The provisions of this Chapter shall be administered jointly by the Code Enforcement Officer and Harbor Master or their respective designee(s).

§ [###]-5. Definitions:

Except as otherwise provided by this Chapter, language used herein shall be construed as set forth in § 125-108 of the Town Code and specific words and phrases shall have the meanings set forth in § 125-109 of the Town Code.

As used in this Chapter, the following terms shall have the following meanings:

Cruise Ship - "cruise ship" has the same meaning as set forth in § 153-22(B) of the Town of Bar Harbor Code.

Cruise Ship Disembarkation Facility ("CSDF") - a public or private property, or a public or private structure, used for disembarkation of persons arriving on land from cruise ships.

CSDF Owner – an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity that owns, operates, or otherwise is authorized to represent the CSDF.

Disembarkation - The arrival of persons to docks and/or land within the Town from cruise ships by tender vessels, or otherwise.

Persons - For purposes of this Chapter and the enforcement of § 125-77(H), "Persons" means passengers of cruise ships and not those persons covered by 33 C.F.R. § 105.200 and 33 C.F.R. § 105.237 (titled "System for seafarers' access"), namely, "vessel personnel," "vessel crew," "seafarers assigned to a vessel," "pilots," and "representatives of seafarers' welfare and labor organizations" (collectively, "Crew"). The word "person" (i.e. not capitalized) shall have the meaning provided by § 125-108 of the Town Code.

§ [###]-6. Requirements to Operate or Disembark at a CSDF

A. Permit Required:

No person may allow or facilitate the disembarkation of Persons from a cruise ship over land or operate a CSDF without having first obtained a permit to operate a CSDF ("CSDF Permit").

B. Cruise Ship Reservation Required:

No CSDF or person shall receive disembarking Persons from a cruise ship that has not first received confirmation from the Harbor Master for a booked reservation for anchorage pursuant to the Town of Bar Harbor Cruise Ship Standard Operating Procedures, as they may be amended.

C. Disembarkation Application and Permit Required:

(1) Application Required. A CSDF Owner shall submit an application to the Code Enforcement Officer, or designee, for a Disembarkation Permit to allow on a specified calendar day a specified number of Persons not exceeding 1,000 to disembark from one or more cruise ship(s) with a confirmed reservation for anchorage.

(2) Application Review. Applications shall be reviewed acted upon in the order in which they were received within 30 days of receipt. The application must identify the specific site of disembarkation, the calendar day of disembarkation, and the requested number of Persons to be disembarked to the identified CSDF and site of disembarkation on that calendar day.

(3) Issuance of Permit. Upon confirming the applicant has satisfied all other application criteria and requirements of this Chapter, the Code Enforcement Officer, or designee,

shall grant the application and issue a Disembarkation Permit for the maximum number of Persons that does not cause the Daily Disembarkation Limit established by § 6(C)(4) of this Chapter to be exceeded.

(4) Daily Disembarkation Limit. The Code Enforcement Officer, or designee, shall not issue a Disembarkation Permit that would authorize the disembarkation of more than 1,000 Persons, in the aggregate, on a single calendar day, regardless of the total number of Disembarkation Permits requested or issued for a specific calendar day.

§ [###]-7. Disembarkation Procedures.

A. Counting Method.

CSDF Owners shall employ a means to electronically count each individual person that disembarks at a given CSDF ("Counting Method"). The Counting Method must include a means for discounting from the total count of individuals all crew. The Counting Method shall be approved by the Harbor Master, or their respective designee, and subject to annual review.

B. Daily Certification.

For each Disembarkation Permit, the CSDF Owner shall submit a certification to the Code Enforcement Officer specifying how many Persons were in fact disembarked on the calendar day specified on the Disembarkation Permit and from what cruise ship said Persons disembarked.

C. Code Enforcement Officer Access.

Consistent with 30-A M.R.S. § 4452(1)(A), the Code Enforcement Officer, or designee, shall be permitted to access the site(s) of the CSDF at which Persons disembark, at any time during normal business hours, or at any time Persons are disembarking or embarking, for the purposes of ensuring and verifying that Persons are being counted properly. The CSDF shall not obstruct or otherwise interfere with said access. Whether access is necessary is within the sole discretion of the Code Enforcement Officer and Harbor Master. If access is denied, the Code Enforcement Officer may apply for an administrative search warrant pursuant to Maine Rule of Civil Procedure 80E.

D. Code Enforcement Officer Audit.

Upon request to the CSDF Owner, the Code Enforcement Officer, and their respective designee(s), shall have unobstructed and immediate access to the records and instruments used to implement the CSDF Counting Method for the purposes of auditing the CSDF Counting Method for accuracy and functionality and implementing and enforcing this Chapter and § 125-77(H) of the Town Code. Whether an audit is necessary is within the sole discretion of the Code Enforcement Officer. The CSDF Owner shall retain all records generated by the CSDF Counting Method for 3 years.

§ [###]-8. Enforcement.

A. Violation Report.

If the Code Enforcement Officer, or designee, determines that the terms of this Chapter have been violated, including without limitation if a CSDF has disembarked Persons without a Disembarkation Permit or disembarked more Persons than authorized per this Chapter and any applicable Disembarkation Permit, the Code Enforcement Officer within a reasonable time of the alleged violation, shall create a Violation Report. The violation report should include the date and time of the incident giving rise to the violation, the tender dock where the violation occurred, who witnessed the violation, the number of Persons who disembarked over the Disembarkation Permit limit, and any other pertinent information as determined relevant by the Code Enforcement Officer.

B. Penalties and Enforcement.

This Chapter shall be enforced by the Code Enforcement Officer in accordance with §§ 125-100 and 125-101 of the Town Code. CSDF Owners, individuals, firms, associations, corporations, partnerships, trusts or other legal entities found to be in violation of this Chapter may be subject to such fines, penalties, actions, and orders as are authorized by 30-A M.R.S. § 4452, as the same may be amended, provided that each disembarking Person exceeding the Disembarkation Permit is a distinct and separate violation under 30-A M.R.S. § 4452(3)(B), resulting in a minimum \$100 penalty per excess unauthorized Person.

Chapter 125. Land Use

Article VII. Permits

§ 125-77. Permit required for certain activities.

[Amended 5-7-1991; 11-2-1999]

After the effective date of this chapter, a written permit from the Code Enforcement Officer shall be required for the following activities, regardless of whether such activities have received site plan or subdivision approval or whether they also require review by the Design Review Board pursuant to Article XIII, Design Review:

- A. Flood hazard areas. All construction or earthmoving activities or other improvements within the one-hundred-year floodplain designated on the Flood Insurance Rate Maps published by the Federal Emergency Management Agency.
- B. New construction. New construction of buildings and structures.
- C. Alteration. Alteration of a building, structure, or land, or parts thereof, including but not limited to:
[Amended 5-3-2004]
 - (1) Change in size of windows or doors;
 - (2) Repair of foundations, whether concrete, cinder block, granite and posts, or piles;
 - (3) Interior renovations for change in use;
 - (4) Remodeling interior walls to create new rooms;
 - (5) Enclosing open frame porch;
 - (6) Installing skylights;
 - (7) Erection of fences;
 - (8) Construction of new steps;
 - (9) Creation of roads or driveways;
 - (10) Erection of panels for winter closure or the erection of winter storm vestibules in the Downtown Village or Waterfront Development Districts; provided, however, that a permit need only be obtained in the first year of the useful life of the structure to be erected.
[Amended 6-8-2010]
- D. Placement of signs. Placement of signs except temporary signs.
[Amended 5-3-2004]
- E. Moving or demolition. All buildings or structures which are removed from or moved onto, or moved around within, a lot or demolished.
- F. Change of use. The change of any premises from one category of land use to any other land

use.

G. Activities. Any other activities described in Article III as requiring a permit from the Code Enforcement Officer.

H. Disembarking persons from cruise ships on, over, or across any property located within the Town of Bar Harbor.

[Added 11-8-2022]

- (1) For the purposes of this section, "cruise ship" has the same meaning as set forth in § 153-22B of the Town of Bar Harbor Code.
- (2) As determined by the Harbor Master, no more than 1,000 persons, in the aggregate, may disembark on a single calendar day from any cruise ship(s) and come to shore on, over, or across any property located within the Town of Bar Harbor; provided, however, that this subsection shall not apply with regard to any cruise ship reservations that have been accepted by the Harbor Master prior to March 17, 2022.
- (3) The Harbor Master shall develop rules and regulations in order to establish (a) a reservation system for cruise ships that transport persons by watercraft for disembarkation in the Town of Bar Harbor; (b) a mechanism for counting and tracking the number of persons disembarking each day; (c) a mandatory procedure for reporting violations to the Code Enforcement Officer; and (d) any other provisions that the Harbor Master deems necessary under this subsection. Any property owner issued a permit under this § 125-77H shall comply with all rules and regulations promulgated by the Harbor Master under this subsection.
- (4) This subsection shall be enforced by the Code Enforcement Officer in accordance with § 125-100 of this chapter, based on information as to violations provided by the Harbor Master, and property owners in violation of this subsection shall be subject to such fines, penalties, actions and orders as are authorized by 30-A M.R.S. § 4452, as the same may be amended, provided that each disembarking person exceeding the permitted daily limit in § 125-77H(2) is a specific violation under 30-A M.R.S. § 4452(3)(B), resulting in a minimum \$100 penalty per excess unauthorized person.
- (5) Notwithstanding 1 M.R.S. § 302, and regardless of the date on which it is approved by the voters, this subsection will be applicable as of March 17, 2022, and shall govern any and all applications for permits or approvals required under this subsection that were or have been pending before any officer, board, or agency of the Town of Bar Harbor on or at any time after March 17, 2022; provided, however, that the Town will not take any enforcement action under this subsection with regard to any cruise ship visits occurring prior to the date of adoption by voters at Town Meeting.



Town of Bar Harbor
 Planning & Code Enforcement

Cruise Ship Disembarkation Facility Permit Application

SECTION I. PROPERTY INFORMATION

Property Address: _____ Map _____ Lot _____

SECTION II. PROPERTY OWNER/APPLICANT INFORMATION

Owner: _____

Address: _____ City: _____ Zip: _____

Phone number: _____ Email: _____

Applicant: _____

Address: _____ City: _____ Zip: _____

Phone number: _____ Email: _____

NOTE: If not owner, please attach written authorization to apply for permits and/or approvals.

SECTION III. APPLICATION INFORMATION

I have attached a written description approved by the Harbor Master describing the means to count each individual person that disembarks at this Cruise Ship Disembarkation Facility. This includes a means for discounting the crew from the total amount of individuals disembarking.

“Persons” means passengers of cruise ships and not those persons covered by 33 C.F.R. § 105.200 and 33 C.F.R. § 105.237 (titled “System for seafarers’ access”), namely, “vessel personnel,” “vessel crew,” “seafarers assigned to a vessel,” “pilots,” and “representatives of seafarers’ welfare and labor organizations”.

SECTION IV. INSTRUCTIONS

Fill out this Cruise Ship Disembarkation Facility Permit Application to the Code Enforcement Officer.

SECTION V.

ACCEPTANCE

The undersigned applicant acknowledges that the applicant and the person on whose behalf a permit is sought are responsible to ensure that the proposed activity complies with all applicable standards of the Municipal Code and Council policies, including but not limited to, Chapter 125 Land Use Ordinance, Chapter 153 Port and Harbor, and Chapter ____ Cruise Ship Disembarkation.

1. By accepting this permit, I agree to allow the Code Enforcement Officer, the Harbor Master or their respective designees to be present on the permitted site during disembarkation of cruise ships for the purpose of ensuring compliance with this permit and all applicable standards of the Municipal Code.
2. By accepting this permit, I acknowledge that no more than the number of persons approved by a Disembarkation permit are entitled to disembark from any cruise ships on any single day at the permitted site, and I agree to abide by the 1,000-person daily limit. "Persons" shall have the meaning provided by the Cruise Ship Disembarkation Ordinance.
3. This permit shall expire one (1) year after the date of issuance.

By accepting this permit, I agree to comply with all applicable standards of the Municipal Code.

Name _____ Date _____

Signature _____

----- For Office Use Only -----

Disembarkation Facility Permit # _____ Fee: _____

Code Enforcement Officer

Date

Harbor Master

Date



Town of Bar Harbor
 Planning & Code Enforcement

Cruise Ship Disembarkation Permit Application

SECTION I. PROPERTY INFORMATION

Property Address: _____ Map _____ Lot _____

SECTION II. PROPERTY OWNER/APPLICANT INFORMATION

Owner:
 Address: _____ City: _____ Zip: _____
 Phone number: _____ Email: _____
 Applicant: _____
 Address: _____ City: _____ Zip: _____
 Phone number: _____ Email: _____

NOTE: If not owner, please attach written authorization to apply for permits and/or approvals.

SECTION III. APPLICATION INFORMATION

Cruise Ship Disembarkation Facility Permit #: _____

Date of Disembarkation: _____

I have attached proof that a reservation for anchorage on this date has been approved by the Harbor Master.

Number of Persons to Disembark (<1,000): _____ Number of Cruise Ships _____

“Persons” means passengers of cruise ships and not those persons covered by 33 C.F.R.

§ 105.200 and 33 C.F.R. § 105.237 (titled “System for seafarers’ access”), namely, “vessel personnel,” “vessel crew,” “seafarers assigned to a vessel,” “pilots,” and “representatives of seafarers’ welfare and labor organizations”.

SECTION IV. INSTRUCTIONS

Fill out this Cruise Ship Disembarkation Permit Application along with proof of accepted anchorage reservation to the Code Enforcement Officer.

SECTION V.**ACCEPTANCE**

The undersigned applicant acknowledges that the applicant and the person on whose behalf a permit is sought are responsible to ensure that the proposed activity complies with all applicable standards of the Municipal Code and Council policies, including but not limited to, Chapter 125 Land Use Ordinance, Chapter 153 Port and Harbor, and Chapter ____ Cruise Ship Disembarkation.

1. By accepting this permit, I agree to allow the Code Enforcement Officer, the Harbor Master or their respective designees to be present on the permitted site during disembarkation of cruise ships for the purpose of ensuring compliance with this permit and all applicable standards of the Municipal Code.
2. By accepting this permit, I acknowledge that no more than the number of persons approved by a Disembarkation permit are entitled to disembark from any cruise ships on any single day at the permitted site, and I agree to abide by the 1,000-person daily limit. "Persons" shall have the meaning provided by the Cruise Ship Disembarkation Ordinance.
3. This permit is only valid for the date of disembarkation listed.

By accepting this permit, I agree to comply with all applicable standards of the Municipal Code.

Name _____ Date _____

Signature _____

----- For Office Use Only -----

Disembarkation Permit # _____ Fee: _____

Date of Disembarkation _____ Persons permitted to disembark _____

Code Enforcement Officer

Date