



STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT
Location: Portland
Docket No. BCD-APP-2024-0007

CHARLES SIDMAN,)
)
 Plaintiff,)
)
 v.)
)
 TOWN OF BAR HARBOR,)
)
 Defendant.)

AFFIDAVIT OF CHARLES SIDMAN

Charles Sidman, being duly sworn, states under oath as follows:

1. I am over eighteen (18) years of age and am competent to testify to the matters set forth in this Affidavit.

2. My knowledge as to the facts set forth in this Affidavit is derived from my personal knowledge.

3. I am a resident of the Town of Bar Harbor, Maine.

4. I am the co-owner of two properties in the Town of Bar Harbor, including a commercial property located at 6 Mount Desert Street in downtown Bar Harbor, for which I pay property taxes to the Town.

5. My wife and I have owned and operated the Argosy Gallery, a fine art gallery, at our downtown property for twenty-nine years.

6. Our art gallery is located at 6 Mount Desert Street in downtown Bar Harbor and is less than one-half mile, just a few blocks, from the pier located at 55 West Street in Bar Harbor where the majority of cruise ship passengers disembark into Bar Harbor.

7. We are adversely affected by the large crowds of cruise ship passengers who disembark into Bar Harbor during the cruise ship season which lasts primarily from May through

October each year, which cause town-wide congestion and overcrowding leading to the inundation of local services, amenities, and attractions.

8. The clientele of our business—collectors of fine art—complain and refuse to come to our gallery on days when cruise ships are disembarking passengers into Bar Harbor because the town is overrun with cruise ship passengers.

9. We used to operate Argosy Gallery at two locations, but it became too much of a nuisance to navigate the crowds caused by cruise ship passengers while shuttling back and forth between locations, and in 2022, we decided to close our original gallery location that was even closer to the cruise ship disembarkation area.

10. In 2022, I was the leader of a Petitioning Committee that successfully advanced a citizens' ballot initiative to amend the Land Use Ordinance of the Town of Bar Harbor, Maine to limit the number of passengers disembarking from cruise ships into Bar Harbor each day (the "Initiative").

11. The Town of Bar Harbor Town Council opposed the Initiative and recommended that voters reject the passage of the Initiative.

12. The Initiative was passed by the voters on November 8, 2022, and amended the Land Use Ordinance of the Town of Bar Harbor, Maine (the "LUO").

13. The Initiative took effect on December 8, 2022, and has been incorporated into the LUO, codified as Chapter 125, Article VII, § 125-77(H) (the "Disembarkation Ordinance").

14. In an Amended Decision and Order, dated March 1, 2024, the United States District Court for the District of Maine in *Assoc. to Preserve and Protect Local Livelihoods, et al. v. Town of Bar Harbor*, No. 1:22-cv-00416-LEW, upheld lawfulness of the Disembarkation Ordinance in nearly all respects.

15. Five days later, on March 6, 2024, the Town Council held a Special Meeting, at which Chairperson Valerie Peacock gave a prepared statement by the Town Council regarding enforcement of the Disembarkation Ordinance (the “Decision and Order”).

16. No public hearing was announced or held by the Town Council prior its issuance of its Decision and Order.

17. No public hearing was announced or held before the Planning Board to consider the Town Council’s Decision and Order prior to its announcement.

18. No vote on the Decision and Order was taken at a duly constituted Town Meeting prior to the Town Council’s announcement of its Decision and Order.

19. In or about July 2024, upon request, I received from the Town a list of cruise ship reservations for the 2024 cruise ship season. The list included both the reservation and arrival dates for 112 cruise ships booked to visit Bar Harbor in 2024.

20. I reviewed that list of cruise ship reservations for the 2024 cruise ship season and compared the reservation dates of the cruise ships against the March 17, 2022, application date of the Disembarkation Ordinance, and the date of the Town vote on November 8, 2022.

21. Of that list of 112 cruise ship reservations for the 2024 cruise ship season (as of July 2024), only 19 ships, with a total lower berth capacity of 56,323 passengers, made reservations prior to the March 17, 2022 application date, and were not subject to the Disembarkation Ordinance.

22. Of that list of 112 cruise ship reservations for the 2024 cruise ship season (as of July 2024), 34 ships with a total lower berth capacity of 72,729 passengers, made reservations after the March 17, 2022 application date, but before the November 8, 2022 vote, and were

purportedly exempted from the Disembarkation Ordinance per the Town Council's Decision and Order.

23. Of that list of 112 cruise ship reservations for the 2024 cruise ship season (as of July 2024), an additional 59 ships with a total lower berth capacity of 28,549 passengers made reservations after both the March 17, 2022 application date and the November 8, 2022 vote.

24. Thus, it is estimated that an additional 93 cruise ships with 101,278 additional passengers that should have been subject to the Disembarkation Ordinance were permitted to come ashore during the 2024 cruise ship season.

25. To the best of my knowledge, neither the Harbor Master nor the Code Enforcement Officer for the Town of Bar Harbor has taken any actions to enforce the Disembarkation Ordinance against any disembarkations from cruise ships that had made reservations for the 2024 cruise ship season after the March 17, 2022 application date, but before the November 8, 2022 vote.

26. To the best of my knowledge, of the 93 cruise ships with 101,278 passengers that should have been subject to the Disembarkation Ordinance in 2024, the Code Enforcement Officer has only issued a single notice of violation against a pier owner for only a single instance of disembarking cruise ship passengers without a proper permit.

Dated: Nov. 12, 2024

Charles Sidman
Charles Sidman

STATE OF MAINE
COUNTY OF HANCOCK, ss.

Nov. 12, 2024

Personally appeared before me, the above-named Charles Sidman, who after being duly sworn, made oath that the foregoing statements made by him on personal knowledge, are true and correct.

Before me,

Galvin Joann
Notary Public / Attorney-at-Law
Commission Expires: 3/9/2026

SEAL:

