



STATE OF MAINE
CUMBERLAND, ss.

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

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

**PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT
WITH INCORPORATED
MEMORANDUM OF LAW
(M.R. Civ. P. 56)**

Pursuant to Rule 7(b) and Rule 56 of the Maine Rules of Civil Procedure, Plaintiff Charles Sidman respectfully moves for summary judgment against the Defendant Town of Bar Harbor (“Town”), declaring that the Town Council’s decision and order promulgated at a Special Town Council Meeting on March 6, 2024, amending the application date and directing Town employees not to enforce land use ordinance provisions regulating cruise ship disembarkations into the Town, was *ultra vires* and thus unlawful. The Town Council’s decision and order was unlawful because the Town Council lacked any authority to amend the land use ordinance and the Town Council is barred by the Town Charter from giving orders to any Town employees, either publicly or privately.

INTRODUCTION AND BACKGROUND

This case is about whether the Town Council can by mere decree—and without a vote—unilaterally amend the application date of a lawfully enacted land use ordinance regulating the disembarkation of cruise ship passengers, and whether, under the Town Charter, the Town Council can order Town employees to disregard their mandatory duties under the ordinance.

The Town is a municipal corporation in the State of Maine. (Plaintiff’s Supporting Statement of Material Facts (“SMF”) ¶¶ 1-2.) The Town is governed by a written charter. *See*

Me. Const. art. VIII, § 1; 30-A M.R.S. §§ 2101-2109. Pursuant to the Charter of the Town of Bar Harbor (the “Charter”), municipal business is administered by a Town Council, which consists of seven members elected by the voters. (SMF ¶¶ 3, 5; Bar Harbor, Me., Charter §§ C-7(A), C-14(C)(1).) At all times relevant to this action, the Town Council consisted of elected members Valerie Peacock, Gary Friedmann, Matthew Hochman, Maya Caines, Joe Minutolo, Earl Brechlin, and Kyle Shank (the “Town Council”). (SMF ¶ 4.)

Plaintiff Charles Sidman is a resident of the Town. (SMF ¶ 13.) Mr. Sidman was the leader of a Petitioning Committee that successfully advanced a citizens’ petition to amend the Land Use Ordinance of the Town of Bar Harbor, Maine (the “LUO”), Bar Harbor, Me., Municipal Code §§ 125-1 to 125-114, to limit the number of passengers disembarking from cruise ships into the Town. (*Id.* ¶ 20.) Despite the Town Council recommendation that voters reject passage of the petition, the petition was adopted by the voters on November 8, 2022, by a vote of 1,780 (58.3%) to 1,273 (41.7%) and automatically amended the LUO. (*Id.* ¶¶ 21-22.) The petition took effect on December 8, 2022, and is incorporated into the LUO, codified as Bar Harbor, Me., Municipal Code § 125-77(H) (Nov. 8, 2022) (the “Disembarkation Ordinance”). (*Id.* ¶ 23.)

The Disembarkation Ordinance regulates the disembarkation of cruise ship passengers on, over, or across any property located within the Town. (SMF ¶ 24; Bar Harbor, Me., Municipal Code § 125-77(H) (Nov. 8, 2022) [hereinafter “Disembarkation Ordinance”].) It requires property owners in the Town seeking to disembark cruise ship passengers on, over, or across their land to first secure a permit from the Bar Harbor Code Enforcement Officer (“CEO”) before disembarking any passengers. (SMF ¶ 24; Disembarkation Ordinance, § 125-77(H).) The Disembarkation Ordinance also limits the number of passengers from cruise ships allowed to disembark into the Town without imposing a fee on the landowners to a maximum, in the aggregate, of 1,000 per day.

(SMF ¶ 27; Disembarkation Ordinance § 125-77(H)(2).) Each disembarking passenger exceeding the location-specific permitted daily limit is a violation with the fee levied against the property owner at a minimum \$100 penalty per excess passenger. (SMF ¶ 29; Disembarkation Ordinance § 125-77(H)(4).) The Disembarkation Ordinance explicitly applies to all cruise ship reservations accepted by the Town after March 17, 2022. (SMF ¶¶ 27, 30; Disembarkation Ordinance § 125-77(H)(2), (5).)

A coterie of businesses that benefit from the cruise industry filed suit challenging the constitutionality of the Disembarkation Ordinance in the United States District Court for the District of Maine. In an Amended Decision and Order, dated March 1, 2024, the District Court upheld the lawfulness of the Disembarkation Ordinance. (SMF ¶ 39.) *See Association to Preserve and Protect Local Livelihoods, et al. [“APPLL”] v. Town of Bar Harbor*, 721 F. Supp. 3d 56 (D. Me. 2024). Five days later, on March 6, 2024, the Town Council held a Special Meeting, at which chairperson Valerie Peacock read a prepared statement of the Town Council concerning the Disembarkation Ordinance. (SMF ¶ 40.) The Town Council’s prepared statement was memorialized by a press release issued by the Town Council on the same day. (*Id.* ¶ 41.)

In its prepared statement, the Town Council, *inter alia*, announced:

This Council has already directed the Harbor Master to cancel, or reject, requests for reservations made **after the day of the vote** for all ships with lower berth capacities greater than 1,000 passengers. The disembarkation of passengers of cruise ships with reservations for the 2024 season that are made and accepted after this date are subject to the current Ordinance. **However, the Council will honor reservations made before the town voted. Passengers from these 2024 ships will not be subject to the disembarkation limits of the Ordinance.**

(the “Decision and Order”). (SMF ¶¶ 42-43) (emphases added). In other words, the Town Council unilaterally decided to change the explicit application date of the Disembarkation Ordinance and

directly instructed the Harbor Master not to apply the Disembarkation Ordinance to any disembarkations from cruise ships that had made reservations for the 2024 cruise ship season prior to the November 8, 2022 vote. No public hearings of any kind were held before the Town Council issued its Decision and Order. (SMF ¶¶ 45-46.) No vote was taken before the Town Council issued its Decision and Order. (*Id.* ¶ 47.) No vote to adopt the Decision and Order was taken at a duly constituted Town Meeting prior to the Town Council’s announcement of its Decision and Order. (*Id.* ¶ 48.)

As discussed in detail below, the Town Council has no authority under either the Town’s Charter or LUO to unilaterally amend the Disembarkation Ordinance. The Town Council is also prohibited from ordering Town employees to disregard their mandatory duties established by the express language of the Disembarkation Ordinance and the LUO. Accordingly, the Town Council’s Decision and Order was an unlawful, *ultra vires* attempt to amend the Disembarkation Ordinance and usurp the mandatory duties of Town employees.

STANDARD OF REVIEW

A party seeking to obtain declaratory judgment may move for summary judgment in the party’s favor. M.R. Civ. P. 56(a). Summary judgment is appropriate when “there is no genuine issue as to any material fact” and the moving party “is entitled to a judgment as a matter of law.” M.R. Civ. P. 56(c). When a party moves for summary judgment on its claims, the movant must establish that there is no dispute of material fact with respect to each element of its claim. *Arrow Fin. Servs., LLC v. Guiliani*, 2011 ME 135, ¶ 9, 32 A.3d 1055; M.R. Civ. P. 56(c).

Maine’s Declaratory Judgments Act, 14 M.R.S. §§ 5951-5963 (the “Act”), is remedial in nature and is liberally construed to provide a simple and effective means by which parties may secure a binding judicial determination of their legal rights, status, or relations where a justiciable

controversy has arisen. *Hodgdon v. Campbell*, 411 A.2d 667, 669 (Me. 1980). The Act expressly permits any person whose rights, status, or other legal relations are affected by a municipal ordinance to bring an action to obtain declaratory relief regarding their rights, status, or other legal relations. 14 M.R.S. § 5954. The Declaratory Judgment Act permits “anticipatory challenges to a regulation or ordinance to resolve a dispute regarding a planned action, before the matter actually proceeds and the challenged ordinance is applied to the detriment of the plaintiffs.” *Sold, Inc. v. Town of Gorham*, 2005 ME 24, ¶ 14, 868 A.2d 172. Governmental action may be challenged as *ultra vires* through a declaratory judgment claim when the action is beyond the jurisdiction or authority of the administrative body to act. *Id.* ¶ 12. Moreover, legislative acts by a municipal body—such as the enactment and amendment of land use ordinances—are reviewable in a declaratory judgment action. *Dahlem v. City of Saco*, 2024 ME 32, ¶ 18, 314 A.3d 280; *Rommel v. City of Portland*, 2014 ME 114, ¶ 10 n.1, 102 A.3d 1168; *F.S. Plummer Co. Inc. v. Town of Cape Elizabeth*, 612 A.2d 856, 858-59, 861 (Me. 1992).

ARGUMENT

The Town Council’s adoption and promulgation of its Decision and Order was not authorized by any provision contained in either the Town’s Charter or the Town of Bar Harbor Code, including the LUO. To the contrary, the Town Charter and Code expressly prohibit the Town Council from unilaterally amending the LUO and ordering public employees, as the Council did through its Decision and Order.

In interpreting ordinance provisions, courts examine “the plain meaning of the language of the ordinance” and construe ordinance provisions “reasonably in light of the purposes and objectives of the ordinance and its general structure.” *Stewart v. Town of Sedgwick*, 2002 ME 81, ¶ 6, 797 A.2d 27. If an ordinance is clear on its face, the reviewing court shall look no further than

the ordinance's plain meaning. *Rudolph v. Golick*, 2010 ME 106, ¶ 9, 8 A.3d 684. Similarly, courts construe the words of a municipal charter according to their plain and ordinary meaning and will only look beyond the words of the charter if application of their plain and ordinary meaning results in an illogical or nonsensical construction. *McGettigan v. Town of Freeport*, 2012 ME 28, ¶ 13, 39 A.3d 48. The plain and ordinary meaning of the LUO and Charter preclude the Council's unilateral amendment and ordering of Town employees.

I. The Town Council Has No Authority to Unilaterally Amend the Application Date of the Disembarkation Ordinance.

The Disembarkation Ordinance enacted by the Town's voters explicitly applies to all cruise ship reservations accepted by the Town after March 17, 2022. (SMF ¶¶ 27, 30; Disembarkation Ordinance § 125-77(H)(2), (5).) However, in its Decision and Order, the Town Council announced that it had decided and "directed" the Harbor Master that the Disembarkation Ordinance would not apply to any disembarkations from cruise ships that made reservations for the 2024 cruise ship season prior to the November 8, 2022 vote. (SMF ¶ 43.) By its Decision and Order, the Town Council amended the application date of the Disembarkation Ordinance from March 17, 2022, to after November 8, 2022. This amendment, accomplished by giving an illegal directive to the Harbor Master to ignore his mandatory duties, exempted an additional eight months' worth of cruise ship reservations from complying with the Disembarkation Ordinance's requirements.

The Town Council has no authority to unilaterally amend the application date of a LUO provision. Foremost, the Charter requires that all official municipal business transacted by the Town Council, except for procedural motions, be effectuated only by a majority vote of Town Council members present at a meeting. (SMF ¶¶ 5-6; Charter, § C-14(C)(1).)

Further, under the Charter, the Town Council may adopt amendments to the LUO only under limited circumstances plainly not applicable here. First, the LUO amendment must be

“procedural or minor” in nature, meaning the amendment “seeks to correct, modify, or reconcile inconsistencies, contradictions, and errors or to bring the land use ordinance into compliance with state statutes pertaining to municipal zoning.” (SMF ¶ 9; Charter, § C-10(A)(9)(d).) Second, the amendment to the LUO must (1) be recommended to the Planning Board by the Town’s Planning Director, and, (2) after review and after a public hearing, recommended to the Town Council pursuant to a supermajority vote by the Planning Board, i.e., a vote of 2/3 of the full membership of the Planning Board. (SMF ¶¶ 9-10; Charter, §§ C-10(A)(9)(d), C-14(C)(3)(a).) Finally, the amendment to the LUO must be adopted by a supermajority vote of the Town Council. (SMF ¶ 9; Charter, § C-10(A)(9)(d).)

For LUO amendments that are neither procedural nor minor changes, the LUO provides four methods for amendment of its provisions: (1) a citizen petition; (2) a request of a property owner made to the Planning Board, which shall be considered at a public hearing of the Planning Board; (3) a proposal by the Planning Board, which shall be considered at a public hearing of the Planning Board; or (4) a written request by the Town Council to the Planning Board, which shall be considered at a public hearing of the Planning Board. (SMF ¶ 11; Bar Harbor, Me., Municipal Code § 125-9(A).) Regardless of which method is employed, a LUO amendment may only “be adopted by a majority vote at a duly constituted Town Meeting.” (SMF ¶ 12; Bar Harbor, Me., Municipal Code § 125-9(E).) In other words, the citizens of the Town have the final say over any substantive amendment to the LUO.

Here, there is no genuine dispute of material fact that the Town Council’s amendment of the Disembarkation Ordinance is not a “procedural or minor” amendment. The Decision and Order materially changes the plain language and substance of the Disembarkation Ordinance by revising the application date from March 17, 2022 to November 8, 2022, through the Town Council’s order

to the Harbor Master not to apply the Disembarkation Ordinance to any cruise ships that made their reservation prior to November 8, 2022. (SMF ¶¶ 27, 30, 43; Disembarkation Ordinance § 125-77(H)(2), (5).) It does not correct, modify, or reconcile any inconsistency, contradiction, or error in the LUO, nor is the Decision and Order necessary to bring the Disembarkation Ordinance into compliance with any identified state statute. (See SMF ¶ 43.)

Moreover, there is no genuine dispute of material fact that no public hearings were held before either the Town’s Planning Board or the Town Council before the Town Council announced its Decision and Order amending the application date of the Disembarkation Ordinance. (SMF ¶¶ 45-46.) The Town Council did not take any vote prior to issuing its Decision and Order. (*Id.* ¶ 47.) Critically, no vote to adopt the Decision and Order was taken at a duly constituted Town Meeting prior to the Town Council’s announcement of its Decision and Order. (*Id.* ¶ 48.) Accordingly, the Town Council had no authority under the Charter or LUO to unilaterally amend the application date of the Disembarkation Ordinance from March 17, 2022 to November 8, 2022, and its Decision and Order purporting to do so without any public hearing or vote was an unlawful *ultra vires* act by the Town Council. As such, it is void.

The Town will likely attempt to minimize its unlawful amendment of the Disembarkation Ordinance by describing its Decision and Order as a mere “press release” or “policy statement.” However, such characterizations are contradicted the Town’s subsequent statements and actions giving the Decision and Order the force and effect of law. In June 2024, the Town Council enacted a new ordinance that the Town claimed were the “rules and regulations” necessary to enforce the Disembarkation Ordinance. (SMF ¶¶ 53-54.) Following the adoption of the new ordinance, Town officials doubled down on the Decision and Order, issuing another press release stating, “The Council’s passage of the Cruise Ship Disembarkation Ordinance on June 18, 2024, does not

supersede a previous press statement released on March 6, 2024. All cruise ship anchorage reservations confirmed on or before November 8, 2022, will allow for disembarkation for the 2024 season.” (*Id.* ¶ 55.) In other words, the Town continued to treat its Decision and Order as the law of the land—even giving it supremacy over other ordinances—despite the Town Council’s clear lack of authority under the Charter or LUO to amend the Disembarkation Ordinance by unilateral decree. Accordingly, the Court must declare the Decision and Order null and void.

II. The Town Council is Expressly Prohibited from Ordering Town Employees to Disregard Their Mandatory Duties to Enforce the Disembarkation Ordinance.

In its Decision and Order, the Town Council announced that it had (1) already “directed” the Harbor Master regarding its change to the Disembarkation Ordinance, and (2) instructed the Harbor Master to selectively enforce the Disembarkation Ordinance as limited by its fiat.¹ (SMF ¶ 43.) By its own words, the Town Council unequivocally commanded and ordered the Harbor Master to disregard his mandatory duties in violation of an express prohibition of the Charter.

The Town Charter expressly states: “Neither the Council nor its members have authority over Town employees, except through the Manager. Neither the Council nor its members shall give orders to any such employee, either publicly or privately.” (SMF ¶ 8, Charter, § C-11(C).) Accordingly, by ordering the Harbor Master to do *anything*, the Town Council violated the Charter. Its order to the Harbor Master was therefore unlawful.

Further, the Town Council’s Decision and Order specifically instructed Town employees to not perform their mandatory obligations. The duties of the Harbor Master and CEO to enforce the Disembarkation Ordinance are mandatory and may not be disregarded. Under the

¹ In its Decision and Order the Town Council also “directed” the Harbor Master to “cancel, or reject, requests for reservations made after the day of the vote for all ships with lower berth capacities greater than 1,000 passengers.” (SMF ¶ 43.) For the same reason discussed herein, *infra*, the Town Council was prohibited from publicly or privately giving the Harbor Master such an order. (*See* SMF ¶ 8, Charter, § C-11(C).)

Disembarkation Ordinance, the Harbor Master is directed to develop “a **mandatory** procedure for reporting violations to the Code Enforcement Officer.” (SMF ¶ 28; Disembarkation Ordinance § 125-77(H)(3) (emphasis added).) The Disembarkation Ordinance further provides that its provisions “**shall be enforced** by the Code Enforcement Officer in accordance with § 125-100 of [the LUO], 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.” (SMF ¶ 29; Disembarkation Ordinance § 125-77(H)(4) (emphasis added).) The Town Council’s Decision and Order illegally interferes with and usurps the Harbor Master’s mandatory duty to report violations of the Disembarkation Ordinance and the CEO’s mandatory duty to investigate and issue notices of violation.

The duties of the CEO to enforce the LUO are also mandatory and may not be disregarded. Section 125-100 of the LUO, referenced above, provides: “The Code Enforcement Officer **shall enforce** the provisions of [the LUO] and the terms and conditions of any permit or approval granted under [the LUO]” (SMF ¶ 31; Bar Harbor, Me., Municipal Code § 125-100(B) (emphasis supplied).) Section 125-100 of the LUO further states:

If, after investigation, the Code Enforcement Officer finds that any provision of [the LUO] or any term or condition of any permit or approval granted under [the LUO] is being violated, [the CEO] **shall give written notice by certified mail, return receipt requested, of such violation to the owner and to the occupant of such premises**, and to any other person responsible for such violation, indicating the nature the nature of the violation and order that action necessary to correct it.... A copy of such notice **shall be submitted to the Town Council** and shall be maintained as a permanent record.

(SMF ¶ 32; Bar Harbor, Me., Municipal Code § 125-100(B) (emphasis supplied).)

The duties of the Harbor Master under the LUO are similarly mandatory. Section 153-4(B)(1) of the Town of Bar Harbor Code expressly provides that it “shall” be the duty of the Harbor

Master to enforce “all rules, regulations, ordinances, and other laws which are lawfully promulgated and which are within his/her jurisdiction pursuant to law.” (SMF ¶ 36; Bar Harbor, Me., Municipal Code § 153-4(B)(1).) Under the Town of Bar Harbor Code and the LUO, the word “shall” is interpreted as “mandatory.” (SMF ¶¶ 37-38; Bar Harbor, Me., Municipal Code §§ 1-14(A)(7); 125-108(F).)

Accordingly, under the plain language of the Disembarkation Ordinance and the LUO, the duties of the Harbor Master and the CEO are mandatory. Landowners are required to obtain a written permit from the CEO to disembark cruise ship passengers into the Town of Bar Harbor at their property. The Harbor Master is required to develop mandatory procedures for reporting violations to the CEO and is required to report any violations of the Disembarkation Ordinance to the CEO. The CEO is required to secure compliance with the provisions of the Disembarkation Ordinance and issue notices to landowners of any violations. The Disembarkation Ordinance and the LUO do not give the Harbor Master or the CEO any discretion in the enforcement of the Disembarkation Ordinance. Thus, the Harbor Master and CEO are obligated to perform their mandatory duties under the Disembarkation Ordinance and the LUO. The Town Council, and its individual members, are expressly prohibited by the Charter from interfering with those mandatory obligations by “directing” the Harbor Master or the CEO, as it did in its Decision and Order. (SMF ¶ 8; Bar Harbor, Me., Charter § C-11(C).)

Therefore, the Town Council exceeded its lawful authority when it announced in its Decision and Order that it had “directed the Harbor Master” that the Disembarkation Ordinance would not be applied to any disembarkations from cruise ships that made reservations for the 2024 cruise ship season prior to the November 8, 2022 vote. The Decision and Order was categorically an *ultra vires* act by the Town Council. *See Sold, Inc.*, 2005 ME 24, ¶ 12, 868 A.2d 172.

The Town will likely attempt to revise the Town Council’s words by arguing that the Town Council did not actually do what the Decision and Order says it did. Essentially, the Town would like this Court to decide that the words of the Town Council are meaningless, and that when the Town Council makes an official public announcement like it did on March 6, 2024, its plain and unambiguous words can later be retracted or disregarded when the Town finds it advantageous to do so. Such a holding would create an absurd and illogical result and set a dangerous precedent—allowing municipal bodies and officials to avoid responsibility and consequences for their official words and actions by simply saying after the fact, “we didn’t actually mean what we said and did.”

The undisputed fact remains that the Town Council publicly announced in its Decision and Order that it had “directed the Harbor Master” to modify and selectively enforce the Disembarkation Ordinance. (SMF ¶ 43.) Whether or not it privately gave any similar direction to the Harbor Master or CEO is irrelevant. The Town Council plainly and unambiguously directed the Harbor Master—and the CEO—by and through its Decision and Order, and it has been treated by the Harbor Master and CEO as the law of the land. (SMF ¶ 51.) Like municipal ordinances and charters, the official statements of municipal bodies and officials should be given their plain and ordinary meaning. Accordingly, the Town Council’s Decision and Order unlawfully ordered the Harbor Master to disregard their mandatory duties to enforce the Disembarkation Ordinance in violation of the Charter, and this Court must declare the Decision and Order null and void.

III. Mr. Sidman is Not Challenging an Enforcement Action by the Town, and the Town’s Purported Prosecutorial Discretion is Not a Defense in this Action.

Mr. Sidman anticipates that the Town will raise the defense that Mr. Sidman is not entitled to declaratory relief because Maine law precludes judicial intrusion into municipal decision-making whether to undertake enforcement action. *See Salisbury v. Town of Bar Harbor*, 2002 ME 13, ¶ 11, 788 A.2d 598. However, contrary to the Town’s anticipated mischaracterization, Mr.

Sidman is not challenging the Town's prosecutorial discretion. Rather, Mr. Sidman is challenging the Town Council's unlawful amendment of the Disembarkation Ordinance and unlawful orders to Town employees not to enforce the law. The Town's prosecutorial discretion, to the limited extent it exists, is no defense to this action.

As discussed above, the Town has no discretion to bypass the mandatory functions of the Harbor Master, CEO, or the law. Under the plain language of the Disembarkation Ordinance and the LUO, the Harbor Master's and CEO's duties to enforce the Disembarkation Ordinance are mandatory. Landowners are required to obtain two written permits from the CEO to disembark cruise ship passengers. (SMF ¶ 24; Disembarkation Ordinance § 125-77(H).) The Harbor Master is required to report violations of the Disembarkation Ordinance to the CEO. (SMF ¶¶ 28-29; Disembarkation Ordinance § 125-77(H)(3)-(4).) The CEO is required to enforce the provisions of the Disembarkation Ordinance and inform landowners of any violations; landowners in violation of the Disembarkation Ordinance shall be subject to fines, penalties, actions and orders. (SMF ¶¶ 29, 32; Bar Harbor, Me., Municipal Code §§ 125-77(H)(4), -100(B).) It is these mandatory duties of the Harbor Master and CEO that are at issue in this action. As discussed above, the Town Council's Decision and Order unlawfully interferes with them.

The Town Council's discretionary authority in enforcement matters is extremely limited. The LUO provides that, if a violation of the LUO is not abated or corrected within the specified time after notice is given, the CEO shall report the violation to the Town Council. (SMF ¶ 33; Bar Harbor, Me., Municipal Code § 125-101(A)(1).) The Town Council or its authorized agent may enter into administrative consent agreements for the purpose of eliminating violations of the LUO and recovering fines without court action. (SMF ¶ 34; Bar Harbor, Me., Municipal Code § 125-

101(A)(2).) It is only at this stage in the process that the Town Council’s prosecutorial discretion over land use violations becomes relevant.

This matter does not reach that stage. Here, the Town Council’s purported prosecutorial discretion over enforcement actions only becomes relevant after (1) the Harbor Master and CEO perform their mandatory duties to enforce the Disembarkation Ordinance and (2) an unabated or uncorrected violation is reported to Town Council. (SMF ¶¶ 28-29, 32-33, 36-38; Bar Harbor, Me., Municipal Code §§ 1-14(A)(7), 125-77(H), 125-100(B), 125-101(A), 125-108(F), 153-4(B)(1).) Mr. Sidman is not seeking a declaratory judgment regarding the Town Council’s purported discretion whether to settle or prosecute an unabated or uncorrected LUO violation.² Rather, Mr. Sidman is seeking a declaratory judgment regarding the Town Council’s unlawful amendment to the Disembarkation Ordinance and its unlawful interference with the mandatory duties of the Harbor Master and CEO to investigate violations of and enforce the Disembarkation Ordinance. Accordingly, the Town Council’s prosecutorial discretion is not a defense to the Town Council’s actions.

IV. Mr. Sidman Has Standing to Challenge the Town Council’s Decision and Order.

Mr. Sidman also anticipates that the Town will argue in its opposition that he does not have standing to bring a declaratory judgment claim. Not so. Under Maine law, there is no set formula for determining whether a plaintiff has standing. *Roop v. City of Belfast*, 2007 ME 32, ¶ 7, 915

² However, Mr. Sidman notes that the Town Council’s authority to enter into administrative consent agreements to resolve unabated violations of the LUO does not apply to violations of the Disembarkation Ordinance. Section 125-101(A)(2) expressly prohibits the Council from entering into consent agreements to allow “illegal structure[s] or use[s] to continue in a shoreland district.” (SMF ¶ 34; Bar Harbor, Me., Municipal Code § 125-101(A)(2).) The “Shoreland District” is defined as “[t]he land area located... within 250 feet, horizontal distance, of the upland edge of a coastal wetland.” (SMF ¶ 35; Bar Harbor, Me., Municipal Code § 125-109.) Because any violation of the Disembarkation Ordinance necessarily occurs within the shoreland district, the Town Council is not permitted to enter into consent agreements to allow pier owners to continue to illegally violate the Disembarkation Ordinance.

A.2d 966. The type of interest or injury required to demonstrate standing varies based on the type of claims asserted. *Id.* Ordinarily, when challenging a governmental action, a plaintiff must allege a “particularized injury” resulting from the challenged action in order to demonstrate standing. *Buck v. Town of Yarmouth*, 402 A.2d 860, 861 (Me. 1979). The “particularized injury” requirement is typically satisfied by allegations that the “defendant’s actions have adversely and directly affected the plaintiff’s property, pecuniary or personal rights.” *Collins v. State*, 2000 ME 85, ¶ 6, 750 A.2d 1257 (citation omitted). Standing may be conferred on plaintiffs for non-economic injuries and for injuries that are widely shared with others. *See Fitzgerald v. Baxter State Park Auth.*, 385 A.2d 189, 196–97 (Me.1978) (holding that plaintiffs have standing to seek injunctive relief against Baxter State Park Authority because plaintiffs “have in the past been substantial users of Baxter State Park and intend to use it potentially in the future”). To satisfy the particularized injury standard in a declaratory judgment action, the plaintiff need only demonstrate a “substantial interest” in the subject matter of the action. *Annable v. Bd. of Env’tl Prot.*, 507 A.2d 592, 595 (Me. 1986); Horton & McGehee, *Maine Civil Remedies* §§ 3-1(c), 3-3(d)(1) at 33-34, 49.

Mr. Sidman has standing under the principles established in *Roop v. City of Belfast*, 2007 ME 32, 915 A.2d 966. In that case, an amendment to the City’s comprehensive plan and zoning ordinance was enacted to create a new zoning district. *Id.* ¶ 2. The plaintiffs owned property located outside the newly created zoning district, which they rented to a business. *Id.* ¶ 3. The land adjacent to the plaintiffs’ property was rezoned for larger retail structures as a result of the amendment. *Id.*

The plaintiffs in *Roop* filed an action for a declaratory judgment that the amendment was unlawfully enacted. *Roop*, 2007 ME 32, ¶ 5, 915 A.2d 966. The city asserted that the plaintiffs lacked standing to challenge the validity of the amendment. *Id.* The Law Court disagreed, stating,

“[i]n the context of disputes involving an abutting landowner, the standing threshold is minimal.” *Id.* ¶ 8. The Law Court held that abutters have standing “notwithstanding the fact that there may not have been a decrease in the value of their property.... [T]he threat of increased public use that may result from the placement of a business or commercial structure near the plaintiff’s property is a sufficiently particularized injury to confer standing.” *Id.* The Law Court has further expanded this holding, stating that “standing has been liberally granted to people who own property in the same neighborhood as the property that is subject to a permit or variance.” *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶ 18, 973 A.2d 735.

The Law Court further noted that the plaintiffs in *Roop* were not challenging any specific development approval under the new zoning; rather the plaintiffs were challenging the validity of the process employed by the city to amend its zoning ordinances and comprehensive plan. *Roop*, 2007 ME 32, ¶ 9, 915 A.2d 966. The injury alleged by the plaintiffs was a violation of the statutorily mandated process meant to ensure meaningful public participation in the amendment process. *Id.* The Court found that a denial of right to participate in the review process was an injury that was real and present, and not abstract or hypothetical. *Id.* ¶ 10 (citing *Fitzgerald*, 385 A.2d at 196–97). Accordingly, the Court held that, because the plaintiffs were abutting land owners effected by the zoning amendment, and they were denied the meaningful right to participate in the process, they had standing to seek a declaratory judgment as to the validity of the amendment process. *Id.* ¶¶ 10-11.

Here, like the plaintiffs in *Roop*, Mr. Sidman is a resident of Bar Harbor and owns two properties within the town, including a downtown commercial property located at 6 Mount Desert Street. (SMF ¶¶ 13-14.) Mr. Sidman and his wife have owned and operated the Argosy Gallery, a fine art gallery, at his downtown property for twenty-nine years. (*Id.* ¶ 15.) Argosy Gallery’s

location is in the same neighborhood, just a few blocks, from the pier located at 55 West Street in Bar Harbor where cruise ship passengers disembark into Bar Harbor. (*Id.* ¶ 16.) Like the Plaintiffs in *Roop*, Mr. Sidman and his business are adversely affected by the increased public use related to the large crowds of cruise ship passengers who disembark into Bar Harbor throughout the cruise ship season each year, including during the 2024 cruise ship season as allowed by the Council’s Decision and Order. (*Id.* ¶ 17.) The clientele of Mr. Sidman’s business complain and refuse to come to his gallery on days when cruise ships are disembarking passengers, because Bar Harbor is overrun with cruise ship passengers. (*Id.* ¶ 18.) Mr. Sidman and his wife previously operated Argosy Gallery out of two locations in Bar Harbor, 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 at the end of the 2022 season, he and his wife decided to close their second gallery location that was even closer to the cruise ship disembarkation area. (*Id.* ¶ 19.) As a result, Mr. Sidman led the Petitioning Committee that successfully passed the Disembarkation Ordinance in an effort to combat the negative effects of cruise ship passenger disembarkations. (*Id.* ¶ 20.)

It is an already litigated fact that the large crowds of cruise ship passengers who disembark onto land in Bar Harbor cause town-wide congestion and overcrowding leading to the inundation of local services, amenities, and attractions, and the Disembarkation Ordinance is intended to protect against these harms. *See APPLL*, 721 F. Supp. 3d at 72-74, 96-97 (discussing the Federal District Court’s factual finding and legal conclusions regarding the negative impact of cruise ship disembarkations on town-wide congestion and overcrowding in Bar Harbor). Indeed, the Federal District Court found that “the press of cruise ship passengers is sufficient to raise safety concerns” at the waterfront, and that “the impact of cruise ship visits” result in “the undesirability of a trip

downtown for many residents on ‘cruise ship days,’ which increasingly means most days of the cruise ship season,....”³ *Id.* at 73.

The Town Council’s March 6, 2024 Decision and Order further exacerbated the negative impacts of cruise ship disembarkations. As a result of the Town Council’s Decision and Order, an additional 34 ships with 72,729 passengers that should have been subject to the Disembarkation Ordinance in 2024 were exempted from the Ordinance’s requirements. (SMF ¶ 49.) In total, 93 cruise ships with 101,278 passengers, that should have been subject to the Disembarkation Ordinance into Bar Harbor during 2024 cruise ship season, were permitted to come ashore during the 2024 cruise ship season. (*Id.* ¶ 50.) Of those 93 cruise ships, with 101,278 passengers, the CEO has only issued a single notice of violation against a pier owner for only a single instance of disembarking cruise passengers without a proper permit. (*Id.* ¶ 52.) Thus, the vast majority of cruise ships visiting Bar Harbor in 2024 were permitted to disembark passengers with no regard whatsoever to the permitting requirements, fines, and restrictions placed on landowners by the Disembarkation Ordinance.

Furthermore, like the plaintiffs in *Roop*, Mr. Sidman is not challenging any permitting or enforcement decision pursuant to the Disembarkation Ordinance; he is challenging the validity of the process by which the Town Council enacted its Decision and Order. As discussed above, the Town Council has no authority under either the Town’s Charter or LUO to unilaterally amend the Disembarkation Ordinance or order Town employees to disregard their mandatory duties. Moreover, contrary to the Charter and the LUO, no public hearings of any kind were held before the Town Council announced its Decision and Order amending the Disembarkation Ordinance.

³ The issue preclusion branch of the doctrine of res judicata precludes the Town from arguing in this matter that excessive cruise passenger disembarkations have no negative impact on town-wide congestion and overcrowding. See *Pacheco v. Libby O'Brien Kingsley & Champion, LLC*, 2022 ME 63, ¶¶ 7-9, 288 A.3d 398 (discussing issue preclusion).

(SMF ¶¶ 45-46.) The Town Council did not take any vote prior to issuing its Decision and Order. (*Id.* ¶ 47.) No vote to adopt the Decision and Order was taken at a duly constituted Town Meeting prior to the Town Council’s Decision and Order. (*Id.* ¶ 48.) Like in *Roop*, the denial of the Mr. Sidman’s right to meaningful public participation in the LUO amendment process is a real and particularized injury.

Lastly, in the federal action, the Court held over the objection of the Town that Mr. Sidman had standing under both Article III and Maine law. *Ass’n to Pres. & Protect Local Livelihoods v. Town of Bar Harbor*, No. 1:22-cv-00416-LEW, 2023 WL 2273949, at *3 n.3 (D. Me. Feb. 28, 2023). The District Court found that Mr. Sidman possessed “more than an undifferentiated, generalized interest” in the Disembarkation Ordinance and that Mr. Sidman had standing based on “his regular actual use of the downtown area, his ownership of a business in the vicinity of the use, and the fact that he is among the persons whom the ordinance is designed to protect.” *Id.* The District Court’s reasoning remains true here.

Therefore, as a regular user of the downtown area of Bar Harbor and owner of a local business located in close proximity to the piers where cruise ship passengers disembark into Bar Harbor, Mr. Sidman’s business and personal use of his property and public property is adversely affected by the Town Council’s *ultra vires* Decision and Order. As the leader of the Petitioning Committee that advocated for the passage of the Disembarkation Ordinance, and someone personally impacted by the Town Council’s unlawful Decision and Order, Mr. Sidman has a substantial interest in ensuring the Town Council does not obstruct the enforcement of the Disembarkation Ordinance. Accordingly, Mr. Sidman has a sufficient particularized injury and a substantial interest in the Disembarkation Ordinance to establish his standing under Maine law to bring this declaratory judgment action.

CONCLUSION

Based on the foregoing, Plaintiff Charles Sidman respectfully requests that the Court enter summary judgment in his favor on his claim for declaratory judgment and enter judgment against Defendant Town of Bar Harbor, declaring:

(a) the Town Council acted unlawfully in issuing its March 6, 2024 Decision and Order without a vote of the Town Council;

(b) the Town Council lacked authority to unilaterally amend the application date of the Disembarkation Ordinance through its March 6, 2024 Decision and Order;

(c) the Town Council lacked authority to order or direct the actions of the Town's Harbor Master, or any other employees, regarding the application date or the enforcement of the Disembarkation Ordinance by its March 6, 2024 Decision and Order;

(d) the Town Council lacked authority to order or direct the Harbor Master, or any other employees, to disregard their mandatory duties under the Disembarkation Ordinance and the Town's Land Use Ordinance by its March 6, 2024 Decision and Order; and

(e) The Town Council's March 6, 2024 Decision and Order, unilaterally amending the Disembarkation Ordinance and directing the Harbor Master, or any other employees, to disregard their mandatory enforcement duties, is null and void.

Dated: November 15, 2024

/s/ Jason J. Theobald
Jason J. Theobald (Bar No. 5605)
David P. Silk (Bar No. 3136)
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NOTICE

PURSUANT TO RULE 7 OF THE MAINE RULES CIVIL PROCEDURE, ANY PARTY OPPOSING THIS MOTION SHALL FILE A RESPONSE TO THE MOTION NOT LATER THAN 21 DAYS AFTER THE FILING OF THE MOTION, UNLESS ANOTHER TIME IS PROVIDED BY THE RULES OR SET BY THE COURT. FAILURE TO FILE A TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THE MOTION, WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.

IN ADDITION, ANY OPPOSITION TO THIS MOTION MUST COMPLY WITH THE REQUIREMENTS OF RULE 56(h) OF THE MAINE RULES CIVIL PROCEDURE, INCLUDING SPECIFIC RESPONSES TO EACH NUMBERED STATEMENT IN THE MOVING PARTIES' STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT, WITH CITATIONS TO POINTS IN THE RECORD OR IN AFFIDAVITS FILED TO SUPPORT THE OPPOSITION. FAILURE TO COMPLY WITH RULE 56(h) IN OPPOSING THE JOINT MOTION FOR SUMMARY JUDGMENT MAY RESULT IN ENTRY OF JUDGMENT WITHOUT HEARING.



STATE OF MAINE
CUMBERLAND, ss.

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

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

ORDER

UPON CONSIDERATION of the Motion for Summary Judgment filed by Plaintiff Charles Sidman, with/without objection and with/without hearing, the Court finds that there are no genuine issues of material fact and that, based upon the undisputed material facts, Plaintiff is entitled summary judgment on Count II of Plaintiff’s Amended Complaint seeking declaratory judgment.

The Court finds as follows:

1. Plaintiff Charles Sidman is a resident of the Town of Bar Harbor who regularly uses the downtown area of Bar Harbor for personal and business purposes, and who is the co-owner of a local business located in close proximity to the piers where cruise ship passengers disembark into Bar Harbor.

2. Mr. Sidman was the leader of a Petitioning Committee that successfully advanced a citizens’ petition to amend the Land Use Ordinance of the Town of Bar Harbor to limit the number of passengers disembarking from cruise ships into the Town.

3. The petition took effect on December 8, 2022, and is incorporated into the LUO, codified as Bar Harbor, Me., Municipal Code § 125-77(H) (Nov. 8, 2022) (the “Disembarkation Ordinance”).

4. The Disembarkation Ordinance regulates the disembarkation of cruise ship passengers on, over, or across any property located within the Town of Bar Harbor.

5. On March 6, 2024, the Town Council of the Town of Bar Harbor held a Special Meeting, at which chairperson Valerie Peacock read a prepared statement of the Town Council concerning the Disembarkation Ordinance.

6. In its prepared statement, the Town Council announced that it had unilaterally decided to amend the application date of the Disembarkation Ordinance and that it had directly instructed the Harbor Master not to apply the Disembarkation Ordinance to any disembarkations from cruise ships that had made reservations for the 2024 cruise ship season prior to the November 8, 2022 vote (the “Decision and Order”).

7. No public hearings of any kind were held before the Town Council issued its Decision and Order.

8. No vote was taken before the Town Council issued its Decision and Order.

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

10. Mr. Sidman’s business and personal use of his property and nearby public property is adversely affected by the Town Council’s March 6, 2024 Decision and Order.

IT IS SO ORDERED that Plaintiff’s motion for summary judgment is granted in favor of Plaintiff and against Defendant Town of Bar Harbor, and declares as follows:

1. The Town Council acted unlawfully in issuing its March 6, 2024 Decision and Order without a vote of the Town Council.

2. The Town Council lacked authority to unilaterally amend the application date of the Disembarkation Ordinance through its March 6, 2024 Decision and Order.

3. The Town Council lacked authority to order or direct the actions of the Town of Bar Harbor's Harbor Master, or any other Town employees, regarding the application date or the enforcement of the Disembarkation Ordinance by its March 6, 2024 Decision and Order.

4. The Town Council lacked authority to order or direct the Harbor Master, or any other Town employees, to disregard their mandatory duties under the Town of Bar Harbor's Disembarkation Ordinance and Land Use Ordinance by its March 6, 2024 Decision and Order.

5. The Town Council's March 6, 2024 Decision and Order, unilaterally amending the Disembarkation Ordinance and directing the Town's Harbor Master, or any other employees, to disregard their mandatory enforcement duties, is null and void.

The clerk is further directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: _____

Justice, Business and Consumer Court



STATE OF MAINE
CUMBERLAND, ss.

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

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

JOINT STIPULATED EXHIBITS

Plaintiff Charles Sidman (“Sidman”) and Defendant Town of Bar Harbor (“Town”), by and through undersigned counsel, stipulate that the documents marked as Joint Exhibits 1 through 6 attached hereto (1) are true and correct copies of official Town records and documents and for purposes of this summary judgment record require no certificate nor seal complying with Rule 902(1) or (2) of the Maine Rules of Evidence or other extrinsic evidence of authenticity in order to be admitted as part of the parties’ summary judgment record; and (2) said exhibits of official Town records and documents are to be used solely for the purpose of summary judgment. In the event this matter may proceed beyond summary judgment, the parties reserve all rights to object to any or all Town records and documents stipulated as exhibits and attached hereto in this summary judgment record, with the intent that nothing in this stipulation is intended to be binding or an admission of any kind other than for the purpose of summary judgment. M.R. Civ. P. 56(d).

- 1. JOINT Exhibit 1: Excerpts of The Charter of the Town of Bar Harbor as follows:

Article I, Grants of Power to the Town
Powers, § C-2.....001
Construction, § C-3.....001

Article II, Town Meetings
Powers and responsibilities, § C-6.....001

Article III, The Town Council,
Composition, eligibility, election and terms, § C-7002
General powers and duties, § C-10002
Prohibitions, § C-11004
Procedure, § C-14004

Article IV, The Town Manager
Powers and duties of the Town Manager, § C-21005

2. JOINT Exhibit 2: Excerpts of the Town of Bar Harbor Code, as follows:

Chapter 1, General Provisions,
Article II, Use and Construction,
Rules of construction, § 1-14(A)001

Chapter 52, Cruise Ship Disembarkation
Purpose, § 52-1002
Authority, § 52-2.....002
Validity and Severability, § 52-3002
Administration, § 52-4002
Definitions, § 52-5002
Requirements to Operate or Disembark at a CSDF, § 52-6...003
Disembarkation Procedures, § 52-7003
Enforcement, § 52-8.....004

Chapter 125, Land Use (“Land Use Ordinance”)
Article I, General Provision,
Amendment, § 125-9005
Article VII, Permits,
Permit required for certain activities, § 125-77008
Article X, Enforcement,
Code Enforcement Officer, § 125-100.....009
Proceedings; violations and penalties, § 125-101009
Article XII, Construction and Definitions,
Construction of language, § 125-108.....012
Definitions, § 125-109013

Chapter 153, Port and Harbor
Article I, Channel Boundaries and Anchorage Areas; Definitions,
Authority; establishment of boundaries, § 153-1052
Definitions, § 153-2052

	Article II, Harbor Master,	
	Statutory authority, § 153-3	053
	Harbor Master, § 153-4.....	053
	Authority of Harbor Master, § 153-11	053
	Fees, § 153-22.....	053
	Appeals, § 153-29	053
3.	JOINT Exhibit 3: Special Bar Harbor Town Council Meeting Minutes (Mar. 6, 2024).	
4.	JOINT Exhibit 4: Statement of Bar Harbor Town Council (Mar. 6, 2024)	
5.	JOINT Exhibit 5: Notice of Violation to Golden Anchor LLC (August 5, 2024)	
	Notice of Violation	
	Violation Report	
	Cruise Ship Disembarkation Facility Permit Application	
	Cruise Ship Disembarkation Permit Application	
6.	JOINT Exhibit 6: Town of Bar Harbor Press Release (July 1, 2024)	

Dated: November 15, 2024

/s/ Jason J. Theobald
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Dated: November 15, 2024

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§ C-2. Powers.

The Town shall have all the powers possible for a municipality to have under the Constitution and laws of the State of Maine.

§ C-3. Construction.

The powers of the Town under this Charter shall be construed liberally in favor of the Town and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this article.

§ C-6. Powers and responsibilities.

- A. The Annual Town Meeting shall have the exclusive power and responsibility to:
 - (1) Elect all necessary Town officers and committees;
- B. The Annual and Special Town Meetings shall have the exclusive power and responsibility to:
 - (1) Act on the issuance of bonds and notes, except notes in anticipation of taxes to be paid within the fiscal year in which issued;
 - (2) Raise by taxation and appropriate monies so raised.
 - (3) Act on those ordinances placed on the warrant and on any initiative or referendum questions as provided for by this Charter; [**Amended 11-3-2020**]
 - (4) Act on the sale of Town-owned real estate other than that acquired through matured tax mortgage liens;
 - (5) Act on any amendments to this Charter pursuant to law;
 - (6) Approve Town budgets, except proprietary budgets for revenue producing facilities as defined by M.R.S.A. Title 30-A, Chapter 213, the Revenue Producing Municipal Facilities Act;
 - (7) Transact other Town business presented to it by warrant articles or required by law.
- C. Town Meeting shall act only on matters presented to it as warrant articles or as required by law.
- D. Any Town Meeting amendment made to the budget published in the Warrant or Town Report, shall be voted only by written or electronic ballot. [**Amended 11-3-2020**]

§ C-7. Composition, eligibility, election and terms.

- A. Composition. There shall be a Town Council of seven members elected by the qualified voters of the Town in accordance with Article VIII.
- B. Eligibility. Only persons who are qualified to vote in elections in the Town of Bar Harbor and have been registered to vote for one year prior to their election to office shall be eligible

to hold the office of Councilor.

- C. Elections and terms. Each member shall be elected for a term of three years; with the seats to be staggered such that no more than three Councilors are elected to fill expired terms in any one year.

§ C-10. General powers and duties.

- A. The Council shall have the power to:

- (1) Appoint:

- (a) The Town Manager for a term not to exceed three years;
- (b) The Town Attorney and an Auditor who shall serve at the will of the Council;
- (c) The members of the Planning Board, Board of Appeals, and such other boards and committees for such terms of office with such powers and duties as are provided for by this Charter, Town ordinances and state statutes.

- (2) Remove for cause during the term of office after hearing any person appointed pursuant to the provisions of this Charter except those persons who serve at the will of the Council.

- (3) By ordinance create, change and abolish offices, departments and agencies, other than offices, departments and agencies established by this Charter. The Council by resolution may assign additional functions or duties to officers, departments or agencies established by this Charter but may not discontinue or assign to any other office, department or agency any function or duty assigned by this Charter to a particular office, department or agency. The Council may, however, vest in the Town Manager all or part of the duties of any office under this Charter, with the exception of that of the Town Clerk, Town Assessor or Town Attorney.

- (4) Convey or authorize the conveyance of real estate acquired by mature tax mortgage liens and the lease or authorization for lease of Town-owned property for a term of not longer than 15 years including any renewal options.

- (5) Adopt an annual budget which shall be presented to the Warrant Committee as provided by this Charter, and cause the detailed budget to be printed in the Town Report; provided, however, that the recommendations and comments of the Warrant Committee shall be printed and made available as required by provisions in § C-36 for distribution prior to Town Meeting. At a minimum the detailed budget shall include:

- (a) A budget message from the Town Manager explaining in narrative fashion the revenues, expenditures and fund balances;
- (b) Calculation of the estimated tax rate;
- (c) Budget summary by cost center;
- (d) A narrative description of the Capital Improvement Program; and

- (e) A spreadsheet showing five years of appropriations for the Capital Improvement Program.
- (6) Borrow funds and provide for the execution of notes thereof in anticipation of taxes, said notes to be repaid within the fiscal year in which issued.
- (7) Provide for an annual audit.
- (8) Dispose of, by sale or otherwise, surplus Town personal property.
- (9) Make, adopt, amend and repeal ordinances for any purpose permitted by statute with the exception of those pertaining to zoning except as provided below. In addition to such ordinances, the Council shall have the power to adopt ordinances which: **[Amended 11-3-2020]**
 - (a) Adopt or amend an administrative code.
 - (b) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed.
 - (c) (Reserved)
 - (d) Adopt land use ordinance amendments by supermajority vote as defined in §C-14C(3) when:
 - [1] The land use ordinance change is procedural or minor in that it seeks to correct, modify, or reconcile inconsistencies, contradictions, and errors or to bring the land use ordinance into compliance with state statutes pertaining to municipal zoning; and
 - [2] The land use ordinance change is first recommended to the Planning Board by the Planning Director and upon review and after a public hearing, the Planning Board recommends it to the Town Council by a supermajority vote [as defined in §C-14C(3)].
 - (e) Provide for the compulsory attendance of witnesses, the administering of oaths and the compulsory production of evidence in connection with investigations into the affairs of the Town and the conduct of any Town department (including the School Department), office or agency or in connection with any hearing provided for by this Charter involving the forfeiture of office of any Councilor, Superintending School Committee member or Warrant Committee member, or the dismissal of any Town employee or member of any Town board.
 - (f) Adopt or amend a Code of Ethics, governing all elected and appointed Town officials, including without exception the members of the Town Council, Superintending School Committee and Warrant Committee and their appointees. Any Code of Ethics adopted under this section shall be based on the following principles: that elected officials and their appointees be fair, impartial and responsive to the needs of the people and each other in the performance of their respective functions and duties; that decisions and policy be made in proper channels of the Town's governmental structure; that public office not be used for

personal gain; and that members of the Town Council, Superintending School Committee, Warrant Committee and their appointees maintain a standard of conduct that will inspire public confidence in the integrity of the Town's government. Any Code of Ethics adopted under this section shall take precedence over §§ C-53 and C-54 of the Charter, in the event that an interpretational conflict arises in regard to these sections.

- (10) Apply for grants and accept such grants, provided that no monetary or other obligation not authorized by Town Meeting is entailed or required.
 - (11) Approve proprietary budgets for revenue producing facilities as defined by M.R.S.A. Title 30-A, Chapter 213, the Revenue Producing Municipal Facilities Act.
 - (12) Exercise all other powers of the Town of Bar Harbor not otherwise specifically reserved to the Town Meeting.
- B. Notwithstanding the foregoing, nothing contained herein shall diminish the right of the citizens of the Town of Bar Harbor at a Town Meeting to approve or disapprove acts of the Town Council, whether such acts be by ordinance or otherwise.

§ C-11. Prohibitions.

- A. Holding other office. Except where clearly authorized by law, or pursuant to an agreement under the Interlocal Cooperation Agreement Act, no Councilor shall hold any other Town office or Town employment or serve as an independent contractor for the Town while serving as a member of the Council. When interpreting this section "Independent contractor" shall have the same definition as contained in 39-A M.R.S.A. § 102.
- B. Appointments and removals. Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any Town administrative officers or employees whom the Town Manager or any of the Manager's subordinates is empowered to appoint, but the Council may express its views and fully and freely discuss with the Manager anything pertaining to appointment or removal of such officers or employees.
- C. Interference with administration. Neither the Council nor its members have authority over Town employees, except through the Manager. Neither the Council nor its members shall give orders to any such employee, either publicly or privately.

§ C-14. Procedure.

- A. Meetings. The Town Council shall convene within two days following the annual election for purposes of organizing as provided by statute and this Charter.
- B. Rules and journal. The Council shall annually determine its own rules and order of business and shall provide for keeping a record of its proceedings, which shall be kept for public record.
- C. Voting.
 - (1) Voting, except on procedural motions, shall be by roll call, and the ayes and nays and

abstentions shall be identified and recorded in the journal. A majority of the Council shall constitute a quorum for purposes of conducting an official meeting and transacting municipal business, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council. Except as otherwise provided in this Charter, the required majority to effectuate the passage, adoption or enactment of an item shall be a simple majority of a quorum.

- (2) Each Councilor in attendance shall vote on all issues and questions presented for vote except when a valid conflict of interest is stated and recognized by a majority vote of the Council. If any Councilor does abstain from a vote other than because of a recognized conflict of interest, he/she shall be considered to have cast a vote with the majority and the record shall so show. **[Amended 11-3-2020]**
- (3) Qualifying land use ordinance amendments as described in § C-10A(9)(d) must be recommended to the Town Council by a supermajority of the full membership of the Planning Board and must be approved by a supermajority of the full membership of the Town Council. **[Added 11-3-2020]**
 - (a) For the purpose of this Charter, "supermajority" shall be defined as 2/3 of the full membership of the body rounded up to the nearest whole number. (e.g., four in a five-member body and five in a seven-member body). In the case of a body of three members or less a supermajority shall be defined as a unanimous vote.

§ C-21. Powers and duties of the Town Manager.

The Town Manager shall:

- A. Be the chief executive and administrative official of the municipality;
- B. Be responsible to the Council for the administration of all departments and offices over which the Council has control;
- C. Execute all laws and ordinances of the municipality;
- D. Serve in any office as the head of any department within the authority of the Council when so directed;
- E. Supervise, control and, subject to confirmation by the Council, appoint and remove the heads of departments within the authority of the Council;
- F. Appoint, supervise, control and remove all other employees, subordinates and assistants, except that the Town Manager may delegate this authority to a head of a department, and report all appointments and removals to the Council;
- G. Act as purchasing agent for all departments within the authority of the Council, provided that the Town Council may require that all purchases greater than a designated amount shall be by sealed bid;
- H. (Reserved)

- I. Attend such meetings and hearings as the Council may require;
- J. (Reserved) [**Amended 11-3-2020¹**]
- K. Keep the Council and the residents of the municipality informed as to the financial condition of the Town;
- L. Collect data necessary for and prepare the annual municipal budget and capital improvement budget;
- M. Assist, insofar as possible, residents and taxpayers in discovering their lawful remedies in cases involving complaints of unfair vendor, administrative and governmental practices.
- N. Perform related work as requested by the Town Council or as may otherwise be required.

1. **Editor's Note: This article repealed former Subsection J, which provided that the Town Manager would make recommendations to the Council for the more efficient operation of the municipality.**



§ 1-14. Rules of construction; general definitions.

A. In the construction of this Code, and of all ordinances and resolutions of the Town, the following rules shall be observed, unless otherwise specifically provided or unless such construction would be inconsistent with the manifest intent of the Town Council:

- (1) Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and others that have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such meaning.
- (2) Definitions given within a chapter or article apply only to words or phrases used in such chapter or article unless otherwise provided.
- (3) Gender. A word importing the masculine gender shall extend and be applied to females and to firms, partnerships and corporations as well as to males.
- (4) Tense. Words used in the past or present tense include the future, past and present where applicable unless the context clearly indicates otherwise.
- (5) Time means an hour of the day according to the official time of the Town.
- (6) And; or. "And" may be read "or," and "or" may be read "and," if the sense requires it.
- (7) May; shall. The word "may" is permissive, and the word "shall" is mandatory.

B. As used in this Code, the following terms shall have the meanings indicated:

CODE or THIS CODE — The Town of Bar Harbor Code.

COUNCIL — The Bar Harbor Town Council.

COUNTY — Hancock County, Maine.

MONTH — A calendar month.

M.R.S.A — Maine Revised Statutes Annotated.

MUNICIPAL OFFICERS — The municipal officers of the Town of Bar Harbor, Maine.

OATH — Shall be construed to include an affirmation in all cases in which by law an affirmation may be substituted for an oath.

OWNER — Applied to any property, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or a part of such property.

PERSON — Shall extend and be applied to associations, firms, partnerships and bodies politic and corporate as well as to individuals. Whenever the word "person" is used in any section of this Code prescribing a penalty or fine as applied to partnerships or associations, the word shall include the partners or members thereof, and such word as applied to corporations shall include the officers, agents or employees thereof who are responsible for any violation of said section.

PRECEDING; FOLLOWING — Next before and next after, respectively.

§ 52-1. 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 § 125-77H 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.

§ 52-2. 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.

§ 52-3. 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.

§ 52-4. Administration.

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

§ 52-5. 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 § 153-22B 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 § 125-77H, "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.

§ 52-6. 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 § 52-6C(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.

§ 52-7. 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 § 125-77H 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.

§ 52-8. 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.

§ 125-9. Amendment. [Amended 11-5-1991; 5-4-1992; 5-4-1998; 11-2-2010; 11-8-2011]

There shall be four methods for proposing amendments to Bar Harbor's Land Use Ordinance, as follows:

A. Amendments.

- (1) Citizen petition. Upon the written petition of a number of registered voters equal to at least 10% of the number of votes cast in the Town at the last gubernatorial election, but in no case fewer than 10 registered voters, the Town Council shall automatically insert in the warrant for a regular or special Town Meeting an article to amend this chapter.
- (2) Property owner. A property owner may submit a written request to the Planning Board to consider an amendment and the Planning Board shall consider this request at a public hearing. Notice of the public hearing shall be provided as set forth in § 125-9C below.
 - (a) The Planning Board, may, upon a written request from a property owner, submit a written request to the Town Council to insert in the warrant for a regular Town Meeting an article to amend this chapter.
 - (b) Such request shall contain at a minimum the following materials:
 - [1] An application form from the Planning Department;
 - [2] A map showing the existing neighborhood districts for the subject property and for properties within 600 feet;
 - [3] A map showing the existing land uses at the time of application for the above-mentioned subject property and area;
 - [4] A narrative and evidence of how the requested change meets the policies and strategies in the most recently adopted Comprehensive Plan (including the Land Use Plan);
 - [5] Other information necessary to illustrate the need for a change in the district or other standards in this chapter.
 - (c) Within 30 days of submission of the written request, together with fees and materials, the Planning Board shall meet to determine if the application is complete for their review. A public hearing will be held within 45 days of the Planning Board finding the application complete.
 - (d) Notification to abutters within 600 feet of the subject property and a notice to a newspaper of general circulation in the Town of Bar Harbor shall occur at least 10 days prior to the hearing.
 - (e) At the public hearing, the Planning Board shall hear the request, accept public comment on the request and deliberate to determine which of the following courses of action they will perform:
 - [1] Recommend to the Town Council the written request as submitted as per § 125-9A.

- [2] Recommend with amendments or conditions that would bring the proposal into conformance with the most recently adopted Comprehensive Plan.
- [3] Take no action.
- (f) If the Planning Board takes no action on the written request, the subject property owner may seek other alternatives outlined in § 125-9A. Planning Board action under § 125-9 is not the subject of appeal under § 125-103.
- (g) The Planning Board shall submit its decision to the Town Council within 30 days of the close of the public hearing.
- (3) Planning Board. The Planning Board may propose an amendment and the Planning Board shall consider this amendment at a public hearing. Notice of the public hearing shall be provided as set forth in § 125-9C below.
- (4) Town Council. The Town Council may submit a written request to the Planning Board to consider an amendment, and the Planning Board shall consider this request at a public hearing. Notice of the public hearing shall be provided as set forth in § 125-9C below.
- B. Final public hearing. Following the conclusion of the Planning Board's public hearings, the Town Council shall hold a public hearing to accept or reject final amendments for the warrant. Notice of the public hearing shall be provided as set forth in § 125-9C below.
- C. Notice requirements.
 - (1) Notice of the hearing shall be posted in the municipal office at least 13 days prior to such hearing.
 - (2) Notice of the hearing shall be published at least two times in a newspaper that complies with 1 M.R.S.A. § 601 and that has a general circulation in the municipality. The date of the first publication must be at least 12 days before the hearing, and the date of the second publication must be at least seven days before the hearing.
 - (3) In addition to the notice required by the preceding two subsections, when an amendment is proposed to the existing Land Use Ordinance or the Neighborhood Districts Map of Bar Harbor that, within a geographically specific portion of the Town, will have the effect of either prohibiting all industrial, commercial or retail uses where any of such uses is permitted, or permitting such uses where any of such uses is prohibited, the following is required:
 - (a) The notice must contain a copy of the map indicating the portion of the Town affected by the proposed amendment.
 - (b) For each parcel within the Town that is in or abutting the portion of the Town affected by the proposed amendment, the notice must be mailed by first-class mail at least 13 days prior to the public hearing to the last-known address of the person to whom property tax on each parcel is assessed. The municipal officers shall prepare and file with the Town Clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate shall

constitute prima facie evidence that notice was sent to those persons named in the certificate. Notice is not required under this subsection for any type of zoning ordinance adopted under the laws governing growth management contained in Chapter 187, Subchapter II of 30-A M.R.S.A., as amended, or the laws governing shoreland zoning contained in Title 38, Chapter 3, Subchapter I, Article 2-B, as amended.¹

- D. Following a hearing conducted pursuant to the preceding subsection, the Planning Board shall, by majority vote, make a recommendation as to whether the proposed amendment ought to be adopted or ought not to be adopted. Such recommendation shall be printed on the warrant.
- E. Such amendment may be adopted by a majority vote at a duly constituted Town Meeting. **[Amended 11-8-2022]**
- F. Copies of amendments to this chapter related to shoreland regulation, attested and signed by the Town Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the Town Meeting and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within 45 days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the Town within the forty-five-day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

§ 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;

1. Editor's Note: See 30-A M.R.S.A. § 4312 et seq. and 38 M.R.S.A. § 435 et seq., respectively.

- (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.

§ 125-100. Code Enforcement Officer. [Amended 11-5-1991]

- A. Authority. The Code Enforcement Officer shall be appointed or reappointed annually by July 1 and, if certified in accordance with 30-A M.R.S.A. § 4451, shall have all of the powers and authorities described in 30-A M.R.S.A. § 4452, as the same may be amended. **[Amended 11-2-2004]**
- B. Enforcement and notice of violation. The Code Enforcement Officer shall enforce the provisions of this chapter and the terms and conditions of any permit or approval granted under this chapter, including approvals from the Planning Board, the Design Review Board, the Board of Appeals, the Planning Department and the Code Enforcement Officer. If, after investigation, the Code Enforcement Officer finds that any provision of this chapter or any term or condition of any permit or approval granted under this chapter is being violated, he/she shall give written notice by certified mail, return receipt requested, of such violation to the owner and to the occupant of such premises, and to any other person responsible for such violation, indicating the nature of the violation and ordering that action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions, be taken within some designated reasonable time. A copy of such notice shall be submitted to the Town Council and shall be maintained as a permanent record. **[Amended 11-2-2004]**
- C. Inspection and investigation. The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and all terms and conditions attached to permits and approvals under this chapter (including subdivision approvals). The Code Enforcement Officer shall also investigate all complaints of alleged violations of this chapter. **[Amended 11-2-2004]**
- D. Records. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied by the Board of Appeals, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On an annual basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

§ 125-101. Proceedings; violations and penalties.

- A. Actions and consent agreements. **[Amended 11-5-1991]**
 - (1) If, after notice given pursuant to § 125-100B, the violation or nuisance condition is not

abated or corrected within the specified time, the Code Enforcement Officer shall report same to the Town Council. The Code Enforcement Officer's report shall indicate the additional enforcement actions that he/she intends to take and whether the Town Attorney has been consulted or will subsequently be involved. At its next meeting, the Town Council shall vote to accept the Code Enforcement Officer's report. The Town Council shall not entertain comment from the person alleged to have violated this chapter nor shall it take any evidence relating to whether a violation has in fact occurred. **[Amended 5-4-1998]**

- (2) The Town Council or its authorized agent is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this chapter and recovering fines without court action. Such agreements shall not allow an illegal structure or use to continue in a shoreland district unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

B. Fines and penalties.

- (1) Any person who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by this chapter or who violates any term or condition of an approval from the Planning Board, Design Review Board, Board of Appeals, Planning Department or Code Enforcement Officer or who continues to violate any other provision of this chapter after receiving notice of such violation shall be subject to such fines, penalties, actions and orders as are authorized by 30-A M.R.S.A. § 4452, as same may be amended. A fine or penalty may be imposed for each violation. Each day of violation after notification shall constitute a separate offense with respect to each violation. **[Amended 11-5-1991; 11-2-2004]**
- (2) Any contractor involved in any activity regulated by the provisions of this chapter may be held liable for fines for violating this chapter if the necessary permits for said activity have not been obtained. **[Amended 11-5-1991]**
- (3) Any person, including, but limited to, a landowner, the landowner's agent, tenant, contractor or seller at a farmers' market, who violates any provision of this chapter shall be liable for the penalties set forth herein. **[Added 3-24-1998]**

C. Suspension or revocation of approvals or permits.

- (1) The Code Enforcement Officer may suspend an approval or permit if:
 - (a) It was granted on incomplete or false information;
 - (b) Continuation of the land use activity authorized would result in the violation of federal or state law or local ordinances;
 - (c) The continuation of the land use activity authorized is endangering or may endanger the safety or general welfare of the community during the construction or

work for which the approval or permit was granted;

- (d) The applicant or his/her agent is exceeding the scope of the work for which the permit was issued;
 - (e) The Code Enforcement Officer determines that he/ she is unable to rule on the continued validity of an approval or permit, in which case he/she shall suspend the approval or permit, without penalty, and require the holder to file an appeal.
 - (f) The Code Enforcement Officer determines that any term or condition of an approval by the Planning Board, the Design Review Board, the Board of Appeals, the Planning Department or the Code Enforcement Officer has not been met. **[Added 11-2-2004]**
- (2) The Code Enforcement Officer shall suspend an approval or permit by furnishing to the applicant a written notice of suspension stating:
- (a) The reason for the suspension;
 - (b) The corrective measures to be taken; and
 - (c) The period of time given to the applicant to correct the violation or potential violation.
- (3) A suspension shall cease when the Code Enforcement Officer certifies that the violation or potential violation ceases to exist. When a cause for suspension has been removed or corrected, the Code Enforcement Officer shall so certify, in writing, and state:
- (a) The reason for the suspension;
 - (b) The corrective measures taken;
 - (c) The period of time which the applicant had to correct the violation; and
 - (d) A statement that all applicable penalties have been paid.
- (4) If, within the time specified in a notice of suspension for correction, the violation has not been corrected or removed, the Code Enforcement Officer shall revoke the approval or permit by furnishing to the applicant a written notice of revocation setting forth the reasons therefor.
- (5) During the period of a suspension or revocation, no work shall continue on a project for which an approval or permit was granted except in the interests of public safety and protection of the property in place at the time of revocation, such work having the written approval of the Code Enforcement Officer. No such work for which an approval or permit has been revoked shall be resumed until and unless a new approval or permit is obtained by the applicant.
- D. Attorneys' fees and costs. An applicant shall pay to the Town all attorneys' fees, court costs and out-of-pocket expenses incurred by the Town in any enforcement action undertaken to correct the applicant's violation of this chapter.

ARTICLE XII
Construction and Definitions

§ 125-108. Construction of language.

Language used in this chapter shall be construed as follows:

- A. In the interpretation and enforcement of this chapter, all words other than those specifically defined herein, except construction or structure-related terminology, shall have the meaning implied by their context in the chapter or their ordinarily accepted meanings as found in the current edition of Webster's Collegiate Dictionary; provided, however, that with respect to any permitted use that is not defined in § 125-109, such use shall be defined by reference to the Standard Industrial Classification and only then, if not defined therein, by reference to the current edition of Webster's New Collegiate Dictionary. For construction or structure-related terminology not specified otherwise herein, the applicable definitions provided in the applicable codes as referenced in § 125-91 shall apply. [**Amended 5-6-1996; 5-3-2004**]
- B. The words "person," "applicant" and "developer" include individuals, firms, associations, corporations, partnerships, trusts or other legal entities.
- C. Words used or defined in one tense or form shall include other tenses or derivative forms.
- D. Words in the singular shall include the plural, and words in the plural shall include the singular.
- E. The masculine gender shall include the feminine, and the feminine shall include the masculine.
- F. The words "shall" and "will" are mandatory, and the word "may" is permissive.
- G. The word "building" includes the word "structure."
- H. The word "dwelling" includes the word "residence."
- I. The word "lot" includes the word "plot" or "parcel."
- J. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."
- K. The word "Town" or "municipality" means the Town of Bar Harbor, Maine.
- L. In case of any difference of meaning or implication between the text of this chapter and any map, illustration, or table, the text shall control.
- M. In the case of reference to "Planning Board" findings or decisions, these shall also include the "Code Enforcement Officer" or other Planning Department and Town staff for decisions in a capacity of delegated authority for the Planning Board or as may be required to apply standards of the Land Use Ordinance for uses or structures for which the Code Enforcement Officer has authority for review and permitting under Article III, or, for minor site plan review and subdivision for the Planning Department. [**Amended 11-4-2003; 6-12-2018**]

§ 125-109. Definitions.

The following terms shall have the following meanings:

ABUTTING — Having a common border with, or being separated from such common border by an alley, easement, street, road, public way or private way.

ACCESS — A means of approach or entry to or exit from property.

ACCESSORY PROJECT — A change to an appendage of a structure that includes signage, awnings, canopies, umbrellas, outdoor displays, lighting, or landscaping.[**Added 11-2-1999**]

ACCESSORY STRUCTURE — See "structure."

ACCESSORY USE — See "use."

ACRE — A measure of land containing 43,560 square feet.

ACTIVE RECREATION — See "recreation."

AFFORDABLE HOUSING — Lots/units which may be purchased or rented for occupancy by people with up to 120% of moderate income as established by the State Planning Office or the Hancock County Planning Commission.[**Added 5-2-2005; amended 11-4-2008**]

AGGRIEVED PERSON — An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this chapter; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.[**Amended 11-3-2009**]

AGRICULTURAL ACTIVITY — Land clearing, tilling, fertilizing, including spreading and disposal of manure and manure sludge, liming, planting, pesticide application, harvesting of cultivated crops, pasturing of livestock, poultry and other similar or related activities, but not including construction, creation or maintenance of land management roads or forest management or timber harvesting activities. Noncommercial gardens are not considered agricultural activities, regardless of size.[**Amended 11-5-1991; 11-4-2003**]

AGRICULTURE, AVOCATIONAL — Farming, raising of animals or crops as an accessory use to one's primary residence which is greater than the intensity of homestead agriculture but less than the intensity of commercial agriculture; or, farming, raising of animals or crops on a site other than one's primary residence and of an intensity less than that of commercial agriculture.[**Added 11-4-2003**]

AGRICULTURE, COMMERCIAL — Production of crops or animals and involving more than five acres of cultivated soil or keeping of more than 100 poultry or other animals raised for meat or other by-product.[**Added 11-4-2003**]

AGRICULTURE, HOMESTEAD — Minor crop raising and animal husbandry as an accessory use to one's primary residence that does not involve tilling of more than one acre of soil, or keeping of more than 20 adult poultry and/or five hooved animals; raising or keeping of swine is not considered homestead agriculture.[**Added 11-4-2003**]

ALLEY — A thoroughfare either used or shown on any recorded description of the subject parcel(s) which is not more than 30 feet wide and which affords only a secondary means of access to abutting property.

ALTERATION — A change, addition, or modification requiring construction, including any change in the location of structural members of buildings or structures, such as bearing walls, columns, beams, or girders, or of the means of egress. The term includes enlargement, whether by extending on a side or by increasing in height, but does not include decorative or cosmetic changes.

ANTENNA ARRAY — Any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.**[Added 6-10-2008]**

APPEAL — A means for obtaining review of a decision, determination, order or failure to act pursuant to the terms of this chapter as expressly authorized by the provisions of § 125-103.

AQUACULTURE — The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.**[Added 11-5-1991]**

ARCHITECTURAL MERIT — A building or structure shall be deemed to have architectural merit if it embodies distinctive characteristics of a type, period or method of construction, represents the work of a master architect or builder, or possesses high artistic value.**[Added 11-2-1999]**

AREA OF SPECIAL FLOOD HAZARD — The land in the floodplain having a one-percent or greater chance of flooding in any given year.

ARRAY — Multiple solar photovoltaic panels combined together to create a system.**[Added 11-2-2021]**

ARTIST STUDIO — An art profession home occupation for gain and support which is conducted entirely within a residential dwelling unit or structure accessory to the dwelling unit. Retail sales of products made on the premises are allowed in residential districts; accessory retail sales of products made on the premises and other products are allowed in commercial and corridor districts.**[Added 6-8-2010]**

ATTIC — That part of a building which is immediately below, and wholly or partly within, the roof framing.

AUTHORIZED AGENT — Anyone having written authorization to act in behalf of a property owner, signed by the property owner.

AUTOMOBILE REPAIR GARAGE — A place where, with or without the attendant sale of engine fuels, the following services may be carried out: general repair, engine rebuilding, rebuilding or reconditioning of motor vehicles; collision service, such as body, frame, or fender straightening and repair; and painting and undercoating of automobiles.

AUTOMOBILE SALES LOT — A lot arranged, designed, or used for the storage and display for sale of any motor vehicle or any type of trailer provided the trailer is unoccupied, and where no repair work is done except minor incidental repair of automobiles or trailers displayed and sold on the premises.

AUTOMOBILE SALVAGE YARD — A yard, field or other screened area where salvaged automobiles or automobile parts are stored, bought, sold, exchanged, baled, packed, disassembled or handled, but not including the storage of used cars in operable condition or the keeping of junked automobiles in violation of Chapter 109, § 109-8.

AUTOMOBILE SERVICE STATION (FILLING STATION) — Any premises used for supplying gasoline and oil at retail, direct to the customer, including the sale of minor accessories and minor services for automobiles.

AWNING — A temporary or permanent canvas roof-like structure extending over any place as a shelter from the sun, wind, or rain such as a door, window, porch, or patio.**[Added 11-2-1999]**

BANNER — A sign on any lightweight material, either enclosed or not enclosed in a rigid frame, and secured, mounted, suspended or displayed in a manner to allow movement caused by wind.**[Added 11-5-1991]**

BASAL AREA — The area of a cross section of a tree stem at 4.5 feet above ground level and inclusive of bark.**[Added 6-8-2010]**

BASEMENT — Any portion of a structure with a floor-to-ceiling height of six feet or more and having more than 50% of its volume below the existing ground level.**[Amended 11-3-2009]**

BED-AND-BREAKFAST I — Overnight accommodations and a morning meal in an owner-occupied dwelling unit constructed before June 8, 2010, provided to transients for compensation. Breakfast is included in the room rate.**[Amended 6-8-2010]**

BED-AND-BREAKFAST II — Overnight accommodations and a morning meal in a dwelling unit occupied by the owner/innkeeper or a designated employee constructed before June 8, 2010, provided to transients for compensation. Breakfast is included in the room rate.**[Added 6-8-2010]**

BED-AND-BREAKFAST III — Overnight accommodations and a morning meal in a dwelling unit occupied by the owner/innkeeper or a designated employee provided to transients for compensation. Breakfast is included in the room rate.**[Added 6-8-2010]**

BED-AND-BREAKFAST IV — Overnight accommodations, a morning meal, and additional meals in a dwelling unit occupied by the owner/innkeeper or a designated employee constructed before June 8, 2010, provided to transients for compensation. Breakfast is included in the room rate. The meals may be open to the public.**[Added 6-8-2010]**

BED-AND-BREAKFAST V — Overnight accommodations, a morning meal, and additional meals in a dwelling unit occupied by the owner/innkeeper or a designated employee provided to transients for compensation. Breakfast is included in the room rate. The meals may be open to the public.**[Added 6-8-2010]**

BILLBOARD — See "sign."

BLOCK FACE — The buildings located along a side of a street within a block.**[Added 11-2-1999]**

BOAT LAUNCHING FACILITY — A facility designed primarily for the launching and landing of watercraft and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.**[Added 11-5-1991]**

BOAT YARD, COMMERCIAL — A place, usually adjacent to navigable waters, where, as a business or gainful occupation, boats are hauled, stored, repaired or constructed.²

BRICK — A block of clay hardened by heat and used for building, paving, etc.**[Added**

2. Editor's Note: The former definition of "bonus dwelling unit," added 11-2-2021, which immediately followed, was repealed 6-11-2024ATM by Art. 4.

11-2-1999]

BUFFERS — Fences, landscaping, berms and mounds used to minimize any adverse impacts or nuisance of the site on adjacent areas.

BUILDING — Any roofed structure built, maintained, or intended for use for the shelter or enclosure of persons, animals, goods or property of any kind. This term is inclusive of any thereof. Where independent units with separate entrances are divided by walls, each unit is a building.

BUILDING AREA — Total of areas taken on a horizontal plane at the main finished grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between exterior faces of walls.

BUILDING COVERAGE — The area of the lot covered by building area.**[Added 5-1-1995]**

BUILDING FRONT LINE — Line parallel to the front lot line transecting that point in the building face which is closest to the front lot line. This face includes porches whether enclosed or unenclosed but does not include steps.

BUILT — Erected, constructed, reconstructed, altered, enlarged, moved, extended, filled, excavated, paved and the like.

CALIPER — A measurement of the size of a tree equal to the diameter of its trunk measured six inches above natural grade.**[Amended 11-6-2001]**

CAMPGROUND — Any land area specifically designed and developed, containing two or more individual campsites which accommodate that segment of the traveling public seeking temporary camping accommodations for tents, recreational vehicles or towed travel trailers for compensation. Accessory uses, subject to a site plan review, include camper services and facilities such as shower and laundry facilities, electricity, fresh water, propane and gas sales, ice, outlet for camping supplies and equipment, recreational services and the like.

CAMPGROUND (SHORELAND DISTRICTS) — Any area or tract of land to accommodate two or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.**[Added 6-8-2010]**

CAMPSITE, PRIVATE — An area of land which is not associated with a campground but which is developed for repeated camping by only one group not to exceed 10 individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fireplace, or tent platform.**[Added 11-5-1991; amended 11-3-2009]**

CANOPY — The more or less continuous cover formed by tree crowns in a wooded area.**[Added 11-2-1999; amended 11-4-2008]**

CEMETERY — Property used for the interment of the dead.

CERTIFICATE OF APPROPRIATENESS — A document or form attesting to the Design Review Board's approval of specific activities issued pursuant to Article XIII, Design Review.**[Added 11-2-1999]**

CERTIFICATE OF OCCUPANCY — Official certification that a premises conforms to provisions of this chapter and may be used or occupied. Such a certificate is granted for new construction or for alteration of or addition to existing structures. Unless such a certificate is issued, a structure cannot be used or occupied.

CHANGE IN USE — The change from an existing use to another use, including, without limitation, the addition of a new use to an existing use.

CHANNEL — A watercourse between defined banks created by the action of surface water and characterized by the lack of terrestrial vegetation and by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil parent material or bedrock.

CHILD-CARE CENTER — A building for providing licensed care and protection for three or more children under 13 years of age.**[Amended 6-8-2010]**

CHILD-CARE FACILITY — A licensed child-care center, family child care or nursery school.**[Added 6-8-2010]**

CHILD CARE, FAMILY — Licensed care and protection that is provided in a dwelling unit on a regular basis for three to 12 children under 13 years of age who are not the children of the provider or who are not residing in the provider's home. If a provider is caring for children living in that provider's home and is caring for no more than two other children, then the use is customary to a dwelling unit and is not regulated herein.³**[Amended 6-8-2010]**

CLUB — Any voluntary association of persons organized for fraternal, social, religious, benevolent, recreational, literary, patriotic, scientific, or political purposes whose facilities are open to members but not the general public and which is principally engaged in activities which are not customarily carried on for pecuniary gain.

CLUB, PRIVATE — An incorporated club which is organized and operated to provide athletic, social, recreational, patriotic, fraternal or cultural activity or entertainment for its members and their guests and which is operated for profit. Any private club which has been in existence and operation for five consecutive years may make a part or all of its facilities available to the public for a fee and may sell food and beverages to the public on the following conditions:

- A. That it continues to operate for the same purpose for which it is organized and has been operated;
- B. That the club and all of its facilities are operated under a lease or otherwise by a nonprofit membership corporation composed exclusively of members of the club;
- C. That any net profit from the operation of the club, after payment of all current expenses, shall be used solely for the payment or retirement of long-term indebtedness of the club, or for the improvement of the club facilities, or be invested in an endowment fund for the benefit of the club; and
- D. That the market value of all the property and assets owned by the club less the total amount of any liens thereon shall equal or exceed \$100,000.⁴

CODE ENFORCEMENT OFFICER — A person appointed by the municipal officers to administer and enforce this chapter. Reference to the Code Enforcement Officer may be construed to include Building Inspector, Plumbing Inspector, Electrical Inspector and the like where applicable.

3. Editor's Note: The former definition of "church," which immediately followed this definition, was repealed 5-2-2005. For current provisions, see the definition of "place of worship."

4. Editor's Note: The former definition of "cluster development," which immediately followed this definition, was repealed 6-13-2006.

CO-LOCATION — The use of a communications facility by more than one communications provider.**[Added 6-10-2008]**

COMMERCIAL FISH PIER — A permanent structure used for berthing, loading and unloading of commercial fishing vessels. The structure may also be used for commercial purposes, such as chartering fishing boats or selling locally caught fish for profit.**[Added 11-2-2010]**

COMMERCIAL USE — The use of lands, buildings, or structures, other than a home occupation as defined below, the intent and result of which activity is the production of income from the buying and selling of goods or services, exclusive of rental of residential buildings and/or dwelling units.

COMMUNICATIONS FACILITY — Any structure, antenna, tower, or other device which provides the capacity to transmit information through such methods as, but not limited to, radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (MR), common carrier wireless exchange phone services, and personal communications service (PAS) or pager services.**[Added 6-10-2008]**

COMPATIBLE DESIGN — The visual relationship between adjacent buildings within 300 feet and the immediate streetscape, in terms of consistency of materials, building elements, building mass, and other constructed elements of the village environment, such that abrupt or severe differences are avoided.**[Added 6-13-2006⁵]**

COMPLEMENT THE VISUAL CHARACTER OF THE (DESIGN REVIEW OVERLAY) DISTRICT — Designed in a manner that is architecturally and visually similar to the predominate pattern of buildings and relationship of buildings to the street within the district.**[Added 11-2-1999]**

COMPREHENSIVE PLAN — Any part or element of the overall plan or policy for development of the Town as defined by 30-A M.R.S.A. § 4321 et seq.

CONDITIONAL USE — A land use that, because of its unique characteristics or potential impact on the Town, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts. By classifying certain uses as conditionally permitted, separate regulations can be imposed to evaluate and mitigate potential adverse impacts.**[Added 11-2-2010]**

CONDITIONAL USE PERMIT — A permit issued by the Planning Board stating that the conditional use meets all conditions set forth in the Land Use Ordinance. It is a mechanism that allows the ability to permit specific uses not otherwise allowed, as long as the landowner or business owner meets certain conditions.**[Added 11-2-2010]**

CONDOMINIUM — As defined in the Maine Condominium Act of 1983,⁶ real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions under a declaration, duly recorded pursuant to this Act. A condominium is a legal form of ownership, not a land development type. Real estate is not a condominium unless the undivided interests in the common elements are

5. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

6. Editor's Note: See 33 M.R.S.A. § 1601-101 et seq.

vested in the unit owners.

CONDOMINIUM CONVERSION — A building that at any time before creation of the condominium was occupied wholly or partially by one or more persons other than purchasers and persons who occupy with the consent of purchasers.

CONFERENCE CENTER — A facility used for conferences and seminars, with accommodations for sleeping, food preparation and eating, recreation, entertainment, resource facilities, meeting rooms, fitness and health center, and retail stores and services primarily for conference center guests.**[Added 6-8-2010]**

CONGREGATE HOUSING — A private, licensed establishment operated for the purpose of providing domiciliary care for a group of persons who by reason of age or physical condition do not desire to but are financially capable of providing such care for themselves, and who are not in need of medical or nursing treatment except in the case of temporary illness.

CONTIGUOUS LOTS — Lots which adjoin at any line or point or are separated at any point by a body of water less than 15 feet wide.

CONVENTIONAL SUBDIVISION — A subdivision planned under the dimensional controls found in Article III.**[Added 6-13-2006⁷; amended 11-4-2008]**

CUL-DE-SAC — A local street with only one outlet and having the other end for the reversal of traffic movement.⁸

DECK — A level structure adjacent to a building elevated above the surface of the ground which may have a railing, but no roof, awning or other covering.

DECORATIVE CHANGES — Repainting; re-siding; re-roofing; or adding, removing or replacing trim, railings, or other nonstructural architectural details.

DEDICATION — The transfer of property interests from private to public ownership for a public purpose. The transfer may be of a fee simple interest or of a less than fee simple interest, including an easement.

DESIGNATED SCENIC RESOURCE — That specific location, view or corridor, which is identified as a scenic resource in the Town's Comprehensive Plan (Figure II.A.1). Such scenic resources shall consist of:**[Added 6-10-2008]**

- A. A three-dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, a lake, or a bay, or a group of objects, such as a downtown skyline or mountain range, or island, resulting in a panoramic view corridor; or
- B. Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

DEVELOPED AREA — Any area on which a site improvement or change is made, including buildings, landscaping, parking areas and streets.

7. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

8. Editor's Note: The definition of "dbh," added 11-4-2008, which immediately followed, was repealed 6-12-2018.

DEVELOPER — The legal or beneficial owner of a lot or parcel of any land proposed for inclusion in a development, including the holder of an option or contract to purchase.

DEVELOPMENT — The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any buildings; any use or change in use of any buildings or land; or any extension of any use of land or any clearing, grading, or other movement of land for which permission may be required pursuant to this chapter.

DEVELOPMENT (SHORELAND DISTRICT) — A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.**[Added 6-8-2010]**

DIMENSIONAL REQUIREMENTS — Numerical standards relating to spatial relationships, including but not limited to setback, lot area, shore frontage and height.**[Added 11-5-1991]**

DISABILITY — Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or, in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which required special education, vocational rehabilitation or related services.**[Added 11-4-2008]**

DISTRICT — A specified portion of the Town, delineated on the Official Zoning Map, within which certain regulations and requirements, or various combinations thereof, apply under the provisions of this chapter.

DOCK — See "structure, water-related."

DORMER — A modification of a roof which increases the elevation of a portion of that roof for the purpose of providing either more interior space or a window.

DRAINAGE — The removal of surface or ground water from land by drains, grading or other means. Drainage includes the control of runoff to minimize erosion and sedimentation during and after development, and includes the means necessary for water supply preservation and prevention or alleviation of flooding.

DRIVE-UP WINDOW — A window where one can pull up in a vehicle to place an order for food or beverage, pay for and receive the food or beverage, and drive away, without ever having to get out of the vehicle.**[Added 11-6-2001]**

DRIVEWAY — A vehicular accessway of any length constructed in accordance with the standards set forth in this chapter, serving two single-family dwellings or one two-family dwelling or less.**[Amended 5-6-1996; 11-3-2009; 6-8-2010]**

DRIVEWAY, ONE-WAY — A driveway on which vehicles are allowed to travel in only one direction and which has two separate connections to a street.**[Added 5-6-1996]**

DRIVEWAY, TWO-WAY — A driveway on which vehicles are allowed to travel in two directions.**[Added 5-6-1996]**

DWELLING — A building or portion thereof used exclusively for residential occupancy and containing one or more dwelling units.

DWELLING, MULTIFAMILY I — A building or portion thereof or multiple buildings on a lot

used for residential occupancy by three or four families living independently of each other and doing their own cooking in the building in each of three or four separate and independent dwelling units.[**Amended 11-7-2006**]

DWELLING, MULTIFAMILY II — A building or portion thereof, or multiple buildings, located on a lot or on a contiguous parcel or area of land, used for residential occupancy for five or more families living independently of each other and doing their own cooking in the building in each of five or more separate and independent dwelling units.[**Amended 11-7-2006; 6-9-2009**]

DWELLING, SINGLE-FAMILY DETACHED — A building designed or intended to be used exclusively for residential occupancy by one family only and containing only one dwelling unit and having no roof, wall or floor in common with any other dwelling unit. The term shall include modular, prefabricated and manufactured homes.

DWELLING, TWO-FAMILY — A detached or semidetached building used for residential occupancy by two families living independently of each other and doing their own cooking in the building in each of two separate and independent dwelling units.

DWELLING UNIT — A room or group of rooms which is designed, equipped and intended exclusively for use as residential living quarters by only one family, which contains independent living, cooking, sleeping, bathing and sanitary facilities, and which is separate and independent from other such rooms or groups of rooms.⁹

DWELLING UNIT (SHORELAND DISTRICTS) — A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time period rented. Recreational vehicles are not residential dwelling units.[**Added 6-8-2010**]

EARTH — Topsoil, sand, gravel, clay, peat, rock, or other minerals.

EASEMENT — Authorization of a property owner of use by another of any designated part of the owner's property for a specified purpose.

EDUCATIONAL INSTITUTION — A building or group of buildings in which post-secondary students are housed, fed, instructed and governed while working toward undergraduate, graduate or postgraduate degrees in a university or college setting.

ELEEMOSYNARY INSTITUTION — A nonprofit establishment for public use, including, but not limited to, libraries.[**Amended 11-5-2013**]

ELEVATION DRAWING — A technical drawing of the facade of a building or structure showing the placement and design of windows, doors, trim, and other structural and ornamental details.[**Added 11-2-1999**]

EMERGENCY OPERATIONS — Operations conducted for the public health, safety or general welfare, such as protecting of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

EMPLOYEE LIVING QUARTERS-1 — An accessory use, attached or detached from the principal structure, consisting of a series of rooms containing beds, where the occupants do not

9. Editor's Note: The former definition of "dwelling unit, accessory," added 6-13-2006, which immediately followed, was repealed 11-2-2021.

constitute a family or a single housekeeping unit, and the principal structure is a commercial use. It shall be used exclusively for the accommodation of employees, for more than 30 days, that are employed on or off site, as long as the off-site employees are employed by the same company, a parent company, or a subsidiary company that owns the parcel where the principal structure is located. Employee living quarters-1 serving a hospital shall not be subject to the thirty-day minimum requirement. Employee living quarters-1 must serve another use on the lot, meaning it cannot be the only use on the lot.**[Added 7-14-2020; amended 6-11-2024ATM by Art. 2]**

EMPLOYEE LIVING QUARTERS-2 — An accessory use, within a structure consisting of a series of rooms containing beds, where the occupants do not constitute a family or a single housekeeping unit, and the principal use is a commercial use where there is no clear principal structure. It shall be used exclusively for the accommodation of employees, for more than 30 days, that are employed on or off site, as long as the off-site employees are employed by the same company, a parent company, or a subsidiary company that owns the parcel where the principal use is located. Employee living quarters-2 must serve another use on the lot, meaning it cannot be the only use on the lot. The maximum total occupancy of all employee living quarters-2 on a lot shall be 14 employees.**[Added 6-11-2024ATM by Art. 2]**

ENLARGEMENT — An addition to the floor area or volume of an existing building, an increase in the size or volume of any other structure, an increase in the ground area of that portion of a tract of land occupied by an existing use.**[Amended 6-8-2010]**

ERECT — To construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way bring into being or establish.**[Added 11-2-1999]**

ESSENTIAL SERVICES — The construction, alteration or maintenance of gas, electrical, communications facilities owned by the Town, steam, fuel or water transmission or distribution systems, collection, supply or disposal systems. Such systems may include towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants, generators, wells, wellheads and similar accessories but shall include structures which are necessary for the furnishing of such services.**[Amended 5-2-2005; 6-10-2008]**

ESTABLISHED PATTERN OF — The situation in which the substantial majority of buildings or structures within a block face, or the two buildings on either side of the subject property, exhibit a reasonably consistent pattern with respect to a physical feature such as height, facade proportion, setback, etc.**[Added 11-2-1999]**

EXIT AISLE — The minimum area within a building or structure reasonably necessary to allow patrons to move into and out of those areas that are included within the definition of "net leasable area."**[Added 3-24-1998]**

EXPANSION — See "enlargement."

EXPANSION OF A COMMUNICATIONS FACILITY — The addition of towers, increased height and/or increased footprints of any buildings or structures of the existing facility.**[Added 6-10-2008]**

EXTENSION — An increase in the amount of existing floor area used for an existing use within an existing building.

EXTERIOR WALLS OF TRADITIONAL SITE-BUILT APPEARANCE — Siding materials such as clapboards, shingles and shakes, including synthetic or metal siding manufactured to

closely resemble clapboards, shingles and shakes. This term shall also include masonry, brick, stucco, and wood board and batten.

EXTRACTION — [Amended 11-5-1991]

- A. The excavation, processing, storage or removal from its natural location of soil, sand, gravel, rock, topsoil, loam, clay, peat or other mineral deposits, not including:
- (1) The excavation of material incidental to approved construction of buildings, driveways or parking areas;
 - (2) The excavation of material incidental to and at the site of construction or repair of streets; or
 - (3) The excavation, processing or storage of less than 10 cubic yards of material on a lot within a one-year period.

- B. The stripping of loam, topsoil and peat from a lot is expressly prohibited by this chapter.

FAA — The Federal Aviation Administration or its lawful successor.[Added 6-10-2008]

FACADE — An exterior wall of a building or structure.[Added 11-2-1999]

FAMILY — Two or more persons related by blood, marriage, adoption or guardianship, or not more than five persons not so related, occupying a dwelling unit and living as a single housekeeping unit, such a group to be distinguished from a group occupying a boardinghouse, lodging house, club, fraternity, transient accommodations, short-term rental, employee living quarters-1, employee living quarters-2, or shared accommodations.[Amended 6-13-2006; 11-8-2011; 7-14-2020; 11-2-2021; 6-11-2024ATM by Art. 2]

FARM AND FOOD PRODUCTS — Any agricultural, horticultural, forest or other product of the soil or water, including but not limited to fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, maple products, apple cider, fruit juice, wine, ornamental or vegetable plants, nursery products, firewood and Christmas trees.[Added 3-24-1998]

FARMERS' MARKET — A building, structure or place used by two or more farmers for the direct sale of farm and food products to consumers, at which no seller may sell a product unless at least 75% of the product offered by that seller was grown or processed by that seller or under that seller's direction. A product not grown or processed by a seller must have been purchased directly from another farmer.[Added 3-24-1998]

FCC — The Federal Communications Commission or its lawful successor.[Added 6-10-2008]

FENCE — A structure commonly made of wooden or metal posts, boards, rails, bricks, stones, PVC, wire mesh, masonry or similar materials, erected for the purpose of enclosing a yard or portion thereof, for screening or decoration, or for marking the general location of a lot boundary. A fence, for purposes of this definition, includes all posts or other supports as well as all ornamentation, decorations and finials.[Added 5-7-1991; amended 11-2-1999]

FILLING — Depositing or dumping any matter on or into the ground or water.

FISHERIES, SIGNIFICANT — Areas identified by a governmental agency, such as the Maine Department of Inland Fisheries and Wildlife, the Atlantic Salmon Authority, and the Maine

Department of Marine Resources, as having significant value as fisheries and any areas identified in the municipality's Comprehensive Plan.[Added 5-3-1999]

FIXTURE — The assembly that holds the lamp (bulb) in a lighting system. It includes the elements designed to give light output control, such as a reflector (mirror) or refractor (lens), the ballast, housing, and the attachment parts.[Added 11-4-2008]

FLOOD- OR SPOTLIGHT — A light designed to flood a well-defined area with light, with a reflector or optical assembly that concentrates the light output in a particular direction or spot.[Added 11-4-2008]

FLOODPLAIN — Land subject to inundation by storm or flood water caused by overflow from the normal high water mark of any coastal or inland waters or as defined or identified by the Flood Boundary Maps of the Town of Bar Harbor.

FLOODWAY — The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the one-hundred-year flood without cumulatively increasing the water surface elevation by more than one foot in height.[Added 11-4-2008]

FLOOR AREA — The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.¹⁰

FOOD PROCESSING ESTABLISHMENT — An establishment in which food or beverages are processed or otherwise prepared for eventual human consumption and may be served or sold on the premises; in the Downtown Village District, this use shall not include fresh or frozen fish, meat or poultry processing.[Added 6-8-2010]

FOOD PROCESSING FACILITY — A place housing any operation which changes the chemical composition or physical properties of food materials consumed by humans. An example would be a creamery where dairy products such as butter, cheese and ice cream are made. The term does not include slaughterhouses or restaurants where food is prepared and sold at retail.

FOOTCANDLE ("FC") — The basic unit of luminance (the amount of light falling on a surface). Footcandle measurements are made with a light meter. One footcandle is equivalent to the luminance produced on one square foot of surface area by a source of one standard candle at a distance of one foot.[Added 11-4-2008]

FOOTCANDLES (AVERAGE) — The amount of light measured between the brightest and the darkest areas. It may be measured at ground level of three feet above the ground.[Added 11-4-2008]

FOOTCANDLES (HORIZONTAL) — The measure of the illumination striking a horizontal plane.[Added 11-4-2008]

FOOTCANDLES (VERTICAL) — The measure of the illumination striking a vertical plane.[Added 11-4-2008]

FOOTPRINT AREA — The total area, calculated in square feet, of a site, if viewed from above, covered by structures or improvements, including areas under roof overhangs and under decks.¹¹[Added 5-6-1996]

10. Editor's Note: The former definition of "floor area ratio," which immediately followed, was repealed 6-13-2023.

FOOTPRINT AREA, BUILDING — The total square footage of a building or buildings if viewed from above, including areas under overhangs.[**Added 7-14-2020**]

FOUNDATION — The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material.[**Amended 11-4-2008**]

FRONTAGE, ROAD — The linear distance measured along the lot line which separates the lot from a public or private road, but not including a private driveway providing access to more than one lot.

FRONTAGE, SHORE — The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.[**Amended 11-5-1991; 11-3-2009**]

FULL CUTOFF — A shielded fixture that directs all light towards the ground by preventing all transmission of light above a horizontal line as specified by the IES.[**Added 11-4-2008**]

FUNCTIONALLY WATER-DEPENDENT USES — Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The uses include but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat-building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.[**Added 11-4-2008**]

GALLERY — A retail establishment primarily engaged in the sale of drawings, photography, paintings, sculpture and the like to customers for their own individual or household use. Accessory uses may include restaurant.¹²[**Added 6-8-2010**]

GARAGE, RESIDENTIAL — An accessory building or a portion of the principal dwelling unit(s) used for parking or temporary storage of automobiles of residential occupants of the premises. Not more than one space may regularly be used by the private passenger automobile of a person not resident on the premises.[**Amended 11-4-2008**]

GLARE — The interfering brilliance of a light source at various viewing angles.[**Added 11-4-2008**]

GLARE (DISABILITY) — Glare which reduces visual performance due to light scattered in the eye, reducing the contrast of the image.[**Added 11-4-2008**]

GOVERNMENT FACILITY/USE — A governmental or public service use for the general benefit of the citizens funded in whole or in part by the state, federal government, Town of Bar Harbor or a quasi-public organization, including, by way of illustration and without limitation, public parks and recreational facilities, visitor information offices.[**Amended 6-8-2010**]

11. Editor's Note: The definition of "forest management activities," which immediately followed, was repealed 6-12-2018.

12. Editor's Note: The former definition of "garage, commercial," which immediately followed, was repealed 6-13-2017. See now the definition of "parking garage."

GRADE — In relation to buildings, the average of the finished ground level at the center of each wall of a building.

GRAVEL PIT — See "extraction."

GREAT AMERICAN NEIGHBORHOOD, THE — An initiative of the Maine State Planning Office to encourage developments that have the following features as defined:[**Added 6-13-2006¹³**]

- A. Walkability: Pedestrian access to other neighborhoods and commercial areas;
- B. Civic core: a portion of the development lot or a building to allow for public gathering;
- C. Neighborhood boundaries: Joining neighborhoods together by vehicles; and
- D. Protection from excessive traffic: street planning standards to discourage speeds over 35 miles per hour.

GREAT POND — See "water bodies, great pond."[**Added 11-5-1991**]

GREAT POND CLASSIFIED GPA — See "water bodies, great pond classified GPA."[**Added 11-5-1991**]

GREENHOUSE, COMMERCIAL — An enclosed building, permanent or portable, which is used for the growth of small plants to be sold at wholesale or retail.

GREENHOUSE, NONCOMMERCIAL — An accessory building to a residence designed or used for the growth of small plants.¹⁴

GROCERY STORE — A small neighborhood establishment retailing food and related commodities, as distinguished from a supermarket.

GROSS FLOOR AREA — The sum of the gross horizontal areas of all enclosed floors of a building, excluding basements, areas beyond exterior walls, and any space with a floor to ceiling height of less than six feet six inches.[**Added 6-13-2006¹⁵**]

GROSS LEASABLE AREA (GLA) — The total area, in square feet, of a building or structure, measured from the interior faces of exterior walls and, in shared buildings or structures, from the center line of each interior wall dividing separately leased or separately owned space. For the sole purpose of calculating required parking spaces, GLA shall include only the area used for, or in support of, the principal use.[**Amended 11-4-2003; 11-4-2008**]

GROUND COVER — Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.[**Added 11-4-2008**]

GUEST ROOM — A room in a hotel, motel, tourist home or bed-and-breakfast offered to the public for compensation in which room no provision is made for cooking and which room is only for transient occupancy.

GUIDE TO LIVABLE DESIGN, THE — A document published by the Maine State Planning

13. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

14. Editor's Note: The former definition of "grocery store," which immediately followed this definition, was repealed 6-8-2010.

15. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

Office and GrowSmart Maine, dated June 2004, or as most recently amended.[**Added 6-13-2006¹⁶**]

HANDICAPPED ACCESS — A ramp or other method of access that is accessible to the handicapped (a maximum pitch of 8.33% is often specified for a ramp).[**Added 11-2-1999**]

HEALTH INSTITUTION — A hospital, clinic, nursing home, boarding care facility, retirement community or any other place for the treatment or diagnosis of human ailments, excluding professional offices.[**Amended 5-3-1999**]

HEIGHT (ALL UPLAND DISTRICTS EXCEPT DOWNTOWN VILLAGE DISTRICTS) — The vertical distance between the mean original grade and the highest point of any structure except a building and, for buildings, the top of the highest roof beams of a flat roof, or the mean level of the highest gable or slope of a hip roof, excluding chimneys, church steeples, water tanks or towers, ornamental cupolas, towers or turrets, antennas, transmission towers, mechanical rooms, and windmills.[**Amended 11-5-1991; 5-4-1992; 5-2-1994; 11-2-1999; 11-4-2003; 6-8-2010**]

HEIGHT (DOWNTOWN VILLAGE DISTRICTS) — The vertical distance between the mean original grade and the highest point of any structure, excluding chimneys, church steeples, silos, water tanks or towers, ornamental cupolas, towers or turrets, antennas, transmission towers, mechanical rooms, and windmills.[**Added 11-4-2003; amended 11-4-2008; 6-8-2010**]

HEIGHT (SHORELAND ZONING DISTRICTS) — The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, church steeples, silos, water tanks or towers, ornamental cupolas, towers or turrets, antennas, transmission towers, mechanical rooms, and windmills.[**Added 5-2-1994**]

HID LIGHTING — High-intensity discharge lighting, a family of bulb type including mercury vapor, metal halide, and high-pressure or low-pressure sodium, which glow when an electric current is passed through a gas mixture inside the bulb.[**Added 11-4-2008**]

HIGH-INTENSITY SOIL SURVEY — A map prepared by a Maine certified soil scientist identifying the soil types down to 1/10 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits or auger samples used to identify the soils and shall be accompanied by a log of each sample point identifying the depth to seasonal high water table or bedrock at that point. Single soil test pits and their evaluation for suitability for subsurface wastewater disposal systems shall not be considered to constitute high-intensity soil surveys.

HISTORIC BUILDING OR STRUCTURE — A building or structure meeting the criteria set forth in § 125-112D(1) and listed on the list of historic buildings and structures.[**Added 11-2-1999**]

HISTORIC DISTRICT — An area of the Town of Bar Harbor which contains improvements which have a special character or special historical or aesthetic interest or value and represent one or more periods or styles of architecture typical of one or more eras in the history of Bar Harbor and cause such area, by reason of such factors, to constitute a distinct section of the Town.

HISTORIC MERIT — Those buildings classified as historic that retain original features and possess historic and architectural merit of a degree warranting their preservation.[**Added**

16. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

11-2-1999]

HISTORIC OR ARCHAEOLOGICAL RESOURCES — Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as historic or archaeological resources and any areas identified by the municipality's Comprehensive Plan.**[Added 5-3-1999]**

HOLIDAY LIGHTING — Festoon-type lights, limited to small, individual, low-wattage bulbs on a string.**[Added 11-4-2008]**

HOME OCCUPATION — A business, trade, arts, occupation or profession conducted for gain and support which is customarily carried on entirely within a residential dwelling unit or structure accessory to the dwelling unit which is clearly accessory and incidental to and compatible with the surrounding residential uses.**[Amended 6-8-2010]**

HOSPITAL — A health institution providing health services, primarily for inpatients, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

HOTEL — A facility offering transient lodging accommodations for transients and which may include additional accessory facilities and services available to the general public, as well as a conference center.**[Amended 6-8-2010]**

IES DEFINITION — The Illumination Engineering Society North America Lighting Handbook. The most recent edition shall be used for the definition of terms used in this chapter but not defined herein. In the case of conflict with the terms of this chapter, the most-restrictive definition will apply.**[Added 11-4-2008]**

INCREASE IN NONCONFORMITY OF A STRUCTURE — Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity, such as but not limited to reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally, provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which infill irregularly shaped structures.**[Added 11-4-2008]**

INDUSTRY — Use of a premises for assembling, fabricating, finishing, manufacturing, packaging, or processing, including but not limited to assembly plants, laboratories, power plants, pumping stations and repair shops.

INSTITUTIONAL — A use, building or structure devoted to some public, governmental, educational, charitable, religious, medical or similar purpose.¹⁷**[Amended 6-8-2010]**

17. Editor's Note: The former definitions of "kennel, commercial" and "kennel, noncommercial," which immediately followed this definition were repealed 6-14-2011; see now the definitions of "kennel" and "kennel, boarding."

KENNEL — A place where five or more dogs or wolf hybrids are kept in a single location under one ownership for breeding, hunting, show, training, field trials, sledding, competition or exhibition purposes. The sale or exchange of one litter of puppies within a twelve-month period alone does not constitute the operation of a kennel.**[Added 6-14-2011]**

KENNEL, BOARDING — Any place, building, tract of land, or abode in or on which three or more privately owned companion animals are kept at any one time for their owners in return for a fee or compensation and includes a facility where three or more companion animals are kept for training purposes for compensation.**[Added 6-14-2011]**

LAKES and PONDS — Natural or artificial bodies of water which retain water year-round. Artificial ponds may be created by dams or may result from excavation.¹⁸**[Amended 6-8-2010]**

LIGHT (DIRECT) — The light emitted directly from the lamp, off the reflector or diffuser of a luminaire.**[Added 11-4-2008]**

LIGHT (INDIRECT) — Direct light that has been reflected or scattered.**[Added 11-4-2008]**

LIGHT MANUFACTURING — The fabrication or processing of materials into the finished product, the weight of which shall not exceed 300 pounds. Fabrication relates to stamping, cutting or otherwise shaping the processed materials into useful objects or products. Light manufacturing does not include the refining or other initial processing of basic raw materials such as metal ores, lumber or rubber.

LIGHT SOURCE — The lamp or enclosing bulb or reflective enclosure.**[Added 11-4-2008]**

LIGHT TRESPASS — The light projected onto a property from a fixture not located on that property.**[Added 11-4-2008]**

LOADING SPACE — An off-street space or berth on the same lot with a building or contiguous to a group of buildings for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials and which abuts upon a street, alley or other appropriate means of access.

LODGING — See "transient accommodations."

LOGO — A single or multicolored symbolic design unique to a business or product, service facility, or point of interest and used to identify its product or services.**[Added 11-2-1999]**

LOT — A contiguous area of land undivided by any street or private road, in one ownership or leasehold, with ascertainable boundaries established by deed or some other instrument of record. An area of land undivided by any street or private road and which is owned in common by members of a condominium shall be considered one lot notwithstanding the fact that each member may be entitled under the declaration to an exclusive area of occupation. A dwelling unit within a condominium development shall not be deemed a lot unless individual members of the condominium shall individually own in fee an area of the land that meets the minimum lot size requirements of this chapter.**[Amended 5-6-1996; 6-9-2009]**

LOT AREA — The area contained within the boundary lines of a lot minus: **[Amended 11-5-1991; 11-7-2006; 11-4-2008]**

A. Land below the normal high water line of a water body or upland edge of a wetland;

18. Editor's Note: The definition of "licensed forester," added 11-4-2008, which immediately followed, was repealed 6-12-2018.

- B. Sustained slopes greater than 20%.
- C. Land held in a conservation easement that limits the use of the land to activities that are no more intense than passive recreation; and
- D. Areas beneath roads serving more than two lots.

LOT, CORNER — A lot abutting two or more streets at their intersection.

LOT COVERAGE — Except as otherwise provided in § 125-67B(8), the footprint area of all structures and improvements calculated as a percentage of the area of the lot shall be considered to be lot coverage, including but not limited to principal and accessory buildings; all improved vehicular and pedestrian surfaces, such as parking lots, roads, driveways, maneuvering spaces, and pedestrian walkways, regardless of the construction material employed; graveled areas and other nonvegetated surfaces. Unimproved natural surfaces of a site shall not constitute lot coverage, regardless of whether they are vegetated. Boats stored in cradles above an unimproved natural surface shall not constitute lot coverage. However, in the case of lumber yards, areas of stored lumber shall constitute lot coverage.**[Amended 5-6-1996; 11-4-2003; 11-7-2006; 6-8-2010; 6-12-2018]**

LOT DEPTH — The mean horizontal distance between the front and rear lot lines, measured within the lot boundaries.

LOT FRONTAGE — See "frontage, road." When a lot has more than one street lot line, lot width shall be measured, and the minimum lot width required by this chapter shall be provided, at each such line.

LOT LINE — A line bounding a lot which divides one lot from another or from a street or any other public or private space, as defined below:**[Amended 11-2-2004]**

- A. LOT LINE, FRONT — In the case of a lot abutting only one street, the street line separating such lot from such street; in the case of a double frontage lot, each street line separating such lot from a street shall be considered to be the front lot line. In the case of a lot with no road frontage, the front lot line shall be considered to be the line parallel to the front of the building.
- B. LOT LINE, REAR — That lot line which is parallel to and most distant from the front lot line of a lot. In the case of an irregular, triangular, or gore-shaped lot, a line 20 feet in length, entirely within the lot, parallel to and at the maximum distance from the front lot line shall be considered to be the rear lot line. In the case of corner lots there shall be no rear lot lines.
- C. LOT LINE, SIDE — Any lot line other than a front or rear lot line.

LOT, NONCONFORMING — A single lot of record which, at the effective date of adoption or amendment of this chapter, does not comply with the minimum lot size, minimum area per family, minimum road frontage, shore frontage, minimum lot width or maximum lot coverage requirements of the district in which it is located.**[Amended 5-2-1994; 6-13-2006¹⁹; 11-7-2006; 11-3-2009]**

19. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

LOT OF RECORD — Any validly recorded lot which at the time of its recordation complied with all applicable laws, ordinances, and regulations.

LOT STANDARDS — Numerical standards relating to spatial relationships, including but not limited to setback, lot area, shore frontage, height, coverage, road frontage and density.

LOT WIDTH — The closest distance between the side lot lines of a lot or the width of an imaginary square that will fit entirely within the lines of a lot. When only two lot lines extend into the Shoreland Zone, both lot lines shall be considered to be side lot lines.**[Amended 11-5-1991; 5-6-1996; 11-3-2009]**

LOW-IMPACT DEVELOPMENT — This is a reference to the document entitled "LID Guidance Manual for Maine Communities - Approaches for Implementation of Low Impact Development Practices at the Local Level," dated September 21, 2007, prepared for the Maine Coastal Program State Planning Office, Augusta, Maine, as may be amended or updated by the source.**[Added 11-4-2008]**

LUMEN — A unit used to measure the actual amount of light that is produced by a light source. The lumen quantifies the amount of light energy produced by a lamp at the lamp, not by the energy input, which is indicated by the wattage. For example, a one-hundred-watt incandescent light produces 1,800 lumens, but a seventy-watt high-pressure sodium lamp produces 6,000 lumens. (Lumen output is listed by the manufacturer on the packaging.)**[Added 11-4-2008]**

LUMINAIRE — The complete lighting fixture, including the lamp, the housing, and optics.**[Added 11-4-2008]**

MANUFACTURED HOUSING — A structural unit designed for human occupancy, constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site, as defined more specifically in 30-A M.R.S.A. § 4358(1)(A).

MARINA — A business establishment having frontage on navigable water within the Town and providing for hire offshore mooring or docking facilities for boats and accessory services and facilities, such as boat sales, rental and storage, marine supplies and equipment, marine engine and hull repairs, construction and outfitting of pleasure craft, fuel and oil, electricity, fresh water, ice, shower and laundry facilities and on-premises restaurant.

MARKET VALUE — The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

MECHANICAL SPACE — An enclosed space, not designed for human habitation, for the housing of mechanical services, including but not limited to heating, ventilation, air-conditioning, refrigeration or elevator equipment. Attic space below a pitched roof shall not be considered mechanical space.**[Added 5-2-1994; amended 11-4-2003]**

MEDICAL CLINIC — An office building used by members of the medical professions for the diagnosis and outpatient treatment of human ailments; doctors' offices are included in this definition.**[Amended 6-8-2010]**

MINERAL EXPLORATION — Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

MOBILE HOME PARK — A parcel of land under unified ownership approved by the Town of Bar Harbor for the placement of three or more manufactured homes.

MODERATE INCOME — Family income which is between 80% and 150% of median family income for Hancock County.**[Added 5-2-2005]**

MOTEL — A facility providing sleeping accommodations for transients with additional accessory facilities and services available to transients at the motel only.**[Amended 6-8-2010]**

MOTOR VEHICLE — Every vehicle which is self-propelled and designed for carrying persons or property or which is used for the transportation of persons.

MOTOR VEHICLE, UNSERVICEABLE — Any motor vehicle which is wrecked or dismantled, cannot be operated legally on any public highway, or which is not being used for the purpose for which it was manufactured.

MULTI-TENANT SIGNAGE PLAN — A plan approved by the property owner which outlines design guidelines for multi-tenant signage. Such a plan may include, but is not limited to the following elements: size limitations and locations of signage. The multi-tenant signage plan shall be submitted to the Design Review Board, and upon approval by the Board the building owner shall be issued a certificate of appropriateness certifying the approval of the plan.**[Added 11-8-2011; amended 6-11-2024ATM by Art. 5]**

MUNICIPAL USE — Buildings or land which is owned by the Town of Bar Harbor and operated under its supervision.**[Amended 6-8-2010]**

MUSEUM — A nonprofit institution operated principally for the purpose of preserving and exhibiting objects of historical, cultural, scientific or artistic interest and which may also engage in retail sales of items related to its principal purpose. Restaurants as an accessory use are permitted only in the Downtown and Salisbury Cove Corridor Districts.**[Amended 6-8-2010]**

NATIVE — Indigenous to the local forests.**[Added 11-4-2008]**

NATURAL AREAS AND NATURAL COMMUNITIES, UNIQUE — Areas identified by a governmental agency such as the Maine Department of Conservation Natural Areas Program as having significant value as natural areas and any areas identified in the municipality's Comprehensive Plan.**[Added 5-3-1999]**

NET LEASABLE AREA — The total floor area leased, rented or owned to house a particular use, including but not limited to customer seating, waiting and reception areas, lounge and bar areas, kitchens, and offices, but not including rest rooms, exit aisles, closets, and basements, attics and rooms devoted exclusively to storage.**[Added 3-24-1998]**

NONCONFORMING LOT — See "lot, nonconforming."

NONCONFORMING STRUCTURE — See "structure, nonconforming."

NONCONFORMING USE — See "use, nonconforming."

NORMAL HIGH WATER LINE (NONTIDAL WATERS) — That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support nonforested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the

river or great pond during the period of normal high water are considered part of the river or great pond.**[Added 11-5-1991; amended 11-4-2008]**

NORMAL MAINTENANCE AND REPAIR — Any work necessary to maintain an improvement or structure in its original or previously improved state or condition. Normal maintenance and repair shall not include reconstruction, change in design, change in structure, change in uses, change in location, or change in size or capacity.

NURSERY, COMMERCIAL — An enterprise which conducts the retail and wholesale sale of plants grown on the site, as well as accessory items (but not power equipment such as gas or electric lawn mowers and farm implements) directly related to their care and maintenance. The accessory items normally sold are clay pots, potting soil, fertilizers, insecticides, hanging baskets, rakes and shovels.

NURSING HOME — A facility for the care of the aged or infirm, or a place of rest for those suffering bodily disorders, but not including facilities for surgical care or institutions for the care and treatment of mental illness, alcoholism, or narcotics addiction.

OPEN SPACE — The portion of a lot or site which is maintained in its natural state to preserve scenic resources, farm and forest land, wetlands, groundwater recharge areas, wildlife habitat, public access to water bodies, and other important or environmentally sensitive areas or to be used for outdoor recreation purposes.

OUTDOOR LIGHTING — The nighttime illumination of an outside area or object by a device that produces light by any means.**[Added 11-4-2008]**

OWNER — The person or persons having the right of legal title to, beneficial interest in, or a contractual right to purchase a lot or parcel of land.

PARCEL — The area within the boundary lines of a development.

PARKING AREA (SHORELAND DISTRICT) — An open area used for parking one or more vehicles, excluding an area associated with a driveway used for parking two vehicles or fewer.**[Added 6-8-2010]**

PARKING DECK — As a principal use, or an accessory use in the Shoreland Maritime Activities District, a structure of no more than two levels for parking vehicles on a deck supported above grade. Parking decks shall utilize site grade differential to access parking. Parking decks may be public or private. A parking deck used solely in conjunction with a multifamily dwelling or hotel shall not be construed to be a parking deck but rather a permitted accessory structure and use, even though not on the same premises as the multifamily dwelling or hotel.**[Added 6-13-2017]**

PARKING DEMAND — The amount of parking spaces needed by the users of a particular structure or tract of land.

PARKING GARAGE — As a principal use, a multistory structure used for parking vehicles, either public or private, either self-service or valet, for such parking or storage. A garage used solely in conjunction with a multifamily dwelling or hotel shall not be construed to be a parking garage but rather a permitted accessory structure and use, even though not on the same premises as the multifamily dwelling or hotel.**[Added 6-13-2017]**

PARKING LOT — An open area other than a street used for the parking of more than four automobiles and available for public use, whether free, for compensation, or as an accommodation

for clients or customers.

PARKING SPACE — A surfaced area, enclosed or unenclosed, meeting the size requirements of § 125-67E, together with a driveway connecting the parking space with a street, road or alley and permitting ingress and egress of that automobile without the necessity of moving any other automobile.

PASSENGER TERMINAL — A transportation facility where passengers embark on or disembark from carriers such as ferries and buses that provide transportation to passengers for hire by land or sea. Passenger terminals typically include some or all of the following: ticket counters, waiting areas, management offices, baggage handling facilities, restroom facilities, visitor center, cruise ship operations. A passenger terminal use on the waterfront may include moorage for cruise ships and/or vessels engaged in transporting passengers for hire. Activities commonly found aboard such vessels, whether moored, docked or under way, that are incidental to the transport of passengers shall be considered part of the passenger terminal use and shall not be treated as separate uses.**[Added 6-13-2017]**

PATIO — A level area adjacent to a dwelling unit constructed of stone, cement or other material, located at ground level, with no railing or other structure above the level of the ground. In all shoreland districts a patio shall be considered a structure.**[Amended 6-8-2010]**

PERFORMANCE GUARANTEE — A financial guarantee to ensure that all improvements, facilities or work required by this chapter, regulations and the approved plans and specifications of a development.

PERFORMANCE STANDARD — A criterion established to control the use of land and structures. The purpose of performance standards is to provide detailed regulations and restrictions by means of minimum criteria which must be met by uses in order to protect neighbors from adverse impacts of adjoining land uses and to protect the general health, safety and welfare of citizens of Bar Harbor.

PERSON — An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.**[Added 11-5-1991]**

PERSONAL PROPERTY — Property which is owned, utilized and maintained by an individual or members of his or her residence and acquired in the normal course of living in or maintaining a residence and is not attached to or affixed to the ground or a structure. It does not include merchandise which was purchased for resale or obtained on consignment.

PERSONAL SERVICES — A business which provides services but not goods, such as hairdressers, shoe repair, and the like.

PHOTO SIMULATION — A computer representation of the appearance of a building or scene showing how it currently looks or how it will look after specified activities (i.e., the construction of a building, renovations, landscaping, etc.) have occurred.**[Added 11-2-1999]**

PHOTOVOLTAIC (PV) — A semiconductor-based device that converts light directly into electricity.**[Added 11-2-2021]**

PIER — See "structure, water-related."

PLACE OF WORSHIP — **[Added 5-2-2005]**

- A. A church, synagogue, temple, mosque, or other facility that is used for prayer by persons of similar beliefs;
- B. A special purpose building that is architecturally designed and particularly adapted for the primary use of conducting formal religious services on a regular basis.

PLASTIC — Any group of synthetic or natural organic materials that may be shaped when soft and then hardened.[**Added 11-2-1999**]

POND — See "water bodies."²⁰

PORTICO — A porch-like structure consisting of a roof supported by columns.[**Added 11-2-1999**]

PREMISES — One or more parcels of land which are in the same ownership and are contiguous, and including all buildings and other structures thereon.[**Added 11-2-1999**]

PRIMARY RESIDENCE — The location where the owner resides most of the year. The property owner uses this address as their legal address for tax returns, driver's license, and/or voter registration card.[**Added 11-2-2021**]

PRIVATE STREET — See "street."

PROFESSIONAL OFFICE BUILDING — A building in which there is located the office of a professional, such as an architect, accountant, dentist, lawyer, and the like, or in which a business conducts its administrative, financial or clerical operations, but not including any manufacturing or sale of goods or merchandise.[**Amended 6-8-2010**]

PROPERTY, HOMESTEAD EXEMPTION — A property whereby the property owner qualifies for the homestead exemption under 36 M.R.S.A. §§ 681 through 689, respectively.[**Added 6-13-2006**]

PROPERTY, NONHOMESTEAD EXEMPTION — A property whereby the property owner does not qualify for the homestead exemption under 36 M.R.S.A. §§ 681 through 689, respectively.[**Added 6-13-2006**]

PUBLIC FACILITY — Any facility, including but not limited to buildings, property, recreation areas, and roads, which is owned, leased, or otherwise operated, or funded by a governmental body or public entity.[**Added 11-4-2008**]

PUBLIC IMPROVEMENT — Any improvement, facility or service, together with customary improvements, necessary to provide for public needs, such as vehicular and pedestrian circulation systems, storm sewers, flood-control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, and public utility and energy services.

PUBLIC UTILITY — Any person, firm, corporation, municipal department, board or commission authorized by the Maine Public Utilities Commission to furnish gas, steam, electricity, communication facilities, or transportation of water to the public.

PUBLIC UTILITY FACILITY — Structures such as electric substations or similar facilities of a scale and character commonly found only in a few specialized locations in the Town, necessary to the delivery of electricity or other services regulated by the Maine Public Utilities Commission,

20. Editor's Note: See now the definition of "lakes and ponds."

but excluding wind turbines and wireless communication towers.[**Added 6-9-2015**]

PUBLIC UTILITY INSTALLATION — The act of connecting to utilities services such as electricity, water, sewer, telephone and cable television, as accessory to a permitted use or structure.[**Added 6-9-2015**]

RECENT FLOODPLAIN SOILS — The following soil series as described and identified by the National Cooperative Soil Survey:[**Added 11-5-1991**]

Alluvial	Cornish	Charles
Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

RECONSTRUCTION — The restoration, remodeling or rebuilding of a nonconforming structure, whether necessitated by deterioration, obsolescence, casualty or other occurrence, where the costs of such work equal or exceed the value of the property in its existing condition.

RECREATION, ACTIVE — Recreation activities which necessitate some degree of structural or mechanical components for participation in the activity.

RECREATIONAL FACILITY — A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.[**Added 11-3-2009**]

RECREATION, PASSIVE — Outdoor recreational activities which involve no structures or motorized equipment, such as skiing, horseback riding, cycling, hiking, walking, picnicking and the like.

RECREATION VEHICLE — A vehicle or vehicular attachment designed for temporary sleeping or living quarters for one or more persons which is not a dwelling and which may include a pickup camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground and must be registered with any state's division of motor vehicles.[**Amended 11-5-1991**]

REGISTRATION — A written permission issued by the Code Enforcement Officer or designee to a property owner to operate a short-term rental in compliance with Chapter 174, Short-Term Rental Registration.[**Added 11-2-2021**]

RENOVATION — A modification to the architectural style, general design and general arrangement of the exterior of a building or structure, including the kind and texture of the building materials and the type and style of all windows, doors, light fixtures, other appurtenant fixtures and other features, such as landscaping, i.e., walks, fences, trees, driveways and parking areas. In addition, all activities that affect the exterior and which require a building permit are also included in this definition.[**Added 11-2-1999**]

REPLACEMENT SYSTEM — A system intended to replace:[**Added 11-4-2008**]

- A. An existing system which is either malfunctioning or being upgraded with no significant

change of design flow or use of the structure; or

B. Any existing overboard wastewater discharge.

RESEARCH FACILITY — A building or part of a building devoted to scientific inquiry and ancillary functions. No manufacturing is conducted on the premises except as related to the scientific research being conducted; said activities shall be solely for eleemosynary purposes.

RESEARCH PRODUCTION FACILITY — A building or part of a building devoted to the propagation, maintenance and distribution of animals, or other biological materials, for use in scientific inquiry; said activities shall be solely for eleemosynary purposes.²¹

RESTAURANT [Amended 5-2-1994; 11-6-2001] —

A. An establishment whose principal business is the sale of food or beverages to consumers in a ready-to-consume state and whose principal method of operation includes one or both of the following characteristics:

- (1) Customers normally are served their food and beverages by a restaurant employee at the same table or counter at which food and beverages are consumed; or
- (2) A cafeteria-type operation where food and beverages generally are consumed on the restaurant premises.

B. Drive-up windows for the procurement of food are not an approved use in the Town of Bar Harbor.

RESTAURANT, TAKEOUT [Added 5-2-1994; amended 11-6-2001] —

A. An establishment whose principal business is the sale of food or beverages to consumers in a ready-to-consume state, which is not licensed to serve alcoholic beverages to be consumed on the premises, with all of the following characteristics:

- (1) Six or fewer counter seats or stand-up counter spaces for patrons;
- (2) A cafeteria-type operation where food and beverages generally are consumed off of the premises; and
- (3) No tables are available for the use of customers.

B. Drive-up windows for the procurement of food are not an approved use in the Town of Bar Harbor.

RETAIL ESTABLISHMENT — Any business, housed in a permanent structure, engaged primarily in the sale of goods and services to the ultimate consumer for direct consumption or use but not for resale.

RETIREMENT COMMUNITY — A combined facility providing independent living and one or more of congregate housing, assisted living, or care of the aged, infirm or those suffering physical disorders or other conditions requiring special care or residential arrangements, but not including the care and treatment, principally, of alcoholism, narcotics addiction, or mental

21. Editor's Note: The definition of "residual basal area," added 11-4-2008, which immediately followed, was repealed 6-12-2018.

illness other than senile dementia, Alzheimer's, and similar mental illness, and which facility may include and provide shared community space, shared dining facilities, personal care and assistance, recreational activities, specialized shared services such as medical services, nursing services and physical and other types of therapy, or similar types of service.[**Added 5-3-1999**]

RIPRAP — Rocks, irregularly shaped and at least six inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two units horizontal to one unit vertical or less.

RIVER — See "water bodies."

ROAD — See "street."

ROADSIDE STAND — A roadside stand selling at retail on the premises only farm produce, campfire wood, or garden, greenhouse or nursery products and, between Labor Day and Christmas, cut Christmas trees, garlands, wreaths and wreath materials primarily produced on the property.

SALT MARSH — Areas of coastal wetland (most often along coastal bays) that support salt-tolerant species and where, at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.[**Added 11-5-1991; amended 11-4-2008**]

SALT MEADOW — Areas of a coastal wetland that support salt-tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.[**Added 11-5-1991; amended 11-4-2008**]

SCHOOL, MUNICIPAL — A facility owned by the Town of Bar Harbor within which educational classes for any grades, kindergarten through 12, are conducted pursuant to a program approved by the State Board of Education or similar governmental agency.

SCHOOL, PRIVATE — A privately owned facility within which instruction is provided for a fee.[**Amended 5-4-1998**]

SCHOOL, PRIVATE COMPULSORY — A privately owned facility within which educational classes for any grades, kindergarten through eighth grade, shall be conducted pursuant to a program approved for attendance purposes under state law pursuant to 20-A M.R.S.A. § 2901, or any corresponding provision of any future law, and recognized by the Maine Department of Education (or similar government agency) as providing an equivalent instruction alternative to public school instruction and within which early childhood development classes may also be conducted.[**Added 5-3-1999**]

SCREENING — A hedge or buffer strip at least five feet wide consisting of densely planted shrubs or trees at least four feet in height at time of planting and eventually reaching a mature height of at least six feet in height, but not exceeding eight feet, which provides an effective visual barrier.

SEASONAL CLOSURE — The closing of a business for a period of more than 90 consecutive days with the intent to reopen.[**Added 11-2-1999**]

SEPTAGE — Waste, refuse, effluent, sludge and any other materials from septic tanks, cesspools or any other similar facilities.[**Added 11-5-1991**]

SEPTIC SYSTEM — See "subsurface sewage disposal system."[**Added 11-5-1991**]

SERVICE DROP — Any utility line extension which does not cross or run beneath any portion of a water body, provided that:[**Added 11-5-1991**]

A. In the case of electrical service:

- (1) The placement of wires and/or the installation of utility poles is located entirely on the premises of the customer requesting service or upon a roadway right-of-way; and
- (2) The total length of the extension is less than 1,000 feet.

B. In the case of telephone service:

- (1) The extension, regardless of length, will be made by the installation of telephone wires to existing utility poles; or
- (2) The extension requiring the installation of new utility poles or replacement underground is less than 1,000 feet in length.

SERVICES — Establishments primarily engaged in providing assistance, as opposed to products, to individuals, business, industry, government and other enterprises.[**Added 6-8-2010**]

SETBACK — The horizontal distance from a lot line or normal high water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object, activity or area.[**Amended 11-5-1991; 11-4-2008**]

SETBACK, FRONT — Setback between the front lot line and the nearest part of a structure, road, parking space or other regulated object, activity or area.[**Amended 11-5-1991**]

SETBACK, REAR — Setback between the rear lot line and the nearest part of a structure, road, parking space or other regulated object, activity or area.[**Amended 11-5-1991**]

SETBACK, SIDE — Setback between a side lot line and the nearest part of a structure, road, parking space or other regulated object, activity or area.[**Amended 11-5-1991**]

SHARED ACCOMMODATIONS — Any group of three or more rooms, other than lodging or vacation rental, where for direct or indirect compensation the occupants live in furnished rooms with shared kitchens for more than 30 days. The occupants do not constitute a family or a single housekeeping unit. The makeup of the occupants is determined by the landlord, property manager, or other third party and not by the occupants themselves. A shared accommodation serving a hospital shall not be subject to the thirty-day minimum requirement. There are three different types of shared accommodations:[**Added 7-14-2020**]

- A. SA-1: three to eight people per structure.
- B. SA-2: nine to 32 people per structure.
- C. SA-3: 33 or more people per structure.

SHIP CHANDLERY — A retail store located within a marina selling supplies and equipment for

boats.

SHORELAND DISTRICT OR ZONE — The land area located within 250 feet, horizontal distance, of the normal high water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within 75 feet, horizontal distance, of the normal high water line of a stream.**[Amended 11-5-1991; 11-4-2008]**

SHORELINE — The normal high water line, or upland edge of a freshwater or coastal wetland.**[Added 11-4-2008]**

SHORT-TERM RENTAL — Includes vacation rental, vacation rental-1 (VR-1) and vacation rental-2 (VR-2).**[Added 11-2-2021]**

SIGN — An object, device or display, or part thereof, whether freestanding, portable, affixed to a building or otherwise, situated outdoors or indoors, which is directed at persons outside or off the premises, used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images. This definition shall not, however, be construed to include merchandise or decorative displays.**[Amended 11-5-1991]**

SIGN AREA — The exposed surface of the sign, including all ornamentation, embellishment, background, and symbols, but excluding the structure which does not form a part of the message of the sign measured in square feet. Regardless of the shape of the sign, the area of a sign shall be the smallest rectangle which encloses the whole message. The total sign area for a premise means the sum of the areas of all signs visible from public streets, sidewalks, parks, etc. This includes small signs attached to the principal sign for a premises. Examples of the latter are exemplified by small signs indicating "fireplaces," "swimming pool," or "Master Card, Diners Club or American Express accepted." For a sign with a double signboard or display area, where the sign faces are parallel and the faces duplicate one another, only one side shall be counted in calculating allowable area.**[Amended 11-5-1991; 6-9-2009]**

SIGN, FREESTANDING — A sign that is not fixed or otherwise attached to a principal or accessory structure.**[Amended 6-9-2009]**

SIGNIFICANT RIVER SEGMENTS — See 38 M.R.S.A. § 437.**[Added 11-5-1991]**

SIGNIFICANT VERNAL POOL — A naturally occurring temporary to permanent inland body of water that forms in a shallow depression and typically fills during the spring or fall and may dry during the summer. The vernal pool contains no viable populations of predatory fish, and it provides the primary breeding habitat for wood frogs, spotted salamanders, blue-spotted salamanders or fairy shrimp. The presence of any one or more of these species is usually conclusive evidence of a vernal pool. Only significant vernal pools that have been mapped or identified by a Town-authorized agency prior to project approval shall be considered as being within this definition. A significant vernal pool further means that there are multiple species present, or that the vernal pool is part of a corridor of other vernal pools, or that the pool is adjacent to a wetland.**[Added 6-13-2006²²]**

22. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

SIGN, INTERNALLY ILLUMINATED — A sign with a light source incorporated into the body of the sign and where light emanates through, or from, the message of the sign; there are five types, as follows:[**Added 6-14-2016; amended 11-2-2021**]

- A. **TYPE 1; CABINET WITH TRANSLUCENT FACE** — An internally illuminated sign with a cabinet-style fixture with full or nearly full translucent face(s) and/or sides, through which light from an internal source passes.
- B. **TYPE 2; CABINET WITH LIGHT-LIMITING FACE** — An internally illuminated sign with an opaque surround cabinet-style fixture with light-limiting translucent face(s), flush translucent sign graphics within an opaque background field, through which light from an internal source passes. This type of sign has two acceptable categories:
 - (1) Type 2-A: 20% (or less) translucent face/80% (or greater) opaque background field.
 - (2) Type 2-B: 30% (or less) translucent face/70% (or greater) opaque background field.
- C. **TYPE 3; CHANNEL LETTER** — An internally illuminated sign comprised of three-dimensional sign graphic letters and logos, each with its own internal light source, in which the dimensional faces are internally illuminated and affixed to the sign or structure upon which the channel letters are mounted.
- D. **TYPE 4; HALO** — An internally illuminated sign comprised of dimensional sign graphics, which cast a halo-like glow along the sides of the graphics, or cast light backward onto the face of the sign or structure upon which the graphics are mounted.
- E. **TYPE 5; PUSH-THROUGH LETTERING** — An internally illuminated sign with an opaque surround cabinet-style fixture with light-limiting translucent face(s), protruding translucent sign graphics within an opaque background field, through which light from an internal source passes. The protruding (push-through) section is limited to 1/2 inch in depth. This type of sign has two acceptable categories:
 - (1) Type 5-A: 20% (or less) translucent face/80% (or greater) opaque background field.
 - (2) Type 5-B: 30% (or less) translucent face/70% (or greater) opaque background field.

SIGN, NEON — A sign featuring exposed visible tubing illuminated by neon or other fluorescing gas. The term "neon" shall also include light-emitting diode (LED) or similarly lit signs intended to simulate the appearance of neon signage.[**Added 11-2-2021**]

SIGN, OFFICIAL BUSINESS DIRECTIONAL — A sign erected and maintained in accordance with the Maine Traveler Information Services Act, 23 M.R.S.A. § 1901 et seq. which points the way to public accommodations and facilities or other commercial facilities.[**Amended 11-5-1991**]

SIGN, OFF-PREMISES — Any sign designed, intended or used for advertising a product, property, business, entertainment, service, amusement or the like and not located where the matter

advertised is available or occurs.

SIGN, PORTABLE — A sign not designed or intended to be permanently affixed into the ground or to a structure.

SIGN, PROJECTING — Any sign projecting more than six inches from a wall surface of a building.**[Added 6-9-2009]**

SIGN, ROOF — Any sign painted on, integral to, or attached to the roof of a building.**[Amended 6-9-2009]**

SIGN, TEMPORARY — A sign of a temporary nature, to be displayed less than 30 days, exemplified by the following: political posters, charitable signs, construction signs, carnival signs, garage sale signs, lawn sale signs, rummage sale signs, all signs advertising sales or promotions, and "for rent" signs.**[Amended 11-5-1991]**

SIGN, WALL — Any sign painted on, or attached parallel to and projecting not more than six inches from, the wall surface of a building.**[Amended 11-5-1991]**

SIGN, WINDOW/DOOR — Any sign visible from the exterior of a building or structure which is painted, attached, glued or otherwise affixed to or placed within six inches of a window or door.²³**[Amended 11-5-1991; 6-9-2009]**

SMALL WIND ENERGY SYSTEM — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW.**[Added 11-3-2009]**

SOLAR PHOTOVOLTAIC SYSTEM, ACCESSORY USE — A solar collection system accessory to a permitted use or structure, consisting of one or more roof-mounted and/or ground-mounted solar photovoltaic cells, panels or arrays, and solar-related equipment that rely upon solar radiation as an energy source for collection, inversion, storage and/or distribution of solar energy for electricity generation. The ground-mounted solar collection system shall not exceed a total surface area (all panels/arrays) of 20,000 square feet in size.**[Added 11-2-2021]**

SOLAR PHOTOVOLTAIC SYSTEM, PRINCIPAL USE (SPVS-PU) — A solar collection system consisting of one or more ground-mounted solar photovoltaic cells, panels or arrays, and solar-related equipment that rely upon solar radiation as an energy source for collection, inversion, storage and/or distribution of solar energy for electricity generation.**[Added 11-2-2021]**

STABLE, COMMERCIAL — A building or land where horses are kept for remuneration, hire, sale, boarding, riding or showing.

STABLE, NONCOMMERCIAL — An accessory building to a residence designed or used for the accommodation of horses owned and used exclusively by occupants of the residence to which it is accessory.

STREAM — See "water bodies."

STREET — Public and private ways such as avenues, boulevards, highways, roads and other rights-of-way consisting of a bed of exposed mineral soil, gravel, asphalt or other surfacing material and constructed for or created by the repeated passage of motorized vehicles, as well as

23. Editor's Note: The definitions of "skid road or skid trail," and "slash," added 11-4-2008, which immediately followed, were repealed 6-12-2018.

areas on subdivision plans designated as rights-of-way or streets, except such ways as have been discontinued or abandoned. If a vehicular accessway meets the definition of a driveway, it shall not be considered a street unless agreed to by the developer or unless said accessway is required to meet road frontage requirements, in which case street standards shall apply.**[Amended 5-6-1996]**

STREET, ARTERIAL — A major thoroughfare which serves as a major trafficway for travel between and through the municipality.

STREET, COLLECTOR — A street servicing at least 25 lots or dwelling units, or streets which serve as feeders to arterial streets and collectors of traffic from minor streets.**[Amended 5-6-1996]**

STREET, INDUSTRIAL OR COMMERCIAL — Streets servicing exclusively industrial or commercial uses.**[Amended 5-6-1996]**

STREET, MINOR — A street servicing fewer than 25 lots or dwelling units.**[Amended 5-6-1996]**

STREET, PRIVATE RIGHT-OF-WAY — A street servicing fewer than 15 lots or dwelling units which is not intended to be dedicated as a public way and which will be maintained by a developer, property owner or group of property owners or a street which is not intended to be dedicated as a public way but which is constructed in accordance with the standards for a minor or collector street, depending on the number of lots or dwelling units served.**[Amended 5-6-1996]**

STRUCTURAL PROJECT — Projects involving the design, construction, renovation and/or maintenance of the actual structure of a building.**[Added 11-2-1999]**

STRUCTURE — Anything constructed or erected, the use of which requires location on, above or below the surface of the land or water.**[Amended 5-3-1999]**

STRUCTURE, ACCESSORY —

A. A structure which is:

- (1) Subordinate to and serves a principal structure or a principal use;
- (2) Subordinate in area, extent and purpose to the principal structure or use served;
- (3) Located on the same lot as the principal structure or use served, except as otherwise expressly authorized by the provisions of this chapter; and
- (4) Customarily incidental to the principal structure or use.

B. Any portion of a principal structure devoted or intended to be devoted to an accessory use is not an accessory structure.

STRUCTURE, NONCONFORMING — A structure which, at the effective date of adoption or amendment of this chapter, does not meet the dimensional, height, or setback requirements of the district in which it is located.**[Amended 11-5-1991; 11-7-2006]**

STRUCTURE, PRINCIPAL — A structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same lot.**[Amended 11-5-1991]**

STRUCTURE, TEMPORARY — A structure established for a fixed period of time with the intent to completely remove same from the lot upon the expiration of such time.

STRUCTURE, WATER-RELATED — A structure, including a pier, dock, wharf, float, crib, piling, boathouse, breakwater or causeway, the utility of which depends on its extending over or below the normal high-water line of a water body or within a wetland. See "use, water-dependent."**[Amended 11-5-1991; 6-8-2010]**

STRUCTURE, WATER-RELATED, PERMANENT — Structures which extend over or below the normal high-water line of a water body or within wetland for seven months or more in any period of 12 consecutive months.**[Amended 11-5-1991; 6-8-2010]**

STRUCTURE, WATER-RELATED, TEMPORARY — Structures which extend over or below the normal high-water line of a water body or within a wetland for less than seven months in any period of 12 consecutive months.**[Amended 11-5-1991; 6-8-2010]**

STUDENT HOUSING — (Applicable only in the Educational Institution District) Structures or portions therein where sleeping accommodations are provided to undergraduate students, graduate students, or any individual attending the college in either matriculated or nonmatriculated status, in one room or in a series of closely associated rooms under joint occupancy and single management.**[Added 5-3-2004]**

SUBDIVISION — See 30-A M.R.S.A. § 4401(4).

SUBSTANTIAL COMPLETION — Completion of 30% of a permitted structure or use measured as a percentage of the estimated total cost.**[Added 11-5-1991]**

SUBSTANTIAL START — The actual start date of construction is considered, but not limited to, construction, repairs, reconstruction, rehabilitation, and additions which occur within six months from the date the permit for such work was issued. Construction activities that do not require a building permit are not considered starting construction. The start of construction includes, but is not limited to, the placement of a structure on a site, setting forms for the pouring of a slab or footings, the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or installation of more than 10 cubic yards of fill. The start of construction also includes, but is not limited to, the removal or installation of interior or exterior doors, windows, walls, alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. The start of construction does not include land preparation, such as clearing, grading or filling of less than 10 cubic yards of fill. All activities, uses or construction allowed by a building permit must be started within six months from the date the permit was issued or the permit is null and void.**[Added 6-8-2010]**

SUBSTANTIVE REVIEW — A review of a completed application to determine whether it complies with the review standards set forth in this chapter and with other applicable requirements of law.

SUBSURFACE SEWAGE DISPOSAL SYSTEM — Any system designed to dispose of waste or wastewater on or beneath the surface of the earth; includes but is not limited to septic tanks, disposal fields, grandfathered cesspools, holding tanks, and pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. § 414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater treatment system.**[Added 11-5-1991; amended 11-4-2008; 11-3-2009]**

SUBSURFACE SEWAGE DISPOSAL SYSTEM, REPLACEMENT SYSTEM — A system

intended to replace:[**Added 11-5-1991**]

- A. An existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure; or
- B. Any existing overboard wastewater discharge.

SUSTAINED SLOPE — A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.[**Added 11-5-1991**]

SWIMMING POOL — An outdoor artificial receptacle or other container, whether in or above the ground, used or intended to be used to contain water for swimming or bathing and designed for a water depth of 24 inches or more.

TENT — A temporary collapsible shelter of canvas or similar material stretched and sustained by poles made fast by ropes attached to pegs into the ground and used for camping outdoors or as a temporary building.[**Added 11-2-1999**]

THEATER — A fully enclosed building used for display or presentation to the public of films, plays or other kinds of performances.

TIDAL AREA — Any area upon which tidal action occurs.[**Amended 6-8-2010**]

TIDAL WATERS — All waters affected by tidal action during the highest annual tide or mean highest high-water mark, whichever number requires the furthest setback from the water for the given year of measurement maximum spring tide.²⁴[**Added 11-4-2008; amended 6-8-2010**]

TRANSIENT — A person staying at a place that does not constitute his or her home or usual dwelling unit for less than 30 days.

TRANSIENT ACCOMMODATIONS —

- A. TA-1 — Bed-and-breakfast accommodations in the private, year-round residence of the host family who live on the premises (one to three rooms; maximum six guests). Breakfast is the only meal provided.
- B. TA-2 — A building or buildings where for compensation lodging is provided (four to 25 rooms). No meals are served.
- C. TA-3 — An existing building, constructed and completed prior to June 10, 1986, where for compensation lodging is provided (four to 10 rooms). TA-3 is permitted in districts where it is felt that lodging for transients is necessary to preserve or maintain many of Bar Harbor's residential structures: [**Amended 11-5-1991; 11-2-2004**]
 - (1) No building shall be expanded in floor area or volume by more than 10% over the lifetime of the building;
 - (2) There shall not be constructed any exterior stairway or fire escape enclosed or otherwise above the ground floor visible from the street on which the building fronts; and
 - (3) Breakfast is the only meal provided.

24. Editor's Note: The definition of "timber harvesting," as amended, which immediately followed, was repealed 6-12-2018.

- D. TA-4 — An existing building, constructed and completed prior to June 10, 1986, where for compensation lodging is provided (11 to 25 rooms). TA-4 is permitted in districts where it is felt that lodging for transients is necessary to preserve or maintain many of Bar Harbor's residential structures: **[Amended 11-5-1991; 11-2-2004]**
- (1) No building shall be expanded in floor area or volume by more than 10% over the lifetime of the building;
 - (2) There shall not be constructed any exterior stairway or fire escape enclosed or otherwise above the ground floor visible from the street on which the building fronts; and
 - (3) Breakfast is the only meal provided.
- E. TA-5 — A building or buildings where for compensation lodging and one or more meals for guests only are provided (four to 25 rooms). **[Amended 5-6-2002]**
- F. TA-6 — An existing building, constructed and completed prior to June 10, 1986, where for compensation lodging and meals for guests only are provided (four to 25 rooms). TA-6 is permitted in districts where it is felt that lodging for transients is necessary to preserve or maintain many of Bar Harbor's residential structures: **[Amended 11-5-1991; 11-2-2004]**
- (1) No building shall be expanded in floor area or volume by more than 10% over the lifetime of the building;
 - (2) There shall not be constructed any exterior stairway or fire escape enclosed or otherwise above the ground floor visible from the street on which the building fronts.
- G. TA-7 — A building or buildings where for compensation lodging and meals are provided (four to 25 rooms). Accessory uses subject to site plan review include restaurant, gift shop and the like.
- H. TA-8 — A building or buildings where for compensation lodging and meals are provided (25 or more rooms). Accessory uses subject to site plan review include restaurant, cocktail lounge, gift shop, conference room, recreational facilities, such as swimming pool, game courts, and recreational rooms, and the like.

TRANSPORTATION FACILITIES — Structures and grounds used for transportation service activities, such as ticket booths and waiting shelters for bus, taxi, touring van or ferry passengers. The term does not include parking lots or major ferry terminal facilities such as the one for the Bluenose.

TRIBUTARY STREAM — A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock and which flows to a water body or wetland as defined. This definition does not include the term “stream” as defined elsewhere in this chapter, and only applies to that portion of the tributary stream located within the Shoreland Zone of the receiving water body or wetland. **[Added 11-5-1991; amended 6-13-2006;**

11-3-2009; 6-8-2010]

UMBRELLA — A portable, usually cloth, canopy to provide protection against the weather that is fastened to a frame with hinged ribs that radiate from the center pole which may be attached to a patio table.**[Added 11-2-1999]**

UNDERTAKING ESTABLISHMENT — A dwelling or other structure used and occupied by a professional licensed mortician for burial preparation and funeral services.

UPLAND EDGE — See "wetland, upland edge."**[Added 11-5-1991]**

USE — The purpose or activity for which land or any building or structure thereon is designed, arranged, intended, occupied or maintained.

USE, ACCESSORY —

A. A use which is:

- (1) Subordinate to and serves a principal use;
- (2) Subordinate in area, extent and purpose to the principal use served;
- (3) Located on the same lot as the principal use served, except as otherwise expressly authorized by this chapter; and
- (4) Customarily incidental to the principal use.

B. An accessory use shall not include any use injurious or offensive to the neighborhood as initially determined by the Code Enforcement Officer.

C. Allowed off-street parking shall always be considered a permitted accessory use when required or provided to serve a permitted use in any district. **[Added 6-13-2017]**

USE, FUNCTIONALLY WATER DEPENDENT — Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, inland waters and that cannot be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or processing water that cannot be reasonably located or operated at an inland site, and uses that primarily provide general public access to inland and tidal waters.**[Added 6-8-2010]**

USE, NONCONFORMING — A use which, at the effective date of adoption or amendment of this chapter, is not a permitted use in the district in which it is situated.

USE, PERMITTED — A use which may be established in a particular district, provided it conforms to all the requirements, standards, and regulations of such district.

USE, PRINCIPAL — A use other than one which is wholly incidental or accessory to another use on the same lot.**[Amended 11-5-1991]**

USE, TEMPORARY — A use established for a fixed period of time with the intent to discontinue such upon the expiration of such time. Such uses do not involve the construction or alteration of

any permanent structure.²⁵

UTILITIES — All public services, such as electricity, water, sanitary sewer, stormwater drainage, telephone and cable television.

VACATION RENTAL — The use of a dwelling unit or portion thereof for rent to a family for a period of less than 30 days and a minimum of five days. Time-share property, as most recently defined in 33 M.R.S.A § 591, is also included in this definition.**[Added 6-13-2006; amended 11-5-2019]**

VACATION RENTAL-1 (VR-1) — A dwelling unit, or portion thereof, that is the primary residence of the property owner or on the owner's primary residence property and is rented to a person or a group for less than 30 days and a minimum of two nights. The rental of a portion of the dwelling, such as a bedroom, must be located in the principal structure housing the dwelling unit.**[Added 11-2-2021]**

VACATION RENTAL-2 (VR-2) — An entire dwelling unit that is not the primary residence of the property owner and is rented to a person or a group for less than 30 days and a minimum of four nights.**[Added 11-2-2021]**

VEGETATION — All live trees, shrubs, and other plants, including, without limitation, trees both over and under four inches in diameter measured at 4 1/2 feet above ground level.**[Amended 6-8-2010]**

VELOCITY ZONE — An area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources.**[Added 6-8-2010]**

VETERINARY HOSPITAL OR CLINIC — A building used for the diagnosis, care and treatment of ailing or injured animals which may include overnight accommodations. The overnight boarding of healthy animals shall be considered a kennel.

VIEWSHED — An elevated or unobstructed location, position, or area that permits an unhindered panoramic vista of particular interest or pleasure or unique view to or from a particular point.**[Added 11-3-2009]**

VISUAL IMPACT ASSESSMENT — An assessment of impacts to the viewshed from and to a proposed development. The assessment should accurately show the proposed project to scale within the visual context of the viewshed. There are six components of a visual impact assessment: defining the project setting and viewshed, identifying key views for visual assessment, analyzing existing visual character, a depiction of the visual appearance of project alternatives, an assessment of the visual impacts of project alternatives and a proposal for methods to mitigate adverse visual impacts.**[Added 11-3-2009]**

VISUALLY COMPATIBLE — A design that is visually or architecturally harmonious with the predominate pattern of buildings when viewed from a public street.**[Added 11-2-1999]**

VISUALLY COMPLEMENT — See "complement the visual character of the district."**[Added 11-2-1999]**

VOLUME OF A STRUCTURE — The volume of all portions of a structure enclosed by a roof

25. Editor's Note: The former definition of "use, water-dependent," as amended 11-5-1991, which immediately followed this definition, was repealed 6-8-2010.

and fixed exterior walls as measured from the exterior faces of these walls and roof.

WALLS, FREESTANDING OR ORNAMENTAL — Structural or nonstructural walls that are not part of a building or structure, such as retaining walls or walls for enclosing or screening areas or facilities.**[Added 11-2-1999]**

WAREHOUSING AND STORAGE FACILITY — A structure for the storage of merchandise or commodities, including bulk storage and bulk sales outlet.

WATER BODIES, GREAT POND — Any inland body of water which in a natural state has a surface area in excess of 10 acres, and any inland body of water artificially formed or increased which has a surface area in excess of 30 acres except for the purposes of this chapter, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.**[Added 11-5-1991]**

WATER BODIES, GREAT POND CLASSIFIED GPA — Any great pond classified GPA, pursuant to 38 M.R.S.A. § 465-A. This classification includes some but not all impoundments of rivers that are defined as great ponds.**[Added 11-5-1991]**

WATER BODIES, RIVER — Any free-flowing body of water from that point at which it provides drainage for a watershed of 25 square miles to its mouth.

WATER BODIES, STREAM — A free-flowing body of water from the outlet of a great pond or the confluence of two perennial streams, as depicted by a solid blue line on the most recent edition of a United States Geological Survey 7.5 minute series topographic map or, if not available, a fifteen-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland zone.**[Amended 11-5-1991; 5-4-1992; 5-6-1996; 6-13-2006²⁶]**

WATER CROSSING — Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland, whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables, as well as maintenance work on these crossings. This definition includes crossings for timber-harvesting equipment and related activities.**[Added 11-5-1991; amended 11-4-2008; 11-3-2009]**

WATER-DEPENDENT USE — See "use, water-dependent."**[Added 11-5-1991]**

WETLAND — A coastal or freshwater wetland.**[Amended 11-5-1991; 6-13-2006²⁷]**

WETLAND, COASTAL — All tidal and subtidal lands, all lands with vegetation present that is tolerant of saltwater and occurs primarily in a saltwater or estuarine habitat, and any swamp, marsh, bog, beach, flat or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed, as identified in tide tables published by the National Ocean Service. Coastal wetlands include coastal portions of sand dunes.**[Added 11-5-1991; amended 6-13-2006; 11-4-2008; 11-3-2009; 6-8-2010]**

WETLAND, FORESTED — A freshwater wetland dominated by woody vegetation that is six meters (approximately 19.7 feet) tall or taller.**[Added 5-4-1992; amended 6-13-2006²⁸]**

26. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

27. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

WETLAND, FRESHWATER — Freshwater swamps, marshes, bogs and similar areas, which are of 80,000 contiguous square feet or more or are wetlands adjacent to any surface water body; and inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.**[Added 11-5-1991; amended 5-4-1992; 6-13-2006²⁹]**

WETLAND, UPLAND EDGE — The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt-tolerant vegetation and/or the highest annual tide, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters (approximately 20 feet) tall or taller.**[Added 11-5-1991; amended 6-13-2006; 11-4-2008; 6-8-2010]**

WHARF — See "structure, water-related."

WHOLESALE BUSINESS ESTABLISHMENT — Any business, housed in a permanent structure, engaged in the sale of goods in large amounts to retailers or jobbers, rather than directly to consumers.

WILDLIFE — All vertebrate species (animals with backbones), except fish.

WILDLIFE HABITAT, SIGNIFICANT — Areas identified by a governmental agency such as the Maine Department of Inland Fisheries and Wildlife as having significant value as habitat for animals and any areas identified in the municipality's Comprehensive Plan.**[Added 5-3-1999]**

WILDLIFE MANAGEMENT PRACTICES — Activities engaged in for the exclusive purpose of management of wildlife populations by manipulation of their environment for the benefit of one or more species. Such practices may include, but not be limited to, harvesting or removal of vegetation, controlled burning, planting, impounding water, controlled hunting and trapping, relocation of wildlife, predator and disease control, and installation of artificial nesting sites, provided that such activities are specifically controlled and designed for the purpose of managing such species.

WINDOW — An opening in the wall of a building for the admission of light or air that is usually closed by casements or sashes containing transparent or translucent material.**[Added 11-5-1991]**

WIND TURBINE — The blades, rotor, and associated mechanical and electrical conversion components mounted on top of the supporting tower.**[Added 11-3-2009]**

WOODY VEGETATION — Live trees or woody, nonherbaceous shrubs.**[Added 11-4-2008]**

YARD — The area of land on a lot not occupied by buildings.

YARD, FRONT — The open, unoccupied space on the same lot with the principal building between the front lot line and the nearest part of any building on the lot and extending the entire width of the lot.

28. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

29. Editor's Note: This ordinance also provided that it shall apply retroactively to all proceedings, applications and/or petitions pending on or commenced after 9-6-2005, notwithstanding the provisions of 1 M.R.S.A. § 302.

YARD, REAR — The open, unoccupied space on the same lot with the principal building between the rear lot line and the nearest part of any building on the lot and extending the entire width of the lot.

YARD, SIDE — The open, unoccupied space on the same lot with the principal building between a side lot line and the nearest part of any building on the lot, extending from the front yard to the rear line or a front line shall be deemed a side line.

ARTICLE I
Channel Boundaries and Anchorage Areas; Definitions

§ 153-1. Authority; establishment of boundaries.

- A. Pursuant to the authority granted by 38 M.R.S.A § 2, 1964, as amended, the Town Council of the Town of Bar Harbor hereby establishes the following boundaries wherein these regulations shall apply to activities occurring within or directly affecting the area to the fullest extent permitted by law:

Beginning at the northwestern point of Bar Island and running along the low water mark of Bar Island southeasterly and easterly to the southeasterly point of Bar Island; thence from the southeasterly point of Bar Island easterly to the southern tip of Sheep Porcupine Island; thence from the southern tip of Sheep Porcupine Island southeasterly to the western tip of Bald Porcupine Island; thence running along the low water mark of Bald Porcupine Island; thence southeasterly to the high water line at Dorr Point on Mount Desert Island; thence westerly and northerly to Israel Point in Mount Desert Narrows; thence following the high water line on Mount Desert Island from Old House Cove southerly and westerly to Crystal Cove in Western Bay on Mount Desert Island; thence northwesterly seaward to the Bar Harbor Town lines or 2,000 yards, whichever is lesser; thence easterly and southerly to the point of beginning. The area includes Compass Cove, Cromwell Harbor, Bar Harbor, Canoe Point, Hulls Cove, Lookout Point, Sand Point, Salisbury Cove, Emery Cove, Leland Point, Hadley Point, Thomas Island, Clark Cove, Northeast Cove, Indian Point, Long Cove, Green Island, Black Island, Crystal Cove, and all the waters within these boundaries.

- B. All that part of the waters of the Town of Bar Harbor encompassed by the above-described boundary lines is hereby assigned for anchorage except designated channels.

§ 153-2. Definitions.

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

INNER HARBOR — Includes all waters eastward of the bar to a line running northerly from Balance Rock to the harbor channel entrance buoy, thence northerly to the easternmost point of Bar Island, bounded on the north by Bar Island and bounded on the south by the shoreline of Mount Desert Island.

WATERCRAFT — Any type of vessel, boat or craft used or capable of being used as a means of transportation on water.

§ 153-3. Statutory authority.

The rules and regulations established by the Bar Harbor Town Council in this chapter are enacted pursuant to 38 M.R.S.A. § 2, as amended.

§ 153-4. Harbor Master.

The Harbor Master may appoint deputies who, under his/her direction, shall be authorized to enforce and carry out the rules and regulations of this chapter.

- A. Compensation. The compensation to be paid to the Harbor Master and deputies shall be determined by the Town Council and the compensation of deputies set as provided by the personnel rules.
- B. Duties. It shall be the duty of the Harbor Master to:
 - (1) Enforce the provisions of all rules, regulations, ordinances and other laws which are lawfully promulgated and which are within his/her jurisdiction pursuant to law.
 - (2) Provide copies of all rules, regulations, ordinances and other laws which pertain to the harbor, waterfront and watercraft within the Town of Bar Harbor and to make said copies available to those persons using said harbor.
 - (3) Promote order in the harbor and ensure safety and use of the harbor for the general public.
- C. The Harbor Master is hereby authorized and it shall be his/her duty to remove or cause to be removed any watercraft from any wharf or dock in Bar Harbor when so requested by the owner of said wharf or dock. Whenever he/she shall deem it necessary, he/she shall remove or cause to be removed any watercraft lying in tier or rafted from any dock, wharf or mooring within his/her jurisdiction. If any vessel, boat, or raft or any watercraft shall anchor or lie contrary to any ordinance, rule or regulation of the Town of Bar Harbor, said Harbor Master shall forthwith serve notice to the owner or master or the person in care of said watercraft to remove the same and, if the person given a notice does not comply with said notice of the Harbor Master without delay, the Harbor Master shall cause the removal of said watercraft at the expense of said owner, and the Harbor Master may recover the cost of any such removal from the watercraft owner upon complaint filed in the Maine District Court.

§ 153-11. Authority of Harbor Master.

The Harbor Master shall have the authority and power to enforce the provisions of these rules and regulations and all other laws and ordinances which are applicable to the harbor, waterfront and watercraft, including the authority and power to make arrests pursuant to law.

§ 153-22. Fees.

- A. No person shall tie up any watercraft to any municipal float, mooring or pier or utilize the boat launching ramp without registering with the Harbor Master and paying such fee as may be required in accordance with such schedule as may be in effect at that time, said schedule of fees to be fixed by the Town Council from time to time.

- B. Port fees. No person shall berth or anchor any cruise ship within the boundaries established by § 153-1 of this chapter or anchor any cruise ship outside such boundaries and transport its passengers by watercraft for disembarkation in the Town of Bar Harbor without registering with the Harbor Master and paying such fee as may be required in accordance with such schedule as may be in effect at that time said schedule of fees to be fixed by the Town Council from time to time by order. For the purposes of this subsection, "cruise ship" means a watercraft carrying passengers for hire which is capable of providing overnight accommodations for 49 or more passengers.

§ 153-29. Appeals.

Any person adversely affected by a decision of the Harbor Master may appeal the decision to the Harbor Committee. Persons filing appeals must make written application to the Town Clerk within 30 days of a written decision of the Harbor Master and pay such fee as determined and set by the Town Council from time to time.



Minutes
Special Bar Harbor Town Council Meeting
March 6, 2024

I. CALL TO ORDER – 5:30 p.m. in the Municipal Building Auditorium—In attendance were Councilors Valerie Peacock, Gary Friedmann, Matthew Hochman, Maya Caines, Joe Minutolo, Earl Brechlin and Kyle Shank; Town Manager James Smith and Town Attorney Stephen Wagner.

II. REGULAR BUSINESS

A. Cruise Ships—Chair Peacock read a prepared statement. Kristi Bond and Cara Ryan offered public comment.

III. ADJOURNMENT—Mr. Hochman, with second by Ms. Caines, moved to adjourn at 5:40 p.m. Roll Call Vote:

- Brechlin Y
- Shank Y
- Hochman Y
- Peacock Y
- Friedmann Y
- Minutolo Y
- Caines Y
- Motion passed 7-0.

Elizabeth N. Graves, Town Clerk



Home Page News Flash

Posted on: March 6, 2024

Town Council statement on cruise ship ordinance enforcement

The Bar Harbor Town Council issued the following statement at a special meeting Wednesday, March 6, 2024.

The Town Council is pleased the United States District Court affirmed what we have known to be true: The Town of Bar Harbor has the authority, under Home Rule, to enact ordinances to limit the volume of cruise ship visitations in order to ensure the Town's quality of life is preserved.

While it is no secret that many of us on this Council have had concerns with some aspects of the cruise ship ordinance proposed by a citizen initiative, the fact remains that this initiative was voted on and approved at Town Meeting and is now the law of the land. This Council will now see to its immediate implementation and enforcement, in a way that is lawful, fair, and fiscally responsible.

Pending rulemaking, enforcement will begin immediately. This Council has already directed the Harbor Master to cancel, or reject, requests for reservations made after the day of the vote for all ships with lower berth capacities greater than 1,000 passengers. The disembarkation of passengers of cruise ships with reservations for the 2024 season that are made and accepted after this date are subject to the current Ordinance. However, the Council will honor reservations made before the town voted. Passengers from these 2024 ships will not be subject to the disembarkation limits of the Ordinance.

Together with the reductions already achieved by implementing the Memorandum of Agreement between the cruise lines and the Town our community will experience a 50% reduction from peak year cruise ship visitation. This will be a good opportunity for us all to experience the impact of such a reduction on our quality of life and Town operations.

It is the position of this Council that this is the fairest and most legally responsible approach, based upon careful consideration of costs and risks associated with enforcement.

We disagree with the demands from some to delay all enforcement until any appeal of the court decision is resolved which would result in no additional reductions. We also disagree with the demands from others to cancel all reservations made prior to the adoption of the Ordinance, which would result in at least an 80% reduction.

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Most of the ships in question are scheduled to arrive in less than 90 days. Cancelling the bulk of the 2024 season now would be fundamentally unfair, would potentially expose the Town to additional legal liabilities, and would have a drastic fiscal impact on an already strained and nearly complete municipal budget.

In reviewing the 2025 season, the Council will ensure that the disembarkation of any cruise lines with reservations made and accepted after March 17, 2022, will be subject to the Ordinance. The Town is prepared to go to court to obtain fines and injunctive relief against any landowner that exceeds the disembarkation limits, and any party that disobeys the orders of the Harbor Master.

The Council hereby directs the Town Manager to prepare draft rules for Council consideration necessary to ensure the Ordinance may be implemented efficiently, and in compliance with the Court's decision. This includes updating the Cruise Ship Standard Operating Procedures to govern shoreside operations and any changes made to confirmed and honored reservations.

The Town Manager shall present these draft rules to the Council as soon as possible, and these draft rules will be subject to a public hearing and a final enactment by the Town Council.

Additionally, the Town Manager shall recommend any additional ordinance amendments or polices necessary to efficiently and effectively manage cruise ship reservations and disembarkations. Any substantive amendments to the Land Use Ordinance will require a Town Meeting vote.

The Council remains committed to listening to all individuals, parties, and stakeholders to ensure that the regulation of cruise ship tourism works for the entire community.

In conclusion, we would like to give special thanks to the Town Attorney Stephen Wagner as well as to Jonathan Hunter and the Attorneys at Rudman Winchell for their tireless advocacy for the Town of Bar Harbor in this matter.

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Posted on: March 25, 2024



**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 uncodified 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.

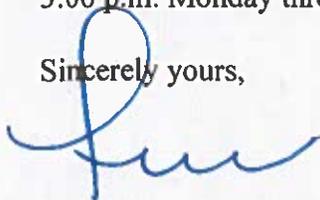
You are hereby ordered to take the following corrective action: within thirty (30) days from the date of this letter you must submit an application to allow for the disembarkation of individuals meeting the definition of Person under the CSD Ordinance. Failure to apply for the applicable permits within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

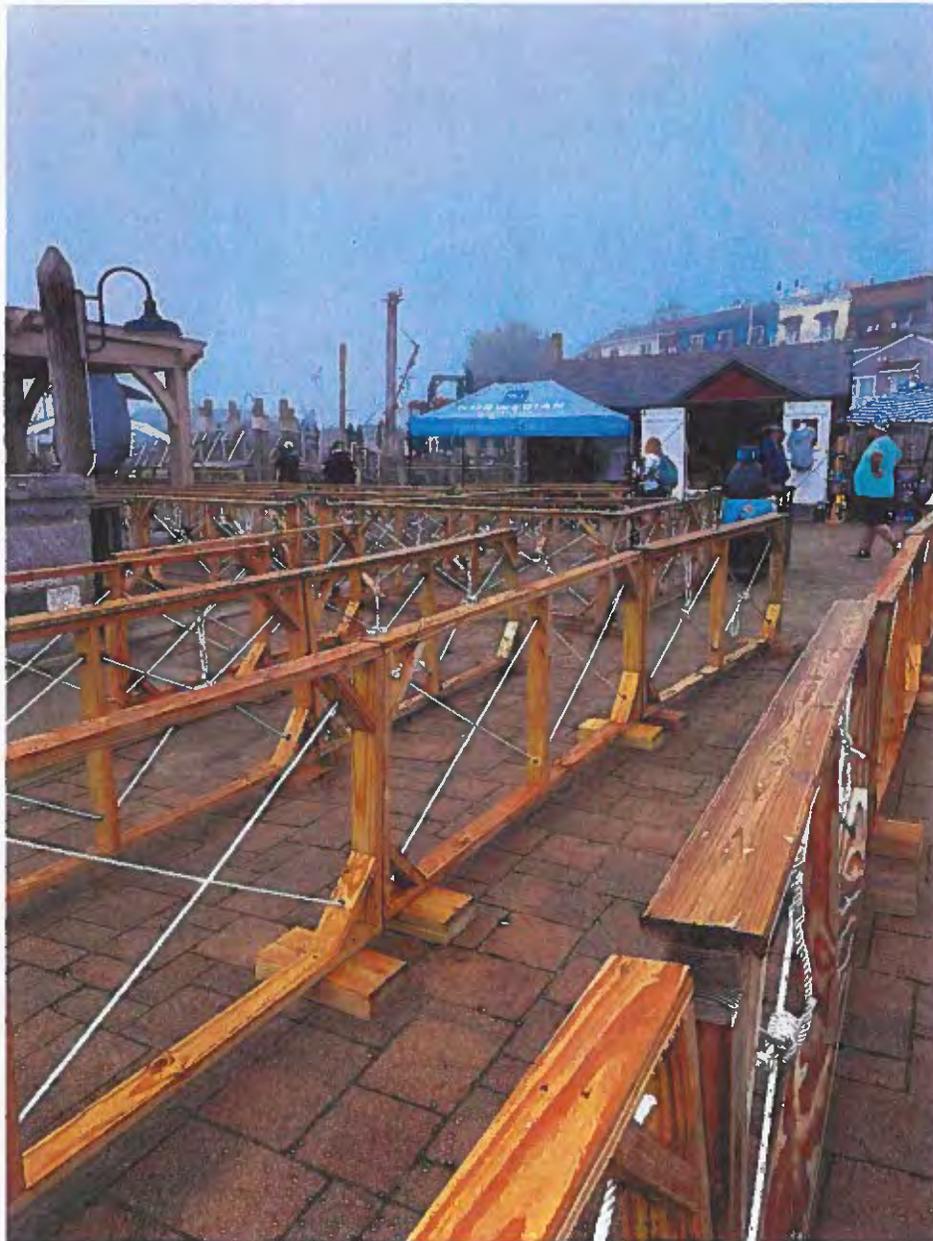
Number of Persons who disembarked over the limit: _____

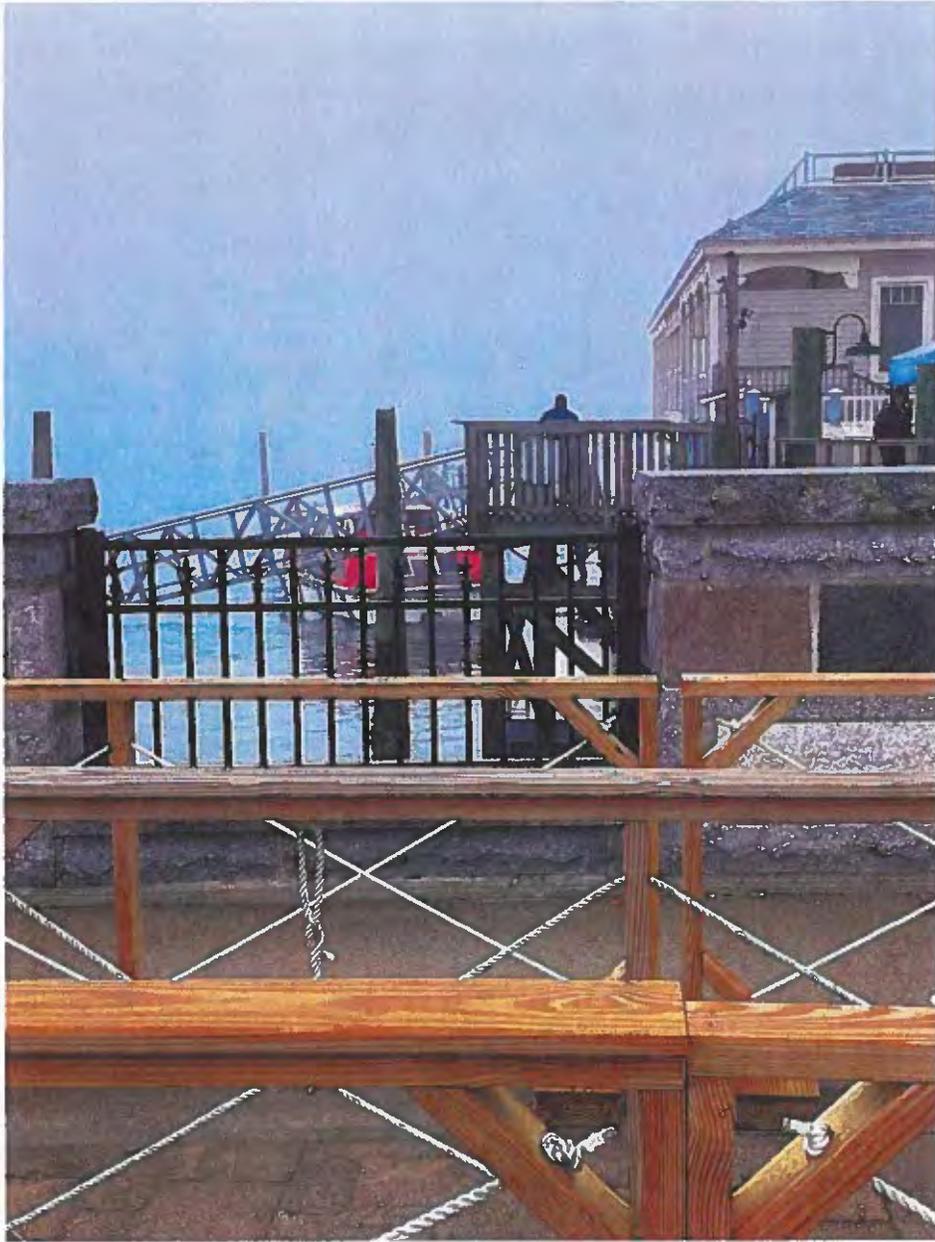
Other pertinent information:

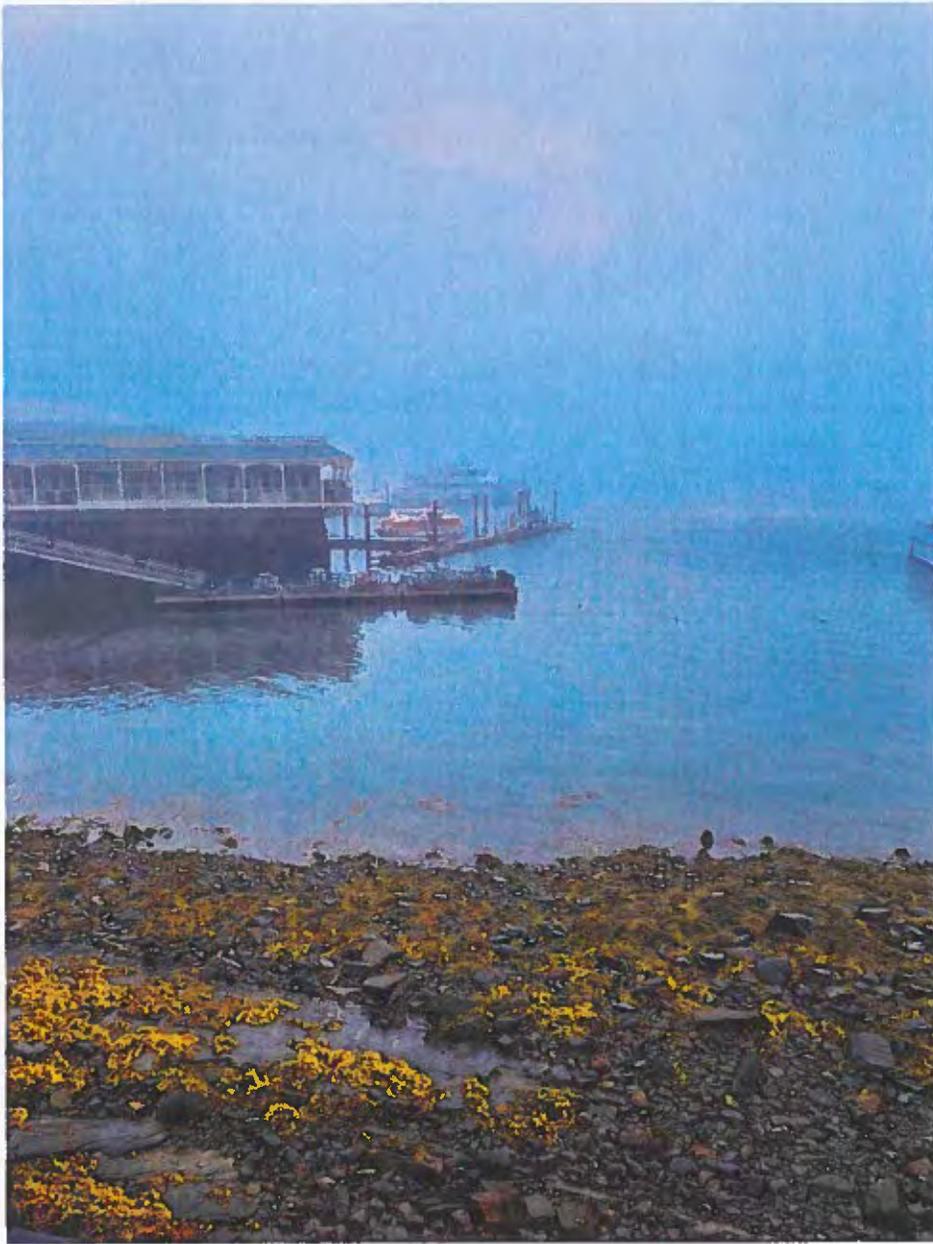
Tenders were arriving at the dock and we witnessed passengers being unloaded from the tenders onto the dock. Norwegian tents were set up on the site for the Norwegian GEM.

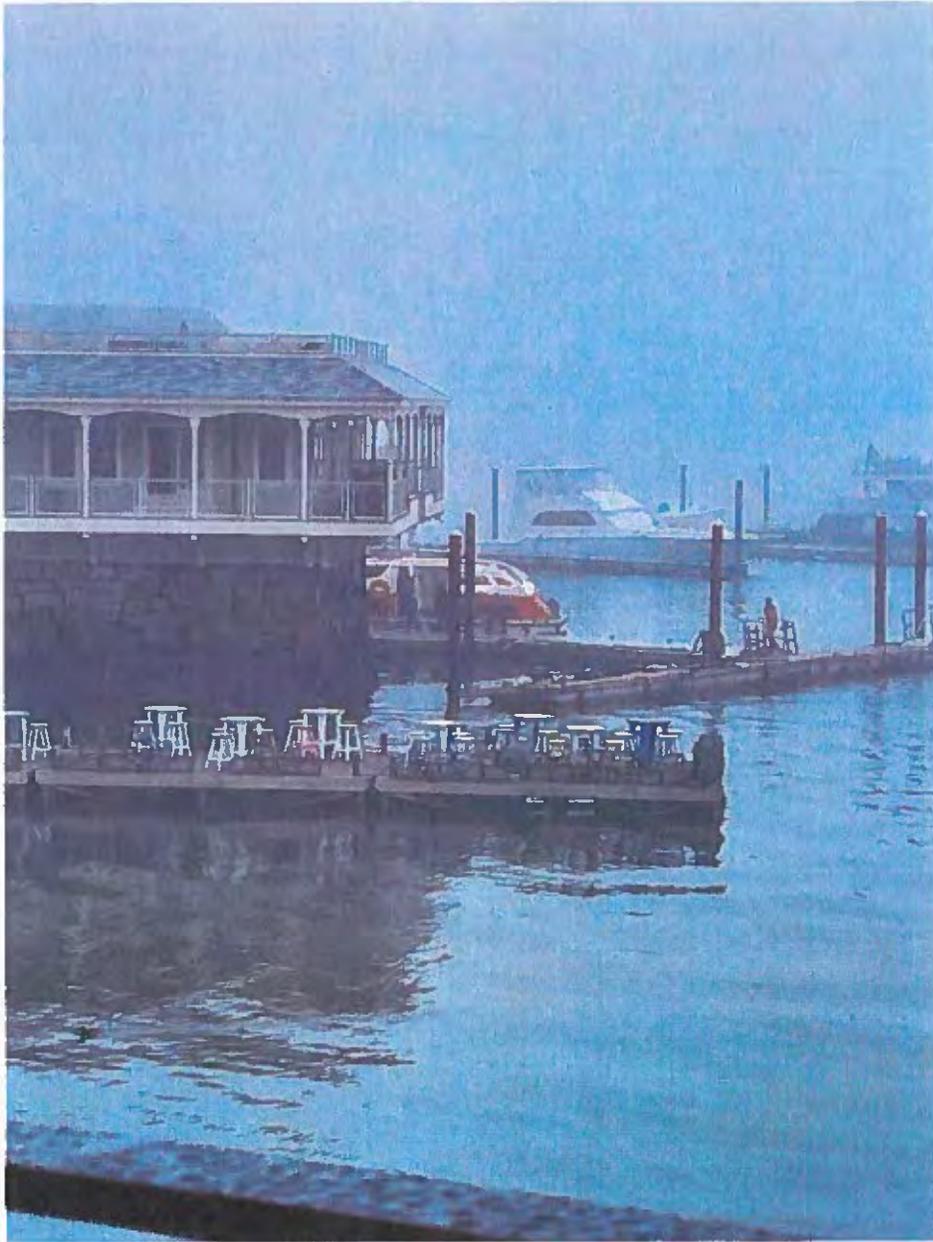
The Code Enforcement Department does not have any pending Cruise Ship Disembarkation Facility Permit or Cruise Ship Disembarkation Permit applications on file for this property.

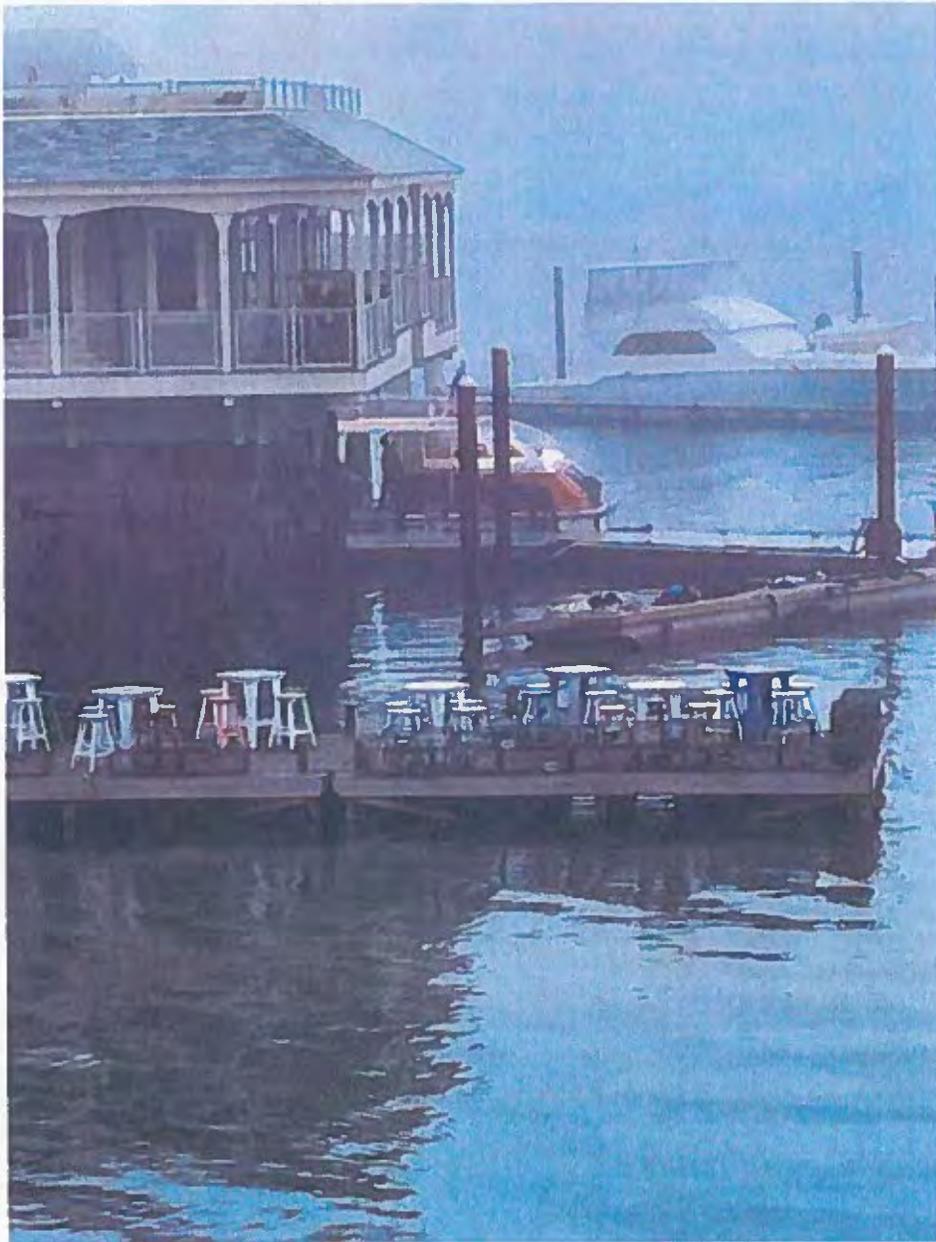
Report prepared by Angela Chamberlain, Code Enforcement Officer.

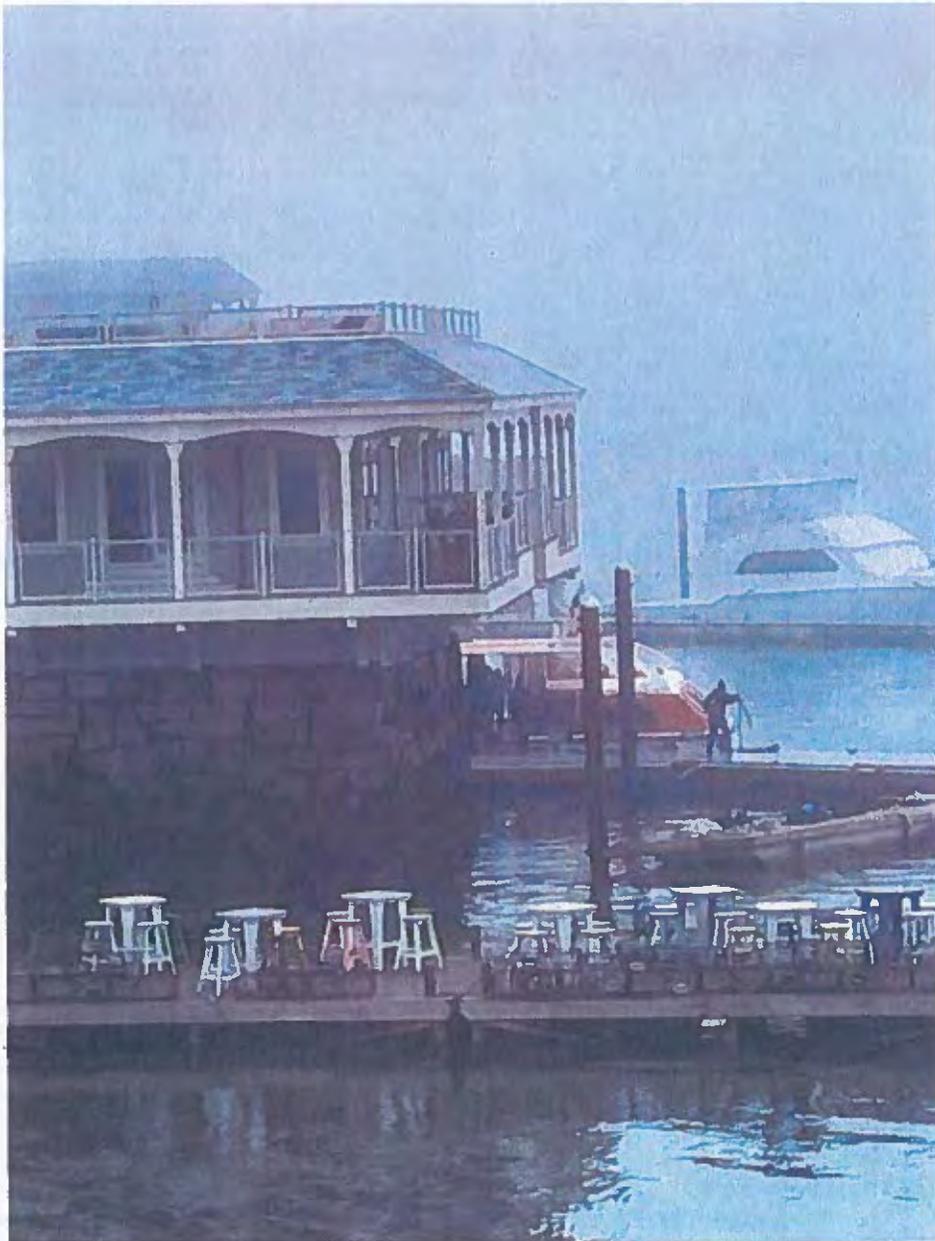












On Tuesday, June 18, 2024, the Bar Harbor Town Council adopted the following amendment to the Municipal Code. The amendment takes effect July 18, 2024. A copy has been filed with the Town Clerk.

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.

July 2024

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



TOWN OF BAR HARBOR

Manager's Office

93 Cottage Street, Suite I
Bar Harbor, ME 04609-1400
Tel. 207-288-4098 Fax 207-288-4461



James Smith, Town Manager

email: manager@barharbormaine.gov

July 1, 2024

PRESS RELEASE

STATUS OF RULES & REGULATIONS:

As explained during the June 18, 2024, Council Meeting, the Cruise Ship Disembarkation Ordinance constitutes the “rules and regulations” required by Land Use Ordinance Section 125-77(H)(3). These rules and regulations are necessary for the regulation of the disembarkation of no more than 1,000 cruise ship passengers per day in the Town of Bar Harbor, or enforcement action if any violation was to occur.

Per Section C-15 of the Town Charter, these rules and regulations do not become effective until July 18, 2024, 30 days post Council adoption.

The enforcement of either Section 125-77(H), or the associated rules and regulations, do not allow the Town to take direct action to prevent passengers from physically disembarking or issue fines. Any such action requires an order from a court issued pursuant to 30-A M.R.S. § 4452.

REGULATING THE 2024 CRUISE SHIP SEASON:

The Council’s passage of the Cruise Ship Disembarkation Ordinance on June 18, 2024, does not supersede a previous press statement released on March 6, 2024. All cruise ship anchorage reservations confirmed on or before November 8, 2022, will allow for disembarkation for the 2024 season. However, pursuant to Section 125-77(H) and its rules and regulations, any property owner seeking to disembark passengers after July 18, 2024, is now required to obtain the necessary permits.

Any such property owner will be provided reasonable time to complete the necessary applications, make any necessary arrangements to comply, and receive their permits. This reasonable accommodation will be made on a case-specific determination through an interactive process.

However, after being provided a reasonable amount of time to voluntarily comply with these new regulatory requirements, if a property owner or operator fails to comply or fails to work with the Town in good faith to comply with these requirements and chooses to facilitate the disembarkation of cruise ship passengers without authorization or required permits, then the Town may consider any such actions and/or decisions a violation and seek enforcement action through the courts.

REGULATING THE 2025 CRUISE SHIP SEASON:

Requests for anchorage reservations will be accepted on a first-come-first-served basis, in accordance with the reservation policies and practices of the Harbor Master.

Any new reservations for 2025 are subject to a disclaimer that all disembarkations are subject to all local codes, rules, and regulations.

Any property owner or their operator seeking to disembark cruise ship passengers is expected to have all the necessary facility upgrades made, applications submitted in a timely manner, and permits received before the disembarkation of any cruise ship passengers, regardless of when requests for anchorage were made or approved for the 2025 Cruise Ship Season, excluding any passengers disembarking from cruise ships with anchorage reservations made and confirmed before March 17, 2022.