

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.