

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 202\_ -\_\_

**BALLOT PROPOSITION OF \_\_\_\_\_ 202\_**

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA,  
LIMITATION OF CRUISE VISITATION IN SITKA**

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become part of the Sitka General Code.
2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstance shall not be affected.
3. **PURPOSE AND OVERVIEW.** This ordinance establishes, in the zoning chapter of the general code, a regulatory system for cruise visitation in Sitka. Using that system, it takes urgent action that restores cruise visitation to an interim pre-pandemic level beginning with the 2024 cruise season. The prescribed level is a reasonable starting point that can stand until such time that adjustments may be made. The ordinance is consistent with the purposes of Sitka's land use (Zoning) code and is necessary: (1) to improve safety and alleviate nuisances by reducing cruise-related overcrowding of people and vehicles on Sitka's highways, streets, sidewalks and public places; (2) to protect the health and wellbeing of Sitka residents; (3) to protect Sitka's rural small town character and way of life; and (4) to protect Sitka's integrity as a destination for international, national and Alaskan visitors of all kinds.

Initiative sponsors acknowledge the Assembly's creation of the Tourism Task Force. However, Task Force deliberations will not begin in earnest until fall, and its report is not due until the end of April 2024. Detrimentially, this is too late to affect numbers of cruise tourists in 2024, and possibly in 2025 as well.

Limitation of the combined number of independent travelers and cruise tourists is necessary. This ordinance focuses only on cruise tourist numbers since this is by far the largest share of the recent unacceptable overcrowding in Sitka — a matter of high urgency in the present absence of controls.

Authority for this ordinance is Alaska Statute 29.04.010 ("Home Rule") under which the municipality "has all legislative powers not prohibited by law or charter." Further, the Ordinance avoids impinging maritime law or the U.S. Constitution's clauses for commerce or federal supremacy because: (1) it is narrowly tailored to a legitimate local interest; (2) it does not discriminate between local, interstate or foreign commerce and does not have a discriminatory purpose or effect; (3) any burden it places on interstate or foreign commerce is incidental in relation to local benefits; and (4) as a land use ordinance it does not impinge federal fields such as vessel navigation, maritime safety, or security.

The ordinance sets caps, exercised through prescheduling. There is an annual cap of 240,000 cruise "persons ashore" (passengers and off-duty crew). The 240,000 is a rough estimate for the mid-range number of people who were ashore from cruise ships during those years of the 2001 to 2019 pre-pandemic period for which the cumulative capacity of cruise ships was over 200,000. (See Attachment A.) Independent of the annual cap, within any week there is a range of daily caps that apply. These limit the persons ashore during a day to no more than a listed percentage of Sitka's resident population. (See Table 22.26-1, in section 22.26.040 below.) Collectively over a week, these also amount to a weekly cap. The three kinds of caps all must be satisfied. Acting in different ways they: improve safety for residents and visitors; avoid visitation-forced closures of Lincoln Street; afford opportunities for all sizes of ships that have visited Sitka; reduce nuisances; and help protect Sitka's small-town rural character.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by action of the electorate of the City and Borough of Sitka as follows:

**Section 1: In Title 22 (Zoning) of the Sitka General Code, add chapter 22.26, as follows:**

**Chapter 22.26 — Limitation of Cruise Visitation**

**22.26.010 Purpose and Intent**

The purpose of this Chapter is to regulate the number of people ashore in Sitka due to cruise ship port calls. A further initial purpose is urgent interim action that gives immediate relief from impacts of ballooning cruise overtourism that began in 2022. The chapter accomplishes this by restoring cruise tourism from the excessive levels in 2022 and 2023 to a still-substantial pre-pandemic level for 2024 and - until such time that this interim restoration may be amended - for following years. The restored level is better suited to the reasonable capacity of Sitka's infrastructure, services and attractions (streets, sidewalks, public facilities, other public places, and more). It is a level that helps avoid overcrowding and nuisances and provides for the safety, health and general welfare of Sitka residents, as well as visitors. In pursuing its purposes, this chapter instills a needed balance among the Comprehensive Plan's competing goals that the "use of private and public lands" will "foster[] economic opportunity, maintain[] Sitka's small-town atmosphere and rural lifestyle, and enhance[] the quality of life for present and future generations." The purposes of this chapter are consistent with the purpose of the Zoning title (see 22.04.020).

**22.26.020 Introduction**

Sitka's road system and the lands it serves became, broadly, a defacto *port district* unacceptably impacted by recent rapid growth in the number of people ashore due to cruise ship port calls. Access to the port district is via several public and private port facilities used by cruise ships or lighters. The ordinance establishing this chapter creates the Sitka Port District ("port district") elsewhere in this title, at 22.12.010. It is a zone overlaying the road system and existing zones the road system accesses.

This chapter regulates the port district through permit and scheduling systems. The systems administer limitations on the daily, weekly and annual numbers of people who, combined, either disembark to the port district from cruise ships or who join cruise ships here (embark on a ship's new itinerary). These are termed "persons ashore". The chapter coordinates responsibilities of the municipal Administrator and the Planning and Harbor Departments for establishing, operating and enforcing the above administrative systems and for acquiring accurate counts of persons ashore. Purposes for the data are to inform municipal decisionmaking for in-season management, for planning uses, for use in making future modifications of this chapter, and to inform the public.

Cruise tourism in Sitka has historically been gauged using coarse 'lower berth' capacity specifications of individual cruise ships (due to lack of any better information), but this chapter regulates using the number of people scheduled to be ashore as a result of port calls, and the later actual number ashore. Persons ashore metrics are more accurate and are better for use in ensuring that shore visitation stemming from port calls will be consistent with the purposes of Title 22 and this chapter.

**22.26.030 Definitions**

A. "Crew" or "crew member" means any paid staff aboard a ship when it arrives or who join the ship in Sitka for its departure, regardless of position or duty, or whether employed directly or through others.

B. "Cruise ship" means a commercial passenger vessel that provides passengers with a tourist experience and calls on a number of ports. Vessels operating normal ferry services are excluded. See

further particulars under 22.26.040(A.3) concerning vessels with a maximum capacity of less than 100 persons, and (A.4) which waives application of this chapter for vessels with overnight accommodations for a maximum of 12 passengers or less.

C. "Lighter" means a vessel that transfers people between a cruise ship and a port facility.

D. "Persons ashore" means, depending on context, the number of people ashore during a relevant time period (day, week, month, or year) as a result of all cruise ship visits combined during the period, or that number regarding a specific ship on a certain date. The number includes passengers and off-duty crew who disembark plus any persons embarking a ship on a new itinerary.

E. "Port facility" means any public or private dock, wharf or other onshore place in the Sitka Port District used by cruise ship passengers or crew to disembark or embark a cruise ship either directly or, via a lighter or other means, indirectly.

F. "Schedule" means the city and borough's Sitka Cruise Visitation Schedule.

D. "Week" means a period of Sunday through Saturday.

**22.26.040 Limitations on visitation ashore by cruise passengers and crew**

A. As administered through the scheduling and permitting systems in sections 22.26.050 and .060, the following shall determine the allowed numbers of cruise "persons ashore" in the Sitka Cruise Visitation Schedule and in later actual count:

1. The sum of "persons ashore" during a calendar year shall not exceed 240,000 persons.
2. The daily and weekly number of "persons ashore" during any week may be as high as, but shall not exceed, those allowed by day or by week in Table 22.26-1 — provided also that the annual cap in section A.1 is not exceeded.

Table 22.26-1

<b>Caps on Persons Ashore (daily, weekly and yearly)</b>		
<i>Basis</i> : Sitka population (rounded up to 9,000)		
<b>Days Per Week</b>	<b>Cruise Persons Ashore as a Fraction of Population</b>	<b>Totals</b>
1	Up to one-half	<b>4,500</b>
1	Up to one-third	<b>3,000</b>
1	Up to one-quarter	<b>2,250</b>
1	Up to one-fifth	<b>1,800</b>
2	Up to one-tenth	<b>1,800</b>
1	None	<b>0</b>
<b>7</b>	<b>No week may exceed:</b>	<b>13,350</b>
<b>And in any year persons ashore must be ≤</b>		<b>240,000</b>

3. Cruise ships with a maximum capacity of less than 100 persons shall not be counted toward the limits in sections A.1 and A.2; however, for data collection purposes each such vessel and the port facilities it utilizes must otherwise comply with section 22.26.050.

4. Commercial vessels with overnight accommodations for a maximum of twelve or fewer passengers are exempt from the requirements and limitations of this chapter, and their passengers and crew will not be counted toward the limits in sections A.1 and A.2.

5. No person shall be prevented from disembarking or embarking a ship, even if a port call causes exceedance of a cap or a ship's scheduled maximum persons ashore. Enforcement shall be against the responsible holders of permits required by this chapter or those failing to get them.

## **22.26.050 Requirements regarding cruise ship port calls**

A. Requirements for cruise ships. A cruise ship not exempted by 22.26.040(A.4) must:

1. have onboard before its arrival an annual "Sitka Cruise Ship Permit" issued by the Sitka Planning Department for the current year;
2. be pre-authorized in the city and borough's "Sitka Cruise Visitation Schedule" for the ship's maximum combined number of "persons ashore" that will result from each port call; and
3. not exceed that pre-authorized number of persons ashore, and fulfill all terms and the spirit of the permit, including performing the required collection of data and its timely reporting to the Planning Department.

B. For Port facilities. This chapter's port facility related requirements apply to all such facilities public or private. A person or entity owning, managing or operating a facility where cruise passengers or crew disembark or embark a cruise ship must possess an annual "Sitka Port Facility Permit" issued by the Sitka Planning department for the current year, and shall fulfill all terms of the permit, including those regarding the acquisition and reporting of required data concerning cruise visitation.

D. Disembarkation and embarkation of seafarers. In compliance with 33 C.F.R. section 105.200 and 33 C.F.R. section 105.237, no requirement of this chapter shall be construed to allow interference with disembarkation or embarkation of a cruise ship or lighter by seafarers, vessel personnel, vessel crew, pilots, representatives of seafarers' welfare or labor organizations. Ensuring that such personnel have unfettered access to both shore and ship is the responsibility of the vessel personnel who are on duty and/or operators of the port facility. Neither permit provisions nor personnel of the city and borough shall interfere with such transit.

## **22.26.060 Administration of the Sitka Cruise Visitation Schedule**

A. The municipal administrator shall designate either the Planning Department or the Harbor Department, or both collaboratively, to develop and operate a scheduling system for authorizing in the Sitka Cruise Visitation Schedule, day by day and ship by ship, the allowed number of "persons ashore" for each cruise ship not exempted under 22.26.040(A.4), in a way that will comply with the limitations of 22.26.040.

B. The scheduling system shall operate in this way:

1. Cruise lines (or their vessels or agents if so authorized) may apply for an authorized spot in the Sitka Cruise Visitation Schedule for a specific vessel to cause up to a specified maximum number of persons to be ashore on a specific date. Both a city and borough webpage and the permits issued under this chapter shall specify reliable information for contacting, from land or sea, the primary designated department in order to submit scheduling applications or request adjustment or cancellation of an already scheduled port call.

2. The responsible department(s), as assigned by the administrator, shall accept or deny each such scheduling application or adjustment request, in order to make additions to the schedule that comply with the limitations in section 22.26.040. New openings in the schedule shall be noticed online.

3. In reviewing the scheduling applications and deciding authorizations in the schedule, the responsible department(s) shall make a reasonable effort to be even-handed in approving or denying applications to fit into the schedule within the limitations of 22.26.040. The department(s) should encourage a collaborative effort with and among cruise lines or their representatives to arrive at a fair and optimal schedule. Further:

(i) every vessel must have a fair shot at scheduling across the cruise season, even if not admitted to the schedule in certain desired day(s) or week(s), but while accepting the reality that larger vessels inherently might not succeed as often as smaller ships in the scheduling competition under the limitations in 22.26.040; and

(ii) there shall be no discrimination over whether a ship is conducting local, interstate or foreign commerce, nor over the potential relative economic benefit to Sitka among ships.

4. The responsible department(s) may coordinate with cruise lines, cruise industry associations and the port facilities to facilitate preparation and updating of the schedule, provided that final decisions on placements (authorizations) in the schedule are made by a designated responsible municipal official and are consistent with the requirements of this chapter.

C. Applications for spots on the schedule can be made preseason, and, for any unfilled capacity in the schedule, may be made at any time during the cruise season if applied for well before arrival (a period to be defined reasonably in Sitka Cruise Ship Permits). In designing the processes for pre-season applications and the approval of postings in the schedule, care is needed to ensure equal opportunity for filing preseason applications. Particularly, care is needed that early applicants or lines with larger vessels or large fleets of vessels won't preempt an equal and fair opportunity for others to secure pre-season approvals for spots on the schedule which suit them.

D. The schedule shall be posted on a public webpage of the city and borough, and shall be updated without delay as changes are made. An archive with each version of the schedule shall be maintained.

#### **22.26.070 Administration of permits**

A. The Planning Department shall craft the permits described in 22.26.050 and a system for their issuance and annual renewal. The permits shall, in combination with the scheduling system, be written to ensure that the limitations in 22.26.040 will be met by (as applicable in varying circumstances) the vessel or port facility for each port call, and that permittees will collect and timely report data specified in this chapter and any other data the department determines is needed for understanding and managing cruise tourism in Sitka. The permits shall be written to be enforceable.

B. The permits shall require that an actual, verifiably accurate count of "persons ashore", made either by the vessel's crew or agent or by port facility personnel (or both), be accomplished regardless of the differing circumstances among ships or from day to day. A final tally that exceeds the number of persons ashore authorized for a ship for a day in the Sitka Cruise Visitation Schedule is a violation of this chapter and of either or both of the permits, and shall be enforced. Enforcement shall be only against the responsible permittee(s) or those who fail to get permits, not against any "persons ashore".

C. The count of persons ashore specified in section B is required even if the total cruise visitation in Sitka for the day, week or year will be within the limitations of section 22.26.040, in order that the data collected over the course of a year will be fine-grained and complete.

#### **22.26.080 Administration of the collection of cruise visitation data**

A. Data the Sitka Cruise Ship Permit must require be collected and provided include: within a reasonable time after departure (which is a reasonable period to be specified in permit), accurate counts of the passengers and of the off-duty crew who went ashore, and accurate counts of new crew and new passengers who embarked, and such other information the Planning Department may determine is needed to improve its understanding of cruise visitation or for planning or regulatory purposes.

B. Port Facility Permits shall require:

1. the collection and provision of data required in section (A) if a ship's crew or permitted agent won't, or might not do so accurately or at all;
2. that when multiple ships or lighters are using a port facility, the data collected must be accurately segregated among the cruise ships or lighters utilizing the facility; and
3. that permittee(s) must report any irregularities observed in the disembarkation or embarkation of passengers or off-duty crew if the counts may be affected.

C. The data acquired shall, on an ongoing basis and as a priority task, be published on the city and borough's website and be accessible to the public.

### **22.26.090 Enforcement of permits and cruise visitation scheduling**

Not all of this title's enforcement sections (in Article VII (22.30.250 to .340)) are appropriate for the purposes and subject matter of this chapter, since they were primarily crafted to address violations regarding construction and land development. Accordingly, for purposes of enforcing this chapter, sections of Article VII are determined below to be applicable or not applicable, or are modified, and additional provisions are made—as follows in A through C.

A. Because out-of-state or foreign persons, or a vessel no longer in port at Sitka may be responsible in a violation of this chapter or its permits, and because a continuing or repeated violation during a cruise season may be prejudicial to purposes of this chapter, any notification of violation or compliance order shall be served or delivered by the most expedient affirmable means.

B. Sections 22.30.350 through .340 are applicable unless they are clearly inapplicable to the purpose, intent, regulations, permits or schedule of this chapter and cannot be construed to apply.

C. By initiative measure, the people of Sitka ask the assembly to consider determining appropriate fines and penalties specific to violations of this chapter. Those in 22.30.290 and .300 appear to fall far short of countering potential financial gains if there are intentional violations, and fines and penalties should not be at levels which condone or encourage such violations.

### **Section 2: In General Code section 22.12.010 (“Districts established”), add the following:**

A. The Sitka Port District is a zone overlaying all other districts in this code section that are served by the Sitka road system. The district is established for the purpose of regulating, under chapter 22.26, the number of persons ashore in Sitka as a result of cruise ship port calls. The planning department may produce a map of the port district if it deems that such map should be produced under 22.12.020, although the underlying zones are already mapped.

### **Section 3: In General Code Title 22, Article VII, add section 22.30.345 as follows:**

Regarding enforcement of chapter 22.26, see specifics in 22.26.090 on enforcement for the specialized purposes of that chapter.

### **Section 4: In General Code Title 22, Article II, add section 22.30.075, as follows:**

#### **22.30.075 Applicability of chapter 22.30 to cruise tourism regulation in chapter 26**

Chapter 22.30 does not apply to chapter 22.26, except where chapter 22.26 relies on 22.30, Article VII (Enforcement), as explained in section 22.26.090.

