

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. This voter-initiated ordinance takes urgent regulatory action to greatly reduce impacts to Sitka residents caused by the dramatic spike in cruise visitation that began in 2022. The regulatory system in the enacted code shall be in full operational effect in time to regulate the 2024 cruise season.

The action is necessary and urgent. (1) The spike in cruise visitation, continuing since 2022, is causing unsafe, unhealthy and otherwise intolerable or adverse conditions. (2) It pushes the density of people within Sitka so high that the ability of many Sitkans to enjoy the city’s downtown, trails, other amenities and small town character is highly impaired or lost. (3) There are forced closures of Lincoln Street. (4) Elevating urgency, continuing the spike for a third year risks resolution becoming intractable as businesses pursue opportunity. (5) Sitka’s rural subsistence designation may be at risk from the spike’s changes to Sitka’s character. (6) The municipal government has not taken adequate, timely action.

The above general purposes are pursued by creation of Title 25 (“Tourism”) and Chapter 25.01 (“Limitation of Cruise Visitation”) in Sitka’s general code. The Home Rule Charter (via Alaska Statute 29.04.010, “Home Rule”) empowers the chapter’s provisions as local regulatory police powers that protect residents’ health, safety and wellbeing. More specific Purposes are stated in Chapter 25.01.

Chapter 25.01 does not impinge maritime law or the U.S. Constitution because: (1) it is narrowly tailored to a legitimate local interest; (2) it does not discriminate between local, interstate or foreign commerce and has no discriminatory purpose or effect; (3) any burden it places on interstate or foreign commerce is incidental in relation to local benefits; (4) it acts onshore, so it does not impinge on federal fields such as vessel navigation, maritime safety, or security; (5) effects on right to travel are within bounds of what federal courts consider reasonable in the exercise of local police powers; and (6) the chapter operates in a field (onshore cruise impacts) not preempted by federal policy.

- 4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by action of the electorate of the City and Borough of Sitka, **that Title 25 and Chapter 25.01 are added to the Sitka General Code, as follows:**

TITLE 25 — TOURISM

Chapter 25.01 — Limitation of Cruise Visitation

Sections:	25.01.050 Administration: ship and port permits, data
25.01.010 Purpose and Intent	25.01.060 Port calls – Conduct of ships and ports
25.01.020 Definitions	25.01.070 No interference with seafarers, passengers
25.01.030 Caps on cruise visitation	25.01.080 Enforcement
25.01.040 Scheduling & port call authorization	25.01.090 Appendix – Chart 25.01-1

25.01.010 Purpose and Intent

Beginning with the 2024 cruise season, this chapter reduces the number of people ashore in Sitka due to cruise ship port calls. It restores the number from the excessive spike in 2022 and 2023 to the level of a recent time that was good for business and which may be widely bearable. To do so, it applies regulatory police powers of Sitka's Home Rule Charter.

The chapter's purposes in applying that power include: (1) restore safety, alleviate nuisances, and protect health and wellbeing of Sitka residents by reducing cruise-related overcrowding of people and vehicles on Sitka's highways, streets, sidewalks and public places; (2) protect Sitka's rural small town character, way of life and federal rural designations; (3) protect Sitka's integrity as a high-quality destination for international, national and Alaskan visitors of all kinds; and (4) through immediate action, avoid economic lock-in of cruise tourism at the harmful spike levels; (5) among other purposes.

A key purpose of this chapter is immediate relief for Sitka residents from impacts of the dramatic 2022-2023 cruise tourism spike. The chapter gives relief in two ways that act in combination to achieve the above purposes. First, an annual cap on cruise visitation is set at a much lower but still substantial level—240,000 "persons ashore." It is the average of nine years (2001 through 2009) that were a stable period of the best pre-spike years for business (see chart appended in 25.01.090). Second, daily caps, which act through a flexible weekly schedule (see Table in 25.01.030-1), limit cruise visitation to specified daily percentages of Sitka's resident population. The daily caps avoid visitation-forced closures of Lincoln Street, and still afford opportunities for ships of all sizes that have visited Sitka. The annual and daily caps are independent of each other—both must be satisfied.

The record cruise visitation of 2023 is 133% more than that historically-justified 240,000 annual cap, amounting to 2.3 times more cruise visitors. The 2022 increase was 60%, or 1.6 times more cruise visitors. This flood of additional visitors raised the density of people and activities within the limited confines of the city, whether judged on an annual or daily basis, to far beyond a safe and acceptable level. This chapter regulates the main contributor by far to the overall density problem, cruise visitation.

A further purpose of this chapter is consistent acquisition of accurate cruise visitation data, and moreover data of a kind more relevant to planning and management that is not otherwise available. This better quality data will: inform municipal decisionmaking for in-season management; inform planning for the short and long terms; inform future modifications of this chapter; and inform the public.

Using permit and scheduling systems, this chapter limits annual and daily numbers of people who either journey ashore from cruise ships or who join a cruise ship here for a new itinerary. These are "persons ashore." The chapter coordinates responsibilities of the planning and harbor departments to implement, operate and enforce the regulatory system, and to get accurate counts of "persons ashore."

The regulatory system includes mandatory permits for cruise ships and the port facilities they use. The permits will require compliance with municipally-administered ship scheduling, respect for caps, and the collection and reporting of data. Scheduling will conform all ships, *collectively*, to the two kinds of caps.

25.01.020 Definitions

- A. "CBS" means the government of the City and Borough of Sitka.
- B. "Crew" means any paid staff aboard a ship when it arrives or who join the ship in Sitka.
- C. "Cruise season" means the span of time from the first port call of a year to the last.
- D. "Cruise ship" means a commercial passenger vessel that provides passengers a tourist experience and calls on several ports. Vessels operating normal ferry services are excluded. (For vessels with a

maximum capacity of less than 100 persons see 25.01.030(A.3). For vessels with maximum overnight accommodations for 12 passengers or less, this chapter is waived by 25.01.030(A.4.)

E. "Department" or "department(s)" mean the planning and/or harbor department, in context as assigned by the administrator or as specified in this chapter.

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

G. "Persons ashore" means, depending on context, either: (1) the number of people ashore as a result of *all* cruise ship visits *combined* during a relevant period of time (e.g., a day or year); or (2) the number ashore regarding a certain ship on a certain date. The term includes both passengers and off-duty crew who disembark to Sitka for a time, plus any persons embarking in Sitka for a ship's new itinerary.

H. "Port facility" means any public or private dock, wharf or other onshore place used by cruise ship passengers or crew to disembark or embark a cruise ship or lighter.

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

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

25.01.030 Caps on cruise visitation

A. In administering the scheduling and permit systems in sections 25.01.040 through .060, the planning and harbor departments shall adhere to the following caps on cruise visitation:

1. The sum of "persons ashore" during a calendar year shall not exceed an annual cap of 240,000.
2. During any week, the sum of "persons ashore" shall not exceed any of the daily caps as allotted among the days in Table 25.01.030-1.

Table 25.01.030-1: **Daily and Annual Caps on Cruise Visitors in Sitka**
 (*Basis for the Daily Caps* : Sitka resident population rounded up to 9,000)

Determination of "persons ashore" daily caps during any week	Daily Caps
1 day equivalent to up to one-half of Sitka's population.	4,500
1 other day equivalent to up to one-third of Sitka's population.	3,000
2 other days equivalent to up to one-quarter of Sitka's population.	2,250
1 other day equivalent to up to one-fifth of Sitka's population.	1,800
1 other day equivalent to up to one-tenth of Sitka's population.	900
1 day with no ships allowed, unless exempt under A.4 or A.5.	0

And in any year "persons ashore" shall not exceed 240,000

3. The caps in sections A.1 and A.2 are independent of each other — both must be satisfied.
4. A Cruise ship with a maximum possible overnight accommodations for 100 or fewer passengers shall not count toward the caps in sections A.1 and A.2. However, because the data collection is

still important, each such vessel and the port facilities it utilizes must still comply with the provisions of 21.01.060.

5. A commercial vessel with maximum possible overnight accommodations for twelve or fewer passengers is exempt from the requirements and limitations of this chapter, and its passengers and crew shall not count toward the caps in sections A.1 and A.2.

6. No person shall be impeded from disembarking or embarking a ship, even if a port call causes exceedance of a cap or of a ship's scheduled "persons ashore." See 25.01.070(A) and (B).

25.01.040 Scheduling and port call authorization

A. The municipal administrator shall designate either the Planning Department or Harbor Department, or both collaboratively, to develop and maintain the Sitka Cruise Visitation Schedule ("the schedule"). Days in the schedule shall list each authorized ship and its requested maximum "persons ashore". Regarding scheduled ships collectively, the schedule must be managed so as to comply all times with the caps in 25.01.030 for each day and week and for the year. A ship which is not in the schedule for a day on which it wishes to make a port call, is not authorized to do so; if it calls it violates this chapter.

B. The scheduling process shall operate in this way:

1. Cruise lines (or, if authorized, their agents or vessel officers) may apply for an authorized spot in the Sitka Cruise Visitation Schedule for a specific vessel to cause up to a specific maximum number of "persons ashore" on a specific date. Both a CBS webpage and the permits issued under this chapter shall specify reliable information for contacting, from land or sea, one designated department in order to file an application or to request adjustment or cancellation of an already scheduled port call.

Applications may be made pre-season, within dates determined by the responsible department(s) and stated in a public notice. After that period, including during the cruise season, an application may be made for any unfilled space in the schedule that is within the caps, if applied for at least 24 hours before arrival.

2. In designing the processes for pre-season applications and making authorization postings in the schedule, reasonable care is needed by the department(s) that there is equal opportunity among applicants. Particularly, reasonable care is needed that early applicants, or cruise 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.

3. The responsible department(s) shall accept or deny each scheduling application or adjustment request, in order to make additions or changes to the schedule that comply with the caps in section 25.01.030. In reviewing applications and deciding authorizations in the schedule, the responsible department(s) shall make a reasonable effort to be even-handed in making those approvals and denials. The department(s) shall encourage a collaborative effort with and among cruise lines or their representatives, toward arriving 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 recognizing that larger vessels inherently might not succeed as often as smaller ships in the scheduling competition under the limitations in 25.01.030. Vessels qualifying under 25.01.030(4) are automatically authorized upon application, since they do not count toward the caps.

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

25.01.050 Administration of ship and port facility permits and data

A. A system of coordinated permits for cruise ships and port facilities is necessary to ensure that the daily and annual caps in section 25.01.030, which are expressed through the scheduling in section 25.01.040, are adhered to in practice as ships make their port calls throughout the cruise season. Verification of adherence to the caps and to the scheduled number of “persons ashore” for each port call depends on the collection and reporting of accurate, high-quality data.

Required practices for how cruise ships and port facilities will achieve adherence to the caps and contribute to verification are specified in 25.01.060. A permit system is needed to ensure awareness by the cruise industry of those provisions and to aid in enforcement.

B. Accordingly, the Planning Department shall craft a “Sitka Cruise Ship Permit” and a “Sitka Port Facility Permit,” for that purpose, and develop a system for their issuance and annual renewal. The permits shall be written to be enforceable.

C. The permits shall also require that the data required in 25.01.060 be collected and reported even if the total cruise visitation in Sitka for the day, week or year will be within the limitations of section 25.01.030. This is so that the data collected over the course of a year will be fine-grained and complete.

D. The data in 25.01.060 that the department acquires shall, on an ongoing basis and as a priority task, be published on the CBS website and be accessible to the public.

25.01.060 Port calls – Conduct of ships and ports

A. Requirements for cruise ships. A cruise ship not exempted by 25.01.030(A.5) must:

1. have onboard a valid annual “Sitka Cruise Ship Permit” (see 25.01.050) issued by the Sitka Planning Department for the current year before disembarking passengers;
2. be pre-authorized in the CBS “Sitka Cruise Visitation Schedule” for the maximum number of “persons ashore” that will result from the port call it is making, and – except in a medical or maritime emergency – not make a port call in Sitka that is not authorized in the schedule;
3. make separate accurate counts of the passengers and of the off-duty crew who go ashore; and if a new itinerary is beginning in Sitka make accurate counts of new passengers and new crew who embark; and also, coordinate with the port facility on making required counts;
4. collect other information the Planning Department may have specified in the permit;
5. within 24 hours of the ship’s departure, report the information and data in A.3 and A.4. to the Planning Department by means specified in the permit; and
6. fulfill all terms of its Sitka Cruise Ship Permit.

Having more “persons ashore” than pre-authorized in the above schedule or failing in any of the above requirements are violations of this chapter and shall be enforced.

B. Requirements for port facilities. A person or entity owning, managing or operating a private or public facility where a cruise ship or lighter embarks or disembarks passengers or crew must:

1. possess a valid annual “Sitka Port Facility Permit” (see 25.01.050) issued by the Sitka Planning department for the current year before allowing a cruise ship or lighter to utilize the premises;
2. ascertain in advance of each cruise ship’s arrival whether the ship’s personnel are prepared to accurately collect the data required in sections A.3 and A.4 above, and perform the collection and reporting if the ship’s personnel are not prepared to do so;
3. ensure, when multiple ships or lighters are using the port facility – and regardless of whether ships’ or facility personnel are collecting data – that the counts are accurately segregated among each of the ships;
4. make a clear, descriptive record of any irregularities observed in the disembarkation or embarkation if the accuracy or segregation of a count of “persons ashore” made by a ship or lighter or the facility may be affected;
5. within 24 hours of a ship’s departure, report to the Planning Department, by means specified in the permit, all data and information generated through requirements B.2 through B.4; and
6. fulfill all terms of the Sitka Port Facility Permit.

Failing in any of the above requirements is a violation of this chapter and shall be enforced.

25.01.070 No interference with seafarers or passengers

A. Disembarkation and embarkation of seafarers. In compliance with 33 C.F.R. section 105.200 and 33 C.F.R. section 105.237, this chapter shall not 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 unfettered access for such personnel to both shore and ship is the responsibility of on-duty vessel personnel and/or port facility operators. Permit provisions and CBS personnel shall not interfere with such transit.

B. Passengers and seafarers (and others listed in A. above) are welcome ashore in Sitka even if their vessel exceeds the number of “persons ashore” authorized in the Sitka Cruise Visitation Schedule. Enforcement shall be against the vessel and/or its cruise line, not these individuals.

25.01.080 Enforcement of permits, cruise visitation scheduling and data requirements

Penalties. The below penalties for violating Chapter 25.01 are intended to avoid condoning or encouraging intentional violations, in view of large financial gains that stand to be made from intentional violations, but while considering that some violations by a party may be unintentional and uncommon. A notice of violation (NOV) shall be issued for each offense to this chapter and have immediate effect. Fines shall be paid to CBS within 30 days of issuance of the NOV, by means specified therein.

A. For failure to obtain a required permit the penalty is a \$5,000 fine and disembarkation of passengers by the ship or at the port premises (as applicable) is barred until the permit is obtained.

B. For a ship that exceeds its authorized “persons ashore” during one or more port calls, for a first offense the fine is \$10,000, and \$25,000 for the second. Upon a third offense the ship’s permit shall be

terminated and it shall be barred from landing passengers in Sitka for one year (except in a maritime or medical emergency). For a cruise line that has multiple ships visiting Sitka, the above count of offenses shall apply collectively for any of those ships, and for a third or higher offense the permit of that offending ship shall be similarly terminated and it shall be barred as above. For an unscheduled, non-emergency port call the fine is \$25,000, and port calls by the ship shall be barred for one year.

C. The fine for failing to collect and/or report required accurate data, or under 25.01.060(B)(3) to accurately segregate data, is \$5,000 for the first offense, and the fine shall escalate by that same amount for each subsequent offense. The fine for any other kind of permit violation not specified in this section is the same as in the prior sentence.

D. Inspection warrants. The Planning Department is authorized to seek administrative search warrants pursuant to this code for the purpose of investigating actual or suspected violations of this chapter, or to ascertain compliance or noncompliance with this chapter or with a permit or term or condition thereof issued under this chapter.

E. If it is determined that the reporting of data is or may be fraudulent, the matter shall be referred to an appropriate prosecutor.

25.01.090 Appendix — A referenced chart

Chart 25.01-1 — Cruise visitation from 1989 through 2023. The years 2001 through 2009 are a stable period of nine years that were good for business (all above 200,000 visitation) and include the highest years. The visitation level in some if not all of those years was highly controversial, with many Sitkans feeling they were too high.

After visitation crashed in 2010 and was low for many years, it returned to above the 200,000 level in 2019. For the next year, 2020, cruise visitation of 215,000 was scheduled (Sitka Sentinel, 5 May 2020), but the season was cancelled due to the COVID.

The annual cap in this ordinance is set at 240,000, which is the average of the black bars below (2001 through 2009 and 2019). In the pre-pandemic years of this century, only four years exceeded that level.

The visitation “spike” referred to in this chapter is the tall bars for 2022 and 2023.

