

Robert J. Papazian, Esq.
rpapazian@curtisthaxter.com

April 2, 2024

VIA COURIER

Terry Harding, Clerk
Hancock County Superior Court
50 State Street, Suite 2
Ellsworth, ME 04605

RE: *Charles Sidman v. Valerie Peacock, et al.*
Docket No. AP-2024-_____

Dear Ms. Harding:

Enclosed for filing, please find the following:

1. Civil Summary Sheet
2. Complaint for Review of Governmental Action (M.R. Civ. P. 80B)
With Independent Claims

Also enclosed is a check in the amount of the required filing fee (\$175).

Thank you for your assistance in this matter.

Sincerely,



Robert J. Papazian, Bar No. 6491

Enclosures

Copy to (w/encs.): Charles Sidman
Stephen W. Wagner, Esq. (swagner@rudmanwinchell.com)
P. Andrew Hamilton, Esq. (ahamilton@eatonpeabody.com)
Twain Braden, Esq. (tbraden@archipelagona.com)

MAINE JUDICIAL BRANCH

This summary sheet and the information it contains do not replace or supplement the filing and service of pleadings or other papers as required by the Maine Rules or by law. This form is required for the Clerk of Court to initiate or update the civil docket. The information on this summary sheet is subject to the requirements of M. R. Civ. P. 11.

I. COUNTY OF FILING OR DISTRICT COURT JURISDICTION ("X" the appropriate box and enter the County or location)

☒ Superior Court County: HANCOCK

☐ District Court Location (city/town): _____

II. NATURE OF THE FILING

☒ Initial Complaint

☐ Third-Party Complaint

☐ Cross-Claim or Counterclaim

☐ Reinstated or Reopened case

Docket No.: _____

If filing a second or subsequent Money Judgment Disclosure, give the docket number of the first disclosure.)

III. ☐ REAL ESTATE OR TITLE TO REAL ESTATE IS INVOLVED

IV. MOST DEFINITIVE NATURE OF ACTION

("X" in ONE box. If the case fits more than one nature of action, select the one that best describes the cause of action.)

GENERAL CIVIL

Constitutional/Civil Rights

☐ Constitutional/Civil Rights

Contract

☐ Debt Collection brought by a debt collector as defined by 32 M.R.S. § 11002 (*Contract Case Cover Sheet (CV-261) must be attached*)

☐ Other Contract (*Contract Case Cover Sheet (CV-261) must be attached*)

Declaratory/Equitable Relief

☐ Declaratory Judgment

☐ General Injunctive Relief

☐ Other Equitable Relief

Non-Personal Injury Torts

☐ Auto Negligence

☐ Libel/Defamation

☐ Other Negligence

☐ Other Non-Personal Injury Tort

Personal Injury Torts

☐ Assault/Battery

☐ Auto Negligence

☐ Domestic Tort

☐ Medical Malpractice

☐ Other Negligence

☐ Other Personal Injury Tort

☐ Product Liability

☐ Property Negligence

Statutory Actions

☐ Freedom of Access

☐ Other Statutory Action

☐ Unfair Trade Practice

Miscellaneous Civil

☐ Administrative Warrant

☐ Appointment of Receiver

☐ Arbitration Awards

☐ Common Law Habeas Corpus

☐ Drug Forfeiture

☐ Foreign Deposition

☐ Foreign Judgments

☐ HIV Testing

☐ Land Use Enforcement (80K)

☐ Minor Settlements

☐ Other Civil

☐ Other Forfeiture/Property Libel

☐ Pre-Action Discovery

☐ Prisoners Transfers

☐ Shareholders' Derivative Action

APPEALS (ADR EXEMPT)

☐ Administrative Agency (80C)

☒ Governmental Body (80B)

☐ Other Appeal

REAL ESTATE

Foreclosures

☐ Foreclosure (ADR exempt)

☐ Foreclosure (Diversion eligible)

☐ Foreclosure (Other)

Title Actions

☐ Boundary

☐ Easement

☐ Eminent Domain

☐ Quiet Title

Miscellaneous Real Estate

☐ Abandoned Road

☐ Adverse Possession

☐ Equitable Remedy

☐ Mechanics Lien

☐ Nuisance

☐ Other Real Estate

☐ Partition

☐ Trespass

CHILD PROTECTIVE CUSTODY

☐ Non-DHHS Protective Custody

SPECIAL ACTIONS

☐ Money Judgment Disclosure

Initial Complaint: A complaint filed as an original proceeding. A filing fee is required.

Third-Party Complaint: An original defendant's action against a third party that was not part of the original proceeding. A filing fee is required.

Cross-Claim: An original defendant's claim against another original defendant. No additional fee is required.

Counterclaim: An original defendant's claim against an opposing party. No additional fee is required.

Reinstated or Reopened Case: Money Judgment Disclosures or post-judgment motions.

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Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

MAINE JUDICIAL BRANCH

V. M.R. Civ. P. 16B ALTERNATIVE DISPUTE RESOLUTION (ADR)

☒ I certify that pursuant to M.R. Civ. P. 16B(b), this case is exempt from a required ADR process because ("X" one box below):

☒ It falls within an exemption listed above (it is an appeal or an action for non-payment of a note in a secured transaction).

☐ The plaintiff or defendant is incarcerated in a local, state, or federal facility.

☐ The parties have participated in a statutory pre-litigation screening panel process with (name of panel chair) _____ that concluded on (date of panel finding - mm/dd/yyyy) _____.

☐ The parties have participated in a formal ADR process with (name of neutral) _____ on (date - mm/dd/yyyy) _____.

☐ The plaintiff's likely damages will not exceed \$30,000, and the plaintiff requests an exemption.

☐ The action does not include ADR pursuant to M.R. Civ. P. 16(a)(1).

☐ There is other good cause for an exemption and the plaintiff has filed a motion for exemption.

VI. PARTY AND ATTORNEY CONTACT INFORMATION

If you need additional space, list additional parties on an attachment and note "see attachment" in the appropriate section.

Please note: If a party is a government agency, use the full agency name or the standard abbreviation. If the party is an official within a government agency, identify the agency first and then the official, giving both name and title.

(a) PLAINTIFF(S)

("X" the box below to indicate the party type associated with the filing)

☒ Plaintiff(s)

☐ Third-Party Plaintiff(s)

☐ Counterclaim Plaintiff(s)

☐ Cross-Claim Plaintiff(s)

Is the plaintiff a prisoner in a local, state, or federal facility? ☐ Yes ☒ No

Name (first, middle initial, last): Charles Sidman

Mailing address (include county): P.O. Box 200

Bar Harbor, ME 04509-0200 County of Hancock

Telephone: _____

Email: _____

Name (first, middle initial, last): _____

Mailing address (include county): _____

Telephone: _____

Email: _____

(b) ATTORNEY(S) FOR PLAINTIFF(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL plaintiffs, specify which plaintiff(s) the listed attorney(s) represents.

Name and bar number: David P. Silk, Bar No. 3136

Firm name: CURTIS THAXTER LLC

Mailing Address: P.O. Box 7320

Portland, ME 04112-7320

Telephone: 207-774-9000

Email: dsilk@curtisthaxter.com

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MAINE JUDICIAL BRANCH

Name and bar number: Robert J. Papazian, Bar No. 6491

Firm name: CURTIS THAXTER LLC

Mailing Address: P.O. Box 7320

Portland, ME 04112-7320

Telephone: 207-774-9000

Email: rpapazian@curtisthaxter.com

(c) DEFENDANT(S)*("X" the box below to indicate the party type associated with the filing)*☒ Defendant(s)☐ Third-Party Defendant(s)☐ Counterclaim Defendant(s)☐ Cross-Claim Defendant(s)Is the defendant a prisoner in a local, state, or federal facility? ☐ Yes ☒ No

Name (first, middle initial, last): Town of Bar Harbor c/o Liz Graves, Town Clerk

Mailing address (include county): 93 Cottage Street

Bar Harbor, ME 04609

Telephone: 207-288-4098

Email:

Name (first, middle initial, last): Valerie Peacock, in her capacity as councilor of Bar Harbor Town Council

Mailing address (include county): 93 Cottage Street

Bar Harbor, ME 04609

Telephone: 207-288-4098

Email:

SEE ATTACHED ADDENDUM**(d) ATTORNEY(S) FOR DEFENDANT(S)**

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL defendants, specify which defendant(s) the listed attorney(s) represents.

Name and bar number: Stephen Wagner, Bar No. 5621

Firm name: RUDMAN WINCHELL

Mailing Address: P.O. Box 1401

Bangor, ME 04402

Telephone: 207-947-4501

Email: swagner@rudmanwinchell.com

Name and bar number:

Firm name:

Mailing Address:

Telephone:

Email:

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MAINE JUDICIAL BRANCH

(e) PARTIES IN INTEREST

Name (first, middle initial, last): _____

Mailing address (include county): _____

Telephone: _____

Email: _____

Name (first, middle initial, last): _____

Mailing address (include county): _____

Telephone: _____

Email: _____

(f) ATTORNEY(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL parties in interest, specify which parties in interest the listed attorney(s) represents.

Name and bar number: _____

Firm name: _____

Mailing Address: _____

Telephone: _____

Email: _____

Name and bar number: _____

Firm name: _____

Mailing Address: _____

Telephone: _____

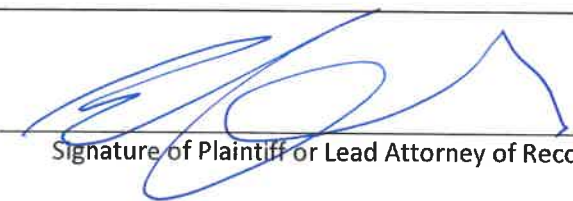
Email: _____

VII. RELATED CASE(S) IF ANY

Case name: _____

Docket Number: _____

Assigned Judge/Justice: _____

Date (mm/dd/yyyy): 04/02/2024

 Signature of Plaintiff or Lead Attorney of Record

Robert J. Papazian, Bar No. 6491

Printed Name of Plaintiff or Attorney

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ADDENDUM

(c) DEFENDANT(S)

(“X” the box below to indicate the party type associated with the filing)

- ☒ Defendant(s)
☐ Third-Party Defendant(s)
☐ Counterclaim Defendant(s)
☐ Cross-Claim Defendant(s)

Is the defendant a prisoner in a local, state, or federal facility? ☐ Yes ☒ No

Name (first, middle initial, last): Gary Friedman, in his capacity as councilor of Bar Harbor Town Council

Mailing address (include county): 93 Cottage Street
Bar Harbor, ME 04609

Telephone: 207-288-4098

Email:

Name (first, middle initial, last): Matthew Hochman, in his capacity as councilor of Bar Harbor Town Council

Mailing address (include county): 93 Cottage Street
Bar Harbor, ME 04609

Telephone: 207-288-4098

Email:

(d) ATTORNEY(S) FOR DEFENDANT(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL defendants, specify which defendant(s) the listed attorney(s) represents.

Name and bar number: Stephen Wagner, Bar No. 5621

Firm name: RUDMAN WINCHELL

Mailing Address: P.O. Box 1401

Bangor, ME 04402

Telephone: 207-947-4501

Email: swagner@rudmanwinchell.com

Name and bar number: Stephen Wagner, Bar No. 5621

Firm name: RUDMAN WINCHELL

Mailing Address: P.O. Box 1401

Bangor, ME 04402

Telephone: 207-947-4501

Email: swagner@rudmanwinchell.com

(c) DEFENDANT(S)

(“X” the box below to indicate the party type associated with the filing)

- ☒ Defendant(s)
☐ Third-Party Defendant(s)
☐ Counterclaim Defendant(s)
☐ Cross-Claim Defendant(s)

Is the defendant a prisoner in a local, state, or federal facility? ☐ Yes ☒ No

Name (first, middle initial, last): Maya Caines, in her capacity as councilor of Bar Harbor Town Council

Mailing address (include county): 93 Cottage Street

Bar Harbor, ME 04609

Telephone: 207-288-4098

Email:

Name (first, middle initial, last): Joe Minutolo, in his capacity as councilor of Bar Harbor Town Council

Mailing address (include county): 93 Cottage Street

Bar Harbor, ME 04609

Telephone: 207-288-4098

Email:

(d) ATTORNEY(S) FOR DEFENDANT(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL defendants, specify which defendant(s) the listed attorney(s) represents.

Name and bar number: Stephen Wagner, Bar No. 5621

Firm name: RUDMAN WINCHELL

Mailing Address: P.O. Box 1401

Bangor, ME 04402

Telephone: 207-947-4501

Email: swagner@rudmanwinchell.com

Name and bar number: Stephen Wagner, Bar No. 5621

Firm name: RUDMAN WINCHELL

Mailing Address: P.O. Box 1401

Bangor, ME 04402

Telephone: 207-947-4501

Email: swagner@rudmanwinchell.com

Bar Harbor councilor of Bar Harbor Town Council

(c) DEFENDANT(S)

(“X” the box below to indicate the party type associated with the filing)

- ☒ Defendant(s)
☐ Third-Party Defendant(s)
☐ Counterclaim Defendant(s)
☐ Cross-Claim Defendant(s)

Is the defendant a prisoner in a local, state, or federal facility? ☐ Yes ☒ No

Name (first, middle initial, last): Earl Brechlin, in his capacity as councilor of Bar Harbor Town Council

Mailing address (include county): 93 Cottage Street

Bar Harbor, ME 04609

Telephone: 207-288-4098

Email:

Name (first, middle initial, last): Kyle Shank, in his capacity as councilor of Bar Harbor Town Council

Mailing address (include county): 93 Cottage Street

Bar Harbor, ME 04609

Telephone: 207-288-4098

Email:

(d) ATTORNEY(S) FOR DEFENDANT(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL defendants, specify which defendant(s) the listed attorney(s) represents.

Name and bar number: Stephen Wagner, Bar No. 5621

Firm name: RUDMAN WINCHELL

Mailing Address: P.O. Box 1401

Bangor, ME 04402

Telephone: 207-947-4501

Email: swagner@rudmanwinchell.com

Name and bar number: Stephen Wagner, Bar No. 5621

Firm name: RUDMAN WINCHELL

Mailing Address: P.O. Box 1401

Bangor, ME 04402

Telephone: 207-947-4501

Email: swagner@rudmanwinchell.com

STATE OF MAINE
HANCOCK, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-2024-_____

CHARLES SIDMAN,)
)
Plaintiff,)
)
v.)
)
TOWN OF BAR HARBOR and VALERIE)
PEACOCK, GARY FRIEDMANN,)
MATTHEW HOCHMAN, MAYA CAINS,)
JOE MINUTOLO, EARL BRECHLIN and)
KYLE SHANK, in their capacities as elected)
members of the Bar Harbor Town Council,)
)
Defendants.)

**COMPLAINT FOR REVIEW OF
GOVERNMENTAL ACTION
(M. R. Civ. P. 80B) WITH
INDEPENDENT CLAIMS**

Plaintiff Charles Sidman for his complaint against the Town of Bar Harbor and Valerie Peacock, Gary Friedmann, Matthew Hochman, Maya Cains, Joe Minutolo, Earl Brechlin and Kyle Shank, in their capacities as elected members of the Bar Harbor Town Council, alleges and states as follows:

PARTIES

1. Charles Sidman is a resident of the Town of Bar Harbor, County of Hancock, State of Maine.
2. The Town of Bar Harbor is a municipal corporation in the State of Maine (the “Town”).
3. Valerie Peacock is a resident of the Town of Bar Harbor and is an elected member of the Bar Harbor Town Council.
4. Gary Friedmann is a resident of the Town of Bar Harbor and is an elected member of the Bar Harbor Town Council.

5. Matthew Hochman is a resident of the Town of Bar Harbor and is an elected member of the Bar Harbor Town Council.

6. Maya Cains is a resident of the Town of Bar Harbor and is an elected member of the Bar Harbor Town Council.

7. Joe Minutolo is a resident of the Town of Bar Harbor and is an elected member of the Bar Harbor Town Council.

8. Earl Brechlin is a resident of the Town of Bar Harbor and is an elected member of the Bar Harbor Town Council.

9. Kyle Shank is a resident of the Town of Bar Harbor and is an elected member of the Bar Harbor Town Council.

JURISDICTION AND VENUE

10. This Court has jurisdiction over these proceedings under Rule 80B of the Maine Rules of Civil Procedure, 4 M.R.S. § 105, Maine's Declaratory Judgments Acts statutes (14 M.R.S. §§ 5951-5963), 42 U.S.C. § 1983, 42 U.S.C. § 1988, common law, as well as under the Court's equitable authority regarding statutory violations and violations of both the United States and Maine constitutions.

11. Venue is proper in Hancock County, Maine pursuant to 14 M.R.S. §§ 501, 505, because the Town is a municipality located in Hancock County, Maine, the cause of action took place in Hancock County, Maine, and the tender ports, lands, and ordinances that govern cruise ships relating to said tender ports and lands in controversy is located in the shoreland zoning in the Town of Bar Harbor, Hancock County, Maine.

FACTS COMMON TO ALL COUNTS

12. The Charter of the Town of Bar Harbor (the "Charter") provides that the Town

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

13. The Charter provides that the Town Council consists of seven members elected by the qualified voters of the Town of Bar Harbor.

14. At all relevant times herein, the Town Council consisted of elected members Valerie Peacock, Gary Friedmann, Matthew Hochman, Maya Cains, Joe Minutolo, Earl Brechlin, and Kyle Shank (collectively the “Town Council”).

15. The Town Council by resolution may assign additional functions or duties to officers, departments or agencies established by the Town Charter but may not discontinue or assign to any other office, department or agency any function or duty assigned by the Town Charter to a particular office, department or agency.

16. Pursuant to the Charter, the Town Council has the power to “adopt land use ordinance amendments by supermajority vote as defined in the Town Charter § C-14C(3) when: (i) 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 (ii) 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 the Town Charter § C-14C(3).”

17. The Charter provides that neither the Town Council nor its individual members have authority over Town employees, except through the Town manager, and prohibits the Town Council and its individual members from giving orders to any such employee, either publicly or privately.

18. The Charter provides that the Town Council's 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 Town 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 Town Council. Except as otherwise provided in the Town Charter, the required majority to effectuate the passage, adoption or enactment of an item shall be a simple majority of a quorum."

19. The Charter provides that each member of the Town Council "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 Town Council. If any Town 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."

20. The Charter provides that qualifying land use ordinance amendments as described in the Charter § 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.

21. The Charter provides that for the purpose of the Charter, "supermajority" shall be defined as $\frac{2}{3}$ 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.

22. On March 17, 2022, Mr. Sidman led a Petitioning Committee to submit a citizens' initiative ballot petitioning the Town Council to amend Bar Harbor Land Use Code Chapter 125, Article VII, § 125-77(H) (the "Initiative").

23. The Initiative passed on November 8, 2022, by a vote of 1,780 to 1,273 (58.3%) and amended the Town's land use ordinance pursuant to the Charter.

24. The Ordinance took effect on December 8, 2022, and has been incorporated into the Town's Land Use Code Chapter 125, Article VII, § 125-77(H) (the "Ordinance").

25. The Ordinance limits the number of passengers from cruise ships allowed to disembark in Bar Harbor without imposing a fee on the landowners to a maximum, in the aggregate, of 1,000 per day.

26. The Ordinance also seeks to broaden participation in the tendering and landing of cruise ship passengers beyond the current monopoly controlled by Ocean Properties at a single localized portion of Town.

27. Under the Ordinance and pursuant to the rules and regulations developed by the Harbor Master, property owners are required to secure a written permit from the Code Enforcement Officer ("CEO") for any passenger disembarking from a cruise ship on, over, or across their land.

28. Once permitted, the property owner must abide by the reservation system developed by the Harbor Master.

29. But rather than prevent passengers from disembarking after the passenger limit has been met, the Harbor Master must report violations to the CEO, who is charged with enforcement.

30. Each disembarking passenger exceeding the location specific permitted daily limit is a violation levied against the property owner and subject to a minimum \$100 penalty per excess unauthorized passenger disembarking at a property owner's site.

31. The Ordinance strictly applies to any cruise ship whose reservation was accepted after March 17, 2022, with the Ordinance stating "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."

32. The Ordinance states that it "shall not apply with regard to any cruise reservations that have been accepted by the Harbor Master prior to March 17, 2022."

33. In an Amended Decision and Order dated March 1, 2024, the Ordinance was upheld as lawful by Judge Lance Walker of the United States District Court for the District of Maine in *Assoc. to Preserve and Protect Local Livelihoods, et al. v. Town of Bar Harbor*, No. 1:22-cv-00416-LEW (the "Federal Lawsuit").

34. Before the November 8, 2022, vote, the Town Council publicly opposed the Initiative.

35. The Town Council opposed Charles Sidman's motion to intervene in the Federal Lawsuit.

36. Judge Walker commented in his decision allowing Mr. Sidman to intervene in the Federal Lawsuit that the Town Council harbored "a decidedly pro cruise ship sentiment" while "actively encourag[ing] the electorate to vote down the initiative."

37. On March 6, 2024, the Town Council held a special meeting whereby it issued a resolution that it would not enforce the Ordinance as adopted, but rather it would “honor reservations made before the town voted” and not subject passengers from cruise ships that made reservations before November 8, 2022, to the disembarkation limits imposed by the Ordinance (the “Resolution”).

38. Further, the Town Council stated that it had “already directed the Harbor Master” to enforce the Ordinance as limited by its fiat.

39. The Town Council’s Resolution was memorialized by a press release issued by the Town Council on the same day.

40. As of April 1, 2022, 56 ships were scheduled to arrive in Bar Harbor for the 2024 cruise ship season.

41. After the Resolution was issued, either 134 or 149 ships are scheduled to arrive in Bar Harbor for the 2024 cruise ship season.

42. The Resolution’s change to the Ordinance results in a difference of up to 93 additional ships being allowed to come to Bar Harbor in 2024, with at least 193,277 passengers coming ashore, with no regard to the permitting requirements, fines, and restrictions placed on land owners by the Ordinance.

43. The Council did not take a vote in issuing its Resolution.

44. The Town Council’s Resolution will result in an increase of cruise ship passengers disembarking to the Town beyond what the Ordinance permits.

45. The increase of passengers in Town will result in more congestion in the Town.

46. The increase of passengers in Town will result in more municipal services being used by the Town.

47. The increase of passengers in Town will decrease safety in the Town.
48. The increase of passengers in Town will decrease certain business's revenues in the Town.
49. The increase of passengers in Town will interfere with Town residents' use and enjoyment of their property.
50. Plaintiff is harmed by the Town Council's Resolution, which will result in his inability to use and enjoy his property, have an adverse impact on his business, and serve to nullify his efforts to petition the government and pass the Ordinance.
51. Plaintiff is harmed by the Town's Council's Resolution because the Town acting through the Town Council and its Resolution have unlawfully interfered with his substantive rights to petition and initiate a Land Use Code ordinance amendment, to petition to have that initiative voted on, and when approved by the voters, to have the initiative become law.

COUNT I (RULE 80B RELIEF)

52. Plaintiff repeats and realleges each of the allegations contained in Paragraphs 1 through 51 above as if more fully set forth herein.
53. The Town Council's Resolution unlawfully interferes with the administration of the Land Use Code.
54. The Charter § C-11(C) states that "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."
55. The Code § 125-100 tasks the CEO with mandatory enforcement of the Land Use Code.
56. The Ordinance tasks the CEO with mandatory enforcement of the Ordinance.

57. The CEO does not have discretion in her duties to enforce the Code.
58. The Code § 153-4(B) tasks the Harbor Master to enforce the Code provisions that are within his jurisdiction.
59. The Harbor Master does not have discretion in his duties to enforce the Code provisions that are within his jurisdiction.
60. The Ordinance requires the Harbor Master to establish “a mandatory procedure for reporting violations to the Code Enforcement Officer.”
61. Investigating violations is one of the CEO’s mandatory duties.
62. The Ordinance imposes mandatory fines and penalties to issue for any continued violations of the Ordinance.
63. The Town Council does not have any discretion as to whether the Harbor Master reports violations of the Ordinance to the CEO
64. The Town Council’s Resolution unlawfully interferes with the Harbor Master’s obligation to report violations of the Ordinance to the CEO.
65. The Town Council does not have any discretion as to whether the CEO issues violations or fines.
66. The Town Council’s Resolution unlawfully interferes with the CEO’s obligations to investigate and enforce the Ordinance.
67. The Town Council does not have any supervisory authority over the CEO or the Harbor Master.
68. Enforcement decisions made by the CEO must be appealed to the Town’s Board of Appeals pursuant to the Code § 125-103.

69. The Town Council's only authority over the CEO is to vote to accept the CEO's report issued to the Town Council of a violation or nuisance condition that is not abated pursuant to the Code § 125-101.

70. The Town Council's Resolution did not involve either a vote by the Town Council or the CEO's report of a violation.

71. The Town Council does not have any authority to suspend the enforcement of the Code.

72. The Town Council does not have any authority to determine whether, which, and how Town ordinances are to be enforced.

73. The Town Council does not have any authority to consider policy decisions of whether a violation of the Code should issue.

74. The Town Council does not have any authority to modify the enforcement measures identified by the CEO.

75. Although the Town Council is "authorized to enter into administrative consent agreements for the purpose of eliminating violations of [the Code] and recovering fines without court action," the Town Council is not allowed to enter into agreements for "illegal structure[s] or use[s] to continue in a shoreland district" pursuant to the Code § 125-101(A)(2).

76. The shoreland district is defined to "include those areas within 250 feet of the normal high-water line of any great pond, river or saltwater body, within 250 feet of the upland edge of a coastal wetland." 38 M.R.S. § 435.

77. The landowners' violation of the Ordinance by disembarking excessive passengers is in the shoreland district.

78. The Town Council cannot enter into administrative consent agreements to eliminate violations of the Ordinance.

79. The Town Council's Resolution usurps the CEO's statutory role of enforcement and goes well beyond any act of prosecutorial discretion.

80. The Town Council's Resolution was a pretext to clothe the Town Council's unlawful attempt to render void, amend, or veto the Ordinance.

81. The Town Council lacks any authority to amend or veto the Ordinance.

82. The Town Council's Resolution was based on errors of law, unlawful procedures, and abuses of discretion.

COUNT II (DECLARATORY RELIEF)

83. Plaintiff repeats and realleges each of the allegations contained in Paragraphs 1 through 82 above as if more fully set forth herein.

84. A controversy exists whether the Town through its Town Council has authority to amend or veto a lawfully passed land use ordinance by directing Town employees to not enforce its terms.

85. Plaintiff requests that this Court declare that the Town and its Town Council has no authority to amend or veto a lawfully passed land use ordinance by directing Town employees to not enforce its terms.

86. A controversy also exists whether the Town through its Town Council can interfere with the mandatory duties of the CEO, Harbor Master, and other Town officials.

87. Plaintiff requests that this Court declare that the Town and Town Council are prohibited from interfering with the duties of the CEO, Harbor Master, and other Town officials, which includes enforcement of the Ordinance.

88. A controversy also exists whether the Town through its Town Council has authority to veto, suspend, or substantively amend the Ordinance to change the date that enforcement of the Ordinance applies to cruise ship reservations, as explicitly provided for in the Ordinance.

89. Plaintiff requests that this Court declare that the Town Council has no authority to veto, suspend or amend substantive provisions of the Ordinance, which includes the date that enforcement of the Ordinance will begin to apply to cruise ship reservations.

90. Pursuant to the Uniform Declaratory Judgment Act, Title 14 M.R.S. §§ 5951, et seq., this Court has jurisdiction to address and decide these disputes and issues.

COUNT III (INJUNCTIVE RELIEF)

91. Plaintiff repeats and realleges each of the allegations contained in Paragraphs 1 through 90 above as if more fully set forth herein.

92. The Town Council's Resolution acts as an illegal legislative veto, suspension and/or amendment of the lawfully enacted Ordinance.

93. Plaintiff requests that this Court grant him injunctive relief and order the Town Council to revoke its Resolution, and further Order the Town, its agents, servants, employees, attorneys or anyone acting under its control, or any person in active concert or participation with the Town to not direct Town employees to not enforce the Ordinance as lawfully passed by the voters, and such grant such other equitable relief as is necessary to prevent the Town Council from nullifying the will of the voters.

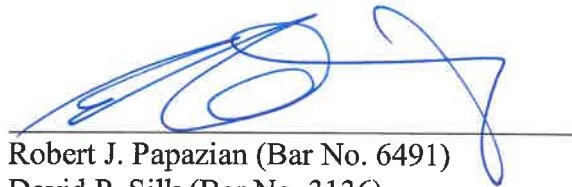
COUNT IV (42 U.S.C. § 1983)

94. Plaintiff repeats and realleges each of the allegations contained in Paragraphs 1 through 93 above as if more fully set forth herein.

95. The Town Council's *ultra vires* actions deprive Plaintiff of his substantive right to petition the Town for amendments to the Land Use Code.

WHEREFORE, Plaintiff Charles Sidman respectfully requests this Court to declare that the Town and its Town Council acted unlawfully in issuing its Resolution, declare that the Town Council lacked any lawful authority to order or direct the Harbor Master and CEO to not enforce or disregard the Ordinance pursuant to their mandatory obligations, grant injunctive relief barring the Town Council from ordering or directing the Harbor Master and CEO from enforcing the Ordinance pursuant to their mandatory obligations, and to grant such other relief, including equitable relief, in order to ensure that the Town Council does not attempt through *ultra vires* and pretextual acts to nullify the will of the voters, find that the Town has unlawfully deprived Plaintiff of his substantive rights to petition the government by initiative and through a Town vote to amend the Land Use Code, and award Plaintiff his costs, and to the extent permitted by law, his attorneys' fees.

Dated: April 2, 2024



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