

Caribe Nautical Services, Inc.
P.O. Box 285
Key West FL 33041 USA

KWESTSHIPS@aol.com
tel: 305.294.3288
fax: 305.258.2158

TO: Commissioner Gregory Davila, Commissioner Mary Lou Hoover, Commissioner Samuel Kaufman,
Commissioner Clayton Lopez, Commissioner Billy Wardlow, Commissioner Jimmy Weekley

FM: John Wells

RE: Violations of FL Law 311.25 by City Officials

DATE: 4 OCT 2021

As you are aware, a new state law invalidated the severe cruise ship restrictions contained in last November's local ballot referenda in the City of Key West. This letter will advise you of an alarming situation that has developed since the last City Commission meeting with regard to those cruise ship restrictions. Specifically, the Mayor and City officials unilaterally imposed the cruise ship restrictions on the Port of Key West, without any official action taken by the City Commission, and in violation of state law. Two meetings between City officials and cruise line executives resulted in immediate cancellations of long-established cruise ship berth reservations:

The first was a Zoom meeting between Carnival Cruise Line (CCL) executives, the City Manager, the Port Director and the City legal department. The CCL executives requested the City review and approve a Memorandum of Agreement (MOA) that set forth CDC-approved COVID protocols that are designed to safeguard Ports of Call. The Carnival executives were emphatically told that no MOA would be considered unless it included the ship size restrictions reflected in the November 2020 referenda. Additionally, Port Director Bradshaw informed me, in writing, that the "City would not sign MOA without (those ship size) restrictions." Please note that the offered MOA is not mandatory but it is presented to outline CDC COVID protocols and reassure local communities. Because the City refused their MOAs without the ship restrictions included, CCL and Holland America Line (a Carnival company) notified us they were cancelling their many ship calls into Key West.

The second meeting took place in Key West between the Mayor, City Manager, City Attorney and senior executives of Virgin Voyages (VV). VV operates the new state-of-the-art cruise ship Scarlet Lady. The Scarlet Lady also had long-established berth reservations to call in Key West. Mayor Johnston declared to the VV executives that their ship would not be allowed into Key West because it carries more passengers than permitted under cruise ship restrictions set forth in the November referenda. As a direct result of the Mayor's action, Virgin Voyages subsequently cancelled their scheduled port calls into Key West.

Those cancellations caused immediate and measurable damage to our business and employees. Mayor Johnston unilaterally acted to dictate City policy regarding the November referenda restrictions, which have been invalidated under state law, without an approving vote of the full City Commission. Furthermore, I must advise the City Commission and City Attorney that the actions of the Mayor and City officials are specifically in direct violation of Florida Law 311.25:

311.25 Florida seaports; local ballot initiatives and referendums.—

(1) With respect to any port that has received or is eligible to apply for or receive state funding under this chapter, a local ballot initiative or referendum may not restrict maritime commerce in such a port, including, but not limited to, restricting such commerce based on any of the following:

- (a) Vessel type, size, number, or capacity.
- (b) Number, origin, nationality, embarkation, or disembarkation of passengers or crew or their entry into this state or any local jurisdiction.
- (c) Source, type, loading, or unloading of cargo.
- (d) Environmental or health records of a particular vessel or vessel line.

(2) Any local ballot initiative or referendum that is in conflict with subsection (1) and that was adopted before, on, or after July 1, 2021, **and any local law, charter amendment, ordinance, resolution, regulation, or policy adopted in such an initiative or referendum, is prohibited, void, and expressly preempted to the state.**

The ship restrictions set by last year's ballot are clearly null and void as per state law. There is simply no legal authority for the Mayor or any City official or employee to impose the severe cruise ship restrictions set forth in the November referenda.

Therefore, I respectfully request that the City Commission publicly correct and reverse the Mayor's unlawful actions with CCL and VV, and promptly communicate that reversal to those companies. I further urge the City Commission to adhere to the law and reject the ship restrictions found in the 2020 Referenda that excessively cancelled 95% of ship traffic into our port and allow the Port of Key West to resume normal operation. Finally, I encourage the entire City Commission and City Management staff to review their intentions with respect to Item (2) above before embarking on *any* effort to enact ordinances to restrict operation of Key West's seaport, in order to avoid the probability of further state intervention and/or litigation.

Very sincerely,



John E. Wells, Jr.

Chairman
Caribe Nautical Services, Inc.