

**John E Wells, Jr**  
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TO: Mayor Johnston, City Commissioners, City Manager, City Attorney, City Clerk Smith:  
FM: John Wells  
RE: Comments on Proposed Cruise Ship Ordinance – Attach to Agenda  
DATE: 14 February 2022

The ordinance set forth by the Trip Scott Law Firm is remarkable in its lack of knowledge of International and Federal Maritime Laws pertaining to International and Interstate Commerce. It also displays a complete unawareness about the workings of shipping in general and cruise shipping specifically. Once again, the Mayor, City Manager and City Attorney have neglected to reach out to the maritime community to avail themselves of the benefit of local knowledge about the workings of our port. Had they done so, they may have avoided the exorbitantly expensive failure manifested in the proposed ordinance. Please consider the following observations that reflect the points included in Tripp Scott's Memorandum of record:

1. All shipping, including cruise shipping, operates under the strict, mandatory requirements, restrictions, regulations, laws and protocols set forth by the International Maritime Organization (IMO). The IMO is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships. IMO's work supports the UN sustainable development goals. One hundred seventy-five (175) member nations have signed onto these mandatory regulations. IMO has 50 separate regulatory conventions pertaining to all forms of pollution: oil pollution, emissions, solid waste, sewage, hazardous materials, and more. One example: IMO requires all vessels to use fuel with less than 0.5% sulphur. This is the same certification standard required by Green Marine certification.
2. Green Marine (a Canadian organization) sets forth a number of voluntary and unenforceable certification standards that are completely redundant to the enforceable IMO regulations and Federal and International Laws. There are no cruise ships operating from Florida ports that are Green Marine certified. The certification process is expensive, time consuming, redundant, and entirely unnecessary. The three Florida Port Authorities that are "members" of Green Marine acknowledge their guidelines for shoreside port operations that address safe cargo handling, dunnage disposal, port vehicle emission standards and even include guidelines to encourage employee carpooling. No Florida port requires Green Marine certification of ships. The ordinance language requiring Green Marine certifications has no precedence in Florida port operations. It is meaningless, superfluous and unenforceable.
3. All ships carry a Certificate of Oil Pollution (IOPP) document. The IOPP is issued by the US Coast Guard or a maritime classification society. This Certificate is issued only after thorough

inspection by a third-party marine surveyor to ensure the safe handling of fuels and oily wastes. This Certificate is renewed annually after reinspection. Upon arrival of a cruise ship in Key West, the IOPP certificate is presented to US Customs and Border Protection officers for compliance and expiration date.

4. The ordinance language proposing detention of a ship involved in a pollution incident is nonsensical. Only the USCG, USCBP or a federal maritime judge (after due process) can detain or seize a documented vessel, US or foreign flag. If a pollution incident were to occur, the situation is immediately within the purview of the US Coast Guard. The USCG Captain of the Port (COTP) decides what enforcement and mitigation actions must be taken. The idea of a City even attempting to seize a vessel is fraught with liability. I must remind you that there has never been a pollution incident, accidental or otherwise, in the Florida Keys. And that is after decades of cruise ship operations. Furthermore, please note that all cruise ships are required to maintain liability insurance policies that cover accidents including water pollution.

5. The language relating to denying medical attention to passengers and crew, except in life-threatening cases, is particularly poorly thought out and implies a lack of humanity. For instance, cruise ship crew and passengers routinely are referred to Key West Urgent Care Clinics, dentists, private physicians' offices and occasionally, the LKMC emergency room. The need for out-patient medical attendance commonly includes toothaches, urinary tract infections, gynecology treatments, broken fingers and occupational eye injuries among others. For decades Key West physicians, dentists and clinics have gladly and efficiently attended these non-life threatening maladies. The crew and passengers are treated and return to ship unless serious complications are imminent. I cannot believe the City of Key West would place itself in position to deny timely treatment to a crewman suffering from an eye injury that could lead to blindness.

6. When the City Manager and Port Director refused to engage with cruise lines to establish CDC-mandated Memoranda of Agreement (MOA) pertaining to COVID protocols for cruise ships, Pier B Corporation stepped up and negotiated MOAs for ships calling at their pier. The CDC required these MOAs to give port communities a say in how COVID infected persons would be handled. The Pier B MOAs stipulated that no COVID infected persons could be landed and placed in FKMC. The CDC readily approved those MOAs after it became clear that the City administrators were not concerned with protecting the community.

In summary, the proposed ordinance is little more than a poorly researched and written pacifier to Safer Cleaner Ships – an organization that has misled the Commission into its current precarious position. This unprecedented ordinance is unenforceable and will certainly lead to litigation against the City. More pointedly it will draw the attention of the Florida Legislature, resulting in increased pre-emption legislation. If passed, this ordinance will accomplish nothing positive.

I respectfully request you consider this suggestion: Reject this proposed ordinance and all modifying attachments and resolutions, dismiss the Tripp Scott Law Firm and, most importantly, listen to your City Attorney. He has always advised that no City ordinance or resolution restricting Pier B's cruise ship operations or management is enforceable. In fact, no ordinance or resolution is needed. Manage your own piers as you see fit and leave Pier B to its operations, without interference of any sort, as set forth in the Development Agreement. Then perhaps you can put an end to the prolonged community pain perpetrated by Safer Cleaner Ships.

Regarding the newly proposed Resolution lately attached to the Ordinance: The closure of Mallory Pier is contrary to the premise that smaller ships are welcome in Key West. Because of standing length restrictions, no ship longer than 664 feet can dock at Mallory. All ships of that length are within the restrictions proposed in the overturned referenda of 2020. The City has approved small ship calls at Mallory into the future and should honor those reservations as a matter of good faith. More importantly, the closure of Mallory to ships means that it is no longer a seaport and will be ineligible for grants pertaining to pier maintenance and improvement.

Sincerely,

*John E. Wells, Jr.*

201 Front Street, Key West