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TO: Mayor Johnston, City Commissioners, City Manager, City Attorney
FROM: John E Wells
RE: Comments on Draft Ordinance and Resolution regarding Cruise Ships
DATE: 9 March 2022

Please consider the following comments on the Proposed Ordinance and Resolution:

I. COMMENTS ON PROPOSED ORDINANCE

On 14 February 22 I emailed a letter to each of you with analysis and comments on the original proposed ordinance aimed at restricting cruise ships. I am grateful to see you amended the original version to accommodate some of my concerns. However, there remain some pertinent issues that are of great concern. My original email had the comments reiterated below which I hope you will revisit and reconsider. I have added additional observations, underlined:

The proposed revised ordinance states that the Commission City Commission “finds substantial evidence that unregulated cruise ship operations impact the public safety health and welfare of the citizens of Key West;” Please provide this evidence to the public. Unless you can provide evidence of these impacts, this constitutes a false public statement, a disservice to the community. As a point of fact, there has never been a public safety or health impact from ships visiting Key West. Nor has there ever been a pollution event from cruise ships.

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.

City requirement for ships to have IOPP, SOLAS and other USCG required documents is unnecessary. Repeating the obvious diminishes the credibility of the document.

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.

The City cannot seize or detain ships. Attempts to do so will result in law suits. Delete this unenforceable language and leave such things to the USCG Captain of the Port, avoiding liability to the City. The COTP does have the authority to detain ships.

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.

The ordinance must clearly and specifically allow passengers and crew to receive routine, out-patient medical/dental services in Key West.

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.

The language stipulating that Covid infected persons must be transported out of the City is already a part of the MOAs between the cruise lines and Pier B. The MOAs are approved by CDC.

In summary, the proposed ordinance document is loaded with misconceptions derived from a deficit of working knowledge of the maritime industry. As such, it is a document that will reflect poorly on the City. There was no input from the maritime community, the cruise industry or anyone with knowledge of admiralty law or even ship operations. I regret to say it is an exercise in uninformed, meaningless verbage. I suggest meetings with the maritime community and the industry to fine tune the document to make it more professional and effective.

II. COMMENTS ON PROPOSED RESOLUTION

Despite protestations to the contrary, this resolution clearly is written to restrict and diminish maritime commerce in the Port of Key West. If passed, the Commission is certainly placing itself in a unique position as being the only "Port Authority" in Florida that intends to shut down all the dock facilities it controls. This action will absolutely draw the attention of concerned parties and agencies in Tallahassee.

Again, a "Port Authority" acting under normal and usual premises is obliged to reasonably promote and enhance maritime commerce for the economic benefit of the local community, county and the State. All previous Commissions did exactly that. This resolution does the opposite.

I recall that the Mr. Pozzuoli, special counsel, mentioned in public that any ordinance/resolution that mimics the overturned referenda restrictions would be in violation of the state law passed last year. This draft resolution clearly does exactly that by citing the same passenger numbers from the referenda.

If passed in its present form, it is a reasonable assumption to expect more pre-emption from the State of Florida.

Thank you,

John E Wells, Jr.

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