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Wednesday, February 9, 2022

Mayor Johnston and the Key West City Commission
Josephine Parker City Hall at Historic Glynn R. Archer School
1300 White Street
City

Ladies and Gentlemen:

I write to express my disappointment with the proposed "Cruise Ship Regulations." This proposal reflects the City's lack of vision as to how to manage the impact of passenger cruise ships on the city. The only goal seems to be appearing to regulate cruise vessels.

This proposal seems entirely collateral to the Committee for Cleaner, Safer Ships first two referenda to limit the number of cruise ship passengers disembarking into the city. What are we trying to do here? This appears to be an expensive effort to placate those trying to support our coral reef, by doing "something."

Furthermore, the declarations are indefensible as follows.

- WHEREAS, the City of Key West is an island with a delicate surrounding environment, including coral reefs;

The City is a body politic, not an Island. The City's corporate limits encompass not only the Island of Key West, but also roughly half of Stock Island. This declaration is not only untruthful, but shows an ignorance of the City of Key West, unbecoming the Mayor and Commissioners.

- WHEREAS, the City Commission finds substantial evidence that unregulated cruise ship operations impact the City of Key West;

While it cannot be disputed that cruise ship operations have an impact on Key West, we all know that the million passengers a year (revenue producing units) that the cruise ships bring to Key West, spend tens of millions of dollars, and support hundreds of full-time equivalent jobs. These passengers do not send children to our schools, do not cause late night trouble downtown, do not travel outside of old town, do not affect our housing shortage, and rarely use our public safety services. The next best thing would be for the tourists to stay home and mail the city a check. Anecdotally, many of these folks return to Key West for a lengthy vacation after experiencing the warmth of our one human family when visiting during their cruise vacation. Please consider this as a freedom of information

request for the "substantial evidence" of the impacts found by the City Commission.

- WHEREAS, the City of Key West, seeking to mitigate harm to the environment and coral reefs and to support the highest standards of environmental compliance and health safety, desires to regulate cruise vessels;

The City government admits that its desire is "to regulate cruise vessels."

The federal government, through the Coast Guard and other federal agencies, routinely prescribes practices, procedures, and standards for vessel operations and, in the interests of safety, health, environmental protection, and maritime and national security, directs where vessels may, and may not, operate or anchor. See 46 C.F.R. Subchapter H. The Coast Guard regulations "are necessary to carry out the provisions of law affecting passenger regulations and such regulations have the force of law." 46 C.F.R. § 70.01-1. These regulations "have preemptive effect over State or local regulations in the same field." *Id.*

Plaintiff's Motion for Summary Judgment in *Key West Bar Pilots, et al v. Joyce Griffin, et al.*, U.S.D.C. South District of Florida, Case 4:20-CV-10076-JLK, P 8.

The federal government has completely occupied the field of regulating cruise vessels, thereby pre-empting state and local regulations under our system of dual sovereignty.

- WHEREAS, the City Commission finds that, in the instance of disease outbreak, the volume of cruise ship passengers intending to utilize the City of Key West's medical services would overwhelm the City of Key West's medical infrastructure;

I am interested to know the basis of the Commission's finding that the number of cruise ship passengers on a ship carrying 500 or more passengers would overwhelm the medical infrastructure of our local for-profit hospital serving this city of twenty-five thousand people. Likewise, I respectfully request whatever documentation the Commission has that supports a finding of what cruise ship passengers intend to do in the instance of disease outbreak.

I am unaware that cruise ship passengers overwhelming the local hospital has ever been a problem in the past. If our medical services are now in such a precarious situation, this presents an imminent risk to the lives and safety of the people in Key West. The Mayor and City Commission should be immediately developing additional overflow capacity for the hospital, and or plans to evacuate the sick and injured to the mainland, rather than enacting a redundant ordinance regulating cruise ships.

If, however the proposal is referring instead to the City of Key West Fire Department's ambulance service, I concur as discussed below.

- WHEREAS, the City of Key West finds that this Ordinance to establish rules and regulations for cruise vessels docking at the City of Key West will promote the health, safety and welfare of the citizens and visitors of the City of Key West,

As above, it is the responsibility of the federal government to establish statutes and regulations "in the interests of safety, health, environmental protection, and maritime and national security," and they have completely occupied the field; this justification is moot. As to the visitors to our city, this ordinance limits their constitutionally protected right to interstate travel in violation of the Fourteenth Amendment to the United States Constitution.

As to the actual regulations, in 80-1, the city purports to exercise its lawfully authority "six hundred (600) feet into the tidal waters" outside of the City of Key West's corporate limits. This extraterritorial regulation impinges upon the jurisdiction of the state and federal governments.

Section 80-2(1) seeks to regulate that which is already regulated by the federal government, thereby pre-empting such a local regulation.

Subsections two and three, prohibit a vessel which is alleged to have discharged pollutants from leaving the port, thereby generating additional port fees for the City, "as well an additional one thousand (\$1,000) dollar per-day pollutant discharge cleanup management fee" to be used to support the reef. The City proposes to falsely imprison thousands of people, for an unlimited period time, based upon an allegation that a third party, the ship's owner, is responsible for a city ordinance violation. Are the City's taxpayers going to be held liable for the damages resulting from passengers not returning home as expected? Meanwhile, the City intends to enrich itself through additional dockage fees and penalties, which are so-called management fees.

Section 80-3 requires any "cruise ship holding more than five hundred (500) passengers and such cruise ship's owner(s) . . . docking at the City of Key West" to participate in a "'Green Marine' environmental certification program." Presumably this refers to the Canadian Green Marine Management Program operated out of Quebec City. By using this program, the City is agreeing to abide by Canadian and Quebec laws and "consent and submit to the exclusive jurisdiction of the courts of the Province of Quebec in any action or proceeding instituted under or related to this agreement or use of Green Marine's website or

publications." How much money does it cost to bring a vessel into compliance? What happens if this program fails? What if none of the ships attempts to qualify? Who will profit from this Canadian litigation? We have no control over the height of the bar, which we are requiring the cruise industry to vault.

Section 80-4 establishes a "coral reef restoration fund for the restoration and maintenance of coral reefs within a distance no more than six hundred (600) feet into the tidal waters adjacent to its corporate limits." My understanding is that the coral reef that we all seek to preserve is several miles from the City of Key West's corporate limits. Whom will the city be paying to administer this fund?

Section 80-5 is perhaps the most alarming proposal. "With the exception of life-threatening emergencies, passengers shall not disembark to utilize healthcare facilities located at the City of Key West." Were I a stockholder of our local hospital's corporation, I would be outraged that the City is denying my business to opportunity to serve customers (revenue producing units) coming on cruise ships.

Further 80-5 requires that "cruise ship[s] holding more than five hundred (500) passengers and such cruise ship's owner(s) .

. . shall transport any passenger-patient with COVID-19 or other confirmed or suspected highly transmissible illness requiring emergency medical service, using an isolated emergency transportation method, to a treatment facility outside of the City of Key West.”

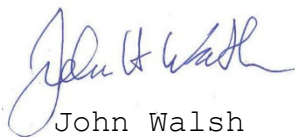
Certainly, every kindergartener, who might grow up to be a cruise ship owner, is taught that when anyone needs “emergency medical service (EMS)” to call 9-1-1. By enacting this regulation, the City is creating a duty for their own “emergency medical service (EMS)” to obtain and maintain “an isolated emergency transportation” system, whatever that is, and to send its very limited ambulance resources to far away hospitals.

In the declarations, the City alleges that cruise ship passengers “would overwhelm the City of Key West’s medical infrastructure.” Now, the city proposes to provide “an isolated emergency transportation” system which will take its EMS resources tens of miles out of the city for hours at a time, at great risk to the sick and injured within the city, rather than let our hospital triage patients as must be done in any mass casualty situation where the number of patients overwhelms local resources. This section puts the lives and safety of the people in Key West in grave danger.

This proposed regulation, while drafted by well-intended attorneys on the mainland, neither meets the goals of the people of Key West, nor provides any practical guidance for passenger cruise ships visiting Key West. If there is an ordinance to improve our lives in Key West and protect our environment, it should be developed by concerned and knowledgeable stake holders through open district meetings. Likewise, we do not need city officials, nor angry protestors, discouraging people from visiting our island home. We have learned over the past two years that we cannot support an adequate number of service industry workers without the millions of dollars which cruise ship passengers dump into our local economy every year.

I eagerly await the City's response to my freedom of information requests for the aforementioned findings, and their back-up documentation.

Cordially,



John Walsh