



December 14, 2017

Mr. Robert Sivertsen
Vice-Mayor, City of Ketchikan
334 Front Street
Ketchikan, AK 99901

Dear Vice-Mayor Sivertsen:

Thank you for your letter of November 29, 2017 regarding infrastructure projects under consideration by the City of Ketchikan. We appreciate the City's commitment to open communication with the cruise industry and its foresight in planning projects that ensure local infrastructure will be able to keep pace with expanding cruise activity well into the future. Your letter reflects our shared view that the interests of the cruise industry and the City and its residents are largely congruent and that an open process of clear and candid communication about future projects can result in decisions that advance the interests of all concerned.

You specifically request "concurrence of Cruise Lines International Association Alaska that any of the projects discussed...are appropriate for funding through local wharfage and dockage fees, as well as through State distributed Commercial Passenger Vessel (CPV) tax revenues." Additionally, you ask that the cruise industry commit that it is "open to discussions of a modified rate structure...." of modified local and dockage fees to offset anticipated costs of new infrastructure to accommodate large cruise vessels that will begin service in the Alaska trades. You cite as a basis for your request legal arguments being made by CLIA in litigation in federal district court challenging the legality of uses of vessel entry fees assessed by the City and Borough of Juneau (CBJ) against cruise vessels serving that port.

As you are aware, CLIA Alaska is a trade organization comprised of 14 cruise lines. We frequently receive updates on port activities in Alaska through Cruise Line Agencies of Alaska. However, we have not been requested in the past to bring specific infrastructure projects to our Board of Directors for approval. In an effort to respond as expeditiously as possible, we are not requesting our legal counsel review and provide a legal analysis of each project. Therefore, you should understand that this response is a more general overview of the industry's position on the appropriate uses of local fees assessed against cruise vessels than it is a project-by-project analysis of our members' positions on any given project.



We appreciate you taking the time to familiarize yourself with the legal arguments in our challenge to Juneau's passenger vessel entry fee use. The basic premise of our position is that the Constitution and Federal Law clearly and unequivocally prohibit levying of state or local fees on a cruise vessel unless those fees are reasonable compensation for goods and services they supply the vessel.

The specific projects you reference at pages 2 and 3 of your 29 November letter, in our view, appear to relate directly to infrastructure or can be reasonably described as providing services to vessels. We have not argued that Ketchikan, Juneau or any other community must fund dock infrastructure projects or navigation improvements (e.g., the Rock Pinnacle removal item) from sales taxes and or other locally generated revenue.

The issue regarding the rate structure of dockage and wharfage fees is more complicated. We would be pleased to further discuss this issue in the context of the need and timing of each project, as that is critical to our ability to respond appropriately. However, we do offer some general observations:

The arrival of the NORWEGIAN BLISS in 2018 and the OVATION OF THE SEAS in 2019 will unquestionably require infrastructure improvements in Alaska, both in ports and in other areas visited by cruise guests. Our assessment of the Ketchikan docks, however, is that they are adequate to get us through the next few years, enabling the prioritization and phasing of projects. As we have indicated to other communities, not everything needs to be done at once and not all funding is necessary at once. We understand permitting and other complications require time and that it is prudent to move forward expeditiously.

Having said that, Berth III will accommodate the BLISS. The OVATION will replace the EXPLORER OF THE SEAS' itinerary, and will thus not call at Ketchikan, at least not initially.

Because your concerns appear to be largely related to the pending Juneau vessel entry fee litigation, additional clarification of our intention and how we see the potential impacts on port communities may be helpful. Our industry operates in over 1000 ports worldwide. It is extremely rare for the industry to file litigation against any community. As an industry, we accept and champion the idea that the industry and the communities it serves depend on each other and should both benefit from a cooperative relationship. We realize that our presence creates economic opportunity for communities, but we also are aware that the numbers of cruise guests that enter a port, particularly smaller ports, bring challenges as well as prosperity to local residents, merchants, and governments.



In the particular case of Juneau, the industry attempted to work with the CBJ for years on achieving some sort of consensus about uses of vessel entry fee revenues. Our view, however, was that CBJ was consistently unresponsive to our positions on uses of funds. Additionally, we witnessed in Juneau a steady proliferation over time of appropriations of funds to projects and activities that violated legal limitations on local fee assessments. Both in function and geography, Juneau appeared to be intent on using vessel entry fee revenue for functions and programs that were conceptually and geographically farther away from direct funding of vessel operations. A central example is Juneau's expenditure of \$10 million on a man-made island and whale park, over a mile from the cruise ships. Juneau's attitude struck us as one which rationalizes the use of vessel entry fee revenues for almost any civic expenditure that might in some way be viewed, witnessed, or used by a passenger from a cruise vessel, no matter where situated in the CBJ region. Our protests to these projects having met with no constructive response, we felt that a clear statement of the limitations on the lawful use of vessel entry fee revenues would be of benefit to both the industry and to the local community.

If we are correct and the court affirms our view that funding for projects of general interest to the community which have no or a very attenuated connection to the vessels is not permitted, more funds, not less, will be available for legitimate projects. If the court invalidates all or a portion of the Juneau fee, the industry will not receive a tax break. Cruise lines will still pay a total of \$34.50 per passenger (combined local and State CPV). CBJ, however, will have to focus fund use on direct vessel-related infrastructure improvements. To the extent the discipline of so doing reduces the level of the CBJ assessments, funds will revert to the State and will be available for appropriation to other ports in Alaska, including Ketchikan, which have pressing and legitimate infrastructure needs.

We see this as a benefit for communities such as Ketchikan that are committed to improving dock infrastructure. Last year, we led the effort working with the Legislature to help move several dock projects forward. In addition to the local and state funds already received, the Legislature was able to get an additional \$2 million for the City of Ketchikan. This resulted in an increase in state funds going directly to the City. The litigation could realistically make even more funds available to Ketchikan.

These are important considerations in addressing the issue of existing fund adequacy. One of our goals this year was to help fund the Berth IV improvements. We felt by obtaining additional funds from the Legislature to assist with the project, future base rent payments required by the City could be reduced, therefore increasing the annual amount of passenger fees the City would have available for other projects. By way of



example, if we were able to work with the City and the Legislature to fully fund the Berth IV project, it could free up and be equivalent to a \$1.7 million annual increase in fees assessed on the vessels.

How the Ketchikan Borough uses the approximately \$2.5 million in entry fees it receives annually, the amount available for additional appropriations from the State, the timing of local projects, and how specific funds are allocated are all critical factors which must be analyzed prior to considering a reconfiguration of the fees. These are discussions we are pleased to have with the City and Borough.

We also understand the City's concern that upland improvements parallel dock projects, so the City can accommodate increased passenger traffic in a safe and efficient manner. We appreciate your focus on this issue as guest satisfaction is a critical component of the success for both the City and the industry.

Please do not read the legal documents as a signal that the industry has no interest in or inclination to support upland improvements. You may not be aware, but the industry attempted on numerous occasions to come to agreement with the community of Juneau on such projects outside of legal proceedings. The industry is open to discussing lawful ways to fund mutually beneficial upland improvements. We have conveyed that message clearly to Juneau in the context of efforts to work out differences short of litigation. Our positive and cooperative history of dealings with Ketchikan dictates that we are very much willing to find areas of common agreement on the value of these investments.

We think it necessary, however, to discuss these types of undertakings in a particularized context – i.e., on a project-by-project basis. At present, we cannot give blanket approvals or disapprovals as we are not intimately familiar with what is being proposed. However, we would be happy to discuss particular upland needs in your community.

We recognize your point that ferry and air passengers do not impose the same pressures on downtown facilities as do one million cruise passengers. Conversely and importantly, however, we note that non-cruise visitors do not have the positive impacts or return on investment as do cruise visitors. In Juneau, it has been estimated that cruise passengers bring in over \$180 million in taxable spending on an annual basis, resulting in considerable contributions to local governmental revenues through tax receipts from merchants and residents who are engaged in cruise related enterprises. Other modes of transportation do not generate the same volume of ancillary local spending. Cruise passengers provide significant economic benefits in terms of jobs and



local revenues. We feel it is entirely appropriate for the community to reinvest a portion of the local revenues (non-ship related) to help maintain and grow economic opportunities.

We hope the community will not embark on policies that discourage or limit passenger growth. We strongly believe that, through a continued partnership, we can plan and accommodate future growth. However, we obviously oppose an expansive theory, one not supported by any previous federal caselaw, that local governments can extract fees from vessel interests to spend on activities and projects that have any connection whatsoever with passengers who visit a given port city. This appears to be at the heart of Juneau's defense in pending litigation. Such a standard would open the door to assessing entry fees against vessels on a per passenger basis by any locality in Alaska that receives visits from cruise industry guests. Even my far inland hometown of Fairbanks has a substantial connection with visiting cruise passengers during the May to September time frame. Industry and communities have a common interest in keeping Alaska an enjoyable, affordable and competitive cruise destination. To do so, we must work together to ensure that the industry can contribute to projects about which all parties share confidence and consensus that the projects are mutually beneficial.

Thank you again for your letter and update on the status of infrastructure projects under consideration. We also appreciate the strong relationship we have enjoyed in the past and look forward to continued collaborative efforts on how we most efficiently meet the growing demand while minimizing impacts upon the community.

Sincerely,

A handwritten signature in blue ink that reads "John Binkley". The signature is fluid and cursive.

John Binkley
President
CLIA Alaska

CC: Mayor Williams & City Council Members
Karl R. Amylon, City Manager
Steve Corporon, Port & Harbors Director
Bob Newell, Finance Director
Mitch Seaver, City Attorney
Ethan Berto, Cruise Line Agencies of Alaska
Bob Berto, Cruise Line Agencies of Alaska
Clay Keene, Keene & Kurrall