

April 16, 2025

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Ms. Beth McEwen
Municipal Clerk
City and Borough of Juneau
155 Heritage Way
Juneau, Alaska 99801

RE: Initiative Affidavit of Petitioners Committee City and Borough of Juneau Alaska

Dear Ms. McEwen:

We represent Allen Marine, Inc. and its affiliated companies, including Allen Marine Tours, Inc., in voicing opposition to the April 7, 2025 filing of an application for a proposed initiative for “Cruise Ship Limits” in Juneau. We request that you deny the application and not issue a petition on the proposed ordinance.

I. Introduction

The initiative, if approved, would amend Title 20 of the CBJ Code by adding a new chapter, Chapter 20.50, with merely four short sections. Proposed Section 20.50.010 would broadly impose limits on calls at Juneau by “medium cruise ships” and “large cruise ships.” Proposed Section 20.50.020 would institute some sort of undefined permit system for such cruise ships calling on Juneau, but completely leaves the task and burden to the City Manager to figure out. Proposed Section 20.50.030 would impose penalties in the form of monetary fines and cancellation of future calls for violation of proposed Section 20.50.020. And proposed Section 20.50.040 would offer definitions for some of the terms used in the other three sections.

In all, the proposed initiative seeks to take on the complex matters of limiting, permitting, and sanctioning cruise ship visitation in just four short sections that consume less than two pages of paper. While brevity is normally appreciated, the code proposed by the application is overly vague, ambiguous, and incomplete, and leaves so much to the imagination that voters will not know what they are voting on. As a result, the proposal is legally insufficient under AS 29.26.110(a)(4) and the application for petition cannot be approved.

That same vagueness, particularly since penalties are at stake, violates the “Vagueness Doctrine” deeply rooted in the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution. But the constitutional concerns with the proposed initiative do not end there, as the proposed initiative presents multiple problems under the U.S. and Alaska Constitutions, which are far too many for us to address in this letter. For the sake of our own brevity, we limit the

constitutional concerns raised in this letter to the Vagueness Doctrine, the Tonnage Clause and a federal statute corresponding thereto, the Contracts Clause, and the freedom to travel. We will save for another day the issues the proposed initiative presents under the Dormant Commerce Clause and the restrictions that federal maritime law puts on state and local governments in regulating shipping and maritime commerce which fall within the traditional domain of the federal government.

II. Discussion

A. Background.

The City and Borough of Juneau (“Juneau” or “CBJ”) is a favored port of call for Alaska cruise ships, and, symbiotically, Juneau benefits significantly from cruise ship tourism through economic contributions, job creation, and local business support. According to a study on the economic impacts of the cruise industry in 2023 conducted at the request of CBJ by McKinley Research Group, LLC, the cruise industry accounted for \$375 million in direct spending in Juneau and 3,850 jobs providing \$196 million in labor income, and CBJ collected an estimated \$22 million in cruise-related fees and an estimated \$18 million in sales tax revenues resulting from cruise industry spending.¹

On April 17, 2023, CBJ announced that it successfully negotiated a Memorandum of Agreement (the “2023 MOA”) with the major cruise lines calling on Juneau, that addresses volume of cruise ship visitation by establishing a limit of no more than five large cruise ships in port per day.² The 2023 MOA, negotiated through the Cruise Lines International Association (“CLIA”) on behalf of its cruise line members, was based on the recommendations of the Visitor Industry Task Force in 2020. The limit of five large ships per day is intended to provide a positive experience for the benefit of both Juneau residents and visitors, “while providing reliable market for the many businesses that rely on the visitor industry, especially cruise.”³ The 2023 MOA was implemented starting in 2024 Alaska cruise season.⁴

¹ “Economic Impact of Juneau’s Cruise Industry – 2023” by McKinley Research Group, LLC, published at <https://juneau.org/wp-content/uploads/2024/01/CBJ-Cruise-Impacts-2023-Report-1.22.24.pdf>, page 1 (Executive Summary) (2024).

² CBJ New Release: “City and Borough of Juneau and Cruise Lines Agree on Port Capacity Guidelines,” published at <https://juneau.org/newsroom-item/city-and-borough-of-juneau-and-cruise-lines-agree-on-port-capacity-guidelines> (4/17/2023).

³ *Id.*

⁴ Memorandum of Agreement between the City & Borough of Juneau and Cruise Lines Docking in Juneau, posted at <https://juneau.org/wp-content/uploads/2023/05/CBJ-CRUISE-LINES-MEMORANDUM-OF-AGREEMENT.pdf> (3/10/2023).

On June 3, 2024, CBJ announced that it successfully negotiated a second Memorandum of Agreement (the “2024 MOA”) with major cruise lines calling on Juneau.⁵ To further address visitor industry volume in Juneau, the 2024 MOA established a limit of 16,000 “lower berths” per day with 12,000 on Saturday.⁶ In the 2024 MOA, the parties committed to meet annually to optimize the schedule, review visitor numbers, and discuss community goals.⁷ The daily visitor caps will begin in the 2026 Alaska Cruise season.⁸

Unhappy with the level of cruise visitation and believing the MOAs to be inadequate, Karla Hart proposed an initiative, the application for which you previously approved, that proposed forbidding cruise ships calling on Juneau on Saturdays and July 4.⁹ However, Juneau’s voters soundly rejected the initiative.¹⁰

Refusing to accept the will of the CBJ electorate, Ms. Hart has now applied for another initiative petition, which she titled “Cruise Ship Limits.”¹¹ As to her motivation in applying for another petition for an initiative address cruise ship visitation, Alaska Public Media attributes the following quote to Ms. Hart:

I really want to win this year. What prompted me to file this year was the complete lack of any indication that the borough Assembly has any plans or any intention of doing anything that relieves the impacts on the community as a whole.¹²

When apparently asked about CBJ’s negotiation of cruise visitation limits through the 2023 MOA and 2024 MOA, Ms. Hart retorted (according to Alaska Public Media):

⁵ CBJ News Release: “City and Borough of Juneau and cruise lines sign Memorandum of Agreement on port capacity,” published at <https://juneau.org/newsroom-item/city-and-borough-of-juneau-and-cruise-lines-sign-memorandum-of-agreement-on-port-capacity> (6/3/2024).

⁶ *Id.*

⁷ *Id.*

⁸ Memorandum of Agreement between the City and Borough of Juneau and Cruise Lines Docking in Juneau, posted at https://juneau.org/wp-content/uploads/2024/06/5.31.24_CBJ_CruiseLines-MOA3_Fully-Executed.pdf (5/24/2024). See also “Limit of 16,000 cruise passengers daily, 12,000 on Saturdays, agreed to by CBJ and industry,” Juneau Empire, published at <https://www.juneauempire.com/news/limit-of-16000-cruise-passengers-daily-12000-on-saturdays-agreed-to-by-cbj-and-industry/> (6/4/2024).

⁹ See “A citizen initiative to limit cruise ships advances in Juneau, while another stalls in Sitka,” Alaska Beacon, published at <https://alaskabeacon.com/2024/07/03/a-citizen-initiative-to-limit-cruise-ships-advances-in-juneau-while-another-stalls-in-sitka/> (7/3/2024).

¹⁰ “Juneau residents react to vote rejecting Saturday cruise ship ban, potential implications if passed,” Alaska’s New Source, published at <https://www.alaskasnewsources.com/2024/10/04/juneau-residents-react-vote-rejecting-saturday-cruise-ship-ban-potential-implications-if-passed/> (10/3/2024).

¹¹ Initiative Affidavit of Petitioners Committee – City and Borough of Juneau Alaska [*sic*] – Initiative Short Title: **Cruise Ship Limits**, received by the CBJ Clerk on April 7, 2025 and posted at https://juneau.org/wp-content/uploads/2025/04/2025-04-07-Initiative-Petition-Affidavit-Cruise-Ship-Limits_Redacted.pdf.

¹² “Juneau advocates try new petition to limit cruise tourism,” Alaska Public Media, published at <https://alaskapublic.org/2025-04-09/juneau-advocates-try-new-petition-to-limit-cruise-tourism> (4/9/2025).

Negotiations mean nothing. My intent with this initiative is to simply say, “you the industry agreed on these limits, and so let’s put them in law so that they stick.”¹³

B. The Proposed Initiative.

The proposed “Cruise Ship Limits” initiative would add four new sections to the CBJ Code in a new Chapter 20.50. The first proposed section, Section 20.50.010, would impose limits on cruise ship visitation, many of which have already been agreed to in the 2023 MOA and 2024 MOA. The provision would impose (a) a daily limit of five “large cruise ships,”¹⁴ (b) a daily limit not to exceed 16,000 “available lower berth capacity”¹⁵ on any Sunday through Friday, and 12,000 available lower berth capacity on any Saturday, (c) a seasonal limit of no medium¹⁶ or large cruise ships before May 1 or after September 30, and (d) an annual limit not to exceed 1,500,000 total available passenger lower berth capacity in a calendar year.

The second proposed section, Section 20.50.020, would, under subsection (a), require a “Juneau Port Call Permit” for “every large and medium cruise ship port call in Juneau.” Subsection (b) would instruct the CBJ City Manager to adopt and enforce regulations under CBJ Code chapter 01.60 to enact Juneau Port Call Permit requirements, conditions, and procedures that maintain and enforce the limits of proposed Section 20.50.010. However, nothing more is offered in this proposed section (or any other) as to what such a complex permitting process should look like.

The third proposed section, Section 20.50.030, would impose penalties on cruise ships that violate proposed Section 20.50.020 and regulations adopted under it. This proposed provision says that “(1) cancellation of future calls of ships within the same company from public dock space; and (2) penalties up to \$1,000 per gross tonnage per unpermitted port call” may be imposed. But the proposed section says that the applicable penalty “includes, but is not limited to” to foregoing penalties, suggesting that other penalties may apply. However, nothing further is said as to what such additional penalties may be or how they may apply.

The fourth proposed section, Section 20.50.040, would provide definitions, many of which are stated in preceding footnotes.

Finally, the proposed initiative would state: “The effective date shall be October 1, 2027.” Nothing more is stated as to what would become “effective” on that date.

¹³ *Id.*

¹⁴ Proposed Section 20.50.040 would define “Large cruise ship” to mean “a cruise ship carrying more than 950 passengers, total capacity;” and “Total capacity” to mean “the maximum number of passengers that the ship sleeps in berths.”

¹⁵ Proposed Section 20.50.040 would define “Available lower berth capacity” to mean “the standard capacity of a cruise ship, usually assuming two people per available cabin.”

¹⁶ Proposed Section 20.50.040 would define “Medium cruise ship” to mean “a cruise ship carrying 250-949 passenger, total capacity.” Note that a cruise ship carrying 950 passengers would meet neither the definition of medium cruise ship nor large cruise ship.

C. AS 29.26.110(a)(4) Prohibits Applications for Initiative Petitions Proposing Ordinances That Are Unenforceable as a Matter of Law.

While Article VII (§§ 7.1-7.13) of CBJ's Home Rule Charter governs the CBJ initiative process, Alaska Statutes 29.26.100-.190 also apply. Under AS 29.26.110(a)(4), a Municipal Clerk may not certify an application for an initiative petition unless she finds, among other things, that the initiative petition "would be enforceable as a matter of law." Stated differently, the application for an initiative petition proposing an ordinance that is unenforceable as a matter of law must be denied.

The proposed Cruise Ship Limits initiative would be unenforceable as a matter of law for several reasons, and, as a result, the application for a petition on the initiative must be denied. First, the ordinances proposed by the application are overly vague, ambiguous, confusing, and incomplete, and leave so much to the imagination that voters will not know what they are voting on. Second, the proposed ordinances would clearly not survive scrutiny under the U.S. Constitution. Third, the proposed ordinances are expressly prohibited by a federal statute which preempts any municipal code to the contrary.

1. The Proposed Initiative Contains Overly Vague, Ambiguous, Confusing, and Incomplete Provisions.

Voters must have the ability to express their will when it comes to citizen initiatives, and confusing, misleading, or incomplete petitions frustrate that ability.¹⁷ When initiatives are not drafted clearly or completely enough for voters to know what they are voting on, they are not legally sufficient. The proposed Cruise Ship Limits initiative is vague, ambiguous, confusing, and incomplete in each of the following ways:

a. The standards setting limits in proposed Section 20.50.010 are confusing. On the one hand, the limits set forth in subsections (a) and (c) are tied to the size of cruise ships, which is defined by the number of passengers they actually carry (*see* definitions of "large cruise ship" and "medium cruise ship" in proposed Section 20.50.040); whereas, the limits set forth in subsections (b) and (d) are tied not to the actual number of passengers on the ship but on the *capacity* of the ship, regardless of the number of passengers that may be present or not present aboard the ship (*see* definition of "available lower berth capacity" in proposed Section 20.20.040).

To illustrate the confusion caused by these differing standards, we pose a simple hypothetical: let us say that on a Tuesday, four cruise ships call on Juneau, which is well within the five ship per day limit of proposed Section 20.50.010(a). Each ship carries 3,500 passengers, thus landing an aggregate of 14,000 passengers that day, which is also well within a daily limit of 16,000 passengers. But the cruise ships are not filled to capacity, and because three of the ships have "available lower berth capacity" for 4,000 passengers, and the fourth ship has "available

¹⁷ *Citizens for Implementing Medical Marijuana v. Municipality of Anchorage*, 129 P.3d 898, 902 (Alaska 2006).

lower berth capacity” for 4,500 passengers, an aggregate “available lower berth capacity” of 16,500 has “called” on Juneau that day. Would that violate proposed Section 20.50.010(b) even though only 14,000 passengers landed that day? And if yes, which of the four ship(s) would be in violation? The proposed initiative does not answer these simple questions posed in a hypothetical that is not at all far-fetched.

b. On top of that, the definition of “available lower berth capacity” is vague and ambiguous and, thus, confusing as well. The term is defined as “the standard capacity of a cruise ship,” but that capacity is to be measured “*usually* assuming two people per available cabin” (italics added for emphasis). What is the word “usually” supposed to mean and how does it affect the meaning of the rest of the definition? By saying “usually assuming,” the definition clearly implies that there will be times when the capacity will be measured by some assumption other than “two people per available cabin.” When will that other measurement or assumption be applied and what will the assumption be? Neither the definition of “available lower berth capacity” nor the rest of the proposed initiative offers any answers to these questions or provides any further guidance as to how or by what assumptions capacity is to be measured.

c. The definition of “available lower berth capacity” is vague and ambiguous for another important reason - it draws no distinction between passengers and crew. While the term “lower berths” may be associated with passengers and not crew, the definition runs counter to this concept. The definition presented in proposed Section 20.50.040 makes no reference to passengers; it simply defines the term as “the standard capacity of a cruise ship.” Does that or does that not include crew? Certainly, no proposed initiative may lawfully restrict a crewmember from going ashore, as such restriction would clearly cross the line of interfering with vessel operations and crewmember rights. But a plain reading of the definition of “available lower berth capacity” is to consider a ship’s overall capacity – both passengers and crew.

d. The foregoing differing standards set forth in proposed Section 20.50.010 (number of passengers actually carried vs. capacity of the ship) would lead to another unintended consequence illustrated by this not-so-far-fetched hypothetical: On a Wednesday, four large cruise ships call on Juneau and each lands 4,000 passengers, for a total of 16,000 passengers ashore. During that same day, a “small” cruise ship with just 150 passengers also calls on Juneau and lands all of its passengers, now putting the total number of cruise ship visitors ashore in Juneau at 16,150, which exceeds the per day limit in violation of proposed Section 20.50.010(b). Who is in violation? How is the violation to be enforced? Who is to be penalized? How are daily and annual limits placed on “cruise ship” (large, medium, and small) to be effectively enforced when as many “small” cruise ships as they want can call on Juneau at any time without permit?

e. The recitals at the beginning of the proposed initiative contain hyperbole and error that would cause confusion among voters and deliver inaccurate information. The third recital says, “this initiative sets a total annual limit that will cap cruise passenger numbers under 1.6 million.” That statement is untrue, or, at best, misleading. Subparagraph (d) of proposed

Section 20.50.010 would set a limit with 100,000 fewer passengers at 1.5 million. That false statement in the recitals alone should be enough to deny the application for a petition.

In addition, the first line of the first recital falsely portrays the aim of the petition by indicating that it is targeting “mega ships.” Putting aside the inflammatory nature of such term, saying the initiative is aimed at mega ships is simply false. And to put it in the very first sentence is misleading at best. In fact, the term “mega ship” appears nowhere else in the rest of the initiative. While the term “mega ship” is undefined both in the initiative and in general, colloquial use, the term generally refers to cruise ships that can accommodate more than 2,000 or 3,000 passengers. Yet, proposed Section 20.50.040 includes cruise ships well below that capacity – in fact, with capacity as low as 951 passengers defined as “large cruise ships.” More importantly, by no stretch of the imagination can a cruise ship with fewer than 950 passengers be considered a “mega ship,” yet medium cruise ships (that is, those cruise ships that carry 250 to 949 passengers) are just as much targeted by this proposed initiative as “mega ships” (by whatever definition) are. The reader who only reads the first line of the first recital and votes based on that reading would indeed be surprised and confused to learn that his vote applies as much to a 250-passenger cruise ship as it does to 4,000-passenger ship. For this reason, from the title of the initiative through the recitals and down through the proposed ordinances, this proposed initiative must be clear, complete, and accurate so as to avoid confusing or misleading voters.

f. Proposed Section 20.50.020 is entirely unclear, vague, and incomplete. It contemplates a complicated system of providing cruise ships with a “Juneau Port Call Permit” for “every port call” at public and private docks and tendering. After stating that contemplation on the broadest terms it could, it then attempts to charge the City Manager to “adopt and enforce” regulations to institute a permit system. However, proposed Section 20.50.020 would force the City Manager to shoot in the dark, as no detail whatsoever is offered to guide the City Manager on a multitude of matters and concerns in trying to adopt such regulations. To name just a few of the more significant unanswered questions: How would the City Manager decide who gets what permit? What is the process for allocating and assigning permits? How does the City Manager deal with the 2023 MOA and 2024 MOA to which CBJ has agreed? How does the City Manager reconcile conflicts between the terms of the MOAs and the ordinances proposed by the initiative? What role, authority, and limits will the CBJ Assembly have in the process? Proposed Section 20.50.020 simply leaves too many gaps and unanswered questions for the creation of complex cruise ship port-call permit issuance and enforcement regulations. In turn, those unhappy with what any permit system would do or not do would have plenty of room to argue that the ultimate end product of the City Manager does not meet the terms and goals of proposed Section 20.50.020, putting the City Manager in the unenviable position of “damned if you do, and damned if you don’t.”

g. Subsection (a) of proposed Section 20.50.030 does not definitively say what penalty would be imposed. It says that the penalty “includes, but is not limited to . . .” In not being “limited,” what other penalty could be imposed, and how do cruise ships and others which fail to comply with the new proposed Chapter 20.50 know the consequences of their behavior? As shown

below, penalty provisions cannot, as a matter of law, be vague, ambiguous, or incomplete as proposed Section 20.50.030(a) plainly is.

h. Perhaps more importantly, subsection (a) of proposed Section 20.50.030 is silent on too many things to pass muster on all notions of “due process.” Unanswered questions include: Who determines whether a violation has occurred? Who determines what penalty is to be imposed if there has been a violation? What process does a cruise ship have to participate in, defend itself against, and appeal from decisions on penalty imposition? Proposed Section 20.50.030 omits any and all process, let alone that which is “due process,” in the imposition of penalties.

i. Paragraph (a)(1) of proposed Section 20.50.030 indicates that one form of penalty would be “cancellation of future calls of ships within the same company from public dock space.” Again, there are more questions that are unanswered by this vague and incomplete (and frankly, confusing) language. What is the “same company”? Each cruise ship that calls on Juneau, certainly the large and medium cruise ships, is separately owned for operational, registry, and liability purposes. Is the “company” referenced in proposed Section 20.50.030(a)(1) the company that owns the cruise ship in violation, such that only that cruise ship will have its future port calls cancelled? By saying “ships [plural] within the same company,” proposed Section 20.50.030(a)(1) would seem to be referring to some other company, maybe the cruise brand itself. But that is not what the express language says. In addition, proposed Section 20.50.030(a)(1) would only bar a violating cruise ship “from public dock space.” The recognition in the proposed initiative that there are private docks and tenders that serve cruise ships calling on Juneau raises questions as to the effectiveness of the penalty under subsection (a)(1). A cruise ship may be “canceled” from tying up at a public dock, but nothing would prevent it from landing its passengers by other means.

j. Paragraph (a)(2) of proposed Section 20.50.030(a)(2) is even more confusing. The term “gross tonnage” is misused in this proposed ordinance when it says, “penalties up to \$1,000 per gross tonnage.” What it should say (but does not say) is “up to \$1,000 per gross ton.” “Gross tonnage” is a shipping term that denotes a vessel’s total internal volume or capacity to carry cargo, expressed in a volume measurement of “tons” (it is not a measure of the vessel’s weight or displacement).¹⁸ As a result, a vessel’s gross tonnage is a single number. So, to say a penalty will be a dollar amount “per gross tonnage” is non-sensical, as that same dollar amount, in this case \$1,000, would apply to all vessels – large, medium, and small – regardless of their gross tonnage.

k. Section 2 of the proposed initiative states, “The effective date shall be October 1, 2027.” “Effective” for what? Is this when the permits need to be in place, or is it when the initiative first takes effect and the City Manager can then start putting together the complex permit scheme and process called for? Or is it when the capacity limit takes effect? Do these new

¹⁸ See McEwan & Lewis, *Encyclopedia of Nautical Knowledge* (Cornell Maritime Press 1953) at p. 563 (“Merchant vessels are described . . . as having a certain gross t[onnage], or a total internal cubic measurement of a given number of tons, or units of 100 cubic feet, less such space or spaces in which no fuel, cargo, or stores is carried.”)

standards and requirements apply to ships that book on October 1, 2027, or for ships that plan to dock on October 1, 2027 regardless of when they initially applied? The questions raised by this simple Section 2 illustrate the vagueness and incompleteness of the proposed initiative. Voters trying to make sense of this Section 2 cannot meaningfully vote on the initiative.

2. The Proposed Initiative Cannot, as a Matter of Law, Survive Scrutiny under the “Vagueness Doctrine.”

The extent to which the proposed initiative is vague – particularly the penalties that could be imposed under the initiative – invoke the “Vagueness Doctrine” that applies under the U.S. Constitution. The due process clauses in Fifth and Fourteenth Amendments require that laws – especially those that impose penalties – provide fair and accurate notice of how the law applies and what is punishable under it. The Vagueness Doctrine, also known as the “Void for Vagueness Doctrine,” is a constitutional requirement that laws must be written with enough clarity that ordinary people can understand what conduct is prohibited. This prevents vague laws from trapping the innocent and allows for fair notice of what is punishable.¹⁹

For all the reasons stated above for why the proposed initiative is vague, ambiguous, confusing, and incomplete, it violates this fundamental doctrine. Cruise ships and the companies that operate them cannot determine, first, what the proposed initiative would prohibit, and, second, how they may be punished for any violation thereunder.

Though the proposed initiative aims to limit passengers who may disembark from cruise ships at Juneau, it does not limit the number of passengers a cruise ship may land. It would instead limit cruise ships based on their “available lower berth capacity,” showing the proposed initiative is more aimed at cruise ships than addressing concerns for over-crowding in Juneau. On top of that, as stated above, the term “available lower berth capacity” is defined to mean “the standard capacity of a cruise ship, usually assuming two people per available cabin.” “Usually assuming two people per cabin” implies that this is an assumption and not a rule, and that there are times when a different count per cabin may or, more importantly, should apply. If this is the case, who makes the determination of how many people per cabin will be the standard? And is that standard subject to change with every ship that docks, or depending on the day or the month?

The penalties in proposed Section 20.50.030 would also violate the Vagueness Doctrine. This proposed section states that one of the penalties for violating the cruise ship ordinance would be “cancellation of future calls of ships within the same company from public dock space.” As it is worded, this form of penalty serves no worth because a separate company owns each cruise ship. Is the initiative attempting to say that the company is the cruise ship brand? If this is the case, that is not the current verbiage that the initiative has, and its confusing and vague language will cause interpretation issues. Similarly, subsection (2) of the clause states that there will be penalties of “up to \$1,000 per gross tonnage.” This penalty as it is currently worded is non-sensical because a

¹⁹ See *Voter Reference Foundation, LLC v. Balderas*, 616 F.Supp.3d 1132, 1229-32 (2022).

vessel's overall internal volume is gross tonnage. How can we have a penalty that reads a dollar amount "per gross tonnage?" Is it supposed to read "per gross ton" instead of "per gross tonnage"? Once again this wording is too vague and will leave too much open to interpretation for the voter.

Finally, Section 2 of the proposed initiative is simply too vague for anyone to even know when the proposed initiative would take effect, and in what ways.

3. The Proposed Ordinance's Application Fee and Fines Violate the Tonnage Clause.

The proposed initiative's attempt to impose permit fees – which are essentially landing fees – and monetary penalties on cruise ships is a clear violation of the Tonnage Clause, found in Article I, Section 10 of the U.S. Constitution. That clause prohibits state and local governments from imposing duties of tonnage – which are charges to access a port based on a vessel's capacity (*i.e.*, tonnage) – without Congressional consent. While the Tonnage Clause may allow states and municipalities to charge vessels for reasonable fees in limited circumstances, such as for rendering or making available services to the vessel that further the marine enterprise or that enhance the safety and efficiency of interstate commerce, the Tonnage Clause does not allow Juneau to charge permit fees or impose monetary penalties that are clearly tied to the tonnage of a vessel engaged in interstate and international commerce. The proposed ordinance essentially puts a price tag on the disembarkation of each cruise ship passenger and employee over a certain cap, and that price tag is directly – and expressly – tied to vessel "tonnage." Such monetary impositions cannot be done without approval of Congress.

4. Similarly, the Proposed Ordinance Would Clearly Violate 33 U.S.C. § 5(b).

Congress enacted 33 U.S.C. § 5(b) not only to reinforce the Tonnage Clause, but also to expand the prohibition thereunder. The subsection provides:

(b) No taxes, tolls, operating charges, fees, **or any other impositions whatever** shall be levied upon or collected from any vessel or other water craft, or from its passengers or crew, by any non-Federal interest, if the vessel or water craft is operating on any navigable waters subject to the authority of the United States, or under the right to freedom of navigation on those waters, except for [exceptions that clearly do not apply here]

(emphasis added). This strict prohibition against any imposition whatever by a municipality on a vessel operating in navigable waters could not be any clearer. Section 5(b) strictly prohibits the permit fees and monetary penalties called for in the proposed initiative.

5. The Proposed Ordinance's Attempt to Interfere With Agreements and Obligations Thereunder Would Violate the Contract Clause.

The proposed initiative recognizes that there are private docks in Juneau where cruise ships will dock and land their passengers. It is not a stretch to understand that owners or operators of those docks have contracts with the cruise ships or cruise lines their docks will serve, and it is also not a stretch to understand that such contracts are multi-year contracts that will likely extend to cover years of Alaska cruise seasons.

By trying to impose caps, particularly those more restrictive than those set forth in the 2023 MOA and 2024 MOA, the proposed initiative would interfere with those contracts by depriving the parties of the respective benefits of their bargains. Indeed, CBJ, by virtue of the MOAs that it negotiated, may also be deprived of all the benefits it expected to receive in entering the MOAs due to caps and other limits that the proposed initiative would impose.

It is such interference with contracts and contract expectancies that the Founders of our country sought to avoid by inserting the Contract Clause in Article I, Section 10, Clause 1 of the U.S. Constitution. The Contract Clause prohibits states and municipalities from passing laws that impair the obligations of contracts or otherwise interfere with the terms and enforceability of existing contracts, whether those contracts are between private parties or between a municipality and a private party. The Contract Clause was put in the Constitution to address the concern about state legislatures enacting laws that would undermine the sanctity of private agreements and disrupt credit relationships.

The proposed initiative would limit cruise ships coming into both public and private docks by creating caps on the number of cruise ships that are allowed to call on Juneau daily and annually. The proposed initiative would also require permits for every large and medium cruise ship port call at both public and private docks. We have little doubt that long-term docking agreements currently in existence contemplated wharfage pricing without caps on port calls, and to impose such caps at this stage would interfere with, or impair, one or both parties receiving the benefits of their existing bargains.

6. The Proposed Initiative Would Impair the Right to Travel Freely that Each American Enjoys.

The limits in proposed Section 20.50.010 would restrict the freedom of passengers on cruise ships from traveling to Juneau. That restriction violates the Privileges and Immunities Clause found in Article IV, Section 2 of the U.S. Constitution. That clause, which states, "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," protects fundamental rights of individual citizens and prevents state and local governments from discriminating against out-of-state citizens, at least with respect to such fundamental rights. The right to travel freely within the United States is fundamental right of all Americans, and this includes the right of citizens of one state to enter another state. More importantly, the Privileges

and Immunities Clause embraces “the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily in the second State.”²⁰

Section 1 of the 14th Amendment also contains a similar Privileges and Immunities Clause, but more importantly contains the Equal Protection Clause, which states that “No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.” The Equal Protection Clause likewise prohibits a state or local government from denying a citizen of another state (and even its own state) equal protection of the laws. Since a resident of Juneau may freely be in Juneau without any caps or limits – just as other visitors not restricted by the proposed ordinance – so too must citizens coming into town aboard cruise ships, whose fundamental right to travel must be equally protected.

III. Conclusion

The foregoing discussion is not intended to be exhaustive on all the shortcomings of the proposed Cruise Ship Limits initiative. Time and space do not allow us to go into each and every problem. Even with that said, the foregoing provides you with more than ample reason to deny the application for the initiative petition. In fact, *any one* of the foregoing objections by itself is enough to deny the application.

The bottom line is that the proposed initiative is wholly inadequate in attempting to address the complexity of limiting, permitting, and penalizing cruise ship visitation. That inadequacy is compounded by inaccuracies, vagueness, ambiguity, and hyperbole throughout the mere two pages of proposed ordinance. The proponents need to do so much more, and so much better, to impose limits, permits, and penalties on cruise ships calling on Juneau.

It is also hard to support this proposed initiative when CBJ has made significant in-roads with the cruise ship industry to address and balance the competing interests of CBJ and its citizens and businesses, as well as those of the cruise industry. In turn, the CBJ and its City Manager should be given the freedom to represent and protect the interests of Juneau unfettered by a poorly drafted initiative and the distraction of a public vote on it.

We appreciate your attention to this important issue.

Very truly yours,

HELSELL FETTERMAN LLP



Scott E. Collins

²⁰ *Saenz v. Roe*, 526 U.S. 489, 500-02 (1999).

Ms. Beth McEwen
April 16, 2025
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Allen Marine, Inc.