



LOT 7a(8)

February 4, 2021

The Honorable Bob Sivertsen
Mayor, City of Ketchikan
344 Front Street
Ketchikan, AK 99901

Dear Mayor Sivertsen:

As the cruise industry remains focused on developing safe return to service protocols by partnering with stakeholders at all levels of government, industry, and the private sector, cooperation between the industry and coastal communities is more important than ever before. The draft ordinance amending local cruise ship passenger fees in the packet for Thursday's City Council meeting impedes everyone's ability to collaborate and work towards a comprehensive return to service solution that the industry and our destination partners require.

Following the City Council's RFP decision in late-2020, we understood that the Council directed city leaders to work with the industry to develop a mutually beneficial arrangement for the use of passenger fees in a way that addresses both urgent and long-term community needs. This was the approach taken in Juneau, where the CBJ and industry acknowledged and supported important services provided in support of our guests. One of many positive outcomes from the Juneau approach is a commitment that community leaders and CLIA Alaska will meet annually to discuss local and industry needs and how we can cooperatively work to address those needs.

CLIA Alaska has consistently expressed a desire and intention to establish a similar relationship with the City of Ketchikan. The timing, process, and substance of this proposed ordinance attempts to expand the scope of passenger fee use without any level of commitment to consult with or communicate with the industry at any interval. Given that no one from the City has reached out to industry informing us of this proposed policy shift or to discuss the rationale prior to the ordinance being put before the Council, we do not believe this approach is reflective of the partnership we both strive for and need.

Our interpretation of the proposed ordinance is that it establishes a new tax on cruise operations and will, in effect, eliminate the special exception which was carved out for Ketchikan by the Legislature in 2010. That measure allowed Ketchikan to receive \$5 per passenger (split between the City and Borough) that was not allowed under original state ballot initiative, given that Ketchikan already had a local tax in place. The legislation further allowed cruise lines to offset certain local passenger charges against state tax obligations ensuring that every passenger coming into the state would pay the same rate regardless of varying port calls. This eliminated the incentive to favor one port over others in planning vessel itineraries.

Ketchikan's recently enacted passenger fee increase of \$9 over the original \$7 has already upset this arrangement. Only the original \$7 is deductible from the amount due to the State. We interpret this present proposal as a new tax, in which the original \$7 per passenger fee is extinguished or superseded



causing that portion of passenger fees tax to revert to the State, to be replaced by a new charge against passengers which would no longer be deductible. Under this scenario the result would be when ships return to Alaska and dock at the city owned or leased docks, the cost per passenger would increase a total of \$9, which would not be embedded in the overall state tax fee that was the subject of a settlement in 2010.

We are taken aback to see this ordinance proposed at a time when the industry has been shut down in the US since March of 2020. Rather than collaborating to restore local jobs and local revenue as we all emerge from this pandemic, the proposed approach increases costs at a time when CLIA members are unable to operate or generate revenue.

We have requested legal review of both the ordinance and the supporting legal memorandum. However, our initial impression is that the ordinance would not survive Constitutional challenge, despite obvious efforts to avoid the limits of the 2018 federal court decision that upheld CLIA Alaska's objections to Juneau's passenger fees. Mr. Blasco's legal analysis minimizes the degree to which Juneau's passenger fees were found by Judge Holland to be incompatible with federal constitutional prohibitions. Our initial legal review indicates that the several changes intended to insulate the proposed Ketchikan fees from legal attack are changes more of form than substance. In fact, what is being proposed is consistent with the original state passenger tax, which was also modified as part of a long-term settlement with industry. However, all the alleged defects of the State passenger fees, pre-settlement, appear to be present in this proposed ordinance.

We strongly prefer to engage in meaningful dialogue with the City rather than having disputing lawyers leading this discussion. As guests in your community, who bring substantial economic benefits, we respectfully request you set this issue aside, focus your immediate attention on working with us to resume operations, and establish positive communications to enable the City and industry to achieve a long-term, mutually beneficial agreement.

Respectfully,

A handwritten signature in black ink that reads "Charlie Ball". The signature is written in a cursive, flowing style.

Charlie Ball
Chairman, CLIA Alaska

CC: Ketchikan City Council