



MEMORANDUM

DATE: April 30, 2021
TO: Beth McEwen, CBJ Municipal Clerk
FROM: Robert Palmer, CBJ Municipal Attorney
SUBJECT: Certification of the Charter amendments regarding limiting cruise ships

You asked whether each of the proposed Charter amendments limiting cruise ships should be certified for signature collection. For the following reasons, I recommend you certify the three items.

Proposed Initiative language

1. Initiative Short Title: Limit Cruise Ship Hours, Section 15.15(a). Cruise Ship Restrictions, Port Hours. "No cruise ship with a capacity of more than 250 passengers may be at dock or at anchor between 7:00 p.m. and 7:00 a.m."
2. Initiative Short Title: Ship Free Saturdays, Section 15.15(b). Cruise Ship Restrictions, Saturdays. "No cruise ship with a capacity of more than 250 passengers may be at dock or at anchor on Saturdays."
3. Initiative Short Title: Cruise Ship Size Limit, Section 15.15(c). Cruise Ship Restrictions, Tonnage. "No cruise ship larger than 100,000 gross tonnage may be at dock or at anchor after January 1, 2026."¹

Legal Backdrop

While the City and Borough of Juneau contains vast areas covered by saltwater and while there are multiple small boat harbors in the borough, nearly every cruise ship that visits Juneau uses the port facilities in downtown Juneau to embark and disembark passengers (Gastineau Channel between downtown Douglas and the Juneau-Douglas Bridge). Currently, there are two privately owned docks designed for cruise ships and two publicly owned (CBJ) docks designed for cruise ships. The two CBJ docks are encumbered with revenue bond conditions until the debt is satisfied. Ordinance 2014-01.

¹ Previously, item three had prohibited new cruise ship docks. See Email from Hart to Palmer to Hart (Feb. 16, 2021); Letter from Palmer to Hart (Feb. 24, 2021).

Alaska's cruise season typically extends from spring to fall. There were no large cruise ships to visit Juneau in 2020. While some small cruise ships are planning for a 2021 season in Juneau, the CDC sailing orders and the Passenger Vessel Services Act have limited large cruise ship sailings to Juneau for 2021.²

The CBJ Charter provides citizens the right to propose Charter amendments similar to the initiative process. CBJ Charter 14.3. The Municipal Clerk makes the certification decision.³

Notably, a charter provision that is clearly unlawful or clearly unconstitutional should not be certified.⁴ Here, the three proposed charter amendments, especially #3 Cruise Ship Size Limit, present incredibly nuanced legal issues that have not been clearly resolved in Alaska or the United States. Issues like federal preemption versus local control of local ports, application and enforcement to the existing private docks versus public docks, defining terms, and anti-appropriation concerns exist.

Although the Alaska Supreme Court has entertained pre-election challenges in certain circumstances like with "appropriations," the Alaska Supreme Court also recognizes a strong non-intervention doctrine until the voters approve of the initiative.⁵ Construing the three proposed charter amendments broadly to preserve them whenever possible and the lack of clearly controlling authority to reject certification, I recommend you certify each matter and issue signature collection books.

² See Proposed "Alaska Tourism Recovery Act" (H.R. 1318) (filed Feb. 14, 2021); State of Alaska Motion to Intervene, *State of Florida v. Xavier Becerra et al.*, No. 8:21-CV-839-SDM-AAS (D. Fla. April 20, 2021); *Key W. Bar Pilots Ass'n v. Griffin*, No. 4:20-CV-10076-JLK, 2020 WL 4813241, at *1 (S.D. Fla. Aug. 18, 2020).

³ *E.g., Alaska Action Ctr., Inc.*, 84 P.3d at 992 ("The executive officer may only reject the measure if 'controlling authority' leaves no room for argument about its unconstitutionality. The initiative's substance must be on the order of a proposal that would 'mandate local school segregation based on race' in violation of *Brown v. Board of Education* before the clerk may reject it on constitutional grounds").

⁴ *Id.*, CBJC 29.10.025(b)(2) & (c)(2); *Price v. Kenai Peninsula Borough*, 331 P.3d 356, 359 (Alaska 2014); *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900-901 (Alaska 2003).

⁵ *Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 481 (Alaska 2020); *Mallott v. Stand for Salmon*, 431 P.3d 159 (Alaska 2018); *Price v. Kenai Peninsula Borough*, 331 P.3d 356, 359 (Alaska 2014); *Municipality of Anchorage v. Holleman*, 321 P.3d 378 (Alaska 2014); *Pebble P'ship ex rel. Pebble Mines Corp. v. Lake & Peninsula Borough*, 262 P.3d 598 (Alaska 2011); *Alaska Action Ctr., Inc.*, 84 P.3d at 992; *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153 (Alaska 1991).