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TOP STORY

## Federal court rules against Port on harbor fee

Port charged vessels \$300 for pier maintenance

By Ethan Myers The Astorian  
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A federal court has ruled against the Port of Astoria over a harbor fee charged to large oceangoing vessels that pass along the Columbia River.

In an attempt to help fund pier maintenance, the Port in 2019 enacted a \$300 fee on oceangoing ships over 250 feet long heading upriver. The Columbia River Steamship Operators' Association, which represents regional shipping interests, strongly opposed the fee and warned of the potential for legal action.



The Port imposed a harbor fee on large oceangoing ships to help fund pier maintenance.

Gary Henley/The Astorian

Several ports along the river also objected to the harbor fee. Later that year, the shipping association, which saw the move as a precursor to other ports charging similar fees, filed a federal lawsuit against the Port, claiming the fee was unconstitutional.

This month, U.S. District Court Judge Michael Simon ruled in the shipping association's favor, affirming that the fee is a violation of the tonnage clause of the Constitution, which restricts state and local agencies from imposing charges on vessels for the "privilege of entering, trading in or lying in a port."

"We're pleased that the court has continued to affirm the position that we've had on this all along," Darien Loiselle, an attorney from Schwabe, Williamson & Wyatt who represented the shipping association, said. "It's a position that we took up with the Port of Astoria informally numerous times. Not only did our trade association do that, but numerous members of the maritime industry did."

"For reasons I don't completely understand, it was a path the Port continued to follow. I think the court's ruling is pretty clear that this sort of action is unconstitutional."

The Port has continued to charge the harbor fee throughout the course of the lawsuit, but many of the ships have not been paying, Will Isom, the Port's executive director, said.

The Port can appeal the court's ruling, Loiselle said, or accept it and work to reimburse the fees that have been charged.

"We're still working with our attorneys to go through the ruling and talk about potential next steps," Isom said.

Isom declined to comment further.

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Through extensive dredging, the Port maintains a deep-water berth at Pier 1, which makes it the only location at the mouth of the Columbia River capable of receiving large oceangoing vessels. The next-nearest deep-water berth is in Longview, Washington.

The Port attempted to justify the harbor fee – and its constitutionality – by claiming the special accessibility provides a critical service to distressed vessels facing repairs or other emergencies.

The shipping association questioned the emergency service capabilities at Pier 1, and noted that any emergency services, such as firefighting, policing, ship repairs or medical intervention, would be done by other agencies.

“The central question here, however, is whether the Port, which does not provide the actual emergency services, still provides a service or benefit to the larger vessels merely by maintaining infrastructure that would be available to allow emergency services to be rendered to larger vessels if and when needed,” the court ruling said.

Lawyers representing the Port had previously claimed that the absence of service at Pier 1 would jeopardize vessel safety and imperil maritime commerce on the river. But the shipping association challenged whether the Port collected enough evidence to make that determination.

While an estimated 30,000 to 40,000 ships passed by during the last two decades, the Port believes that only a handful used Pier 1 as an emergency berth. —

“The court finds that ... the dispositive issue here is that the Port itself does not provide any emergency services and merely dredges and otherwise maintains the pier,” the court ruling stated. “For that type of ‘service,’ which is really maintenance of the infrastructure of the port, the type of direct connection sufficient to support a fee that would not violate the tonnage clause is a fee on vessels that use the pier.

“ ... Although general services like emergency services do not necessarily require that all ships avail themselves of the service, the court is not persuaded that because Pier 1 is necessary for any in-berth large vessel emergency services to take place, services to maintain the pier are the equivalent of emergency services themselves,” the ruling continued.

The court ruling found that since so few ships have used the pier as an emergency berth, the fee primarily affects vessels that only pass by the Port en route to other destinations, and is therefore in violation of the tonnage clause.

“We hope that we now can get this situation behind us. I think the industry is hoping that the message from the court is clear and that the opinion will stand and that we now can get back to business as usual,” Loiselle said. “This was an unusual assessment by a port authority. We are happy that the court has found, as we have felt all along, that this is something you just can’t do.”

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