

## Seattle Department of Construction and Inspections Director's Report

### Amendments to Seattle's Shoreline Master Program

January 31, 2019

#### Proposal Summary

The proposed legislation would:

1. Amend Section 23.60A.942 of the Seattle Municipal Code (SMC) to clarify the terms "designed for navigation" and "used for navigation" in the definition of vessel;
2. Replace "vessel" with "house barge" in Section 23.60A.204; and
3. Replace "vessel" with "structure" in Section 23.60A.916.

The proposal is intended to increase the consistency of the use of terms in the regulations. The proposed amendments to the definition of vessel are necessary to address the unintended consequences of a 2016 Seattle Hearing Examiner's decision that ruled that an existing conventional recreational vessel with a broken engine was not a vessel but instead could be considered a "structure" and thereby be verified as a floating on-water residence.

#### Background

The State Shoreline Management Act (SMA, RCW 90.58), enacted in 1972, established several important policies, including a strong preference for uses in the shoreline that protect the environment or are water-dependent. Water-dependent uses are those that cannot exist in any other location but a waterfront location. The SMA requires local governments to develop their own master program that meets the State's Shoreline Master Program Guidelines (WAC 173-26) for regulating uses, development, and shoreline modifications within the shoreline district and to implement the policies and provisions of the SMA. The City of Seattle's Shoreline Master Program (SMP) is codified in Chapter 23.60A. Under both the SMA and SMP, preference for uses is given first for water-dependent uses, then for water-related uses and water-enjoyment uses.

A residential use, whether located on land, or over or on the water, is not a water dependent use. The Washington Administrative Code Chapter 173-26, which implements the SMA, is explicit with the policies that govern over-water residential uses and states that:

*New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over-water homes exist and should be*

*reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.*

One of the main purposes of the SMA is to "protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high water mark" and the SMA directs local governments to "allow new over-water structures only for water-dependent uses, public access, or ecological restoration," and "the size of new over-water structures should be limited to the minimum necessary to support the structure's intended use."

The City is required to comply with WAC 173-26 including the above provisions and did so during its most recent SMP update enacted in 2015. This update also included provisions defining a category of new over-water residences called floating on-water residences (FOWRs) and limiting this category to those FOWRs present in Seattle waters prior to July 1, 2014. This date was based on the recognition of this category of over-water residences by the State Legislature in legislation effective on that date. The statute clarified that FOWRs should be considered a conforming use to the extent that they were legally established prior to July 1, 2014. No new FOWRs are allowed. The legislature described its intent as: preserving the existence and vitality of then-existing FOWRs; and establishing greater clarity and regulatory uniformity for these uses.

The definitions of a vessel and a FOWR are mutually exclusive. Vessels and FOWRs are defined in the City's Shoreline Code and, by definition, a vessel cannot be a FOWR.

Vessel means:

*... ships, boats, barges or any other floating craft that are designed and used for navigation and do not interfere with the normal public use of the water, including historic ships that do not have means of self-propulsion and steering equipment*

...

Floating on-water residence means:

*... any floating structure, other than a floating home, that is designed or used primarily as a residence, has detachable utilities, and is the subject of a lease or sublease at a marina, or whose owner or predecessor in interest had an ownership interest in a marina, as of July 1, 2014. See RCW 90.58.270.*

The City's definition of FOWRs is essentially identical to the State's definition. Both definitions define a FOWR as a floating structure and designed or used primarily as a residence.

SMC 23.60A.936 defines "structure" to mean:

*... a permanent or temporary edifice or building, or any piece of work ... whether installed on, above, or below the surface of the ground or water, including fences, walls, signs, piers, floats and drydocks, but not including ... vessels.*

Therefore, a vessel cannot be a FOWR, because a vessel is not a structure.

The purpose of the proposed code amendments is to clarify the terms "designed for navigation" and "used for navigation," which are part of the definition of a vessel in the City's SMP. "Used for navigation" should be an objectively determined status and should not rely on the voluntary action or inaction of a particular owner in maintaining the condition of the vessel, or whether a particular owner uses or does not use an operable vessel for any reason.

For example, an owner may allow their vessel to fall into such disrepair that it cannot be operated safely, or an owner may decide to keep their vessel at the dock for an extended period of time. These are actions or inactions that vary and are within the power of an individual owner; they do not change the fundamental character of the vessel.

#### Explanation of Amendments

Amendment to Definition of Vessel	Explanation
<p>"Vessel" means ships, boats, barges, or any other floating craft that are <u>designed for navigation in order to transport people or goods over water, and used for or capable of being used for navigation, and do not interfere with the normal public use of the water.</u> (<del>;</del> including)) <u>A vessel is considered capable of being used for navigation even if it is not used for navigation due to actions or inactions of the vessel owner(s) or due to conditions affecting the use of the vessel for navigation, which include, but are not limited to, broken engines, lack of an engine, hull damage, physical modifications, or missing sails.</u> Vessel also means historic ships that do not have means of self-propulsion and steering equipment (<del>and house barges</del>).</p>	<p>The clarification is achieved by changing the term "vessel" to "house barge" in Section 23.60A.204 (house barge standards); "vessel" to "structure" in Section 23.60A.916 (definition of house barge); and to include additional language in the definition of vessel to specify how the terms "designed for navigation" and "used for navigation" are intended to be interpreted (as shown on the left).</p>

The proposed amendments include additional language to clarify that the intent of the term “designed for navigation” is to transport people or goods over water. The proposed amendments also include additional language to clarify what “used for navigation” means by including the term “capable of being used for navigation.” The term “capable of being used for navigation” will clarify that the use of the vessel isn’t dependent on the current owner of the vessel or the current condition of the vessel. The amendments will clarify that a vessel that has been designed for navigation and has been capable of being used for navigation, meets the intent of the phrase “used for navigation.”

## **Analysis**

Because the definitions of a vessel and a FOWR are mutually exclusive, they must be read consistently to carry out the intent of the SMA to encourage and facilitate water-dependent uses in the shoreline over non-water dependent uses such as over-water and on-water residential uses.

The 2014 state legislation that amended RCW 90.58.270 to allow existing floating residents to remain on waters of the State was explicit that these structures needed to exist prior to July 1, 2014. Additionally, this legislation was clear in defining a FOWR as a structure not a vessel. There was to be a finite number of these existing structures that would be allowed to remain on State waters.

The 2016 Hearing Examiner’s decision ruled that a vessel with a broken engine was no longer a vessel because it could not be used for navigation. This ruling creates unintended consequences when implementing the City’s 2015 SMP regulations. If it is determined that every vessel that existed as of July 1, 2014 is not a vessel because it has not been “used for navigation” either because of a broken engine or potentially other reasons, then these vessels can be verified as FOWRs. The use of these vessels could change from a water-dependent use, which is a preferred use, to a non-water dependent use, which is not a preferred use under the SMA. This allowed change of use clearly goes against the goals and policies of the SMA and the City’s SMP.

Additionally, the consequences from this allowed change of use is that there is now a potential for many more FOWRs on the water than were originally contemplated by City Council adopting the 2015 SMP update. There is no longer the finite number of FOWRs that were grandfathered by the 2015 SMP update; instead there are potentially as many additional FOWRs as vessels that existed as of July 1, 2014 in the City.

The proposed amendments to the SMP will clarify the use of terms and addresses the consequence of the Hearing Examiner’s decision that interprets the term “used for navigation” literally. The amendments will clarify that a vessel

that has been designed for navigation and has been used for navigation, still meets the definition of vessel.

These amendments are consistent with the following shoreline goals and policies in the City's Comprehensive Plan

**LUG41** Locate uses that are not water-dependent or water-related on upland lots to optimize shoreline use and access.

**LU231** Allow only those uses, developments, and shoreline modifications that retain options for future generations, unless identified benefits clearly outweigh the physical, social, environmental and economic loss over a 20-year planning horizon. Use preference will be given in the following order:

1. On waterfront lots:

- a. Uses that protect or restore and enhance natural areas and ecological processes and functions, particularly those areas or systems identified as containing or having unique geological, ecological or biological significance.
- b. Water-dependent uses...
- c. "Water-related use"...
- d. Water-enjoyment uses...

### **Director's Recommendation**

The Director recommends adoption of the proposed amendments to comply with the SMA. The proposed amendments reflect the City's SMP goals to protect the shoreline environment, to protect our water-dependent uses and to provide for public access to the shoreline.