

From: Lake Union Liveaboard Association

To: Seattle DPD

The Lake Union Liveaboard Association (LULA) appreciates this opportunity to submit the following comments in response to materials presented at the meeting on June 30th and other materials that followed.

The development and approval process for the Seattle Shoreline Master Program has been of great concern to LULA and our membership. We have participated in meetings, hearings and made comments throughout the process. Our close-knit community of houseboat liveaboards has reviewed multiple changes to the SSMP and proposed implementing ordinances. We participated in the On-Water Stakeholders Group and worked to secure the passage of ESB-6450. From our perspective this has been a long and arduous process.

We request consideration of the following changes in the proposed SSMP ordinance before they are submitted to the City Council by Mayor Murray: *(LULA's proposed changes in red with supporting arguments in italics)*

FLOATING ON-WATER RESIDENCE STANDARDS (New) 23.60A.203. (A. – F.)

DPD Draft:

“B. For purposes of this Chapter 23.60A, a floating on-water residence is allowed only if it:

1. Was used as a dwelling unit within the City prior to July 1, 2014.
2. Was moored pursuant to a lease or ownership interest at a marina, as defined by Section 23.60A.926, within the City prior to July 1, 2014.”

LULA's Proposed Changes:

“B. For purposes of this Chapter 23.60A, a floating on-water residence is allowed only if it:

1. Was moored within the State of Washington prior to the date of SSMP Implementation.
2. Was moored pursuant to a lease or ownership interest at a marina, as defined by Section 23.60A.926, within the State of Washington prior to the date of SSMP Implementation.”

Condensed Rationale:

The Shoreline Management Act (SMA) Definition of Floating on-water residence takes precedence. “Containing a dwelling unit” and “Used as a residence” are therefore synonymous criteria. Date of Implementation is necessary to prevent retroactive rulemaking.

Expanded Rationale:

Application of SSMP:

The proposed ordinance should not be more restrictive than or inconsistent with the SMA. The SMA defines a “Floating on-water residence” as follows:

“Floating on-water residence” means any floating structure, other than a floating home, that was legally established prior to July 1, 2014 and 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 has an ownership interest in a marina, as of July 1, 2014. See, RCW 90.58.270. For the purpose of this chapter, a structure will be considered designed or used primarily as a residence if it contains a dwelling unit.

Based on this definition, the ordinance’s requirement to be “used as a dwelling unit” as specified in paragraph B.1. is ambiguous and inconsistent with the SMA definition. The unit simply needs to “contain” a dwelling unit in order to be allowed.

Application of ESB 6450:

ESB 6450 is applicable across Washington State, and to date the Washington Department of Ecology (ECY) has not issued guidance nor adopted changes to its implementing WAC. Prior to the passage of ESB 6450, the ECY worked with other local governments to restrict or eliminate existing residences on the water. Some Houseboat liveaboards have been forced to relocate or take on a non-conforming status. The long uncertainty here in Seattle has also caused some Houseboat liveaboards to locate outside of Seattle, although their preference would have been to locate in Seattle. The broad application of ESB 6450 should provide a safe harbor for affected vessels.

ESB6450 provides protection to Floating On Water Residences (FLOWR) prior to July 1, 2014. The date of application, July 1 2014, was established by state law to provide the minimum standard. In recognition of the many years of varied draft standards and uncertainty for our community, the City of Seattle should establish a date no earlier than the effective date of SSMP Implementation.

Best Management Practices (BMP’s)

DPD Draft:

“B. The Director by Director’s Rule may establish alternative best management practices to implement the requirements of Section 23.60A.155 or may add or clarify best management practices to minimize impacts on the aquatic environment based on the science and technical information described in WAC 173-26-201(2)(a).”

LULA’s Proposed Change:

Strike “Section B” of the new section 23.60A.155.

Condensed Rationale:

LULA opposes granting such authority to the Director (DPD) to modify BMPs by “Director’s Rule.” BMP’s should only be modified by ordinance following standard protocols for community engagement and public comment. The potential impacts of new or modified BMP’s on Marina operators and their tenants are too far-reaching to be established or modified by Director’s Rule. Additionally, there is no clear process to appeal a Director’s Rule in the event of unintended impacts.

Expanded Rationale:

The new SSMP will establish Best Management Practices (BMP's) in the SSMP for the first time. Although BMP's have been used by many marina owners and many residents for some time, this is the first time the City will adopt and enforce BMP's. The many SSMP drafts contained multiple BMP standards. We appreciate that the Department of Planning and Development (DPD) is now proposing a single BMP standard applicable across the SSMP. Because this draft has not been published nor circulated for public comment to date, we anticipate further comments when a complete draft ordinance is published for review. The BMP's will apply to various users in multiple sections of the SSMP:

- 1. 23.60A.187 Standards for piers and floats and overwater structures,*
- 2. 23.60A.200 Standards for marinas, commercial and recreational,*
- 3. 23.60A.202 Standards for floating homes and floating home moorages,*
- 4. 23.60A.203 Standards for floating on-water residences,*
- 5. 23.60A.204 Floating structures and standards for house barges, and*
- 6. 23.60A.214 Standards for vessels containing dwelling units and appeals.*

Verification Process

The term “verification” is new and has not been defined. The requirements for verification and the process should be clearly defined prior to the adoption of the SSMP requiring such a process. The means and scope of a verification process are of significant concern to LULA and our members.

LULA's proposed change

Define “verification” and the full extent of the process.

Rationale: The required information and process for “verification” must be defined. As vessels, there is a concern that Federal preemption be considered and that the scope of “verification” be clearly and unambiguously defined.

Verification fees for House Barges

The DRAFT ordinance proposes significant changes for the 34 existing legally-established (licensed) House Barges:

“Each house barge must be verified by the Director, and owners shall pay a one-time fee to receive a verification number plate. The fee shall be established by the Director to recover the reasonable costs of the program for issuing verification number plates. Owners of house barges authorized by this Section 23.60A.204 may apply to the Director for a verification number plate or may wait until the Director asks for verification information. If the Director discovers an un-verified house barge, the Director may require the owner to submit the verification information and pay the required fee.”

LULA's Proposed Changes:

Eliminate the fee for the 34 documented House Barges.

Rationale:

Each of the 34 owners has already paid a two-step licensing fee and has legally established their House Barge and received a City-issued numbered decal. Paying the cost of a new “verification number plate” is reasonable to replace deteriorating City-issued decals. Paying a second licensing fee to once again legally establish their use is not reasonable.

Verification fee for Floating on-water residences

DPD Draft:

“D. Verification of a floating on-water residence

1. Each floating on-water residence shall be verified by the Director and the owner shall pay a one-time fee to receive a verification number plate. The fee shall be established by the Director to recover the reasonable costs of the program for issuing verification number plates. Owners of floating on-water residence allowed pursuant to subsection 23.60A.203.B may apply to the Director for verification or may wait until the Director asks for verification information. During the first year following the effective date of this ordinance, no verification fee will be due. If a floating on-water residence is not verified, the Director may require the owner to submit verification information and pay the required fee.”

LULA’s Proposed Change:

Encourage voluntary participation by waiving the fee for one year after SSMP Implementation.

Rationale:

In order to encourage compliance from Houseboat liveaboards we request a waiver for anyone applying for verification during the first year following the adoption of the new SSMP. As a user group we are very weary after all the many versions of proposed standards for our use. This has been a very discouraging process for many of our members. In order to induce voluntary compliance in a timely fashion we request the waiver. Waiving the fee is a good faith action to encourage compliance with the verification process. This could save the City considerable resources from pursuing an enforcement route to coerce verification. Our community has already paid in uncertainty and legal expenses to get to a reasonable resolution for FLOWR’s. After one year the fee would apply to any unverified FLOWR’s.

23.60A.203.C.1.a

REPLACEMENT

DPD Draft:

“Floating on-water residences legally established pursuant to subsection 23.60A.203.D are regulated as a conforming use, and relocation, repair and maintenance, remodeling, expansion, and replacement are allowed subject to the following standards:

- a. Normal maintenance and repair, as defined in Section 23.60A.020.C.1, is allowed, and replacement is not considered the common method of repair for this type of structure.”

**LULA's Proposed Change:
23.60A.203.C.1.a SHOULD BE REMOVED**

Rationale:

Section (a) has no effect. Although this is part of the standards for repair and maintenance, there is no guidance or consequence as a result of this statement and it is redundant with the preamble in 23.60A.203.C.1

23.60A.203.C.1.e.5 EXPANSION

DPD Draft:

"If the total expansion over the life of the structure exceeds 120 square feet, gray-water containment or a waste-water hookup that disposes the gray water to the City's waste-water disposal system is required."

LULA's Proposed Changes:

"If, after the date of implementation, the total expansion of the living space exceeds 120 square feet, gray-water containment or a waste-water hookup that disposes the gray water to the City's waste-water disposal system is required."

Rationale:

Expansions that occurred prior to the date of implementation should not be considered, as no rule was in effect preventing this expansion. Only expansion after the date of implementation should be considered.

23.60A.203.C.2.b STABILITY

DPD Draft:

"b. The owner/applicant shall demonstrate any expansion will not create future stability problems for the floating on-water residence;"

LULA's Proposed Changes:

23.60A.203.C.2.b SHOULD BE REMOVED

Rationale:

No standard is provided for demonstrating future stability problems. This implies some kind of building standard, inspection, certification that does not currently exist. Expansion on vessels is not regulated by building codes.

LULA comment letter 8-14-14

The Lake Union Liveaboard Association appreciates this opportunity to comment. Please contact myself or Vice President John Chaney for further clarification. We are prepared to meet and discuss these requests.

Best Regards,

Mauri Shuler
President