Jill Vanneman  
Enforcement Facilitation Supervisor  
Department of Planning and Development, City of Seattle  
700 Fifth Ave., Suite 2000  
P.O. Box 34019  
Seattle, WA 98124-4019  

Re: Lake Union Liveaboard Association Response to Draft Director’s Rule X-2013  
Regarding Liveaboard Vessels  

Dear Ms Vanneman:

This letter is written on behalf of the Lake Union Liveaboard Association (LULA), for which I serve as legal counsel. LULA wishes to suggest changes to the preliminary draft Director’s Rule regarding existing on-water residences that the Department of Planning and Development (DPD) issued for public comment on 18 September 2013. LULA also would like to thank DPD Code Compliance Director, Faith Lumsden, and other DPD staff members for their engagement with its members at a LULA meeting on 22 August 2013 and in a DPD-sponsored public forum regarding the Director’s Rule on 1 October 2013. LULA would further like to express its gratitude to the DPD Director, Diane Sugimura, for her participation in a meeting with Seattle Mayor, Michael McGinn, at which Kevin Bagley represented LULA on 23 October 2013.

As an organization, LULA believes that it is particularly well qualified to provide input to the proposed Director’s Rule. Formed in 2009, LULA constitutes a community of hundreds of people within Seattle who have interests in life and work on the waters of Lake Union in vessels of any style or shape. Through educational, political and social activities, LULA advocates for liveaboard vessel owners, promotes the protection of Lake Union for the benefit of all who enjoy Seattle waters and seeks to preserve Seattle’s iconic houseboat heritage for future generations. The president of LULA is Mauri Shuler and the vice president is John Chaney. Additional members of the LULA board of directors are Kevin Bagley, Linda Bagley, Gregory Baumann, William Cirino,
Barbara Engram, John Geisheker, Langdon Miller, Toni Radonich, Lynne Reister, Michael Sherlock, Brian Sykes, and William Wehrenberg. All of the LULA board members own liveaboard vessels. Most of the board members have spoken publicly at the Seattle City Hall regarding liveaboard vessels, several have served on a stakeholder group appointed by the Seattle City Council to consider this issue and all have carefully evaluated the potential effects of the Director’s Rule on behalf of the many vessel owners whose investments and homes could be affected.

LULA accepts that vessels that are moored in Seattle waters prior to the future effective date of the new version of the Seattle Shoreline Master Program (SSMP), as described in Seattle Municipal Code (SMC § 23.60.A, adopted by Ordinance 124105), should comply with existing ordinances that define a legal vessel as being designed and used for navigation (SMC § 23.60.942) and having a means of steering and propulsion (SMC § 23.60.090F). However, LULA urges the DPD not to adopt the proposed Director’s Rule in its current form. Rather, LULA believes that modifications are required so that the Director’s Rule preserves the liveaboard vessels that are homes to many Seattle residents by providing a legal “safe harbor” for those that can be shown to be compliant liveaboard vessels. LULA also would expect that this could establish these vessels as conforming. Further, LULA maintains that the changes proposed by LULA could provide reasonable compliance and enforcement guidelines for vessel owners and the DPD.

LULA agrees with the DPD that documentation provided by a qualified marine professional could be the basis for establishing compliance with SMC § 23.60.942 and SMC § 23.60.090F. However, LULA believes that having such documentation could reasonably be the sole basis for determining that a vessel is compliant. Further, LULA requests modification to the draft Director’s Rule proposed by the DPD, which mandates that evaluation can only be provided by a naval architect who is also a licensed engineer. LULA believes that a vessel owner should be able to provide documentation from any one of several types of experienced marine professionals, including a naval architect (with or without an engineering degree), a marine surveyor, a boatyard operator, a shipwright, or boat designer. LULA expects that the vessel owner would be responsible for any costs that the owner incurs from such a professional in obtaining guidance, performing vessel modifications to establish compliance, and/or obtaining documentation. Accordingly, LULA believes that the Director’s Rule should specify that selection of the qualified marine professional is at the discretion of the vessel owner.

In addition, LULA would propose that a vessel owner could provide documentation that a vessel conforms to SMC § 23.60.942 and SMC § 23.60.090F through such evidence as vessel logs; itemizations of equipment; and/or travel over
water as documented through still photos, videos, or narrative accounts. Such documentation would be an alternative to evaluation by a qualified marine professional and could also be the sole basis for establishing compliance.

In this regard, LULA opposes an absolute requirement for performance tests that would likely to impose logistical, financial, insurance and potential legal liabilities for vessel owners and the City and would encroach upon areas pre-empted by the Federal Boating Safety Act of 1971, 46 USC § 4302 et seq. LULA observes that, unless expressly permitted by the Coast Guard, the City would be pre-empted from establishing procedures and tests for determining the required equipment and performance of vessels. id., §§ 4306. LULA is not aware, and the draft rule makes no claim, that the Coast Guard has granted the City such authority. LULA would also note that providing available documentation could reduce the burden for vessel owners, particularly those with financial hardships. Such owners would be spared the costs associated with hiring a marine professional and conducting a performance test if they already have existing records that show their vessels to be compliant.

LULA requests that the Director’s Rule indicate that a vessel owner who submits the proposed documentation could obtain certification of legal status from the city, consistent with the concept of a legal “safe harbor”. Such certification would serve in lieu of a license as had previously been proposed by the stakeholders group. In keeping with the proposal that an owner can provide existing documentation of compliance with SMC § 23.60.942 and SMC § 23.60.090F, LULA strongly advocates against the requirement for documentation and certification within the last 12 months as is currently suggested by the draft Director’s Rule. Instead, documentation available since the manufacture of the vessel would seem more appropriate. Further, LULA would emphatically argue against the need for repeated documentation, performance tests, and/or certification. Once a vessel has been certified as a compliant vessel, repeated certification should not be necessary.

An important additional recommendation from LULA is that obtaining certification be voluntary. Effectively, this means that a vessel should be presumed to be in compliance unless it is proven noncompliant as the result of a complaint-based process. LULA would request that a liveaboard owner who does not proactively go through the documentation process and later receives a notice of violation (NOV) would still be afforded the opportunity to bring a vessel into compliance with the requirements of the Director’s Rule.
Accordingly, LULA makes the following specific recommendations to the DPD and the City of Seattle relating to the composition of the Director’s Rule:

- A vessel moored in Seattle waters prior to the effective date of the new SSMP (SMC § 23.60.A – Ordinance 124105) will be considered a legal vessel and will be considered conforming if the vessel meets the following criteria:
  1) The vessel is designed and used for navigation, and
  2) The vessel has a means of steering and propulsion, and
  3) Items 1 and 2 above are documented by either:
     a) An affidavit from an independent marine professional with at least 5 years of experience, such as a naval architect, marine surveyor, boatyard operator, shipwright, or boat designer; or
     b) Written or pictorial evidence (e.g., log books, video, photos) provided by the vessel owner that the vessel has used its own propulsion and steering to navigate in waters typical of those in which the vessel is moored.

- Selection of an independent marine professional will be at the discretion of the vessel owner, who will be responsible for any costs incurred.

- A vessel owner who submits the necessary documentation will be provided with a certificate of compliance or equivalent written recognition by DPD that the vessel meets the legal definition of a vessel under SMC § 23.60.942 and SMC § 23.60.090F.

- Once a vessel has been certified by DPD as a legal vessel, any owner of that vessel will not need to seek recertification from DPD.

- Providing vessel documentation and obtaining DPD certification will be voluntary on the part of the vessel owner. This means that the owner of a vessel will not be required to provide documentation and obtain DPD certification unless a notice of violation (NOV) is issued against a vessel for noncompliance with the requirements of the Director’s Rule; in this case, if the owner can establish that the vessel was moored in Seattle waters prior to the effective date of SMC § 23.60.A (Ordinance 124105), the vessel owner would be afforded the opportunity to present documentation that the vessel is designed and used in navigation consistent with SMC § 23.60.942 and SMC § 23.60.090F (as described in Item 3 above).
Owners of vessels issued an NOV will have an opportunity to correct any deficiencies and seek DPD certification. Any appeal of DPD's determination would be reviewable by the Office of the Hearing Examiner, with any appeals of the Examiner’s decision being reviewed by the King County Superior Court through an action under the Land Use Petition Act (consistent with the compliance recommendations in the Final Report and Recommendations of the Seattle On-Water Resident Stakeholders Group, Appendix D, 31 May 2013, copy attached).

The LULA board of directors and membership believe that implementation of these simple provisions will conform to existing legal definitions, minimize further regulatory or legal dispute, and provide the certainty and clarity that vessel owners, marina operators, and the DPD are seeking.

Please do not hesitate to contact me with questions or comments. This office and LULA itself ask to be listed as parties of record to this rulemaking process. Correspondence to LULA may be directed to:

Mauri Schuler  
President, Lake Union Liveaboard Association  
Seattle, WA  
E-mail: maurishuler@icloud.com

Thank you for your consideration of these comments.

Sincerely yours,

ARAMBURU & EUSTIS, LLP

Jeffrey M. Eustis

Cc:
Diane Sugimura, Director DPD  
Faith Lumsden, Code Compliance Director, DPD  
Mauri Shuler, LULA President  
John Chaney, LULA Vice President  
LULA Board of Directors