Ordinance No. 120866

Council Bill No. 114179

AN ORDINANCE relating to Shoreline District regulations; amending Section 23.60.016 of the Seattle Municipal Code in order to clarify shoreline use regulations.

CF No.

Date Introduced: MAY - 6 2002	
Date 1st Referred: MAY - 6 2002	To: (committee) Land Use Committee
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: 7-29-02	Full Council Vote: 8-0
Date Presented to Mayor: 7-30-02	Date Approved: 8/5/02
Date Returned to City Clerk: 8/6/02	Date Published: 8/9 T.O. F.T. 2
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

The City of Seattl

Council Bill/Ordina

The Council 2-1 (Co

7-29-02 Passe

This file is complete and ready

Law Department

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____ NICASTRO

Councilmember

Committee Action:

File Divided Report
2-1 (Conlin) Y: MP, JN; N: RC

7-29-02 Passed (Excused: Conlin)

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

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Law Department

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed

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12/27/01
NEWVessel_Ord.Doc
V1

ORDINANCE 120866

AN ORDINANCE relating to Shoreline District regulations; amending Section 23.60.016 of the Seattle Municipal Code in order to clarify shoreline use regulations.

NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.60.016 of the Seattle Municipal Code (SMC), which was last amended by Ordinance 118793, is amended as follows:

SMC 23.60.016 Inconsistent development prohibited.

No development shall be undertaken and no use, <u>including a use that is located on a vessel,</u> shall be established in the Shoreline District unless the Director has determined that it is consistent with the policy of the Shoreline Management Act and the regulations of this chapter. This restriction shall apply even if no substantial development permit is required.

ACTING CITY CLERK

MM
12/27/01
NEWVessel_Ord.Doc
V1

Section 2. After its approval by the City Council and Mayor, this Ordinance will be reviewed by the Washington State Department of Ecology (DOE) as per WAC 173-26-120. Once approved by DOE, the ordinance will take effect immediately.

Passed by the City Council the 29th day of July, 2002, and signed by me in open session in authentication of its passage this 29th day of July, 2002.

Peter Steinbrueck
President of the City Council

Approved by me this 5 day of August, 2002.

Gregory J. Nickels, Mayor

Filed by me this 6th day of August, 2002.

Judith E. Pippin
City Clerk

(SEAL)

ACTING CITY CLERK

For Action at Full Council on Monday, July 29, 2002

Council Bill 114175
Divided Report of the Land Use Committee
7/16/02

Council Bill 114175 amends the City's shoreline regulations in response to a ruling by the King County Superior Court. The legislation amends existing regulations regarding the establishment of uses in areas governed by the Shoreline Master Program (SMP), SMC Ch. 23.60, to clarify that a use on a moored vessel is required to be consistent with the SMP.

At the public hearing on the legislation, a number of people testified that the proposed language was too broad and should be narrowed. The Committee discussed whether to move forward with the legislation now and request that the Department of Design, Construction and Land Use (DCLU) prepare any necessary follow-up legislation as soon as possible, or to hold the legislation (or vote no on it) until DCLU can prepare new legislation and conduct necessary environmental review. The Committee divided on the issue and voted DO PASS with a 2-1 vote. The majority and minority reports are shown below:

Majority (Nicastro, Pageler): The City should act now to address the ruling by King County Superior Court. As soon as possible, DCLU should prepare any necessary follow-up legislation for consideration by the Council.

Minority (Conlin): The legislation should be held until DCLU can address the concerns raised in the public hearing. This way, we don't try to solve one problem but create another with overly broad legislation.

If you have questions, please feel free to contact Eleanore Baxendale in the Law Department, 684-8232.

CB 114175 Divided Report
GB 7/16

AMENDMENT TO THE SHORELINE MASTER PROGRAM RELATED TO USES ON MOORED VESSELS

February, 2002

I. Introduction

The Department of Design, Construction and Land Use (DCLU) proposes legislation that amends the wording of existing regulations regarding establishment of uses in the area governed by SMC Chapter 23.60, The Shoreline Master Program (SMP). The proposal will clarify that a use on a moored vessel in the Shoreline District is required to be consistent with the SMP (SMC 23.60.016).

II. Existing Conditions

Currently, the City's SMP regulations state that "no use" shall be legally established unless it is consistent with the SMP regulations (SMC 23.60.016). DCLU construes this section to apply to all uses on a parcel, including uses (principal or accessory) conducted on vessels moored on that parcel.

In December 2001 the King County Superior Court held that "no use" does not specifically state uses conducted on vessels; therefore the City could not apply SMP standards to a site that was used for a lodging business conducted on a vessel moored at a recreational marina on the site. The City has appealed this decision on the grounds that both the Washington State Shoreline Management Act and the Shoreline Master Program require the City to control the impacts of all uses of the shoreline. The City must be able to, and the Washington Department of Ecology intends the City to, regulate uses on moored vessels because the use may have impacts on the parcel and vicinity (parking and water quality impacts, for example).

An appeal may take several years to be decided. During that time, DCLU believes that it is important to make this clarification in the regulations to ensure that others conducting businesses along the shoreline on moored vessels are clear about their responsibilities to engage in uses consistent with the Shoreline Master Program.

III. Analysis of the Proposal

DCLU proposes to amend the provision of the SMP that states "no use" can be established unless it is consistent with the SMP regulations to state "no use <u>including a use that is located on a vessel</u>" can be established unless it is consistent with the SMP regulations. DCLU believes this will address the court's concern that "no use" is not explicit enough to require application of these regulations when the use occurs on a moored vessel. In the case of principal uses, property where the vessel is moored must have a use permit that is consistent with the provisions of the SMP.

In addition to clarifying the effect of the SMP during the appeal, amending the SMP now will limit claims that uses on vessels are lawful as "grandfathered" uses, if the City loses the appeal under the unamended language.

ACTING CITY CLERK

This amendment will not allow the City to regulate vessels in any manner that is preempted by federal or state laws.

IV. Recommendation

The proposed amendment will promote the public interest by clarifying that uses within the SMP area can be established only when consistent with the requirements of the SMP. Therefore, DCLU recommends that the proposed amendment to the SMP be approved.

ACTING CITY CLERK

City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

April 5, 2002

Honorable Peter Steinbrueck, President
Seattle City Council
Municipal Building, 11th Floor

Re: Clarification of Use Regulations in the Shoreline District

Dear Council President Steinbrueck:

I am transmitting the attached ordinance for Council consideration.

The proposal amends existing regulations regarding the establishment of uses in areas governed by SMC Chapter 23.60, The Shoreline Master Program (SMP). The proposal will clarify that a use on a moored vessel is required to be consistent with the SMP.

Currently, the City's SMP regulations state that "no use" shall be legally established unless it is consistent with the SMP regulations (SMC 23.60.016). DCLU construes this section to apply to all uses on a parcel, including uses (principal or accessory) conducted on vessels moored on that parcel.

In December 2001 the King County Superior Court held that "no use" does not specifically state uses conducted on vessels; therefore the City could not apply SMP standards to a site that was used for a lodging business conducted on a vessel moored at a recreational marina on the site. The City has appealed this decision on the grounds that both the Washington State Shoreline Management Act and the City's Shoreline Master Program require the City to control the impacts of all uses of the shoreline. The City must be able to, and the Washington Department of Ecology intends that the City, regulate uses on moored vessels because the use may have impacts on the parcel and vicinity (parking or water quality impacts, for example). An appeal may take several years to be decided.

A report of the Director of the Department of Design, Construction and Land Use accompanies this legislative package detailing the background and implications of this legislation.

Thank you for your consideration of this legislation. Should you have questions, please contact Miles Mayhew at 615-1256.

Sincerely,

GREG NICKELS
Mayor of Seattle

600 Fourth Avenue, 12th Floor, Seattle, WA 98104-1873
Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E:mail: mayors.office@ci.seattle.wa.us
An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

ACTING CITY CLERK

Seattle
City Council

PUBLIC HEARING COMMENT FORM

COMMENTS ARE PUBLIC RECORD

Date JULY 16, 2002

SHORELINE USE REGULATIONS

Hearing Title C.B. 114175

Committee LAND USE

PLEASE WRITE AS LEGIBLY AS POSSIBLE!

Location CHAMBER

NAME	AFFILIATION	ADDRESS	ZIP	PHONE	E-MAIL
Larry Kozner	Seattle Ferry Service LLC	12245 NE 92nd	Kirkland 98033	425 889-0326	SeattleFerrySvc@cs.com
Marsha Holbrook	Port of Seattle				
Melody McCutchen	Land Use Attorney for Port of Seattle	2200 Gateway Bld 1221 2nd Ave	Seattle 98101	206 623 1745	mbm@ehcmp.com
Sandra Lange	Mayor's Office of Economic Development	3190 160th Ave SE	Bellevue WA 98008	425 649-4260	Slange@ci.bellevue.wa.gov

Please use other side for your comments, if necessary.

Seattle
City Council

PUBLIC HEARING COMMENT FORM

COMMENTS ARE PUBLIC RECORD

Date JULY 16, 2002

SHORELINE USE REGULATIONS

Hearing Title C.B. 114175

Committee LAND USE

PLEASE WRITE AS LEGIBLY AS POSSIBLE!

Location CHAMBER

NAME	AFFILIATION	ADDRESS	ZIP	PHONE	E-MAIL
DAVID DUNDAS		PO BOX 94786	98124	206-938-6529	DDUNDAS@HARBORMASTER.net

Please use other side for your comments, if necessary.

STATE OF WASHINGTON – KING COUNTY

--ss.

148570 No. ORDINANCE IN FULL
City of Seattle,Clerk's Office

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORDINANCE 120866

was published on

8/15/2002

J. Stedman

Subscribed and sworn to before me on

8/15/2002

Notary public for the State of Washington,
residing in Seattle

MELISSA M. PASCUA
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
NOV 21, 2004

Affidavit of Publication

State of Washington, King County

City of Seattle

ORDINANCE 120866

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PETER STEINBRUECK,

President of the City Council.

Approved by me this 5th day of August, 2002.

GREGORY J. NICKELS,

Mayor.

Filed by me this 6th day of August, 2002.

JUDITH E. PIPPIN,

City Clerk.

(Seal) Publication ordered by JUDITH PIPPIN, City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, August 15, 2002.

8/15(148570)