

ORDINANCE NO. 2252

ORDINANCE ADOPTING, ON AN EMERGENCY BASIS, CHANGES TO THE SELAH MUNICIPAL CODE: ADOPTING A NEW CHAPTER 3.01; AMENDING SECTION 4.32.100; AND ADOPTING A NEW SECTION 6.14.005

Recitals Pertaining to City's Status, Legal Authority, and Relevant Titles of Municipal Code

WHEREAS, the City of Selah is a non-charter code city that exists pursuant to Washington law and that operates under a Mayor-Council Plan of Government pursuant – among other authorites – RCW Chapter 35A.12; and

WHEREAS, the City is vested with authority – specifically via Article XI, Section 10 of the state Constitution, and additionally and more generally via other laws – to “make and enforce within its limits all such local police, sanitary and other regulations that are not in conflict with general laws”; and this authority is sometimes referred to as governmental police power (though the authority is, in fact, broader than such label suggests); and

WHEREAS, the City Council is vested with authority – specifically via RCW 35A.11.020 (2nd & 3rd ¶¶), and additionally and more generally via other laws as well – to “adopt and enforce ordinances of all kinds . . . and may impose pentalites of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein” and, further, the City Council possesses “all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law”; and

WHEREAS, the City has – previously and periodically throughout its history – adopted and enforced ordinances on many subjects, including but not limited to those that established:

1. Title 3 of the SMC, which title is labeled “Health and Sanitation” and which constitutes the majority of the City’s municipal health code;
2. Title 4 of the SMC, which title is labeled “Business Registration” and which – via its Chapter 4.32 – constitutes the City’s business licensing and regulation municipal code; and
3. Title 6 of the Selah Municipal Code (SMC), which title is labeled “Public Peace, Safety and Morals” and which constitutes the majority of the City’s municipal criminal code;

and

WHEREAS, certain SMC provisions – including but not limited to some provisions currently existing within the above-cited three titles – were enacted via ordinances that, in full or in part, adopted “by reference” provisions of state statutes or county codes, as allowed by RCW 35A.12.140, so as to make those state statutes or county codes equally an operative part of the SMC; and

WHEREAS, RCW 35A.12.140 provides that the types of state statutes or county codes that the City can adopt within its municipal code (*i.e.*, SMC) by reference include, but are not limited to, those pertaining to “health and sanitation” or “selling of meat and meat products for human consumption”; and

Recitals Pertaining to Existing Emergency

WHEREAS, during the past few weeks on multiple occasions at night, multiple individuals who are working together as an enterprise have entered Selah, set up a temporary location and then prepared food – including but not limited to meat – and sold the food to humans for consumption; and

WHEREAS, the Yakima Health District has informed the City that such individuals do not possess valid food worker cards (a/k/a food worker permits) as required by RCW Chapter 69.06 and WAC Chapter 246-217, and, further, nor do they possess a retail food permit/license from the Yakima Health District as required by WAC 246-215-08600. As a result, the food that these individuals are preparing and selling is – as a matter of law – unsafe for human consumption; and

WHEREAS, such individuals have not – either separately or as an enterprise – obtained a valid City business license as required by Title 4 of the SMC. As a result, these individuals are illegally engaging in business in Selah and are unlawfully competing with legally-compliant restaurants and mobile food vendors; and

WHEREAS, such individuals have carried out their activities – at least in part – at, on or upon land that they do not have valid legal permission to use, including but not limited to City-owned land and also privately-owned land. This includes, but is perhaps not limited to, portions of sidewalks, which creates a barrier for able-bodied and disabled pedestrians to use the sidewalks; and

WHEREAS, the actions of these individuals created in Selah – and if repeated similarly, will again create – actual and substantial dangers with regard to public health and public safety because customers are consuming food from unqualified and disreputable preparers. It is not merely conceivable, but highly likely, that one or more customers will become gravely ill or even die if these individuals continue to sell unsafe food in Selah; and

WHEREAS, furthermore, the actions of these individuals created in Selah – and if repeated similarly, will again create – an actual and substantial risk of breach of the peace because landowners’ are having their rights trampled and may resultantly confront these individuals via verbal or physical means, and, likewise, because other food sellers in the City are facing unlawful competition and may resultantly confront these individuals via verbal or physical means. It is not merely conceivable, but highly likely, that aggressive or violent confrontations will occur if these individuals continue to trample landowners’ rights and continue to unlawfully compete with legally-compliant businesses; and

WHEREAS, yet further, the actions of these individuals created for the City government itself – and if repeated similarly, will again create – an actual and substantial liability risk both because the activities are partially occurring on City-owned land and because City management has been informed of the dangers and risks that are thus partially originating from City-owned land; and

WHEREAS, City management has a reasonable belief and expectation that these individuals – or others, either associated with them or operating independently – are planning to carry out the same activities within the City in the near future and, further, that some or all of them have no intention of ever seeking or obtaining valid food worker cards, nor a valid City business license, nor lawful permission from landowners; and

WHEREAS, accordingly and for additional reasons set forth later below, there is an existing emergency in Selah; and

Recitals to Clarify and Disambiguate the “Individuals”

WHEREAS, the above-referenced “individuals” are different from legally-compliant mobile food vendors – including but not limited to JJ’s Birrieria and Antojitos – that have also recently begun operating in Selah; and

WHEREAS, anyone reading this Ordinance should understand that the existing emergency has been caused by people who are choosing to operate outside the bounds of the law; and

Additional Recitals Pertaining to the Currently-Existing Municipal Code and Existence of the Emergency

WHEREAS, as it currently exists Title 3 of the SMC (labeled “Health and Sanitation”) does not incorporate or fully incorporate – via an adoption by reference – the provisions of RCW Chapter 69.06, WAC Chapter 246-217 and WAC section 246-215-08300. As a result, when – as here – individuals are preparing and selling food despite lacking valid food worker cards and despite lacking a permit/license from the Yakima Health District, the City’s code enforcement and law enforcement personnel cannot directly impose punishment when those provisions are violated. The provisions are, presently, part of state law but not part of the City’s municipal law (*i.e.*, SMC). Thus, presently, only the state or the county could impose punishment when violations of those provisions occur in the City, and due to state-level and county-level personnel and budgetary constraints it is unclear the extent to which the state and county will be willing and able to do so when violations occur in the City; and

WHEREAS, similarly, as it currently exists Title 4 of the SMC and more specifically Chapter 4.32 thereof (labeled “Business Registration”) does not expressly say that a retail food operation must – as a condition of obtaining or maintaining a City business license – demonstrate full compliance with RCW Chapter 69.06, WAC Chapter 246-217, and WAC section 246-215-08300. As a result, the City’s code enforcement and law enforcement personnel do not possess direct authority to demand and require that any individual(s) selling food must present a valid food worker card and general proof of identity, nor to impose punishment if the individual(s) fail or refuse to do so. Thus, presently, only the state or the county could take those sort of enforcement actions in the City, and due to state-level and county-level personnel and budgetary constraints it is unclear the extent to which the state and county will be willing and able to do so in the City. Moreover, as it currently exists, SMC Chapter 4.32 – via section 4.32.100 – imposes penalties of civil injunctive relief and criminal misdemeanor conviction with a fine not exceeding five hundred dollars, but no potential jail time, when the chapter is violated. The capped-at-five-hundred-dollars and no-jail-time criminal penalties are far lessor than the otherwise-legally-permissible

misdemeanor maximums, which are a fine not exceeding one thousand dollars and jail time not exceeding ninety days. As a result, the impetus for persons to comply with and not violate or reviolate SMC Chapter 4.32 are not as strong as they could be and should be; and

WHEREAS, also similarly, as it currently exists Title 6 of the SMC (labeled “Public Peace, Safety and Morals”, which is the majority of the City’s municipal criminal code) includes Chapter 6.14 which is labeled “Offenses Against Public Health”. However, said chapter does not currently include any crime – either as a unique city-level crime, or as an adopted-by-reference-from-state-law crime within the City – for when, as here, one or more individual(s) prepare and sell food in the City contrary to the provisions of RCW Chapter 69.06, or WAC Chapter 246-217, or WAC section 246-215-08300; and

WHEREAS, by combination, the authority and power of City personnel to directly protect people within the City with regard to retail food sales is – at present – limited and in some instances lacking. This needs to immediately change, so that City personnel can prevent and when necessary punish any individual(s) who choose to prepare and sell unsafe retail food in the City; and

Final Recitals

WHEREAS, City management and staff have recommended that the City Council declare that an emergency presently exists in the City; and

WHEREAS, further, City management and staff have recommended that numerous provisions of the SMC be immediately changed in order to address the existing emergency, including both amendments to preexisting SMC sections and adoption of new SMC sections; and

WHEREAS, the City Council finds that good cause exists to declare that the emergency exists and to immediately change the SMC in such regards:

III

Operative Provisions of this Ordinance

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON does hereby ordain as follows:

Section 1. Adoption of Recitals. By this reference, the City Council adopts each and all of the preceding recitals (*i.e.*, the “WHEREAS” paragraphs above).

Section 2. Declaration of Emergency. The City Council declares that an emergency presently exists in the City, finds that time is of the essence with regard to addressing the emergency, and determines that the emergency must be immediately resolved.

Section 3. Adoption of New SMC Chapter 3.01. That a new SMC Chapter 3.01 be and is adopted – pursuant to and consistent with the above-cited authorities and others – to read and provide as follows (with the full text in double-underlined editing marks because all the language is new, but which editing marks shall be removed when the codifiers publish the official version of SMC Chapter 3.01 on the internet):

<u>Chapter 3.01</u>	<u>Retail Food Operations</u>
<u>Section 3.01.010</u>	<u>Authority</u>
<u>Section 3.01.020</u>	<u>Purpose</u>
<u>Section 3.01.030</u>	<u>Adoption by reference of state laws</u>
<u>Section 3.01.040</u>	<u>Enforcement by city personnel</u>
<u>Section 3.01.050</u>	<u>Penalties</u>
<u>Section 3.01.060</u>	<u>Savings</u>

3.01.010 Authority.

This chapter is adopted pursuant to, and as an exercise of, the city's general police powers under Article XI, Section 10 of the state Constitution and RCW 35A.11.020 in their presently existing versions, or as they might later be amended or recodified, and also via any replacements or substitutions.

3.01.020 Purpose.

This chapter is intended to promote and protect the health, safety and well-being of the public and to prevent the spread of disease by food.

3.01.030 Adoption by reference of state laws

The city adopts, by this reference, the provisions of RCW Chapter 69.06, WAC Chapter 246-217 and WAC sections 246-215-08300 and 246-215-08600, as operative provisions of the city's municipal code, except to the extent, if at all, that any provision or provisions thereof is or are clearly inapplicable to or for the city. Such authorities are adopted in their presently existing versions, or as they might later be amended or recodified, and also via any replacements or substitutions.

3.01.040 Enforcement by city personnel.

(a) City officers and agents, including but not limited to code enforcement and law enforcement personnel, shall and do have direct authority to enforce this chapter. Concurrent authority shall and does exist with other governmental jurisdictions, such as the county.

(b) The authority of city personnel to enforce this chapter includes, but is not limited to, the following:

(i) conducting routine or occasional inspections of locations, operations, vehicles and places in the city that are within the scope of this chapter in order to determine whether each person who is required to possess a valid food worker card does or does not possess such as of the time of the inspection;

(ii) conducting routine or occasional inspections of locations, operations, vehicles and places in the city that are within the scope of this chapter in order to determine whether an employer does or does not possess, as of the time of the inspection, valid documentation showing the employer has provided proper information and training with regard to food handling to each and every person to whom the employer is legally obligated to provide it;

(iii) requiring persons and entities in the city that are within the scope of this chapter to provide, upon demand, for inspection and photocopying each and every food worker card, business license or registration, permit/license, or other document of any kind – including but not limited to valid proof of personal identity for each owner and each employee – so that compliance or non-compliance with this chapter can be determined as of the time of the demand;

(iv) issuing or posting correspondences, cease and desist orders, notices of non-compliance, notices of infraction, and any other type of written or oral communication, regarding this chapter and compliance or non-compliance with this chapter, to persons and entities in the city that are within the scope of this chapter;

(v) destroying or requiring the destruction of any food in the city that has been prepared or sold in violation of this chapter;

(vi) seizing, towing, impounding, or otherwise taking possession of any equipment, tools, vehicles, or other items in the city that have been used to commit a violation of this chapter;

(vii) enforcing this chapter by imposing, or referring to the city prosecutor or county prosecutor for filing of, criminal charges against any

person or entity who has violated this chapter.

3.01.050 Penalties.

(a) Any person or entity who violates this chapter shall be guilty of a criminal misdemeanor and upon conviction shall be punished by a fine not exceeding one thousand dollars, or confinement in jail not exceeding ninety days, or both. A person or entity who commits or continues a violation on multiple days shall be guilty of a separate offense for each calendar day during which a violation occurred.

(b) Any person or entity who willfully hinders, delays or obstructs the efforts of city personnel to enforce this chapter, such as by knowingly providing false information or refusing to provide information, may be charged with a gross misdemeanor pursuant to other city or state law and may be punished accordingly.

(c) Any person or entity who commits a criminal trespass, in any degree, in conjunction with violating this chapter may be charged with criminal trespass pursuant to other city or state law and may be punished accordingly.

3.01.060 Savings.

In the event that any aspect of this chapter, or its application to any circumstance, be declared unconstitutional or otherwise invalid for any reason, such decision or preemption shall not affect the validity of the remaining portions of this chapter or its application to other circumstances.

Section 4. Amendment of SMC section 4.32.100. That the body of SMC section 4.32.100 be and is amended – pursuant to and consistent with the above-cited authorities and others – to read and provide as shown in the following editing marks (which are included in this Ordinance for ease of reference, but which shall be removed when the codifiers publish the official updated version of SMC section 4.32 on the internet):

4.32.100 Penalties.

(a) Failure to pay the registration fee within thirty days after the day on which it is due shall render the registration expired.

(b) If any taxpayer fails, neglects or refuses to renew his registration, the city may seek court action including injunctive relief to prohibit the business from continued operation within the city if the registration fees are unpaid.

(c) Any person or entity who knowingly fails or refuses to comply with any provisions of this chapter or with any rule or regulation promulgated by the city clerk/~~treasurer~~, or supplies false or fraudulent information in required declarations or statements, or abets violation of this chapter, is guilty of a misdemeanor and, upon conviction shall be punished by a fine not exceeding one thousand dollars, or

~~confinement in jail not exceeding ninety days, or both, shall be punished by a fine not to exceed five hundred dollars.~~ If the violation of or failure to comply with provisions or requirements of this chapter is of a continuing duration, then each day shall constitute a separate offense.

Section 5. Adoption of New SMC section 6.14.005. That a new SMC section 6.14.005 be and is adopted – pursuant to and consistent with the above-cited authorities and others – to read and provide as follows (with the full text in double-underlined editing marks because all the language is new, but which editing marks shall be removed when the codifiers publish the official version of SMC section 6.14.005 on the internet):

6.14.005 Unlawful retail food preparation or sale.

(a) It is a criminal misdemeanor for any person or entity to violate any provision of selah municipal code chapter 3.01, and upon conviction the violator shall be punished by a fine not exceeding one thousand dollars, or confinement in jail not exceeding ninety days, or both. A person or entity who commits or continues a violation on multiple days shall be guilty of a separate offense for each calendar day during which a violation occurred.

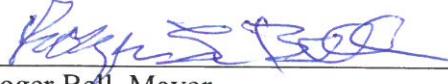
(b) City officers and agents, including but not limited to code enforcement and law enforcement personnel, shall and do have the authority to seize, tow, impound, or otherwise take possession of any equipment, tools, vehicles, or other items in the city that have been used to commit a violation of selah municipal code chapter 3.01.

Section 6. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 7. Corrections. The City Attorney and the codifiers of the SMC are authorized to make any necessary or desirable clerical or formatting changes – including but not limited to correcting scrivener errors; changing formatting; eliminating bold, italic and underscore emphasis; changing numbering; and correcting references – when publishing or republishing the official text of any section(s), chapter(s), title(s) or other portion(s) of the SMC due to any amendment, addition, alteration, change, impact or enactment effectuated by this Ordinance.

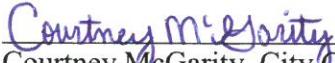
Section 8. This Ordinance Takes Effect Immediately; Subsequent Publication Shall Occur. This Ordinance – as a public safety emergency ordinance that is necessary for the protection of public health, public safety, public property and public peace, and which has been passed by a majority-plus-one portion of the whole membership of the City Council and also signed by the Mayor – shall and does take effect immediately and shall be and is in full force immediately. Pursuant to RCW 35A.12.130 (3rd ¶), the non-exhaustive underlying facts necessary to support a declaration of emergency are included in the recitals (*i.e.*, “WHEREAS” paragraphs) set forth above, all of which have been adopted by reference within the operative provisions of this Ordinance. This Ordinance or a summary of it shall be published in the City’s official newspaper.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH,
WASHINGTON this 12th day of August, 2025.



Roger Bell, Mayor

ATTEST:



Courtney McGarity, City Clerk

APPROVED AS TO FORM:



Rob Case, City Attorney