

ORDINANCE NO. 2171

ORDINANCE RELATING TO PUBLIC SAFETY

[WHICH REPEALS THE PREEXISTING SELAH MUNICIPAL CODE SECTION 6.02.030, REPLACES SUCH PREEXISTING CODE SECTION WITH A NEWLY-ENACTED MUNICIPAL CODE SECTION 6.02.030, CONFIRMS THAT THE INSTANT ORDINANCE REPEALS AND REPLACES PREVIOUS ORDINANCE NO. 1952, AND CONFIRMS THAT THE INSTANT ORDINANCE IS A PUBLIC EMERGENCY ORDINANCE THAT IS EFFECTIVE IMMEDIATELY UPON ITS ADOPTION]

WHEREAS, in 2014 the City – via passage of Ordinance No. 1952 – adopted by reference three sections from the then-existing state “Domestic Violence Prevention Act”, RCW Chapter 26.50, as part of the City’s municipal code; and

WHEREAS, such three specific sections were RCW 26.50.010, RCW 26.50.110 and RCW 26.50.140, and such Ordinance created a new subsection of the Selah Municipal Code specifically numbered as SMC 6.02.030; and

WHEREAS, in 2021 the state – via the Legislature’s passage of Engrossed Second Substitute House Bill 1320 and the Governor’s signature on the corresponding Chapter 215 of the Session Laws of 2021 – acted to, among other things, repeal RCW Chapter 26.50 and replace it with a new a “Civil Protection Orders” statutory chapter codified under RCW Chapter 7.105;

WHEREAS, the City desires to update its municipal code so as to conform to the state’s recent update of state law on this topic, which update will enable the City to charge and prosecute as a gross misdemeanor crime at the City’s municipal court any violation that occurs within the City of a court order that was issued under RCW Chapter 7.105; and

WHEREAS, if the City did not so update its municipal code, the City would not be able to charge or prosecute such violations at its municipal court, and such matters would have to be handled by the Yakima County Prosecuting Attorney’s Office at either the Yakima County District Court or the Yakima County Superior Court depending on the circumstances; and

WHEREAS, the Yakima County Prosecuting Attorney’s Office has a large caseload comprised of other types of cases and likely would not have the time and resources to charge and prosecute all violations that occur within the City, which would mean – if the City did not so update its municipal code – that some or all violations occurring within the City would go uncharged and unprosecuted; and

WHEREAS, the Selah Police Department is familiar with these types of court orders, has experience working with them, has access to information confirming whether any specific court order is still binding and applicable, and is competent to make referrals to the City’s prosecuting attorney for consideration of filing of charges and pursuing prosecution thereon at the City’s municipal court when a violation occurs within the City; and

WHEREAS, the City's prosecuting attorney is also familiar with these types of court orders, has experience working with them, has access to information confirming whether any specific court order is still binding and applicable, and is competent to receive referrals from the Selah Police Department and other law enforcement agencies for consideration of filing charges and pursuing prosecution thereon when a violation has occurred within the City, and has previously charged and prosecuted many violations of that type in prior years under the preexisting SMC 6.02.030; and

WHEREAS, violations of these types of court orders can inflict great distress on members of the public, can put persons in danger, can disrupt persons' lawful activities, and can lead to violence, harassment and other ills; and

WHEREAS, charging and prosecuting violations of these types of court orders is vital for purposes protecting vulnerable persons, upholding the integrity of the courts, and ensuring that persons restrained and bound by these types of court orders are held accountable when they violate the terms of any such court order; and

WHEREAS, this Ordinance promotes the public good and is necessary for the protection of public health, safety, property and welfare of the residents of the City; and

WHEREAS, a public emergency exists, this Ordinance is designated as a public emergency ordinance, and thus this Ordinance shall and does become effective upon adoption consistent with the third paragraph of RCW 35A.12.120 rather than becoming effective according to the ordinary, non-emergency timeline of no sooner than five days after publication in the City's official newspaper;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Findings of Fact. The recitals (*i.e.*, "WHEREAS" paragraphs) set forth above are hereby adopted by reference as the City Council's findings of fact that support this Ordinance.

Section 2. Repeal of Preexisting SMC 6.02.030. The preexisting version of SMC 6.02.030 is hereby repealed in its entirety effective immediately.

Section 3. Enactment of New SMC 6.02.030. A new version of SMC 6.02.030 is hereby enacted immediately as part of the City's criminal code, which newly-enacted SMC 6.02.030 in full reads as follows:

6.02.030 Additional RCW sections adopted by reference.

The following sections of the Revised Code of Washington are adopted by reference as part of the Selah Criminal Code:

RCW 7.105.010 – Definitions

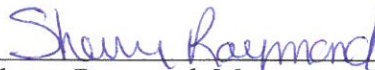
RCW 7.105.450 – Enforcement and penalties—Other than antiharassment protection orders and extreme risk protection orders.

RCW 7.105.465 – Enforcement and penalties—Knowledge of order.

Section 4. Repeal of Previous Ordinance No. 1952. The instant Ordinance immediately repeals in its entirety previous Ordinance No. 1952.

Section 5. Declaration of Emergency; Effective Date. This Ordinance – as a public 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 of the whole membership of the City Council and also signed by the Mayor – shall take effect and be in full force immediately upon its adoption. Pursuant to RCW 35A.12.130, 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 are adopted by reference as findings of fact pursuant to Section 1 of above and likewise all of which shall by this additional reference be deemed fully repeated within this Section 5. This Ordinance shall take effect immediately. This Ordinance or a summary thereof shall be published in the City’s official newspaper.


PASSED by the City Council of the City of Selah this 11th day of October, 2022.


Sherry Raymond, Mayor

ATTEST:


Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:


Rob Case, City Attorney

6.02.030 Additional RCW sections adopted by reference.

The following sections of the Revised Code of Washington are adopted by reference as part of the Selah Criminal Code:

RCW 26.50.010 Definitions.

RCW 26.50.110 Violation of order—Penalties.

RCW 26.50.140 Peace officers—Immunity. (Ord. 1952 § 1, 2014.)

The Selah Municipal Code is current through Ordinance 2167, passed July 12, 2022.

Disclaimer: The finance department has the official version of the Selah Municipal Code. Users should contact the finance department for ordinances passed subsequent to the ordinance cited above.

City Website: selahwa.gov

City Telephone: (509) 698-7334

Code Publishing Company

ORDINANCE NO. 1952

ORDINANCE AMENDING SELAH MUNICIPAL CODE
CHAPTER 6.02, CRIMINAL CODE, BY ADDING A NEW
SECTION 6.02.030 ENTITLED, "ADDITIONAL RCW
PROVISIONS ADOPTED BY REFERENCE"; AND
ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City should adopt certain provisions of RCW Title 26, Chapter 50, Domestic Violence Prevent, by reference for the purpose of ensuring that the Municipal Court has jurisdiction over any criminal activity associated with those provisions;

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

Section 1. Selah Municipal Code, Chapter 6.02 Criminal Code amended.

Chapter 6.02 to the Selah Municipal Code is amended to include a new section 6.02.030 which reads as follows:

6.02.030 – Additional RCW sections adopted by reference.

The following sections of the Revised Code of Washington are adopted by reference as part of the Selah Criminal Code:


RCW 26.50.010 Definitions

RCW 26.50.110 Violation of order -- Penalties.

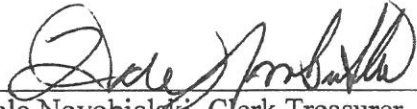
RCW 26.50.140 Peace officers -- Immunity

Section 2. Effective Date. This ordinance shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication.

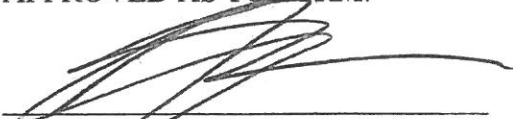
PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF SELAH,
WASHINGTON this 25th day of November, 2014.


John Gawlik, Mayor

ATTEST:


Dale Novobielski, Clerk Treasurer

APPROVED AS TO FORM:


Robert Noe, City Attorney

ORDNANCE NO. 1952

[Printout of excerpts from City of Selah's online copy of its currently-existing municipal code as of October 3, 2022. The City's previous adoptions of portions of RCW Chapter 26.50 are what will be replaced via the current AIS and Ordinance.]

Chapter 26.50.110 RCW Dispositions

DOMESTIC VIOLENCE PREVENTION

Sections

26.50.010 Definitions.

[2019 c 263 § 204. Prior: 2015 c 287 § 8; 2008 c 6 § 406; 1999 c 184 § 13; 1995 c 246 § 1; prior: 1992 c 111 § 7; 1992 c 86 § 3; 1991 c 301 § 8; 1984 c 263 § 2.]
Repealed by 2021 c 215 § 170, effective July 1, 2022.

...

26.50.110 Violation of order-Penalties.

[2019 c 263 § 913; 2019 c 46 § 5039; 2017 c 230 § 9. Prior: 2015 c 275 § 15; 2015 c 248 § 1; 2013 c 84 § 31; prior: 2009 c 439 § 3; 2009 c 288 § 3; 2007 c 173 § 2; 2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]
Repealed by 2021 c 215 § 170, effective July 1, 2022.

...

26.50.140 Peace officers-Immunity.

[1984 c 263 § 17.]
Repealed by 2021 c 215 § 170, effective July 1, 2022.

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse," for the purposes of a vulnerable adult protection order, means intentional, willful, or reckless action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. "Abuse" includes sexual abuse, mental abuse, physical abuse, personal exploitation, and improper use of restraint against a vulnerable adult, which have the following meanings:

(a) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline, or in a manner that: (i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

(b) "Mental abuse" means an intentional, willful, or reckless verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. "Mental abuse" may include ridiculing, yelling, swearing, or withholding or tampering with prescribed medications or their dosage.

(c) "Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(d) "Physical abuse" means the intentional, willful, or reckless action of inflicting bodily injury or physical mistreatment. "Physical abuse" includes, but is not limited to, striking with or without an object, slapping, pinching, strangulation, suffocation, kicking, shoving, or prodding.

(e) "Sexual abuse" means any form of nonconsensual sexual conduct including, but not limited to, unwanted or inappropriate touching, rape, molestation, indecent liberties, sexual coercion, sexually explicit photographing or recording, voyeurism, indecent exposure, and sexual harassment. "Sexual abuse" also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not the sexual conduct is consensual.

(3) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(4)(a) "Coercive control" means a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person's free will and personal liberty. In determining whether the interference is unreasonable, the court shall consider the context and impact of the pattern of behavior from the perspective of a similarly situated person. Examples of coercive control include, but are not limited to, engaging in any of the following:

(i) Intimidation or controlling or compelling conduct by:

(A) Damaging, destroying, or threatening to damage or destroy, or forcing the other party to relinquish, goods, property, or items of special value;

(B) Using technology to threaten, humiliate, harass, stalk, intimidate, exert undue influence over, or abuse the other party, including by engaging in cyberstalking, monitoring, surveillance, impersonation, manipulation of electronic media, or distribution of or threats to distribute actual or fabricated intimate images;

(C) Carrying, exhibiting, displaying, drawing, or threatening to use, any firearm or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate the other party or that warrants alarm by the other party for their safety or the safety of other persons;

(D) Driving recklessly with the other party or minor children in the vehicle;

(E) Communicating, directly or indirectly, the intent to:

(I) Harm the other party's children, family members, friends, or pets, including by use of physical forms of violence;

(II) Harm the other party's career;

(III) Attempt suicide or other acts of self-harm; or

(IV) Contact local or federal agencies based on actual or suspected immigration status;

(F) Exerting control over the other party's identity documents;

(G) Making, or threatening to make, private information public, including the other party's sexual orientation or gender identity, medical or behavioral health information, or other confidential information that jeopardizes safety; or

(H) Engaging in sexual or reproductive coercion;

(ii) Causing dependence, confinement, or isolation of the other party from friends, relatives, or other sources of support, including schooling and employment, or subjecting the other party to physical confinement or restraint;

(iii) Depriving the other party of basic necessities or committing other forms of financial exploitation;

(iv) Controlling, exerting undue influence over, interfering with, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or employment, including but not limited to interference with or attempting to limit access to services for children of the other party, such as health care, medication, child care, or school-based extracurricular activities;

(v) Engaging in vexatious litigation or abusive litigation as defined in RCW 26.51.020 against the other party to harass, coerce, or control the other party, to diminish or exhaust the other party's financial resources, or to compromise the other party's employment or housing; or

(vi) Engaging in psychological aggression, including inflicting fear, humiliating, degrading, or punishing the other party.

(b) "Coercive control" does not include protective actions taken by a party in good faith for the legitimate and lawful purpose of protecting themselves or children from the risk of harm posed by the other party.

(5) "Consent" in the context of sexual acts means that at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact. Consent must be ongoing and may be revoked at any time. Conduct short of voluntary agreement does not constitute consent as a matter of law. Consent cannot be freely given when a person does not have capacity due to disability, intoxication, or age. Consent cannot be freely given when the other party has authority or control over the care or custody of a person incarcerated or detained.

(6)(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes any form of communication, contact, or conduct, including the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(b) In determining whether the course of conduct serves any legitimate or lawful purpose, a court should consider whether:

(i) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(ii) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(iii) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(iv) The respondent is acting pursuant to any statutory authority including, but not limited to, acts which are reasonably necessary to:

(A) Protect property or liberty interests;

(B) Enforce the law; or

(C) Meet specific statutory duties or requirements;

(v) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner; or

(vi) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

(7) "Court clerk" means court administrators in courts of limited jurisdiction and elected court clerks.

(8) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(9) "Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner; or

(b) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one family or household member by another family or household member.

(10) "Electronic monitoring" has the same meaning as in RCW **9.94A.030**.

(11) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes, but is not limited to, clothing, cribs, bedding, medications, personal hygiene items, cellular phones and other electronic devices, and documents, including immigration, health care, financial, travel, and identity documents.

(12) "Facility" means a residence licensed or required to be licensed under chapter **18.20** RCW, assisted living facilities; chapter **18.51** RCW, nursing homes; chapter **70.128** RCW, adult family homes; chapter **72.36** RCW, soldiers' homes; chapter **71A.20** RCW, residential habilitation centers; or any other facility licensed or certified by the department of social and health services.

(13) "Family or household members" means: (a) Persons related by blood, marriage, domestic partnership, or adoption; (b) persons who currently or formerly resided together; (c) persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren, or a parent's intimate partner and children; and (d) a person who is acting or has acted as a legal guardian.

(14) "Financial exploitation" means the illegal or improper use of, control over, or withholding of, the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, government benefits, health insurance benefits, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship or conservatorship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of the vulnerable adult's property, income, resources, or trust funds.

(15) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes. "Firearm" also includes parts that can be assembled to make a firearm.

(16) "Full hearing" means a hearing where the court determines whether to issue a full protection order.

(17) "Full protection order" means a protection order that is issued by the court after notice to the respondent and where the parties had the opportunity for a full hearing by the court. "Full protection order" includes a protection order entered by the court by agreement of the parties to resolve the petition for a protection order without a full hearing.

(18) "Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any employee, agent, officer, director, or independent contractor thereof.

(19) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of a vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(20) "Intimate partner" means: (a) Spouses or domestic partners; (b) former spouses or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time, unless the child is conceived through sexual assault; or (d) persons who have or have had a dating relationship where both persons are at least 13 years of age or older.

(21)(a) "Isolate" or "isolation" means to restrict a person's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing. Isolation may be evidenced by acts including, but not limited to:

(i) Acts that prevent a person from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or

(ii) Acts that prevent or obstruct a person from meeting with others, such as telling a prospective visitor or caller that the person is not present or does not wish contact, where the statement is contrary to the express wishes of the person.

(b) The term "isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under *chapter 11.92 RCW or prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

(22) "Judicial day" means days of the week other than Saturdays, Sundays, or legal holidays.

(23) "Mechanical restraint" means any device attached or adjacent to a vulnerable adult's body that the vulnerable adult cannot easily remove that restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are (a) medically authorized, as required, and (b) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(24) "Minor" means a person who is under 18 years of age.

(25) "Neglect" means: (a) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain the physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety including, but not limited to, conduct prohibited under RCW **9A.42.100**.

(26) "Nonconsensual" means a lack of freely given consent.

(27) "Nonphysical contact" includes, but is not limited to, written notes, mail, telephone calls, email, text messages, contact through social media applications, contact through other technologies, or contact through third parties.

(28) "Petitioner" means any named petitioner or any other person identified in the petition on whose behalf the petition is brought.

(29) "Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include (a) briefly holding, without undue force, a vulnerable adult in order to calm or comfort him or her, or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

(30) "Possession" means having an item in one's custody or control. Possession may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession, but there is dominion and control over the item.

(31) "Respondent" means the person who is identified as the respondent in a petition filed under this chapter.

(32) "Sexual conduct" means any of the following:

(a) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;

(b) Any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;

(c) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent;

(d) Any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;

(e) Any intentional or knowing touching of the clothed or unclothed body of a child under the age of 16, if done for the purpose of sexual gratification or arousal of the respondent or others; or

(f) Any coerced or forced touching or fondling by a child under the age of 16, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.

(33) "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(34) "Stalking" means any of the following:

(a) Any act of stalking as defined under RCW **9A.46.110**;

(b) Any act of cyber harassment as defined under RCW **9A.90.120**; or

(c) Any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person that:

(i) Would cause a reasonable person to feel intimidated, frightened, under duress, significantly disrupted, or threatened and that actually causes such a feeling;

(ii) Serves no lawful purpose; and

(iii) The respondent knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the respondent did not intend to intimidate, frighten, or threaten the person.

(35) "Temporary protection order" means a protection order that is issued before the court has decided whether to issue a full protection order. "Temporary protection order" includes ex parte temporary protection orders, as well as temporary protection orders that are reissued by the court pending the completion of a full hearing to decide whether to issue a full protection order. An "ex parte temporary protection order" means a temporary protection order that is issued without prior notice to the respondent.

(36) "Unlawful harassment" means:

(a) A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner; or

(b) A single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include: (i) A malicious and intentional threat as described in RCW 9A.36.080(1)(c); or (ii) the presence of a firearm or other weapon.

(37) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from a person under contract with the department of social and health services to provide services in the home under chapter 74.09 or 74.39A RCW; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

[2022 c 268 § 1; 2022 c 231 § 8; 2021 c 215 § 2.]

NOTES:

Reviser's note: *(1) Chapter 11.92 RCW was repealed in its entirety by 2020 c 312 § 904.

(2) This section was amended by 2022 c 231 § 8 and by 2022 c 268 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

(3) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective dates—2022 c 268: "(1) Except for sections 9 through 14, 37, and 47 of this act, this act takes effect July 1, 2022.

(2) Section 37 of this act takes effect July 1, 2023.

(3) Sections 9 through 14 and 47 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 31, 2022]." [2022 c 268 § 49.]

Effective date—2022 c 231 §§ 8, 9, 11, 13, and 15: "Sections 8, 9, 11, 13, and 15 of this act take effect July 1, 2022." [2022 c 231 § 19.]

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

Enforcement and penalties—Other than antiharassment protection orders and extreme risk protection orders.

(1)(a) Whenever a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order is granted under this chapter, or an order is granted under chapter **9A.40**, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or **26.26B** RCW, or there is a valid foreign protection order as defined in RCW **26.52.020**, or there is a Canadian domestic violence protection order as defined in RCW **26.55.010**, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or the restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, the respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order or a Canadian domestic violence protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court:

(i) May require that the respondent submit to electronic monitoring. The court shall specify who must provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring; and

(ii) Shall impose a fine of \$15, in addition to any penalty or fine imposed, for a violation of a domestic violence protection order issued under this chapter. Revenue from the \$15 fine must be remitted monthly to the state treasury for deposit in the domestic violence prevention account.

(2) A law enforcement officer shall arrest without a warrant and take into custody a person whom the law enforcement officer has probable cause to believe has violated a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter **9A.40**, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or **26.26B** RCW, or a valid foreign protection order as defined in RCW **26.52.020**, or a Canadian domestic violence protection order as defined in RCW **26.55.010**, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter **9A.40**, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or **26.26B** RCW, or a valid foreign protection order as defined in RCW **26.52.020**, or a Canadian domestic violence protection order as defined in RCW **26.55.010**, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter **9A.40**, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or **26.26B** RCW, or a valid

foreign protection order as defined in RCW **26.52.020**, or a Canadian domestic violence protection order as defined in RCW **26.55.010**, and that does not amount to assault in the first or second degree under RCW **9A.36.011** or **9A.36.021** is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or a court order issued under chapter **9A.40**, **9A.44**, **9A.46**, **9A.88**, **9.94A**, **10.99**, **26.09**, **26.26A**, or **26.26B** RCW, or a valid foreign protection order as defined in RCW **26.52.020**, or a Canadian domestic violence protection order as defined in RCW **26.55.010**, is a class C felony if the offender has at least two previous convictions for violating the provisions of a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter **9A.40**, **9A.44**, **9A.46**, **9A.88**, **9.94A**, **10.99**, **26.09**, **26.26A**, or **26.26B** RCW, or a valid foreign protection order as defined in RCW **26.52.020**, or a Canadian domestic violence protection order as defined in RCW **26.55.010**. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6)(a) A defendant arrested for violating a domestic violence protection order, sexual assault protection order, stalking protection order, or vulnerable adult protection order, or an order granted under chapter **9A.40**, **9A.44**, **9A.46**, **9A.88**, **9.94A**, **10.99**, **26.09**, **26.26A**, or **26.26B** RCW, or a valid foreign protection order as defined in RCW **26.52.020**, or a Canadian domestic violence protection order as defined in RCW **26.55.010**, is required to appear in person before a magistrate within one judicial day after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release.

(b) A defendant who is charged by citation, complaint, or information with violating any protection order identified in (a) of this subsection and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(7) Upon the filing of an affidavit by the petitioner or any law enforcement officer alleging that the respondent has violated a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order granted under chapter **9A.40**, **9A.44**, **9A.46**, **9A.88**, **9.94A**, **10.99**, **26.09**, **26.26A**, or **26.26B** RCW, or a valid foreign protection order as defined in RCW **26.52.020**, or a Canadian domestic violence protection order as defined in RCW **26.55.010**, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days as to why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

(8) Appearances required under this section are mandatory and cannot be waived.

[2022 c 268 § 21; 2021 c 215 § 56.]

NOTES:

Effective dates—2022 c 268: See note following RCW 7.105.010.

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

Enforcement and penalties—Knowledge of order.

(1) When the court issues a protection order under this chapter, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in this chapter for a violation of the order unless the respondent knows of the order.

(2) When a law enforcement officer investigates a report of an alleged violation of a protection order issued under this chapter, the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the law enforcement officer determines that the respondent did not, or probably did not, know about the protection order and the officer is provided a current copy of the order, the officer shall serve the order on the respondent if the respondent is present. If the respondent is not present, the officer shall make reasonable efforts to serve a copy of the order on the respondent. If the officer serves the respondent with the petitioner's copy of the order, the officer shall give the petitioner a receipt indicating that the petitioner's copy has been served on the respondent. After the officer has served the order on the respondent, the officer shall enforce prospective compliance with the order.

(3) Presentation of an unexpired, certified copy of a protection order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system.

[2021 c 215 § 59.]

NOTES:

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

ORDINANCE NO. 2022-017

AN ORDINANCE relating to Public Safety; removing statutes repealed by the State and adopting the newly codified equivalent RCW's 7.105.450, 7.105.455 and 7.105.465 as an Emergency Ordinance to authorize the continued prosecution of Violation of Protective Orders and Antiharassment Orders in the City of Yakima Municipal Court.

WHEREAS, the State Legislature consolidated all protective orders and antiharassment orders in a new chapter RCW 7.105 entitled Civil Protection Orders and repealed RCW 26.50.110, RCW 10.14.120, and RCW 10.14.170, statutes dealing with penalties for violations of protective and antiharassment orders; and

WHEREAS, the penalties for domestic violence protective orders and antiharassment orders, amongst other types of orders, are now included in RCW 7.105; and

WHEREAS, the City of Yakima Police Department enforces protective orders and anti-harassment orders within the City of Yakima and forwards referrals to the City of Yakima Prosecution Division for filing in the Municipal Court; and

WHEREAS, the City of Yakima Prosecution Division prosecuted 539 violations of protective orders in 2021; and

WHEREAS, violations of protective orders cause great distress for victims of crime and can put victims in danger of further violence, perpetrator manipulation, and further harassment; and

WHEREAS, prosecution of protection order violations is vital for the purposes of holding perpetrators of domestic violence accountable and protecting the community against those individuals that are violating court orders; and

WHEREAS, without adoption of this Emergency Ordinance the City of Yakima will no longer be able to prosecute these offenses in Yakima Municipal Court and all referrals will be sent to the Yakima County Prosecuting Attorney's Office, who has a large caseload and does not need the additional burden of cases which the City of Yakima has jurisdiction, and moreover the City will have no control over the filing and resolution of said violations; and

WHEREAS, this Emergency Ordinance promotes the public good and is necessary for the protection of public health, property, safety, and welfare of citizens of the City of Yakima. A public emergency exists requiring that this ordinance becomes effective immediately; Now, Therefore,

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. Finding of Fact. The recitals set forth above are hereby adopted as the City Council's initial finding of fact in support of this ordinance.

Section 2. The following section, 6.05.090, of the City of Yakima Municipal Code is hereby amended to read as follows:

6.05.090 Statutes adopted—Violation of orders—Enforcement and penalties.
The following Revised Code of Washington (RCW) sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full:

- 7.105.450 Enforcement and penalties—Other than antiharassment protection orders and extreme risk protection orders.
- 7.105.465 Enforcement and penalties—Knowledge of order.

Section 3. The following section of Chapter 6.45 of the City of Yakima Municipal Code is hereby repealed:

- 6.45.040 Willful violation of antiharassment or protection order.

Section 4. The following section, 6.45.015, of the City of Yakima Municipal Code is hereby amended to read as follows:

6.45.015 Statutes adopted—Harassment crimes.

The following RCW sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full:

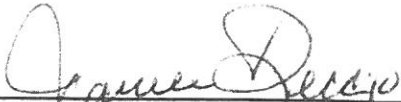
- 7.105.455 Enforcement and penalties—Antiharassment protection orders.
- 9A.46.020 Definition—Penalties.
- 9A.46.030 Place where committed.
- 9A.46.040 Court-ordered requirements upon person charged with crime—Violation.
- 9A.46.050 Arraignment—No contact order.
- 9A.46.060 Crimes included in harassment.
- 9A.46.070 Enforcement of orders restricting contact.
- 9A.46.080 Order restricting contact—Violation.
- 9A.46.090 Nonliability of peace officer.
- 9A.46.100 "Convicted," time when.
- 9A.46.110 Stalking.
- 9A.46.910 Severability—1985 c 288.
- 9.61.230 Telephone harassment.
- 9.61.250 Telephone harassment—Offense, where deemed committed.
- 9.61.260 Cyberstalking.
- 9A.86.010 Disclosing intimate images.

Section 5. Declaration of Emergency; effective date. This ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, and public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to RCW 35A.12.130, non-exhaustive underlying facts necessary to support this emergency declaration are included in the "Whereas" clauses above, all of which are adopted by reference as finding of fact as if fully set forth herein. This ordinance shall take effect immediately. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

PASSED UNANIMOUSLY BY THE CITY COUNCIL, signed and approved this 5th day of July, 2021.

ATTEST:


Sonya Claar Tee, City Clerk


Janice Deccio, Mayor



Publication Date: July 8, 2022

Effective Date: July 5, 2022

**BUSINESS OF THE CITY COUNCIL
YAKIMA, WASHINGTON
AGENDA STATEMENT**

Item No. _____

For Meeting of July 5, 2002

ITEM TITLE:

AN ORDINANCE relating to Public Safety; removing statutes repealed by the State and adopting the newly codified equivalent RCW's 7.105.450, 7.105.455 and 7.105.465 as an Emergency Ordinance to authorize the continued prosecution of Violation of Protective Orders and Antiharassment Orders in the City of Yakima Municipal Court.

SUBMITTED BY: Cynthia Martinez, Senior Assistant City Attorney

SUMMARY EXPLANATION: The attached ordinance is presented as an Emergency effective immediately upon adoption. An emergency ordinance requires a unanimous vote for passage.

The State Legislature has recodified the statutes controlling protective orders and antiharassment orders, including penalties for these crimes, in a new chapter RCW 7.105. The chapter is labeled, "Civil Protection Orders," which has caused confusion among the criminal justice community. The new chapter does include protective orders issued in connection with criminal matters including domestic violence orders. As part of this recodification, the legislature repealed the statutes enumerating the penalties for violations of protective orders and anti-harassment orders. The new statute went into effect on July 1st, 2022, and was discovered when officers tried to issue a citation under a repealed statute. We had hoped the savings clause would cover the changes, however upon closer examination of the language, the event of a repealed statute is not anticipated in language.

The City of Yakima Prosecution Division will not be able to prosecute violations of protective orders and antiharassment orders in Municipal Court until Council adopts the specific provisions of the new RCW 7.105. Officers can still enforce violations but charges will need to be forwarded to the County Prosecutor and defendants booked into the county jail. Forwarding violations of protective order and anti-harassment order matters cedes discretion of City of Yakima cases to the County Prosecutor, who has a heavy caseload that includes serious felony matters. Forwarding matters in which the city could have jurisdiction to the County Prosecutor is done at a cost to the city.

The number of these types of cases is not inconsequential, with the City of Yakima handling over 500 cases a year. Violations of protective orders and antiharassment orders are of great concern to victims of crime and may expose the victim to further violence, manipulation by the perpetrator, and further harassment. These types of acts are a crime of focus for the City of Yakima Coordinated Community response team for

Domestic Violence. Prosecution of protection order violations is vital for the purposes of holding perpetrators of domestic violence accountable and protecting the community against those individuals that are violating court orders.

FINANCIAL IMPACT

ITEM BUDGETED (choose one):

☒ YES ☐ NO ☐ NA

STRATEGIC PRIORITY (choose only one):

☐ Economic Development

☒ **Public Safety**

☐ Neighborhood and Community Building

☐ Public Trust and Accountability

☐ Partnership Development

☐ NA

RECOMMENDATION (choose only one):

☐ Adopt resolution.

☒ **Pass ordinance.**

☐ Approve report.

[Printout from City of Yakima's online copy of its municipal code]

6.05.090 Statutes adopted—Violation of orders—Enforcement and penalties. [SHARE](#)

The following Revised Code of Washington (RCW) sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full:

RCW

7.105.450 Enforcement and penalties—Other than antiharassment protection orders and extreme risk protection orders.

7.105.465 Enforcement and penalties—Knowledge of order.

(Ord. 2022-017 § 2, 2022; Ord. 2000-25 § 1, 2000).