

ORDINANCE NO. 2217

ORDINANCE ADOPTING NEW SECTIONS 6.02.060, 6.02.070, 6.02.080 AND 6.02.090 OF THE SELAH MUNICIPAL CODE, PERTAINING TO THE USE AND POSSESSION OF CONTROLLED SUBSTANCES AND THE POSSESSION OF DRUG PARAPHERNALIA; PROVIDING FOR SEVERABILITY; AUTHORIZING CORRECTIONS; AND DIRECTING PUBLICATION AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, City staff recommends that four new sections should be added to the Selah Municipal Code (SMC), specifically within Chapter 6.02 entitled "Criminal Code", so as to establish crimes for public use of controlled substances, public possession of controlled substances and possession of drug paraphernalia, and to specify the applicable punishments; and

WHEREAS, the City Council finds that good cause exists;

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

Section 1. Adoption of New SMC Section 6.02.060. That a new section 6.02.060, labeled "Adoption of State Statutes on Controlled Substances", be and is added to the SMC, to read and provide as follows:

6.02.060 Adoption of State Statutes on Controlled Substances

The following statutes of the state of Washington are hereby adopted by reference, in their currently-existing forms and in any future form or forms following any amendment, addition or recodification:

- (1) RCW 69.50.101, Definitions;
- (2) RCW 69.50.102, Drug paraphernalia—Definitions;
- (3) RCW 69.50.4011, Counterfeit Substances—Penalties—Referral to assessment and services;
- (4) RCW 69.41.030, Sale, delivery, possession, or use of legend drug without prescription or order prohibited—Exceptions—Penalty—Referral to assessment and services;
- (5) RCW 69.41.010, Definitions;
- (6) RCW 69.50.309, Containers;
- (7) RCW 69.50.505, Seizure and forfeiture;
- (8) RCW 69.50.506, Burden of proof; liabilities; and
- (9) RCW 69.50.509, Search and seizure of controlled substances.

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Section 2. Adoption of New SMC Section 6.02.070. That a new section 6.02.070, labeled “Public Use and Possession of Controlled Substances”, be and is added to the SMC, to read and provide as follows:

6.02.070 Public Use and Possession of Controlled Substances

- (1) Except as otherwise authorized by RCW chapter 69.50 or a different applicable law, it is unlawful for any person to:
 - (a) Knowingly possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice; or
 - (b) Knowingly use a controlled substance in a public place unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice.
- (2) For purposes of this section 6.02.070, “use a controlled substance” means to introduce the substance into the human body by injection, inhalation, ingestion or any other means.
- (3) For purposes of this section 6.02.070, “public place” has the same meaning as set forth in RCW 66.04.010 in its current form or any future form following any amendment, addition or recodification. The exclusions set forth in RCW 66.04.011 do not apply.
- (4) Except as provided in RCW 69.50.4014 or 69.50.445, a violation of subsection (1)(a) or (1)(b) of this section 6.02.070 is a gross misdemeanor punishable by imprisonment of up to 180 days in jail, or by a fine of not more than \$1,000, or both such imprisonment and fine; provided however that if the defendant has two or more prior convictions under subsection (1)(a) or (1)(b) of this section 6.02.070 occurring after the effective date of this section, then a violation of subsection (1)(a) or (1)(b) of this section 6.02.070 is punishable by imprisonment for up to 364 days in jail, or by a fine of not more than \$1,000, or by both such imprisonment and fine. The prosecutor is encouraged to divert such cases for assessment, treatment or other services.
- (5) No person may be charged under both subsection (1)(a) and (1)(b) of this section 6.02.070 relating to the same course of conduct.
- (6) In lieu of jail booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and services available under RCW 10.31.110 or from a program or entity responsible for receiving

referrals in lieu of legal system involvement, which may include, but are not limited to, arrest and jail alternative programs established under RCW 36.28A.450, law enforcement-assisted diversion programs established under RCW 71.24.589, and the recovery navigator program established under RCW 71.24.115.

- (7) The possession, by a person 21 years of age or older, of cannabis, useable cannabis, cannabis concentrates or cannabis-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section 6.02.070.
- (8) The possession of cannabis, useable cannabis, cannabis concentrates or cannabis-infused products being physically transported or delivered within the state, in amounts not exceeding those that may be established under RCW 569.50.385(3), by a licensed employee of a common carrier when performing the duties authorized in accordance with RCW 69.50.382 and 69.50.385, is not a violation of this section 6.02.070.
- (9) No person under 21 years of age may knowingly possession cannabis, useable cannabis, cannabis concentrates or cannabis-infused products, regardless of THC concentration. This does not include qualifying patients with a valid authorization. Violation of this subsection (9) of section 6.02.070 is a misdemeanor punishable by imprisonment of up to 90 days in jail, or by a fine of not more than \$1,000, or both such imprisonment and fine.
- (10) The possession by a qualifying patient or designated provider of cannabis, useable cannabis, cannabis concentrates, cannabis-infused products or plants in accordance with RCW chapter 69.51A is not a violation of this section 6.02.070.

Section 3. Adoption of New SMC Section 6.02.080. That a new section 6.02.080, labeled “Drug Paraphernalia—Possession Prohibited”, be and is added to the SMC, to read and provide as follows:

6.02.080 Drug Paraphernalia—Possession Prohibited

- (1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process or prepare a controlled substance other than cannabis. Any person who violates this subsection (1) of section 6.02.080 is guilty of a misdemeanor.
- (2) It is unlawful for any person to deliver, possess with intent to deliver or manufacturer with intent to deliver drug paraphernalia, knowing or under circumstances where on reasonably should know that it will be used to

plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process or prepare a controlled substance other than cannabis. Any person who violates this subsection (2) of section 6.02.080 is guilty of a misdemeanor unless the violation constitutes a gross misdemeanor under subsection (3) of this section 6.02.080.

- (3) Any person eighteen years of age or over who violates subsection (2) of this section 6.02.080 by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his or her junior is guilty of a gross misdemeanor.
- (4) It is unlawful for any person to place in or on any newspaper, magazine, handbill, other publication or upon the internet any advertisement or notice knowing or under circumstances where one reasonably should know that the purpose of the advertisement or notice is, in whole or in part, to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection (4) of section 6.02.080 is guilty of a misdemeanor.

Section 4. Adoption of New SMC Section 6.02.090. That a new section 6.02.090, labeled “Possession of Less than 40 Grams of Cannabis—Penalty”, be and is added to the SMC, to read and provide as follows:

6.02.090 Possession of Less than 40 Grams of Cannabis—Penalty


- (1) Except as provided in RCW 69.50.401(2)(c) or as otherwise authorized by RCW chapter 69.50 or a different applicable law, any person found guilty of knowing possession of forty grams or less of cannabis is guilty of a misdemeanor. The prosecutor is encouraged to divert cases under this subsection (1) of section 6.02.090 for assessment, treatment or other services.
- (2) In lieu of jail booking and referral to the prosecutor, law enforcement is encouraged to offer a referral to assessment and services available under RCW 10.31.110 or from a program or entity responsible for receiving referrals in lieu of legal system involvement, which may include, but are not limited to, arrest and jail alternative programs established under RCW 36.28A.450, law enforcement-assisted diversion programs established under RCW 71.24.589, and the recovery navigator program established under RCW 71.24.115.

Section 5. 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 6. 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.

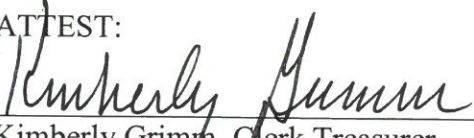
Section 7. Publishing & Effective Date. Consistent with RCW 35A.12.130 (3rd ¶) and .160 (1st and 2nd ¶¶), this Ordinance or a summary of it shall be published at least once in the City's official newspaper prior to the Ordinance taking effect.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH,
WASHINGTON this 9th day of January, 2024.




Roger Bell, Mayor

ATTEST:



Kimberly Grimm, Clerk Treasurer

APPROVED AS TO FORM:



Rob Case, City Attorney