

**Law Office of Stephen I. Liss
19815 S.E. 10th Street
Camas, WA 98607**

**215-407-5598
stephen_liss@comcast.net**

To: Kalama City Clerk/Treasurer Coni McMaster (Via E-mail
cityclerk@kalama.com)

and; Kalama City Council

From: Kalama City resident Katharine Carmichel, of 311 Juniper Street, via her
counsel,
Stephen I. Liss, WSBA#44611

Re: An appeal asking Council to overturn the city administrator's decision to
allow a bakery to continue operating in an R-1 zoned Kalama
neighborhood.

Date: September 14, 2015

To Ms. McMaster and the members of Kalama City Council:

Please allow this letter to serve as Kalama City resident Katharine
Carmichel's formal appeal of the City's administrative decision which erroneously
allows a bakery to continue operating in her R-1 zoned neighborhood.

Here is a brief procedural history for your review:

On August 10, 2015 Kalama City Administrator Adam Smee received the
first complaint letter from Ms. Carmichel outlining her issues with the zoning
violations. In part, the letter stated that her neighbors Victor and Edith Ahrens, of
597 North Third Place, Kalama (Cowlitz County tax parcel number 40533), were
operating an illegal bakery out of their home in violation of Kalama Muni Code
17.60.020.

On August 19, 2015 Kalama City Attorney Paul Brachvogel offered a written opinion, without citing any facts or law, which indicated he believed the Ahrens were operating within the limits of the city's zoning ordinances and applicable city and state laws.

On September 1, a more detailed complaint was provided to Mr. Brachvogel. This time pointing out that even if the Ahrens' business was considered a cottage industry, as he suggested, the local zoning laws specifically forbid operating a "bakery" in an R-1 zoned neighborhood. Muni Code 17.60.020. Nevertheless, Mr. Brachvogel denied Ms. Carmichel's request to close the bakery in her residential neighborhood, believing instead that the heavy early morning truck and employee traffic from the bakery business does not alter "the residential character of the neighborhood" nor does it objectively create a "negative impact on the general welfare of adjacent property owners."

Pursuant to your local code 17.12.050, Ms. Carmichel now appeals and urges this Council to reverse the prior administrative decision and uphold the unambiguously clear zoning ordinances which forbid the operation of a bakery in ANY R-1 zoned community in this city.

Here is the September 1, 2015 letter to Mr. Brachvogel (with attachments via e-mail):

To: Paul Brachvogel, Kalama City Attorney

Date: September 1, 2015

VIA E-MAIL (brachvogel1@msn.com)

RE: Commercial Bakery Operating in an R-1 Zoned Neighborhood; Code Violation

Dear Mr. Brachvogel,

This is a follow-up to our previous letters and e-mails to the city regarding the bakery operating at 597 North Third Place, Kalama (Cowlitz County tax parcel number 40533) owned by Victor and Edith Ahrens. As you know, I represent Katharine Carmichel, of 331 Juniper Street, Kalama. She is the Ahrens' neighbor and has been tortured by the constant employee and truck traffic flowing in and out of this home in her residential single-family home neighborhood. (See Zoning Map scanned and attached to this e-mail). It is unequivocally clear both properties are zoned in an R-1 neighborhood.

In 2011, the Ahrens started a bakery out of their home. (See "Bread Winner: Kalama boy starts sourdough bakery business" scanned and attached to e-mail). Back then, they produced 130 loaves a day by their own admission. Since then, it's grown exponentially and as of right now, the Ahrens consider themselves a commercial bakery enterprise. (See Ahrens Washington State business license at <http://dor.wa.gov/content/doingbusiness/registermybusiness/brd/default.aspx>; type in Kalama Sourdough Bakery); and <https://www.facebook.com/KalamaSourdoughBakery>.

While it may be legal in Washington State to run a business from a home kitchen under its revised 2012 cottage industry law; in Kalama it's illegal to run a bakery in an R-1 zoned neighborhood. Bakeries and food processors are specifically prohibited with or without a permit. See Kalama Muni Code 17.60.020 at (https://www.municode.com/library/wa/kalama/codes/code_of_ordinances?nodeId=TIT17ZO_CH17.60USTA).

Similarly, the cottage industry law in Washington State, which allows residents to operate small businesses out of their homes, has a prohibited list of products. The Ahrens' bakery is certainly much larger now than a "cottage industry" but if it were considered one (which it is not) the list of prohibited products produced on site would include several of the items the Ahrens use in their products including eggs, cheese and other dairy products. Here is that list:

Prohibited Products (WAC 16-149-130) This is not all inclusive but provides most of the types of prohibited cottage food products.

- This section lists unacceptable cottage food products. Although not inclusive, it lists most types of unapproved cottage food products:
 - Fresh or dried meat or meat products including jerky;
 - Fresh or dried poultry or poultry products;
 - Canned fruits, vegetables, vegetable butters, salsas, etc.;
 - Fish or shellfish products;
 - Canned pickled products such as corn relish, pickles, sauerkraut;
 - Raw seed sprouts;
 - Bakery goods which require any type of refrigeration such as cream, custard or meringue pies and cakes or pastries with cream or cream cheese fillings, fresh fruit fillings or garnishes, glazes or frostings with low sugar content, cream, or **uncooked eggs**;
 - Tempered or molded chocolate or chocolate type products;
 - **Milk and dairy products including hard, soft and cottage cheeses and yogurt**;
 - Cut fresh fruits or vegetables;
 - Food products made from cut fresh fruits or vegetables;
 - Food products made with cooked vegetable products;
 - **Garlic in oil mixtures**;
 - Juices made from fresh fruits or vegetables;
 - Ice or ice products;
 - Barbeque sauces, ketchups, or mustards;
 - **Focaccia-style breads with vegetables or cheeses.**

These types of activities are reserved for non-residential zoned areas as described in your Kalama Code 17.08.199 - Light industrial manufacturing for up to forty thousand square feet of gross floor area.

In its entirety:

“Light industrial manufacturing up to forty thousand square feet of gross floor area” means those industrial or manufacturing activities which are engaged in the production of articles or a product from raw or prepared materials by giving them new forms and qualities and may include, but are not limited to, processing, packaging or treatment of bakery goods, candy, pharmaceuticals, perfume, toiletries, soft drinks and food products and consumer goods, timber, wood and paper products, chemical products, medical and optical products, feed, metal and metal alloy products and the storage of raw materials for such industries. Gross floor area shall not exceed forty thousand square feet.”

(Ord. No. 1313, § 1, 6-5-2013)

In 2014, the Kalama Sourdough Bakery grew large enough that it was no longer a kid’s home project, (<https://www.facebook.com/KalamaSourdoughBakery/posts/672967879439195>) but a full-fledged commercial bakery business operating out of Ms. Carmichel’s residential neighborhood – complete with 24-hour-a-day employees and delivery trucks.

Originally within its jurisdiction, administrators for the state’s cottage industry department contend this business is no longer within its agency’s oversight as it has now grown into a large commercial operation. After two inspections, it has declined to oversee the Kalama Bakery for a third because of this growth. Washington’s Cottage Food Industry state workers can be reached at 360-902-1876.

The Ahrens are now suing Ms. Carmichel for more truck access to the back of their lot. Cowlitz County Superior Court Civil Division Case# 15-2-00896-1. The law suit incredulously asks for the right to travel over her land so that the bakery can get more delivery trucks to and from their house. A decision by the city indicating the bakery is improperly located would appear to have no impact on the litigation. The dispute between the parties is for access to land via adverse possession and/or related land laws.

This now constitutes a more thorough compilation of Ms. Carmichel's grievances regarding the operation of the commercial bakery in her residential single family neighborhood. The business violates every local code on file. It must cease operations immediately and the city must send notice to the Ahrens to commence this shutdown. If you do not agree that this bakery is illegally operating, please respond by identifying the facts and/or law you may be relying upon to make that determination.

Respectfully,
Stephen I. Liss, Esq.
WSBA #44611

On September 4, 2015 Mr. Brachvogel issued the following response:

Dear Mr. Liss:

The City appreciates the opportunity to revisit the issue of whether the Ahrens are in violation of the R-1 permitted uses.

My client has reviewed your request to reconsider your client's allegation that Mr. Ahrens is operating a bakery in violation of R-1 permitted uses, but concludes the Ahrens are operating lawfully within the code. The code authorizes cottage industries, which is defined as: Under KMC17.08.1088 "Cottage industry" means a business located on the same lot as the operator's residence which functions without altering the residential character of the neighborhood, and which does not create negative impacts on the public health, safety, and general welfare of adjacent property owners." My client does not find that the cottage industry "alters the residential character of the neighborhood" nor does it objectively create a "negative impact on the general welfare of adjacent property owners." We have been informed by the Ahrens' counsel that deliveries are made once per day, four days a week, during business hours, which cannot reasonably alter the neighborhood to the extent such use violates the code. Likewise, there are no retail sales taking place at the Ahrens residence such that an unreasonable amount of traffic is created by the business location.

The WAC you cite pertains to licensure and regulation by the State Department of Health, not the City of Kalama. Assuming *arguendo*, the WAC is applicable here the City is not persuaded that the Ahrens exceed the allowable uses of R-1 zone by virtue of using eggs in the making dough for baking. To the contrary, the WAC 16-149-120 "Allowable cottage food

products" specifically names baking as a cottage industry authorized under DOH regulations.

As to your request for appellate remedies, I have suggested you review the Kalama City code, a copy of which may be obtained on line through the City of Kalama website. However, I decline to advise you further given the Carmichels have an active matter before the Cowlitz County Superior Court in which they make the same allegations as made in this instance; and, they are represented by you in this cause of action.

Sincerely,
Paul Brachvogel
Kalama City Attorney
(360) 721-0027

Ms. Carmichel's response to this most recent determination by the city attorney is an **appeal to this Council on the following grounds:**

Mr. Brachvogel fails to cite any city code or state law which ALLOWS a bakery to operate in an R-1 zoned neighborhood. Primarily because there is no such statute; to the contrary, your city zoning law specifically forbids the operation bakeries. (See Kalama Muni Code 17.60.020 at https://www.municode.com/library/wa/kalama/codes/code_of_ordinances?nodeId=TIT17ZO_CH17.60USTA). Mr. Ahrens admits he operates a bakery out of the home (See email attachments of news article and Facebook comments). As such the bakery is clearly not permitted and should be closed.

Additionally, even if this Council was to ignore its own zoning law, which it should not, the state law which authorizes certain types of businesses to operate out of residentially zoned communities must do so without altering the residential character of the neighborhood, and "which does not create negative impacts on the public health, safety, and general welfare of adjacent property owners." Mr. Brachvogel believes there is minimal traffic during regular business hours. Truck and employee traffic from the bakery starts around 3 a.m. and ends mid-morning, Ms. Carmichel can testify. This is certainly not the residential character Kalama City leaders envisioned when they enacted the zoning ordinance prohibiting bakeries (not just retail but ALL bakeries and food processors) from operating in R-1 neighborhoods.

As for having a negative impact on the general welfare of adjacent property owners, the Ahrens illegally dumped gravel on part of a city street to create better access to the rear of their lot. The trucks that travel to and from the lot kick up significant amounts of dust and debris which now coats Ms. Carmichel's house and property. A retaining wall is damaged from the trucks which clipped her property when they made sharp turns onto Juniper Street. She must keep her windows shut near her kitchen and bedrooms to prevent the dust and heavy early morning noises from disturbing and impacting her more than they already are.

Also, the state administrators who enforce Washington's cottage industries have determined already that the bakery is NOT a cottage industry and does NOT fall under their jurisdiction. Washington's Cottage Food Industry state workers can be reached at 360-902-1876 and will state on the record that the Ahrens' business is a commercial bakery not a "cottage industry" as contemplated under state law.

In summation, please allow this letter and attachments to serve as Ms. Carmichel's formal appeal. She urges this City Council to overturn the administrative decision. This bakery is a fine asset to this community. However, it belongs in an appropriately zoned neighborhood, not one that is R-1 zoned. Ms. Carmichel and I will plan to attend any and all Council sessions of which we are permitted to attend so that her testimony and legal arguments are fully available for Council's review. If required, I will continue to supplement this appeal letter with any and all information which may be needed or requested for your determination.

Respectfully,
Stephen I. Liss, Esq.
WSBA#44611

Cc: Katharine Carmichel