

Subject: Ordinance No. 1588 – Update of Title 19 RMC to make Permit Processing regulations Consistent with SSSB 5290

Dept. Origin: City Attorney
Prepared by: Jennifer Robertson, City Attorney's Office
For Agenda of: January 8, 2025
Exhibits: Ordinance No. 1588

Proposed Planning Commission Action:

Hold a public hearing and discuss Ordinance No. 1588. Make recommendation to the City Council re: Ordinance No. 1588

Initial & Date

Concurred by Mayor: _____
Approved by City Planner: _____
Approved as to form by City Atty: JSR/12-4-24
Approved by Finance Director: _____
Approved by Department Head: _____

INFORMATION / BACKGROUND

Title 19 of the Ruston Municipal Code (RMC) establishes the City's permit processing regulations consistent with Chapter 36.70B RCW.

Second Substitute Senate Bill 5290 (SSSB 5290) is a Washington State Mandate. In 2023, the Washington State legislature enacted SSSB 5290, which amends certain provisions in Chapter 36.70B RCW relating to the review and processing of project permit applications, including the timelines for issuing decisions on project permits. These amendments will take effect on January 1, 2025, therefore, Ruston must update its permit processing chapter for consistency with SSSB 5290, ideally before the end of this calendar year.

The permit processing requirements apply to most, but not all, land use and development permits. See RMC 19.01.010 for exceptions.

Legislative Summary.

The requirements under SSSB 5290 are described below.

The timing requirements for permit processing steps have been changed. Previously, the processing time was 120 days for most permits. However, SSSB 5290 set some faster processing time periods and also some longer processing time periods based on the permit processing needed. The updated requirements are:

Action	Deadline
Notice of Complete/Incomplete (NOC/NOI)	28 calendar days
Resubmittal after NOI	Review and make decision in 14 days
Notice of Application	Must issue 14 days after NOC
Review times from Notice of Complete (NOC)	
Permits without public notice requirements	65 days from NOC
Permits with public notice but no public hearing	100 days from NOC
Permits with public notice <u>and</u> a public hearing	170 days from NOC

In addition to changing the maximum processing times, the legislation also established *how* to “count” the processing time period (also called the “shot clock”).

- Must include every *calendar* day (not just weekdays).
- Clock is stopped for times when the City is requesting information/revisions. The clock starts again with the applicant’s submittal of the complete additional information
- Clock is stopped for times when applicant has requested a pause. The clock starts again when the applicant notifies the City to begin processing. (All notices must be in writing and the City can set conditions for temporary suspension of a permit application.)
- Clock is stopped during any period after filing an administrative appeal until the appeal is resolved (plus any additional time period provided by the appeal).
- Shot clock goes back to Day 1 if the application proposes:
 - A change of use
 - Adds or removes commercial or residential elements from the original application that would make the application fail to meet the determination of completeness for the new use
- If the applicant suspends the application for more than 60 days (in writing) or the applicant has been non-responsive for more than 60 consecutive days after the City has sent a request for more information. In such case an addition 30 days is added to the shot clock to issue a final decision.

There is nothing in the legislation that would prohibit the City and an applicant from agreeing to extend processing time periods. RCW 36.70B.080(3).

Some types of permits are excluded from the “shot clock” such as Comp Plan amendments. In addition, the City can set forth other exempt permits. The proposed ordinance excludes the following types of permits. This exemption is found in revised RMC 19.01.010:

1. Building and grading permits when exempt from State Environmental Policy Act (SEPA) review (WAC 197-11-800) or when covered by other environmental review.
2. Legislative actions such as area-wide rezones, zoning text amendments, and comprehensive plan amendments.
3. Street vacations.
4. Street and public areas use permits.
5. Sewer system connection permits.
6. Boundary line adjustments.
7. Landmark designations.
8. Adoption of development regulations and amendments thereto.
9. Administrative decisions listed in Section 19.01.011 which are listed as not subject to this Title 19, including sign permits, site plan approval, minor amendments to master development plans, short plats, street excavation permits, right-of-way encroachment permits, temporary encampment permits, and hazards and obstructions.
10. Development Agreements. ****this is newly added****

If a city doesn't meet processing deadlines, a portion of the permit fee must be refunded as follows:

- 10% if the final decision was made after the deadline but does not exceed 20% of the original time period; or
- 20% if the final decision issuance exceeded 20% of the original time period.

There are exceptions to this refund requirement if the City adopts or utilizes three or more of the practices that are set forth in RCW 36.70B.160(1)(a)-(j). These practices are primarily administrative in nature and therefore are not included in the attached ordinance.

Summary of Revisions to Title 19 MMC.

In addition to adding development agreements to RMC 19.010.010, the following changes were made:

RMC 19.02.020:

- Determination of Completeness: RMC 19.02.020.c was amended to make the language regarding a complete application consistent with SSSB 5290.

- Notice of incomplete application: RMC 19.02.020.f.3 was revised to allow more methods of providing the notice of incomplete application (since the City uses a permit portal and email for most things)
- A new subsection “h” was added to allow the City to not issue a notice of complete if it issues the permit prior to the time period when that notice would need to be issued.

RMC 19.05.010:

This section was dramatically modified for consistency with SSSB 5290 as shown on the table above.

Next Steps.

The Planning Commission is requested to approve the proposed amendments to the Ruston Municipal Code Sections 19.01.010, 19.02.020, and 19.03.010 to bring the City’s code into compliance with SSSB 5290 as soon as possible. Upon receiving the Planning Commission's approval, the proposal will be presented to the Council for consideration and action.

Attachments

FISCAL CONSIDERATION

None. However, failure to meet the new processing deadlines could lead to being required to refund a portion of the permit fees.

RECOMMENDATION / MOTION

Hold a public hearing and discuss Ordinance No. 1588. If approval is recommended to the Council, the below motion may be used.

MOTION: I move to recommend that the City Council approve Ordinance No. 1588 relating to project permit procedures and timelines, amending sections 19.01.010, 19.02.020, and 19.05.010 of the Ruston Municipal Code for compliance with state law, providing for severability and corrections, and establishing an effective date.

ORDINANCE NO. 1588

AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON, RELATING TO PROJECT PERMIT PROCEDURES AND TIMELINES, AMENDING SECTIONS 19.01.010 APPLICABILITY, 19.02.020 DETERMINATION OF COMPLETENESS, AND 19.05.010 PROCESSING TIMELINES OF THE RUSTON MUNICIPAL CODE FOR COMPLIANCE WITH STATE LAW (SSSB 5290), PROVIDING FOR SEVERABILITY AND CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Ruston is a code city operating under Title 35A RCW, among other laws; and

WHEREAS, in Title 19 of the Ruston Municipal Code, the City Council has established the rules for the administration of the City's development regulations, which include procedures and timelines for the review and processing of project permits in Title 19 RMC, in accordance with Chapter 36.70B RCW; and

WHEREAS, in 2023, the Washington State legislature enacted SSSB 5290, which amends certain provisions in Chapter 36.70B RCW relating to the review and processing of project permit applications, including the timelines for issuing decisions on project permits, and these amendments will take effect on January 1, 2025; and

WHEREAS, the City has determined that it is necessary to amend the provisions of Title 19 of the Ruston Municipal Code as stated in this Ordinance, to make the City Code consistent with Chapter 36.70B RCW, as amended by SSSB 5290; and

WHEREAS, this Ordinance was submitted to the Department of Commerce with a request for expedited review on _____, 2024, and expedited review was granted on _____, 2024; and

WHEREAS, the Planning Commission conducted a public hearing on the substance of this Ordinance on January 8, 2025 and recommended adoption by the City Council; and

WHEREAS, on January 8, 2025 the Ruston Planning Commission held a duly noticed public hearing on these proposed regulations which would modify the City's administration of development regulations; and

WHEREAS, on _____, the Ruston City Council held first reading of this Ordinance; and

WHEREAS, on _____, the City Council held second reading of this Ordinance and adopted this Ordinance during its regular meeting at second reading; and

WHEREAS, the City Council, after careful consideration of the recommendation from the Planning Commission, all public comment, and the Ordinance, finds that this Ordinance is consistent with the City's Comprehensive Plan and development regulations, the Growth Management Act, Chapter 36.70A RCW, and that the amendments herein are in the best interests of the residents of the City and further advance the public health, safety and welfare; **NOW, THEREFORE**

THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY ORDAINS AS FOLLOWS:

Section 1. Findings. The recitals listed above are adopted as findings in support of this Ordinance.

Section 2. Section 19.01.010 of the Ruston Municipal Code is hereby amended to read as follows:

19.01.010 Applicability.

(a) The following project permits are excluded from the procedures of this title:

- (1) Building and grading permits when exempt from State Environmental Policy Act (SEPA) review (WAC 197-11-800) or when covered by other environmental review.
- (2) Legislative actions such as area-wide rezones, zoning text amendments, and comprehensive plan amendments.
- (3) Street vacations.
- (4) Street and public areas use permits.
- (5) Sewer system connection permits.
- (6) Boundary line adjustments.
- (7) Landmark designations.
- (8) Adoption of development regulations and amendments thereto.
- (9) Administrative decisions listed in Section 19.01.011 which are listed as not subject to this Title 19, including sign permits, site plan approval, minor amendments to master development plans, short plats, street excavation permits, right-of-way encroachment permits, temporary encampment permits, and hazards and obstructions.

(10) Development Agreements.

- (b) This title shall apply to:
 - (1) Title 25 (Zoning) as follows:
 - (A) Conditional use permit;
 - (B) Unclassified use permit;
 - (C) Variance permit;
 - (D) Special use permit.
 - (E) Master development plan approvals and major amendments of MDPs.
 - (2) Chapter 15.01 (Shorelines).
 - (3) Title 29 (Subdivisions).
- (c) The Mayor is authorized, with the assistance of the City Clerk, the City's Planning and Community Development Director, and other persons designated by the Mayor, to administer this title and to employ other persons to perform administrative functions related to the designated administrative actions, including the use of a Hearing Examiner.

Section 3. Section 19.02.020 of the Ruston Municipal Code is hereby amended to read as follows:

19.02.020. Determination of completeness.

- (a) **Deadline.** Within 28 days after receiving a project permit application, the City shall ~~mail or personally~~ deliver to the applicant a determination which states either:
 - (1) That the application is complete; or
 - (2) That the application is incomplete and ~~exactly~~ what is necessary to make the application complete.
- (b) **What Must Be Included.** If more than one application is submitted under the consolidated permit review process, the determination of completeness shall include all project permits being reviewed in a consolidated manner. To the extent known by the City, other agencies with jurisdiction over the project shall be identified in the determination of completeness. However, it is the applicant's responsibility to determine which permits are required from other agencies for a development, and to submit the appropriate permit applications.
- (c) **Required Elements.** A determination of completeness is made by the City when the application ~~includes all of the elements identified~~ meets the submittal requirements established under the Ruston Municipal Code in the development regulations in this chapter as well as the chapter relating to the individual permit/approval. The City's issuance of a determination of completeness means that the application is sufficiently complete to initiate review, even though additional information may be required by the City during processing or when subsequent application modifications are made. Issuance of a determination of completeness does not bar the City from requesting additional information or studies whenever new information is required, or substantial changes are made to the proposal.
- (d) **Deemed Complete.** If a determination of completeness is not issued by the City as provided in this section and within the deadlines established herein, the permit/approval application shall be deemed complete.
- (e) **Effect of Determination of Completeness or Application Deemed Complete.** If an application has been determined complete or deemed complete under this section, it does not mean that the application is "vested" to the applicable development regulations in place at the time the application was determined complete or deemed complete under this section. Not all project permit applications are subject to the vested rights doctrine. An application that is "deemed complete" may not trigger vesting. Applications for building permits and plat approvals are vested into applicable regulations at the time a complete application is filed under RCW 19.27.095 and RCW 58.17.033. State case law is uncertain regarding vesting of other applications for regulatory permits and approvals. In addition, the City has authority to provide for vesting by ordinance or development agreement that goes beyond state vesting requirements. The City will not make a vesting determination except where the regulations in effect on the date of submittal of a complete application have been changed prior to City action on the application.

- (f) Incomplete Applications. Once the applicant receives notice of an incomplete application, the applicant has the following choices. The applicant may:
- (1) Submit the information requested by the City within 90 days. If the additional information is submitted within this time period, the Planning Director shall re-initiate the process for a determination of completeness in subsection (a) above, and notify the applicant within 14 days of the receipt of the additional information whether the application is complete or incomplete. If another notice of incomplete application is sent to the applicant, the process shall continue until the City issues a determination of completeness.
 - (2) Appeal the City's determination of incompleteness to the Hearing Examiner in accordance with the appeal procedures contained in this Title 19 RMC within 14 days of the date of the notice of incomplete application. The burden shall be on the applicant to establish that the application was complete in compliance with the City Code and that the notice of incompleteness was in error.
 - (3) Fail (or refuse) to submit the information requested by the City within 90 days. After this period expires, the Planning Director shall ~~send a letter by certified mail to~~ inform the applicant ~~informing the applicant~~ that unless the information is received within 30 days from the date of the letter, the Director will make written findings and issue a decision that the application has expired for lack of the information necessary to complete review and processing. The decision shall be sent to the applicant and will also state that the City shall take no further action on the application, and if no arrangements are made within 30 days to pick up the application materials, they will be destroyed. If the application expires under this procedure, the applicant may request a refund of the application fee remaining after the City's determination of incompleteness. A decision that an application has expired does not preclude the applicant from submitting new applications which are the same or substantially similar to the expired application.
- (g) "Holding" of Applications. Applicants may not request that the City "hold" incomplete or complete applications in abeyance, indefinitely or for any set period of time. Once an application is submitted to the City, it will be processed according to the time frames in this title to a final decision, or the applicant may withdraw the application.
- (h) When a permit is issued prior to the expiration of the 28 day period set forth in (a) above, the city need not issue a determination of completeness for the issued permit.

Section 4. Section 19.05.010 of the Ruston Municipal Code is hereby amended to read as follows:

19.05.010 Decision Processing timelines.

- a) A decision on a project permit application shall be issued within the processing timelines set forth in subsection (b) below. All processing timelines shall be counted from the date the application is determined to be complete pursuant to RMC 19.02.020, except as set forth in subsection (e) below.
- b) Processing timelines by application type.
 - 1. Applications that do not have any public notice requirements shall have a processing time of 65 days from the date the application is determined to be complete pursuant to RMC 19.02.020.
 - 2. Applications that have required public notice but for which there is no public hearing shall have a processing time of 100 days from the date the application is determined to be complete pursuant to RMC 19.02.020.
 - 3. Applications that have required public notice and which require a public hearing shall have a processing time of 170 days from the date the application is determined to be complete pursuant to RMC 19.02.020.
 - 4. If the city is undertaking consolidated review, then the processing time shall be the time period for the highest permit type that is being processed.
- c) Determination of processing time. Days in processing time shall be counted as calendar days.
- d) If the city is unable to issue its final decision on a project permit application within the time limits provided for in this section, it shall provide written notice of this fact to the parties of record. The notice shall include a statement of reasons why the time limits were not met, and an estimated date for issuance of the notice of decision.
- e) In calculating the processing time period, the following days shall be excluded:
 - 1. Any period in which the city asks the applicant to correct plans, perform required studies, or provide additional information and the applicant takes to provide the additional information.
 - 2. Any period where the city determines that submitted information is insufficient or incorrect, and has requested the applicant provide the necessary information.
 - 3. Any period, not to exceed 30 days, during which a code interpretation pursuant to 19.09.040 is processed in conjunction with an underlying project permit application.
 - 4. Any period during which an environmental impact statement is being prepared.
 - 5. Any period of time for an administrative appeal or reconsideration of the hearing examiner's decision.
 - 6. Any period during which the applicant has requested in writing a temporary suspension of the review.
 - 7. Any period of time after an applicant requests in writing that the city pause permit processing. The processing time will not begin again until the applicant requests in writing the city to re-commence processing.
 - 8. Any period of time a project permit application requires approval of an amendment to the comprehensive plan or development regulation in order to receive permit approval.

9. Any extension of time mutually agreed upon by the applicant and the city.
- f) The following shall result in a change to the applicable number of processing days:
 1. Whenever the applicant suspends the application in writing for a period of more than 60 days, or the applicant has been non-responsive for more than 60 consecutive days after a city request for additional information, an additional 30 days shall be added to the processing time. Non-responsive means that there is no demonstrable progress on providing the additional information, or there is no ongoing communications from the applicant to the city on the willingness or ability to provide the additional information.
 2. If the applicant proposed a change of use from the original application, then the processing time period will revert to Day 1 from the date the changed application is determined to be complete pursuant to RMC 19.02.020.
 3. If the applicant removes commercial or residential elements from the original application such that it makes the application fail to meet the determination of completeness for the new use, then the processing time period will revert to Day 1 from the date the changed application is determined to be complete pursuant to RMC 19.02.020.
- g) All excluded periods are calculated from the date the city notifies the applicant to when the information satisfies the city's requirement.
- h) If the city is unable to issue a decision within the time period prescribed by this section, the city shall notify the applicant in writing. The notice shall include a statement of reasons why the time limits have not been met and an estimated date of issuance of a decision.
- i) Failure to comply with the required timelines specified by this chapter shall not create a liability for damages.

~~Administrative, Planning Commission, Hearing Examiner and City Council actions shall be scheduled promptly so that a final decision on a technically complete application shall not require more than 120 days; provided:~~

- ~~(a) If a determination of significance (DS) is issued, then the applicable hearing body shall issue a recommendation not sooner than seven calendar days after a final environmental impact statement is issued.~~
- ~~(b) An applicant may agree in writing to extend the time in which the applicable hearing body shall issue a recommendation. The applicable hearing body may consider new evidence the applicant introduces with or after such a written request.~~
- ~~(c) In determining the number of days that have elapsed after the City has notified the applicant that the application is technically complete, the following periods shall be excluded:~~
 - ~~(1) Any period during which the applicant has been requested by the City to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the City notifies the applicant of the need for additional information until the earlier of the date the City determines whether the additional information satisfies the~~

request for information or 14 days after the date the information has been provided to the City.

- ~~(2) If the City determines that the information submitted by the applicant is insufficient, it shall notify the applicant of the deficiencies and the procedures under subsection (c)(1) of this section shall apply as if a new request for studies has been made.~~
- ~~(3) Any period of time during which an environmental impact statement is being prepared, which shall not exceed one year from the issuance of the determination of significance unless the City and applicant have otherwise agreed in writing to a longer period of time. If no mutual written agreement is completed, then the application shall become null and void after the one-year period unless the City Engineer determines that delay in completion is due to factors beyond the control of the applicant.~~
- ~~(d) If the City is unable to issue its final decision within the time limits provided in this title, it shall provide written notice to the applicant with a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.~~

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 7. Corrections. Upon the approval of the city attorney, the city clerk, and/or the code publisher is authorized to make any necessary technical corrections to this ordinance, including but not limited to the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 8. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this ____ day of _____, 2025.

APPROVED by the Mayor this ____ day of _____, 2025.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Mario Ortega
City Clerk

APPROVED AS TO FORM:

Jennifer S. Robertson
City Attorney's Office

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: 1588