

ORDINANCE NO. 1469

AN ORDINANCE OF RUSTON, WASHINGTON, RELATING TO AMENDING PROJECT PERMIT APPLICATION PROCEDURES, FOR THE SHORELINE MASTER PROGRAM, AMENDING SECTION 15.01.080 OF THE RUSTON MUNICIPAL CODE TO REFLECT CHANGES OF PROCEDURE WHEREBY THE DECISION MAKER FOR CERTAIN DECISIONS IS THE CITY'S HEARING EXAMINER, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS in January 2015, the City Council created the Office of the Hearing Examiner by adoption of Ordinance No. 1450 which is codified as Chapter 1.20 of the Ruston Municipal Code ("RMC"); and

WHEREAS, in accordance with RMC 1.20.020(A), the City Council is authorized to appoint the City Hearing Examiner; and

WHEREAS, on February 17, 2015, the City Council by Resolution No. 598 appointed a City Hearing Examiner; and

WHEREAS, in order to have the Hearing Examiner hear certain matters for the City, the Ruston Municipal Code needs to be updated to change the applicable decision maker to the City's Hearing Examiner; and

WHEREAS, by passage of Ordinance Nos. 1453 and 1454, the City Council has adopted revisions to the City Code to utilize the Hearing Examiner for appeal of enforcement procedures under Chapter 12.40 RMC and 25.03 RMC; and

WHEREAS, by adoption of Ordinance No. 1463, the City Council will update the permit processing procedures contained in Chapter 19.01 RMC, including establishing the Hearing

Examiner as the decision-maker for Shoreline Variances and Shoreline Conditional Use Permits;
and

WHEREAS, Section 15.01.080 of the Ruston Municipal Code contains the requirements for Shoreline Variances and Shoreline Conditional Use Permits and will need to also be updated to make the Hearing Examiner, rather than the City Council, the decision-maker; and

WHEREAS, on September 1, 2015, the City Council held the first reading of this Ordinance; and

WHEREAS, on September 15, 2015, the City Council adopted this Ordinance during its regular meeting at the second reading; **NOW, THEREFORE,**

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

Section 1. Section 15.01.080 of the Ruston Municipal Code is hereby amended to read as follows:

15.01.080 - Permit criteria and administrative provisions.

(a) Permits—General Regulations.

- (1) To be authorized under this Program, all uses and developments shall be planned and carried out in a manner that is consistent with the SMA, the RMC and this Program regardless of whether a shoreline substantial development permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.
- (2) Ruston shall not issue any permit for development within the shoreline jurisdiction until approval has been granted pursuant to this Program.
- (3) When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of this Program, such development or use may only be authorized by approval of a state-issued shoreline variance even if the development or use does not require a substantial development permit (WAC 173-27-040(1)(a)).
- (4) A new use or development that is unlisted or listed as a "conditional use" pursuant to this Program, must obtain a conditional use permit even if the development or use does not require a substantial development permit.

- (5) Issuance of a shoreline substantial development permit, shoreline variance or shoreline conditional use permit does not constitute approval pursuant to any other federal, state or Ruston laws or regulations.
- (6) A complete application for substantial development permits, shoreline conditional use permits, and shoreline variances shall consist of the following materials, and be submitted to the Shoreline Administrator for review:
 - (A) A completed project application form signed by the property owner(s) of the subject property or by a representative authorized to do so by written instrument executed by the owner(s) and filed with the application;
 - (B) A written description of the proposal, (which also addresses the criteria for variance approval when applicable);
 - (C) A property and/or legal description of the site;
 - (D) A site plan drawn to scale which includes:
 - (i) Site boundary, extending from the street frontage (as applicable) to the outer harbor line, all state lease lands (existing and proposed), structures on adjacent properties from OHW to the outer harbor line, tideland leases and ownerships, and harbor line lease areas on adjacent properties;
 - (ii) Property dimensions in the vicinity of project;
 - (iii) Ordinary high water mark (OHWM);
 - (iv) Typical cross-section or sections showing existing ground elevation, proposed ground elevation, height of existing structures and height of proposed structures;
 - (v) Where appropriate, proposed land contours using five-foot intervals in water area and ten-foot intervals on areas landward of ordinary high water mark, if development involves grading, cutting, filling, or other alteration of land contours;
 - (vi) Show dimensions and location of existing structures which will be maintained;
 - (vii) Show dimensions and locations of proposed structures, parking and landscaping;
 - (viii) Identify source, composition and volume of any fill materials;
 - (ix) Identify composition and volume of any extracted materials, and identify proposed disposal area;
 - (x) Location of proposed utilities, such as sewer, septic tanks and drain fields, water, gas and electricity, and sewage pump-out facilities if being installed;
 - (xi) Shoreline designation according to this Master Program;
 - (E) A landscape plan drawn to scale which includes parking and vehicle use areas; driveways and walkways; buildings and structures, both existing and proposed; all proposed new landscaping; all existing landscaping to be retained; and schematic irrigation plans;

- (F) A vicinity map;
- (G) A brief narrative description of the general nature of the improvements and land uses within 1,000 feet in all directions from the development site;
- (H) The appropriate review fee as determined by the Ruston City Council.

(b) Permits—Substantial Development.

- (1) Substantial development as defined by RCW 90.58.030 shall not be undertaken by any person on the shorelines of the state without first obtaining a substantial development permit from the Shoreline Administrator.
- (2) The City Council ~~Hearing Examiner~~ may grant a substantial development permit only when the development proposed is consistent with the policies and procedures of RCW 90.58; the provisions of WAC 173-27; and this Program. The Shoreline Administrator shall provide the City Council ~~Hearing Examiner~~ with an analysis of the proposal and a recommendation for denial, approval, or approval with conditions.
- (3) Substantial development permits require a public hearing and shall be processed as described in RMC Title 19 Administration of Development Regulations.

(c) Permits—Exemptions from a Substantial Development Permit.

- (1) Uses and developments that are not considered substantial developments shall not require a substantial development permit but shall conform to the policies and regulations of this Program.
- (2) If any part of a proposed development is not eligible for exemption then a substantial development permit is required for the entire proposed development project.
- (3) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
- (4) The burden of proof that a development or use is exempt from a substantial development permit is on the applicant or property owner proposing the use or development action.
- (5) The holder of a certification from the Governor pursuant to RCW 80.50 shall not be required to obtain a substantial development permit under this Program.

(d) Permits—Statements of Exemption.

- (1) Whenever a proposed action falls within the exemption criteria of WAC 173-27-040, a request for a statement of exemption shall be submitted to the Shoreline Administrator by the property owner prior to commencing the action.
- (2) Requests for statements of exemption shall be processed by the Shoreline Administrator as an administrative decision consistent with RMC 19.01.011, and the review and approval criteria set forth in WAC 173-27-040, WAC 173-27-045, and WAC 173-27-050.
- (3) The Shoreline Administrator's decision shall be sent to the applicant and to all real property owners within 300 feet of the subject site.

(e) Permits—Shoreline Variances.

- (1) The City ~~Council~~ Hearing Examiner is authorized to grant a shoreline variance from the performance standards of this Program only when all of the criteria enumerated in WAC 173-27-170 are met. The Shoreline Administrator shall process shoreline variance applications in accordance with RMC Title 19 Administration of Development Regulations.
- (2) The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Program would impose unnecessary hardships on the applicant/property owner or thwart the policies of this Program.
- (3) In the granting of all shoreline variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of this Program and should not produce significant adverse effects to the shoreline ecological functions or other users.
- (4) A variance from Ruston development code requirements shall not be construed to mean a shoreline variance from SMP use regulations and vice versa.
- (5) Variances may not be used to permit a use or development that is specifically prohibited.

(f) Permits—Conditional Use.

- (1) The City ~~Council~~ Hearing Examiner is authorized to issue shoreline conditional use permits only when all the criteria enumerated in WAC 173-27-160 are met. The Shoreline Administrator shall process shoreline conditional use permit applications in accordance with RMC Title 19 Administration of Development Regulations.
- (2) The burden of proving that a proposed shoreline conditional use meets the criteria in WAC 173-27-160 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.
- (3) The City ~~Council~~ Hearing Examiner is authorized to impose conditions and standards to enable a proposed shoreline conditional use to satisfy the conditional use criteria.

(g) Administration—General Standards.

- (1) Unless otherwise stated, this Program shall be administered according to the criteria in RMC Title 19, RCW 90.58 and WAC 173-2(7)
- (2) The Shoreline Administrator shall consult with the Department of Ecology prior to issuing any formal written interpretations, to ensure consistency with the purpose and intent of Chapter 90.58 RCW.
- (3) The Shoreline Administrator shall document all permit decisions and shoreline exemptions in order to periodically evaluate the cumulative effects of authorized development on shoreline conditions.

(h) Permit Process—Land Use Decisions.

- (1) Shoreline substantial development permits, statements of exemption, shoreline variances and shoreline conditional use permits shall be subject to all of the applicable requirements of this Program, RCW 90.58 and RMC Title 19.
- (2) All permit decisions whether approval, conditional approval or denial shall be filed with the Department of Ecology as described in WAC 173-27-130.

(i) Permit Process—Appeals.

- (1) Appeals of substantial development permits, variances, and conditional uses are considered by the Shoreline Hearings Board and shall be governed by the provisions of RCW 90.58.180.
- (2) The effective date of the City's decision shall be the date of filing with the Department of Ecology as defined in RCW 90.58.140.

(j) Non-conforming Use and Development—Alteration and Reconstruction.

(1) Non-conforming Structures.

- (A) Reconstruction, replacement, or expansion of existing, legally established nonconforming structure is allowed provided that the addition or reconstruction does not increase the degree of nonconformity.
- (B) Replacement may be allowed in a different non-conforming location if a determination is made by the City that the new location results in less impact to shoreline functions than replacement in the existing footprint.

(2) Nonconforming Uses.

- (A) Uses that were legally established prior to the adoption or amendment of this Program - and are nonconforming with regard to the use regulations of this Program may continue as legal nonconforming uses.
- (B) An existing use designated as a conditional use that lawfully existed prior to the adoption or amendment of this Program and which has not obtained a conditional use permit shall be considered a legal nonconforming use and may be continued subject to the provisions of this section without obtaining a conditional use permit.
- (C) Nonconforming uses which are discontinued shall be regulated in accordance with RMC 25.01.120.

(k) Enforcement, Violations and Penalties. The Shoreline Administrator is authorized to enforce the provisions of the Program, including any rules and regulations promulgated thereunder, pursuant to the enforcement provisions of RMC 25.03.

(l) Initiation of Development. Development pursuant to a shoreline substantial development permit, shoreline variance, or shoreline conditional use shall not begin and shall not be authorized until 21 days after the date that the shoreline substantial development permit, shoreline variance, or shoreline conditional use permit has been filed with the Department of Ecology, or until all appeal proceedings before the Shoreline Hearings Board have terminated.

(m) Permit Revisions.

- (1) A permit revision is required whenever the applicant/property owner proposes substantive changes to the design, terms or conditions of a use or development from those as approved in the existing and approved permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the existing and approved permit, this Program or the Act. Changes that are not substantive in effect do not require a permit revision.
- (2) An application for a revision to a shoreline permit shall be submitted to the Shoreline Administrator. The application shall include all the materials for a complete application as described in RMC 15.01.080(A)(6) above. The Shoreline Administrator shall review and process the request in accordance with the requirements of RMC Title 19 and WAC 173-27-100.

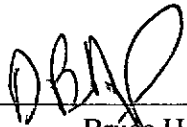
Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

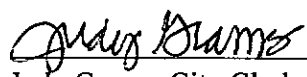
ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 15th day of September, 2015.

APPROVED by the Mayor this 15th day of September, 2015.



Bruce Hopkins, Mayor

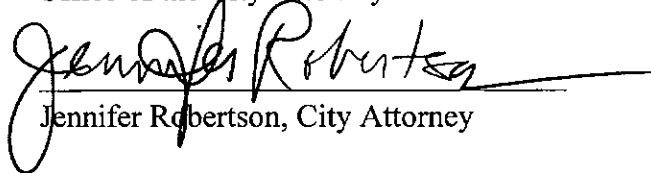
ATTEST/AUTHENTICATED:



Judy Grams, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney


Jennifer Robertson, City Attorney

FILED WITH THE CITY CLERK: 8/25/2015

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

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