

ORDINANCE NO. 1395

**AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON,
AMENDING THE ENFORCEMENT PROCEDURES FOR
VIOLATIONS OF THE SUBDIVISION CODE TO IMPLEMENT
THE EXISTING ZONING CODE ENFORCEMENT CHAPTER,
AMENDING SECTIONS 29.02.030, 25.03.010, 25.03.030, 25.03.070,
25.03.080 AND 25.03.090, AND ESTABLISHING AN EFFECTIVE
DATE.**

WHEREAS, in February of 2012 the Ruston City Council adopted land use code enforcement procedures under Chapter 25.03 RMC; and

WHEREAS, the City's subdivision code does not include any detail regarding the procedures that should be implemented in enforcement actions, and only provides criminal penalties for violation of the subdivision code; and

WHEREAS, the detailed code enforcement procedures established in Chapter 25.03 RMC should also be used for enforcement of the City's subdivision code; and

WHEREAS, the City's SEPA Responsible Official has determined that this Ordinance is exempt from SEPA under WAC 197-11-800(19); and

WHEREAS, the City sent a copy of this Ordinance to the Washington State Department of Commerce on January 24, 2013 as per WAC 365-195-620(1) and RCW 36.70A.106 and requested expedited review which was granted by the State on February 11, 2013; and

WHEREAS, on February 6, 2013 a public hearing was held by the Planning Commission on this Ordinance to elicit community input; and

WHEREAS, the Planning Commission found that this Ordinance is consistent with the goals and policies of the City's Comprehensive Plan; and

WHEREAS, the Planning Commission voted to recommend Council approval of this Ordinance; and

WHEREAS, on February 19, 2013, the City Council held the first reading of this Ordinance; and

WHEREAS, on March 5, 2013, the City Council adopted this Ordinance during its regular meeting at the second reading; NOW, THEREFORE

**THE CITY COUNCIL OF THE CITY OF RUSTON DOES HEREBY ORDAIN AS
FOLLOWS:**

Section 1. Section 29.02.030 of the Ruston Municipal Code is hereby modified to read as follows:

29.02.030 – Enforcement, Fees and penalties.

- (a) Enforcement. This chapter 29.02 RMC shall be enforced under the procedures and provisions of Chapter 25.03 RMC. Fees shall be charged for all review and processing costs as set forth in the Town's current fee schedule for permit applications.
- (b) Penalties. Any person, firm or corporation violating any provision of Sections 29.02.010 or 29.02.020 shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$300.00, and each day such violation continues shall constitute a separate and distinct offense. Each sale, offer for sale or lease or transfer of a lot, tract or parcel of land in violation of this chapter shall likewise constitute a separate and distinct offense.
- (c) In addition to the enforcement and imposition of fines, as authorized by subsection (ab) of this section, whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of this chapter, or any term or condition of plat approval prescribed for the plat by the City is violated, the City may refuse to issue any further building permits, or may issue and enforce stop work orders for any construction upon a lot, tract or parcel of land divided in violation of this chapter, and may continue to do so until all lots, tracts or parcels of land within the particular subdivision have been divided in accordance with applicable State law and this chapter.
- (d) In addition to the charges heretofore imposed, the applicant shall at the time of application or such other time as may be fixed by the Clerk, pay the reasonable

~~engineering charges actually incurred by the Town in evaluating the applications and determining the nature of the project and the site.~~

Section 2. Section 25.03.010 of the Ruston Municipal Code is hereby amended to read as follows:

25.03.010. - Violations.

- (a) It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by any code adopted in this title, or cause same to be done, in conflict with or in violation of any of the provisions of Title 25 RMC or Chapter 29.02 RMC.
- (b) Additional Violations. In addition to the above, it is a violation of this title to:
 - (1) Remove or deface any sign, notice, complaint or other order required by or posted in accordance with this chapter or any other chapter in Title 25 or Chapter 29.02 RMC;
 - (2) Misrepresent any material fact in any application, plans or other information submitted to obtain any building or construction authorization;
 - (3) Fail to comply with any of the requirements of this Title 25 or Chapter 29.02, including any requirement of the Town'sCity's codes and State's codes adopted by reference herein.
 - (4) To use, construct, locate, demolish or cause to be used, constructed, located or demolished, any structure, land or property within Ruston in any manner that is not permitted by the terms of any permit or authorization issued pursuant to the codes in Title 25 RMC or Chapter 29.02 RMC.

Section 3. Section 25.03.030 of the Ruston Municipal Code is hereby amended to read as follows:

25.03.030. - Investigation and notice of violation.

- (a) Investigation. The Town Planner shall investigate any structure or use which the Town Planner reasonably believes does not comply with the standards and requirements of this Title 25 RMC or Chapter 29.02 RMC.
- (b) Notice of Violation. If after investigation the CityTown Planner determines that the standards or requirements of this title 25 or Chapter 29.02 have been violated, the CityTown Planner shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall contain the following information:

- (1) A separate statement of each standard, code provision or requirement violated;
- (2) What corrective action, if any, is necessary to comply with the standards, code provision or requirements;
- (3) A reasonable time for compliance;
- (4) A statement that if the violation is not already subject to criminal prosecution, any subsequent violations may result in criminal prosecution as provided in RMC 25.03.080(b)(3)

(c) Service. The notice shall be served on the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person(s) is unknown or service cannot be accomplished and the CityTown Planner makes an affidavit to that effect, then service of the notice upon such person(s) may be made by:

- (1) Publishing the notice once each week for two consecutive weeks in the City'sTown's official newspaper; and
- (2) Mailing a copy of the notice to each person named on the notice of violation by first-class mail to the last known address as shown on the official Pierce County Assessor's parcel data, or if unknown, to the address of the property involved in the proceedings.

(d) Posting. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

(e) Other Actions May Be Taken. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to RMC 25.03.010, 25.03.050, 25.03.060, 25.03.080, or 25.03.090 or 29.02.030.

(f) Optional Notice to Others. The CityTown Planner may mail, or cause to be delivered, to all residential and/or nonresidential rental or condominium units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.

(g) Amendment. A notice and order may be amended at any time in order to:

- (1) Correct clerical errors; or
- (2) Cite additional authority for a stated violation.

(h) Withdrawal. Ruston may choose to withdraw a notice of violation at any time, without prejudice to Ruston's ability to reissue it, if a certificate of compliance has not been obtained for the specific violations.

Section 4. Section 25.03.070 of the Ruston Municipal Code is hereby amended to read as follows:

25.03.070. - Administrative appeals.

- (a) There is no administrative appeal of a notice of violation issued pursuant to this chapter if the violation cited is subject to criminal penalties under RMC Section 25.03.080(b).
- (b) Notice of Violation (citing to civil penalties), Stop Work Orders and Emergency Orders.
 - (1) Any person aggrieved by a notice of violation issued by the Town Planner pursuant to Title 25 or this chapter or chapter 29.02, for a violation of the codes in this title or chapter 29.02 which subject the violator to civil penalties may appeal the notice of violation as set forth in subsection (c) below.
 - (2) Any person aggrieved by a stop work or emergency order issued pursuant to this chapter or Title 25 or Chapter 29.02 RMC, may appeal the notice of violation as set forth in subsection (c) below.
- (c) Appeals.
 - (1) The appeal of a notice of violation must be requested in writing within 15 calendar days after service of the notice of violation. When the last day of the period so computed is a Saturday, Sunday or state holiday, the period shall run until 5:00 p.m. on the next business day.
 - (2) The appeal of a stop work order or emergency order must be requested in writing within two calendar days after posting or personal service of the stop work order or emergency order. When the last day of the period so computed is a Saturday, Sunday or state holiday, the period shall run until 5:00 p.m. on the next business day. ~~Upon receipt of the written request of appeal of a notice of violation, the Town Planner shall forward the request to the Town Clerk who shall schedule a hearing with the Town Council within 21 calendar days after receipt.~~
 - (3) Upon receipt of the written request of appeal of a notice of violation, the Town Planner shall forward the request to the CityTown Clerk who shall schedule a hearing with the CityTown Council within 21 calendar days after receipt.
 - (4) Upon receipt of the written request of appeal of a stop work or emergency order, the CityTown Planner shall forward the request to the CityTown Clerk who shall schedule a hearing with the Mayor. The appeal shall be scheduled as soon as possible, but in any event not more than seven calendar days after receipt of the appeal request.
 - (5) At or after the appeal hearing, the decisionmaker(s) may:

- (A) Sustain the notice of violation, stop work or emergency order;
- (B) Withdraw the notice of violation, stop work or emergency order;
- (C) Continue the appeal to a date certain for receipt of additional information;
- (D) Modify the notice of violation, stop work or emergency order, which may include an extension of the compliance date.

(6) The CityTown Council shall issue a decision on an appeal of a notice of violation within ten days of the date of the completion of the appeal. The Mayor shall issue a decision on an appeal of a stop work or emergency order within two days of the date of the completion of the appeal. The CityTown Council/Mayor shall cause their decisions to be mailed by regular first-class mail to the person(s) named on the notice of violation, stop work order or emergency order. If the notice of violation was filed with the Pierce County Auditor, the decision on the appeal shall also be filed with the Auditor.

(7) The decision of the CityTown Council/Mayor shall be final, and no further administrative appeal may be filed of the subject notice of violation, stop work order or emergency order. Appeals of the CityTown Council's/Mayor's decision shall be filed with Superior Court within the deadlines and under the procedures set forth in Chapter 36.70C RCW.

Section 5. Section 25.03.080 of the Ruston Municipal Code is hereby amended to read as follows:

25.03.080. - Penalties.

- (a) Civil Penalty.
 - (1) In addition to any other sanction or remedial procedure which may be available, any person, firm or corporation violating or failing to comply with any of the provisions of this Title 25 or Chapter 29.02 RMC shall be subject to a cumulative civil penalty in the amount of \$500.00 per day for each violation from the date set for compliance until compliance with the order or decision is achieved.
 - (2) The penalty imposed by this section shall be collected by civil action brought in the name of Ruston. The CityTown Planner shall notify the Ruston CityTown Attorney in writing of the name of the person subject to the penalty, and the Ruston Attorney shall, with the assistance of the CityTown Planner, take appropriate action to collect the penalty.
 - (3) The violator may show as full or partial mitigation of liability:
 - (A) That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
 - (B) That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was

prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the violator.

(b) **Criminal Penalty.** Any person, firm or corporation who violates any provision of this Title 25 or Chapter 29.02 RMC is also subject to criminal penalties as identified therein, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of up to \$5,000.00 and/or imprisonment for a period of up to one year, or both such fine and imprisonment. The above criminal penalty may also be imposed:

- (1) When any person violates or fails to comply with any of the provisions of this Title 25 or Chapter 29.02 RMC and who has had a judgment entered against him or her pursuant to RMC 25.03.080(a) for the same violation within the past five years;
- (2) For any other violation of Title 25 or Chapter 29.02 RMC for which corrective action is not possible;
- (3) For any willful, intentional or bad faith failure or refusal to comply with the standards or requirements of Title 25 or Chapter 29.02 RMC.

Section 6. Section 25.03.090 of the Ruston Municipal Code is hereby amended to read as follows:

25.03.090. - Additional relief.

The City-Town Planner may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this Title 25 or Chapter 29.02 RMC when civil or criminal penalties are inadequate to effect compliance.

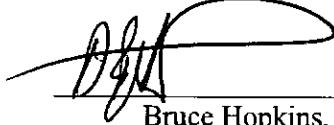
Section 7. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. 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 5th day of March, 2013.

APPROVED by the Mayor this 5th day of March, 2013.



Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:



Judy Grams, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

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