

**TOWN OF RUSTON
ORDINANCE NO. 1345**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF RUSTON, RELATING TO THE ENFORCEMENT OF THE RUSTON ZONING CODE, TITLE 25, DESCRIBING VIOLATIONS, THE ELEMENTS OF NOTICES TO PROPERTY OWNERS OF VIOLATIONS, ISSUANCE OF NOTICES OF VIOLATION, STOP WORK ORDERS AND EMERGENCY ORDERS, ADMINISTRATIVE APPEALS OF NOTICES AND ORDERS, PENALTIES FOR VIOLATIONS, REPEALING THE EXISTING ZONING CODE ENFORCEMENT PROCEDURES IN RMC SECTION 25.01.140(g); AND ADDING A NEW CHAPTER 25.03, "ENFORCEMENT OF ZONING REGULATIONS" TO THE RUSTON MUNICIPAL CODE.

WHEREAS, the Town currently has a procedure for zoning code enforcement that is abbreviated and needs to be updated, and the Council desires to have clear and consistent procedures regarding enforcement of the Town's zoning codes; and

WHEREAS, the procedure for amending the Town's development regulations and zoning text is described in RMC 19.01.011; and

WHEREAS, the Town's SEPA Responsible Official issued a determination of non-significance (DNS) for this Ordinance on January 17, 2012; and

WHEREAS, the Town sent a copy of this proposed Ordinance to the Washington State Department of Commerce on November 22, 2011, as per WAC 365-195-620(1) and RCW 36.70A.106; and

WHEREAS, a public hearing on this Ordinance was held on November 17, 2011 by the Planning Commission to receive community input on the proposal; and

WHEREAS, the Planning Commission found that the proposed amendment is consistent with the goals and policies of the Town of Ruston Comprehensive Plan; and

WHEREAS, on November 17, 2011, the Planning Commission voted to recommend approval of this Ordinance; and

WHEREAS, on February 6, 2012, this Ordinance was introduced to the Town Council and provided a first reading; and

WHEREAS, the Town Council held a second reading of this Ordinance during its regular Council meeting of February 21, 2012, and voted to adopt this Ordinance; NOW, THEREFORE,

Be it ordained by the Council of the Town of Ruston:

Section 1. Section 25.01.140(g) of the Ruston Municipal Code is hereby repealed.

Section 2. A new Chapter 25.03 is hereby added to the Ruston Municipal Code, which shall read as follows:

CHAPTER 25.03
ENFORCEMENT OF ZONING REGULATIONS

- 25.03.010 Violations.**
- 25.03.020 Enforcement.**
- 25.03.030 Investigation and Notice of Violation.**
- 25.03.040 Time to Comply.**
- 25.03.050 Stop Work Order.**
- 25.03.060 Emergency Order.**
- 25.03.070 Administrative Appeals.**
- 25.03.080 Penalties.**
- 25.03.090 Additional Relief.**

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.

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;
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, including any requirement of the Town'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.

25.03.020. Enforcement.

- A.** The Town Planner or a designee shall have the ability to enforce this chapter. The Town Planner may call upon the police, fire, building and community development or other appropriate town departments to assist in enforcement.
- B.** Upon presentation of proper credentials, the Town Planner may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant, in order to perform the duties imposed by this title.
- C.** This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
- D.** It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of this title.
- E.** No provision of or any term used in this chapter is intended to impose any duty upon Ruston or any of its officers or employees which would subject them to damages in a civil action.

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.

B. Notice of Violation. If after investigation, the Town Planner determines that the standards or requirements of this title have been violated, the Town 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).

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 Town 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 Town'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.

F. Optional Notice to Others. The Town Planner may mail, or cause to be delivered, to all residential and/or non-residential 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.

25.03.040. Time to Comply.

A. Determination of Time. When calculating a reasonable time for compliance, the Town Planner shall consider the following criteria:

1. The type and degree of violation cited in the notice;

2. The stated intent, if any, of a responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action, including seasonal considerations; and
5. Any other circumstance beyond the control of the responsible party.

B. The Town Planner may file a copy of the notice of violation with the Pierce County Auditor. The Town Planner may choose not to file a copy of the notice of violation if the notice is directed only to a responsible person other than the owner of the property, or if there is reasonable expectation that the owner will promptly take action to resolve the issue or correct the violation. This subsection (B) does not apply to emergency orders or stop work orders.

25.03.050. Stop Work Order.

Whenever the Town Planner finds any work regulated by this code is being performed in a manner either contrary to the provisions of this code, dangerous or unsafe, or if he/she finds that a continuing violation of this code will materially impair the Town Planner's ability to secure compliance with this code, or when the continuing violation otherwise threatens the health or safety of the public, the Town Planner shall issue a stop work order specifying the violation and prohibiting any work or other activity at the site. The stop work order shall also include a reference to the procedure in RMC Section 25.03.070, which allows for an administrative appeal. Failure to comply with a stop work order shall constitute a violation of this chapter.

25.03.060. Emergency Order.

Whenever any use or activity in violation of this title threatens the health and safety of the occupants of the premises or any member of the public, the Town Planner may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. The emergency order shall include a reference to the procedure in RMC Section 25.03.070, which allows for an administrative appeal. A failure to comply with an emergency order shall constitute a violation of this chapter. Any condition described in the emergency order which is not corrected within the time frame specified is hereby declared to be a public nuisance and the Town Planner is authorized to contact the Town Attorney for the purpose of obtaining an order of abatement of such nuisance by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

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, for a violation of the codes in this Title 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 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 2 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.

3. 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.

4. Upon receipt of the written request of appeal of a stop work or emergency order, the Town Planner shall forward the request to the Town 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 7 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 Town Council shall issue a decision on an appeal of a notice of violation within 10 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 2 days of the date of the completion of the appeal. The Town 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 Town 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 Town 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.

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 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 Town Planner shall notify the Ruston Town attorney in writing of the name of the person subject to the penalty, and the Ruston attorney shall, with the assistance of the Town 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 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 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 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 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 RMC.

25.03.090. Additional Relief.

The 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 when criminal penalties are inadequate to effect compliance.

Section 3. 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 4. Publication. This Ordinance shall be published by an approved summary consisting of the title.

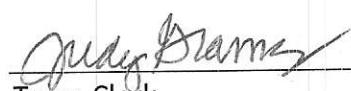
Section 5. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon publication.

PASSED by the Town Council of Ruston this 21st day of February, 2012.



Mayor

ATTEST:



Town Clerk.

APPROVED AS TO FORM:
Office of the Town Attorney

Town Attorney

PUBLISHED: 2/22/2012
EFFECTIVE DATE: 2/21/2012