

**CITY OF RUSTON, WASHINGTON  
ORDINANCE NO. 1450**

**AN ORDINANCE OF RUSTON, WASHINGTON, CREATING THE OFFICE OF THE HEARING EXAMINER, DESCRIBING THE MANNER IN WHICH THE EXAMINER IS SELECTED, THE QUALIFICATIONS OF THE EXAMINER, PROHIBITING IMPROPER INFLUENCE, CONFLICTS OF INTEREST AND APPEARANCE OF FAIRNESS VIOLATIONS, ESTABLISHING THE DUTIES AND POWERS OF THE EXAMINER AND ADDING A NEW CHAPTER 1.20 TO THE RUSTON MUNICIPAL CODE AND SETTING AN EFFECTIVE DATE.**

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WHEREAS, the Ruston City Council desires to create the Office of the Hearing Examiner, and to establish the Examiner's duties and powers; and

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

WHEREAS, the City Council considered this Ordinance on January 6, 2015, during a regular Council meeting: Now, Therefore,

IT IS HEREBY ORDAINED BY THE RUSTON CITY COUNCIL AS FOLLOWS:

Section 1. A new chapter 1.20 is hereby added to the Ruston Municipal Code, which shall read as follows:

**CHAPTER 1.20  
OFFICE OF THE HEARING EXAMINER**

**Sections:**

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|-----------------|---|
| <b>1.20.010</b> | <b>Office of the Hearing Examiner Created.</b>                              |
| <b>1.20.020</b> | <b>Hearing Examiner Selection.</b>  |
| <b>1.20.030</b> | <b>Qualification and Removal.</b>   |
| <b>1.20.040</b> | <b>Improper Influence, Conflict of Interest and Appearance of Fairness.</b> |
| <b>1.20.050</b> | <b>Duties and Powers of the Hearing Examiner.</b>                           |
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**1.20.010 Office of the Hearing Examiner Created.**

A. There is created the Office of the Hearing Examiner as a separate and independent office of the City for the conduct of hearings in contested cases as provided in this chapter and applicable ordinances/codes.

B. The purpose of the creation of the Office of the Hearing Examiner is to:

1. Separate the land use regulatory function from the land use planning process.
2. Ensure procedural due process and appearance of fairness in land use regulatory hearings and decisions.
3. Provide an efficient and effective land use regulatory system which integrates the public hearing and decision-making process for land use matters.
4. Provide for consistency and predictability in land use decision making and the application of policies and regulations adopted by the City.
5. Establish clear and understandable rules governing the land use decision making process.

**1.20.020 Hearing Examiner Selection.**

A. Appointment to the Office of the Hearing Examiner shall be made by the City Council.

B. The Hearing Examiner may be retained on a professional service contract for a term and on conditions determined appropriate by the Council.

C. The Hearing Examiner's performance may be reviewed annually through a process developed by the City.

D. The contract between the City and the Hearing Examiner shall provide that the Examiner is authorized from time to time to appoint Hearing Examiners Pro Tempore to serve on a temporary basis during the absence, unavailability, incapacity, conflict or disqualification of the Hearing Examiner.

**1.20.030 Qualification and Removal.**

A. Each Hearing Examiner shall be appointed solely with regard to his/her qualifications for the duties of Hearing Examiner. Each Hearing Examiner (and Hearing Examiner Pro Tempore) shall be an attorney having training and experience in the conduct of administrative and quasi-judicial hearings, at least five (5) years' experience

as a land use attorney or land use hearing examiner and shall have such other qualifications as may be prescribed by ordinance.

B. The Hearing Examiner shall hold no other elective or appointive office or position with the City of Ruston.

C. The Hearing Examiner may be removed with or without cause, as provided in the contract between the Examiner and the City.

**1.20.040 Improper Influence, Conflict of Interest and Appearance of Fairness.**

A. No City official, elective or appointive, shall attempt to influence the Hearing Examiner in any matter officially before him or her so as to constitute misconduct of a public officer under chapter 42.30 RCW or a violation of the appearance of fairness doctrine under chapter 42.36 RCW. No member of the Council shall participate in any proceeding on appeal from a Hearing Examiner's decision, if to do so would constitute a conflict of interest or violation of the appearance of fairness doctrine.

B. The Hearing Examiner shall conduct all proceedings in a manner to avoid conflicts of interest or other misconduct and to avoid violations of the appearance of fairness doctrine. If such conflicts or violations cannot be avoided in a particular case, the Hearing Examiner shall assign a Hearing Examiner Pro Tempore to act in his or her absence.

**1.20.050 Duties and Powers of Hearing Examiner.**

A. The Hearing Examiner shall be empowered to adopt Rules of Practice and Procedure for the conduct of hearings and other procedural matters, as well as scheduling matters related to the duties of the Office.

B. The Hearing Examiner shall have the authority to conduct public hearings on appeals of project permit decisions or code enforcement actions, as specifically allowed by City ordinance/code.

1. In the performance of duties prescribed by this chapter or other ordinances, the Hearing Examiner may:

a. Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive relevant evidence, and conduct discovery procedures, provided that no person shall be compelled to divulge information which he could not be compelled to divulge in a court of law.

b. Upon the request of a party, or upon his own volition, issue and cause to be served subpoenas for the attendance of witnesses and for production for examination of any books, records, or other information in the possession and under the control of any witness, provided that any such subpoena shall state the name and address

of the witness sought, and if for the production of books, documents or things, shall specifically identify the same and the relevance thereof to the issues involved.

c. Regulate the course of the hearing in accordance with The Hearing Examiner's Rules of Practice and Procedure, and other applicable ordinances.

d. Hold conferences for the settlement or simplification of the issues by consent of the parties.

e. Dispose of procedural requests or similar matters.

f. Make decisions or recommendations in accordance with this chapter.

g. Take any other action authorized by ordinance or agency rule consistent therewith.

h. Take judicial notice of all duly-adopted rules, ordinances, standards, plans, regulations and policies of the City of Ruston and other public agencies.

i. Coordinate with the City Clerk to ensure that public notice as required by law is provided of the Hearing Examiner's public hearings.

C. Within fourteen (14) days of the conclusion of the public hearing, unless a longer period is agreed to in writing by the applicant, the Hearing Examiner shall render a written decision which shall include the following, at a minimum:

1. Findings based on the record and conclusions therefrom which support the decision, as required by law. In lieu of original findings and conclusions regarding uncontested matters, the Examiner may adopt findings and conclusions recommended by the staff, applicant or any party of record, as long as the same are supported by the administrative record and applicable evidence.

2. A decision on the application, which may be to approve, deny or approve with such conditions, modifications and restrictions as the Hearing Examiner finds necessary to make the application compatible with the environment, the Comprehensive Plan, the applicable land use regulations, and other official policies, objectives, etc.

3. Where applicable, a statement that the decision is final.

D. The City is a party with standing and is authorized to appeal or seek review of a decision of the Hearing Examiner to Superior Court, pursuant to chapter 36.70C RCW or other authority.

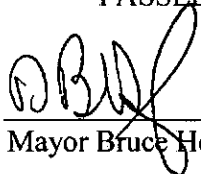
E. If the City Council adopts an ordinance granting the Hearing Examiner the authority to hold a public hearing and issue a decision on site specific rezone or Master Plan Development applications, the Examiner's decision shall be in the form of a recommendation to the City Council. The City Council shall act on the recommendation after holding a closed record appeal hearing.

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.

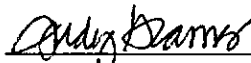
Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

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

PASSED by the City Council of Ruston this 20<sup>th</sup> day of January 2015.

  
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Mayor Bruce Hopkins

AUTHENTICATED:

  
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City Clerk, Judy Grams

APPROVED AS TO FORM:  
Office of the City Attorney

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Carol Morris, City Attorney

PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE: 1450