

ORDINANCE NO. 1452

AN ORDINANCE OF RUSTON, WASHINGTON, RELATING TO PROJECT PERMIT PROCESSING, REPEALING THE EXISTING PROCEDURE FOR DETERMINING THE COMPLETENESS OF A PROJECT PERMIT APPLICATION, DESCRIBING THE ELEMENTS OF A DETERMINATION OF COMPLETE / INCOMPLETE APPLICATION, DESCRIBING THE EFFECT OF SUCH DETERMINATION, ADDING A NEW PROCEDURE THAT ALLOWS THE CITY TO DETERMINE THAT AN APPLICATION HAS EXPIRED FOR THE APPLICANT'S FAILURE TO PROVIDE THE INFORMATION REQUESTED BY THE CITY AND PROHIBITING THE "HOLDING" OF APPLICATIONS BY THE STAFF FOR INDEFINITE PERIODS OF TIME, REPEALING SECTION 19.02.020 AND ADDING A NEW SECTION 19.02.020 TO THE RUSTON MUNICIPAL CODE AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City of Ruston is required to adopt procedures for the processing of project permit applications (as defined in RCW 36.70B.020) to conform to chapter 36.70B RCW; and

WHEREAS, RCW 36.70B.070 requires that the City establish procedures to determine the completeness of applications, which requires that the City provide a determination of completeness or incompleteness in writing to an applicant within 28 days after the submission of an application; and

WHEREAS, once the City issues a notice of incompleteness to an applicant, the applicant may take a very long time to submit additional information, and even the process of submitting additional information is discretionary on the part of the applicant; and

WHEREAS, the City desires to establish a clear process whereby an application will expire or lapse, if the applicant fails to respond to the City's notice of incomplete application by providing the requested information by a certain deadline; and

WHEREAS, the City believes that this process will provide certainty to both the applicants and the City; and

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

WHEREAS, on March 17, 2014, the City Council held the first reading of this Ordinance; and

WHEREAS, on April 21, 2014, the City Council adopted this Ordinance at second reading during its regular meeting; **NOW, THEREFORE,**

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

Section 1. Section 19.02.020 of the Ruston Municipal Code is hereby repealed.

Section 2. A new Section 19.02.020 is hereby added to the Ruston Municipal Code, which shall read as follows:

19.02.020. Determination of completeness.

A. *Deadline.* Within twenty-eight (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 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 ninety (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 fourteen (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 fourteen (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 ninety (90) days. After this period expires, the Planning Director shall send a letter by certified mail to the applicant, informing the applicant that unless the information is received within thirty (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 thirty (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 timeframes in this Title to a final decision, or the applicant may withdraw the application.¹

Section 3. 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.

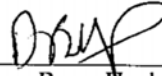
Section 4. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 5. Effective Date. This Ordinance shall take effect and be in full force and effect 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 7th day of April, 2015.

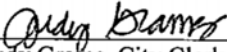
¹ When state law requires the city to adopt new regulations or the city announces that it will soon adopt new regulations, a developer may submit an application for development in order to vest under the old regulations, even if the developer has no plans to construct the development in the immediate future. The developer will take pains to submit all information necessary for a complete application, but then asks the city to "hold" the application (sometimes for years) until the developer is ready to construct the development. In this way, the developer attempts to evade compliance with the new regulations.

APPROVED by the Mayor this 7th day of April, 2015.



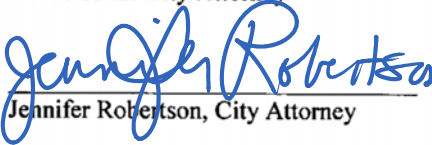
Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:



Judy Grams, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



Jennifer Robertson, City Attorney

FILED WITH THE CITY CLERK: 2/19/2015
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: _____ 1452