

ORDINANCE NO. 1454

AN ORDINANCE OF RUSTON, WASHINGTON, RELATING TO AMENDING THE ENFORCEMENT PROCEDURES FOR VIOLATIONS OF THE ZONING CODE, AMENDING SECTION 25.03.070 OF THE RUSTON MUNICIPAL CODE REGARDING APPEALS TO CHANGE THE DECISION MAKER FOR BOTH APPEALS OF STOP WORK ORDERS FROM THE MAYOR TO THE CITY'S HEARING EXAMINER AND APPEALS OF NOTICES OF VIOLATION FROM THE CITY COUNCIL TO THE CITY'S HEARING EXAMINER, REVISING THE APPEALS PROCESS FOR NOTICES OF VIOLATION TO REQUIRE THE APPELLANT TO PAY AN APPEAL FEE AND PROVIDE A BASIS FOR THE APPEAL, EXTENDING THE HEARING DATE FOR APPEALS OF NOTICES OF VIOLATION FROM 21 DAYS TO 30 DAYS, AND AMENDING THE CODE TO ALLOW THE APPELLANT AND THE CITY TO EXTEND THE TIME FOR HEARING, AMENDING SECTION 25.03.080 TO REVISE THE CONDITIONS UNDER WHICH A VIOLATION UNDER THIS CHAPTER WILL RESULT IN CRIMINAL PENALTIES AND THE PROCEDURE FOR SEEKING CRIMINAL PENALTIES, AMENDING SECTION 25.03.030 TO AMEND THE CROSS-REFERENCE TO RMC 25.03.080 TO BE CONSISTENT WITH THIS REVISION, 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, the zoning and subdivision code enforcement procedures are contained in Chapter 25.03 RMC; and

WHEREAS, Chapter 25.03 RMC sets forth the appeals process for violations of the City's Zoning and Subdivision Codes; and

WHEREAS, the Zoning and Subdivision Codes are enforced by use of Stop Work Orders and/or Notices of Violation both of which may be administratively appealed; and

WHEREAS, appeals of Stop Work Orders currently are heard by the City's Mayor and appeals of Notices of Violation are heard by the City Council; and

WHEREAS, the City Council deems it in the best interests of the City to have both of these matters heard by the City's Hearing Examiner; and

WHEREAS, violations which are enforced under Chapter 25.03 RMC are typically civil in nature; and

WHEREAS, there are certain conditions under which such violations may be subjected to criminal penalties; and

WHEREAS, in order to create clarity and enforceability, the conditions under which a criminal penalty may be imposed should be revised; 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 as per WAC 365-195-620(1) and RCW 36.70A.106 on ____April 24, 2015 with a

request for expedited review which was granted on May 11, 2015 and the requisite time has passed and this Ordinance is ready for passage on or before the date set for Second Reading by the Council; and

WHEREAS, on May 20, 2015 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 August 18, 2015, the City Council held the first reading of this Ordinance; and

WHEREAS, on September 1, 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 25.03.030 of the Ruston Municipal Code is hereby amended to read as follows:¹

25.03.030. - Investigation and notice of violation.

- (a) Investigation. The City Planner shall investigate any structure or use which the City 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 City Planner determines that the standards or requirements of this title 25 or Chapter 29.02 have been violated, the City 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;

¹ The text is highlighted to show the only location for a revision in this section.

- (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 City 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'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, 25.03.090 or 29.02.030
 - (f) Optional Notice to Others. The City 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 2. 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 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 City 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. The notice of appeal shall state the specific errors in the Notice of Violation and the specific grounds upon which a reversal or modification of the Notice is sought. The notice of appeal shall be accompanied by the filing fee provided in the City's Master Fee Resolution.
- (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. The notice of appeal shall state the specific errors in the Stop Work Order and the specific grounds upon which a lifting of the Order is sought.
- (3) Upon receipt of the written request of appeal of a notice of violation, the City Planner shall forward the request to the City Clerk who shall schedule a hearing with the Hearing Examiner City Council within 30 21-calendar days after receipt. Notice of hearing shall be provided to all parties not less than ten days prior to the hearing. The Hearings Examiner's review shall be de novo. The date for the hearing may be extended by mutual agreement of the appellant and the City.
- (4) Upon receipt of the written request of appeal of a stop work or emergency order, the City Planner shall forward the request to the City Clerk who shall schedule a hearing with the Hearing Examiner 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. The date for the hearing may be extended by mutual agreement of the appellant and the City.
- (5) At or after the appeal hearing, the Hearing Examiner 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 Hearing Examiner City Council shall issue a decision on an appeal of a notice of violation within fourteen ten days of the date of the completion of the appeal.

The Hearing Examiner Mayor shall issue a decision on an appeal of a stop work or emergency order within two business days of the date of the completion of the appeal. The Hearing Examiner Town Council/Mayor shall cause ~~their decisions~~ the decision 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 Hearing Examiner 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 Hearing Examiner's 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.

Section 3. 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 City Planner shall notify the Ruston City Attorney in writing of the name of the person subject to the penalty, and the Ruston Attorney shall, with the assistance of the City 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.~~

In certain instances, where the enforcement and penalty provisions outlined in this chapter are utilized and do not result in compliance or continued compliance or when repeat violations occur within a five year period, the City Planner may refer the matter to the police department for criminal investigation and prosecution. Unless a different criminal penalty is provided specifically for the violation, violations of chapters and titles of the code referenced in this chapter shall constitute a misdemeanor as set forth in Chapter 1.18 RMC. Upon conviction and pursuant to a prosecution motion, the court shall also order immediate action to correct the condition constituting the violation and to maintain the corrected condition in compliance with this code.


Section 4. 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 5. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 6. 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 1st day of September, 2015.

APPROVED by the Mayor this 1st day of September, 2015.



Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams
Judy Grams, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Jennifer Robertson
Jennifer Robertson, City Attorney

FILED WITH THE CITY CLERK: 5/15/2015

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

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