

ORDINANCE NO. 1464

AN ORDINANCE OF RUSTON, WASHINGTON, RELATING TO AMENDING PROJECT PERMIT APPLICATION HEARING PROCEDURES, AMENDING RUSTON MUNICIPAL CODE SECTIONS 19.04.010, 19.04.020, 19.04.030, 19.04.040, 19.04.050 AND ADDING A NEW SECTION 19.04.015, TO REFLECT CHANGES OF HEARING PROCEDURE AND CHANGES IN THE DECISION-MAKING BODIES, INCLUDING THE ADDITION OF A CITY HEARING EXAMINER, TO ADD MORE DETAILED HEARING PROCEDURES FOR OPEN RECORD HEARINGS, TO CLEAN-UP LANGUAGE BY CHANGING “TOWN” TO “CITY”, 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, by passage of Ordinance Nos. 1453 and 1454, the City Council has adopted revisions to the City Code to utilize the Hearing Examiner for appeal of enforcement procedures under Chapter 12.40 RMC and 25.03 RMC; and

WHEREAS, the summary of permit procedures in contained in Chapter 19.01 RMC was amended by Ordinance No. 1463 for consistency with the process revisions; and

WHEREAS, for consistency with Chapter 19.01 RMC, Chapter 19.04 RMC should also be amended; and

WHEREAS, additional procedures for open record hearings should be added to the Code under Section 19.04.020 for clarity and to improve the hearing procedures; and

WHEREAS, code clean ups (i.e. changing “town” to “city”) should also be made; 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 19.04.010 of the Ruston Municipal Code is hereby amended to read as follows:

19.04.010 - ~~Planning commission~~ Rreview and recommendation.

(a) Actions.

- (1) The body or person charged with making a recommendation in accordance with the procedures contained in the Ruston Municipal Code (“recommending body”) ~~Planning Commission~~ shall make recommendations to the ~~Town Council~~ Hearing Body for all actions as assigned under Section 19.01.010(a)(2) following an open record public hearing as required.
- (2) Prior to the ~~Planning Commission~~ open record hearing, the Mayor or designee shall prepare a staff report on the proposed development or action that summarizes the comments and recommendations, comments of any affected public agencies and special districts, and that evaluates the proposed development's consistency with applicable decision criteria. ~~CityTown~~ ordinances, adopted plans and regulations. The staff report

may include proposed findings, conclusions and recommendations for consideration of the application.

- (3) The ~~Planning Commission~~ recommending body shall conduct an open record public hearing. The public hearing shall be recorded on audio or audiovisual tape.
- (b) At the beginning of a hearing or agenda of hearings, the ~~Planning Commission~~ recommending body shall:
- (1) State that testimony will be received only if it is relevant to the applicable approval criteria and development standards and is not unduly repetitious and all testimony and evidence must be received by the end of the open record public hearing;
 - (2) Identify the applicable decision criteria and development standards;
 - (3) State that the ~~Planning Commission~~ recommending body will consider any party's request that the hearing be continued or that the record be kept open for a period of time and may grant or deny that request;
 - (4) State that the ~~Planning Commission~~ recommending body must be impartial and whether the ~~Planning Commission~~ recommending body has had any ex parte contact or has any personal or business interest in the application. The ~~Planning Commission~~ recommending body shall afford parties an opportunity to challenge the impartiality of the ~~Planning Commission~~ recommending body;
 - (5) State that persons who want to receive notice of the decision may sign a list for that purpose at the hearing;
 - (6) State that a time limit may be imposed on all parties; and
 - (7) Summarize the conduct of the hearing.
- (c) Decisions.
- (1) At the conclusion of the hearing on each application, the ~~Planning Commission~~ recommending body shall announce one of the following actions:
 - (A) That the hearing is continued. If the hearing is continued to a place, date and time certain, notice will be posted at the ~~Town~~City Hall; additional notice of the continued hearing will not be required to be mailed or published. If the hearing is not continued to a place, date and time certain, then notice of the continued hearing shall be given as though it was the initial hearing and will be posted at the ~~Town~~City Hall;
 - (B) A continued meeting will be held at which no further testimony or evidence will be taken, and a recommendation will be issued as provided in Section 19.05.010(c)(2); or
 - (C) That the application is recommended for denial, approval or approval with conditions, together with a brief summary of the basis for the decision, and that a recommendation will be issued as provided in Section 19.05.010(c)(2).
 - (2) Within 14 days after the date the open record hearing closes, the ~~Planning Commission~~ recommending body shall issue a recommendation regarding the application(s); provided, the ~~Planning Commission~~ recommending body shall not issue a

recommendation regarding the application(s) until at least 15 calendar days after the threshold determination under SEPA is made.

- (3) Within five working days from the date of the recommendation, the ~~City~~Town Clerk shall mail the notice of ~~Planning Commission~~ recommending body's recommendation to the applicant and applicant's representative, and all parties of record. The mailing shall include a notice which includes the following information:
 - (A) The time and place at which the ~~Town Council~~ Hearing Body will set the date for or hold the closed-record hearing for review and action if required. Said statement shall include notice that ~~Town Council~~ Hearing Body action shall be closed record review based on the ~~Planning Commission's~~ recommending body's open record hearing.
 - (B) A statement that the complete case file is available for review. The statement shall list the place, days and times where the case file is available and the name and telephone number of the ~~City~~Town representative to contact for information about the case. ~~Town Council shall set a time for Council action at its next regular meeting.~~
- (4) Recommendations of the ~~Planning Commission~~ recommending body to the ~~Town Council~~ Hearing Body regarding actions under Section ~~19.01.011~~19.01.010(a)(2) shall be submitted no later than 14 days following ~~Planning Commission~~ recommending body's action. The ~~Town Council~~ Hearing Body shall promptly schedule the ~~at its next regular meeting shall act on the recommendation or shall set the date when the~~ ~~Town Council~~ Hearing Body shall act on the recommendation based on the record established at the public hearing. The ~~Planning Commission's~~ recommending body's record and recommendation shall, at a minimum, include:
 - (A) A statement of the applicable criteria and standards in this title and other applicable law;
 - (B) A statement of the facts found by the ~~Planning Commission~~ recommending body that shows the application does or does not comply with each applicable approval criterion and standards;
 - (C) The reasons for a conclusion to approve or deny;
 - (D) The recommendation to deny or approve the application and, if approved, any conditions of approval necessary to ensure the proposed development will comply with applicable criteria and standards;
 - (E) Minutes describing the oral testimony given by each person to the ~~Planning Commission~~ recommending body.

Section 2. A new section 19.04.015 is hereby added to the Ruston Municipal Code to

read as follows:

19.04.015 – Hearing Examiner review.

For all matters assigned to the Hearing Examiner in accordance with RMC 19.01.011 or by other ordinance, the Hearing Examiner shall hold the open or closed record hearing in accordance with this chapter and the Hearing Examiner’s adopted rules of procedure.

Section 3. Section 19.04.020 of the Ruston Municipal Code is hereby amended to read as follows:

19.04.020 - Procedures for open record public hearings.

(a) Public hearings shall be conducted in accordance with the Hearing Body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision or recommendation. The Chair or Hearing Examiner shall open the public hearing and, in general, observe the following sequence of events:

- (a1) Applicant presentation, including submittal of any materials. Members of the Hearing Body may ask questions of the applicant;
- (b2) Staff presentation, including submittal of any administrative reports. Members of the Hearing Body may ask questions of the staff;
- (c3) Testimony or comments by the public germane to the matter;
- (d4) Rebuttal, response, or clarifying statements by the staff and the applicant;
- (e5) The evidentiary portion of the public hearing shall be closed and the Hearing Body shall deliberate on the matter before it.

(b) The burden of proof is on the proponent. The project permit application must be supported by convincing proof that it conforms to the applicable elements of the City’s Zoning Code, development regulations and Comprehensive Plan. The proponent must also prove that any significant adverse environmental impacts have been adequately mitigated.

(c) The order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate.

(1) Before receiving testimony and other evidence on the issue, the following shall be determined:

A. Any objections on jurisdictional grounds shall be noted on the record and if there is objection, the Hearing Body may proceed or terminate the proceeding;

B. Any member disqualifications shall be determined.

(2) The presiding officer may take official notice of commonly known and accepted information, such as:

A. Ordinances, resolutions, rules, officially adopted development standards, and state law;

B. Public records and facts judicially noticeable by law.

(d) Information officially noticed need not be proved by submission of formal evidence to be considered by the Hearing Body. Parties requesting official notice of any information shall do so on the record. The Hearing Body, however, may take notice of matters listed in subsection (2) of this section at any time. Any information given official notice may be rebutted.

(e) The Hearing Body may view the proposed project site or planning area with or without notification to the parties, but shall put into the record a statement setting forth the time, manner and circumstances of the site visit.

(f) Information shall be received from the staff and from proponents and opponents. The presiding officer may, in his or her discretion, permit persons attending the hearing to ask questions. Unless the presiding officer specifies otherwise, approved questions will be asked of persons submitting testimony by the presiding officer.

(g) When the presiding officer has closed the public hearing portion of the hearing, the Hearing Body may openly discuss the issue and may further question the staff or any person submitting information. An opportunity to present rebuttal shall be provided if new information is presented in the questioning. When all evidence has been presented and all questioning and rebuttal completed, the presiding officer shall officially close the record and end the hearing.

(h) Decision. Following the hearing procedure described in this section, the Hearing Body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the Hearing Body shall affirm, reverse or, with the written consent of the applicant, which shall include a waiver of the statutory prohibition against two open record hearings, remand the decision for additional information.

(1) The Hearing Body's written decision shall issue within 10 working days after close of record of the hearing and within 90 days of the opening of the hearing, unless a longer period is agreed to by the parties.

(2) Notice of the decision shall be provided as set forth in RMC 19.04.030.

(3) If the city is unable to issue its final decision on a project permit application within the time limits provided for in this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of decision.

Section 4. Section 19.04.030 of the Ruston Municipal Code is hereby amended to read

as follows:

19.04.030 - ~~Town council actions~~Final Administrative Action.

- (a) Actions. Upon receiving a recommendation from ~~the Planning Commission~~ a designated recommending body, the final decision maker or Hearing Body (i.e. Hearing Examiner or City Council) ~~requiring the Council's action~~, the Council shall perform the following actions as appropriate:
- (1) Make a decision on ~~Planning Commission~~ the recommending body's recommendations. Where the ~~Planning Commission~~ the recommending body has held an open record public hearing, ~~Council~~ Hearing Body shall review the matter at a closed record hearing.
 - (2) The ~~Council~~ Hearing Body may, at its discretion, hold a public hearing and make a decision on the following matters:
 - (A) Appeal of administrative interpretations.
 - (B) Appeal of determinations of significance.
 - (C) Other matters not prohibited by law.
- (b) Decisions. The ~~Town Council~~ Hearing Body shall make its decision in writing ~~by motion, resolution, or ordinance~~ as appropriate.
- (1) A ~~Council~~ Hearing Body decision following an open record public hearing (if applicable) shall include one of the following actions:
 - (A) Approve as recommended by the ~~Planning Commission~~ recommending body.
 - (B) Approve with additional conditions.
 - (C) Modify; provided, that the modifications do not significantly increase adverse environmental impacts as determined by the responsible official.
 - (D) Deny (reapplication or resubmittal is permitted).
 - (E) Deny with prejudice (reapplication or resubmittal is not allowed for one year).
 - (F) Remand for further proceedings where appropriate.
 - (2) Notice of Decision. A written notice for all final decisions shall be sent to the applicant and to all parties of record. Persons who desire to be a party of record shall so notify the ~~CityTown~~ Clerk and provide the ~~CityTown~~ Clerk their name and mailing address. For development applications requiring Planning Commission or Hearing Examiner review and ~~CityTown~~ Council approval, the notice shall be the signed ordinance or resolution.

Section 5. Section 19.04.040 of the Ruston Municipal Code is hereby amended to read

as follows:

19.04.040 - Procedures for closed record hearings.

Closed record hearings shall serve to provide guidance for the Hearing Body's decision and shall be conducted in accordance with the ~~Town Council's applicable~~ rules of procedure. Closed record hearings shall be conducted generally as provided for public meetings:

- (a) No new evidence or testimony shall be given or received. The parties may submit timely written or oral statements or arguments so long as such statements or arguments use evidence contained in the record before the ~~Planning Commission recommending~~ body.
- (b) Affirm that the ~~Town Council~~ Hearing Body must be impartial and request members to state whether there has been any ex parte contact or whether a member has a personal or business interest in application. ~~Town Council~~ The Hearing Body shall afford parties an opportunity to challenge the impartiality of the ~~Town Council~~ Hearing Body or its member(s).
- (c) The ~~Town Council~~ Hearing Body shall be responsible to review the application, staff report, minutes of the open public hearing, and the findings and conclusions, or reasons for decisions or recommendations. The ~~Town Council~~ Hearing Body may, ~~by motion passed by a majority,~~ continue the hearing to review the record audio or audio-visual tapes or other evidence from the open hearing not available at the closed hearing.
- (d) The ~~Town Council~~ Hearing Body may elect to continue the closed record hearing to consider evidence and testimony before making a decision.
- (e) Make its decision in accordance with Section 19.04.030

Section 6. Section 19.04.050 of the Ruston Municipal Code is hereby amended to read

as follows:

19.04.050 - Remand.

In the event the ~~Town Council~~ Hearing Body determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the Council may remand the matter back to the ~~Planning Commission recommending~~ body to correct the deficiencies. The ~~Council~~ Hearing Body shall specify the items or issues to be considered and the time frame for completing the additional work.

The ~~Town Council~~ Hearing Body may hold a public hearing on a closed record appeal only for the limited purposes identified in RCW 34.05.562(1).

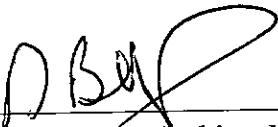
Section 7. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause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

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

Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

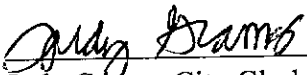
ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 1st day of September, 2015.

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



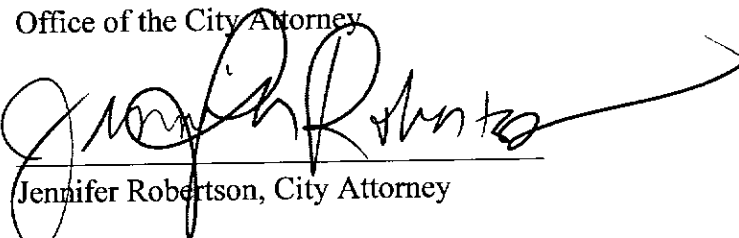
Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:



Judy Grams, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



Jennifer Robertson, City Attorney

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

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