

**Subject:** **Ordinance #1525** – Updating to Hearing Examiner Chapter 1.20 RMC to provide expanded power To hear additional types of Appeals.

**Dept. Origin:** City Attorney’s Office

**Prepared by:** City Attorney’s Office

**For Agenda of:** November 5, 2019

**Exhibits:** Ordinances #1525

**Proposed Council Action:**

This is on for First Reading. Unless directed Otherwise, this ordinance will return for Second Reading and Action on November 19, 2019.

	Initial & Date
<b>Concurred by Mayor:</b>	_____
<b>Approved/form by Town Atty:</b>	<b><u>JSR/10-31-19</u></b>
<b>Approved by _____ Director:</b>	_____
<b>Approved by Department Head:</b>	_____

**INFORMATION / BACKGROUND**

During the course of updating Chapters 5.01 and 5.01A of the Ruston Municipal Code to adopt the state-mandated revisions for B&O tax, the City Attorney and Mayor recommend that the City Council also consider changing the body that hears appeals that may occur under these chapters from the City Council to the City Hearing Examiner. These changes are contained in Ordinance No. 1524. That ordinance updates Chapter 5.01A to allow a Hearing Examiner, rather than the City Council, to hear tax appeals under RMC 5.01A.140 as well as appeals of suspensions or revocations of business licenses under RMC 5.01A.230. This change also necessitated revisions to the City’s code on Hearing Examiners, Chapter 1.20 RMC as contained in this attached Ordinance No. 1525.

As previously written, the Hearing Examiner was limited to hearing land use matters. By revising sections 1.20.010, 1.20.020 and 1.20.050, the Hearing Examiner can be used to hear non-land use cases as established by the City Council. The Hearing Examiner will only be empowered to hear matters that the Council has assigned via adoption of ordinances. By making these changes, the Hearing Examiner can hear tax and business license matters, rather than the Council. The new ordinance also permits the City to appoint different Hearing Examiners as it deems fit. This is necessary in case our current Hearing Examiner does not have the expertise to hear tax and license matters.

**FISCAL CONSIDERATION**

By having a Hearing Examiner hear and decide appeals, the City will incur fees for the Hearing Examiner.

**RECOMMENDATION / MOTION**

This is scheduled for First Reading. No action required. Unless directed otherwise, this Ordinance will be brought back for Second Reading and Adoption on November 19, 2019. The state law requires that these changes be adopted and take effect on January 1, 2020.

**ORDINANCE NO. 1525**

**AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON, AMENDING CHAPTER 1.20 OF THE RUSTON MUNICIPAL CODE, ENTITLED “OFFICE OF THE HEARING EXAMINER” FOR THE PURPOSE OF PROVIDING THE AUTHORITY OF THE HEARING EXAMINER TO HEAR OTHER TYPES OF ADMINISTRATIVE APPEALS FOR THE CITY OF RUSTON, AMENDING SECTIONS 1.20.010, 1.20.020 AND 1.20.050, AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, the City is in the process of updating its Business and Occupation code (Chapters 5.01 and 5.01A of the Ruston Municipal Code); and

WHEREAS, during the course of this update, the City Council has determined that appeals under Chapter 5.01A should go to the City’s Hearing Examiner; and

WHEREAS, in order to provide the Hearing Examiner with jurisdiction, certain amendments are needed to Chapter 1.20 of the Ruston Municipal Code; and

WHEREAS, this Ordinance accomplishes this goal; and

WHEREAS, on November 5, 2019, the City Council held the first reading on this Ordinance; and

WHEREAS, on November 19, 2019, the City Council adopted this Ordinance during its regular meeting at second reading; **NOW, THEREFORE**

**THE CITY COUNCIL OF THE CITY OF RUSTON DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Section 1.20.010 of the Ruston Municipal Code is hereby amended to read as follows:

**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.
  - 6. Hear other cases (non-land use) as established by the Ruston City Council and adopted under the Ruston Municipal Code, including tax and license appeals and any other assigned matters.

**Section 2.** Section 1.20.020 of the Ruston Municipal Code is hereby amended to read as follows:

**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.
- E. The City Council may appoint more than one Hearing Examiners as it deems appropriate to serve the needs of the City.

**Section 3.** Section 1.20.050 of the Ruston Municipal Code is hereby amended to read as follows:

**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, or any other matters, 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 14 days of the conclusion of the public hearing, unless a longer period is agreed to in writing by the applicant or as otherwise established under the Ruston Municipal Code, 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 or appeal. ~~For land use decisions this may be, 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. For non-land use decisions, this will be to grant the appeal, deny the appeal or modify the decision.

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 4. Effective Date.** This ordinance shall take effect and be in force five (5) days after passage and legal publication.

**Section 5. 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 6. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 19<sup>th</sup> day of November, 2019.

APPROVED by the Mayor this 19<sup>th</sup> day of November, 2019.

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Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

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Judy Grams, City Clerk

APPROVED AS TO FORM:

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Office of the City Attorney

FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
PUBLISHED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
ORDINANCE NO: 1525