

ORDINANCE NO. 1021 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF EL PASO DE ROBLES AMENDING SECTIONS
14.02.020, 14.06.020, 14.06.040, 14.06.049, 14.06.052, 14.06.104,
14.06.132, 14.06.135, 14.06.136 AND 14.06.138 OF CHAPTER
14.06 AND ADDING CHAPTER 14.07 TO TITLE 14 OF THE
MUNICIPAL CODE OF
THE CITY OF EL PASO DE ROBLES, CALIFORNIA,
RELATING TO RECYCLED WATER SERVICE AND
PRIVATE WELLS WITHIN THE CITY

WHEREAS, it is the goal of the City of El Paso de Robles to supply water to all premises within the boundaries of the City; and,

WHEREAS, in light of current water conditions and to protect the public health, safety, and welfare, the City Council adopted an urgency ordinance, Ordinance No. 1000, on February 4, 2014, to impose a temporary prohibition on the issuance of permits for new private water wells or modification/rehabilitation of existing wells that would increase groundwater extraction; and

WHEREAS, the provisions of Ordinance No. 1000 were extended by Ordinance No. 1002 in order for the City to have time to consider the issue of private wells more comprehensively; and

WHEREAS, Ordinance No. 1002 will expire on February 5, 2016; and

WHEREAS, with only a few exceptions, the City water system is available to serve the entire City, and therefore private wells may be approved only under limited conditions; and,

WHEREAS, the City's goal and policy regarding private wells is founded on several key principles, including but not limited to the following:

- The City, County, landowners and other stakeholders within the Paso Robles Groundwater Basin should share in the stewardship of Basin resources.
- The City is committed to prudent City-wide use of water and water conservation.
- The goals and objectives of the City's water resource master plans, wastewater and recycled water plans, urban water management plan, and groundwater management and sustainability plans should be integrated to provide a long-term, reliable, and high quality water supply for the City.

- The City's development of a City recycled water system should be used to offset potable water demand, consistent with statewide water recycling goals and the City's integrated water resources management plan.
- A reliable and sustainable water system requires all water users to contribute financially to the system.
- Potential conflicts among well users in the unincorporated areas should be minimized.
- The need exists to control cross-connections and minimize the possibility that private well usage might degrade groundwater quality.
- The need exists to police the proper abandonment of wells.

WHEREAS, it is recognized that some private wells already exist in the City, and it may be appropriate to allow construction of new private wells or modification, replacement or rehabilitation of existing private wells within the City under certain limited circumstances; and,

WHEREAS, to protect the public health, safety and welfare, it is prudent to also require that existing private wells comply with the same groundwater management and sustainability measures as other City water users; and

WHEREAS, private wells may be temporarily needed to provide water in areas without City water service, including areas recently annexed to the City, agricultural areas, or for resort and recreation uses in appropriate zones; and,

WHEREAS, the City Council of the City of El Paso de Robles held a duly noticed public hearing on December 15, 2015 where it took the following actions:

- a) Considered the facts and analysis, as presented in the staff report;
- b) Held a public hearing to obtain public testimony on the proposed ordinance;
- c) Introduced and waived full reading of said ordinance for the first reading by title only;

NOW, THEREFORE, The City Council of the City of El Paso de Robles does ordain the Paso Robles Municipal Code shall be amended as follows:

Section 1. Subsection A. of Section 14.02.020 is hereby amended in its entirety to read as follows:

“14.02.020 Application

“A. This chapter applies to all customers in the use of any water provided by

the City of El Paso de Robles, including customers located within or outside the City, and to all private well owners and operators within the City limits.”

Section 2. Paragraph A.10. in Section 14.06.020 is hereby deleted and a new Subsection J. is hereby added in its entirety to read as follows:

“14.06.020 Definitions and interpretation.

.....

J. "Private well" means any well that supplies potable or nonpotable water, or both, to residential, agricultural, commercial, industrial, parks, open space, recreational or any other use and that is located on property within the boundaries of the city. As used in this Chapter 14.06, a “private well” shall constitute a "noncity well."

Section 3. Section 14.06.040 is hereby amended to read in its entirety as follows:

“14.06.040 Permits.

No person, firm, corporation, or special district formed under the laws of this state shall within the city, construct, replace, repair, modify, rehabilitate, or destroy any well unless such person possess a valid permit issued by the department of public works as provided in this Chapter 14.06. Any person, firm, corporation, or special district refused or denied the issuance of a permit, or issued a conditional permit, shall have the opportunity for an appeal as described under Section 14.06.052”

Section 4. Subsection C. of Section 14.06.049 is hereby amended in its entirety to read as follows:

“14.06.049 Permit – General requirements.

....

C. Permit – Suspension and Revocation. The department of public works may suspend or revoke any permit issued pursuant to this Chapter, whenever it finds that the permittee has violated any of the provisions of this Chapter, has failed to comply with any permit condition, or has misrepresented any material fact in his application, or any supporting documents, for such a permit. An appeal of a decision by the department of public works may be made as described under Section 14.06.052.”

Section 5. Section 14.06.052 is hereby amended in its entirety to read as follows:

“14.06.052 Appeals.

Any person may appeal a decision by the department of public works regarding the issuance, denial, suspension or revocation of a permit, or any conditions attached thereto, by filing an appeal with the council. The city clerk shall set the matter for hearing before the council and shall give reasonable notice of the time and place thereof to the applicant or permittee. The council shall hear the evidence offered by the applicant/permittee and the department of public works, and shall decide the issue.”

Section 6. Section 14.06.070 is hereby deleted in its entirety.

Section 7. Section 14.06.104 is hereby amended in its entirety to read as follows:

“14.06.104 Confidentiality of report.

In accordance with California Water Code Section 13752, reports prepared as set forth in Section 14.06.102 shall not be made available for inspection by the public, but otherwise shall be made available in accordance with State law.”

Section 8. Section 14.06.132 is hereby amended in its entirety to read as follows:

“14.06.132 Special Additional Requirements Regarding Private Wells.

It is the goal of the City of El Paso de Robles to supply water to all premises within the boundaries of the City. With only a few exceptions, the City water system is available to serve the entire city, and therefore private wells may be approved only under limited conditions. The City’s goal and policy regarding private wells is founded on several key principles, including but not limited to the following:

The City, County, landowners and other stakeholders in the Paso Robles Groundwater Basin should share in the stewardship of Basin resources.

The City is committed to prudent City-wide use of water and water conservation.

The goals and objectives of City’s water resource master plans, wastewater and recycled water plans, urban water management plan, and groundwater management and sustainability plans should be integrated to provide a long-term, reliable, and high quality water supply for the City.

The City's development of a City recycled water system should be used to offset the potable water demand, consistent with statewide water recycling goals and the City's integrated water resources management plan.

A reliable and sustainable water system requires all users to contribute financially to the system.

Potential conflicts among well users in the unincorporated areas should be minimized.

The need exists to control cross-connections and minimize the possibility that private well usage might degrade groundwater quality.

The need exists to police the proper abandonment of wells.

It is recognized that some private wells already exist in the City, and it may be appropriate to allow construction of new private wells or modification, replacement or rehabilitation of existing private wells within the City under certain limited circumstances. Private wells may be temporarily needed to provide water in areas without City water service, including areas recently annexed to the City, agricultural areas, or for resort and recreation uses in appropriate zones.

In recognition of these circumstances the director of public works in accordance with this Chapter may authorize the construction, replacement, repair/reactivation, modification, or rehabilitation of private wells for the supply of potable or irrigation water and may issue orders for the abandonment of such private wells. Property owners shall be required to construct, repair, modify, render inactive and abandon private wells in accordance with the applicable rules, regulations, and requirements of federal, state or local agencies.”

Section 9. Section 14.06.135 is hereby added to read in its entirety as follows:

“14.06.135 Existing Private Wells.

Any private well that has been operating continuously in the three-year period immediately prior to the effective date of the ordinance adding this Section 14.06.135 to the Municipal Code may continue in operation, provided, however, that such private well owner shall allow City, at the City’s expense, to install a metering device to monitor the production volume of such well. The owner shall grant to the City the authority to enter the property for periodic inspection to ensure proper operation and maintenance of the metering device. Existing private wells with City-installed metering devices shall be exempt from the requirements to obtain a permit under Section 14.06.136 for so long as such well operations continue as exists on such effective date.

Notwithstanding the foregoing, a new permit shall be required and the requirements of Section 14.06.136 and 14.06.138 shall apply to such permit application for the operation of such private well in the event that:

- (i) use or uses of the property served by the well(s) is proposed to change or intensify, or

- (ii) deepening, replacing, rehabilitating, or re-drilling the well(s) is proposed, or
- (iii) modifications are proposed for such well(s) that would increase the volume of water to be supplied by such well(s), or
- (iv) additional water fixtures are proposed as part of a building permit application for residential properties, or
- (v) the continued operation of the well(s) has created or is likely to create or result in any nuisance or other hazard that threatens the public health and safety.”

Section 10. Section 14.06.136 of Chapter 14.06 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby amended to read as follows:

“14.06.136 Private Well Permit Eligibility

The director of public works may issue a permit for the construction of a new private well or for the modification, replacement or rehabilitation of existing private well only under one of the following circumstances:

Domestic Uses in Agricultural Zones

For a potable water source for a proposed residence, secondary residence, or an addition to either that is located in an area zoned Agricultural or Parks and Open Space, and where a water service line extension is required, the property boundary is more than 1,000 feet¹ from a City potable water source. Such permit shall remain in effect until such time as a City potable water source becomes available within 1,000 feet of the property boundary.

Agricultural Uses in Agricultural Zones

For non-potable water to be used for agricultural purpose(s) on agriculturally-zoned properties within the City limits and where the nearest property boundary is located more than 1,000 feet from a City recycled or other non-potable water source. Permitted private wells supporting agricultural uses may, at the discretion of the director of public works, remain in service to meet water quality and/or seasonal usage demands if City recycled or other non-potable water source becomes available within 1,000 feet from the property boundary.

Resort and Other Recreational Land Uses

For non-potable water to be used for a recreational land use (golf course, athletic field, related non-potable purpose) in a Parks and Open Space or Agricultural

¹ Distance references are as measured through public right-of-way or existing utility easements. The intent is not to require property owners to secure right-of-way through adjoining private properties

Zone and where the property boundary is located more than 1,000 feet from a City recycled or other non-potable water source.

Other Properties Distant from City Water Supply

To provide water supply to any property not listed above within the City limits whose closest property boundary is located more than 1,000 feet from a City water source.

Existing Well on Property Being Annexed to City

For an active well providing water on property that is annexed to the City after the effective date of the ordinance amending this Section 14.06.136 and that meets one of the conditions described above in this Section 14.06.136.

The issuance of a permit for a private well pursuant to this Chapter 14 shall not be deemed to satisfy any other condition required by the City regarding improvements on the property, including, but not limited to, fire suppression needs.

As used in this Section 14.06.136, “Non-potable water” shall have the meaning set forth in Section 14.07.010.”

Section 11. Section 14.06.138 is hereby amended in its entirety to read as follows:

“14.06.138 Private Well Approval Conditions

- A. The issuance of any permit for a new private well or for the modification, replacement or rehabilitation of existing private well shall be conditioned upon compliance with an agreement executed by the property owner ("Owner") and the director of public works on behalf of the City. Such agreement shall be in a form approved by the City Attorney. The terms of such private well agreement shall include, but are not limited to, the following provisions, as applicable:
- (i) The private well shall provide water only to the property identified in the agreement, and strictly for the purpose(s) and for the volume specified in the agreement. Water from the private well shall not be used for any other purpose(s) or for the benefit of or to provide water to any other property.
 - (ii) The private well shall be operated and maintained in a manner to protect against any threat to public health and safety.
 - (iii) Owner shall provide the City with specific information on the location of the well, including accurate coordinates through land surveying or use of a Global Positioning System (GPS) and a property map showing the well location in sufficient detail to allow a City agent to readily locate the well.
 - (iv) City shall have the right to inspect the wellhead, appurtenances, and related facilities with reasonable advance notice to the Owner. The Owner shall grant to the City the authority to enter the property for periodic

inspection to ensure proper operation and maintenance of the well. Owner shall pay the City for the costs of any such inspections.

- (v) All costs of maintenance and repair of the private well shall be at the Owner's expense.
- (vi) For any private well(s) serving more than one single family residence, the Owner shall place an approved metering device on the well to monitor its production volume and shall report such usage no less frequently than quarterly to the director of public works.
- (vii) Owner shall waive any and all claims against the City for interference with Owner's right or ability to extract water from the private well, or the quality or quantity of the water available from such well, and shall defend, indemnify and hold the City harmless from any such claims from third parties.
- (viii) Any private well, appurtenances, and related facilities shall be constructed in accordance with all applicable requirements of the California Department of Water Resources, California Department of Health Services, San Luis Obispo County Health Department, City Public Works Department, and any other local, State or Federal agency with jurisdiction.
- (ix) Any private well, appurtenances, and related facilities shall be operated and maintained in a safe and sanitary manner at all times, at no expense to the City.
- (x) The private well shall be constructed with a reduced pressure principal backflow prevention assembly (RP device) at the discharge outlet of the well. The RP device shall conform to the standards of the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research, and said device shall be inspected and tested at least once per year by a City-approved qualified technician, at the Owner's expense. A report of the inspection shall be submitted to the City Public Works Department. Further, Owner shall maintain an air gap at all times between the private well system and the City water system.
- (xi) If in the opinion of the City director of public works, the San Luis Obispo County Health Department, the San Luis Obispo County Flood Control and Water Conservation District, or any other local, State or Federal agency with jurisdiction, operation of the private well has created or is likely to create or result in any nuisance, or other hazard that threatens the public health and safety, the Owner shall comply with the directives of the enforcement agency. The Owner shall bear any expenses incurred for such compliance. In addition, if a health hazard or nuisance is determined to exist, the City may terminate the private well agreement and revoke the permit and/or certificate of occupancy for those utilizing the private well pursuant to this Chapter 14.06, Sections 102 and 109.6 of the California Building Code and/or Sections 1001.1 and 1001.2 of the Uniform Housing Code, as those sections may be amended from time to time.

- (xii) Private wells may be rendered inactive only in accordance with the provisions of the California Health and Safety Code and any applicable regulations, and the requirements of this Chapter 14.06.
 - (xiii) The private well agreement shall be recorded against the property, and its provisions shall run with the land and be binding upon any successors in interest to Owner.
 - (xiv) For any existing private well on property that is annexed to the City after the date of the ordinance amending this Section 14.06.138, Owner shall be required to provide City with all applicable information required by this Chapter 14.06 regarding such existing well.
 - (xv) The operation of the private well shall comply with the City's Water Conservation and Water Shortage Contingency Plan program, or any similar City water conservation program.
- B. If the director of public works issues an order to abandon the private well due to contamination of the well or other situation posing a pollution risk or other threat to groundwater resources or public health or safety, or in the event that the well is displaced by City water service, then the private well shall be abandoned at the Owner's expense in accordance with the standards of the California Department of Water Resources, and any other agency with jurisdiction, and the requirements of this Chapter 14.06.
- C. The private well agreement shall terminate if:
- (i) Owner fails to comply with the terms of the agreement, or
 - (ii) The parties mutually consent, or
 - (iii) The City determines that the private well is interfering with City's ability to deliver water to City residents, is jeopardizing the quality of City water, or is otherwise posing a threat to public health or safety, or
 - (iv) Owner terminates use of the private well, in which case Owner shall take all steps to properly abandon the well in accordance with the requirements of this Chapter 14.06 and provide evidence thereof to the City, or
 - (v) At the discretion of the director of public works, for a private well providing non-potable water, City recycled or other non-potable water source becomes available within 1,000 feet of the property boundary.
- D. At the discretion of the director of public works, the private well permit agreement may include additional conditions, including but not limited to the following:
- (i) Owner shall submit to the director of public works a report prepared by a qualified and licensed professional assessing the impact of the proposed well, both on quality and quantity, on other wells in the area, and the potential impact of such proposed well on surrounding properties, whether within or outside the City.

- (ii) Owner’s agreement to not oppose formation of an assessment district or other type of public financing mechanism for the purposes of constructing water mains to provide City water service to Owner’s property.
- (iii) The parties shall terminate the private well agreement, and Owner shall either abandon or render inactive the private well and connect to City water either when directed to do so by the director of public works or when the conditions set forth under “Domestic Uses in Agricultural Zones” in Section 14.06.136 no longer apply. Owner shall pay City water connection fees at the rates in effect at the time of connection. Owner shall take all steps necessary to either abandon or render inactive the private well in accordance with the applicable rules and regulations of state law, any or local regulatory or enforcement agency with jurisdiction over such matters, and this Chapter 14.06.”

Section 12. Chapter 14.07 is hereby added to Title 14 of the Municipal Code of the City of El Paso de Robles, California, to read as follows:

**“Chapter 14.07
Non-Potable Water Service**

“14.07.010 Definitions

The definitions in this Chapter 14.07 apply to the provisions of Chapter 14.06 and this Chapter only and do not affect any other provisions of law.

- A. “Non-potable water” means recycled water that is treated municipal wastewater or other non-potable water supply that is treated to meet water quality requirements for the intended end use as established by federal, state, and local laws and regulations.

“14.07.020 Statement of Policy

When in the discretion of the public works department, non-potable water service can be feasibly provided to a particular parcel for particular use(s), the public works director shall require the use of non-potable water in lieu of potable water or private wells for such use(s). As used herein, the term “feasibly” means non-potable water is available for delivery to the property in compliance with all applicable federal, state, and local laws, ordinances and regulations.

“14.07.030 Use and Distribution of Non-Potable Water

The use and distribution of non-potable water shall be in accordance with adopted City procedures and all applicable federal, state, and local laws, permits and regulations including Titles 17 and 22 of the California Code of Regulations, as may be amended from time to time.”

Section 13. The provisions of this Ordinance shall supersede those contained in Ordinance No. 1002.

Section 14. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of El Paso de Robles hereby declares it would have passed this ordinance and each section or subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases subsequently be declared invalid.

Section 15. The City Clerk is hereby ordered and directed to certify to the passage of this ordinance and to cause the ordinance to be published in a newspaper of general circulation, published and circulated in the City of Paso Robles, within 15 days after adoption of this ordinance.

Section 16. This ordinance shall be in full force and effect thirty (30) days after its adoption.

INTRODUCED at a regular meeting of the City Council held on December 15, 2015, and PASSED AND ADOPTED by the City Council of the El Paso de Robles on this 5th day of January 2016, by the following vote:

AYES: Strong, Hamon, Reed, Martin
NOES:
ABSENT:
ABSTAIN: Gregory



Steven W. Martin, Mayor

ATTEST:


Kristen L. Buxkemper, Deputy City Clerk