

TO: JAMES L. APP, CITY MANAGER

FROM: BOB LATA, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: CODE AMENDMENT 05-003: UTILITY METERS FOR SECOND UNITS

DATE: OCTOBER 18, 2005

Needs: To consider a City-initiated amendment to the Zoning Code to revise the requirements for second dwelling units to allow that second units may have their own electrical and gas meters.

Facts:

1. Subsection (d) of Section 21.16D.040 presently provides that only one electric, one gas, and one water meter shall be allowed on the (single family residential zoned) property on which a second unit is built and that the single meters shall serve both the primary and secondary units.
2. The applicant for a permit for a second unit recently informed the City that both PG&E and The Gas Co. charge higher rates for utilities above the historic baselines registered on the meters for the property. This means that the costs of electrical and gas utilities for second units are higher than they would be if the second units had their own meters.
3. Staff contacted representatives for PG&E and The Gas Co. and confirmed that the billing rates are in fact structured to encourage conservation and to penalize increased use of utilities above baseline rates determined over a year or more. Both representatives advocated the provision of separate meters for second units.
4. The proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) per Section 15303(d) of the State's Guidelines to Implement CEQA (new construction of small structures). The proposed code amendment would only authorize the setting of individual utility meters.
5. The Planning Commission is scheduled to review this code amendment at its meeting of October 11, 2005. The Planning Commission's recommendation will be verbally reported to the City Council at its meeting of October 18.

Analysis and
Conclusion:

The City's second unit regulations apply only to single family zoned property. In adopting these regulations, several provisions were established in Section 21.16D.040 to notify owners of property with second units that further subdivision of single family lots to create separate lots for the primary and secondary units would not be approved unless the lots were of a size and configuration that accommodated new lots that conformed to zoning regulations. These provisions included the following:

1. Subsection (a), which states that further subdivision of lots with second units shall not be allowed unless the subdivision meets all requirements of the City's zoning and subdivision regulations;

2. Subsection (b), which requires owners of property with second units to record an instrument to provide constructive notice to all future owners of the second units use and the restrictions on future subdivision of the property; and
3. Subsection (d), which provides that only one water, one electric, and one gas meter shall be allowed on the property for use by both the primary and secondary units.

The purpose of Subsection (d) was to place another hurdle in the path of property owners who would want to consider subdividing their property. However, at the time it was established in 2003, staff was unaware of the utility rate structures and the impact they would have on utility costs to the second unit. Subsections (a) and (b) would appear to be sufficient to accomplish the objective of informing property owners that the City will not approve future subdivisions of the property unless the subdivision conformed with zoning and subdivision regulations.

Action Items #1 and 2 implementing Housing Element Policy H-3A calls for the City to review the City policies, regulations, and development standards to identify and remove any constraints to affordable housing, especially provisions which unnecessarily increase the cost of housing.

The State's definition of affordable housing costs for rental housing (Health and Safety Code Section 50053) states that such affordable housing costs shall include a reasonable allowance for utilities. Therefore, since second units are by definition rental units, the maintenance of reasonable utility costs would be an important component of the City's efforts to provide affordable housing to low and moderate income households. The proposed code amendment appears to be consistent with this policy.

Policy

Reference: Zoning Code Section 21.16D.040; Housing Element; California Health and Safety Code Section 50053

Fiscal Impact: None.

Options: After consideration of all public testimony, that the City Council consider the following options:

- a.** Introduce for first reading Ordinance No. XXX N.S. amending the Zoning Code to revise the requirements for second dwelling units to allow that second units may have their own electrical and gas meters, and set November 1, 2005, as the date for adoption of said Ordinance.
- b.** Amend, modify or reject the foregoing option.

Prepared by:

Ed Gallagher, Housing Programs Manager

Attachments:

1. Ordinance Amending the Zoning Code to Allow Second Units to Have Their Own Utility Meters
2. Newspaper Notice Affidavit

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION/CITY COUNCIL PROJECT NOTICING

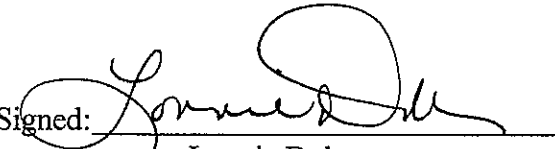
Newspaper: Tribune

Date of Publication: September 30, 2005

Meeting Date: October 11, 2005
(Planning Commission)
October 18, 2005
(City Council)

Project: Code Amendment 05-003
(City initiated)

I, Lonnie Dolan, employee of the Community
Development Department, Planning Division, of the City
of El Paso de Robles, do hereby certify that this notice is
a true copy of a published legal newspaper notice for the
above named project.

Signed: 
Lonnie Dolan

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CITY OF EL PASO DE ROBLES NOTICE OF PUBLIC HEARINGS

Zoning Code Amendment Regarding Utility
Meters for Second Units
Code Amendment 05-003

NOTICE IS HEREBY GIVEN that the Planning Commission and City Council of the City of El Paso de Robles will hold Public Hearings to consider Code Amendment 05-003, initiated by the City of Paso Robles, to amend the Zoning Code (Title 21 of the Municipal Code) to revise the utility metering requirements for second dwelling units built on single family lots to allow that second units may have their own electrical and gas meters.

These hearings will take place in the Conference Room at the Paso Robles Library/City Hall, 1000 Spring Street, Paso Robles, California, at the hour of 7:30 pm on the following dates:

Planning Commission: Tuesday, October 11, 2005
City Council: Tuesday, October 18, 2005

All interested parties may appear and be heard at the above hearings.

Comments on the proposed code amendment may be mailed to the Community Development Department, 1000 Spring Street, Paso Robles, CA 93448 or e-mailed to: CDdirector@prcity.com provided that such comments are received prior to the time of the respective hearings.

If you challenge the Code Amendment in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission or City Council at, or prior to, the public hearing.

Ed Gallagher, Housing Programs Manager
Sept. 30, 2005

6255121

ORDINANCE NO. XXX N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
AMENDING TITLE 21 (ZONING) OF THE MUNICIPAL CODE
TO ALLOW SECOND UNITS TO HAVE THEIR OWN UTILITY METERS
(CODE AMENDMENT 05-003)

WHEREAS, Subsection (d) of Section 21.16D.040 presently provides that only one electric, one gas, and one water meter shall be allowed on the (single family residential zoned) property on which a second unit is built and that the single meters shall serve both the primary and secondary units; and

WHEREAS, the City has been informed by representatives of the electric and gas utilities that their rate structures are established to encourage conservation and penalize use above historically-determined baselines, which in turn makes the utilities used by second units subject to higher rates; and

WHEREAS, the original intent of the provisions of Subsection (d) of Section 21.16D.040 was to discourage subdivisions which did not conform with zoning and subdivision codes; and

WHEREAS, the provisions contained within Subsections (a) and (b) of Section 21.16D.040 provide sufficient safeguards against nonconforming subdivision of single family lots with second units; and

WHEREAS, Action Items #1 and 2 implementing Housing Element Policy H-3A call for the City to review the City policies, regulations, and development standards to identify and remove any constraints to affordable housing, especially provisions which unnecessarily increase the cost of housing; and

WHEREAS, the State's definition of affordable housing costs for rental housing (Health and Safety Code Section 50053) states that such affordable housing costs shall include a reasonable allowance for utilities; and

WHEREAS, second units are by definition rental units, and the maintenance of reasonable utility costs are an essential component of the City's efforts to provide affordable housing to low and moderate income households; and

WHEREAS, at its meeting of October 11, 2005, the Planning Commission took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this ordinance;
- b. Conducted a public hearing to obtain public testimony on the proposed ordinance;
- c. Recommended that the City Council adopt the proposed ordinance; and

WHEREAS, at its meeting of October 18, 2005, the City Council took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this ordinance;
- b. Considered the recommendation of the Planning Commission regarding this ordinance;
- c. Conducted a public hearing to obtain public testimony on the proposed ordinance.

NOW, THEREFORE, BE IT KNOWN that the Paso Robles City Council, based upon the substantial evidence presented at the above referenced public hearing, including oral and written staff reports, hereby finds as follows:

1. The above stated facts of this ordinance are true and correct.
2. This ordinance is consistent with the City's General Plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Section 21.16D.040 of the El Paso de Robles Municipal Code is hereby amended to read as follows:

21.16D.040 General Requirements

- (a) No Subdivision of Property. No subdivision of property shall be allowed where a second unit has been established unless the subdivision meets all requirements of the city's zoning and subdivision regulations (Titles 21 and 22 of this code). Nothing in this section shall prohibit joint ownership of the property where a secondary dwelling unit has been established.
- (b) Constructive Notice. The property owner shall record an instrument, on a form approved by the City Attorney, to provide constructive notice to all future owners of the property of the second unit use and the restrictions on subdivision that affect the property. Said instrument shall be recorded in the office of the county recorder prior to issuance of a building permit for a second unit. Said instrument shall run with the land and be coterminous in tenure with the life of the second dwelling unit.
- (c) Water and Sewer Service. Second units shall be served by city water and sanitary sewer systems.
- ~~(d) Utility Meters. Only one electric, one gas and one water meter shall be allowed on the property and shall serve both the primary dwelling and the second unit.~~
- (d)** ~~(e)~~ Garage Conversions. Garages may be converted to second units provided that:
 1. Replacement covered off-street parking which conforms to Chapter 21.22 and to the underlying zoning district regulations (e.g. setbacks) is provided for the primary dwelling;
 2. Off-street parking for the second unit is provided in accordance with this chapter; and
 3. Converted garages meet all building code requirements for a dwelling unit.
- (e)** ~~(f)~~ Guest House. A second unit may not be developed on a lot containing a guest house (separate living quarters without kitchen facilities). However, a guest house may be converted to a second unit, provided that it complies with the regulations set forth in this chapter and with the regulations for the underlying zoning district.

~~(f)~~ ~~(g)~~ Recreational Vehicles, Campers, and Travel Trailers. Recreational vehicles, campers, and travel trailers may not be used as second units.

~~(g)~~ ~~(h)~~ Non-Conforming Use. Only one second unit shall be permitted on a lot. If a lot contains two single-family dwelling units that were legally-established as a non-conforming use, as defined by Section 21.08.310, and were established prior to the effective date of the ordinance creating this chapter, a third dwelling unit, to be considered a second unit, shall not be permitted.

~~(h)~~ ~~(i)~~ Non-Conforming Primary Dwelling. If the primary dwelling is a non-conforming building as defined by Section 21.08.300, an attached second unit may be developed subject to compliance with Section 21.20.350.

~~(i)~~ ~~(j)~~ Illegal Second Unit. The establishment or continuance of a second unit contrary to the provisions of this chapter is declared to be unlawful and shall constitute a misdemeanor and a public nuisance.

SECTION 2: Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with section 36933 of the Government Code.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of the Ordinance is, for any reason, found to be invalid or unconstitutional, such finding shall not affect the remaining portions of this Ordinance.

The City Council hereby declares that it would have passed this ordinance by section, subsection, sentence, clause, or phrase irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared unconstitutional.

SECTION 4. Inconsistency. To the extent that the terms or provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance(s), motion, resolution, rule, or regulation governing the same subject matter thereof and such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.

SECTION 5. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

Introduced at a regular meeting of the City Council held on October 18, 2005, and passed and adopted by the City Council of the City of El Paso de Robles on the 1st day of November 2005 by the following roll call vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk