

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Policies for Private Water Well Use
DATE: November 6, 2007

NEEDS: That the City Council consider a Municipal Code Amendment to Title 14 outlining permit requirements for the development and use of private wells.

FACTS:

1. On May 1, 2007, the City Council adopted the Integrated Water Resources Plan which provided the framework for water resource programs and policies over the coming decades. One premise of the integrated plan was to extend services throughout the City in a fashion that reduces groundwater dependence. It called for the City to adopt policies and programs that reflected careful stewardship of the groundwater basin and watershed such that a self-sustaining water resource portfolio may be assembled.
2. The 2006 Economic Strategy calls for new development to take place in existing urbanized areas before using more agricultural or open space lands. Policies addressing water supply to agricultural and open space properties that are remote from existing City infrastructure are in order.
3. Further, Action Item No. 7 of the Conservation Element of the General Plan states "Maintaining private water well use shall be allowed only for existing agriculture uses and then only when approved by the City Council".
4. Section 14.06 of the Municipal Code regulates the construction, repair, modification and destruction of water wells. Section 14.06.132 establishes "restrictions on non-City private wells within the boundaries of the City", allowing wells to be approved for 'agricultural uses.' Section 14.06.136 addresses "permit eligibility" and provides a five-year window (from 1997) under which permits for wells could be issued to residential, commercial or industrial establishments that meet listed specifications based primarily on "no access to City water supplies because of lack of facilities in the area". With the expiration of the five-year window, the Code provision limits well permits to agricultural uses only.
5. In recent years the Council has received requests for the use of private wells for: 1) expanded residential use of existing wells located on rural properties not near existing water mains; 2) resort use of existing and new wells for irrigation of golf courses and significant landscape areas; and 3) agricultural purposes.
6. The Paso Robles Groundwater Basin Study Phase 2 final report was released in February 2005. Principal findings of that report were; a) while the basin is not in overdraft, groundwater pumping is increasing and approaching the basin yield; b) increasing agricultural water usage across the basin combined with urban area build-out is projected to result in overdraft; c) the Estrella subarea, which envelops most of the City, is experiencing groundwater storage declines; d) nitrate concentrations

are increasing in the area north of Highway 46 between the Salinas River and the Huer Huero Creek, and; e) salt levels are increasing in other areas of the basin.

7. The City is party to the Paso Robles Groundwater Basin Agreement with the San Luis Obispo County Flood Control & Water Conservation District and with private landowners throughout the Paso Robles Groundwater Basin, some of whom are members of the organization "Paso Robles Imperiled Overlying Rights" (PRIOR). The agreement outlines a procedure for declaring the basin to be in overdraft and calls for cooperation in basin management activities. The PRIOR agreement sets the stage for the City, the San Luis Obispo County Flood Control & Water Conservation District, and participating private property owners to cooperate as stewards of beneficial use of groundwaters in the North County.

ANALYSIS &

CONCLUSION: The Municipal Code does not currently provide the direction necessary to make prudent decisions with regard to well requests, particularly cases involving residential properties in rural areas and resort properties with significant demands for water related to the development of golf courses and other outdoor amenities. Nor does the Code reflect the City's role in water resource stewardship in the North County or its acknowledgment of PRIOR's expressed concerns. Well requests continue to be considered by the Council on a case by case basis.

In order to fully implement the Integrated Water Resource Plan, protect the groundwater basin and meet the City's commitments in the PRIOR agreement, clear policies need to be in place to regulate the development of wells in all cases, including wells for agricultural purposes. The following outlines the issues involved in the cases of residential, resort and agricultural uses.

Residential use

Existing parcels in the agricultural and residential zoning categories are entitled to have one (1) dwelling unit per parcel. This may be referred to as the "Primary Dwelling Unit". The Zoning Code allows second dwelling units "by right" (without a discretionary approval process) in the R-1 and R-A Zones. The purpose and intent is both to promote affordable housing (consistent with State requirements), to provide farm housing, and to allow reasonable use of private property.

Since 2001, the Council has received four requests for the use of an existing private well to serve secondary residences as depicted on **Exhibit A**. Each of these properties installed their well when they were located in County jurisdiction prior to annexation into the City. In the cases of Butterfield (9-01), Canaday (7-04) and Root (8-06), the Council authorized continued use of the wells due to the extensive distance between the subject properties and the existing City water system.

In the case of Wilson (6-04), the Council denied continued use of an existing well because the property had direct access to a City water main in Airport Road. In addition, the applicant was unable to demonstrate any evidence of agricultural use. Finally it was determined that the Wilson property contained other dwellings evidencing domestic use in excess of the allowed number of residences.

Properties without access to City potable water are few. A very limited number of those properties are vacant without wells or have existing residences. These properties are

proposed to be exempted from the prohibition that new residential entitlements must hook up to City water consistent with past Council actions above. This exemption proposes a minimum distance from property line to the availability of City water (potable or recycled) or demonstrated agricultural use of the property and a minimum distance between the proposed residences to the availability of City water.

Resort use

Since 1998, the Council has received at least four requests for use of wells associated with the development of destination resorts and golf courses as depicted in **Exhibit B**.

In December 1998, the Council denied the use of a well for the irrigation of landscaping associated with the development of the Wine Country RV Park located at the northeast corner of Highway 46 and Airport Road. City water was available to the property from a relatively short water line extension in Airport Road.

In May 2003, the Council considered the request of Oak Knoll Ranch, LLC (Dick Willhoit, representative) to allow continued use of a private well, located on property that had been dedicated to the City, for the purposes of irrigating a golf course. The Council approved the request with the stipulation that the golf course hook up to reclaimed water when made available by the City.

In March 2004, the Council approved a similar request of the Black Ranch Resort to irrigate their golf courses with private well water with the same stipulation regarding hook up to reclaimed water when available.

In May 2004, the Council approved the request of the Vina Robles Resort to irrigate a small vineyard associated with a wine-tasting hospitality center. The Council denied the Resort's request to irrigate landscaping associated with their proposed hotel.

Again, consistent with past Council action, an exemption is proposed to allow for use of private wells to support recreational land uses (such as golf courses or athletic fields). The use of wells to serve recreational land uses will however be conditional upon the owner agreeing to use recycled water when that becomes available.

Agricultural Use

In early 2007, the Council considered a request for a private well from Tom Erskine pertaining to a property on Airport Road. The Council approved that request, noting that the property was zoned Agriculture, the house was accessory to the property's agricultural land use, and the proposed house was located a considerable distance from the existing potable water main.

Agricultural land within the City amounts to approximately 460 acres and it is the intent of the General Plan to accommodate agricultural land uses. The proposed Code amendment allows the use of private agricultural wells only when necessary to accommodate that land use, and when there is no feasible access to City water (1000 feet or greater), or the use of City water for the agricultural purpose would be inconsistent with other City policies such as water conservation goals, water recycling policies, or water quality concerns.

Abandonment of Wells

In cases where wells exist and connection to City water is required, there is an option to maintain a well as “inactive” as opposed to permanently eliminating the well. The State Health and Safety Code contains California Well Standards which define an “inactive well” as one not used for one year. Requirements for maintenance of an inactive well include insuring that the well does not impair groundwater quality, providing a welded cap on the well, clearly marking the above-ground portions as a well, keeping it clear of brush and debris, and maintaining access for City inspection.

Cases where inactive wells may be appropriately allowed may be Agricultural and Open Space zoning where tangible future agricultural uses are demonstrated.

Policy Considerations Associated With All Wells

a) Restrict use of wells

It would seem reasonable to clarify and reinforce the requirement that all projects involving a discretionary land use decision (e.g. subdivision, use permit, Planned Development, etc.) which characteristically involve an intensification of land use and significant capital investment, be required to connect to City water (potable and/or reclaimed water) for all uses that require potable water, or for which reclaimed water is appropriate. To permit these added land uses without connection to City water would result in “leapfrog development” (development of isolated parcels separated some distance away from existing City infrastructure); would divert resources from City-wide infrastructure planning and would compromise groundwater stewardship commitments.

Restricting well use in the City is supported by the following:

- Shared stewardship by the City, County, landowners and other involved parties of the Paso Robles Groundwater Basin resources.
- A commitment to prudent City-wide use of water and water conservation.
- Stated goals and objectives of City integrated water and wastewater plans to provide a long-term, reliable, and high quality water supply for the City.
- Support for the Water Master Plan; the water master plan is dependent upon completion of each individual link in the system. Unless each property is required to install or pay for its share of the system, the financial feasibility of completing the system is questionable.
- Benefits of minimizing potential conflicts with well users in the County.
- Need for cross-connection control and minimization of the threat that private wells might degrade the quality of groundwater
- The difficulty of policing the proper abandonment of wells.

b) Allow the use of wells subject to permit conditions

The City may consider the use of wells under certain circumstances subject to permits issued by the Public Works Director. New wells may be allowed where the following situations apply:

- Agricultural production
- Irrigation of resort or recreational uses
- Hardship due to distance between the structure and the City's water supply.
- Conservation of the City's supply of water for domestic use and creation of a customer base for City recycled water.
- Enhancement of the Council's goal as stated in the 2006 Economic Strategy to "expand and diversify hotel products, including end destination full-service resorts".
- Other extraordinary circumstances as defined by the Director of Public Works

If private well use is considered to be beneficial to the City under certain circumstances, regulations consistently covered by permit agreements may include:

- Use of private well water would be restricted to the subject property
- No threat to public health and safety shall be posed. Failure to adhere to this term may result in revocation of the City occupancy permit(s).
- Owner to provide accurate coordinates for wells
- City maintains right to inspect private wells
- Owner to bear cost of well operations, maintenance, and permit compliance
- City shall have the right to place a meter on the well and the Owner shall enroll in the County's groundwater monitoring program
- Owner to waive all claims against the City for well interference or perceived water quality impacts
- Private wells to be constructed, operated, and ultimately abandoned by the Owner according to applicable local, County, State, and Federal regulations.
- Private wells to be equipped with an approved, regularly inspected backflow prevention assembly and an air gap shall be maintained between the private well system and the City water system
- Private wells may be rendered inactive only in accordance with applicable codes

POLICY

REFERENCE: City Municipal Code Sections 14.06.132, 14.06.136 and 14.06138

FISCAL

IMPACT: None

- OPTIONS:**
- a.** Introduce for first reading Ordinance No. XXX N.S., Municipal Code Amendments outlining the terms for approval of the use of private wells, and set Tuesday, November 20, 2007 for adoption of said Ordinance; or
 - b.** Amend, modify or reject the above option.

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ATTACHMENTS: (3)

- 1) Exhibit A: Locations of Requests for Use of Existing Wells for Residential Uses
- 2) Exhibit B: Locations of Requests for Use of Wells for Resorts and Golf Courses
- 3) Amended Ordinance



Buena Vista Dr.

Butterfield

025-434-007

PASO ROBLES
AIRPORT

Airport Rd.

Dry Creek Rd.

Stratus Ln.

025-436-005
Canaday

025-436-006
Root

Wilson

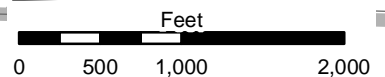
025-436-018

025-435-009

Erskine

Highway 46

EXHIBIT A
Locations of Requests for Use of
Existing Private Wells
for Residential Uses



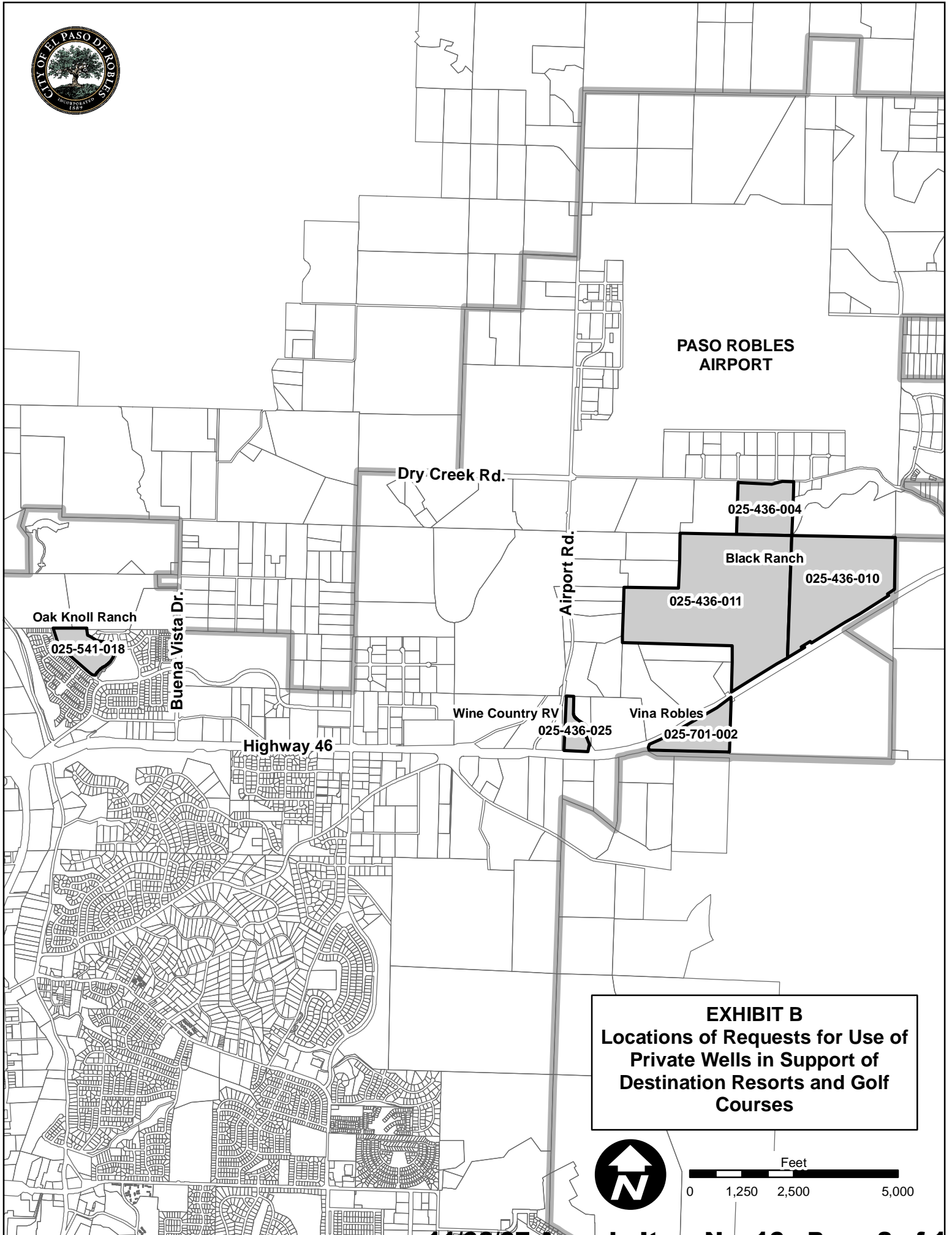
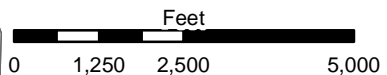


EXHIBIT B
Locations of Requests for Use of
Private Wells in Support of
Destination Resorts and Golf
Courses



AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES AMENDING SECTIONS 14.06.132, 14.06.136 AND 14.06.138 OF CHAPTER 14.06 OF TITLE 14 OF THE MUNICIPAL CODE OF THE CITY OF EL PASO DE ROBLES, CALIFORNIA, RELATING TO PRIVATE WELLS WITHIN THE CITY

The City Council of the City of El Paso de Robles does ordain as follows:

Section 1. The definition of "noncity well" in Section A. of Section 14.06.020 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby deleted and the following paragraph shall be inserted in its place to read as follows:

14.06.020 Definitions and interpretation.

.....

10. "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 users and that is located on property within the boundaries of the city. As used in this Chapter 14.06, the term "noncity well" shall mean "private well."

Section 2. Subsection C. of Section 14.06.049 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby amended to read as follows:

14.06.049 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, 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 14.060.052.

Section 3. Section 14.06.070 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby deleted in its entirety.

Section 4. Section 14.06.104 of Section 14.06.049 of Title 14 of the Municipal Code of the City of El Paso de Robles, California, is hereby amended to read as follows:

14.06.104 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 shall be made available to governmental agencies for use in making studies, or to any person who obtains a written authorization from the owner of the well. However, a report associated with a well located within two miles of an area affected or potentially affected by a known unauthorized release of a contaminant shall be made available to any person performing an environmental cleanup study associated with the unauthorized release, if the study is conducted under the order of a regulatory agency. A report released to a person conducting an environmental cleanup study shall not be used for any purpose other than for the purpose of conducting the study.

Section 5. Section 14.06.132 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:

14.06.132 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 potable 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 the following principles:

- The stewardship by the City, County, landowners and other involved parties of the Paso Robles Groundwater Basin resources should be shared.
- The City is committed to prudent City-wide use of water and water conservation.
- The City's desire to implement its stated goals and objectives of City integrated water and wastewater plans and urban water management plan to provide a long-term, reliable, and high quality water supply for the City.
- The City's desire to allow for the possible future development of a City recycled water system to offset the potable water demand, consistent with statewide water recycling goals and the City's integrated water resources management plan.
- The policy should support the Water Master Plan, the success of which is dependent upon completion of each individual link in the system identified in that Plan. Unless each property is required to install or pay for its share of the system, the financial feasibility of completing the system is questionable.
- The desire to minimize potential conflicts with well users in the unincorporated areas.
- The need to control cross-connections and minimize the possibility that private well usage might degrade groundwater quality.
- Policing the proper abandonment of wells is difficult.

Nevertheless, it is recognized that some private wells already exist and it may be appropriate to allow construction of new 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.

Therefore, in recognition of these circumstances the Public Works Director may grant permission to construct, repair/reactivate and/or modify 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 relevant rules, regulations, and requirements of federal, state or local agencies.

Section 6. 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 Public Works Director may grant a permit for a 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 the property boundary is either located farther than 200 feet from a City potable water source or the demonstrated primary use of the property is agricultural and the proposed residence is located more than 1,000 feet from a City potable or recycled water source.

Agricultural Uses in Agricultural Zones

For non-potable water that would be used to support agricultural uses on agriculturally-zoned properties within the City limits and where the property boundary is located more than 1,000 feet from a City recycled water source.

Water Used for Non-Potable Purposes Related to Resort and Recreational Land Uses

For non-potable water that would be used to support a recreational land use (golf course, athletic field, related non-potable purposes) in an Parks and Open Space or Agricultural Zone and where the property boundary is located more than 1,000 feet from a City recycled 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 14.06.11136 and that meets one of the conditions described above in this Section 14.06.136.

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

Section 7. Section 14.06.138 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:

14.06.138 Private Well Approval Conditions

Permits for private wells shall be subject to an agreement signed by the property owner ("Owner") and the Public Works Director on behalf of the City. The private well agreement shall include, but are not limited to, the following conditions, as applicable:

- The private well shall provide water only to the property identified in the agreement, and strictly for the purposes and in the volume stated in the agreement. Water from the private wells shall not be used for any other purpose or on any other property.
- The private well shall be operated and maintained so as to preclude any threat to the public health and safety.
- Owner shall provide 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.
- City shall have the right to inspect the wellhead and appurtenances with reasonable advance notice to the property owner, at the Owner's expense. The Owner of the private well shall grant to the City the authority to enter the property for periodic inspection to ensure proper operation and maintenance of the well.
- All costs of maintenance and repair of the private well shall be at the Owner's expense.
- City shall have the right to place a meter on the well to monitor its production volume. The Owner shall enroll in the San Luis Obispo County Flood Control and Water Conservation District's groundwater monitoring program and report actual pumping to the District as may be requested from time-to-time.
- 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.
- Any private well and appurtenances 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.
- The private well and related facilities shall be operated and maintained in a safe and sanitary manner at all times, at no expense to the City.
- 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.
- If in the opinion of the Public Works Director, 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 certificate of occupancy for those utilizing the private well. The City may revoke the certificate of occupancy

pursuant to 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.

- 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.
- 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.
- For existing private wells on property that is annexed to the City, Owner shall provide City with all applicable information required by this Chapter 14.06 regarding such existing well.

If the Public Works Director 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, 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.

The private well agreement shall terminate if:

- Owner fails to comply with the terms of the agreement, or
- The parties mutually consent, or
- The City determines that the private well is interfering with City's ability to deliver potable or recycled water to City residents, is jeopardizing the quality of City water, or is otherwise posing a threat to public health or safety, or
- 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.

At the discretion of the Public Works Director, the private well permit agreement may include additional conditions as follows:

- Owner shall submit to the Public Works Director 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 the City or not.
- Owner's agreement to not oppose formation of an assessment district for the purposes of constructing water mains to provide City water service to Owner's property.
- The parties shall terminate the permit 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 Public Works Director or when a City water source becomes available within the distances set forth under "Domestic Uses in Agricultural Zones" in Section 14.06.136 – Permit Eligibility." 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 8. 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 be declared invalid.

Section 9. 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 10. This ordinance shall be in full force and effect thirty-one (31) days after its adoption.

INTRODUCED at a regular meeting of the City Council held on _____, 2007, and PASSED AND ADOPTED by the City Council of the El Paso de Robles on this _____ day of _____, 2007, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank Mecham, Mayor

ATTEST:

Deborah D. Robinson, Deputy City Clerk