

TO: Planning Commission

FROM: Ed Gallagher, Community Development Director

SUBJECT: Code Amendment 14-006: Fortunetelling & Building Height Limits

DATE: September 23, 2014

Needs: For the Planning Commission to consider recommending that the City Council adopt two amendments to the Zoning Code.

- Facts:
1. The Zoning Code is proposed to be amended to address the following issues:
    - a. Amend Table 21.16.200 to allow for fortunetelling, psychics, and related services in commercial and office professional zones, subject to the approval of a Conditional Use Permit, and not in areas of the City identified as Gateway locations;
    - b. Amend Section 21.16A.020 to replace the existing language that requires the City Council to approve height exceptions in conjunction with a Planned Development (PD), to allow exceptions be approved by the Planning Commission.
    - c. Amend Section 21.20.130 to include language that would allow for non-habitable architectural roof and tower features of buildings to exceed height limits specified in each zoning district, subject to approval of a site plan by the Development Review Committee.
  2. On August 19, 2014, the City Council was asked whether they would be interested in considering making a determination that fortune tellers are similar to other office uses such as counseling, and/or personal services such as barber shops and beauty salons, and permit them in the same zoning districts as those uses.
  3. The Council directed staff to prepare an ordinance amending the Zoning Code allowing for fortunetelling, psychics and related services, subject to a Conditional Use Permit (CUP) in certain commercial and mixed use zones.
  4. Also proposed are amendments related to building height limits as follows:
    - a. amend Section 21.16.A.020 to replace subsections “a” and “b” (see original code section Attachment 1), replace as follows:

“In combination with any base zone, the planned development district overlay shall require approval of a development plan application by the Planning Commission for applications seeking approval of different development standards as provided for in 21.16A.030 (Density and use limitations).”
    - b. amend Section 21.20.130 (see original language, Attachment 2) to include language that would allow for architectural roof and tower features of buildings to exceed height limits specified in each zoning district, subject to approval of a site plan by the Development Review Committee;

5. The Development Review Committee considered the proposed amendments on September 15, 2014 and supported consideration of the amendments by the Planning Commission.
6. The proposed amendments to the Zoning Ordinance collectively would not have a significant effect on the environment and, therefore, are exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3) of the State's Guidelines to Implement CEQA).

## **Analysis and**

### **Conclusion:**

Each topic is analyzed individually (below) and is provided with a suggested approach on how to address the issue and amend the code.

#### **1. Regulations for Fortunetelling, Psychics and Related Services**

As mentioned above, the City Council reviewed this matter and was open to allowing fortunetelling businesses in certain commercial and mixed use zones, where they would not be located in areas of the City that are considered gateways, as outlined in the City's Gateway Plan. Additionally, there was concern that fortunetelling businesses could be proposed in areas where they may not be compatible with existing surrounding uses, therefore, the City Council suggested that a Conditional Use Permit be required so that each site could be evaluated on a case-by-case basis for compatibility. The CUP would also look at proposed signage to determine that signage would be appropriate.

This code amendment is specific to properties in city limits that are not located within the Uptown Town Centre Specific Plan. A separate amendment is being processed for the specific plan area.

Exhibit A to the draft Ordinance attached to this staff report proposes to amend Table 21.16.200 of the Zoning Code to add a line for fortune telling, psychics, and related services in the C1, C2, C3, and, OP zoning districts subject to the approval of a CUP and not within properties located at City gateways.

#### **2. Building Height Limits**

In the past couple of years, the City has approved exceptions for architectural roof and tower features that do not enclose habitable space. Exceptions were granted for the Ayres Hotel, Marriott Hotel, Oxford Inn, and Pine Street Promenade projects using authority in the regulations for the PD Overlay Zone and the UTCSP to approve "modifications" to zoning standards.

Assuming that the City wishes to allow such flexibility in future development applications, it would be preferable to amend the code to allow the Planning Commission to approve exceptions to building heights for buildings that are subject to a Development Plan (PD) rather than the City Council in Section 21.16A.020, and for the DRC too approve "architectural roof and tower features that do not enclose habitable space" for buildings subject to a Site Plan review in Section 21.20.130.

**Reference:** Zoning Ordinance Sections 21.16.200 and 21.20.080

**Fiscal  
Impact:** None.

**Options:** After opening the public hearing and taking public testimony, the Planning Commission is requested to recommend that the City Council take one of the actions listed below:

- a. Introduce Ordinance No. 14-XXX for first reading at its meeting on October 7, 2014 or
- b. Amend, modify, or reject the foregoing option.

**Attachments:**

1. Section 21.16A.020 & 030
2. Section 21.20.130
3. Draft Ordinance
4. Public Hearing Notice

**21.20.130 Exceptions to building height limits.**

Chimneys, silos, cupolas, flagpoles, monuments, gas storage holders, radio and other towers, water tanks, church steeples and similar structures and mechanical appurtenances may be permitted in excess of height limits specified for each zoning district, subject to approval of a site plan by the development review committee, except as provided in Section 21.20.080 (public utility distribution and transmission lines).

*(Ord. 665 N.S. § 25, 1993; Ord. 405 N.S. § 2 (part), 1977)*

**Attachment 1**

Section 21.16A.020 & 030  
(Code Amend. 14-006)

**21.16A.020 Permit requirements.**

In combination with any base zone, the planned development district overlay shall require approval of a development plan application by:

- a. The planning commission for applications seeking approval of different development standards as provided for in Subsections (1), (2), (3), (5), (6), (7), (8), (9), (10), (11), (12), and (13) of Section 21.16A.030 (Density and use limitations); and
- b. The city council for applications seeking approval of modified building heights as provided for in Subsection (4) of Section 21.16A.030 (Density and use limitations).

*(Ord. 851 N.S. § 1 Exh. A § 3, 2003; Ord. 635 N.S. Exh. A (part), 1992; Ord. 621 N.S. § 1 Exh. A (part), 1992)*

**21.16A.030 Density and use limitations.**

The planning commission may allow different development standards to be applied within the planned development district than are required for any zoning district as follows:

- (1) Can be used to provide flexibility in minimum lot sizes, widths and depths, which are specified by the base zone district; for example: to cluster lots to preserve natural resources;
- (2) Can be used to modify setback requirements; for example: to permit zero lot line development design;
- (3) Can be used to modify the descriptive nonnumerical grading standards of the R-1 district regulations for properties located within the R-1 and Hillside development districts, if it can be demonstrated that such modifications will still preserve the integrity of the existing topography and basic land form of the site. It must also be demonstrated that such modifications will meet the intent of preservation of natural resources and/or conserve/provide for open space;
- (4) Can be used to modify zoning code building heights, but not to override building code requirements;
- (5) Can be used to limit the types and intensities of land uses within any base zone;
- (6) Can be used to discourage/prevent premature subdivision of commercial and industrial land before a master development plan has been approved;
- (7) Can be used as a conceptual review/approval process for projects which are filed in conjunction with subdivision applications;
- (8) Cannot be used to increase the permissible overall project site density or intensity of development for a project site for any base zone district;
- (9) Cannot be used to modify the numerical grading limitation standards of the R-1 district regulations for properties located within the R-1 and Hillside development districts, i.e., cannot modify maximum developable slopes, maximum vertical heights of graded slopes, maximum vertical heights of retaining walls or stem walls;
- (10) Cannot be used to create lots of less than the minimum size, width and depth required for lots within the R-1 and Hillside development districts in cases where the finished graded slopes of a lot are fifteen percent or greater in slope (exclusive of 2:1 or lesser slopes approved for pads, benches, driveways, and usable yard areas);
- (11) Cannot be used to modify safety requirements for public improvements such as engineered street and driveway design or street widths;

**Attachment 2**  
Section 21.20.130  
(Code Amend. 14-006)

- (12) Can be used to provide flexibility to modify other public improvements, such as the width and location of parkways and sidewalks when such modifications do not adversely affect public safety;
- (13) Cannot be used to modify the standards of the sign ordinance.

*(Ord. 700 N.S. § 1, 1995; Ord. 621 N.S. § 1 Exh. A (part), 1992)*

ORDINANCE NO. XXX N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES  
AMENDING THE ZONING CODE  
(CODE AMENDMENT 14-006 - CITY INITIATED)

---

WHEREAS, at its meeting of August 19, 2014, the City Council directed staff to prepare an ordinance to regulate fortunetelling and related services (e.g., card reading, palmistry, psychics, etc.) to provide that such uses be subject to approval of a conditional use permit in office and commercial zones except for gateway areas; and

WHEREAS, there exists conflicts between Sections 21.16A.020 and 21.20.130 of the City's Zoning Code pertaining to process for considering and approving exceptions to building height limits, which are proposed to be resolved via a code amendment to revise both sections; and

WHEREAS, at a meeting held on September 23, 2014, 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 project;
- b. Held a public hearing to obtain public testimony on the proposed ordinance;
- c. Recommended that the City Council approve the proposed ordinance; and

WHEREAS, based on information received at its meeting on October 7, 2014 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 project;
- b. Held a public hearing to obtain public testimony on the proposed ordinance;
- c. Considered the Planning Commission's recommendations from its September 23, 2014 public meeting to approve the proposed ordinance;
- d. Introduced said ordinance for the first reading; and

WHEREAS, on October 21, 2014 the City Council held a second reading of said ordinance,

NOW, THEREFORE, the City Council of the City of El Paso de Robles does hereby ordain as follows:

SECTION 1: Table 21.16.200, Permitted Land Uses for All Zoning Districts, is amended as shown in **Exhibit A.**

SECTION 2: Section 21.16A.020, Permit Requirements, to replace subsections “a” and “b” as shown in “proposed” with text underlined:

Existing:

In combination with any base zone, the planned development district overlay shall require approval of a development plan application by:

- a. The planning commission for applications seeking approval of different development standards as provided for in Subsections (1), (2), (3), (5), (6), (7), (8), (9), (10), (11), (12), and (13) of Section 21.16A.030 (Density and use limitations); and
- b. The city council for applications seeking approval of modified building heights as provided for in Subsection (4) of Section 21.16A.030 (Density and use limitations).

Proposed:

**In combination with any base zone, the planned development district overlay shall require approval of a development plan application by the Planning Commission for applications seeking approval of different development standards as provided for in Section 21.16A.030 (Density and use limitations).**

SECTION 3: Section 21.16A.020, Permit Requirements, to add additional language as shown in underlined as follows:

Chimneys, silos, cupolas **and/or architectural roof or tower features, but not full stories,** flagpoles, monuments, gas storage holders, radio and other towers, water tanks, church steeples and similar structures and mechanical appurtenances may be permitted in excess to height limits specified in each zoning district, subject to approval of a site plan by the development review committee, except as provided in Section 21.20.080 (public utility distribution and transmission lines).

SECTION 5. 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 6. 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 7. 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, such inconsistent and conflicting provisions of prior ordinances, motions, resolutions, rules, and regulations are hereby repealed.



Introduced at a regular meeting of the City Council held on October 7, 2014, and passed and adopted by the City Council of the City of El Paso de Robles on the 21<sup>st</sup> day of October, 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Duane Picanco, Mayor

ATTEST:

---

Caryn Jackson, Deputy City Clerk

**ZONING DISTRICT**

LAND USE	AG	RA	R1	R2	R3	R30	R4	R5	OP	CP	C1	C2	C3	RC	M	PM	AP	POS
* Subject to a limitation that the floor area shall not exceed 10 percent of the total floor area of a commercial center.																		
9. Real estate sales offices (within approved development projects)	N	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	N
10. Personal services:																		
a. Barber/beauty shops, nails & tanning salons, massage	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	N	P	N
<b>b. Fortunetelling and related services (card reading, psychics, palmistry, etc.)</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>C*</b>	<b>C*</b>	<b>C*</b>	<b>C*</b>	<b>C*</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>	<b>N</b>
* Not permitted in gateway areas identified in the Gateway Plan.																		
c. Laundries, non-plant	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	N	P	N
d. Laundromats	N	N	N	N	N	N	N	N	N	P	P	P	P	N	N	N	N	N
e. Locksmiths	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	N	P	N
f. Mortuaries (* if located within 300 feet of existing cemetery)	N	N	N	C*	C*	C*	C*	C*	N	N	C	C	C	C	C	N	C	N
g. Parcel services	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	P	P	N
h. Tailor/dressmakers, alterations, shoe repair	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	N	P	N
11. Printing, publishing, blueprinting, duplicating	N	N	N	N	N	N	N	N	N	N	P	P	P	P	P	P	P	N
12. Recycling																		
a. Collection centers for aluminum glass, paper, plastic, etc. (does not include collection of hazardous/toxic items)	N	N	N	N	N	N	N	N	N	N	N	N	C	N	C	N	C	N
b. Composting, green waste	C	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
13. Small motor repair (electrical motor rewinding lawnmower repair, etc.)	N	N	N	N	N	N	N	N	N	N	N	P	P	N	P	N	P	N

As amended through Ordinance 988 N.S. adopted February 5, 2013; effective March 8, 2013

PROOF OF PUBLICATION

LEGAL NEWSPAPER NOTICES

PLANNING COMMISSION  
PROJECT NOTICING

Newspaper: The Tribune

Date of Publication: 09/12/2014

Meeting Date: 09/23/2014  
Planning Commission

Project: Zoning Code Amendment 14-006

I, Kristen L. Buxkemper, employee of the Community Development Department, Engineering 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: Kristen L. Buxkemper  
Kristen L. Buxkemper

**CITY OF EL PASO DE ROBLES**

**NOTICE OF PUBLIC HEARING**  
**ZONING CODE AMENDMENT 14-006**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of El Paso de Robles will hold a Public Hearing on Tuesday, September 23, 2014, at 7:30 p.m. at the City of El Paso de Robles, 1000 Spring Street, Paso Robles, California, in the City Council Chambers, to consider recommending that the City Council adopt an ordinance to amend the Zoning Code to address the following issues:

- a. Amend Table 21.16.200 to allow for fortunetellers, psychics, and related services in commercial and office professional zones, subject to the approval of a Conditional Use Permit, and not in areas of the City identified as Gateway locations;
- b. Amend Section 21.20.130 to include language that would allow for architectural roof and tower features of buildings to exceed height limits specified in each zoning district, subject to approval of a site plan by the Development Review Committee.

The proposed Code Amendment may be reviewed at the Community Development Department, 1000 Spring Street, Paso Robles, California. Copies may be purchased for the cost of reproduction. The staff report for this code amendment may be viewed online beginning September 19, 2014 at the following link: <http://www.prcity.com/government/plancommission/agendas.asp>.

Written comments on the proposed Ordinance may be mailed to the Community Development Department, 1000 Spring Street, Paso Robles, CA 93446 or emailed to the City provided that the comments are received prior to the time of the public hearing. Oral comments may be made at the hearing. Should you have any questions regarding this project, please contact Darren Nash at (805) 237-3970 or [darren@prcity.com](mailto:darren@prcity.com).

If you challenge this project 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 at or prior to the public hearing.

Darren Nash, Associate Planner  
September 12, 2014 1273294