

---

# ARTICLE 1: GENERAL PROVISIONS

---

## **1.1. TITLE AND EFFECTIVE DATE**

This chapter of the Pagosa Springs Municipal Code shall be officially known as the “Land Use and Development Code,” and is referred to throughout this document as “this Land Use Code.” This Land Use Code shall become effective on February 3, 2009.

## **1.2. AUTHORITY**

This Land Use Code is adopted pursuant to the powers granted by the Town’s Charter. The Town Council hereby expresses that neither this Land Use Code, nor any amendment to it, nor any decision under it, may be challenged on the basis of any alleged nonconformity with any other planning document, including the Pagosa Springs Comprehensive Plan dated May 1, 2006.

## **1.3. PURPOSE OF THIS LAND USE CODE**

This Land Use Code is adopted to protect the public health, safety, and welfare and to implement the Pagosa Springs Comprehensive Plan and other adopted plans.

## **1.4. APPLICABILITY AND JURISDICTION**

### **1.4.1. GENERAL APPLICABILITY**

The provisions of this Land Use Code shall apply to all land, buildings, structures, and uses thereof located within the Town of Pagosa Springs, unless an exemption is provided by the terms of this Land Use Code. The provisions of this Land Use Code are the minimum requirements adopted for the promotion of the public health, safety, and welfare.

### **1.4.2. COMPLIANCE REQUIRED**

- A. No building or structure shall be erected, converted, enlarged, reconstructed, or altered for use, nor shall any land, building, or structure be used or changed, except in accordance with all of the applicable regulations established by this Land Use Code.
- B. No lot of record that did not exist on the effective date of this Land Use Code shall be created, by subdivision or otherwise, that does not conform to the applicable requirements of this Land Use Code.
- C. No permit or approval may be issued under this Land Use Code unless all structures and uses of land and structures to be authorized by the permit or approval conform to this Land Use Code, regulations promulgated under this Land Use Code, and the terms and conditions of other applicable permits and approvals issued under this Land Use Code. A permit or approval issued in violation of this Land Use Code is void.

### **1.4.3. APPLICATION TO GOVERNMENTAL AGENCIES**

To the extent allowed by law, the provisions of this Land Use Code shall apply to all land, buildings, structures, and uses owned by government agencies. Where the provisions of this Land Use Code do not legally control such land, buildings, structures, and uses owned by government agencies, such agencies are encouraged to meet the provisions of this Land Use Code.

# ARTICLE 1: GENERAL PROVISIONS

## SECTION 1.5 CONFLICTING PROVISIONS

---

### **1.5. CONFLICTING PROVISIONS**

#### **1.5.1. CONFLICT WITH OTHER PUBLIC LAWS, ORDINANCES, REGULATIONS, OR PERMITS**

This Land Use Code is intended to complement other local, state, and federal regulations that affect land use. This Land Use Code is not intended to revoke or repeal any other public law, ordinance, regulation, or permit. However, where conditions, standards, or requirements imposed by any provision of this Land Use Code are either more restrictive or less restrictive than comparable standards imposed by any other public law, ordinance, or regulation, the provisions that are more restrictive or that impose higher standards or requirements, as determined by the Director, shall govern.

#### **1.5.2. CONFLICT WITH PRIVATE AGREEMENTS**

This Land Use Code is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this Land Use Code are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this Land Use Code shall govern. Nothing in this Land Use Code shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this Land Use Code. In no case shall the Town be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

### **1.6. ENFORCEMENT**

#### **1.6.1. PURPOSE**

This Section establishes procedures through which the Town seeks to ensure compliance with the provisions of this Land Use Code and obtain corrections for violations of this Land Use Code. This Section also sets forth the remedies and penalties that apply to violations of this Land Use Code.

#### **1.6.2. VIOLATIONS**

Each of the following activities shall constitute a violation of this Land Use Code:

##### **A. Activity Inconsistent with Code**

Any erection, construction, reconstruction, remodeling, excavation, alteration, maintenance, expansion, movement, or use of any building, structure, or sign, or development or subdivision of any land, in contravention of any provision of this Land Use Code or any regulation promulgated under this Land Use Code.

##### **B. Activity Inconsistent with Permit or Approval**

Any development, use, construction, remodeling, or other activity in any way inconsistent with the terms or conditions of any permit or approval required to engage in such activity, whether issued under or required by this Land Use Code.

Each day that a violation occurs or remains uncorrected shall constitute a separate and distinct violation of this Land Use Code. Each day that any violation continues after a final written notice or order for compliance is issued by the Director shall be considered a separate offense for purposes of the penalties and remedies specified in this Section.

# ARTICLE 1: GENERAL PROVISIONS

## SECTION 1.6 ENFORCEMENT

---

### 1.6.3. ENFORCEMENT ACTIONS

#### A. Responsibility for Enforcement

This Land Use Code shall be administered and enforced by the Director or such other person as may be designated by the Director.

#### B. Investigation

Whenever the Director receives a written, signed complaint alleging a violation of this Land Use Code or a permit or approval issued under this Land Use Code, the Director shall investigate the complaint and inform the complainant in writing of his or her findings and any actions that have been, or will be taken.

#### C. Persons Liable

The owner, tenant, or occupant of any building or land, or any part thereof, and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Land Use Code or a permit or approval issued pursuant to this Land Use Code, may be held responsible for the violation and be subject to the penalties and remedies provided in this Section.

#### D. Procedures Upon Discovery of Violations

1. If the Director finds that any provision of this Land Use Code is being violated, the Director shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Director's discretion.
2. If the person responsible for the violation does not take action to correct the violation within 30 days of the first notice, a final written notice shall be sent by certified mail with return receipt required to the owner of record of the subject property, or to the homeowners association, as applicable. The final written notice shall state the action the Director intends to take if the violation is not corrected and shall advise that the Director's decision or order may be appealed to the Town Council, pursuant to Section 2.4.13, *Appeals*.
3. Following an appeal to the Town Council or failure to file a timely appeal of a decision, or notwithstanding the foregoing, when a delay would seriously threaten the effective enforcement of the Code, or pose a danger to the public health, safety, and welfare, the Director may immediately issue an order for compliance by personal service, posting of the property, or certified mail with return receipt required to the owner of record of the subject property, or to the homeowners association, as applicable, and seek enforcement through the municipal court as authorized below.

#### E. Continuation of Prior Enforcement Actions

Nothing in this Land Use Code shall prohibit the continuation of previous enforcement actions undertaken by the Town pursuant to previous regulations.

# ARTICLE 1: GENERAL PROVISIONS

## SECTION 1.6 ENFORCEMENT

---

### 1.6.4. PENALTIES AND REMEDIES

The Director shall have the following remedies and powers to enforce this Land Use Code:

**A. Fines**

Violation of this Land Use Code shall be subject to a civil monetary penalty as set forth in Chapter 1, Article 3 of the P.S.M.C.

**B. Deny/Withhold Entitlements**

The Director may deny or withhold all entitlements, including building permits, certificates of occupancy, business licenses, or other forms of authorization to use or develop any land, structure, or improvements, until an alleged violation, associated civil penalty, and/or lien resulting from a previous final order related to such property, use, or development is corrected. This provision shall apply whether or not the current owner or applicant for the permit or other approval is responsible for the violation.

**C. Revoke Entitlements**

Any entitlement or other form of authorization required under this Land Use Code may be revoked, after notice and a hearing by the Town Council within one month of a request by the Director, when the Director determines that:

1. There is a departure from the approved plans, specifications, limitations, or conditions as required under the entitlement;
2. The entitlement was procured by false representation;
3. The entitlement was issued in error; or
4. There is a violation of any provision of this Land Use Code.

No work or construction shall proceed after service of the notice of revocation hearing, except to correct the alleged violation. Upon determination of a violation and issuance of a revocation order by the Town Council, no work or construction shall proceed except to comply with the revocation order. Once conditions for resumption of work have been met, the Director shall rescind the notice of revocation hearing or revocation order.

**D. No Acceptance of Public Improvements**

No acceptance or extension of public improvements shall be authorized until stated violations are in compliance and/or all fines for violations of this Land Use Code have been paid to the Town.

**E. Stop-Work Orders**

1. Whenever any building, structure, site, or part thereof is being demolished, constructed, excavated, reconstructed, altered, or repaired in a hazardous manner, in substantial violation of any state or local building code, or in a manner that endangers life or property, the Director has the authority to issue a stop-work order for the work that is in violation or presents the hazard.
2. With or without revoking permits, the Director may issue an order to stop work on any property on which there is an uncorrected violation of either a provision of this Land Use Code, a provision of an entitlement, or other form

# ARTICLE 1: GENERAL PROVISIONS

## SECTION 1.6 ENFORCEMENT

---

of authorization issued under this Land Use Code that endangers life or property.

3. The stop-work order shall be in writing directed to the person doing the work, and shall specify the provisions of this Land Use Code or other law allegedly in violation. After any such order has been served, no work shall proceed on any building, other structure, or tract of land covered by such order, except to correct such violation or comply with the order.
4. Once conditions for resumption of the work have been met, the Director shall rescind the stop-work order.

### F. **Injunctive Relief**

The Director may seek injunctive relief or other appropriate relief in any court of competent jurisdiction against any person who fails to comply with any provision of this Land Use Code or any requirement or condition imposed pursuant to this Land Use Code. In any court proceedings in which the Town seeks a preliminary injunction, it shall be presumed that a violation of this Land Use Code is a real, immediate, and irreparable injury to the public; that the public will be irreparably injured by the continuation of the violation unless the violation is enjoined; and that there is no plain and adequate remedy at law for the subject Code violation.

### G. **Abatement**

The Town may abate a violation pursuant to this subsection.

1. Before action is taken to abate a violation, a final written notice or order of compliance shall be sent by certified mail with return receipt required to the owner of record of the subject property, or to the homeowner's association, as applicable.
2. Unless the final written notice or order of compliance is appealed pursuant to Section 2.4.13., *Appeals*, the Director may proceed to abate the violation after ten days of sending the final written notice or order of compliance, except that the Director, at his or her sole discretion, may immediately abate a violation that poses a danger to the public health, safety, and welfare.
3. The Director shall keep an account of the cost, including incidental expenses, incurred by the Town in the abatement of any violation. The Director shall forward a bill for collection to the violator or the homeowner's association and to the owner of record of the property specifying the nature and costs of the work performed. For purposes of this Section, the term "incidental expenses" shall include but not be limited to the actual expenses and costs to the Town in the preparation of the notices, specifications and contracts, work inspection, and interest from the date of completion at the rate prescribed by law for delinquent real property taxes. The responsibility for payment of the charges for abatement as set forth in this Section shall rest solely upon the owners of the property upon which the abatement occurred, or the homeowner's association, as applicable. Such charges become a lien upon the real property upon which the violation was located. The lien shall be subordinate to all existing special assessment

# ARTICLE 1: GENERAL PROVISIONS

## SECTION 1.7 TRANSITIONAL REGULATIONS

---

liens previously imposed upon the same property and shall be paramount to all other liens except for state or municipal property taxes, with which it shall be upon a parity. The lien shall continue until the charges and all interest due and payable thereon are paid.

### **1.7. TRANSITIONAL REGULATIONS**

#### **1.7.1. PURPOSE**

The purpose of transitional regulations is to clarify the status of properties with pending applications or recent approvals, as those terms are used below, and properties with outstanding violations, at the time of the adoption of this Land Use Code.

#### **1.7.2. VIOLATIONS CONTINUE**

Any violation of the previous Land Use and Development Code shall continue to be a violation under this Land Use Code and shall be subject to the penalties and enforcement in Section 1.6, *Enforcement*; provided, however, that a use, structure, or lot not lawfully existing at the time of the adoption of this Land Use Code is deemed lawful and conforming as of the effective date of this Land Use Code if it conforms to all of the requirements of this Land Use Code. Payment shall be required for any civil penalty assessed under the previous code, even if the original violation is no longer considered a violation under this Land Use Code.

#### **1.7.3. USES, STRUCTURES, AND LOTS RENDERED NONCONFORMING**

- A. When a building, structure, or lot is used for a purpose that was a lawful use before the effective date of this Land Use Code, and this Land Use Code no longer classifies such use as an allowed use in the zoning district in which it is located, such use shall be considered nonconforming and shall be controlled by Article 9, *Nonconformities*.
- B. Where any building, structure, or lot that legally existed on the effective date of this Land Use Code does not meet all standards set forth in this Land Use Code, such building, structure, or lot shall be considered nonconforming and shall be controlled by Article 9, *Nonconformities*.

#### **1.7.4. APPLICATIONS COMMENCED OR APPROVED UNDER PREVIOUS ORDINANCES**

##### **A. Pending Applications**

- 1. Any complete application that has been submitted for approval, but upon which no final action has been taken by the appropriate decision-making body prior to the effective date of this Land Use Code, shall be reviewed in accordance with the ordinance in effect on the date the application was deemed complete. If the applicant fails to comply with any applicable required period for submittal or other procedural requirements, the application shall expire and subsequent applications shall be subject to the requirements of this Land Use Code. Any re-application for an expired project approval shall meet the standards in effect at the time of re-application.
- 2. An applicant with a complete application that has been submitted for approval, but upon which no final action has been taken prior to the effective date of this Land Use Code, may request review under this Land Use Code by a written letter to the Director.

# ARTICLE 1: GENERAL PROVISIONS

## SECTION 1.8 SEVERABILITY

---

### B. Preliminary Approvals

An application for which preliminary approval of a planned unit development (PUD) or preliminary subdivision plan was granted prior to the effective date of this Land Use Code may be processed for a final decision in accordance with the preliminary approval, and applicable terms of the ordinance in place at the time of preliminary approval, even if the application does not comply with one or more requirements set forth in this Land Use Code. Preliminary approvals granted under the previous Land Use and Development Code may be extended no more than once, and for no longer than six months.

### C. Approved Projects

1. Approvals and permits that are valid on February 3, 2009, shall remain valid until their expiration date. Projects with valid approvals or permits may be completed in conformance to the development standards in effect at the time of approval.
2. Any building or development for which a building permit was granted prior to the effective date of this Land Use Code may be permitted to proceed to construction. If the development for which the building permit is issued prior to the effective date of this Land Use Code fails to comply with the time frames for development established for the building permit, the building permit shall expire and future development shall comply with the requirements of this Land Use Code.

## **1.8. SEVERABILITY**

- 1.8.1. If any court of competent jurisdiction invalidates any provision of this Land Use Code, then such judgment shall not affect the validity and continued enforcement of any other provision of this Land Use Code.
- 1.8.2. If any court of competent jurisdiction invalidates the application of any provision of this Land Use Code, then such judgment shall not affect the application of that provision to any other building, structure, or use not specifically included in that judgment.
- 1.8.3. If any court of competent jurisdiction invalidates any condition attached to the approval of an application for development approval, then such judgment shall not affect any other conditions or requirements attached to the same approval that are not specifically included in that judgment.