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**TOWN OF PAGOSA SPRINGS, COLORADO**

**ORDINANCE NO. 799  
(SERIES 2013)**

**AN ORDINANCE OF THE TOWN OF PAGOSA SPRINGS, AMENDING  
PORTIONS OF CHAPTER 21 OF THE PAGOSA SPRINGS MUNICIPAL CODE,  
ARTICLE 6 OF THE LAND USE AND DEVELOPMENT CODE REGARDING  
REVISED STATE OF COLORADO FLOOD PLAIN REGULATIONS**

WHEREAS, the Town of Pagosa Springs (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Pagosa Springs Home Rule Charter of 2003 as amended on April 3, 2012; and

WHEREAS, the Town of Pagosa Springs (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Pagosa Springs Home Rule Charter of 2003; and

WHEREAS, pursuant to Section 11.2, A) of the Charter, the Town is authorized to adopt land use and development ordinances; and

WHEREAS, the Local Government Control Enabling Act (the “Act”), Sections 29-20-101, *et seq.*, C.R.S., Article 23 of Title 31, and other applicable laws grant broad authority to the Town to plan for and regulate the development of land on the basis of the impacts thereof on the community and surrounding areas; and

WHEREAS, The State of Colorado adopted higher standards for floodplain management, which are outlined in the Rules and Regulations for Regulatory Floodplains in Colorado (Rules), effective January 14, 2011. Important changes to previous requirements include provisions for freeboard, critical facilities and floodway surcharge criteria. In order for the Town to remain in good standing in the National Flood Plain Insurance Program (NFIP), the Town must enact the new rules in a legally enforceable document by January 14, 2014; and

WHEREAS, Article 6, section 6.2 of the Town’s Land Use and Development Code (“LUDC”) provides current adopted Flood Damage Prevention Regulations; and

WHEREAS, the Town Council hereby finds and determines that amending the Pagosa Springs Municipal Code to adopt the revised State of Colorado higher standards for floodplain management into article 6 of the Town’s Land Use and Development Code (“LUDC”) to remain in good standing with the National Flood Plain Insurance Program (NFIP) is appropriate and necessary for the health, safety and welfare of the residents and visitors of the Town and to the function and operation of the Town.



NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, as follows:

**I. Repeal and Readoption of LUDC section 6.2.2.B Applicability**

This Section shall apply to all areas of special flood hazard and areas removed from the flood plain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of the Town.

**II. Delete LUDC section 6.2.2.D. Exemptions**

**III. Repeal and Readoption of LUDC section 6.2.3.B. Basis for Establishing Areas of Special Flood Hazard**

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for Archuleta County, and Incorporated areas", dated September 25, 2009, with accompanying Flood Insurance Rate Maps dated September 25, 2009 and any revisions thereto are hereby adopted by reference and declared to be a part of this Section. These documents are on file at the Pagosa Springs Town Hall.

**IV. Addition of LUDC section 6.2.4.B.4.c**

Inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of this ordinance, including proper elevation of the structure.

**V. Addition of LUDC section 6.2.4.B.4.d**

For all proposed developments that alter a watercourse within a Special Flood Hazard Area, the following standards apply:

1. Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design.
2. Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.
3. Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable Federal, State and local floodplain rules, regulations and ordinances.
4. Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist.
5. All activities within the regulatory floodplain shall meet all applicable Federal, State and Town of Pagosa Springs, Colorado, floodplain requirements and regulations.
6. Within the Regulatory Floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a Floodway analysis and report, sealed by a registered Colorado Professional Engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to existing conditions Floodway resulting from the project, otherwise known as a No-Rise Certification, unless the community first applies for



a CLOMR and Floodway revision in accordance with Section D of Article V of the Colorado Floodplain Damage Prevention Ordinance .

7. Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

**VI. Repeal and Readoption of LUDC section 6.2.5.B.1 Residential Construction**

Any residential structure shall have the lowest floor, including the basement, and electrical, heating, ventilation and plumbing facilities elevated to at least one foot above the base flood elevation.

**VII. Repeal and Readoption of LUDC section 6.2.5.B.2 Nonresidential Construction**

Any nonresidential structure shall either have the lowest floor, including the basement utilities, elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities, shall:

**VIII. Repeal and Readoption of LUDC section 6.2.5.D.1** All new construction and substantial improvements of residential structures have the lowest floor (including basement and utilities) elevated above the highest adjacent grade one foot above the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified).

**IX. Repeal and Readoption of LUDC section 6.2.5.D.2.** All new construction and substantial improvements of non-residential structures

- a. have the lowest floor (including basement) elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the community's FIRM (at least three feet if no depth number is specified); or
- b. together with attendant utility and sanitary facilities be designed so that below the one foot above base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

**X. Addition of LUDC section 6.2.5.D.5**

A Floodplain Development Permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), unless such new structure or addition complies with the following:

**a. Residential Construction**

The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill.

**b. Non Residential Construction**

The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or



addition is watertight to at least one foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

**XI. Addition of LUDC section 6.2.5.D.6**

A Critical Facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.

**CLASSIFICATION OF CRITICAL FACILITIES**

It is the responsibility of the Town of Pagosa Springs, Colorado Town Council to identify and confirm that specific structures in their community meet the following criteria:

Critical Facilities are classified under the following categories: (a) Essential Services; (b) Hazardous Materials; (c) At-risk Populations; and (d) Vital to Restoring Normal Services.

a. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.

These facilities consist of:

- i. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);
- ii. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors offices, and non-urgent care medical structures that do not provide these functions);
- iii. Designated emergency shelters;
- iv. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);
- v. Public utility plant facilities for generation and distribution ( hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and
- vi. Air Transportation lifelines (airports (municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).

Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.



Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Town of Pagosa Springs, Colorado, Town Council, that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town of Pagosa Springs, Colorado, Town Council, on an as-needed basis upon request.

- b. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials.  
These facilities may include:
  - i. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);
  - ii. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;
  - iii. Refineries;
  - iv. Hazardous waste storage and disposal sites; and
  - v. Above ground gasoline or propane storage or sales centers.

Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, AND the chemical(s) is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either 500 pounds or the TPQ listed (whichever is lower) for the 356 chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or 10,000 pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation this ordinance, but exclude later amendments to or editions of the regulations

Specific exemptions to this category include:

- i. Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.
- ii. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.

- iii. Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.

These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this Article.

- c. At-risk population facilities include medical care, congregate care, and schools. These facilities consist of:
  - i. Elder care ( nursing homes);
  - ii. Congregate care serving 12 or more individuals ( day care and assisted living);
  - iii. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving 12 or more children);
  
- d. Facilities vital to restoring normal services including government operations. These facilities consist of:
  - i. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);
  - ii. Essential structures for public colleges and universities (dormitories, offices, and classrooms only).

These facilities may be exempted if it is demonstrated to the Town of Pagosa Springs, Colorado, Town Council, that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this ordinance, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town of Pagosa Springs, Town Council, on an as-needed basis upon request.

**XII. Public Inspection.** The full text of this Ordinance, with any amendments, is available for public inspection at the office of the Town Clerk.

**XIII. Severability.** If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

**XIV. Effective date.** This Ordinance shall become effective and be in force immediately upon final passage at second reading.



INTRODUCED, READ, AND ORDERED PUBLISHED PURSUANT TO SECTION 3.9, B) OF THE PAGOSA SPRINGS HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE 21 DAY OF November, 2013.

TOWN OF PAGOSA SPRINGS,  
COLORADO

By: Ross Aragón  
Ross Aragón, Mayor

Attest:  
April Hessman  
April Hessman, Town Clerk



FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED PURSUANT TO SECTION 3.9, D) OF THE PAGOSA SPRINGS HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS SPECIAL MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE 3 DAY OF December, 2013

TOWN OF PAGOSA SPRINGS,  
COLORADO

By: Ross Aragón  
Ross Aragón, Mayor

Attest:  
April Hessman  
April Hessman, Town Clerk

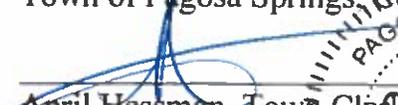


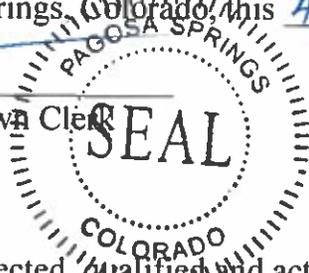


**CERTIFICATE OF PUBLICATION**

I, the duly elected, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 799 (Series 2013) was approved by the Town Council of the Town of Pagosa Springs on first reading at its special meeting held on the 21 day of Nov. 2013, and was published by title only, along with a statement that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on NOV 21, 2013, which date was at least ten (10) days prior to the date of Town Council consideration on second reading.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this 4 day of Dec., 2013.

  
April Hessman, Town Clerk  
(S E A L)



I, the duly elected, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 799 (Series 2013) was approved by the Town Council of the Town of Pagosa Springs on second reading, at its special meeting held on the 3 day of Dec., 2013, and was published by title only, along with a statement indicating the effective date of the Ordinance and that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on Dec. 4, 2013.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this 4 day of Dec., 2013.

  
April Hessman, Town Clerk

(S E A L)



Rtn:

Town of Pagosa Springs  
P.O. Box 1859  
Pagosa Springs, CO 81147