

**SAN MIGUEL COUNTY LAND USE CODE**

**ARTICLE 1**

**ADMINISTRATION AND ENFORCEMENT**

**SECTION 1-1: TITLE AND SHORT TITLE**

This Resolution, as amended from time to time, shall be known as "**The San Miguel County Land Use Code**." In this text it may also be called "the Code" or "the Land Use Code."

**SECTION 1-2: ORGANIZATIONAL FORMAT**

**1-201 General**

The San Miguel County Land Use Code is substantially based upon the County Land Use Policies in Article 2. Article 3 of the Code contains procedures for all land use reviews. Article 4 contains the submission contents for land use applications and Article 5 contains land use standards. Article 6 contains definitions.

**SECTION 1-3: REPEALS AND ENACTMENT**

**1-301 Repeals**

The San Miguel County Subdivision Regulations, San Miguel County Zoning Resolution and San Miguel County Impact Regulations are repealed in their entirety; all other prior San Miguel County resolutions inconsistent with provisions of this Code are hereby repealed to the extent of such inconsistency only, except for Planned Unit Development agreements effective at the time of adoption of this Code. The repeal of any of the above-mentioned resolutions does not revive any other resolution or portion thereof repealed by said resolution. Such repeals shall not affect or prevent the prosecution or punishment of any person for violation of any resolution hereby repealed for an offense committed prior to the repeal.

**1-302 Enactment and Effective Date**

The Code is hereby enacted pursuant to the approval by the Board of County Commissioners, after review and recommendation by the Planning and Zoning Commission and public hearings as required by State law. The Code became effective upon adoption by the Board of County Commissioners on November 30, 1990.

## **SECTION 1-4: PURPOSES OF THE LAND USE CODE**

### **1-401 General**

The purposes of this Land Use Code are established as follows:

### **1-402 Implement Policies**

To implement the policies of San Miguel County regarding land use and development, housing, growth and related issues, as adopted and amended from time to time.

### **1-403 Create Common System of Administration and Regulation**

To combine the regulation of all aspects of land use and development and the use of land and natural resources into a common system of administration and regulation.

### **1-404 Simplify the Land Use Regulatory Process**

To simplify the application and review process for such regulatory system.

### **1-405 Protect Health, Safety and Welfare**

To protect the health, safety and public welfare of San Miguel County.

## **SECTION 1-5: BASIS FOR LAND USE CODE**

The policies, regulations and districts set forth in this Code have been adopted in accordance with San Miguel County Comprehensive Development Plan(s) prepared with reasonable consideration given to the social, economic and environmental characteristics of certain areas and the community in general; the compatibility of uses with each other and with social, economic and environmental opportunities and constraints; and the particular suitability of certain uses in certain areas.

## **SECTION 1-6: POWER AND AUTHORITY**

### **1-601 General**

It is the intent of the Board in adopting and enforcing the Code to exercise all relevant authority and powers conferred on it by the laws of the State of Colorado, including, but not limited to, the following sections of Colorado Revised Statutes, as they may be amended and supplemented from time to time:

- 1-601 A. Chapter 28 of Title 30 (County Planning, Zoning, Subdivision);
- 1-601 B. Chapter 65.1 of Title 24 (Areas and Activities of Local and State Interest);
- 1-601 C. Chapter 67 of Title 24 (Planned Unit Development);
- 1-601 D. Chapter 20 of Title 29 (Local Government Land Use Control Enabling Act); and
- 1-601 E. Applicable provisions of Chapter 11 of Title 30 (County Powers and Functions).

**SECTION 1-7: SEVERABILITY**

If any part of the Code or the application or enforcement thereof to any person or circumstance is held invalid, the remainder of the Code and its application to other persons or circumstances shall not be affected thereby.

**SECTION 1-8: APPLICATION**

The Code applies to the use, development and other activity on all land located in San Miguel County but not within the territorial limits of an incorporated municipality.

**SECTION 1-9: CONFLICTING PROVISIONS**

Where there exists a conflict between any limitation or requirement in the Code or in other applicable State Statutes and any applicable limitation or requirement contained elsewhere in this Code, the more restrictive limitation or requirement shall prevail. Where a conflict exists between the provisions of this Code and any other resolution, regulation or policy of San Miguel County, the provisions of this Code shall control.

**SECTION 1-10: COUNTY PLANNING OFFICE**

**1-1001 Establishment**

The San Miguel County Planning Office is part of the County government and operates in accordance with the County operational, fiscal, employment and other policies and directives.

**1-1002 Planning Director**

The Planning Office's activities are under the control and direction of the Planning Director, who is selected and serves in accordance with County policies. The Planning Director reports to the Board of County Commissioners.

**1-1002 A. Power and Duties**

The Planning Director administers the Land Use Code and has those powers and duties expressly assigned to him/her under this Code and otherwise delegated or assigned to him/her in accordance with County policy. The Planning Office has such duties as the Planning Director delegates and has such other powers and duties as are expressly assigned to it under this Code or in accordance with County policy.

**1-1003 Issuance of Development Permits**

The Planning Director shall issue development permits (refer to Sections 3-1,2,3) prior to the issuance of any building permits for construction activities pursuant to the procedures in the Code and deny development permits that are inconsistent with the Code.

## **SECTION 1-11: BUILDING OFFICIAL**

The Building Official shall have, in addition to powers granted to such office under applicable Uniform Building Code then in effect and other enactments of the Board, the additional duties and powers identified in this Section.

### **1-1101 Issuance of Building Permits**

The Building Official shall issue applicable permits to allow construction activities which have received a development permit pursuant to the procedures in the Code and deny building permits for activities which have not received a development permit.

### **1-1102 Enforcement Powers**

The Building Official shall conduct the duties of the office consistent with Code requirements, in addition to the other duties of the office, including specifically the enforcement powers and duties under this Code.

## **SECTION 1-12: COUNTY ATTORNEY**

The County Attorney shall advise the Board of County Commissioners regarding all legal matters related to the Land Use Code.

## **SECTION 1-13: PLANNING COMMISSION**

### **1-1301 Establishment**

In accordance with the by-laws of the County the membership of the Planning Commission shall be five persons appointed by the Board of County Commissioners on staggered two or three-year terms. Planning Commission members shall be appointed by area and economy in order to keep the Commission representative of the County population as much as practicable. Three members of the Commission shall be appointed regionally and two members shall be appointed as at-large Commissioners. All five members shall have full voting rights. The members shall be residents of San Miguel County. Up to two alternate members may also be appointed by the Board of County Commissioners to take the place of any member of the Planning Commission if such member is absent from the County, ill, interested in the matter before the Commission or otherwise temporarily disabled from serving. Any member may resign from the Planning Commission on written notice of such resignation to the Chairman of the Board of County Commissioners. Any member of the Planning Commission may be removed for cause by the Board of County Commissioners.

### **1-1302 Organization**

The Planning Commission shall adopt by-laws establishing its organization and procedures. A copy of such bylaws is available in the San Miguel Planning Office. The Planning Commission shall elect a chairperson to serve a one-year term.

### **1-1303 Powers**

The Planning Commission shall have authority provided by the Board of County Commissioners, the Code, and State law. Authority under State law includes, but is not limited to, the following sections of C.R.S. 1973, as it may be amended from time to time: Chapter 28 of Title 30, Chapter 65.1 of Title 24, Chapter 67 of Title 24, Chapter 20 of Title 29, and Chapter 11 of Title 30.

## **SECTION 1-14: BOARD OF ADJUSTMENT**

### **1-1401 Establishment and Membership**

The Board of Adjustment of San Miguel County is hereby established. Board establishment and membership is subject to applicable State law and Board of County Commissioner resolution. The Board of Adjustment consists of five members, including up to two members of the Planning Commission, in accordance with C.R.S. 30-28-117(1). The term of each member shall be set by the Board of County Commissioners, with the term of at least one member expiring each year. The Board of County Commissioners may appoint alternate Board members. Any member of the Board may be removed for cause by the Board of County Commissioners.

### **1-1402 Organization**

The Board of Adjustment shall adopt by-laws and may adopt supplemental rules of procedure. A copy of such supplemental rules of procedure shall be available in the San Miguel County Planning Office. The Board shall elect a chairperson from its members to serve a one-year term.

### **1-1403 Powers**

The Board of Adjustment shall have authority provided by the Board of County Commissioners, the Code, and State law. Authority under State law includes, but is not limited to C.R.S. Section 30-28-117 et seq., as it may be amended from time to time.

#### **1-1403 A. Appeals to the Board of Adjustment**

Appeals to the Board of Adjustment may be taken by any person aggrieved by inability to obtain a building permit or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of zoning. Appeals shall be heard only where:

- I. The Board of Adjustment is authorized by a Board of Commissioners resolution to hear and decide, in accordance with the provision of the resolution, requests for special exceptions, interpretations of a zoning map or decisions of specific questions authorized by the resolution; or
- II. It is alleged by the appellant that there is error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of zoning where no other administrative remedy exists pursuant to Land Use Code Sections 1-19, 1-20 and/or the Board of Building Appeals rules of procedure; or

- III. By reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of any regulation or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, and where relief in the form of a variance from zoning may be granted without substantial detriment to the public good and substantial impairment of the intent and purpose of zoning, and where the hardship was not created or caused by the owner.

In addition, demonstration by the applicant that access to sunlight for solar-driven devices would be unduly restricted without the variance requested may serve as cause for granting a variance.

## **SECTION 1-15: LAND USE CODE VIOLATIONS**

The following are Land Use Code violations that are subject to the enforcement remedies and penalties provided by the Code:

### **1-1501 Development without a Development Permit**

To engage in development within the County without a development permit for such development, obtained in accordance with the provisions of this Code.

### **1-1502 Development Inconsistent with Development Permit**

To engage in development within the County in any way inconsistent with the development permit for such development.

### **1-1503 Violation of Development Permit Conditions**

To violate, by act or omission, any term or condition of any development permit.

### **1-1504 Land Use Code Violations**

To erect, construct, reconstruct, alter, maintain or use any building or structure or to use any land in violation of any provision of this Code or any amendments thereto.

### **1-1505 Offering to Sell Land Prior to Subdivision**

To offer to sell land in any subdivision before a preliminary plat for such subdivision has been approved pursuant to State statutes or by the Board of County Commissioners.

### **1-1506 Selling Land Prior to Subdivision**

To sell land in a subdivision prior to approval of final plat approved pursuant to State statutes or by the Board of County Commissioners and recorded or filed with the County Clerk.

### **1-1507 Continuation of Violations**

To continue any of the above violations. Each day of a continuing violation shall be considered a separate offense.

### **1-1508 Other Violations**

Any other violations of this Code not specifically defined in this Section 1-15.

## **SECTION 1-16: ENFORCEMENT AND REMEDIES**

San Miguel County shall have the remedies and enforcement powers identified in this part of the Code. Except as expressly reserved in this Code, the remedies and enforcement powers are hereby delegated to the Building Official or his designee.

### **1-1601 Legal Notice of Violation**

When the Building Official determines that there has been a violation of any provision of the Land Use Code, he/she shall make necessary determinations required in this Section 1601, and give legal notice of such violation to the person or persons responsible therefore, and require compliance with the ordinances, as provided in this Section.

1-1601 A. Legal notice of violations shall:

- I. Be put in writing on an appropriate form;
- II. Determine and include a list of violations, refer to the section or sections of the Code violated and specify remedial action which, if taken, will effect compliance with the Code provisions;
- III. Determine and specify a reasonable time for performance of the remedial action, except when a zoning violation citation tag has been issued pursuant to 1-1602;
- IV. Be served on the owner, occupant, operator, lessee, agent or other responsible party in person, provided that such notice and requirement shall be deemed to be properly served on such responsible party if a copy thereof is delivered to, posted on, or sent by registered or certified mail to his/her last known mailing address, residence or place of business; and

1-1601 B. Any person failing to comply with a legal notice and requirement as herein provided shall be deemed guilty of a violation of the Land Use Code. Each day such violation or failure to comply is continued after notification thereof shall constitute a separate offense. The County may assess penalties against the person violating the Land Use Code and/or seek such civil or criminal penalties as are provided by this Land Use Code and/or Colorado law for violation of zoning, subdivision or other provisions of this Code.

### **1-1602 Zoning Violation Citation Tags**

The Building Official or the Building Official's designee is authorized to use Zoning Violation Citation Tags for giving due notice and summons to the person or persons responsible for violations identified in Section 1-15.

- 1-1602 A. A Zoning Violation Citation Tag shall be put in writing on an appropriate form, state the nature of the violation, refer to the section or sections of the Land Use Code violated and state the appropriate assessment or penalty.
- 1-1602 B. Such person or persons, when a Zoning Violation Citation Tag is served to her/him, in accordance with the provisions of 1-1602 A., shall appear at the place or places designated on such tag and shall pay the assessment for the violation noted on the citation, pursuant to the assessment schedule in 1-1603.
- 1-1602 C. On payment of the assessment as provided by Section 1-1602 B. no further action will be taken to prosecute the violation noted on the citation unless the violation is not corrected.
- 1-1602 D. The citation tag as herein provided shall be sufficient notice, summons and legal service thereof for the purpose specified thereon, provided that the use of such tags shall not prohibit the issuance of either additional citation tags or a legal notice of violation as provided by Section 1-1601, in the event such violation is continued or repeated.

### **1-1603 Penalties**

As per C.R.S. 30-28-124, any party violating any of the provisions or standards of the Land Use Code, or any amendment thereto, following legal notification pursuant to Section 1-1601, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$100, or by imprisonment in the County jail for not more than 10 days, or both. Each day during which such violation continues shall be deemed a separate offense.

### **1-1604 Other Remedies**

The County shall have such other remedies as may from time to time be provided by Colorado law for the violation of zoning, subdivision or other provisions of this Code.

### **1-1605 Withholding Development Permits**

The County may withhold or deny development permits, building permits, plat approvals or any other administrative or quasi-judicial action on any land on which there is an uncorrected violation of a provision of this Code or of a permit issued hereunder. The County may, rather than withholding a permit or denying another permit or action, condition any such action on the correction of the uncorrected violation. The provisions of this section shall apply regardless of whether the applicant for the subsequent permit is responsible for the uncorrected violation.

### **1-1606 Stop Work Orders**

The County may halt work on any land on which there is or has been an uncorrected violation of a provision of this Code or of a permit issued hereunder, in accordance with its powers to halt work under the applicable Uniform Codes as adopted by the County from time to time.

### **1-1607 Injunctive Relief**

The County may seek an injunction or other equitable relief from the District Court of the State of Colorado to halt any violation of this Code or of a permit issued hereunder.

### **1-1608 Abatement**

The County may seek a court order from the District Court of the State of Colorado in the nature of mandamus, abatement, or other appropriate action or proceeding to abate or remove a violation or otherwise restore premises to the condition in which they existed prior to the violation.

### **1-1609 Specific Performance**

The County may seek specific performance of the terms of any subdivision improvements agreement, development permit or other permit issued under this Code. The County may seek specific enforcement against any party to any such agreement, against the original applicant(s) for any such permit and against any owner of the land affected who acquired title to the land with constructive notice of the existence of such agreement or permit;

### **1-1610 Cumulative Remedies**

All such remedies shall be cumulative. To the extent that Colorado law may limit the availability of a particular remedy set forth above for a particular violation or a part of a violation, such remedy shall remain available for other violations or other parts of the same violation, and all other remedies shall remain available for the same violation or part of a violation.

## **SECTION 1-17: PRIVATE ENFORCEMENT**

In addition to the powers of San Miguel County to enforce the provisions of this Code and permits issued hereunder, there shall be the private enforcement rights identified in this Section.

### **1-1701 Improvement Agreements**

Any purchaser of land subject to a plat restriction which is the security portion of an improvements agreement may bring an action in the District Court of the State of Colorado to compel enforcement of any improvements agreement on the sale, conveyance or transfer of title of any lot, lots, tract or tracts of land or of any other provision of such agreement. Authority under this provision shall include the right to compel rescission of any sale, conveyance or transfer of title of any lot, lots, tract or tracts of land contrary to the provisions of any such restriction set forth on the plat or in any separate recorded instrument. Any such action shall be commenced prior to issuance of a building permit.

### **1-1702 Specific Performance**

The purchaser of any land included within the land area affected by a development permit approved prior to the date of such purchase shall have the right to seek specific performance of all of the terms and conditions of such development permit against the person(s) obtaining such permit and/or against the person(s) conveying title to such purchaser. If a purchaser is successful in obtaining partial or complete relief in such an action, the Court shall award such person reasonable attorneys' fees, as well as costs of the action.

### **1-1703 County - No Duty**

If bonded improvements are not installed or are not properly installed pursuant to an improvements agreement, then the County shall have the right, but not the duty or obligation to any party to an improvements agreement or to any third-party, to complete the construction of the bonded improvements. If the County, in its sole discretion, chooses to attempt to complete the bonded improvements, then:

#### **1-1703 A. Use of Collateral Proceeds**

The Board shall use all liquid collateral and all net proceeds from the sale of any collateral pledged pursuant to any improvements agreement for the purpose of completing the bonded improvements and for no other purpose.

#### **1-1703 B. No Obligation**

The Board shall have no obligation to any party to any improvements agreement or to any third-party to utilize any other funds or assets of the County to pay for the completion of any bonded improvements

## **SECTION 1-18: OTHER ENFORCEMENT**

### **1-1801 Other Powers**

In addition to the other enforcement provisions in this chapter, San Miguel may exercise any and all enforcement powers granted to it by State law, including without limitation Section 30-28-1-24 C.R.S. 1973 (Enforcement of Zoning Resolution), Section 24-67-106 C.R.S. 1973 (Enforcement of Planned Unit Development Plan), Section 30-28-114 C.R.S. 1973 (Building Inspection Enforcement), and Section 30-28-110 C.R.S. 1973 (Subdivision Enforcement).

### **1-1802 Other Actions**

Nothing in this chapter shall prohibit the continuation of previous enforcement practices undertaken pursuant to valid resolution and law.

## **SECTION 1-19: APPEAL OF PLANNING COMMISSION AND ADMINISTRATIVE DECISIONS**

### **1-1901 General**

Any affected or aggrieved party may request an appeal of a final administrative land use decision by the Planning Commission. Land use recommendations are not subject to appeal. This part of the Code establishes procedures, submission contents and standards for such appeals.

### **1-1902 Appeal of Planning Commission Decisions**

#### **1-1902 A. Filing an Appeal**

Any challenge must be filed in writing with the Planning Office by any affected or aggrieved party to the proceedings before the Planning Commission, within 14 days of the Planning Commission public meeting at which an application was considered.

#### **1-1902 B. Basis of Appeal**

The review of an appeal shall be limited to determining whether there has been an abuse of discretion by the Planning Commission.

#### **1-1902 C. Review of Appeal**

In reviewing an appeal, the Board of County Commissioners shall consider the development applications based upon the record established by the Planning Commission. The Board of County Commissioners shall affirm the decision of the Planning Commission, unless it determines that there was an abuse of discretion by the Commission in which case the Board of County Commissioners shall take action as it shall deem necessary to remedy the Planning Commission's action. Legal error or lack of any competent evidence in the record to support the Planning Commission decision shall constitute abuse of discretion. Remedies available to the Board of County Commissioners shall include, but not be limited to changing the Planning Commission' decision or remanding the development application to the Planning Commission for reconsideration.

### **1-1903 Appeal of Planning Director's Administrative Decisions**

#### **1-1903 A. Filing an Appeal**

Any challenge must be filed in writing with the Planning Office by an affected or aggrieved party to any Planning Director administrative decision, including any Land Use Code interpretation, within 14 days of the Planning Director's decision.

1-1903 B. Review of Appeal

In reviewing an appeal, the Board of County Commissioners shall consider the Planning Director's decision based upon the land use issue involved. The Board of County Commissioners shall affirm the Planning Director's decision or take action as it shall deem necessary to remedy administrative action.

**1-20 Call-Up of Land Use Decisions by the Planning Commission**

I. The Board of Commissioners (BOCC), or any two (2) Commissioners, may call-up a land use application for review by the BOCC upon written notice thereof to the Planning Department within fourteen (14) days after the date of final decision of the Planning Commission. For purposes of this procedure a final decision is when the Planning Commission votes to approve, approve with conditions or deny the One-step Land Use application. This written notice from the BOCC shall state the issue or issues that are the basis for the call up of the CPC decision.

II. A copy of the written call-up notice shall be mailed by the Planning Department to the applicant and the Planning Commission chair. Upon filing of such notice with the Planning Department, any decision of the Planning Commission shall be suspended. However, all written materials presented to the Planning Commission, as a part of its evaluation of the land use application and decision, shall be considered by the BOCC and included in the record. The applicant, the Planning Commission, and any interested party may submit additional information or materials that shall then be added to and included in the cumulative record to be considered by the BOCC in making its decision.

III. Upon call-up, the Board of Commissioners shall be vested with jurisdiction over the land use application and shall conduct its review of the application under the process and requirements applicable to the subject land use application(s) including Public Notice in accordance with Land Use Code (LUC) Section 3-9. Such review shall be conducted within thirty (30) days from the date of the call-up, or as soon thereafter as can be reasonably accommodated.

IV. In considering the Call-Up of a Land Use Decision by the Planning Commission, the BOCC may affirm the decision of the Planning Commission, may modify or reverse the decision, or may remand the Land Use application back to the Planning Commission for their reconsideration of new and additional information or materials.

