



# WESTMINSTER

## Staff Report

TO: The Mayor and Members of the City Council

DATE: January 27, 2016

SUBJECT: Study Session Agenda for February 1, 2016

PREPARED BY: Donald M. Tripp, City Manager

Please Note: Study Sessions and Post City Council meetings are open to the public, and individuals are welcome to attend and observe. However, these meetings are not intended to be interactive with the audience, as this time is set aside for City Council to receive information, make inquiries, and provide Staff with policy direction.

Looking ahead to next Monday night's Study Session, the following schedule has been prepared:

*A light dinner will be served in the Council Family Room*

*5:30 P.M.*

### CITY COUNCIL REPORTS

1. Report from Mayor (5 minutes)
2. Reports from City Councillors (10 minutes)

### CITY MANAGER'S REPORT

### PRESENTATIONS

1. Mayor Steve Hogan on Metro Mayors homeless Initiative – *Verbal*
2. Affordable Housing Update
3. Construction Defect Ordinance

### EXECUTIVE SESSION

1. Discussion of strategy and progress on negotiations related to the Downtown Westminster Redevelopment and the possible sale, trade or exchange of property interests and provide instructions to the Authority's negotiators as authorized by WMC 1-11-3(C)(4) and (7) CRS 24-6-402 (4)(a) and (e)(I).

### INFORMATION ONLY ITEMS

None at this time.

Additional items may come up between now and Monday night. City Council will be apprised of any changes to the Study Session meeting schedule.

Respectfully submitted,

Donald M. Tripp  
City Manager

**NOTE:** Persons needing an accommodation must notify the City Manager's Office no later than noon the Thursday prior to the scheduled Study Session to allow adequate time to make arrangements. You can call [303-658-2161](tel:303-658-2161) /TTY 711 or State Relay or write to [mbarajas@cityofwestminster.us](mailto:mbarajas@cityofwestminster.us) to make a reasonable accommodation request.



## Staff Report

City Council Study Session Meeting  
February 1, 2016



**SUBJECT:** Affordable Housing Update Presentation

**PREPARED BY:** John Hall, Economic Development Director  
Mac Cummins, AICP, Planning Manager

### Recommended City Council Action

Staff is requesting feedback on this issue and update.

### Summary Statement

- One of Council's 2015 and 2016 Strategic Plan objectives is to advance strategies to provide affordable/workforce housing.
- To address this goal, Staff is engaged in a work effort that will result in development of a recommended affordable/workforce policy and strategy that, when implemented, will result in the development of affordable/workforce housing units.
- The first step in this work effort was to interview individual Council members to better understand specific concerns and objectives around this issue. A summary of Council comments were provided in Staff Reports provided to Council on September 9, 2015 and September 28, 2015 (copies are attached).
- BBC Consulting is under contract with the City to conduct research related to affordable housing and recommend policy and strategy alternatives. The complete study is scheduled for completion in the second quarter of this year.
- Tonight, Staff and BBC Consulting will be providing a summary update of the first phase of work assessing the affordable housing landscape, an update on next steps and timing for the additional phases of work to be completed.

**Expenditure Required:** No cost identified at this time.

**Source of Funds:** N/A

## **Policy Issue**

Does City Council wish to continue with the affordable housing study in support of the development of a city-wide, comprehensive affordable housing policy?

## **Alternatives**

1. Delay work on the affordable housing study at this time.
2. Stop work on the affordable housing study and only pursue affordable housing projects as opportunities arise.
3. Continue working on the affordable housing study and pursue affordable housing project opportunities as they arise.

## **Background Information**

One of Council's 2015 and 2016 Strategic Plan objectives is to advance strategies to provide affordable/workforce housing. Specifically, to "Advance strategies that demonstrate Westminster is a regional leader in providing affordable/workforce housing." To address this goal, Staff is engaged in a work effort that will result in development of a recommended affordable/workforce policy and strategy that, when implemented, will result in the development of affordable/workforce housing units.

The first step in this work effort was to interview individual Council members to better understand specific concerns and objectives around this issue. A summary of Council comments were provided through an Information Only Staff Report provided to Council on September 14, 2015, which served as the foundation for further discussion at a City Council Study Session on September 28, 2015.

Present at the September 28, 2015 discussion was Heidi Aggeler, Managing Director, BBC Consulting, the City's consultant in the development of the City-wide affordable housing policy and strategy. BBC is under contract with the City to conduct research related to affordable housing and recommend policy and strategy alternatives. The major components of BBC's scope of work include an assessment of the Westminster housing and affordable housing landscape that includes both market and affordable housing metrics, public outreach to constituent groups engaged in advocacy for and delivery of affordable housing, a summary of best practices in the industry and from other municipalities, and a recommended set of potential policy and strategy options. The complete study is scheduled for completion in the second quarter of this year.

Tonight, Staff and BBC Consulting will be providing a summary update of the first phase of work assessing the affordable housing landscape, an update on next steps and timing for the additional phases of work to be completed.

Discussion with City Council regarding affordable/workforce housing supports the Strategic Plan goals of "Vibrant, Inclusive and Engaged Community" and "Dynamic Diverse Economy."

Respectfully submitted,

Donald M. Tripp  
City Manager

Attachments: A – September 9, 2015 Staff Report  
B – September 28, 2015 Staff Report



**Staff Report**

ATTACHMENT A

Information Only Staff Report  
September 9, 2015



**SUBJECT:** Affordable/Workforce Housing Interview Summary

**PREPARED BY:** Mac Cummins, AICP, Planning Manager  
John Hall, Economic Development Director

**Summary Statement**

This report is for City Council information only and requires no action by City Council.

**Background Information**

One of Council's 2015 Strategic Plan objectives is to advance strategies to provide affordable/workforce housing. Specifically, the relevant goal, objective and action are stated as follows:

**GOAL:** Vibrant, Inclusive and Engaged Community - Westminster provides options for an inclusive, demographically diverse citizenry in unique settings with community identity, ownership and sense of place, with easy access to amenities, shopping, employment and diverse integrated housing options. Members of the community are empowered to address community needs and important community issues through active involvement with city cultural, business and nonprofit groups.

**OBJECTIVE:** Advance strategies that demonstrate Westminster is a regional leader in providing affordable/workforce housing.

- **ACTION:** Pursue workforce housing

To address this goal staff is engaged in a work effort that will result in development of a recommended affordable/workforce housing policy and strategy that when implemented will result in the development of affordable/workforce housing units. The general steps included in this work effort include:

1. One-on-one interviews with each Council member to better understand specific concerns and objectives around this issue.
2. Preparation of this summary memo for review and use by Council. Staff's intent following this memo is to have a more detailed Study Session discussion with Council on September 28, 2015; where a more robust discussion of the work program for this item can be conducted. Due to constraints with the Council Calendar in September, this discussion will likely occur as a Post Item after the regular meeting that evening. Staff anticipates having a consultant present for this discussion.
3. Subsequent to a Council Study Session discussion, development of baseline data and drafting of a final work scope that will guide policy development, analysis, and



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recommendations necessary to implement a City affordable/workforce housing strategy during the balance of 2015 and into 2016.

4. Pursuing current affordable/workforce housing opportunities in the short-run through our partnerships with both the Jefferson and Adams County Housing Authorities, as a part of City development and planning efforts in both the Downtown and the South Westminster TOD area, and in other areas of the City.

Staff appreciates Council members taking the time to meet individually over the course of the past few weeks, for sharing your perspective about housing policy, workforce housing, and the issues you seek to have addressed related to this Strategic Plan objective. The intent of the interviews was for Staff to gain a better perspective on what the City Council would like Staff to pursue in order to fully execute the work plan associated with this objective. The purpose of this memo is to provide a summary of Council comments, and identify where it appears there is consensus on key topics that will serve as a starting point for consideration of a work program to be conducted during the balance of 2015 and into 2016.

The memo is formatted to describe where there appears to be full consensus on topics, and those areas where multiple Councilors were suggesting the same (or substantially similar) ideas. The memo has two components, one in which ideas or comments were made by 6 or more Councilors, and one in which ideas or comments were made by 2-5 Councilors on the same topic or idea.

Consensus Comments (6 or more Councilors made this comment):

1. The City is facing an affordable/workforce housing problem. Council members felt strongly that this was a problem that needed to be addressed based on the significant rise in housing costs the past few years, coupled with the low vacancy rates in the rental housing stock in the City. This was important to note, because the Council as a whole felt that there was a “problem,” even if there was not agreement about how to define the problem, or what the possible solutions may be.
2. Growth Management should proceed without any changes in 2015. The majority consensus was that the competition should not be held up while the Council undertakes this strategic program to evaluate affordable/workforce housing. In the interim, the Council conveyed that this year’s competition could move forward using the existing rules and procedures.
3. Timing – The consensus among Councilors was that the “appropriate” amount of time should be spent researching, evaluating, and working with a consultant to consider possible solutions to the problem of affordable/workforce housing; all Councilors said that they wanted to take the appropriate amount of time to have the “right” approach. There were some differences in how long the term “appropriate” should mean (Ranging from weeks to months); but there was consensus that the City should not “rush” this process.
4. Community development standards were important to maintain and nearly all of the Councilors commented that the City should be careful not to create a “slum” or “project” in developing affordable/workforce housing units. There is consensus among Council members was that affordable/workforce housing should reflect community standards consistent with other types of housing in the City. Councilors conveyed that this was a difficult task, acknowledging that the extra cost of producing the types of housing that makes Westminster known for quality will increase the end user’s cost of consuming that housing. However, the Council uniformly felt that “projects” were not the solution, but some mix of market rate and workforce housing within a project was preferable to a project comprised of solely of affordable units.



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5. Geographic dispersion of the units was critical; and not having all the units in one area of the City was very important to the majority of the Council. Though many Councillors acknowledged that they did not have a good sense of the exact housing costs in various parts of the City, Council members felt strongly that they did not want one portion of the City to be the repository of lower income residential units.
6. A consultant should be brought in to help Council and Staff identify specific aspects of the problem and potential possible solutions. This consultant should be an expert in this field, and have worked with jurisdictions similar to ours in the past.
7. Council members felt that workforce housing should include evaluation of, and assure ability to have, both rental and ownership product. There was no consensus about how much of either type, nor by product type (i.e. townhomes vs. single family residences vs. condo, etc.). The Council felt strongly, however, that to be a complete community, residents should be able to afford to live in both ownership and rental housing accommodations throughout the community.
8. Council members are not interested, at this time, in having the Westminster Housing Authority build affordable workforce housing.

### Comments made by Multiple Councillors (2-5 Councillors made these comments)

1. Construction defects appear to be a significant factor in the ability to produce ownership housing. Councillors pointed to the fact that these units are generally smaller and can become more affordable than a traditional single family house. Addressing this issue will hopefully help with the production of another product type (condos) that the market is currently missing.
2. Several of the Councillors wanted to see examples of workforce housing which has been done well. A few of the Councillors cited the “Mueller” project in Austin, Texas as an example and asked Staff to contact the Austin Economic Development Director for further information.
3. The majority of the Council (though not 6) believed that demand pulling prices upward was as much of a factor, if not more, than the production cost of the house itself. The Councillors who commented on this generally believed that we are a community of high standards and that this desirability leads to an increased value in the marketplace. None were sure exactly how to handle this “premium” in terms of attacking the workforce housing problem facing our community, but there was an acknowledgement that this “demand pull” phenomenon was occurring in housing prices within Westminster.
4. There was not complete agreement about what the “metrics” should look like relative to defining “affordable/workforce housing.” Many of the Councillors felt that this should be a range of Area Median Income; and possibly a percentage of units built in a particular subdivision or project. The consensus ranged from 60% - 80% AMI, with varying ideas of percentages of units in those categories being either required or incented to be produced. Nearly all the Councillors asked for more information to make a more informed decision about what the metrics should be.
5. When prompted, many of the Councillors felt that they would prefer a “carrot” approach to the “stick” approach in terms of either incenting or attempting to regulate the production of affordable/workforce housing units. Though not opposed to regulating (ie inclusionary zoning principles), most of Council felt that some type of incentive program would be a good first step. Most who contributed to this discussion topic asked Staff to have the consultant evaluate these options for further consideration.



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6. Several Councillors mentioned that their idea of who they would like to evaluate for affordability included firemen (both single and married), teachers, and single parent households.
7. Some of the Councillors mentioned that they were concerned about the aging housing stock, and how affordability is considered when looking at those units. They were concerned about the maintenance costs of these kinds of units when compared against the affordability metrics.
8. Several Councillors felt that a good barometer for expenditure on housing cost should be somewhere between 30-35% of income.
9. Some of the Councillors comments on the need for public outreach and to set up focus groups to further study the issue. This included suggestions of the “market,” the “developers” and the “community.”
10. Some of the Councillors commented that strategy in this area of affordable/workforce housing is tied to economic growth and the City should focus on this area so that our economic policy can be achieved as well, both in the short term, and the long term.
11. Several of the Councillors asked what types of regulatory barriers could be removed or reduced (aka parking requirements) to help with the production of workforce housing.

This encapsulates the majority of the main topic points that came up in the interviews. There were several comments made by individuals which were not repeated by others in the interviews. This does not decrease the value of any of those comments or ideas. The intent of this memo is to help facilitate the Council discussing these issues and help focus the discussion on September 28 to help give direction to staff about how the Council would like to proceed.

Respectfully submitted,

Donald M. Tripp  
City Manager

cc: Jody Andrews, Deputy City Manager  
Steve Smithers, Deputy City Manager



**Staff Report**

ATTACHMENT B

City Council Study Session Meeting  
September 28, 2015



**SUBJECT:** Affordable/Workforce Housing Interview Summary

**PREPARED BY:** Mac Cummins, AICP, Planning Manager  
John Hall, Economic Development Director

**Recommended City Council Action**

Provide Staff with feedback and direction on this issue.

**Summary Statement**

One of Council's 2015 Strategic Plan objectives is to advance strategies to provide affordable/workforce housing. Specifically, to "Advance strategies that demonstrate Westminster is a regional leader in providing affordable/workforce housing." To address this goal, Staff is engaged in a work effort that will result in development of a recommended affordable/workforce policy and strategy that, when implemented, will result in the development of affordable/workforce housing units. The first step in this work effort was to interview individual Council members to better understand specific concerns and objectives around this issue. A summary of Council comments were provided through an Information Only Staff Report provided to Council on September 14, 2015. That report is attached and provided as the foundation for further discussion on September 28, 2015. However, Council asked that Consensus Comment #3 on page 2, regarding timing, reflect greater urgency around this issue. Therefore, Staff suggests the following language to expand and revise the language regarding Timing and Timeliness in the execution and completion of this work effort.

"3. Timing, Execution and Completion – The development, completion and implementation of an affordable/workforce housing policy and strategy remains an urgent issue for Council. This objective has been articulated as part of the 2015 Strategic Plan. While Council members seek a thorough process, it is essential the work to be completed expeditiously. In addition, Council would like regular updates as policy and strategy are developed. The consensus among Councillors was that the "appropriate" amount of time should be spent researching, evaluating, and working with a consultant to consider possible solutions to the problem of affordable/workforce housing; all Councillors said that they wanted to take the appropriate amount of time to have the "right" approach, but emphasized that this work must be completed as soon as practically feasible."

The purpose of the September 28, 2015, Post City Council Meeting is to provide for a robust full Council discussion where Staff anticipates having a consultant present so that we can move quickly to a final work scope and plan for this effort.

**Expenditure Required:** N/A

**Source of Funds:** N/A



**Policy Issue**

Does City Council want to commence a discussion with the full Council to initiate with a consultant to assist with efforts to define and create an affordable/workforce housing policy?

**Alternative**

City Council could direct to proceed with a consultant without a full discussion at Monday's Post City Council meeting. Staff does not recommend this due to the Council's desire to move this effort forward and having a follow-up discussion with the full City Council with the consultant present will assist in ensuring Staff is moving forward in line with Council's focus.

**Background Information**

Staff conducted interviews with each City Council member during July and August in efforts to understand each member's specific concerns and objectives around the issues of affordable/workforce housing. Attached is the Information Only Staff Report from September 14, 2015. Staff will be in attendance at City Council's Post meeting Monday night with the consultant to discuss key points in the attached Staff Report.

Discussion with City Council regarding affordable/workforce housing supports the Strategic Plan goals of "Vibrant, Inclusive and Engaged Community" and "Dynamic Diverse Economy."

Respectfully submitted,

Donald M. Tripp  
City Manager

Attachment: September 14, 2015 Information Only Staff Report



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## Staff Report

City Council Study Session Meeting  
February 1, 2016



**SUBJECT:** Consideration of a draft Construction Defect Ordinance

**PREPARED BY:** David Frankel, City Attorney

### Recommended City Council Action

Consider the attached Construction Defect Ordinance draft and provide staff direction as to consideration on an upcoming meeting agenda.

### Summary Statement

Many front range municipalities have adopted local construction defect ordinances in an effort to stimulate development of residential condominium construction. The purpose of this ordinance is to encourage more residential condominium construction in Westminster through the efficient and fair settlement or adjudication of construction defect claims, without compromising the rights and remedies condominium homeowners associations and individual condominium owners currently enjoy under state law to seek redress for construction defects in common interest communities. The proposed draft is modeled after Denver's construction defect ordinance.

**Expenditure Required:** N/A

**Source of Funds:** N/A

**Policy Issue**

Should the City Council adopt a construction defect ordinance?

**Alternative**

The City Council could choose to not adopt a construction defect ordinance.

**Background Information**

The City of Westminster has a compelling local and municipal interest in promoting a diverse housing supply that gives residents the opportunity to rent or purchase homes in a wide range of styles, location and affordability within the city.

The purpose of this ordinance is to encourage more residential condominium construction in Westminster through the efficient and fair settlement or adjudication of construction defect claims, without compromising the rights and remedies condominium homeowners associations and individual condominium owners currently enjoy under state law to seek redress for construction defects in common interest communities.

Promotion of a diverse housing supply for city residents furthers the city’s strategic goals of Visionary Leadership, Effective Governance and Proactive Regional Collaboration; Vibrant, Inclusive and Engaged Community; Dynamic, Diverse Economy; and Beautiful, Desirable, Safe and Environmentally Responsible City.

Respectfully submitted,

Donald M. Tripp  
City Manager

Attachment - Ordinance

BY AUTHORITY

ORDINANCE NO.

COUNCILLOR'S BILL NO.

SERIES OF 2016

INTRODUCED BY COUNCILLORS

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A BILL

FOR AN ORDINANCE ADOPTING A NEW CHAPTER 14 IN TITLE 11 OF THE WESTMINSTER MUNICIPAL CODE CONCERNING CONSTRUCTION DEFECT CLAIMS IN COMMON INTEREST COMMUNITIES

WHEREAS, the City of Westminster is a home rule municipal corporation organized pursuant to Article 20 of the Colorado Constitution and the Charter of the City of Westminster; and

WHEREAS, by virtue of Article 20 of the Colorado Constitution, and as further authorized by state law, including but not limited to, Sections 31-15-401, General Police Powers, and 31-23-301, Grant of Power, of the Colorado Revised Statutes, the City of Westminster has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the citizenry;

WHEREAS, land use, planning, building code regulation and general business regulation are well-established as matters of purely local concern, and therefore subject to regulation by home rule cities; and

WHEREAS, the City's zoning ordinance and Comprehensive Plan both contemplate a diverse housing stock, consisting of a mix of single-family and multi-family developments, and both owned and rented units, designed to serve the needs of all Westminster residents; and

WHEREAS, the advent of light rail service via the Westminster Station and the new development at Downtown Westminster have intensified the need for owner-occupied units; and

WHEREAS, despite a genuine demand for such housing options, statistics show that almost no owner-occupied multi-family developments, or condominiums, are being developed in and around Westminster; and

WHEREAS, the relative dearth of new residential condominium construction in Westminster is attributable, in part, to trends in construction defect litigation brought by condominium homeowners associations in common interest communities, with the sheer volume and magnitude of such claims in recent years causing new condominium projects to be uninsurable, un-financeable, or both, particularly at more affordable price points for housing consumers; and

WHEREAS, that risk of exposure to large damage awards has led insurance companies who would normally insure development projects to stop writing policies for owner-occupied multi-family projects; and

WHEREAS, the City Council finds that the health, safety and welfare of Westminster residents is being negatively impacted by the lack of housing options; and

WHEREAS, the purpose of this ordinance is to encourage more residential condominium construction in Westminster through the efficient and fair settlement or adjudication of construction defect claims, without compromising the rights and remedies condominium homeowners associations and individual condominium owners currently enjoy under state law to seek redress for construction defects in common interest communities; and

WHEREAS, Colorado courts recognize the authority of legislative bodies to determine how their regulatory codes adopted under the police power, including building codes, may or may not be used in private civil litigation, and this ordinance is intended to clearly express the intention of the Westminster City Council in regard to how compliance with or violation of Westminster's adopted codes may be invoked by private litigants in the course of construction defects claims brought by common interest communities; and

WHEREAS, Colorado law and public policy strongly supports the use of alternative dispute resolution in lieu of litigation, and the purpose of this ordinance is to likewise support the use of ADR and reinforce requirements for arbitration to the extent that the parties have agreed to such requirements in the declaration of covenants in a common interest community; and

WHEREAS, because the initiation of a construction defect claim in a common interest community significantly affects the economic interests of all condominium owners, potentially positively or negatively, this ordinance is intended to promote and require informed consent by the affected homeowners prior to the initiation of such claims in the future; and

WHEREAS, nothing in this ordinance is intended to conflict with or supersede the requirements of any state statute governing construction defects claims, including by way of example the notice of claim provisions set forth in the Colorado Construction Defect Action Reform Act, Part 8 of Article 20 of Title 13, C.R.S.

THE CITY OF WESTMINSTER ORDAINS:

TITLE XI CHAPTER 14

**CONSTRUCTION DEFECT CLAIMS IN COMMON INTEREST  
COMMUNITIES**

Section 1: A new Chapter 14 shall be adopted and added to Title XI, W.M.C., to read as follows:

Chapter 14: CONSTRUCTION DEFECT CLAIMS IN COMMON INTEREST COMMUNITIES

Section 2: Chapter 14 of Title XI, W.M.C., is hereby AMENDED by the addition of the following definitions:

11-14-1. DEFINITIONS: The following words, terms, and phrases, when used in this Title, shall have the following meaning unless specifically defined in another Chapter:

“Association” shall be defined as provided in the Colorado Common Interest Ownership Act, Article 33.3 of Title 38, C.R.S., as amended.

“Common Interest Community” shall be defined as provided in the Colorado Common Interest Ownership Act, Article 33.3 of Title 38, C.R.S., as amended.

“Construction Defect Claim” shall mean a civil action or an arbitration proceeding for damages, indemnity, or contribution brought against a Development Party to assert a claim, counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of the use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property that is part of a Common Interest Community.

“Declarant” shall be defined as provided in the Colorado Common Interest Ownership Act, article 33.3 of Title 38, C.R.S., as amended.

“Declaration” shall be defined as provided in the Colorado Common Interest Ownership Act, Article 33.3 of Title 38, C.R.S., as amended.

“Development Party” shall mean an architect, contractor, subcontractor, developer, Declarant or affiliates of a Declarant, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property that is part of the Common Interest Community or any other party responsible for any part of the design or construction of any portion of the Common Interest Community, or any of such parties’ affiliates, or the officers, directors, partners, shareholders, members, managers, employees or servants of any of them.

“Executive Board” shall be defined as provided in the Colorado Common Interest Ownership Act, Article 33.3 of Title 38, C.R.S., as amended.

“Unit” shall be defined as provided in the Colorado Common Interest Ownership Act, Article 33.3 of Title 38, C.R.S., as amended.

“Unit Owner” shall be defined as provided in the Colorado Common Interest Ownership Act, Article 33.3 of Title 38, C.R.S., as amended.

Section 3. Chapter 14 of Title XI, W.M.C., is hereby AMENDED to add the following section:

11-14-2. Relationship of City building codes to Construction Defect Claims.

(A) IN GENERAL: A violation of any city building code as adopted in Chapter 9 of Article XI, or a failure to substantially comply with any such code shall not create a private cause of action. A violation of any city building code as adopted in Chapter 9 of Article XI, or a failure to substantially comply with any such code may not be used to support or prove any Construction Defect Claim, regardless of the statutory or common law theory under which the claim is asserted, unless the violation or failure to substantially comply results in one or more of the following:

- (1) Actual damage to real or personal property;
- (2) Actual loss to the use of real or personal property;
- (3) Bodily injury or wrongful death; or

(4) A risk of bodily injury or death to, or a threat to the life, health, or safety of, the occupants of residential real property.

(B) NO STRICT LIABILITY FOR BUILDING CODE VIOLATIONS: Under no circumstances shall a violation of any city building code as adopted in Chapter 9 of Article XI, or a failure to substantially comply with any such code, support or prove a Construction Defect Claim based upon a theory of strict liability, or under the common law doctrine of negligence *per se*.

(C) CODE COMPLIANT IMPROVEMENTS SHALL NOT BE CONSIDERED DEFECTIVE: The building codes adopted in Chapter 9 of Article XI are intended to establish a minimum standard for safe and sound construction in Westminster. Therefore, any particular element, feature, component or other detail of any improvement to real property that is specifically regulated under the city’s codes and is constructed or installed in substantial compliance with such codes shall not be considered defective for purposes of proving any Construction Defect Claim.

Section 4. Chapter 14 of Article XI, W.M.C., is hereby AMENDED to add the following section:

11-14-3. Informed consent for Construction Defect Claims associated with Common Interest Communities.

(A) **ADDITIONAL INFORMATION REQUIRED IN NOTICE TO UNIT OWNERS:** Before the Executive Board of a Common Interest Community institutes any legal action involving a Construction Defect Claim, the Executive Board shall include in the notice to Unit Owners required by §38-33.3-303.5, C.R.S. the following additional information to more fully advise the Unit Owners of the nature of the action and the relief sought, in substantially the following form:

(1) If the Association does not file a claim by (DATE), the claim cannot be filed at all under the applicable statute of limitations, statute of repose, or both.

(2) If the Association prevails, the Executive Board expects that the Association may recover from the defendant(s) an amount between \$\_\_\_\_\_ and \$\_\_\_\_\_.

(3) The Executive Board intends to enter into a contingency fee arrangement with the attorneys representing the Association, under which, of the amount the Association recovers from the defendant(s), the attorneys will be paid a contingency fee equal to percent of the (net) (gross) recovery. The Executive Board estimates that, in addition to the attorney fees, the Association will incur costs totaling approximately \$\_\_\_ for consultants, expert witnesses, depositions, filing fees, and other expenses of litigation.

(4) If the Association makes a claim and does not win, the Executive Board expects that the Association will have to pay for its own attorney fees, consultant fees, expert witness fees, and other costs (the amount listed in paragraph 3, above) and may have to pay defendant's consultant fees, expert witness fees, and court costs.

(5) If the Association does not recover from the defendant(s), it may have to pay to repair or replace the claimed defective construction work.

(6) Until the claimed defective construction work is repaired or replaced, or until the Construction Defect Claim is concluded, the market value of the affected Units may be adversely affected.

(7) Until the claimed defective construction work is repaired or replaced, or until the claim is concluded, owners of the affected Units may have difficulty refinancing and prospective buyers of the affected Units will have difficulty obtaining financing. In addition, certain federal underwriting standards or regulations may prevent refinancing or obtaining a new loan in projects where a construction defect is claimed. In addition, certain lenders as a matter of policy may not refinance or provide a new loan in projects where a construction defect is claimed.

(B) **TIMING FOR DELIVERY OF NOTICE TO UNIT OWNERS:** The notice to Unit Owners required by §38-33.3-303.5, C.R.S., including the additional information set forth in subsection (a) of this section, must be sent at least sixty days before service of the notice of a Construction Defect Claim under the Colorado Construction Defect Action Reform Act, section 13-20-803.5, C.R.S.

(C) **MAJORITY CONSENT OF UNIT OWNERS REQUIRED:** A Construction Defect Claim is not authorized unless the Executive Board obtains the signed, written consent from owners, other than the Declarant, of Units to which at least a majority of the total votes, excluding votes allocated to Units owned by the Declarant, in the Association are allocated, which written consent acknowledges that the owner has received the notice required under §38-33.3-303.5, C.R.S., including the additional information set forth in subsection (a) of this section, and approves of the Executive Board's proposed action.

(D) **PRESERVATION OF PRIVILEGED INFORMATION:** Nothing in this section shall be construed to:

(1) Require the disclosure in the notice or disclosure to a Unit Owner of attorney-client communications or other privileged communication.

(2) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice.

Section 5. Chapter 14 of Article XI, W.M.C., is hereby AMENDED to add the following section:

11-14-4. Enforcement of covenants requiring alternative dispute resolution for Construction Defect Claims.

Whenever a Declaration in a Common Interest Community requires any form of alternative dispute resolution for Construction Defect Claims asserted by the Association, by the Executive Board, or by any Unit Owners, and the Declaration expressly prohibits any future amendment to the Declaration that would modify or eliminate the requirement for alternative dispute resolution without the consent of the Declarant, then any attempt to modify or eliminate the requirement for alternative dispute resolution by the Association, by the Executive Board or by the Unit Owners absent the consent of the Declarant shall be deemed ineffective, an abrogation of a contractual obligation, and void as against public policy. This section shall apply if and only if:

(1) The Declaration contains a provision substantially in the following form:

“The terms and provisions of the Declaration requiring alternative dispute resolution for Construction Defect Claims inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the real estate at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THE DECLARATION REQUIRING ALTERNATIVE DISPUTE RESOLUTION OF CONSTRUCTION DEFECT CLAIMS ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS CONTAINED IN THE DECLARATION, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS.”; and

(2) The provisions of the Declaration requiring alternative dispute resolution for Construction Defect Claims inures to the benefit of other Development Parties in addition to the Declarant; and

(3) The provisions of the Declaration requiring alternative dispute resolution for Construction Defect Claims are consistent with the requirements of the Colorado Uniform Arbitration Act, Part 2 of Article 22 of Title 13, C.R.S., including but not limited to the requirement that any mediator or arbitrator selected to preside over a Construction Defect Claim must be a neutral third party as required by §13-22-211(2), C.R.S., and that the mediator or arbitrator shall make the disclosures required by §13-22-212, C.R.S.; and

(4) The provisions of the Declaration requiring alternative dispute resolution for Construction Defect Claims require that any mediation or arbitration must be held at a mutually agreeable location; and

(5) The provisions of the Declaration requiring alternative dispute resolution for Construction Defect Claims requires that any arbitration shall be governed by the substantive law of Colorado



with regard to any remedy granted, and if the remedy is substantially affected by the arbitrator's failure to follow the substantive law of Colorado, a court may vacate or refuse to confirm the arbitrator's award on that basis.

Section 6. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 8th day of February, 2016.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of February, 2016.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:

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City Attorney's Office