

**Wednesday, January 21, 2015**

**7:00 am – 9:30 am**

**Host: Douglas County**

**Douglas County Events Center, 500 Fairgrounds Drive, Castle Rock, Colorado**

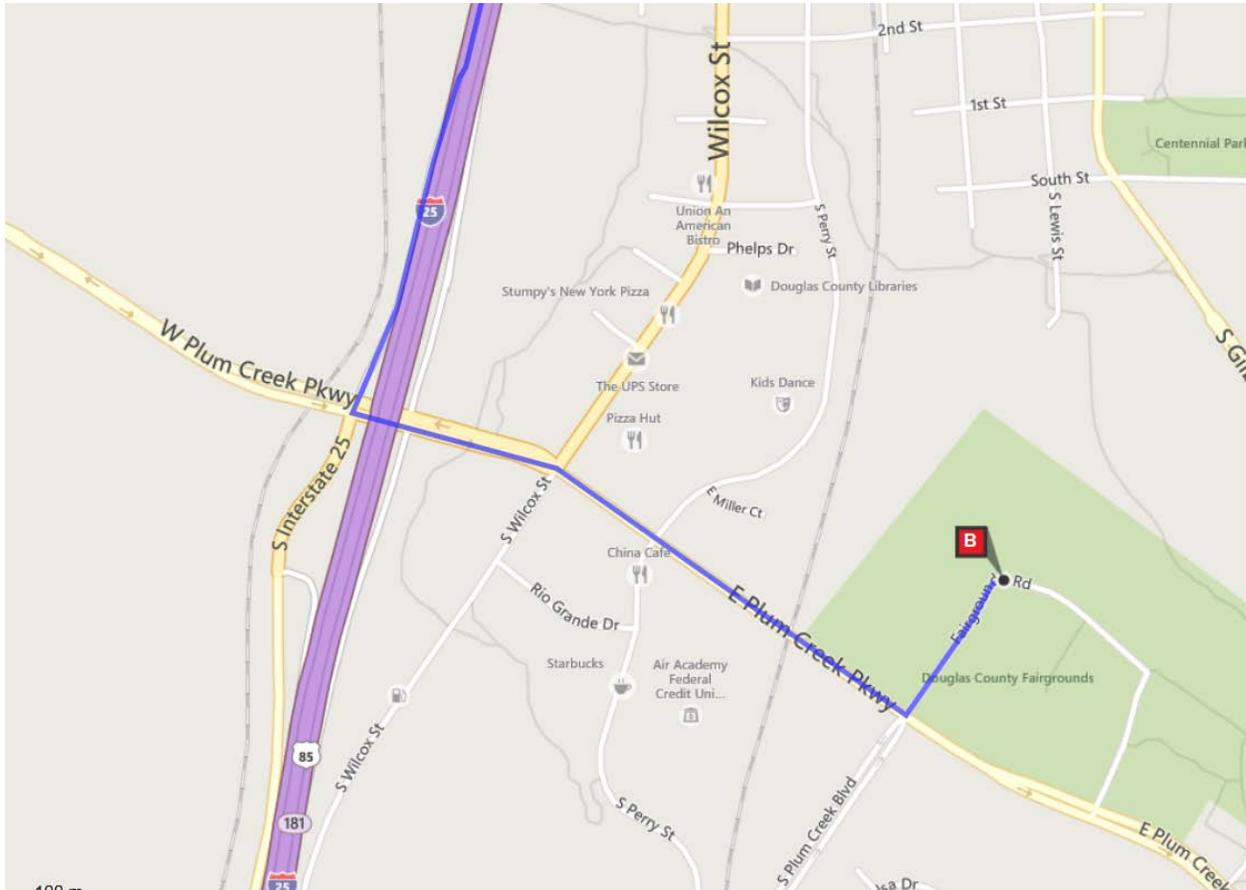
### **Meeting Agenda**

- 7:00 am     **BREAKFAST/NETWORKING**
- 7:30 am     **CALL TO ORDER AND INTRODUCTIONS** – Mayor Paul Donahue, Castle Rock
- 7:35 am     **WELCOME AND JURISDICTIONAL UPDATES**
- a) Town of Castle Rock
  - b) Highlands Ranch Metro District
  - c) Douglas County School District
  - d) Town of Parker
  - e) City of Castle Pines
  - f) Douglas County Libraries
  - g) Douglas County
  - h) City of Lone Tree
  - i) Town of Larkspur
  - j) Guests
- 8:15 am     **DISCUSSION/DIRECTION:** Organizational Guidelines and Meeting Schedule
- 8:45 am     **DISCUSSION/DIRECTION:** Construction Defects Legislation
- 9:00 am     **PARTNERING REPORTS**
- a) Douglas County
  - b) Douglas County Libraries
- 9:30 am     **ADJOURN**



**Douglas County Events Center  
500 Fairgrounds Drive, Castle Rock, Colorado**

**DIRECTIONS: I-25 to Exit 181, Plum Creek Parkway  
East .6 miles, Turn Left/North onto Fairgrounds Road**







Meeting Date: January 21, 2015

## **AGENDA MEMORANDUM**

To: Partnership of Douglas County Governments

From: Sally Misare, Castle Rock Town Clerk

Title: Discussion/Direction: Organizational Guidelines and Meeting Schedule

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### **Executive Summary**

When the Partnership of Douglas County Governments was established in 2004, they created a Charter (***Attachment C***) and Operational Guidelines intended to outline how the Partnership would function.

The Manager's Group has recently spent time reviewing these documents, and has found that updates are needed to reflect the current operational structure of the group.

The Charter contains very specific information regarding such things as numerous standing committees which no longer exist, and for which the designated leader may no longer be an employee of any designated membership entity. Many other provisions of the Charter were considered no longer applicable, and those aspects of the Charter that remained relevant to the group have been incorporated into the updated Operational Guidelines. Therefore, the Manager's Group is recommending that this document be revoked.

In place of the Charter, the Operational Guidelines (***Attachment A***) have been updated, and generally reflect the manner in which the group has operated over the last several years.

The Manager's Group is recommending several major changes:

- 1) The Partnership meeting every other month (January, March, May, July, September and December) rather than every month. The November Elected Officials Caucus would take place in November of each year. (***Attachment B***)
- 2) A standing Agenda Item has been added called "Partnering Reports". This time will be used by Partnership members to report on success stories and good news items related to joint projects or activities. The Manager's Group will be responsible for scheduling items of this nature for discussion at a given meeting.
- 3) Establishment of annual goals has been replaced with identification of Partnership Projects. The Manager's Group felt this approach was more in keeping with the Partnership Mission, and better reflected what has occurred over the last several years.

- 4) The Media Relations/ Communications subsection has been completely rewritten to reflect current practices. There were several provisions in the prior version of the Operating Guidelines which were no longer applicable, and these have been deleted.

Other minor changes have been made, but these are more technical in nature, and include such things as changing language to match the common nomenclature adopted by the Partnership, and adding some additional structure to the role of the Vice Chair.

Please let me know if you have any questions about the proposed revisions. If the Operational Guidelines as presented are acceptable to the membership, they will be adopted by informed consent of the group.

### **Attachments**

Attachment A: Proposed 2015 Operational Guidelines  
Attachment B: Proposed Meeting Schedule Rotation  
Attachment C: 2004 Charter

# Operational Guidelines (Proposed Revisions – January 2015)

## PARTNERSHIP MISSION

The Mission of the Partnership is to enhance and strengthen intergovernmental and regional relationships and pursue intergovernmental and regional collaborative efforts that result in the cost savings to taxpayers, improvements and greater efficiencies in operations, and improvements and enhancements to the levels of service provided to residents of Douglas County.

## MEETINGS

- The Partnership will follow the calendar year, January through December.
- Beginning in 2015 meetings will be held on the 3rd Wednesday of the month in January, March, May, July, September and December. A November meeting would be reserved for the Elected Officials Caucus. Breakfast will be served at 7 a.m., meetings will begin at 7:30 a.m., and conclude at 9:30 a.m.
- Hosting of the meetings (and funding the cost of breakfast) will rotate among the Partners - allowing visitation of multiple locations around the county.
- Generally there will be 7 meetings a year with the following months devoted to specific agendas:
  - July - Group requesting membership to give presentation, if organization meets membership criteria.
  - September- Discussion of group requesting membership status.
  - November - Elected Officials Caucus in lieu of an official meeting.
  - December - The Partnership will host a “legislative” workshop, inviting select state and federal elected officials to attend and discuss upcoming legislative needs or concerns.
- Meetings are public, however, attending public needs to contact the Chair with a request to be added to the agenda. Unless added to the agenda, attending public will be present as observing guests.

## MEETING AGENDA

- Jurisdictional Updates
- Featured Speaker or Program (if any)
- Partnering Reports
- Follow-Up Items (if needed)

## MEETING GROUND RULES

- Treat all as peers
- Maintain one conversation
- Listen actively to assure understanding
- Be on time and remain for the entire meeting
- Assure maximum interaction among the participants
- Make decision only by informed consent; at no time is there voting in the Partnership decision making process

## **ROSTER**

- Each Partner will designate representatives to the Partnership meetings as follows: A primary and alternate elected official, and a senior staff member. These people, and their contact information, will be recorded and the information distributed on a Roster.
- Partnership members will be notified of each meeting by the Chairing jurisdiction. Members may submit requests to the Chair for specific agenda items to be included. Such requests shall be submitted no later than 10 days prior to the meeting.
- Some groups, such as the Housing Partnership, Douglas County Youth Initiative, Sheriff's Department, and other elected officials are not expected to attend each meeting, but may request, or be invited by the chair, to give reports.

## **MEMBERSHIP CRITERIA**

- The Partnership of Douglas County Governments is by definition an organization of governments within Douglas County. Applications will be accepted from local governments in Douglas County as defined by the Colorado Department of Local Affairs.
- The cost of membership is defined only as the cost of serving breakfast as the monthly meeting host, which rotates among the members sequentially by alphabet and the administrative cost incurred during the year in which the member government serves as Chair of the Partnership.
- Many of the activities of the Partnership of Douglas County Governments revolve around municipal functions and coordination. Should any population served by a metropolitan district establish a city or town serving the same population, membership in the Partnership shall move from the metro district to the new municipality as soon as the new municipality is able and willing to join.
- Further clarification if needed regarding membership can be found in the Resolution Establishing the Partnership of Douglas County Governments and updated August 8, 2006. No further criteria are necessary to determine the membership into the organization.

## **MEDIA RELATIONS/COMMUNICATIONS**

The Partnership Chair PIO or communication's staff may represent the chairing entity to assure coordination and communication between Partnership organizations, and may also attend Partnership meetings.

- The Partnership Chair will summarize information items at the end of the meeting and determine if there is a media opportunity appropriate to pursue.
- With authorization to proceed, the Chair will draft or direct the drafting of the appropriate document and solicit approval from a media relations management committee appointed by the Chair.
- Should a need arise for an interview, statement or other direct contact with the media, the Partnership Chair, or their designee, will act as spokesperson.

- Significant media efforts such as news conferences or events will be coordinated at the direction of the Partnership Chair with consensus from the organization.
- For any media inquiry occurring outside of a Partnership meeting, the Chair, in consultation with the media relations committee be authorized to prepare a response be behalf of the Partnership

## **PARTNERSHIP PROJECTS**

Partnership members may present proposals for Partnership Projects which are consistent with Partnership Mission. By consensus at Partnership Meetings, the Partnership will determine whether to pursue the proposed projects

## **PARTNERSHIP CHAIR RESPONSIBILITIES**

- Serves as official Chair of Partnership meetings;
- Set annual schedule of meetings, and assures timely distribution of agendas, meeting materials and minutes of meeting;
- May cancel Partnership meetings in the event of insufficient scheduled business or planned attendance by members;
- The Chair position will rotate among the Partners, according to the following schedule:
  - 2015 – Town of Castle Rock
  - 2016 – Town of Parker\*
  - 2017 – City of Lone Tree\*
  - 2018 – Douglas County Government / Larkspur
  - 2019 – Douglas County Libraries
  - 2020 – Douglas County School District
  - 2021 – Highlands Ranch Metro District
  - 2022 – City of Castle Pines
  - New Partners, if any, will simply be added to the end of the list.

Partners may defer or swap their “years,” with the mutual consent of a Partner following them in the rotation.

*\*The Town of Parker and City of Lone Tree have agreed to switch years; Parker will serve as the Chair in 2016 and Lone Tree will be the Chair in 2017.*

## **PARTNERSHIP VICE-CHAIR RESPONSIBILITIES**

Serves as the Chair of Partnership meetings in the absence of the Chair

Becomes chair of the Partnership in the following year

## **ELECTED OFFICIALS CAUCUS**

This event is held in November of each year and is organized and hosted by the incoming chairing entity.

The goals of the Elected Officials Caucus include:

- Reviewing and celebrating Partnership accomplishments of the year
- Encouraging a broader connection among Partnership governing bodies
- Presenting a unified front for the county to officials representing areas larger than the county

Invitees to the Elected Officials Caucus should include:

- Partnership representatives and governing bodies
- Partnership spin-off groups (Douglas County Housing Authority, Douglas County Youth Initiative, etc.) and their governing bodies and key staff
- State and federal representatives
- Other interested elected County officials (Assessor, Treasurer, etc.)
- Others, at the Vice-Chair's discretion, depending upon the focus of the caucus

**PROPOSED SCHEDULE**

**2015 PDCG Rotation (Chair: Castle Rock)**

January	Douglas County
March	Lone Tree
May	Larkspur
July	Castle Rock
September	Highlands Ranch
November	Caucus - sponsored by Parker (Vice Chair)
December	School District

**2016 PDCG Rotation (Chair: Parker)**

January	Parker
March	Castle Pines
May	Douglas County Libraries
July	Douglas County
September	Lone Tree
November	Caucus – sponsored by Lone Tree (Vice Chair)
December	Larkspur



## Partnership of Douglas County Governments Charter for 2004

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### I. Purpose of the Partnership of Douglas County Governments

The Partnership of Douglas County Governments (The Partnership) was organized in order to bring senior staff and elected officials together from all jurisdictions for the purpose of strengthening relationships and finding opportunities to work jointly on projects that are of importance to the region. The charter also serves as a communication vehicle that sets expectations for new members. The following are important aspects of the Partnership:

- a. Qualify all projects based upon a regional focus and direction,
- b. Improve the potential for intergovernmental collaboration at all levels,
- c. Establish new relationships and strengthen existing relationships,
- d. Find ways to share appropriate information,
- e. Optimize the use of collective resources,
- f. Create a bias for action in all activities through clear direction,
- g. Create opportunities for educating and sharing expertise across the region.

### II. Why is The Partnership different from other cross-jurisdictional teams?

- a. The leadership of The Partnership comes from the elected officials who are members of the team and who cooperatively work together to create greater understanding of the needs and identification of solutions across the region.
- b. The Partnership members intend to prioritize regional activities in order to sustain the momentum of the *effort* and to produce real results in the quality of service delivery to citizens.
- c. ***The Partnership uses a consensus-driven, facilitated process for its meetings.*** This process does not assume a predetermined outcome for any topic or issue and this allows free flow of ideas and information. Using this consensus-based approach to decision making, the team is open to the discovery of new ideas, insights, and solutions. ***At no time is there voting in the Partnership process.***
- d. The activities undertaken may involve experimentation with new ideas that make The Partnership an incubator for innovation.
- e. The Partnership promotes bottom-up direction and top-down delegation, intending to blend the best of both approaches. The members encourage ideas that come from staff practitioners, as well as, delegating to cross-functional teams, but not mandating the solution. Through this unique blend of teamwork and management leadership, The Partnership intends to leverage creativity at all levels of the regional organization.

### III. PDCG Committee Structure:

- a. Executive Committee
  - i. This is the core team made up of senior staff and elected officials from Douglas County Government, the Town of Castle Rock, the Town of Parker, Town of Larkspur, the Douglas County School District, and the City of Lone Tree.
  - ii. The senior staff members (managers) of Castle Rock, Parker, Lone Tree, Douglas County School District, and Douglas County Government will take the lead and staff all teams. The teams will be distributed based upon which organization the chair resides.
  - iii. The managers are responsible for assuring that sub teams report on a timely and regular basis.
- b. Standing Committees:
  - i. Emergency Preparedness
  - ii. Arts and Culture
  - iii. Parks, Trails, and Open Space - Aden Hogan

- iv. DRCOG - conference call with Commissioner and Managers
  - v. Legislative - twice yearly meetings with PDCG
  - vi. Transportation/Public Transit - Jack Hidahl
  - vii. Douglas County University - Mark Stevens
  - viii. Regional Planning Committee - Mark Stevens
  - ix. Human Services – Doug DeBord
  - x. Water - Doug DeBord/Mark Stevens
  - xi. Finance - Doug DeBord
  - xii. Youth Issues - Chris Stutler
  - xiii. Douglas County Housing Partnership - Doug DeBord
  - xiv. Animal Control - Aden Hogan
  - xv. Other teams may be created based upon bottoms-up identified needs
- c. Elected Officials Caucus will focus on information and issues rather than specific tasks.
  - d. Ad hoc committees that are focused on a specific issues that are time-critical and have a finite life span. There will be a special process for the creation and retirement of these teams.

#### **IV. Operation and Governance**

The operation of The Partnership and its committees is governed by an underlying principle of efficiency and minimal administrative overhead. There are three governing documents: the resolution, the team charter, and the standard agenda format.

- a. PDCG Governance Documents
  - 1. Resolution – developed by the team in its first months of operation. It contains the commitment made by all jurisdictions and the goals and objectives of the Partnership. See attachment.
  - 2. PDCG Charter - contains the details of purpose, governance and operation.
  - 3. Standard Agenda – contains the structure for conduct of all meetings and all teams. The only exceptions to use of this meeting agenda are the caucus sessions, which may be conducted differently.
    - o The host will open the meeting and conduct introductions.
    - o The key elected official from the host entity will give a quick (5 minute) update on the community. Provide information of a regional nature.
    - o Each manager will review the committee reports by highlighting pertinent issues and progress made.
    - o The rest of the meeting will be dedicated to the focus topic of that meeting. It could be any of the three types of teams or an educational session.
    - o Close the meeting and determine next meeting date and location.
- b. Frequency of meetings
  - 1. PDCG Executive Team meets once a month for 3 hours on the third Wednesday of the month unless otherwise indicated. The time slot will be 7:30 a.m. to 10:30 a.m.
  - 2. Standing Committees meet a minimum of once per month or ad hoc based upon the task assigned.
  - 3. Legislative sessions with representatives, CML and CCI will be scheduled in June for end-of-session conversation and October to give input to the next year's legislative session.
  - 4. Ad hoc committees will be chartered on time-critical issues. These committees will have a sunset time built in and a deliverable to indicate closure. The criticality and deliverable will determine the frequency of meetings.

## ATTACHMENT C

Elected Official Caucus will be held once per year in November. Time will be 6:00 to 8:00 p.m. with dinner. The actual dates will be determined at the planning session to be held in September.

5. Staff/Director Caucus will be held once per year. The actual dates will be determined at the yearly review and planning session held in January.
  6. Annual meeting of the Executive Committee to assess progress of the previous year, identify improvements, and create plan for implementation. The meeting will be held in January to place the Partnership on a calendar year rotation.
- c. Reporting requirements
1. Minutes will be produced and distributed from all Partnership members.
  2. Sub committees will report monthly a 1-page summary of activities. The report will be due to the manager the Monday prior to the next meeting. It will be responsibility of the manager to insure that all sub committees report appropriately.
- d. Conduct of meetings
1. Standard agenda – refer to the standard agenda format to be used to plan and conduct all meetings.
  2. Ground Rules
    - a. All are peers.
    - b. One conversation.
    - c. Active listening to assure understanding.
    - d. Manage time by being on time and remain full duration.
    - e. Casual discussion format to allow maximum interaction among the participants.
  3. Facilitation will be employed to ensure that the agenda is completed and time is used to best advantage.
  4. Consensus decision-making will be employed in an effort to strengthen teaming relationships.
  5. Logistics – at each meeting the next meeting is scheduled and host assigned. Members on a rotating basis host meetings, and the host provides food and beverages.
- e. Membership
1. Terms – Each member entity will determine the terms of its members. It will be the responsibility of each member entity to ensure that the rotation of members does not affect the continuity of Partnership activities and at all times demonstrates a commitment to support the collaborative nature of the team.
  2. Member representation
    - a. Up to 2 elected officials, primary and backup.
    - b. Up to 2 staff members, primary and backup.
    - c. Drop-ins are welcome as this is an open public meeting where no one is excluded.
  3. New member qualification process
    - a. New organizational members will be considered by The Partnership and approved by consensus.
- f. Communication and Public information
1. A Public Information Officer (PIO) will attend Executive Committee meetings in order to assist the Partnership with

communication activities.

2. The PIO will be a staff member from one of the members of the Partnership and will serve a one-year term. The PIO will attend all meetings or send a representative.
3. To assist with transition, PIO rotation will begin in October, with two PIOs attending meetings until January.
4. The PIO will assist the Partnership in issuing an annual report.
5. PIO Protocols are as follows:
  - a. News releases will be issued based on when there is important information to communicate. The PIO will actively seek out newsworthy items from the partnership and send news releases on a regular basis.
  - b. The PIO will write the news releases and get approval from the manager of his/her organization before issuing the release. This manager will be responsible to the group for the content of the release and is encouraged to consult with others in the group should there be any concerns about the material.
  - c. News releases will be copied to all PDCG members via email at least 24 hours prior to public release.
  - d. Should there arise a need for interviews, statements or other direct contact with the media, the PIO will work with the management group to determine the best contacts for these efforts.
  - e. Significant media efforts such as news conferences or events will be coordinated at the direction of the management group.
  - f. The PIO will keep an archive of all information released on behalf of the Partnership.
- g. Implementation of the Charter
  1. Changes to the resolution approved by all Boards.
  2. Orientation of new members – distribute Charter and Resolution.

For more information regarding the Partnership contact:

Shirley Crider  
sac@quantumwest.com  
Quantum West,hc.  
303.537.8100

Douglas DeBord  
ddebord@douglas.co.us  
Douglas County Colorado  
303.660.7401



Meeting Date: January 21, 2015

## **AGENDA MEMORANDUM**

To: Partnership of Douglas County Governments  
From: Mark Stevens, Castle Rock Town Manager  
Title: Discussion/Direction: Construction Defects Legislation

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### **Executive Summary**

State law impacting new construction of owner-occupied multi-family housing has been a topic of considerable discussion at the State Legislature and among various local jurisdictions, including within Douglas County.

State Senator Mark Scheffel and State Representative Polly Lawrence, among others, have indicated an intent to pursue state legislation this Legislative Session to try to address issues and concerns with current state law.

Members of the Douglas County State Legislative Delegation have indicated that they believe actions by local government on this issue would be helpful in influencing action at the State Legislature, especially if local government actions reinforce that this is a bi-partisan issue of concern and that local governments are prepared to act on their own if the State Legislature does not effectively act, thereby creating the risk of a patchwork of local ordinances across the state and prolonged litigation over such local actions.

The City of Lone Tree is considering an ordinance modeled after the City of Lakewood ordinance (information from Lone Tree attached). Douglas County and the Town of Parker have adopted plat note legislation (information from Douglas County attached). The City of Littleton recently adopted a Resolution urging State action on the issue (information attached).

The Partnership's Managers Committee discussed this issue at its January 7, 2015 meeting. The Managers recommend that the Partnership receive updates from member entities about their approaches, and consider recommending that Partnership entities consider adopting a Resolution communicating to the Governor and State Legislature the importance of State action on this issue this Legislative Session and the willingness of Partnership entities to consider taking local action if the State does not address this issue in an effective manner.

### **Attachments**

Attachment A: Lone Tree Information  
Attachment B: Douglas County Information  
Attachment C: Littleton Resolution

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## Lone Tree tackles construction defects issue

Proposal would allow chance to fix before lawsuit

Jane Reuter  
 Posted 1/19/15



Lone Tree is among a handful of Colorado communities not willing to wait for a statewide solution to problems springing from construction defects litigation. The city council agreed during its Jan. 6 meeting to move forward with its own construct defects ordinance, which will allow condominium builders and homeowners to seek a solution before or instead of litigating.

The Town of Parker took a similar step late in 2014.

Lone Tree's proposal, similar to one recently passed in Lakewood, is designed ultimately to provide a more

balanced housing mix in Lone Tree. The community of 11,000 is projected to someday have 40,000 residents — most on the as-yet undeveloped east side of Interstate 25.

"It's very important to us," Mayor Jim Gunning said. "When you look at the future of Lone Tree, I really see condos will be an important part of the mix on the other side of the highway. We want to make sure that (option) is available."

Lone Tree's ordinance is set for a first reading during the council's Feb. 3 meeting, and a second reading on Feb. 17.

Many policy makers believe current state laws related to condominium construction defects are to blame for a scarcity of condo projects. That's left first-time homebuyers with fewer options and created a housing market gap.

Like Lakewood's ordinance, Lone Tree's gives the developer a chance to repair a defect before a lawsuit is filed. It also ensures all homeowners in a complex — not just the HOA board — are aware of what's happening.

"We're not trying to remove the legitimate right of the homeowners to seek action in court," Gunning said. "We're just trying to make sure both parties have an opportunity to discuss a cure, and that all the parties involved are fully informed of the action everybody is getting ready to pursue."

State lawmakers have debated changing the 2005 law that allegedly created today's litigious environment and escalated condo developers' insurance premiums, but have not yet reached consensus. They plan to again address it in the legislative session that began Jan. 7.

In Lone Tree, an ordinance addressing the issue needs to come sooner rather than later, Gunning said. Transit-oriented developments likely will sprout up around the three light rail stations planned with Lone Tree's southeast light rail extension. One station is proposed near Sky Ridge Medical Center on the west side of I-25 and the other two on the highway's east side. Such developments typically include multi-family housing and retail in a walkable format that draws young professionals and empty-nesters.

Otherwise, "You get apartments in places where you thought you'd see condos because the market is not conducive to building condos," he said. "Once that part of the market is locked out, it's very difficult to get it back in."

One condominium project is under construction in Lone Tree. Commonwealth Heights on RidgeGate Parkway will include 190 units with retail on the ground floor.

Two apartment complexes are under construction at the Lincoln light rail station on Park Meadows Drive.

The Town of Parker added a provision in October 2014 that also aims to resolve such issues outside a courtroom.

During the town's approval of a multi-family project, a property owner now may request adding a plat note that provides the opportunity for arbitration and mediation in resolving any construction defects. The note specifies those efforts be made before a class-action lawsuit is filed.

Parker Mayor Mike Waid said the intent is not to prevent homeowners from filing suit.

"The problem with the way the existing system works right now is if a simple majority of (a homeowners' association) board decides to file a class-action lawsuit on behalf of the rest of their members, they have the right to do that," he said. "The contractors are not made aware of it until it's already filed. They don't have an opportunity to cure if there is a legitimate defect.

"You have to be able to give the builder an opportunity to cure. If the builder says, 'Forget you,' (homeowners) still have the right to file a class-action lawsuit."





CITY OF LONE TREE  
STAFF REPORT

**TO: Mayor Gunning and City Council**

**FROM: Neil Rutledge**

**DATE: December 22, 2014**

**FOR: January 6, 2015 City Council Study Session**

**SUBJECT: Ordinance 15-XX, AN ORDINANCE ADDING A NEW ARTICLE XII TO CHAPTER 18 OF THE MUNICIPAL CODE REGARDING REPAIR OF CONSTRUCTION DEFECTS**

Summary

This Ordinance is aimed at reducing the risk of large verdicts against builders and developers for construction defects by giving builders and developers a “right to repair” defects upon notice from a condominium owner or association. It also requires condominium association boards to obtain the informed consent of a majority of the owners in the association before asserting any claims against builders or developers.

The Ordinance adds a new Article to the City’s building codes that applies to construction defects that do not conform in all material respects to the Building Code or the manufacturer’s specifications if they are stricter than the Building Code.

Under this Ordinance, a Homeowner or HOA who has discovered a construction defect must send written notice of the defect via certified mail or personal delivery to the alleged responsible Builder. “Builder” may include builders, architects, developers, contractors, subcontractors and engineers.

Builder must acknowledge receipt of notice to claimant within 14 days, or the protections of the Ordinance do not apply and the Claimant may file suit. Builder must provide to the claimant, if requested: copies of relevant plans, specifications, grading plans, soils reports and available engineering calculations pertaining to claimant’s residence; all maintenance and preventative maintenance recommendations pertaining to the claimant’s residence; and limited contractual warranty information.

Builder has the right to inspect the property within 14 days after acknowledging receipt of notice and bears all costs of inspection. The Homeowner may record and observe the inspection.

Builder has the right to repair the defect within 30 days after initial inspection with a detailed, step-by-step timeline for repair. Builder must complete repairs in the time allotted, or within a reasonable extension not to exceed 10 days, and notify the Claimant

of completion; otherwise, Claimant may file an action. Repair work must be warranted against material defects for 2 years.

If a claimant is not satisfied by the repairs, the claimant may file an action, unless the claimant is a common interest community or HOA.

If a Board of an HOA wishes to institute an action, notice must be sent to each Homeowner at least 60 days before the statutory notice required under state law. Notice must contain the following: nature of the action and relief sought; amount of expenses and fees the board anticipates will be incurred; estimated impact on value of units subject to the action; estimated impact on marketability of units not subject to the action; manner of funding the cost of the action; and anticipated duration of the action and likelihood of success. This notice may not be sent by a lawyer or law firm that would represent the HOA in the defects claim. Written consent from a majority of Homeowners must be obtained within 30 days of providing notice to them or the action may not be filed.

#### Cost

There is no cost to the City.

#### Suggested Motion

This is a Study Session topic. No formal action is necessary at this time.

#### Background

Statistics show that almost no owner-occupied, multi-family projects (condominiums) are being built in metropolitan Denver or elsewhere in Colorado. The risk of large verdicts against builders and developers for construction defects has resulted in insurance companies declining to write policies for condominium projects. This ordinance is aimed at reducing that risk by (1) giving builders and developers a “right to repair” defects upon notice from the condominium association, and (2) requiring condominium association boards to obtain the informed consent of a majority of the owners in the association before asserting any claims against builders or developers. This may contribute to increasing development and construction of condominiums, although it establishes requirements before a Claimant has the right of access to the Courts.

**ORDINANCE OF THE  
CITY OF LONE TREE**

**Series of 2015**

**Ordinance No. 15-XX**

**AN ORDINANCE ADDING A NEW ARTICLE XII TO CHAPTER 18  
OF THE MUNICIPAL CODE REGARDING  
REPAIR OF CONSTRUCTION DEFECTS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,  
COLORADO:**

**ARTICLE 1 – AUTHORITY**

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

**ARTICLE 2 – DECLARATIONS OF POLICY**

A. Land use, planning and general business regulation are well-established as matters of purely local concern, and therefore subject to regulation by home rule cities; and

B. 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, both owned and rented units, designed to serve the needs of all Lone Tree residents; and

C. The City Council recognizes the need for owner-occupied units, particularly in transit-oriented zones around light rail stations; and

D. The City Council anticipates vigorous housing development in and around future light rail stations to be located in the City; and

E. Despite a genuine demand for such housing options, a dearth of owner-occupied multi-family developments, or condominiums, are being planned and developed in the City;

F. The City Council is aware that the paucity of condominiums available for sale in the City can be attributed to a litigation climate that puts builders and developers at risk of substantial judgments, often including punitive damages, for alleged construction defects; and

G. The City Council finds that the 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

H. The City Council finds that the health, safety and welfare of Lone Tree residents are being negatively impacted by the lack of housing options; and

I. The City Council further finds that while the scarcity of new condominium projects is not unique to the City, the City nevertheless experiences some unique impacts because of its proximity to future expansion of the light rail line, among other factors; and

J. The City Council therefore desires to take reasonable steps within its power as a home rule city to encourage the development of owner-occupied multi-family residential projects through the adoption of regulations designed to reduce the risk and exposure to builders and developers of such projects, while still protecting home-owners from legitimate construction defect claims.

### **ARTICLE 3 – SAFETY CLAUSE**

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

### **ARTICLE 4 - ADOPTION**

The Code is amended as follows:

A new Chapter 18, Article XII is adopted as follows:

### **ARTICLE XII REPAIR OF CONSTRUCTION DEFECTS**

#### **Sec. 18-12-10. Purposes and Applicability.**

- A. The purposes of this Ordinance are to:
1. Encourage the construction of owner-occupied multi-family developments in the City;
  2. Facilitate the implementation of the Comprehensive Plan and Zoning Ordinance, both of which contemplate owner-occupied multi-family developments in transit-oriented areas and throughout the City;
  3. Reassure homeowners that most, if not all, construction defects will be promptly investigated and repaired by builders;

4. Motivate all parties to resolve disputes involving construction defects quickly and without the need for expensive and time-consuming litigation; and

5. Provide homeowners in communities with homeowners associations with an enhanced opportunity to participate in the governance of their community by empowering individual owners to give or withhold their informed consent with respect to actions the board of the homeowners association may desire to pursue regarding construction defects.

**B. Applicability**

This ordinance shall apply only to new construction commenced after the effective date of the ordinance.

**Sec. 18-12-20. Definitions.**

*Builder* means any entity or individual, including but not limited to a builder, developer, general contractor, contractor, subcontractor, architect, engineer or original seller who performs or furnishes the design, supervision, inspection, construction or observation of any improvement to real property that is intended to be occupied as a dwelling or to provide access or amenities to such an improvement.

*Construction Defect* means any instance in which a structure or portion thereof does not conform in all material respects to the applicable sections(s) of the Building Code, or does not conform to the manufacturer's specifications if those specifications are stricter than the applicable provisions of the Building Code.

*Homeowner* means any person who owns a unit in a condominium or planned community, but shall not include any declarant or any person having an interest in a unit solely as security for an obligation. As used in this Article, Declarant shall have the meaning set forth in C.R.S. § 38-33.3-103(12).

**Sec. 18-12-30. Potential Claimants.**

Original buyers or subsequent buyers of an attached single-family dwelling or a unit in a multi-family building, or the governing homeowners association may send the notice of Construction Defect, provided the notice is sent within the applicable time period.

**Sec. 18-12-40. Potential Respondents.**

Any person or entity within the definition of a "Builder" as defined in this Article is subject to the requirements of this Ordinance.

**Sec. 18-12-50. Claimant's Notice to Builder of Construction Defects; Builder's Acknowledgement; Inspection**

A. Claimant's Notice. Upon the discovery of any alleged Construction Defect, a claimant must provide written notice via certified mail or personal delivery to the party alleged to have caused or contributed to the defect, in the manner prescribed in this Section, of the claimant's claim that one or more Construction Defects exists in the residence or, with respect to any homeowners association, that one or more Construction Defects exists in any residence or in any common areas or facilities.

The notice must:

1. Provide the claimant's name, address and preferred method of contact;
2. State that the claimant alleges a Construction Defect pursuant to this

Chapter against the Builder; and

3. Describe the claim in reasonable detail sufficient to determine the nature and location of the alleged Construction Defects.

B. **Builder's Responsibilities.** After receiving notice of a potential Construction Defects claim, a Builder must do each of the following:

1. Acknowledge Claim in Writing.

a. A Builder who receives a notice under this Article shall acknowledge receipt of the notice, in writing, within 14 days after receipt. The notice shall be sent to the claimant and to any attorney the Builder knows to be representing the claimant in connection with the notice. If the Builder has retained legal counsel, said counsel shall thereafter communicate with the claimant's legal representative, if any.

b. If the Builder fails to acknowledge receipt of a notice within the time specified, this Article shall not apply and the claimant shall be released from the requirements of this Article and may proceed with the filing of an action against the Builder.

2. Maintain an agent for notice with the Secretary of State; and

3. If specifically asked to do so by the claimant and within 14 days of such a request, provide the claimant or the claimant's legal representative with:

a. copies of all relevant plans, specifications, grading plans, soils reports and available engineering calculations pertaining to the claimant's residents;

b. all maintenance and preventative maintenance recommendations pertaining to the claimants residence; and

c. limited contractual warranty information.

C. A Builder responding to a Claimant's request for documents may charge reasonable copying costs and may require the copies of the documents to be made onsite.

D. **Builder's Election to Inspect Property.** In addition to the requirements set forth in this Section, if the Builder elects to inspect the claimed Construction Defect, the Builder shall complete the initial inspection and testing, if any, within 14 days after the Builder acknowledged receipt of the notice, and at a mutually agreeable date and time. The Builder shall bear all costs of inspection and testing, including any damage caused by the inspection and testing. Before entering onto the premises for the inspection, the Builder shall supply the claimant with proof of liability insurance coverage. The Builder shall, upon request, allow the inspection to be observed and recorded or photographed. Nothing that occurs during a Builder's inspection may be used or introduced as evidence to support a defense of spoliation of evidence by any potential party in subsequent litigation.

E. A Builder who fails to comply with any of the foregoing requirements within the time specified is not entitled to the protection of this Article, and the homeowner is released from the requirements of this Article and may proceed with the filing of an action.

F. If a notice is sent to the Builder in accordance with Sec. 18-12-50 within the time prescribed for the filing of an action under any applicable statute of limitations or repose, then the statute of limitations or repose is tolled until sixty days after the completion of the notice process described in Sec. 18-12-50. If the builder elects to repair pursuant to Sec. 18-12-60, then the statute of limitations or repose is tolled until sixty days after the completion of repairs.

**Sec. 18-12-60. Builder's Right to Repair**

A. Within thirty (30) days of the initial inspection of testing, the Builder may elect to repair the Construction Defect. If the Builder elects to repair the Construction Defect, it has the

right to do so and the Claimant may not, directly or indirectly, impair, impede or prohibit the Builder from making repairs. Any notice to repair shall offer to compensate the claimant for all applicable damages within the timeframe set for repair. Any notice to repair shall be accompanied by a detailed, step-by-step explanation of the particular defect being repaired and set forth a reasonable completion date for the repair work. The notice shall also include the contact information for any contractors the Builder intends to employ for the repairs.

B. Claimant shall promptly cooperate with Builder to schedule repair work by Builder.

C. Within ten (10) days after receipt of the Builder's notice to repair, a claimant may deliver to the Builder a written objection to the proposed repair if the claimant believes in good faith that the proposed repairs will not remedy the alleged defect. The Builder may elect to modify the proposal in accordance with the claimant's objection, or may proceed with the scope of work set forth in the original proposal.

D. **Builder's Failure to Comply.** If the Builder fails to send a notice to repair or otherwise strictly comply with this Article within the specified time frames, or if the Builder does not complete the repairs within the time set forth in the notice to repair, the claimant shall be released from the requirements of this Article and may proceed with the filing of an action against the Builder. Notwithstanding the foregoing, if the Builder notifies the claimant in writing at least 5 days before the stated completion date that the repair work will not be completed by the completion date, the Builder shall be entitled to one reasonable extension of the completion date, not to exceed ten days.

E. **Completion of repairs.** The Builder shall notify the claimant when repairs have been completed. The claimant shall have ten days following the completion date to have the premises inspected to verify that the repairs are complete and satisfactorily resolved the alleged defects. A claimant who believes in good faith that the repairs made do not resolve the defects may proceed with the filing of an action unless notice and consent are required by Sec. 18-12-100.

**Sec. 18-12-70. Warranty of Repairs.**

The repair work performed by the Builder shall be warranted against material defects in design and construction for a period of two years, which warranty shall be in addition to any express warranties on the original work.

**Sec. 18-12-80. Subsequently Discovered Defects.**

If notice of a particular Construction Defect is not given to a Builder by claimant with an opportunity to repair the defect, any alleged Construction Defect discovered after any repairs have been completed shall be subject to the same requirements of this Article.

**Sec. 18-12-90. Alternative Dispute Resolution Provisions.**

If a provision found in the declaration, bylaws or rules and regulations of a common interest community requires that Construction Defect claims be submitted to mediation or arbitration, that requirement constitutes a commitment on the part of the unit owner and the association upon which a developer, contractor, architect, builder or other person involved in the construction of the community is entitled to rely. Consequently, a subsequent amendment to the declaration, bylaws or rules and regulations that removes or amends the mediation or arbitration requirement shall not be effective in regard to any Construction Defect claim that is based on an alleged act or omission that predates that amendment.

**Sec. 18-12-100. Informed Consent of Homeowners.**

Homeowners are entitled to be kept informed by boards of homeowners associations of the board's consideration of actions regarding Construction Defects and to have meaningful input and a right to make a considered judgment and give or withhold informed consent. Accordingly, if a board of an association considers or intends to institute an action asserting one or more Construction Defects, the board must do each of the following:

A. At least sixty (60) days before filing any action under Section 13-20-803.5, C.R.S., the claimant must mail or deliver written notice to each Homeowner at the Homeowner's last known address.

B. The notice must be signed by a person other than, and not employed or otherwise affiliated with, the attorney or law firm that represents or will represent the association in the construction defects claim.

C. The notice required by this section must contain the following information:

- i. The nature of the action and the relief sought;
- ii. The amount of expenses and fees the board anticipates will be incurred, directly or indirectly, in prosecuting the action, including attorney's fees, consultant fees, expert witness fees and court costs (whether incurred by the association directly or for which it may be liable if it is not the prevailing party), or if it does not proceed with action;
- iii. The estimated cost of repairing the defect, or if the defect is not repaired, the estimated reduction in value of the unit;
- iv. The estimated impact on the marketability of units that are not the subject of the action, including any impact on the ability of the owners to refinance their property during and after the action;
- v. The manner in which the association proposes to fund the cost of the action, including any proposed special assessments or the use of any revenues;
- vi. The anticipated duration of the action and the likelihood of success;
- vii. Whether the Builder has offered to make any repairs and, if so, whether the Builder has made repairs; and
- viii. The steps taken by the Builder in accordance with this Article to address the alleged defect, including any acknowledgement, inspection, election to repair or offered repairs.

D. The association may not commence an action unless the Board obtains the written consent of Homeowners holding at least a majority of the total voting rights in the association after giving the notice required by this Section. Homeowners may vote either directly or through a proxy directed in writing by the Homeowner and confirmed in writing by the proxy. Such consent must be obtained within 60 days after such notice is provided; otherwise the owners shall be deemed to have declined to provide their informed consent to such action.

**ARTICLE 5 - SEVERABILITY**

If any part or provision of this Ordinance, or its application to any person or circumstance is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given the effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**ARTICLE 6 – CAUSES OF ACTION RETAINED**

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

**ARTICLE 7 - EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

**INTRODUCED READ AND ORDERED PUBLISHED ON JANUARY 20, 2015.**

**CITY OF LONE TREE:**

\_\_\_\_\_  
James D. Gunning, Mayor

**ATTEST:**

(SEAL)

\_\_\_\_\_  
Jennifer Pettinger, CMC, City Clerk



AS A MEANS TO PROMOTE THE PROMPT, EFFICIENT AND COST EFFECTIVE RESOLUTION OF DISPUTES PERTAINING TO THE PROPERTY COVERED BY THIS PLAT, (THE "PROPERTY"), AND TO ENCOURAGE AND FOSTER THE DEVELOPMENT OF AFFORDABLE HOUSING AND TO HELP ENSURE THE CONSTRUCTION OF OWNER-OCCUPIED MULTI-FAMILY HOUSING FOR THE BENEFIT OF COUNTY RESIDENTS, WHICH CONSTRUCTION THE COUNTY UNDERSTANDS IS BECOMING COST PROHIBITIVE DUE TO INCREASING AND EXCESSIVE LITIGATION COSTS. , INCLUDING, BUT NOT LIMITED TO, MULTI-FAMILY HOUSING, IN DOUGLAS COUNTY, IT SHALL BE A REQUIREMENT THAT THE FOLLOWING CLAIMS INVOLVING THE PROPERTY SHALL BE SUBMITTED TO BINDING ARBITRATION IN LIEU OF SUBMITTING ANY SUCH CLAIM TO A COURT OF LAW: ANY AND ALL CLAIMS (1) THAT ARE BETWEEN ANY TWO OR MORE OF THE FOLLOWING PERSONS OR ENTITIES: (A) ANY OWNER OF ANY PORTION OF THE PROPERTY, (B) ANY COMMON INTEREST COMMUNITY ASSOCIATION CREATED WITH RESPECT TO THE PROPERTY, (C) THE SUBDIVIDER, ~~AND~~ (D) ANY PARTY THAT CONSTRUCTS ANY RESIDENTIAL DWELLING UNITS UPON THE PROPERTY OR (E) ANY CONSTRUCTION PROFESSIONAL AS DEFINED IN THE CONSTRUCTION DEFECT REFORM ACT, C.R.S. § 13-20-801 et. seq. AS AMENDED, AND (2) THAT PERTAINS TO ANY DEFECT IN DESIGN OR CONSTRUCTION OF OR ON (A) THE PROPERTY, (B) ANY DWELLING UNIT OR OTHER IMPROVEMENTS CONSTRUCTED ON THE PROPERTY, (C) THE COMMON INTEREST COMMUNITY TO BE CREATED FOR THE PROPERTY, OR (D) THE DECLARATION OR OTHER DOCUMENTS GOVERNING SUCH COMMUNITY. THE FOREGOING SHALL NOT PRECLUDE ANY OF THE FOREGOING PARTIES FROM ENDEAVORING TO RESOLVE ANY SUCH CLAIM THROUGH EITHER NEGOTIATION OR MEDIATION BEFORE SUBMITTING SUCH CLAIM TO BINDING ARBITRATION. ADDITIONALLY, THE PROPERTY MAY ALSO BE SUBMITTED TO A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS THAT MAY IMPLEMENT AND EXPAND UPON THE REQUIREMENTS OF THIS PARAGRAPH AND THAT MAY EXEMPT CERTAIN CLAIMS FROM THE REQUIREMENT THAT SUCH CLAIMS MUST BE SUBMITTED TO BINDING ARBITRATION, INCLUDING CLAIMS BROUGHT TO FORECLOSE LIENS FILED AS PART OF THE CONSTRUCTION PROCESS, CLAIMS BROUGHT BY A COMMON INTEREST COMMUNITY ASSOCIATION TO RECOVER UNPAID ASSESSMENTS PAYABLE TO SUCH ASSOCIATION OR TO OBTAIN A TEMPORARY RESTRAINING ORDER OR INJUNCTION FROM A COURT OF LAW PROHIBITING A VIOLATION OF SUCH COVENANTS, CONDITIONS AND RESTRICTIONS: PROVIDED, HOWEVER, THAT ANY SUBSEQUENT AMENDMENT OR CHANGE TO SUCH DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS SHALL NOT ELIMINATE THE REQUIREMENT THAT THE CLAIMS DESCRIBED IN THIS PLAT NOTE, INCLUDING BUT NOT NECESSARILY LIMITED TO CONSTRUCTION DEFECT CLAIMS, SHALL BE SUBMITTED TO BINDING ARBITRATION IN LIEU OF SUBMITTING ANY SUCH CLAIM TO A JUDICIAL PROCEEDING.

ALL FUTURE PURCHASERS OF ANY INTEREST IN THE PROPERTY ARE DEEMED TO HAVE ACCEPTED AND AGREED TO THE TERMS AND CONDITIONS OF THIS PLAT NOTE.



**CITY OF LITTLETON, COLORADO**

**Resolution No. 139**

**Series, 2014**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LITTLETON, COLORADO, ENCOURAGING MEANINGFUL CONSTRUCTION DEFECTS LITIGATION REFORM BY THE COLORADO GENERAL ASSEMBLY DURING THE 2015 LEGISLATIVE SESSION**

**WHEREAS**, the city of Littleton has seen an abundance of rental development projects in recent years with no owner-occupied attached housing developed during the same time.

**WHEREAS**, the city council and Littleton residents are concerned with insuring a sustainable and diverse mix of housing options that allow individuals to invest long-term in the community;

**WHEREAS**, existing Colorado law concerning construction defects needs a major overhaul to reduce litigation risks to developers while maintaining consumer protections;

**WHEREAS**, the city council respects and supports the actions of the City of Lakewood, the town of Parker, and other municipalities in calling attention to the issue of construction defects litigation reform.

**WHEREAS**, the Colorado General Assembly has failed to discuss meaningful construction defects litigation reforms.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LITTLETON, COLORADO, THAT:**

The city council hereby respectfully requests the Colorado General Assembly address meaningful reforms concerning construction defects litigation during the 2015 legislative session that results in the ability of the development community to build owner-occupied attached housing.

**BE IT FURTHER RESOLVED THAT:**

Copies of this resolution shall be provided to the senators and representatives representing Littleton at the General Assembly, the Colorado Municipal League, as well as Governor Hickenlooper.

Resolution No.\_\_\_\_

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INTRODUCED, READ AND ADOPTED at a regularly scheduled meeting of the

City Council of the City of Littleton, Colorado, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, at 6:30  
p.m. at the Littleton Center, 2255 West Berry Avenue, Littleton, Colorado.

ATTEST:

\_\_\_\_\_  
Wendy Heffner  
CITY CLERK

\_\_\_\_\_  
Phil Cernanec  
PRESIDENT OF CITY COUNCIL

APPROVED AS TO FORM:

\_\_\_\_\_  
Kenneth S Fellman  
CITY ATTORNEY