

**CITY OF WHEAT RIDGE, COLORADO**  
**INTRODUCED BY COUNCIL MEMBER STARKER**  
**COUNCIL BILL NO. 18**  
**ORDINANCE NO. 1580**  
Series 2015

**TITLE: AN ORDINANCE ADDING A NEW ARTICLE XIII TO CHAPTER 26 OF THE WHEAT RIDGE CODE OF LAWS CONCERNING REPAIR OF CONSTRUCTION DEFECTS**

**WHEREAS**, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

**WHEREAS**, 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

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

**WHEREAS**, the introduction of electric commuter rail service via the Gold Rail Line has intensified the need for owner-occupied units, particularly in transit-oriented zones around transit rail stations; 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 Wheat Ridge; and

**WHEREAS**, the City Council finds that the scarcity of condominiums available for sale in Wheat Ridge is the result of a litigation climate that puts builders and developers at risk of substantial judgments, often including punitive damages, for alleged construction defects; and

**WHEREAS**, the City Council finds 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 Wheat Ridge residents is being negatively impacted by the lack of housing options; and

**WHEREAS**, the City Council further finds that while the scarcity of new condominium projects is not unique to the City of Wheat Ridge, the City nevertheless experiences some unique impacts because of its proximity to the electric commuter rail line and the aging of its population, among other factors; and

**WHEREAS**, the City Council finds there is a need for affordable housing in proximity to transit stations; and

**WHEREAS**, the lack of such affordable housing is related, in part, to the cost of construction insurance; and

**WHEREAS**, 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 homeowners' ability to obtain corrective action for legitimate construction defect claims.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:**

**Section 1.** Chapter 26 of the Code of Laws is amended to add a new Article 13 to read as follows:

## **ARTICLE 13**

### **REPAIR OF CONSTRUCTION DEFECTS**

#### **26-1301 Purposes and Applicability.**

A. The purposes of this Article are to:

1. Encourage the construction of high quality owner-occupied multi-family developments in Wheat Ridge;
2. Facilitate the implementation of the Wheat Ridge 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 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 Article shall apply only to new construction commenced after August 24, 2015.

#### **26-1302 Definitions.**

*Association* means a homeowners association governing certain owners' rights and responsibilities in an attached multi-family dwelling, a common interest community, a condominium or other multi-family development.

*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.

*Building Code* means the current version of the International Building Code, as adopted by the city.

*Construction Defect* means any instance in which a structure or portion thereof does not conform in all material respects to the applicable section(s) of the Building Code, or does not conform to the manufacturer's specifications if those specifications are more strict than the applicable provisions of the Building Code, and the effect of which is to materially lower the value of the structure or pose a safety risk to its occupants.

*Declarant* means any person or group of persons acting in concert who: (a) As part of a common promotional plan, offers to dispose of to a purchaser such declarant's interest in a unit not previously disposed of to a purchaser; or (b) Reserves or succeeds to any special declarant right.

*Homeowner* means any person who owns a unit in an attached multi family dwelling, a common interest community, a condominium or other multifamily development, but shall not include any declarant or any person having an interest in a unit solely as security for an obligation. *Declarant* shall have the meaning set forth in C.R.S. § 38-33.3-103(12).

### **26-1303 Potential Claimants**

Original buyers or subsequent owners of a unit in an attached multi-family dwelling, a common interest community, a condominium or other multifamily development, or the governing homeowners association thereof, may assert the rights of a claimant under this Article by sending notice of a construction defect, provided the notice is sent within the applicable time period.

### **26-1304 Potential Respondents**

Any person or entity within the definition of a "Builder" as defined in Section 26-1302 of this Article is subject to the requirements of this Article.

### **26-1305 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 his/her 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. Provide the name and address of the claimant's attorney, if any;

3. State that the claimant alleges a construction defect pursuant to this Article against the builder; and
  4. 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 defect 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 acknowledgement 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 Colorado Secretary of State if required by the form of the builder's corporate or business structure, and if not, otherwise provide an address and contact person for notices under this Article; and
  3. If specifically asked to do so by the claimant and within 30 days of such a request, provide the claimant or his/her legal representative with:
    - a. copies of all relevant plans, specifications, grading plans, soils reports and available engineering calculations pertaining to the claimant's residence;
    - b. all maintenance and preventative maintenance recommendations pertaining to the claimant's residence; and
    - c. limited contractual warranty information.
  4. 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 at the builder's location.
  5. 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 30 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.



6. 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.
7. If a notice is sent to the builder in accordance with this section 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 section 26-1305. If the builder elects to repair pursuant to 26-1306, then the statute of limitations or repose is tolled until sixty days after the completion of repairs. The tolling imposed by this section shall be limited only to the construction defect described in the notice.

#### **26-1306 Builder's Right to Repair**

- A. Within thirty (30) days of the initial inspection or 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 of repair shall be accompanied by a detailed, step-by-step explanation of the particular defect being repaired and setting 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 repair 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 repair 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 30 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. An association claimant who believes in good faith that the repairs made do not resolve the defects may proceed with the notice required by section 26-1310. Any other claimant may then elect to file an action under C.R.S. § 13-20-803.5 or any other applicable statute or court rule.



### **26-1307 Warranty of Repairs**

The repair work performed by the builder shall be warranted against material defects in design or construction for a period of 2 years, which warranty shall be in addition to any express warranties on the original work.

### **26-1308 Subsequently Discovered Defects**

Any alleged construction defect discovered after repairs have been completed shall be subject to the same requirements of this Article if the builder did not have notice or an opportunity to repair the particular defect.

### **26-1309 Alternative Dispute Resolution Provisions**

Nothing in this Article shall preclude the claimant and builder from reaching a mutual agreement regarding alternative dispute resolutions. If a provision found in the declaration, bylaws or rules and regulations of a condominium development or 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 owners 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 with regard to any construction defect claim that is based on an alleged act or omission that predates that amendment.

### **26-1310 Association Obligation to Inform 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) consent to institute an action asserting one or more construction defects. The association board must do each of the following:

- A. At least sixty (60) days before filing any action under C.R.S. § 13-20-803.5, or on any other statute or court rule, an association 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:
  1. The nature of the action and the relief sought;
  2. The amount of expenses and fees the board anticipates will be incurred, directly or indirectly, in prosecuting the action, including attorney 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 the action;
  3. The estimated cost of repairing the defect, or if the defect is not repaired, the estimated reduction in value of the unit;

4. 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;
  5. 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;
  6. The anticipated duration of the action and the likelihood of success;
  7. Whether the builder has offered to make any repairs and, if so, whether the builder has made repairs; and
  8. The steps taken by the builder, if any, in accordance with this Article to address the alleged defect, including any acknowledgement, inspection, election to repair or repairs.
- D. The association claimant may not commence the 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. In the event the association governs units in more than a single building, the written consent required by this section shall be a majority of the units with voting rights only in the building or buildings in which the construction defect is alleged to be present. 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.

**Section 2.** The Code of Laws is amended by the addition of a new Section 26-420, to read:

**Sec. 26-420.** Plat note concerning multi-family development.

**A.Contents.** Only at the specific written request of the applicant, a final plat containing lots, blocks, or other land intended for the development of owner-occupied multi-family dwelling units or associated common areas, limited common elements, or improvements within a common interest community (the "multi-family development area") will include the following plat note, applicable to the property within such multi-family development area and the improvements thereon.

THIS PLAT CONTAINS LOTS, BLOCKS, OR OHER LAND INTENDED FOR THE DEVELOPMENT OF OWNER-OCCUPIED MULTI-FAMILY DWELLING UNITS OR ASSOCIATED COMMON AREAS, LIMITED COMMON ELEMENTS, OR IMPROVEMENTS (THE "MULTI-FAMILY DEVELOPMENT AREA"). TO THE EXTENT THAT THE FOLLOWING CLAIMS INVOLVE ANY MULTI-FAMILY DEVELOPMENT AREA (OR THE IMPROVEMENTS THEREON) WITHIN THE PROPERTY COVERED BY THIS PLAT, SUCH CLAIMS SHALL BE SUBMITTED TO BINDING ARBITRATION IN LIEU OF SUBMITTING ANY SUCH CLAIM TO A COURT OF LAW.



ANY AND ALL CLAIMS THAT ALLEGE A CONSTRUCTION DEFECT AS DEFINED AT SECTION 26-1302 OF THE CODE OF LAWS AND: (1) ARE BETWEEN ANY TWO OR MORE OF THE FOLLOWING PERSONS OR ENTITIES: (A) ANY OWNER OF ANY PORTION OF THE MULTI-FAMILY DEVELOPMENT AREA, (B) ANY COMMON INTEREST COMMUNITY ASSOCIATION CREATED WITH RESPECT TO THE MULTI-FAMILY DEVELOPMENT AREA, (C) THE SUBDIVIDER, DEVELOPER, CONTRACTOR, OR ANYONE CLAIMING UNDER OR THROUGH ANY SUCH PERSONS, (D) ANY PARTY THAT CONSTRUCTS OR DESIGNS ANY PORTION OF ANY RESIDENTIAL DWELLING UNITS UPON THE MULTI-FAMILY DEVELOPMENT AREA, AND (E) ANY CONSTRUCTION PROFESSIONAL AS DEFINED IN THE CONSTRUCTION DEFECT ACTION REFORM ACT, C.R.S. 13-80-802.5, ET SEQ. AS AMENDED ("CDARA"); AND (2) THAT PERTAINS TO ANY OF: (A) THE MULTI-FAMILY DEVELOPMENT AREA, (B) ANY DWELLING UNIT, COMMON AREA DEVELOPMENT STRUCTURE, LIMITED COMMON ELEMENTS, OR OTHER IMPROVEMENTS CONSTRUCTED ON THE MULTI-FAMILY DEVELOPMENT AREA, (C) THE COMMON INTEREST COMMUNITY TO BE CREATED FOR THE MULTI-FAMILY DEVELOPMENT AREA OR ANY PORTION THEREOF, OR (D) THE DECLARATION OR OTHER DOCUMENTS GOVERNING SUCH COMMUNITY.

THE FOREGOING SHALL NOT PRECLUDE ANY OF THE PERSONS OR ENTITIES DESCRIBED ABOVE FROM ENDEAVORING TO RESOLVE ANY SUCH CLAIM(S) THROUGH EITHER NEGOTIATION OR MEDIATION BEFORE SUBMITTING SUCH CLAIM(S) TO BINDING ARBITRATION. ADDITIONALLY, THE MULTI-FAMILY DEVELOPMENT AREA MAY ALSO BE SUBJECT TO A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS THAT MAY IMPLEMENT AND EXPAND UPON THE REQUIREMENTS OF THIS PLAT NOTE AND THAT MAY EXEMPT CERTAIN CLAIMS FROM THE REQUIREMENT THAT SUCH CLAIMS MUST BE SUBMITTED TO BINDING ARBITRATION, PROVIDED, HOWEVER, THAT ANY SUBSEQUENT AMENDMENT OR CHANGE TO SUCH DECLARATION OF COVENANTS, CONDITIONS OR RESTRICTION SHALL NOT ELIMINATE THIS REQUIREMENT THAT CONSTRUCTION DEFECT CLAIMS SHALL BE SUBMITTED TO BINDING ARBITRATION IN LIEU OF SUBMITTING ANY SUCH CLAIM TO A COURT OF LAW.

FOR PURPOSES OF THIS PLAT NOTE, BINDING ARBITRATION SHALL MEAN SUBMISSION OF ANY CLAIM DESCRIBED ABOVE TO THE ARBITRATION SERVICE PROVIDER SPECIFIED IN THE DECLARATION OR OTHER GOVERNING DOCUMENTS OF THE COMMON INTEREST



COMMUNITY, IF QUALIFIED PURSUANT TO THE UNIFORM ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S. AND, IF NOT, AN ARBITRATION SERVICE PROVIDER SO QUALIFIED IN SUCH ARBITRATION; THE COSTS AND EXPENSES OF ARBITRATION TO BE BORNE EQUALLY BY THE PARTIES.

ALL FUTURE PURCHASERS OF ANY INTEREST IN THE MULTI-FAMILY DEVELOPMENT AREA ARE DEEMED TO HAVE ACCEPTED AND AGREED TO THE TERMS AND CONDITIONS OF THIS PLAT NOTE AND SHALL BE BOUND BY THE PLAT NOTE, WHICH IS RECORDED IN THE JEFFERSON COUNTY CLERK AND RECORDER'S OFFICE, DEEMED TO BE A COVENANT RUNNING WITH THE MULTI-FAMILY DEVELOPMENT AREA, AND BINDING UPON ALL SUCCESSORS IN INTEREST, GRANTEES, OWNERS, HEIRS, ASSIGNS, AND ALL OTHERS WHO ACQUIRE AN INTEREST IN OR TO THE MULTI-FAMILY DEVELOPMENT AREA, TOGETHER WITH ANY COMMON INTEREST COMMUNITY ASSOCIATION ASSOCIATED THEREWITH.

B. Disclosure. If a plat, pursuant to subparagraph a above, contains the plat note described herein, then the developer, builder, or other person or entity engaged in the initial sale of a lot or dwelling unit within the multi-family development Area of such plat to the intended resident or end user shall be required to include in such contract for purchase and sale a disclosure statement in bold-faced type that is clearly legible and in substantially the following form:

THE RECORDED PLAT OF THE PROPERTY WITHIN WHICH THIS LOT OR UNIT IS SITUATED CONTAINS A RESTRICTION REQUIRING MANDATORY, BINDING ARBITRATION FOR CERTAIN TYPES OF CLAIMS, IN LIEU OF SEEKING REDRESS IN A COURT OF LAW. PURCHASERS SHOULD CAREFULLY READ THE PLAT AND NOTE CONCERNING ARBITRATION, AS THEY ARE DEEMED TO HAVE ACCEPTED AND AGREED TO THE TERMS AND CONDITIONS OF SUCH PLAT NOTE.

C. Applicability. A request for plat note, as provided for in this section, shall be permitted only as to a final plat concerning land for which an application is filed after August 24, 2015.

**Section 4. Severability, Conflicting Ordinances Repealed.** If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or

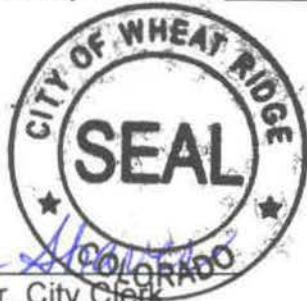
otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 5. Effective Date.** This Ordinance shall take effect upon approval on second reading as permitted by Section 5.11 of the Charter.

**INTRODUCED, READ, AND ADOPTED** on first reading by a vote of 8 to 0 on this 27th day of July, 2015, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for August 24, 2015 at 7:00 p.m., in the Council Chambers, 7500 West 29<sup>th</sup> Avenue, Wheat Ridge, Colorado.

**READ, ADOPTED AND ORDERED PUBLISHED** on second and final reading by a vote of 8 to 0, this 24 day of August, 2015.

**SIGNED** by the Mayor on this 24<sup>th</sup> day of August, 2015.



ATTEST:

Janelle Shaver  
Janelle Shaver, City Clerk

Joyce Jay  
Joyce Jay, Mayor

Approved as to Form

Gerald E. Dahl  
Gerald E. Dahl, City Attorney

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