

1 CITY OF LITTLETON, COLORADO

2
3 ORDINANCE NO. 25

4
5 Series, 2015

6
7 INTRODUCED BY COUNCILMEMBERS: BRINKMAN & COLE

8
9 AN ORDINANCE OF THE CITY OF LITTLETON,
10 COLORADO, ADDING A NEW CHAPTER 7 TO TITLE 4
11 OF THE LITTLETON CITY CODE CONCERNING REPAIR
12 OF CONSTRUCTION DEFECTS

13
14 WHEREAS, the City of Littleton is a home rule municipality organized pursuant
15 to Article 20 of the Colorado Constitution and the Charter of the City of Littleton;

16
17 WHEREAS, by virtue of Article 20 of the Colorado Constitution, and as further
18 authorized by state law, including but not limited to, Sections 31-15-401 and 31-23-301 of the
19 Colorado Revised Statutes, the City of Littleton has broad authority to exercise its police powers
20 to promote and protect the health, safety and welfare of the citizenry;

21
22 WHEREAS, land use, planning, general business regulation and adoption,
23 implementation and enforcement of building codes are well-established as matters of purely local
24 concern, and therefore subject to regulation by home rule municipalities;

25
26 WHEREAS, the city's zoning ordinance and comprehensive plan both
27 contemplate a diverse housing stock, consisting of a mix of single-family and multifamily
28 developments, and both owned and rented units, designed to serve the needs of all Littleton
29 residents;

30
31 WHEREAS, the advent of light rail service via the Southwest Rail Line has
32 intensified the need for owner-occupied units, particularly in transit oriented zones around light
33 rail stations;

34
35 WHEREAS, despite a genuine demand for such housing options, statistics show
36 that almost no owner-occupied multi-family developments, or condominiums, are being
37 developed in Littleton;

38
39 WHEREAS, the general consensus is that the scarcity of condominiums available
40 for sale in Littleton is the result of a litigation climate that puts builders and developers at risk of
41 substantial judgments, often including punitive damages, for alleged construction defects;

42
43 WHEREAS, that risk of exposure to large damage awards has led insurance
44 companies who would normally insure development projects to stop writing policies for owner-
45 occupied multi-family projects;

46
47 WHEREAS, construction defects claims frequently allege that such defects are
48 violations of applicable building codes and, if violations of applicable building codes do exist,
49 they are frequently not remedied for many months or years;

1
2 **WHEREAS**, the city council finds that the health, safety and welfare of residents
3 of Littleton is being negatively impacted by the lack of housing options;
4

5 **WHEREAS**, the city council further finds that while the scarcity of new
6 condominium projects is not unique to the City of Littleton, the city nevertheless experiences
7 some unique impacts because of its proximity to the light rail line and the aging of its population,
8 among other factors;
9

10 **WHEREAS**, the city council further finds that allegations of violations of the
11 city’s building codes, and the likelihood that such violations may continue unremedied for many
12 months or years presents a material risk to the health and safety of residents of Littleton,
13 including the risk that unsafe conditions present as a result of construction defects may be
14 exacerbated by long delays in remedying such conditions, and a material burden upon the city’s
15 building department, which has the authority and responsibility to enforce the city’s building
16 codes, and may result in increased cost to the city and a lower level of compliance with the city’s
17 building codes;
18

19 **WHEREAS**, the city council further finds that lawsuits brought on account of
20 alleged construction defects in condominium projects and planned communities are often brought
21 at the direction of the board of directors of the homeowners association, without the informed
22 consent of the unit owners, thereby depriving the unit owners of the opportunity to become
23 educated about the advantages and disadvantages of pursuing litigation, to have meaningful input
24 regarding the consideration of such decision and to vote on such decision;
25

26 **WHEREAS**, the city council therefore desires to take reasonable steps within its
27 power as a home rule municipality to encourage the development of owner-occupied multi-
28 family residential projects through the adoption of regulations designed to reduce the risk and
29 exposure to builders and developers of such projects, while still protecting homeowners from
30 legitimate construction defect claims;
31

32 **WHEREAS**, the city council also desires to take reasonable steps within its
33 power as a home rule municipality to encourage the prompt and voluntary correction of
34 construction defects that may constitute violations of the city’s building code in order to enhance
35 the health and safety of residents of Littleton and to minimize the burden upon the city’s building
36 department; and
37

38 **WHEREAS**, the city council also desires to establish that consumers that
39 purchase residences within the city that are located within a community that is managed by a
40 homeowners association have the right to participate in the consideration and determination
41 whether to pursue litigation concerning alleged construction defects, and, for such purpose, the
42 city council desires to take reasonable steps within its power as a home rule municipality to
43 assure that such consumers have the opportunity to become educated about the advantages and
44 disadvantages of pursuing litigation concerning alleged construction defects, to have meaningful
45 input concerning the decision and to be able to vote on such decision;
46

47 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF**
48 **THE CITY OF LITTLETON, COLORADO, THAT:**
49

1 **Section 1:** The foregoing recitals are incorporated into and made part of this
2 ordinance.

3
4 **Section 2:** Title 4 of the Littleton City Code is hereby amended by the addition of
5 a new chapter 7 to read in full as follows:

6
7 **Chapter 7**
8 **REPAIR OF CONSTRUCTION DEFECTS**

9
10 **4-7-1: Purposes and Applicability.**

11
12 A. The purposes of this chapter are to:

- 13
14 1. Encourage the construction of owner-occupied multi-family developments
15 in the City of Littleton;
- 16
17 2. Facilitate the implementation of the City’s Comprehensive Plan and
18 Zoning Ordinance, both of which contemplate owner-occupied, multi-
19 family developments in transit-oriented areas and throughout the City;
- 20
21 3. Reassure homeowners that most, if not all, construction defects will be
22 promptly investigated and addressed by builders;
- 23
24 4. Encourage prompt and voluntary correction of construction defects that
25 may constitute violations of the City’s Building Code in order to enhance
26 the health and safety of residents of Littleton and to minimize the burden
27 upon the City’s Building Department;
- 28
29 5. Motivate all parties to resolve disputes involving construction defects
30 quickly to avoid the need for expensive and time-consuming litigation;
- 31
32 6. Provide homeowners in communities with homeowners associations with
33 an enhanced opportunity to participate in the governance of their
34 community by empowering individual owners to give or withhold their
35 informed consent with respect to actions the board of the homeowners
36 association may desire to pursue regarding construction defects.

37
38 B. Applicability. The provisions of this chapter shall apply only to new construction
39 commenced after the effective date of this ordinance.

40
41 **4-7-2: Definitions**

42 As used in this chapter, the following words or phrases shall have the following meaning:

43
44 **Builder** means any entity or individual, including but not limited to a builder, developer, general
45 contractor, contractor, subcontractor, architect, engineer or original seller who performs or
46 furnishes the design, supervision, inspection, construction or observation of any improvement to
47 real property that is intended to be occupied as a dwelling or to provide access or amenities to
48 such an improvement.

50 **Common interest community** means real estate described in a declaration with respect to
51 which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate
52 taxes, insurance premiums, maintenance or improvements of other real estate described in a
53 declaration.
54

55 **Condominium** means a common interest community in which portions of the real estate are
56 designated for separate ownership and the remainder of which is designated for common
57 ownership solely by the owners of the separate ownership portions. A common interest
58 community is not a condominium unless the undivided interests in the common elements are
59 vested in the unit owners.
60

61 **Construction Defect** means any instance in which a structure or portion thereof does not
62 conform in all material respects to the applicable section(s) of the Building Code, or does not
63 conform to the manufacturer's specifications if those specifications are more strict than the
64 applicable provisions of the Building Code.
65

66 **Homeowner** means any person who owns a unit in a condominium or in a multi-family building
67 in a common interest community, but shall not include any declarant (as defined in C.R.S. § 38-
68 33.3-103(12)) or any person having an interest in a unit solely as security for an obligation.
69

70 **Homeowners Association** means a unit owners' association formed to represent the interest of
71 Homeowners owning units in a condominium or in a multi-family building in a common interest
72 community.
73

74 **4-7-3: Potential Claimants**

75 An original Homeowner or a subsequent Homeowner or a Homeowners Association
76 representing the interests of Homeowners may provide the notice of a claim of a Construction
77 Defect, provided the notice is sent within the applicable time period.
78

79 **4-7-4: Potential Respondents**

80 Any person or entity within the definition of a "Builder" as defined in section 4-7-2 is subject to
81 the requirements of this chapter.
82

83 **4-7-5: Claimant's Notice to Builder of Construction Defects; Builder's Acknowledgement;
84 Inspection**
85

86 A. Claimant's Notice. Upon the discovery of any alleged Construction Defect, a claimant
87 must provide written notice via certified mail or personal delivery to the party alleged to
88 have caused or contributed to the Construction Defect, in the manner prescribed in this
89 section, indicating that one or more Construction Defects exists in his/her residence or,

90 with respect to any Homeowners Association, that one or more Construction Defects
91 exists in any residence or in any common area or facility. The notice must:

- 92
- 93 1. Provide the claimant's name, address and preferred method of contact;
 - 94
 - 95 2. State that the claimant alleges a Construction Defect pursuant to this
96 chapter against the Builder; and
 - 97
 - 98 3. Describe the claim in reasonable detail sufficient to determine the
99 nature and location of the alleged Construction Defect.

100

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

103

- 104 1. Acknowledge Claim in Writing.

105

- 106 a) A Builder who receives a notice under this chapter shall acknowledge receipt
107 of the notice, in writing, within fourteen (14) days after receipt. The
108 acknowledgement shall be sent to the claimant and to any attorney the Builder
109 knows to be representing the claimant in connection with the notice. If the
110 Builder has retained legal counsel, said counsel shall thereafter communicate
111 with the claimant's legal representative, if any.

112

- 113 b) If the Builder fails to acknowledge receipt of a notice within the time
114 specified, this chapter shall not apply and the claimant shall be released from
115 the requirements of this chapter and may proceed with the filing of an action
116 against the Builder, unless notice and consent are required by section 4-7-10.

117

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

119

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

122

- 123 a) copies of all relevant plans, specifications, grading plans, soils reports and
124 available engineering calculations pertaining to the claimant's residence,
125 common areas and facilities that are the subject of the claim;

126

- 127 b) all maintenance and preventative maintenance recommendations pertaining to
128 the claimant's residence, common areas and facilities that are the subject of
129 the claim; and

130

- 131 c) contractual warranty information.
132
133 3. A Builder responding to a claimant's request for documents may charge reasonable
134 copying costs and may require the copies of the documents to be made onsite.
135
136 4. Builder's Election to Inspect Property. In addition to the requirements set forth in this
137 section, if the Builder elects to inspect and conduct tests regarding the claimed
138 Construction Defect, the Builder shall complete the initial inspection and testing, if
139 any, within thirty (30) days after the Builder acknowledged receipt of the notice, and
140 at a mutually agreeable date and time. The Builder shall bear all costs of inspection
141 and testing, including any damage caused by the inspection and testing. Before
142 entering onto the premises for the inspection, the Builder shall supply the claimant
143 with proof of liability insurance coverage. The Builder shall, upon request, allow the
144 inspection to be observed and recorded or photographed. Nothing that occurs during a
145 Builder's inspection may be used or introduced as evidence to support a defense of
146 spoliation of evidence by any potential party in subsequent litigation.
147
148 5. A Builder who fails to comply with any of the foregoing requirements within the time
149 specified shall not be entitled to the protection of this chapter, and the claimant shall
150 be released from the requirements of this chapter and may proceed with the filing of
151 an action, unless notice and consent are required by section 4-7-10.
152
153 6. If a notice is sent to the Builder in accordance with this section 4-7-5 within the time
154 prescribed for the filing of an action under any applicable statute of limitations or
155 repose, then the statute of limitations or repose is tolled until sixty (60) days after the
156 completion of the notice process described in this section 4-7-5. If the Builder elects
157 to repair pursuant to section 4-7-6, then the statute of limitations or repose is tolled
158 until sixty (60) days after the completion of repairs.
159

160 **4-7-6: Builder's Right to Repair**
161

- 162 A. Within thirty (30) days of the initial inspection or testing, or within fourteen (14) days of
163 Builder's acknowledgment of the notice of claim, whichever is later, the Builder may
164 elect to repair the Construction Defect. If the Builder elects to repair the Construction
165 Defect, it has the right to do so and the claimant may not, directly or indirectly, impair,
166 impede or prohibit the Builder from making repairs. Any notice to repair shall offer to
167 compensate the claimant for all applicable expenses, if any, incurred by the claimant
168 within the timeframe set for repair, such as, without limitation, expenses for lodging if
169 the repair requires the claimant to vacate his/her residence. Any notice of repair shall be
170 accompanied by a detailed, step-by-step explanation of the particular Construction Defect
171 being repaired and setting forth a reasonable completion date for the repair work. The

172 notice shall also include the contact information for any contractors the Builder intends to
173 employ for the repairs.

174
175 B. Claimant shall promptly cooperate with Builder to schedule repair work by Builder.

176
177 C. Within ten (10) days after receipt of the Builder's notice to repair, a claimant may deliver
178 to the Builder a written objection to the proposed repair if the claimant believes in good
179 faith that the proposed repairs will not remedy the alleged Construction Defect. The
180 Builder may elect to modify the proposal, in whole or in part, in accordance with the
181 claimant's objection, and proceed with the modified scope of work, or may proceed with
182 the scope of work set forth in the original proposal.

183
184 D. Builder's Failure to Comply. If the Builder fails to send a notice to repair or otherwise
185 strictly comply with this chapter within the specified time frames, or if the Builder does
186 not complete the repairs within the time set forth in the notice to repair, the claimant shall
187 be released from the requirements of this chapter and may proceed with the filing of an
188 action against the Builder, unless notice and consent are required by section 4-7-10.
189 Notwithstanding the foregoing, if the Builder notifies the claimant in writing at least five
190 (5) days before the stated completion date that the repair work will not be completed by
191 the completion date, the Builder shall be entitled to one reasonable extension of the
192 completion date, not to exceed twenty (20) days.

193
194 E. Completion of repairs. The Builder shall notify the claimant when repairs have been
195 completed. The claimant shall have ten (10) days following the completion date to have
196 the premises inspected to verify that the repairs are complete and satisfactorily resolved
197 the alleged Construction Defects. A claimant who believes in good faith that the repairs
198 made do not resolve the Construction Defects may proceed with the filing of an action,
199 unless notice and consent are required by section 4-7-10.

200
201 **4-7-7: Warranty of Repairs**
202 The repair work performed by the Builder shall be warranted against material defects in design
203 or construction for a period of two years, which warranty shall be in addition to any express
204 warranties on the original work.

205
206 **4-7-8: Subsequently Discovered Defects**
207 Any alleged Construction Defect discovered after repairs have been completed shall be subject
208 to the same requirements of this chapter if the Builder did not have notice or an opportunity to
209 repair the particular Construction Defect.

210
211 **4-7-9: Alternative Dispute Resolution Provisions**

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

220

221 **4-7-10: Informed Consent of Homeowners**

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

227

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

231

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

235

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

237

238 1. The nature of the action and the relief sought.

239

240 2. The amount of expenses and fees the board anticipates will be incurred, directly
241 or indirectly, in prosecuting the action, including attorney's fees, consultant fees,
242 expert witness fees and court costs, whether incurred by the association directly
243 or for which it may be liable if it is not the prevailing party or if it does not
244 proceed with the action.

245

246 3. The estimated cost of repairing the Construction Defect, or if the Construction
247 Defect is not repaired, the estimated reduction in value of the unit.

248

249 4. The estimated impact on the marketability of units that are not the subject of the
250 action, including any impact on the ability of the owners to refinance their
251 property during and after the action.

252

- 253 5. The manner in which the association proposes to fund the cost of the action,
254 including any proposed special assessments or the use of any revenues.
255
256 6. The anticipated duration of the action and the likelihood of success.
257
258 7. Whether the Builder has offered to make any repairs and, if so, whether the
259 Builder has made repairs.
260
261 8. The steps taken by the Builder in accordance with this chapter to address the
262 alleged Construction Defect, including any acknowledgement, inspection,
263 election to repair or repairs.
264
265 D. The Homeowners Association may not commence the action unless the board obtains the
266 written consent of Homeowners holding at least a majority of the total voting rights in the
267 association after giving the notice required by this section. Homeowners may vote either
268 directly or through a written ballot signed by the Homeowner. Such consent must be
269 obtained within sixty (60) days after such notice is provided, otherwise the Homeowners
270 shall be deemed to have declined to provide their informed consent to such action.
271

272 **Section 3:** Severability. If any part, section, subsection, sentence, clause or
273 phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the
274 validity of the remaining sections of this ordinance. The City Council hereby declares that it
275 would have passed this ordinance, including each part, section, subsection, sentence, clause or
276 phrase hereof, irrespective of the fact that one or more parts, sections, subsections, sentences,
277 clauses or phrases may be declared invalid.
278

279 **Section 4:** Repealer. All ordinances or resolutions, or parts thereof, in
280 conflict with this ordinance are hereby repealed, provided that this repealer shall not repeal the
281 repealer clauses of such ordinance nor revive any ordinance thereby.
282
283

284 INTRODUCED AS A BILL at a regularly scheduled meeting of the City Council
285 of the City of Littleton on the 21st day of April, 2015, passed on first reading by a vote of 6 FOR
286 and 0 AGAINST; and ordered published by posting at Littleton Center, Bemis Library, the
287 Municipal Courthouse and on the City of Littleton Website.

288 PUBLIC HEARING on the Ordinance to take place on the 5th day of May, 2015,

289 in the Council Chambers, Littleton Center, 2255 West Berry Avenue, Littleton, Colorado, at the
290 hour of 6:30 p.m., or as soon thereafter as it may be heard.

291 PASSED on second and final reading, following public hearing, by a vote of _____ FOR
292 and _____ AGAINST on the 5th day of May, 2015 and ordered published by posting at Littleton
293 Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

294 ATTEST:

295 _____
296 Wendy Heffner
297 CITY CLERK

Phil Cernanec
PRESIDENT OF CITY COUNCIL

298
299 APPROVED AS TO FORM:

300
301 _____
302 Kristin Schledorn
303 CITY ATTORNEY

304