



## Legislation Text

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**File #:** 15-00647, **Version:** 2

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Ordinance No. 15-93 creating a new Article 14 (Construction Defect Claims in Common Interest Communities) of Chapter 6 (Neighborhood Vitality/Community Health) of the Code of the City of Colorado Springs 2001, as amended, pertaining to required homeowner consent for construction defect claims related to common interest communities, builder rights to repair construction defects in common interest communities, and the effect of the City Building Code in construction defect claims related to common interest communities.

**From:**

Council President Pro Tem Jill Gaebler

**Summary:**

This ordinance, which relates to construction defect claims, as well as the associated ordinance relating to plat notes, are designed to encourage condominium and townhome construction within the City of Colorado Springs by encouraging arbitration and mediation of disputes related to construction defect claims. The ordinances are similar in many respects to laws considered in other Colorado municipalities in 2015.

The proposed ordinances apply only to construction defect claims in common interest communities (generally condominiums and townhomes with “unit” ownership) filed by a homeowners association (hereinafter “HOA”). The ordinances do not affect homeowner rights for typical single family, detached homes.

The ordinances address the following: enhanced HOA notice and informed homeowner consent to file HOA claims, (2) builder rights to repair construction defects and/or offer cash settlements for construction defect claims, (3) limitation of the applicability of local building code standards to support claims for minor or immaterial construction defects, and (4) enhanced notice of arbitration provisions in condominium declarations that apply to construction defect claims.

**Previous Council Action:**

N/A

**Background:**

In 2015, the Colorado state legislature had broad, bi-partisan support for reform of construction defects laws that apply to common interest communities (generally condominiums and townhomes with “unit” ownership), but these measures did not receive a full vote. SB 15-177 proposed changes to CRS 13-33-101, et seq. (the Colorado Common Interest Ownership Act), that supported arbitration/mediation of construction defect claims through: 1) prohibiting amendment of condominium declaration provisions that require arbitration/mediation of construction defect claims and 2) requiring informed consent by majority of unit owners before HOA executive boards file construction defects lawsuits.

New condominium construction has lagged behind apartments and single family homes in the front range. Municipalities, including Aurora and Denver have considered local measures to encourage condominium construction by reining in construction defects claims. Legislative alternatives are discussed more fully below.

The construction and insurance industries contend fewer condominium starts are caused by increased insurance costs and litigation risks in Colorado. They also claim that current laws encourage proliferation of construction defect claims related to condominium and townhome developments. Opponents of construction defect reforms argue that the lack of condominium starts stems from a lack of demand. They also argue that developers should employ better construction methods.

**Financial Implications:**

N/A

**Board/Commission Recommendation:**

N/A

**Stakeholder Process:**

The internal stakeholder process has included input from construction, insurance, and legal professionals involved with common interest community development and litigation. City staff has followed developments with the adoption of similar construction defects ordinances throughout the front range over the last six (6) months, as well as the status of pending construction defects cases with the Colorado Court of Appeals and Supreme Court.

**Alternatives:**

Front range municipalities have considered various home rule options that augment state statutes including: (1) enhanced HOA notice and informed homeowner consent to file claims, (2) builder rights to repair construction defects, (3) facilitation of cash settlements for construction defect claims, (4) prohibitions on amendments to declaration provisions requiring arbitration of construction defects claims, and (5) limitation of the applicability of local building code standards to support claims for minor or immaterial construction defects.

**Proposed Motion:**

Approve construction defects ordinance as proposed.

An ordinance creating a new City Code article pertaining to homeowner consent for construction defect claims, builder rights to repair construction defects, and the effect of the City Building Code in construction defect claims, all relating to common interest communities.