

**CITY OF ARVADA
COUNCIL AGENDA INFORMATION SHEET
SECOND READING ORDINANCE**

Agenda No. 8.A

City Council Meeting Date: October 5, 2015

Title: CB15-034, An Ordinance Amending Various Provisions of the Arvada Land Development Code to Provide for a Plat Note Pertaining to Owner-Occupied Multi-Family Housing

Initiated by (Department): City Attorney **(Division):**

Action Proposed: Final Reading and Public Hearing

Financial Impact: None **This project/request is:** One-time On-going Multi-year

Explain financial impact of this request.

Funding Source: N/A **Type** **Fund**

Future associated costs requiring Council actions: None Additional funds required

In the text, explain any future financial obligations, including operations and maintenance, that may be associated with this request.

Information about the Project or Request:

The topic of construction defects reform has become a focus of legislative efforts at the municipal level, especially over the past year, as RTD's light-rail and commuter-rail stations come on line and the Denver metropolitan area experiences a dearth of construction with respect to new owner-occupied, multi-family housing construction. The failure of the state legislature to act in recent legislative sessions, on a number of proposed reform bills, has accelerated the momentum toward municipal legislation to address the issue. Builders point to the high cost of, or inability to obtain, insurance for owner-occupied, multi-family housing construction projects due to construction defect lawsuits often brought by HOAs.

A number of municipalities have adopted ordinances to address this issue, including but not limited to Lakewood, Littleton, Lone Tree, and Parker. The attached ordinance is based upon the Parker approach, which provided for the inclusion of a note on a multi-family plat that requires mandatory arbitration of construction defects claims, if such a note was requested by the owner/developer. That has been modified in the attached ordinance to provide for such a plat note only in those circumstances in which the owner/developer both requests the plat note *and* has written or intends to write the project's Declaration of Covenants, Conditions, and Restrictions to require binding arbitration and prohibit the deletion of such a requirement without the owner/developer's consent, consistent with recent case law. The ordinance also requires that a disclosure be provided to the initial prospective purchaser of the existence of the plat note requirement.

Suggested Motion: Moved by _____

I move that CB15-034, An Ordinance Amending Various Provisions of the Arvada Land Development Code to Provide for a Plat Note Pertaining to Owner-Occupied Multi-Family Housing, be (approved on final reading, numbered 4518 and ordered published by title only) (rejected).

YES

NO

ABSENT

COUNCIL BILL NO. 15-034
ORDINANCE NO. 4518

AN ORDINANCE AMENDING VARIOUS PROVISIONS OF THE ARVADA LAND
DEVELOPMENT CODE TO PROVIDE FOR A PLAT NOTE PERTAINING TO
OWNER-OCCUPIED MULTI-FAMILY HOUSING

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Subsection 3.8.3 ("Final Subdivision Plat Review") of Section 3.8 ("Major Subdivisions") of Article 3 ("Development Review & Administrative Procedures") of the Arvada Land Development Code is hereby amended by the addition of a new subparagraph D to read as follows:

D. Plat Note Concerning Multi-Family Development.

1. Contents. 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 such Multi-Family Development Area and the improvements thereon:

THIS PLAT CONTAINS 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 (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: (1) THAT, REGARDLESS OF THEORY OF LIABILITY, ALLEGE ONE OR MORE CONSTRUCTION DEFECTS; AND (2) THAT 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 (3) THAT PERTAIN TO ANY OF (A) THE MULTI-FAMILY DEVELOPMENT AREA, (B) ANY DWELLING UNIT, COMMON

Section 5. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

Section 6. This Ordinance shall become effective five (5) days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 21st day of September, 2015.

PASSED, ADOPTED, AND APPROVED this 5th day of October, 2015.

Marc Williams, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

for  *ckd*
for Christopher K. Daly, City Attorney

Publication dates: September 24, 2015
October 8, 2015

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. "CONSTRUCTION DEFECT" MEANS ANY INSTANCE IN WHICH A STRUCTURE OR PORTION THEREOF DOES NOT CONFORM IN ALL MATERIAL RESPECTS TO THE APPLICABLE SECTIONS OF THE CITY'S BUILDING CODES IN FORCE AT THE TIME OF CONSTRUCTION, OR DOES NOT CONFORM TO THE MANUFACTURER'S SPECIFICATIONS IN FORCE AT THE TIME OF CONSTRUCTION, IF THOSE SPECIFICATIONS ARE STRICTER THAN THE APPLICABLE PROVISIONS OF THE CITY'S BUILDING CODES.

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.

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 SHALL 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 THIS PLAT NOTE, WHICH IS RECORDED IN THE 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, GRANTEEES, 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.

2. Disclosure. If a plat, pursuant subparagraph D.1 above, contains the plat note described therein, 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.

3. Applicability. A request for plat note, as provided for in subparagraph D.1 above, shall be permitted:
 - a. only as to a final plat concerning land for which an application is filed after the effective date of the ordinance adopting this provision. "Application," as used in this subparagraph D.3, shall mean an application specifically connected to, and submitted to the City as part of, an identified development project and which constitutes the application for the first City approval necessary to such project, excluding annexation and rezoning; and
 - b. only if such request is accompanied by a certification, in form approved by the City, that any Declaration of Covenants, Conditions, and Restrictions applicable to the Multi-Family Development Area contains or shall contain a provision or provisions requiring binding arbitration for construction defects claims and prohibiting the amendment or deletion of such provision(s) without the consent of the Applicant.

Section 2. The preexisting subparagraph D ("Recordation; Effect of Approval") of subsection 3.8.3 is redesignated as subparagraph E.

Section 3. Section 3.9 ("Minor Subdivisions") of Article 3 of the Land Development Code is hereby amended by the addition of a new subsection 3.9.6 to read as follows:

3.9.6 Plat Note Concerning Multi-Family Development

The provisions of subparagraph D of subsection 3.8.3 shall apply to a Minor Subdivision, if requested by the Applicant, subject to compliance with the requirements thereof, and to the extent the property platted includes a Multi-Family Development Area, as that term is defined therein.

Section 4. The preexisting subsections 3.9.6 ("Acceptance of Dedications") and 3.9.7 ("Recordation") are redesignated as subsections 3.9.7 and 3.9.8, respectively.