



Lone Tree City Council Agenda Tuesday, February 17, 2015

Meeting Location: City Council Meeting Room, Lone Tree Civic Center, 8527 Lone Tree Parkway.

Meeting Procedure: The Lone Tree City Council and staff will meet in a public Study Session at 4:30pm. At 6:00pm and following the meeting, if necessary, the Council Meeting will adjourn and convene in Executive Session. If an Executive Session is not necessary, Council will recess for dinner. The Regular Session will be convened at 7:00pm. Study Sessions and Regular Sessions are open to the public, Executive Sessions are not. Comments from the public are welcome at these occasions: 1. Public Comment (brief comments on items not scheduled for a public hearing) 2. Public Hearings. Contact the City Clerk if special arrangements are needed to attend (at least 24 hours in advance).

4:30pm Study Session Agenda

1. Douglas County School District 2014/2015 Master Capital Plan Community Outreach
 2. Community Garden Update
 3. South Metro Fire District Update
 4. Recap Hosting of CACP Marijuana Conference
 5. Proposed Douglas County Rezoning Information
 6. **Ordinance 15-01, ADDING A NEW ARTICLE XII TO CHAPTER 18 OF THE MUNICIPAL CODE REGARDING REPAIR OF CONSTRUCTION DEFECTS (Second Reading) (Agenda Item)**
 7. Community Vision Discussion
-

6:00pm Executive Session Agenda

1. Roll Call
 2. Executive Session
-

7:00pm Regular Session Agenda

3. Opening of Regular Meeting/Pledge of Allegiance
 4. Amendments to the Agenda and Adoption of the Agenda
 5. Conflict of Interest Inquiry
 6. Public Comment
 7. Announcements
 8. Presentations
 - a. Arbor Day Proclamation
 9. Consent Agenda
 - a. Minutes of the February 3, 2015 Regular Meeting
 - b. Claims for the Period of January 26 - February 9, 2015
 - c. Treasurer's Report for December 2014
 10. Administrative Matters
 - a. **Public Hearing: Ordinance 15-01, ADDING A NEW ARTICLE XII TO CHAPTER 18 OF THE MUNICIPAL CODE REGARDING REPAIR OF CONSTRUCTION DEFECTS (Second Reading)**
 11. Council Comments
 12. Adjournment
-

City of Lone Tree Upcoming Events

more info available at www.cityoflonetree.com and www.lonetreeartscenter.org

- SF Family Tree: Unbe-Weave-Able, a Buntport Theater Storytelling Trip Into Greek Mythology, Saturday, February 21st, 4:00 pm, LTAC Main Stage
- LTSO: Postcards from Europe, Friday, February 27th, 7:30 pm, LTSO Main Stage
- Passport to Culture: Wonderbound, Interactive Dance Experience, Sunday, March 1st, 3:00 pm, LTAC Main Stage
- Outstanding Youth of Lone Tree applications will be accepted until April 1st



CITY OF LONE TREE STAFF REPORT

TO: Mayor Gunning and City Council

FROM: Kelly First, Community Development Director
Julius Zsako, City Forester & Zoning Enforcement Coordinator

DATE: February 11, 2015

FOR: February 17, 2015 Agenda

SUBJECT: Arbor Day Proclamation

Summary:

Proclaiming Arbor Day Friday, April 24, 2015 as required to maintain status as a Tree City USA and acknowledging the forestry initiatives of the City of Lone Tree.

Cost

There is no cost.

Suggested Motion or Recommended Action

I move to approve the 2015 Arbor Day Proclamation

Background

Arbor Day began in Nebraska in 1872 with more than one million trees being planted in Nebraska on the first Arbor Day. We continue that tradition in Lone Tree today and the City is proud to be a "Tree City USA" for the thirteenth year in row. One of the standards for a Tree City USA is the adoption of an annual proclamation.

Although the City proclaims a single day for Arbor Day, the City is focused on tree care and planting throughout the year. Three efforts underway this year are:

1. Lone Tree residents can purchase a tree for their property for just \$25 each in a program coordinated by the Lone Tree Arts Center in partnership with Alameda Wholesale Nursery and South Suburban Parks and Recreation on Saturday, June 7, 2015.
2. The Community Development Department has initiated a partnership with scientists at the Colorado State University in order to provide information about evergreen tree care needs following the sudden, dramatic temperature drop in early November 2014 that will have lingering impacts on trees along the Front Range of Colorado.
3. The Community Development Department educates property owners on code requirements to maintain landscaping in all approved site plans.



CITY OF LONE TREE

PROCLAMATION

- Whereas,* In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and
- Whereas,* this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and
- Whereas,* Arbor Day is now observed throughout the nation and the world, and
- Whereas,* trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life – giving oxygen, and provide habitat for wildlife, and
- Whereas,* trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and
- Whereas,* trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and
- Whereas,* trees, wherever they are planted, are a source of joy and spiritual renewal.
- Whereas,* the City of Lone Tree seeks to continually celebrate Arbor Day and add to our urban forest, Lone Tree residents can purchase a tree for their property for just \$25 each in a program coordinated by the Lone Tree Arts Center in partnership with Alameda Wholesale Nursery and South Suburban Parks and Recreation on Saturday, June 7, 2015.
- Whereas,* the City of Lone Tree seeks to foster an appreciation for trees among our children and their families, the Lone Tree Arts Center will host Kidsfest on Saturday June 7, 2015 to bring science and nature to life through kid-delighting music, stories and activities.
- Whereas,* the City of Lone Tree seeks to assist homeowners and property owners in caring for their trees, the Community Development Department has initiated a partnership with scientists at the Colorado State University in order to provide information about evergreen tree care needs following the sudden, dramatic temperature drop in early November 2014 that will have lingering impacts on trees along the Front Range of Colorado.

Now, Therefore, I, James D. Gunning, Mayor of the City of Lone Tree, do hereby proclaim Friday, April 24th, 2015, as Arbor Day in the City of Lone Tree, and I urge all citizens to celebrate Arbor Day and support efforts to protect our trees and woodlands, and Further, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

Dated this 17th day of February, 2015

James D. Gunning, Mayor

**MINUTES OF A REGULAR MEETING
OF THE COUNCIL OF THE
CITY OF LONE TREE
HELD
February 3, 2015**

A regular meeting of the Council of the City of Lone Tree was held on Tuesday, February 3, 2015, at 7:00 p.m., at the Lone Tree City Council Chambers located at 8527 Lone Tree Parkway, Lone Tree, Colorado 80124.

Attendance

In attendance were:

James D. Gunning, Mayor
Jacqueline Millet, Mayor Pro Tem
Harold Anderson, Council Member
Kim Monson, Council Member
Susan Squyer, Council Member

Also in attendance were:

Seth Hoffman, City Manager
Jennifer Pettinger, City Clerk
Steve Hebert, Deputy City Manager
Jeff Holwell, Economic Development Director
Chief Jeffery Streeter, Lone Tree Police Department
Kristin Baumgartner, Finance Director
Kelly First, Community Development Director
Lisa Rigsby Peterson, Lone Tree Arts Center Director
Neil Rutledge, City Attorney, White, Bear and Ankele, P.C.
John Cotten, Public Works Director, TTG Corp.

Call to Order

Mayor Gunning called the meeting to order at 7:00 p.m., and observed that a quorum was present.

Pledge of Allegiance

Mayor Gunning led those assembled in reciting the Pledge of Allegiance.

Amendments to the Agenda

There were no amendments to the agenda.

Conflict of Interest

There was no conflict of interest.

Public Comment

There was no public comment.

Announcements

Lindsay Nikolaeff, Youth Commissioner, gave Council an update on the Youth Commission.

Mayor Gunning announced upcoming events.

Presentations

There were no presentations.

Consent Agenda

Mayor Gunning noted the following items on the Consent Agenda, which consisted of:

- *Minutes of the January 20, 2015 Regular Meeting*
- *Claims for the period of January 12-26, 2015*

Council Member Squyer moved, Council Member Anderson seconded, to approve the Consent Agenda. The motion passed with a vote of 5-0.

Administrative Matters

Public Hearing: Resolution 15-04. AMENDING THE CITY'S BUDGET FOR FISCAL YEAR 2015 IN ORDER TO TRANSFER APPROPRIATED MONEYS BETWEEN FUNDS

Mayor Gunning opened the public hearing at 7:05 p.m.

Kristin Baumgartner, Finance Director, introduced the item. Mayor Gunning shared a presentation regarding the RidgeGate Annexation.

Mayor Gunning opened the public hearing for comment at 7:35 p.m.

There was no public comment.

The public hearing was closed at 7:35 p.m.

Council Member Anderson moved, Council Member Squyer seconded, to approve **Resolution 15-04. AMENDING THE CITY'S BUDGET FOR FISCAL YEAR 2015 IN ORDER TO TRANSFER APPROPRIATED MONEYS BETWEEN FUNDS.** The motion passed with a vote of 5-0.

Ordinance 15-01, ADDING A NEW ARTICLE XII TO CHAPTER 18 OF THE MUNICIPAL CODE REGARDING REPAIR OF CONSTRUCTION DEFECTS (First Reading)

Neil Rutledge, City Attorney, introduced the item.

Council Member Monson moved, Mayor Pro Tem Millet seconded, to approve **Ordinance 15-01, ADDING A NEW ARTICLE XII TO CHAPTER 18 OF THE MUNICIPAL CODE REGARDING REPAIR OF CONSTRUCTION DEFECTS** on first reading. The motion passed with a vote of 5-0.

Approval of IGA with Town of Parker for Services of Emergency Preparedness Coordinator

Chief Jeff Streeter introduced the item.

Mayor Pro Tem Millet moved, Council Member Monson seconded, to approve the IGA with the Town of Parker for Services of Emergency Preparedness Coordinator. The motion passed with a vote of 5-0.

Approval of IGA for 2015 Douglas County Youth Initiative Funding

Torie Brazitis, Management Analyst, introduced the item.

Mayor Pro Tem Millet moved, Council Member Anderson seconded, to approve the IGA for the 2015 Douglas County Youth Initiative Funding. The motion passed with a vote of 5-0.

Adjournment

There being no further business, Mayor Gunning adjourned the meeting at 7:56 p.m.

Respectfully submitted,

Jennifer Pettinger, CMC, City Clerk



CITY OF LONE TREE
STAFF REPORT

TO: Mayor Gunning and City Council

FROM: Neil Rutledge

DATE: February 12, 2015

FOR: February 17, 2015 City Council Study Session & Agenda

SUBJECT: Ordinance 15-01, AN ORDINANCE ADDING A NEW ARTICLE XII TO CHAPTER 18 OF THE MUNICIPAL CODE REGARDING REPAIR OF CONSTRUCTION DEFECTS (SECOND READING)

Summary

This Ordinance is aimed at encouraging the development of owner-occupied, multi-family residential projects through the adoption of regulations designed to balance the risk and exposure to builders and developers of such projects, while still protecting homeowners from legitimate construction defect claims. It encourages dialogue between the parties and gives builders and developers an opportunity to repair defects upon notice from an owner of a unit in a condominium, cooperative, multi-family building in a planned community or a homeowners association. It also requires homeowners association boards to obtain the informed consent of a majority of the owners in the association, not including declarants representing builders' interests, 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. A Claimant must include dates and times within 28 days of a claim for a Builders' access to the property and scheduling to inspect and test alleged construction defects.

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 contractual warranty information.

Builder has the right to inspect the property within 28 days after notice of claim and bears all costs of inspection. The Homeowner may record and observe the inspection.

Builder may offer to repair the defect within 30 days after initial inspection, if any, or 28 days after notice of claim, whichever is later, with a detailed, step-by-step, reasonable timeline for repair, unless there is an objection to the repair by the Homeowner. The Homeowner or HOA may object in advance to the repair, in which case the Builder may modify the proposal or offer alternatives. The Homeowner may again object. Negotiations may continue, or the Homeowner or HOA may file an action. The Builder may not make repairs while an objection is pending. The 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 or offer of 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, not including Declarants, 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 and Agenda Item. No formal action is necessary at the Study Session. Assuming the Ordinance remains on the Agenda, I suggest the following Motion: **"I Move to approve Ordinance 15-01, AN ORDINANCE ADDING A NEW ARTICLE XII TO CHAPTER 18 OF THE MUNICIPAL CODE REGARDING REPAIR OF CONSTRUCTION DEFECTS on second reading."**

Background

Statistics show that very few 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 an opportunity to repair defects upon notice from the Homeowners Association, and (2) requiring association boards to

obtain the informed consent of a majority of the owners in the association before asserting any claims against builders or developers. It is hoped 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.

This Ordinance varies from the Ordinance previously considered by the City Council in significant ways:

- It emphasizes the balance between the rights of the Homeowner and the interests of the Builder
- It clarifies and adds definitions regarding which entities are covered by this Ordinance
- It includes unit owners in cooperatives and in multi-family buildings in planned communities as Homeowners subject to the requirements of this Ordinance
- It clarifies who potential claimants may be
- It requires Homeowners to provide reasonable dates and times for the Builder to inspect alleged construction defects
- It ensures dialogue between Homeowners and Builders regarding the nature of the defects and an opportunity to offer repairs
- It encourages the Homeowner to allow repairs, but does not give the right to Builders to make repairs against the Homeowner's objections
- It retains the right of a Homeowner to access to the courts, while instituting procedures to notify the Builder of alleged defects and encouraging dialogue before legal action is taken
- It makes it clear that alternative dispute resolution is an option to litigation, and that the parties may settle disputes by mutual agreement outside the boundaries of this Ordinance.

This Ordinance also takes into consideration comments received by the City Council at its last meeting. It clarifies that a Homeowner does not include a Declarant, and adds a definition of a Declarant. These revisions provide for a Homeowners Association to obtain the consent of majority of Homeowners before filing an action, without allowing a Builder or Developer to control the vote by retaining unsold units for voting purposes.

Should this Ordinance be adopted after Second Reading, the City Council may also wish to consider informing the Colorado General Assembly and its leadership, the state legislators who represent the City and Douglas County, CML, DRCOG and other responsible entities of the action the City is taking by this Ordinance and the reasons for

this action. This Ordinance, and actions taken by other local jurisdictions, may be viewed as contributing to an impetus for the state legislature to address meaningful reform of construction defects litigation on a state-wide basis.

**ORDINANCE OF THE
CITY OF LONE TREE**

Series of 2015

Ordinance No. 15-01

**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 allow for 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. The City Council is aware that the paucity of condominiums available for sale in the region 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

F. The City Council finds that the risk of exposure to large damage awards has led insurance companies who would normally insure development projects to inflate prices or stop writing policies for owner-occupied multi-family projects; and

G. 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

H. 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

I. 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 balance the risk and exposure to builders and developers of such projects, while still protecting homeowners 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 addressed by builders;

4. Motivate all parties to resolve disputes involving construction defects quickly to avoid 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 this Ordinance.

Sec. 18-12-20. Definitions.

Builder means any non-governmental 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.

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

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

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 Building Code 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 Building Code.

Cooperative means a common interest community in which the real property is owned by an association, each member of which is entitled by virtue of such member's ownership interest in the association to exclusive possession of a unit.

Declarant means any person or group of persons acting in concert who: (i) as part of a common plan, promotional or otherwise, intends to or offers to dispose of to a purchaser such declarant's interest in a unit not previously disposed of to a purchaser; or (ii) reserves or succeeds to any special declarant right.

Homeowner means any person who owns a unit in a condominium, cooperative or multi-family building in a planned community, but shall not include any Declarant or any person having an interest in a unit solely as security for an obligation.

Homeowners Association means a unit owners' association formed to represent the interests of Homeowners owning units in a condominium, cooperative or multi-family building in a planned community.

Planned community means a common interest community that is not a condominium or cooperative. A condominium or cooperative may be part of a planned community.

Sec. 18-12-30. Potential Claimants.

An original Homeowner or a subsequent Homeowner, or a Homeowners Association representing the interests of Homeowners, may make a Construction Defect claim and provide the notice of a claim of a 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 Defect; Builder's Acknowledgement; Inspection

A. Claimant's Notice. Upon the discovery of any alleged Construction Defect, a claimant shall provide written notice of a claim 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, indicating that one or more Construction Defect exists to any improvement in or on the claimant's real property or residence, or, with respect to any Homeowners Association, that one or more Construction Defect exists to any improvement in or on any real property, residence, common area or facility governed by the association.

The notice must be dated and:

1. Provide the claimant's name, address and preferred method of contact;
2. State that the claimant alleges a Construction Defect pursuant to this Article against the Builder;
3. Describe the claim in reasonable detail sufficient to determine the nature and location of the alleged Construction Defect; and
4. Provide sufficient dates and times, between 7 and 28 days from the date of the claimant's notice, to the Builder to accommodate inspection and testing of the alleged Construction Defect regarding the claim. Reasonable scheduling and access shall be provided by the claimant to the Builder.

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, unless notice and consent are required by Sec. 18-12-100.
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 residence, common areas and facilities that are the subject of the claim;
 - b. all maintenance and preventative maintenance recommendations pertaining to the claimant's allegations; and
 - c. contractual warranty information.

C. A Builder responding to a claimant's request for documents may charge reasonable copying costs and may allow inspection of the documents to be made onsite.

D. Builder's Election to Inspect Property. In addition to the requirements set forth in this Section, a Builder may elect to inspect and conduct tests regarding the claimed Construction Defect. If a Builder elects to do so, the Builder shall complete the initial inspection and testing, if any, no later than 28 days after the date of the notice of claim by the claimant or 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. Upon request, the Builder shall supply the claimant with proof of liability insurance coverage before entering onto the premises. The Builder shall allow the inspection to be observed, recorded and 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 requirements of this Section within the time specified shall not be entitled to the protections of this Article; the claimant shall be released from the requirements of this Article and may proceed with the filing of an action, unless notice and consent are required by Sec 18-12-100.

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 Repair.

A. Within thirty (30) days of the initial inspection and testing, if any, or within 14 days of the Builder's acknowledgement of receipt of notice of claim, whichever is later, the Builder may elect to repair the Construction Defect and shall deliver a notice to repair to the claimant. Any notice to repair i) shall offer to compensate the claimant for all applicable damages, if any, during the timeframe set for repair, ii) shall be accompanied by a detailed, step-by-step explanation of the particular defect being repaired, and iii) shall set forth a reasonable starting and 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. 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. Within ten (10) days of receipt of the written objection, the Builder may elect to modify the proposal in accordance with the claimant's objection to the claimant's satisfaction, or may propose alternatives to the scope of work set forth in the original proposal. A claimant may deliver to the Builder a written objection to the proposed alternatives within ten (10) days, after which the claimant may continue to

negotiate with the Builder or proceed with the filing of an action against the Builder, unless notice and consent are required by Sec 18-12-100. A Builder shall not make repairs while an objection is pending without the written consent of the claimant.

C. **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, unless notice and consent are required by Sec. 18-12-100. Notwithstanding the foregoing, if the Builder notifies the claimant in writing at least five (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 unless otherwise agreed.

D. **Completion of repairs.** The Builder shall notify the claimant when repairs have been completed. The claimant shall have ten (10) 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.

E. Nothing in this Article shall preclude the claimant and Builder from reaching a mutual agreement regarding a full or partial settlement and withdrawal of the Construction Defect claim.

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.

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 Homeowners Association or 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 Defect, 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 Homeowners 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 Homeowners 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 Homeowners 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, not including Declarants, 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 Homeowner shall be deemed to have declined to provide 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 pending in any court on the effective date of 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 FEBRUARY 3, 2015.

**PUBLISHED IN THE DOUGLAS COUNTY NEWS PRESS ON FEBRUARY 12, 2015,
LEGAL NOTICE NO. 9266859.**

APPROVED AND ADOPTED ON SECOND READING ON FEBRUARY 17, 2015.

CITY OF LONE TREE:

James D. Gunning, Mayor

ATTEST:

(SEAL)

Jennifer Pettinger, CMC, City Clerk