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HOME BUILDERS
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of
METRO DENVER®

March 28, 2022

City of Commerce City
Mayor Benjamin Huseman
Members of City Council
7887 East 60th Avenue
Commerce City, CO 80022

Mayor and City Council:

I am writing to submit formal comments regarding the City's proposed ordinance requiring all new residential developments in Commerce City with 10 dwelling units or more - to maintain a Homeowners Association (HOA).

These comments are being provided on behalf of the Home Builders Association of Metro Denver.

As the largest HBA in Colorado, Metro Denver HBA represents over 500 homebuilders, developers, remodelers, architects, mortgage lenders, title companies, subcontractors, suppliers and service providers in the eight metro-area counties we serve. In Commerce City, HBA Metro Denver represents 8 different developers with over 600 registered permits in the past 12 months.

Based on the related staff memo submitted on March 14th, we understand that that this proposed amendment is a directive requested by City Council. While the staff memo did provide a general overview of what a potential ordinance might look like, it did not provide any analysis on the broader policy, financial or legal implications this new requirement would impose.

As you are aware, many residential developments in Commerce City are within special districts that are already permitted to provide covenant enforcement and design review services. This authority was added to state statute years ago as a measure to reduce costs in special districts where it is appropriate to provide these services.

Special districts offer many additional benefits to residents that often make them preferable to HOAs. Because special districts are governmental entities, districts are required to provide more transparency and accountability. For example, as a government entity, district meetings are required to be open to the public and documents are subject to the Colorado Open Records Act (CORA). This is not the case with HOAs. Furthermore, as a governmental entity, districts are also able to take advantage of better insurance rates and governmental immunity provisions.

Creating another oversight authority, where one already exists, often creates unnecessary redundancy within a development and added confusion for the residents who reside there - even when maps and information are provided. In many instances, residents within established districts have opted to eliminate their HOA in order to reduce redundant bureaucracy and administrative costs.

The City's draft ordinance also raises considerable legal questions. Section 5(a) of the proposed draft requires "public access" to all of the "facilities" that are privately funded, owned and operated by the residents of the community. Presumably, this would also include facilities like pools and clubhouses exclusively paid for and maintained by community members. Likewise, we also have significant concerns regarding the added requirement that HOAs obtain the consent of the City to amend their covenants. Both raise significant process and property rights questions that likely extend beyond the City's authority.

In conclusion, we are strongly opposed to the City's proposed HOA requirement and encourage the City Council to consider the implications this important matter will have on the general welfare and property rights of future residents. We are available for additional consultation with the council and city staff, as necessary.

Thank you for your time and consideration on this matter.

Sincerely,



Ted Leighty
Chief Executive Officer
Home Builders Association of Metro Denver

Cc: Roger Tinklenberg, City Manager
Jason Rogers, Deputy City Manager
Jim Tolbert, Community Development Director