Colo. Rev. Stat. § 32-1-1004.5

Section 32-1-1004.5 - Metropolitan districts' covenant enforcement and design review services - requirements - prohibitions as against public policy - definitions

(1) As used in this section, unless the context otherwise requires:

(a) "Board" means the board of a metropolitan district.

(b) "Covenant enforcement and design review services" means the covenant enforcement and design review services that a metropolitan district may provide in relation to residential property pursuant to section 32-1-1004 (8).

(c) "Energy efficiency measure" means a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a unit. "Energy efficiency measure" includes only the following types of devices or structures:

(I) An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

(II) A garage or attic fan and any associated vents or louvers;

(III) An evaporative cooler;

(IV)

(A) Except as provided in subsection (1)(c)(IV)(B) of this section, an energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device.

(B) Subsection (1)(c)(IV)(A) of this section does not apply to covenant enforcement and design review services provided under an instrument that implements dark sky requirements for residential property that is a designated dark sky place, as defined in section 24-49.7-110 (2)(d).

(V) A retractable clothesline; and

(VI) A heat pump system, as defined in section 39-26-732 (2)(c).

(d)

(I) "Impartial decision-maker" means a person or a group of persons:

(A) With the authority to make a decision regarding the enforcement of an instrument that a metropolitan district enforces pursuant to this section or section 32-1-1004 (8), including the enforcement of any architectural requirements; and

(B) That does not have any direct personal or financial interest in the outcome of the matter being decided.

(II) As used in this subsection (1)(d), "personal or financial interest" means that the impartial decision-maker, as a result of the outcome of the matter being decided, would receive a greater benefit or detriment than that of other unit owners subject to the same instrument.

(e) "Instrument" means the declaration, rules and regulations, or any other instrument that a metropolitan district enforces pursuant to this section and section 32-1-1004 (8).

(f) "Local government" means a statutory or home rule county, municipality, or city and county.

(g) "Unit" means a physical portion of a residential property that is designated for separate ownership or occupancy and is subject to an instrument.

(h) "Unit owner" means a person who owns a unit.

(2)

(a) On or before January 1, 2025, except as provided in subsection (2)(d) of this section, a metropolitan district shall adopt a written policy governing the imposition of fines. In furnishing covenant enforcement and design review services, a board shall not impose a fine on a unit owner for an alleged violation of an instrument unless the fine is imposed in accordance with the written policy. The written policy:

(I) Must include a fair and impartial fact-finding process concerning whether an alleged violation actually occurred and, if so, whether a unit owner is responsible for the violation; and

(II) Must require providing notice to the unit owner regarding the nature of the alleged violation, the action or actions required to cure the alleged violation, and the timeline for the fair and impartial fact-finding process required under subsection (2)(a)(I) of this section.

(b) The fair and impartial fact-finding process may be informal but, at a minimum, must provide a unit owner notice and an opportunity to be heard before an impartial decision-maker.

(c) The written policy must specify the schedule of fines that may be imposed for alleged violations that are continuous or repetitive in nature, including a description of what constitutes a continuous violation and what constitutes a repetitive violation.

(d)

(I) A metropolitan district that does not provide covenant enforcement and does not form a unit owners' association pursuant to section 38-33.3-301:

(A) Cannot pursue other remedies against property owners to enforce design review requirements adopted by the metropolitan district; and

(B) Is not required to adopt written policies pursuant to subsections (2)(a) and (5)(a) of this section.

(II) If a metropolitan district elects to provide covenant enforcement at any time, the requirements of this section apply to the metropolitan district.

(3)

(a) In furnishing covenant enforcement and design review services for units, a board may fix, and from time to time increase or decrease, fees, rates, tolls, fines, penalties, or charges for covenant enforcement and design review services furnished pursuant to this section and section 32-1-1004 (8).

(b)

(I) Until paid, any fee, rate, toll, fine, penalty, or charge described in subsection (3)(a) of this section constitutes a perpetual lien on and against the unit for which covenant enforcement and design review services were provided.

(II) The board of a metropolitan district furnishing covenant enforcement and design review services pursuant to this section and section 32-1-1004 (8) shall not foreclose on any lien described in this subsection (3)(b) that arises from amounts that a unit owner owes the metropolitan district as a result of a covenant violation or enforcement of a failure to comply with any instrument.

(III) In addition to any other means provided by law, a board, by resolution and at a public meeting held after notice has been provided to an affected unit owner, may elect to have certain delinquent fees, rates, tolls, fines, penalties, charges, or assessments made or levied for covenant enforcement and design review services certified to the treasurer of the county in which the metropolitan district is located, and for the delinquent fees, rates, tolls, fines, penalties, charges, or assessments to be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be collected and paid over pursuant to section 39-10-107.

(4)

(a) For any unit owner's failure to comply with an instrument, a metropolitan district, without needing to commence a legal proceeding, may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of the failure to comply.

(b) Except as provided in subsection (4)(c) of this section, in a civil action to enforce or defend an instrument, the court shall award reasonable attorney fees, costs, and, if relevant, costs of collection to the prevailing party.

(c) In connection with a civil action claim in which a unit owner is alleged to have violated an instrument but prevails on the matter because the court finds that the unit owner did not commit the alleged violation:

(I) The court shall award the unit owner reasonable attorney fees and costs incurred in defending the claim;

(II) The court shall not award costs or attorney fees to the metropolitan district; and

(III) The metropolitan district shall not allocate to the unit owner's account with the metropolitan district any of the metropolitan district's costs or attorney fees incurred in asserting or defending the claim from revenue that the metropolitan district collects other than ad valorem property taxes imposed on all taxpayers in the metropolitan district.

(d) Notwithstanding any law to the contrary, an action shall not be commenced or maintained to enforce the terms of any building restriction contained in an instrument or to compel the removal of any building or improvement because of a violation of the terms of any such building restriction unless the action is commenced within one year after the date that the metropolitan district commencing the action first knew or, in the exercise of reasonable diligence, should have known of the violation forming the basis of the action.

(5)

(a)

(I) On or before January 1, 2025, except as provided in subsection (2)(d) of this section, a metropolitan district furnishing covenant enforcement and design review services under this section and section 32-1-1004 (8) shall adopt a written policy setting forth the metropolitan district's procedure for addressing disputes arising between the metropolitan district and one or more unit owners related to the enforcement of an instrument.

(II)

(A) Except as provided in subsection (5)(a)(II)(B) of this section, a metropolitan district shall make a copy of the written policy adopted pursuant to subsection (5)(a)(I) of this section available to unit owners on the metropolitan district's website that the metropolitan district is required to maintain pursuant to section 32-1-104.5 (3).

(B) If the metropolitan district is not required to maintain a website pursuant to section 32-1-104.5 (3), the metropolitan district shall make the written policy available to unit owners upon request.

(b)

(I) Any controversy between a metropolitan district and a unit owner that arises out of the enforcement of an instrument may be submitted to mediation by agreement of the parties prior to the commencement of any legal proceeding. Either party to the mediation may terminate the mediation process without prejudice.

(II) If a mediation agreement is reached pursuant to subsection (5)(b)(I) of this section, the mediation agreement may be presented to a court as a stipulation. The stipulation must not include a requirement that the unit owner pay additional interest or unreasonable attorney fees. If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief. If the parties execute a stipulation that the court deems unfair or that does not comply with the requirements of this subsection (5)(b), the stipulation is invalid and the court may award the unit owner reasonable attorney fees and costs.

(6) Notwithstanding any provision in an instrument to the contrary, a metropolitan district shall not prohibit any of the following in relation to any unit subject to the instrument:

(a) The display of a flag on a unit, in a window of the unit, or on a balcony adjoining the unit. The metropolitan district shall not prohibit or regulate the display of flags on the basis of their subject matter, message, or content; except that the metropolitan district may prohibit flags bearing commercial messages. The metropolitan district may adopt reasonable, content-neutral rules to regulate the number, location, and size of flags and flagpoles but shall not prohibit the installation of a flag or flagpole.

(b) The display of a sign by the owner or occupant of a unit on property within the boundaries of the unit or in a window of the unit. The metropolitan district shall not prohibit or regulate the display of window signs or yard signs on the basis of their subject matter, message, or content; except that the metropolitan district may prohibit signs bearing commercial messages. The metropolitan district may establish reasonable, content-neutral rules to regulate signs based on the number, placement, or size of the signs or on other objective factors.

(c) The parking of a motor vehicle by the occupant of a unit on the driveway of the unit if the vehicle is required to be available at designated periods at the occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

(I) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;

(II) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency firefighting, law enforcement, ambulance, or emergency medical services;

(III) The vehicle bears an official emblem or other visible designation of the emergency service provider; and

(IV) Parking of the vehicle can be accomplished without obstructing emergency access to or interfering with the reasonable needs of other unit owners or occupants to use streets, driveways, and guest parking spaces;

(d) The removal by a unit owner of trees, shrubs, or other vegetation to create defensible space on a unit for fire mitigation purposes, so long as the removal complies with a written defensible space plan created for the property by the Colorado state forest service, an individual or company certified by an entity of a local government to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located and is no more extensive than necessary to comply with the plan. The plan shall be registered with the metropolitan district at least thirty days before the commencement of work. The metropolitan district may require changes to the plan if the metropolitan district obtains the consent of the individual, official, or agency that originally created the plan. The work must comply with applicable standards of the metropolitan district regarding slash removal, stump height, revegetation, and contractor regulations.

(e) Reasonable modifications to a unit as necessary to afford an individual with disabilities full use and enjoyment of the unit in accordance with the federal "Fair Housing Act of 1968", 42 U.S.C. sec. 3604 (f)(3)(A);

(f) The use of xeriscape, nonvegetative turf grass, or drought-tolerant vegetative or nonvegetative landscapes to provide ground covering to property for which a unit owner is responsible in accordance with section 38-33.3-106.5 (1)(i) and (1)(i.5);

(g) The use of a rain barrel, as defined in section 37-96.5-102 (1), to collect precipitation from a residential rooftop in accordance with section 37-96.5-103. A metropolitan district may impose reasonable aesthetic requirements that govern the placement or external appearance of a rain barrel. This subsection (6)(g) does not confer upon a unit owner a right to place a rain barrel at, or to connect a rain barrel to, any property that is:

(I) Leased, except with permission of the lessor;

(II) A common element or a limited common element of a common interest community, as those terms are defined in section 38-33.3-103;

(III) Owned or maintained by the metropolitan district; or

(IV) Attached to one or more other units, except with permission of the owners of the other units.

(h)

(I) The operation of a family child care home, as defined in section 26.5-5-303, that is licensed pursuant to part 3 of article 5 of title 26.5.

(II) This subsection (6)(h) does not supersede any of the provisions of an instrument concerning architectural control, parking, landscaping, noise, or other matters not specific to the operation of a business per se. The metropolitan district shall make reasonable accommodation for fencing requirements applicable to licensed family child care homes.

(III) This subsection (6)(h) does not apply to a community qualified as housing for older persons under the federal "Housing for Older Persons Act of 1995", Pub.L. 104-76.

(IV) The metropolitan district may require the owner or operator of a family child care home to carry liability insurance, at reasonable levels determined by the board, providing coverage for any aspect of the operation of the family child care home for personal injury, death, damage to personal property, and damage to real property that occurs in or on any property owned or maintained by the metropolitan district, in the unit where the family child care home is located, or in any other unit subject to an instrument. The metropolitan district shall be named as an additional insured on the liability insurance the family child care home is required to carry, and such insurance must be primary to any insurance the metropolitan district is required to carry under the terms of an instrument.

(7)

(a) Notwithstanding any provision in an instrument to the contrary, a metropolitan district shall not:

(I) Effectively prohibit renewable energy generation devices, as defined in section 38-30-168;

(II) Require the use of cedar shakes or other flammable roofing materials on a unit; or

(III) Effectively prohibit the installation or use of an energy efficiency measure on a unit.

(b) Subsection (7)(a)(III) of this section does not apply to:

(I) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an energy efficiency measure. In creating reasonable aesthetic provisions, a metropolitan district shall consider:

(A) The impact of the purchase price and operating costs of the energy efficiency measure;

(B) The impact on the performance of the energy efficiency measure; and

(C) The criteria contained in any instrument.

(II) Bona fide safety requirements, consistent with an applicable building code or recognized safety standard, for the protection of persons or property.

(c) Subsection (7)(a)(III) of this section does not confer upon any unit owner the right to place an energy efficiency measure on property that is:

(I) Owned by another person;

(II) Leased, except with permission of the lessor;

(III) Collateral for a commercial loan, except with permission of the secured party;

(IV) A common element or limited common element of a common interest community, as those terms are defined in section 38-33.3-103; or

(V) Owned or maintained by a metropolitan district.

C.R.S. § 32-1-1004.5

Added by 2024 Ch. 117,§ 3, eff. 8/7/2024, app. to conduct occurring on or after the applicable effective date.

Section 4(2) of chapter 117 (HB 24-1267), Session Laws of Colorado 2024, provides that the act adding this section applies to conduct occurring on or after August 7, 2024.

2024 Ch. 117, was passed without a safety clause. See Colo. Const. art. V, § 1(3).