

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 10, SERIES 2016**

**A RESOLUTION ADOPTING THE FIRST AMENDED AND
RESTATED COLORADO OPEN RECORDS ACT (“CORA”)
PUBLIC RECORDS REQUEST POLICY**

WHEREAS, the Town Council of the Town of Timnath (“Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, the Town’s longstanding position has been that council-approved written minutes serve as the public record of public meetings, including Town Council and Planning Commission meetings, and electronic recordings of these meetings are intended to function solely as individual note-taking and reference aids to the town clerk and staff in creating written minutes; and

WHEREAS, the law surrounding the public nature of electronic recordings of public meetings is unsettled, with colorable arguments both for and against public disclosure of such electronic recordings; and

WHEREAS, in light of the unsettled nature of this area of law, on January 12th, 2016, Town Council directed Town Staff to revise the Town’s CORA Policy in order to avoid confusion as to what constitutes a public record; and

WHEREAS, the First Amended and Restated Town of Timnath CORA Public Records Request Policy (“Policy”) has been amended and restated to state that electronic recordings of Town Council and Planning Commission meetings shall no longer be made, and clarifies that in the absence of an electronic recording, written minutes are the sole public record of such meetings; and

WHEREAS, attached hereto as **Exhibit A** is the Policy; and

WHEREAS, the Town Council is familiar with the Policy and finds it to be in the best interest of the Town, the residents within its boundaries, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOWS:

Section 1. Approval

The First Amended and Restated Town of Timnath CORA Public Records Request Policy is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.

Section 2. Truncation

The Town may revise and post truncated versions of the Policy as deemed necessary, at the discretion of the Town Manager, to provide notice to residents and ensure compliance with the Policy.

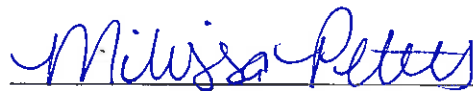
INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON JANUARY 26, 2016.

TOWN OF TIMNATH, COLORADO



Jill Grossman-Belisle, Mayor

ATTEST:



Milissa Peters, CMC
Town Clerk



EXHIBIT A

**FIRST AMENDED AND RESTATED TOWN OF TIMNATH
CORA PUBLIC RECORDS REQUEST POLICY**



FIRST AMENDED AND RESTATED
TOWN OF TIMNATH
COLORADO OPEN RECORDS ACT
PUBLIC RECORDS REQUEST POLICY

I. Purposes of the Town’s Public Records Request Policy

This Public Records Request Policy (the “Policy”) of the Town of Timnath, Colorado (the “Town”) shall be applied and interpreted with the following purposes in mind:

- a. To adopt a Public Records Request Policy pursuant to § 24-72-203(1), C.R.S.;
- b. To provide access to and the protection and integrity of Public Records in the custody of the Town;
- c. To prevent unnecessary interference with the regular discharge of the duties of the Town and its manager in compliance with the Colorado Open Records Act, §§ 24-72-200.1 to 24-72-206, C.R.S. (“CORA”);
- d. To establish reasonable and standardized fees for producing copies of and information from records maintained by the Town as authorized by CORA; and
- e. To set forth a general procedure for providing consistent, prompt and equitable service to those requesting access to Public Records.

II. Public Records Requests

A. Applicability

This Public Records Request Policy applies to requests submitted to the Town for the inspection of Public Records pursuant to CORA, and shall supersede and replace any previously adopted CORA policies of the Town.

B. Definitions

1. **“Custodian”**: Except as otherwise provided in this policy, the term “Custodian” shall mean the Town Clerk, or any successor that has been designated by the Town Council to oversee the collection, retention, and retrieval of Public Records of the Town.

2. **“Public Records”**: As defined in § 24-74-202(6), C.R.S. Public meeting minutes are as defined in the Colorado Open Meetings Law, § 24-6-401,402, C.R.S. Further, as of the date of adoption of this policy, the Town shall no longer make electronic audio recordings of Town Council and Planning Commission meetings. In the absence of such electronic recordings, the written minutes will be the sole public record of such meetings.

C. Submission of Requests

1. Requests for inspection of Public Records are to be submitted in writing on an official request form to the Custodian and must be sufficiently specific as to enable the Custodian to locate the information requested with reasonable effort. The official request form is attached here as **Exhibit A** and incorporated herein by this reference (the "Official Request Form"), as may be modified from time to time by the Town. The Town has determined that the use of an official request form is necessary for the efficient handling of Public Records requests.

2. Requests must be written and submitted using the Town's Official Request Form, by mail, fax, e-mail or hand-delivery.

3. A request shall be considered made when the request is actually received by the Custodian:

a. A letter is received when it is opened in the usual course of business by the recipient or a person authorized to open the recipient's mail;

b. A fax is received when it is printed during regular business hours, or, if received after hours, at 8:30 a.m. on the following business day; and

c. An e-mail is received when it is received and opened during regular business hours, or, if received after hours, at 8:30 a.m. on the following business day.

4. If a deposit is required, the request is not considered received until the deposit is paid.

5. The Town reserves the right not to respond to that portion of any communication that contains demeaning, harassing, or threatening language, or consists of interrogatories, editorials, or other similar comments.

D. Inspection

1. The Custodian or the Custodian's designee shall make the requested Public Records available for inspection during regular business hours, deemed to be from 8:30 a.m. to 4:30 p.m., Monday through Friday, except for times the Custodian's office is closed, such as for holidays, etc. During the inspection of Public Records, the Custodian may ask that the requestor follow certain procedures to protect the integrity of the Public Records.

2. If a Public Record is not immediately or readily available for inspection, the Custodian or the Custodian's designee shall make an appointment or other arrangements with the applicant concerning the time at which the requested record will be available. The Public Records shall be made available for inspection within a reasonable time, which is presumed to be three (3) working days or less from the date of receipt of the request. Such three (3) day period may be extended by an additional seven (7) working days if extenuating circumstances, as described in § 24-72-203(3)(b), C.R.S., exist. Responding to applications for inspection of Public Records need not take priority over the previously scheduled work activities of the Custodian or the Custodian's designee.

3. All Public Records to which the request applies shall be preserved from the date of the request until such time as set forth in the Town's records maintenance, retention, or deletion policy or practices utilized by the Custodian.

4. No one shall remove a Public Record from the Custodian's offices without the permission of the Custodian. Public Records may be removed from file folders or places of storage for photocopying by the Custodian or the Custodian's designee. The Custodian may, but is not required to, allow a person to use his or her own portable electronic equipment to make copies of Public Records.

5. As a general practice, in response to a Public Records request:

a. Public Records in hard copy, paper, published, or documentary form shall be made available for inspection;

b. A document will not ordinarily be created in order to respond to such a request;

c. In the case of e-mail that is a Public Record, a paper copy of such e-mail that is a Public Record will be made available by the Custodian if requested by the person requesting the record;

d. The person making the request shall not be allowed to access the Custodian's computer or any other computer for purposes of inspecting any Public Records;

e. Any portion of a Public Record containing non-public information that is not subject to inspection may be redacted by the Custodian prior to making the record available for inspection. The Custodian is not required to redact information from a writing that is not a Public Record in order to make the writing available for inspection. *Denver Publishing Co. v. Bd. of County Comm'rs of the County of Arapahoe*, 121 P.3d 190 (Colo. 2005); *Colorado Republican Party v. Benefield, et al.*, Court of Appeals No. 07CA1216, Oct. 23, 2008 (Unpublished).

f. The Custodian, in consultation with the Town's general counsel, will determine which information is no longer considered "work-in-progress" subject to the deliberative process or work product privilege and therefore eligible for release.

6. Where a request seeks in excess of 25 e-mails or other electronically-stored Public Records, the Custodian may elect to produce Public Records in electronic form on a disk or comparable media. The following procedure shall apply in responding to such a request:

a. The Custodian shall solicit the comments of the requestor regarding any search terms to be used to locate and extract such records, and, in doing so, will seek to have the request refined so that it does not result in an inordinate number of irrelevant or duplicative documents, it being understood that the Custodian will make the final determination regarding search terms;

b. The Custodian shall designate an employee or another person with experience in performing electronic searches to locate and extract responsive records;

c. The person who is designated to perform the searches shall consult, as appropriate, with legal counsel to identify privileged records that should not be produced; and

d. Where appropriate, legal counsel shall conduct a final review to identify and withhold privileged records.

7. The Custodian or the Custodian's designee shall deny the inspection of the records if such inspection would be contrary to federal or state law or regulation or would violate a court order. In special circumstances, a Custodian shall deny inspection of the Public Records if such inspection would cause substantial injury to the public interest. Such a denial shall be made in writing by the Custodian to the person making the request and shall set forth with specificity the grounds of the denial. It is not necessary to state a ground for denial of access for each document if a specific ground is applicable to a group of documents.

8. If the Public Records requested are not in the custody or control of the Custodian, the Custodian shall notify the requestor of this fact in writing. In such notification, the Custodian shall state in detail to the best of his/her knowledge and belief the reason for the absence of the Public Records, the location of the Public Records, and what person then has custody or control of the Public Records.

9. All Public Records, regardless of storage format, may be destroyed in accordance with administration of an approved retention policy. The Town reserves the right to adopt the records retention policy that has been promulgated by the Custodian.

E. Fees for All Record Requests

1. **Fees for standard reproductions.** The Custodian or the Custodian's designee shall charge a fee not to exceed twenty-five cents per page for any photocopies or printed copies of electronic records that are required to make a Public Record available. Other reproductions of Public Records shall be provided at a cost not to exceed the actual cost of the reproduction. Such fees shall be paid by the applicant prior to the receipt of copies of any Public Records. Requests expected to exceed a total charge of \$10.00 or more must be accompanied by a deposit equal to the reasonably-estimated reproduction costs. This deposit will be credited toward the total fee, and the total fee shall be paid prior to release of the requested records. In the event the deposit amount exceeds the actual costs, the balance will be refunded.

2. **Transmission fees.** No fees related to transmission shall be charged for transmitting public records via electronic mail. Within the period specified in § 24-72-203, C.R.S., the Custodian shall notify the record requester that a copy of the record is available but will only be sent to the requester once the custodian receives payment for postage if the copy is transmitted by United States mail, or payment for the cost of delivery if the copy is transmitted other than by United States mail, and payment for any other supplies used in the mailing, delivery, or transmission of the record and for all other costs associated with producing the

record. Upon receiving such payment, the custodian shall send the record to the requester as soon as practicable but no more than three business days after receipt of such payment.

3. **Fees for search, retrieval and legal review:**

a. In the case of any request requiring more than one hour of time for search, retrieval, supervision of inspection, copying, manipulation, redaction or legal counsel review to identify and withhold privileged records, the Custodian or the Custodian's designee may charge an hourly fee for such time not to exceed \$30.00 per hour pursuant to § 24-72-205(6)(a), C.R.S. Prior to performing any services necessary to respond to a request, the Custodian or the Custodian's designee shall require the applicant to pay a deposit equal to the reasonably estimated fees that will be charged by the Custodian for such staff time. Before receiving any records, the applicant shall also pay the amount by which the cost of any open records services exceeds the deposit. The Town shall promptly refund the amount by which the deposit exceeds the cost of any open records services.

b. To the extent possible, the Custodian shall utilize administrative or clerical staff for search and retrieval of Public Records who are ordinarily responsible for such duties to ensure that the fees charged for staff time in connection with the request represent costs incurred in the ordinary course of business and not extraordinary charges, but in any case, such charges shall not exceed \$30 per hour.

F. Process for employees.

1. If any employee receives a written CORA request by U.S. mail, hand-delivery, fax, e-mail, or any other means, **he or she shall immediately deliver a copy of the written request to the Custodian.**

2. Employees shall comply in all respects with the Town's policy on document retention as set forth in the Colorado Municipal Records Retention Schedule. **In no event shall an employee destroy or modify a requested record.** The Town Manager or Town Attorney may redact confidential, non-public, or otherwise exempt information where appropriate.

3. Employees shall provide all responsive records to the Custodian. It is not the employee's responsibility to cull out records that are privileged or otherwise not subject to disclosure.

4. The Custodian shall note the time and date on which a request is opened. This information should be noted in the box on the Official Request Form labeled "Internal Use Only."

5. The Custodian shall coordinate with the Town Manager and Town Attorney to ensure a response and, if necessary, inspection in compliance with part II.D of this policy.


Overview of How to Respond to a CORA Request:

1. Requests must be in writing, utilizing the official Town Public Records Request Form.
2. Record when any written request is received.
3. Forward all requests to the Town Clerk and to the Town Manager.
4. The Town Clerk will confirm response deadline.
5. The Town Clerk or other designated employee will gather all responsive documents and provide to the Town Attorney for review.
6. The Town Clerk and Town Attorney will coordinate a timely response to the request.
- 7. No response to a CORA request or documents responsive to a CORA request shall be sent without prior approval of the Town Manager or Town Attorney.**

Signature page follows.

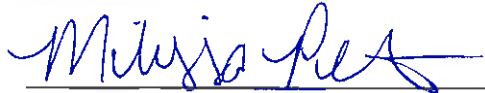
INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF
TIMNATH, ON JANUARY 26, 2016.

TOWN OF TIMNATH, COLORADO



Mayor

ATTEST:



Town Clerk

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

General Counsel to the Town

EXHIBIT A
OFFICIAL REQUEST FORM