

## **Proposed Amendment to Timnath Home Rule Charter**

The following language would be added to the Timnath Home Rule Charter:

### **Section 15.7 Preserving the Character of the Town of Timnath and Natural Habitats Surrounding the Town by Prohibiting Excessively Tall Fences Over 65 Feet in Height**

- 15.7.1 The people of the Town of Timnath adopt this section 15.7 to promote and preserve the small-town character, aesthetics, views, open space, natural habitats, and wildlife within and around the Town. The people of the Town declare that these interests are important to the health, safety, and welfare of the community, and adopt this section to promote and protect such interests. In order to promote and protect these interests, the people of the Town hereby declare that they consider fences over 65 feet in height to be harmful and contrary to the character and aesthetics of the Town; harmful and contrary to protecting the views of the people residing in the Town; harmful and contrary to protecting and preserving Town open space; and harmful and contrary to promoting and protecting nature and wildlife within and around the Town, including being specifically harmful to bird flight paths and migration patterns over and through the Town. In particular, with respect to bird flight paths and migration patterns, bird flight studies conducted in and around the Town have shown that herons flying over and through the Town have an average flight height of 88 feet, thereby demonstrating excessively tall fences will interfere with those flight paths and negatively impact wildlife in the area. Accordingly, the people of the Town hereby find restricting fence height pursuant to this section will promote the above interests, including minimizing the negative impacts of excessively tall fences on local wildlife. This section shall be liberally construed to effectuate the above intents and purposes.
- 15.7.2 No permanent fence over 65 feet in height, measured vertically from the base of the fence to the top of the fence, shall be erected in the Town. For purposes of this section 15.7, "fence" shall be given its plain language definition; however, for purposes of clarity, "fence" shall specifically include, but is not necessarily limited to, wooden fences, plastic fences, chain link fences, concrete fences, brick fences, and fences comprised of netting or screening materials such as golf driving range nets and their supporting poles.
- 15.7.3 The people of the Town hereby declare that the interests of ensuring that permanent fences over 65 feet in height are not erected within the Town is

an issue of local government concern. The people of the Town also declare that this section 15.7 is immediately necessary to preserve the public health and safety of the Town, particularly in light of proposed real property developments that will have excessively tall fences. Accordingly, this section shall apply to all currently pending applications with the Town government that relate to the development of real property and that, at the time this section is adopted, have not yet had a final decision rendered by the Town government which actually and finally vests property rights with the vestee such that deprivation of those vested rights would violate the Colorado Constitution or the Constitution of the United States of America. Therefore, by way of specific example, and only for the purpose of determining whether this section applies to any such pending applications, such pending applications shall not be considered to qualify as a "site specific development plan" pursuant to state statutes. Consequently, any property rights that actually and finally vest after this section is adopted cannot circumvent the restrictions of this section on the basis that such vested property rights stem from an application filed before adoption of this section. To the extent this subsection 15.7.3 conflicts with any other Town laws, regulations, or agreements entered into with the Town that would result in a different outcome, this subsection shall govern. However, for no other purposes shall this subsection impact or otherwise supersede any Town laws, regulations, or agreements entered into with the Town that define "site specific development plan" or that determine when property rights vest with the vestee. This subsection is also deemed to be, and qualify as, a regulation determined by the Town local government. For purposes of clarity, it is the intent of this subsection 15.7.3 that only those property rights that have actually and finally vested pursuant to constitutional principles at the time this section 15.7 is adopted shall be exempt from this section 15.7.

- 15.7.4 This section 15.7 shall become effective immediately upon voter approval by the people of the Town.
- 15.7.5 In addition to the Town government being able to enforce this section 15.7 pursuant to all powers the Town would normally have to enforce provisions of its charter, citizens and businesses of the Town shall also have private rights of action to enforce this section against a developer, property owner, individual, business, or other legal entity responsible for erecting a fence in violation of this section. Such private actions shall be limited to obtaining injunctive or equitable relief to stop the erection of a fence that violates this section, or an order requiring the taking down of a fence that has been erected in violation of this section.
- 15.7.6 If any part, section, subsection, sentence, clause, or phrase of this section 15.7 is held to be invalid for any reason, such invalidity shall not affect the validity of the remaining parts, sections, subsections, sentences, clauses,

or phrases of this section. The people of the Town hereby declare that they would have passed this section; including each part, section, subsection, sentence, clause, or phrase thereof; irrespective of the fact that one or more parts, sections, subsections, sentences, clauses, or phrases be declared invalid.