

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 33, SERIES 2023**

**A RESOLUTION APPROVING SPECIAL MAIL BALLOT ELECTION
OF THE TOWN OF TIMNATH, COLORADO ON JUNE 27, 2023**

WHEREAS, the Town of Timnath (the “**Town**”) is a home rule municipality operating under the Timnath Home Rule Charter (the “**Charter**”) adopted on November 7, 2006, as amended on November 3, 2015 and April 5, 2022, and the Town’s Municipal Code (the “**Code**”). Pursuant to the Charter, the Code, and C.R.S. § 31-15-103, the Town has the power to pass resolutions; and

WHEREAS, the members of the Town Council (the “**Council**”) have been duly elected and qualified; and

WHEREAS, Section 15.2 of the Town Charter allows for citizens to initiate a Charter amendment in a manner provided by Article XX of the Colorado Constitution and by C.R.S. §§ 31-2-201, *et seq.*, or any successor statute on the same subject; and

WHEREAS, pursuant to C.R.S. § 31-2-210(1), five registered electors of the Town (the “Petitioners’ Committee”) submitted a statement of intent to circulate a petition to amend the Town Charter (the “Petition”), which contains the text of a proposed Charter amendment prohibiting fences over sixty-five feet in height that stated that the amendment was to be submitted at a special election to be held approximately August 1, 2023; and

WHEREAS, the Town Clerk certified the Petition as to form on February 8, 2023, and the Petitioners submitted the signed Petition to the Town Clerk on March 29, 2023; and

WHEREAS, on April 17, 2023, the Town Clerk certified that the Petition was signed by at least ten percent of the registered electors of the Town registered on the date of filing the statement of intent; and

WHEREAS, C.R.S. § 31-2-210(3) provides that if the Town Clerk finds that the petition is sufficient, the governing body shall set the ballot title for the proposed amendment at its next meeting, and the Council wishes to hereby set the ballot title; and

WHEREAS, the Town Clerk plans to publish notice of the special election on the proposed Charter Amendment no later than April 28, 2023; and

WHEREAS, Article IV, Section 4.9 of the Charter allows a special Town election to be called by resolution of the Council at least sixty-one (61) days prior to the election, with the resolution setting forth the purpose or purposes of such election, and pursuant to C.R.S. § 31-2-210(4) an election on a charter amendment must be held within 60 – 120 days after publication of the notice of election on charter amendment; and

WHEREAS, the Council would like to call a Special Election for June 27, 2023, and refer the proposed Charter amendment as a ballot question to the registered electors of the Town at such Special Election; and

WHEREAS, the Council wishes to appoint the Town Clerk as the Designated Election Official for the upcoming Special Election on June 27, 2023; and

WHEREAS, the Council must approve a Ballot Title for the proposed amendment to the Town Charter.

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

Section 1. Special Election.

By adopting this Ordinance, the Town hereby calls a Special Election for June 27, 2023, to be conducted as an independent mail ballot election, pursuant to Colorado Municipal Election Code of 1965, C.R.S. §§ 31-10-101, *et seq.*, related the question whether the Town should adopt the proposed Charter Amendment set forth in the Petition to add a new Section 15.7 to the Charter, as attached to this ordinance. The Town Council finds that such date is as near as possible to the proposed date for the special election, given other scheduling considerations of the Town.

Section 2. Designated Election Official.

The Town Clerk is hereby appointed as the Designated Election Official for the Town for the purposes of performing acts required or permitted by law in connection with the June 27, 2023 Special Election, including without limitation, appointment of election judges pursuant to § 31-10-401, C.R.S.

Section 3. Conduct of Election.

The Town Clerk is hereby authorized to oversee the general conduct of the Special Election, and the Council hereby authorizes the Town Clerk as the Designated Election Official to take all action necessary for the proper conduct thereof and to exercise the authority of the Town Council in conducting the Special Election.

Section 4. Ballot Title.

The Ballot Title that will appear on the ballot for the Special Election on the initiated Charter Amendment shall read as follows:

Town of Timnath Ballot Question

Amending the Town of Timnath Home Rule Charter to Prohibit Permanent Fences Over 65 Feet in Height

Shall the Town of Timnath Home Rule Charter be amended to add a new Section 15.7 prohibiting permanent fences over 65 feet in height, measured vertically from the base of the fence to the top of the fence, including fences comprised of netting or screening materials?

Section 5. Effect of Passage

If a majority of the votes cast on the ballot question are in favor of the ballot question, the Charter shall be amended as contained in Exhibit A, and as described in such ballot question.

Section 6. Contests

Pursuant to § 1-11-203.5, C.R.S., any election contest arising out of a ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by

petition filed with the proper court within five (5) days after the title of the ballot question is set by this Resolution.

Section 7. Ramifications

All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Town, the Council, and the Town Clerk, directed towards the Election and the objects and purposes stated herein are hereby ratified, approved and confirmed.

Section 8. Severability.

If any section, subsection, paragraph, clause, or provision of this Resolution shall for any reason by held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, or provision shall in no manner affect any remaining provisions of this Resolution, the intent being that the same are severable.

Section 9. Effective Date

This Resolution shall take effect upon adoption.

Section 10. Inconsistency.

All orders, resolutions, ordinances, or regulations of the Town, or parts thereof, inconsistent with this Resolution are hereby repealed to the extent only of such inconsistency.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON APRIL 25, 2023.

TOWN OF TIMNATH, COLORADO

DocuSigned by:
Mark Soukup
3BD94680F9C4E8...
Mark J. Soukup, Mayor

ATTEST:

DocuSigned by:
Milissa Peters-Garcia
07A6AF3B02114D7...
Milissa Peters-Garcia, CMC
Town Clerk

Exhibit A

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.