

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 68, SERIES 2023**

**A RESOLUTION OPPOSING THE PROPOSED BALLOT INITIATIVE
AMENDING THE TOWN CHARTER TO ADD A PROHIBITION
ON ANNEXATION OF PROPERTY WITH OPEN MINING PERMITS**

WHEREAS, a petition to amend the Timnath Home Rule Charter (the “Charter”), to prohibit the Town from annexing property subject to an open mining permit, has been submitted to the Town Clerk by a committee of five residents, and the Town Clerk certified the petition as to form to allow it to be circulated for signature for possible placement on the ballot during the Town’s April election (the “Initiative”); and

WHEREAS, the Town Council of the Town of Timnath has reviewed the proposed Initiative and finds that it would be harmful to the Town and its residents because the Initiative: a) would restrict the rights of property owners and the Town Council; b) would not achieve the professed goals of protecting the environment, nature, wildlife, and communities; c) conflicts with the goals set by the Timnath residents in the adopted Town Comprehensive Plan; and d) exposes the Town to an increased risk of litigation; and

WHEREAS, the Initiative would restrict the rights of property owners, Timnath residents, and the Town Council:

- A) In 1980, Colorado voters approved an amendment to the Bill of Rights in the Colorado Constitution to provide the right of citizens to petition and/or vote for annexation, Colo. Const. II, Art. 30, and the Initiative would infringe on those rights, by prohibiting annexation of certain property; and
- B) Every other town and city in the state of Colorado has the authority and discretion to determine whether to annex eligible property, per the Municipal Annexation Act of 1965, Sec. 31-12-101, *et seq.*, C.R.S., and the Initiative would take that power from the Town Council; and
- C) If property is annexed into the Town, the Town would have the authority to review and approve land use and zoning requirements, Sec. 34-32.5-109(3), C.R.S., providing the Town and its Town residents with more control and voice in the development and use of property, than if the land use and zoning are regulated by the County; and

WHEREAS, the Initiative’s goals are summarized in proposed Charter Section 15.8.1¹; and

WHEREAS, adopting the Initiative would not accomplish the stated goals in that:

- A) Property under an open mining permit which is annexed into the boundaries of the Town remains under state statutes, regulation, and oversight, and the Town does not gain the authority or responsibility to oversee reclamation, Sec. 34-32.5-109(3), C.R.S.; and
- B) Annexation of property which is subject to an open mining permit would not make the Town legally or financially responsible for clean-up or remediation of the subject property, as such responsibilities continue with the Operator under the mining permit, *Id.*; and
- C) A mine outside of the boundaries of the Town would have the same impact on the natural resources, wildlife, aquatic resources whether it was in the boundaries of the Town or outside the Town; and
- D) The state does not require that reclamation be completed before the property can be put to a different use, as redevelopment is often an integral part of reclamation; and
- E) In fact, the Town expects that property will be remediated more quickly if it is annexed into the Town and redeveloped in accordance with Town Code, better protecting the environment, nature, wildlife, and communities; and

WHEREAS, the Initiative conflicts with the goals set by the Timnath residents in the adopted Town Comprehensive Plan and Charter, specifically:

- A) The Town adopted a Comprehensive Plan, last updated in February 2020, which is a public policy document and land use plan that guides future development based on the community’s vision and values, by strategically planning for expected growth while reflecting on the community’s values and desired enhancements; and

¹Proposed Section 15.8.1 of the Initiative reads: “The Colorado state legislature has recognized, through its enactment of Colorado's mined land reclamation statutes C.R.S. 34-32-101 to 34-34-102, that, while mining activities play important economic roles in the state, such activities can have detrimental effects on the natural resources, wildlife, aquatic resources, and community planning and development in the state. Accordingly, the state legislature recognized that the proper reclamation of mined lands is important to protect and promote the health, safety, and general welfare of the people of the state. The people of the Town have similar concerns and hereby declare that; because mining activities can be harmful to the environment, nature, wildlife, and communities affected by such activities; because including mined areas in the Town that have not yet been properly reclaimed can result in detrimental effects to the Town and the people of the Town; and because there is good reason that state statutes and state regulatory authorities mandate and oversee the reclamation of mined areas to ensure proper reclamation of those areas before they are put to a different use; it is, therefore, important to prohibit the annexation of mined areas into the Town that have not been properly reclaimed. The people of the Town adopt this section 15.8 to protect and promote these interests; and to protect and promote the health, safety, and general welfare of the people of the Town.”

- B) The Comprehensive Plan was adopted after extensive community engagement, via public open houses, one-on-one interviews, presence at key social events, online questionnaires, and many hours contributed by a steering committee with representatives from various perspectives and interests;
- C) There is one parcel of property which is under an open mining permit and currently petitioning for annexation into the Town, which is planned for Employment / Regional Commercial in the Comprehensive Plan and for road improvements and expansions frequently requested by the residents; and
- D) Residents of Timnath have expressed their desire for more commercial development, including restaurants, grocery stores, theaters and retail, which may be thwarted if the property is not able to annex; and
- E) If the Town is unable to annex the subject property until close-out of the mining permits, the Town will have no authority to regulate and oversee any land use changes, to ensure that they are consistent with community goals, as set forth in the Comprehensive Plan and no authority to make traffic safety improvements in roads proposed to be included in the annexation; and
- F) Land use restrictions are not appropriate to include in the Town Charter, as the purpose of the Town Charter adopted by the residents is to set forth the governance structure of the Town and describe powers and limitations available to the Town and its citizens, including Council procedures, powers and duties; legal considerations; methods of Council action; redistricting; elections; finance and budget; and amendment and repeal of the Charter.

WHEREAS, passing the Initiative would expose the Town to an increased risk of litigation, increasing the costs to all residents of the Town and creating uncertainty, including:

- A) The Initiative would attempt to create a new cause of action against the Town, whereby any citizens and businesses of the Town could sue to enforce the restrictions, regardless of whether they were impacted by the annexation;
- B) The Initiative attempts to re-define vested property rights of individual landowners;
- C) The Initiative invites litigation to challenge previously approved annexations; and
- D) The Initiative may conflict with state law and existing agreements of the Town.

WHEREAS, in light of the foregoing, the Council seeks to express its opposition for the Proposed Ballot Initiative.

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

Section 1. Findings


The Town Council hereby adopts the determinations and findings contained in the recitals set forth above.

Section 2. Opposition to Initiative.

The Town Council hereby establishes as the legislative policy of the Town, its objection to the Ballot Initiative and support for the current annexation process set forth in the Colorado Constitution and state statutes.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON NOVEMBER 14, 2023.

TOWN OF TIMNATH, COLORADO



Mark J. Soukup, Mayor

ATTEST:



Milissa Peters-Garcia, CMC Town Clerk

