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MEMORANDUM

To: Palmer Lake Mayor and Board of Trustees

From: Scotty P. Krob, Town Attorney

Date: November 10, 2025

Re: Some consideration in discussing parameters governing future annexation elections and amendments to Town Code

This memorandum is being provided in conjunction with your consideration of an ordinance adopting possible amendments to the Town Code governing future annexation elections and some of the specific issues and considerations involved with those amendments.

1. Timing of Election within the annexation process

- a. Provision: See Subsection (8)(a)(i)
- b. Considerations

To address this item requires some background regarding the steps involved in the annexation process. There are three primary steps in an annexation where 100% of the owners of the property proposed for annexation desire to be annexed to the Town.

Step 1: Initiation of annexation. Submission of annexation petition and map, and adopting initial resolution setting hearing for determining whether the property is eligible to be annexed.

Step 2: Eligibility hearing. At the date and time set by the Board for the eligibility hearing, the Board considers whether the petition and the property satisfy the requirements of the Colorado Constitution and the statutes in order for the property to be eligible for annexation. This step involves only a limited amount of discretion by the Board, as it looks at criteria

such as whether the area proposed to be annexed is 1/6 contiguous with the Town's existing limits. If the proposed property does not meet the eligibility criteria then the annexation proposal is terminated at that point and no further proceedings are allowed under the statutes.

Step 3. Annexation. This final step is the actual annexation of the property. This is a purely discretionary decision previously made by the Board of Trustees (and the property owner), but now subject to approval by the electors. Annexation usually does not occur unless it is agreed to by both parties - the Town and the property owner. The terms of the agreement are usually set forth in an annexation agreement. Annexation is accomplished by the Town Board of Trustees adopting an annexation ordinance. The annexation ordinance usually approves the annexation thereby making the property a part of the Town, approves the annexation agreement, and zones the property. Usually by the time the matter reaches this decision point, the zoning aspects of the applicant's annexation proposal will have been reviewed by the Planning Commission and their recommendation will have been provided to the Board. Often a sketch plan of the proposed subdivision of the property that is being proposed for annexation will also be presented to the Board as part of the annexation.

The initiated ordinance was silent as to what point in the annexation process the election is to occur. Since an annexation terminates if it does not satisfy the eligibility requirements of the statutes, it does not make sense to have the election before the property is determined to be eligible.

The election could be held immediately after the property is determined to be eligible. The benefit of holding it at this point is that if the election fails, then no effort will have been wasted on determining the appropriate zoning or negotiating an annexation agreement. The downside of having the election at this early stage is that the voters may feel like they do not have enough information about what is being proposed to enable to make an informed decision.

Another option is to hold the election after the zoning the applicant is proposing has been finalized and the proposed annexation agreement has been negotiated between the Board and the applicant. The advantage of holding the election at this point later in the process is that the electors will know what they are voting for or against. However, to get to this point could take a substantial amount of time, expense, and staff resources.

c. Initial Recommendation

My initial recommendation is to have the election after (1) the Board and the Applicant have negotiated a mutually acceptable annexation agreement, (2) The Board of Trustees has approved the proposed zoning through the process provided in Chapter 17.14 of the Town Code, including but not limited to review and recommendation by the Planning Commission, and (3) the Board of Trustees has approved the subdivision sketch plan, with the caveat that the Board can decide that the election related to a specific annexation should occur sooner. That caveat might come into play, for example, if there is an annexation proposal that the Board believes has little or no chance of passing and does not want to spend the time and effort on zoning or an annexation agreement.

2. Scheduling of election

- a. Provision: See Subsection (8)(a)(ii)
- b. Considerations

In conferring with the Town Clerk and Judy Egbert of GovPro, who the Town has used as an election advisor, they suggest the date allow at least 150 days and preferably 180 after the resolution setting the election is adopted to allow time to implement the election. [SPK: at what point is the resolution to be adopted? See issue 1???

- c. Initial Recommendation

180 days from the date of the resolution setting the election.

3. Payment of election costs

- a. Provision: Subsection (8)(a)(iii)
- b. Considerations

The general rule is that development pays its own way. However, if there is a proposed annexation that is particularly beneficial to the Town, the Board may want to consider having the flexibility to have the Town pay for the election to encourage the annexation. The draft section includes language that would allow the Board to do so.

- c. Initial Recommendation

See proposed language in Subsection (8)(a)(iii)

- 4. Formulation of ballot question
- 5.
 - a. Provision: Subsection (8)(a)(iv)
 - b. Considerations

There is some benefit in placing the primary responsibility for formulating the ballot question on the applicant. That approach would limit the ability of the applicant to complain after the election that the ballot question was insufficient to clearly approve the applicant's annexation proposal, or in the event of a denial, that the electors did not understand the annexation proposal. However, it is the Town's ballot and the Board may want to have at least the ability to review what the applicant proposes, to ensure it is not misleading or otherwise improper. There is also an issue inherent setting the ballot question of what happens if the applicant and the Board are

unable to agree on what it should say? Should the applicant have the ultimate say or the Board or should it be joint?

c. Initial Recommendation:

Place primary responsibility for formulating the question, but reserving to the Board the ability to revise it in the interest of clarity, if the Board deems clarification necessary. With regard to the form of a particular question, I suggest that it reference a petition, an annexation agreement, a zoning application, and a subdivision submittal from the applicant that are referenced to a place where they can be found on the Town's website, with a hard copy available at the Clerk's office.

6. Other possible issues:

7.

a. What if BOT says no to an annexation/agreement/zoning/subdivision aspect of the annexation proposal. Does applicant still have right to insist on an election? It is likely a court would conclude that the language of the initiated ordinance gives the voters the right to vote on any annexation and gives the applicant the right to insist on the electors considering the annexation proposal.

b. I encourage you to give some thought to other issues that are likely to arise in the context of implementing the annexation elections required by the initiated ordinance. It will be better to identify and address them in advance where possible.

8. I look forward to our discussion of these and other possible issues.