

July 1, 2015

Dear Springdale residents, friends, and community members,

The Town Council has made the very difficult decision to settle litigation with Izzy Poco concerning the formula restaurant ordinance, which litigation has spanned five years. This decision has been extremely challenging for the Council on many levels, requiring nearly two years of regular evaluations and deliberations. However, after weighing all factors the Council unanimously feels the settlement is the best among a number of undesirable and disappointing options facing the Town.

Unfortunately, due to the nature of litigation, much of the Council's deliberation on this issue has necessarily occurred during closed sessions of many properly noticed public meetings. Thus, the Council is unable to disclose all of the factors, issues, and considerations that influenced its decision. The Council understands this is frustrating and aggravating for the community. It is similarly frustrating for the Council to not be able to disclose these details.

One of the many issues central to the Council's decision centers on insurance coverage. The Council has disclosed that the Town's insurance carrier, the Utah Local Governments Trust (ULGT), informed the Town that it would not renew the Town's insurance policy when it came up for renewal on July 1, 2015 if the Town persisted with the formula restaurant ordinance in place. While the Council cannot disclose specifics regarding insurance coverage or discussions with ULGT, we can provide general information to help community members understand the gravity of the insurance predicament facing the Town.

Utah law requires all municipalities to have insurance and sets minimum coverage amounts for this required insurance based on the size of the municipality. The largest municipalities in Utah may self-insure; and the rest are required to obtain insurance from a third party provider. Without insurance the Town's financial resources (and accordingly its ability to provide services to the community) are put in jeopardy.

Many community members have suggested simply finding a new insurance company if ULGT cancels the Town's insurance. The Town Council has investigated this possibility with the following findings.

- 1- ULGT is by far the largest insurer of municipalities in Utah with more than 550 government agencies being insured. ULGT is solely dedicated to serving local governments, and therefore understands the unique insurance situations facing municipalities. It provides the best rates and the most comprehensive coverage for government agencies. It offers the widest array of risk management services to assist local governments. There is no other equivalent, or even semi-equivalent, option for insurance coverage available to local governments in Utah.
- 2- The Utah Risk Management Mutual Association (URMMA) is the only other risk management option besides ULGT specifically serving local governments in Utah. It serves a much smaller group of client jurisdictions (19). URMMA is not traditional insurance—it is risk management

assistance. Rather than providing insurance payments to its members to cover claims, it provides a five-year no interest loan on claim payouts. Thus, any claims the Town might incur would need to be paid back to URMMA over five years, in addition to the payment of the annual premium. The Council feels this option provides decidedly inferior protection to the Town.

- 3- There are private insurance companies that will provide coverage to local governments. However, these companies treat local governments the same as any other client and offer the least attractive combination of rates and coverage. These companies are not able to respond to the unique insurance and risk management needs of local governments. Rather than vigorously defend the Town in litigation and payment of claims (as ULGT does), these companies most often look for reasons to deny coverage on a claim.
- 4- In making application to any potential new insurance provider (either to URMMA or a private insurer) the Town would need to disclose any threatened or pending litigation. It would also need to disclose any known issues with Town ordinances that could result in litigation. Thus, the Town would need to disclose both the litigation with Izzy Poco and the potential for future challenges to the formula restaurant ordinance. Given these disclosures, the insurance carrier would refuse to insure the Town altogether or treat any claims arising from these disclosures as coverage exclusions under the insurance policy. In either case, the Town would be exposed to the full financial liability of future challenges to the formula restaurant ordinance.

Given all of these findings, the Council has determined the most fiscally responsible decision is to settle the lawsuit, repeal the ordinance, and retain insurance coverage with ULGT. Other options provide inferior protection of Town assets and would expose the Town to great financial risk in the face of future challenges to the formula restaurant ordinance.

As stated earlier, the issue of insurance coverage is not the only factor influencing the Council's decision regarding the formula restaurant ordinance and lawsuit. But it is a major factor. The Council is providing this information to help community members more fully understand the insurance situation. The Council will be able to share other details regarding the decision making process after the Izzy Poco litigation is dismissed by the federal court in a few weeks. If there is community interest, the Council may consider scheduling a public meeting to discuss these factors in more detail.

More information regarding the issues and legal arguments surrounding the lawsuit can be found in legal briefs filed in the federal court litigation (see, e.g., Plaintiff's Motion to Reconsider, filed March 30, 2015). Such documents are all public records.

Thank you for your thoughtful consideration of these points and the trust you have placed in us as your elected community representatives.

Sincerely,

Mayor Stan Smith, on behalf of the Springdale Town Council