

August 11, 2015

To the Springdale Community,

The Town Council is committed to doing what is best for Springdale, and what the Springdale community collectively wants for our town. Based on overwhelming community support, the Council adopted an ordinance that helped preserve the Town's village atmosphere by requiring all restaurants in the Town to be unique to Springdale (the "formula restaurant ordinance"). The Council has diligently defended the formula restaurant ordinance, especially over the last six years in the face of a legal challenge.

However, after careful and painstaking deliberation and analysis, the Council has now made the difficult decision to initiate the process to repeal the ordinance.

The struggle to defend the formula restaurant ordinance has impacted Council members directly and deeply. The Council has spent many hours in multiple difficult deliberations with legal advisors trying to protect the Town's interests in this case. No one in the community should doubt the Council's dedication to uphold Town ordinances. The Council continually seeks to protect and preserve the character of the Town, and struggled to do just that throughout the legal challenge to the formula restaurant ordinance.

Many members of the community have expressed frustration over a perceived lack of transparency as the Council dealt with ongoing legal issues surrounding the ordinance. The Council understands this frustration, and regrets that circumstances did not allow for more complete and current information being shared with the community. The Council was limited in what it could disclose by the protocols surrounding closed meetings, maintenance of its attorney-client relationship and by the need to keep legal strategies confidential.

Ironically, the Council likely would have done more damage to the Town by informing the community about the details of the situation than by keeping those details private at the expense of greater transparency. The last thing the Council wanted to do during the pendency of the lawsuit was to provide the opposing party with information concerning which legal options and strategies the Council was considering, and what the Council perceived as the strengths and weaknesses of the Town's legal position. It would have been difficult to share information with the community without also divulging these details to the opposition.

Now that the lawsuit has been settled, the Council is able to share more details concerning its decision to remove the formula restaurant prohibition from the Town Code.

The following are responses to some of the most commonly asked questions surrounding the ordinance, its proposed repeal, and the lawsuit.

***The judge in the lawsuit ruled in the Town's favor on summary judgment. Doesn't this mean we won the legal challenge?***

Unfortunately, no. The Town's motion for summary judgement was based on two legal theories. First, the Town argued the ordinance was legal and constitutional and should be upheld. Second, the Town argued the plaintiff in the case, Izzy Poco, LLC, lacked "standing," or the ability to even file a lawsuit because it failed to correctly fulfill the administrative requirements to apply for a business license application before it filed the lawsuit. The judge ruled in Town's favor on the "standing" argument. He did not render a decision either way on the ultimate constitutionality of the ordinance.

Unfortunately, this ruling by the judge did not effectively end the lawsuit. Rather, it merely prolonged resolution by creating a pathway for the plaintiff to correct the errors in its business license application and thereafter refile its lawsuit. Further, due to "savings" clauses in the state and federal statutes, the new lawsuit filed after correcting the administrative deficiencies could claim damages dating back to the time the original lawsuit was filed. Thus, the judge's decision to rule on the standing issue merely delayed the ultimate decision on the constitutionality of the ordinance, which extended the time period the plaintiff could claim damages, thereby increasing its monetary award if the case was ultimately decided in its favor.

***The Council said the insurance company made us repeal the ordinance. Is that really why the Council settled and agreed to remove the formula restaurant prohibition?***

It is true that the Town's insurance company, the Utah Local Governments Trust (ULGT), told the Town it would not issue a full renewal of the Town's insurance with the ordinance still in place.<sup>1</sup> This was a significant motivating factor in the Council's decision. However, there were other factors that also influenced the Council's decision.

Prior to adopting the original formula restaurant ordinance, the Town located some case law from other federal trial court jurisdictions that supported a municipality's ability to prohibit formula restaurants in order to preserve unique attributes of the municipality, which the Town relied upon when adopting its formula restaurant ordinance. Since that time these cases have been appealed and overturned. Because these cases are not in the same federal court district as Springdale they are not binding on the federal court that presided over the Izzy Poco lawsuit. However, they do serve as an important reference for the Town's ordinance and would likely be considered by the instant federal court as persuasive legal authority when determining the ultimate constitutionality of the Town's formula restaurant ordinance.

The U.S. Supreme Court has stated "where a statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefit." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). In *Cachia v. Islamorada*, the plaintiff challenged

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<sup>1</sup> The ULGT did issue the Town a temporary policy on July 1, 2015 with the understanding the ordinance would be repealed by the time the temporary policy expired.

Islamorada's ban on formula restaurants. The Eleventh Circuit Court of Appeals, which is an intermediate federal appellate court, reasoned that a municipality's ban on formula restaurants had the "practical effect of discriminating against interstate commerce" because it "disproportionately target[ed] restaurants operating in interstate commerce." *Cachia v. Islamorada*, 542 F.3d 839, 843 (11th Cir. 2008). This court held that because the ordinance was discriminatory, it was subject to elevated court scrutiny. *Id.* at 843. That elevated scrutiny then requires the municipality show a "legitimate local purpose and that there are no reasonable nondiscriminatory alternatives adequate to serve that purpose." *Id.* at 843. Ordinances subject to elevated scrutiny are almost always held unconstitutional because it is nearly impossible for a municipality to show that there are *no* nondiscriminatory alternatives to the discriminatory ordinance. Accordingly, "[r]egulations that facially discriminate or have a discriminatory effect on interstate commerce rarely pass the elevated scrutiny test." *Island Silver & Spice v. Islamorada*, 542 F.3d 844, 847 n.3 (11th Cir. 2008).

In briefs filed with the instant federal court, Izzy Poco continually argued that the Town has had formula lodging establishments and formula gas stations for many decades, dating back to long before the formula restaurant ordinance was adopted. Although the Council believes there is a significant difference between a formula restaurant and a formula hotel or gas station, given the aforementioned elevated scrutiny to which the Town's formula restaurant ordinance will be subjected, it became increasingly difficult, if not impossible, to successfully promote the preservation of the Town's "unique sense of place" and "village atmosphere" by prohibiting formula restaurants and allowing other types of formula businesses.

Another factor influencing the Council's decision was the potential unintended application of the ordinance that would prevent a successful restaurant first established in Springdale from expanding to other areas. The Council found it difficult to demonstrate how a Springdale restaurant's contribution to the Town's village character would be undermined if that restaurant later opened a location outside of Springdale.

Finally, planning and legal staff for communities across the country with similar formula restaurant prohibitions openly admitted their ordinances were on questionable legal footing when Town representatives contacted them. Some of these representatives candidly admitted that their communities' formula restaurant ordinances only remained viable because they had not been subjected to legal challenge.

Given the facts specific to the case, decisions in similar cases that could be detrimental to the Town's cause, and the ever increasing chorus of legal opinions questioning the prospect of the Town's success, the Council decided now was the time to settle the case, repeal the ordinance, and explore other strategies to protect and promote the Town's village atmosphere and unique sense of place.

Naturally, the Council could not disclose to the community details about how the factors discussed above strengthened or weakened the Town's legal position before the case was settled. Doing so would have undermined the Town's strategy in the lawsuit.

***Is the Council considering other options to regulate formula restaurants?***

The prohibition on formula restaurants was a strategy to promote the Town's village character. It was not intended to be punitive to formula restaurants. The ordinance was based on the finding that restaurants unique to Springdale made a significant contribution to the Town's village character, and that formula restaurants detracted from that unique character.

The Council is now exploring other methods to help promote and protect the village atmosphere.

Some residents have suggested adopting regulations that limit the areas of Town formula restaurants may be established, or the total number of formula restaurants allowed. Other suggestions are to require conditional use permits or special review processes for formula restaurants. The intent of these regulations would be to preserve the Town's character by limiting the saturation of formula restaurants in the community.

Several communities throughout the country have adopted this approach. Coronado, California is often cited as an example of successful formula business regulation. Coronado requires conditional use permits for formula restaurants and has development criteria that apply specifically to formula restaurants. However, these methods do not prevent or prohibit formula restaurants. In fact, there are nearly a dozen formula restaurants in Coronado. So these types of regulations should not be seen as a de facto method to prevent formula restaurants. Rather, they are a means to make sure formula restaurants adhere to adopted standards.

Another approach is to ensure the Town's architectural standards and design regulations promote the village character by requiring a consistent look and appearance of new development. This approach would apply to all development, not just formula restaurants. In addition to the existing regulations on color, building material, building size and height, lighting, landscaping, etc., the Town could require new buildings to incorporate design elements consistent with "parkitecture" or other architectural styles. These types of regulations are widely used across the country and are based on a solid legal foundation.

Under any of these options formula restaurants could, and most likely would, be established in Town.

***Conclusion***

The Council appreciates that the formula restaurant ordinance, and its pending repeal, are issues that impact the community profoundly. The Council has not made its decision regarding these issues lightly. The Council deeply wishes circumstances were different and the formula restaurant ordinance could remain in place. As the Town goes through this period of transition, the Council requests patience, support and constructive feedback from the community.

Thank you,

Mayor Stan Smith on behalf of the Springdale Town Council