



551 Hot Springs Boulevard
Post Office Box 1859
Pagosa Springs, CO 81147
Phone: 970.264.4151
Fax: 970.264.4634

**TOWN COUNCIL SPECIAL MEETING MINUTES
TUESDAY, MARCH 9th, 2010
TOWN COUNCIL CHAMBER, TOWN HALL
11:00 A.M.**

- I. **CALL MEETING TO ORDER** – Mayor Aragon, Council Member Cotton, Council Member Holt, Council Member Jackson, Council Member Pierce, Council Member Volger

- II. **NEW BUSINESS**
 1. **Emergency Ordinance No. 751 Repeal Sections of the LUDC relating to Large Retail development and Referring Ordinance No. 751 to Electors** – The first reading of Ordinance No. 751 was approved on first reading on February 18, 2010. The ordinance is intended to bring to the voters at the April 6th election the decision to vote on the repeal of sections of the Land Use and Development Code dealing with large retail development over 100,000 square feet. Pursuant to the first and second reading process provided by Section 3.9 of the Charter which allows reading of the ordinance by title only if copies of the ordinance are available to the public at the meeting and at the time of first reading copies of Ordinance No. 751 were available in the Council chambers to the public from the Town Clerk, Town Manager, Council members, and members of the local media, but no other person in attendance requested a copy. However at the Town Council meeting of March 2, 2010, opponents of Ordinance 751 challenged the validity of first reading of Ordinance No. 751 by title only based on copies not being available to the public. Emergency Ordinance No. 751 states that for the preservation of public peace, health and safety it is immediately necessary to stimulate the economy that is in a state of recession in and around Pagosa Springs by acting to counteract increased unemployment and increase Town sales tax revenues, which are in decline but critical to pay for essential public services, and to accomplish the same by repealing the variance requirements for large retail development containing more than 100,000 square feet and related requirements, and it is further necessary to have such repeal conclusively determined by the voters at the general election of April 6, 2010. Town Manager Mitchem read the title for the record. Council Member Jackson moved to approve Emergency Ordinance No. 751, Series 2010, an emergency ordinance of the Town of Pagosa Springs repealing provisions of the Land Use and Development Code and related provisions of the Land Use and Development Code User's Manual regarding large retail development which were not previously addressed by Ordinance No. 743, and referring this Ordinance to the registered electors of the Town at the regular election to be held on Tuesday April 6, 2010, Council Member Volger seconded. Mayor Aragon opened this item for public comment. Mr. Matthew Roane, a local attorney, expressed his concern with the passing of Ordinance 751. He handed out a copy of the Town's home rule charter section 3.10 which addresses the qualifications of an emergency ordinance. He believes Ordinance 751 cannot be deemed an emergency by town charter requirements and the legal issues he had previously raised regarding the first reading of Ordinance 751 does not deem this ordinance an emergency. He also addressed section 5.7 of the home rule charter which requires public notice of any ordinance at least 30 days prior to an election in order for that ordinance to be put on the ballot. Although the public notice of the passing of the emergency ordinance is scheduled to be published on

March 11th, he said this emergency ordinance does not qualify to be put on the ballot legally. He explained that the passing of Ordinance 751 is a mistake at this time and believes that putting a Referendum B on the ballot would cause confusion and cause future problems with the big box issues that are in the Land Use Development Code and User's Manual. Council Member Jackson expressed his concern and distaste of the legal process the attorney's have gone through with the big box issue. Council Member Holt believes the emergency ordinance is represented by the Town's attorney and he is confident in the legal counsel received by the Town's attorney. Council Member Volger referred to the large retail business looking to come into Pagosa and about the issues which are time sensitive. He questioned the process should Ordinance No. 751 not be approved and the process of development if Referendum A were approved by the voters. Mr. Roane believes that forcing Ordinance 751 to the voters will cause more problems that will need to be addressed later. He said he would be willing to help the Town Council and staff with new ordinances correcting the problems that a passing vote of Referendum A will cause with reference to development over 100,000 square foot. He addressed the belief that a "Referendum B" would add to confusion at the polls, problems should "A" pass and "B" not pass, and future issues with Referendum A. Town Manager Mitchem explained the Council is the one who decides what an emergency ordinance is defined as; he also said that a Referendum B is recommended by the Town's legal counsel. He believes that the voters will recognize the differences in the two referendums and will know to vote yes on both or no on both. Mayor Aragon said he is very uncomfortable with a two part referendum and apologizes for not being vocal earlier, but doesn't feel like he has been receiving the right information. He feels a great responsibility as a Town leader to do all he can to keep the economy moving forward and feels Mr. Roane has been an adversary. He asked the board to reconsider approving Ordinance 751 and to look at addressing the LUDC large retail development issues correctly. Council Member Cotton asked Mr. Roane about pending lawsuits should the Council decide to pass Ordinance No. 751. Mr. Roane said he would like the Council to be required to follow the same legal procedures as he is required to follow and the procedures set forth in the Town's Home Rule Charter. Council Member Volger reviewed the information that having two referendums may confuse the voters as Mayor Aragon had stated, he also said the other option would be to bring Referendum A to the voters and depending on the outcome, look at cleaning up the rest of the issues addressed in Ordinance 751. Council Member Holt said if Referendum A passes, then there could be more challenges on big-big box issues that may arise by other attorneys. Mr. Bill Hudson said this has been the first referred issue to be brought to the people and believes this issue is about unregulated and regulated big box. He said he would like a clear choice and wants to make it easy for the voters to understand the issue to be voted on. Council Member Pierce believes this emergency ordinance is required to be published 30 days prior to the election, which March 11th publication is not within the Charter regulations. She believes section 7 of the emergency ordinance 751 should read health or safety, not health and safety. Council Member Volger asked Town Manager Mitchem about the delay of additional complications and if this would affect the potential big box developer. Town Manager Mitchem said there could be an ordinance to clean up the big-big box issues possibly within 45 days, Mr. Roane expressed great interest in helping to correct issues that the repeal of 2.4.5 might cause. Mr. Roane said he will not give the council a battle should Referendum A be approved by the voters of the Town at the April 6th election and will work helpfully with the Town, if requested, to provide all information and suggestions to correct LUDC issues by council ordinance. Council Member Jackson withdrew his motion and would like to work with Mr. Roane to discover if he is a man of his word. Council Member Volger withdrew his second. Emergency Ordinance 751 failed due to lack of motion.

2. **Amendment to the Intergovernmental Agreement for the Consolidation of Emergency Communications** – On July 15, 2008 the Town of Pagosa Springs entered into an Intergovernmental Agreement with the Board of County Commissioners and Sheriff of Archuleta County and the Pagosa Fire Protection District for consolidation of emergency communications. On February 3, 2009 the Town Council modified the IGA to; 1) add the Upper San Juan Health Service District to the IGA; 2) create an Executive Management Board; 3) change the financial contributions for 2009; and 4) empower the executive

management board to annually validate an allocation of costs based on use of the communications system. Recently, it has come to the attention of Archuleta County that the Consolidated Emergency Communications system was not adequately insured under Archuleta County's current insurance carrier. To rectify this issue at the earliest possible date an amendment to the IGA has been drafted. Town Manager Mitchem explained that Archuleta County does not intend to charge the entities for any additional charges as stated in item #4 of the IGA. Council Member Volger moved to approve the First Amendment to the Intergovernmental Agreement for Consolidation of Emergency Communications for Archuleta County, Town of Pagosa Springs, Upper San Juan Health Care Service District and Pagosa Fire Protection District, contingent upon written agreement by the county not to increase the Town's costs for service as referenced in number 4, Council Member Pierce seconded, unanimously approved.

III. OLD BUSINESS

- 1. Ordinance No. 751 (second reading) Repeal Sections of the LUDC relating to Large Retail Development and Referring Ordinance No. 751 to Electors** - The first reading of Ordinance No. 751 was approved on first reading on February 18, 2010. The ordinance brings to the voters at the April 6th election the decision to vote on the repeal of sections of the Land Use and Development Code dealing with large retail development over 100,000 square feet. Council Member Cotton moved to approve second reading of Ordinance No. 751, Council Member Jackson seconded. Upon reflection of Item #1, New Business, Council Member Jackson withdrew his second, motion failed for lack of a second.

The mid-month meeting will be rescheduled for the 25th of March at 12:00noon.

- IV. ADJOURNMENT** – Upon motion duly made, the meeting adjourned at 12:40pm.

Ross Aragón
Mayor