

# Jeffrey S. Aal

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April 11, 2023

The Honorable Chris Higgins, Mayor, [chiggins@paysonaz.gov](mailto:chiggins@paysonaz.gov)  
The Honorable Barbara Underwood, Vice-Mayor, [bunderwood@paysonaz.gov](mailto:bunderwood@paysonaz.gov)  
The Honorable Brett Flaherty, [bflaherty@paysonaz.gov](mailto:bflaherty@paysonaz.gov)  
The Honorable Joel Mona, [jmona@paysonaz.gov](mailto:jmona@paysonaz.gov)  
The Honorable Scott Nossek, [snossek@paysonaz.gov](mailto:snossek@paysonaz.gov)  
The Honorable Jolynn Schinstock, [jschinstock@paysonaz.gov](mailto:jschinstock@paysonaz.gov)  
The Honorable Suzy Tubbs-Avakian, [stubby-avakian@paysonaz.gov](mailto:stubby-avakian@paysonaz.gov)

Town of Payson  
303 N Beeline Highway  
Payson, Arizona 85541

Re: Agenda Items F.6 and F.7, April 12<sup>th</sup>, 2023 Council Meeting.

Dear Mayor and Town Council:

By way of introduction, my name is Jeffrey Aal, a Citizen of Payson. I am also the Chairperson for Transparent Payson. Transparent Payson is the political committee that sponsored Propositions 401 and 402. The Propositions were passed by the voters in 2018.

The Town of Payson has an emergency agenda item for the future Council meeting. Items F.6, Public Hearing regarding Repealing Chapter 157 Right to Control Public Land. And item F.7. Public Hearing regarding Repealing Section 35.04 People's Right to Know Debt Obligation.

Attempts were previously made in 2021 to repeal the initiatives. At that time, a letter was provided to the Council outlining our concerns. As many members of the Council were not present then, a copy is again attached. The objections remain as stated.

I anticipate that the proposed declaration of "An Emergency" is disingenuous. To assert that a matter from 2018 is now an "emergency" appears to be an attempt to circumvent the requirement for two readings.

Town Code reads as follows:

§ 10.05 DEFINITIONS.

(A) General rule. All words and phrases shall be construed and understood according to the common and approved usage of the language;

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"Emergency is not defined in the Code. The general definition is:

emergency

noun

1: an unforeseen combination of circumstances or the resulting state that calls for immediate action

2: an urgent need for assistance or relief <sup>1</sup>

There is nothing to suggest that repealing the duly enacted Propositions is an "Emergency." I will take this opportunity to remind the Council of additional TOP Code requirements.

§ 30.52 SAME DAY PASSAGE; TWO SEPARATE HEARINGS.

(A) No ordinance except an emergency ordinance or other ordinance not subject to referendum shall be voted upon on the same day on which it is introduced.

( 82 Code, § 2-5-3)

\* \* \*

§ 30.54 EFFECTIVE DATE OF ORDINANCE.

No ordinance or franchise shall become operative until 30 days after its passage by the Council and approval by the Mayor, except measures necessary for the immediate preservation of the peace, health or safety of the town, but such an emergency measure shall not become immediately operative unless it states in a separate section the reason why it is necessary that it should become immediately operative, and unless it is approved by the affirmative vote of three-fourths of all the members elected to the Council, taken by ayes and nays. A resolution becomes effective upon adoption unless otherwise provided for in the resolution.

( 82 Code, § 2-5-6) (Am. Ord. 946, passed 7-28-22)

**I request that Council Members vote "no" on the Agenda Items.**

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/emergency>

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Should the matter be adopted, I anticipate a more formal response, including possible judicial intervention, will be provided.

I appreciate your consideration.

Sincerely yours,

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Jeffrey S. Aal  
Cell: (480) 628-6818

JSA/sjn

Enclosures/Attachments: As indicated.

cc Timothy A. La Sota, PLC

Arizona Ombudsman – Citizens' Aide  
2020 N Central Ave., Suite 570  
Phoenix, AZ 85004

[ombuds@azoca.gov](mailto:ombuds@azoca.gov)

Copy provided in .pdf format for email formatting issues.

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March 24, 2021

**Via email to:**

The Honorable Tom Morrissey, Mayor  
The Honorable Chris Higgins, Vice-Mayor  
The Honorable Jim Ferris  
The Honorable Scott Nossek  
The Honorable Jolynn Schinstock  
The Honorable Suzy Tubbs-Avakian  
The Honorable Barbara Underwood  
Town of Payson  
303 N Beeline Highway  
Payson, Arizona 85541

**Re: Proposed Ordinance 927 (Agenda Items F.1. and F.2., March 25 Council Agenda)**

Dear Mayor and Town Council:

This law firm represents Transparent Payson. Transparent Payson is the political committee that sponsored Propositions 401 and 402. The Town Council is considering repealing these voter-passed initiatives, action that would be illegal. I am referring to proposed Ordinance 927, items F.1. and F.2. on the March 25 Agenda. These items would either repeal or suspend Propositions 401 and 402, passed in August of 2018.

As voter passed initiatives, Propositions 401 and 402 are protected from repeal by elected officials such as yourself by the Arizona Constitution, to wit the Voter Protection Act of the Arizona Constitution, Art. IV, Pt. 1 § 6(B) prohibits a Town from repealing a voter-passed measure, and § 6(C) allows amendment only if the amendment “furthers the purposes” of the voter passed measure and only then with a three-fourths council vote.

Honorable Mayor and Town Council  
March 24, 2021

It is true that both §§ 6(A) and 6(B) use the term “Legislature.” However, § 8 incorporates the same powers and rights that state voters enjoy into municipal initiative matters:

**Local, city, town or county matters.** The powers of the initiative and the referendum are hereby further reserved to the qualified electors of every incorporated city, town, and county as to all local, city, town, or county matters on which such incorporated cities, towns, and counties are or shall be empowered by general laws to legislate.

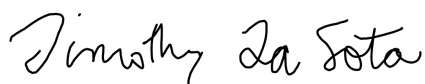
This is unambiguous, but to the extent there are any doubts, the Payson Town Code, § 30.65, puts these to rest, stating: “[t]here is reserved to the qualified electors of the town the power of the initiative and the referendum as prescribed by the State Constitution.” (Emphasis added).

If the Council persists in either repealing or suspending Propositions 401 or 402, Transparent Payson and its members will file suit against the Town seeking to enjoin the Council’s action. We will also seek attorney’s fees, and if we win, we will certainly be granted them. See A.R.S. §§ 12-348(A)(4), 12-2030.

I hope you will consider my arguments. The last time I asked the Town to do so it declined and I had to file suit, winning in both Superior Court and the Arizona Supreme Court. I hope that is not necessary this time.

Very truly yours,

**TIMOTHY A. LA SOTA PLC**



Timothy A. La Sota