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**IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

REX ROHLFS d/b/a COVERS PLUS;
NORTH PARK PLAZA, LLC;
POLLACK BUSINESS PARK NORTH, LLC;
PUTZ, LLC; and
UNIVERSITY CENTRAL CENTER, LLC,

Plaintiffs,

vs.

CITY OF CHANDLER, a body politic,

Defendants.

Case No. CV2016-014097

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Introduction

1. This civil rights lawsuit seeks to vindicate two of the most venerated rights protected by the constitutions of Arizona and the United States—Plaintiffs’ constitutionally guaranteed rights to free speech and equal protection of the laws. Defendant City of Chandler (“the City”), by enforcing its ordinances regulating the display of signs (“Sign Code”) unconstitutionally prohibits or intrudes upon Plaintiffs’ rights to free speech and equal protection of the laws. The City’s Sign Code is also impermissibly vague, imposes an unconstitutional prior restraint, and is unequally and arbitrarily applied. As such, the provisions of the City’s Sign Code challenged here are unconstitutional under the state and federal constitutions, both facially and as applied.

2. The City’s Sign Code imposes different rules on signs based on the “communicative content” of those signs, in direct contradiction to the U.S. Supreme Court’s recent ruling in *Reed v. Town*

of Gilbert, 135 S.Ct. 2218, 2226 (2015). The Sign Code restricts certain types of signs based on (a) “the topic discussed or the idea or message expressed,” *id.* at 2227, (b) the speaker’s “economic motive,” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011), and (c) “the identity of the speaker.” *Id.* These and other aspects of the Sign Code violate the freedom-of-speech and equal protection guarantees of the state and federal constitutions.

3. Plaintiffs exercise their fundamental right to free speech in a “responsible” manner, ARIZ. CONST. art. II, § 6—or would, but for the fact that the City’s Sign Code contains content-based, speaker-based, and speaker’s motive-based restrictions on speech in violation of Arizona Constitution Article II, Sections 4, 6 and 13, and the First and Fourteenth Amendments to the United States Constitution. Plaintiffs respectfully request an injunction to protect their right to freedom of expression.

Parties, Jurisdiction, and Venue

4. Plaintiff North Park Plaza, LLC, is an Arizona limited liability company that owns property located at 1004–1088 North Arizona Avenue in the City of Chandler.

5. Plaintiff Pollack Business Park North, LLC, is an Arizona limited liability company that owns properties located at 3205, 3215, and 3245 North Arizona Avenue in the City of Chandler.

6. Plaintiff Covers Plus is an Arizona business that leases and operates out of suite number 5 at 3205 North Arizona Avenue in the City of Chandler that is owned by Plaintiff Pollack Business Park North, LLC.

7. Plaintiff Putz, LLC, is an Arizona limited liability company that owns property located at 1731 North Arizona Avenue in the City of Chandler.

8. Plaintiff University Central Center, LLC, is an Arizona limited liability company that owns properties located at 3002 and 3080 North Arizona Avenue in the City of Chandler.

9. Defendant City of Chandler is a municipal corporation and body politic in the State of Arizona. The City’s officers and employees have enforced and continue to enforce the City’s sign code against all of the Plaintiffs.

10. Jurisdiction over this action and its claims is provided by ARIZ. CONST. art. VI, § 14, A.R.S. §§ 12-123, 12-1801, 12-1831, and 42 U.S.C. § 1983.

11. Venue is proper pursuant to A.R.S. § 12-401.

Facts Common to All Claims

Putz, LLC

12. Plaintiff Putz, LLC, and its tenants have been repeatedly harassed by City's sign code enforcement officers. On April 18, 2014, the City wrote a letter to Putz, LLC, informing Plaintiff that "city inspectors observed exterior placement of non-permitted signage at" 1731 North Arizona Avenue. Exhibit 2 is a true and correct copy of the April 18, 2014 letter. *See* Affidavit of Robert Schure attached as Exhibit 14.

13. In that April 18, 2014 letter, the City maintained that Chandler City Code ("CCC") § 39-10 "prohibits any person from placing a temporary commercial sign in the street, right-of-way or public place." That provision of the Code, the City wrote, "prohibits banners, pennants, tear drop signs and inflatable signs not installed in conjunction with a permitted Significant Event Sign Permit as defined by code. [CCC §] 39-7.10(D) also prohibits the use of vehicles primarily as signage e.g. for advertising or identifying the business premises." The letter went on to warn Putz, LLC, that the City would formally enforce the ordinance within 30 days unless Putz, LLC "[took] steps to discontinue the use of or remove any/all prohibited and unlawful signs advertising [Putz's] business or service," and warning that "formal enforcement action [would] include immediate removal of signs placed in the right of way and issuance of civil and/or criminal penalties with fines."

14. Also on April 18, 2014, the City wrote a second letter to Putz, LLC. Exhibit 3 is a true and correct copy of the second April 18, 2014 letter.

15. In the second letter, the City wrote that Putz, LLC, "need[ed] to discontinue the unlawful parking and use of vehicles as commercial signage," and also "inform[ed]" Putz, LLC, of the "option to pursue lawfully install[ed] Real estate [CCC § 39-10.9] and/or development sign(s) [CCC § 39-10.2]," instead. The letter also advised that "[d]evelopment signs can be placed on the property when the project is in the process of obtaining building permits for construction. Real estate signs can be placed on the property at any time but must meet all code requirements."

16. On May 20, 2014, the City sent a "Code Enforcement Notice to Comply-Sign Violation" to Putz, LLC. The Notice alleged a violation of CCC § 39-7.10(D) and ordered compliance by June 20,

2014. Exhibit 4 is a true and correct copy of the Notice.

17. The two April 18, 2014 letters, and the May 20, 2014 Notice, were mailed to 5501 East Gelding Drive, Scottsdale, AZ 85254. Putz, LLC's business address was never 5501 East Gelding Drive in Scottsdale, nor did any of Putz, LLC's members or statutory agents ever reside at or operate out of 5501 East Gelding Drive in Scottsdale. As a result, Putz, LLC, never received these letters.

18. On November 25, 2014, the City filed a "criminal complaint and judgment misdemeanor" in the Chandler Municipal Court against Mr. Robert Schure, a member and statutory agent of Putz, LLC. Exhibit 5 is a true and correct copy of the November 25, 2014 criminal complaint. The City alleged that on or about July 9, 2014, Mr. Schure violated CCC § 39-7.10(D), which was alleged to constitute "a misdemeanor offense."

19. Pursuant to that complaint, on December 16, 2014, a summons was issued against Mr. Schure to appear in Chandler Municipal Court. Exhibit 6 is a true and correct copy of that summons.

20. The summons was issued to Mr. Robert Schure, 4815 East Carefree Highway, Cave Creek, AZ 85331. *See* Ex. 6. Putz, LLC's business address was never 4815 East Carefree Highway in Cave Creek, nor did any of Putz, LLC's members or statutory agents ever reside at or operate out of 4815 East Carefree Highway in Cave Creek. Putz, LLC and Mr. Schure thus never had knowledge of the two April 18, 2014 letters, the May 20, 2014 notice, or the criminal complaint filed against them alleging sign code violations.

21. On April 29, 2015, the City filed a motion to dismiss the criminal action "for the reason that it is in the interest of justice at this time." Exhibit 7 is a true and correct copy of the City's motion to dismiss. On May 1, 2015, the Chandler Municipal Court entered an order "dismissing th[e] matter without prejudice." Exhibit 8 is a true and correct copy of the court's order.

22. On January 23, 2016, City officials had an in-person meeting with representatives of Putz, LLC and a tenant of Putz, LLC, informing them that their signs were in violation of the Sign Code. Putz, LLC, wishes, intends to, and, but for the Sign Code, would again responsibly post signs on their own property and in the right-of-way.

23. Pursuant to this January 23 discussion, Putz, LLC and its tenant, in fear of the City bringing criminal charges against them, ceased exercising their right to speech and expression according to the

City's dictates.

***Plaintiffs North Park Plaza, LLC,
Pollack Business Park North, LLC, and
University Central Center, LLC***

24. Plaintiffs North Park Plaza, LLC, Pollack Business Park North, LLC, and University Central Center, LLC ("Plaza Plaintiffs") have in the past posted, and wish, intend to, and but for the Sign Code, would again post "For Lease" signs in their own rights-of-way to advertise open and vacant commercial spaces for rent.

25. Plaza Plaintiffs call these "lollipop signs" because they are signs supported by one upright pole braced securely into the ground. The surface area of each sign is typically 4 square feet, and never more than 6 square feet. The upright pole is less than 8 feet in height. The signs say "For Lease" and provide the phone number of Plaza Plaintiffs. Plaza Plaintiffs typically place 4 to 8 signs per parcel in the right-of-way of that parcel. *See* Affidavit of Michael A. Pollack attached as Exhibit 15 ¶ 11. Exhibit 9 is a true and correct photographic representation of the lollipop signs used by Plaza Plaintiffs to advertise open and vacant commercial spaces for lease by small, local business owners.

26. On January 2, 2016 City Sign Code enforcement officers posted sign code violation notices on signs belonging to Plaza Plaintiffs, citing them on the grounds that they were "lease sign[s]," "illegally placed signs," "prohibited sign[s]," signs "in the right-of-way (please place 15 ft or more from edge of roadway)," and signs which required a permit. Exhibit 10 is a true and correct photograph of one of the violation notices placed on Plaza Plaintiffs' signs. All violation notices placed on Plaza Plaintiffs' signs were identical to this photograph. Ex. 15 ¶ 12.

27. On January 29, 2016, the City sent Plaza Plaintiffs a letter enclosing aerial maps indicating the locations of two of the Plaza Plaintiffs' properties with "'For Lease' signs placed in the city right-of-way." The maps showed a "yellow box highlighting the area that is private property and is not considered right-of-way. The second set shows estimated measurements, in feet, between the sidewalk and property line." Exhibit 11 is a true and correct copy of the January 29, 2016 letter.

28. On March 7, 2016, the City sent Plaza Plaintiffs another letter "related to lease signs on"

Plaza Plaintiffs' property. Exhibit 12 is a true and correct copy of the March 7, 2016 letter. It stated that the City "staff noted a number of 'for lease' signs placed in the public right of way and placed an orange notice on said signs," and that the City's "main concern with the signs in question was their unlawful placement in the City's public right of way." The letter also said that the "aerial photos" attached to the January 29, 2016 letter "*roughly* indicate the private property versus right of way line and can be used to guide the proper lawful placement of signs on private property and not in the City's public right of way," *id.* (emphasis added), and that the City "will pursue compliance for similar sign placements found at other properties in the area and throughout the City."

29. On June 30, 2016, the City sent a letter to the Plaza Plaintiffs "confirm[ing] that there are no outstanding sign code violations and all matters related to any sign code enforcement that occurred on January 2, 2016 have been abated," and "acknowledge[d] the Zoning Administrator's finding in the matter." Exhibit 13 is a true and correct copy of the June 30, 2016 letter.

30. The Plaza Plaintiffs continue to place "for lease" signs on their property and in their own rights-of-way.

Plaintiff Rex Rohlf's d/b/a Covers Plus

31. Covers Plus is a tenant of one of the Plaza Plaintiffs. Covers Plus is a family-owned upholstery business and wishes, intends to, and but for the Sign Code, would use the right-of-way to advertise its fledgling business. The relevant Plaza Plaintiff has no objection to Covers Plus meaningfully and responsibly using the right-of-way to put up signs. The sole reason Covers Plus has not used the right-of-way to advertise its business is its fear of punishment and retaliation by the City and fear that the City will take adverse action against the business, including imposing of criminal penalties, were it to do so. *See* Affidavit of Rex Rohlf's attached as Exhibit 16.

All Plaintiffs

32. All Plaintiffs want to continue to use their own property and the right-of-way to meaningfully and responsibly exercise their speech rights.

33. Landlord Plaintiffs (North Park Plaza, LLC, Pollack Business Park North, LLC, Putz, LLC, and University Central Center, LLC) have no objection to their tenants, including the Tenant Plaintiff

(Rex Rohlfs d/b/a Covers Plus), meaningfully and responsibly exercising their speech rights by putting up signs on Landlord Plaintiffs' property or in the right-of-way under Landlord Plaintiffs' control.

34. All Plaintiffs and all of the Landlord Plaintiffs' tenants wish, intend to, and but for the Sign Code, would use the right-of-way for a wide range of speech, including, without limitation, "For Lease" signs to signs calling attention to sales or discounts, notifying the public that "Sign Language Interpreters [are] Wanted," and "Day Care Discount for Single Parents [are] Available," supporting charitable causes such as "Veterans: Your Dinner is On the House," or publicizing ideological messages such as "Graduates, Stay Sober, Drive Safe."

35. By enforcing the Sign Code, the City unconstitutionally and unreasonably prohibits or restricts Plaintiffs' exercise of these expressive rights on Plaintiffs' private property and in Plaintiffs' right-of-way.

Statutory Framework

36. The City of Chandler's Sign Code is contained in Chapter 39 of its Code of Ordinances. Exhibit 1 is a true and correct copy of Chapter 39 and relevant provisions of Chapter 1. The Sign Code is also available at

https://www.municode.com/library/az/chandler/codes/code_of_ordinances?nodeId=PTVIPL_CH39SIC
Q (visited August 12, 2016).

Definitions

37. The Sign Code defines "sign" as "[a]ny visual communications [*sic*] which is used to attract the attention of the public, when the display is visible beyond the boundaries of the property." CCC § 39-3. The Sign Code then subdivides signs into various subcategories:

38. An on-site sign is "[a] sign which correctly identifies a business, commodity, service or entertainment conducted, sold or offered on the same premises as those upon which the sign is located, whether an attached sign or freestanding sign, and which may include other nonchangeable information that further identifies the type of business, commodity, service, or entertainment offered therein, including addresses and phone numbers." CCC § 39-3.

39. A freestanding sign is "[a] sign which is supported by one (1) or more uprights or poles,

and braced in or upon the ground.” CCC § 39-3.

40. A temporary sign is “[a]ny sign, banner, pennant, valance or advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard, or other like materials, with or without frames, intended to be displayed for a short period of time as defined in this chapter.” CCC § 39-3.

41. A permanent sign is “[a]ny sign constructed and intended to be of an enduring and lasting condition, remaining unchanged in character, condition (beyond normal wear) and position.” CCC § 39-3.

42. A portable sign is “[a]ny sign not permanently attached to the ground or to a structure on the property it occupies.” CCC § 39-3.

43. A vehicle sign is “[a]ny sign mounted or painted upon or otherwise erected on a trailer, truck, automobile or other vehicle so parked or placed so that the signs thereon are visible from a public street or right-of-way.” CCC § 39-3.

44. “Grand opening” is defined as “[t]he introduction, promotion or announcement of a new business, store, shopping center or office, or the announcement, introduction or promotion of the changing of ownership of an established business.” CCC § 39-3.

45. A real estate sign relates to a “property being advertised for lease, sale or rental.” CCC § 39-10.9(A).

46. A “significant event sign” is “a temporary sign displayed on property used or zoned for any use other than a single-family residence and which displays any type of event that is unique or significant to the business located upon the property. Such events include, but are not limited to, an anniversary, special sale, change in ownership or management, or similar event.” CCC § 39-10.10.

47. An “open during construction” sign is “a temporary sign displayed on property used or zoned for any use other than a single-family residence and which calls attention to an existing business or institutional use located on property adjacent to or otherwise affected by a City funded or designated construction project.” CCC § 39-10.11.

48. A “model home sign” is “a form of temporary sign which identifies an unoccupied new home used as a demonstrator to advertise and promote sales of other homes within the recorded

subdivision.” CCC 39-10.6(A).

49. An “open house sign” is “a portable, temporary sign to direct traffic to a home for sale.” CCC § 39-10.7(A).

50. “Political and campaign signs” are “signs on behalf of candidates for public office or urging action on primary, general or special election ballots.” CCC § 39-10.8.

51. A “subdivision direction sign” is “a temporary sign which is designed and erected for the purpose of directing the public to a recorded residential subdivision for the sale of homes or lots thereon.” CCC § 39-10.4(A).

52. “Contractor sign,” CCC § 39-10.1, “development sign,” CCC § 39-10.2, and “subdivision sign,” CCC § 39-10.3, although they are singled out and a separate set of regulations apply to each such type of sign, these terms are not defined in the Sign Code.

53. The term “right-of-way” is not defined in the Sign Code. The Code uses the terms “street right-of-way” and “public right-of-way” interchangeably and neither term refers to “public property.” *Compare* CCC § 39-9.5(A)(2)(f), 39-9.9(F)(3) *with* §§ 39-7.10, 39-10 (“Non-public signs in public rights-of-way *or on public property*”) (emphasis added).

The Universal Permit Requirement and Criminal Penalties

54. All signs are presumptively “illegal ... except” the five types of signs listed in CCC § 39-3 (definition of “[i]llegal sign”). CCC § 39-4 states, “no sign shall be erected, installed, enlarged or maintained without first obtaining a permit from the City as herein provided,” under CCC §§ 39-7.3 or 39-10.10, “unless” the obtaining of such a permit is “specifically exempted.” “All temporary signs require a permit unless specifically exempted.” CCC § 39-10. Additionally, “[a] separate permit shall be required for a sign or signs for each business entity, and/or separate permit shall be required for each group of signs on a single supporting structure.” CCC § 39-7.1.

55. The “significant event sign” permit, which “is not the same as a special event permit under Chapter 32 of the Chandler City Code,” CCC § 39-10.10(A), is the exclusive means of obtaining city approval to put up a temporary sign.

56. Before a sign may be displayed, the person or entity wishing to display a sign must apply

for a permit in writing and pay a fee to the City. CCC §§ 39-7.3(A), 39-7.4. In addition to the location of the proposed sign and the name and address of the business owner and/or “sign contractor,” CCC § 39-7.3(A), the permit application must also include two copies of “plans and specifications” which must include “complete details” such as “size, materials, method of support or attachments, name and address of the persons or firm designing said sign and plot plan showing location of sign on the premises.” CCC § 39-7.3(A). The “significant event sign” permit limits the temporary signs to 21 “cumulative days” within each 6 month period in a calendar year. CCC § 39-10.10(B)(2).

57. Any “fail[ure] to comply with any order or regulations” of chapter 39 is a criminal misdemeanor, and “each and every day or portion thereof during which any violation or failure to comply with this chapter is committed, continued or permitted” is “a separate offense.” CCC § 39-4(B). The maximum criminal penalty imposed on a person for communicating a message via a sign without the required permission is a \$2,500 fine, or a 6-month imprisonment, or 3-year probation, or any combination thereof. CCC § 1-8.3. The maximum criminal penalty “imposed on an enterprise” for exercising its speech rights is a \$20,000 fine. CCC § 1-8.4; *see also* CCC § 1-8.6.

Prohibited Signs in Rights-of-Way

58. The Sign Code provides: “No sign shall be erected or maintained in the public right-of-way except as provided hereafter in this chapter.” CCC § 39-7.10(E).

59. The prohibition of signs in rights-of-way applies to signs attached to or painted on vehicles. CCC § 39-7.10(D).

60. The Code also forbids “A-frame signs and portable signs of any nature, other than those provided in section 39-10” in public rights-of-way. CCC § 39-8(A). Under CCC § 39-10, “[o]ff-premises, portable signs or ‘A-frame’ signs” are not allowed. But an on-premises A-frame sign or portable sign *is* allowed *with a permit* if it is a non-residential “real estate sign,” CCC § 39-10.9, “significant event sign,” CCC § 39-10.10, or “open during construction” sign, CCC § 39-10.11. An *on-premises* A-frame sign is allowed *without a permit* if it is a “model home sign.” CCC § 39-10.6. *Off-premises* A-frame signs are allowed *without a permit* if they are “open house sign[s].” CCC § 39-10.7. Also, by operation of A.R.S. § 16-1019 and CCC § 39-7.2, notwithstanding CCC § 39-10.8, all types of political signs are allowed

without a permit in rights-of-way.

61. “Banners, pennants, wind-driven spinners, streamers, balloons, flags, search lights, strobe lights, holographic projections, laser light displays, beacons, bandit, and inflatable signs” are prohibited on private property and in rights-of-way. CCC § 39-10. But a “banner, pennant, wind-driven spinner, tear-drop banner, streamer, balloon, flag, or inflatable” signs are allowed *with* a permit if they advertise a “significant event.” CCC § 39-10.10(B)(1). A “banner, pennant, or tear-drop banner” is allowed *without* a permit if it is intended to be an “open during construction” sign. CCC § 39-10.11(D)(2).

Temporary Signs

62. The Sign Code singles out 11 types of temporary signs and applies separate sets of regulations to each such type of sign. CCC § 39-10. “All temporary signs require a permit unless specifically exempted.” CCC § 39-10.

63. The 11 types of temporary signs are divided based solely on the content of the message the sign in question conveys. The categories are as follows:

- a. Contractor signs (CCC § 39-10.1).
- b. Development signs (CCC § 39-10.2).
- c. Subdivision signs (CCC § 39-10.3).
- d. Subdivision direction signs (CCC § 39-10.4).
- e. Grand opening signs (CCC § 39-10.5).
- f. Model home signs (CCC § 39-10.6).
- g. Open house signs (CCC § 39-10.7).
- h. Political signs (CCC § 39-10.8).
- i. Real estate signs (CCC § 39-10.9).
- j. Significant event signs (CCC § 39-10.10).
- k. “Open During Construction” signs (CCC § 39-10.11).

64. The Sign Code subjects these categories to differential treatment. For example, a permit is *not* required for one “contractor sign,” but *is* required for *two or more* contractor signs. CCC § 39-10.1. No permit is required for “model home” or “open house” signs, regardless of whether the sign is a

temporary sign or a freestanding sign. CCC §§ 39-10.6, 39-10.7. Also, no permit is required for political signs, CCC §§ 39-7.2, 39-10.8, grand opening signs, CCC § 39-7.2, or residential “real estate” signs. CCC § 39-10.9(D). But a permit *is* required for *non-residential* real estate signs. CCC § 39-10.9(E). Similarly, a permit *is* required for development signs, CCC § 39-10.2, subdivision signs, CCC § 39-10.3, and subdivision direction signs, CCC § 39-10.4.

65. There is no setback requirement for “contractor” signs, CCC § 39-10.1, “grand opening” signs, CCC § 39-10.5, or “open during construction” signs. CCC § 39-10.11. But there are setback requirements for “development” signs, CCC § 39-10.2, and “subdivision direction” signs, CCC § 39-10.4 (10 feet from a “public right-of-way”), and for “subdivision” signs, CCC § 39-10.3 (15 feet from a public right-of-way).

66. “[M]odel home” signs, CCC § 39-10.6, “open house” signs, CCC § 39-10.7, “political signs,” CCC § 39-10.8, “real estate” signs, CCC § 39-10.9, and “significant event” signs, CCC § 39-10.10, are not allowed in any public right-of-way. *But see* A.R.S. § 16-1019 (cities cannot remove political signs in public right-of-way).

67. “Contractor” signs and “subdivision direction” signs can be up to 32 square feet in size. CCC §§ 39-10.1, 39-10.4. “Development” signs can be up to 96 square feet in size. CCC § 39-10.2. “[S]ubdivision” signs can be up to 160 square feet. CCC § 39-10.3. There is no size limit on “grand opening” signs or “significant event” signs. CCC §§ 39-10.5, 39-10.10. But “model home” and “open house” signs can only be up to 6 square feet, and “open during construction” signs can only be up to 16 square feet. CCC §§ 39-10.6, 39-10.7, 39-10.11. A *residential* “real estate” sign can be up to 16 square feet, and on non-residential parcels of 2 acres or less, CCC § 39-10.9, but can be up to 32 square feet if they are placed on non-residential parcels between 2 and 10 acres, and up to 50 square feet if placed on parcels of more than 10 acres. CCC § 39-10.9. On non-residential parcels of 10 acres or more, a real estate sign can be indirectly or internally illuminated. CCC § 39-10.9.

68. The height limit for different types of temporary signs is as follows:

- a. “Contractor” signs: 8 feet (CCC § 39-10.1).
- b. “Development” and “subdivision” signs: 15 feet (CCC §§ 39-10.2, 39-10.3).

- c. “Subdivision direction” signs: 10 feet (CCC § 39-10.4).
- d. “Grand opening,” “model home,” “significant event,” and “open during construction” signs: no limit (CCC §§ 39-10.5, 39-10.6, 39-10.10, 39-10.11).
- e. “Open house” signs: 3 feet (CCC § 39-10.7).
- f. “Political” signs: 5 feet in residential and 8 feet in non-residential areas (CCC § 39-10.8).
- g. “Real estate” signs: 6 feet above grade in residential, and 12 feet above grade in non-residential areas (CCC § 39-10.9).

69. Only one sign per parcel is permitted if it is a “development sign,” CCC § 39-10.2 or a “subdivision sign,” CCC § 39-10.3. But more than one sign per parcel is permitted if it is a “contractor sign.” CCC § 39-10.1.

70. If it is a “subdivision direction” sign, one sign “per project per mile” or per “change in direction” is permitted. CCC § 39-10.4. Only one “grand opening” sign per use is permitted, CCC § 39-10.5, one “model home” sign for each model home is permitted, CCC § 39-10.6, but up to four signs for each home or group of homes in a subdivision are permitted if they are “open house” signs. CCC § 39-10.7. Similarly, only one “real estate” sign on each lot or parcel of land is permitted, CCC § 39-10.9, and one “open during construction” sign is allowed per use. CCC § 39-10.11.

71. There is no limit to the number of “political signs” and “significant event” signs. CCC §§ 39-10.8, 39-10.10.

Claims for Relief

Count 1 –

Content-based, speaker-based, and motive-based speech prohibitions or restrictions (ARIZ. CONST. art. II, § 6; U.S. CONST. amends. I, XIV).

72. Plaintiffs reallege, adopt and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

73. The exclusive way for the City to enforce its Sign Code against Plaintiffs is to read the content of the signs to determine which set of regulations apply.

74. Defendant must allow signs in rights-of-way under truly content-neutral laws. *Reed v.*

Town of Gilbert, 135 S.Ct. 2218 (2015); *see also* A.R.S. § 9-499.13 (requiring municipalities to allow the “posting, display and use of sign walkers”); A.R.S. § 16-1019 (prohibiting cities from removing, altering, defacing or covering political signs in rights-of-way).

75. Defendant, acting under color of state law, by enforcing the Sign Code, has deprived, is now depriving, and unless enjoined by this Court, will continue to deprive, Plaintiffs of their right to free speech and expression guaranteed by Article II, § 6 of the Arizona Constitution, First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

76. But for Defendant’s enforcement of the Sign Code, Plaintiffs would engage in expression by placing signs as described above to advertise their products, services, or property. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights of free expression and equal protection of the laws.

77. On their face, and as applied, CCC §§ 1-8.3, 1-8.4, 1-8.6, 39-3, 39-4, 39-7.1, 39-7.2, 39-7.3, 39-7.4, 39-7.10, 39-8, 39-10 create content-based, speaker-based, and speaker’s motive-based prohibitions or restrictions on speech, and chill speech, in violation of the free speech clauses in the state and federal Constitutions. ARIZ. CONST. art. II, § 6; U.S. CONST. amends. I, XIV.

**Count 2 –
Prior restraint on speech
(ARIZ. CONST. art. II, § 6; U.S. CONST. amends. I, XIV).**

78. Plaintiffs reallege, adopt and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

79. The exclusive way to exercise speech rights by using signs as a means of communication in rights-of-way and on private property in the City of Chandler—excepting the limited content-based carve-outs from the universal permit requirement—is to obtain the City’s prior approval through a permit before speech can occur.

80. But for Defendant’s enforcement of the Sign Code, Plaintiffs would engage in expression by placing signs as described above to advertise their products, services, or property. The existence of a permitting process that subjects Plaintiffs to criminal penalties for failure to obtain a permit chills Plaintiffs’ speech, and the threat of criminal conviction induces Plaintiffs to self-censor. The permitting

process, therefore, is a prior restraint on Plaintiffs' speech.

81. Defendant, acting under color of state law, has deprived, is now depriving, and unless enjoined by this Court, will continue to deprive, Plaintiffs of their fundamental right to free speech and expression in violation of Article II, § 6 of the Arizona Constitution, First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

82. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights of free expression and equal protection of the laws.

83. On their face, and as applied, CCC §§ 1-8.3, 1-8.4, 1-8.6, 39-4, 39-7.1, 39-7.2, 39-7.3, 39-7.4, 39-7.10, 39-10 impose an unconstitutional prior restraint on Plaintiffs' fundamental right to freedom of speech under the free speech clauses of the state and federal Constitutions. ARIZ. CONST. art. II, § 6; U.S. CONST. amends. I, XIV.

**Count 3 –
Equal protection of the laws
(ARIZ. CONST. art. II, § 13; U.S. CONST. amend. XIV).**

84. Plaintiffs reallege, adopt and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

85. Defendant's Sign Code singles out for separate and unequal treatment different types of signs based on their content. Defendant not only provides a separate set of regulations that apply to commercial signs than those that apply to non-commercial signs, Defendant also provides a separate set of regulations for certain types of commercial signs than those that apply to other types of commercial signs.

86. Defendant, by acting under color of state law, infringes upon Plaintiffs' right to equal protection of the laws in violation of Article II, § 13 of the Arizona Constitution, Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983.

87. But for Defendant's enforcement of the Sign Code, Plaintiffs would engage in expression by placing signs as described above to advertise their products, services, or property. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the continuing irreparable

harm to their constitutional rights of free expression and equal protection of the laws.

88. On their face and as applied, CCC §§ 1-8.3, 1-8.4, 1-8.6, 39-3, 39-4, 39-7.1, 39-7.2, 39-7.3, 39-7.4, 39-7.10, 39-8, 39-10 violate Plaintiffs' fundamental right to equal protection of the laws and equal treatment under the law guaranteed by the state and federal constitutions. ARIZ. CONST. art. II, § 13; U.S. CONST. amend. XIV.

**Count 4 –
Vagueness
(ARIZ. CONST. art. II, §§ 4, 6, 13; U.S. CONST. amends. I, XIV).**

89. Plaintiffs reallege, adopt and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

90. The definitions, or lack of definitions, of different types of signs, the definition for permitted placement areas for signs, and the set of regulations that depend on such definitions render the Sign Code so vague that they fail to give people of ordinary intelligence reasonable notice about what signs are permitted and what signs are forbidden. This imprecision gives Defendant virtually unconstrained, arbitrary, standardless, and unfettered discretion in interpreting the Sign Code and subjecting Plaintiffs to the continued threat of criminal convictions.

91. There is no way to know whether Defendant will take or threaten to take an enforcement action against Plaintiffs because Defendant may choose to categorize, based on the sign's content, one type of sign for which no permit is required as another type of sign for which permit is required, thus chilling Plaintiffs' speech by subjecting them to criminal misdemeanor penalties for failure to obtain a permit.

92. There is no way to know whether Defendant will take or threaten to take an enforcement action against Plaintiffs because Defendant may choose to characterize land between the sidewalk and the parking lot, or a portion thereof, as public right-of-way, for which no definition exists in the Sign Code, thus chilling Plaintiffs' speech and inducing them to self-censor by subjecting them to criminal misdemeanor penalties for placing signs in the right-of-way.

93. Defendant, by acting under color of state law, subjects Plaintiffs to vague Sign Code provisions in violation of Article II, §§ 4, 6 and 13 of the Arizona Constitution, First and Fourteenth

Amendments to the United States Constitution, and 42 U.S.C. § 1983.

94. But for Defendant's enforcement of the Sign Code, Plaintiffs would engage in expression by placing signs as described above to advertise their products, services, or property. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights of free expression and equal protection of the laws.

95. On their face and as applied, CCC §§ 1-8.3, 1-8.4, 1-8.6, 39-3, 39-4, 39-7.1, 39-7.2, 39-7.3, 39-7.4, 39-7.10, 39-8, 39-10 are unconstitutionally vague under the state and federal constitutions. ARIZ. CONST. art. II, §§ 4, 6, 13; U.S. CONST. amends. I, XIV.

**Count 5 –
Overbreadth
(ARIZ. CONST. art. II, §§ 4, 6, 13; U.S. CONST. amends. I, XIV).**

96. Plaintiffs reallege, adopt and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

97. Defendant regulates substantially more speech than the state and federal constitutions allow to be regulated. All signs in the City of Chandler are presumptively illegal, and those that are expressly declared to be not illegal, presumptively must have a City-issued permit before speech can occur. By subjecting substantially more speech to unjustified non-content-neutral laws than the state and federal constitutions allow, the City imposes a real and substantial ban or burden on constitutionally-protected speech in violation of Article II, §§ 4, 6 and 13 of the Arizona Constitution, First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

98. Defendant, by acting under color of state law, infringes upon the right to free speech and expression of Plaintiffs and all tenants of Landlord Plaintiffs under the overbroad provisions of Defendant's Sign Code.

99. But for Defendant's enforcement of the Sign Code, Plaintiffs would engage in expression by placing signs as described above to advertise their products, services, or property. Plaintiffs have no adequate legal, administrative or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights of free expression and equal protection of the laws.

100. On their face and as applied, CCC §§ 1-8.3, 1-8.4, 1-8.6, 39-3, 39-4, 39-7.1, 39-7.2, 39-

7.3, 39-7.4, 39-7.10, 39-8, 39-10 are unconstitutionally overbroad under the state and federal constitutions. ARIZ. CONST. art. II, § 4, 6, 13; U.S. CONST. amends. I, XIV.

Request for Relief

Consequently, in order to serve the interests of equity and justice, Plaintiffs respectfully request that this honorable Court award the following relief:

A. Declare that CCC §§ 1-8.3, 1-8.4, 1-8.6, 39-3, 39-4, 39-7.1, 39-7.2, 39-7.3, 39-7.4, 39-7.10, 39-8, 39-10, on their face, violate Plaintiffs' state and federal constitutional rights to Freedom of Speech, Due Process of Law, and the Equal Protection of the Laws.

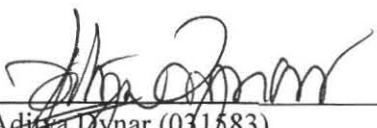
B. Declare that CCC §§ 1-8.3, 1-8.4, 1-8.6, 39-3, 39-4, 39-7.1, 39-7.2, 39-7.3, 39-7.4, 39-7.10, 39-8, 39-10, as applied, violate Plaintiffs' state and federal constitutional rights to Freedom of Speech, Due Process of Law, and the Equal Protection of the Laws.

C. Preliminarily and permanently enjoin Defendant from enforcing CCC §§ 1-8.3, 1-8.4, 1-8.6, 39-3, 39-4, 39-7.1, 39-7.2, 39-7.3, 39-7.4, 39-7.10, 39-8, 39-10.

D. Award costs and attorney fees to Plaintiffs pursuant to A.R.S. §§ 12-341, 12-348, the private attorney general doctrine, and 42 U.S.C. § 1988.

E. Grant such other and additional relief as may be just, equitable, and proper.

RESPECTFULLY SUBMITTED this 15th day of August, 2016 by:



Aditya Dynar (031583)

Veronica Thorson (030292)

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Attorneys for Plaintiffs