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

BRAMLEY PAULIN,

Plaintiff,

vs.

KATE GALLEG0, in her official capacity
as Mayor of the City of Phoenix; JEFF
BARTON, in his official capacity as City
Manager of the City of Phoenix; and CITY
OF PHOENIX, a municipal corporation of
the State of Arizona,

Defendants,

Case No. CV2023-000409

**APPLICATION FOR
TEMPORARY RESTRAINING
ORDER (WITH NOTICE) AND
PRELIMINARY INJUNCTION**

Pursuant to Arizona Rule of Civil Procedure 65, Plaintiff Bramley Paulin requests that this Court issue a Temporary Restraining Order pending a hearing for preliminary injunction enjoining Defendant City of Phoenix ("City") from enforcing Phoenix City Council Resolution 22073. Plaintiff further requests that this Court set an Order to Show Cause Hearing as to why a preliminary injunction should not be granted.

Plaintiff's Motion is supported by the following Memorandum of Points and Authorities, its attachments, and Plaintiff's Verified Complaint.

MEMORANDUM OF POINTS AND AUTHORITIES

In the lead-up to the 2023 Super Bowl, the City of Phoenix has enacted a blanket ban on any temporary signage not approved by two private corporations: the National Football League ("NFL") and the Arizona Super Bowl Hosting Committee ("Hosting

Committee”). The ban applies to non-commercial as well as commercial signage, and it gives no standards or procedural safeguards for the signage approval process. This violates the Arizona Constitution’s guarantees of free speech, due process, and separation of powers.

Unless this Court grants a temporary restraining order, and thereafter a preliminary injunction, Plaintiff will suffer irreparable harm, and he will be deprived of his constitutional rights, contrary to law.

I. Statement of Facts in Support of Injunctive Relief

Plaintiff owns two pieces of property in downtown Phoenix, including a property at the intersection of 1st Street and Moreland, near the Margaret T. Hance Park (“Hance Park”). Declaration of Bramley Paulin attached as Exhibit 1 ¶ 6; Compl. ¶ 34. With the Super Bowl coming to Glendale, Arizona in February 2023, downtown Phoenix will host multi-day festivities, including a music festival and an “NFL Experience” event at Hance Park. Ex. 1 ¶ 7; Compl. ¶¶ 31, 32. Over 1.5 million people are expected to attend these events. Compl. ¶ 33.

Plaintiff hopes to erect temporary signage on his properties, particularly the property near Hance Park, in order to exercise his constitutional free speech rights and to take advantage of the high public visibility any signage would garner during Super Bowl festivities. Ex. 1 ¶ 8; Compl. ¶ 35. Plaintiff has contacted companies to discuss the possibility of advertising on his properties. Ex. 1 ¶ 9; Emails attached as Exhibit 2; Compl. ¶ 36. These companies, however, have responded that they are unwilling even to discuss the opportunity because Plaintiff’s property “is in the clean zone for the NFL,” and no advertising is allowed in that zone during Super Bowl-related events without NFL approval. Ex. 1 ¶ 10; Ex. 2; Compl. ¶ 36.

They were right. On October 12, 2022, the Phoenix City Council adopted Resolution 22073, a “Resolution Declaring 2023 National Football League (NFL) Super Bowl Activities Held in Downtown Phoenix as Special Promotional and Civic Events” (“Resolution”). Resolution attached as Exhibit 3. The Resolution establishes a “Special

1 Promotional and Civic Event Area,” stretching roughly from Lincoln Avenue to
2 McDowell Road, and from 7th Street to 7th Avenue—nearly two square miles of
3 downtown Phoenix. *Id.* at 4. Within this Special Promotional and Civic Event Area, the
4 Resolution “restrict[s] all temporary signage ... that has not been authorized by the NFL
5 or Arizona Super Bowl Host Committee ... in order to support NFL event-related
6 activities.” *Id.* at 2.

7 The Resolution does not provide any additional details or standards regarding the
8 approval of temporary signage. The Resolution does not even define “temporary signage”
9 (although the City has since announced that in its view “[t]emporary signage is anything
10 that is not physically built into” a building). “Downtown Phoenix, Inc., Clean Zone 101”,
11 attached as Exhibit 4; *see also id.* (stating that this includes “Banners (cloth or vinyl),”
12 “Window paintings,” “Pennants,” “Posters/Flyers,” “Flags,” and “Balloons”).¹

13 Guidance from the City on these signage restrictions has been sparse and
14 confusing. Ex. 1 ¶ 11; Compl. ¶¶ 20–23. One City webpage states that “[b]usinesses that
15 fall within the ‘Clean Zone’ must remove all their current temporary signage by October
16 31,” and that “[n]ew temporary signs that will be displayed between November 1, 2022,
17 and February 19, 2023, require Arizona Super Bowl Host Committee approval.” *Super*
18 *Bowl 2023 Small Business Support*, Phoenix City Manager’s Office (Nov. 2, 2022).²
19 Another webpage, however, says that the restrictions take effect January 15, 2023. Ex. 4.

20 The City held a “Super Bowl LVII Small Business Permitting and Licensing
21 Workshop” on November 2, 2022, where it explained the “Clean Zone” requirements in
22 more detail. At this workshop, a City spokesperson stated:

23 Obviously, the NFL sponsors are making a huge financial commitment to be
24 one of those designated sponsors, and we need to provide that protection to
25 those sponsors in the downtown area where a lot of the Super Bowl events
are happening. This is also a huge economic impact to our local economy,

26 ¹ The City’s Zoning Ordinance (assuming it is relevant to construing the Resolution)
27 reinforces the exceptionally broad reach of this restriction. It defines “temporary sign” in
28 relevant part as “[a]ny sign or advertising display intended to be displayed for a period of
less than six months or for such period as may be established in a use permit.” Phoenix
Zoning Ord. § 202.

² <https://www.phoenix.gov/newsroom/city-manager/2503>.

1 so we want to make sure we're being a good partner to the NFL and the
2 Host Committee.

3 Super Bowl LVII Small Business Permitting and Licensing Workshop (10:45 AM Nov. 2,
4 2022) at 7:30-7:45.³ The City's presentation also stated that a purpose of the Clean Zone
5 is to "Protect NFL Super Bowl Sponsors." *Id.* Another spokesperson said that any
6 promotional outdoor items with non-NFL-approved logos or products, such as
7 promotional patio umbrellas and chairs, pennant signs, and flags from non-NFL-approved
8 vendors would be not be approved for display. *Id.* at 17:00.

9 The Resolution completely restricts Plaintiff from placing temporary signage on his
10 property without first obtaining approval from the City, the NFL, and the Host
11 Committee. Exhibits 1 at ¶ 12, 3. Because of the Resolution, potential business partners
12 will not even discuss advertising arrangements with Plaintiff unless he has pre-approval.
13 Exhibits 1 at ¶ 13, 2. This puts Plaintiff in a Catch-22: on one hand, he cannot apply for
14 temporary signage approval without providing some information about the sign he wishes
15 to display. On the other hand, he cannot determine what sign he would display until he
16 reaches an agreement with an advertiser, and advertisers are unwilling to reach an
17 agreement until Plaintiff has approval to display signage. *Id.*

18 **II. Standards for Preliminary Relief**

19 In deciding whether to grant a temporary restraining order or a preliminary
20 injunction, courts consider (1) the likelihood of success on the merits, (2) the possibility of
21 irreparable harm without an injunction, (3) the balance of hardships, and (4) public policy.
22 *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). When determining whether preliminary
23 relief is appropriate, courts apply a sliding scale rather than a strict balancing of the four
24 factors. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410–11 ¶ 10
25 (2006). Thus, to warrant a preliminary injunction the plaintiff must "establish either 1)
26 probable success on the merits and the possibility of irreparable injury; or 2) the presence
27 of serious questions and that the balance of hardships tips sharply in favor of the moving
28

³ <https://www.phoenix.gov/newsroom/ced/2549>.

1 party.” *Id.* (citation and internal marks omitted). In other words, “[t]he greater and less
2 reparable the harm, the less the showing of a strong likelihood of success on the merits
3 need be.” *Id.* All these factors decisively favor Plaintiff on each of his claims.

4 **III. Plaintiff’s Challenge to the Resolution Is Likely to Succeed on the Merits.**

5 The Resolution is constitutionally defective in at least three ways. First, it infringes
6 on the Arizona Constitution’s guarantee of free speech because it is a prior restraint and a
7 vague, overbroad, content-based regulation of speech. Second, it violates due process
8 because it is unconstitutionally vague and lacks minimum procedural safeguards. Third, it
9 unconstitutionally delegates government power to private third parties.

10 **A. The Resolution is a content-based prior restraint of speech.**

11 To begin with, the Resolution is a prior restraint. “Prior restraints on speech and
12 publication are the most serious and the least tolerable infringement” on free expression.
13 *Phoenix Newspapers, Inc. v. Otis*, 243 Ariz. 491, 495 ¶ 13 (App. 2018) (citations and
14 internal marks omitted). Accordingly, prior restraints “come with a heavy presumption
15 against constitutional validity.” *Nash v. Nash*, 232 Ariz. 473, 481–82 ¶ 32 (App. 2013).
16 Such a restriction can survive only if it survives strict scrutiny—meaning, only “if the
17 restriction serves a compelling governmental interest, is necessary to serve the asserted
18 compelling interest, is precisely tailored to serve that interest, and is the least restrictive
19 means readily available for that purpose.” *Id.* (citations and internal marks omitted).

20 The Resolution is a prior restraint because it prospectively forbids the expression of
21 any message⁴ until and unless that message is specifically reviewed, approved, and
22 thereby licensed, by the City and by a private third party (i.e., “the NFL and/or the Super
23 Bowl Host Committee”⁵). Ex. 3 at 2. Significantly, this is *not* a content-neutral time,
24 place, and manner restriction, but a *content-based* restriction on speech, whereby signage
25

26 ⁴ A prior restraint is any government act “that result[s] in the physical interception and
27 suppression of speech prior to its public expression.” Marin Scordato, *Distinction Without*
28 *A Difference: A Reappraisal of the Doctrine of Prior Restraint*, 68 N.C. L. Rev. 1, 30–31
(1989).

⁵ It is unclear whether the City is requiring approval from just the NFL, just the Host
Committee, or both entities.

1 is legally prohibited unless and until the government and the NFL review and approve of
2 the *content* of a sign’s message. That is unconstitutional. *Reed v. Town of Gilbert*, 576
3 U.S. 155, 173 (2015);⁶ *Wortham v. City of Tucson*, 128 Ariz. 137, 141 (App. 1980).

4 The Resolution’s plain language allows the City to deny a temporary sign
5 application for any reason at all, including the content of the sign. And the City has
6 admitted in repeated public statements that content regulation is precisely the purpose of
7 the Resolution:

- 8 • One of the purposes of the signage restrictions is to “Protect NFL Super Bowl
9 Sponsors”⁷
- 10 • “Obviously, the NFL sponsors are making a huge financial commitment to be
11 one of those designated sponsors and we need to provide that protection to
12 those sponsors in the downtown area where a lot of the Super Bowl events are
13 happening.”⁸
- 14 • “Permit applications can not [sic] be approved for *materials that display the*
15 *logos for Super Bowl sponsor competitors* and non-licensed use of the Super
16 Bowl LVII trademark.” Ex. 4 (emphasis added).

17 The fact that the Resolution regulates advertising makes no difference. First,
18 Arizona courts have never held that the Arizona Constitution affords lesser protections to
19 commercial speech than non-commercial speech. *See Sign Here Petitions LLC v. Chavez*,
20 243 Ariz. 99, 105 ¶ 16 (App. 2017). Indeed, even if this case involves commercial speech,
21 it demonstrates what dangerous and sweeping speech restrictions governments can impose
22 under the pretext of regulating advertisements, and why strict scrutiny is applied to such
23 regulations.

24
25 ⁶ Although Plaintiff challenges the Resolution based only on the free speech protections in
26 the Arizona Constitution, First Amendment jurisprudence is informative insofar as “the
27 Arizona Constitution provides broader protections for free speech than the First
28 Amendment.” *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281 ¶ 45 (2019).

⁷ Super Bowl LVII Small Business Permitting and Licensing Workshop (10:45 AM Nov.
2, 2022) at 7:30-7:45, <https://www.phoenix.gov/newsroom/ced/2549>.

⁸ *Id.*

1 More fundamentally, however, the Resolution is *not* a commercial speech
2 regulation. By its plain language, it applies to *all* temporary signage, including
3 advertising, political speech, and any other content. It would require residents to obtain
4 NFL and/or Host Committee approval for signs such as the following:

- 5 • A happy hour menu taped to a restaurant’s window;
- 6 • A sign in an apartment window supporting a political candidate;
- 7 • A yard sign with a controversial political message;
- 8 • A blank sheet of paper taped to a window in support of the ongoing “white
9 paper” protests in China;
- 10 • A yard sign with a message critical of the NFL;
- 11 • A “Merry Christmas” or “Happy Hannukah” sign in a window;
- 12 • An umbrella on a restaurant patio bearing words or a logo;
- 13 • A sign truck parked temporarily on a business’s premises;
- 14 • A lawn sign asking pet owners not to leave dog waste behind.

15 Because the Resolution requires residents and businesses within its ambit to obtain
16 preclearance and preapproval of a sign’s content before they may display *any* sign, it is a
17 content-based prior restraint and subject to strict scrutiny.

18 **B. The Resolution cannot survive strict scrutiny, or any scrutiny.**

19 There is no legitimate government interest in content-based regulation of signs, let
20 alone regulation of signs based on the content preferences of private businesses that are
21 given special privileges by the government. Courts have recognized two substantial
22 government interests that can sometimes justify regulations on commercial signage:
23 public safety and aesthetics. *See, e.g., Outdoor Sys., Inc. v. City of Mesa*, 169 Ariz. 301,
24 306 (1991). The government, not the Plaintiff, bears the burden of proving that the
25 Resolution serves these ends with proper narrow tailoring, *Salib v. City of Mesa*, 212 Ariz.
26 446, 451 ¶ 10 (App. 2006), and it has not done this. Nor can it, because neither factor is at
27 play here.

1 First, the Resolution does not advance either an aesthetic or public safety interest
2 because it bans all signs absent preapproval of their content—and specifies no safety
3 factors or aesthetic considerations to be followed by anyone wishing to exercise free
4 speech. Preapproval of signs under the Resolution depends on the message, not on the
5 aesthetics or any safety concerns. Second, and for the same reason, the Resolution is not
6 narrowly tailored. It bans *any and all* temporary signs, unless pre-approved by the City
7 and the private companies the City has empowered as censors. Such a sweeping ban on
8 speech cannot qualify as “the least restrictive means readily available” to achieve a safety
9 or aesthetic purpose. *Nash*, 232 Ariz. at 481–82 ¶ 32.

10 Finally, even setting aside the Resolution’s broad restrictions on non-commercial
11 speech and assuming that a lower level of scrutiny applies to commercial speech
12 restrictions under Arizona law, the Resolution here would fail even under intermediate
13 scrutiny. It is not justified by any of the “substantial state interests” federal courts have
14 recognized in relation to commercial speech regulations. *See 44 Liquormart, Inc. v. Rhode*
15 *Island*, 517 U.S. 484, 500–05 (1996). Rather, by the City’s own admission, the principal
16 purpose of the Resolution is to protect the economic interests of the NFL, the Hosting
17 Committee, and their sponsors, by suppressing competitors’ ability to communicate. But
18 “[c]ourts have repeatedly recognized that protecting a discrete interest group from
19 economic competition is not a legitimate governmental purpose.” *Craigsmiles v. Giles*, 312
20 F.3d 220, 224 (6th Cir. 2002); *Merrifield v. Lockyer*, 547 F.3d 978, 991–92 & n.15 (9th
21 Cir. 2008).

22 In sum, the Resolution cannot survive strict scrutiny, or even a lower level of
23 scrutiny, because it lacks a compelling governmental interest and is not tailored.

24 **C. The Resolution is vague and overbroad.**

25 Finally, the Resolution is unconstitutionally vague and overbroad. On its face, it
26 applies to “*all* temporary signage” within the clean zone. It makes no distinction between
27 commercial versus non-commercial signage, trademark-infringing versus non-infringing
28 signage, or even Super Bowl-related versus non-Super Bowl-related signage. It fails to

1 define key terms such as “temporary signage.” It gives no indication whether, or to what
2 extent, it should be read in tandem with the Zoning Ordinance or other laws. And, as
3 discussed above, its plain language bans the temporary display of *any* message—whether
4 commercial, political, religious, or otherwise. It is difficult to imagine a legitimate (let
5 alone compelling) governmental interest that could justify such an overbroad prior
6 restraint on speech.

7 Even assuming the City did *not* intend the Resolution apply to some of the
8 examples listed above, it has given residents no way to discern which signs it does or does
9 not apply to—and thus, the Resolution is unconstitutionally vague. The following section
10 explains why this is a due process violation. But in the free speech context, the
11 Resolution’s vagueness also has a chilling effect: rather than guess about the Resolution’s
12 meaning, and risk running afoul of the law, many residents will likely self-censor. That is
13 constitutionally unacceptable. *Cf. State v. Western*, 168 Ariz. 169, 171–72 (1991)
14 (“[W]here a vague statute abuts upon sensitive areas of basic First Amendment freedoms,
15 it operates to inhibit the exercise of those freedoms,” because uncertainty leads “citizens
16 to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were
17 clearly marked.” (alterations adopted) (quoting *Grayned v. City of Rockford*, 408 U.S.
18 104, 106 (1972))).

19 Under the overbreadth doctrine,⁹ a plaintiff can facially challenge a law, even if
20 some conceivable applications of that law may be constitutional, provided “a substantial
21 number of its applications are unconstitutional, judged in relation to the statute’s plainly
22

23 ⁹ To be sure, while the federal courts do not entertain overbreadth challenges to statutes
24 that solely regulate commercial speech, Arizona courts have never adopted this rule. And
25 even under the federal approach, Plaintiff’s overbreadth challenge is proper because the
26 Resolution facially applies to *all* temporary signage, commercial or not. *See Bd. of Tr. of*
27 *State Univ. of N.Y. v. Fox*, 492 U.S. 469, 481 (1989) (“Although it is true that overbreadth
28 analysis does not normally apply to commercial speech, that means only that a statute
whose overbreadth consists of unlawful restriction of commercial speech will not be
facially invalidated on that ground. ... Here, however, although the principal attack upon
the resolution concerned its application to commercial speech, the alleged overbreadth ...
consists of its application to *non*-commercial speech, and that is what counts.” (internal
citations omitted)).

1 legitimate sweep.” *United States v. Stevens*, 559 U.S. 472, 473 (2010) (citation omitted);
2 *Western*, 168 Ariz. at 173. Of course, the foremost reason that prior restraints are regarded
3 as so constitutionally improper is because of their tendency to cause just this chilling
4 effect. *State v. Feld*, 155 Ariz. 88, 94–95 (App. 1987).

5 Thus, the Resolution is unconstitutional not only as applied to Plaintiff’s
6 circumstances, but also on its face, because it unconstitutionally bans a whole range of
7 protected speech, from yard signs to advertisements.

8 **D. The Resolution violates Plaintiff’s due process rights.**

9 The Resolution violates Plaintiff’s rights to due process under the Arizona
10 Constitution, *see* Ariz. Const. art. II, § 4, because it is unconstitutionally vague and fails to
11 establish minimum procedural safeguards.

12 First, the Resolution is unconstitutionally vague. “A statute is unconstitutionally
13 vague if it fails to provide persons of ordinary intelligence a reasonable opportunity to
14 know what is prohibited and fails to contain explicit standards of application to prevent
15 arbitrary and discriminatory enforcement.” *State v. George*, 233 Ariz. 400, 402 ¶ 9 (App.
16 2013) (citation and internal marks omitted), Therefore, “[a] legislative enactment must
17 ‘provide explicit standards for those who will apply it.’” *State v. Singer*, 190 Ariz. 48, 50
18 (App. 1997) (quoting *State v. Takacs*, 169 Ariz. 392, 394 (App. 1991)).

19 Neither the Resolution nor any other City document contains “ascertainable
20 standards on which the decision to grant or withhold [approval] is based.” *Herrera v.*
21 *Jamieson*, 124 Ariz. 133, 134 (App. 1979). Instead, the Resolution vests the City, the
22 NFL, and the Host Committee with unfettered authority to decide how, when, and against
23 whom to enforce the signage ban. It provides no substantive standards for how these
24 entities are to evaluate temporary signage applications. This “complete lack of any
25 standard” fails to give residents fair notice of how to comply with the law, and it invites
26 “the arbitrary exercise of power by the officials charged with administering” the signage
27 restriction. *Id.* at 134–35.

1 Second, the Resolution lacks the minimum procedural safeguards required by the
2 Arizona Constitution. “Due process primarily requires that rights and property are not
3 taken by governmental authority without notice and an opportunity for hearing.” *Elia v.*
4 *Ariz. Bd. of Dental Exam’rs*, 168 Ariz. 221, 228 (App. 1990). *See also Freedman v.*
5 *Maryland*, 380 U.S. 51, 57-60 (1965) (recognizing that any licensing requirement
6 applicable to speech must provide procedural safeguards including an opportunity to
7 appeal the wrongful denial of a permit). The Resolution does not give applicants any
8 opportunity to be heard meaningfully, or to challenge the decision of the NFL or the Host
9 Committee. It does not require the decision-maker to give any kind of reasoned
10 explanation for denying an application. It provides for no administrative oversight, let
11 alone judicial review. Thus, it violates the Arizona Constitution’s guarantee of due
12 process.

13 **E. The Resolution is an unconstitutional delegation of government power.**

14 The Resolution delegates government authority to two private corporations.
15 Indeed, it appears to delegate legislative (to enact whatever rules they choose to govern
16 the approval of temporary signage), judicial (to decide what temporary signage is
17 allowable under the Resolution), *and* executive (to implement the censorship regime)
18 power to the NFL and the Host Committee. As explained in the preceding sections, the
19 City itself lacks the authority to censor speech. That makes it all the more unconstitutional
20 for the City to delegate that authority to a private actor.

21 First, it was unconstitutional for the City to delegate this power at all. A statute,
22 ordinance, or resolution may delegate governmental power only if “it contains reasonably
23 definite standards which govern the exercise of the power, and ... procedural safeguards
24 in the nature of a right of review are provided.” *Schechter v. Killingsworth*, 93 Ariz. 273,
25 285 (1963). The Resolution provides *no* standards to guide decision-makers’ discretion.

26 Second, it was unconstitutional for the City to delegate this power to an
27 unaccountable private actor. “[I]t is a well-established theory that a legislature may not
28 delegate its authority to private persons over whom the legislature has no supervision or

1 control.” *Emmett McLoughlin Realty, Inc. v. Pima Cnty.*, 203 Ariz. 557, 559 ¶ 7 (App.
2 2002) (citation and internal marks omitted); *see also id.* (“[Z]oning powers may not be
3 delegated to private parties or property owners.” (quoting 83 Am. Jur.2d Zoning and
4 Planning § 615 (1992))).

5 Thus, for example, the Arizona Court of Appeals has held that a county may not
6 give a private landowner the power to veto a zoning proposal. *Emmett McLoughlin Realty*,
7 203 Ariz. at 560-61 ¶¶ 7-12. Similarly, “courts throughout the nation,” including the
8 Arizona Supreme Court, “have universally condemned attempts to delegate municipal
9 legislative power to private groups, to fix wages or hours.” *Parrack v. City of Phoenix*, 86
10 Ariz. 88, 91 (1959). Contrary to this authority, the Resolution gives the NFL and the
11 Hosting Committee a blank check: it offers them total discretion to decide what signage to
12 “authorize,” with no procedural safeguards or judicial review.

13 To be sure, the City itself lacks the authority to censor signs based on content. But
14 even what powers a city *does* possess, it can rightly exercise only “because the
15 government is ultimately accountable to the ... citizens through the established political
16 mechanisms for the expression of the majority’s will.” *Cahill v. Pub. Serv. Comm’n*, 556
17 N.E.2d 133, 140 (N.Y. 1990) (Titone, J., concurring). “These mechanisms are
18 circumvented, however, when the decisions ... are delegated to a private corporation,
19 which is not accountable through any of these mechanisms.” *Id.*

20 Here, as private corporations, the NFL and the Hosting Committee are not
21 susceptible to any of the ordinary mechanisms—from public hearings to records requests
22 to elections—that enable citizens to hold their governments accountable. Handing over
23 power to an unaccountable third party is totally antithetical to the principles of limited
24 government enshrined in Arizona’s Constitution. *See* Ariz. Const. art. II, § 2 (“All
25 political power is inherent in the people, and governments derive their just powers from
26 the consent of the governed, and are established to protect and maintain individual
27 rights.”).

1 **IV. Plaintiff faces irreparable harm without preliminary relief.**

2 “The loss of First Amendment freedoms, for even minimal periods of time,
3 unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976);
4 *see also Am. Trucking Ass’n v. City of L.A.*, 559 F.3d 1046, 1059 (9th Cir. 2009)
5 (“[C]onstitutional violations cannot be adequately remedied through damages and
6 therefore generally constitute irreparable harm.” (citation omitted)).

7 Plaintiff, together with hundreds of other downtown Phoenix business owners and
8 thousands of residents, is already suffering the deprivation of his free speech and due
9 process rights with each passing day. Unquestionably, the harm suffered by Plaintiff in the
10 absence of relief is irreparable. Moreover, the Super Bowl itself is set for February 12,
11 2023. If Plaintiff receives no relief by that time, he will lose any opportunity to display
12 signs and will be unable to remedy his injuries afterward.

13 **V. The balance of hardships and public interest favor Plaintiff.**

14 When a government entity is a party to a lawsuit, it is appropriate to “consider the
15 balance of equities and the public interest together.” *California v. Azar*, 911 F.3d 558, 581
16 (9th Cir. 2018).¹⁰ Here, it is not necessary for this Court to address these factors because
17 Plaintiff has a strong likelihood of success on the merits. Nevertheless, any violation of
18 the Constitution is also a hardship that tips the balance in favor of Plaintiff, and enforcing
19 the constitution is always in the public interest. *See, e.g., Melendres v. Arpaio*, 695 F.3d
20 990, 1002 (9th Cir. 2012).

21 Conversely, preliminary relief would impose little or no hardship on the
22 government. Plaintiff is not asking this Court to halt the enforcement of ordinary zoning
23 and signage ordinances. In asking the Court to enjoin enforcement of the Resolution,
24 Plaintiff merely seeks relief from a sweeping regime of prior restraints on speech that
25 gives private corporations unfettered power to ban signs based on their content. The City

26 ¹⁰ *See Flynn v. Campbell*, 243 Ariz. 76, 80 ¶ 9 (2017) (“Although a federal court’s
27 interpretation of a federal procedural rule is ‘not binding in the construction of our rule,’
28 we recognize its instructive and persuasive vale and that ‘uniformity in interpretation of
 our rules and the federal rules is highly desirable.” (quoting *Orme Sch. v. Reeves*, 166
 Ariz. 301, 304 (1990))).

1 has no cognizable interest in such a deprivation of its residents’ constitutional rights.
2 Moreover, to the extent the City has identified *any* interest in enforcing the Resolution,
3 that interest appears to be pure economic protectionism for the NFL, the Hosting
4 Committee, and their sponsors. *See Merrifield*, 547 F.3d at 991 n.15 (“[E]conomic
5 protectionism for its own sake ... cannot be said to be in furtherance of a legitimate
6 governmental interest.”).

7 **VI. No bond should be required.**

8 A plaintiff seeking preliminary relief typically must post a bond “in such amount as
9 the court considers proper to pay,” Ariz. R. Civ. P. 65(c), but the Court has discretion to
10 waive this requirement when doing so serves the interests of justice. *In re Wilcox*
11 *Revocable Tr.*, 192 Ariz. 337, 341 ¶¶ 17–20 (App. 1988); *see also Save Our Sonoran, Inc.*
12 *v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2004) (noting that “requiring nominal bonds is
13 perfectly proper in public interest litigation.”).

14 Any bond in this matter should be nominal because Plaintiff is seeking in the
15 public interest to enjoin a violation of the state constitution. As one federal court observed
16 when interpreting Rule 56(c)’s federal counterpart, “requiring a bond to issue before
17 enjoining potentially unconstitutional conduct by a governmental entity simply seems
18 inappropriate,” because such a requirement would make “protection of [constitutional]
19 rights ... contingent upon an ability to pay.” *Doctor John’s Inc. v. City of Sioux City*, 305
20 F. Supp. 2d 1022, 1043–44 (N.D. Iowa 2004).

21 Plaintiff brings this case as a concerned citizen seeking to vindicate rights enjoyed
22 by all similarly situated Phoenix residents. *Cf. Ctr. For Food Safety v. Vilsack*, 753 F.
23 Supp. 2d 1051, 1062 (N.D. Cal. 2010) (dispensing with bond requirement where plaintiff
24 was a “small non-profit” and “requiring the organization to pay a bond would fatal[ly]
25 harm its ability to bring lawsuits on behalf of the public interest”). Anything more than a
26 nominal bond will have a chilling effect on efforts to ensure legal compliance. *Cf.*
27 *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 350 (1984) (Attorney fees
28 should not be awarded “[w]here aggrieved citizens, in good faith, seek a determination of

1 the legitimacy of governmental actions. ... Courts exist to hear such cases; we should
2 encourage resolution of constitutional arguments in court rather than on the streets.”). The
3 Court should therefore waive the bond requirement or set it at a nominal amount.

4 **CONCLUSION**

5 Plaintiff respectfully requests that this Court grant his Motion and enter a
6 temporary restraining order enjoining the enforcement of the Act in all respects until the
7 Court has had the opportunity to consider Plaintiff’s preliminary injunction application.
8 Additionally, Plaintiff respectfully requests that the Court set an Order to Show Cause
9 hearing as to why a Preliminary Injunction should not issue to enjoin Defendant from
10 enforcing the Resolution during the pendency of this litigation.

11
12 **RESPECTFULLY SUBMITTED** this 9th day of January, 2023.

13
14 GOLDWATER INSTITUTE

15 /s/ John Thorpe

16 Jonathan Riches (025712)

17 Timothy Sandefur (033670)

18 John Thorpe (034901)

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Attorneys for Plaintiff

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

BRAMLEY PAULIN,

Plaintiff,

vs.

KATE GALLEG0, in her official capacity
as Mayor of the City of Phoenix; JEFF
BARTON, in his official capacity as City
Manager of the City of Phoenix; and CITY
OF PHOENIX, a municipal corporation of
the State of Arizona,

Defendants,

Case No.

**DECLARATION OF
BRAMLEY PAULIN**

I, Bramley Paulin, declare under penalty of perjury under the laws of the State of Arizona as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this declaration and am competent to testify regarding them.

2. I am a resident of Maricopa County, Arizona.

3. I understand that on October 12, 2022, the Phoenix City Council enacted Resolution 22073 (“Resolution”), declaring a “Special Promotional and Civic Event Area” (“Clean Zone”) covering a portion of downtown Phoenix stretching approximately from Lincoln Street to McDowell Street, and from Seventh Street to Seventh Avenue.

4. It is my understanding and belief that the Resolution forbids any “temporary signage” within the Clean Zone during the three weeks before Super Bowl LVII (“Super

1 Bowl”) and the week following the Super Bowl unless that signage is approved by the
2 City, the NFL, and the Arizona Super Bowl Host Committee.

3 5. It is my understanding and belief that the City is actively enforcing the
4 Resolution, including by issuing fines and requiring the removal of unapproved temporary
5 signage.

6 6. I own two pieces of property in downtown Phoenix, including a property at
7 the intersection of First Street and Moreland, near Margaret T. Hance Park (“Hance
8 Park”).

9 7. I understand that Hance Park will be the site for a multi-day outdoor festival
10 during the week leading up to Super Bowl, and that upwards of 1.5 million people are
11 anticipated to attend the festival.

12 8. I hope to erect temporary signage on my properties, particularly the property
13 near Hance Park, in the weeks leading up to the Super Bowl. I want to do so in order to
14 exercise my constitutional right to free speech and in order to take advantage of the high
15 public visibility such signage would have during Super Bowl-related festivities.

16 9. To this end, over the past several months I have contacted potential business
17 partners to discuss the possibility of placing temporary signage on my property.

18 10. In these discussions, the potential business partners have informed me that
19 my property is located “in the clean zone for the NFL” and that “non-NFL partners” may
20 not advertise within the Clean Zone.

21 11. It is my understanding and belief that the Resolution does not define
22 “temporary signage,” it does not give any standards or guidance for how the NFL and the
23 Host Committee should evaluate temporary signage applications, and no other resolution,
24 ordinance, or guidance from the City has clarified the scope of the Resolution’s
25 restrictions.

26 12. Nevertheless, it is my understanding and belief that my property is located
27 in the Clean Zone, and that the Resolution’s restrictions on temporary signage would
28

1 apply to any signage I might display on my property during the three weeks before, and
2 the week following, the Super Bowl.

3 13. Because potential business partners have been unwilling to reach an
4 agreement to display temporary signage without approval from the NFL, I have not had,
5 and currently do not have, a specific proposal for temporary signage to submit for
6 approval. However, I cannot even request approval without first submitting a proposal for
7 temporary signage.

8 14. It is my understanding and belief that if I display temporary signage on my
9 property without first obtaining approval from the City, the NFL, and the Host
10 Committee, I will face fines, removal of my signs, and other adverse consequences.

11 15. I have been trying for over two months to resolve these problems in
12 communications with City and Host Committee staff, but to no avail.

13 16. Finally, on December 13, 2022, I sent a letter to the City through my
14 attorneys, stating that I was suffering substantial harm from the City's passage and
15 enforcement of the Resolution, and that the temporary signage restrictions were depriving
16 me of my constitutional rights. I requested written assurance from the City that I, and any
17 person approved by me, could advertise on my property without unreasonable restriction
18 and without any input or review by the NFL or the Super Bowl Host Committee.

19 17. To date, the City has refused to allow me to display temporary signage on
20 my property without first obtaining approval from the City, the NFL, and the Host
21 Committee.

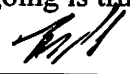
22 18. It is my understanding and belief that but for the Resolution's temporary
23 signage restrictions, I would have already been able to enter an advertising agreement,
24 given the proximity of my property to Hance Park and other Super Bowl-related
25 festivities.

26 19. Although the Resolution has already deprived me of opportunities and there
27 is little time remaining for me to enter an advertising agreement before the Super Bowl, it
28

1 is my belief that it may still be possible to enter such an arrangement if the City is
2 enjoined from enforcing the Resolution.

3 20. The Resolution's temporary signage restrictions have harmed me, and are
4 continuing to harm me, by depriving me of the ability to display messages on signage
5 without the approval of the City and two private corporations. The restrictions have also
6 harmed me, and are continuing to harm me, by depriving me of significant revenue and
7 opportunities to do business.

8 21. I declare that to the best of my knowledge the foregoing is true and correct.

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10 
11 Bramley Paulin

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DATED: 1/6/23

From: John Mount <johnmount@coca-cola.com>
Subject: Re: Coca-Cola - Super Bowl Music Fest 2023 in Phoenix
Date: October 13, 2022 at 4:22:23 PM MST
To: Bramley Paulin <bramleypaulin@cox.net>

Oh I will check with the NFL and see if we have clearance. If we do I will see if our brand teams have any interest in pursuing an opportunity.

-John
Coca-Cola
North America Operating Unit
(C) 513.638.0902

On Oct 13, 2022, at 7:19 PM, Bramley Paulin <bramleypaulin@cox.net> wrote:

John

I just want to provide clarity that the Super Bowl music festival is not located within the City of Glendale and is many miles from the stadium where the Super Bowl will be played on February 12., 2023.

If I could provide you with certainty that a legal "clear zone" does not apply to the location or to the leasing of my property, would Coca-Cola be interested in leasing my property for the duration of the music festival scheduled for February 8-12, 2023, or longer?

Exhibit 2

Bramley

On Oct 13, 2022, at 4:08 PM, John Mount
<johnmount@coca-cola.com> wrote:

We cant activate within the clean zone – given your proximity to the music fest, I am 100% certain, non-NFL partners can activate there. See the attached article

https://link.edgepilot.com/s/6bc941a5/rY6bgIc7Uk_Z4uS3Mpv44w?u=https://www.abc15.com/sports/clean-zones-will-be-in-place-for-super-bowl-around-state-farm-stadium

Classified - Confidential

From: Bramley Paulin <bramleypaulin@cox.net>
Sent: Thursday, October 13, 2022 2:02 PM
To: John Mount <johnmount@coca-cola.com>
Subject: Re: Coca-Cola - Super Bowl Music Fest 2023 in Phoenix

Hi John

My understanding of Clean Zone refers to public rights of way and or the use of the words Super Bowl & NFL. I can't find any legal prohibition of the use of private property to haven or move Powerade trucks on site to distribute Powerade products and marketing materials to the general public. Nowhere will Super Bow or NFL be used.

On Oct 13, 2022, at 10:24 AM, John Mount
<johnmount@coca-cola.com> wrote:

Received – biggest challenge is that your location is in the clean zone for the NFL which means we will receive a cease and desist letter for doing anything in that location. We will have to pass. THANK YOU for considering us. My reco is that you use your property with an official NFL sponsor.

Classified - Confidential

From: Bramley Paulin
<bramleypaulin@cox.net>
Sent: Thursday, October 13, 2022 12:03 PM
To: John Mount <johnmount@coca-cola.com>
Subject: Coca-Cola - Super Bowl Music Fest
2023 in Phoenix

ATTENTION: This email was sent from outside the company. Do not click links or open files unless you know it is safe. Forward malicious emails to phish@coca-cola.com.

Good afternoon John

As a follow up to our brief phone conversation, I am submitting this email.

I am trying to reach the person who oversees Coca-Cola's marketing and special events. As you may know, the NFL's Super Bowl will be in Phoenix in February 2023. Leading up to the Super Bowl, the NFL has several major events that will engage the public, including a multi-day music festival that will be held in downtown Phoenix's Margaret T. Hance Park. This music festival is open to the general public and will have several major named performers (the names have not yet been made public) along with other activities and vendors for the community attendees. Festival attendance is expected to exceed 1.5 million guests over multiple days.

This NFL festival surrounds my property on 3-sides. While I am not directly related with the NFL, the distance from the festival area from my property is the thickness of a chain link fence. See NFL music festival area map attached indicating the location of my site.

I would like to provide Coca-Cola's Powerade, or other brands, with this exceptional opportunity to utilize my property at this prime location to market its brands & products to the attendees during this amazing Super Bowl event. This allows Powerade to market directly to the Super Bowl crowd without being an

official Super Bowl sponsor.

Would you please provide this information to the appropriate special events person within Coca-cola so we can discuss further the specifics of this great marketing opportunity.

Please confirm your receipt of this email.

Thank you

Bramley Paulin

(602) 918-2998

bramleypaulin@cox.net

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be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

RESOLUTION 22073

A RESOLUTION DECLARING 2023 NATIONAL FOOTBALL LEAGUE (NFL) SUPER BOWL ACTIVITIES HELD IN DOWNTOWN PHOENIX AS SPECIAL PROMOTIONAL AND CIVIC EVENTS.

WHEREAS, the City Council adopted Resolution 21987 and declared that for the three-week period before the National Football League (NFL) 2023 Super Bowl (Super Bowl LVII) on Sunday, February 12, 2023 and the one-week period after Super Bowl LVII, all official NFL events and other NFL and Arizona Super Bowl Host Committee-sanctioned activities that are held in the Special Promotional and Civic Event area in downtown Phoenix will be considered special promotional and civic events for the purposes of the Phoenix Zoning Ordinance.

WHEREAS, it is anticipated that certain events and activities related to Super Bowl LVII will take place in downtown Phoenix in the weeks before and after the event. These events and activities will bring significant revenue and media exposure to the City of Phoenix during the event period. Phoenix Zoning Ordinance, Section 705.F.1.b, provides that advertising devices otherwise prohibited by the Zoning Ordinance may be erected in the Downtown Redevelopment Area, subject to a use permit, in conjunction with special promotional events of a civic or commercial nature. By declaring the NFL and the Arizona Super Bowl Host Committee sanctioned activities

Exhibit 3

as special promotional and civic events, the Resolution allows the NFL, the NFL-approved sponsors, and the Arizona Super Bowl Host Committee to advertise official events in the Promotional and Civic Event Area by use of signs, banners and similar devices. This action will not impact any existing permitted permanent signs in downtown. This declaration will restrict all temporary signage within the Special Promotional and Civic Event Area that has not been authorized by the NFL or the Arizona Super Bowl Host Committee during the above-mentioned time period in order to support NFL event related activities.

WHEREAS, The Special Promotional and Civic Event area in Resolution 21987 must be modified to better align with the Super Bowl related activities

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PHOENIX
as follows:

SECTION 1. Resolution 21987 adopted by the City Council on January 26, 2022 is superseded by this Resolution.


SECTION 2. For the three-week period before the Super Bowl LVII event and the one week after Super Bowl LVII, all official events and other NFL-sanctioned activities that are held in the Special Promotional and Civic Event Area will be considered special promotional or civic events and are hereby declared to be "special promotional event" as that term is used in the Phoenix Zoning Ordinance section 705, subsection F, paragraph 1, subparagraph b.

PASSED by the Council of the City of Phoenix this 12th day of October,
2022.




MAYOR

ATTEST:


Denise Archibald, City Clerk

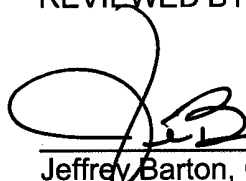
APPROVED AS TO FORM:
Cris Meyer, City Attorney


BY: _____

Deryck R. Lavelle, Assistant Chief Counsel

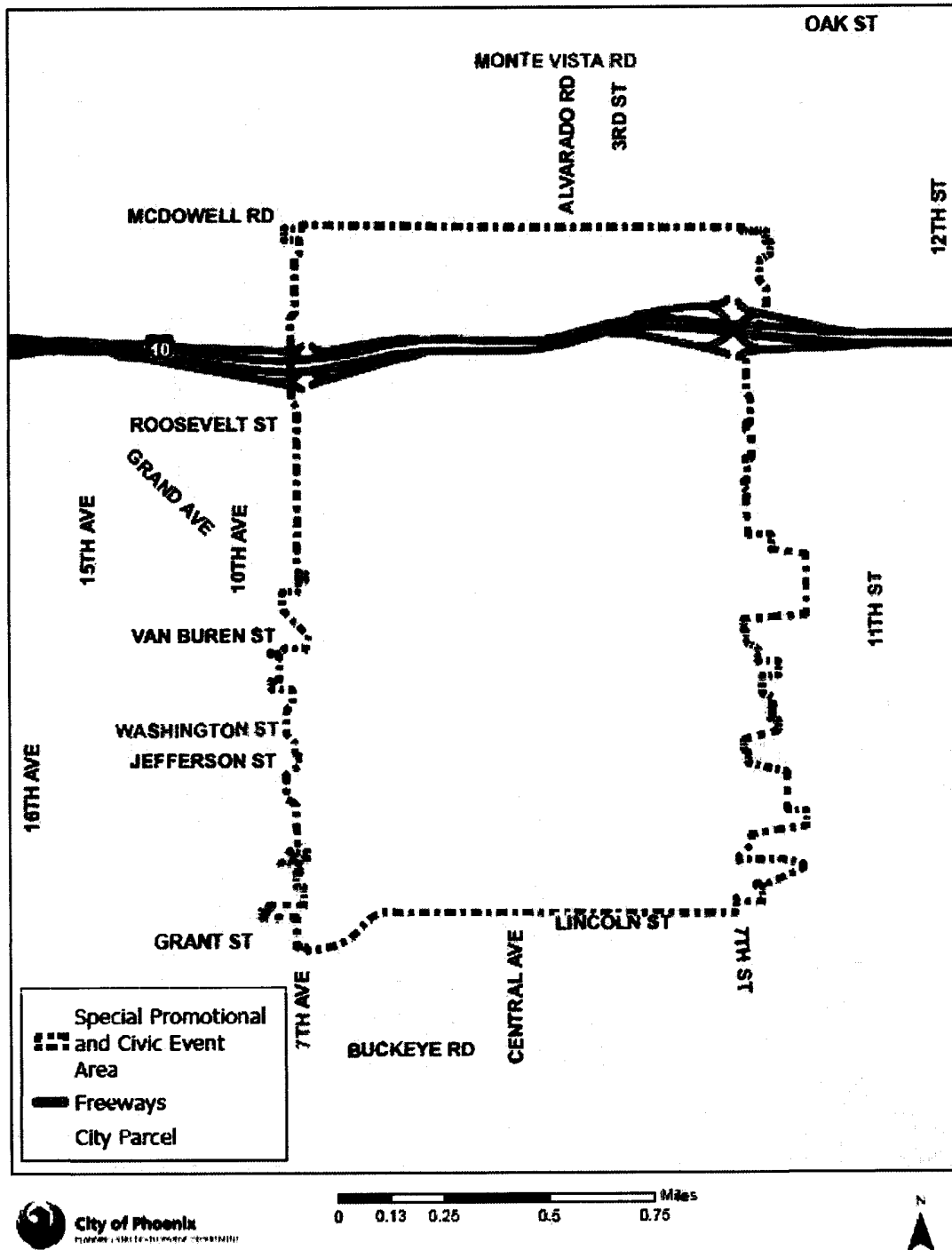
REVIEWED BY:

Pml


Jeffrey Barton, City Manager

PML:am:LF22-1558:10/12/22:2339529_1

Special Promotional and Civic Event Area



CLEAN ZONE 101

Super Bowl LVII Temporary Sign Restrictions aka "The Clean Zone"

The City of Phoenix is the proud host of Super Bowl LVII. While the Big Game will be held in Glendale, many of the events and activities will take place in Downtown Phoenix. During such mega events, many cities put temporary signage restrictions in place in partnership with the NFL to protect local businesses from "ambush" or "guerrilla" marketing attempts during the event period.

Downtown Phoenix Inc. (DPI), in partnership with the City of Phoenix Planning and Development Department, and the Arizona Super Bowl Host Committee is asking downtown business owners to start early to ensure their business complies with zoning and signage regulation for events.

The "Clean Zone" enforcement period is from January 15, 2023 through February 19, 2023.

The "Clean Zone" applies to businesses in the Special Promotional and Civic Event Area (see map on back) at the center of the activities around Margaret T. Hance Park. New temporary signage requires Arizona Super Bowl Host Committee approval.

WHAT DOES THIS MEAN FOR MY BUSINESS?

This means that businesses that fall within the "Clean Zone" should remove any existing *temporary signage* during the Special Promotional and Civic Event Area period above. You can apply for additional temporary signage permits using the contact information below, in order to display guideline-compliant signage during the event period.

Please Note! These restrictions will not affect existing permitted permanent signs that have been approved by the City of Phoenix.

KEY DATES:

- December 15: Deadline to submit applications for temporary signage permits. Applications submitted after this date may not be processed in time for the event period. Please allow at least 5-7 business days for processing.
- January 15: Specific civic event period begins (all temporary signage must be removed)
- February 20: Special event period ends

WHAT COUNTS AS TEMPORARY SIGNAGE?

Temporary signage is anything that is not physically built into your business. This includes:

- Banners (cloth or vinyl)
- Pennants
- Flags
- Window paintings
- Posters/Flyers
- Balloons

Permit applications can not be approved for materials that display the logos for Super Bowl sponsor competitors and non-licensed use of the Super Bowl LVII trademark.

WHERE CAN I GO IF I HAVE QUESTIONS?

Please contact David A. Williams at 602.256.4242 or david.a.williams@phoenix.gov with questions related to temporary signs during the special promotional/civic event period.

For general inquiries, contact DPI Stakeholder engagement Manager, Erika Rubio at erubio@dtphx.org or 602.388.6327.

Special Promotional and Civic Event Area

