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

13 BRAMLEY PAULIN,

14 Plaintiff,

15 vs.

16 KATE GALLEGO, in her official capacity
17 as Mayor of the City of Phoenix; JEFF
18 BARTON, in his official capacity as City
19 Manager of the City of Phoenix; and CITY
20 OF PHOENIX, a municipal corporation of
21 the State of Arizona,

22 Defendants,

Case No. CV2023-000409

**CONSOLIDATED RESPONSE TO
MOTION TO DISMISS AND
REPLY IN SUPPORT OF
APPLICATION FOR
PRELIMINARY INJUNCTION**

(Assigned to the Honorable
Brad Astrowsky)

23 Under Resolution 22095 (Ex. 7 to Am. Compl.), as under Resolution 22073, the
24 City of Phoenix prospectively bans Plaintiff from communicating any message via certain
25 types of signage without pre-approval from the Arizona Super Bowl Host Committee. Not
26 once in this litigation has the City defended the constitutionality of this practice. Instead, it
27 argues that Plaintiff could bypass Host Committee pre-approval by applying for his own
28 use permit—an option that has never actually been available to Plaintiff before, is not
legally viable now, and even if it were, would take too long.

The City also opposes injunctive relief on a variety of meritless procedural grounds
and argues that Plaintiff’s First Amended Complaint (“Compl.”) should be dismissed due
to laches, failure to exhaust, limitations on mandamus relief, and public policy—none of
which apply.

1 The removal of the sentence from Resolution 22073 that required NFL approval
2 did redress *part of* Plaintiff’s injury—specifically, it cured the *facial* unconstitutionality of
3 the speech restriction at issue here. But that restriction remains unconstitutional *as applied*
4 to Plaintiff, and the bottom line remains the same: whether directly or indirectly, the City
5 is giving a private entity (the Host Committee) total authority to dole out zoning rights
6 (special use permit privileges) to other property owners in the downtown area, while
7 giving those property owners (or at least Plaintiff) no other way to exercise their rights
8 besides obtaining Host Committee approval.

9 Plaintiff has diligently sought resolution via negotiation, and, when that failed, via
10 this lawsuit. Tourists are already arriving in town for the Super Bowl, and Plaintiff is
11 *already* being deprived of his constitutional rights to communicate with them and
12 thousands of other Super Bowl attendees. What remains of those rights will be
13 irretrievably lost unless this Court orders the City to immediately act on Plaintiff’s
14 applications, subject *only* to its ordinary content-neutral signage standards.¹

15 **I. Injunctive relief is the only way to redress Plaintiff’s injuries.**

16 **A. Plaintiff is likely to succeed on the merits.**

17 The City has repealed its facially unconstitutional Resolution 22073, but the
18 situation is no better for Plaintiff, because the new Resolution 22095, as applied to
19 Plaintiff, is depriving him of the same constitutional rights. “It is axiomatic in law that
20 what cannot be done directly may not be done by indirection.” *Black & White Taxicab Co.*
21 *v. Standard Oil Co.*, 25 Ariz. 381, 396 (1923). But that’s just what the City is doing:
22 having deprived Plaintiff of any other way to exercise his rights, it now tells him the only
23 way he can exercise those rights is to get the Host Committee’s permission to use *its*
24 special use permit. But the whole point of this lawsuit was that forcing him to get
25 permission of this sort is unconstitutional.

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27
28 ¹ That is, regulations, such as rules prohibiting obscenity, or restricting the size of signs, etc., none of which Plaintiff challenges here.

1 The City claims Plaintiff has two options: (1) “he can apply for a use permit under
2 his own name”; or (2) he can “request authorization to ‘use’ the NFL’s or Host
3 Committee’s use permit.”² Defs.’ Mot. to Dismiss at 4.

4 The first option is illusory. While Resolution 22073 was in effect (i.e., until
5 January 18, 2023), Plaintiff could not have applied for his own use permit because
6 Resolution 22073 expressly forbade him from erecting any temporary signage without
7 Host Committee approval. The City reiterated this fact in a June 10, 2022 letter that it sent
8 to Plaintiff and other property owners: “In accordance with [city law] *no temporary sign*
9 *permits will be issued without the approval of the NFL, Arizona Super Bowl Host*
10 *Committee, and City beginning on November 1, 2022. All current existing temporary*
11 *sign permits, and any future permits issued prior to November 1, 2022 will expire on*
12 *October 31, 2022, and a new permit application must be submitted.”* Ex. 3 to Compl.

13 If Plaintiff had applied for his own use permit, he would have had to tell the City
14 how he wanted to use his property: namely, to put up advertising signage. *See* City of
15 Phoenix, *Zoning Process Guide* at 1 (last visited Jan. 30, 2023) (listing requirements for
16 use permit applications, including a “written narrative” with a “description of proposal”).³
17 But until last week, that use was not allowed without NFL and Host Committee pre-
18 approval. *See id.* at 3 (noting that “to rule favorably on a Use Permit request,” “[t]he
19 Zoning Administrator or Hearing Officer must find that ... [t]he use will be in compliance
20 with all provisions of the Zoning Ordinance and the laws of the City of Phoenix”);
21 Resolution 22073 (banning temporary signage unapproved by Host Committee and NFL)
22 (Ex. 1 to Compl.). To have applied for his own permit would therefore have been futile,
23 and “the law does not require a futile act.” *Coronado Co. v. Jacome’s Dep’t Store, Inc.*,

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25
26 ² The City has repeatedly stated that these are the only “two ways” available to Plaintiff.
27 Def. Mot. to Dismiss at 4; *see* David Williams Jan. 27, 2023 Email, attached as Exhibit 1
28 (describing the two alternatives). When Plaintiff inquired about other options, including
trying to submit an “Administrative Temporary Use Permit,” he was told that process was
inapplicable here and the only two options were those described above.

³ https://www.phoenix.gov/pddsites/Documents/PZ/pdd_pz_pdf_00267.pdf.

1 129 Ariz. 137, 140 (App. 1981); *see also Stagecoach Trails MHC, L.L.C. v. City of*
2 *Benson*, 231 Ariz. 366, 370 ¶ 16 (2013) (explaining that futility excuses exhaustion).

3 And now that Resolution 22073 is no longer in effect (i.e., since January 18), there
4 is not nearly enough time for Plaintiff to obtain his own use permit. The City estimates
5 that ***obtaining a use permit is an approximately “4–6 week process,” and it requires a***
6 ***public hearing***. *See* Temporary Use Guide, attached as Exhibit 2. The City states that it
7 will schedule a hearing “within 60 days of the filing date.” Once a hearing is scheduled,
8 the applicant must give public notice of the hearing, at least fifteen days before the
9 scheduled hearing date. *Zoning Process Guide* at 1–2.⁴ Consider the Host Committee’s
10 own experience: it applied for a temporary use permit on October 6, 2022, and received a
11 final decision on November 17. *See* Host Committee Use Permit Application, attached as
12 Exhibit 3. In short, Plaintiff could not have obtained his own use permit when Resolution
13 22073 was in effect, and he still can’t.⁵

14 To be sure, a four-to-six-week consideration period is (obviously) not
15 unconstitutional in itself; Plaintiff is not challenging the “normal delays in obtaining
16 building permits, changes in zoning ordinances, variances,” etc., per se. *Tahoe-Sierra*
17 *Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 535 U.S. 302, 329 (2002). Here,
18 however, it is *the City’s fault* that this four-to-six week period is now too long to take
19 advantage of the Super Bowl. It is because the unconstitutional Resolution 22073 was in
20 place for so long—so that it is now too late for Plaintiff to obtain his own use permit—
21 that the current sign restrictions now operate as an unconstitutional prior restraint on
22 speech *as-applied*. The fact that the normal options are now no longer viable is due to the
23 City’s unconstitutional acts—which is all the more reason why Plaintiff is entitled to
24 equitable relief.

25
26 ⁴ https://www.phoenix.gov/pddsite/Documents/PZ/pdd_pz_pdf_00267.pdf.

27 ⁵ If it *were* a realistic option to obtain one’s own use permit, then why, in the leadup to the
28 biggest event downtown Phoenix has seen since 2015 (i.e., since the last Arizona Super
Bowl), has nobody else done so? *See* Ex. 1 (noting that “the Host Committee is the only
entity with an approved use permit” in the downtown area). The answer: because it is not
a genuine option.

1 As to the second option—to “get approval to ‘piggy back’ off the” Host
2 Committee, Defs.’ Mot. to Dismiss at 4—that would require permission from the Host
3 Committee, just as Resolution 22073 did. And requiring Host Committee approval for the
4 use of that permit is both (1) unnecessary as a matter of zoning law and (2)
5 unconstitutional, just as Resolution 22073 was.

6 First, the Phoenix Zoning Ordinance treats use permits as belonging to each
7 individual “establishment,” *not* to a single “master of the permit” who can grant or
8 withhold the use of that permit throughout an entire neighborhood. *See* Phoenix Zoning
9 Ordinance § 705(F)(1)(b). As a general principle, “[s]pecial use permits under zoning
10 ordinances ... run with the land”; they do not function as the permit-holder’s own
11 personal privilege. 101A C.J.S. Zoning and Land Planning § 296 (Nov. 2022); *see also*,
12 *e.g.*, *Cohn v. Cnty. Bd. of Supervisors*, 286 P.2d 836, 839 (Cal. App. 1955) (explaining
13 that special use permits are not the holder’s personal right). There is no authority for the
14 idea that the Host Committee can obtain a use permit *for thousands of other people’s*
15 *properties*, then dole out rights under that permit as it chooses.

16 But even if that were correct as a matter of zoning law, to condition Plaintiff’s
17 freedom of speech on his obtaining the Host Committee’s permission to use its special use
18 permit is unconstitutional, just as it was unconstitutional for the City to directly force
19 Plaintiff to get the Host Committee’s approval under Resolution 22073. The Host
20 Committee is a private business, and it is free to decide how to exercise *its own* rights on
21 whatever grounds it chooses. But requiring Plaintiff to get Host Committee approval to
22 exercise *his* rights under the special use permit simply does not redress the injury he
23 originally complained of. More precisely, it exchanges the facial unconstitutionality of
24 Resolution 22073 into the as-applied unconstitutionality of Resolution 22095.

25 Here’s why: by treating the Host Committee as the exclusive “master of the
26 permit” for all of downtown, while restricting Plaintiff from obtaining his own use permit,
27 the City has given the Host Committee the power to occupy the entire field. That means
28 the Host Committee has sole discretion whether to share “its” exemption from ordinary

1 signage restrictions—that is, its blanket use permit—with others, entirely in its own
2 discretion. That effectively gives the Host Committee “zoning powers”—but zoning
3 powers “may not be delegated to private parties or property owners.” *Emmett McLoughlin*
4 *Realty, Inc. v. Pima Cnty.*, 203 Ariz. 557, 559 ¶ 7 (App. 2002) (quoting 83 Am. Jur.2d
5 Zoning and Planning § 615 (1992)). And it infringes on free speech and due process for
6 the same reasons alleged in Plaintiff’s original Complaint: it leaves residents no way to
7 exercise their free speech rights except by petitioning an unaccountable private company
8 to let them do so.

9 **B. Plaintiff’s injury is irreparable.**

10 While Plaintiff wants to erect advertising signage, that does not mean his only
11 interest here is “pecuniary.” On the contrary, his injury is not loss of revenue, but the loss
12 of his constitutional rights. “The loss of [freedom of speech], for even minimal periods of
13 time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373
14 (1976). And being forced to forego valuable business opportunities is also an irreparable
15 injury that cannot be cured through damages. *Berster Techs., LLC v. Christmas*, No. CIV.
16 S-11-1541 KJM JFM, 2012 WL 33031, at *10 (E.D. Cal. Jan. 6, 2012); *Warner Bros. Ent.*
17 *Inc. v. WTV Sys., Inc.*, 824 F. Supp.2d 1003, 1012–13 (C.D. Cal. 2011).

18 Arizona courts have never relegated advertising to any second-class status of
19 speech rights. And even if they had, advertising is still constitutionally protected free
20 speech—the censorship of which is an irreparable injury, not a merely financial one. *See,*
21 *e.g., Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 63, 75 (1983) (injunctive relief
22 available to protect advertising speech).

23 **C. Balance of hardships and public policy support an injunction.**

24 The City argues that Plaintiff “slept on his rights.” Defs.’ Opp’n to Appl. for
25 Prelim. Inj. (“Opp’n”) at 3. This assertion ignores the undisputed facts that since October,
26 Plaintiff has diligently sought to resolve this problem via negotiation, and only filed a
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28

1 lawsuit when it was clear that the City would not agree.⁶ The City’s unconstitutional
2 Resolution 22073 prevented him from applying for temporary signage before January 18,
3 because of the Catch-22 Plaintiff has described in the First Amended Complaint. *See* ¶¶
4 38–40. *Since then, the City has refused to accept Plaintiff’s applications without Host*
5 *Committee approval. Id.*; Compl. Ex. 6, Prelim. Inj. Appl. Ex. 1 ¶ 13. And the only other
6 option, applying for his own use permit, would take far too long.

7 The City also argues that Plaintiff’s proposed signage might not “comport with the
8 zoning ordinances” or might “intrude upon the rights of others.” Opp’n at 3–4. But
9 Plaintiff has never questioned the City’s right to enforce ordinary, content-neutral signage
10 requirements. If the City finds that Plaintiff’s signs violate *content-neutral* requirements,
11 it has every right to condition its approval on Plaintiff fixing *those* problems. But it cannot
12 do what it is doing now: offer him the Hobson’s choice of either applying for a permit that
13 would take too long to get (due to the City’s own unconstitutional acts) or obtaining
14 permission from the Host Committee.

15 **II. Injunctive relief is necessary and appropriate.**

16 The urgency here is obvious. Yet rather than responding to Plaintiff’s constitutional
17 arguments, the City asserts several procedural arguments against Plaintiff’s application for
18 injunctive relief. All of these fail, as described below.

19 **A. There is no exhaustion requirement.**

20 The City says Plaintiff “has not exhausted his administrative remedies,” but it
21 overlooks two well-established exceptions to the exhaustion requirement that apply here.
22 First, for constitutional claims: a plaintiff need not apply to the government for a permit to
23 speak before challenging the constitutionality of that speech restriction. *See Kaahumanu*
24 *v. Hawaii*, 682 F.3d 789, 796 (9th Cir. 2012) (“Plaintiffs who challenge a permitting

25 ⁶ The City asserts, without evidence, that Plaintiff scheduled two meetings, including one
26 on “the 25th and 26th,” “and then failed to show up.” If the City means *January 25* and *26*,
27 Plaintiff timely rescheduled those appointments before they occurred. Paulin appointment
28 email, attached as Exhibit 4. If the City means *December 25* (Christmas Day), this is
incorrect: City was aware since at least December 19 that the meeting had been
“scheduled for Dec 27.” Chief Assistant City Attorney David Benton email, attached as
Exhibit 5.

1 system are not required to show that they have applied for, or have been denied, a
2 permit.”); *see also Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992)
3 (allowing facial First Amendment challenge to discretionary licensing scheme when
4 plaintiff never applied for a permit); *Pac. Frontier v. Pleasant Grove City*, 414 F.3d 1221,
5 1228 (10th Cir. 2005) (holding salespersons were not required to “apply for and be denied
6 a license before challenging a licensing ordinance’s constitutionality”).

7 Second, “[e]xhaustion is not required when the pursuit of administrative remedies
8 would be futile.” *Stagecoach Trails*, 231 Ariz. at 370 ¶ 16. As detailed above, Plaintiff
9 could not submit his applications before January 18, because of the explicit ban on all
10 temporary signage not pre-approved by the Host Committee. Since then, Plaintiff has
11 repeatedly tried to submit his applications to the City; each time, the City has refused to
12 accept them. Even if the City cooperates with Plaintiff at this late hour, the Super Bowl is
13 less than two weeks away. Plaintiff *cannot* wait for weeks or months while the City
14 considers his applications.

15 **B. Laches does not apply.**

16 Laches “is an equitable counterpart to the statute of limitations, designed to
17 discourage dilatory conduct.” *Sotomayor v. Burns*, 199 Ariz. 81, 82–83 ¶ 6 (2000). The
18 City bears the burden of proving (1) Plaintiff unreasonably delayed in seeking relief and
19 (2) that delay prejudices the City. *Rash v. Town of Mammoth*, 233 Ariz. 577, 583 ¶ 18
20 (App. 2013). But Plaintiff did not unreasonably delay, and the City’s own unclean hands
21 bar its laches argument.

22 First, Plaintiff did not unreasonably delay. Rather, he has been working diligently
23 since October to resolve this issue via negotiation. Only when that failed did he resort to
24 litigation. Courts will not apply laches to discourage parties from trying to amicably
25 resolve disputes outside of court, and delays from negotiations are not “unreasonable” for
26 purposes of laches. *McComb v. Super. Ct.*, 189 Ariz. 518, 525 (App. 1997) (quoting
27 Restatement (2d) of Torts § 939 cmt. B (1977)).
28

1 Second, any delays were caused by the City’s unconstitutional Resolution(s), not
2 Plaintiff’s lack of diligence. The City faults Plaintiff for failing to apply for a permit, but it
3 overlooks (1) the impossibility of completing an application before January 18 due to the
4 City’s prior restraint on signage, which chilled businesses from negotiating a signage deal
5 with Plaintiff, and (2) the City’s own refusal, since January 18, to accept Plaintiff’s
6 applications.

7 **C. There is no bar to a mandatory injunction.**

8 Plaintiff is not asking for an order compelling the City to issue a sign permit no
9 matter what. *See Kahn v. Thompson*, 185 Ariz. 408, 411 (App. 1995) (noting mandamus
10 applies where the law compels “only one course of action on an admitted state of facts”).
11 Plaintiff has always recognized that the City may apply its ordinary, content-neutral
12 standards (rules regarding size, mounting, materials, etc.) to his sign applications, and can
13 withhold approval for signs that fail those standards. Rather, Plaintiff is asking the Court
14 to order the City to act on Plaintiff’s applications *subject solely to those standards*, which
15 leaves the City with proper discretion.

16 That is not as “extraordinary” as the City contends, and such relief is well within
17 the Court’s equitable power. Injunctions often require parties to take action (as opposed to
18 refraining from action), particularly to redress harms caused by those parties’ previous
19 actions. *See, e.g., Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 51 ¶¶ 30–35
20 (App. 2007) (affirming injunction requiring party to reduce the height of a hangar he had
21 already constructed); *Burton v. Celentano*, 134 Ariz. 594 (App. 1982) (affirming
22 preliminary injunction requiring party to remove a wall it had constructed).

23 This is just as true when the enjoined party happens to be a governmental entity.
24 *See, e.g., Britt v. Red Mesa Unified Sch. Dist.*, 155 Ariz. 571, 576–77 (App. 1986), *aff’d in*
25 *relevant part*, 155 Ariz. 578 (1987) (holding that trial court’s injunction requiring school
26 district to hold a hearing was inadequate remedy for wrongfully terminated teachers and
27 that, on remand, “a mandatory injunction” requiring the school to offer the teachers new
28 contracts “is available as a possible remedy”); *State ex rel. Corbin v. Portland Cement*

1 *Ass'n*, 142 Ariz. 421 (App. 1984) (requiring the state to amend its complaint in ongoing
2 federal district court lawsuit to remove certain claims); *Jarvis v. State Land Dep't*, 104
3 Ariz. 527, 532 (1969) (requiring State Land Department “to cancel any rights-of-way
4 heretofore granted to Tucson for the transportation of water between Avra and Altar
5 Valleys and Tucson”); *see also Fund for Empowerment v. City of Phoenix*, No. 2:22-cv-
6 02041-GMS, Order granting preliminary injunction (D. Ariz. Dec. 15, 2022) (requiring
7 city to take specific steps to notify property owners after it seizes property believed to be
8 abandoned).

9 True, the Court can’t mandate an exercise of discretion, but Plaintiff is not asking
10 for that. He is asking the Court to order the City to act on his permit under content-neutral
11 standards. Courts *can* “compel [a] [zoning] official to act.” *City of Providence v. Est. of*
12 *Tarro*, 973 A.2d 597, 605 (R.I. 2009). As one treatise explains: “Where a duty to make a
13 decision is imposed upon a body or officer, even though discretion is involved in the
14 determination, *mandamus will lie to compel the body or officer to make the decision,*
15 *since there is no discretion involved in whether action is to be taken.* The purpose of the
16 writ in such cases is to eliminate the delays and losses which can ensue from bureaucratic
17 procrastination.” 4 Arden H. Rathkopf & Daren A. Rathkopf, *The Law of Zoning and*
18 *Planning* § 64:7 at 64–16 (2005) (citation omitted). To be sure, Plaintiff is asking the
19 Court for immediate relief. The City has left him no other recourse, with so little time left
20 to obtain permits, finalize advertising agreements, get a print shop to print and ship the
21 signs, and for him to mount the signs.

22 **D. An injunction will not cause chaos.**

23 Finally, the City says that if this Court grants an injunction, “chaos” will ensue
24 because “those similarly situated would be emboldened to file suit rather than comply
25 with legitimate processes.” Defs.’ Mot. to Dismiss at 7. To begin with, what the City calls
26 “chaos” is just the freedom of speech; if the City’s ordinances (or applications of those
27 ordinances) violate it, then they “must fall.” *Dorgan v. Pima Cnty.*, 131 Ariz. 491, 489
28 (App. 1982).

1 But even if that were not the case, Plaintiff’s injury is “as-applied,” which means
2 any potential plaintiff would have to prove sufficient facts to obtain relief, and practically
3 speaking, that is unlikely. On the eve of the Super Bowl, Plaintiff knows of no other
4 lawsuits challenging the sign restrictions, let alone those involving circumstances similar
5 to these. All Plaintiff asks this Court to do is vindicate his own right to speak, and the
6 specter of some unspecified risk of chaos cannot outweigh the constitutional and equitable
7 considerations entitling him to relief.

8 **III. Conclusion**

9 For the foregoing reasons, Plaintiff asks this Court to deny the City’s motion to
10 dismiss and to grant an injunction ordering the City to immediately approve Plaintiff’s
11 temporary sign applications subject to any ordinary, content-neutral signage rules that
12 apply.

13 **RESPECTFULLY SUBMITTED** this 31st day of January, 2023.

14 GOLDWATER INSTITUTE

15 */s/ John Thorpe*

16 Jonathan Riches (025712)

17 Timothy Sandefur (033670)

18 John Thorpe (034901)

Scharf-Norton Center for

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21 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

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ORIGINAL E-FILED this 31st day of January, 2023, with a copy delivered via the ECF system to:

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/s/ Kris Schlott
Kris Schlott, Paralegal

John Thorpe

From: David A Williams <david.a.williams@phoenix.gov>
Sent: Friday, January 27, 2023 8:06 AM
To: Bramley Paulin
Cc: John Thorpe
Subject: Temporary Sign Permit application - Paulin

Hi Bramley,

Sorry for the delay. I was out of the office on sick leave yesterday and realized this message did not get sent out.

Per your request during our meeting yesterday morning, I wanted to follow up with a summary of the issues with your temporary sign permit application and how it can be moved forward.

Any property owners or businesses interested in having temporary signs permitted within the Special Promotion and Civic Event Area can apply for and obtain a use permit as described in Section 705.F.1.b, as described in the council resolution. This use permit will be issued under the normal use permit approval process. There is no NFL/Host Committee review.

There is an alternative to obtaining your own use permit - an entity with an approved use permit may allow you to rely on its use permit. Currently, the Host Committee is the only entity with an approved use permit.

PDD's sign staff will be able to process your sign application after you obtain your own use permit or permission to use another entity approved use permit.

Please feel free to contact me if you have any questions.

Thank you,
David

David A. Williams, AICP
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Zoning Information Guide

"Planning with People for a Better Phoenix"



City of Phoenix
PLANNING & DEVELOPMENT DEPARTMENT

TEMPORARY USES

Below is a summary of the regulations and procedures for applying for temporary uses. It is intended for convenience only and does not replace the ordinance itself. Please refer to Section 708 of the Phoenix Zoning Ordinance for a complete description of the temporary uses requirements. All applications for a temporary use should be submitted at least 45 days in advance to allow for processing of any possible appeals (please refer to flowchart below). Staff will provide applicants with a response (approval/denial) within 7 business days of receiving an application. All fees are non-refundable.

An **administrative temporary use permit** may be issued upon submission of an application with the Planning and Development Department. Any approval is contingent upon Section 708 with written stipulations contained on the permit. (Approx. 7 day process)

A **temporary use permit** allows for a temporary use that does not meet the requirements of an administrative temporary use permit. An applicant shall file a public hearing application per Section 307 and 708 to request an approval of a temporary use permit. (Approx. 4-6 week process)

TEMPORARY USES FLOWCHART

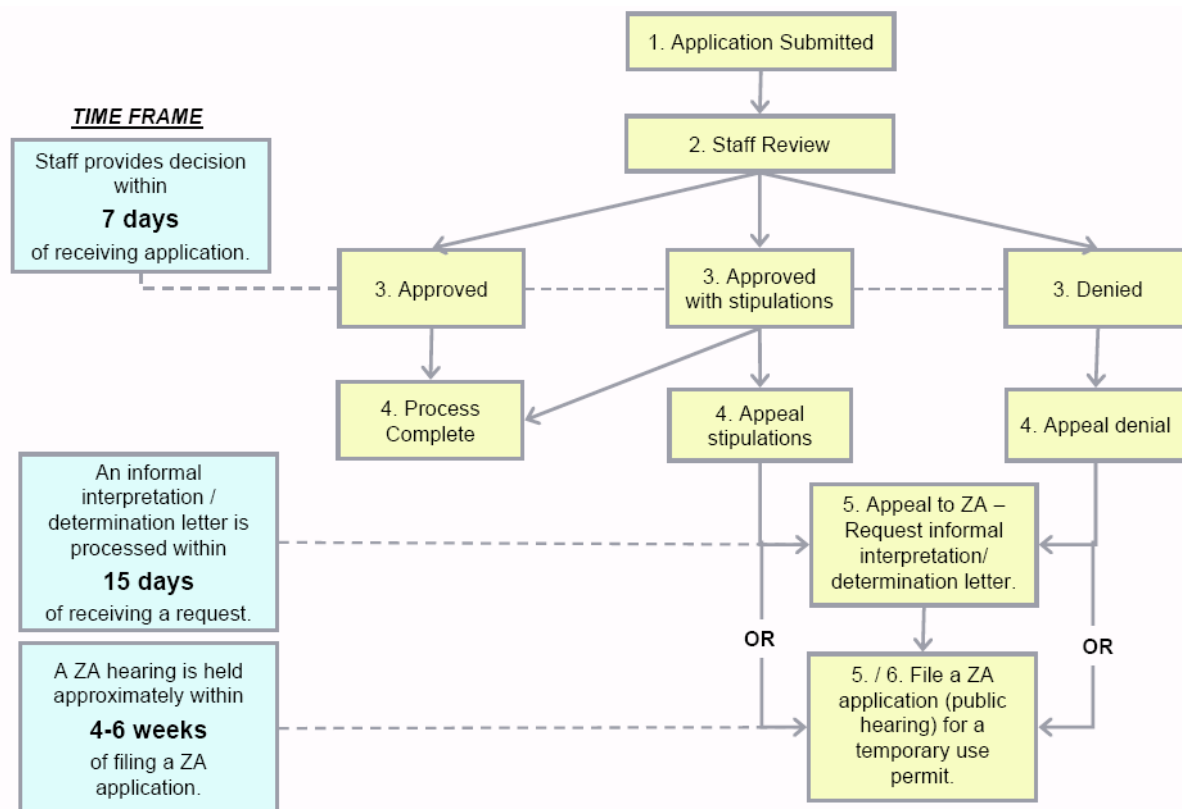


Exhibit 2

I. ADMINISTRATIVE TEMPORARY USE PERMIT (ATUP)

An applicant must submit in person a completed ATUP application packet (See page 7) to the Planning & Zoning Counter, Phoenix City Hall building at 200 West Washington Street, 2nd floor, Phoenix, AZ 85003.

If the ATUP is approved, the applicant must maintain the permit with conditions, site plan/sketch map and copy of application on site at all times the temporary use is being conducted. Approvals are by property and not by vendor, owner or tenant.

Criteria for Approval

All such uses must meet the following criteria, as set forth in the Phoenix Zoning Ordinance:

1. The use shall not cause a significant increase in odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions.
2. The use shall comply with all other codes and ordinances.
3. The use shall not reduce the number of parking spaces below the number required by the zoning ordinance for existing uses on the site.
4. Dates, times, duration, and other requirements shall be in accordance with Section 708.C.3.d of the Phoenix Zoning Ordinance, or as otherwise may be limited by the Planning and Development director or designee. If the ATUP is approved this information along with any other appropriate stipulations will be listed on the permit.
5. The use shall not emit light that is greater than 1-foot candle at the property line or broadcast sound beyond the boundaries of the property on which the use is conducted unless approved by the Planning and Development Director or designee at the time of permit issuance.
6. All parking and vehicle maneuvering for temporary uses will be required to occur on a dustproof site. To request for an alternative dustproof letter please go to <http://phoenix.gov/pdd/pz/pzdocs/index.html>.
7. An ATUP may be denied when a notice of violation that was related to a previous temporary use on the property was issued within the previous two years of an application. To find out more information on possible past violations please contact the Neighborhood Services Department (200 West Washington Street, 4th Floor, Phoenix, AZ 85003 / 602-262-7844).

Appeal of ATUP

Appeal of the denial or stipulation of an ATUP may be requested by:

- (1) Filing for an informal interpretation/determination from the Zoning Administrator. Please go to <http://phoenix.gov/pdd/pz/pzdocs/> for the complete instructions; or
- (2) An applicant also has the option to file for a temporary use permit through the approximate 4-6 week Zoning Adjustment hearing process <http://phoenix.gov/pdd/pz/pzservices/zoneuse.html>.

Definitions

Uses which require an ATUP include, but are not limited to, are listed below and within the following tables.

Carnival: A temporary commercial amusement event which typically includes rides, games and sales booths. Any such event shall be considered a carnival only if it exceeds the standards of a community fair (see "Community Fair"). This shall also include haunted houses and corn mazes.

Civic Event: An event which is of civic or public benefit. The event shall be sponsored by a charitable or nonprofit group or organization and shall not be for personal or private gain. Said event must further the athletic, benevolent, cultural, educational, historical, medical, patriotic, scientific, or social service objectives of the sponsor.

Community Fair: A temporary commercial amusement event which typically include rides, games and sales booths. A community fair contains a maximum of 5000 square feet of event space including all concourses and booth space, a maximum of 5 rides with a maximum height of 30 feet.

Interim Surface Parking: An interim parking area necessary for an interim use when related to a construction project that may be on-site or off-site.

Temporary Event Parking: A parking area designated for attendees of an organized event, where fees may be charged.

Temporary Promotional Event: An event consisting of productions, displays or exhibits produced for the main purpose of attracting persons to a shopping center (i.e. grand openings for retail stores).

Administrative Temporary Use Days/Times/Duration

The following three tables provide examples of the three different intensity levels of ATUPs. Time durations/frequency of events, allowed zoning districts and restrictions are summarized in the tables below.

LEVEL A.	Temporary use	Max # of Days	Max #/Year	Max #/Month	Zoning districts
		5	5	2	
	Community or other special events/uses				Commercial districts
		Carnival			
		(1) Shall only be conducted between 8 a.m. and 10 p.m. (2) Shall not be located within 200 feet of a residentially zoned property line.			
		Civic event			
		(1) Shall only be conducted between 8 a.m. and 10 p.m. (2) Shall not be located within 50 feet of a residentially zoned property line.			
		Community fair			
		(1) Shall only be conducted between 8 a.m. and 10 p.m. (2) Shall not be located within 100 feet of a residential zoned property line.			
	Promotional vehicle sales				Commercial districts
		(1) Shall only be conducted between 8 a.m. and 10 p.m. (2) A minimum 20 cumulative acres of defined sales area is required.			
	Temporary event parking				Commercial districts
		(1) The temporary parking area may not include required parking for another use. (2) These standards do not apply to temporary parking for sports arenas and civic events. For those uses, see Sections 702.F.2 and 702.F.3.			

For these temporary uses in residential districts please refer to Section 708.E of the Zoning Ordinance, or for events occurring on school or church sites refer to the zoning district's specific section of the Zoning Ordinance (Sections 603 – 619).

LEVEL B.	Temporary use	Max # of Days	Max #/Year	Max #/Month	Zoning districts
		5	12	2	
	Promotional events for commercial retail businesses				Commercial districts
		(1) Shall only be conducted between 8 a.m. and 10 p.m. (2) Shall not be located within 25 feet of a residential zoned property line. (3) No participation fee, entrance fee or contribution shall be requested or required of the public.			
	Promotional events for commercial service (i.e. restaurant/bar temporary extension of premises) businesses				Commercial districts
		(1) If within 300 feet of a residential zoned property line (including residentially developed R-5) the use shall not be conducted past 10 p.m.			

	Portable searchlights	Commercial districts
	(1) A searchlight display may consist of two searchlights. Additional lights may be authorized with a use permit. (2) No searchlight shall be illuminated at any time when the angle between its beam and the ground surface is less than sixty degrees. (3) May not be located within 150 feet of a residential district. (4) Shall only be operated between 8 a.m. and 10 p.m. (5) There shall be no advertising located on any part of the searchlight or its supporting structure.	

Level C.	Temporary use	Max # of Days	Max #/Year	Max #/Month	Zoning districts
<i>The following temporary uses can be approved for up to one year.</i>					
	Commercial accessory structure without a primary structure during construction				Commercial districts
	(1) Property must have active building permits for the primary structure. (2) The ATUP shall become invalid if the building permit for the primary structure becomes invalid or expires.				
	Construction staging (off-site)				All districts
	(1) Permitted only during construction with an active building permit. (2) The ATUP shall become invalid if the building permit for the project becomes invalid or expires.				
	Employment (hiring) office during construction (on-site)				Commercial districts
	(1) Permitted for existing or proposed businesses only. (2) Property must have active building permits for the primary structure. (3) The ATUP shall become invalid if the building permit for the primary structure becomes invalid or expires.				
	Generators				All districts
	(1) The provisions contained in this section shall not apply to portable temporary wireless communication facilities (cell-on-wheels) or environmental remediation facilities. (2) Generators used in conjunction with another permitted temporary use are exempt from the standards contained within this section. (3) The noise level, measured at any point on the received property, shall not exceed 55 dBA unless a temporary use permit is obtained. An occurrence where the sound level increases up to 60 dBA for five (5) continuous seconds or less shall not be deemed a violation of this section as long as there are no more than five (5) occurrences within an hour long interval. (4) Generators shall not be operated between 8 a.m. and 10 p.m.				
	Interim surface parking				All districts
	(1) All parking and maneuvering space must comply with Zoning Ordinance standards. (2) These standards do not apply to temporary parking for sports arenas and civic events. For those uses, see Sections 702.F.2 and 702.F.3.				
	Residential dwelling units or residential accessory structures during construction				All districts
	(1) Property must have active building permits for the primary structure. (2) The ATUP shall become invalid if the building permit for the primary structure becomes invalid or expires.				

II. TEMPORARY USE PERMIT

An application for a temporary use permit may be filed through the Zoning Adjustment public hearing process. The Zoning Administrator at the public hearing has the ability to grant a temporary use permit for up to 36 months. A time extension may be granted only through an additional temporary use permit hearing but only for an additional 6 months. A temporary use permit may not be obtained or used to authorize a mobile vending use as regulated by the Phoenix City Code (PCC), Chapter 10, Article XIV. Mobile vending as described in the PCC Chapter 10 requires a Mobile Vending License with the City Clerk Department – License Services Section.

A temporary use permit is required for the following:

- A proposed temporary use does not meet the requirements of Section 708.C.3 of the Phoenix Zoning Ordinance (See pages 2-3); or
- An applicant wants to appeal the denial or stipulations of an ATUP.
- A non-residential use in a residential district.

Applications for temporary use permits must be filed in person before 4:00 p.m. at the Planning & Zoning Counter, 2ND floor of Phoenix City Hall. Counter staff will assign applicants a hearing date approximately 4-6 weeks out from the time they submit their applications.

Use Permit Fees:

Commercial temporary use permit request: \$1,380.00

Residential temporary use permit request: \$490.00

Please refer to the Zoning Adjustment packet at <http://phoenix.gov/pdd/pz/pzservices/zoneuse.html> for further information on how to apply and complete process for a temporary use permit application.

Appeal

Appeals for Temporary Use Permits follow the appeal process as outlined in the Zoning Adjustment application. An applicant or any person from the public has the ability to appeal the decision of the Zoning Adjustment Hearing Officer to the Board of Adjustment.

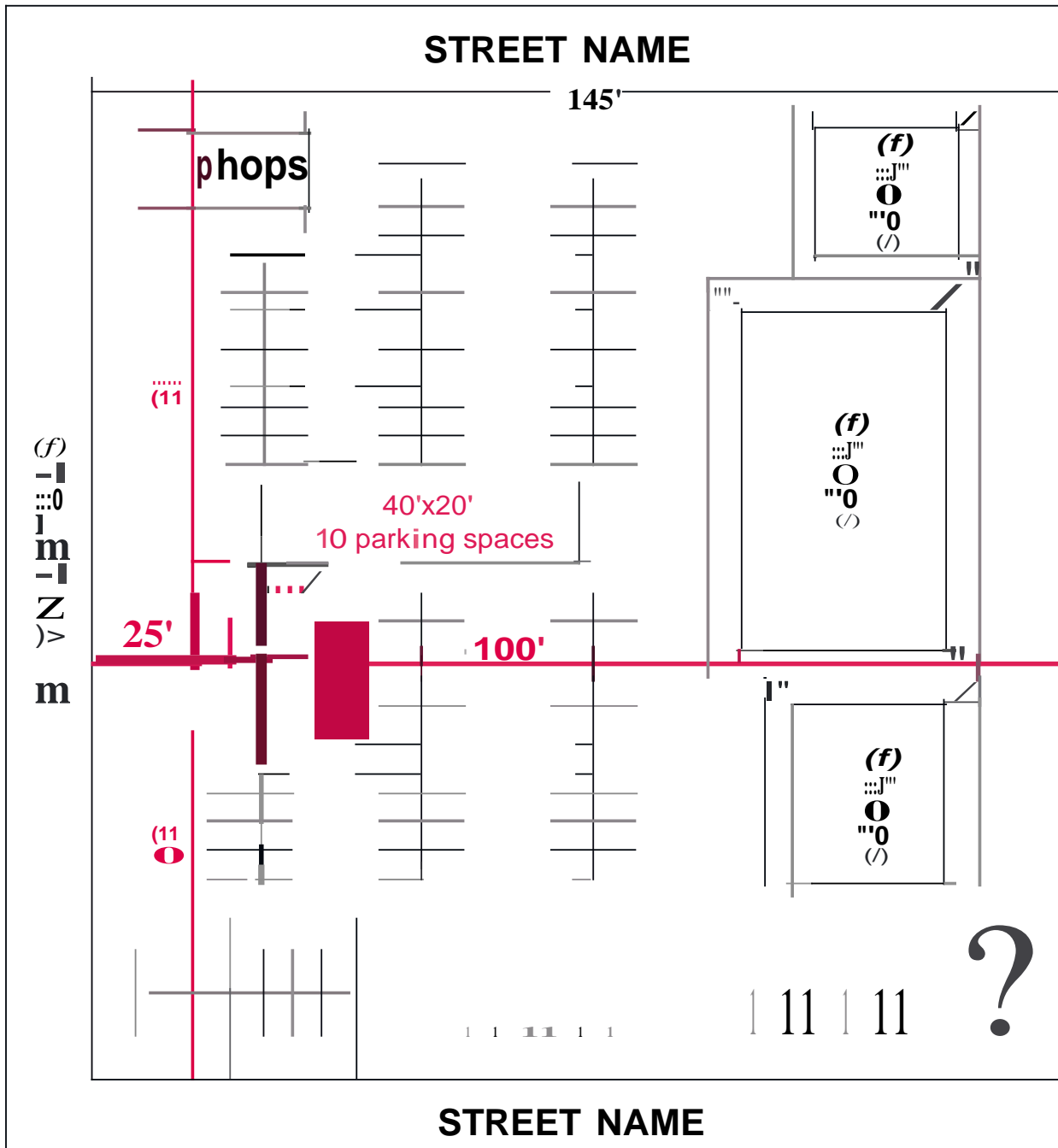
III. REVOCATION

The Planning and Development director may revoke an ATUP or Temporary Use Permit if any conditions or stipulations are not met.

IV. OTHER DEPARTMENT CONTACTS

- **Neighborhood Services Department** – *Neighborhood Preservation Office* (200 W. Washington St, 4th Floor / 602-262-7844) Applicants may check for any previous zoning violations related to temporary uses on file with the Neighborhood Preservation Division.
- **City Clerk Department** – *License Services* (200 W. Washington St, 1st Floor / 602-262-4638 opt. #4) <http://phoenix.gov/CITYCLERK/index.html>; Regulated business licenses (i.e. mobile vending, concessionaire and mechanical rides, liquor licenses).
- **Finance Department** – (251 W. Washington Street, 9th Floor / 602-262-7166) Sales tax privilege license <http://phoenix.gov/PLT/pltidx.html>
- **Development Division** – *Building Safety* (200 W. Washington St., 2nd Floor / 602-262-7811) <http://phoenix.gov/pdd/development/index.html>; Permits for generators, bleachers, stages, etc.
- **Fire Prevention** – <http://phoenix.gov/fire/prevention/index.html>; Tent or canopy permit (602-262-6771)

Sample Site Plan



Upon request this publication will be made available in alternate formats including large-print, Braille, audiotape or computer disk to accommodate a person with a disability if given reasonable advance notice. Please contact Elaine Noble at voice 602-495-0256 or via the City TTY Relay at 602-534-5500.

Zoning Information Guide



"Planning with People for a Better Phoenix"

City of Phoenix
PLANNING & DEVELOPMENT DEPARTMENT

Administrative Temporary Use Permit Application

STEP 1: CHECKLIST – The following items must be submitted to the Zoning Counter.

- Completed application page.
- Notarized letter of authorization from property owner for the temporary outdoor sales event.
- Site plan/sketch illustrating location of event on subject property (See page 6 Sample Site Plan).
- A current aerial of the subject property with the temporary area delineated.
- Non-Refundable Fee: \$135.00 (Check payable to City of Phoenix)

STEP 2: TO BE FILLED OUT BY APPLICANT

Address of Temporary Use Location: _____

Assessor Parcel Number (APN): _____

* Go to <http://www.maricopa.gov/Assessor/Default.aspx> for APN(s)

Applicant / Company Name: _____

Applicant Address: _____

Applicant/Company Phone #: _____ Email Address: _____

Property Owner(s): _____

Property Owner(s) Address: _____

Property Owner Phone #: _____ Email Address: _____

Representative: _____

Address: _____

Phone #: _____ Email Address: _____

Description of Temporary Use (Attach additional pages if needed):

Dates: _____

Hours of Operation: _____

of Attendees: _____ Square footage of area: _____

Parking spaces being taken up: _____

I have reviewed the entire Temporary Uses Zoning Information Guide and understand there may be additional steps I must complete or other departments/agencies I must contact for approval of licenses, building permits or site plan approvals. I attest that the information provided with this application is correct to the best of my knowledge. I further acknowledge that this permit may be revoked if any conditions or stipulations are not met.

Signature

Date

Upon request this publication will be made available in alternate formats including large print, Braille, audiotape or computer disk to accommodate a person with a disability if given reasonable advance notice. Please contact Elaine Noble at voice 602-495-0256 or via the City TTY Relay at 602-534-5500.

ZONING ADJUSTMENT INFORMATION

1:30p

Case No: ZA-490-22 Annex Date: _____ Hearing Date: 11/17/22

Application #: ZA-490-22-7 (SIGN)
 Existing Zoning: DTC
 Location: Downtown Redevelopment Area, as defined in Resolution No. 21987
 Quarter Section:
 Proposal: 1) Use permit for a comprehensive sign plan for 2023 NFL Super Bowl events within the Downtown Redevelopment Area. Use permit required.
 2) Use permit to allow temporary signs erected in conjunction with a special promotional event within the Business Core of a civic or commercial nature. Use permit required.
 Ordinance Sections: 705.E.2 and 705.F.1.b 1209.B.8.j
 Applicant: Rayme Lofgren, Arizona Super Bowl Host Committee
 Representative: Rayme Lofgren, Arizona Super Bowl Host Committee
 Owner: Various

History of parcel (prior application, etc)/Field Notes: ZA-588.16 NCAA CSP+UP

FOR HEARING OFFICER USE ONLY

HEARING TESTIMONY:

USE PERMIT:

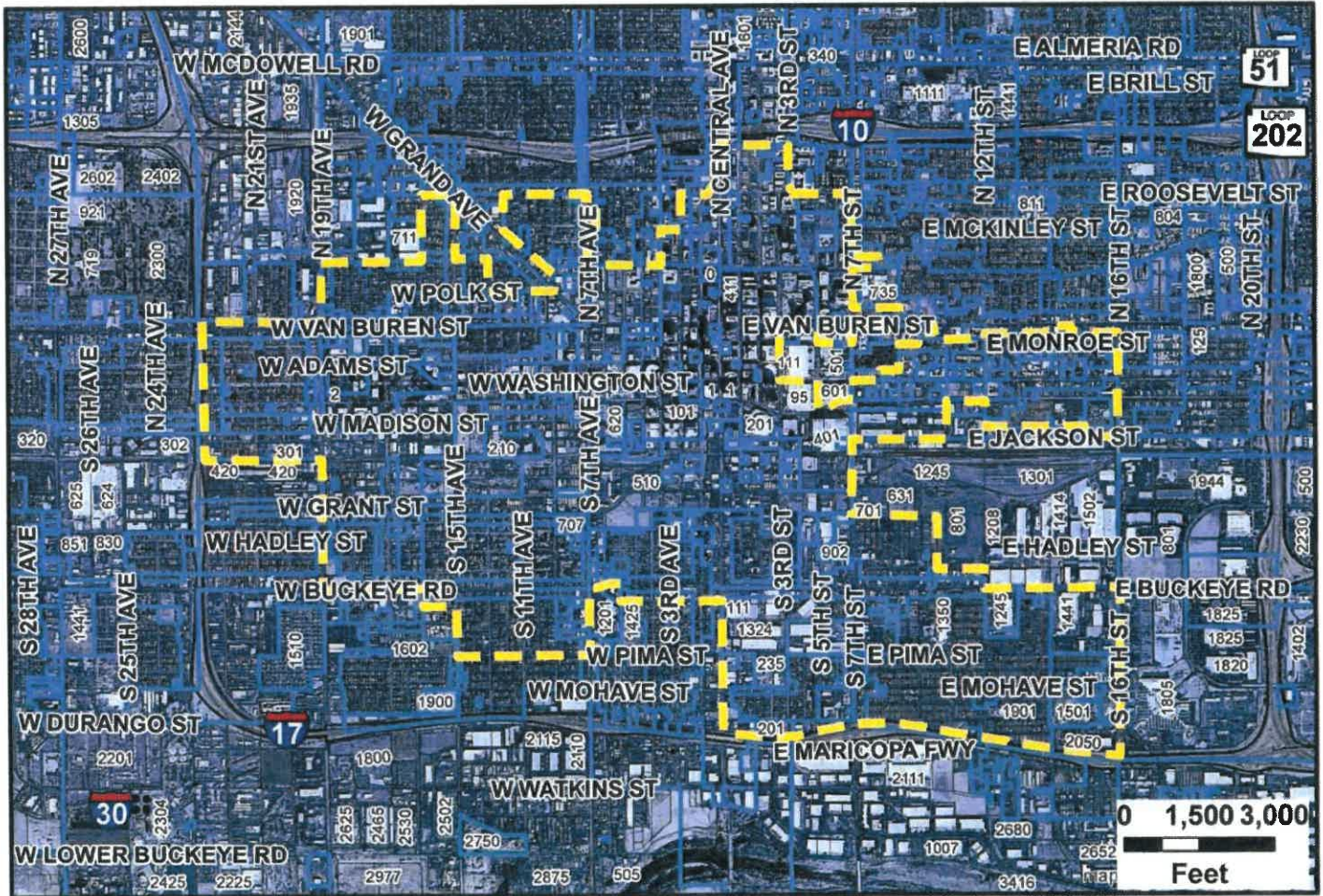
- 1. Significant increase in vehicular or pedestrian traffic in adjacent residential area?
- 2. Emission of odor, dust, gas, noise, vibration, smoke, heat, or glare that exceed ambient conditions?
- 3. Negative impacts on surrounding areas?

VARIANCE:

- 1. Special circumstances or conditions?
- 2. Self-imposed conditions?
- 3. Necessary for the preservation and enjoyment of property rights?
- 4. Any negative impacts on neighborhood?

S:\Planning\Zoning Adjustments\Hearings\ZA\Leonor's H Drive\ZA FORMS\ZA PriorForm.doc

Zoning Adjustment
ZA-490-22-7&8 (SIGN)
11/17/2022



**Downtown Redevelopment Area, as defined
in Resolution No. 21987**



Use permit for a comprehensive sign plan for 2023 NFL Super Bowl events within the Downtown Redevelopment Area. Use permit required.

Use permit to allow temporary signs erected in conjunction with a special promotional signs within the Business Core of a civic or commercial nature. Use permit required.



ZA CASE NO: 490-22-7,8 (SIGN)

Date: 11/17/22 1:30 PM

Zoning Administrator Action

Appeal Date:

Approved Denied Denied, as filed ~Stipulations

Under Advisement Withdrawn Other

Cont: _____

STIPULATIONS:

Must appeal by December 2, 2022.

11-17-2022

Frank Polesinski

ZONING ADMINISTRATOR

DATE

BY

Support Present

Opposition Present

STIPULATIONS MET:

YES/NO



City of Phoenix

PLANNING AND DEVELOPMENT DEPARTMENT

APPLICATION FOR ZONING ADJUSTMENT

APPLICATION NO: ZA-490-22

CASE TYPE: Sign - Use Permit
DATE FILED: 10/6/2022

COUNCIL DISTRICT: 7, 8
CASE STATUS: Pending

EXISTING ZONING: DTC
FILING STAFF: DAW

Fee	Fee Waived	Fee Date	Receipt	Purpose
\$1,080.00	\$0.00	10/06/2022		Original Filing Fee

HEARING DATES

ZA: 11/17/2022 1:30 PM LOCATION: Meeting will be held virtually.

BOA:

PROPERTY LOCATION: Downtown Redevelopment Area, as defined in Resolution No. 21987

LEGAL DESCRIPTION: See Attached

CONTACT INFORMATION

NAME	ADDRESS	PHONE	FAX	EMAIL
Rayme Lofgren Arizona Super Bowl Host Committee <small>(Applicant, Representative)</small>	201 W Washington Street, 1400 Phoenix AZ 85304	(480) 332-6907		rlofgren@azsuperbowl.com

If, during the course of review of a pending application, the applicant submits one or more additional applications that are related to the pending application, then and in such event, the substantive review time frame shall be reset on all related applications. In this event there shall be one applicable substantive review time for all of the related applications and the time frame shall be revised to be the longest substantive review time frame that was applicable to any one of the related applications. As a result, the entire substantive review time frame for the related applications shall start over, and a fee may be charged.

An applicant may receive a clarification from the city of its interpretation or application of a statute, ordinance, code or authorized substantive policy statement. To request clarification or to obtain further information on the application process and applicable review time frames, please call 602-262-7131 (option 6), email zoning.mailbox@phoenix.gov or visit our website at <http://phoenix.gov/pdd/licensetimes.html>.

In making this application, I understand that the filing of this application and payment of fees does not entitle me to the relief requested. (See Sec. 307 of City of Phoenix Zoning Ordinance for standards by which the hearing officer will review the application.) I understand the approval of this request does not replace the need for acquiring the appropriate building permits, site plan approval, liquor license or any other licenses required by governmental agencies. I also understand that in the case of liquor request approval of a use permit does not guarantee the CITY OF PHOENIX will recommend approval of the liquor license.

APPLICANT'S SIGNATURE: _____ DATE: _____

NOTE TO APPLICANT: SUCH USE PERMITS AND VARIANCES AS ARE GRANTED BY THE ZONING ADMINISTRATOR SHALL BE VOID IF THE USE IS NOT COMMENCED OR IF A BUILDING PERMIT IS NOT OBTAINED 60 DAYS OF SUCH GRANTING OR WITHIN THE TIME STIPULATED BY THE ADMINISTRATOR.

APPEALS OF DECISIONS OF THE ZONING ADMINISTRATOR MAY BE MADE BY ANY PERSON TO THE BOARD OF ADJUSTMENT WITHIN 15 DAYS AFTER THE DATE OF ACTIONS.

REQUEST

1. Use permit for a comprehensive sign plan for 2023 NFL Super Bowl events within the Downtown Redevelopment Area. Use permit required.
2. Use permit to allow temporary signs erected in conjunction with a special promotional event within the Business Core of a civic or commercial nature. Use permit required.

ZONING ORD. SECTIONS
705.E.2 and 705.F.1.b
1209.B.8.j

GEOGRAPHIC INFORMATION

APN:

Qtr Section(Map Index):



City of Phoenix

PLANNING AND DEVELOPMENT DEPARTMENT

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COUNCIL DISTRICT: 7, 8
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FILING STAFF: DAW

Fee	Fee Waived	Fee Date	Receipt	Purpose
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HEARING DATES

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PROPERTY LOCATION: Downtown Redevelopment Area, as defined in Resolution No. 21987

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APPLICANT'S SIGNATURE: _____

DATE: _____

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APPEALS OF DECISIONS OF THE ZONING ADMINISTRATOR MAY BE MADE BY ANY PERSON TO THE BOARD OF ADJUSTMENT WITHIN 15 DAYS AFTER THE DATE OF ACTIONS.

REQUEST

1. Use permit for a comprehensive sign plan for 2023 NFL Super Bowl events within the Downtown Redevelopment Area. Use permit required.
2. Use permit to allow temporary signs erected in conjunction with a special promotional event within the Business Core of a civic or commercial nature. Use permit required.

ZONING ORD. SECTIONS
705.E.2 and 705.F.1.b
1209.B.8.j

GEOGRAPHIC INFORMATION

APN:

Qtr Section(Map Index):

ARIZONA 2023

SUPER BOWL LVII

City of Phoenix
Use Permit Request
Building Wraps

CITY OF PHOENIX
NOV 17 2022
Planning & Development
Department



From: PDD Sign Services <pdd.signservices@phoenix.gov>
Date: January 24, 2023 at 3:52:41 PM MST
To: Bramley Paulin <bramleypaulin@cox.net>
Subject: RE: Adjustments to Appointments Schedules

You're Welcome

-----Original Message-----

From: Bramley Paulin <bramleypaulin@cox.net>
Sent: Tuesday, January 24, 2023 3:50 PM
To: PDD Sign Services <pdd.signservices@phoenix.gov>
Subject: Re: Adjustments to Appointments Schedules

Thank you very much
Bramley

On Jan 24, 2023, at 3:47 PM, PDD Sign Services <pdd.signservices@phoenix.gov> wrote:

Bramley,

Your appointment has been changed. New appointment below

DATE TO 1/25/23 @ 10AM

-----Original Message-----

From: Bramley Paulin <bramleypaulin@cox.net>
Sent: Tuesday, January 24, 2023 3:39 PM
To: PDD Sign Services <pdd.signservices@phoenix.gov>
Subject: Re: Adjustments to Appointments Schedules

Please see details within my original email. The city's email link to reschedule / cancel seems not be working

On Jan 24, 2023, at 3:36 PM, PDD Sign Services
<pdd.signservices@phoenix.gov> wrote:

Hello,

What adjustments would you like to make.

-----Original Message-----

From: Bramley Paulin <bramleypaulin@cox.net>
Sent: Tuesday, January 24, 2023 3:31 PM
To: PDD Sign Services <pdd.signservices@phoenix.gov>
Subject: Adjustments to Appointments Schedules

I would like to make adjustments to my appointments schedules.
Can someone assist?

Confirmation # 295241400
Bramley Paulin
Temp Sign / Use Permit
PLEASE CHANGE DATE TO 1/25/23 @ 10AM

Confirmation #295231500
Bramley Paulin
PLEASE CANCEL APPOINTMENT

Confirmation # 295221530
Bramley Paulin
PLEASE CANCEL APPOINTMENT

John Thorpe

From: David H Benton <david.benton@phoenix.gov>
Sent: Monday, December 19, 2022 3:52 PM
To: John Thorpe
Subject: 1129 N st

Mr. Thorpe,

In light of the meeting with Mr. Paulin scheduled for Dec 27, I thought it would be a good idea for us to chat. Are you available for a phone call?

David H Benton
Chief Assistant City Attorney
City of Phoenix Law Department
200 West Washington Street, 13th Floor
Phoenix, AZ 85003
(602) 262-4551
david.benton@phoenix.gov

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