



CITY OF SURPRISE
Regular City Council Work Session Agenda
16000 N. Civic Center Plaza
Surprise, AZ 85374

Tuesday, February 2, 2016 @ 4:00 PM
COUNCIL CHAMBERS

Back Print

- A. Call To Order
- B. Roll Call
- C. Pledge of Allegiance
- D. Call To The Public:

INSTRUCTIONS: In order to address the City Council, you will need to fill out a Call to the Public Form available at the front counter, and then turn it in to the City Clerk before the meeting begins.

[Download the Call to the Public form](#) (PDF download requires [Adobe Acrobat Reader](#))

[Fill out the Call to the Public form online](#) If submitting form electronically, please submit to City Clerk at least one hour before the meeting start time.

The Call to the Public form is also available at the front counter.

Note: A.R.S. 38-431.01(H) - During this time members of the public may address City Council on any item not on the agenda. At the conclusion of the open call, City Council may respond to criticism, may ask staff to review the matter or may ask that the matter be put on a future agenda. No discussion or action shall take place on any item raised.

Approval of items on the Consent Agenda – all items with an asterisk (*) are considered to be routine matters and will be enacted by one motion and one roll call vote to the City Council. There will be no separate discussion on these items unless a Councilmember requests, in which event the item will be removed from the consent agenda and considered in its normal sequence on the agenda.

E. Regular City Council Work Session Agenda:

Regular Agenda Item - Non-Public Hearing:

1. District Citywide [Presentation and discussion by Rusty Mitchell, Director of Community Initiatives for Luke Air Force base, pertaining to an update on activities at the base.](#) None
Nicole
Lance,
Deputy City
Manager
2. District Citywide [Presentation and discussion regarding Bell and Grand communication and outreach during construction in support of local businesses.](#) None
Jeanine
Jerkovic,
Economic
Development
3. District Citywide [Presentation and Discussion pertaining to a proposed amendment to Chapter 113 of the Surprise Municipal Code regarding Political](#) No Action
Robert

F. Executive Session:

For information Purposes; Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, but for only the following purposes:

- discussion or consideration of personnel matters (A.R.S. §38-431.03 (A)(1));
- discussion or consideration of records exempt by law from public inspection (A.R.S. §38-401.03 (A)(2));
- discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03 (A)(3));
- discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. §38-431.03 (a)(4));
- discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03 (A)(5)); or
- discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town. A.R.S. §38-401.03 (A)(6)).
- discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03 (A)(7)).

Confidentiality Requirements Pursuant to A.R.S. §38-431.03(C)(D): Any person receiving executive session information pursuant to A.R.S. §38-431.02 shall not disclose that information except to the Attorney General or County Attorney by agreement of the City Council, or as otherwise ordered by a court of competent jurisdiction.

The council may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

G. Adjournment:

SHERRY ANN AGUILAR, CITY CLERK, MMC

POSTED:

SPECIAL NOTE: PERSONS WITH SPECIAL ACCESSIBILITY NEEDS, INCLUDING LARGE PRINT MATERIALS OR INTERPRETER, SHOULD CONTACT THE CITY CLERK'S OFFICE @ 623.222.1200 OR TTY 623.222.1002, BY NO LATER THAN 24 HOURS IN ADVANCE OF THE REGULAR SCHEDULED MEETING TIME.



CITY OF SURPRISE
Regular City Council Work Session

February 2, 2016 @ 4:00:00 PM

Back Print

Council Meeting Date:	February 2, 2016	Contact Person:	Nicole Lance, Deputy City Manager
Submitting Department:	City Mgr	District:	Citywide
Staff Recommendations:	None		

Consent	Regular	Public Hearing	Report/Discussion
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Agenda Wording:

Presentation and discussion by Rusty Mitchell, Director of Community Initiatives for Luke Air Force base, pertaining to an update on activities at the base.

Motion:

N/A, item is for presentation and discussion only.

Background:

As a primary community partner, representatives from Luke Air Force base periodically update the Council regarding activities on the base. This is a general update regarding base activity and current initiatives.

Objective Analysis:

N/A

Policy Compliant:

This item is City and Council policy compliant.

Financial Impact:

None at this time; however, topics discussed in this work session could lead to future actions which may have a fiscal impact on city operations.

Budget Impact:

None at this time.

FTE Impact:

The number of full time equivalents (FTE) is not impacted by this item.

ATTACHMENTS:

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No Attachments Available



CITY OF SURPRISE
Regular City Council Work Session

February 2, 2016 @ 4:00:00 PM

Back Print

Council Meeting Date:	February 2, 2016	Contact Person:	Jeanine Jerkovic, Economic Development
Submitting Department:	Econ Development	District:	Citywide
Staff Recommendations:	None		

Consent	Regular	Public Hearing	Report/Discussion
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Agenda Wording:

Presentation and discussion regarding Bell and Grand communication and outreach during construction in support of local businesses.

Motion:

N/A

Background:

Arizona Department of Transportation (ADOT) will begin construction of the Bell and Grand overpass bridge in calendar year 2016 resulting in a full closure for a temporary period of time. This presentation will discuss planned outreach and promotional efforts to mitigate local business impacts and encourage consumer support required to sustain local businesses during the Bell and Grand construction closures.

Objective Analysis:

Policy Compliant:

This discussion was requested by Council and is consistent with Council policy

Financial Impact:

Promotional efforts that will be discussed in this work session may have future costs that impact operational expenses. Anticipated efforts will require additional staff time, reprioritization of staff goals, and financial resources, such as advertising, designing and printing materials, and others.

Budget Impact:

Promotional topics discussed in this work session could lead to future actions which may have a budget impact.

FTE Impact:

The number of full time equivalents (FTE) is not yet impacted by this item, although additional staff resources may be required as a result of promotional efforts discussed in this work session.

ATTACHMENTS:

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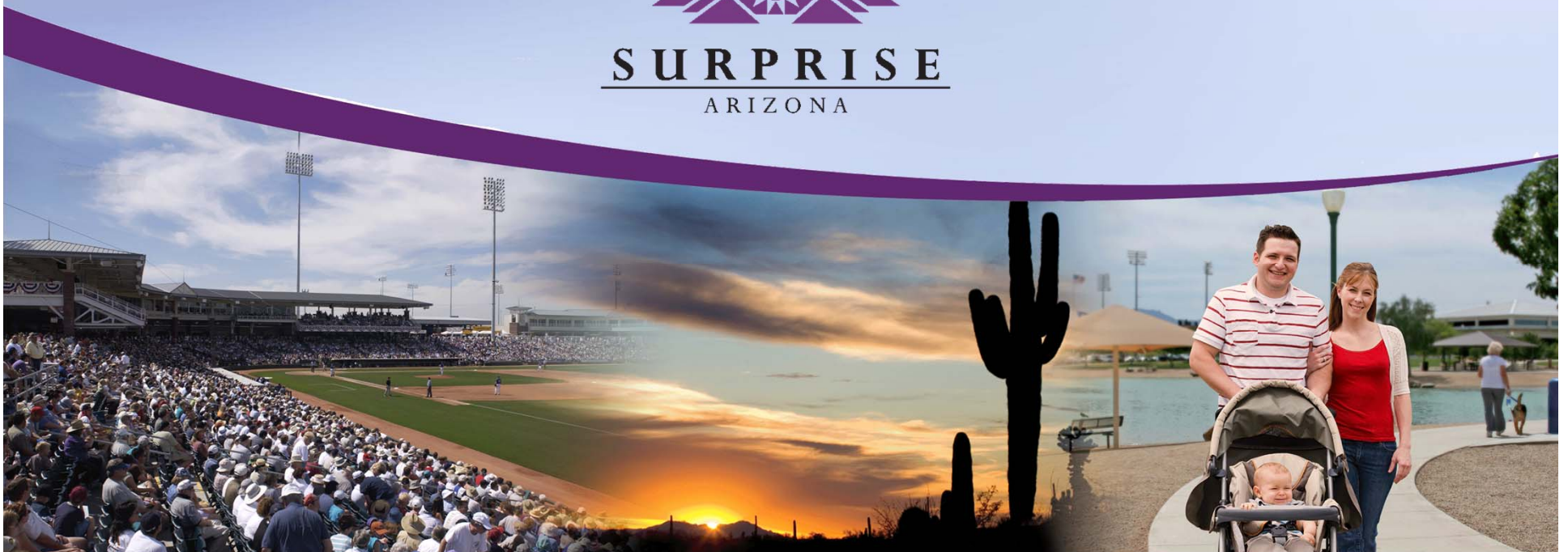
☐ [Bell/Grand Business Engagement Presentation](#)

Bell and Grand Business Engagement

Council Workshop Presentation

February 2, 2016

Jeanine Jerkovic
Economic Development Director

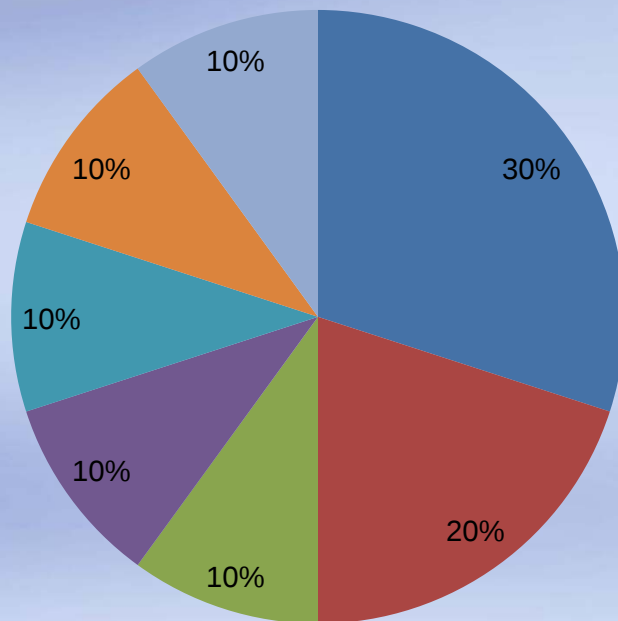


Staff & Resource Allocation



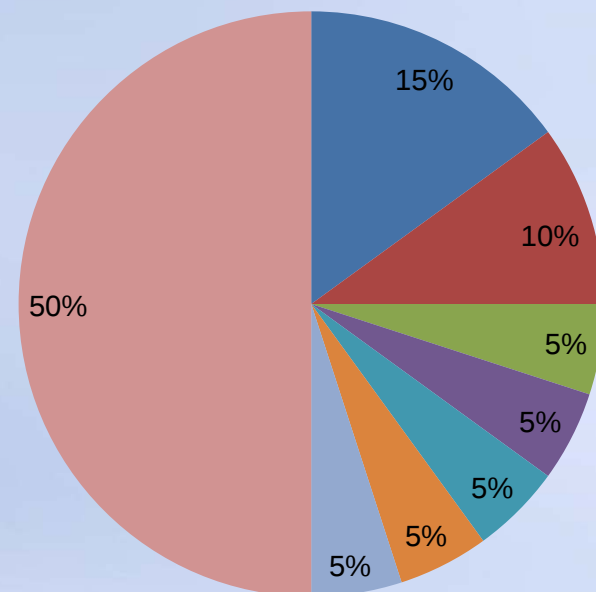
Current Staff & Resource Allocation

- Large Business / Relocation
- Innovation / Entrepreneurship
- Small Business
- Retail Attraction
- Education
- Partnerships / Special Programs
- Business Retention and Expansion



February/March – November 2016

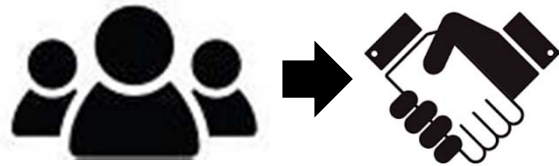
- Large Business / Relocation
- Innovation / Entrepreneurship
- Small Business
- Retail Attraction
- Education
- Partnerships / Special Programs
- Business Retention and Expansion
- Bell and Grand



Economic Dev. Reprioritization

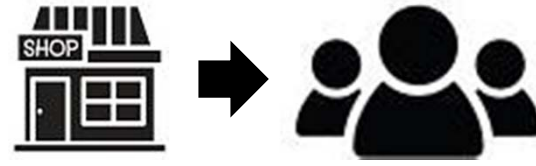


Customer Retention



Relationship Based

Our Businesses



Are Our Customers

70-85%

Existing companies generate 70-85% **more new jobs** than recruited employers and start-ups

7x > \$

Costs 6-7X more **to acquire a new customer** vs retaining an existing one

12 : 1

Takes 12 **positive customer experiences** to overcome a negative one

2 : 1

Negative experiences **are shared 2-to-1** over positive ones

96%

96% of dissatisfied customers **never hit the radar screen** and suffer quietly

92%

92% of customers say they will never go back **after a negative experience**

68%

68% of **customers leave** because they think you don't care about them

ED and the Bell & Grand Project



Two-Pronged Bell and Grand BR&E Approach

Bridge Buddy Program: Business consultation for mitigating construction impacts

ED role in facilitating business communication: Maps, Website, Email Blasts

Chamber partnership on Business Guide, Speaker Series

Coordinated door-to-door campaign with ADOT

Temporary & Permanent signage, events allowed

Resources considered for signage, additional staff time, advertising, etc.

Shop Local Promotion: Consumer focused to encourage behavior during construction impacts

Marketing and advertising campaign in coordination with Chamber, Property Management, Businesses.

Specific to Bell & Grand area / temporary initiatives

Aimed at shoppers rather than businesses



Construction Mitigation Program

Bell and Grand



“Getting Your Business Across the Finish Line”
brochure co-authored with Chamber:

- Before construction / planning for the impacts
- During construction
- After construction / celebration of final product

Sign Up ▶

Education Series:

- Social Media Marketing
- Customer Engagement
- Financing



Business Outreach:

- Business Visits (multiple)
- Job Fairs
- Event Partnership



Communication Strategies:

- Weekly/Bi-Weekly PIO Meetings
- 2nd Tuesday: Public Outreach Meetings
- 4th Tuesday: Bell and Grand Cabinet Meetings

About Shop Local Campaigns



Best Practices of Shop Local Campaigns Nationally / Overview:

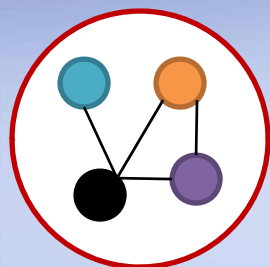


Feel-good cause:

"Helps dollars stay local to fund police, fire, pools, parks, etc."



Community interaction between business and city to discuss support needs



"Team-Up" Approach / better when businesses themselves band together:

- o Events, signage, ads, group discounts
- o City role in support/promotion of these initiatives



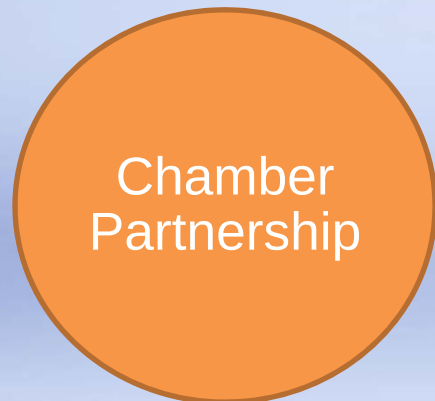
City can help highlight business stories through social media, email blasts



Chamber has existing campaigns

Shop Local Campaign

Bell and Grand



Bridge Buddy Contacts



Kendra:

Business Liaison

(Economic Development)



Aisha:

Public Information

*(Communications
and Marketing)*



Armando:

Traffic and Access

(Engineering)

City Business Line: 623.222.3330 | Website: www.surpriseaz.gov/bellandgrand

ADOT Project Hotline: 855.712.8530 | Website: www.azdot.gov/bellandgrand

ED Staff Resources



Kendra: Point of Contact for Businesses – Door-to-door, e-blast outreach, stakeholder meeting organization



Julie: TechCelerator signage, speaker series coordination



Kelsey: Data analytics and marketing/design of materials



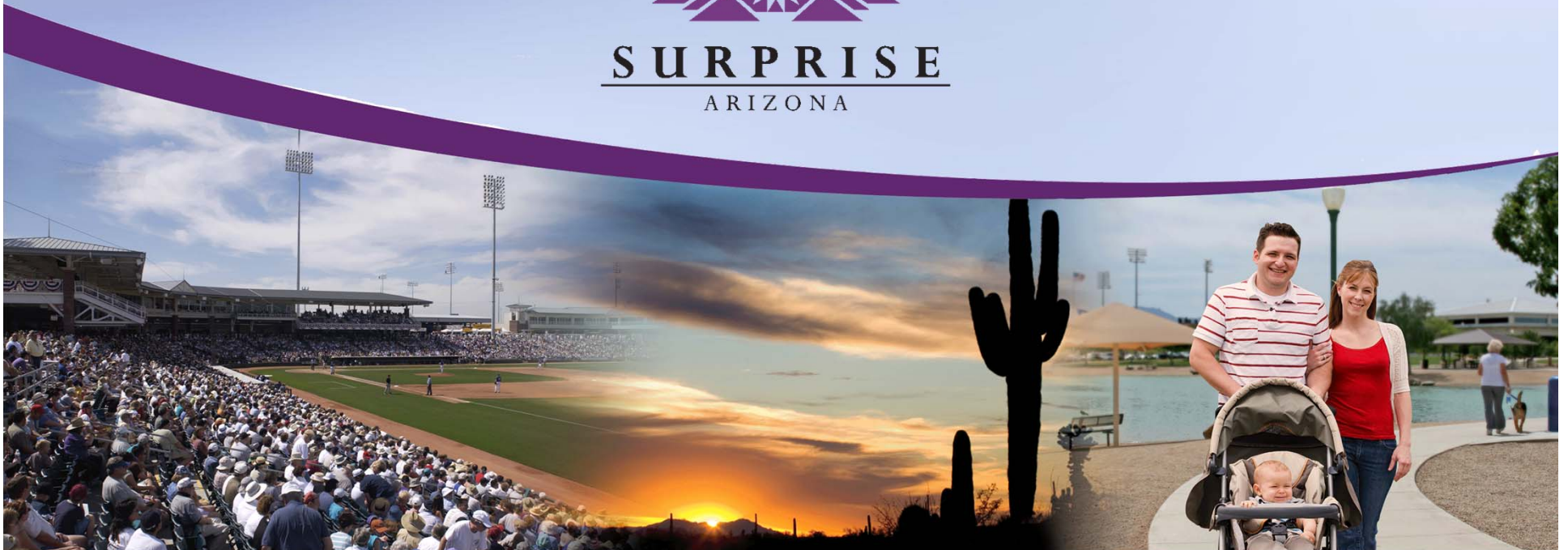
Jeanine & Mike: Decision-making for resource allocations



Suzanne, Al: Assistance with one-on-one business communication

Thank you!

Jeanine Jerkovic
Economic Development Director
(623) 222-3327
Jeanine.Jerkovic@SurpriseAZ.gov





CITY OF SURPRISE
Regular City Council Work Session

February 2, 2016 @ 4:00:00 PM

Back Print

Council Meeting Date:	February 2, 2016	Contact Person:	Robert Kuhfuss, Community Development
Submitting Department:	CD	District:	Citywide
Staff Recommendations:	No Action		

Consent	Regular	Public Hearing	Report/Discussion
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Agenda Wording:

Presentation and Discussion pertaining to a proposed amendment to Chapter 113 of the Surprise Municipal Code regarding Political Signs.

Motion:

No Action.

Background:

In early 2015, staff initiated a proposed Text Amendment to Chapter 113 of the SMC under case FS15-311. The intent of that Text Amendment was, and is, to re-write Chapter 113 in its entirety for the purpose of clarifying and simplifying the code's language, while addressing certain deficiencies. During the preliminary work regarding FS15-311, the U.S. Supreme Court ruled on a landmark case, Reed v. Town of Gilbert, which at its core dealt with temporary signs in the public right-of-way. One of the arguments made by the Town of Gilbert to the Supreme Court, however, involved the application of ARS 16-1019 which involved Political Signs. The Supreme Court rejected that argument. The Arizona League of Cities and Towns sought an opinion from the Arizona State Attorney General regarding ARS 16-1019. Arizona Attorney General Mark Brnovich then opined that ARS 16-1019 did not violate the First Amendment to the U.S. Constitution or the Reed decision. Further staff review of the existing language in Chapter 113 of the Municipal Code as it pertains to political signs, however, leads staff to conclude that said language is not consistent with the U.S. Supreme Court's decision regarding Reed.

Objective Analysis:

Approval of the proposed Text Amendment will reduce the likelihood of the City of Surprise having to defend against legal challenges arising from a claim that provisions of the sign code which speak to political signage are inherently content-based.

Denial of the proposed Text Amendment will have the effect of maintaining the status quo, which could lead to legal challenges arising from the content-based nature of the existing language.

Policy Compliant:

City policies do not explicitly speak to signage; however, the Purpose statement in Section 113-1 of the Municipal Code states in part that, “The purpose of this chapter is to safeguard the public interest by establishing standards of signs within the City of Surprise.” This statement, in and of itself, is an expression of the will of the City Council; however, the Council's will can be served through the existing language pertaining to political signs as expressed in state statute.

Financial Impact:

All activity related to ongoing development of the City of Surprise has an economic and fiscal impact on the city and the region.

Budget Impact:

There is no anticipated budget impact related to this item.

FTE Impact:

This item does not have an impact on current staff levels.

ATTACHMENTS:

Click to download

- ☐ [FS15-520 - Political Sign Text Amendment - Public Engagement Form](#)
 - ☐ [00 - FS15-520 - Political Sign Text Amendment - Staff Report](#)
 - ☐ [01 - FS15-520 - Political Sign Text Amendment - Summary of Proposed Changes, January 4, 2016 version](#)
 - ☐ [02 - FS15-520 - Political Sign Text Amendment - ARS § 16-1019](#)
 - ☐ [03 - FS15-520 - Political Sign Text Amendment - Letter of Opinion from Arizona Attorney General Mark Brnovich regarding Reed and ARS § 16-1019](#)
-

PUBLIC ENGAGEMENT FORM

PROJECT TITLE:

OVERALL PUBLIC INVOLVEMENT LEVEL:

IDENTIFY STAKEHOLDERS:

OBJECTIVES:

PUBLIC ENGAGEMENT STRATEGIES & TOOLS:

Public Engagement & Project timeline:

Public outreach time frame (when to when)

Future Council Work Session/Meetings target dates

Election dates (if applicable)

Project start/completion dates

Communication Tools and Technique options: (which do you plan to use?)

Press releases

Public meetings (video/photos, poster boards, fact sheet(s) *do you need Spanish version?)

Presentations to boards and commissions, other interested community partners/stakeholders

Third-party consultant/moderator (pending budget)

Survey (online/paper/both?)

Social media

Surprise 11

Notify Me email/ Council newsletters (opt-in audience)

Paid advertising (pending budget)

Surprise Progress (mailed quarterly and tied to print deadlines)

Booth at city events

Paid mailings (pending budget)

Creation of a subcommittee/task force

Youth/adult activities, registration, or orientation (HOA Academy)

Website updates

TEXT AMENDMENT

REPORT TO THE CITY COUNCIL

Case: FS15-520

Project Name: Text Amendment to Chapter 113 of the Surprise Municipal Code relating to Political Signs

Council District: Citywide

Meeting Date: February 2, 2016 (Work Session)

Planner: Robert H. Kuhfuss, AICP, Planner II

Application Summary:

The subject application involves proposed revisions to Chapter 113 of the Surprise Municipal Code (SMC) as it pertains to Political Signs. Staff's intent is to remove from the SMC any language relating to political signs in deference to the recent U.S. Supreme Court decision regarding Reed v. Town of Gilbert.

Background:

In early 2015, staff initiated a proposed Text Amendment to Chapter 113 of the SMC under case FS15-311. The intent of that Text Amendment was, and is, to re-write Chapter 113 in its entirety for the purpose of clarifying and simplifying the code's language, while addressing certain deficiencies. During the preliminary work regarding FS15-311, the U.S. Supreme Court ruled on a landmark case, Reed v. Town of Gilbert, which at its core dealt with temporary signs in the public right-of-way. The Reed decision has far reaching implications, including that signs should by-and-large be content-neutral. In light of the Reed decision, staff redirected its efforts to craft content-neutral language and is in that process now.

One of the provisions of Chapter 113 of the SMC as currently written is to regulate political signs in a manner that is consistent with ARS § 16-1019. While ARS § 16-1019 makes the removal of political signs a Class 2 misdemeanor in certain circumstances, the statute also provides that municipalities may remove political signs if they are deemed to be a hazard. Of interest is that ARS § 16-1019 does not require a municipality to adopt regulations regarding political signs in order to enforce that provision of state statute.

One of the arguments made by the Town of Gilbert to the Supreme Court, however, involved the application of ARS § 16-1019. The U.S. Supreme Court rejected this argument, which led to concerns that ARS § 16-1019 itself may be in conflict with Reed due to it being content-based as opposed to content-neutral. The Arizona League of Cities and Towns sought an opinion from the Arizona State Attorney General regarding ARS § 16-1019. Attorney General Mark Brnovich

then opined that ARS § 16-1019 did not violate the 1st Amendment to the U.S. Constitution or the Reed decision, as summarized in the conclusion statement of the Opinion (R15-013) as follows:

“Arizona state statutes referencing political signs do not restrict speech, so Reed does not have implications for our state statutes. Because Section 16-1019 does not itself restrict speech, it does not implicate the First Amendment and Reed does not, therefore, invalidate this state law. There is no need to amend Section 16-1019 because of the Reed decision.”

Mark Brnovich, Arizona Attorney General

Despite the Attorney General’s opinion, staff is still concerned that a legal challenge to the City of Surprise could be made with respect to Chapter 113 of the SMC as it pertains to political signage due to its inherent reliance on the sign’s content for enforcement purposes, thereby violating the premise of content-neutrality. While staff is working on a larger Text Amendment that will address content-based issues at-large, this effort may take some time and with the upcoming political season, staff wishes to reduce the likelihood of being faced with a legal challenge with respect to political signage.

Staff has scheduled the matter for a Citizen Review meeting to occur on January 20, 2016 and has scheduled this matter for public hearing by the Planning and Zoning Commission on February 18, 2016, with final determination by the City Council to occur during a public hearing on March 1, 2016. Should the Council approve this Text Amendment on that date, the revisions would go into effect on March 31, 2016 and would be included in the sign code update being processed under FS15-311.

Attached:

01 Summary of Proposed Changes, January 4, 2016 version (3 pages)

02 Arizona Revised Statutes, § 16-1019 (2 pages)

03 Letter of Opinion from Arizona Attorney General Mark Brnovich regarding Reed and ARS §16-1019 (5 pages)

**Summary of Proposed Changes to Chapter 113 of the Surprise Municipal
Code regarding Political Signs**

City of Surprise Case FS15-520

January 4, 2016

The following is a summary of the proposed changes to the Surprise Municipal Code as of January 4, 2016 as it pertains to political signage. The scope of the proposed amendment may change as the project progresses through the process.

Amend Section 113-2 Definitions:

Remove “political speech” from the definition of “Noncommercial speech”:

Noncommercial speech: Constitutionally protected speech such as ~~political speech or ideological speech~~ that contains neither advertising copy nor obscene material or language. Signs containing only noncommercial speech shall always be considered on-premises.

Delete the definition of “Political sign”:

~~Political sign: A temporary sign used to advertise the candidacy of an individual, ballot proposition, or to encourage a citizen to vote.~~

Amend Section 113-4 Signs prohibited:

- (a) *No person shall erect, place, establish, paint, create or maintain a sign in the city except as provided in this chapter. All signs that are contrary to the provisions of this chapter are declared to be in violation, and as such may be abated as provided by law.*
- (b) *The following signs are prohibited. Any:*
 - (1) *Abandoned sign;*
 - (2) *Animated sign, except as specified in this chapter;*
 - (3) *Billboard sign;*
 - (4) *Off-premises sign, except as permitted within this chapter;*
 - (5) *Portable sign;*
 - (6) *Sandwich sign, except as permitted within this chapter;*
 - (7) *Snipe sign;*
 - (8) *Sign which inhibits free ingress to or egress from any door, window or any exit way required by the International Building Code as adopted and amended by the city, or by fire department regulations;*
 - (9) *Sign that may obstruct the line of sight of any authorized traffic sign, signal or other traffic control device; or any sign by reason of shape, color or position that interferes with or may be confused with any authorized traffic signal or device;*
 - (10) *Sign placed in a location that will obstruct vision of a vehicle operator while entering, exiting or traveling upon the public right-of-way;*
 - (11) *Sign located in a manner that interferes with pedestrian travel or poses a hazard to pedestrians;*
 - (12) *Vehicle sign when mounted or placed on any trailer, boat, or motor vehicle that is parked, stored or displayed in a manner to attract the attention of the public for advertising purposes;*

- (13) Sign with flashing, blinking, rotating lights, exposed neon or similar tube type illumination, bare incandescent, fluorescent, metal halide, or high or low pressure sodium light bulbs or mercury vapor light sources;*
- (14) Sign placed in rights-of-way, except as specified in this chapter;*
- (15) Message board;*
- (16) Roof-mounted sign;*
- (17) Any other sign that is not expressly permitted by this chapter;*
- (18) Home occupation sign;*
- (19) Pole-mounted banners, attention flags, wind-driven spinners, streamers, search lights, strobe lights, holographic projections, laser light displays, inflatable signs, or balloons;*
- (20) Any flag not associated with a governmental unit.*
- ~~*(21) Political signs displayed more than 60 calendar days prior to an election or seven calendar days after an election.*~~

Amend Section 113-8 Signs not requiring a permit:

No person shall be required to have a permit for the following signs; provided, however, that such signs shall be subject to any and all applicable provisions of this chapter or any other law:

- (1) Public signs;*
- (2) Directional signs, when wall-mounted or, if detached, where not exceeding a height of three feet;*
- (3) Emergency signs;*
- (4) Portable electronic signs used by the city for special events;*
- (5) Way finding signs for public buildings and facilities;*
- (6) Development sign as described under section 113-158(b);*
- (7) Temporary window graphics, consistent with restrictions herein;*
- ~~*(8) Political signs displayed in conjunction with an election erected no earlier than 60 calendar days prior to the election and removed seven calendar days after the election.*~~

16-1019. Political signs; printed materials; tampering; classification

A. It is a class 2 misdemeanor for any person to knowingly remove, alter, deface or cover any political sign of any candidate for public office or knowingly remove, alter or deface any political mailers, handouts, flyers or other printed materials of a candidate that are delivered by hand to a residence for the period commencing forty-five days before a primary election and ending seven days after the general election.

B. This section does not apply to the removal, alteration, defacing or covering of a political sign or other printed materials by the candidate or the authorized agent of the candidate in support of whose election the sign or materials were placed, by the owner or authorized agent of the owner of private property on which such signs or printed materials are placed with or without permission of the owner or placed in violation of state law or county, city or town ordinance or regulation.

C. Notwithstanding any other statute, ordinance or regulation, a city, town or county of this state shall not remove, alter, deface or cover any political sign if the following conditions are met:

1. The sign is placed in a public right-of-way that is owned or controlled by that jurisdiction.
2. The sign supports or opposes a candidate for public office or it supports or opposes a ballot measure.
3. The sign is not placed in a location that is hazardous to public safety, obstructs clear vision in the area or interferes with the requirements of the Americans with disabilities act (42 United States Code sections 12101 through 12213 and 47 United States Code sections 225 and 611).
4. The sign has a maximum area of sixteen square feet, if the sign is located in an area zoned for residential use, or a maximum area of thirty-two square feet if the sign is located in any other area.
5. The sign contains the name and telephone number or website address of the candidate or campaign committee contact person.

D. If the city, town or county deems that the placement of a political sign constitutes an emergency, the jurisdiction may immediately relocate the sign. The jurisdiction shall notify the candidate or campaign committee that placed the sign within twenty-four hours after the relocation. If a sign is placed in violation of subsection C and the placement is not deemed to constitute an emergency, the city, town or county may notify the candidate or campaign committee that placed the sign of the violation. If the sign remains in violation at least twenty-four hours after the jurisdiction notified the candidate or campaign committee, the jurisdiction may remove the sign. The jurisdiction shall contact the candidate or campaign committee contact and shall retain the sign for at least ten business days to allow the candidate or campaign committee to retrieve the sign without penalty.

E. A city, town or county employee acting within the scope of the employee's employment is not liable for an injury caused by the failure to remove a sign pursuant to subsection D unless the employee intended to cause injury or was grossly negligent.

F. Subsection C does not apply to commercial tourism, commercial resort and hotel sign free zones as those zones are designated by municipalities. The total area of

those zones shall not be larger than three square miles, and each zone shall be identified as a specific contiguous area where, by resolution of the municipal governing body, the municipality has determined that based on a predominance of commercial tourism, resort and hotel uses within the zone the placement of political signs within the rights-of-way in the zone will detract from the scenic and aesthetic appeal of the area within the zone and deter its appeal to tourists. Not more than two zones may be identified within a municipality.

G. A city, town or county may prohibit the installation of a sign on any structure owned by the jurisdiction.

H. Subsection C applies only during the period commencing sixty days before a primary election and ending fifteen days after the general election, except that for a sign for a candidate in a primary election who does not advance to the general election, the period ends fifteen days after the primary election.

I. This section does not apply to state highways or routes, or overpasses over those state highways or routes.



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION By MARK BRNOVICH ATTORNEY GENERAL December 2, 2015	No. I15-011 (R15-013) Re: Whether A.R.S. § 16-1019 requires an amendment
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To: Senator John Kavanaugh
Arizona State Senate

Question Presented

What legal impact does the recent United States Supreme Court ruling in *Good News Presbyterian Church v. Town of Gilbert* have on Arizona Statutes regulating political campaign signs? In particular, does the Supreme Court ruling require an amendment to Section 16-1019, Arizona Revised Statutes, in order to comply with the Court's mandate?

Summary Answer

The Supreme Court's decision does not directly impact any Arizona statutes regulating political campaign signs. It does not require an amendment to Section 16-1019 because nothing in that statute restricts speech.

Background

In 1962, the Arizona Legislature adopted House Bill 198, which provided misdemeanor penalties for anyone to "remove, alter, deface, or cover any political sign." Laws 1962,

Chapter 124 (HB 198) [codified as A.R.S. § 16-1312(A) (1962)]. At the time, the provision did not apply to “signs placed on private property with or without permission of the owner thereof, or signs placed in violation of state law, or county, city or town ordinance or regulation.” *Id.* [§ 16-1312(B)].

Since 1962, the statute has been amended a number of times. Its original function—imposing misdemeanor criminal penalties for tampering with political signs—has remained unchanged. In 2011, the Legislature significantly amended the law by:

1. Clarifying that local governments generally lack the authority to tamper with political signs that support or oppose a candidate or ballot measure and exist in a public right-of-way as long as the sign:
 - a. does not present a public hazard, obstruct vision, or interfere with the Americans with Disabilities Act;
 - b. meets maximum size limitations; and
 - c. contains contact information for the candidate or campaign committee.
2. Allowing a local government to relocate signs deemed to be placed in a manner constituting an emergency, subject to certain requirements.
3. Limiting the liability of a public employee who does not remove or relocate a sign pursuant to the “emergency” provision.
4. As to the provisions in number 1, exempting “commercial tourism, commercial resort and hotel sign free zones as those zones are designated by municipalities” and setting restrictions for such zones.
5. Allowing local governments to prohibit the installation of signs on government structures.
6. Limiting the prohibitions described in number 1 above from 60 days before a primary to 15 days after a general election, in most cases.
7. Clarifying that the section “does not apply to state highways or routes, or overpasses over those state highways or routes.”

A.R.S. § 16-1019. Acting under the authority of point four, municipalities have adopted ordinances creating tourism zones. *See, e.g.,* Fountain Hills Resolution No. 2012-31 (adopted

November 15, 2012); Paradise Valley Resolution No. 1241 (adopted October 13, 2011). These ordinances allow municipalities to remove political signs from the designated zones.

In June 2015, the United States Supreme Court decided *Reed v. Town of Gilbert, Arizona*, 135 S. Ct. 2218 (2015), clarifying the constitutional standard applicable to laws that restrict or limit speech based on its content. Specifically, the Court more clearly defined which laws are considered content-based and thus subject to strict scrutiny. A law subject to strict scrutiny is unconstitutional unless the government defending it can demonstrate that the law serves a compelling government interest and does so in the least restrictive manner possible.

Analysis

The *Reed* decision explicitly confirmed that *any* content-based government restriction of speech will be subject to the most rigorous level of review. *Id.* at 2227. Such restrictions will therefore most likely be found unconstitutional. *See Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, (2015) (noting that only in “rare cases” will “a speech restriction withstand[] strict scrutiny”). While the Court has long required content-based restrictions to meet this very high bar, determining when a regulation is or is not content-neutral remained open until *Reed* resolved the question by classifying any differential treatment based on “topic” as content-based:

Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

135 S. Ct. at 2227 (internal citations omitted). Under this standard, courts must apply strict scrutiny to special restrictions for political signs. *Reed* did not, however, restrict the permissibility of traditional time, place, and manner restrictions.

There are only three state laws regulating political signs in Arizona. Two of them, A.R.S. §§ 33-1261 and 33-1808, limit the ability of homeowners associations to restrict placement of political signs. A.R.S. §§ 33-1261(E), 1808(H), (I). The third statute, A.R.S. § 16-1019, imposes criminal penalties for interfering with political materials, including signs, and incorporates the exceptions described above, which allow a local government to adopt regulations relating to political signs.

Because this statute explicitly references political signs, one might suppose that it runs afoul of the First Amendment based on *Reed* because it references a particular category of speech identified by its content. To the contrary, *Reed* does not invalidate Section 16-1019. *Reed* clarified the analytical framework applicable to sign regulations that *restrict speech* and thus present “the danger of censorship” at the heart of First Amendment concerns. *Reed*, 135 S. Ct. at 2229. But nothing in Section 16-1019 restricts speech or compels the regulation of signs. Instead, it establishes the limits—under Arizona law—of what local governments may do as *they* limit or regulate signs. For example, subsection (F) recognizes that municipalities may designate certain sign-free zones within which the municipality may remove political signs. While such local laws might fall within the scope of *Reed*’s definition of content-based regulation, Section 16-1019 itself does not constitute content-based regulation.¹

A municipality desiring to enact rules specifically targeting political signs in violation of *Reed* cannot rely on Section 16-1019(F) to inoculate such rules against a First Amendment

¹ Justice Alito’s concurring opinion in *Reed* provides a number of examples of rules that are not content-based. 135 S. Ct. at 2334 (listing, *inter alia*, restrictions on size, illumination, off-premises placement, and number of signs).

challenge. The state law must now be read in light of *Reed*, and should thus be read as permitting municipalities to engage in sign regulation through the designation of tourism zones only to the extent that they do so in a content-neutral manner. In other words, such zones may not solely target political signs, but must employ generally-applicable time, place, and manner restrictions. That reconciliation with *Reed* does not affect the validity of Section 16-1019.

Conclusion

Arizona state statutes referencing political signs do not restrict speech, so *Reed* does not have implications for our state statutes. Because Section 16-1019 does not itself restrict speech, it does not implicate the First Amendment and *Reed* does not, therefore, invalidate this state law. There is no need to amend Section 16-1019 because of the *Reed* decision.

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