

# City of Flagstaff Advertising Policy

Follow Up After September 12 Discussion





# City of Flagstaff Advertising Policy

## Agenda for Tonight's Discussion

- Recap of September 12 Discussion.
- Background Clarification.
- Happenings Since September 12.
- Very High Level Legal Overview – Not Legal Advice.
- Changes to Draft Policy Since Last Meeting.
  - Options for consideration.
- Council Questions.
- Public Comment.
- Council Discussion and Direction.



# City of Flagstaff Advertising Policy

## Recap of September 12 Discussion

- Draft advertising policy presented for consideration.
- Staff provided some background regarding the purpose and intent of the policy.
- Draft policy was discussed with Council after receiving public comment.
  - Hot topic was the proposed restriction on firearms advertising.
- Council provided suggested changes from the dais.
- Staff is now back to discuss those suggested changes, as well as additional changes made by staff.



# City of Flagstaff Advertising Policy



## Background Clarification

- Matter is being argued in the press, which is unfortunate.
- Some statements in the press have been inaccurate or misleading.
- Want to ensure the Council and the public are considering accurate facts.



# City of Flagstaff Advertising Policy

## Background Clarification

- How did we get here?
  - Prior to 2021, advertising at the airport was managed by Clear Channel.
  - In 2021, City staff at the airport took over the program.
  - When City staff took over the program, advertising standards were adopted.
  - In April 2023, Timberline Firearms requested the opportunity to advertise at the airport.



# City of Flagstaff Advertising Policy

## Background Clarification

- How did we get here?
  - Timberline shared the proposed ad with staff, and staff was concerned that a portion of the ad did not comply with the advertising standards.
  - Staff shared those concerns with Timberline, and Timberline was unwilling to change the ad; instead, it became an argument about the standards.
  - Internal discussions commenced, and staff decided to take steps to clarify the standards.
  - In order to have clearer standards for all advertisers, staff felt it was appropriate to bring the discussion to Council and the public.



# City of Flagstaff Advertising Policy

## Clarification

- The City Council did not “take a stance” at the September 12 Work Session.
- The City is not “abusing its power to push an anti-gun agenda.”
- Timberline Firearms has not advertised at the airport every summer since 2019.
  - According to Airport records provided by Clear Channel, Timberline ran an ad at the airport from 8/26/19 to 9/22/19.
- Timberline Firearms was not denied the ability to run an ad at the airport in 2023.
  - Timberline was asked to revise the ad that was submitted—Timberline would not revise.
  - In fact, City staff not only attempted to work with Timberline to revise its ad for use at the airport, but also offered additional opportunities through Discover Flagstaff.



# City of Flagstaff Advertising Policy

## Clarification

**From:** Heidi Hansen  
**Sent:** Friday, July 7, 2023 2:46 PM  
**To:** Rob Wilson <[rob@timberlinefirearms.us](mailto:rob@timberlinefirearms.us)>  
**Subject:** RE: Call?

Rob – Here you go...

Datafy is a data driven agency providing digital solutions with key audiences. Further, to our Discover Flagstaff, business relationship, they are very good at listening, understanding and then providing a plan. They are very accessible, responsive, and reactive, they pivot when we need to pivot – they understand our business as many staff have worked in Destination Marketing Organizations (DMO). If you are interested in learning more and seeing how they might be able to cast a local net for you, I would give one of them a call to get more information. It's an extremely targeted way to advertise.



# City of Flagstaff Advertising Policy



## Happenings Since September 12

- Meeting with Mr. Wilson.
- Meeting with attorney from Goldwater Institute.
- Revised draft policy based on Council comment and additional internal review.



# City of Flagstaff Advertising Policy



## Legal Overview

- First Amendment of U.S. Constitution.

“Congress shall make no law ... abridging the freedom of speech, or of the press.” U.S. Const. amend. I.



# City of Flagstaff Advertising Policy

## Legal Overview – Speech on Public Property

“Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities.”

*Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799–800, 105 S. Ct. 3439, 3447, 87 L. Ed. 2d 567 (1985).



# City of Flagstaff Advertising Policy



## Legal Overview – Speech on Public Property

Selective access furthers First Amendment interests because it encourages “the government to open its property to some expressive activity . . . where, if faced with an all-or-nothing choice, it might not open the property at all.”

*Arkansas Educ. Television Com’n v. Forbes*, 523 U.S. 666 (1998).



# City of Flagstaff Advertising Policy

## Legal Overview – Forum Analysis

“The U.S. Supreme Court has adopted a so-called forum analysis as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interests of those wishing to use the property for other purposes. Under this analysis, the extent to which the government can control access to a particular forum depends upon the nature of the forum.”

*Korwin v. Cotton*, 234 Ariz. 549, 554, ¶ 9, 323 P.3d 1200, 1205 (App. 2014)  
(internal quote and citations omitted).



# City of Flagstaff Advertising Policy



## Legal Overview – Forums and Rules

- Traditional Public Forum.

“[E]xpressive activity occurring in ‘traditional public fora,’ such as streets or parks, receives the greatest protection from state limitations on speech.”

*Korwin v. Cotton*, 234 Ariz. 549, 555, ¶ 14, 323 P.3d 1200, 1206 (App. 2014).



# City of Flagstaff Advertising Policy

## Legal Overview – Forums and Rules

- Designated Public Forum.

“A designated public forum is a nontraditional forum that the government has opened for expressive activity by part or all of the public. The creation of a designated public forum requires a decision intentionally opening a nontraditional forum for public discourse.”

*Children of the Rosary v. City of Phoenix*, 154 F.3d 972, 976 (9th Cir. 1998) (internal quotes and citations omitted).



# City of Flagstaff Advertising Policy

## Legal Overview – Forums and Rules

- Nonpublic Forum.

“All remaining public property is classified as nonpublic fora. The government may limit expressive activity in nonpublic fora if the limitation is reasonable and not based on the speaker's viewpoint.”

*DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 965 (9th Cir. 1999).

“Viewpoint discrimination is a form of content discrimination in which the government targets not subject matter, but particular views taken by speakers on a subject.”

*Children of the Rosary v. City of Phoenix*, 154 F.3d 972, 980 (9th Cir. 1998).



# City of Flagstaff Advertising Policy

## Legal Overview – Forums and Rules

- Forums can be closed.

“Nor do we believe that the Constitution prohibited the school from closing the forum in response to appellant's ad. The government has an inherent right to control its property, which includes the right to close a previously open forum.”

*DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 970 (9th Cir. 1999).

“[T]he fact that the District chose to close the forum rather than post Mr. DiLoreto's advertisement and risk further disruption or litigation does not constitute viewpoint discrimination.”

*Id.*



# City of Flagstaff Advertising Policy

## Changes to Draft Policy Since Last Meeting

- Created separate policies for airport and recreation facilities.
- Expanded the purpose section.
  - Added additional goals and objectives.
- Expanded statement regarding nonpublic forum status.
- Clarified the permitted types of advertising.
  - Commercial and government advertising.
- Added limitation on elected PSAs.
- Added restriction on ads depicting graphic violence.



# City of Flagstaff Advertising Policy

## Changes to Draft Policy Since Last Meeting

- Provided options regarding firearm advertising.
- Added restriction depicting use of weapons in a manner intended to harm an individual or animal.
- Added restriction on advertising that promotes or markets adult-oriented businesses.
- Added statement regarding viewpoint neutrality.



# City of Flagstaff Advertising Policy

- **Council Questions**
- **Public Comment**
- **Council Discussion and Direction**
  - **Does the City want to continue accepting advertising at the airport and recreation facilities?**
    - **If no, we can end the discussion.**
    - **If yes:**
      - **Which option related to firearms?**
      - **Any other changes or suggested edits?**
      - **Staff will bring the final policy back for action on Nov. 21.**

Thank you.

