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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 Rebekah Massie; and
Quintus Schulzke,
14 *Plaintiffs,*
15 v.
16 City of Surprise, a municipal corporation
and a governmental entity;
17 Skip Hall, in his individual capacity; and
18 Steven Shernicoff, in his individual
capacity,
19 *Defendants.*

No. _____

**COMPLAINT FOR
CIVIL-RIGHTS VIOLATIONS**

JURY TRIAL DEMANDED

Hon. _____

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INTRODUCTION

1. The Supreme Court has made clear that “one of the most precious of the liberties safeguarded by the Bill of Rights” is the sacred promise to every American, enshrined in the First Amendment, that citizens enjoy the freedom to complain about their leaders. *Lozman v. Riviera Beach*, 585 U.S. 87, 101 (2018). But Defendants Surprise, Arizona and its mayor, Skip Hall, broke that promise, arresting Plaintiff Rebekah Massie in front of her 10-year-old daughter for criticizing a public official at a city council meeting.

2. Video of the arrest¹ speaks for itself. On August 20, 2024, during the public comment portion of the Surprise City Council meeting, Massie spoke in opposition to a planned pay increase for Surprise’s city attorney. But Mayor Hall interrupted her remarks, scolding her for violating a City Council policy prohibiting “complain[ing]” about public officials.

3. Massie insisted—correctly—that the First Amendment protected her comments. Mayor Hall didn’t care, responding, “Do you want to be escorted out of here or are you going to stop talking?” Massie stood firm on her constitutional rights and demanded the opportunity to finish her remarks.

4. She never got the chance. Instead, Mayor Hall instructed a Surprise police officer, Defendant Steven Shernicoff, to detain Massie and eject her from the room.

¹ Video of the relevant portion of Surprise’s August 20, 2024 City Council meeting is attached as Exhibit A; video of the entire meeting is on Surprise’s public webpage, <https://surpriseaz.portal.civicclerk.com/event/4076/media>. Mayor Hall recognizes Massie to speak at 1:57:42.

1 Shernicoff carried out Hall’s unconstitutional order, detaining and then arresting Massie in
2 the City Council chamber. Her alleged crime? “Trespassing.” But the only trespass on
3 August 20th was against Massie’s rights.

4 5. Surprise places a muzzle on its residents at City Council meetings, imposing
5 a policy that bars remarks leveling “charges or complaints against any employee of the
6 City or members of the body” (the “Council Criticism Policy”).

7 6. Surprise’s Council Criticism Policy violates the First Amendment.
8 “Criticism of government is at the very center of the constitutionally protected area of free
9 discussion.” *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). After all, “speech concerning
10 public affairs is more than self-expression; it is the essence of self-government.” *Garrison*
11 *v. Louisiana*, 379 U.S. 64, 74–75 (1983).

12 7. But when Massie exercised her constitutional right to criticize officials at a
13 City Council meeting, a right “high in the hierarchy of First Amendment values,” *Lozman*,
14 585 U.S. at 101, the Council Criticism Policy and Mayor Hall ensured she left the meeting
15 in handcuffs. That might be how repressive regimes treat government critics, but it’s an
16 affront to our Constitution.

17 8. Surprise’s sudden move to arrest dissidents and enforce the Council
18 Criticism Policy is casting a cloud of fear over the city. Plaintiff Quintus Schulzke, a
19 frequent speaker at City Council meetings, now fears criticizing Surprise officials, knowing
20 he, like Massie, now risks arrest when he exercises his constitutional rights.

1 to the public. During the public comment period of City Council meetings, Surprise
2 enforces the Council Criticism Policy.

3 15. Defendant Skip Hall is the elected Mayor of the City of Surprise. The Mayor
4 is the presiding officer of the City Council and its meetings. Mayor Hall, enforcing the
5 Council Criticism Policy, ordered Massie to cease complaining about city officials, then
6 directed police to detain her.

7 16. Mayor Hall is Surprise's final policymaker for rules and decisions pertaining
8 to the conduct of City Council meetings.

9 17. At all times relevant to this Complaint, Mayor Hall acted under color of state
10 law. Massie sues Hall in his individual capacity.

11 18. Defendant Steven Shernicoff is an officer of the Police of the City of
12 Surprise. Officer Shernicoff, enforcing the Council Criticism Policy, detained and arrested
13 Massie.

14 19. At all times relevant to this Complaint, Officer Shernicoff acted under color
15 of state law. Massie sues Shernicoff in his individual capacity.

16 **JURISDICTION AND VENUE**

17 20. This action arises under the First, Fourth, and Fourteenth Amendments to
18 the United States Constitution and is brought under the Civil Rights Act of 1871, 42 U.S.C.
19 §§ 1983 and 1988, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201-02.

20 21. Massie and Schulzke seek injunctive relief against the City of Surprise
21 enjoining enforcement of the Council Criticism Policy. Massie also seeks declaratory relief
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1 that the Council Criticism Policy and Mayor Hall’s directive that she cease criticizing city
2 officials at City Council meetings violate the First Amendment. Additionally, Massie seeks
3 monetary damages against the Defendants for violating her clearly established First and
4 Fourth Amendment rights.

5 22. Accordingly, this Court has subject-matter jurisdiction under 28 U.S.C.
6 § 1331 (federal question jurisdiction) and § 1343 (civil rights jurisdiction).

7 23. Venue is proper in the District of Arizona under 28 U.S.C. § 1391(b)(1)
8 because at least one of the Defendants resides in this District and all Defendants reside in
9 Arizona.

10 24. Venue is also proper in this judicial district under 28 U.S.C. § 1391(b)(2)
11 because a substantial part of the events and omissions giving rise to Massie’s and
12 Schulzke’s claims occurred within this District.

13 **FACTUAL ALLEGATIONS**

14 ***Surprise City Council meetings are open to public comments.***

15 25. The City of Surprise holds regular meetings of its City Council.

16 26. The mayor is the presiding officer of all City Council meetings. Surprise,
17 Ariz., Municipal Code § 2-40(a).

18 27. Under Arizona law, a “public body” like Surprise’s City Council, “may make
19 an open call to the public during a public meeting,” during which any individual may
20 “address the public body on any issue within the jurisdiction of the public body.” Ariz.
21 Rev. Stat. § 38-431.01(I).

1 28. Arizona law permits members of the public to criticize members of a public
2 body during a public comment period, providing that at “the conclusion of an open call to
3 the public, individual members of the public body may respond to criticism made by those
4 who have addressed the public body.” *Id.*

5 29. Arizona law allows public bodies to consider the public’s remarks, but
6 “members of the public body shall not discuss or take legal action on matters raised during
7 an open call to the public unless the matters are properly noticed for discussion and legal
8 action.” *Id.*

9 30. During City of Surprise City Council meetings, members of the public are
10 invited to speak during the “Call to the Public” segment of the meeting.

11 31. The City of Surprise’s website invites any person “wishing to address the
12 City Council” during the “Call-to-the-Public segment of the City Council Meeting” to
13 submit a form to the City Clerk’s office.

14 32. The “Council Meeting Public Comment Form” is available online and at City
15 Council meetings.

16 33. A true and correct copy of the “Council Meeting Public Comment Form,” as
17 made available online, is attached as **Exhibit B**.

18 34. According to the “Council Meeting Public Comment Form,” the City of
19 Surprise “values the comments and input from residents.” *Id.*

20 35. The “Council Meeting Public Comment Form” lists “rules” for remarks
21 during the public comment period. *Id.*

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1 36. The rules derive from the City of Surprise Policies & Procedures Manual, a
2 true and correct copy of which, as made available online, is attached as **Exhibit C**, and
3 from page 20 of its “Rules for the Public at Council Meetings” (the “Rules for the Public”).

4 37. On August 6, 2024, following a review of the City of Surprise Policies &
5 Procedures Manual by the Rules Committee, the City Council reaffirmed the Rules for the
6 Public.

7 38. The City of Surprise reaffirmed its use of the Council Criticism Policy even
8 though, 28 years earlier, a federal court declared unconstitutional a narrower policy
9 prohibiting “charges or complaints against any employee” during public comments at a
10 school board’s meetings. *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 730
11 (C.D. Cal. 1996).

12 39. The rules provide that public speakers are permitted to speak for three
13 minutes. Ex. B.

14 40. The rules, as published on the online form, prohibit “actual disruption” of
15 meetings. *Id.*

16 41. The rules and the Rules for the Public both contain the Council Criticism
17 Policy, barring speakers from “lodg[ing] charges or complaints against” Surprise officials
18 and employees. *Id.*; Ex. C at 20.

19 42. The Council Criticism Policy reads in full:

20 Oral communications during the City Council meeting may not
21 be used to lodge charges or complaints against any employee
22 of the City or members of the body, regardless of whether such
23 person is identified in the presentation by name or by any other

1 reference that tends to identify him/her. Any such charges or
2 complaints should be submitted during normal business hours
to the City Manager for appropriate action.

3 Ex. B; Ex. C at 20.

4 ***Mayor Hall welcomes praise and neutral speech about Surprise officials and employees***
5 ***during City Council meetings.***

6 43. The Council Criticism Policy permits and welcomes praises and neutral
7 speech during City Council meetings.

8 44. For example:

9 a) On December 20, 2022, a member of the public said she “came here
10 to thank all of you for everything that you’ve done for our
11 organization,” and “specially thank [...] Councilmember Roland
12 Winters” for “all of those years, you have been so instrumental in
13 supporting the arts,” and handed the Councilmember a gift.

14 b) On April 18, 2023, a member of the public praised the Chief of Police
15 of the City of Surprise, stating that “if there is ever any issues [sic], I
16 trust in Chief Piña to do what is necessary for his department to
17 continue to provide services in a professional manner,” and praised
18 “all the members of the Surprise Police Department” for “your hard
19 work and devotion to service for our communities.”

20 c) On October 17, 2023, a member of the public praised the Parks and
21 Recreation Director of the City of Surprise, saying the Director gave
22 a “great presentation” and he wanted to give “her and her staff a
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1 standing ovation” because it was “the kind of investment that we need
2 in our city,” and “our city is doing awesome and we are growing.”

3 d) On May 21, 2024, a member of the public mentioned two members of
4 the City Council by name, making a heart-shape hand symbol and
5 remarking, “Nick, love you. Heart, Nick. Heart, Jack.”

6 e) On May 21, 2024, Plaintiff Schulzke told the Council: “I know you’ve
7 all made a lot of personal sacrifice [...], serving as you have here.”

8 f) On August 6, 2024, Plaintiff Schulzke said “I had a great discussion
9 with Mr. Judd,” referring to a member of the City Council.

10 ***Massie voices respectful, but pointed criticism of Surprise’s public officials, including***
11 ***during City Council meetings.***

12 45. Rebekah Massie and Quintus Schulzke are frequent critics of the City of
13 Surprise and its elected and appointed officials.

14 46. Massie operates The Grand Failure, a nonprofit organization critical of the
15 government of the City of Surprise.

16 47. Through The Grand Failure, Massie operates a website,
17 TheGrandFailure.org, publishing articles, petitions, and podcasts critical of the government
18 of the City of Surprise.

19 48. Through The Grand Failure and its website, Massie encourages visitors to
20 contact Surprise officials, including Mayor Hall.

1 49. On TheGrandFailure.org, Massie tells visitors: “We must continue to work
2 together and ensure our voices are heard that enough is enough, our safety is being put at
3 risk daily, and we are not going to allow this to be the ‘status-quo’ any longer.”

4 50. Massie also frequently criticizes the government of the City of Surprise in
5 media appearances.

6 51. Massie’s public advocacy has been unwelcome to some members of the
7 Surprise City Council.

8 52. For example, on March 27, 2024, Councilmember Aly Cline—a candidate
9 for mayor—ripped down flyers Massie had posted to promote her website and another
10 candidate for mayor.

11 53. On June 18, 2024, an outside law firm determined Councilmember Cline
12 “violated state law and policies of the City on multiple occasions,” including in tearing
13 down Massie’s flyers.

14 ***Massie criticizes Surprise officials during City Council meetings on August 6, 2024.***

15 54. The City Council held two meetings on August 6, 2024: a “work session”
16 and a “regular” meeting.

17 55. Video of the August 6 work session of the City Council is publicly
18 available on Surprise’s webpage: [https://surpriseaz.portal.civicclerk.com/
19 event/4040/media](https://surpriseaz.portal.civicclerk.com/event/4040/media).

20 56. During a public comment period of the August 6, 2024, work session of the
21 City Council, Mayor Hall recognized Massie to speak. This occurs at 2:16:00 in the video.
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1 57. As Massie approached the podium, she noticed Mayor Hall rolled his eyes
2 while saying “Miss Massie wants to speak to us again?”

3 58. Massie told the mayor, “You can roll your eyes all you want, Mayor.”

4 59. During the public comment period of the August 6, 2024, regular City
5 Council meeting, Massie criticized the appointment process for several city officials.

6 60. Video of the August 6 regular meeting of the City Council is publicly
7 available on Surprise’s webpage:

8 <https://surpriseaz.portal.civicclerk.com/event/4064/media>.

9 61. The appointment process utilized a nominating committee composed of two
10 outgoing members of the City Council, including Councilmember Cline.

11 62. During her remarks, Massie questioned the propriety of the makeup of the
12 nominating committee for the appointments which involved outgoing councilmembers.

13 63. Massie called it a “question of ethics” that Mayor Hall “nominate[d] the chair
14 of the [nominating] committee and then the chair hand-selects the two members
15 appointed.” Massie also said Councilmember Cline “has proven herself incapable of being
16 impartial.”

17 64. Massie’s remarks can be seen at 38:43 in the regular City Council meeting
18 video.

19 65. As Massie approached the podium to speak during the second public
20 comment period of the meeting, a microphone captured a City Council member remarking
21 under their breath: “Oh, God.” This occurs at 1:00:05 of the video of the regular meeting.

1 *Surprise police detain Massie at Mayor Hall's direction after she opposes a raise for the*
2 *City Attorney.*

3 66. The City Council next met on August 20, 2024.

4 67. Mayor Hall presided over the August 20 meeting.

5 68. As the presiding officer of the August 20 meeting, Mayor Hall was Surprise's
6 final decisionmaker in implementing the Rules for the Public.

7 69. The City Council's agenda for the August 20 meeting announced the body
8 would consider an increase to the city attorney's salary.

9 70. The proposed amendment to the "Employment Agreement with City
10 Attorney" was premised on his "exceptional performance" having "faithfully and
11 competently performed the duties of City Attorney."

12 71. A true and correct copy of the "Second Amendment to the Employment
13 Agreement with City Attorney" considered at the August 20, 2024, meeting is attached as

14 **Exhibit D.**

15 72. A true and correct copy of the video of Surprise's August 20 City Council
16 meeting is submitted as **Exhibit A** to this Complaint.

17 73. Massie attended the August 20, 2024, meeting with her 10-year-old daughter.

18 74. When the "Call to the Public" segment began, Mayor Hall recognized Massie
19 to speak. (Ex. A at 1:57:56.)

20 75. Massie criticized the proposal to increase the city attorney's salary and
21 voiced her belief that the city attorney's pay was too high compared to the salaries paid to
22 other Surprise employees and to city attorneys in larger cities. (Ex. A at 1:59:00.)

1 76. Massie questioned the proposal’s assertion that the city attorney had done an
2 “exceptional” job. (Ex. A at 1:58:34.)

3 77. Massie supported her position by sharing her view that the city attorney had,
4 in handling complaints about the conduct of a mayoral candidate, not complied with the
5 Constitution, state law, or his duties of professional conduct. (Ex. A at 1:59:40.)

6 78. Massie further supported her position by asserting the city attorney had been
7 dilatory in responding to public records requests. (Ex. A at 2:00:24.)

8 79. Massie’s comments about the city attorney addressed issues within the
9 jurisdiction of the City Council.

10 80. Massie’s comments did not purport to lodge a formal charge or formal
11 complaint.

12 81. Massie’s comments did not disrupt the City Council meeting.

13 82. Before Massie’s three minutes had expired, and while she was explaining her
14 opposition to the proposed city attorney pay increase, Mayor Hall said, “I’ve got to
15 interrupt you here.” (Ex. A at 2:00:30.)

16 83. Mayor Hall held up the Council Meeting Public Comment Form. (Ex. A at
17 2:00:35; Ex. B.)

18 84. Mayor Hall told Massie that by speaking at a public meeting, she “agree[d]”
19 to the Council Criticism Policy. (Ex. A at 2:00:35.)

20 85. Mayor Hall then read her the policy verbatim. (Ex. A at 2:00:39.)

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1 86. Massie objected that Mayor Hall was violating her “First Amendment
2 rights.” (Ex. A at 2:01:01.)

3 87. Mayor Hall retorted, citing the Council Criticism Policy, “this is your
4 warning [...] for attacking the City Attorney personally.” (Ex. A at 2:01:06.)

5 88. Massie explained she was only sharing “factual information.” (Ex. A at
6 2:01:14.)

7 89. Mayor Hall responded that it “doesn’t matter.” (Ex. A at 2:01:15.)

8 90. When Massie explained that she had a First Amendment right to speak,
9 Mayor Hall responded she “agreed to” follow the Council Criticism Policy as a condition
10 for sharing her opinion during the public comment period. (Ex. A at 2:01:19.)

11 91. Massie responded that the Council Criticism Policy is “unconstitutional” and
12 urged Mayor Hall to “look at case law.” Massie stressed, “you are violating my First
13 Amendment rights.” (Ex. A at 2:01:23.)

14 92. Mayor Hall then told Massie, “Do you want to be escorted out of here or are
15 you going to stop talking?” (Ex. A at 2:01:41.)

16 93. When Massie again asserted that Mayor Hall was “violating my First
17 Amendment rights,” Hall responded: “That’s your opinion.” (Ex. A at 2:01:47.)

18 94. Although the city attorney was present, Mayor Hall did not ask the city
19 attorney whether Massie was correct.

20 95. Mayor Hall told Massie that she would be “escorted out” now and “in the
21 future also, any time you attack any staff member” or city official. (Ex. A at 2:01:51.)

1 96. Mayor Hall directed City of Surprise Chief of Police Benny Piña to “have
2 somebody come down here and escort Miss Massie out of this chamber.” (Ex. A at
3 2:02:14.)

4 97. Massie pleaded with Mayor Hall not to detain her “in front of my 10-year-
5 old daughter.” (Ex. A at 2:02:21.)

6 98. Mayor Hall responded, “She can go with you.” (Ex. A at 2:02:24.)

7 ***Officer Shernicoff carries out Mayor Hall’s order to detain Massie.***

8 99. At the direction of Mayor Hall, Officer Steven Shernicoff detained Massie.
9 (Ex. A at 2:02:31.)

10 100. Officer Shernicoff grabbed Massie’s arms and placed them behind her back.
11 (Ex. A at 2:02:36.)

12 101. Shernicoff told Massie, “come out with me now before you get arrested.”
13 (Ex. A at 2:02:45.)

14 102. Massie asked Shernicoff if he was detaining her. (Ex. A at 2:02:49.)

15 103. Shernicoff responded “Yes.” (Ex. A at 2:02:51.)

16 104. Shernicoff forcibly removed Massie from the chamber. (Ex. A at 2:02:36.)

17 105. Shernicoff forced Massie against a wall.

18 106. Shernicoff placed Massie in handcuffs.

19 107. Shernicoff told Massie she was under arrest.

20 108. Shernicoff removed Massie to a detention facility.

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1 109. At the detention facility, an officer searched Massie, including placing her
2 hands under Massie’s clothing and under Massie’s undergarments.

3 110. In the process of detaining, arresting, and removing Massie, Shernicoff
4 bruised and injured Massie’s wrists, arms, and legs, causing her severe physical and
5 emotional pain and distress.

6 111. At the detention facility, an officer took Massie’s fingerprints.

7 112. Contrary to Mayor Hall’s representation that Massie’s 10-year-old daughter
8 could “go with” her, Massie’s daughter was left in the City Council chamber. (Ex. A at
9 2:03:03.)

10 113. Officer Shernicoff refused to permit Massie to make a phone call or
11 otherwise attempt to locate her daughter.

12 114. Shernicoff cited Massie for criminal trespass in the third degree in violation
13 of Arizona Revised Statutes, § 13-1502(A)(1).

14 115. Because of the criminal charge, Massie was forced to retain a criminal
15 defense attorney at her own expense.

16 ***Schulzke frequently criticizes the City of Surprise and its officials at City Council***
17 ***meetings, but now fears expulsion or arrest.***

18 116. Plaintiff Schulzke is the Chairperson of the Voice of Surprise, an Arizona
19 political action committee.

20 117. As explained on its Facebook page, Voice of Surprise is “a grassroots
21 political action committee driven by the voices of our community members.”
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1 118. Voice of Surprise’s Facebook page explains that the organization is
2 “[d]edicated to fostering transparency and accountability among our city’s leaders.”

3 119. Hundreds of residents of the City of Surprise follow the organization’s
4 Facebook page.

5 120. A true and correct copy of a screenshot of the Voice of Surprise’s Facebook
6 page is attached as **Exhibit E**.

7 121. Schulzke frequently attends City Council meetings to speak on items on the
8 Council’s agenda.

9 122. Schulzke watched the video of Massie’s arrest and Mayor Hall’s assertion
10 that speakers “in the future” will be escorted out by police whenever they “attack any city
11 employee” or official.

12 123. Schulzke intends to attend and speak at future City Council meetings.

13 124. As he has before, Schulzke wants to criticize the City of Surprise, its
14 employees, and its officials, including Mayor Hall for his conduct on August 20, 2024.

15 125. Schulzke fears that he will be silenced, ejected, or arrested if his criticism of
16 the City of Surprise, its employees, or its officials is deemed to violate the Council
17 Criticism Policy.

18 126. As a result of Mayor Hall’s enforcement of the Council Criticism Policy, he
19 now intends to refrain from voicing his complete criticisms of the City of Surprise, its
20 officials, and its employees when he speaks at City Council meetings, out of fear that he
21 will be ejected, detained, or arrested.

1 **INJURY TO PLAINTIFFS**

2 127. Defendants injured Massie by silencing, detaining, and arresting her because
3 she criticized government officials—an exercise of rights “high in the hierarchy of First
4 Amendment values.” *Lozman*, 585 U.S. at 101.

5 128. The City of Surprise has violated—and continues to violate—Massie’s and
6 Schulzke’s First Amendment rights by establishing, maintaining, and enforcing a policy
7 allowing speakers to praise city officials, while forbidding them from complaining about
8 the same officials.

9 129. Mayor Hall injured Massie by ordering her to “stop talking” negatively of
10 government officials, cutting off her “Call to the Public” remarks at the August 20 City
11 Council meeting, and directing police to detain and eject her. Mayor Hall’s viewpoint-
12 discriminatory and content-discriminatory directive violated Massie’s well-established
13 First Amendment right to address a public body in a nondisruptive manner during a public
14 comment period.

15 130. Officer Shernicoff injured Massie by carrying out Mayor Hall’s
16 unconstitutional directive. Shernicoff’s actions compounded the violation of Massie’s First
17 Amendment rights by violating her Fourth Amendment right to be free from unreasonable
18 seizure.

19 131. Officer Shernicoff physically injured Massie in the course of detaining her
20 while carrying out Mayor Hall’s unconstitutional directive. Shernicoff caused further
21 injury to Massie’s constitutional rights by physically removing her from a public forum,
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1 pushing her against a wall, handcuffing her, arresting her, and removing her to a detention
2 facility, where she was fingerprinted, searched, and held.

3 132. Mayor Hall and Officer Shernicoff injured Massie by enforcing, through
4 physical force, the Council Criticism Policy in front of Massie's minor daughter, in front
5 of the audience assembled for the August 20 meeting, and in front of all those watching
6 online and who later watched online.

7 133. Mayor Hall promised to repeat his unconstitutional conduct, warning Massie,
8 onlookers, and viewers of the video that he will have police remove those who violate the
9 Council Criticism Policy during future City Council meetings.

10 134. Mayor Hall's willingness to violate Massie's First Amendment rights at the
11 hands of law enforcement has a chilling effect on Massie, Schulzke, and all those who wish
12 to address the Surprise City Council.

13 135. For Schulzke, the City of Surprise's maintenance and enforcement of the
14 Council Criticism Policy inhibits his ability to share his views at City Council meetings,
15 frustrating his ability to lead his organization's efforts to convey the views of Surprise
16 residents to their City Council.

17 136. The Council Criticism Policy's presence in the rules and the Rules for the
18 Public, and Mayor Hall's recent history enforcing the policy, demonstrates a credible,
19 specific, and ongoing threat of enforcement of the policy against Massie, Schulzke, and
20 others who wish to criticize government officials at Surprise City Council meetings.

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1 **CLAIMS**

2 **FIRST CLAIM**

3 **Violation of First Amendment—**
4 **Freedom of Speech, Freedom of Petition**
5 **42 U.S.C. § 1983**

6 **(All Plaintiffs against Defendant City of Surprise**
7 **for Injunctive and Declaratory Relief)**

8 137. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though
9 fully set forth herein.

10 138. The First Amendment provides that “Congress shall make no
11 law . . . abridging the freedom of speech, or of the press, or of the right of the people
12 peaceably to assemble, and to petition the Government for a redress of grievances.” U.S.
13 Const. amend. I.

14 139. Criticizing government officials “is at the very center of the constitutionally
15 protected area of free discussion.” *Rosenblatt*, 383 U.S. at 85.

16 140. The City of Surprise’s Council Criticism Policy, which Mayor Hall enforces
17 through his status as Chair of City Council meetings, violates the First Amendment both
18 on its face and as applied to criticism of public officials.

19 141. Surprise established a limited public forum when it created a “Call to the
20 Public” segment of City Council meetings. *White v. City of Norwalk*, 900 F.2d 1421, 1425
21 (9th Cir. 1990).

1 142. In a public body’s public comment period, content-based regulations are
2 permissible only where they are “viewpoint neutral and enforced that way.” *Norse v. City*
3 *of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010).

4 143. “Viewpoint discrimination is impermissible no matter the forum.” *Waln v.*
5 *Dysart Sch. Dist.*, 54 F.4th 1152, 1162 (9th Cir. 2022) (internal quotation omitted).

6 144. “Viewpoint discrimination is an egregious form of content discrimination
7 and is presumptively unconstitutional.” *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019)
8 (internal quotation omitted).

9 145. On its face, the Council Criticism Policy’s prohibition of “complaints” about
10 city officials and employees permits two points of view (laudatory or neutral speech about
11 public officials) while forbidding a third (critical speech about the same officials).

12 146. The Council Criticism Policy therefore codifies viewpoint discrimination
13 and is unconstitutional under the First Amendment both on its face and as applied to public
14 comments critical of government officials.

15 147. The Council Criticism Policy is also unlawful content discrimination because
16 it prohibits a category of speech (complaints about public officials) while allowing others.

17 148. Under the First Amendment, content discrimination is permissible in the
18 limited public forum of a public comment portion of a City Council meeting only if the
19 restriction is viewpoint-neutral and reasonable in light of the purpose served by the forum.
20 *Norse*, 629 F.3d at 975, 976 n.10.

1 149. Prohibiting members of the public from criticizing government officials
2 during a City Council meeting is not a reasonable restriction because the purpose of a
3 public comment period is, among other things, to permit the public an opportunity to raise
4 matters of public concern with their elected officials, and in so doing to address, praise, or
5 criticize their elected officials. The public comment period allows the public to exercise
6 their right to free speech and their right to petition their government officials for redress of
7 grievances.

8 150. Because the Council Criticism Policy discriminates based on viewpoint and
9 content, it must satisfy strict scrutiny by being narrowly tailored to serve compelling state
10 interests. *Waln*, 54 F.4th at 1163.

11 151. Surprise has no compelling state interest in suppressing the public's ability
12 to exercise their rights to free speech and to petition by peacefully voicing criticism about
13 government officials.

14 152. To the extent the Council Criticism Policy is intended to prevent "disruption"
15 at City Council meetings, it is not narrowly tailored because a violation of the policy
16 requires no evidence of actual, imminent, or threatened disorder.

17 153. The reaction of the Mayor or City Council members to public criticism
18 cannot serve as a "disruption" justifying restricting the speech of members of the public.

19 154. To the extent that the Council Criticism Policy is intended to prevent the City
20 Council from acting on a formal complaint without advance notice to the public, the policy
21 is not narrowly tailored to achieve that goal.

1 155. Any interest in preventing the City Council from acting on a formal
2 complaint without advance notice to the public can be served without prohibiting the public
3 from making critical comments during public meetings.

4 156. For example, the City Council could prohibit its own members from acting
5 on a formal complaint until the next regular meeting.

6 157. But for the Council Criticism Policy and Surprise’s enforcement of the
7 policy, Plaintiffs would attend Surprise City Council meetings and criticize Surprise
8 government officials during the “Call to the Public” comment period.

9 158. The “loss of First Amendment freedoms, for even minimal periods of time,
10 unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

11 159. Plaintiffs are entitled to an injunction against enforcement of the Council
12 Criticism Policy.

13 160. Plaintiffs are entitled to a declaration under 28 U.S.C. § 2201 that the Council
14 Criticism Policy constitutes, on its face and as applied to nondisruptive criticism of
15 government officials like Massie’s, unlawful suppression of Plaintiffs’ First Amendment
16 right to be free from viewpoint and content discrimination.

17 161. As a direct and proximate result of the Council Criticism Policy, Plaintiffs
18 suffer and continue to suffer irreparable injury, including the denial of their constitutional
19 rights to free speech and petition. Plaintiffs are entitled to prospective and permanent
20 injunctive relief against the Council Criticism Policy.
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1 168. “When speech is involved, rigorous adherence to those requirements is
2 necessary to ensure that ambiguity does not chill protected speech.” *Id.* at 253–54.

3 169. The Council Criticism Policy, which bars “complaints against any employee
4 of the City or members of the body regardless of whether such person is identified in the
5 presentation by name,” fails to provide members of the public sufficient notice of what is
6 restricted so that they may act accordingly. For example, the Council Criticism Policy
7 leaves residents guessing whether voicing concern about a department’s performance is
8 equivalent to a “complaint” about the head of that department. And it provides no guidance
9 as to whether objecting to an ordinance’s passage counts as a “complaint” against those
10 who voted for it. Nor does it make clear whether *any* criticism, or even a request that
11 officials carry out their duties differently than they have, constitutes a “complaint.”

12 170. The Council Criticism Policy similarly fails to provide sufficient precision
13 and guidance so that those enforcing the policy do not act in an arbitrary or discriminatory
14 way.

15 171. The Council Criticism Policy, which fails to provide members of the public
16 sufficient information to conform their conduct to the requirements of the policy, chills
17 Plaintiffs and other members of the public from engaging in protected First Amendment
18 speech.

19 172. The Council Criticism Policy codifies, invites, causes, and is used to
20 facilitate viewpoint discrimination.

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THIRD CLAIM
Violation of First and Fourteenth Amendments—
Overbreadth
42 U.S.C. § 1983
(All Plaintiffs against Defendant City of Surprise
for Injunctive and Declaratory Relief)

5 180. Plaintiffs re-allege and re-incorporate the preceding paragraphs as though
6 fully set forth herein.

7 181. The Council Criticism Policy is facially overbroad in violation of the First
8 Amendment.

9 182. A speech regulation violates the First Amendment on its face when a
10 substantial number of its applications violate the First Amendment compared to its
11 legitimate applications. *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2397 (2024); *see also*
12 *Broadrick v. Oklahoma*, 413 U.S. 601, 611–12, 615 (1973).

13 183. A regulation of speech during the “Call to the Public” comment segment of
14 a public meeting is unconstitutionally overbroad where “it unnecessarily sweeps a
15 substantial amount of non-disruptive, protected speech within its prohibiting language.”
16 *Acosta v. City of Costa Mesa*, 718 F.3d 800, 816 (9th Cir. 2013).

17 184. The Council Criticism Policy sweeps up a substantial amount of
18 nondisruptive, protected speech within its prohibition on “complaints against any
19 employee of the City or members of the body.”

20 185. For example, the Council Criticism Policy has been applied or could be
21 applied to reach:

- 1 a) Massie’s non-disruptive criticism of the proposal to increase the
- 2 salary of the city attorney;
- 3 b) A speaker disagreeing with a councilmember’s vote; and
- 4 c) A statement that members of the City Council do not adequately
- 5 address storm drainage.

6 186. Mayor Hall, whose authority as presiding officer requires him to interpret the
7 rules applicable to public comments, has interpreted the Council Criticism Policy to reach
8 any “attack [on] any staff member” or city official. Ex. A at 2:01:51.

9 187. To the extent that the Council Criticism Policy is intended to prevent the City
10 Council from acting on a formal complaint without advance notice to the public, that
11 interest can be served without prohibiting the public from making negative comments
12 during public meetings.

13 188. For example, the City Council could prohibit its own members from acting
14 on a formal complaint until the next regular meeting.

15 189. The Council Criticism Policy therefore prohibits a significant amount of
16 protected core political speech: criticism of public employees during a public comment
17 period, which far eclipses any theoretical lawful application against formal complaint
18 submissions.

19 190. The City of Surprise has no legitimate state interest in suppressing the
20 public’s ability to exercise their rights to free speech and to petition by peacefully voicing
21 criticism about government officials.

1 191. Plaintiffs are entitled to a declaration under 28 U.S.C. § 2201 that the Council
2 Criticism Policy is unlawfully overbroad on its face and therefore violates the First
3 Amendment.

4 192. The “loss of First Amendment freedoms, for even minimal periods of time,
5 unquestionably constitutes irreparable injury.” *Elrod*, 427 U.S. at 373.

6 193. Plaintiffs are also entitled to an injunction preventing the City of Surprise
7 from enforcing the Council Criticism Policy.

8 194. Without declaratory and injunctive relief against the enforcement of the
9 Council Criticism Policy, Surprise’s suppression and chill of Plaintiffs’ freedom of speech
10 will continue and Plaintiffs will suffer *per se* irreparable harm indefinitely.

11 **FOURTH CLAIM**
12 **Violation of First Amendment—Freedom of Speech, Freedom of Petition**
13 **42 U.S.C. § 1983**
14 **(Plaintiff Massie against Defendant Hall for Damages)**

15 195. Massie re-alleges and re-incorporates the preceding paragraphs as though
16 fully set forth herein.

17 196. The Council Criticism Policy, and its enforcement against Massie’s August
18 20, 2024, public comment remarks, violated the First Amendment for the reasons explained
19 in Claims I–III.

20 197. Massie’s remarks about the city attorney’s pay addressed a topic of public
21 interest and concern.

22 198. Mayor Hall engaged in impermissible viewpoint discrimination by using his
23 status as Chair of the City Council to suppress Massie’s criticism of a proposed pay

1 increase for Surprise’s city attorney via the viewpoint-discriminatory Council Criticism
2 Policy. Mayor Hall’s actions deprived Massie of her First Amendment right to peacefully
3 criticize public officials and to speak about matters of public concern.

4 199. Mayor Hall engaged in impermissible content discrimination by using his
5 status as Chair of the City Council to suppress Massie’s criticism of a proposed pay
6 increase for Surprise’s city attorney via the content-discriminatory Council Criticism
7 Policy. Mayor Hall’s actions deprived Massie of her First Amendment right to peacefully
8 criticize public officials and to speak about matters of public concern.

9 200. It is clearly established that criticizing government officials “is at the very
10 center of the constitutionally protected area of free discussion.” *Rosenblatt*, 383 U.S. at 85.

11 201. It is clearly established that government actors may not discriminate against
12 speech based on the viewpoint expressed. *Rosenberger*, 515 U.S. at 828.

13 202. It is further clearly established that prohibitions on criticizing government
14 employees during public comment periods at City Council meetings are unconstitutional
15 viewpoint discrimination. *Norse*, 629 F.3d at 975.

16 203. It is clearly established that unreasonable restrictions on public comments at
17 City Council meetings violate the First Amendment. *Norse*, 629 F.3d at 975.

18 204. Using governmental authority to suppress public criticism of government
19 officials but allowing praise of state officials is an obvious constitutional violation.

20 205. At all times relevant, Mayor Hall was or should have been aware his actions
21 were unconstitutional.

1 206. As a direct and proximate cause of Mayor Hall’s actions, Massie was
2 deprived of her rights guaranteed by the First Amendment and suffered damage to her
3 reputation, physical health, and mental health, and suffered mental anguish, emotional
4 distress, humiliation, and public embarrassment. Massie is entitled to actual and
5 compensatory damages against Mayor Hall in an amount to be proven at trial.

6 207. Mayor Hall’s conduct toward Massie recklessly and callously disregarded
7 and was indifferent to Massie’s First Amendment rights because the Mayor acted with the
8 intent to suppress Massie’s criticism, not for any legitimate policy purpose. Accordingly,
9 punitive damages also are appropriate and necessary to punish Mayor Hall for abridging
10 Massie’s constitutional rights, to deter Mayor Hall from violating the First Amendment in
11 the future, and to deter other government officials from following Mayor Hall’s censorial
12 example.

13 208. Mayor Hall’s recklessness and callous disregard for Massie’s First
14 Amendment rights is exhibited by, among other things:

- 15 a) Mayor Hall’s violation of clearly established First Amendment law;
 - 16 b) Mayor Hall’s dismissal of Massie’s First Amendment rights as “your
17 opinion;”
 - 18 c) Mayor Hall’s failure to seek guidance from the city attorney when
19 Massie raised her First Amendment rights;
 - 20 d) Mayor Hall’s enforcement of a policy substantively identical to that
21 declared unconstitutional in 1996; and
- 22
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1 e) Mayor Hall’s expulsion of Massie, at the hands of law enforcement,
2 for nondisruptive speech, in front of her 10-year-old daughter.

3 **FIFTH CLAIM**
4 **First Amendment Retaliation—**
5 **Freedom of Speech, Freedom of Petition**
6 **42 U.S.C. § 1983**
7 **(Plaintiff Massie against Defendant Hall for Damages)**

8 209. Massie re-alleges and re-incorporates the preceding paragraphs as though
9 fully set forth herein.

10 210. It is clearly established that “the First Amendment prohibits government
11 officials from subjecting an individual to retaliatory actions” for engaging in protected
12 speech. *Hartman v. Moore*, 547 U.S. 250, 256 (2006).

13 211. Massie engaged in protected First Amendment expression for the reasons
14 stated in Claims I and IV.

15 212. Mayor Hall violated Massie’s clearly established First Amendment rights by
16 censoring her remarks and directing police to detain her at the August 20, 2024, City
17 Council meeting based on Massie’s prior critical comments about Mayor Hall and Mayor
18 Hall’s allies.

19 213. In the alternative or in addition, Mayor Hall violated Massie’s clearly
20 established First Amendment rights by censoring her remarks and directing police to detain
21 her at the August 20, 2024, City Council meeting based on Massie’s critical comments
22 regarding Surprise’s city attorney.
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1 214. But for Massie’s protected expression criticizing Mayor Hall, Mayor Hall’s
2 allies, and Surprise’s city attorney, Mayor Hall would not have censored her August 20,
3 2024, remarks or directed police to detain her.

4 215. Having remarks abruptly censored and being detained by police would deter
5 a person of ordinary firmness from continuing to engage in protected First Amendment
6 activity.

7 216. Mayor Hall’s actions not only prematurely curtailed Massie’s exercise of her
8 First Amendment rights, but also chilled her from engaging in protected First Amendment
9 activity since she is now refraining from criticizing Surprise government officials at City
10 Council meetings due to Mayor Hall’s actions on August 20, 2024.

11 217. As a direct and proximate cause of Mayor Hall’s actions, Massie was
12 deprived of her rights guaranteed by the First Amendment, and suffered damage to her
13 reputation, physical health, and mental health, and suffered mental anguish, emotional
14 distress, humiliation, and public embarrassment. Massie is entitled to actual and
15 compensatory damages against Mayor Hall in an amount to be proven at trial.

16 218. Mayor Hall’s conduct toward Massie recklessly and callously disregarded
17 and was indifferent to Massie’s rights because he acted with the intent to suppress her
18 nondisruptive political speech criticizing him, his allies, and the Surprise city attorney.
19 Accordingly, punitive damages are appropriate and necessary to punish Mayor Hall for
20 abridging Massie’s constitutional rights and to deter similar violations in the future.

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SIXTH CLAIM
First Amendment—
Freedom of Speech, Freedom of Petition
42 U.S.C. § 1983
(Plaintiff Massie against Defendant Shernicoff for Damages)

219. Massie re-alleges and re-incorporates the preceding paragraphs as though fully set forth herein.

220. On August 20, 2024, Officer Shernicoff knew that the “Call to the Public” segment of Surprise City Council meetings was a forum intended for residents to express views to elected officials.

221. Massie had a clearly established right to be free from detention and arrest for nondisruptive political remarks made within her allotted time during the “Call to the Public” segment of City Council meetings. *Lozman*, 585 U.S. at 101.

222. On August 20, 2024, Officer Shernicoff knew or reasonably should have known that Massie’s comments opposing a pay raise for Surprise’s city attorney were constitutionally protected speech.

223. By detaining and then arresting Massie for exercising her First Amendment rights, Officer Shernicoff deprived Massie of her First Amendment rights.

224. As a direct and proximate cause of Officer Shernicoff’s actions, Massie was deprived of her rights guaranteed by the First Amendment and suffered damage to her reputation, physical health, and mental health, and suffered mental anguish, emotional distress, humiliation, public embarrassment, and legal and other costs. Massie is entitled to

1 actual and compensatory damages against Officer Shernicoff in an amount to be proven at
2 trial.

3 225. Officer Shernicoff's conduct toward Massie recklessly and callously
4 disregarded and was indifferent to Massie's First Amendment rights because he acted with
5 the intent to suppress her nondisruptive political speech. Accordingly, punitive damages
6 are appropriate and necessary to punish Officer Shernicoff for abridging Massie's
7 constitutional rights and to deter similar violations in the future.

8 **SEVENTH CLAIM**
9 **Violation of Fourth Amendment—**
10 **Unlawful Seizure and False Arrest**
11 **42 U.S.C. § 1983**
12 **(Plaintiff Massie against Defendants Hall and Shernicoff for Damages)**

13 226. Massie re-alleges and re-incorporates the preceding paragraphs as though
14 fully set forth herein.

15 227. The Fourth Amendment provides that “[t]he right of the people to be secure
16 in their persons, houses, papers, and effects, against unreasonable searches and seizures,
17 shall not be violated, and no Warrants shall issue, but upon probable cause, supported by
18 Oath or affirmation, and particularly describing the place to be searched, and the person or
19 things to be seized.” U.S. Const. amend. IV.

20 228. “Under the Fourth Amendment, a warrantless arrest requires probable
21 cause.” *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007).

22 229. Probable cause for a warrantless arrest exists only when “under the totality
23 of circumstances known to the arresting officers, a prudent person would have concluded

1 that there was a fair probability that the defendant had committed a crime.” *Id.* (internal
2 citation omitted) (cleaned up).

3 230. Probable cause may not be based on speech protected by the First
4 Amendment. *Wayte v. United States*, 470 U.S. 598, 608 (1985).

5 231. Mayor Hall and Officer Shernicoff, acting at all times under color of state
6 law, knowingly arrested and detained Massie, or knowingly acted to cause the same,
7 against her will and without probable cause, in deprivation of Massie’s rights under the
8 Fourth and Fourteenth Amendments.

9 232. Lacking a valid basis to arrest Massie, Mayor Hall and Officer Shernicoff
10 knowingly arrested and detained her and/or caused her arrest and detention without
11 probable cause and against her will, based on her protected First Amendment political
12 speech.

13 233. Mayor Hall and Officer Shernicoff willfully arrested and detained Massie, or
14 willfully caused and directed her arrest and detention, with malice and/or a reckless and
15 callous disregard for, and deliberate indifference to, her constitutional rights.

16 234. Mayor Hall knew or should have known that his conduct would cause Officer
17 Shernicoff to inflict constitutional injury on Massie. *Johnson v. Duffy*, 588 F.2d 740, 743–
18 44 (9th Cir. 1978).

19 235. It is clearly established that an official or another acting under the color of
20 state law cannot deprive a person of due process and seize and detain her person without
21 probable cause. *Michigan v. Summers*, 452 U.S. 692, 700 (1981).

1 236. It is also clearly established that an official or another acting under the color
2 of state law cannot deprive a person of due process and seize her person in response to that
3 person engaging in constitutionally protected activity, including nondisruptive political
4 speech during the public comment period of a City Council meeting. *Lozman*, 585 U.S. at
5 101.

6 237. It would have been clear to any reasonable official and law enforcement
7 officer that no probable cause existed to arrest Massie.

8 238. As a direct and proximate cause of Mayor Hall's and Officer Shernicoff's
9 actions, Massie was deprived of her rights guaranteed by the Fourth Amendment and
10 suffered damage to her reputation, physical health, and mental health, and suffered mental
11 anguish, emotional distress, humiliation, public embarrassment, and legal and other costs.
12 Massie is entitled to actual and compensatory damages against Mayor Hall and Officer
13 Shernicoff in an amount to be proven at trial.

14 239. Mayor Hall's and Officer Shernicoff's conduct toward Massie recklessly and
15 callously disregarded and was indifferent to Massie's rights because they acted with the
16 intent to suppress her nondisruptive political speech. Accordingly, punitive damages are
17 appropriate and necessary to punish Mayor Hall and Officer Shernicoff for abridging
18 Massie's constitutional rights and to deter similar violations in the future.

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1 **EIGHTH CLAIM**
2 **Violation of First Amendment—**
3 **Retaliatory Arrest**
4 **42 U.S.C. § 1983**

5 **(Plaintiff Massie against Defendant Hall for Damages)**

6 240. Massie re-alleges and re-incorporates the preceding paragraphs as though
7 fully set forth herein.

8 241. Massie engaged in constitutionally protected speech when she criticized
9 Mayor Hall, Mayor Hall's allies, and a proposed pay increase for Surprise's city attorney.

10 242. Despite knowing there was no probable cause to detain or arrest Massie for
11 her constitutionally protected speech, Mayor Hall intended and caused Officer Shernicoff
12 to detain and arrest Massie in retaliation for exercising her First Amendment rights.

13 243. But for Massie's protected speech regarding Mayor Hall, Mayor Hall's allies,
14 and Surprise's city attorney, Mayor Hall would not have caused Officer Shernicoff to
15 detain and arrest her.

16 244. Other speakers at Surprise City Council meetings have praised and otherwise
17 expressed views about government officials. Those speakers have not been detained or
18 arrested.

19 245. As a direct and proximate cause of Mayor Hall's actions, Massie was
20 deprived of her rights guaranteed by the First Amendment and suffered damage to her
21 reputation, physical health, and mental health, and suffered mental anguish, emotional
22 distress, humiliation, public embarrassment, and legal and other costs. Massie is entitled to
23 actual and compensatory damages against Mayor Hall in an amount to be proven at trial.

1 246. Mayor Hall's conduct toward Massie recklessly and callously disregarded
2 and was indifferent to Massie's rights because he acted with the intent to suppress her
3 nondisruptive political speech. Accordingly, punitive damages are appropriate and
4 necessary to punish Mayor Hall for abridging Massie's constitutional rights and to deter
5 similar violations in the future.

6 **NINTH CLAIM**
7 **Violation of First, Fourth, and Fourteenth Amendments—**
8 **Municipal Liability under *Monell***
9 **42 U.S.C § 1983**
10 **(Plaintiff Massie against Defendant City of Surprise)**

11 247. Massie re-alleges and re-incorporates the preceding paragraphs as though
12 fully set forth herein.

13 248. At all times relevant to the allegations made herein, the City of Surprise
14 developed, ratified, enforced, and continues to enforce the Council Criticism Policy.

15 249. The Council Criticism Policy, reflected and codified in the Rules for the
16 Public, constitutes an official city policy restricting speakers' First Amendment rights.

17 250. The Council Criticism Policy was the moving force behind the deprivation
18 of Massie's constitutional rights.

19 251. Specifically, the Council Criticism Policy was the basis to: (1) censor
20 Massie's remarks at the August 20, 2024, City Council meeting, (2) detain Massie at the
21 August 20, 2024, City Council meeting, and (3) arrest Massie at the August 20, 2024 City
22 Council meeting.
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1 252. Because the Council Criticism Policy is an official policy of the City of
2 Surprise, the City of Surprise is responsible for Mayor Hall’s and Officer Shernicoff’s
3 constitutional violations enforcing that policy under 42 U.S.C. § 1983.

4 253. Under the City of Surprise Municipal Code, Mayor Hall was the presiding
5 officer of the City Council at the August 20, 2024, meeting.

6 254. As presiding officer, Mayor Hall is the final policymaker and has final
7 policymaking authority over the conduct of a City Council meeting because the City
8 Council’s rules provide that a member of the public may not speak “until after being
9 recognized by” the presiding officer. (Ex. B; Ex. C at 20.)

10 255. As presiding officer, Mayor Hall had final policymaking authority for the
11 City of Surprise to order Massie to stop speaking and to order police to remove Massie
12 from the meeting.

13 256. Mayor Hall’s actions as presiding officer at the August 20, 2024, City
14 Council meeting violated Massie’s constitutional rights for the reasons stated in Claims I,
15 II, III, IV, V, VII, and VIII.

16 257. Because Mayor Hall’s actions at the August 20, 2024, City Council meeting
17 constituted the acts of a final policymaker of the City of Surprise, or are fairly attributable
18 to the city as official city policy, the City of Surprise is responsible for the Mayor’s
19 constitutional violations under 42 U.S.C. § 1983.

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1 258. Because Officer Shernicoff acted under the orders of final policymaker
2 Mayor Hall and pursuant to the Council Criticism Policy, the City of Surprise is responsible
3 for Shernicoff's constitutional violations under 42 U.S.C. § 1983.

4 **PRAYER FOR RELIEF**

5 Plaintiffs respectfully request this Court enter judgment against Defendants and
6 issue the following relief:

- 7 A. Enter a preliminary and permanent injunction enjoining the City of Surprise
8 from enforcing the Council Criticism Policy during meetings of the City
9 Council of the City of Surprise;
- 10 B. Declare Defendants' enforcement of the Council Criticism Policy against
11 Massie on August 20, 2024, violated Massie's First Amendment rights;
- 12 C. Declare the Council Criticism Policy violates the First and Fourteenth
13 Amendments;
- 14 D. Award Massie compensatory, nominal, and punitive damages;
- 15 E. Award Plaintiffs their attorneys' fees under 42 U.S.C. § 1988;
- 16 F. Award Plaintiffs their costs; and
- 17 G. Award such other relief as the Court deems appropriate.
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1 **DEMAND FOR JURY TRIAL**

2 In compliance with Federal Rule of Civil Procedure 38, Plaintiffs demand a trial by
3 jury on all issues so triable.

4 Dated: September 3, 2024

Respectfully submitted,

5 /s/ Daniel J. Quigley

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18 *Counsel for Plaintiffs*

19 * *Pro hac vice* application forthcoming.
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Massie v. Hall, et al.,

EXHIBIT A

to the Complaint

**Video of August 20, 2024, meeting of the
City Council of the City of Surprise, available at
<https://surpriseaz.portal.civicclerk.com/event/4076/media>**

**(Non-electronic exhibit; *see* contemporaneous
Motion for Leave to File Non-Electronic Exhibit Re: Complaint)**

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Massie v. Hall, et al.,

EXHIBIT B

to the Complaint



Council Meeting Public Comment Form

Individuals wishing to address the City Council on specific items, during public hearings or at the Call-to-the-Public segment of the City Council Meeting should fill out this form completely. Upon submission, your request will be sent to the City Clerk's Office.

Note

The City Clerk must receive this form at least 1 hour prior to the meeting start time in order for your request to be processed. **Ensure you review the Public Meeting and Public Hearing Rules prior to your arrival.**

Special Message from Mayor & City Council

The City of Surprise values the comments and input from residents. Under the provisions of the Arizona Open Meeting Law, with the exception of responding to criticism, the Mayor & City Council are prohibited from responding to or taking action on matters that have been raised during Call to the Public and, therefore, not properly noticed. The Mayor & City Council may only listen to citizens who wish to address them on non-agenda items. The Mayor & City Council cannot respond beyond thanking you for your comments and directing city staff to take appropriate action when necessary.

First Name*

Last Name*

Phone Number*

Email

Address 1*

Address 2

City*

State*

Zip*

Date of Council Meeting*

I would like to address the City Council during*

- Agenda Item
- the Call to the Public
- a Non-Agenda Item

Do you have written materials that you would like distributed to City Council? You may attach your materials using the Associated Materials form field.

Note

You do not have to submit materials at this time. However, any written materials to be distributed to the City Council must be submitted to the City Clerk prior to the calling of the issue by

the Mayor. If written notes are used during your address, please provide a copy to the City Clerk.

Associated Materials



Public Meetings & Public Hearings Rules

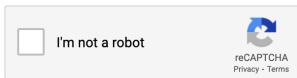
Individuals wishing to address the City Council on an item during public hearings or at the Call-to-the-Public segment of the City Council Meeting shall abide by the following rules:

1. Presence in the Council Dais Area: During a Council meeting, members of the public are permitted within the area in front of the Council dais only at the invitation or consent of the chair for purposes of making presentations and providing information to Council.
2. Addressing Council:
 - a. Any member of the public desiring to address the Council may not proceed to the lectern until after being recognized by the Chair.
 - b. At the lectern, the member of the public should clearly state their name and approximate cross streets for the record.
 - c. Statements shall be limited to matters within the subject matter jurisdiction of the City Council/City of Surprise and to three (3) minutes per item to allow the meeting to proceed and end in a timely manner. The time limit may be extended at the option of the Chair.
 - d. If several speakers desire to speak regarding a single topic, the Chair can limit the number of speakers or limit the time given to each group; however, an equal amount of time will be given to each side of an issue.
 - e. Oral communications during the City Council meeting may not be used to lodge charges or complaints against any employee of the City or members of the body, regardless of whether such person is identified in the presentation by name or by any other reference that tends to identify him/her. Any such charges or complaints should be submitted during normal business hours to the City Manager for appropriate action.
3. No loud vocalization (shouting or calling out) that cause an actual disruption will be permitted from the seating area of the Council Chamber. Attendees who violate this rule will be given a warning. An attendee who commits a second violation at the same meeting may be asked to leave the Council Chamber and view the remainder of the meeting remotely in the atrium.
4. Pursuant to A.R.S 38-431.01(H), at the conclusion of an open call to the public, individual councilmembers may, in their sole discretion, respond to criticism made by those who have addressed the public body or ask staff to follow-up or review the matter raised.
5. A civil decorum will be expected of all speakers. Behavior that is disruptive and prevents the City Council from accomplishing its business in a reasonably efficient and timely manner or interferes with conducting an orderly meeting or other speakers' rights is prohibited. Prohibited disruptive behavior includes, but is not limited to, threats, profanity, words likely to provoke immediate combat or speech that exceeds pre-set time limits, is unduly repetitive, or extends discussion by irrelevancies. Speakers engaged in disruptive behavior may forfeit their speaking time, or be removed from City Council chambers by direction of the Chair.

Citizens wishing to express personal views about individuals or groups of individuals may do so in writing.

Submit written statements to the attention of:

City Manager and/or the Mayor
Surprise City Hall
16000 N Civic Center Plaza
Surprise, AZ 85374



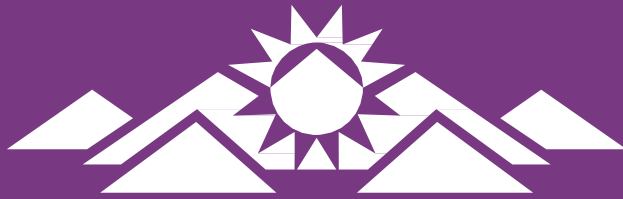
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Massie v. Hall, et al.,

EXHIBIT C

to the Complaint



SURPRISE

ARIZONA

CITY OF SURPRISE
POLICIES & PROCEDURES
MANUAL



PROLOGUE

We will never bring disgrace on this our City by an act of dishonesty or cowardice.

We will fight for the ideals and sacred things of the City, both alone and with many.

We will revere and obey the City's laws, and will do our best to incite a like reverence and respect in those above us who are prone to annul them or set them at naught.

We will strive increasingly to quicken the public's sense of civic duty.

Thus, in all these ways, we will transit this City, not only, not less, but greater and more beautiful it was transmitted to us.

-The Athenian Oath

INTRODUCTION

Residents of the City of Surprise are entitled to have fair, ethical and accountable local government that has earned the public's full confidence and trust. Excellence in local governance requires that public officials comply with the letter and spirit of the laws and policies affecting the operations of government. It requires that every official be independent and impartial in matters brought before them. Effective local government requires that each public office be used for the good of the public and not for personal gain. Transparent local government demands that deliberations and discussions be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

Notwithstanding the standards, requirements, and prohibitions set forth within this Policy, the United States and Arizona Constitutions, as the supreme laws of the land, guarantee to all, not excluding elected officials, certain protections, rights, and privileges. Therefore, nothing in this Policy shall be interpreted or applied in a manner which infringes or impairs any elected official's protections, privileges, or rights guaranteed by the respective Constitutions or any federal or state laws adopted under the authority of same.

RULES OF CONDUCT AND Demeanor

Elected and appointed officials are often called upon to make decisions that affect various groups and individuals. Balancing diverse constituent interests can be a difficult task. While someone may be disappointed in a decision, officials must adhere to ethical standards that eliminate disappointment borne of dishonesty, conflicts of interest, unfairness, or illegality. **Preservation of public trust is critical for the preservation of democracy.**

It is the policy of the City of Surprise to uphold, promote, and demand the highest standards of ethics from all of its officials, whether elected or appointed. Accordingly, all members of the City Council will maintain the following standards:

Rule 1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the City of Surprise and not for any private or personal interest, and will assure fair and equal treatment of all persons, claims and transactions coming before the Surprise City Council.

Rule 2. Comply with the Law

Members will comply with the laws of the nation, the State of Arizona, and the City of Surprise in the performance of their public duties. These laws include, but are not limited to: the Federal and State constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures, anti-discrimination, confidentiality/non-disclosure laws, and open meeting; City ordinances; and City and City Council policies.

Rule 3. Professional Conduct

The professional and personal conduct of members must be above reproach and devoid of even the appearance of impropriety. Members must refrain from abusive conduct, harassment, personal charges or verbal attacks upon the character or motives of other members of Council, boards, commissions, and committees, City staff or members of the public. Likewise, Honesty and integrity shall be the primary values exercised in resolving all issues.

Rule 4. Conduct of Public Meetings

Members have an obligation to attend meetings, be prepared, and act in accordance with the processes and rules of order established by City Council. Members are expected to review the materials, participate in discussions and make an informed decision on the merits of the issue. Members must act courteously, refrain from interrupting other speakers, making personal comments not germane to the business of the body, or otherwise interfering with the orderly conduct of meetings.

Rule 5. Transparent Governance

Members must publicly disclose substantive information that is relevant to a matter under consideration by the Council which the member may have received from sources outside the public decision-making process.

Members are increasingly using social media to share information with the public and as a forum to facilitate the public's ability to communicate with them about matters relating to City governance. However, numerous laws and legal obligations are implicated, and legal issues arise, when members utilize social media accounts to carry out their official duties or engage in city business. These legal issues become even more pronounced when members conduct official city business on personal or private social media accounts.

Therefore, in order to ensure social media accounts are administered uniformly, to the highest standards, and in compliance with all laws and legal obligations, the City will create and maintain official social media accounts for use by members in connection with their official duties. Once an official account is created on any given platform, members will not use a personal or private social media account on that platform for official purposes, conducting city business, or performing their duties as a council member. For example, members will not use personal or private social media accounts to make announcements about official responsibilities, actions, or events, discuss city business, solicit comments or input from the public on city matters, or distribute official city notices or information. Nevertheless, recognizing that complete isolation of a private account from city business is an unrealistic standard, using a private account to link, reference, or otherwise direct the public to the member's official account or city webpages, notices, or accounts does not violate this policy. Members' personal or private social media account designs will not utilize official city logos, graphics, pictures, or material that would reasonably mislead the public to believe it is an official city account.

Rule 6. Advocacy

Members of the City Council are frequently contacted by the media for background and quotes. The Mayor is the designated representative of the Council to present and speak on the official City position. Members must represent the official policies or positions of the City Council to the best of their ability if designated as delegates for this purpose. When presenting their individual opinions and positions, members must not allow or perpetuate the inference or misperception of official City representation to exist. Until and unless the Mayor and Council take an **official** position on an issue as a collective public body in a public meeting, any statements or written correspondence should reflect clearly that the position taken is that of the individual in his/her personal capacity.

Rule 7. Policy Role of Members

The Role of each Member, as an individual, is to represent the community and to share their ideas, recommendations, and point of view during consideration of matters before the body. Members must respect and adhere to the Council-manager structure of the Surprise City government as outlined in City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards, commissions, committees and City staff. Members therefore may not interfere with the administrative functions of the City or the professional duties of City staff; nor impair the ability of staff to implement Council policy decisions. Members should also refrain from individually directing, without a majority consensus of the Council, the City Manager, City Clerk, City Auditor, or City Attorney in the performance of his/her job responsibilities.

Rule 8. Positive Work Place Environment

Members must support and maintain a positive and constructive work place environment for City employees, residents, and businesses dealing with the City. Members must recognize the special role of the Council in dealings with City employees and refrain from directing or giving orders, outside of a public meeting, to any City employee under the supervision of an appointed official.

Rule 9. Conflict of Interest

Members must be constantly on guard against conflicts of interest, whether real or perceived. Officials must not be involved in discussing or deciding any issue over which the Council may have jurisdiction and which may impact a financial or property interest of either the member or a member's relatives (relatives means the spouse, children, parent, grandparent, grandchildren, siblings of whole or half blood and their spouses and in-laws).

If a member believes that a conflict of interest, as defined by Arizona Revised Statutes Title 38, Chapter 3, Article 8 exists, then the member must disclose the fact as soon as possible on the record. From that point on, the member may not participate in any manner (by discussing, questioning or voting) in that matter. Declaring a conflict and not participating should be recognized as a necessary part of preserving public trust and should not be avoided simply because of delays or inconvenience. At the same time, members have a duty to participate, and vote. Therefore, members must not abstain from participation or voting unless the matter involves the consideration of their own official conduct or a conflict of interest as defined by law exists.

Rule 10. Accepting Gifts, Favors or Benefits

Pursuant to Arizona law:

A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

Arizona Revised Statute § 38-504(C)

Therefore, members shall not solicit, directly or indirectly, a gift regardless of value.

An unsolicited gift with a known value or reasonably estimated fair market value of \$50.00 or less is permissible if the gift is not otherwise prohibited by law. An unsolicited gift with a known value or reasonably estimated fair market value greater than \$50.00 is permissible if the gift is not otherwise prohibited by law and if the gift is disclosed by the member as provided in this Section.

For purposes of this section, "gift" means anything of value, which is directly and personally received, unless consideration of equal or greater value is given in return. Gift does not include:

- 1) Salary, compensation, or benefit lawfully received from the City of Surprise
- 2) A gift, devise or inheritance from a relative when motivated by familial relationship
- 3) A gift from a personal friend either motivated by friendship, of a nature that was customarily received before the member became an elected or appointed official, or customarily given due to a personal life event, such as a wedding or birthday.
- 4) A campaign contribution that is permitted and reported as required by law.
- 5) A benefit received, while acting as a representative of the City of Surprise, from another government entity due to participation in that entity's operations, programs, or events.
- 6) An item or benefit that is given to all attendees at an event.
- 7) Admission, food, or beverages furnished in connection with attendance or participation in an official capacity at an event, activity, or function sponsored by the City of Surprise, a non-profit organization, a professional association, a business association, a charitable, cultural/arts, or community organization.
- 8) Items of trivial value, tokens, or award of appreciations for service, informational materials, publications, promotional items, or subscriptions pertinent to the performance of official duties.
- 9) Reasonable expenses for attendance at a convention, fact-finding mission or trip, or similar event if the member is scheduled to speak, present, or otherwise participate in a matter related to City business as a representative of the City of Surprise.
- 10) An item that is reimbursed or not used and that is either paid for or returned within fifteen business days of receipt to the donor or that is delivered within fifteen business days of receipt to a charitable organization and that is not claimed as a charitable contribution for tax purposes.

Written disclosure of any gift required to be reported pursuant to this Section must be made to the City Clerk within 15 business days after receipt and must include a description of the gift, the known or reasonably estimated fair market value, the date of receipt, and the source. The disclosure of gifts will be posted on the City's web page along with the member's financial disclosure statements.

In the event of uncertainty, contact the City Attorney.

PARLIAMENTARY PROCEDURE

Surprise Municipal Code §2-80 provides that “the latest standard edition of Robert’s Rules of Order will serve as a guide for parliamentary procedure...”. In furtherance of such guidance, the parliamentary rules outlined below will be followed in all City Council Meetings, keeping the following principles:

1. The Council must act as a body.
2. The Council should proceed in the most efficient manner possible.
3. The Council must act by at least a majority as defined by the Surprise Municipal Code.
4. Every member must have an equal opportunity to participate in decision making.
5. The Council’s rules of procedure must be followed consistently.
6. The Council’s actions should be the result of a decision on the merits and not a manipulation of the procedural rules.

Rule 1. Powers of the Chair

The Chair (usually the Mayor) has the following powers:

- a) To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- b) To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
- c) To entertain and answer questions of parliamentary law or procedure;
- d) To call a brief recess at any time;
- e) To adjourn in an emergency.

***Comment:** A decision by the Chair under (a), (b) or (c) may be appealed to the Council upon motion of any member, pursuant to Rule 8(b). Such a motion is in order immediately after a decision under (a),(b) or (c) is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion if timely made may not be ruled out of order.*

Rule 2. Consent Agenda

The Council may designate a part of the agenda as the “consent agenda.” Items are placed on the

consent agenda if they are judged to be noncontroversial and routine. Any member may remove an item from the consent agenda and place it on the regular agenda when the consent agenda comes forward for action and can be revised prior to its adoption. All items on the consent agenda must be voted on and adopted by a single motion, with the minutes reflecting the motion and vote on each item.

Comment: *Many Councils use a consent agenda as a device to handle routine business more quickly. As a general rule, ordinances, controversial items, matters in which citizens may be interested, and matters of great substance will not be included on the consent agenda.*

The Council reviews the "consent agenda" at the beginning of each meeting. Each member is free to remove items from the consent agenda to the regular agenda. A member may wish to do so if, for example, he or she would like to debate the proposal or vote against the item.

Rule 3. When the Chair Is in Active Debate

If the Chair becomes actively engaged in extended debate on a particular proposal, the Chair may designate another member to preside over the debate. The Chair will resume presiding as soon as action on the matter is concluded.

Comment: *Good leadership depends, to a certain extent, on not taking sides during a debate. On a small board this may not always be feasible or desirable; yet, an unfair advantage accrues to the side whose advocate controls access to the floor. This rule is designed to ensure even-handed treatment to both sides during a heated debate. Ordinarily, if the Chair is leading the meeting, he or she should ask the Vice Chair to preside in this situation. But, if that person also engaged in the debate, the Chair should feel free to call on some other member in order to achieve the purpose of this rule.*

Rule 4. One Motion at a Time

A member may make only one substantive motion at a time.

Comment: *None.*

Rule 5. Substantive Motions

A substantive motion is a motion to take action on the principal item and is out of order while another substantive motion is pending. In other words, a substantive motion is any motion other than the procedural motions listed in Rule 8. A substantive motion may deal with any subject within the Council's legal powers, duties, and responsibilities.

Comment: *This rule sets forth the basic principle of parliamentary procedure that distinct issues will be considered and dealt with one at a time, and a new proposal may not be put forth until action on the preceding one has been concluded. The term substantive motion is used here to underscore the distinction between this type of motion and the various procedural motions listed in Rule 8.*

Rule 6. Debate

The Chair will open the floor to debate. The Chair will preside over

the debate according to the following general principles:

- (a) Once a motion is made, the maker of the motion is entitled to speak first;
- (b) A member who has not spoken on the issue will be recognized before someone who has already spoken;
- (c) To the extent possible, the debate will alternate between proponents and opponents of the measure.

Comment: None.

Rule 7. Ratification of Actions

To the extent permitted by law, the Council may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

Comment: *Ratification of actions taken on the Council's behalf but without its prior approval is permitted under these rules, to the extent that such after-the-fact approval of actions is legally allowed. The principle behind the motion to ratify is that an assembly may subsequently approve what it could have authorized. This rule treats the motion to ratify as a substantive proposal rather than as a procedural motion, since a ratification is in effect an after-the-fact substantive action by the Council concerning something that was done without Council approval when advance authorization should have been obtained. For example, if the City enters a contract that would normally have been approved by Council prior to the City entering the contract, but the circumstances were such that prior Council approval was not possible, Council can approve the contract after the fact under this rule.*

Rule 8. Withdrawal of Motion

A motion may be withdrawn by the maker at any time before it is amended or before the Chair puts the motion to a vote, whichever occurs first.

Comment: *This rule prohibits withdrawing motions after they have been amended. Once a motion has been amended, it is no longer the same motion as was made by the maker, so it is no longer his or hers to withdraw.*

Rule 9. Procedural Motions

(a) Motions Allowed. In addition to substantive proposals, only the following procedural motions, and no others, are permitted. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted.

Comment: *The following enumeration of procedural motions is exhaustive; if a procedural option is not on the list, then it is not available. Procedural motions are frequently used to "act upon" a substantive motion by amending it, delaying consideration of it, and so forth. Several procedural motions can be entertained in succession without necessarily disposing of the previous procedural motion. The order of priority establishes which procedural motion yields to which—that is, which procedural motion may be made and considered while another one is pending.*

(b) Order of Priority of Motions. In order of priority (if applicable), the procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Chair. A decision of the Chair ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the Council. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the Chair and the motion, if timely made, may not be ruled out of order.

Comment: *This motion allows the ruling of the Chair on certain procedural matters to be appealed to the whole Council. This appeal must be made as soon as the Chair's decision is announced, so this motion is accorded the highest priority.*

Motion 2. To Adjourn. This motion may be made only at the conclusion of Council consideration of a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to or adjourn ends the current meeting to a time and place certain and establishes a specified time and place for the meeting to reconvene.

Comment: *Since the number of members is small and procedures are available to limit debate, Motion 2 allows both debate and amendment, but specifies the motion is in order only when consideration of a pending matter has concluded. If the Council wants to adjourn before completing final action on a matter, it must, prior to adjourning, first temporarily conclude its consideration of that matter. This is done with one of three motions: to defer consideration of the matter, to postpone the matter to a certain time or day, or to refer the matter to a committee. Only as a last resort should the Council use a motion to suspend the rules, in order to allow the motion to adjourn to interrupt deliberation on the matter.*

Motion 3. To Take a Brief Recess. This motion is made when a member wishes to take a short break during the meeting, but does not end the meeting.

Comment: *This motion allows the Council to pause briefly in its proceedings and should not be confused with the motion to adjourn to a time and place certain, which is a form of the motion to adjourn under these rules. Motion 3 is a "motion to take a brief recess" rather than a "motion to recess" or "motion to adjourn." Since the number of Council members is small, and procedures are available to limit debate, debate is allowed on this motion. A motion to take a brief recess is in order at any time except when a motion to appeal a procedural ruling of the Chair or a motion to adjourn is pending.*

Motion 4. Call to Follow the Agenda. This motion would require the agenda be taken in order, prohibiting the Chair from taking items out of order. The motion must be made at the first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.

Comment: *This motion may be debated. Unless the motion is made when the item of business that deviates from the agenda is proposed, the right to insist on following the agenda is waived for that item.*

Motion 5. To Suspend the Rules. The Council may not suspend provisions of the rules that state requirements imposed by law on the Council. For adoption, the motion requires a vote equal to two-thirds of the actual membership of the Council, excluding vacant seats.

Comment: *This motion is in order when the Council wishes to do something that it may legally do but cannot accomplish without violating its own rules. The motion permits the Council to exercise greater flexibility and perhaps informality than adhering strictly to what the rules might allow. A motion to suspend the rules requires approval by two-thirds of the actual membership of the Council to pass. Note that the Chair and members who are absent from the meeting are counted for purposes of determining two-thirds of the Council, but vacant seats are excluded in making the two-thirds determination.*

Motion 6. To Go into Executive Session. The Council may go into Executive session only for one or more of the permissible purposes listed in A.R.S. §38-431.03 The motion to go into Executive Session must cite the purpose of the Executive Session and must be adopted at an open meeting.

Comment: *The requirements for this motion are found in A.R.S. §38-431.03(A), which permits Executive Session only for 7 topics. Those are:*

- 1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.*
- 2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.*
- 3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.*
- 4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body'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.*
- 5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.*

6. 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.

7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.

Motion 7. To Divide a Complex Motion and Consider It by Paragraph. The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Comment: *This motion is debatable.*

Motion 8. Motion for the Previous Question. The motion is not in order until every member has had an opportunity to speak once and there has been either at least 15 minutes of debate or debate has become repetitive.

Comment: *With small boards, a minimum period of debate on every proposal that comes before it strikes a superior balance between efficiency and effective representation by all Council members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote. Fifteen minutes is merely a suggested minimum period of time. This rule avoids the practice followed by some boards of allowing any member to end debate by simply saying "call the question," without the Council actually taking a vote on that procedural issue. Such a practice is contrary to regular parliamentary procedures. In addition, such a practice allows individual members to impose their will unilaterally on the group, in defiance of the principle of majority rule on which these rules are based.*

Motion 9. To Postpone to a Certain Time or Day. If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A member who wishes to revisit the matter must either wait until the specified time, or move to suspend the rules.

Comment: *This motion allows the Council to postpone consideration to a specified time or day and is appropriate when more information is needed or the deliberations are likely to be lengthy. Note the restriction on making a new motion with the same effect while a postponed motion remains pending.*

Motion 10. To Refer a Matter to a Sub-Committee. The Council may vote to refer an item on the agenda to a sub-committee for study and recommendations. Sixty days or more after a substantive motion has been referred to a sub-committee, a member may compel consideration of the item by the entire Council, whether or not the committee has reported the matter to the Council by requesting the matter be placed back on the Council agenda.

Comment: *The right of the maker to compel consideration by the full Council after a specified period of time prevents using the motion as a mechanism to defeat a proposal by referring it to a subcommittee that is willing to "sit" on it.*

Motion 11. To Amend.

(a) An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment will be treated as a motion to amend.

(b) A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote.

Comment: *The restriction on amendments stated in subpart (a), second sentence, of the provisions concerning this motion should be read narrowly; it is intended only to prevent an amendment that merely negates the provisions of the original motion. The intent of such an amendment can be achieved in a simpler and more straightforward manner by the defeat of the original proposal. Pertinent amendments that make major substantive changes in the original motion are quite proper.*

Some Councils allow a "substitute motion" when major changes in a motion are proposed. Such a motion is, in effect, a type of amendment. To avoid confusion, "substitute motions" are not allowed under these rules. All proposals for changes in a motion or in an amendment are treated as motions to amend, no matter how major their potential effect.

Subpart (b) of the rules governing this motion limits the number of proposed amendments that may be pending at one time to two, in order to reduce confusion. Amendments are voted on in reverse order; that is, the last-offered amendment, which would amend the first amendment, is voted on first. Once the last-offered of the two pending amendments is disposed of, an additional amendment may be offered.

Some Councils may have a practice of requiring the person making the original motion to approve of any proposed amendments to that motion. Such a practice is not recommended. Once a motion has been offered to the Council, it is up to the Council to decide whether or not it should be changed by amendment. If the person making the motion does not favor a proposed amendment, he or she is free to vote against it. And so long as the original motion has not been voted on and no amendment to it has passed, the original maker of the motion is free under these rules to withdraw it (see Rule 8). If a motion has been withdrawn, the Council members are generally free to make their own separate motions on the same subject.

Motion 12. To Reconsider. The Council may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority side except in the case of a tie; in that case the "nos" prevail) and no later than at the next regularly scheduled Council meeting. The motion cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the next regularly scheduled Council meeting.

Comment: *To avoid placing a measure in limbo, these rules restrict the availability of the motion no later than the regularly scheduled meeting following the original vote. Any Motion for Reconsideration occurring at the following regularly scheduled meeting must*

be placed on the agenda in compliance with Arizona's Open Meeting Laws. Surprise Municipal Code allows an item to be placed on an agenda by the Mayor no less than 24 hours before a meeting; a motion and second of any council member made during a future agenda item at a public meeting; or upon written request signed by two council members and submitted to the city clerk no less than five business days prior to the meeting date. In the case of a Motion to Reconsider item, each of the options above would need to be acted on by members who voted on the prevailing side.

USE OF CITY RESOURCES

Discretionary Funds:

Each member will be allotted discretionary funds, not to exceed an amount determined by Council during the annual budget process, to be utilized for a public purpose and betterment or benefit of the community or the Councilmember's district. Use of discretionary funds must be consistent with all applicable laws.

Use of discretionary funds requires the member wishing to utilize such funds to provide a Disbursement Request to the Finance Department. The City Attorney's Office will be consulted prior to expenditure to ensure compliance with all applicable laws. Funds will be released consistent with this policy.

Expenses, Reimbursements and Stipends

Council members are eligible to receive a City-issued cell phone or receive a monthly stipend for the business use of a personal cell phone.

Travel expenses, including mileage, reimbursements and stipends will be provided to members on the same basis as general City employees and will be approved and processed consistent with City policy.

Uses Barred

Consistent with State Law, no City resources, including communications media (computers, newsletters, etc.) may be used for advocacy or promotion of any issue subject to voter approval or candidate for elected office.

Council Offices

Council Offices are located in the northeast section of the 4th Floor of City Hall. The Office of the Mayor will be occupied by the one elected to that office, or appointed after a vacancy consistent with City Code. All other offices will be occupied on a first-come first-serve basis. Any member can request to move into any vacant office. If more than one member wishes to occupy a vacant office, selection of Council member offices will be based on seniority (that is the greatest number of uninterrupted days as a Surprise elected official), and then by lottery.

PREPARATION OF THE COUNCIL AGENDA

Supporting Information and Attachments

Each item on the Agenda should have supporting information and documentation for the item being considered. Necessary information includes the following, if applicable:

- Background Information: Relevant historical information, such as prior actions on the same or similar item, origin of the request, regional impact, or similar information.
- Financial Impact: actual and operational costs, revenue and other financial considerations, and whether such are one-time or ongoing.
- Budget Impact: Funding sources in the current budget (including e.g. contingency, unforeseen grants, etc.), and funding sources for future years, if applicable.
- Policy Compliant: Statement whether the action is consistent with City and Council Policy. If not, an explanation of why the item should deviate from policy. (Policy for this purpose includes normal City practice whether or not included in a written policy).
- FTE Impact: Necessary change in the number of FTE, whether the action would require a new FTE or the transfer of an FTE from another program.
- Objective Analysis: Analysis containing potential positive and negative impacts and impacts of if the item is not approved.
- Actual final documents (Resolution, Ordinance, Contracts, etc.)

Use of Consent Agenda

Consistent with the Council Rules of Conduct and Demeanor, and Parliamentary Rule #2, the Consent Agenda, unless otherwise required by law, should include all items previously discussed by Council for which no changes were requested by any member of Council; routine items (i.e. minor budget amendments, simple Intergovernmental Agreements, contract extensions, grant acceptances, and simple contract amendments); and items placed on the Consent Agenda at the Agenda Review.

Draft Agenda, Agenda Review

The Mayor (or designee) and/or the Vice Mayor (or designee), along with relevant staff selected by the City Manager, will review the Draft Agenda no fewer than 6 calendar days prior to the Council meeting. A Draft Agenda and the required "Supporting Information and Attachments" must be provided to the Mayor and Vice Mayor (or designees) no later than 24 hours prior to the Agenda Review meeting. Items may be removed that do not have sufficient information as identified in "Supporting Information and Attachments". Removed items will be placed on the agenda as soon as the "Supporting Information and Attachments" are available. The requirements of this section do not apply to emergency meetings or items placed on the agenda pursuant to Municipal Code Section 2-61(c)(1) (pertaining to items added 24 hours prior to the meeting) for which there is insufficient time to comply with this section.

SUBCOMMITTEES & WORKING GROUPS

Subcommittees and Working Groups formed in accordance with Surprise Municipal Code §2-40(i) will convene meetings at the direction of the subcommittee chair. Requests for meetings may be made to the subcommittee chair through the staff liaison.

An Agenda for each subcommittee meeting will be posted by the City Clerk no less than 24 hours prior to the meeting, in conformance with the Open Meeting Law, A.R.S. §38-431.01. Subcommittee meetings will convene in a meeting room at City Hall generally accessible to the public, except that executive sessions may be held in any location at City Hall.

IMPLEMENTATION AND ENFORCEMENT

As an expression of the standards of conduct for members expected by the City, this Policy & Procedure Manual is intended to be self-enforcing. Members themselves have the primary responsibility to assure that standards are understood and met, and that the public can continue to have full confidence in the integrity of government. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions. For this reason, standards will be included in the regular orientations for candidates for City Council, and newly elected members. Members entering office must sign a statement affirming they have read and understood the provisions of this City Council Policy & Procedure Manual. In addition, this manual and the Boards and Commissions Handbook will be reviewed by the City Council to consider recommendations and update it as necessary in August of even-numbered years, or as soon thereafter as practical.

Notwithstanding the intended self-enforcing nature of these policies and procedures, the City Council, by a vote of a majority of its members, may impose sanctions on members whose conduct does not comply with the City's standards, such as reprimand, formal censure, removal from meeting (if the member's conduct is disruptive or impedes the orderly conduct of business at the meeting), or removal from any position or assignment to which the member has been appointed by the Mayor or City Council.

REPORTING VIOLATIONS

Members have a duty to create the image and reality of a responsive, accessible, and fair City government. Accordingly, members have a duty to report if another member has violated law or policy. Moreover, members must never attempt to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any person with the intent of interfering with that person's duty to disclose such improper activity. As a Corresponding duty, members shall refrain from making a false, misleading, or unsubstantiated report. If after review it is determined that a complaint is groundless and was made in bad faith or for the purpose of harassment, or intentionally false or otherwise malicious in nature, the complainant may be subject to sanctions under this Policy.

COMPLAINT

A Complaint by a member must be filed with the City Attorney on or before one-hundred eighty (180) days after the violation is alleged to have occurred or thirty (30) days after the alleged violation was discovered, whichever date is earlier. Upon receipt, the City Attorney will engage conflict counsel who will conduct an initial screening of the complaint and within fifteen (15) days recommend that the City Attorney handle the complaint as follows:

- (a) Dismiss it for being incomplete, untimely, or on its face lacking factual or legal merit;
- (b) Dismiss it if the complaint on its face fails to state allegations that, if true, would violate a mandatory requirement or prohibition as opposed to an aspirational or administrative provision of this Policy, City Code or any other laws;
- (c) Refer alleged violations of Arizona or federal laws to an appropriate agency if the complaint states on its face allegations that, if true, would constitute a violation of Arizona or federal law;
- (d) Or If the complaint states on its face allegations that, if true, would constitute a violation of a mandatory requirement or prohibition (as opposed to aspirational or administrative provisions) of the this Policy, the City Code or any other law, conflict counsel shall investigate the complaint and report to the City Council, the complainant, the member who is the subject of the complaint, and the City Attorney findings of fact and conclusions of law within sixty (60) days. The City Council shall consider the Conflict Counsel's report at a public meeting and either accept or reject the report as submitted and shall impose sanctions as it finds appropriate.

In all circumstances, the City Attorney shall follow conflict counsel's recommendation. The City Attorney's recommendation to refer a complaint for further investigation pursuant to subsection (c) and (d) above shall not raise the presumption that any of the complaint's allegations are true or that any member had violated this Policy or law. The timelines for handling complaints set forth above set the outer limits. All parties involved are strongly encouraged to make their findings, recommendations, and decisions as expeditiously as possible for the sake of the public and the City officials against whom complaints have been filed.

The City Attorney will adopt written rules of procedure to govern the review process, including the right of a member against whom the complaint has been lodged to respond to the complaint, attend any hearing, and present witnesses and other evidence on her or his own behalf.

Any complaints relating to City elections must be filed with or referred to the City Clerk for review and disposition as provided by law.

APPENDIX

- A. Statement of Commitment
- B. Rules for the Public at Council Meetings

Statement of Commitment

As a member of the Surprise City Council I agree to uphold the principles, policies and procedures set forth in the Surprise City Council Policy & Procedure Manual and conduct myself by the following model of behavior. I will:

- Recognize the worth of individual members and appreciate their individual talents, perspectives and contributions;
- Help create an atmosphere of respect and civility where individual members, City staff and the public are free to express their ideas and work to their full potential;
- Conduct my personal and public affairs with honesty, integrity, fairness, and respect for others;
- Respect the dignity and privacy of individuals and organizations;
- Keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit;
- Avoid and discourage conduct that is divisive or harmful to the best interests of the City;
- Treat all people with whom I come in contact in the way I wish to be treated.

I affirm that I have read and that I understand the Surprise City Council Policy & Procedure Manual, dated this _____ day of _____, _____.

Mayor /Council Member for District _____

Rules for the Public at Council Meetings

- 1) Presence in the Council Dais Area. During a Council meeting, members of the public are permitted within the area in front of the Council dais only at the invitation or consent of the chair for purposes of making presentations and providing information to Council.
- 2) Addressing Council
 - a) Any member of the public desiring to address the Council may not proceed to the lectern until after being recognized by the Chair.
 - b) At the lectern, the member of the public should clearly state their name, and approximate cross streets for the record.
 - c) Statements will be limited to three (3) minutes per item to allow the meeting to proceed and end in a timely manner. The time limit may be extended at the option of the Chair.
 - d) If several speakers desire to speak regarding a single topic, the Chair can limit the number of speakers or limit the time given to each group; however, an equal amount of time will be given to each side of an issue.
 - e) Oral communications during the City Council meeting may not be used to lodge charges or complaints against any employee of the City or members of the body, regardless of whether such person is identified in the presentation by name or by any other reference that tends to identify him/her. Any such charges or complaints should be submitted during normal business hours to the City Manager for appropriate action.
- 3) No loud vocalization (shouting or calling out) will be permitted from the seating area of the Council Chamber.
- 4) Pursuant to A.R.S 38-431.01(H), at the conclusion of an open call to the public, individual councilmembers may, in their sole discretion, respond to criticism made by those who have addressed the public body or ask staff to follow-up or review the matter raised.
- 5) A civil decorum will be expected of all speakers. Behavior that is disruptive and prevents the City Council from accomplishing its business in a reasonably efficient and timely manner or interferes with conducting an orderly meeting or other speakers' rights is prohibited. Prohibited disruptive behavior includes, but is not limited to, threats, profanity, words likely to provoke immediate combat or speech that exceeds pre-set time limits, is unduly repetitive, or extends discussion by irrelevancies. Speakers engaged in disruptive behavior may forfeit their speaking time, or be removed from City Council chambers by direction of the Chair.

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Massie v. Hall, et al.,

EXHIBIT D

to the Complaint

Second Amendment to
the
Employment Agreement with City Attorney

This Second Amendment ("Amendment") to the Employment Agreement with City Attorney dated January 3, 2017 ("Employment Agreement"), is made and entered into this _____ day of August, 2024, by and between the City of Surprise, Arizona, a municipal corporation ("City") and Robert Wingo ("Attorney"), both of who understand and agree as follows:

WHEREAS, Attorney has faithfully and competently performed the duties of City Attorney since October 2015, meeting all expectations of city council;

WHEREAS, since that time, Attorney has successfully assisted with and resolved various complex, substantial, and significant legal matters for the City;

WHEREAS, Attorney's base salary will be increased to compensate for Attorney's exceptional performance;

WHEREAS, per Attorney's request, Attorney will forfeit 140 hours of Paid time off (PTO) from Attorney's regular PTO bank thereby partially offsetting the cost to the City for the increase in Attorney's base salary for approximately 1.5 years; and

WHEREAS, City and Attorney intend to ratify and confirm the remainder of the Employment Agreement other than base salary and PTO reduction as set forth herein.

NOW THEREFORE, in consideration of the promises, conditions and covenants contained herein, the City and Attorney agree that the Employment Agreement, as amended by the First Amendment entered into on September 7, 2021, shall be amended as follows :

1. Attorney's current base salary shall be increased by 4.4 percent effective September 2, 2024.
2. Attorney's regular PTO bank shall be reduced by 140 hours at the time Attorney's base salary is increased. This reduction shall have no effect on Attorney's PTO accrual rate or maximum accrual of 560 regular PTO hours.

Except as expressly provided for in this Amendment, all provisions, terms, paragraphs, subsections, and conditions of the Employment Agreement, dated January 3, 2017, as amended by the First Amendment entered into on September 7, 2021, are hereby ratified, shall remain unmodified, and in full force and effect. Furthermore, except as expressly provided in this Amendment, all benefits to Attorney under the Employment Agreement or City policies and procedures, whether previously accrued or accruing, shall not be reduced or diminished by this Amendment.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of this _____ day of August 2021.

City of Surprise

Attorney

Mayor Skip Hall

Robert Wingo

Approved as to Form:

William J. Sims

Special Counsel for City of Surprise

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Massie v. Hall, et al.,

EXHIBIT E

to the Complaint

Voice of Surprise
Public group · 871 members

More chats in this group

303/163/60 Update
Click to join

Help get Kevin on the ballot!
Click to join

Monday Night Live with Kevin -
Click to join

Talking the Sales Tax - Monday
Click to join



Voice of Surprise
Public group · 871 members

Join group

Share

- Discussion
- Featured
- People
- Events
- Media
- Files

Write something...

Reel

Photo/video

Poll

Featured

Jack Hastings
August 28 at 5:08 PM

Councilman Jack Hastings
August 28 at 4:14 PM

About

Voice of Surprise (VOS) is a grassroots political action committee driven by the voices of our community members. Dedicated to fostering transparency and accountability among our city's leaders, VOS tirelessly advocates for the interests and concerns of Surprise residents. With a commitment to ensuring that citizens' voices are heard and respected, VOS actively engages in initiatives aimed at promoting open governance and responsible leadership within our city. Join us in shaping the future of Surprise through active civic engagement and advocacy with Voice of Surprise. See less

Public

Anyone can see who's in the group and what they post.

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