

ORIGINAL

FILED

2014 MAR 28 AM 9:42

JOEY ORONA HASTINGS
CLERK OF THE COURT
Electronically Filed
BY *[Signature]* Apr 07 2014 02:12 p.m.
DEPUTY
Tracie K. Lindeman
Clerk of Supreme Court

1 **\$2515**
2 MARK WRAY, #4425
3 608 Lander Street
4 Reno, Nevada 89509
5 (775) 348-8877
6 (775) 348-8351 fax
7 Attorney for Plaintiff
8 SCENIC NEVADA, INC.

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE

12 SCENIC NEVADA, INC.,

13 Plaintiff,

Case No. CV12-02863

14 vs.

Dept. No.: 7

15 CITY OF RENO, a political subdivision
16 of the State of Nevada, and the CITY
17 COUNCIL thereof,

NOTICE OF APPEAL

18 Defendant.

19
20 SAUNDERS OUTDOOR
21 ADVERTISING, INC., a Utah
22 corporation,

23 Plaintiff,

Case No. CV12-02917

24 vs.

Dept. No.: 7

25 THE CITY OF RENO, a municipal
26 corporation

27 Defendant.
28


1 TO ALL INTERESTED PARTIES:

2 PLEASE TAKE NOTICE that Plaintiff Scenic Nevada, Inc. hereby appeals to the
3 Nevada Supreme Court from the Order entered March 27, 2014, of which the Notice of
4 Entry was served on March 28, 2014 in the above-entitled action.

5
6 DATED: March 28, 2014

LAW OFFICES OF MARK WRAY

7
8 By



9 MARK WRAY

10 Attorney for Plaintiff SCENIC NEVADA, INC.

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Jonathan Shipman
Reno City Attorney's Office
One E. First St., 3rd Floor
P.O. Box 1900
Reno, NV 89505

Frank Gilmore
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

Theresa M. Pease

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF WASHOE

3 **AFFIRMATION**

4 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.

6
7 DATED: March 28, 2014

LAW OFFICES OF MARK WRAY

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9 By: Mark Wray

10 MARK WRAY
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ORIGINAL

FILED

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MARK WRAY, #4425

608 Lander Street

Reno, Nevada 89509

(775) 348-8877

(775) 348-8351 fax

Attorney for Plaintiff

SCENIC NEVADA, INC.

2014 MAR 28 AM 9:55

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

BY

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SCENIC NEVADA, INC.,

Plaintiff,

Case No. CV12-02863

vs.

Dept. No.: 7

CITY OF RENO, a political subdivision
of the State of Nevada, and the CITY
COUNCIL thereof,

CASE APPEAL STATEMENT

Defendant.

SAUNDERS OUTDOOR
ADVERTISING, INC., a Utah
corporation,

Plaintiff,

Case No. CV12-02917

vs.

Dept. No.: 7

THE CITY OF RENO, a municipal
corporation

Defendant.

CV12-02863
SCENIC NEVADA, INC. VS. CITY
District Court
Washoe County
nnc
DC-09900054880-004
03/28/2014 09:55 AM
1310
ASMTTH

1 1. The district court case number and names of all parties to the proceedings
2 in the district court:

3 (a) CV12-02863 (consolidated with CV12-02917)

4 (b) Plaintiffs: Scenic Nevada, Inc. and Saunders Outdoor Advertising, Inc.
5 Defendant: City of Reno

6 2. Judge Issuing the Decision: The Hon. Patrick Flanagan, Department 7

7 3. Each appellant and name and address of counsel: Plaintiff Scenic Nevada,
8 Inc. represented by the Law Offices of Mark Wray, 608 Lander Street, Reno, Nevada
9 89509

10 4. Each respondent and name and address of counsel: Defendant City of Reno
11 represented by the Reno City Attorney's Office, One E. First Street, 3rd Floor, Reno,
12 Nevada 89505

13 5. Whether any counsel is not licensed to practice in Nevada: All counsel are
14 licensed in Nevada

15 6. Whether appellant was represented by retained counsel in District Court:
16 Yes

17 7. Whether appellant is represented by retained counsel on appeal: Yes

18 8. Whether appellant was granted leave to proceed in forma pauperis: No

19 9. Date proceedings commenced in district court: November 16, 2012

20 10. Brief description of nature of action and result in district court: Complaint
21 for declaratory relief to invalidate City of Reno digital billboard ordinance. Judgment
22 entered for Defendant City of Reno.

23 11. Whether the case has previously been the subject of an appeal: No

24 12. Whether this appeal involves child custody or visitation: No

25 13. If a civil case, whether this appeal involves the possibility of settlement:
26 Yes

1 DATED: March 28, 2014

LAW OFFICES OF MARK WRAY

2
3 By 

4 MARK WRAY

5 Attorney for Plaintiff SCENIC NEVADA, INC.
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Jonathan Shipman
Reno City Attorney's Office
One E. First St., 3rd Floor
P.O. Box 1900
Reno, NV 89505

Frank Gilmore
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

Theresa Mace

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF WASHOE

3 **AFFIRMATION**

4 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.

6
7 DATED: March 28, 2014

LAW OFFICES OF MARK WRAY

8
9 By: Mark Wray

10 MARK WRAY
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SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV12-02863****Case Description: SCENIC NEVADA, INC VS. CITY OF RENO (D7)**

Case Number: CV12-02863 Case Type: OTHER ADMINISTRATIVE LAW - Initially Filed On: 11/16/2012

Parties

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - PATRICK FLANAGAN - D7	Active
PLTF - SAUNDERS OUTDOOR ADVERTISING, INC. - @1172259	Active
PLTF - SCENIC NEVADA, INC. - @1232412	Active
DEFT - CITY OF RENO - @1014022	Active
DEFT - CITY COUNSEL - @1022413	Active
ATTY - Jonathan D. Shipman - 5778	Active
ATTY - Frank C. Gilmore, Esq. - 10052	Active
ATTY - Mark Douglas Wray, Esq. - 4425	Active
ATTY - John J. Kadlic, Esq. - 1291	Active
ATTY - Marilyn Diane Craig, Esq. - 3304	Party ended on: 6/9/2013 12:00:00AM

Disposed Hearings

- Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 1/25/2013 at 08:12:00
Extra Event Text: MOTION TO DISMISS COMPLAINT FOR JUDICIAL REVIEW TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE
Event Disposition: S200 - 3/12/2013
- Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 3/28/2013 at 11:00:00
Extra Event Text: DEFENDANTS' MOTION TO DISMISS
Event Disposition: S200 - 3/29/2013
- Department: D7 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 3/28/2013 at 11:00:00
Extra Event Text: Oral Argument re Mtn to Dismiss per Order filed 03.12.13 - ks
Event Disposition: D840 - 3/28/2013
- Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 5/17/2013 at 16:30:00
Extra Event Text: MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE
Event Disposition: S200 - 6/7/2013
- Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 6/14/2013 at 10:46:00
Extra Event Text: MOTION TO FILE SUPPLEMENTAL PLEATING TO MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIC
Event Disposition: S200 - 6/27/2013
- Department: D7 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 7/18/2013 at 14:30:00

Event Disposition: D355 - 7/18/2013
- Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 1/8/2014 at 12:28:00
Extra Event Text: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
Event Disposition: S200 - 1/30/2014
- Department: D7 -- Event: PRE-TRIAL CONFERENCE -- Scheduled Date & Time: 1/30/2014 at 13:15:00
Extra Event Text: Declaratory Relief - Ordinance Issue
Event Disposition: D355 - 1/30/2014

Report Does Not Contain Sealed Cases or Confidential Information

- 9 Department: D7 -- Event: TRIAL - NON JURY -- Scheduled Date & Time: 2/18/2014 at 09:30:00
Extra Event Text: Declaratory Relief - Ordinance Issue
Event Disposition: D844 - 1/10/2014
- 10 Department: D7 -- Event: EXHIBITS TO BE MARKED W/CLERK -- Scheduled Date & Time: 2/18/2014 at 14:00:00
Extra Event Text: TERESA OF MARK WRAY'S OFFICE/JONATHAN SHIPMAN/FRANK GILMORE
Event Disposition: D596 - 2/18/2014
- 11 Department: D7 -- Event: TRIAL - NON JURY -- Scheduled Date & Time: 2/19/2014 at 13:30:00
Extra Event Text: Declaratory Relief - Ordinance Issue
Event Disposition: D844 - 1/30/2014
- 12 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 2/24/2014 at 09:00:00
Extra Event Text: NON-JURY TRIAL - COURT WILL ISSUE A WRITTEN DECISION
Event Disposition: S200 - 2/25/2014
- 13 Department: D7 -- Event: TRIAL - NON JURY -- Scheduled Date & Time: 2/24/2014 at 09:00:00
Extra Event Text: BENCH/ONE DAY
Event Disposition: D840 - 2/24/2014

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|----|--------------------|----------|--|
| 1 | 11/16/2012 | - | COV - **Civil Cover Sheet
<i>No additional text exists for this entry.</i> |
| 2 | 11/16/2012 | - | \$1425 - \$Complaint - Civil
<i>No additional text exists for this entry.</i> |
| 3 | 11/16/2012 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of -\$260.00 was made on receipt DCDC385084. |
| 4 | 11/16/2012 | - | 4090 - ** Summons Issued
<i>No additional text exists for this entry.</i> |
| 5 | 11/16/2012 | - | 4090 - ** Summons Issued
<i>No additional text exists for this entry.</i> |
| 6 | 11/16/2012 | - | 3720 - Proof of Service
Additional Text: Transaction 3353093 - Approved By: APOMA : 11-16-2012:16:23:01 |
| 7 | 11/16/2012 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 3353138 - Approved By: NOREVIEW : 11-16-2012:16:29:00 |
| 8 | 12/6/2012 | - | 2520 - Notice of Appearance
Additional Text: Transaction 3390895 - Approved By: APOMA : 12-06-2012:11:55:13 |
| 9 | 12/6/2012 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 3391038 - Approved By: NOREVIEW : 12-06-2012:12:00:22 |
| 10 | 12/26/2012 | - | 2315 - Mtn to Dismiss ...
Additional Text: MOTION TO DISMISS COMPLAINT FOR JUDICIAL REVIEW TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3428460 - Approved By: MCHOLICO : 12-26-2012:16:52:12 |

- 11 12/26/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3428473 - Approved By: NOREVIEW : 12-26-2012:16:53:31
- 12 1/14/2013 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO MOTION TO DISMISS - Transaction 3463543 - Approved By: MFERNAND : 01-15-2013:08:51:20
- 13 1/15/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3463772 - Approved By: NOREVIEW : 01-15-2013:08:54:48
- 14 1/24/2013 - 3790 - Reply to/in Opposition
Additional Text: REPLY TO OPPOSITION TO MOTION TO DISMISS - Transaction 3487744 - Approved By: MLAWRENC : 01-24-2013:16:07:35
- 15 1/24/2013 - 3860 - Request for Submission
Additional Text: MOTION TO DISMISS COMPLAINT FOR JUDICIAL REVIEW TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3487757 - Approved By: MLAWRENC : 01-24-2013:16:06:31
DOCUMENT TITLE: MOTION TO DISMISS COMPLAINT FOR JUDICIAL REVIEW TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE
PARTY SUBMITTING: MARILYN CRAIG ESQ
DATE SUBMITTED: 01-24-13
SUBMITTED BY: MLAWRENCE
DATE RECEIVED JUDGE OFFICE:
- 16 1/24/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3487933 - Approved By: NOREVIEW : 01-24-2013:16:13:09
- 17 1/24/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3487945 - Approved By: NOREVIEW : 01-24-2013:16:16:17
- 18 3/12/2013 - 3370 - Order ...
Additional Text: [REQUESTING PARTIES SET ORAL ARGUMENT RE DEFENDANT'S MTN TO DISMISS - ks]
- 19 3/12/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3584946 - Approved By: NOREVIEW : 03-12-2013:12:24:42
- 20 3/12/2013 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 21 3/28/2013 - MIN - ***Minutes
Additional Text: ORAL ARGUMENTS - DEFENDANTS' MOTION TO DISMISS - Transaction 3623004 - Approved By: NOREVIEW : 03-28-2013:12:18:16
- 22 3/28/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3623013 - Approved By: NOREVIEW : 03-28-2013:12:19:38
- 23 3/29/2013 - S200 - Request for Submission Complet
Additional Text: ORDER REQUIREMENT PLACED ON INTERNAL MONITORING SYSTEM - ks
- 24 3/29/2013 - 3370 - Order ...
Additional Text: [DEFENDANT'S MTN TO DISMISS GRANTED; PLAINTIFF'S ORAL MTN TO AMEND GRANTED; FIRST AMENDED COMPLAINT TO BE FILED WITHIN 15 DAYS OF ORDER - ks]
- 25 3/29/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3626918 - Approved By: NOREVIEW : 03-29-2013:15:57:59
- 26 4/8/2013 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 3645889 - Approved By: NOREVIEW : 04-08-2013:16:08:51

- 27 4/8/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3645903 - Approved By: NOREVIEW : 04-08-2013:16:11:19
- 28 4/15/2013 - 1090 - Amended Complaint
Additional Text: FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3658981 - Approved By: APOMA : 04-15-2013:09:41:36
- 29 4/15/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3659390 - Approved By: NOREVIEW : 04-15-2013:09:46:08
- 30 4/24/2013 - 2315 - Mtn to Dismiss ...
Additional Text: MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3683741 - Approved By: MCHOLICO : 04-24-2013:16:14:39
- 31 4/24/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3684039 - Approved By: NOREVIEW : 04-24-2013:16:21:45
- 32 5/13/2013 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO MOTION TO DISMISS - Transaction 3720495 - Approved By: AEATON : 05-13-2013:12:15:16
- 33 5/13/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3721081 - Approved By: NOREVIEW : 05-13-2013:12:18:11
- 34 5/17/2013 - 3790 - Reply to/in Opposition
Additional Text: REPLY TO OPPOSITION TO MOTION TO DISMISS - Transaction 3733094 - Approved By: YLLOYD : 05-17-2013:13:11:55
- 35 5/17/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3733189 - Approved By: NOREVIEW : 05-17-2013:13:13:02
- 36 5/17/2013 - 3860 - Request for Submission
Additional Text: DOCUMENT TITLE: MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3733473 - Approved By: TWHITE : 05-17-2013:15:53:22
PARTY SUBMITTING: MARILYN D. CRAIG, ESQ.
DATE SUBMITTED: MAY 17, 2013
SUBMITTED BY: TWHITE
DATE RECEIVED JUDGE OFFICE:
- 37 5/17/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3733905 - Approved By: NOREVIEW : 05-17-2013:15:55:06
- 38 6/5/2013 - 2490 - Motion ...
Additional Text: MOTION TO FILE SUPPLEMENTAL PLEADING TO MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3769029 - Approved By: HBROWN : 06-05-2013:15:10:31
- 39 6/5/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3769114 - Approved By: NOREVIEW : 06-05-2013:15:13:43
- 40 6/7/2013 - 3370 - Order ...
Additional Text: [TO SET ORAL ARGMT RE DEFENDANT'S MTN TO DISMISS - ks]
- 41 6/7/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3774931 - Approved By: NOREVIEW : 06-07-2013:15:36:55
- 42 6/7/2013 - S200 - Request for Submission Complet
No additional text exists for this entry.

- 43 6/11/2013 - 3880 - Response...
Additional Text: RESPONSE TO MOTION TO FILE SUPPLEMENTAL PLEADING TO MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3780041 - Approved By: YLLOYD : 06-11-2013:14:49:22
- 44 6/11/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3781116 - Approved By: NOREVIEW : 06-11-2013:14:53:30
- 45 6/13/2013 - 3790 - Reply to/in Opposition
Additional Text: REPLY IN RESPONSE TO MOTION TO FILE SUPPLEMENTAL PLEADING TO MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3786355 - Approved By: YLLOYD : 06-13-2013:12:46:52
- 46 6/13/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3786870 - Approved By: NOREVIEW : 06-13-2013:12:49:14
- 47 6/14/2013 - 3860 - Request for Submission
Additional Text: Transaction 3788893 - Approved By: AEATON : 06-14-2013:10:35:40
DOCUMENT TITLE: MOTION TO FILE SUPPLEMENTAL PLEATING TO MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE
PARTY SUBMITTING: JOHN KADLIC, ESQ.
DATE SUBMITTED: 06/14/13
SUBMITTED BY: AEATON
DATE RECEIVED JUDGE OFFICE:
- 48 6/14/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3788987 - Approved By: NOREVIEW : 06-14-2013:10:37:52
- 49 6/27/2013 - 3370 - Order ...
Additional Text: [GRANTING CITY OF RENO'S MTN TO SUPPLEMENT MTN TO DISMISS - ks]
- 50 6/27/2013 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 51 6/27/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3820402 - Approved By: NOREVIEW : 06-27-2013:13:45:33
- 52 6/28/2013 - 4105 - Supplemental ...
Additional Text: SUPPLEMENT TO MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3822245 - Approved By: HBROWN : 06-28-2013:09:26:46
- 53 6/28/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3822347 - Approved By: NOREVIEW : 06-28-2013:09:31:44
- 54 7/3/2013 - 4105 - Supplemental ...
Additional Text: SUPPLEMENTAL RESPONSE TO MOTION TO DISMISS FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL BILLBOARD ORDINANCE - Transaction 3831826 - Approved By: ACROGHAN : 07-03-2013:11:10:10
- 55 7/3/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3832196 - Approved By: NOREVIEW : 07-03-2013:11:13:10
- 56 7/9/2013 - 2526 - Notice of Change of Attorney
Additional Text: Transaction 3840049 - Approved By: DJARAMIL : 07-09-2013:12:09:36
- 57 7/9/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3840747 - Approved By: NOREVIEW : 07-09-2013:12:11:26
- 58 7/23/2013 - 2842 - Ord Denying Motion
Additional Text: TO DISMISS - Transaction 3874009 - Approved By: NOREVIEW : 07-23-2013:16:28:53

- 59 7/23/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3874188 - Approved By: NOREVIEW : 07-23-2013:16:40:00
- 60 7/30/2013 - 1130 - Answer ...
Additional Text: CITY OF RENO - Transaction 3888144 - Approved By: DJARAMIL : 07-30-2013:12:19:58
- 61 7/30/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3889058 - Approved By: NOREVIEW : 07-30-2013:12:22:04
- 62 8/6/2013 - 1085 - Amended Answer
Additional Text: FIRST AMENDED ANSWER TO FIRST AMENDED COMPLAINT - Transaction 3902376 - Approved By: MFERNAND : 08-06-2013:12:51:30
- 63 8/6/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3903426 - Approved By: NOREVIEW : 08-06-2013:12:54:26
- 64 8/26/2013 - A120 - Exemption from Arbitration
Additional Text: Transaction 3952071 - Approved By: AZION : 08-26-2013:16:08:48
- 65 8/26/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3952232 - Approved By: NOREVIEW : 08-26-2013:16:14:28
- 66 8/27/2013 - 3696 - Pre-Trial Order
Additional Text: Transaction 3953918 - Approved By: NOREVIEW : 08-27-2013:10:53:27
- 67 8/27/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3953937 - Approved By: NOREVIEW : 08-27-2013:10:56:37
- 68 9/11/2013 - 3980 - Stip and Order...
Additional Text: TO CONSOLIDATE ACTIONS - [CV12-02917 CONSOLIDATED INTO CV12-02863]
- 69 9/11/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3989352 - Approved By: NOREVIEW : 09-11-2013:16:03:40
- 70 9/12/2013 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 3991089 - Approved By: NOREVIEW : 09-12-2013:09:48:10
- 71 9/12/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3991208 - Approved By: NOREVIEW : 09-12-2013:09:53:32
- 72 9/17/2013 - 1250E - Application for Setting eFile
Additional Text: Declaratory Relief - Ordinance Issue - Matter consolidated w/Saunders v Reno - CV12-02917
MPTC - 03.26.13 - 1:15 p.m.
PTC - 01.30.14 - 1:15 p.m.
Trial - 02.18.14 - 9:30 a.m. [#1 - 3 day bench]

Attys:
P Saunders: Frank Gilmore, Esq. - 329.3151
P Scenic: Mark Wray, Esq. - 348.8877
D: Jonathan Shipman, Esq. - 334.2050
- 73 9/17/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 4002180 - Approved By: NOREVIEW : 09-17-2013:13:56:42
- 74 9/19/2013 - 3370 - Order ...
Additional Text: [DENYING DEFENDANT'S MTN TO DISMISS - ks]

- 75 9/19/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 4007249 - Approved By: NOREVIEW : 09-19-2013:10:38:17
- 76 9/19/2013 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 4009300 - Approved By: NOREVIEW : 09-19-2013:15:48:35
- 77 9/19/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 4009310 - Approved By: NOREVIEW : 09-19-2013:15:50:44
- 78 10/22/2013 - 1835 - Joint Case Conference Report
Additional Text: Transaction 4084137 - Approved By: MFERNAND : 10-22-2013:13:51:39
- 79 10/22/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 4084617 - Approved By: NOREVIEW : 10-22-2013:13:53:38
- 80 11/6/2013 - MIN - ***Minutes
Additional Text: 07-18-13 ORAL ARGUMENTS - Transaction 4119889 - Approved By: NOREVIEW : 11-06-2013:16:54:12
- 81 11/6/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 4119911 - Approved By: NOREVIEW : 11-06-2013:16:56:36
- 82 11/26/2013 - 2200 - Mtn for Summary Judgment
Additional Text: DEFENDANT CITY OF RENO'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF SCENIC NEVADA -
Transaction 4163376 - Approved By: AAKOPYAN : 11-26-2013:16:29:52
- 83 11/26/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 4163699 - Approved By: NOREVIEW : 11-26-2013:16:32:41
- 84 12/5/2013 - 2582 - Notice of Taking Deposition
Additional Text: NOTICE OF TAKING VIDEOTAPED DEPOSITION AND FOR PRODUCTION OF DOCUMENTS AT TIME OF DEPOSITION -
Transaction 4178148 - Approved By: AAKOPYAN : 12-05-2013:13:31:51
- 85 12/5/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 4178192 - Approved By: NOREVIEW : 12-05-2013:13:33:34
- 86 12/24/2013 - 2645 - Opposition to Mtn ...
Additional Text: SCENIC NEVADA'S OPPOSITION TO THE CITY OF RENO'S MOTION FOR SUMMARY JUDGMENT
- 87 12/30/2013 - 3720 - Proof of Service
Additional Text: Transaction 4224571 - Approved By: AAKOPYAN : 12-30-2013:12:43:17
- 88 12/30/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 4224688 - Approved By: NOREVIEW : 12-30-2013:12:44:48
- 89 1/2/2014 - 2582 - Notice of Taking Deposition
Additional Text: NOTICE OF TAKING VIDEOTAPED DEPOSITION AND FOR PRODUCTION OF DOCUMENTS AT TIME OF DEPOSITION -
Transaction 4231144 - Approved By: AAKOPYAN : 01-02-2014:16:17:26
- 90 1/2/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4231278 - Approved By: NOREVIEW : 01-02-2014:16:29:14
- 91 1/3/2014 - 2582 - Notice of Taking Deposition
Additional Text: NOTICE OF TAKING VIDEOTAPED DEPOSITION AND FOR PRODUCTION OF DOCUMENTS AT TIME OF DEPOSITION -
Transaction 4233908 - Approved By: MCHOLICO : 01-06-2014:08:43:59
- 92 1/6/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4234496 - Approved By: NOREVIEW : 01-06-2014:08:46:02

- 93 1/8/2014 - 3790 - Reply to/in Opposition
Additional Text: DEFENDANT CITY OF RENO'S REPLY T SCENIC NEVADA'S OPPOSITION TO THE CITY OF RENO'S MOTION FOR SUMMARY JUDGMENT - Transaction 4242180 - Approved By: MFERNAND : 01-08-2014:12:07:11
- 94 1/8/2014 - 3860 - Request for Submission
Additional Text: MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF SCENIC NEVADA (NO PAPER ORDER PROVIDED) - Transaction 4242180 - Approved By: MFERNAND : 01-08-2014:12:07:11
PARTY SUBMITTING: JONATHAN D. SHIPMAN, ESQ.
DATE SUBMITTED: 01/08/14
SUBMITTED BY: M. FERNANDEZ
DATE RECEIVED JUDGE OFFICE:
- 95 1/8/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4242387 - Approved By: NOREVIEW : 01-08-2014:12:09:35
- 96 1/10/2014 - 4025 - Stip & Ord to Continue
Additional Text: TRIAL -
[01.10.14 - TRIAL RESET TO COMMENCE 02.19.14 - 1:30 P.M. - ks]
- 97 1/10/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4250446 - Approved By: NOREVIEW : 01-10-2014:14:51:59
- 98 1/30/2014 - S200 - Request for Submission Complet
Additional Text: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT DENIED
COUNSEL WRAY TO PREPARE PROPOSED ORDER
- 99 1/30/2014 - 3370 - Order ...
Additional Text: [DENIAL OF CITY OF RENO'S MTN TO DISMISS COMPLAINT IN SAUNDERS V CITY OF RENO - CV12-02917 - ks]
- 100 1/30/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4283742 - Approved By: NOREVIEW : 01-30-2014:15:50:19
- 101 1/31/2014 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 4284366 - Approved By: NOREVIEW : 01-31-2014:08:49:57
- 102 1/31/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4284372 - Approved By: NOREVIEW : 01-31-2014:08:51:09
- 103 2/3/2014 - 4185 - Transcript
Additional Text: PRETRIAL CONFERENCE - JANUARY 30, 2014 - Transaction 4286373 - Approved By: NOREVIEW : 02-03-2014:09:31:00
- 104 2/3/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4286374 - Approved By: NOREVIEW : 02-03-2014:09:32:02
- 105 2/3/2014 - MIN - ***Minutes
Additional Text: PRE-TRIAL CONFERENCE - 01-30-14 - Transaction 4286430 - Approved By: NOREVIEW : 02-03-2014:09:55:11
- 106 2/3/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4286431 - Approved By: NOREVIEW : 02-03-2014:09:56:13
- 107 2/12/2014 - 4220 - Trial Statement - Plaintiff
Additional Text: SAUNDERS OUTDOOR ADVERTISING'S TRIAL STATEMENT - Transaction 4302501 - Approved By: MFERNAND : 02-12-2014:14:12:39
- 108 2/12/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4302749 - Approved By: NOREVIEW : 02-12-2014:14:13:46

- 109 2/12/2014 - 4055 - Subpoena
Additional Text: Transaction 4303195 - Approved By: MELWOOD : 02-13-2014:08:11:53
- 110 2/13/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4303539 - Approved By: NOREVIEW : 02-13-2014:08:13:02
- 111 2/13/2014 - 4205 - Trial Statement...
Additional Text: DEFENDANT CITY OF RENO'S TRIAL STATEMENT - Transaction 4304398 - Approved By: MELWOOD : 02-13-2014:13:41:40
- 112 2/13/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4304606 - Approved By: NOREVIEW : 02-13-2014:13:42:50
- 113 2/13/2014 - 4210 - Trial Statement - Defendant
Additional Text: Transaction 4305224 - Approved By: KSIMS : 02-13-2014:16:47:52
- 114 2/13/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4305298 - Approved By: NOREVIEW : 02-13-2014:16:49:05
- 115 2/18/2014 - 3370 - Order ...
Additional Text: DENYING MOTION FOR SUMMARY JUDGMENT - Transaction 4307018 - Approved By: NOREVIEW : 02-18-2014:08:23:20
- 116 2/18/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4307021 - Approved By: NOREVIEW : 02-18-2014:08:24:35
- 117 2/24/2014 - 1695 - ** Exhibit(s) ...
Additional Text: NON-JURY TRIAL
EXHIBITS 1 - 71; 100 - 102; AND 200 - 237
ALL EXHIBITS WERE ADMITTED BY STIPULATION
- 118 2/25/2014 - COC - Evidence Chain of Custody Form
No additional text exists for this entry.
- 119 2/25/2014 - MIN - ***Minutes
Additional Text: NON-JURY TRIAL - 02-24-14 - Transaction 4317827 - Approved By: NOREVIEW : 02-25-2014:09:25:03
- 120 2/25/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4317828 - Approved By: NOREVIEW : 02-25-2014:09:26:02
- 121 2/25/2014 - S200 - Request for Submission Complet
Additional Text: REQUIREMENT FOR ORDER PLACED ON INTERNAL DOCKET IN D7 - ks
- 122 3/27/2014 - 3370 - Order ...
Additional Text: [JUDGMENT IN FAVOR OF DEFENDANT CITY OF RENO AND AGAINST PLAINTIFF SAUNDERS OUTDOOR ADVERTISING, INC.; AND
JUDGMENT IN FAVOR OF DEFENDANT CITY OF RENO AND AGAINST PLAINTIFF SCENIC NEVADA, INC. - ks]
- 123 3/27/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4363646 - Approved By: NOREVIEW : 03-27-2014:17:10:22
- 124 3/27/2014 - F145 - Adj Non-Jury (Bench) Trial
No additional text exists for this entry.
- 125 3/28/2014 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 4363861 - Approved By: NOREVIEW : 03-28-2014:08:57:01

- 126 3/28/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4363865 - Approved By: NOREVIEW : 03-28-2014:08:57:58
- 127 3/28/2014 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: PLTF SCENIC NEVADA, INC
- 128 3/28/2014 - PAYRC - **Payment Receipted
Additional Text: A Payment of -\$34.00 was made on receipt DCDC448646.
- 129 3/28/2014 - SAB - **Supreme Court Appeal Bond
No additional text exists for this entry.
- 130 3/28/2014 - 1310 - Case Appeal Statement
No additional text exists for this entry.
- 131 4/2/2014 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 4370418 - Approved By: NOREVIEW : 04-02-2014:14:43:07
- 132 4/2/2014 - NEF - Proof of Electronic Service
Additional Text: Transaction 4370430 - Approved By: NOREVIEW : 04-02-2014:14:44:18

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV12-02917****Case Description: SAUNDERS V RENO [consolidated into CV12-02863 (D7)]****Case Number: CV12-02917 Case Type: GENERAL CIVIL - Initially Filed On: 11/21/2012****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - PATRICK FLANAGAN - D7	Active
PLTF - SAUNDERS OUTDOOR ADVERTISING, INC. - @1172259	Active
DEFT - CITY OF RENO - RENO	Active
ATTY - Jonathan D. Shipman - 5778	Active
ATTY - John J. Kadlic, Esq. - 1291	Active
ATTY - Frank C. Gilmore, Esq. - 10052	Active
ATTY - Marilyn Diane Craig, Esq. - 3304	Party ended on: 7/9/2013 12:00:00AM

Disposed Hearings

- 1 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 12/6/2012 at 13:54:00
Extra Event Text: PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION
Event Disposition: S200 - 12/7/2012
- 2 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 12/19/2012 at 08:54:00
Extra Event Text: PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION
Event Disposition: S200 - 12/19/2012
- 3 Department: D7 -- Event: PRELIMINARY INJUNCTION -- Scheduled Date & Time: 1/9/2013 at 09:00:00
Extra Event Text: AND TEMPORARY RESTRAINING ORDER HEARING
Event Disposition: D845 - 1/9/2013
- 4 Department: D7 -- Event: MAND PRETRIAL STATUS CONF -- Scheduled Date & Time: 3/26/2013 at 13:15:00
Extra Event Text: Declaratory Relief - Ordinance Issue
Event Disposition: D435 - 3/26/2013
- 5 Department: D7 -- Event: Request for Submission -- Scheduled Date & Time: 8/22/2013 at 09:50:00
Extra Event Text: MOTION TO DISMISS COMPLAINT
Event Disposition: S200 - 9/19/2013
- 6 Department: D7 -- Event: PRE-TRIAL CONFERENCE -- Scheduled Date & Time: 9/17/2013 at 13:15:00
Extra Event Text: PTC ORIGINALLY SET FOR 10.01.13; HEARING VACATED AND RESET TO 09.17.13 AT COURT'S REQUEST - ALL COUNSEL ARE AGREEA
Event Disposition: D435 - 9/17/2013
- 7 Department: D7 -- Event: PRE-TRIAL CONFERENCE -- Scheduled Date & Time: 10/1/2013 at 13:15:00
Extra Event Text: Declaratory Relief - Ordinance Issue
Event Disposition: D844 - 8/26/2013
- 8 Department: D7 -- Event: TRIAL - NON JURY -- Scheduled Date & Time: 10/15/2013 at 09:30:00
Extra Event Text: Declaratory Relief - Ordinance Issue
Event Disposition: D844 - 9/17/2013

ActionsFiling Date - Docket Code & Description**Report Does Not Contain Sealed Cases or Confidential Information**

- 1 11/21/2012 - COV - **Civil Cover Sheet
No additional text exists for this entry.
- 2 11/21/2012 - \$1425 - \$Complaint - Civil
No additional text exists for this entry.
- 3 11/21/2012 - 4090 - ** Summons Issued
No additional text exists for this entry.
- 4 11/21/2012 - PAYRC - **Payment Receipted
Additional Text: A Payment of -\$260.00 was made on receipt DCDC385730.
- 5 11/21/2012 - 2222 - Mtn for TRO
Additional Text: PLTFS MOTION FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION
- 6 11/21/2012 - 1067 - Affidavit of Service
Additional Text: Transaction 3363883 - Approved By: MCHOLICO : 11-21-2012:16:02:41
- 7 11/21/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3364019 - Approved By: NOREVIEW : 11-21-2012:16:05:41
- 8 11/26/2012 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER - Transaction 3364850 - Approved By: MCHOLICO : 11-26-2012:10:05:54
- 9 11/26/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3365141 - Approved By: NOREVIEW : 11-26-2012:10:08:24
- 10 12/5/2012 - 2520 - Notice of Appearance
Additional Text: JOHN J. KADLIC, ESQ. & MARILYN D. CRAIG, ESQ. / CITY OF RENO - Transaction 3389001 - Approved By: MCHOLICO : 12-05-2012:15:40:32
- 11 12/5/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3389115 - Approved By: NOREVIEW : 12-05-2012:15:45:47
- 12 12/6/2012 - 3795 - Reply...
Additional Text: PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER - Transaction 3391227 - Approved By: MCHOLICO : 12-06-2012:13:28:32
- 13 12/6/2012 - 3860 - Request for Submission
Additional Text: PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION (NO PAPER ORDER PROVIDED) - Transaction 3391239 - Approved By: MCHOLICO : 12-06-2012:13:29:29
PARTY SUBMITTING: FRANK C. GILMORE, ESQ.
DATE SUBMITTED: 12/6/12
SUBMITTED BY: MCHOLICO
DATE RECEIVED JUDGE OFFICE:
- 14 12/6/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3391293 - Approved By: NOREVIEW : 12-06-2012:13:31:53
- 15 12/6/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3391294 - Approved By: NOREVIEW : 12-06-2012:13:31:53
- 16 12/6/2012 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION - Transaction 3392157 - Approved By: MCHOLICO : 12-07-2012:08:09:13

- 17 12/7/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3392404 - Approved By: NOREVIEW : 12-07-2012:08:10:32
- 18 12/7/2012 - 3370 - Order ...
Additional Text: [ORDER TO SET TRO FOR HEARING - ks]
- 19 12/7/2012 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 20 12/7/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3393627 - Approved By: NOREVIEW : 12-07-2012:11:37:36
- 21 12/17/2012 - 1250E - Application for Setting eFile
Additional Text: Transaction 3411977 - Approved By: NOREVIEW : 12-17-2012:15:14:48
- 22 12/17/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3411988 - Approved By: NOREVIEW : 12-17-2012:15:16:19
- 23 12/18/2012 - 3795 - Reply...
Additional Text: PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION - Transaction 3415741 - Approved By: MCHOLICO : 12-19-2012:08:22:54
- 24 12/18/2012 - 3860 - Request for Submission
Additional Text: PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (NO PAPER ORDER PROVIDED) - Transaction 3415741 - Approved By: MCHOLICO : 12-19-2012:08:22:54
PARTY SUBMITTING: FRANK C. GILMORE, ESQ.
DATE SUBMITTED: 12/18/12
SUBMITTED BY: MCHOLICO
DATE RECEIVED JUDGE OFFICE:
- 25 12/19/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3415858 - Approved By: NOREVIEW : 12-19-2012:08:24:46
- 26 12/19/2012 - S200 - Request for Submission Complet
Additional Text: HEARING SET FOR TRO AND PREL. INJ. TO BE HEARD 01.09.13 - 1:30 P.M. - ks
- 27 1/7/2013 - 1130 - Answer ...
Additional Text: CITY OF RENO'S ANSWER TO COMPLAINT - Transaction 3445269 - Approved By: MCHOLICO : 01-07-2013:10:44:15
- 28 1/7/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3445472 - Approved By: NOREVIEW : 01-07-2013:10:46:10
- 29 1/8/2013 - 1085 - Amended Answer
Additional Text: CITY OF RENO'S AMENDED ANSWER TO COMPLAINT - Transaction 3448304 - Approved By: APOMA : 01-08-2013:11:09:06
- 30 1/8/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3449178 - Approved By: NOREVIEW : 01-08-2013:11:19:29
- 31 1/16/2013 - 2529 - Notice of Early Case Conferenc
Additional Text: Transaction 3469869 - Approved By: NOREVIEW : 01-16-2013:11:12:20
- 32 1/16/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3469874 - Approved By: NOREVIEW : 01-16-2013:11:14:19
- 33 1/24/2013 - 2605 - Notice to Set
Additional Text: 01/29/2013 - TRIAL SETTING - Transaction 3488075 - Approved By: MBEST : 01-24-2013:16:37:56

- 34 1/24/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3488201 - Approved By: NOREVIEW : 01-24-2013:16:57:37
- 35 1/30/2013 - 1250E - Application for Setting eFile
Additional Text: Declaratory Relief - Ordinance Issue
MPTC - 03.26.13 - 1:15 p.m.
PTC - 10.01.13 - 1:15 p.m.
Trial - 10.15.13 - 9:30 a.m. [#2 - 2 day bench]

Attys:
P: Frank Gilmore, Esq. - 329.3151
D: Marilyn Craig, Esq. - 334.2050
- 36 1/30/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3497783 - Approved By: NOREVIEW : 01-30-2013:09:36:24
- 37 2/4/2013 - 1835 - Joint Case Conference Report
Additional Text: Transaction 3507527 - Approved By: SHAMBRIG : 02-04-2013:12:25:03
- 38 2/4/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3507580 - Approved By: NOREVIEW : 02-04-2013:12:26:49
- 39 2/7/2013 - A120 - Exemption from Arbitration
Additional Text: Transaction 3516648 - Approved By: MCHOLICO : 02-07-2013:10:14:49
- 40 2/7/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3516787 - Approved By: NOREVIEW : 02-07-2013:10:17:03
- 41 2/7/2013 - 3696 - Pre-Trial Order
Additional Text: Transaction 3518972 - Approved By: NOREVIEW : 02-07-2013:16:50:32
- 42 2/7/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3518982 - Approved By: NOREVIEW : 02-07-2013:16:52:41
- 43 3/26/2013 - 3915 - Scheduling Order
Additional Text: Transaction 3617309 - Approved By: NOREVIEW : 03-26-2013:13:31:02
- 44 3/26/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3617317 - Approved By: NOREVIEW : 03-26-2013:13:32:38
- 45 3/26/2013 - MIN - ***Minutes
Additional Text: MANDATORY PRETRIAL STATUS CONFERENCE - Transaction 3617854 - Approved By: NOREVIEW : 03-26-2013:15:02:32
- 46 3/26/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3617865 - Approved By: NOREVIEW : 03-26-2013:15:04:28
- 47 6/28/2013 - 2315 - Mtn to Dismiss ...
Additional Text: MOTION TO DISMISS COMPLAINT - Transaction 3824110 - Approved By: AEATON : 07-01-2013:09:47:54
- 48 7/1/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3824929 - Approved By: NOREVIEW : 07-01-2013:09:50:27
- 49 7/9/2013 - 2526 - Notice of Change of Attorney
Additional Text: JOHATHAN SHIPMAN - Transaction 3841147 - Approved By: AEATON : 07-09-2013:14:58:29

- 50 7/9/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3841547 - Approved By: NOREVIEW : 07-09-2013:15:02:11
- 51 8/8/2013 - 2645 - Opposition to Mtn ...
Additional Text: PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS - Transaction 3910855 - Approved By: MFERNAND : 08-08-2013:16:48:00
- 52 8/8/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3911042 - Approved By: NOREVIEW : 08-08-2013:16:55:31
- 53 8/22/2013 - 3790 - Reply to/in Opposition
Additional Text: DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS - Transaction 3942361 - Approved By: ACROGHAN : 08-22-2013:09:22:30
- 54 8/22/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3942407 - Approved By: NOREVIEW : 08-22-2013:09:24:56
- 55 8/22/2013 - 3860 - Request for Submission
Additional Text: MOTION TO DISMISS COMPLAINT - Transaction 3942460 - Approved By: MCHOLICO : 08-22-2013:09:41:03
PARTY SUBMITTING: JONATHAN, SHIPMAN, ESQ.
DATE SUBMITTED: 8/22/13
SUBMITTED BY: MCHOLICO
DATE RECEIVED JUDGE OFFICE:
- 56 8/22/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3942516 - Approved By: NOREVIEW : 08-22-2013:09:45:34
- 57 9/11/2013 - 3980 - Stip and Order...
Additional Text: TO CONSOLIDATE ACTIONS - [CV12-02917 CONSOLIDATED INTO CV12-02863 - ks]
- 58 9/11/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3989615 - Approved By: NOREVIEW : 09-11-2013:16:09:56
- 59 9/12/2013 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 3991197 - Approved By: NOREVIEW : 09-12-2013:09:52:06
- 60 9/12/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3991396 - Approved By: NOREVIEW : 09-12-2013:09:56:19
- 61 9/17/2013 - MIN - ***Minutes
Additional Text: PRETRIAL CONFERENCE - Transaction 4002795 - Approved By: NOREVIEW : 09-17-2013:15:42:08
- 62 9/17/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 4002812 - Approved By: NOREVIEW : 09-17-2013:15:43:57
- 63 9/19/2013 - S200 - Request for Submission Complet
No additional text exists for this entry.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SCENIC NEVADA, INC., Case No. CV12-02863

Plaintiff, Dept. No. 7

vs.

CITY OF RENO, a political
subdivision of the State of Nevada,
and the CITY COUNCIL thereof,

Defendant.

SAUNDERS OUTDOOR ADVERTISING, Case No.: CV12-02917
INC., a Utah corporation,

Dept. No. 7

Plaintiff,

vs.

CITY OF RENO, a political
subdivision of the State of Nevada,
and the CITY COUNCIL thereof,

Defendant.

ORDER

INTRODUCTION

Surrounded by the Sierra Nevada Mountains and the Great Basin Desert,
Reno's bucolic landscape shapes the character of this city, community, and region.
This panorama is celebrated in Nevada's State Song and western regional

1 literature.¹ However, the City of Reno is more than mountains and desert; it is
2 home to 231,027 residents and 21,297 businesses whose taxes contribute millions of
3 dollars to its economy.² The City of Reno drew over 4.6 million visitors in 2013,³
4 many of whom are guided to their destination by billboards on the public highways.
5 The City of Reno is also the battleground of this litigation.

6 BACKGROUND

7 Factual History

8 On January 20, 2000, a volunteer organization called "Citizens for a Scenic
9 Reno" ("CFASR") was formed to persuade the Reno City Council to adopt stronger
10 billboard controls. On March 29, 2000, CFASR filed an Initiative Petition which
11 stated:

12 **"New off-premise advertising displays/billboards in**
13 **the City of Reno are prohibited, and the City of Reno**
14 **may not issue permits for their construction."**

15 The initiative qualified for the 2000 general election. Question R-1 read:

16 **"The construction of new off-premises advertising**
17 **displays/billboards is prohibited, and the City of**
18 **Reno may not issue permits for their construction."**

19 On November 7, 2000, Ballot Question R-1 passed with 57% approval. On
20 November 14, 2000, it became effective and is presently codified as Reno Municipal
21 Code ("RMC") § 18.16.902(a).⁴ Entitled as "Restrictions on Permanent Off-Premises
22 Advertising Displays" it reads:

23 **"The construction of new off-premises advertising**
24 **displays/billboards is prohibited, and the City of**
25 **Reno may not issue permits for their construction."**

26 ¹ "Mt. Rose is the sole, white, exalted patron angel and fountain of wind and storm to south Reno,
27 while in north Reno, her reign is strongly contested by black Peavine Mountain, less austere, wilder,
28 and home of two winds. Mt. Rose is a detached goal of the spirit, requiring a lofty and difficult
worship. Peavine is the great humped child of the desert. He is barren, and often powering, but he
reaches out and brings unto him, while Rose stands aloof." *The City of Trembling Leaves*, Clark,
Walter Van Tilburg, University of Nevada Press (1945).

² www.reno.gov

³ www.visitrenotahoe.com

⁴ The Initiative only applied to off-premises billboards, and did not place similar restrictions on on-
premises advertising displays.

1 On November 14, 2000, the City Council adopted Ordinance No. 5206 which
2 established a moratorium on applications for billboards. Ex. 9, 10, 11, 12. On
3 January 22, 2002, the City Council enacted Ordinance No. 5295 (the "Conforming
4 Ordinance"). This interpreted the "no new billboards" language in the Initiative to
5 mean that no *additional* billboards could be built in the City of Reno, thus capping
6 the number of billboards in the City. RMC § 18.06.920(b).

7 In September 2002, CFASR changed its name to "Citizens For A Scenic
8 Northern Nevada" and adopted its current name, "Scenic Nevada."⁵

9 On June 11, 2003, the City adopted Ordinance No. 5461 (the "Banking
10 Ordinance") which allowed billboard owners to remove a billboard from one area
11 and relocate it to a permitted location, provided it complied with all requirements of
12 RMC § 18.16.908(a). Neither Scenic Nevada nor the billboard industry challenged
13 the constitutionality of either ordinance from 2003 to 2012.

14 Digital Billboards⁶

15 Until recently, all billboard lighting in the City of Reno was required to be
16 directed toward the billboard and not toward the street. RMC §18.16.905(l). This
17 requirement effectively prevented the construction of any digital billboards in Reno.
18 On February 13, 2008, the City Council directed staff to initiate an amendment to
19 the Reno Municipal Code which would allow the construction and permitting of
20 digital billboards.

21 Thereafter, City staff, legal counsel, Scenic Nevada and billboard industry
22 representatives held numerous meetings to draft a digital billboard ordinance. Ex.
23 19, 29-70. As a result of these discussions, the City Council enacted Ordinance No.
24 6258 entitled "Digital Off-Premises Advertising Displays, including Light-Emitting
25

26 ⁵ Plaintiff Scenic Nevada, Inc. is a non-profit Nevada corporation whose mission is to educate the
27 general public on the economic, social, and cultural benefits of scenic preservation by means of
encouraging billboard and sign control, among other issues. www.scenicnevada.org

28 ⁶ Digital billboards are computer controlled variable message electronic signs whose informational
content can be changed or altered by means of computer-driven impulses (including "light emitting
diodes") or "LED" light bulbs.

1 Diode (LED”) (“the digital billboard ordinance”), which allowed static billboards to
2 be converted to digital billboards on October 24, 2012.⁷

3 The Billboard Litigation

4 On November 16, 2012, Scenic Nevada filed a *Petition for Judicial Review*
5 seeking to invalidate the digital billboard ordinance. The City filed a *Motion to*
6 *Dismiss* on the basis that the Petition improperly raised substantive, not
7 procedural, issues. While granting the City’s *Motion to Dismiss*, this court
8 permitted Scenic Nevada to file an amended complaint challenging the digital
9 billboard ordinance.

10 On November 21, 2012, Saunders Outdoor Advertising, Inc.,⁸ (“Saunders”)
11 filed a civil rights complaint against the City of Reno under 42 U.S.C. § 1983
12 alleging the digital billboard ordinance violated the First Amendment and the
13 Equal Protection Clause of the Fourteenth Amendment to the Constitution. The
14 City of Reno filed a *Motion to Dismiss Saunders’ Complaint*. This court denied the
15 City’s motion on January 30, 2014.

16 On April 15, 2013, Scenic Nevada’s filed its *First Amended Complaint* alleging
17 the digital billboard ordinance violated the Nevada Constitution, the Reno Municipal
18 Code and the Federal Highway Beautification Act. The City filed its *Motion to Dismiss*
19 on April 24, 2013. This court denied the City of Reno’s motion on July 23, 2013.

20 On September 11, 2013, the parties agreed to consolidate the actions. Both
21 cases were tried to the Bench on February 24, 2014. The court has reviewed the
22 record in its entirety, the legal authorities, considered the relative merits of the
23 arguments of the parties and all the evidence presented at trial. This Order follows.

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26 ⁷ The particulars of the Ordinance permit the approval of digital off-premises advertising displays
27 when the proposing party removes existing static billboards or exchanges banked receipts. The
28 Ordinance does not assume a 1:1 ratio of removal to approval of a digital display, but rather creates
a ratio system for different areas identified in the Ordinance and is intended to reduce billboard
‘clutter’ in certain problem areas identified in RMC § 18.16.904(b)(5).

⁸ Saunders Outdoor Advertisements, Inc., a Utah corporation, owns a number of billboards within
the City of Reno.

DISCUSSION

Saunders Outdoor Advertising, Inc. v. City of Reno

Arguments

Saunders contends that the digital billboard ordinance violates its rights under the First Amendment by restricting the ability of a billboard sign owner to upgrade from a single static vinyl billboard to a single digital billboard. Saunders argues that the digital billboard ordinance does not advance the traffic safety and aesthetic goals of the City of Reno. Saunders posits that the “ratio requirement” is not so narrowly tailored to achieve those goals because it restricts more speech than is necessary to achieve the goal of reducing clutter and protecting the health, safety and welfare of the general public.

Additionally, Saunders argues that the digital billboard ordinance’s ratio system does not cabin the discretion of the City Council in approving or rejecting applicants for permits or special exceptions thus constituting a prior restraint on its First Amendment rights. Finally, Saunders argues that the ratio system favors large billboard companies who have more billboard inventory over the smaller operators with little or no inventory, thereby creating separate classes of billboard operators in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Legal Standard for Equal Protection Claims

Saunders claims that the ratio system adopted by the City creates different classes of billboard operators and discriminates against those smaller companies with less billboard inventory to trade for digital billboards in favor of larger billboard operators. This may be true but this market-based challenge does not give rise to an Equal Protection Clause claim under the Fourteenth Amendment.

The Equal Protection Clause of the Fourteenth Amendment does not create any substantive rights for individuals but rather, “embodies a general rule that States must treat like classes alike but may treat unlike cases accordingly.” *Vacco v.*

1 *Quill*, 521 U.S. 793, 799 (1997); *Higgs v. Neven*, 2013 WL 5663127 (D. Nev. 2013).

2 Saunders claims it suffers an unfair impact from the ratio system's removal
3 formulae, given's Saunders' smaller inventory than that of its larger competitors.
4 This may be the case, but the ratio's impact is felt by all billboard owners, large and
5 small. This system does not single out Saunders. Thus, Saunders' claim under the
6 Fourteenth Amendment is unavailing.

7 Legal Standard for First Amendment Claims

8 While plead as a violation of its civil rights, the constitutional rights
9 Saunders asserts have been violated by the digital billboard ordinance really arise
10 under the First Amendment to the Constitution of the United States and the court
11 analyzes these claims under the standard governing commercial speech.

12 The United States Supreme Court has adopted a four-part test for
13 determining the validity of government restrictions on commercial speech:

14 At the outset, we must determine whether the expression is protected
15 by the First Amendment. For commercial speech to come within that
16 provision, it at least must concern lawful activity and must not be
17 misleading. Next, we ask whether the asserted governmental interest
18 is substantial. If both inquiries yield positive answers, we must
determine whether the regulation directly advances the governmental
interest asserted, and whether it is not more extensive than is necessary
to serve that interest.

19 *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of New York*, 447 U.S.
20 557, 566, 100 S. Ct. 2343, 2350-2351 (1980).

21 The United States Supreme Court applied the *Central Hudson* standards to
22 static billboards in *Metromedia, Inc. v. City of San Diego et al.*, 453 U.S. 590, 101 S.
23 Ct. 2882 (1981). "[T]he government has legitimate interests in controlling the
24 noncommunicative aspects of the medium." *Metromedia*, 453 U.S. at 502. Although
25 a billboard may exhibit commercial or noncommercial speech, large, immovable,
26 and permanent structures (such as billboards) can be subject to restriction for their
27 noncommunicative qualities. "Because regulation of the noncommunitive aspects of
28 a medium often impinges to some degree on the communicative aspects, it has been

1 necessary for the courts to reconcile the government's regulatory interests with the
2 individual's right to expression." *Id.*

3 To reconcile these competing interests, a court must conduct "a particularized
4 inquiry into the nature of the conflicting interests at stake here, beginning with a
5 precise appraisal of the character of the ordinance as it affects communication." *Id.*
6 at 503. This is satisfied through an application of the *Central Hudson* standards.

7 Saunders does not question the City's satisfaction of the first two elements of
8 the *Central Hudson* test,⁹ but asserts the digital billboard ordinance does not
9 advance any stated or implied purpose the City may have and that it is more
10 restrictive than it needs to be in order to obtain the City's stated objectives. The
11 court now turns to an analysis of the final two elements of the *Central Hudson* test
12 and applies them to the facts of Saunders' case.

13 Legal Analysis

14 The Supreme Court has said that "[t]he last two steps of the *Central Hudson*
15 analysis basically involve a consideration of the 'fit' between the legislature's ends
16 and the means chosen to accomplish those ends." *United States v. Edge*
17 *Broadcasting Co.*, 509 U.S. 418, 427-28, 113 S. Ct. 2696 (1993)(internal quotation
18 marks omitted); *see also, Metro Lights, LLC. v. City of Los Angeles*, 551 F.3d 898,
19 904, 2009 U.S. App. LEXIS 38 (9th Cir. 2008). In *Metromedia*, the Supreme Court
20 stated that it did not disagree with "lawmakers and the many reviewing courts that
21 [find] billboards are real and substantial hazards to traffic safety." *Id.* at 509. As a
22 practical matter, digital billboards serve as multiple billboards in one - part of their
23 utility is that they can rotate different messages on a single platform.

24 This court finds it reasonable to extend the *Metromedia* analysis to support
25 the general proposition here that digital billboards in the City of Reno are real and
26 substantial hazards to traffic safety capable of distracting drivers, even more than
27

28 ⁹ 1) The commercial speech is lawful and not misleading; and 2) the City has a substantial interest in
regulating billboards.

1 static billboards.¹⁰ A restriction on the use of digital billboards therefore serves to
2 advance the City of Reno's governmental interest of promoting traffic safety.

3 Furthermore, the court finds the City of Reno's legitimate interest in
4 preserving the region's aesthetic value is also advanced by restricting the
5 construction of digital billboards. The Reno Municipal Code recognizes that the
6 scenic vistas surrounding the City of Reno "shapes the character of our city,
7 community, and region" and the stated intent and purpose of the billboard
8 regulations is to "promote the maintenance and enhancement of the city's esthetic
9 qualities and improve the character of our city[.]" Ex. 3; RMC § 18.16.901(a).
10 The alternating display of a digital billboard distracts citizens and visitors from the
11 natural vistas even more than a static billboard. Thus, the court finds the digital
12 billboard regulation directly advances the City of Reno's interests in enhancing the
13 aesthetic values in the scenic preservation of this unique environment.

14 The final standard under *Central Hudson* is whether the digital billboard
15 regulation is more extensive than necessary to serve the City of Reno's
16 governmental interests. The ratio system adopted in RMC § 18.16.905(14) restricts
17 the construction of digital billboards by creating an exchange system between
18 existing (or previously banked) static billboards and digital billboards. To reduce
19 billboard 'clutter' in certain problem areas, the City has determined it appropriate
20 to exchange existing static displays totaling four times the square footage of the
21 proposed digital display¹¹ in order to obtain a permit for the construction of a single
22 digital billboard. This municipal regulation reduces the number of billboards in
23 Reno and is concordant with the declared goals of Scenic Nevada.

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27 ¹⁰ RMC § 18.16.905(n)(1) states: "[e]ach message or copy shall remain fixed for a minimum of eight
28 seconds." This restriction serves as an acknowledgment of the potential for distraction posed by
digital billboards.

¹¹ Or banked receipts totaling eight times the square footage of the proposed digital display.

1 One of the goals of Scenic Nevada is the elimination of billboard 'blight'
2 through the enactment of laws to regulate and reduce the numbers of billboards.¹²
3 The City of Reno has promulgated these municipal ordinances in an effort to
4 eliminate billboard clutter with the City of Reno. Members of the billboard industry
5 recognize that the ratio system promulgated in these regulations will lead to the
6 elimination of some static billboards but they support the effort.¹³

7 The court finds that the digital billboard ordinance is reasonably restricted to
8 reach the City's governmental interests in enhancing the aesthetic value of the
9 community and promoting public safety and does not unconstitutionally restrict
10 Saunders' constitutional rights under the First Amendment.

11 Saunders' Public Policy Challenges

12 Saunders asserts the ratio system adopted by the City of Reno has no relation
13 to the restriction on digital billboards and is not narrowly tailored because it targets
14 even those non-cluttered areas of the city. Saunders volunteers several different
15 methods by which the City could reduce billboard clutter. While these may be
16 laudable suggestions, it is not within the purview of the court to determine the best
17 method for the City of Reno to confront the urban problem of billboard clutter.

18 Legal Standard

19 Public policy is the exclusive province of the Legislative branch of
20 government. As such, the formulation of public policy is not within the purview of
21 the court. *Koscot Interplanetary v. Draney*, 90 Nev. 450, 530 P.2d 108 (1974). If the
22 court were to do so, it would supplant the City Council's constitutionally delegated
23 legislative powers. *See, North Lake Tahoe Fire Pro. Dist. v. Washoe County Bd. of*
24 *County Comm'rs*, 129 Nev. Ad.Op. 72, 310 P.3d 583 (2013).

25
26 ¹² www.scenicnevada.org.

27 ¹³ "[The billboard industry] is still willing to work with the City to reduce the overall number of
28 boards in the community. South Virginia was brought up and multiple structures that create a
cluttered effect. This could be an opportunity to do something about that. We do have a business to
run. Out of the goodness of our hearts, we cannot mow down 10 structures, but if we could mow
down 10 and put up two or convert to digital, then I think it is a win for the City." Ex. 36, COR 591.

1 Legal Analysis

2 Whether a legislative enactment is wise or unwise is not a determination to
3 be made by the judicial branch. *Koscot v. Interplanetary v. Draney*, 90 Nev. at 456,
4 530 P.2d at 112. “[The law’s] wisdom is not the concern of the courts; if a challenged
5 action does not violate the Constitution, it must be sustained[.]” *I.N.S. v. Chadha*,
6 462 U.S. 919, 944, 103 S. Ct. 2764, 2780 (1983). The court finds that the proper
7 entity to decide how to confront the urban problem of billboard clutter and provide
8 the determination of the best method to solve this issue is the Reno City Council.¹⁴

9 However, the court does have the constitutional authority to determine
10 whether the City’s method is so narrowly tailored as to comply with the Supreme
11 Court’s *Metromedia* standards. The court finds that it is. A billboard owner
12 seeking the construct a digital billboard within the corporate limits of the city must
13 comply with RMC § 18.16, Article II. These standards are objective in nature and
14 do not grant unfettered discretion to city officials. So long as the billboard owner
15 can demonstrate compliance, the operator is entitled to a building permit as a
16 matter of right.

17 The court finds the City’s discretion in approving permit applications is not
18 unconstitutionally unfettered; it is subject to the requirements enumerated in the
19 Reno Municipal Code. Saunders’ claim to the contrary is unsupported by the facts.

20 Saunders’ Unfair Competition Claim Arguments

21 Saunders contends that the digital billboard ordinance discriminates against
22 persons who have no existing billboards, have no existing inventory to exchange or
23 have no inventory to exchange within the restricted area. The City of Reno
24 counters that the removal requirements for digital billboards further legitimate
25 governmental traffic safety and aesthetic goals; and in particular they “prevent and
26 alleviate needless distraction and clutter resulting from excessive and confusing off-

27
28 ¹⁴ The City of Reno is a municipal corporation, organized and existing under the laws of the State of Nevada through a charter approved by the Legislature. Under the Reno City Charter, the legislative power of the City is vested in the city council. Reno City Charter, Art. II, § 2.010(1).

1 premises advertising displays.” See, RMC § 18.16.901(a). The fact these goals may
2 effect a disparate impact on smaller billboard operators than larger ones is an
3 economic issue best addressed in the free market and not a constitutional issue to
4 be resolved by the courts.

5 Legal Analysis

6 Currently, off-premise digital billboards are banned in the City of Reno. To
7 meet the industry’s application of this new technology, reduce billboard clutter
8 across the City, enhance traffic safety and promote the aesthetic value of the
9 community, the City has promulgated these municipal regulations. Billboard
10 operators are free to exercise any of the available regulatory options.

11 First, it is axiomatic that billboard operators are not required by law to
12 convert their static billboards to digital billboards. They may keep and maintain
13 their existing inventory with no additional governmental regulation. Second, the
14 City has provided for special exceptions for those applicants who seek to relocate or
15 convert a static billboard in the restricted areas to a digital billboard but cannot
16 meet the billboard ratio requirements discussed in the Reno Municipal Code. RMC
17 § 8.16.905(n)(15)(the “Special Exceptions”). Additionally, those applicants who have
18 no inventory to exchange may either apply for a variance or purchase static or
19 banked billboards from those with inventory at market price. Even if it has an
20 incidental effect on some billboard operators but not others, all operators are
21 treated equally under the ordinance. The law does not require that the ‘fit’ between
22 regulation and constitution be perfect, only that it be reasonable.

23 The City has also provided specific mechanisms to reduce the stringency of
24 the ratio requirements for those smaller billboard operators without the inventory
25 of larger billboard operators. Finally, further questioning as to the precise manner
26 in which the City of Reno undertook the task of addressing the issues of aesthetic
27 environmental quality and public safety is outside the ambit of the court’s
28 constitutional authority.

1 The court finds the ratio system is narrowly tailored to serve the legitimate
2 governmental interests of promoting traffic safety and reducing billboard clutter.

3 Scenic Nevada v. The City of Reno

4 Scenic Nevada's State Constitutional Claim

5 The court next considers Scenic Nevada's assertion that Ordinance 5295 (the
6 "Conforming Ordinance") interpreting the "no new billboards" language in the 2000
7 Ballot Initiative violated Article 19 § 2.3 of the Nevada Constitution.

8 Arguments

9 Scenic Nevada asserts Article 19 § 2.3 applies to municipal initiatives and
10 therefore the conforming ordinance amending the billboard ordinance violated the
11 Nevada Constitution. The City contends that because the billboard ordinance was a
12 municipal initiative, Article 19 § 2.3 does not apply and therefore it was permissible
13 for the City Council to pass the conforming ordinance within three years of the
14 billboard ordinance's approval. The court turns to an analysis of the applicable
15 constitutional and legislative provisions.

16 Legal Standard

17 Article 19 § 4 states, in relevant part, "[t]he initiative and referendum powers
18 provided for in this article are further reserved to the registered voters of each
19 county and each municipality as to all local, special and municipal legislation of
20 every kind or for such county or municipality."

21 Article 19 § 2.3 provides, in part,

22 If a majority of the voters voting on such question at such election votes
23 approval of such statute or amendment to a statute, it shall become law
24 and take effect upon completion of the canvass of votes by the Supreme
25 Court. An initiative measure so approved by the voters shall not be
amended, annulled, repealed, set aside or suspended by the Legislature
within 3 years from the date it takes effect.

26 Legal Analysis

27 The Nevada Constitution includes specific provisions for the passage of
28 initiatives and referendums in counties and municipalities: "[i]n counties and

1 municipalities initiative petitioner may be instituted by a number of registered
2 voters equal to 15 percent or more of the voters who voted at the last preceding
3 general county or municipal election. Referendum petitioners may be instituted by
4 10 percent or more of such voters.” Nev. Const. Art. XIX § 4. In this case, the 2000
5 Ballot Initiative clearly meets the statutory and constitutional requirements for
6 municipal initiatives.

7 While Art. 19 § 2.3 contains the prohibition on the amendment of state
8 initiatives by the legislature within 3 years from the date the state initiative takes
9 effect, there is no similar provision for municipal initiatives. The Nevada
10 Constitution could have been amended to provide a corollary to the ban on
11 amendments found in Article 19 § 2.3, instead the Legislature enacted Nevada
12 Revised Statute 295.220. NRS 295.220 provides that a municipal initiative “shall
13 be treated in all respects as other ordinances of the same kind adopted by the
14 council.” The Reno Municipal Code does not provide a ban on amendments similar
15 to Article 19 § 2.3 of the Nevada Constitution.

16 Foundational differences in the structure of the Legislature and the city
17 governments of the state caution against a liberal reading of the Nevada
18 Constitution conflating acts by the Legislature to acts by those city governments. If
19 a constitutional provision is clear and unambiguous, courts will not look beyond the
20 provision of the provision. *Miller v. Burk*, 124 Nev. 579, 590, 188 P.3d 1112, 1119-20
21 (2008).¹⁵

22 The language of Article 19 § 2.3 of the Nevada Constitution specifically
23 references approval of a *statute*, a canvass of votes by the Supreme Court, and the
24 power of the Legislature to amend, annul, repeal, set aside, or suspend the *statute*.
25 A plain reading of the language cuts against applying the restriction on
26 amendments to municipal *ordinances*.

27 ¹⁵ The court notes while the use of the word “statute” is in and of itself insufficient to identify this
28 section as applying to only state-wide initiatives, the totality of the language suggests that this
interpretation is appropriate.

1 The court finds the 2000 Billboard Initiative was a municipal, not state,
2 initiative and the provision disallowing amendments of initiative measures found in
3 Article 19 § 2.3 of the Nevada Constitution is inapplicable to the actions of the Reno
4 City Council. Thus the court finds the 'banking ordinance' was a proper exercise of
5 constitutional power given to the City of Reno by the Nevada Legislature and does
6 not violate the Nevada Constitution's restriction on amendments to state initiatives.

7 The 2000 Initiative, Ballot Question R-1 and the Term "New Billboards."

8 The court next considers whether the intent of the 2000 Initiative and Ballot
9 Question R-1 was to completely eliminate billboards or simply cap the number of
10 billboards in the City of Reno at the number in existence at the time of their
11 passage and what the proponents of the 2000 Initiative and Ballot Question R-1
12 meant when they sought to prohibit the construction of "new" billboards.

13 Arguments

14 Scenic Nevada argues that "[t]he voter initiative of 2000, codified as RMC §
15 18.16.902, prohibited new construction of billboards and banned the issuance of
16 building permits for their construction." *First Amend. Compl.*, ¶55. The City argues
17 that the 2000 Initiative and Ballot Question R-1 simply capped the number of
18 existing billboards which may not be exceeded by additional (i.e. "new") billboards.

19 Under the City of Reno's analysis, so long as a billboard was existing before
20 November 14, 2000, it is not a "new" billboard and may be moved when zoning,
21 contractual termination, construction or land use restrictions require its removal.
22 Scenic Nevada counters that any billboard relocated to another location is "new" to
23 that location and the City is prohibited from issuing a permit for its construction.

24 Legal Standard

25 Whenever a law is equivocal, courts must define its purpose and intent to
26 effectuate a reasonable interpretation. "[I]f the statutory language is ambiguous or
27 does not address the issue before us, we must discern the Legislature's intent and
28 construe the statute according to that which 'reason and public policy would

1 indicate the legislature intended.” *Sandoval v. Bd. Of Regents*, 119 Nev. 148, 153,
2 67 P.3d 902, 905 (2003) (internal citation omitted). Otherwise, absent an ambiguity,
3 courts should interpret a law according to its plain meaning. *See Kay v. Nunez*, 122
4 Nev. 1100, 1104, 146 P.3d 801, 804 (2006).

5 Legal Analysis

6 The 2000 Ballot Initiative stated:

7 **“New off-premises advertising displays/billboards is**
8 **prohibited, and the City of Reno may not issue**
9 **permits for their construction.”**

10 Once it qualified for the General Election Ballot, Question R-1 read:

11 **“The construction of new off-premises advertising**
12 **displays/billboards is prohibited, and the City of**
13 **Reno may not issue permits for their construction.”**

14 After passage of Ballot Question R-1, this Reno City Council adopted Reno
15 Municipal Code section 18.16.902(a) which reads:

16 **“The construction of new off-premises advertising**
17 **displays/billboards is prohibited, and the City of**
18 **Reno may not issue permits for their construction.”**

19 In order to understand the intent of the proponents of the Ballot Question,
20 the court looks first to the language of the Question. This is a compound sentence
21 with two independent clauses joined by a comma and conjunction. The independent
22 clauses could function as individual sentences: there is a subject and predicate for
23 each of the independent clauses. This implies equal attention for both ideas in each
independent clause.¹⁶ This provides little assistance to the court.

24 In the first independent clause, *construction* is the simple subject, *is*
25 *prohibited* is the predicative (verb) and *of off-premise advertising* is a prepositional
26 phrase acting as an adjective to modify *construction*.¹⁷ In the second independent
27

28 ¹⁶ *The Bedford Handbook 8th Edition*, p. 177, 14a.

¹⁷ *The Brief McGraw-Hill Handbook 2nd Edition*, p. 514, 2. New York: McGraw-Hill, 2012. Print.

1 clause, *the City of Reno* is the simple subject, *may not issue* is the simple predicate
2 (*may not issue permits for their construction* is the complete predicate which
3 includes the complement: *permits for their construction*). *Permits* is the object of the
4 second independent clause and *there is* a pronoun referring to *new off-premises*
5 *advertising/billboards*. *For their construction* is a prepositional phrase that is
6 acting as an adjective to modify *permits*.¹⁸

7 Under this sentence structure analysis, the proponents of 2000 Initiative and
8 Ballot Question R-1 intended to prohibit the City of Reno from permitting the
9 construction of new billboards. On this point both Scenic Nevada and the City of
10 Reno agree. However, the parties diverge on the definition of the word “new” as it
11 modifies “off-premise advertising display/billboards.” For that answer, the court
12 turns elsewhere.

13 There are several definitions of the word “new.” One dictionary defines it as:
14 “Of a kind now existing or appearing for the first time[.]”¹⁹ Another defines “new”
15 as: “Of any thing recently discovered.”²⁰ Still another defines “new” as: “Already
16 existing but seen, experienced or acquired recently or now for the first time.”²¹
17 These definitions are consistent with the representation of both Scenic Nevada and
18 the City of Reno, thus establishing the ambiguity of the 2000 Initiative and Ballot
19 Question R-1.

20 Where ambiguity exists, a court is permitted to consider the history of the
21 regulation in determining the intent of the legislating body. If a law is ambiguous,
22 courts “may look to the provision’s history, public policy, and reason to determine
23 what the voters intended.” *Miller*, 124 Nev. at 590. In this case, in order to guide
24 the voting public, the ballot contained arguments for and against passage of Ballot
25 Question R-1. Scenic Nevada’s arguments for passage stated:

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27 ¹⁸ *The Brief McGraw-Hill Handbook, 2nd Edition*, p. 514, 2.

28 ¹⁹ The Random House Dictionary, 2014. On-line.

²⁰ Black’s Law Dictionary, Garner 9th edition, 2010. Print.

²¹ New Oxford American Dictionary, 3rd Ed. 2010. Print.

1 **“[t]his Initiative does not ban existing billboards,**
2 **but it does place a cap on their numbers.”**

3 Ex. 6.

4 When the opponents of the Initiative argued that the Initiative would
5 prohibit all building permits for any billboards, Scenic Nevada responded: “Also,
6 [the billboard industry] led voters to believe, *incorrectly*, that R-1 banned all
7 billboards.” Ex. 223, SN 34(emphasis added). Even after the passage of the 2000
8 Initiative, Scenic Nevada continued to maintain that the Initiative merely placed a
9 “cap” of 289 billboards permitted in the City of Reno and prohibited the construction
10 of any *additional* billboards.²² Additionally, Scenic Nevada told the voters that
11 “approval of the Initiative would therefore have no significant effect on the current
12 level of business of the billboard industry in the City of Reno.” Ex. 6. This stark
13 statement cannot be reconciled with Scenic Nevada’s present position on the intent
14 of the drafters of the 2000 Initiative and Ballot Question R-1.

15 In this lawsuit, Scenic Nevada now argues that the intent of the 2000
16 Initiative and Ballot Question was to eliminate billboards and that regardless
17 where the billboard originated or how long it existed, if it is relocated to another
18 location it is a “new” billboard whose construction is prohibited by the Initiative and
19 Ballot Question.²³ See, Ex. 223, SN 35-36.

20 In response, the City argues that the 2000 Initiative and Ballot Question R-1
21 only prohibited the construction of “new” billboards and that excludes any billboard
22 in existence at the time the 2000 Initiative became law. The City interprets the

23 ²² “This Initiative Petition, supported by over 7,000 Reno citizens, would prohibit any increase in the
24 present number of billboards, but it does place a cap on their numbers.” Ex. 6. “All parties agreed
25 that the effect of the voter-approved initiative established a cap of 289 billboards within the City
26 limits. That being the number of billboards extant or approved.” Ex 223, SN 35.

27 ²³ “[T]he vote [on the 2000 Initiative] was about putting a ban on it, and then having attrition when
28 the billboard comes down so it does not go into the bank. It just never existed again. So eventually
we would get fewer and fewer billboards.” Ms. Wray, Minutes of Billboards Workshop, May 24, 2011
Ex. 18, COR-00220. This position has been consistently asserted by other representatives of Scenic
Nevada. The language “construction of new off-premises advertising displays/billboards is
prohibited” is unambiguous. Chris Wicker, Minutes of Reno Planning Commission Workshop,
September 20, 2011. Ex. 36, COR 585-86. Permits for the construction of relocated billboards are
“prohibited.” Mark Wray, Ex 36, COR 587. “The City Council’s decision [to approve the banking and
relocation plan] circumvents the will of the voters.” Chris Wicker, Ex. 36, COR 591.

1 term "new billboards" to mean that existing signs can be rebuilt using new
2 technology, or removed and relocated and that a "new" sign would be one that is in
3 addition to those already present in the community at the time the 2000 Initiative
4 was passed into law. Ex. 33; RMC § 18.16.902(b).

5 In examining their language, the court finds that Scenic Nevada's argument
6 is not supported by either the 2000 Initiative or Ballot Question R-1. If the intent of
7 the 2000 Initiative and Ballot Question was to ban the construction of billboards
8 once they had been taken down, the Initiative would simply have read: "Billboards
9 are prohibited in the City of Reno."²⁴ However, that is not the language Scenic
10 Nevada put before the voters. The Initiative and Ballot Question told the voters
11 that only the construction of "new" billboards was prohibited, not the construction of
12 all billboards. Indeed, the City of Reno has refused billboard applications seeking
13 approval of "new" billboards. See Ex. 211.

14 The conflict between the parties' interpretation of the adjective "new" is
15 resolved when "new billboards" in the 2000 Initiative, Question R-1 and RMC §
16 18.16.902(a) is interpreted as meaning "additional" billboards. A billboard created
17 in the place of another may have but lately been brought into being, but its origin is
18 in the removal of the other existing billboard.²⁵ This is a reasonable interpretation
19 considering the changing character of public land usage. Cities expand and contract
20 to meet the residential and commercial needs of their citizens. Every city must
21 balance the public need with the private interest. The practical flexibility needed to
22 meet the demands of the City's citizens and business community was addressed in
23 the deposition of Claudia Hanson, the Planning and Engineering Manager for the
24 City of Reno, when she described the basis for the banking ordinance:

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26
27 ²⁴ Four states ban billboards; Maine, Vermont, Alaska and Hawaii. Large cities that have
prohibitions on new billboards include Houston, Los Angeles, St. Paul and Kansas City. See
www.scenic.org.

28 ²⁵ Under Heraclitus' logic, *nemo discentis bis in indem fluminem*, both the man and the river have
changed. In this case, while the location has changed, it is still the same billboard.

1 Q: Why are billboards banked?

2 A: **Billboards are banked to give owners of the board an opportunity to relocate them at a later time.**

3 Q: Why?

4 A: **To maintain their rights to have that board.**

5 Q: So—

6 A: **Sometimes boards are removed for – if they're falling apart. Some are moved because right-of-way is expanded. Some are moved because the lease is lost with the underlying property owner. Some are moved because a new building is going in.**

7 Ex. 203, p. 40.

8 “Statutory provisions should, whenever possible, be read in harmony
9 provided that doing so does not violate the ascertained spirit and intent of the
10 legislature.” *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886,
11 892, 784 P.2d 974, 978 (1989). The banking Ordinance, read in harmony with the
12 2000 Initiative and Ballot Question R-1, effectuates the voters’ intent in limiting the
13 number of billboards in the City of Reno to those existing at the time of the 2000
14 election while protecting the private property rights of billboard owners. Read in
15 conformity with Scenic Nevada’s position at the time Ballot Question R-1 was put to
16 the voters, it is clear that Question R-1 meant to ban the construction of *additional*
17 billboards; i.e., billboards which were not in existence prior to November 14, 2000.

18 Consistent with that interpretation, the City of Reno adopted the conforming
19 Ordinance 5295 which prohibited additional billboards by capping the number of
20 billboards to the number that existed on November 14, 2000. RMC § 18.06.920(b).
21 Thus, while a billboard created pursuant to the banking or removal Ordinance may
22 appear for the first time in a different area, it isn’t genuinely appearing for the first
23 time: the location is new, but the billboard is not.²⁶

24 “Whenever possible, this court will interpret a rule or statute in harmony
25 with other rules and statutes.” *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860
26 P.2d 720, 723 (1993) (per curiam) (citations omitted). “If there is an irreconcilable

27 ²⁶ Scenic Nevada’s interpretation could be viewed as permitting the movement of billboards provided
28 the original materials were used at the new location. This view begs the question presented in the
philosophical conundrum concerning the Ship of Theseus: how much of the original structure would
necessarily be included to prevent the resulting billboard from being “new?” For obvious reasons,
this construction of the statute would lead to absurd results.

1 conflict between two statutes, the statute which was most recently enacted controls
2 the provisions of the earlier enactment.” *Marschall v. City of Carson*, 86 Nev. 107,
3 115, 464 P.2d 494, 500 (1970) (citations omitted). The most recent Ordinance
4 addressing this issue is the conforming Ordinance. Under the law, this court
5 considers this Ordinance both instructive and persuasive.

6 The conflict between the parties is resolved when “new billboards” in the
7 2000 Initiative Ballot Question R-1 is interpreted as meaning “additional”
8 billboards. Thus, in order to effect the stated intent of the proponents of the 2000
9 Initiative and Ballot Question and also harmonize the City of Reno’s municipal
10 ordinances with its governmental interests, this court finds the 2000 Initiative and
11 Ballot Question is properly read as creating a cap on the number of billboards in the
12 City of Reno and the word “new” is intended to refer to additional billboards above
13 that amount as existed on November 14, 2000. Thus, Reno Municipal Code section
14 18.16.902 does not violate the voter’s intent of the 2000 Initiative or the Ballot
15 Question and is a lawful and constitutional exercise of its municipal authority.

16 This interpretation is further reinforced when considering the practical
17 impact Scenic Nevada’s recent interpretation would have on the billboard industry
18 and the citizens of the City of Reno. Scenic Nevada’s interpretation of the Initiative
19 and Ballot Question would clearly lead to the permanent loss of a billboard to its
20 owner. Not only would this frustrate all parties’ interest in reducing billboard
21 clutter²⁷ but the billboard’s loss could constitute a “taking” under the Fifth
22 Amendment which could subject the citizens of Reno to litigation and monetary
23 damages, a consequence not explained to the public voting on Ballot Question R-1. ²⁸

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26 ²⁷ There would be little incentive for an owner to remove a dilapidated billboard if its loss would be permanent.

27 ²⁸ This is not hypothetical. Outdoor Media Dimensions sued the City when it lost the use of its
28 billboards because of the RETRAC project and the City of Reno paid \$50,000.00 to settle the litigation. Ex. 202. In Minnesota, a judge ordered the State to pay Clear Channel Outdoors \$4.321 million in compensation for removal of a digital billboard. Ex. 218. The litigation risks to the citizens of Reno are substantial.

1 The Takings Clause of the Fifth Amendment of the Constitution of the
2 United States, made applicable to the states through the Fourteenth Amendment,
3 prohibits the government from taking private property for public use without just
4 compensation. *Chicago, Burlington & Q. Railroad v. Chicago*, 166 U.S. 226, 17 S.Ct.
5 581 (1897). Nevada Constitution Article 1 § 8(6) states “[p]rivate property shall not
6 be taken for public use without just compensation having been first made, or
7 secured.”

8 In *Pennsylvania Coal Co. v. Mahon*, the United States Supreme Court
9 determined that state regulation of property may require just compensation,
10 observing that, “while property may be regulated to a certain extent, if regulation
11 goes too far it will be recognized as a taking.” 260 U.S. 393, 415, 43 S. Ct. 158
12 (1922). The Nevada Supreme Court has recognized that government regulation of
13 private property may, in some instances, be so onerous that its effect is tantamount
14 to a direct appropriation or ouster and that such regulatory takings may be
15 compensable under the Fifth Amendment. *McCarran Int’l Airport, et al. v. Sisolak*,
16 122 Nev. 645, 137 P.3d 1110 (2006). Certainly Scenic Nevada did not intend the
17 confiscation of private property by its support of the 2000 Initiative and Ballot
18 Question R-1.

19 The Federal Highway Beautification Act

20 In 1965, Congress passed the Federal Highway Beautification Act (“HBA”),
21 23 U.S.C. § 131, to preserve the scenic beauty of America’s highways. Among other
22 things, it required States to provide effective control of billboard advertising along
23 federally funded highways. In conformity therewith, the Nevada Legislature
24 authorized the Board of Directors of the Department of Transportation (“NDOT”) to
25 regulate and restrict the construction and maintenance of outdoor advertising
26 within 660 feet of the nearest edge of the right-of-way and visible from the main-
27 traveled way of the interstate and primary highway systems within Nevada. NRS
28 410.220 to NRS 410.410. The Board of Directors of the NDOT was required to enter

1 into an agreement with the Secretary of Transportation with respect to criteria
2 regarding spacing, size, and lighting of highway billboards (the “Federal-State
3 Agreement”). NRS 410.330. On January 28, 1977, NDOT and the Secretary of
4 Transportation entered into the Federal-State Agreement. Ex. 69.

5 Arguments

6 Scenic Nevada argues that the digital billboard ordinance is void and of no
7 legal force because it violates Nevada law banning intermittent lighting on
8 billboards adjacent to interstate highways as adopted by the Federal-State
9 Agreement (“FSA”) and for the same reasons enunciated in *Scenic Arizona v. City of*
10 *Phoenix Board of Adjustments*, 268 P.3d 370 (Ariz.App. 2011). The City of Reno
11 argues that Nevada law does not expressly preempt municipalities from adopting
12 highway billboard ordinances less restrictive than NDOT regulations. The City
13 argues that state law grants the City and NDOT concurrent jurisdiction over
14 highway billboards and the right to issue permits.

15 Legal Standard

16 The Highway Beautification Act controls signs along the Interstate Highway
17 System and the former Federal-aid primary highway system (collectively, “Nevada
18 Highways”). 23 U.S.C. § 131 (2006). The FSA for Nevada relies upon the Nevada
19 Department of Transportation (“NDOT”) to enforce its provisions. Pursuant to the
20 FSA, billboards “shall not include or be illuminated by flashing, intermittent or
21 moving lights . . .” Nevada’s corollary is found in NAC 410.350(2) and states, in
22 part, “[A] commercial electronic variable message sign, including, without
23 limitation, a trivision sign, may be approved as an off-premises outdoor advertising
24 sign in an urban area if the sign does not contain flashing, intermittent or moving
25 lights . . .” NRS 410.330.

26 Nevada law grants both the City and NDOT concurrent jurisdiction over
27 highway billboards and the right to issue permits. NRS 278.020; NRS 410.220 to
28 NRS 410.410, inclusive; and specifically, NRS 410.365. Because both agencies

1 exercise concurrent jurisdiction, an applicant must obtain both a City permit and a
2 NDOT permit to erect a highway billboard.

3 Legal Analysis

4 An applicant seeking to erect and maintain a digital billboard within the City
5 limits and within 660 feet of an interstate highway must obtain permits from both
6 the City of Reno and NDOT as they exercise concurrent jurisdiction over highway
7 billboards. To the extent a permit issued by the City is less restrictive than a
8 permit issued by NDOT, the more restrictive standard governs and the City permits
9 yields to the NDOT permit pursuant to RMC § 18.02.109(a) ("If the provisions of
10 Title 18 are inconsistent with those of the state or federal governments, the more
11 restrictive provisions will control, to the extent permitted by law.").

12 Where NDOT regulations control, they supersede the municipal ordinances.
13 However, for areas in the city not within 660 feet of an interstate highway, and
14 where the applicant has otherwise satisfied the municipal requirements, the
15 municipal ordinances are applicable as they do not conflict with NDOT regulations.

16 NDOT is authorized to prescribe regulations governing the issuance of
17 permits for the erection and maintenance of highway billboards consistent with the
18 HBA. NRS 410.330. As billboard technology evolved, FHA recognized that the
19 FSAs and regulations needed to be clarified with regard to commercial electronic
20 variable message signs (digital billboards), so the FHA issued a memorandum
21 expressly authorizing the use of digital billboards on September 25, 2007. The
22 Nevada Legislature enacted Assembly Bill 305 in 2013. AB 305 became effective on
23 January 1, 2014. This directs the Board of Directors of NDOT to prescribe
24 regulations specifying the operational requirements for digital billboards which
25 conform to any regulations promulgated by the Secretary of Transportation. Thus,
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1 digital billboards are permitted on highways in Nevada.²⁹ Thus, the digital
2 billboard ordinance does not violates the Federal Highway Beautification Act.

3 The Reno Sign Code

4 The court now considers Scenic Nevada's assertion that the digital billboard
5 ordinance violates RMC § 18.16.905.

6 Arguments

7 Scenic Nevada claims that the digital billboard ordinance violates Reno Sign
8 Code's prohibition against using flashing intermittent LED lights to display
9 advertising messages. RMC § 18.16.905(n)(5). Scenic Nevada also argues that
10 digital billboards are fundamentally unhealthy, unsafe, unaesthetic, anti-
11 environmental and injurious to public welfare and the City cannot rebut those
12 assertions. The City argues that it adopted the digital billboard ordinance to
13 further implement the stated purpose and intent of the Sign Code set forth in RMC
14 § 18.16.901(a). While the City does not specifically address the public health, safety
15 and welfare issue, the City argues the digital billboard ordinance is a matter of
16 public policy not subject to the courts' purview. This court agrees.

17 Legal Standard

18 RMC § 18.24.203.4570 provides that "[f]lashing sign means a sign which uses
19 blinking, flashing or intermittent illumination, either direct, or indirect or internal."
20 The Reno City Council enacted the digital billboard ordinance which establishes
21 standards for off-premises advertising displays in RMC § 18.16.905(n). This
22 ordinance pertains to permanent off-premises displays in the city. RMC §
23 18.16.905(n)(5) states, "[D]isplays shall not flash or move during a display period."

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27 ²⁹ *Scenic Arizona v. City of Phoenix* is easily distinguished from the case at bar. First, the Arizona
28 Legislature passed a law specifically banning intermittent lighting on highway billboards across the
state – Nevada has not. In fact, the Nevada Legislature has directed NDOT to promulgate
regulations governing the operation of digital billboards on Nevada highways where they are now
permitted.

1 Legal Analysis

2 Reno Municipal Code § 18.24.203.4570 defines a “flashing sign” as a sign
3 which uses blinking, flashing or intermittent illumination, either direct, or indirect
4 or internal. RMC § 18.16.905(n)(5) states: “[d]isplays shall not flash or move during
5 a display period.” The digital billboard ordinance contains specific limitations on
6 the types of digital displays permitted. The language of RMC § 18.16.905(n) is
7 deliberate. The guidelines of that provision are far more detailed than the blanket
8 restriction on flashing signs. Additionally, the language of § 18.16.905(n)(5) reveals
9 an intent to distinguish between the typical message rotation of a digital sign and
10 the flashing sign not permitted under RMC § 18.24.203.4570. Therefore, the digital
11 billboard ordinance does not violate the Reno Sign Code.

12 **CONCLUSION**

13 This litigation reveals that the parties have more in common than in conflict.
14 Scenic Nevada promotes the economic, social and cultural benefits of scenic
15 preservation through the enactment of billboard and sign control regulation.
16 Through the exercise of the democratic process, their efforts lead to the enactment
17 of municipal ordinances that cap and will reduce the number of billboards in the
18 City of Reno. The billboard industry participated in drafting a municipal ordinance
19 which protects its private property rights while accepting a reduction in static
20 billboards in exchange for the use of digital technology.

21 Finally, the City of Reno reached out to both constituencies in open workshop
22 meetings and public hearings to promulgate municipal ordinances that balance the
23 commercial needs of its business community and the scenic preservation aspirations
24 of its citizens, enhancing both the economy and the community.

25 Scenic Nevada is correct; the 2000 Initiative and Ballot Question prohibited
26 the construction of new billboards. The City of Reno is correct; the 2000 Initiative
27 and Ballot Question does not permit the construction of new billboards. Saunders
28 Outdoor Advertising has new opportunities to implement digital technology.

1 While these efforts have been difficult, in concluding this litigation, this court
2 finds the regulations reasonable and the ordinances constitutional.

3
4 **THEREFORE,**

- 5 1. As to *SAUNDERS OUTDOOR ADVERTISING, INC.'s v. CITY OF RENO*,
6 this court enters Judgment in favor of Defendant CITY OF RENO and
7 against Plaintiff SAUNDERS OUTDOOR ADVERTISING, INC.
8 2. As to the *SCENIC NEVADA v. THE CITY OF RENO*, the court enters
9 Judgment in favor of Defendant CITY OF RENO and against Plaintiff
10 SCENIC NEVADA, INC.
11 3. All parties to bear their own attorney fees and costs.

12 **IT IS SO ORDERED.**

13
14 **DATED** this 27 day of March, 2014.

15
16 Patrick Flanagan
17 Patrick Flanagan
18 District Judge
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 27 day of March, 2014, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

7 Mark Wray, Esq. for Scenic Nevada, Inc.;

8 Frank Gilmore, Esq. for Saunders Outdoor Advertising; and

9 John Kadlic, Esq. and Jonathan Shipman, Esq. for City of Reno

10 I deposited in the Washoe County mailing system for postage and mailing
11 with the United States Postal Service in Reno, Nevada, a true copy of the attached
12 document addressed to:

13 
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15 Judicial Assistant
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1 **2540**

2 MARK WRAY, #4425
3 608 Lander Street
4 Reno, Nevada 89509
5 (775) 348-8877
6 (775) 348-8351 fax
7 Attorney for Plaintiff
8 SCENIC NEVADA, INC.

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE

12 SCENIC NEVADA, INC.,

13 Plaintiff,

Case No. CV12-02863

14 vs.

Dept. No.: 7

15 CITY OF RENO, a political subdivision
16 of the State of Nevada, and the CITY
17 COUNCIL thereof,

**NOTICE OF ENTRY OF
ORDER**

18 Defendant.
19

20 SAUNDERS OUTDOOR
21 ADVERTISING, INC., a Utah
22 corporation,

23 Plaintiff,

Case No. CV12-02917

24 vs.

Dept. No.: 7

25 THE CITY OF RENO, a municipal
26 corporation

27 Defendant.
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TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an Order was entered and filed in the above-entitled matter on the 27th day of March, 2014, a true copy of which is attached hereto.

DATED: March 28, 2014

LAW OFFICES OF MARK WRAY

By 
MARK WRAY
Attorney for Plaintiff SCENIC NEVADA, INC.

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1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF WASHOE

3 **AFFIRMATION**

4 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
5 document does not contain the social security number of any person.
6

7 DATED: March 28, 2014

LAW OFFICES OF MARK WRAY

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9 By: 

10 MARK WRAY
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
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9 SCENIC NEVADA, INC., Case No. CV12-02863
10 Plaintiff, Dept. No. 7
11

12 vs.

13 CITY OF RENO, a political
subdivision of the State of Nevada,
and the CITY COUNCIL thereof,

14 Defendant.
15

16 SAUNDERS OUTDOOR ADVERTISING, Case No.: CV12-02917
17 INC., a Utah corporation, Dept. No. 7
18 Plaintiff,

19 vs.

20 CITY OF RENO, a political
subdivision of the State of Nevada,
and the CITY COUNCIL thereof,

21 Defendant.
22

23 **ORDER**

24 **INTRODUCTION**

25 Surrounded by the Sierra Nevada Mountains and the Great Basin Desert,
26 Reno's bucolic landscape shapes the character of this city, community, and region.
27 This panorama is celebrated in Nevada's State Song and western regional
28

1 literature.¹ However, the City of Reno is more than mountains and desert; it is
2 home to 231,027 residents and 21,297 businesses whose taxes contribute millions of
3 dollars to its economy.² The City of Reno drew over 4.6 million visitors in 2013,³
4 many of whom are guided to their destination by billboards on the public highways.
5 The City of Reno is also the battleground of this litigation.

6 BACKGROUND

7 Factual History

8 On January 20, 2000, a volunteer organization called "Citizens for a Scenic
9 Reno" ("CFASR") was formed to persuade the Reno City Council to adopt stronger
10 billboard controls. On March 29, 2000, CFASR filed an Initiative Petition which
11 stated:

12 **"New off-premise advertising displays/billboards in**
13 **the City of Reno are prohibited, and the City of Reno**
14 **may not issue permits for their construction."**

15 The initiative qualified for the 2000 general election. Question R-1 read:

16 **"The construction of new off-premises advertising**
17 **displays/billboards is prohibited, and the City of**
18 **Reno may not issue permits for their construction."**

19 On November 7, 2000, Ballot Question R-1 passed with 57% approval. On
20 November 14, 2000, it became effective and is presently codified as Reno Municipal
21 Code ("RMC") § 18.16.902(a).⁴ Entitled as "Restrictions on Permanent Off-Premises
22 Advertising Displays" it reads:

23 **"The construction of new off-premises advertising**
24 **displays/billboards is prohibited, and the City of**
25 **Reno may not issue permits for their construction."**

26 ¹ "Mt. Rose is the sole, white, exalted patron angel and fountain of wind and storm to south Reno,
27 while in north Reno, her reign is strongly contested by black Peavine Mountain, less austere, wilder,
28 and home of two winds. Mt. Rose is a detached goal of the spirit, requiring a lofty and difficult
worship. Peavine is the great humped child of the desert. He is barren, and often powering, but he
reaches out and brings unto him, while Rose stands aloof." *The City of Trembling Leaves*, Clark,
Walter Van Tilburg, University of Nevada Press (1945).

² www.reno.gov

³ www.visitrenotahoe.com

⁴ The Initiative only applied to off-premises billboards, and did not place similar restrictions on on-
premises advertising displays.

1 On November 14, 2000, the City Council adopted Ordinance No. 5206 which
2 established a moratorium on applications for billboards. Ex. 9, 10, 11, 12. On
3 January 22, 2002, the City Council enacted Ordinance No. 5295 (the "Conforming
4 Ordinance"). This interpreted the "no new billboards" language in the Initiative to
5 mean that no *additional* billboards could be built in the City of Reno, thus capping
6 the number of billboards in the City. RMC § 18.06.920(b).

7 In September 2002, CFASR changed its name to "Citizens For A Scenic
8 Northern Nevada" and adopted its current name, "Scenic Nevada."⁵

9 On June 11, 2003, the City adopted Ordinance No. 5461 (the "Banking
10 Ordinance") which allowed billboard owners to remove a billboard from one area
11 and relocate it to a permitted location, provided it complied with all requirements of
12 RMC § 18.16.908(a). Neither Scenic Nevada nor the billboard industry challenged
13 the constitutionality of either ordinance from 2003 to 2012.

14 Digital Billboards⁶

15 Until recently, all billboard lighting in the City of Reno was required to be
16 directed toward the billboard and not toward the street. RMC §18.16.905(l). This
17 requirement effectively prevented the construction of any digital billboards in Reno.
18 On February 13, 2008, the City Council directed staff to initiate an amendment to
19 the Reno Municipal Code which would allow the construction and permitting of
20 digital billboards.

21 Thereafter, City staff, legal counsel, Scenic Nevada and billboard industry
22 representatives held numerous meetings to draft a digital billboard ordinance. Ex.
23 19, 29-70. As a result of these discussions, the City Council enacted Ordinance No.
24 6258 entitled "Digital Off-Premises Advertising Displays, including Light-Emitting
25

26 ⁵ Plaintiff Scenic Nevada, Inc. is a non-profit Nevada corporation whose mission is to educate the
27 general public on the economic, social, and cultural benefits of scenic preservation by means of
encouraging billboard and sign control, among other issues. www.scenicnevada.org

28 ⁶ Digital billboards are computer controlled variable message electronic signs whose informational
content can be changed or altered by means of computer-driven impulses (including "light emitting
diodes") or "LED" light bulbs.

1 Diode (LED”) (“the digital billboard ordinance”), which allowed static billboards to
2 be converted to digital billboards on October 24, 2012.⁷

3 The Billboard Litigation

4 On November 16, 2012, Scenic Nevada filed a *Petition for Judicial Review*
5 seeking to invalidate the digital billboard ordinance. The City filed a *Motion to*
6 *Dismiss* on the basis that the Petition improperly raised substantive, not
7 procedural, issues. While granting the City’s *Motion to Dismiss*, this court
8 permitted Scenic Nevada to file an amended complaint challenging the digital
9 billboard ordinance.

10 On November 21, 2012, Saunders Outdoor Advertising, Inc.,⁸ (“Saunders”)
11 filed a civil rights complaint against the City of Reno under 42 U.S.C. § 1983
12 alleging the digital billboard ordinance violated the First Amendment and the
13 Equal Protection Clause of the Fourteenth Amendment to the Constitution. The
14 City of Reno filed a *Motion to Dismiss* Saunders’ *Complaint*. This court denied the
15 City’s motion on January 30, 2014.

16 On April 15, 2013, Scenic Nevada’s filed its *First Amended Complaint* alleging
17 the digital billboard ordinance violated the Nevada Constitution, the Reno Municipal
18 Code and the Federal Highway Beautification Act. The City filed its *Motion to Dismiss*
19 on April 24, 2013. This court denied the City of Reno’s motion on July 23, 2013.

20 On September 11, 2013, the parties agreed to consolidate the actions. Both
21 cases were tried to the Bench on February 24, 2014. The court has reviewed the
22 record in its entirety, the legal authorities, considered the relative merits of the
23 arguments of the parties and all the evidence presented at trial. This Order follows.

24
25
26 ⁷ The particulars of the Ordinance permit the approval of digital off-premises advertising displays
27 when the proposing party removes existing static billboards or exchanges banked receipts. The
28 Ordinance does not assume a 1:1 ratio of removal to approval of a digital display, but rather creates
a ratio system for different areas identified in the Ordinance and is intended to reduce billboard
‘clutter’ in certain problem areas identified in RMC § 18.16.904(b)(5).

⁸ Saunders Outdoor Advertisements, Inc., a Utah corporation, owns a number of billboards within
the City of Reno.

1 DISCUSSION

2 Saunders Outdoor Advertising, Inc. v. City of Reno

3 Arguments

4 Saunders contends that the digital billboard ordinance violates its rights
5 under the First Amendment by restricting the ability of a billboard sign owner to
6 upgrade from a single static vinyl billboard to a single digital billboard. Saunders
7 argues that the digital billboard ordinance does not advance the traffic safety and
8 aesthetic goals of the City of Reno. Saunders posits that the “ratio requirement” is
9 not so narrowly tailored to achieve those goals because it restricts more speech than
10 is necessary to achieve the goal of reducing clutter and protecting the health, safety
11 and welfare of the general public.

12 Additionally, Saunders argues that the digital billboard ordinance’s ratio
13 system does not cabin the discretion of the City Council in approving or rejecting
14 applicants for permits or special exceptions thus constituting a prior restraint on its
15 First Amendment rights. Finally, Saunders argues that the ratio system favors
16 large billboard companies who have more billboard inventory over the smaller
17 operators with little or no inventory, thereby creating separate classes of billboard
18 operators in violation of the Equal Protection Clause of the Fourteenth Amendment
19 to the Constitution of the United States.

20 Legal Standard for Equal Protection Claims

21 Saunders claims that the ratio system adopted by the City creates different
22 classes of billboard operators and discriminates against those smaller companies
23 with less billboard inventory to trade for digital billboards in favor of larger
24 billboard operators. This may be true but this market-based challenge does not give
25 rise to an Equal Protection Clause claim under the Fourteenth Amendment.

26 The Equal Protection Clause of the Fourteenth Amendment does not create
27 any substantive rights for individuals but rather, “embodies a general rule that
28 States must treat like classes alike but may treat unlike cases accordingly.” *Vacco v.*

1 *Quill*, 521 U.S. 793, 799 (1997); *Higgs v. Neven*, 2013 WL 5663127 (D. Nev. 2013).

2 Saunders claims it suffers an unfair impact from the ratio system's removal
3 formulae, given's Saunders' smaller inventory than that of its larger competitors.
4 This may be the case, but the ratio's impact is felt by all billboard owners, large and
5 small. This system does not single out Saunders. Thus, Saunders' claim under the
6 Fourteenth Amendment is unavailing.

7 Legal Standard for First Amendment Claims

8 While plead as a violation of its civil rights, the constitutional rights
9 Saunders asserts have been violated by the digital billboard ordinance really arise
10 under the First Amendment to the Constitution of the United States and the court
11 analyzes these claims under the standard governing commercial speech.

12 The United States Supreme Court has adopted a four-part test for
13 determining the validity of government restrictions on commercial speech:

14 At the outset, we must determine whether the expression is protected
15 by the First Amendment. For commercial speech to come within that
16 provision, it at least must concern lawful activity and must not be
17 misleading. Next, we ask whether the asserted governmental interest
18 is substantial. If both inquiries yield positive answers, we must
determine whether the regulation directly advances the governmental
interest asserted, and whether it is not more extensive than is necessary
to serve that interest.

19 *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of New York*, 447 U.S.
20 557, 566, 100 S. Ct. 2343, 2350-2351 (1980).

21 The United States Supreme Court applied the *Central Hudson* standards to
22 static billboards in *Metromedia, Inc. v. City of San Diego et al.*, 453 U.S. 590, 101 S.
23 Ct. 2882 (1981). "[T]he government has legitimate interests in controlling the
24 noncommunicative aspects of the medium." *Metromedia*, 453 U.S. at 502. Although
25 a billboard may exhibit commercial or noncommercial speech, large, immovable,
26 and permanent structures (such as billboards) can be subject to restriction for their
27 noncommunicative qualities. "Because regulation of the noncommunitive aspects of
28 a medium often impinges to some degree on the communicative aspects, it has been

1 necessary for the courts to reconcile the government's regulatory interests with the
2 individual's right to expression." *Id.*

3 To reconcile these competing interests, a court must conduct "a particularized
4 inquiry into the nature of the conflicting interests at stake here, beginning with a
5 precise appraisal of the character of the ordinance as it affects communication." *Id.*
6 at 503. This is satisfied through an application of the *Central Hudson* standards.

7 Saunders does not question the City's satisfaction of the first two elements of
8 the *Central Hudson* test,⁹ but asserts the digital billboard ordinance does not
9 advance any stated or implied purpose the City may have and that it is more
10 restrictive than it needs to be in order to obtain the City's stated objectives. The
11 court now turns to an analysis of the final two elements of the *Central Hudson* test
12 and applies them to the facts of Saunders' case.

13 Legal Analysis

14 The Supreme Court has said that "[t]he last two steps of the *Central Hudson*
15 analysis basically involve a consideration of the 'fit' between the legislature's ends
16 and the means chosen to accomplish those ends." *United States v. Edge*
17 *Broadcasting Co.*, 509 U.S. 418, 427-28, 113 S. Ct. 2696 (1993)(internal quotation
18 marks omitted); *see also, Metro Lights, LLC v. City of Los Angeles*, 551 F.3d 898,
19 904, 2009 U.S. App. LEXIS 38 (9th Cir. 2008). In *Metromedia*, the Supreme Court
20 stated that it did not disagree with "lawmakers and the many reviewing courts that
21 [find] billboards are real and substantial hazards to traffic safety." *Id.* at 509. As a
22 practical matter, digital billboards serve as multiple billboards in one - part of their
23 utility is that they can rotate different messages on a single platform.

24 This court finds it reasonable to extend the *Metromedia* analysis to support
25 the general proposition here that digital billboards in the City of Reno are real and
26 substantial hazards to traffic safety capable of distracting drivers, even more than

27
28 ⁹ 1) The commercial speech is lawful and not misleading; and 2) the City has a substantial interest in regulating billboards.

1 static billboards.¹⁰ A restriction on the use of digital billboards therefore serves to
2 advance the City of Reno's governmental interest of promoting traffic safety.

3 Furthermore, the court finds the City of Reno's legitimate interest in
4 preserving the region's aesthetic value is also advanced by restricting the
5 construction of digital billboards. The Reno Municipal Code recognizes that the
6 scenic vistas surrounding the City of Reno "shapes the character of our city,
7 community, and region" and the stated intent and purpose of the billboard
8 regulations is to "promote the maintenance and enhancement of the city's esthetic
9 qualities and improve the character of our city[.]" Ex. 3; RMC § 18.16.901(a).
10 The alternating display of a digital billboard distracts citizens and visitors from the
11 natural vistas even more than a static billboard. Thus, the court finds the digital
12 billboard regulation directly advances the City of Reno's interests in enhancing the
13 aesthetic values in the scenic preservation of this unique environment.

14 The final standard under *Central Hudson* is whether the digital billboard
15 regulation is more extensive than necessary to serve the City of Reno's
16 governmental interests. The ratio system adopted in RMC § 18.16.905(14) restricts
17 the construction of digital billboards by creating an exchange system between
18 existing (or previously banked) static billboards and digital billboards. To reduce
19 billboard 'clutter' in certain problem areas, the City has determined it appropriate
20 to exchange existing static displays totaling four times the square footage of the
21 proposed digital display¹¹ in order to obtain a permit for the construction of a single
22 digital billboard. This municipal regulation reduces the number of billboards in
23 Reno and is concordant with the declared goals of Scenic Nevada.

24
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27 ¹⁰ RMC § 18.16.905(n)(1) states: "[e]ach message or copy shall remain fixed for a minimum of eight
28 seconds." This restriction serves as an acknowledgment of the potential for distraction posed by
digital billboards.

¹¹ Or banked receipts totaling eight times the square footage of the proposed digital display.

1 One of the goals of Scenic Nevada is the elimination of billboard 'blight'
2 through the enactment of laws to regulate and reduce the numbers of billboards.¹²
3 The City of Reno has promulgated these municipal ordinances in an effort to
4 eliminate billboard clutter with the City of Reno. Members of the billboard industry
5 recognize that the ratio system promulgated in these regulations will lead to the
6 elimination of some static billboards but they support the effort.¹³

7 The court finds that the digital billboard ordinance is reasonably restricted to
8 reach the City's governmental interests in enhancing the aesthetic value of the
9 community and promoting public safety and does not unconstitutionally restrict
10 Saunders' constitutional rights under the First Amendment.

11 Saunders' Public Policy Challenges

12 Saunders asserts the ratio system adopted by the City of Reno has no relation
13 to the restriction on digital billboards and is not narrowly tailored because it targets
14 even those non-cluttered areas of the city. Saunders volunteers several different
15 methods by which the City could reduce billboard clutter. While these may be
16 laudable suggestions, it is not within the purview of the court to determine the best
17 method for the City of Reno to confront the urban problem of billboard clutter.

18 Legal Standard

19 Public policy is the exclusive province of the Legislative branch of
20 government. As such, the formulation of public policy is not within the purview of
21 the court. *Koscot Interplanetary v. Draney*, 90 Nev. 450, 530 P.2d 108 (1974). If the
22 court were to do so, it would supplant the City Council's constitutionally delegated
23 legislative powers. See, *North Lake Tahoe Fire Pro. Dist. v. Washoe County Bd. of*
24 *County Comm'rs*, 129 Nev. Ad.Op. 72, 310 P.3d 583 (2013).

25
26 ¹² www.scenicnevada.org.

27 ¹³ "[The billboard industry] is still willing to work with the City to reduce the overall number of
28 boards in the community. South Virginia was brought up and multiple structures that create a
cluttered effect. This could be an opportunity to do something about that. We do have a business to
run. Out of the goodness of our hearts, we cannot mow down 10 structures, but if we could mow
down 10 and put up two or convert to digital, then I think it is a win for the City." Ex. 36, COR 591.

1 Legal Analysis

2 Whether a legislative enactment is wise or unwise is not a determination to
3 be made by the judicial branch. *Koscot v. Interplanetary v. Draney*, 90 Nev. at 456,
4 530 P.2d at 112. “[The law’s] wisdom is not the concern of the courts; if a challenged
5 action does not violate the Constitution, it must be sustained[.]” *I.N.S. v. Chadha*,
6 462 U.S. 919, 944, 103 S. Ct. 2764, 2780 (1983). The court finds that the proper
7 entity to decide how to confront the urban problem of billboard clutter and provide
8 the determination of the best method to solve this issue is the Reno City Council.¹⁴

9 However, the court does have the constitutional authority to determine
10 whether the City’s method is so narrowly tailored as to comply with the Supreme
11 Court’s *Metromedia* standards. The court finds that it is. A billboard owner
12 seeking the construct a digital billboard within the corporate limits of the city must
13 comply with RMC § 18.16, Article II. These standards are objective in nature and
14 do not grant unfettered discretion to city officials. So long as the billboard owner
15 can demonstrate compliance, the operator is entitled to a building permit as a
16 matter of right.

17 The court finds the City’s discretion in approving permit applications is not
18 unconstitutionally unfettered; it is subject to the requirements enumerated in the
19 Reno Municipal Code. Saunders’ claim to the contrary is unsupported by the facts.

20 Saunders’ Unfair Competition Claim Arguments

21 Saunders contends that the digital billboard ordinance discriminates against
22 persons who have no existing billboards, have no existing inventory to exchange or
23 have no inventory to exchange within the restricted area. The City of Reno
24 counters that the removal requirements for digital billboards further legitimate
25 governmental traffic safety and aesthetic goals; and in particular they “prevent and
26 alleviate needless distraction and clutter resulting from excessive and confusing off-

27
28 ¹⁴ The City of Reno is a municipal corporation, organized and existing under the laws of the State of Nevada through a charter approved by the Legislature. Under the Reno City Charter, the legislative power of the City is vested in the city council. Reno City Charter, Art. II, § 2.010(1).

1 premises advertising displays.” See, RMC § 18.16.901(a). The fact these goals may
2 effect a disparate impact on smaller billboard operators than larger ones is an
3 economic issue best addressed in the free market and not a constitutional issue to
4 be resolved by the courts.

5 Legal Analysis

6 Currently, off-premise digital billboards are banned in the City of Reno. To
7 meet the industry’s application of this new technology, reduce billboard clutter
8 across the City, enhance traffic safety and promote the aesthetic value of the
9 community, the City has promulgated these municipal regulations. Billboard
10 operators are free to exercise any of the available regulatory options.

11 First, it is axiomatic that billboard operators are not required by law to
12 convert their static billboards to digital billboards. They may keep and maintain
13 their existing inventory with no additional governmental regulation. Second, the
14 City has provided for special exceptions for those applicants who seek to relocate or
15 convert a static billboard in the restricted areas to a digital billboard but cannot
16 meet the billboard ratio requirements discussed in the Reno Municipal Code. RMC
17 § 8.16.905(n)(15)(the “Special Exceptions”). Additionally, those applicants who have
18 no inventory to exchange may either apply for a variance or purchase static or
19 banked billboards from those with inventory at market price. Even if it has an
20 incidental effect on some billboard operators but not others, all operators are
21 treated equally under the ordinance. The law does not require that the ‘fit’ between
22 regulation and constitution be perfect, only that it be reasonable.

23 The City has also provided specific mechanisms to reduce the stringency of
24 the ratio requirements for those smaller billboard operators without the inventory
25 of larger billboard operators. Finally, further questioning as to the precise manner
26 in which the City of Reno undertook the task of addressing the issues of aesthetic
27 environmental quality and public safety is outside the ambit of the court’s
28 constitutional authority.

1 The court finds the ratio system is narrowly tailored to serve the legitimate
2 governmental interests of promoting traffic safety and reducing billboard clutter.

3 Scenic Nevada v. The City of Reno

4 Scenic Nevada's State Constitutional Claim

5 The court next considers Scenic Nevada's assertion that Ordinance 5295 (the
6 "Conforming Ordinance") interpreting the "no new billboards" language in the 2000
7 Ballot Initiative violated Article 19 § 2.3 of the Nevada Constitution.

8 Arguments

9 Scenic Nevada asserts Article 19 § 2.3 applies to municipal initiatives and
10 therefore the conforming ordinance amending the billboard ordinance violated the
11 Nevada Constitution. The City contends that because the billboard ordinance was a
12 municipal initiative, Article 19 § 2.3 does not apply and therefore it was permissible
13 for the City Council to pass the conforming ordinance within three years of the
14 billboard ordinance's approval. The court turns to an analysis of the applicable
15 constitutional and legislative provisions.

16 Legal Standard

17 Article 19 § 4 states, in relevant part, "[t]he initiative and referendum powers
18 provided for in this article are further reserved to the registered voters of each
19 county and each municipality as to all local, special and municipal legislation of
20 every kind or for such county or municipality."

21 Article 19 § 2.3 provides, in part,

22 If a majority of the voters voting on such question at such election votes
23 approval of such statute or amendment to a statute, it shall become law
24 and take effect upon completion of the canvass of votes by the Supreme
25 Court. An initiative measure so approved by the voters shall not be
amended, annulled, repealed, set aside or suspended by the Legislature
within 3 years from the date it takes effect.

26 Legal Analysis

27 The Nevada Constitution includes specific provisions for the passage of
28 initiatives and referendums in counties and municipalities: "[i]n counties and

1 municipalities initiative petitioner may be instituted by a number of registered
2 voters equal to 15 percent or more of the voters who voted at the last preceding
3 general county or municipal election. Referendum petitioners may be instituted by
4 10 percent or more of such voters.” Nev. Const. Art. XIX § 4. In this case, the 2000
5 Ballot Initiative clearly meets the statutory and constitutional requirements for
6 municipal initiatives.

7 While Art. 19 § 2.3 contains the prohibition on the amendment of state
8 initiatives by the legislature within 3 years from the date the state initiative takes
9 effect, there is no similar provision for municipal initiatives. The Nevada
10 Constitution could have been amended to provide a corollary to the ban on
11 amendments found in Article 19 § 2.3, instead the Legislature enacted Nevada
12 Revised Statute 295.220. NRS 295.220 provides that a municipal initiative “shall
13 be treated in all respects as other ordinances of the same kind adopted by the
14 council.” The Reno Municipal Code does not provide a ban on amendments similar
15 to Article 19 § 2.3 of the Nevada Constitution.

16 Foundational differences in the structure of the Legislature and the city
17 governments of the state caution against a liberal reading of the Nevada
18 Constitution conflating acts by the Legislature to acts by those city governments. If
19 a constitutional provision is clear and unambiguous, courts will not look beyond the
20 provision of the provision. *Miller v. Burk*, 124 Nev. 579, 590, 188 P.3d 1112, 1119-20
21 (2008).¹⁵

22 The language of Article 19 § 2.3 of the Nevada Constitution specifically
23 references approval of a *statute*, a canvass of votes by the Supreme Court, and the
24 power of the Legislature to amend, annul, repeal, set aside, or suspend the *statute*.
25 A plain reading of the language cuts against applying the restriction on
26 amendments to municipal *ordinances*.

27
28 ¹⁵ The court notes while the use of the word “statute” is in and of itself insufficient to identify this
section as applying to only state-wide initiatives, the totality of the language suggests that this
interpretation is appropriate.

1 The court finds the 2000 Billboard Initiative was a municipal, not state,
2 initiative and the provision disallowing amendments of initiative measures found in
3 Article 19 § 2.3 of the Nevada Constitution is inapplicable to the actions of the Reno
4 City Council. Thus the court finds the 'banking ordinance' was a proper exercise of
5 constitutional power given to the City of Reno by the Nevada Legislature and does
6 not violate the Nevada Constitution's restriction on amendments to state initiatives.

7 The 2000 Initiative, Ballot Question R-1 and the Term "New Billboards."

8 The court next considers whether the intent of the 2000 Initiative and Ballot
9 Question R-1 was to completely eliminate billboards or simply cap the number of
10 billboards in the City of Reno at the number in existence at the time of their
11 passage and what the proponents of the 2000 Initiative and Ballot Question R-1
12 meant when they sought to prohibit the construction of "new" billboards.

13 Arguments

14 Scenic Nevada argues that "[t]he voter initiative of 2000, codified as RMC §
15 18.16.902, prohibited new construction of billboards and banned the issuance of
16 building permits for their construction." *First Amend. Compl.*, ¶55. The City argues
17 that the 2000 Initiative and Ballot Question R-1 simply capped the number of
18 existing billboards which may not be exceeded by additional (i.e. "new") billboards.

19 Under the City of Reno's analysis, so long as a billboard was existing before
20 November 14, 2000, it is not a "new" billboard and may be moved when zoning,
21 contractual termination, construction or land use restrictions require its removal.
22 Scenic Nevada counters that any billboard relocated to another location is "new" to
23 that location and the City is prohibited from issuing a permit for its construction.

24 Legal Standard

25 Whenever a law is equivocal, courts must define its purpose and intent to
26 effectuate a reasonable interpretation. "[I]f the statutory language is ambiguous or
27 does not address the issue before us, we must discern the Legislature's intent and
28 construe the statute according to that which 'reason and public policy would

1 indicate the legislature intended.” *Sandoval v. Bd. Of Regents*, 119 Nev. 148, 153,
2 67 P.3d 902, 905 (2003) (internal citation omitted). Otherwise, absent an ambiguity,
3 courts should interpret a law according to its plain meaning. *See Kay v. Nunez*, 122
4 Nev. 1100, 1104, 146 P.3d 801, 804 (2006).

5 Legal Analysis

6 The 2000 Ballot Initiative stated:

7 **“New off-premises advertising displays/billboards is**
8 **prohibited, and the City of Reno may not issue**
9 **permits for their construction.”**

10 Once it qualified for the General Election Ballot, Question R-1 read:

11 **“The construction of new off-premises advertising**
12 **displays/billboards is prohibited, and the City of**
13 **Reno may not issue permits for their construction.”**

14 After passage of Ballot Question R-1, this Reno City Council adopted Reno
15 Municipal Code section 18.16.902(a) which reads:

16 **“The construction of new off-premises advertising**
17 **displays/billboards is prohibited, and the City of**
18 **Reno may not issue permits for their construction.”**

19 In order to understand the intent of the proponents of the Ballot Question,
20 the court looks first to the language of the Question. This is a compound sentence
21 with two independent clauses joined by a comma and conjunction. The independent
22 clauses could function as individual sentences: there is a subject and predicate for
23 each of the independent clauses. This implies equal attention for both ideas in each
24 independent clause.¹⁶ This provides little assistance to the court.

25 In the first independent clause, *construction* is the simple subject, *is*
26 *prohibited* is the predicative (verb) and *of off-premise advertising* is a prepositional
27 phrase acting as an adjective to modify *construction*.¹⁷ In the second independent

28 ¹⁶ *The Bedford Handbook 8th Edition*, p. 177, 14a.

¹⁷ *The Brief McGraw-Hill Handbook 2nd Edition*, p. 514, 2. New York: McGraw-Hill, 2012. Print.

1 clause, *the City of Reno* is the simple subject, *may not issue* is the simple predicate
2 (*may not issue permits for their construction* is the complete predicate which
3 includes the complement: *permits for their construction*). *Permits* is the object of the
4 second independent clause and *there is* a pronoun referring to *new off-premises*
5 *advertising/billboards*. *For their construction* is a prepositional phrase that is
6 acting as an adjective to modify *permits*.¹⁸

7 Under this sentence structure analysis, the proponents of 2000 Initiative and
8 Ballot Question R-1 intended to prohibit the City of Reno from permitting the
9 construction of new billboards. On this point both Scenic Nevada and the City of
10 Reno agree. However, the parties diverge on the definition of the word “new” as it
11 modifies “off-premise advertising display/billboards.” For that answer, the court
12 turns elsewhere.

13 There are several definitions of the word “new.” One dictionary defines it as:
14 “Of a kind now existing or appearing for the first time[.]”¹⁹ Another defines “new”
15 as: “Of any thing recently discovered.”²⁰ Still another defines “new” as: “Already
16 existing but seen, experienced or acquired recently or now for the first time.”²¹
17 These definitions are consistent with the representation of both Scenic Nevada and
18 the City of Reno, thus establishing the ambiguity of the 2000 Initiative and Ballot
19 Question R-1.

20 Where ambiguity exists, a court is permitted to consider the history of the
21 regulation in determining the intent of the legislating body. If a law is ambiguous,
22 courts “may look to the provision’s history, public policy, and reason to determine
23 what the voters intended.” *Miller*, 124 Nev. at 590. In this case, in order to guide
24 the voting public, the ballot contained arguments for and against passage of Ballot
25 Question R-1. Scenic Nevada’s arguments for passage stated:

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27 ¹⁸ *The Brief McGraw-Hill Handbook, 2nd Edition*, p. 514, 2.

28 ¹⁹ The Random House Dictionary, 2014. On-line.

²⁰ Black’s Law Dictionary, Garner 9th edition, 2010. Print.

²¹ New Oxford American Dictionary, 3rd Ed. 2010. Print.

1 **“[t]his Initiative does not ban existing billboards,**
2 **but it does place a cap on their numbers.”**

3 Ex. 6.

4 When the opponents of the Initiative argued that the Initiative would
5 prohibit all building permits for any billboards, Scenic Nevada responded: “Also,
6 [the billboard industry] led voters to believe, *incorrectly*, that R-1 banned all
7 billboards.” Ex. 223, SN 34(emphasis added). Even after the passage of the 2000
8 Initiative, Scenic Nevada continued to maintain that the Initiative merely placed a
9 “cap” of 289 billboards permitted in the City of Reno and prohibited the construction
10 of any *additional* billboards.²² Additionally, Scenic Nevada told the voters that
11 “approval of the Initiative would therefore have no significant effect on the current
12 level of business of the billboard industry in the City of Reno.” Ex. 6. This stark
13 statement cannot be reconciled with Scenic Nevada’s present position on the intent
14 of the drafters of the 2000 Initiative and Ballot Question R-1.

15 In this lawsuit, Scenic Nevada now argues that the intent of the 2000
16 Initiative and Ballot Question was to eliminate billboards and that regardless
17 where the billboard originated or how long it existed, if it is relocated to another
18 location it is a “new” billboard whose construction is prohibited by the Initiative and
19 Ballot Question.²³ See, Ex. 223, SN 35-36.

20 In response, the City argues that the 2000 Initiative and Ballot Question R-1
21 only prohibited the construction of “new” billboards and that excludes any billboard
22 in existence at the time the 2000 Initiative became law. The City interprets the

23 ²² “This Initiative Petition, supported by over 7,000 Reno citizens, would prohibit any increase in the
24 present number of billboards, but it does place a cap on their numbers.” Ex. 6. “All parties agreed
25 that the effect of the voter-approved initiative established a cap of 289 billboards within the City
26 limits. That being the number of billboards extant or approved.” Ex 223, SN 35.

27 ²³ “[T]he vote [on the 2000 Initiative] was about putting a ban on it, and then having attrition when
28 the billboard comes down so it does not go into the bank. It just never existed again. So eventually
29 we would get fewer and fewer billboards.” Ms. Wray, Minutes of Billboards Workshop, May 24, 2011
30 Ex. 18, COR-00220. This position has been consistently asserted by other representatives of Scenic
31 Nevada. The language “construction of new off-premises advertising displays/billboards is
32 prohibited” is unambiguous. Chris Wicker, Minutes of Reno Planning Commission Workshop,
33 September 20, 2011. Ex. 36, COR 585-86. Permits for the construction of relocated billboards are
34 “prohibited.” Mark Wray, Ex 36, COR 587. “The City Council’s decision [to approve the banking and
35 relocation plan] circumvents the will of the voters.” Chris Wicker, Ex. 36, COR 591.

1 term "new billboards" to mean that existing signs can be rebuilt using new
2 technology, or removed and relocated and that a "new" sign would be one that is in
3 addition to those already present in the community at the time the 2000 Initiative
4 was passed into law. Ex. 33; RMC § 18.16.902(b).

5 In examining their language, the court finds that Scenic Nevada's argument
6 is not supported by either the 2000 Initiative or Ballot Question R-1. If the intent of
7 the 2000 Initiative and Ballot Question was to ban the construction of billboards
8 once they had been taken down, the Initiative would simply have read: "Billboards
9 are prohibited in the City of Reno."²⁴ However, that is not the language Scenic
10 Nevada put before the voters. The Initiative and Ballot Question told the voters
11 that only the construction of "new" billboards was prohibited, not the construction of
12 all billboards. Indeed, the City of Reno has refused billboard applications seeking
13 approval of "new" billboards. See Ex. 211.

14 The conflict between the parties' interpretation of the adjective "new" is
15 resolved when "new billboards" in the 2000 Initiative, Question R-1 and RMC §
16 18.16.902(a) is interpreted as meaning "additional" billboards. A billboard created
17 in the place of another may have but lately been brought into being, but its origin is
18 in the removal of the other existing billboard.²⁵ This is a reasonable interpretation
19 considering the changing character of public land usage. Cities expand and contract
20 to meet the residential and commercial needs of their citizens. Every city must
21 balance the public need with the private interest. The practical flexibility needed to
22 meet the demands of the City's citizens and business community was addressed in
23 the deposition of Claudia Hanson, the Planning and Engineering Manager for the
24 City of Reno, when she described the basis for the banking ordinance:

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26
27 ²⁴ Four states ban billboards; Maine, Vermont, Alaska and Hawaii. Large cities that have
prohibitions on new billboards include Houston, Los Angeles, St. Paul and Kansas City. See
www.scenic.org.

28 ²⁵ Under Heraclitus' logic, *nemo discentis bis in indem fluminem*, both the man and the river have
changed. In this case, while the location has changed, it is still the same billboard.

1 Q: Why are billboards banked?

2 A: Billboards are banked to give owners of the board an
3 opportunity to relocate them at a later time.

4 Q: Why?

5 A: To maintain their rights to have that board.

6 Q: So—

7 A: Sometimes boards are removed for – if they're falling apart.
8 Some are moved because right-of-way is expanded. Some are
9 moved because the lease is lost with the underlying property
10 owner. Some are moved because a new building is going in.

11 Ex. 203, p. 40.

12 “Statutory provisions should, whenever possible, be read in harmony
13 provided that doing so does not violate the ascertained spirit and intent of the
14 legislature.” *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886,
15 892, 784 P.2d 974, 978 (1989). The banking Ordinance, read in harmony with the
16 2000 Initiative and Ballot Question R-1, effectuates the voters’ intent in limiting the
17 number of billboards in the City of Reno to those existing at the time of the 2000
18 election while protecting the private property rights of billboard owners. Read in
19 conformity with Scenic Nevada’s position at the time Ballot Question R-1 was put to
20 the voters, it is clear that Question R-1 meant to ban the construction of *additional*
21 billboards; i.e., billboards which were not in existence prior to November 14, 2000.

22 Consistent with that interpretation, the City of Reno adopted the conforming
23 Ordinance 5295 which prohibited additional billboards by capping the number of
24 billboards to the number that existed on November 14, 2000. RMC § 18.06.920(b).
25 Thus, while a billboard created pursuant to the banking or removal Ordinance may
26 appear for the first time in a different area, it isn’t genuinely appearing for the first
27 time: the location is new, but the billboard is not.²⁶

28 “Whenever possible, this court will interpret a rule or statute in harmony
with other rules and statutes.” *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860
P.2d 720, 723 (1993) (per curiam) (citations omitted). “If there is an irreconcilable

²⁶ Scenic Nevada’s interpretation could be viewed as permitting the movement of billboards provided the original materials were used at the new location. This view begs the question presented in the philosophical conundrum concerning the Ship of Theseus: how much of the original structure would necessarily be included to prevent the resulting billboard from being “new?” For obvious reasons, this construction of the statute would lead to absurd results.

1 conflict between two statutes, the statute which was most recently enacted controls
2 the provisions of the earlier enactment.” *Marschall v. City of Carson*, 86 Nev. 107,
3 115, 464 P.2d 494, 500 (1970) (citations omitted). The most recent Ordinance
4 addressing this issue is the conforming Ordinance. Under the law, this court
5 considers this Ordinance both instructive and persuasive.

6 The conflict between the parties is resolved when “new billboards” in the
7 2000 Initiative Ballot Question R-1 is interpreted as meaning “additional”
8 billboards. Thus, in order to effect the stated intent of the proponents of the 2000
9 Initiative and Ballot Question and also harmonize the City of Reno’s municipal
10 ordinances with its governmental interests, this court finds the 2000 Initiative and
11 Ballot Question is properly read as creating a cap on the number of billboards in the
12 City of Reno and the word “new” is intended to refer to additional billboards above
13 that amount as existed on November 14, 2000. Thus, Reno Municipal Code section
14 18.16.902 does not violate the voter’s intent of the 2000 Initiative or the Ballot
15 Question and is a lawful and constitutional exercise of its municipal authority.

16 This interpretation is further reinforced when considering the practical
17 impact Scenic Nevada’s recent interpretation would have on the billboard industry
18 and the citizens of the City of Reno. Scenic Nevada’s interpretation of the Initiative
19 and Ballot Question would clearly lead to the permanent loss of a billboard to its
20 owner. Not only would this frustrate all parties’ interest in reducing billboard
21 clutter²⁷ but the billboard’s loss could constitute a “taking” under the Fifth
22 Amendment which could subject the citizens of Reno to litigation and monetary
23 damages, a consequence not explained to the public voting on Ballot Question R-1.²⁸

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26 ²⁷ There would be little incentive for an owner to remove a dilapidated billboard if its loss would be permanent.

27 ²⁸ This is not hypothetical. Outdoor Media Dimensions sued the City when it lost the use of its
28 billboards because of the RETRAC project and the City of Reno paid \$50,000.00 to settle the
litigation. Ex. 202. In Minnesota, a judge ordered the State to pay Clear Channel Outdoors \$4.321
million in compensation for removal of a digital billboard. Ex. 218. The litigation risks to the citizens
of Reno are substantial.

1 The Takings Clause of the Fifth Amendment of the Constitution of the
2 United States, made applicable to the states through the Fourteenth Amendment,
3 prohibits the government from taking private property for public use without just
4 compensation. *Chicago, Burlington & Q. Railroad v. Chicago*, 166 U.S. 226, 17 S.Ct.
5 581 (1897). Nevada Constitution Article 1 § 8(6) states “[p]rivate property shall not
6 be taken for public use without just compensation having been first made, or
7 secured.”

8 In *Pennsylvania Coal Co. v. Mahon*, the United States Supreme Court
9 determined that state regulation of property may require just compensation,
10 observing that, “while property may be regulated to a certain extent, if regulation
11 goes too far it will be recognized as a taking.” 260 U.S. 393, 415, 43 S. Ct. 158
12 (1922). The Nevada Supreme Court has recognized that government regulation of
13 private property may, in some instances, be so onerous that its effect is tantamount
14 to a direct appropriation or ouster and that such regulatory takings may be
15 compensable under the Fifth Amendment. *McCarran Int’l Airport, et al. v. Sisolak*,
16 122 Nev. 645, 137 P.3d 1110 (2006). Certainly Scenic Nevada did not intend the
17 confiscation of private property by its support of the 2000 Initiative and Ballot
18 Question R-1.

19 The Federal Highway Beautification Act

20 In 1965, Congress passed the Federal Highway Beautification Act (“HBA”),
21 23 U.S.C. § 131, to preserve the scenic beauty of America’s highways. Among other
22 things, it required States to provide effective control of billboard advertising along
23 federally funded highways. In conformity therewith, the Nevada Legislature
24 authorized the Board of Directors of the Department of Transportation (“NDOT”) to
25 regulate and restrict the construction and maintenance of outdoor advertising
26 within 660 feet of the nearest edge of the right-of-way and visible from the main-
27 traveled way of the interstate and primary highway systems within Nevada. NRS
28 410.220 to NRS 410.410. The Board of Directors of the NDOT was required to enter

1 into an agreement with the Secretary of Transportation with respect to criteria
2 regarding spacing, size, and lighting of highway billboards (the “Federal-State
3 Agreement”). NRS 410.330. On January 28, 1977, NDOT and the Secretary of
4 Transportation entered into the Federal-State Agreement. Ex. 69.

5 Arguments

6 Scenic Nevada argues that the digital billboard ordinance is void and of no
7 legal force because it violates Nevada law banning intermittent lighting on
8 billboards adjacent to interstate highways as adopted by the Federal-State
9 Agreement (“FSA”) and for the same reasons enunciated in *Scenic Arizona v. City of*
10 *Phoenix Board of Adjustments*, 268 P.3d 370 (Ariz.App. 2011). The City of Reno
11 argues that Nevada law does not expressly preempt municipalities from adopting
12 highway billboard ordinances less restrictive than NDOT regulations. The City
13 argues that state law grants the City and NDOT concurrent jurisdiction over
14 highway billboards and the right to issue permits.

15 Legal Standard

16 The Highway Beautification Act controls signs along the Interstate Highway
17 System and the former Federal-aid primary highway system (collectively, “Nevada
18 Highways”). 23 U.S.C. § 131 (2006). The FSA for Nevada relies upon the Nevada
19 Department of Transportation (“NDOT”) to enforce its provisions. Pursuant to the
20 FSA, billboards “shall not include or be illuminated by flashing, intermittent or
21 moving lights . . .” Nevada’s corollary is found in NAC 410.350(2) and states, in
22 part, “[A] commercial electronic variable message sign, including, without
23 limitation, a trivision sign, may be approved as an off-premises outdoor advertising
24 sign in an urban area if the sign does not contain flashing, intermittent or moving
25 lights . . .” NRS 410.330.

26 Nevada law grants both the City and NDOT concurrent jurisdiction over
27 highway billboards and the right to issue permits. NRS 278.020; NRS 410.220 to
28 NRS 410.410, inclusive; and specifically, NRS 410.365. Because both agencies

1 exercise concurrent jurisdiction, an applicant must obtain both a City permit and a
2 NDOT permit to erect a highway billboard.

3 Legal Analysis

4 An applicant seeking to erect and maintain a digital billboard within the City
5 limits and within 660 feet of an interstate highway must obtain permits from both
6 the City of Reno and NDOT as they exercise concurrent jurisdiction over highway
7 billboards. To the extent a permit issued by the City is less restrictive than a
8 permit issued by NDOT, the more restrictive standard governs and the City permits
9 yields to the NDOT permit pursuant to RMC § 18.02.109(a) ("If the provisions of
10 Title 18 are inconsistent with those of the state or federal governments, the more
11 restrictive provisions will control, to the extent permitted by law.").

12 Where NDOT regulations control, they supersede the municipal ordinances.
13 However, for areas in the city not within 660 feet of an interstate highway, and
14 where the applicant has otherwise satisfied the municipal requirements, the
15 municipal ordinances are applicable as they do not conflict with NDOT regulations.

16 NDOT is authorized to prescribe regulations governing the issuance of
17 permits for the erection and maintenance of highway billboards consistent with the
18 HBA. NRS 410.330. As billboard technology evolved, FHA recognized that the
19 FSAs and regulations needed to be clarified with regard to commercial electronic
20 variable message signs (digital billboards), so the FHA issued a memorandum
21 expressly authorizing the use of digital billboards on September 25, 2007. The
22 Nevada Legislature enacted Assembly Bill 305 in 2013. AB 305 became effective on
23 January 1, 2014. This directs the Board of Directors of NDOT to prescribe
24 regulations specifying the operational requirements for digital billboards which
25 conform to any regulations promulgated by the Secretary of Transportation. Thus,
26
27
28

1 digital billboards are permitted on highways in Nevada.²⁹ Thus, the digital
2 billboard ordinance does not violates the Federal Highway Beautification Act.

3 The Reno Sign Code

4 The court now considers Scenic Nevada's assertion that the digital billboard
5 ordinance violates RMC § 18.16.905.

6 Arguments

7 Scenic Nevada claims that the digital billboard ordinance violates Reno Sign
8 Code's prohibition against using flashing intermittent LED lights to display
9 advertising messages. RMC § 18.16.905(n)(5). Scenic Nevada also argues that
10 digital billboards are fundamentally unhealthy, unsafe, unaesthetic, anti-
11 environmental and injurious to public welfare and the City cannot rebut those
12 assertions. The City argues that it adopted the digital billboard ordinance to
13 further implement the stated purpose and intent of the Sign Code set forth in RMC
14 § 18.16.901(a). While the City does not specifically address the public health, safety
15 and welfare issue, the City argues the digital billboard ordinance is a matter of
16 public policy not subject to the courts' purview. This court agrees.

17 Legal Standard

18 RMC § 18.24.203.4570 provides that "[f]lashing sign means a sign which uses
19 blinking, flashing or intermittent illumination, either direct, or indirect or internal."
20 The Reno City Council enacted the digital billboard ordinance which establishes
21 standards for off-premises advertising displays in RMC § 18.16.905(n). This
22 ordinance pertains to permanent off-premises displays in the city. RMC §
23 18.16.905(n)(5) states, "[D]isplays shall not flash or move during a display period."

24
25
26
27 ²⁹ *Scenic Arizona v. City of Phoenix* is easily distinguished from the case at bar. First, the Arizona
28 Legislature passed a law specifically banning intermittent lighting on highway billboards across the
state – Nevada has not. In fact, the Nevada Legislature has directed NDOT to promulgate
regulations governing the operation of digital billboards on Nevada highways where they are now
permitted.

1 Legal Analysis

2 Reno Municipal Code § 18.24.203.4570 defines a “flashing sign” as a sign
3 which uses blinking, flashing or intermittent illumination, either direct, or indirect
4 or internal. RMC § 18.16.905(n)(5) states: “[d]isplays shall not flash or move during
5 a display period.” The digital billboard ordinance contains specific limitations on
6 the types of digital displays permitted. The language of RMC § 18.16.905(n) is
7 deliberate. The guidelines of that provision are far more detailed than the blanket
8 restriction on flashing signs. Additionally, the language of § 18.16.905(n)(5) reveals
9 an intent to distinguish between the typical message rotation of a digital sign and
10 the flashing sign not permitted under RMC § 18.24.203.4570. Therefore, the digital
11 billboard ordinance does not violate the Reno Sign Code.

12 **CONCLUSION**

13 This litigation reveals that the parties have more in common than in conflict.
14 Scenic Nevada promotes the economic, social and cultural benefits of scenic
15 preservation through the enactment of billboard and sign control regulation.
16 Through the exercise of the democratic process, their efforts lead to the enactment
17 of municipal ordinances that cap and will reduce the number of billboards in the
18 City of Reno. The billboard industry participated in drafting a municipal ordinance
19 which protects its private property rights while accepting a reduction in static
20 billboards in exchange for the use of digital technology.

21 Finally, the City of Reno reached out to both constituencies in open workshop
22 meetings and public hearings to promulgate municipal ordinances that balance the
23 commercial needs of its business community and the scenic preservation aspirations
24 of its citizens, enhancing both the economy and the community.

25 Scenic Nevada is correct; the 2000 Initiative and Ballot Question prohibited
26 the construction of new billboards. The City of Reno is correct; the 2000 Initiative
27 and Ballot Question does not permit the construction of new billboards. Saunders
28 Outdoor Advertising has new opportunities to implement digital technology.

1 While these efforts have been difficult, in concluding this litigation, this court
2 finds the regulations reasonable and the ordinances constitutional.

3
4 **THEREFORE,**

- 5 1. As to *SAUNDERS OUTDOOR ADVERTISING, INC.'s v. CITY OF RENO*,
6 this court enters Judgment in favor of Defendant CITY OF RENO and
7 against Plaintiff SAUNDERS OUTDOOR ADVERTISING, INC.
8 2. As to the *SCENIC NEVADA v. THE CITY OF RENO*, the court enters
9 Judgment in favor of Defendant CITY OF RENO and against Plaintiff
10 SCENIC NEVADA, INC.
11 3. All parties to bear their own attorney fees and costs.

12 **IT IS SO ORDERED.**

13
14 **DATED** this 27 day of March, 2014.

15
16 Patrick Flanagan
17 Patrick Flanagan
18 District Judge
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Mark Wray, Esq. for Scenic Nevada, Inc.;

Frank Gilmore, Esq. for Saunders Outdoor Advertising; and

John Kadlic, Esq. and Jonathan Shipman, Esq. for City of Reno

Kathryn Limb
Judicial Assistant

CASE NO. CV12-02863

SCENIC NEVADA, INC. vs. CITY OF RENO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

03/28/13
HONORABLE
PATRICK
FLANAGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

ORAL ARGUMENTS IN RE: DEFENDANTS' MOTION TO DISMISS

Mark Wray, Esq., was present in Court on behalf of the Plaintiff.
Deputy City Attorney Marilyn Craig, was present in Court on behalf of the Defendants.
11:13 a.m. – Court convened with Court and counsel present.
Counsel for the Defendants addressed the Court and argued in support of Defendants' Motion to Dismiss.
Counsel for the Plaintiff addressed the Court and argued in opposition to the Motion to Dismiss, to include amending the Complaint to include a claim for Declaratory Relief, if necessary.
Counsel for the Defendants responded and further argued in support of the Motion to Dismiss.
Respective counsel presented additional argument.
Counsel for the Plaintiff advised the Court that an active litigation case, Saunders vs. the City of Reno, exists in this Department and is almost identical to the Scenic Nevada case. Further, counsel addressed the possibility of consolidating the two cases.
Counsel for the Defendants argued that two cases are very different.
COURT ORDERED: The Court will defer to counsel as to filing a Motion to Consolidate and Opposition. It is further ordered that Defendants' Motion to Dismiss is Taken Under Advisement, and further, the Court will issue a written order.
11:45 a.m. – Court stood in recess.

CASE NO. CV12-02863

SCENIC NEVADA INC. vs. CITY OF RENO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

7/18/13
HONORABLE
PATRICK
FLANAGAN
DEPT. NO. 7
M. Conway
(Clerk)
S. Koetting
(Reporter)

ORAL ARGUMENTS RE: MOTION TO DISMISS

Mark Wray, Esq. was present in Court on behalf of the Plaintiff, with no representative present.
Jonathan Shipman, Esq. was present in Court on behalf of Defendant, City of Reno, with no representative present.
2:40 p.m. - Court convened.
The Court presented a brief procedural history of the case at bar.
Counsel Shipman addressed the Court, presented argument in support of Defendant's Motion to Dismiss, arguing that the action should be barred due to Plaintiff's failure to comply with applicable statutes of limitations, and addressed concurrent jurisdiction.
Counsel Wray addressed the Court and presented argument in opposition of the City of Reno's Motion to Dismiss, arguing that the City of Reno should have to answer the claims.
Counsel Shipman responded.
COURT ORDERED: City of Reno's Motion to Dismiss Complaint is DENIED.
3:05 p.m. - Court stood in recess.

CASE NO. CV12-02863

SCENIC NEVADA, INC. vs. CITY OF RENO

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

01/30/14

HONORABLE

PATRICK

FLANAGAN

DEPT. NO. 7

K. Oates

(Clerk)

S. Koetting

(Reporter)

PRE-TRIAL CONFERENCE

Mark Wray, Esq., was present in Court on behalf of Plaintiff Scenic, Nevada, Inc., with no representative being present.

Frank Gilmore, Esq., was present in Court on behalf of Plaintiff Saunders Outdoor Advertising, Inc., with no representative being present.

Deputy City Attorney Jonathan was present in Court on behalf of Defendant City of Reno, with no representative being present.

1:19 p.m. – Court convened with Court and counsel present.

The Court advised respective counsel that a trial date is presently set for February 19, 2014 at 1:30 p.m., however, ordered that the trial date be moved to February 20, 2014 beginning at 9:00 a.m.

No objections were stated by counsel.

The Court further advised that the City of Reno's Motion for Summary Judgment is pending, however, the Court will not issue a ruling until after the Settlement Conference with Judge Adams has occurred.

Counsel responded they will not be conducting a Settlement Conference in this case.

The Court replied that he is prepared to rule on Defendant's Motion for Summary Judgment.

COURT ORDERED: With findings being placed on the record, Defendant's Motion for Summary Judgment DENIED. It is further ordered that counsel Wray will prepare the proposed order, and counsel is ordered to prepare proposed findings of facts and conclusions of law, and e-mail them to Department Seven chambers no later than 5:00 p.m. on Thursday, February 13, 2014.

Counsel Gilmore addressed and advised the Court that two cases were consolidated, and as a result, the Motion to Dismiss previously submitted to the Court has not been ruled upon. Further, counsel argued in support of denying that Motion.

COURT ORDERED: The Court will review the record and proceed accordingly.

1:35 p.m. – Court stood in recess.

CASE NO. CV12-02863

SCENIC NEVADA, INC. et al. vs. CITY OF RENO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

02/24/14

NON-JURY TRIAL

HONORABLE

Mark Wray, Esq., was present in Court on behalf of Plaintiff Scenic, Nevada, Inc., with representative Lori Wray being present.

PATRICK

Frank Gilmore, Esq., was present in Court on behalf of Plaintiff

FLANAGAN

Saunders Outdoor Advertising, Inc., with representative Ryan

DEPT. NO. 7

Saunders being present.

K. Oates

Deputy City Attorney Jonathan Shipman was present in Court on

(Clerk)

behalf of Defendant City of Reno, with representative Claudia

S. Koetting

Hanson being present.

(Reporter)

9:07 a.m. – Court convened with Court, counsel and respective parties present.

Counsel Wray, on behalf of Plaintiff Scenic, Nevada, Inc., addressed the Court and presented opening statement.

Counsel Gilmore, on behalf of Plaintiff Saunders Outdoor Advertising, Inc., addressed the Court and presented opening statement.

Deputy City Attorney Jonathan Shipman, on behalf of Defendant City of Reno, addressed the Court the Court and presented opening statement.

Counsel Wray moved for the admission of all stipulated exhibits; no objection(s) stated.

COURT ORDERED: Exhibits 1 – 71, Exhibits 100 – 102 and Exhibits 200 – 237 ADMITTED.

Counsel Wray, on behalf of Plaintiff Scenic Nevada, Inc., called **Lori Wray**, who was sworn and direct examined.

10:33 a.m. – Morning Recess.

10:50 a.m. – Court reconvened with Court, counsel and respective parties present.

Lori Wray resumed the stand, heretofore sworn and further direct examined; cross-examination conducted by counsel Gilmore, cross-examination conducted by counsel Shipman; re-direct examination waived; the Court inquired of the witness, who in turn responded.

11:58 a.m. – Noon Recess.

1:31 p.m. – Court reconvened with Court, counsel and respective parties present.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

02/24/14

NON-JURY TRIALHONORABLE
PATRICK
FLANAGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

Counsel Wray called **Claudia Hanson**, who was sworn and direct examined; counsel Gilmore conducted cross-examination; counsel Shipman conducted cross-examination, followed by direct examination; counsel Wray conducted cross-examination; counsel Gilmore conducted cross-examination; counsel Shipman conducted re-direct examination; no re-cross examination conducted; witness excused.

Counsel Wray, on behalf of Plaintiff Scenic Nevada, Inc., rested their case.

Counsel Gilmore, on behalf of Plaintiff Saunders Outdoor Advertising, Inc., read portions of the Deposition Transcript of **Dwight Dortch** (Exhibit 200) into the record, with the assistance of Eric Roberson, who was sworn to accurately read the testimony given in the deposition transcript to the best of his ability.

Counsel Gilmore called **Ryan Saunders**, who was sworn and direct examined.

3:22 p.m. – Afternoon Recess.

3:40 p.m. – Court reconvened with Court, counsel and respective parties present.

Ryan Saunders resumed the stand, heretofore sworn and further direct examined by counsel Gilmore; cross-examination conducted by counsel Wray; cross-examination conducted by counsel Shipman; counsel Gilmore conducted re-direct examination; no re-cross examination conducted; witness excused.

Counsel Gilmore, on behalf of Plaintiff Saunders Outdoor Advertising, Inc., rested their case.

Counsel Shipman, on behalf of Defendant City of Reno, rested their case.

Counsel Wray, on behalf of Plaintiff Scenic Nevada, Inc., conducted closing argument.

Counsel Gilmore, on behalf of Plaintiff Saunders Outdoor Advertising, Inc., conducting closing argument.

Counsel Shipman, on behalf of Defendant City of Reno, conducted closing argument.

CASE NO. CV12-02863

SCENIC NEVADA, INC. et al. vs. CITY OF RENO

Page Three

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

02/24/14

NON-JURY TRIAL

HONORABLE

COURT ORDERED: This case will be taken under advisement. The Court will issue a written decision.

PATRICK

The Court thanked counsel and the respective parties for their courtesy and professionalism.

FLANAGAN

DEPT. NO. 7

5:52 p.m. – Court stood in recess.

K. Oates

(Clerk)

S. Koetting

(Reporter)

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al. PATY: Mark Wray, Esq./Pltf Scenic Nevada
 DEFT: CITY OF RENO PATY: Frank Gilmore, Esq./Pltf Saunders
 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
1	Defendant	Certification of Clerk's Office (COR 1-3)	02-18-14	Stipulated	02-24-14
2	Defendant	Section 18.16.902. Restrictions on Permanent Off-Premises Advertising Displays (COR 4)	02-18-14	Stipulated	02-24-14
3	Defendant	Ordinance No. 6258 passed and adopted on October 24, 2012 (COR 5-26)	02-18-14	Stipulated	02-24-14
4	Defendant	Ordinance No. 5295 passed and adopted on January 22, 2002 (COR 27-61)	02-18-14	Stipulated	02-24-14
5	Defendant	Staff report for Item 14A for Reno City Council Meeting from August 15, 2000 (COR 62-71)	02-18-14	Stipulated	02-24-14
6	Defendant	Question No. R-1 (Billboard Ballot Question) (COR 72-74)	02-18-14	Stipulated	02-24-14
7	Defendant	Agenda for Reno City Council Meeting from November 14, 2000 (COR 75-79)	02-18-14	Stipulated	02-24-14
8	Defendant	Staff report for Item 6A for Reno City Council Meeting from November 14, 2000 (COR 80-99)	02-18-14	Stipulated	02-24-14
9	Defendant	Staff report for Item 13E for the Reno City Council Meeting from November 14, 2000 (COR 100-104)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
10	Defendant	Agenda, Ordinance & Staff report for Item 13E1 for Reno City Council Meeting from November 14, 2000 (COR 105-116)	02-18-14	Stipulated	02-24-14
11	Defendant	Ordinance No. 5208 passed and adopted on November 17, 2000 (COR 117-129)	02-18-14	Stipulated	02-24-14
12	Defendant	Minutes for Reno City Council meeting from November 14, 2000 (COR 130-140)	02-18-14	Stipulated	02-24-14
13	Defendant	Section 18.16.901 of the Reno, Nevada Land Development Code (COR 141-142)	02-18-14	Stipulated	02-24-14
14	Defendant	Agenda for the Reno City Council Meeting from December 18, 2001 (COR 143-151)	02-18-14	Stipulated	02-24-14
15	Defendant	Staff report for Item 13C1 for Reno City Council Meeting from December 18, 2001 (COR 152-169)	02-18-14	Stipulated	02-24-14
16	Defendant	Staff report for Item 13C for Reno City Council Meeting from December 18, 2001 (COR 170-174)	02-18-14	Stipulated	02-24-14
17	Defendant	Minutes for Reno City Council Meeting from December 18, 2001 (COR 175-189)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
18	Defendant	Staff report for the Reno City Planning Commission Meeting from January 4, 2012 (COR 190-339)	02-18-14	Stipulated	02-24-14
19	Defendant	Continuation of Staff report for the Reno City Planning Commission Meeting from January 4, 2012 (COR 340-351)	02-18-14	Stipulated	02-24-14
20	Defendant	Agenda for the Reno City Council Meeting from January 8, 2002 (COR 352-358)	02-18-14	Stipulated	02-24-14
21	Defendant	Staff report for Item 15A for Reno City Council Meeting from January 8, 2002 (COR 359-380)	02-18-14	Stipulated	02-24-14
22	Defendant	Staff report for Item 15A1 for Reno City Council Meeting from January 8, 2002 (COR 381-402)	02-18-14	Stipulated	02-24-14
23	Defendant	Draft Minutes for Reno City Council Meeting from January 8, 2002 (COR 403-419)	02-18-14	Stipulated	02-24-14
24	Defendant	Minutes for Reno City Council Meeting from January 8, 2002 (COR 420-437)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
25	Defendant	Agenda for the Reno City Council Meeting from January 22, 2002 (COR 438-444)	02-18-14	Stipulated	02-24-14
26	Defendant	Minutes and Staff report for Item 8B for Reno City Council Meeting from January 22, 2002 (COR 445-477)	02-18-14	Stipulated	02-24-14
27	Defendant	Staff report for Item 8B for Reno City Council Meeting from January 22, 2002 (COR 478-523)	02-18-14	Stipulated	02-24-14
28	Defendant	Minutes for Reno City Council Meeting from January 22, 2002 (COR 524-538)	02-18-14	Stipulated	02-24-14
29	Defendant	Partial Minutes for Reno City Council Meeting from February 13, 2008 (COR 539-541)	02-18-14	Stipulated	02-24-14
30	Defendant	Agenda for Reno City Planning Commission from May 6, 2009 (COR 542-547)	02-18-14	Stipulated	02-24-14
31	Defendant	Partial Minutes for Reno City Council Meeting from May 13, 2009 (COR 548-550)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al. PATY: Mark Wray, Esq./Pltf Scenic Nevada
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 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
32	Defendant	Staff report for Case No. AT-32-07 for Reno City Planning Commission from November 5, 2009 (COR 551-556)	02-18-14	Stipulated	02-24-14
33	Defendant	Partial Minutes for Reno City Planning Commission from November 5, 2009 (COR 557-569)	02-18-14	Stipulated	02-24-14
34	Defendant	Draft Minutes for Billboards Workshop from May 24, 2011 (COR 570-579)	02-18-14	Stipulated	02-24-14
35	Defendant	Agenda for Reno City Planning Commission Workshop from September 20, 2011 (COR 580-581)	02-18-14	Stipulated	02-24-14
36	Defendant	Minutes for Reno City Planning Commission Workshop from September 20, 2011 (COR 582-599)	02-18-14	Stipulated	02-24-14
37	Defendant	Minutes for Reno City Planning Commission Workshop from September 20, 2011 Exhibit 2 (COR 600-617)	02-18-14	Stipulated	02-24-14
38	Defendant	Partial Minutes for Reno City Planning Commission from October 5, 2011 (COR 618-631)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al. PATY: Mark Wray, Esq./Pltf Scenic Nevada
 DEFT: CITY OF RENO PATY: Frank Gilmore, Esq./Pltf Saunders
 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
39	Defendant	Staff report for Case No. AT-32-07 for Reno City Planning Commission from November 2, 2011 (COR 632-636)	02-18-14	Stipulated	02-24-14
40	Defendant	Partial Minutes for Reno City Planning Commission from November 2, 2011 (COR 637-648)	02-18-14	Stipulated	02-24-14
41	Defendant	Appeal from Scenic Nevada for Case No. AT-32-07 received on November 14, 2011 (COR 649-650)	02-18-14	Stipulated	02-24-14
42	Defendant	Partial Minutes for Reno City Planning Commission from December 8, 2011 (COR 651-653)	02-18-14	Stipulated	02-24-14
43	Defendant	Memorandum from Reno City Attorneys (Exhibit 7) from December 19, 2011 (COR 654-668)	02-18-14	Stipulated	02-24-14
44	Defendant	Staff report for Case No. AT-32-07 for Reno City Planning Commission from January 4, 2012 (COR 669-674)	02-18-14	Stipulated	02-24-14
45	Defendant	Partial Minutes for Reno City Planning Commission from January 4, 2012 (COR 675-677)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al. PATY: Mark Wray, Esq./Pltf Scenic Nevada
DEFT: CITY OF RENO PATY: Frank Gilmore, Esq./Pltf Saunders
 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
46	Defendant	Appeal from Scenic Nevada for Case No. AT-32-07 received on January 9, 2012 (COR 678-679)	02-18-14	Stipulated	02-24-14
47	Defendant	Partial Agenda for Reno City Council Meeting from February 8, 2012 (COR 680-683)	02-18-14	Stipulated	02-24-14
48	Defendant	Minutes for Special Session Reno City Council Meeting from March 6, 2012 (COR 684-688)	02-18-14	Stipulated	02-24-14
49	Defendant	Staff report for Item A.6 for Special Session Reno City Council Meeting from March 6, 2012 (COR 689-692)	02-18-14	Stipulated	02-24-14
50	Defendant	Minutes for Special Session Reno City Council Meeting from April 25, 2012 (COR 693-699)	02-18-14	Stipulated	02-24-14
51	Defendant	Staff report for Item A.5 for Special Session Reno City Council Meeting from April 25, 2012 (COR 700-709)	02-18-14	Stipulated	02-24-14
52	Defendant	Partial Agenda for Reno City Council Meeting from July 18, 2012 (COR 710-715)	02-18-14	Stipulated	02-24-14
53	Defendant	Staff report for Item N.2 for Reno City Council Meeting from July 18, 2012 (COR 716-718)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al. PATY: Mark Wray, Esq./Pltf Scenic Nevada
 DEFT: CITY OF RENO PATY: Frank Gilmore, Esq./Pltf Saunders
 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
54	Defendant	Partial Minutes for Reno City Council Meeting from August 22, 2012 (COR 719-721)	02-18-14	Stipulated	02-24-14
55	Defendant	Staff report for Item G.3 for Reno City Council Meeting from August 22, 2012 (COR 722-725)	02-18-14	Stipulated	02-24-14
56	Defendant	Staff report for Item I.1.1 for Reno City Council Meeting from September 12, 2012 (COR 726-732)	02-18-14	Stipulated	02-24-14
57	Defendant	Partial Minutes for Reno City Council Meeting from October 10, 2012 (COR 733-735)	02-18-14	Stipulated	02-24-14
58	Defendant	Staff report for Item I.1.1 for Reno City Council Meeting from October 10, 2012 (COR 736-738)	02-18-14	Stipulated	02-24-14
59	Defendant	Staff report for Item I.1.2 for Reno City Council Meeting from October 10, 2012 (COR 739-745)	02-18-14	Stipulated	02-24-14
60	Defendant	Staff report for Item G.6.1 for Reno City Council Meeting from October 24, 2012 (COR 746-750)	02-18-14	Stipulated	02-24-14
61	Defendant	Staff report for Item G.6.2 for Reno City Council Meeting from October 24, 2012 (COR 751-755)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
62	Defendant	Staff report for Item G.6.3 for Reno City Council Meeting from October 24, 2012 (COR 756-757)	02-18-14	Stipulated	02-24-14
63	Defendant	Staff report for Item G.6.4 for Reno City Council Meeting from October 24, 2012 (COR 758-759)	02-18-14	Stipulated	02-24-14
64	Defendant	Agenda for Reno City Council Meeting from October 24, 2012 (COR 760-779)	02-18-14	Stipulated	02-24-14
65	Defendant	Ordinance No. 6258 passed and adopted January 24, 2013 (COR 780-801)	02-18-14	Stipulated	02-24-14
66	Defendant	Staff report for Item G.6.1 for Reno City Council Meeting from October 24, 2012 (COR 802-806)	02-18-14	Stipulated	02-24-14
67	Defendant	Staff report for Item G.6.2 for Reno City Council Meeting from October 24, 2012 (COR 807-830)	02-18-14	Stipulated	02-24-14
68	Defendant	Minutes for Reno City Council Meeting from October 24, 2012 (COR 831-882)	02-18-14	Stipulated	02-24-14
69	Defendant	Memorandum from City Attorney dated December 19, 2011 (COR 883-897)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
70	Defendant	Partial Minutes for Reno City Council Meeting from December 12, 2012 (COR 898-901)	02-18-14	Stipulated	02-24-14
71	Defendant	Assembly Bill No. 305 (COR 902-903)	02-18-14	Stipulated	02-24-14
100	Plaintiff Saunders	City of Reno's Responses to Saunders' First Set of Requests for Admission (Depo. Ex. 23)	02-18-14	Stipulated	02-24-14
101	Plaintiff Saunders	May 24, 2011 Billboards Workshop Draft Minutes (Depo. Ex. 24)	02-18-14	Stipulated	02-24-14
102	Plaintiff Saunders	City of Reno's Responses to Saunders' First Set of Interrogatories (Depo. Ex. 25)	02-18-14	Stipulated	02-24-14
200	Joint	Deposition Transcript of Dwight Dortch	02-18-14	Stipulated	02-24-14
201	Joint	Deposition Transcript of Claudia Hanson	02-18-14	Stipulated	02-24-14
202	Plaintiff Scenic Nevada	RETRAC publication with project start date Sept. 13, 2002 (Depo. Ex. 5, SN 1187, SN 509, SN 762, SN 1034-1045, COR 696)	02-18-14	Stipulated	02-24-14
203	Plaintiff Scenic Nevada	Ordinance 5461 of June 11, 2003 (Depo. Ex. 7, SN 1053-1060)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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DEFT: **CITY OF RENO** PATY: **Frank Gilmore, Esq./Pltf Saunders**
 DATY: **DCA Jonathan Shipman/Deft City of Reno**

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
204	Plaintiff Scenic Nevada	Jan. 30, 2008 Reno City Council Outfall (Depo. Ex. 8, SN 58-69, SN 72-73, SN 48-50)	02-18-14	Stipulated	02-24-14
205	Plaintiff Scenic Nevada	March 10, 2008 RGJ article about activists targeting LED billboards (Depo. Ex. 9, SN 87-88)	02-18-14	Stipulated	02-24-14
206	Plaintiff Scenic Nevada	March-April 2009 letters and articles about digital ordinance (Depo. Ex. 10, SN 302, SN 188-189, SN 202, SN 1076-1078, SN 77, COR 4041, SN 294-295)	02-18-14	Stipulated	02-24-14
207	Plaintiff Scenic Nevada	Sept. 20, 2011 Planning Commission workshop minutes with photo (Depo. Ex. 11, SN 501, SN 485)	02-18-14	Stipulated	02-24-14
208	Plaintiff Scenic Nevada	Jan. 31, 2012 Dortch email to Barrett (Depo. Ex. 12, COR 5018)	02-18-14	Stipulated	02-24-14
209	Plaintiff Scenic Nevada	July 19, 2012 RGJ Article "Electronic Billboards OK'd" (Depo. Ex. 14, SN 765)	02-18-14	Stipulated	02-24-14
210	Plaintiff Scenic Nevada	Jan. 31, 2008 meeting with stakeholders at sign in Sparks (Depo. Ex. 15, COR 5571)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
211	Plaintiff Scenic Nevada	New billboard construction permits in 2011 and 2012 (Depo. Ex. 16, SN 480-81, SN 1174-76, COR 3923-24, COR 3959, COR 3979, COR 3983)	02-18-14	Stipulated	02-24-14
212	Plaintiff Scenic Nevada	May 11, 2011 Hanson emails with Clear Channel (Depo. Ex. 17, COR 4261-4262)	02-18-14	Stipulated	02-24-14
213	Plaintiff Scenic Nevada	Hanson emails in 2011-2012 to keep Clear Channel informed about Scenic Nevada (Depo. Ex. 18, COR 4304-4305, 4482-83, 4353-54, 4535, 4368-71, 4387, 2971-72, 4366-67, 4555, 4042-44)	02-18-14	Stipulated	02-24-14
214	Plaintiff Scenic Nevada	Jan. 2012 Hanson emails about billboard appeals (Depo. Ex. 19, COR 4144-45, 4152)	02-18-14	Stipulated	02-24-14
215	Plaintiff Scenic Nevada	March 2012 Hanson emails with Bill Thomas (Depo. Ex. 20, COR 4221, COR 703)	02-18-14	Stipulated	02-24-14
216	Plaintiff Scenic Nevada	July 2, 2012 Turnier email re billboards for July 18 council meeting (Depo. Ex. 21, COR 3812)	02-18-14	Stipulated	02-24-14
217	Plaintiff Scenic Nevada	Moana billboard project by Clear Channel -2012 (SN 1207-1346)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Case No. CV12-02863	Dept. No. 7	Court Clerk: Kim Oates	Date: 02/24/14
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PATY: **Mark Wray, Esq./Pltf Scenic Nevada**
PATY: **Frank Gilmore, Esq./Pltf Saunders**
DATY: **DCA Jonathan Shipman/Deft City of Reno**

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
218	Plaintiff Scenic Nevada	Feb. 4, 2014 Finance & Commerce Article (SN 1347-1348)	02-18-14	Stipulated	02-24-14
219	Plaintiff Scenic Nevada	OMD Settlement Packet – COR 99, Docket in OMD v. Reno, Settlement Agreement and Mutual Release (Saunders 252-255)	02-18-14	Stipulated	02-24-14
220	Plaintiff Scenic Nevada	May 8, 2003 City Attorney memo to council on billboard relocations (City's Response to SN request for production)	02-18-14	Stipulated	02-24-14
221	Plaintiff Scenic Nevada	Dec. 17, 2002 Nevada Supreme Court decision in Eller Media, 118 Nev. 767	02-18-14	Stipulated	02-24-14
222	Plaintiff Scenic Nevada	Scenic Nevada's First Amended Complaint (Depo. Ex. 4)	02-18-14	Stipulated	02-24-14
223	Plaintiff Scenic Nevada	April 1, 2002 Scenic Nevada billboard history (SN 26-38)	02-18-14	Stipulated	02-24-14
224	Plaintiff Scenic Nevada	Sept. 20, 2011 Chris Wicker comments to Planning Commission (COR 582, 586)	02-18-14	Stipulated	02-24-14
225	Plaintiff Scenic Nevada	Feb. 2012 video of Scenic Nevada's exhaustion of administrative remedies before filing suit	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al. DEFT: CITY OF RENO	PATY: Mark Wray, Esq./Pltf Scenic Nevada PATY: Frank Gilmore, Esq./Pltf Saunders DATY: DCA Jonathan Shipman/Deft City of Reno
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Case No. CV12-02863	Dept. No. 7	Court Clerk: Kim Oates	Date: 02/24/14
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PATY: Mark Wray, Esq./Pltf Scenic Nevada

PATY: **Frank Gilmore, Esq./Pltf Saunders**

DATY: DCA Jonathan Shipman/Deft City of Reno

Dept. No. 7

Court Clerk: Kim Oates

Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
226	Plaintiff Scenic Nevada	Corporate records of Scenic Nevada and predecessor entities	02-18-14	Stipulated	02-24-14
227	Plaintiff Scenic Nevada	April 25, 2008 workshop emails, agenda and discussion items (SN 296-301)	02-18-14	Stipulated	02-24-14
228	Plaintiff Scenic Nevada	April, 2011 digital billboard poll and Aug. 7, 2011 RGJ news article (SN 470-474, SN 477)	02-18-14	Stipulated	02-24-14
229	Plaintiff Scenic Nevada	Dec. 5, 2011 Lori Wray email and testimony to Planning Commission (SN 601-603, SN 1-9)	02-18-14	Stipulated	02-24-14
230	Plaintiff Scenic Nevada	Scenic Arizona v. City of Phoenix opinion Nov. 2011 (SN 560-600)	02-18-14	Stipulated	02-24-14
231	Plaintiff Scenic Nevada	July 11, 2012 Scenic Nevada letter to City Council (SN 746-752)	02-18-14	Stipulated	02-24-14
232	Plaintiff Scenic Nevada	Aug. 16, 2012 Scenic Nevada letter to City Council (SN 788-790)	02-18-14	Stipulated	02-24-14
233	Plaintiff Scenic Nevada	Oct. 5, 2012 Staff email to stakeholders (SN 868)	02-18-14	Stipulated	02-24-14
234	Plaintiff Scenic Nevada	May 15, 2009 article in RGJ "City Wants to Trade with Sign Companies," (SN 326)	02-18-14	Stipulated	02-24-14

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DATY: DCA Jonathan Shipman/Deft City of Reno

[illegible]

CASE NO. CV12-02917

SAUNDERS OUTDOOR ADV. vs. THE CITY OF RENO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

03/26/13
HONORABLE
PATRICK
FLANAGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

MANDATORY PRETRIAL STATUS CONFERENCE

Frank Gilmore, Esq., was present in Court on behalf of the Plaintiff, who was not present.
Deputy City Attorney Marilyn Craig was present in Court on behalf of the Defendant, who was not present.
1:18 p.m. – Court convened with Court and counsel present.
Counsel for the Plaintiff addressed and advised the Court that although he has not formally withdrawn the Motion for Temporary Restraining Order, that issue was resolved by the City of Reno, and is considered moot by the ordinance, which will be effective in January 2014, and trial will have gone forward by then.
Counsel for the Defendant addressed the Court and concurred.
The Court inquired of counsel as to the possibility of a Settlement Conference.
Counsel for the Plaintiff responded that most the discovery has been completed in this case, and he would not be opposed to a Settlement Conference.
Counsel for the Defendant responded that this case centers around a legal question, and settlement does not look promising.
The Court entered and outlined a Scheduling Order in this matter.
Respective counsel stipulated to no experts or expert reports in this case.
1:18 p.m. – Court stood in recess.

CASE NO. CV12-02917

SAUNDERS et al. vs. CITY OF RENO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

09/17/13
HONORABLE
PATRICK
FLANAGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

PRE-TRIAL CONFERENCE

Frank Gilmore, Esq., was present in Court on behalf of Plaintiff
Saunders, who was not present.

Jonathan Shipman, Esq., was present in Court on behalf of
Defendant City of Reno, who was not present.

Angeline Peterson, Assistant to Mark Wray, Esq., was also present in
Court on behalf of Mark Wray, Esq., who represents Plaintiff Scenic
Nevada, Inc., who was not present.

1:14 p.m. – Court convened with Court, counsel and Ms. Peterson
present.

Counsel Gilmore addressed and advised the Court that Department
Seven had previously signed an Order consolidating this case with
that of counsel's Wray's case (Scenic Nevada, Inc.). Further,
counsel advised that Mr. Wray's client is not prepared to go forward
with trial in October as additional discovery remains to be completed.
Further, counsel moved to vacate and reset the current trial date.
Counsel Shipman, on behalf of Defendant City of Reno, addressed
the Court and concurred.

COURT ORDERED: The current trial date in October, 2013 is
vacated and will be reset with Department Seven's Judicial Assistant.
Counsel Gilmore inquired as to the submitted Motion to Dismiss.
The Court responded a decision will be forthcoming.

1:18 p.m. – Court stood in recess.

1 **Code 1350**

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3
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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 **SCENIC NEVADA, INC,**

9 **Plaintiff,**

10 **vs.**

Case No. CV12-02863

11 **CITY OF RENO, a politcal**
12 **subdivision of the State of Nevada,**
13 **and the CITY COUNCIL thereof,**

Dept. No. 7

14 **Defendant.**

15
16 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

17 I certify that I am an employee of the Second Judicial District Court of the State of
18 Nevada, County of Washoe; that on the 2nd day of April, 2014, I electronically filed the
19 Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

20 I further certify that the transmitted record is a true and correct copy of the original
21 pleadings on file with the Second Judicial District Court.

22 Dated this 2nd day of April, 2014

23
24 **JOEY ORDUNA HASTINGS**
25 **CLERK OF THE COURT**

26 By /s/ Shannon Hambright
27 Shannon Hambright
28 Deputy Clerk