

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

SCENIC NEVADA, INC.,  
Appellant,  
vs.  
CITY OF RENO, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA,  
Respondent.

No. 65364

Electronically Filed  
Apr 18 2014 03:32 p.m.

Tracie K. Lindeman  
Clerk of Supreme Court  
DOCKETING STATEMENT  
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department 7  
County Washoe Judge Hon. Patrick Flanagan  
District Ct. Case No. CV12-02863

**2. Attorney filing this docketing statement:**

Attorney Mark Wray Telephone 775-348-8877  
Firm Law Offices of Mark Wray  
Address 608 Lander Street  
Reno, Nevada 89509

Client(s) Scenic Nevada, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Jonathan Shipman Telephone 775-334-2050  
Firm Reno City Attorney's Office  
Address One E. First Street, 3rd Floor  
Reno, Nevada 89505

Client(s) City of Reno

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Complaint by Scenic Nevada, Inc. for declaratory relief to invalidate the City of Reno's digital billboard ordinance. Judgment entered for City of Reno.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Please see attached.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

## QUESTION 9. ISSUES ON APPEAL

1. If the voters adopt a municipal ballot initiative, can it be immediately repealed by the city council?
2. Do the initiative powers reserved to the voters of each municipality under Article 19, §4 of the Nevada Constitution include the power to adopt an ordinance that cannot be amended, annulled, repealed, set aside or suspended by the city council for at least three years?
3. As to a ballot initiative adopted by the citizens of Reno that states: “The construction of new off-premises advertising displays/billboards is prohibited, and the City of Reno may not issue permits for their construction,” did the district court err in interpreting the initiative to be merely a cap on the total number of billboards, such that the City of Reno can allow construction of billboards and issue permits for their construction, so long as the total number of billboards in the city limits does not exceed the number of billboards in existence at the time the initiative was adopted?
4. Did the district court err in holding that the digital billboard ordinance adopted by the Reno city council did not violate the Highway Beautification Act, 23 U.S.C. §131, and the implementing Federal State Agreement, statutes, and regulations?
5. Did the district court err in holding that the digital billboard ordinance does not violate provisions of the Reno sign code prohibiting construction of billboards and prohibiting intermittent lighting?

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☒ A ballot question

If so, explain: The case concerns a ballot initiative passed by Reno voters in 2000 banning billboards. The constitutional issue and policy issue of first impression is whether the Nevada Constitution allows a city council to repeal or annul a municipal initiative immediately after it is adopted by the voters.

**13. Trial.** If this action proceeded to trial, how many days did the trial last? 1

Was it a bench or jury trial? Bench

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No

## TIMELINESS OF NOTICE OF APPEAL

**15. Date of entry of written judgment or order appealed from** Mar 27, 2014

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**16. Date written notice of entry of judgment or order was served** Mar 28, 2014

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**18. Date notice of appeal filed** Mar 28, 2014

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

**SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify)          | <u></u>                               |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1): This appeal arises out of a final judgment entered in an action or proceeding commenced in the court in which the judgment is entered. Specifically, a judgment arising from a bench trial.



**21. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Scenic Nevada, Inc.  
Saunders Outdoor Advertising, Inc.  
City of Reno

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Saunders Outdoor Advertising, Inc. did not appeal from the judgment against it.

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Scenic Nevada, Inc.: declaratory relief  
Saunders Outdoor Advertising, Inc.: declaratory relief

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Scenic Nevada, Inc.  
Name of appellant

Mark Wray  
Name of counsel of record

April 18, 2014  
Date

  
Signature of counsel of record

Nevada, Washoe  
State and county where signed

## CERTIFICATE OF SERVICE


I certify that on the 18<sup>th</sup> day of April, 2014, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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

Janet Chubb  
Supreme Court Settlement Judge  
Armstrong Teasdale LLP  
50 W. Liberty Street, #950  
Reno, Nevada 89501

Dated this 18<sup>th</sup> day of April, 2014

  
Signature

1 **1090**  
2 **MARK WRAY**  
3 Bar No. 4425  
4 608 Lander Street  
5 Reno, Nevada 89509  
6 (775) 348-8877  
7 (775) 348-8351 fax  
8 Attorney for Plaintiff  
9 **SCENIC NEVADA, INC.**

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

12 **SCENIC NEVADA, INC.,**

13 **Plaintiff,**

**Case No. CV12-02863**

14 **vs.**

**Dept. 7**

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

18 **Defendant.**

19 \_\_\_\_\_ /  
20 **FIRST AMENDED COMPLAINT TO INVALIDATE CITY OF RENO DIGITAL**  
21 **BILLBOARD ORDINANCE**

22 COMES NOW Plaintiff Scenic Nevada, Inc., pursuant to NRS 30.040, and for its  
23 First Amended Complaint against Defendant City of Reno and the City Council thereof,  
24 to invalidate the City of Reno digital billboard ordinance, alleges:

25 **NATURE OF THE CASE**

26 1. The citizens of Reno passed an initiative prohibiting new billboard  
27 construction and banning issuance of any building permits for billboard construction.  
28 The citizens acted because their elected city officials would not. Since the citizens

1 passed the law, the Defendant City Council has flouted the citizens' vote by allowing  
2 billboard companies to "bank" and relocate each billboard that is removed and to  
3 construct new billboards using the banked receipts. Most recently, the Defendant City  
4 Council has adopted an ordinance that permits and expands construction of new  
5 billboards by allowing billboard companies to construct electronic, or digital, billboards,  
6 further violating the voter's mandate, sections of the Reno Municipal Code, the  
7 Constitution of Nevada, and provisions of state and federal law concerning billboards on  
8 public highways.

9 PARTIES

10 2. Plaintiff Scenic Nevada, Inc. is a non-profit Nevada corporation with a  
11 principal place of business at 150 Ridge Street, Reno, Nevada. Its principal activity is to  
12 educate the general public on the economic, social, and cultural benefits of scenic  
13 preservation by means of encouraging billboard and sign control, among other issues.

14 3. Scenic Nevada is an aggrieved party and has exhausted its administrative  
15 remedies before bringing this action pursuant to NRS 30.040.

16 4. Defendant City of Reno is a political subdivision of the State of Nevada  
17 located in the County of Washoe and the Defendant City Council thereof is a public body  
18 composed solely of elected officials.

19 RELIEF SOUGHT

20 5. Scenic Nevada seeks a judgment declaring void and of no force or effect  
21 the ordinance of the Defendant City of Reno adopted October 24, 2012 that approved a  
22 text amendment to the Reno sign code, allowing the new construction of off-premise  
23 electronic signs, also known as digital billboards.

24 FACTS

25 6. Following repeated attempts by Reno citizens to persuade the Reno  
26 Planning Commission and Reno City Council to enact stronger billboard controls, a  
27 grassroots, volunteer organization called "Citizens for a Scenic Reno" ("CFASR")  
28 formed on January 20, 2000.

1           7.     CFASR filed nonprofit articles of incorporation with the Nevada Secretary  
2 of State on March 27, 2000.

3           8.     On March 29, 2000, CFASR filed an Initiative Petition with the Reno City  
4 Clerk which stated: "New off-premise advertising displays/billboards in the City of Reno  
5 are prohibited, and the City of Reno may not issue permits for their construction."

6           9.     On June 26, 2000 opponents filed an initiative petition which stated: "Off-  
7 Premise Advertising Displays (billboards) in the City of Reno shall only be permitted on  
8 property zoned commercial and industrial."

9           10.    By July 25, 2000, CFASR had collected 7,381 valid signatures, above the  
10 required minimum of 6,790 signatures, which represented 15% of the votes cast in the  
11 previous citywide election, in order to qualify its initiative for the 2000 general election  
12 ballot. Ballot Question R-1 read:

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

16           11.    On July 29, 2000, opponents withdrew their initiative petition from  
17 circulation stating, "The dueling petition drive confused voters. The group will now  
18 concentrate its efforts on defeating the referendum."

19           12.    CFASR spent about \$3,000 in its successful fight for passage of Question  
20 R-1. Opponents, calling themselves "Nevadans to Save Jobs and Fight Extremism" spent  
21 \$226,823 in a losing effort.

22           13.    On August 24, 2000, the opponents, led by Eller Media Co. as plaintiff,  
23 filed a lawsuit asking the Court to remove the initiative from the ballot.

24           14.    On October 14, 2000, the Hon. Jerome Polaha, District Judge, Second  
25 Judicial District Court, found in favor of the City and against Eller Media. The initiative  
26 remained on the ballot.

27           15.    At the polls on November 7, 2000, of the 57,782 votes cast, 32,765, or  
28 57%, voted in favor of Ballot Question R-1.

1           16.    The results were certified by the Defendant City Council on November 14,  
2 2000, and Ballot Question R-1 became Reno Municipal Code ("RMC") §18.16.902 (a),  
3 entitled "Restrictions on Permanent Off-Premises Advertising Displays". RMC  
4 §18.16.902 (a) states:

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

8           17.    Notwithstanding the mandate of the voters enacted into law as RMC  
9 §18.16.902 (a), on or about January 22, 2002, a majority of the Defendant City Council  
10 voted to amend the municipal code to create a billboard "banking" and relocation system,  
11 allowing a billboard company to remove a billboard in one location and "bank" the  
12 permit for up to 10 years (later increased to 15 years) until a new permitted location could  
13 be found. Using these "banked" receipts, a billboard company could construct a new  
14 billboard, often in a new location, where no billboard stood before, by obtaining a new  
15 building permit for the new billboard, contrary to the plain mandate of the voters in  
16 passing Ballot Question R-1.

17           18.    The Defendant City Council's adoption of the "banking" and relocation  
18 system now codified in RMC §18.16.908 effectively repealed the ballot initiative barely  
19 14 months after it was approved by the voters. RMC §18.16.908 purportedly gave staff  
20 of the Defendant City of Reno the authority to issue permits for new billboard  
21 construction when existing billboards are removed. Specifically, the ordinance provided  
22 that a billboard "may be relocated to a permitted location" as long as two permits are  
23 obtained; one to remove the old billboard and one to relocate the new billboard to a new  
24 location. The Defendant City Council again amended the municipal sign ordinance  
25 shortly thereafter, to formally establish a billboard permit "bank" and provide city staff a  
26 mechanism for tracking permits of removed billboards.

27           19.    CFASR changed its name to "Citizens For A Scenic Northern Nevada" and  
28 in September 2002, adopted its current name, "Scenic Nevada".

1           20. Eller Media had appealed Judge Polaha's decision to the Nevada Supreme  
2 Court. On Dec. 17, 2002, the Supreme Court affirmed, in *Eller Media Co. v. City of*  
3 *Reno*, 118 Nev. 767, 59 P.3d 437 (2002), holding that the billboard petition was  
4 legislative in character, a proper subject for an initiative petition, and reflected a citywide  
5 change in policy towards off-premise advertising. On Feb. 6, 2003, the Supreme Court  
6 denied Eller Media's petition for rehearing.

7           21. During the years 2000 through 2012, all billboard lighting was required to  
8 be directed toward the billboard, and not toward the street. This requirement was  
9 codified in RMC§18.16.905 (l), which effectively prevented digital billboards in the City  
10 of Reno. In contrast to a traditional billboard where lights shine onto the display, the  
11 lighting of a digital billboard shines toward the public roads. RMC §18.16.905 (l)  
12 effectively made digital billboards illegal in the City of Reno by prohibiting light shining  
13 toward the public roads.

14           22. On February 13, 2008, a majority of the Reno City Council, led by  
15 Councilman Dwight Dortch, voted to direct Reno City staff to initiate a text amendment  
16 that would eliminate RMC §18.16.905 (l) and allow the construction and permitting of  
17 new digital billboards.

18           23. Digital billboards are computer controlled variable message electronic signs  
19 whose informational content can be changed or altered by means of computer-driven  
20 electronic impulses (including "light emitting diodes" or "LED" light bulbs). LED bulbs  
21 turn off and on every eight seconds to display a different advertisement in a sequence of  
22 eight rotating advertisements, day and night.

23           24. Digital billboard displays are by definition a new type of billboard, using  
24 new technology, and requiring mostly new construction and new building permits.

25           25. On April 25, 2008 the Community Development Department held a  
26 workshop to gather suggestions, ideas and recommendations for inclusion in the proposed  
27 draft digital billboard ordinance. Representatives from the billboard industry and Scenic  
28 Nevada attended.



1           26. At all times since the initial draft proposed in 2008, the text amendment for  
2 the proposed digital billboard ordinance was based upon, and indeed, dependent upon,  
3 the Defendant City Council's adoption of the 2002 ordinance creating the "banking" and  
4 relocation system, which purported to allow billboard companies to "bank" receipts for  
5 billboards and move them to new locations within the city.

6           27. Due to meddling by some City Council members, the proposed digital  
7 billboard ordinance became bogged down in a series of continuances. On March 12,  
8 2009, the city staff circulated a draft ordinance with the intent of having it reviewed by  
9 the Planning Commission on April 1, 2009, but the draft was pulled by Director of  
10 Community Development John Hester, who explained to staff in an email that the draft's  
11 restrictions on digital billboards were not in accord with the intentions of Councilman  
12 Dortch. Dortch was pushing the interests of the billboard industry by seeking to lessen or  
13 even eliminate any new restrictions on new digital billboard construction.

14           28. A new draft was circulated to be reviewed at the May 6, 2009 Planning  
15 Commission meeting, but on April 29, 2009, the new draft was pulled from the May 6  
16 agenda, because city staff reported that it was awaiting the results of a federal study on  
17 the safety impacts of digital billboards. Two weeks later, at the May 13 City Council  
18 meeting, members of the Defendant City Council instructed Hester that regardless of the  
19 safety studies, he was to move forward and present a draft ordinance to the Planning  
20 Commission.

21           29. On October 13, 2009 the Community Development Department released  
22 another draft ordinance that was to be reviewed at the November Planning Commission  
23 meeting. At the hearing on November 5, billboard company Clear Channel Outdoor,  
24 appearing by its attorney John Frankovich, requested a continuance, due to Clear  
25 Channel's objections to restrictions on digital billboards contained in the proposed draft.  
26 The Planning Commission voted to continue the public hearing, but not before members  
27 of Scenic Nevada were allowed to address the Commissioners and point out that the 2000  
28

1 ballot initiative prohibited the city from allowing new billboard construction, including  
2 new construction of digital billboards.

3 30. Citizen opposition to new billboards remained strong. In April, 2011,  
4 Scenic Nevada commissioned a poll that asked registered voters within Reno a series of  
5 questions about traditional and digital billboards. The results showed that 55% of the  
6 voters were opposed to the Defendant City Council's effort to add text changes to the  
7 sign code allowing digital billboards within the Reno city limits. Further, 66% said they  
8 would not want to view a digital billboard from their home or office window; 80% said  
9 that Reno had enough or too many billboards; and almost 90% were concerned about  
10 distracted driving.

11 31. The proposed digital billboard ordinance did not resurface until May 24,  
12 2011, when city staff held another stakeholders meeting at the Community Development  
13 office. Scenic Nevada attended and again spoke in opposition to the new ordinance,  
14 citing the prohibition against new billboard construction and adding that the direction to  
15 include digital billboards was moving the city farther away from the law contained in the  
16 ballot initiative.

17 32. On September 20, 2011 the Planning Commission held a public workshop  
18 on the proposed digital billboard ordinance. Scenic Nevada attended, testifying that the  
19 city's banking and relocation system violated the ballot initiative and that digital  
20 billboards are new construction, prohibited by city code and a further departure from the  
21 voters' intent to reduce billboard blight.

22 33. At the October 2011 Planning Commission meeting, Scenic Nevada was  
23 present during a discussion by commissioners who questioned whether the City should be  
24 proceeding with a draft billboard ordinance in light of the 2000 ballot initiative.  
25 Commissioners directed city staff to return at the next meeting with two alternative  
26 recommendations: one continuing the prohibition of digital billboards and one permitting  
27 digital billboards.

28

1           34.    At the November 2, 2011 Planning Commission hearing on the draft  
2 ordinance, a motion to continue prohibiting digital billboards within the city limits based  
3 on the ballot initiative failed by a 2-3 vote. City staff then was directed to return with  
4 new changes to the draft ordinance.

5           35.    On November 14, 2011, Scenic Nevada timely appealed the vote of the  
6 Planning Commission from the November 2<sup>nd</sup> hearing.

7           36.    Prior to the December 2011 Planning Commission meeting, Scenic Nevada  
8 presented evidence and argument in writing, followed by testimony at the public hearing,  
9 that digital billboards would violate not only existing municipal code but state and federal  
10 law as well. In November 2011, the court in *Scenic Arizona v. City of Phoenix Board of*  
11 *Adjustment*, 268 P.3d 370 (Ariz.App. 2011) had issued an opinion that digital technology  
12 uses "intermittent lighting", which is prohibited adjacent to interstate and other highways.  
13 The Arizona court had stricken down a Phoenix ordinance that would have allowed the  
14 construction of digital billboards on grounds that the ordinance violated the proscription  
15 against intermittent lighting.

16           37.    At the December Planning Commission meeting, Scenic Nevada also  
17 repeated that the banking system violated the voter initiative and should be abandoned  
18 instead of expanding its use by allowing digital billboards.

19           38.    Based on the presentation by Scenic Nevada, Planning Commissioners  
20 postponed discussion of the ordinance and asked the city attorney for a legal opinion and  
21 report.

22           39.    On January 4, 2012, after a lengthy public hearing extending past 10 p.m.,  
23 with few members of the public still present, by a 4-2 vote, the Planning Commission  
24 recommended a draft digital billboard ordinance allowing new construction of digital  
25 billboards within the city limits.

26           40.    On January 9, 2012, Scenic Nevada timely appealed the January 4, 2012  
27 recommendation of the Planning Commission.  
28

1           41.    At the Feb. 8, 2012 public hearing before the Defendant City Council,  
2 Scenic Nevada appeared to present its appeals. Members of the City Council expressed  
3 dissatisfaction with the draft ordinance recommended by the Planning Commission, and  
4 postponed the public hearing as well as Scenic Nevada's appeal.

5           42.    Instead of hearing Scenic Nevada's appeals, the City Council scheduled  
6 and held two more public workshops. Scenic Nevada attended both workshops (March 6  
7 and April 25, 2012) and opposed adoption of the new ordinance on numerous grounds,  
8 including the violation of the 2000 voter initiative and the ban on intermittent lighting.  
9 Scenic Nevada also asked the city council to consider eliminating the billboard banking  
10 and relocation system to help reduce billboard blight.

11           43.    After the workshops, members of the City Council and representatives of  
12 the billboard industry came to an understanding on how they wished to proceed and the  
13 City Council held a public hearing on the draft ordinance on July 18, 2012, where Scenic  
14 Nevada's appeal finally would be heard. Consistent with its opposition at hearings for  
15 the past four years, Scenic Nevada opposed the draft and presented arguments against its  
16 passage. The city council approved the first reading of the draft ordinance over Scenic  
17 Nevada's objections.

18           44.    The second reading of the ordinance was scheduled for August 22, 2012.  
19 In a letter dated Aug. 16, 2012, Scenic Nevada opposed the draft, only to learn that the  
20 second reading was postponed because the Defendant City Council was considering  
21 substantial changes to the draft that had been made since the first reading.

22           45.    Scenic Nevada opposed the substantially revised draft in a letter dated  
23 September 6, 2012, but when the revised ordinance came before the Defendant City  
24 Council for a "first reading" on September 12, 2012, the Defendant City Council  
25 approved it over Scenic Nevada's opposition.

26           46.    On October 5, 2012, city staff notified representatives of the billboard  
27 industry and Scenic Nevada that there were more substantial changes to the draft and that  
28 another "first reading" was scheduled for October 10, 2012.

1           47.    On October 10, 2012, Scenic Nevada appeared again to challenge the  
2 ordinance as violating the voter initiative, city code and the ban on intermittent lighting  
3 adjacent to highways. The Defendant City Council again approved the "first reading" of  
4 the ordinance and the second reading was scheduled for October 24, 2012.

5           48.    The agenda for the October 24 meeting included a proposed moratorium  
6 and resolution to prohibit staff from issuing digital billboard building permits.  
7 According to the city attorney, in the event of a lawsuit and subsequent court decision  
8 invalidating the new digital billboard ordinance, a moratorium on issuing new permits for  
9 billboards would avoid the expense of having to remove digital billboards that were  
10 subsequently found by a court to be unlawfully constructed.

11           49.    Scenic Nevada appeared at the City Council meeting on October 24, 2012,  
12 to protest the adoption of the digital billboard ordinance but also to support the  
13 moratorium, which obviously would be beneficial to the citizens of Reno in light of  
14 Scenic Nevada's intention of filing the instant complaint in this action. Scenic Nevada  
15 supported its position with approximately 50 letters in support of the moratorium. No  
16 one in attendance at the City Council meeting opposed a moratorium. In yet another  
17 twist, without explanation to Scenic Nevada or the public, the Defendant City Council  
18 did not adopt a moratorium. Instead, the Defendant City Council approved the second  
19 reading of the ordinance along with an effective date of January 24, 2013.

20           50.    Scenic Nevada's objections to the digital billboard ordinance are long-  
21 standing and consistent. During the past four years, as a result of Scenic Nevada's  
22 unswerving attention to the important public issue of digital billboards, the City Clerk has  
23 a massive administrative record. The physical size of the administrative record amounts  
24 to thousands of pages of evidence, including staff reports, public hearing recordings and  
25 transcripts, workshop presentations, letters, emails, photographs, videos, scientific  
26 studies, power point presentations, voter survey results, related court cases, and other  
27 evidence. All of the evidence has been part of one or more presentations,  
28 communications, workshops, hearings or appeals involving city staff, City Clerk,

1 Planning Commission or the Defendant City Council, and shall be referenced and utilized  
2 by Scenic Nevada in the briefing of this action on the merits.

3 VIOLATION OF THE VOTER INITIATIVE

4 51. Scenic Nevada is the author and proponent of the billboard initiative  
5 adopted as RMC§18.16.902. Scenic Nevada has devoted more than four years to  
6 exhausting its administrative remedies by opposing the new digital billboard ordinance in  
7 workshops, public hearings and appeals and is an aggrieved party.

8 52. The Nevada Constitution guarantees the right of the citizens to resort to the  
9 initiative process where their elected officials have failed to act. Nevada Constitution  
10 Article 19, §2(1) states:

11 Notwithstanding the provisions of Section 1 of Article 4 of this Constitution, but  
12 subject to the limitations of Section 6 of this Article, the people reserve to  
13 themselves the power to propose, by initiative petition, statutes and amendments  
14 to statutes and amendments to this Constitution, and to enact or reject them at the  
polls.

15 53. Once the citizens have passed an initiative, the governing body of the local  
16 government is prohibited from amending, annulling or repealing that initiative law for a  
17 period of not less than three (3) years. Nevada Constitution Article 19, §3, states, in  
18 pertinent part:

19 If a majority of the voters voting on such question at such election votes approval  
20 of such statute or amendment to a statute, it shall become law and take effect upon  
21 completion of the canvass of votes by the Supreme Court. An initiative measure so  
22 approved by the voters shall not be amended, annulled, repealed, set aside or  
23 suspended by the Legislature within 3 years from the date it takes effect. If a  
majority of such voters votes disapproval of such statute or amendment to a  
statute, no further action shall be taken on such petition.

24 54. The same initiative powers that the citizens possess with respect to statutes  
25 and constitutional provisions also can be exercised with respect to municipal ordinances.  
26 Nevada Constitution Article 19, §4 states:

27 The initiative and referendum powers provided for in this article are further  
28 reserved to the registered voters of each county and each municipality as to all  
local, special and municipal legislation of every kind in or for such county or

1 municipality. In counties and municipalities initiative petitions may be instituted  
2 by a number of registered voters equal to 15 percent or more of the voters who  
3 voted at the last preceding general county or municipal election. Referendum  
4 petitions may be instituted by 10 percent or more of such voters.

5 55. The voter initiative of 2000, codified as RMC §18.16.902, prohibited new  
6 construction of billboards and banned the issuance of building permits for their  
7 construction. Since RMC §18.16.902 resulted from an initiative petition, the Defendant  
8 City Council had no authority to “amend, annul, repeal, set aside or suspend” the voter  
9 initiative for a period of three years following its adoption on Nov. 7, 2000.

10 56. By adopting the “banking” and relocation system in 2002, which allowed  
11 billboard companies to “bank” receipts for existing billboards and obtain building permits  
12 for billboards in new locations, the Defendant City of Reno and City Council violated the  
13 rights of Scenic Nevada and the citizens of Reno under the Nevada Constitution by  
14 amending, annulling, repealing and setting aside the voter initiative codified as RMC  
15 §18.16.902 less than three years after the initiative had passed.

16 57. The digital billboard ordinance of 2012 is entirely dependent upon the  
17 unconstitutional underpinning of a “banking” and relocation system adopted by the  
18 Defendant City Council in violation of Article 19 of the Nevada Constitution. Without  
19 the unconstitutional banking and relocation system embedded in the new ordinance, there  
20 can be no digital billboard ordinance, and the ordinance therefore must be invalidated in  
21 its entirety.

22 58. Scenic Nevada is entitled to a judicial determination that the digital  
23 billboard ordinance is unconstitutional.

24 59. Scenic Nevada is entitled to a judgment and decree that the digital billboard  
25 ordinance is void and of no force and effect as a matter of law.

#### 26 VIOLATION OF HIGHWAY BEAUTIFICATION ACT

27 60. The Federal Highway Beautification Act of 1965 provides that billboards  
28 should be controlled to “protect the public investment in such highways, to promote the

1 safety and recreational value of public travel, and to preserve natural beauty.” 23 U.S.C.  
2 § 131(a) (2002).

3 61. The Nevada Legislature adopted NRS 410.220 to 410.410 requiring  
4 Nevada to enter into a federal-state agreement, or “FSA” with the federal government. In  
5 1972, Nevada entered into an FSA to ensure continued federal funding of highways.

6 62. Nevada statutes state that the regulations in the FSA must be consistent  
7 with federal highway standards, on “spacing, size and lighting.”

8 63. Nevada’s FSA states that billboards: “shall not include or be illuminated by  
9 flashing, intermittent or moving lights (except that part necessary to give public service  
10 information such as time, date, temperature, weather or similar information) and shall not  
11 cause beams or rays of light to be directed at the traveled way if such light is of such  
12 intensity or brilliance or is likely to be mistaken for a warning or danger signal as to  
13 cause glare or impair vision of any driver, or to interfere with a driver’s operation of a  
14 motor vehicle.”

15 64. In addition, regulations found in NAC 410.350 state: “Signs must not  
16 include or be illuminated by flashing, intermittent or moving lights” and also electronic  
17 signs may be approved, “if the sign does not contain flashing, intermittent or moving  
18 lights ...”, similar to the language upon which the court in *Scenic Arizona* declared the  
19 Phoenix ordinance invalid.

20 65. In addition, NRS 410.220 (b) states:

21 The erection and maintenance of such advertising in such locations must be  
22 regulated:

23 (1) To prevent unreasonable distraction of operators of motor vehicles,  
24 confusion with regard to traffic lights, signs or signals and other  
25 interference with the effectiveness of traffic regulations;

26 (2) To promote the safety, convenience and enjoyment of travel on the state  
27 highways;

28 (3) To attract tourists and promote the prosperity, economic well-being and  
general welfare of the State;



1  
2 (4) For the protection of the public investment in the state highways; and

3 (5) To preserve and enhance the natural scenic beauty and aesthetic features  
4 of the highways and adjacent areas.

5 66. The City of Reno digital billboard ordinance is void and should be declared  
6 of no force and effect because it violates Nevada law as adopted by the FSA, for the same  
7 reasons enunciated by the court in *Scenic Arizona v City of Phoenix Board of Adjustment*,  
8 268 P.3d 370 (Ariz.App. 2011).

9 VIOLATION OF RENO SIGN CODE

10 67. RMC §18.16.901(a) addresses the need to restrict billboards to ensure  
11 public safety, preserve scenic beauty and protect the environment. The ordinance states:

12 Recognizing that the City of Reno is a unique city in which **public safety,**  
13 **maintenance, and enhancement of the city's esthetic qualities** are important  
14 and effective in promoting quality of life for its inhabitants and the City of Reno's  
15 24-hour gaming/ entertainment/ recreation/ tourism economy; recognizing that the  
16 promotion of tourism generates a commercial interest in the environmental  
17 attractiveness of the community; and recognizing that the visual landscape is more  
18 than a passive backdrop in that it shapes the character of our city, community, and  
19 region, the purpose of this article is to establish a comprehensive system for the  
20 regulation of the commercial use of off-premises advertising displays. It is  
21 intended that these regulations impose reasonable standards on the number, size,  
22 height, and location of off-premises advertising displays to prevent and alleviate  
23 needless distraction and clutter resulting from excessive and confusing off-  
24 premises advertising displays; to safeguard and enhance **property values**; and to  
25 promote the general welfare and **public safety** of the city's inhabitants and to  
26 promote the maintenance and enhancement of the city's **esthetic qualities** and  
27 improve the character of our city. It is further intended that these regulations  
28 provide one of the tools essential to the preservation and enhancement of the  
environment, thereby protecting an important aspect of the economy of the city  
which is instrumental in attracting those who come to visit, vacation, live, and  
trade and to permit noncommercial speech on any otherwise permissible sign.

(Emphasis added)

68. As the administrative record proves, at every public hearing and workshop  
and in written testimony, members of Scenic Nevada offered evidence that digital  
billboards mar scenic mountain views, blight neighborhoods, lower property values, harm

1 the environment by wasting energy, and cause safety issues for drivers on public streets  
2 and highways.

3 69. The Defendant City Council has no evidence to rebut or refute the fact that  
4 digital billboards are harmful to the citizens of Reno, including injurious to public safety,  
5 property values and esthetics.

6 70. Indeed, in hearing after hearing, Planning Commissioners and City Council  
7 members alike reaffirmed that billboards, especially digital billboards, cause all of the  
8 harms to which Scenic Nevada testified, and these city officials and elected  
9 representatives declared over and over that nobody wants billboards in Reno because they  
10 are a blight on the city.

11 71. Based on the undisputed evidence in the administrative record that  
12 billboards are contrary to the general welfare, including the admissions by members of  
13 the Planning Commission and City Council that nobody wants the myriad of harms  
14 associated with billboards, Scenic Nevada is entitled to a judgment that the digital  
15 billboard ordinance exceeds the powers of the Defendant City Council in that it adopts a  
16 law that is concededly unhealthy, unsafe, unaesthetic, anti-environmental and injurious to  
17 public welfare.

18 72. Not possessing the nerve to admit that they were repealing the voter  
19 initiative, the Defendant City Council left §18.16.902 (a) intact. Thus, the current  
20 ordinance retains RMC§18.16.902 (a), which states:

21 **The construction of new off-premises advertising displays/billboards is**  
22 **prohibited, and the City of Reno may not issue permits for their construction.**  
23 **(Approved by the voters at the November 7, 2000, General Election, Question R\_1 –**  
24 **The results were certified by the city council on November 14, 2000).**

25 73. New digital billboards are “new off-premises advertising displays” for  
26 which the billboard industry must apply for and obtain “permits for their construction.”  
27 In combination with the banking and relocation system, the digital billboard ordinance of  
28 2012 creates a contradiction in which the voter’s mandate, as expressed in

1 RMC§18.16.902 (a), that no permits shall be issued and no construction shall take place,  
2 is in the same code as the new digital ordinance allowing permits for digital billboards.  
3 Under such circumstances, the voter's initiative addresses with specificity the prohibition  
4 on issuing permits for new construction of billboards, and the voter initiative is entitled to  
5 prevail.

6 74. Additionally, the definitions section of the sign code states advertising  
7 "display means any arrangement of materiel or symbols erected...for the purpose of  
8 advertising...This definition shall include signs, **billboards**, posters..." and the code  
9 further clarifies by stating: "**Flashing sign means a sign which uses blinking, flashing**  
10 **or intermittent illumination, either direct, or indirect or internal.**" (RMC  
11 §18.24.203.4570, emphasis added).

12 75. Based on these definitions, the digital ordinance violates city code with  
13 respect to flashing or intermittent lights in that RMC §18.16.905(n)(5) states that:  
14 "**Displays shall not flash** or move during a display period." (Emphasis added). Flashing  
15 is defined as intermittent illumination, which includes digital billboards, as established in  
16 the *Scenic Arizona* case. Accordingly, in addition to violating RMC §18.16.901 and  
17 902(a) of the off-premise sign code, the digital ordinance violates the law against LED  
18 bulbs using flashing, intermittent lights to display advertising messages.

19 WHEREFORE, Plaintiff Scenic Nevada, Inc. requests:

20 1. A judgment declaring that the October 24, 2012 vote of the Reno City  
21 Council adopting Ordinance No. 6258 entitled "Digital Off-Premises Advertising  
22 Displays, including Light-Emitting Diode (LED)" is unlawful, void, and of no force and  
23 effect, and that the ordinance purportedly adopted thereunder is unlawful, void, and of no  
24 force and effect;

25 2. That the Defendant City of Reno be ordered to prepare, index and produce  
26 to Scenic Nevada the complete administrative record of all papers, photographs,  
27 recordings, communications, notes, emails, letters, faxes, memos, files and other  
28

1 documents and evidence maintained, collected or compiled by any and all public officials  
2 and their agents relating to the digital sign ordinance from 2008 to present;

3 3. Costs of suit;


4 4. Reasonable attorneys fees; and

5 5. All other relief, which the court deems just, and proper.

6 Dated this 15th day of April, 2013.

7 LAW OFFICES OF MARK WRAY

8  
9 By

10   
MARK WRAY

11 Attorney for Plaintiff SCENIC NEVADA  
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VERIFICATION

I, Mark Wray, am the attorney for the Plaintiff. I have read the foregoing First Amended Complaint and am familiar with its contents. The facts stated in the foregoing Complaint are true of my own knowledge, information and belief. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that this verification was executed on April 15, 2013 at Reno, Nevada.

  
MARK WRAY

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CERTIFICATE OF SERVICE

The undersigned employee of the Law Offices of Mark Wray certifies that a true copy of the foregoing document was sealed in an envelope with first class postage prepaid thereon and deposited in the U.S. Mail at Reno, Nevada on 4/15/13, 2013 addressed as follows:

Marilyn Craig, Asst City Attorney  
Reno City Hall  
One East First Street  
Reno, NV 89501

Samuel Wray

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AFFIRMATION

The undersigned certifies that the foregoing document does not contain the Social Security number of any person.

DATED: April 15, 2013

Mark Wray  
MARK WRAY

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  
Dept. No. 7

vs.

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

Defendant.

SAUNDERS OUTDOOR ADVERTISING,  
INC., a Utah corporation,

Case No.: CV12-02917  
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.<sup>1</sup> 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.<sup>2</sup> The City of Reno drew over 4.6 million visitors in 2013,<sup>3</sup>  
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).<sup>4</sup> 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 <sup>1</sup> "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).

<sup>2</sup> [www.reno.gov](http://www.reno.gov)

<sup>3</sup> [www.visitrenotahoe.com](http://www.visitrenotahoe.com)

<sup>4</sup> 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."<sup>5</sup>

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 Billboards<sup>6</sup>

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

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26 <sup>5</sup> 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](http://www.scenicnevada.org)

28 <sup>6</sup> 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.<sup>7</sup>

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.,<sup>8</sup> ("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 <sup>7</sup> 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).

<sup>8</sup> 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,<sup>9</sup> 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 (9<sup>th</sup> 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 <sup>9</sup> 1) The commercial speech is lawful and not misleading; and 2) the City has a substantial interest in  
regulating billboards.

1 static billboards.<sup>10</sup> 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 display<sup>11</sup> 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  
25  
26  
27 <sup>10</sup> 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.

<sup>11</sup> 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.<sup>12</sup>  
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.<sup>13</sup>

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).

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25  
26 <sup>12</sup> [www.scenicnevada.org](http://www.scenicnevada.org).

27 <sup>13</sup> "[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.<sup>14</sup>

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 <sup>14</sup> 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).<sup>15</sup>

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 <sup>15</sup> 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.<sup>16</sup> 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*.<sup>17</sup> In the second independent

28 <sup>16</sup> *The Bedford Handbook 8th Edition*, p. 177, 14a.

<sup>17</sup> *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*.<sup>18</sup>

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[.]"<sup>19</sup> Another defines "new"  
15 as: "Of any thing recently discovered."<sup>20</sup> Still another defines "new" as: "Already  
16 existing but seen, experienced or acquired recently or now for the first time."<sup>21</sup>  
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:

26  
27 <sup>18</sup> *The Brief McGraw-Hill Handbook, 2nd Edition*, p. 514, 2.

28 <sup>19</sup> *The Random House Dictionary*, 2014. On-line.

<sup>20</sup> *Black's Law Dictionary*, Garner 9th edition, 2010. Print.

<sup>21</sup> *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.<sup>22</sup> 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.<sup>23</sup> 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                   <sup>22</sup> “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                   <sup>23</sup> “[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."<sup>24</sup> 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.<sup>25</sup> 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:

25  
26  
27 <sup>24</sup> 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](http://www.scenic.org).

28 <sup>25</sup> 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.<sup>26</sup>

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

<sup>26</sup> 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 clutter<sup>27</sup> 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.<sup>28</sup>  
24

25  
26 <sup>27</sup> There would be little incentive for an owner to remove a dilapidated billboard if its loss would be permanent.

27 <sup>28</sup> 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.<sup>29</sup> 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 <sup>29</sup> *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   
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

*Katherine Lino*  
Judicial Assistant

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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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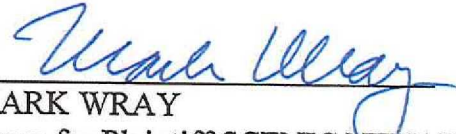
TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that an Order was entered and filed in the above-entitled matter on the 27<sup>th</sup> 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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Theresa Moore

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: 

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 vs.

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

14 Defendant.  
15

16 SAUNDERS OUTDOOR ADVERTISING,  
17 INC., a Utah corporation,

Case No.: CV12-02917

18 Plaintiff,

Dept. No. 7

19 vs.

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

22 Defendant.  
23

24 ORDER  
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.<sup>1</sup> 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.<sup>2</sup> The City of Reno drew over 4.6 million visitors in 2013,<sup>3</sup>  
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).<sup>4</sup> 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 <sup>1</sup> "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).

<sup>2</sup> [www.reno.gov](http://www.reno.gov)

<sup>3</sup> [www.visitrenotahoe.com](http://www.visitrenotahoe.com)

<sup>4</sup> 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."<sup>5</sup>

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 Billboards<sup>6</sup>

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 <sup>5</sup> 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  
28 encouraging billboard and sign control, among other issues. [www.scenicnevada.org](http://www.scenicnevada.org)

<sup>6</sup> 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.<sup>7</sup>

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.,<sup>8</sup> ("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 <sup>7</sup> 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).

<sup>8</sup> 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,<sup>9</sup> 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 (9<sup>th</sup> 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

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

1 static billboards.<sup>10</sup> 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 display<sup>11</sup> 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  
25  
26  
27 <sup>10</sup> 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.

<sup>11</sup> 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.<sup>12</sup>  
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.<sup>13</sup>

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 <sup>12</sup> [www.scenicnevada.org](http://www.scenicnevada.org).

27 <sup>13</sup> "[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.<sup>14</sup>

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 <sup>14</sup> 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).<sup>15</sup>

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 <sup>15</sup> 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  
8 **“New off-premises advertising displays/billboards is**  
9 **prohibited, and the City of Reno may not issue**  
10 **permits for their construction.”**

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

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

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

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

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

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

<sup>16</sup> *The Bedford Handbook 8th Edition*, p. 177, 14a.

<sup>17</sup> *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*.<sup>18</sup>

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[.]"<sup>19</sup> Another defines "new"  
15 as: "Of any thing recently discovered."<sup>20</sup> Still another defines "new" as: "Already  
16 existing but seen, experienced or acquired recently or now for the first time."<sup>21</sup>  
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:

26  
27 <sup>18</sup> *The Brief McGraw-Hill Handbook*, 2<sup>nd</sup> Edition, p. 514, 2.

28 <sup>19</sup> The Random House Dictionary, 2014. On-line.

<sup>20</sup> Black's Law Dictionary, Garner 9<sup>th</sup> edition, 2010. Print.

<sup>21</sup> New Oxford American Dictionary, 3<sup>rd</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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                   <sup>22</sup> "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                   <sup>23</sup> "[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."<sup>24</sup> 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.<sup>25</sup> 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:

25  
26  
27 <sup>24</sup> 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](http://www.scenic.org).

28 <sup>25</sup> 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  
time: the location is new, but the billboard is not.<sup>26</sup>

27 "Whenever possible, this court will interpret a rule or statute in harmony  
28 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

<sup>26</sup> 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." *Marshall 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 clutter<sup>27</sup> 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.<sup>28</sup>

24  
25  
26 <sup>27</sup> There would be little incentive for an owner to remove a dilapidated billboard if its loss would be permanent.

27 <sup>28</sup> 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.<sup>29</sup> 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 <sup>29</sup> *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

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

*Kathryn Link*  
Judicial Assistant