

Electronically Filed
Dec 19 2014 03:40 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCENIC NEVADA, INC.

Appellant,

Case No. 65364

v.

CITY OF RENO, a Political Subdivision
of the State of Nevada,

Respondent.

JOINT APPENDIX

VOL. 1

Mark Wray, #4425
Law Offices of Mark Wray
608 Lander Street
Reno, Nevada 89509
(775) 348-8877
(775) 348-8351 fax
Attorney for Appellant
SCENIC NEVADA, INC.

INDEX OF APPENDIX

| <u>NO.</u> | <u>DOCUMENT</u> | <u>DATE</u> | <u>VOL.</u> | <u>PAGE NO.</u> |
|------------|--|-------------|-------------|---------------------|
| 1 | Answer to First Amended Complaint | 7/30/2013 | 1 | 059-067 |
| 2 | Case Appeal Statement | 3/28/2014 | 3 | 511-515 |
| 3 | Complaint for Judicial Review to Invalidate City of Reno Digital Billboard Ordinance | 11/16/2012 | 1 | 001-019 |
| 4 | Defendant's Trial Statement | 2/13/2014 | 1 | 097-127 |
| 5 | First Amended Answer to First Amended Complaint | 8/6/2013 | 1 | 068-077 |
| 6 | First Amended Complaint to Invalidate City of Reno Digital Billboard Ordinance | 4/15/2013 | 1 | 032-051 |
| 7 | Minutes of Non-Jury Trial | 2/25/2014 | 2 | 458-475 |
| 8 | Minutes of Oral Arguments | 3/28/2013 | 1 | 027 |
| 9 | Minutes of Oral Arguments | 11/6/2013 | 1 | 092 |
| 10 | Minutes of Pre-Trial Conference | 2/3/2014 | 1 | 096 |
| 11 | Notice of Appeal | 3/28/2014 | 3 | 507-510 |
| 12 | Notice of Entry of Order | 3/28/2014 | 3 | 503-506 |
| 13 | Order (to set oral argument) | 3/12/2013 | 1 | 025-026 |
| 14 | Order (granting motion to dismiss/motion to amend) | 3/29/2013 | 1 | 028-031 |
| 15 | Order (to set oral argument) | 6/7/2013 | 1 | 052-053 |
| 16 | Order (granting motion to supplement motion to dismiss) | 6/27/2013 | 1 | 054-056 |
| 17 | Order (denying motion to dismiss first amended complaint) | 7/23/2013 | 1 | 057-058 |
| 18 | Order (denying motion to dismiss Saunders' complaint) | 9/19/2013 | 1 | 088-091 |
| 19 | Order (denying motion for summary judgment) | 2/18/2014 | 1 | 142-144 |
| 20 | Order (judgment in favor of defendant) | 3/27/2014 | 3 | 476-502 |
| 21 | Plaintiff's Trial Statement | 2/13/2014 | 1 | 128-141 |
| 22 | Pretrial Order | 8/27/2013 | 1 | 078-085 |
| 23 | Proof of Service of Summons and Complaint | 11/16/2012 | 1 | 020-024 |
| 24 | Stipulation and Order to Consolidate Actions | 9/11/2013 | 1 | 086-087 |

| | <u>NO.</u> | <u>DOCUMENT</u> | <u>DATE</u> | <u>VOL.</u> | <u>PAGE NO.</u> |
|----|-------------------|---|--------------------|--------------------|----------------------------|
| 1 | | | | | |
| 2 | | | | | |
| 3 | 25 | Stipulation and Order to Continue Trial | 1/10/2014 | 1 | 093-095 |
| 4 | 26 | Transcript of Proceedings – Trial, Part 1 | 9/26/2014 | 1 | 145-250 |
| 5 | | Transcript of Proceedings – Trial, Part 2 | 9/26/2014 | 2 | 251-457 |
| 6 | 27 | Trial Exhibit 1 | | 3 | 516-518 |
| 7 | 28 | Trial Exhibit 2 | | 3 | 519 |
| 8 | 29 | Trial Exhibit 3 | | 3 | 520-541 |
| 9 | 30 | Trial Exhibit 4 | | 3 | 542-576 |
| 10 | 31 | Trial Exhibit 5 | | 3 | 577-586 |
| 11 | 32 | Trial Exhibit 6 | | 3 | 587-589 |
| 12 | 33 | Trial Exhibit 7 | | 3 | 590-594 |
| 13 | 34 | Trial Exhibit 8 | | 3 | 595-614 |
| 14 | 35 | Trial Exhibit 9 | | 3 | 615-619 |
| 15 | 36 | Trial Exhibit 10 | | 3 | 620-631 |
| 16 | 37 | Trial Exhibit 11 | | 3 | 632-644 |
| 17 | 38 | Trial Exhibit 12 | | 3 | 645-655 |
| 18 | 39 | Trial Exhibit 13 | | 3 | 656-657 |
| 19 | 40 | Trial Exhibit 14 | | 3 | 658-666 |
| 20 | 41 | Trial Exhibit 15 | | 3 | 667-684 |
| 21 | 42 | Trial Exhibit 16 | | 3 | 685-689 |
| 22 | 43 | Trial Exhibit 17 | | 3 | 690-704 |
| 23 | 44 | Trial Exhibit 18 | | 4 | 705-854 |
| 24 | 45 | Trial Exhibit 19 | | 4 | 855-866 |
| 25 | 46 | Trial Exhibit 20 | | 4 | 867-873 |
| 26 | 47 | Trial Exhibit 21 | | 4 | 874-895 |
| 27 | 48 | Trial Exhibit 22 | | 4 | 896-917 |
| 28 | 49 | Trial Exhibit 23 | | 4 | 918-934 |
| | 50 | Trial Exhibit 24 | | 4 | 935-952 |
| | 51 | Trial Exhibit 25 | | 5 | 953-959 |
| | 52 | Trial Exhibit 26 | | 5 | 960-992 |
| | | | | | 993- |
| | 53 | Trial Exhibit 27 | | 5 | 1037 |
| | | | | | 1038- |
| | 54 | Trial Exhibit 28 | | 5 | 1052 |
| | | | | | 1053- |
| | 55 | Trial Exhibit 29 | | 5 | 1055 |
| | | | | | 1056- |
| | 56 | Trial Exhibit 30 | | 5 | 1061 |

| | <u>NO.</u> | <u>DOCUMENT</u> | <u>DATE</u> | <u>VOL.</u> | <u>PAGE NO.</u> |
|----|------------|------------------|-------------|-------------|---------------------|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | 1062- |
| 4 | 57 | Trial Exhibit 31 | | 5 | 1064 |
| 5 | | | | | 1065- |
| 6 | 58 | Trial Exhibit 32 | | 5 | 1070 |
| 7 | | | | | 1071- |
| 8 | 59 | Trial Exhibit 33 | | 5 | 1083 |
| 9 | | | | | 1084- |
| 10 | 60 | Trial Exhibit 34 | | 5 | 1093 |
| 11 | | | | | 1094- |
| 12 | 61 | Trial Exhibit 35 | | 5 | 1095 |
| 13 | | | | | 1096- |
| 14 | 62 | Trial Exhibit 36 | | 5 | 1113 |
| 15 | | | | | 1114- |
| 16 | 63 | Trial Exhibit 37 | | 5 | 1131 |
| 17 | | | | | 1132- |
| 18 | 64 | Trial Exhibit 38 | | 5 | 1145 |
| 19 | | | | | 1146- |
| 20 | 65 | Trial Exhibit 39 | | 5 | 1150 |
| 21 | | | | | 1151- |
| 22 | 66 | Trial Exhibit 40 | | 5 | 1162 |
| 23 | | | | | 1163- |
| 24 | 67 | Trial Exhibit 41 | | 5 | 1164 |
| 25 | | | | | 1165- |
| 26 | 68 | Trial Exhibit 42 | | 5 | 1167 |
| 27 | | | | | 1168- |
| 28 | 69 | Trial Exhibit 43 | | 5 | 1182 |
| | | | | | 1183- |
| | 70 | Trial Exhibit 44 | | 5 | 1188 |
| | | | | | 1189- |
| | 71 | Trial Exhibit 45 | | 5 | 1191 |
| | | | | | 1192- |
| | 72 | Trial Exhibit 46 | | 5 | 1193 |
| | | | | | 1194- |
| | 73 | Trial Exhibit 47 | | 5 | 1197 |
| | | | | | 1198- |
| | 74 | Trial Exhibit 48 | | 5 | 1202 |

| | <u>NO.</u> | <u>DOCUMENT</u> | <u>DATE</u> | <u>VOL.</u> | <u>PAGE NO.</u> |
|----|------------|------------------|-------------|-------------|---------------------|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | 1203- |
| 4 | 75 | Trial Exhibit 49 | | 6 | 1206 |
| 5 | | | | | 1207- |
| 6 | 76 | Trial Exhibit 50 | | 6 | 1213 |
| 7 | | | | | 1214- |
| 8 | 77 | Trial Exhibit 51 | | 6 | 1223 |
| 9 | | | | | 1224- |
| 10 | 78 | Trial Exhibit 52 | | 6 | 1229 |
| 11 | | | | | 1230- |
| 12 | 79 | Trial Exhibit 53 | | 6 | 1232 |
| 13 | | | | | 1233- |
| 14 | 80 | Trial Exhibit 54 | | 6 | 1235 |
| 15 | | | | | 1236- |
| 16 | 81 | Trial Exhibit 55 | | 6 | 1239 |
| 17 | | | | | 1240- |
| 18 | 82 | Trial Exhibit 56 | | 6 | 1246 |
| 19 | | | | | 1247- |
| 20 | 83 | Trial Exhibit 57 | | 6 | 1249 |
| 21 | | | | | 1250- |
| 22 | 84 | Trial Exhibit 58 | | 6 | 1252 |
| 23 | | | | | 1253- |
| 24 | 85 | Trial Exhibit 59 | | 6 | 1259 |
| 25 | | | | | 1260- |
| 26 | 86 | Trial Exhibit 60 | | 6 | 1264 |
| 27 | | | | | 1265- |
| 28 | 87 | Trial Exhibit 61 | | 6 | 1269 |
| | | | | | 1270- |
| | 88 | Trial Exhibit 62 | | 6 | 1271 |
| | | | | | 1272- |
| | 89 | Trial Exhibit 63 | | 6 | 1273 |
| | | | | | 1274- |
| | 90 | Trial Exhibit 64 | | 6 | 1293 |
| | | | | | 1294- |
| | 91 | Trial Exhibit 65 | | 6 | 1315 |
| | | | | | 1316- |
| | 92 | Trial Exhibit 66 | | 6 | 1320 |

| | <u>NO.</u> | <u>DOCUMENT</u> | <u>DATE</u> | <u>VOL.</u> | <u>PAGE NO.</u> |
|----|------------|-------------------|-------------|-------------|---------------------|
| 1 | | | | | 1321- |
| 2 | | | | | 1344 |
| 3 | | | | | 1345- |
| 4 | 93 | Trial Exhibit 67 | | 6 | 1396 |
| 5 | | | | | 1397- |
| 6 | 94 | Trial Exhibit 68 | | 6 | 1411 |
| 7 | | | | | 1412- |
| 8 | 95 | Trial Exhibit 69 | | 6 | 1415 |
| 9 | | | | | 1416- |
| 10 | 96 | Trial Exhibit 70 | | 6 | 1417 |
| 11 | | | | | 1418- |
| 12 | 97 | Trial Exhibit 71 | | 6 | 1422 |
| 13 | | | | | 1423- |
| 14 | 98 | Trial Exhibit 100 | | 6 | 1432 |
| 15 | | | | | 1433- |
| 16 | 99 | Trial Exhibit 101 | | 6 | 1435 |
| 17 | | | | | 1436- |
| 18 | 100 | Trial Exhibit 102 | | 6 | 1492 |
| 19 | | | | | 1493- |
| 20 | 101 | Trial Exhibit 200 | | 7 | 1552 |
| 21 | | | | | 1553- |
| 22 | 102 | Trial Exhibit 201 | | 7 | 1568 |
| 23 | | | | | 1569- |
| 24 | 103 | Trial Exhibit 202 | | 7 | 1576 |
| 25 | | | | | 1577- |
| 26 | 104 | Trial Exhibit 203 | | 7 | 1593 |
| 27 | | | | | 1594- |
| 28 | 105 | Trial Exhibit 204 | | 7 | 1595 |
| | | | | | 1596- |
| | 106 | Trial Exhibit 205 | | 7 | 1606 |
| | | | | | 1607- |
| | 107 | Trial Exhibit 206 | | 7 | 1608 |
| | | | | | 1609 |
| | 108 | Trial Exhibit 207 | | 7 | 1610- |
| | 109 | Trial Exhibit 208 | | 7 | 1611 |
| | | | | | 1612 |
| | 110 | Trial Exhibit 209 | | 7 | |
| | 111 | Trial Exhibit 210 | | 7 | |

| | <u>NO.</u> | <u>DOCUMENT</u> | <u>DATE</u> | <u>VOL.</u> | <u>PAGE NO.</u> |
|----|------------|-------------------------|-------------|-------------|---------------------|
| 1 | | | | | 1613- |
| 2 | 112 | Trial Exhibit 211 | | 7 | 1622 |
| 3 | | | | | 1623- |
| 4 | 113 | Trial Exhibit 212 | | 7 | 1624 |
| 5 | | | | | 1625- |
| 6 | 114 | Trial Exhibit 213 | | 7 | 1644 |
| 7 | | | | | 1645- |
| 8 | 115 | Trial Exhibit 214 | | 7 | 1647 |
| 9 | | | | | 1648- |
| 10 | 116 | Trial Exhibit 215 | | 7 | 1649 |
| 11 | 117 | Trial Exhibit 216 | | 7 | 1650 |
| 12 | | | | | 1651- |
| 13 | 118 | Trial Exhibit 217 | | 8 | 1790 |
| 14 | | | | | 1791- |
| 15 | 119 | Trial Exhibit 218 | | 8 | 1799 |
| 16 | | | | | 1800- |
| 17 | 120 | Trial Exhibit 219 | | 8 | 1824 |
| 18 | | | | | 1825- |
| 19 | 121 | Trial Exhibit 220 | | 8 | 1830 |
| 20 | | | | | 1831- |
| 21 | 122 | Trial Exhibit 221 | | 8 | 1834 |
| 22 | | | | | 1835- |
| 23 | 123 | Trial Exhibit 222 | | 8 | 1854 |
| 24 | | | | | 1855- |
| 25 | 124 | Trial Exhibit 223 | | 8 | 1867 |
| 26 | | | | | 1868- |
| 27 | 125 | Trial Exhibit 224 | | 8 | 1869 |
| 28 | 126 | Trial Exhibit 225 (DVD) | | | |
| | | | | | 1870- |
| | 127 | Trial Exhibit 226 | | 8 | 1876 |
| | | | | | 1877- |
| | 128 | Trial Exhibit 227 | | 8 | 1882 |
| | | | | | 1883- |
| | 129 | Trial Exhibit 228 | | 8 | 1888 |
| | | | | | 1889- |
| | 130 | Trial Exhibit 229 | | 8 | 1900 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| <u>NO.</u> | <u>DOCUMENT</u> | <u>DATE</u> | <u>VOL.</u> | <u>PAGE NO.</u> |
|------------|-------------------|-------------|-------------|-----------------|
| 131 | Trial Exhibit 230 | | 9 | 1901-1951 |
| 132 | Trial Exhibit 231 | | 9 | 1952-1958 |
| 133 | Trial Exhibit 232 | | 9 | 1959-1961 |
| 134 | Trial Exhibit 233 | | 9 | 1962 |
| 135 | Trial Exhibit 234 | | 9 | 1963 |
| 136 | Trial Exhibit 235 | | 9 | 1964-1969 |
| 137 | Trial Exhibit 236 | | 9 | 1970-1974 |
| 138 | Trial Exhibit 237 | | 9 | 1975-1980 |

1 **\$1425**
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.

FILED
2012 NOV 16 AM 9:08

JOHN C. HASTINGS
CLERK OF THE COURT

S. J. Ames

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

13 SCENIC NEVADA, INC.,

14 Plaintiff,

Case No.

CV12 02868

15 vs.

Dept.

7

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

19 Defendant.

20 **COMPLAINT FOR JUDICIAL REVIEW TO INVALIDATE CITY OF RENO**
21 **DIGITAL BILLBOARD ORDINANCE**

22 COMES NOW Plaintiff Scenic Nevada, Inc., pursuant to NRS 278.0235 and NRS
23 278.3195, and for its Complaint against Defendant City of Reno and the City Council
24 thereof, 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
10 PARTIES

11 2. Plaintiff Scenic Nevada, Inc. is a non-profit Nevada corporation with a
12 principal place of business at 333 Flint Street, Reno, Nevada. Its principal activity is to
13 educate the general public on the economic, social, and cultural benefits of scenic
14 preservation by means of encouraging billboard and sign control, among other issues.

15 3. Scenic Nevada is an aggrieved party within the meaning of NRS 278.3195
16 and has exhausted its administrative remedies before bringing this action pursuant to
17 NRS 278.0235.

18 4. Defendant City of Reno is a political subdivision of the State of Nevada
19 located in the County of Washoe and the Defendant City Council thereof is a public body
20 composed solely of elected officials that are subject to Chapter 278 of the Nevada
21 Revised Statutes and Reno Municipal Code, Title 18.

22 RELIEF SOUGHT

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

27 FACTS

28 6. Following repeated attempts by Reno citizens to persuade the Reno
Planning Commission and Reno City Council to enact stronger billboard controls, a

1 grassroots, volunteer organization called "Citizens for a Scenic Reno" ("CFASR")
2 formed on January 20, 2000.

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

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

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

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

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

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

21 12. CFASR spent about \$3,000 in its successful fight for passage of Question
22 R-1. Opponents, calling themselves "Nevadans to Save Jobs and Fight Extremism" spent
23 \$226,823 in a losing effort.

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

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

1 15. At the polls on November 7, 2000, of the 57,782 votes cast, 32,765, or
2 57%, voted in favor of Ballot Question R-1.

3 16. The results were certified by the Defendant City Council on November 14,
4 2000, and Ballot Question R-1 became Reno Municipal Code ("RMC") §18.16.902 (a),
5 entitled "Restrictions on Permanent Off-Premises Advertising Displays". RMC
6 §18.16.902 (a) states:

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

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

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

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

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

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

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

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

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

27 25. On April 25, 2008 the Community Development Department held a
28 workshop to gather suggestions, ideas and recommendations for inclusion in the proposed

1 draft digital billboard ordinance. Representatives from the billboard industry and Scenic
2 Nevada attended.

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

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

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

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

1 of Scenic Nevada were allowed to address the Commissioners and point out that the 2000
2 ballot initiative prohibited the city from allowing new billboard construction, including
3 new construction of digital billboards.

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

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

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

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

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 2nd 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. In yet another twist, the agenda for the October 24 meeting included a
6 proposed moratorium and resolution to prohibit staff from issuing digital billboard
7 building permits. According to the city attorney, in the event of a lawsuit and
8 subsequent court decision invalidating the new digital billboard ordinance, a moratorium
9 on issuing new permits for billboards would avoid the expense of having to remove
10 digital billboards that were 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. Without
17 explanation to Scenic Nevada or the public, the Defendant City Council did not adopt a
18 moratorium. Instead, the Defendant City Council approved the second reading of the
19 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. This Complaint for Judicial Review is timely under NRS 278.0235.

5 52. Scenic Nevada is the author and proponent of the billboard initiative
6 adopted as RMC§18.16.902. Scenic Nevada has devoted more than four years to
7 exhausting its administrative remedies by opposing the new digital billboard ordinance in
8 workshops, public hearings and appeals. Scenic Nevada is an aggrieved party under NRS
9 278.3195.

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

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

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

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

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

1 The initiative and referendum powers provided for in this article are further
2 reserved to the registered voters of each county and each municipality as to all
3 local, special and municipal legislation of every kind in or for such county or
4 municipality. In counties and municipalities initiative petitions may be instituted
5 by a number of registered voters equal to 15 percent or more of the voters who
6 voted at the last preceding general county or municipal election. Referendum
7 petitions may be instituted by 10 percent or more of such voters.

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

13 57. By adopting the “banking” and relocation system in 2002, which allowed
14 billboard companies to “bank” receipts for existing billboards and obtain building permits
15 for billboards in new locations, the Defendant City of Reno and City Council violated the
16 rights of Scenic Nevada and the citizens of Reno under the Nevada Constitution by
17 amending, annulling, repealing and setting aside the voter initiative codified as RMC
18 §18.16.902 less than three years after the initiative had passed.

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

25 59. Scenic Nevada is entitled to a judicial determination that the digital
26 billboard ordinance is unconstitutional.

27 60. Scenic Nevada is entitled to a judgment and decree that the digital billboard
28 ordinance is void and of no force and effect as a matter of law.

1 VIOLATION OF HIGHWAY BEAUTIFICATION ACT

2 61. The Federal Highway Beautification Act of 1965 provides that billboards
3 should be controlled to “protect the public investment in such highways, to promote the
4 safety and recreational value of public travel, and to preserve natural beauty.” 23 U.S.C.
5 § 131(a) (2002).

6 62. The Nevada Legislature adopted NRS 410.220 to 410.410 requiring
7 Nevada to enter into a federal-state agreement, or “FSA” with the federal government. In
8 1972, Nevada entered into an FSA to ensure continued federal funding of highways.

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

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

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

23 66. In addition, NRS 410.220 (b) states:

24 The erection and maintenance of such advertising in such locations must be
25 regulated:

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

- 1 (2) To promote the safety, convenience and enjoyment of travel on the state
2 highways;
- 3 (3) To attract tourists and promote the prosperity, economic well-being and
4 general welfare of the State;
- 5 (4) For the protection of the public investment in the state highways; and
- 6 (5) To preserve and enhance the natural scenic beauty and aesthetic features
7 of the highways and adjacent areas.

8 67. The City of Reno digital billboard ordinance is void and should be declared
9 of no force and effect because it violates Nevada law as adopted by the FSA, for the same
10 reasons enunciated by the court in *Scenic Arizona v City of Phoenix Board of Adjustment*,
11 268 P.3d 370 (Ariz.App. 2011).

12 VIOLATION OF RENO SIGN CODE

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

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

1 (Emphasis added)

2 69. As the administrative record proves, at every public hearing and workshop
3 and in written testimony, members of Scenic Nevada offered evidence that digital
4 billboards mar scenic mountain views, blight neighborhoods, lower property values, harm
5 the environment by wasting energy, and cause safety issues for drivers on public streets
6 and highways.

7 70. The Defendant City Council has no evidence to rebut or refute the fact that
8 digital billboards are harmful to the citizens of Reno, including injurious to public safety,
9 property values and esthetics.

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

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

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

25 **The construction of new off-premises advertising displays/billboards is**
26 **prohibited, and the City of Reno may not issue permits for their construction.**
27 **(Approved by the voters at the November 7, 2000, General Election, Question R_1 –**
28 **The results were certified by the city council on November 14, 2000).**

1 74. New digital billboards are “new off-premises advertising displays” for
2 which the billboard industry must apply for and obtain “permits for their construction.”
3 In combination with the banking and relocation system, the digital billboard ordinance of
4 2012 creates a contradiction in which the voter’s mandate, as expressed in
5 RMC§18.16.902 (a), that no permits shall be issued and no construction shall take place,
6 is in the same code as the new digital ordinance allowing permits for digital billboards.
7 Under such circumstances, the voter’s initiative addresses with specificity the prohibition
8 on issuing permits for new construction of billboards, and the voter initiative is entitled to
9 prevail.

10 75. Additionally, the definitions section of the sign code states advertising
11 “display means any arrangement of materiel or symbols erected...for the purpose of
12 advertising...This definition shall include signs, **billboards**, posters...” and the code
13 further clarifies by stating: “**Flashing sign means a sign which uses blinking, flashing**
14 **or intermittent illumination, either direct, or indirect or internal.**” (RMC
15 §18.24.203.4570, emphasis added).

16 76. Based on these definitions, the digital ordinance violates city code with
17 respect to flashing or intermittent lights in that RMC §18.16.905(n)(5) states that:
18 “**Displays shall not flash** or move during a display period.” (Emphasis added). Flashing
19 is defined as intermittent illumination, which includes digital billboards, as established in
20 the *Scenic Arizona* case. Accordingly, in addition to violating RMC §18.16.901 and
21 902(a) of the off-premise sign code, the digital ordinance violates the law against LED
22 bulbs using flashing, intermittent lights to display advertising messages.

23 WHEREFORE, Plaintiff Scenic Nevada, Inc. requests:

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

2. That the Defendant City of Reno be ordered to prepare, index and produce to Scenic Nevada the complete administrative record of all papers, photographs, recordings, communications, notes, emails, letters, faxes, memos, files and other documents and evidence maintained, collected or compiled by any and all public officials and their agents relating to the digital sign ordinance from 2008 to present;

3. For the issuance of a briefing schedule following a reasonable period time after the production of the administrative record;

4. Costs of suit;

5. Reasonable attorneys fees; and

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

Dated this 16th day of November, 2012.


LAW OFFICES OF MARK WRAY

By Mark Wray
MARK WRAY
Attorney for Plaintiff SCENIC NEVADA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Mark Wray, am the attorney for the Plaintiff. I have read the foregoing Complaint for Judicial Review 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 November 16, 2012 at Reno, Nevada.


MARK WRAY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION

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

DATED: Nov. 16, 2012

Mark Wray
MARK WRAY

1 **3720**
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 **PROOF OF SERVICE OF SUMMONS AND COMPLAINT**

21 **State of Nevada)**
22 **) ss.**
23 **County of Washoe)**

24 **The undersigned, being first duly sworn, attests under penalty of perjury under the**
25 **laws of the State of Nevada as follows:**

- 26 **1. The undersigned is over the age of 18 and not a party to this action.**
27 **2. On November 16, 2012 at 9:30 a.m. the undersigned personally served true**
28 **and correct copies of the Summons and Complaint for Judicial Review to Invalidate City**

1 of Reno Digital Billboard Ordinance in this action on Lynnette Jones, at the Reno City
2 Clerk's Office, located on the 2nd floor of the Reno City Hall, One E. First Street, Reno,
3 Nevada. As she examined the papers I handed to her, Ms. Jones advised me that current
4 City policy may require me to serve someone other than the City Clerk with a Summons
5 and Complaint.

6 3. About 30 minutes later, Ms. Jones called my office to inform me that the
7 City Attorney advised that a Summons and Complaint must be served on the Chief
8 Executive Officer of the City of Reno, who is the City Manager, on the 15th Floor of City
9 Hall. I called Marilyn Craig at the City Attorney's Office, who confirmed to me what
10 Ms. Jones had said, namely, that service must be made upon the Chief Executive Officer,
11 the City Manager, on the 15th Floor.

12 4. After ascertaining that the City Manager was Andrew Clinger and that his
13 office is on the 15th floor, I returned to City Hall with additional copies of the Summons
14 and Complaint at approximately 10:30 a.m. on November 16, 2012. I went up the
15 elevator to the 15th floor. I met a lady at the first desk on the 15th floor, introduced
16 myself, and asked to see the City Manager. The lady asked me if I had an appointment. I
17 said I did not. She said the City Manager was in a meeting. I said I was there because I
18 had to serve him, as the Chief Executive Officer of the City of Reno, with papers that I
19 had also delivered to the City Clerk that morning. The lady told me she was the person to
20 be served. I told her that I was pretty sure that the Chief Executive Officer was the
21 person I had to serve. She repeated that she was the person to be served. I asked for her
22 business card, and she gave it to me. The card identified her as Kim Cuara, Secretary.
23 Being unable to serve the City Manager, and being now advised by Kim Cuara, Secretary
24 for the City of Reno, that she, and not the City Manager, was the person to be served, I
25 gave true copies of the Summons and Complaint to Ms. Cuara, but just in case, I also
26 introduced myself to the other Secretary at the next desk, Marcia Morse, and gave her a
27 copy of the Summons and Complaint, too.

5. I asked if the Mayor was available to be served and was informed he was in a meeting, so I left several additional copies of the Summons and Complaint with Kim Cuara which I asked her to give to the Mayor and each councilperson. Ms. Cuara said she would just give those additional copies to the City Attorney.


6. I took the elevator down to the 3rd Floor and asked to see City Attorney John Kadlic and Assistant City Attorney Marilyn Craig. I was asked to sign in, and after I did that, at approximately 10:35 a.m. I met Ms. Craig and personally gave Ms. Craig her own personal set of true and correct copies of the Summons and Complaint. Ms. Craig permitted me to leave an additional true and correct set of copies of the Summons and Complaint on the empty chair of Mr. Kadlic, who was out of the office that morning. As I left the City Attorney's Office on the 3rd Floor, Ms. Cuara was there, too, delivering to the City Attorney's Office those copies of the Summons and Complaint that I had just handed to Ms. Cuara on the 15th Floor minutes earlier.

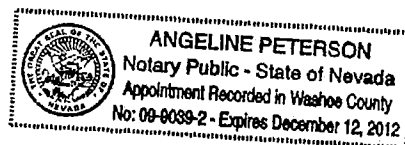
7. I therefore certify that to the best of my knowledge and ability, the Defendant City of Reno and the City Council thereof has been duly served, multiple times, on the morning of Nov. 16, 2012, with the Summons and Complaint in this action.

Further affiant sayeth nought.

Mark Wray
MARK WRAY

Subscribed and sworn to before me
this 16th day of November, 2012.


Notary



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 November 16, 2012 addressed as follows:

Kim Cuara, Secretary
Office of the City Manager
P.O. Box 1900
Reno, NV 89505


MARK WRAY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION

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

DATED: Nov. 16, 2012

Mark Wray
MARK WRAY

1
2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 SCENIC NEVADA, INC.,

Case No.: CV02-02863

10 Plaintiff,

Dept. No.: 7

11 vs.

12 CITY OF RENO, et al.,

13 Defendants.
14

ORDER

15 On December 26, 2012, Defendant, CITY OF RENO, filed a *Motion to Dismiss*
16 *Complaint for Judicial Review to Invalidate City of Reno Digital Billboard Ordinance*. On
17 January 14, 2013, Plaintiff, SCENIC NEVADA, INC., filed its *Opposition*. On January 24,
18 2013, Plaintiff, CITY OF RENO, filed its *Reply* and submitted the matter for decision.
19

20 Having fully reviewed the briefing and pleadings, this Court finds that oral argument
21 necessary for a full and fair determination and adjudication of the *Motion*.

22 Accordingly, the parties to this matter are hereby **ORDERED** to contact the Judicial
23 Assistant in Department 7 within seven (7) days of this *Order* to set oral argument in this matter.

24 **DATED** this 12 day of March, 2013.

25
26 
27 PATRICK FLANAGAN
28 District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

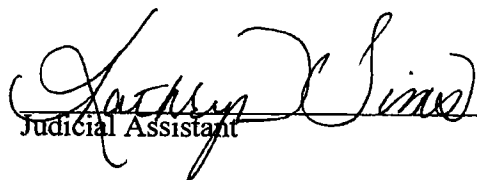
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 12 day of March, 2013, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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

Marilyn Craig, Esq. for City of Reno, et al.

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:


Judicial Assistant

CASE NO. CV12-02863

SCENIC NEVADA, INC. vs. CITY OF RENO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

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

ORAL ARGUMENTS IN RE: DEFENDANTS' MOTION TO DISMISS

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

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

SCENIC NEVADA, INC.,

Case No.: CV12-02863

Plaintiff,

Dept. No.: 7

vs.

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

Defendants.

ORDER

Plaintiff, Scenic Nevada, Inc., has filed a complaint for judicial review seeking to invalidate a City of Reno ordinance relating to digital billboards, adopted October 24, 2012. Plaintiff claims the ordinance is in violation of an initiative passed by the City's voters in 2000 which limited the erection of new billboards. The City has moved to dismiss the petition for judicial review. The court heard oral argument on the *Motion to Dismiss* on March 28, 2012. One of the grounds raised in the City's *Motion to Dismiss* is that a petition for judicial review is not the correct vehicle to challenge the ordinance. The court agrees.

The Nevada Supreme Court had an opportunity to elaborate on the proper means to challenging actions by a city council recently in *City of Reno v. Citizens for Cold Springs*, 126 Nev. Adv. Op. 27, 236 P.3d 10 (2010). In that case, residents of

1 Cold Springs challenged the City's resolution and ordinance which annexed Cold
2 Springs and changed its zoning to an urban environment from a rural one. One of
3 the issues before the Supreme Court was the proper method of challenging the City
4 Council's determination: whether the proper vehicle to challenge alleged procedural
5 errors in adopting legislation was a petition for judicial review or one for
6 mandamus. Ultimately, the Court determined that the procedural actions of
7 municipal legislative entities are subject to judicial review, and that the proper
8 method for obtaining such review was by filing a petition for judicial review. *Id.* at
9 15-16. A determination "addressing a question of procedure only, eschewing any
10 intrusion into the substance of the matter being voted on—is within the scope of
11 judicial authority." *Id.* at 15 (internal citation and quotations omitted). The court
12 went on to determine that the case challenged the City Council's legislation on two
13 procedural basis, one of which was found to be in violation of established City
14 procedure. *Id.* ("Because these issues are procedural and do not require this court to
15 consider the substance or content of the enactments, we conclude that a petition for
16 judicial review was the proper vehicle for respondents' challenge.").

17 In this case, the Plaintiff's challenge is not procedural in nature. Plaintiff
18 states no claim that the ordinance was adopted in violation of any procedure
19 established by the City or the State. Rather, Plaintiff maintains the substantive
20 provisions of the ordinance violate the Nevada Constitution because they amend
21 and alter an initiative ordinance. In order to determine whether the ordinance is
22 valid, this court must necessarily consider the substantive provisions of the
23 ordinance, and whether those provisions violate the State Constitution, State
24 statute, or a prior ordinance of the City adopted by the voters through their
25 initiative power. Accordingly, a petition for judicial review is not the proper vehicle
26 to challenge the ordinance under these circumstances. Rather, Plaintiff should file,
27 as it has suggested, a complaint for declaratory relief.

28

1 Defendant's *Motion to Dismiss* is GRANTED. Plaintiff's oral *Motion to*
2 *Amend the Complaint*, made at oral argument on Defendant's *Motion to Dismiss*, is
3 also GRANTED. Plaintiff is to file a *First Amended Complaint* within 15 days of
4 this Order.

5 IT IS SO ORDERED.

6 DATED this 29 day of March, 2013.

7
8 
9 PATRICK FLANAGAN
10 District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Mark Wray, Esq. for Scenic Nevada, Inc.; and
Marilyn Craig, Esq. for City of Reno

Kathryn Sims
Judicial Assistant

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
10 PARTIES

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

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

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

20 RELIEF SOUGHT

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

25 FACTS

26 6. Following repeated attempts by Reno citizens to persuade the Reno
27 Planning Commission and Reno City Council to enact stronger billboard controls, a
28 grassroots, volunteer organization called "Citizens for a Scenic Reno" ("CFASR")
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 (1), 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 (1)
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 (1) 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 2nd 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

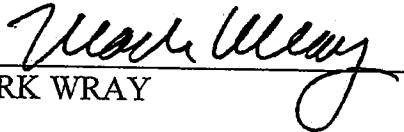
10 
MARK WRAY

11 Attorney for Plaintiff SCENIC NEVADA
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

1
2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 SCENIC NEVADA, INC.,

10 Plaintiff,

Case No.: CV02-02863

11 vs.

Dept. No.: 7

12 CITY OF RENO, et al.,

13 Defendants.
14

15 **ORDER**

16 On April 24, 2013, Defendant, CITY OF RENO, filed a *Motion to Dismiss First*
17 *Amended Complaint to Invalidate City of Reno Digital Billboard Ordinance*. On May 13, 2013,
18 Plaintiff, SCENIC NEVADA, INC., filed its *Opposition*. On May 17, 2013, Plaintiff, CITY OF
19 RENO, filed its *Reply* and submitted the matter for decision.

20 Having fully reviewed the briefing and pleadings, this Court finds that oral argument
21 necessary for a full and fair determination and adjudication of the *Motion*.

22 Accordingly, the parties to this matter are hereby **ORDERED** to contact the Judicial
23 Assistant in Department 7 within seven (7) days of this *Order* to set oral argument in this matter.

24 **DATED** this 7 day of June, 2013.

25
26 
27 PATRICK FLANAGAN
28 District Judge

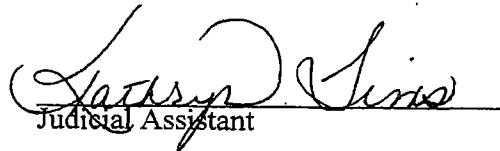
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 7 day of June, 2013, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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

Marilyn Craig, Esq. for City of Reno, et al.

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:


Judicial Assistant

1
2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

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,
14 and the CITY COUNCIL thereof,

15 Defendants.
16 _____/

17 **ORDER**

18 Defendant, City of Reno, has moved to dismiss Plaintiff's First Amended
19 Complaint. A hearing on that motion is currently scheduled for July 18, 2013.
20 Currently before the court is Defendant's *Motion to File Supplemental Pleading to*
21 *Motion to Dismiss First Amended Complaint*. The court agrees with Plaintiff that
22 the procedural vehicle chosen by Defendant, NRCP 15(d), applies to pleadings and
23 not motions. Nonetheless, in the interests of having all potentially relevant
24 information before the court, Defendant's motion is **GRANTED**.

25 ///

26 ///

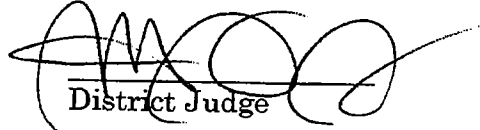
27 ///

28 ///

1 Defendant shall file a supplement to the motion to dismiss no later than July
2 10, 2013 at 5 p.m. Plaintiff shall file a supplemental response no later than July 16,
3 2013 at 5 p.m. No reply will be permitted.


4 **IT IS SO ORDERED.**

5 **DATED** this 26th day of June, 2013.

6
7
8 
District Judge

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Mark Wray, Esq. for Scenic Nevada, Inc.; and
Marilyn Craig, Esq. for City of Reno


Judicial Assistant

1
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

11
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

13 IN AND FOR THE COUNTY OF WASHOE

14 SCENIC NEVADA, INC.,

15 Plaintiff,

Case No. CV12-02863

16 vs.

Dept. 7

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

20 Defendant.
21 _____/

22 **ORDER DENYING MOTION TO DISMISS**

23 The Defendant City of Reno moved pursuant to NRCP 12(b)(5) to dismiss the
24 First Amended Complaint to Invalidate City of Reno Digital Billboard Ordinance. The
25 motion came on for hearing on July 18, 2013 at 2:30 p.m. before the Honorable Patrick
26 Flanagan, District Judge. The City of Reno was represented by Deputy City Attorney
27 Jonathan Shipman and Plaintiff Scenic Nevada, Inc. was represented by Mark Wray. The
28 Court considered the oral arguments of counsel, the pleadings, motion, opposition, reply,
and supplemental briefs. Applying the standards for dismissal set forth in the case law

1 interpreting NRCP 12(b)(5), the Court determined that the First Amended Complaint was
2 not subject to dismissal under Rule 12(b)(5).

3 IT IS THEREFORE ORDERED that the motion to dismiss under NRCP 12(b)(5)
4 is DENIED.

5
6 Patrick Flanagan
7 PATRICK FLANAGAN
8 District Judge

9 DATED: July 23, 2013
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED

Electronically

07-30-2013:09:40:04 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3888144

1 **Code: 1130**

JOHN J. KADLIC

2 Reno City Attorney

JONATHAN D. SHIPMAN

3 Nevada State Bar No. 5778

Post Office Box 1900

4 Reno, Nevada 89505

5 Phone: (775) 334-2050

6 *Attorney for Defendant*

City of Reno

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 ***

11 SCENIC NEVADA, INC.,

12 Plaintiffs,

CASE NO.: CV12-02863

13 vs.

DEPT. No.: 7

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

17 Defendants.

18
19 ANSWER TO FIRST AMENDED COMPLAINT

20 COMES NOW DEFENDANT CITY OF RENO, a municipal corporation, and hereby
21 answers Plaintiff's Complaint, filed on April 15, 2013, as follows:

22 NATURE OF THE CASE

23 1. To the degree that averments of Paragraph 1 require an answer, the Defendant
24 CITY OF RENO denies the same.

25 PARTIES

26 2. Defendant CITY OF RENO admits the averments of Paragraph 2.
27
28

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1 3. The averments contained in Paragraph 3 are conclusions and, therefore, are not
2 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
3 the same.

4 4. Defendant CITY OF RENO admits the averments of Paragraph 4.

5 RELIEF SOUGHT

6 5. Defendant CITY OF RENO admits the averments of Paragraph 5.

7 FACTS

8 6. As to the averments of Paragraph 6, Defendant CITY OF RENO is without
9 sufficient information or knowledge to form a belief as to the veracity of said averments and
10 therefore denies the same.

11 7. As to the averments of Paragraph 7, Defendant CITY OF RENO is without
12 sufficient information or knowledge to form a belief as to the veracity of said averments and
13 therefore denies the same.

14 8. Defendant CITY OF RENO admits the averments of Paragraph 8

15 9. Defendant CITY OF RENO admits the averments of Paragraph 9.

16 10. Defendant CITY OF RENO admits the averments of Paragraph 10.

17 11. As to the averments of Paragraph 11, Defendant CITY OF RENO is without
18 sufficient information or knowledge to form a belief as to the veracity of said averments and
19 therefore denies the same.

20 12. As to the averments of Paragraph 12, Defendant CITY OF RENO is without
21 sufficient information or knowledge to form a belief as to the veracity of said averments and
22 therefore denies the same.

23 13. Defendant CITY OF RENO admits the averments of Paragraph 13.

24 14. Defendant CITY OF RENO admits the averments of Paragraph 14.

25 15. Defendant CITY OF RENO admits the averments of Paragraph 15.

26 16. Defendant CITY OF RENO admits the averments of Paragraph 16.

1 17. Defendant CITY OF RENO admits that the Defendant City Council voted to
2 amend the municipal code to create a banking and relocation system. City denies all other
3 averments in Paragraph 17.

4 18. Defendant CITY OF RENO denies the averments of Paragraph 18.

5 19. As to the averments of Paragraph 19, Defendant CITY OF RENO is without
6 sufficient information or knowledge to form a belief as to the veracity of said averments and
7 therefore denies the same.

8 20. Defendant CITY OF RENO admits the averments of Paragraph 20.

9 21. The averments contained in Paragraph 21 are conclusions and, therefore, are not
10 required to be answered. To the extent an answer is required, Defendant CITY OF RENO denies
11 the same.

12 22. Defendant CITY OF RENO admits on February 13, 2008, the Reno City Council
13 voted to direct Reno City staff to initiate a text amendment to allow off-premises signs with
14 LEDs (Light Emitting Diodes). City denies all other averments in Paragraph 22.

15 23. The averments contained in Paragraph 23 are conclusions and, therefore, are not
16 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
17 the same.

18 24. The averments contained in Paragraph 24 are conclusions and, therefore, are not
19 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
20 the same.

21 25. As to the averments of Paragraph 15, Defendant CITY OF RENO is without
22 sufficient information or knowledge to form a belief as to the veracity of said averments and
23 therefore denies the same.

24 26. The averments contained in Paragraph 26 are conclusions and, therefore, are not
25 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
26 the same.

27 27. To the degree that the averments of Paragraph 27 require an answer, the
28 Defendant CITY OF RENO denies the same.

1 28. Defendant CITY OF RENO admits that a text amendment to allow digital off-
2 premises advertising displays including Light Emitting Diodes was pulled from the May 6, 2009
3 Planning Commission agenda, and that on May 13, 2009, the City Council directed staff to move
4 the text amendment through the process. City denies all other averments in Paragraph 28.

5 29. Defendant CITY OF RENO admits the averments of Paragraph 29.

6 30. As to the averments of Paragraph 30, Defendant CITY OF RENO is without
7 sufficient information or knowledge to form a belief as to the veracity of said averments and
8 therefore denies the same.

9 31. The Defendant CITY OF RENO denies the implications and characterization of
10 "did not resurface", but otherwise admits the averments of Paragraph 31.

11 32. Defendant CITY OF RENO admits the averments of Paragraph 32.

12 33. Defendant CITY OF RENO admits that at a Planning Commission meeting on
13 October 5, 2011, Scenic Nevada was present during a discussion of the draft billboard ordinance.
14 As to the remaining averments of Paragraph 33, Defendant CITY OF RENO is without sufficient
15 information or knowledge to form a belief as to the veracity of said averments and therefore
16 denies the same.

17 34. Defendant CITY OF RENO admits the averments of Paragraph 34.

18 35. Defendant CITY OF RENO admits the averments of Paragraph 35.

19 36. As to the averment of Paragraph 36 regarding information provided prior to a
20 meeting of the Planning Commission, Defendant CITY OF RENO is without sufficient
21 information or knowledge to form a belief as to the veracity of said averments and therefore
22 denies the same. City admits all other averments in Paragraph 36.

23 37. Defendant CITY OF RENO admits the averments of Paragraph 37.

24 38. Defendant CITY OF RENO admits the averments of Paragraph 38.

25 39. Defendant CITY OF RENO admits the averments of Paragraph 39.

26 40. Defendant CITY OF RENO admits the averments of Paragraph 40.

27 41. Defendant CITY OF RENO admits the averments of Paragraph 41.

1 42. Defendant CITY OF RENO admits the averments of Paragraph 42 that the City
2 Council conducted two public workshops regarding digital off-premise advertising displays
3 including light-emitting diode on March 6, 2012, and April 25, 2012. City denies all other
4 averments in Paragraph 42.

5 43. Defendant CITY OF RENO admits the averments of Paragraph 43 that the City
6 Council held a public hearing on the draft ordinance on July 18, 2012. City denies all other
7 averments in Paragraph 43.

8 44. Defendant CITY OF RENO admits the averments of Paragraph 44 that the second
9 reading of the ordinance was scheduled for August 22, 2012. As to the remaining averments of
10 Paragraph 44, Defendant CITY OF RENO is without sufficient information or knowledge to
11 form a belief as to the veracity of said averments and therefore denies the same.

12 45. Defendant CITY OF RENO admits the averments of Paragraph 45.

13 46. As to the averments of Paragraph 46, Defendant CITY OF RENO is without
14 sufficient information or knowledge to form a belief as to the veracity of said averments and
15 therefore denies the same.

16 47. Defendant CITY OF RENO admits the averments of Paragraph 47.

17 48. Defendant CITY OF RENO admits the averments of Paragraph 48.

18 49. Defendant CITY OF RENO admits the averments of Paragraph 49.

19 50. To the degree that averments of Paragraph 50 require an answer, the Defendant
20 CITY OF RENO denies the same.

21 VIOLATION OF THE VOTER INITIATIVE

22 51. To the degree that averments of Paragraph 51 require an answer, the Defendant
23 CITY OF RENO denies the same.

24 52. Defendant CITY OF RENO admits the averments of Paragraph 52.

25 53. Defendant CITY OF RENO denies the averments of Paragraph 53.

26 54. The averments contained in Paragraph 54 are conclusions and, therefore, are not
27 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
28 the same.

1 55. The averments contained in Paragraph 55 are conclusions and, therefore, are not
2 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
3 the same.

4 56. The averments contained in Paragraph 56 are conclusions and, therefore, are not
5 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
6 the same.

7 57. The averments contained in Paragraph 57 are conclusions and, therefore, are not
8 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
9 the same.

10 58. The averments contained in Paragraph 58 are conclusions and, therefore, are not
11 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
12 the same.

13 59. The averments contained in Paragraph 59 are conclusions and, therefore, are not
14 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
15 the same.

16 VIOLATION OF HIGHWAY BEAUTIFICATION ACT

17 60. Defendant CITY OF RENO admits the averments of Paragraph 60.

18 61. Defendant CITY OF RENO admits the averments of Paragraph 61.

19 62. The averments contained in Paragraph 62 are conclusions and, therefore, are not
20 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
21 the same.

22 63. As to the averments of Paragraph 63, Defendant CITY OF RENO is without
23 sufficient information or knowledge to form a belief as to the veracity of said averments and
24 therefore denies the same.

25 64. The averments contained in Paragraph 64 are conclusions and, therefore, are not
26 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
27 the same.

28 65. Defendant CITY OF RENO admits the averments of Paragraph 65.

66. The averments contained in Paragraph 66 are conclusions and, therefore, are not required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies the same.

VIOLATION OF RENO SIGN CODE

67. Defendant CITY OF RENO admits the averments of Paragraph 67.

68. The averments contained in Paragraph 68 are conclusions and, therefore, are not required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies the same.

69. Defendant CITY OF RENO denies the averments of Paragraph 69.

70. The averments contained in Paragraph 70 are conclusions and, therefore, are not required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies the same.

71. The averments contained in Paragraph 71 are conclusions and, therefore, are not required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies the same.

72. Defendant CITY OF RENO admits the averment of Paragraph 72 that RMC § 18.16.902(a) states that “[t]he construction of new off-premises advertising displays/billboards is prohibited, and the City of Reno may not issue permits for their construction. (Approved by the voters at the November 7, 2000, General Election, Question R_1 – The results were certified by the city council on November 14, 2000).” City denies all other averments in Paragraph 72.

73. The averments contained in Paragraph 73 are conclusions and, therefore, are not required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies the same.

74. The averments contained in Paragraph 74 are conclusions and, therefore, are not required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies the same.

1 75. The averments contained in Paragraph 75 are conclusions and, therefore, are not
2 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
3 the same.

4 **AFFIRMATION PURSUANT TO NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document filed in this court does
6 not contain the social security number of any person.

7 Dated this 30TH day of July, 2013.

8 JOHN I. KADLIC
9 Reno City Attorney

10 By _____

11 JONATHAN D. SHIPMAN
12 Deputy City Attorney
13 P.O. Box 1900
14 Reno, NV 89505
15 (775) 334-2050

16 *Attorneys for City of Reno*

17
18
19
20
21
22
23
24
25
26
27
28
Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

 X ECF electronic notification system to:

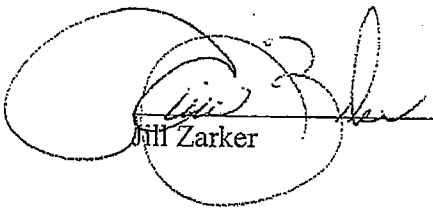
MARK WRAY, ESQ.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

DATED this 30th day of July, 2013.


Jill Zarker

FILED

Electronically

08-06-2013:09:21:45 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3902376

1 **Code: 1085**

JOHN J. KADLIC

Reno City Attorney

2 JONATHAN D. SHIPMAN

3 Nevada State Bar No. 5778

Post Office Box 1900

4 Reno, Nevada 89505

5 Phone: (775) 334-2050

6 *Attorney for Defendant*

City of Reno

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 ***

11 SCENIC NEVADA, INC.,

12 Plaintiffs,

CASE NO.: CV12-02863

13 vs.

DEPT. No.: 7

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

17 Defendants.

18
19 **FIRST AMENDED ANSWER TO FIRST AMENDED COMPLAINT**

20 COMES NOW DEFENDANT CITY OF RENO, a municipal corporation, and hereby
21 answers Plaintiff's Complaint, filed on April 15, 2013, as follows:

22 **NATURE OF THE CASE**

23 1. To the degree that averments of Paragraph 1 require an answer, the Defendant
24 CITY OF RENO denies the same.

25 **PARTIES**

26 2. Defendant CITY OF RENO admits the averments of Paragraph 2.
27
28

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1 3. The averments contained in Paragraph 3 are conclusions and, therefore, are not
2 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
3 the same.

4 4. Defendant CITY OF RENO admits the averments of Paragraph 4.

5 RELIEF SOUGHT

6 5. Defendant CITY OF RENO admits the averments of Paragraph 5.

7 FACTS

8 6. As to the averments of Paragraph 6, Defendant CITY OF RENO is without
9 sufficient information or knowledge to form a belief as to the veracity of said averments and
10 therefore denies the same.

11 7. As to the averments of Paragraph 7, Defendant CITY OF RENO is without
12 sufficient information or knowledge to form a belief as to the veracity of said averments and
13 therefore denies the same.

14 8. Defendant CITY OF RENO admits the averments of Paragraph 8

15 9. Defendant CITY OF RENO admits the averments of Paragraph 9.

16 10. Defendant CITY OF RENO admits the averments of Paragraph 10.

17 11. As to the averments of Paragraph 11, Defendant CITY OF RENO is without
18 sufficient information or knowledge to form a belief as to the veracity of said averments and
19 therefore denies the same.

20 12. As to the averments of Paragraph 12, Defendant CITY OF RENO is without
21 sufficient information or knowledge to form a belief as to the veracity of said averments and
22 therefore denies the same.

23 13. Defendant CITY OF RENO admits the averments of Paragraph 13.

24 14. Defendant CITY OF RENO admits the averments of Paragraph 14.

25 15. Defendant CITY OF RENO admits the averments of Paragraph 15.

26 16. Defendant CITY OF RENO admits the averments of Paragraph 16.

1 17. Defendant CITY OF RENO admits that the Defendant City Council voted to
2 amend the municipal code to create a banking and relocation system. City denies all other
3 averments in Paragraph 17.

4 18. Defendant CITY OF RENO denies the averments of Paragraph 18.

5 19. As to the averments of Paragraph 19, Defendant CITY OF RENO is without
6 sufficient information or knowledge to form a belief as to the veracity of said averments and
7 therefore denies the same.

8 20. Defendant CITY OF RENO admits the averments of Paragraph 20.

9 21. The averments contained in Paragraph 21 are conclusions and, therefore, are not
10 required to be answered. To the extent an answer is required, Defendant CITY OF RENO denies
11 the same.

12 22. Defendant CITY OF RENO admits on February 13, 2008, the Reno City Council
13 voted to direct Reno City staff to initiate a text amendment to allow off-premises signs with
14 LEDs (Light Emitting Diodes). City denies all other averments in Paragraph 22.

15 23. The averments contained in Paragraph 23 are conclusions and, therefore, are not
16 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
17 the same.

18 24. The averments contained in Paragraph 24 are conclusions and, therefore, are not
19 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
20 the same.

21 25. As to the averments of Paragraph 15, Defendant CITY OF RENO is without
22 sufficient information or knowledge to form a belief as to the veracity of said averments and
23 therefore denies the same.

24 26. The averments contained in Paragraph 26 are conclusions and, therefore, are not
25 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
26 the same.

27 27. To the degree that the averments of Paragraph 27 require an answer, the
28 Defendant CITY OF RENO denies the same.

1 28. Defendant CITY OF RENO admits that a text amendment to allow digital off-
2 premises advertising displays including Light Emitting Diodes was pulled from the May 6, 2009
3 Planning Commission agenda, and that on May 13, 2009, the City Council directed staff to move
4 the text amendment through the process. City denies all other averments in Paragraph 28.

5 29. Defendant CITY OF RENO admits the averments of Paragraph 29.

6 30. As to the averments of Paragraph 30, Defendant CITY OF RENO is without
7 sufficient information or knowledge to form a belief as to the veracity of said averments and
8 therefore denies the same.

9 31. The Defendant CITY OF RENO denies the implications and characterization of
10 "did not resurface", but otherwise admits the averments of Paragraph 31.

11 32. Defendant CITY OF RENO admits the averments of Paragraph 32.

12 33. Defendant CITY OF RENO admits that at a Planning Commission meeting on
13 October 5, 2011, Scenic Nevada was present during a discussion of the draft billboard ordinance.
14 As to the remaining averments of Paragraph 33, Defendant CITY OF RENO is without sufficient
15 information or knowledge to form a belief as to the veracity of said averments and therefore
16 denies the same.

17 34. Defendant CITY OF RENO admits the averments of Paragraph 34.

18 35. Defendant CITY OF RENO admits the averments of Paragraph 35.

19 36. As to the averment of Paragraph 36 regarding information provided prior to a
20 meeting of the Planning Commission, Defendant CITY OF RENO is without sufficient
21 information or knowledge to form a belief as to the veracity of said averments and therefore
22 denies the same. City admits all other averments in Paragraph 36.

23 37. Defendant CITY OF RENO admits the averments of Paragraph 37.

24 38. Defendant CITY OF RENO admits the averments of Paragraph 38.

25 39. Defendant CITY OF RENO admits the averments of Paragraph 39.

26 40. Defendant CITY OF RENO admits the averments of Paragraph 40.

27 41. Defendant CITY OF RENO admits the averments of Paragraph 41.

1 42. Defendant CITY OF RENO admits the averments of Paragraph 42 that the City
2 Council conducted two public workshops regarding digital off-premise advertising displays
3 including light-emitting diode on March 6, 2012, and April 25, 2012. City denies all other
4 averments in Paragraph 42.

5 43. Defendant CITY OF RENO admits the averments of Paragraph 43 that the City
6 Council held a public hearing on the draft ordinance on July 18, 2012. City denies all other
7 averments in Paragraph 43.

8 44. Defendant CITY OF RENO admits the averments of Paragraph 44 that the second
9 reading of the ordinance was scheduled for August 22, 2012. As to the remaining averments of
10 Paragraph 44, Defendant CITY OF RENO is without sufficient information or knowledge to
11 form a belief as to the veracity of said averments and therefore denies the same.

12 45. Defendant CITY OF RENO admits the averments of Paragraph 45.

13 46. As to the averments of Paragraph 46, Defendant CITY OF RENO is without
14 sufficient information or knowledge to form a belief as to the veracity of said averments and
15 therefore denies the same.

16 47. Defendant CITY OF RENO admits the averments of Paragraph 47.

17 48. Defendant CITY OF RENO admits the averments of Paragraph 48.

18 49. Defendant CITY OF RENO admits the averments of Paragraph 49.

19 50. To the degree that averments of Paragraph 50 require an answer, the Defendant
20 CITY OF RENO denies the same.

21 VIOLATION OF THE VOTER INITIATIVE

22 51. To the degree that averments of Paragraph 51 require an answer, the Defendant
23 CITY OF RENO denies the same.

24 52. Defendant CITY OF RENO admits the averments of Paragraph 52.

25 53. Defendant CITY OF RENO denies the averments of Paragraph 53.

26 54. The averments contained in Paragraph 54 are conclusions and, therefore, are not
27 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
28 the same.

1 55. The averments contained in Paragraph 55 are conclusions and, therefore, are not
2 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
3 the same.

4 56. The averments contained in Paragraph 56 are conclusions and, therefore, are not
5 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
6 the same.

7 57. The averments contained in Paragraph 57 are conclusions and, therefore, are not
8 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
9 the same.

10 58. The averments contained in Paragraph 58 are conclusions and, therefore, are not
11 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
12 the same.

13 59. The averments contained in Paragraph 59 are conclusions and, therefore, are not
14 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
15 the same.

16 VIOLATION OF HIGHWAY BEAUTIFICATION ACT

17 60. Defendant CITY OF RENO admits the averments of Paragraph 60.

18 61. Defendant CITY OF RENO admits the averments of Paragraph 61.

19 62. The averments contained in Paragraph 62 are conclusions and, therefore, are not
20 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
21 the same.

22 63. As to the averments of Paragraph 63, Defendant CITY OF RENO is without
23 sufficient information or knowledge to form a belief as to the veracity of said averments and
24 therefore denies the same.

25 64. The averments contained in Paragraph 64 are conclusions and, therefore, are not
26 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
27 the same.

28 65. Defendant CITY OF RENO admits the averments of Paragraph 65.

1 66. The averments contained in Paragraph 66 are conclusions and, therefore, are not
2 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
3 the same.

4 VIOLATION OF RENO SIGN CODE

5 67. Defendant CITY OF RENO admits the averments of Paragraph 67.

6 68. The averments contained in Paragraph 68 are conclusions and, therefore, are not
7 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
8 the same.

9 69. Defendant CITY OF RENO denies the averments of Paragraph 69.

10 70. The averments contained in Paragraph 70 are conclusions and, therefore, are not
11 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
12 the same.

13 71. The averments contained in Paragraph 71 are conclusions and, therefore, are not
14 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
15 the same.

16 72. Defendant CITY OF RENO admits the averment of Paragraph 72 that RMC §
17 18.16.902(a) states that "[t]he construction of new off-premises advertising displays/billboards is
18 prohibited, and the City of Reno may not issue permits for their construction. (Approved by the
19 voters at the November 7, 2000, General Election, Question R_1 – The results were certified by
20 the city council on November 14, 2000)." City denies all other averments in Paragraph 72.

21 73. The averments contained in Paragraph 73 are conclusions and, therefore, are not
22 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
23 the same.

24 74. The averments contained in Paragraph 74 are conclusions and, therefore, are not
25 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
26 the same.

1 75. The averments contained in Paragraph 75 are conclusions and, therefore, are not
2 required to be answered. To the extent an answer is required; Defendant CITY OF RENO denies
3 the same.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 Plaintiff has failed to state a claim upon which relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 Plaintiff is precluded from relief under the doctrine of laches.

9 **THIRD AFFIRMATIVE DEFENSE**

10 Plaintiff is precluded from relief because of Plaintiff's own action herein.

11 **FOURTH AFFIRMATIVE DEFENSE**

12 Plaintiff is precluded from relief under the doctrine of unclean hands.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 Plaintiff is precluded from relief because of Plaintiff's failure to comply with the
15 applicable statute of limitations.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Plaintiff lacks standing to institute a suit in that the Complaint does not meet conditions
18 precedent required for declaratory relief; specifically: (1) there must exist a justiciable
19 controversy; (2) the controversy must be between persons whose interests are adverse; (3) the
20 party seeking declaratory relief must have a legal interest in the controversy, that is to say, a
21 legally protectible interest; and (4) the issue, involved in the controversy must be ripe for judicial
22 determination.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiff has failed to join all interested or affected parties pursuant to NRS 30.130.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Defendant is informed and believes, and therefore alleges, that the Nevada Attorney
27 General, who is an indispensable party to this action, has served with a copy of the Summons
28

1 and Complaint, and by reason thereof complete relief cannot be adjudicated among those parties
2 already served.

3 NINETH AFFIRMATIVE DEFENSE

4 This answering Defendant alleges that because the Complaint is couched in conclusory
5 terms, this Defendant cannot fully anticipate all affirmative defenses that may be applicable to
6 this action. Accordingly, the right to assert additional affirmative defenses, if any to the extent
7 such affirmative defenses are applicable, is hereby reserved.

8
9 AFFIRMATION PURSUANT TO NRS 239B.030

10 The undersigned does hereby affirm that the preceding document filed in this court does
11 not contain the social security number of any person.

12 Dated this 6th day of August, 2013.

13 JOHN J. KADLIC
14 Reno City Attorney

15 By 

16 JONATHAN D. SHIPMAN
17 Deputy City Attorney
18 P.O. Box 1900
19 Reno, NV 89505
20 (775) 334-2050

21 *Attorneys for City of Reno*
22
23
24
25
26
27
28

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1
2
3 **CERTIFICATE OF SERVICE**
4

5 Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY
6 ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on
7 the party(s) set forth below by:

8 _____ Placing an original or true copy thereof in a sealed envelope placed for collection
9 and mailing in the United States Mail, at Reno, Nevada, postage prepaid,
10 following ordinary business practices.

11 _____ Personal delivery.

12 X ECF electronic notification system to:

13 MARK WRAY, ESQ.

14 _____ Facsimile (FAX).

15 _____ Federal Express or other overnight delivery.

16 _____ Reno/Carson Messenger Service.

17 DATED this 6th day of August, 2013.

18
19 
20 Bill Zarker
21
22
23
24
25
26
27
28

1
2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 SCENIC NEVADA, INC.,

Case No.: CV12-02863

10 Plaintiff,

Dept. No.: 7

11
12 vs.

13 CITY OF RENO, et al.,

14 Defendants.
15

PRETRIAL ORDER

16
17 **IT IS HEREBY ORDERED THAT:**

18 No later than twenty (20) days after entry of this order, counsel for the
19 parties shall set an Initial Mandatory Pretrial Conference, Pretrial Conference and
20 Trial. Please contact the Judicial Assistant of the department (775) 328-3158 to
21 schedule a setting appointment. Plaintiff's counsel is to prepare the Application for
22 Setting form; and should the setting be a telephonic setting, deliver the form to
23 chambers prior to setting.

24 **I. PRETRIAL CONFERENCES**

25 A. The Initial Mandatory Pretrial Conference shall be held within sixty
26 (60) days of this Order. The purpose of this conference is to expedite settlement or
27 other appropriate disposition of the case. Attendance by counsel for each party will
28

1 be required; however, if counsel is located out of the Reno area, telephonic
2 appearance will be acceptable and is to be discussed with the Judicial Assistant
3 during the setting appointment.

4 Counsel must be prepared to discuss the following:

- 5 (1) The status of settlement discussions and any possible court
6 assistance;
- 7 (2) Any alternative dispute resolution techniques appropriate to
8 this case;
- 9 (3) Any possible simplification of issues;
- 10 (4) The nature and timing of all discovery;
- 11 (5) Any special case management procedures appropriate to this
12 case;
- 13 (6) Whether there is good cause to waive the requirements for
14 expert witness reports (NRCP 16.1(2)(B));
- 15 (7) Whether there is good cause to limit the number and duration of
16 depositions;
- 17 (8) Whether there is good cause to limit requests for production, or
18 to increase the number of interrogatories;
- 19 (9) Whether discovery, and any other disputes, may be handled by a
20 meeting or telephonic conference with the parties and the Court
21 without the need for written motions; or without submitting
22 discovery disputes to the Discovery Commissioner;
- 23 (10) Whether any or all of the requirements of NRCP 16.1 should be
24 waived pursuant to NRCP 16.1(f);
- 25 (11) Any possible amendments to the pleadings or additional parties;
26 and,
- 27 (12) Other matters as may aid in the prompt disposition of this
28 action.

1 (See, NRCp 1).

2 B. The Final Pretrial Conference is held approximately two weeks prior to
3 trial. The parties should be prepared to discuss the status of Motions in Limine,
4 and formulate a program for facilitating the admission of evidence

5 The conference shall be attended by:

6 (1) Trial or lead counsel for all parties;

7 (2) The parties (if the party is an entity, an authorized
8 representative);

9 (3) A representative with negotiating and settlement authority of
10 any insurer insuring any risk pertaining to this case may
11 attend, in person or telephonically; and

12 (4) Any unrepresented parties.

13 II. PRETRIAL MOTIONS

14 A. Any motions which should be addressed prior to trial – including
15 motions for summary judgment – shall be served, filed and submitted for decision
16 no later than thirty (30) days before trial.

17 B. Motions in limine shall be served, filed and submitted for decision no
18 later than fifteen (15) days before trial. Except upon a showing of unforeseen
19 extraordinary circumstances, the Court will not entertain any pretrial motions filed
20 or orally presented after these deadlines.

21 C. Legal memoranda submitted in support of any motion shall not exceed
22 fifteen (15) pages in length; opposition memoranda shall not exceed fifteen (15)
23 pages in length; reply memoranda shall not exceed five (5) pages in length. These
24 limitations are exclusive of exhibits. This limitation also applies to post-trial
25 motions. The parties may request leave to exceed these limits in extraordinary
26 circumstances.

27 III. DISCOVERY

28 A. Prior to filing any discovery motion, the attorney for the moving party

1 must consult with opposing counsel about the disputed issues. Counsel for each
2 side must present to each other the merits of their respective positions with candor,
3 specificity, and supporting material.

4 B. Unless a discovery dispute is submitted directly to this Court pursuant
5 to § 1A(9), supra, and if both sides desire a dispute resolution conference pursuant
6 to NRCP 16.1(d), counsel must contact the Discovery Commissioner's office at (775)
7 328-3293 to obtain a date and time for the conference that is convenient to all
8 parties and the Discovery Commissioner. If the parties cannot agree upon the need
9 for a conference, the party seeking the conference must file and submit a motion in
10 that regard.

11 C. A continuance of trial does not extend the deadline for completing
12 discovery. A request for an extension of the discovery deadline, if needed, must be
13 included as part of any motion for continuance.

14 D. A party objecting to a written discovery request must, in the original
15 objection, specifically detail the reasons that support the objection, and include
16 affidavits or other evidence for any factual assertions upon which an objection is
17 based.

18 IV. TRIAL STATEMENT

19 A. A trial statement on behalf of each party shall be hand delivered to
20 opposing counsel, filed herein and a copy delivered to chambers no later than 5:00
21 p.m. five (5) court days prior to trial.

22 B. In addition to the requirements of WDCR 5, the trial statement shall
23 contain:

- 24 (1) Any practical matters which may be resolved before trial (e.g.
25 suggestions as to the order of witnesses, view of the premises,
26 availability of audio or visual equipment);
27 (2) A list of proposed general voir dire questions for the Court or
28 counsel to ask of the jury;

1 (3) A statement of any unusual evidentiary issues, with appropriate
2 citations to legal authorities on each issue; and

3 (4) Certification by trial counsel that, prior to the filing of the trial
4 statement, they have personally met and conferred in a good
5 faith-effort to resolve the case by settlement.

6 V. JURY INSTRUCTIONS

7 A. The parties shall exchange all proposed jury instructions and verdict
8 forms ten (10) court days prior to trial.

9 B. All original instructions shall be accompanied by a separate copy of the
10 instruction containing a citation to the form instruction, statutory or case authority
11 supporting that instruction. All modifications made to instructions taken from
12 statutory authority, Nevada Pattern Jury Instructions, *Devitt and Blackmar*,
13 CALJIC, BAJI or other form instructions shall be specifically noted on the citation
14 page.

15 C. The parties shall confer regarding the proposed jury instructions and
16 verdict forms and submit these instructions and verdict forms jointly to the Court
17 five (5) court days prior to trial. The parties shall indicate which instructions and
18 verdict forms are jointly agreed upon and which are disputed.

19 D. At the time Jury Instructions are settled, the Court will consider the
20 disputed instructions and any additional instructions which could not have been
21 readily foreseen prior to trial.

22 VI. MISCELLANEOUS

23 A. The Court expects that all counsel will cooperate to try the case within
24 the time set. Trial counsel are ordered to meet and confer regarding the order of
25 witnesses, stipulations and exhibits and any other matters which will expedite trial
26 of the case.

27 B. Jurors will be permitted to take notes during trial. Jurors will be
28 permitted to ask reasonable questions in writing during trial after the questions are

1 screened by the Court and counsel. Any party objecting to this procedure shall set
2 forth this objection in the trial statement.

3 C. Counsel and/or the parties are ordered to specifically inform every
4 witness that they call about any orders in limine, or similar rulings, that restrict or
5 limit testimony or evidence and to further inform them that they may not offer, or
6 mention, any evidence that is subject to such an Order.

7 D. Trial counsel for all parties shall speak with the courtroom clerk, Ms.
8 Kim Oates (775) 328-3140 or Maureen Conway (775) 325-6593 no later than five (5)
9 court days prior to trial, to arrange a date and time to mark trial exhibits. All
10 exhibits shall be marked in one numbered series (Exhibit 1, 2, 3, etc.) and placed in
11 binder(s) provided by counsel. Counsel shall cooperate to insure that three identical
12 sets of exhibits (one for the Court, one for the Clerk and one for testifying witnesses)
13 are provided to the Court. Once trial exhibits are marked by the clerk, they shall
14 remain in the custody of the clerk. When marking the exhibits with the clerk,
15 counsel should advise the clerk of all exhibits which may be admitted without
16 objection and those that may be admissible subject to reserved objections.

17 E. Any memorandum of costs and disbursements must comply with
18 Bergman v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993) and Bobby Berosini v. PETA,
19 114 Nev. 1348, 971 P.2d 383 (1998).

20 F. All applications for attorney's fees shall state services rendered and
21 fees incurred for such services with sufficient specificity to enable an opposing party
22 and the court to review such application, and shall specifically address the factors
23 set out in Schouweiler v. Yancy, 101 Nev. 827, 712 P.2d 786 (1985).

24 VII. CIVILITY

25 The use of language which characterizes the conduct, arguments or ethics of
26 another is strongly discouraged and is to be avoided. In the appropriate case, the
27 Court will upon motion or sua sponte, consider sanctions, including monetary
28 penalties and/or striking the pleading or document in which such improprieties


1 appear, and may order any other suitable measure the Court deems to be justified.
2 This section of this order applies to written material exchanged between counsel,
3 briefs or other written materials submitted to the Court and conduct at depositions,
4 hearings, trial or meetings with the Court.

5 Failure to comply with any provision of this Pretrial Order may result in the
6 imposition of sanctions.

7 DATED this 27 day of August, 2013.

8
9
10 Patrick Flanagan
11 PATRICK FLANAGAN
12 District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28


Judicial Assistant

1 JOHN J. KADLIC
2 Reno City Attorney
3 JONATHAN D. SHIPMAN
4 Nevada State Bar No. 5778
5 Post Office Box 1900
6 Reno, Nevada 89505
7 Phone: (775) 334-2050

8 *Attorney for Defendant*
9 *City of Reno*

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

13 ***

14 SCENIC NEVADA, INC.,

15 Plaintiffs,

CASE NO.: CV12-02863

16 vs.

DEPT. No.: 7

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

20 Defendant.

21 STIPULATION AND ORDER TO CONSOLIDATE ACTIONS

22 IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto,
23 through their undersigned counsel, that the above-captioned action be consolidated with
24 *Saunders Outdoor Advertising, Inc., v. City of Reno, et al.*, Case No. CV12-02917, Department
25 7, for the limited purposes of motions in limine and consolidated trial. This stipulation is entered
26 into for purposes of judicial economy and in the interests of justice in that this action and CV12-
27 02917 involve the digital billboard ordinance of the City of Reno and the City of Reno is the
28 defendant in both actions.

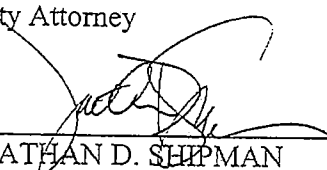
Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1 IT IS FURTHER STIPULATED AND AGREED that the two cases be consolidated
2 under the lower case number and all further pleadings and papers bear the captions of both cases
3 and both case numbers, with the lower case number first.

4 IT IS FURTHER STIPULATED AND AGREED that the trial date of October 15, 2013
5 in CV12-02917 be vacated to be reset for a consolidated trial after the close of discovery in this
6 case, and at the convenience of the court and counsel for all parties.

7
8 DATED: 9/9/13

JOHN J. KADLIC
Reno City Attorney

9
10 By: 
11 JONATHAN D. SHIPMAN
12 Deputy City Attorney
13 *Attorneys for Defendant, City of Reno*

14 DATED: 9/9/13

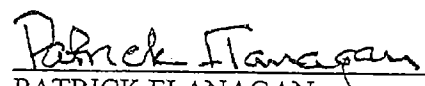
LAW OFFICES OF MARK WRAY

15
16 By: /s Mark Wray
17 MARK WRAY
18 *Attorneys for Plaintiff, Scenic*
19 *Nevada, Inc.*

20 **ORDER**

21 The parties having stipulated,

22 IT IS SO ORDERED.

23
24 
25 PATRICK FLANAGAN
26 District Judge

27 DATED: SEPTEMBER 11, 2013

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

SAUNDERS OUTDOOR
ADVERTISING, INC., a Utah
corporation,

Consolidated Case No.: CV12-02863
Case No.: CV12-02917

Dept. No.: 7

Plaintiff,

vs.

THE CITY OF RENO, a municipal
corporation,

Defendant.

ORDER

Defendant, CITY OF RENO, filed a *Motion to Dismiss Complaint* on June 28, 2013. Plaintiff, SAUNDERS OUTDOOR ADVERTISING, INC., a Utah corporation (hereafter SAUNDERS), filed an *Opposition to Motion to Dismiss* on August 8, 2013. Defendant, CITY OF RENO, filed its *Reply* and submitted the matter for decision on August 22, 2012.

Legal Standards

A motion to dismiss made pursuant to NRCP 12(b)(5) "is subject to a rigorous standard," because policy favors resolving disputes on their merits rather than dismissing them on technicalities. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. --, 181 P.3d 670, 672 (2008); *Dept. of Motor Vehicles and Public Safety v. Moss*, 106 Nev. 866 (1990). A court should only dismiss a complaint "if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle

1 [the plaintiff] to relief. *Id.*; *Id.* at 672 n. 6 (citing *Blackjack Bonding v. Las Vegas*
2 *Mun. Ct.*, 116 Nev. 1213, 1217 (2000)) (abandoning the “reasonable doubt” standard
3 erroneously asserted in numerous prior Nevada cases). A complaint will not be
4 dismissed for failure to state a claim unless it appears beyond a doubt that the
5 plaintiff could prove no set of facts, which, if accepted by the trier of fact, would
6 entitle him or her to relief. *Schneider v. County of Elko*, 119 Nev. 381, 383 (2003);
7 *Blackjack Bonding*, 116 Nev. at 1217.

8 Defendant argues that this complaint should be analyzed under the
9 heightened pleading standards provided for the Federal Rules of Civil Procedure by
10 the United States Supreme Court in *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955,
11 1964-65 (2007) and *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1951 (2009). Clearly, these
12 precedents enhance federal district courts’ gatekeeper responsibilities. Despite the
13 fact the Nevada Supreme Court often finds federal precedent “strong persuasive
14 authority,” *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38
15 P.3d 872, 875 (2002), it has not been persuaded to abandon its long-standing
16 principle of liberal construction of pleadings.¹

17 In this case, Plaintiff’s primary contentions are that “the new amendments to
18 the Ordinance – dealing exclusively with the restriction on the use of LED displays
19 – do not directly advance the City’s stated interest, and the amendments are far
20 overreaching in an effort to advance the City’s interest.” *Opp.*, pp. 9-10. In
21 determining whether a complaint should be dismissed, the district court must
22 accept all the factual allegations in the complaint as true, *Pemberton v. Farmers*
23 *Insurance Exchange*, 109 Nev. 789, 792, 858 P.2d 380, 381 (1993), and must
24 determine whether the complaint “sets forth allegations sufficient to make out the
25

26
27 ¹ Nevada’s standard is much more liberal than the federal *Twombly/Iqbal* standard, which the Supreme Court of
28 Nevada decided not to adopt most recently in *Bevan v. Eighth Judicial Dist. Court*, 126 Nev. ___, 2010 WL
3501847 (unpub’d Order July 26, 2010). As a result, the standard to grant a motion to dismiss in Nevada is very
high. See *Seput v. Lacayo*, 122 Nev. 499, 501, 134 P.3d 733, 734 (Nev. 2006) (stating a motion to dismiss under
NRCF 12(b)(5) is “subject to a rigorous standard of review on appeal.”)

1 elements of a right to relief." *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111
2 (1985). "A claim should not be dismissed ... unless it appears to a certainty that the
3 plaintiff is not entitled to relief under any set of facts which could be proved in
4 support of the claim." *Hale v. Burkhardt*, 104 Nev. 632, 636, 764 P.2d 866, 868
5 (1988).

6 Whether or not the amendments to the Ordinance advance the City's
7 legitimate interests or are unnecessarily excessive are factual disputes. At this
8 stage of the proceedings, this court finds that Plaintiff has pled sufficient facts
9 which, if true, would entitle it to the relief it seeks.

10 Therefore, CITY OF RENO'S *Motion to Dismiss Complaint* is **DENIED**.

11 DATED this 19 day of September, 2013.

12
13 
14 PATRICK FLANAGAN
15 District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 19 day of September, 2013, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

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:


Judicial Assistant

CASE NO. CV12-02863

SCENIC NEVADA INC. vs. CITY OF RENO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

7/18/13

ORAL ARGUMENTS RE: MOTION TO DISMISS

HONORABLE
PATRICK
FLANAGAN

Mark Wray, Esq. was present in Court on behalf of the Plaintiff, with no representative present.
Jonathan Shipman, Esq. was present in Court on behalf of Defendant, City of Reno, with no representative present.

DEPT. NO. 7

2:40 p.m. - Court convened.

M. Conway

The Court presented a brief procedural history of the case at bar.

(Clerk)

Counsel Shipman addressed the Court, presented argument in support of Defendant's Motion to Dismiss, arguing that the action should be barred due to Plaintiff's failure to comply with applicable statutes of limitations, and addressed concurrent jurisdiction.

S. Koetting

Counsel Wray addressed the Court and presented argument in opposition of the City of Reno's Motion to Dismiss, arguing that the City of Reno should have to answer the claims.

(Reporter)

Counsel Shipman responded.

COURT ORDERED: City of Reno's Motion to Dismiss Complaint is DENIED.

3:05 p.m. - Court stood in recess.

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

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

11 SCENIC NEVADA, INC.,

12
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 **STIPULATION AND ORDER TO CONTINUE TRIAL**

21 IT IS HEREBY STIPULATED, by and between the parties hereto, through their
22 undersigned counsel:

23 1. Counsel for Plaintiff Scenic Nevada is also counsel for the plaintiff in a
24 business case pending in the Second Judicial District Court. The case involves multiple
25 counsel and parties. Yesterday, counsel for the plaintiff filed an application for setting
26 for a settlement conference in Department 6 in the business case. The settlement
27 conference is to take place all day on February 18, 2014. After multiple efforts to set the
28

1 settlement conference on other dates, February 18, 2014 was the only date available for
2 the court, counsel and parties.

3 2. Counsel for Scenic Nevada has requested that counsel for Saunders
4 Outdoor and for the City of Reno agree to vacate the first day of trial in this action, now
5 scheduled for February 18, 2014, and that all counsel agree to continue the trial to the
6 following day, February 19, 2014, to accommodate the settlement conference in
7 Department 6.

8 3. All parties consent to the one-day continuance.

9 4. Counsel for the parties understand that if the Court approves this stipulation
10 and allows the continuance of the trial date, trial would commence at 1:30 p.m. on
11 February 19, 2014, and conclude by 12 noon February 21, 2014.

12 5. There has been one prior continuance of the trial date in this action,
13 following the consolidation of the cases filed by Scenic Nevada and Saunders Outdoor
14 Advertising.

15 6. This one-day continuance is made in good faith and not for purposes of
16 delay.

17 DATED: Jan. 8, 2014

LAW OFFICES OF MARK WRAY

19 By Mark Wray
20 MARK WRAY
21 Attorney for Plaintiff SCENIC NEVADA

22 DATED: 1-8-14

23 ROBISON, BELAUSTEGUI, SHARP & LOW
24 A Professional Corporation
25 71 Washington Street
26 Reno, Nevada 89503

27 By Frank C. Gilmore For
28 FRANK C. GILMORE, ESQ.
Attorneys for Plaintiff
SAUNDERS OUTDOOR ADVERTISING

1
2 DATED: 1/9/14

JOHN J. KADLIC
Reno City Attorney

3
4
5 By 
JONATHAN D. SHIPMAN

6 Deputy City Attorney
7 P.O. Box 1900
8 Reno, Nevada 89505
9 (775) 334-2050
Attorney for Defendant CITY OF RENO

10
11
12 **ORDER**

13 The parties having stipulated, for good cause shown,
14 IT IS SO ORDERED.

15
16 
17 PATRICK FLANAGAN
18 District Judge

19 DATED: JANUARY 10, 2014
20
21
22
23
24
25
26
27
28

CASE NO. CV12-02863

SCENIC NEVADA, INC. vs. CITY OF RENO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

01/30/14

PRE-TRIAL CONFERENCE

HONORABLE

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

PATRICK

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

FLANAGAN

Saunders Outdoor Advertising, Inc., with no representative being present.

DEPT. NO. 7

K. Oates

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

(Clerk)

S. Koetting

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

(Reporter)

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

No objections were stated by counsel.

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

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

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

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

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

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

1:35 p.m. – Court stood in recess.

1 **Code: 4205**
JOHN J. KADLIC
2 Reno City Attorney
JONATHAN D. SHIPMAN
3 Nevada State Bar No. 5778
Post Office Box 1900
4 Reno, Nevada 89505
Phone: (775) 334-2050
5 *Attorney for Defendant*
6 City of Reno

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE
9 ***

10 SCENIC NEVADA, INC.,

11 Plaintiffs,
12 vs.

CASE NO.: CV12-02863
DEPT. No.: 7

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

15 Defendant.

16 SAUNDERS OUTDOOR ADVERTISING,
INC., a Utah Corporation,

17 Plaintiff,
18 vs.

Case No. CV12-02917
Dept. No. 7

19 CITY OF RENO, a municipal corporation
20 and political subdivision of the State of
21 Nevada,

22 Defendant.

23 **DEFENDANT CITY OF RENO'S TRIAL STATEMENT**

24 Defendant City of Reno ("City") hereby submits the following Trial Statement in
25 connection with Scenic Nevada v. City of Reno, et al, Case No. CV12-02863 and Saunders
26 Outdoor Advertising, Inc. v. City of Reno, Case No. CV12-02917.

27 ///
28

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1 **I. FINDINGS OF FACT**

2 1. In 1965, Congress passed the Federal Highway Beautification Act of 1965, 23
3 U.S.C. § 131 (the "FHBA"), to preserve the scenic beauty of America's highways. (EXHIBIT
4 69; COR-00883)

5 2. Among other things, the FHBA required States to provide "effective control" of
6 billboard advertising along federally funded highways. (EXHIBIT 69; COR00884)

7 3. The FHBA required States to enter into agreements with the federal Secretary of
8 Transportation "for erection and maintenance" of advertising billboards along federally funded
9 highways within commercial and industrial zones. (EXHIBIT 69; COR00884)

10 4. Consistent with the FHBA, the Nevada Legislature authorized the Board of
11 Directors of the Department of Transportation ("NDOT") to regulate and restrict the erection and
12 maintenance of outdoor advertising located within 660 feet of the nearest edge of the right-of-
13 way and visible from the main-traveled way of the interstate and primary highway systems
14 within this state ("highway billboards"). (NRS 410.220 to NRS 410.410, inclusive.)

15 5. NRS 410.330 required the Board of Directors of the NDOT to enter into an
16 agreement with the Secretary of Transportation with respect to criteria regarding spacing, size,
17 and lighting of highway billboards (the "Federal-State Agreement" or "FSA").

18 6. On January 28, 1977, NDOT and the Secretary of Transportation entered into the
19 Federal-State Agreement, R058-97. (EXHIBIT 69; COR00884-00885)

20 7. On December 11, 1998, NDOT adopted administrative regulations regarding
21 billboards which provided in part as follows:
22

23 1. . . Signs must not include or be illuminated by flashing, intermittent or
24 moving light, except any parts necessary to give public service information
such as the time, date, temperature, weather or similar information. . .

25 2. A commercial electronic variable message sign [CEVMS], including,
26 without limitation, a tri-vision sign, may be approved as an off premises
27 outdoor advertising sign in an urban area if the sign does not contain flashing,
intermittent or moving lights, does not cause a glare on the roadway and the
following conditions are met: . . .

28 (b) A message on a tri-vision sign must have a minimum display time of 6
seconds and a maximum change of interval of 3 seconds. . .

1
2 (e) Prior to approval from the Department is required to modify existing
3 signs to include commercial or electronic variable message sign." NAC
4 410.350

5 (EXHIBIT 69; COR00885)

6 8. As billboard technology evolved, FHA recognized that the FSAs and regulations
7 needed to be clarified with regard to commercial electronic variable message signs ("CEVMS"),
8 so the FHA issued a memo expressly authorizing the use of digital billboards on September 25,
9 2007 ("FHA Memo"); specifically:

10 Changeable message signs, including Digital/LED Display CEVMS, are
11 acceptable for conforming off-premises signs, if found to be consistent with
12 the FSA and with acceptable and approved State regulations, policies and
13 procedures. [...]

14 This guidance does not prohibit States from adopting more restrictive
15 requirements for permitting CEVMS to the extent those requirements are not
16 inconsistent with the HBA, Federal regulations, and existing FSAs. [...]

17 Based upon contacts with all Divisions, we have identified certain ranges of
18 acceptability that have been adopted in those States that do allow CEVMS that
19 will be useful in reviewing State proposals on this topic. Available
20 information indicates that State regulations, policy and procedures that have
21 been approved by the Divisions to date, contain some or all of the following
22 standards:

- 23 • Duration of Message
 - 24 ○ Duration of each display is generally between 4 and 10
 - 25 seconds – 8 seconds is recommended.
- 26 • Transition Time
 - 27 ○ Transition between messages is generally between 1 and 4
 - 28 seconds – 1-2 seconds is recommended.
- Brightness
 - Adjust brightness in response to changes in light levels so
 - that the signs are not unreasonably bright for the safety of
 - the motoring public.

29 [...]

30 Other standards that the States have found helpful to ensure driver safety
31 include a default designed to freeze a display in one still position if a
32 malfunction occurs; a process for modifying displays and lighting levels
33 where directed by the State DOT to assure safety of the motoring public; and
34 requirements that a display contain static messages without movement such as
35 animation, flashing, scrolling, intermittent or full-motion video.

36 (EXHIBIT 69; COR00896-00897)

1 9. The Nevada Legislature enacted AB 305 in 2013. AB 305 became effective on
2 January 1, 2014. AB 305 directs the Board of Directors of NDOT to prescribe regulations
3 specifying the operational requirements for CEVMS which conform to any regulations
4 promulgated by the Secretary of the United States Department of Transportation. (EXHIBIT 71)

5 10. In 2000, the registered voters of Reno proposed Ballot Question R-1 which read,
6 “[t]he construction of new off-premises advertising displays/billboards is prohibited, and the City
7 of Reno may not issue permits for their construction.” (EXHIBIT 2)

8 11. On November 14, 2000, the initiative became effective upon certification by the
9 City Council. The initiative is codified as Reno Municipal Code (“RMC” or “Code”) §
10 18.16.902(a) (the “initiative”). (EXHIBITS 7, 8)

11 12. The initiative only applied to off-premises billboards, and did not place similar
12 restrictions on on-premises advertising displays.

13 13. At that same meeting November 14, 2000, the City Council also adopted City
14 Ordinance No. 5206 establishing a moratorium on the filing and acceptance of applications for
15 billboards pending the amendments to the City’s existing billboard ordinance (the “moratorium
16 ordinance”). (EXHIBITS 9, 10, 11, and 12)

17 14. On January 22, 2002, the City Council enacted Ordinance No. 5295, entitled “An
18 ordinance amending Chapter 18.06 of Title 18 of the Municipal Code entitled ‘Zoning’ by
19 adding language to and deleting language from Sections 18.06.910-18.06.985 which govern how
20 Off-Premises Advertising Displays will be regulated; together with other matters properly related
21 thereto” (the “conforming billboard ordinance”). (EXHIBIT 4)

22 15. Under the conforming billboard ordinance, the City Council clarified and
23 interpreted the “no new billboards” language in the initiative to mean that “no *additional*
24 billboards” could be built in the City of Reno, thus effectively capping the number of billboards
25 in the City to the number that existed on November 14, 2000. So long as the number of
26 billboards did not increase, existing billboards could be maintained, repaired, replaced or
27 relocated. See, RMC § 18.06.920; specifically:
28

- 1 (a) The construction of new off-premise advertising
2 displays/billboards is prohibited, and the City of Reno may
3 not issue permits for their construction [. . .]
4 (b) In no event shall the number of off-premise advertising
5 displays exceed the number of existing off-premise
6 advertising displays located within the City on November
7 14, 2000. This number shall include all applications for
8 off-premises advertising displays approved in final action
9 by the City on or before November 14, 2000 but unbuilt as
10 well as those applications approved by a court of competent
11 jurisdiction [...] (EXHIBIT 4; COR00047)

12 16. Any legally-established, permanent off-premises advertising display that existed
13 on November 14, 2000 is a non-conforming use under City Code. A non-conforming use may
14 continue until it is removed or abandoned under certain specific conditions, but survival of the
15 use is not encouraged. RMC § 18.08.501.

16 17. Certain areas in the city have a higher concentration of non-conforming static
17 billboards than others, which creates billboard clutter and degrades the City's aesthetics. RMC §
18 18.16.905(n)(14)(a-c)

19 18. On June 11, 2003, the City Council enacted Ordinance No. 5461 authorizing the
20 banking and relocation of previously existing, legally-established, permanent off-premises
21 advertising displays (the "banking ordinance"). (EXHIBIT 203)

22 19. The banking ordinance allows a billboard owner to remove a billboard, while
23 retaining the legal right to erect that billboard at another location on a future date provided the
24 reconstruction is in compliance with applicable laws. (EXHIBIT 203)

25 20. Between 2003 and 2012, Scenic Nevada took no legal action to challenge the
26 constitutionality of the conforming billboard ordinance or the banking ordinance.

27 21. Since the adoption of the conforming and banking billboard ordinances, the
28 billboard industry has banked and relocated a number of billboards in reliance on RMC §
18.06.950(E)(3).

29 22. Currently the City has 91 signs in the "bank", which represent billboards that
30 were in existence at the time of the passage of the initiative and that were subsequently removed
31 and have not yet been replaced or relocated. (Claudia Hanson testimony)

1 23. The adoption of the digital board ordinance began in 2007. The record is
2 voluminous. The City conducted numerous workshops, committee meetings and public hearings
3 before the Planning Commission and the City Council. Scenic Nevada, together with
4 representatives of the billboard industry, City staff and legal counsel were actively involved in
5 the process. (EXHIBITS 19, 29-70)

6 24. On October 24, 2012, the City Council enacted Ordinance No. 6258, entitled
7 "Digital Off-Premises Advertising Displays, including Light-Emitting Diode (LED)" (the
8 "digital billboard ordinance"). (EXHIBIT 3)

9 25. On November 16, 2012, Plaintiff Scenic Nevada, Inc. ("Scenic Nevada") filed a
10 Complaint for Judicial Review to invalidate the digital billboard ordinance. Scenic Nevada
11 argues that the initiative violates the Nevada Constitution, the Federal Highway Beautification
12 Act of 1965, 23 U.S.C. § 131(a) (2002), and the Reno sign code.

13 26. On November 21, 2012, Plaintiff Saunders Outdoor Advertising, Inc.
14 ("Saunders") filed a Complaint for declaratory and injunctive relief alleging that the digital
15 billboard ordinance is unconstitutional under the *First* and *Fourteenth Amendments* of the United
16 States Constitution ("Saunders Complaint"). 42 U.S.C. § 1983.

17 27. On February 13, 2013, the City Council adopted Ordinance No. 6276 adding
18 Reno Municipal Code § 18.16.1500 entitled "Moratorium on Conversion of Static Billboards to
19 Digital Billboards" to temporarily halt the City of Reno from accepting applications for the
20 conversion of banked or static billboards to digital billboards in accordance with the digital
21 billboard ordinance.

22 28. On April 15, 2013, Scenic Nevada filed its First Amended Complaint to
23 Invalidate City of Reno Digital Billboard Ordinance (the "Scenic Complaint") requesting
24 declaratory relief pursuant to NRS 30.040.
25

26 ////

27 ////

28 ////

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1 **II. CONCLUSIONS OF LAW**

2 **SCENIC NEVADA V. CITY OF RENO, ET AL.;**
3 **CASE NO.: CV12-02863**

4 a. **The three year prohibition set forth in Article 19, § 2.3 applies only to**
5 **statutes, not municipal initiatives, and specifically, not to the initiative**
6 **adopted by Reno voters in 2000**

7 1. Nev. Const. Art. 19, § 2.1 states that “the people reserve to themselves the power
8 to propose, by Initiative petition, statutes and amendments to statutes and amendments to this
9 Constitution, and to enact or reject them at the polls.”

10 2. Nev. Const. Art. 19, § 2.3 applies to “statutes” and states in part that “[i]f the
11 initiative petition proposes a statute or an amendment to a statute, [...] [a]n initiative measure so
12 approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the
13 Legislature within 3 years from the date it takes effect.”

14 3. Nev. Const. Art. 19, § 4, in contrast, applies to “local, special and municipal
15 legislation,” and states that “[t]he initiative and referendum powers provided for in this [Article
16 19] are further reserved to the registered voters of each county and each municipality as to all
17 local, special and municipal legislation of every kind in or for such county or municipality.”
18 Section § 4 does not contain any provision limiting a municipal government from amending,
19 annulling, repealing, setting aside or suspending a municipal initiative.

20 4. When interpreting the Constitution, specific provisions should be read in the light
21 of the whole constitution. Ex parte SHELOR, 33 Nev. 361, 373, 111 P. 291 (1910). When a
22 statute uses words which have a definite and plain meaning, the words will retain that meaning
23 unless it clearly appears that such meaning was not so intended. Balboa Ins. Co. v. Southern
24 Distrib. Corp., 101 Nev. 774, 710 P.2d 725 (1985); City of Las Vegas v. Macchiaverna, 99 Nev.
25 256, 661 P.2d 879 (1983). If language is plain and unambiguous, it must be given effect. State
26 v. State of Nevada Employees Ass'n, Inc., 102 Nev. 287, 289-290, 720 P.2d 697, 699 (1986).
27 Moreover, in interpreting legislation, Nevada follows the rule that “*expression unius est*
28 *exclusion alterius*”, which translates as the expression of one thing is the exclusion of the other.
See, State v. Javier C., 289 P.3d 1194 (2012).

1 5. In light of Ex parte Shelor, Balboa Ins. Co., and Javier C., Art. 19, § 4 must be
2 read in light of the whole constitution, including Art. 19, § 2. The fact that the Nevada
3 Constitution distinguishes between initiative petitions relating to “statutes” in Art. 19, § 2.3, and
4 initiative petitions relating to “local, special and municipal legislation” in Art. 19, § 4, is
5 material. The words used in both sections are different, plain and unambiguous, and must be
6 given effect.

7 6. The initiative is a municipal ordinance, not a “statute” within the meaning of Art.
8 19, § 2.3.

9 7. Thus, based on the plain language used, the framers did not intend the strictures of
10 Art. 19, § 2.3 to apply to local, special and municipal legislation referred to in Art. 19, § 4. If
11 they had, they would have included “local, special and municipal legislation” in Art. 19, § 2. But
12 they did not. Nowhere in Art. 19, § 4 does it state that local, special and municipal legislation
13 approved by the voters of a city cannot be amended, annulled, repealed, set aside or suspended
14 by a city council within three years from the date of adoption. Because of this omission, the
15 framers clearly intended to treat municipal initiatives differently than statewide initiatives—the
16 three-year prohibition found in § 2.3 only applies to statutes, not local, special and municipal
17 legislation.

18 8. This interpretation is further bolstered by the Legislature’s enactment of NRS
19 295.220 which requires municipal initiatives to be treated in all respects in the same manner as
20 ordinances of the same kind adopted by the council, as well as the holding in Horne v. City of
21 Mesquite, 120 Nev. 700, 100 P.3d 168 (2004) (“initiative petitions passed by the voters of a city
22 are treated the same in all respects as ordinances passed by the city council of that city, and that
23 the citizens have only those legislative powers that the local governing body possesses.”).

24 9. In general, the power to enact local legislation implies the power to suspend,
25 amend or repeal it, providing that no property or contract rights have vested by reason of the
26 passage of the enactment. 2-25 ANTIEAU ON LOCAL GOVERNMENT LAW, SECOND EDITION §
27 25.18.
28

1 10. Moreover, an ordinance must conform to, be subordinate to, not conflict with, and
2 not exceed the city charter, and can no more change or limit the effect of the charter than a
3 legislative act can modify or supersede a provision of the constitution of the state. See,
4 *MUNICORP* § 15:17 (3rd Edition).

5 11. Therefore, like all ordinances adopted by the Reno city council, the initiative
6 adopted by Reno voters in 2000 cannot conflict with § 2.080 of the city charter which authorizes
7 the city council to "make and pass all ordinances, resolutions and orders not repugnant to the
8 Constitution of the United States or the State of Nevada, or to the provisions of Nevada Revised
9 Statutes or of this Charter, necessary for the municipal government and the management of the
10 affairs of the City, and for the execution of all the powers vested in the City."

11 12. Similar to the municipal initiatives in *Horne*, citizens of Reno have only those
12 legislative powers that the city council possesses, so the initiative adopted by Reno voters in
13 2000 cannot impinge upon the Legislature's express grant of legislative authority to the city
14 council under § 2.080 of the city charter. *Horne*, 120 Nev. at 705, 100 P.3d at 171.

15 13. Because the initiative is subject to the city charter, the initiative may be amended,
16 annulled, repealed, set aside or suspended by the city council at any time for any reason provided
17 the city council complies with § 2.100 of the city charter. To hold otherwise would conflict with
18 and be repugnant to the provisions of NRS 295.220 and § 2.080 of the city charter.

19 14. The three year prohibition set forth in Article 19, § 2.3 applies only to statutes, not
20 municipal initiatives, and specifically, not to the initiative adopted by Reno voters in 2000.
21 Thus, the City did not violate Article 19 of the Nevada Constitution by adopting the conforming
22 billboard ordinance less than three years after the adoption of the initiative.

23 b. Assuming, *arguendo*, that the City violated the Nevada Constitution by
24 amending, annulling, repealing, and setting aside the initiative less than
25 three years after its passage by adopting the conforming billboard
26 ordinance, Scenic Nevada is time barred from challenging the conforming
27 billboard ordinance

28 15. A cause of action challenging the constitutionality of the conforming billboard
ordinance accrued on January 22, 2002, the date the City Council adopted the conforming

1 billboard ordinance. (EXHIBIT 4) Regardless of which statute of limitations applies, Scenic
2 Nevada is 6-10+ years beyond the applicable period of limitations, and is time barred from
3 challenging the conforming billboard ordinance. See, e.g., NRS 278.0235 (25 days), NRS
4 11.190(3)(a) (three years), and NRS 11.220 (four years).

5 16. Accordingly, Scenic Nevada is time barred from challenging the constitutionality
6 of the conforming billboard ordinance.

7 c. Scenic Nevada's constitutional challenge pursuant to Article 19 became
8 moot three years from the date of adoption of the initiative

9 17. The question of mootness is one of justiciability. A controversy must be present
10 through all stages of the proceeding, see Arizonans for Official English v. Arizona, 520 U.S. 43,
11 67, 117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997); Lewis v. Continental Bank Corp., 494 U.S. 472,
12 476-78, 110 S. Ct. 1249, 108 L. Ed. 2d 400 (1990), and even though a case may present a live
13 controversy at its beginning, subsequent events may render the case moot. University Sys. v.
14 Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); Wedekind v. Bell, 26
15 Nev. 395, 413-15, 69 P. 612, 613-14 (1902).

16 18. In this case, the voters of Reno adopted the initiative on November 14, 2000. The
17 City Council adopted the conforming billboard ordinance approximately 14 months later.
18 (EXHIBIT 3) The claim that the conforming billboard ordinance violates the three year
19 prohibition found in Article 19 became moot when Scenic Nevada failed to seek judicial relief
20 declaring the conforming billboard ordinance unconstitutional on or before November 14, 2003,
21 three years after the date of adoption of the initiative. Nearly ten years after the fact, the court
22 cannot grant effective relief with respect to the alleged procedural constitutional violation at
23 issue, and this matter should be dismissed as moot. Personhood Nev. v. Bristol, 245 P.3d 572,
24 574, 126 Nev. Adv. Rep. 56 (2010).

25 19. Furthermore, even under the reasoning provided by Scenic Nevada, three years
26 after the enactment of the initiative in 2000 the City Council had the full right to pass an
27 ordinance regulating billboards without reference to, or compliance with, the initiative.
28

1 20. Thus, Scenic Nevada's constitutional challenge pursuant to Article 19 became
2 moot on November 15, 2003, three years from the date of adoption of the initiative.

3 d. The digital billboard ordinance is consistent with the FHBA and the
4 standards approved by the Federal Highway Administration

5 21. The Nevada Legislature did not codify the standards for highway billboards and
6 CEVMS in statute.

7 22. Instead, the Nevada Legislature delegated the authority to regulate highway
8 billboards and CEVMS to NDOT. NDOT has the authority to adopt regulations, and the
9 regulations must be consistent with the FHBA, and approved by the Federal Highway
10 Administration ("FHA").

11 23. NDOT's regulatory authority is expressly limited to highway billboards. NDOT
12 has no jurisdiction over billboards located more than 660 feet from the nearest edge of the right-
13 of-way and visible from the main-traveled way of the interstate and primary highway systems
14 within this state. See, NRS 410.220 to NRS 410.410, inclusive.

15 24. Under the FHA Memo, changeable message signs, including Digital/LED Display
16 CEVMS, are acceptable for conforming off-premises signs, if found to be consistent with the
17 FSA and with acceptable and approved State regulations, policies and procedures. (EXHIBIT
18 69; COR00896-00897)

19 25. Under NDOT regulations, CEVMS complying with the standards set forth in the
20 FHA Memo are permitted, and are not considered flashing or intermittent lighting. (EXHIBIT
21 69; COR00896-00897)

22 26. Consistent with the standards set forth in the FHA Memo, the digital billboard
23 ordinance allows CEVMS; specifically:

- 24 (1) Each message or copy shall remain fixed for a minimum of eight seconds.
25 (2) Maximum time allowed for transition between message displays shall be
26 one second.
27 (3) Displays shall not be presented in motion, appear to be in motion or video.
28 (4) Illumination shall not change during a display period.

- 1 (5) Displays shall not flash or move during a display period.
- 2 (6) Displays shall not imitate or resemble any official traffic signal, traffic
- 3 sign or other official warning signs.
- 4 (7) Displays shall contain a default design that will freeze the device in one
- 5 position or display solid black if a malfunction occurs.

6 RMC § 18.16.905(n).

7 27. Thus, the digital billboard ordinance is consistent with the standards approved by

8 FHA, and does not violate the FHBA.

9 28. Further bolstering this holding, the Nevada Legislature enacted AB 305 in 2013.

10 AB 305 directs the Board of Directors of NDOT to prescribe regulations specifying the

11 operational requirements for CEVMS which conform to any regulations promulgated by the

12 Secretary of the United States Department of Transportation. (EXHIBIT 71)

- 13 e. The legal reasoning set forth in *Scenic Ariz. v. City of Phoenix Bd. of*
- 14 *Adjustment*, 228 Ariz. 419, 268 P.3d 370 (2011) is not applicable in the
- 15 present case because the City and NDOT have concurrent jurisdiction
- 16 over highway billboards, and the digital billboard ordinance cannot
- 17 preempt more restrictive NDOT regulations, or the FHBA

18 29. An applicant seeking to erect and maintain a digital billboard within the City

19 limits and within 660 feet of an interstate highway must obtain permits from both the City of

20 Reno and NDOT.

21 30. In *Scenic Ariz. v. City of Phoenix Bd. of Adjustment*, 228 Ariz. 419, 268 P.3d

22 370 (2011), a city granted a permit to a billboard company to operate an electronic billboard.

23 *Scenic Ariz.*, 228 Ariz. at 420, 268 P.3d at 372. Billboard opponents argued that the permit

24 violated a state law ban on intermittent lighting on billboards adjacent to interstate highways

25 (“highway billboards”). *Id.* The lower court affirmed the permit, holding that the city did not act

26 in excess of its authority. The court of appeals, however, reversed the lower court, holding that

27 state law, A.R.S. § 28-7903(A)¹, expressly prohibited intermittent lighting on highway

28 ¹ Under a section titled "Outdoor Advertising Prohibited," A.R.S. § 28-7903(A) provides in

29 pertinent part as follows:

30 Outdoor advertising shall not be placed or maintained adjacent to the interstate,

31 secondary or primary systems at the following locations or positions, under any of the following

32 conditions or if the outdoor advertising is of the following nature:

1 billboards. Id., at 387. The court reasoned that state law did not preempt local zoning authorities
2 from enforcing outdoor advertising ordinances provided the local law was at least as restrictive
3 as the applicable state law. Id., at 378; A.R.S. § 28-7912(B) (1998) ("Cities, towns or counties
4 shall not assume control of advertising under this section if the ordinance is less restrictive than
5 this article."). The city in Scenic Ariz., however, issued a permit which purported to allow
6 intermittent lighting on a highway billboard in violation of state law, A.R.S. § 28-7903(A).
7 Scenic Ariz., 228 Ariz. at 436, 268 P.3d at 387. As a result, the appeals court struck down the
8 permit.

9 31. The case at bar is readily distinguishable from Scenic Ariz. in two key respects.
10 First, in Scenic Ariz., the Arizona Legislature passed a law banning intermittent lighting on
11 highway billboards across the state. Scenic Ariz., 268 P.3d at 378; A.R.S. § 28-7903(A). In the
12 present case, in contrast, state law does not ban intermittent lighting on highway billboards.
13 Instead, state law expressly authorizes NDOT to prescribe regulations governing the issuance of
14 permits for the erection and maintenance of highway billboards consistent with the FHBA. NRS
15 410.330. NDOT, not the Nevada Legislature, adopted regulations governing intermittent
16 lighting on highway billboards in Nevada, and those regulations must be consistent with the
17 FHBA. See, NAC 410.350(1). In addition, the Legislature recently passed AB 310 which
18 directs the Board of Directors of NDOT to prescribe regulations specifying the operational
19 requirements for CEVMS conforming to any regulations promulgated by the Secretary of the
20 United States Department of Transportation.

21
22 32. If a company proposed to erect a highway billboard in violation of NAC
23 410.350(1), NDOT would not issue the permit. Notwithstanding the fact that a highway
24 billboard fully comports with the digital billboard ordinance, without a NDOT permit, a highway
25
26

27
28 ...
 4. *If it is visible from the main traveled way and displays a red, flashing, blinking,
intermittent or moving light or lights likely to be mistaken for a warning or danger signal [...];*
Scenic Ariz., 268 P.3d at 378.

1 billboard would be subject to removal by NDOT as a public nuisance pursuant to NRS
2 410.360(1).²

3 33. Second, in Scenic Ariz., Arizona law expressly preempted municipalities from
4 adopting highway billboard ordinances less restrictive than state law. Scenic Ariz., 268 P.3d at
5 378; A.R.S. § 28-7912(B). In the present case, unlike the Arizona Legislature in Scenic Ariz.,
6 the Nevada Legislature did not enact a state law more restrictive than the FHBA regarding the
7 permitting of CEVMS.

8 34. Nevada law does not expressly preempt municipalities from adopting highway
9 billboard ordinances less restrictive than NDOT regulations. Instead, state law grants both the
10 City and NDOT concurrent jurisdiction over highway billboards, and the right to issue permits.
11 See, NRS 278.020; NRS 410.220 to NRS 410.410, inclusive; and specifically, NRS 410.365.

12 35. Because both agencies exercise concurrent jurisdiction, an applicant must obtain
13 both a City permit and a NDOT permit to erect a highway billboard.

14 36. To the extent a permit issued by the City is less restrictive than a permit issued by
15 NDOT, the more restrictive standard governs, and the City permit yields to the NDOT permit
16 pursuant to RMC § 18.02.109(a) ("If the provisions of this Title 18 are inconsistent with those of
17 the state or federal governments, the more restrictive provision will control, to the extent
18 permitted by law.").

19 37. Given RMC § 18.02.109(a), the digital billboard ordinance does not have the
20 legal capacity to preempt more restrictive NDOT regulations or federal law in cases involving
21 highway billboards or CEVMS.
22
23
24

25 ² Any outdoor advertising sign, display or device erected after February 20, 1972, which violates
26 the provisions of NRS 410.220 to 410.410, inclusive, is hereby declared to be a public nuisance
27 and the Director shall remove any such sign, display or device which is not removed before the
28 expiration of 30 days after notice of the violation and demand for removal have been served
personally or by registered or certified mail upon the landowner and the owner of the sign or
their agents. Removal by the Department of the sign, display or device on the failure of the
owners to comply with the notice and demand gives the Department a right of action to recover
the expense of the removal, cost and expenses of suit. NRS 410.360(1).

1 38. Thus, under Nevada's FSA, CEVMS meeting the display standards set forth in
2 RMC § 18.16.905(n) and the FHA Memo are not considered to be intermittent or flashing lights,
3 and therefore, are allowed.

4 39. In short, the legal reasoning set forth in Scenic Ariz. is not applicable in the
5 present case because Nevada law does not ban digital highway billboards, and the digital
6 billboard ordinance cannot preempt more restrictive NDOT regulations, or the FHBA.

7 f. **The digital billboard ordinance does not violate the law against LED bulbs**
8 **using flashing intermittent lights to display advertising messages**

9 40. Scenic Nevada claims that the digital billboard ordinance is internally
10 inconsistent, and violates sign code prohibitions against LED bulbs using flashing intermittent
11 lights to display advertising messages.

12 41. Scenic Nevada states that RMC § 18.24.203.4570 defines "flashing sign" as a
13 sign which uses blinking, flashing or intermittent illumination, either direct, or indirect or
14 internal. Scenic Nevada argues that LED technology is a type of intermittent illumination, and
15 that "flashing" illumination should be construed as the legal equivalent of "intermittent"
16 illumination. Since RMC § 18.16.905(n)(5) states that "[d]isplays shall not flash or move during
17 a display period", Scenic Nevada argues that the digital billboard ordinance as written violates
18 the law against LED bulbs using flashing intermittent lights to display advertising messages.

19 42. In addition, Scenic Nevada argues that the digital billboard ordinance is
20 fundamentally unhealthy, unsafe, unaesthetic, anti-environmental and injurious to public welfare,
21 and the City Council has no evidence to rebut or refute the fact that digital billboards are harmful
22 to the citizens of Reno, and injurious to public safety, property values and esthetics.

23 43. Public policy is the exclusive domain of the City Council, and the formulation of
24 public policy is not within the purview of the court. Koscot Interplanetary, 90 Nev. at 456, 530
25 P.2d at 112. Precisely because the digital billboard ordinance is subject to competing interests
26 and public debate, case law directs that the court construe the ordinance with a view to
27 promoting, rather than defeating, the legislative policy intended by City Council. Lovett, 110
28 Nev. at 477, 874 P.2d at 1249-1250.

1 44. The City Council adopted the digital billboard ordinance to further implement
2 the stated purpose and intent of the sign code set forth in RMC § 18.16.901(a); specifically:

3 Recognizing that the City of Reno is a unique city in which public
4 safety, maintenance, and enhancement of the city's esthetic
5 qualities are important and effective in promoting quality of life for
6 its inhabitants and the City of Reno's 24-hour gaming/
7 entertainment/ recreation/ tourism economy; recognizing that the
8 promotion of tourism generates a commercial interest in the
9 environmental attractiveness of the community; and recognizing
10 that the visual landscape is more than a passive backdrop in that it
11 shapes the character of our city, community, and region, the
12 purpose of this article is to establish a comprehensive system for
13 the regulation of the commercial use of off-premises advertising
14 displays. It is intended that these regulations impose reasonable
15 standards on the number, size, height, and location of off-premises
16 advertising displays to prevent and alleviate needless distraction
and clutter resulting from excessive and confusing off-premises
advertising displays; to safeguard and enhance property values;
and to promote the general welfare and public safety of the city's
inhabitants and to promote the maintenance and enhancement of
the city's esthetic qualities and improve the character of our city. It
is further intended that these regulations 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.

17 45. There can be little argument that the City Council adopted the digital billboard
18 ordinance with the intent of allowing digital off-premises advertising displays. Here, the digital
19 billboard ordinance is entitled "Ordinance amending the Reno Municipal Code Title 18,
20 'Annexation and Land Development' by adding certain wording to and deleting certain wording
21 from Chapter 18.16, 'Signs' Off-Premise Advertising Displays, and Section 18.24.203.4570
22 (Definition of Sign) to establish additional standards regarding Digital Off-Premises Advertising
23 Displays, including Light-Emitting Diode (LED), together with other matters properly relating
24 thereto." See, Roberts v. State, Univ. of Nevada System, 104 Nev. 33, 37, 752 P.2d 221, 223
25 (1988)("the title of act or statute may be considered in construing a statute.").

26 46. The unreasonableness of the result produced by one interpretation of a statute is
27 reason for rejecting that interpretation in favor of another that would produce a reasonable result.
28 Sheriff, Washoe County v. Smith, 91 Nev. 729, 733, 542 P.2d 440, 443 (1975). Adopting Scenic

1 Nevada's hyper-technical legal interpretation of RMC § 18.16.905(n)(5) leads to the
2 unreasonable conclusion that the City Council intended to ban digital/LED billboards across the
3 board. A cursory review of the digital billboard ordinance proves otherwise. The City Council
4 clearly intended to allow digital billboards, subject to certain terms and conditions. See,
5 generally, RMC § 18.16.905(n).

6 47. Indeed, RMC § 18.16.907 lists specific off-premises advertising displays that are
7 prohibited within the City of Reno. Nowhere in RMC § 18.16.907 does it expressly state that
8 digital off-premises advertising displays employing intermittent lighting are prohibited.³ Instead,
9 RMC § 18.16.905(n) expressly allows digital billboards, subject to certain minimum standards
10 being met.

11 48. Scenic Nevada's legal interpretation of RMC § 18.16.905(n)(5) ignores key
12 provisions and subsections of the digital billboard ordinance. Under the rules of statutory
13 construction, where a statute is susceptible to more than one interpretation it should be construed
14 in line with what reason and public policy would indicate the legislative body intended. Statutes
15 are generally construed with a view to promoting, rather than defeating, legislative policy behind
16 them. Department of Motor Vehicles v. Lovett, 110 Nev. 473, 477, 874 P.2d 1247, 1249-1250
17 (1994). Moreover, multiple legislative provisions be construed as a whole, and where possible, a
18 statute should be read to give plain meaning to all its parts. Other words or phrases used in the
19 statute or separate subsections of the statute can be reviewed to determine the meaning and
20 purpose of the statute. Gilman v. Nev. State Bd. of Veterinary Med. Examiners, 120 Nev. 263,
21 271, 89 P.3d 1000, 1006 (2004). Statutory provisions should, whenever possible, be read in
22

23 **³ Section 18.16.907. Prohibited Types of Off-Premises Advertising Displays.**

The following off-premises advertising displays are prohibited:

- 24 (a) Signs which emit noise via artificial devices.
25 (b) Roof signs.
26 (c) Signs which produce odor, sound, smoke, fire or other such emissions.
27 (d) Stacked signs.
28 (e) Temporary signs except as otherwise provided in Sections 18.16.910 and 18.16.911
(f) Wall signs.
(g) Signs with more than two faces.
(h) Building wraps.

1 harmony provided that doing so does not violate the ascertained spirit and intent of the
2 legislature. City Council of Reno v. Reno Newspapers, 105 Nev. 886, 892, 784 P.2d 974 (1989).
3 Whether a legislative enactment is wise or unwise is not a determination to be made by the
4 judicial branch. Koscot Interplanetary v. Draney, 90 Nev. 450, 456, 530 P.2d 108, 112 (1974).

5 49. As directed in Gilman and Reno Newspapers, the court must interpret RMC §
6 18.16.905(n)(5) in harmony with the other subsections of the ordinance to determine the
7 meaning and purpose of the ordinance. RMC § 18.16.905(n)(5) must be read in concert with
8 RMC § 18.16.905(n)(4) and RMC § 18.16.905(n)(1). RMC § 18.16.905(n)(5) prohibits flashing
9 or moving "during a display period." Similarly, RMC § 18.16.905(n)(4) prohibits changing
10 illumination "during a display period." Finally, RMC § 18.16.905(n)(1) states that "[e]ach
11 message or copy shall remain fixed for a minimum of eight seconds." When read together, it is
12 clear that the City Council intended to prohibit intermittent lighting on billboards in periods of
13 less than eight seconds "during a display period". The City Council did not intend to ban digital
14 billboards.

15 50. In conclusion, RMC § 18.16.905(n)(5) does not ban digital billboards, nor does
16 the digital billboard ordinance violate any law against LED bulbs using flashing, intermittent
17 lights to display advertising messages. For these reasons, the court rejects Scenic Nevada's
18 interpretation.
19

20
21 **SAUNDERS OUTDOOR ADVERTISING V. CITY OF RENO;**
22 **CASE NO. CV12-02917**

23 51. Saunders challenges the City's adoption of the digital billboard ordinance, and
24 specifically the process established by ordinance to convert static billboards to digital billboards.

25 52. Both state and federal courts have jurisdiction over 42 U.S.C. § 1983 claims.
26 Howlett v. Rose, 496 U.S. 356, 358, 110 S. Ct. 2430, 2433 (1990). To prevail, Saunders must
27 show that the conduct complained of: (1) was committed by a person acting under color of state
28 law, and (2) deprived the complainant of rights, privileges, or immunities secured by the

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1 Constitution or laws of the United States. Cummings v. Charter Hospital of Las Vegas, 111 Nev.
2 639, 647, 896 P.2d 1137, 1142 (1995).

3 53. The *Equal Protection Clause* of the *Fourteenth Amendment* of the United States
4 Constitution does not create any substantive rights. Thus, the constitutional rights that Saunders
5 asserts have been violated arise under the *First Amendment* to the United States Constitution.

6 54. Since this case deals with the regulation of commercial speech that is neither
7 misleading nor related to unlawful activity, Central Hudson Gas & Elec. Corp. v. Pub. Serv.
8 Comm'n of New York, 447 U.S. 557, 562-63, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980) controls.
9 Metro Lights, L.L.C. v. City of L.A., 551 F.3d 898, 903-904, 2009 U.S. App. LEXIS 38 (9th Cir.
10 Cal. 2009).

11 55. In Central Hudson, the Supreme Court announced a four-part test for assessing
12 the constitutionality of a restriction on commercial speech: (1) if "the communication is neither
13 misleading nor related to unlawful activity," then it merits *First Amendment* scrutiny as a
14 threshold matter; in order for the restriction to withstand such scrutiny, (2) "[t]he State must
15 assert a substantial interest to be achieved by restrictions on commercial speech;" (3) "the
16 restriction must directly advance the state interest involved;" and (4) it must not be "more
17 extensive than is necessary to serve that interest." Id. at 564-66; see Clear Channel Outdoor, Inc.,
18 340 F.3d at 815.

19 56. It is well-established that traffic safety and aesthetics constitute substantial
20 government interests. See, Metromedia, 453 U.S. at 507-08; Metro Lights, L.L.C., 551 F.3d at
21 903-904. The City may prohibit such billboards entirely in the interest of traffic safety and
22 aesthetics, Metromedia, 453 U.S. at 507-10; Vincent, 466 U.S. at 806-07, 817, and may also
23 prohibit them except where they relate to activity on the premises on which they are
24 located. Metromedia, 453 U.S. at 510-12; see also Naegle Outdoor Advertising, Inc. v. City of
25 Durham, 844 F.2d 172, 173-74 (4th Cir. 1988); National Advertising Co. v. Orange, 861 F.2d
26 246, 248 (9th Cir. Cal. 1988).

27
28 ////

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1 g. RMC § 18.16.901(a) asserts the City's substantial governmental interests in
2 traffic safety and aesthetics

3 57. The City Council adopted the initiative, the conforming billboard ordinance, the
4 banking ordinance, and the digital billboard ordinance to further implement the stated purpose
5 and intent of the sign code set forth in RMC § 18.16.901(a); specifically:

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

58. In light of Metromedia and its progeny, the City's underlying traffic safety and
aesthetics concerns are legitimate state interests supporting the adoption of the initiative, the
conforming billboard ordinance, the banking ordinance, and the digital billboard ordinance, and
the City is not required to present additional evidentiary justification for its restrictions.

24 h. The digital billboard ordinance directly advances the City's interests in
25 traffic safety and aesthetics, and is not more extensive than necessary to
26 serve the City's traffic safety and aesthetics interests

27 59. The Supreme Court has said that "[t]he last two steps of the Central
28 Hudson analysis basically involve a consideration of the 'fit' between the legislature's ends and
the means chosen to accomplish those ends." United States v. Edge Broadcasting Co., 509 U.S.
418, 427-28, 113 S. Ct. 2696, 125 L. Ed. 2d 345 (1993) (internal quotation marks omitted). It has

1 not always been clear how this basic inquiry differs with respect to the last two steps of
2 the Central Hudson analysis, and indeed the Supreme Court has observed that the steps of the
3 analysis are "not entirely discrete." Greater New Orleans Broadcasting Ass'n, Inc. v. United
4 States, 527 U.S. 173, 183, 119 S. Ct. 1923, 144 L. Ed. 2d 161 (1999); Metro Lights, L.L.C. v.
5 City of L.A., 551 F.3d 898, 904, 2009 U.S. App. LEXIS 38 (9th Circuit 2008)

6 60. As to narrow tailoring, the fourth element of the Central Hudson test requires that
7 the challenged regulation not be "more extensive than is necessary to serve that interest." Central
8 Hudson, 447 U.S. at 566. The Supreme Court has clarified that this requirement does not demand
9 that the government use the least restrictive means to further its ends. Rather,

10 what [precedent] require[s] is a fit between the legislature's ends
11 and the means chosen to accomplish those ends--a fit that is not
12 necessarily perfect, but reasonable; that represents not necessarily
13 the single best disposition but one whose scope is in proportion to
14 the interest served; that employs not necessarily the least restrictive
15 means but . . . a means narrowly tailored to achieve the desired
16 objective. Bd. of Trustees of the State Univ. of N.Y. v. Fox, 492
17 U.S. 469, 480, 109 S. Ct. 3028, 106 L. Ed. 2d 388 (1989) (internal
18 quotation marks and citation omitted).

19 Metro Lights, 551 F.3d at 906.

20 1. **Off-premises billboard ban; RMC § 18.16.901**

21 61. Before addressing the digital billboard ordinance specifically, as a threshold issue,
22 the court must determine whether the City's ban on billboards is constitutional in light Central
23 Hudson?

24 62. Reno voters enacted an off-premises billboard ban when they adopted the
25 initiative in 2000.

26 63. Shortly thereafter the City Council enacted the conforming billboard ordinance
27 which clarified and interpreted that the "no new billboards" language in the initiative meant that
28 "no *additional* billboards" could be built in the City of Reno, thus effectively capping the
number of billboards in the City to the number that existed on November 14, 2000. So long as
the number of billboards did not increase, existing billboards could be maintained, repaired,
replaced or relocated.

1 64. The City did not place a similar ban on on-premises advertising displays.

2 65. The leading case in the field of billboard regulation is Metromedia v. City of San
3 Diego, 453 U.S. 490, 69 L. Ed. 2d 800, 101 S. Ct. 2882 (1981). In Metromedia, the Court
4 considered the constitutionality of San Diego's sign Ordinance. Seven of the Justices agreed that
5 San Diego's legislative judgment, that billboards contribute to traffic hazards and visual blight,
6 sufficed to justify a complete ban on offsite commercial billboards. See Ackerly
7 Communication v. Krochalis, 108 F.3d 1095, 1099 fn. 5 (9th Cir 1997) quoting Metromedia, 453
8 U.S. at 510, 101 S.Ct. at 2893-94 (plurality), id. at 549-53, 101 S.Ct. at 2913-16 (Stevens, J.,
9 dissenting in part); id. at 560-61, 101 S.Ct. at 2919-20 (Burger, C.J., dissenting); id. at 570.

10 66. In a number of instances since Metromedia the Ninth Circuit has expressly upheld
11 the total ban on billboards announced in Metromedia. See Ackerly Communication v. Krochalis,
12 108 F.3d 1095 (9th Cir. 1997); Outdoor Sys., Inc. v. City of Mesa, 997 F.2d 604, 610 (9th Cir.
13 1993); National Advertising Co. v. City of Orange, 861 F.2d 246, 248 (9th Cir. 1988); Desert
14 Outdoor Advertising v. Moreno Valley, 103 F.3d 814 (9th Cir. 1996). Additionally, the Supreme
15 Court itself reaffirmed its holding in Metromedia in Members of City of Council of the City of
16 Los Angeles v. Vincent, 466 U.S. 789, 807, 80 L. Ed. 2d 772, 104 S. Ct. 2118, (1984).

17 67. Regarding the off-premises billboard ban, the case at bar is similar to the case of
18 Outdoors II, LLC v. City of San Diego, 381 F. Supp. 2d 1250 (2005). In Outdoors II, the city
19 had implemented a billboard ban, and denied a billboard company's applications for installation
20 of new billboards. The billboard company claimed the ordinance violated its free speech rights
21 both facially and as applied. Regarding the as applied challenge, there was no triable issue of fact
22 regarding the ordinance's constitutionality as it did not impose a total ban on billboards, but
23 rather banned new advertising display signs, allowed for billboards built before a particular date,
24 and allowed on-site billboards. Outdoors II, 381 F. Supp. 2d at 1263-1264. The underlying
25 traffic safety and aesthetics concerns were legitimate state interests to support the ban on new
26 billboards and the city was not required to present additional evidentiary justification for its
27 restrictions. Id., at 1266. The on-site/off-site distinction was permissible and constitutional, as it
28

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1 was not content-based. Id., at 1267. Furthermore, the "savings clause" further proved that the
2 city did not intend to favor either commercial nor noncommercial speech. Id., at 1269.

3 68. Based on the similar facts and reasoning in Outdoors II, the initiative and
4 conforming billboard ordinance in the present case survive constitutional scrutiny under Central
5 Hudson. Like the ban on billboards in Outdoors II, Reno voters enacted the initiative in 2000 to
6 alleviate, *inter alia*, traffic safety and aesthetics concerns. The initiative did not impose a total
7 ban on billboards, but rather banned new advertising display signs, and allowed for billboards
8 built before a particular date. The ban did not apply to on-site billboards, and the on-site/off-site
9 distinction is content-neutral. See, also, Outdoor Sys., Inc. v. City of Mesa, 997 F.2d 604, 613
10 (9th Cir. Cal. 1993); Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L.
11 Ed. 2d 661, 1989 U.S. LEXIS 3129, 57 U.S.L.W. 4879 (U.S. 1989) ("Government regulation of
12 expressive activity is content neutral so long as it is "justified without reference to the content of
13 the regulated speech."). Finally, like Outdoors II, City Code contains a savings clause,
14 specifically, RMC § 18.16.995, entitled, "Noncommercial Speech is Allowed Whenever
15 Commercial Speech is Allowed."

16 69. Banning off-premises billboards, but leaving onsite billboards intact, is a
17 reasonable, narrowly tailored means to accomplish the ends of advancing the City's traffic safety
18 and aesthetics concerns. Thus, for these reasons, the City's ban on off-premises billboards
19 survives constitutional scrutiny under Central Hudson.

20 2. Removal requirements

21 70. The principal inquiry in determining content neutrality, in speech cases generally
22 and in time, place, or manner cases in particular, is whether the government has adopted a
23 regulation of speech because of disagreement with the message it conveys. The government's
24 purpose is the controlling consideration. A regulation that serves purposes unrelated to the
25 content of expression is deemed neutral, even if it has an incidental effect on some speakers or
26 messages but not others. Government regulation of expressive activity is content neutral so long
27 as it is "justified without reference to the content of the regulated speech." Ward v. Rock Against
28

1 Racism, 491 U.S. 781, 791-792, 109 S. Ct. 2746, 105 L. Ed. 2d 661, 1989 U.S. LEXIS 3129, 57
2 U.S.L.W. 4879 (U.S. 1989) (internal cites omitted).

3 71. In general, a billboard operator seeking to erect an off-premises digital advertising
4 display (a "digital billboard") within the corporate limits of the city must comply with of RMC §
5 18.16, Article II, and specifically:

- 6 • general billboard standards set forth in RMC § 18.16.905);
- 7 • certain locational requirements in RMC § 18.16.904; and,
- 8 • specific removal requirements found in RMC § 18.16.905(n)(14).

9 72. As an example of a locational requirement, an operator applying for a digital
10 billboard must demonstrate that the proposed digital billboard is not located within 300 feet of
11 the right-of-way of: (a) State Route 431 (Mount Rose Highway); (b) Interstate 80 west of
12 Garson Drive, to the most western city limit; (c) Interstate 80 between the east Verdi on/off
13 ramps (exit 5) and the Robb Drive interchange; or (d) U.S. 395 north of North McCarran
14 Boulevard. RMC § 18.16.904(b)(10).

15 73. Collectively, the code standards are clear and objective in nature, and do not
16 grant unfettered discretion to city officials. Either the proposed digital billboard meets the stated
17 standards, or it doesn't. There is very little room for discretionary decision-making on the city's
18 part.

19 74. So long as the operator can demonstrate compliance, he is entitled to a building
20 permit to convert/relocate/reconstruct a digital billboard as a matter of right.

21 75. Saunders, however, claims that the removal requirements set forth in RMC §
22 18.16.905(n)(14) are unconstitutional and discriminatory because they allow operators owning
23 more than a minimum threshold of existing and banked billboard inventory to convert their static
24 billboards into digital LED displays, while at the same time prohibiting operators owning less
25 than the minimum threshold of existing and banked billboard inventory to use digital LED
26 displays.
27

1 76. RMC § 18.16.905(n)(14) states that prior to the approval of any digital off-
2 premises advertising display, an operator shall provide documentation demonstrating:

- 3 a. For any digital off-premises advertising display proposed in
4 the restricted areas identified in Section 18.16.904(b)(5)
5 above, the removal of existing off-premises advertising
6 displays, located within any restricted area, totaling four
7 times the square footage of the proposed digital display; or
8 b. For any digital off-premises advertising display proposed in
9 the restricted areas identified in Section 18.16.904(b)(5)
10 above, the exchange of banked receipts totaling eight times
11 the square footage of the proposed digital display; or
12 c. For any digital off-premises advertising display proposed in
13 the restricted areas identified in Section 18.16.904(b)(5)
14 above, a combination of a and b above accomplishing an
15 equal ratio; or
16 d. Approval of a Digital Off-Premises Advertising Display
17 Special Exceptions request for digital off-premises
18 advertising display criteria; or
19 e. For any digital off-premises advertising display proposed
20 outside of the restricted areas identified in Section
21 18.16.904(b)(5) above, the removal of existing off-
22 premises advertising displays or banked receipts totaling
23 two times the square footage of the proposed digital
24 display.
25 f. With respect to (14)a.—e. above, any off-premises
26 advertising displays removed or banked receipts exchanged
27 to facilitate the installation of a digital off-premises
28 advertising display, whether to meet spacing requirements
 or to satisfy the removal requirements stated above shall
 not be replaced or banked and the maximum number of
 allowed off-premises, legally established permanent
 advertising displays under Section 18.16.902(b) shall be
 reduced accordingly.

22 77. Like the initiative, conforming and banking ordinances, the City imposed the
23 removal requirements for digital billboards to further traffic safety and aesthetics goals; and in
24 particular, "to prevent and alleviate needless distraction and clutter resulting from excessive and
25 confusing off-premises advertising displays." See, RMC § 18.16.901(a).

26 78. Again, give Metromedia and its progeny, traffic safety and aesthetics goals are
27 widely recognized substantial governmental interests, and the City is not required to present
28 additional evidentiary justification for these restrictions.

1 79. As far as the third and fourth prongs of the Central Hudson test, prior to the
2 adoption of the digital billboard ordinance, City code did not allow digital billboards. City code
3 effectively banned digital billboards. In 2012, the City Council was under no legal compulsion
4 or obligation to allow digital billboards or adopt the digital billboard ordinance.

5 80. In an attempt to reduce billboard clutter, the City Council designed the digital
6 billboard ordinance to establish tailored removal requirements for different parts of the City.
7 Areas with significantly more billboard clutter—the restricted areas defined in Section
8 18.16.904(b)(5)—have higher removal requirements, i.e., either 4:1 (existing) or 8:1 (banked)
9 the square footage of the proposed digital display. See, RMC § 18.16.905(n)(14)(a-c).

10 81. Unrestricted areas have a 2:1 (banked or existing) removal requirement. RMC §
11 18.16.905(n)(14)(e).

12 82. By implementing removal requirements, the ordinance directly reduces the
13 number of legal, non-conforming billboards and decreases billboard clutter in targeted areas of
14 the City. In more cluttered areas, the removal requirements are higher. In less cluttered areas,
15 the removal requirements are lower. Clearly, this is content-neutral time, place, or manner
16 approach, and the City's intent is to reduce billboard clutter in a tailored, thoughtful and
17 circumscribed manner.

18 83. As to discrimination claims, billboard operators are not required by law to convert
19 their static billboards to digital billboards. The decision to convert a static billboard to a digital
20 billboard remains with the operator. The removal requirement only comes into play in cases
21 where an operator decides to convert a static billboard to a digital billboard. For an operator that
22 does not desire to convert a static billboard to a digital billboard, there remain ample alternative
23 channels of communication in the form of existing static billboards.

24 84. Because of the lawful cap placed on off-premises billboards in 2000, some
25 operators may have a hundred billboards. Some operators may have a handful of billboards.
26 Some operators may have one or no billboards.

27 85. The digital billboard ordinance does not treat operators differently based on the
28 number of billboards they own or have banked. Regardless of the number of billboards an

1 operator owns, all operators seeking to construct digital billboards in the city must comply with
2 minimum removal requirements. RMC § 18.16.905(n)(14). The removal requirements do not
3 exempt certain classes of operator, or treat any operator differently from any other operator or
4 would-be operator. Even though it has an incidental effect on some speakers or messages but not
5 others, all operators are treated equally under the ordinance.

6 86. If an operator has a static billboard, but because of the cap does not have
7 sufficient billboard inventory to convert to a digital billboard, ample alternative channels of
8 communication are left open and he still retains his rights to a static billboard. He is also free to
9 purchase billboards from other operators that have banked or physical billboards. Thus, the
10 digital billboard ordinance does not suppress an operator's ability to engage in commercial
11 speech. Like height, wide and spacing requirements, the digital billboard ordinance places
12 uniform limitations on an operator's ability to speak in a certain manner, namely, using a LED
13 display.

14 87. Because the City's overall objective is to reduce the number of non-conforming
15 billboards and general billboard clutter across the City, the removal requirements do not restrict
16 more speech than is necessary. Currently, digital billboards are banned in the City of Reno. In
17 light of this fact, the removal requirements are a reasonable, narrowly tailored means to further
18 accomplish the ends of reducing billboard clutter and advancing the City's traffic safety and
19 aesthetics concerns. The fit is not necessarily perfect, but it is not required to be. Instead, the
20 removal requirements are reasonable and the scope is in proportion to the interest served.

21 88. Thus, for these reasons, the City's removal requirements survive constitutional
22 scrutiny under Central Hudson.

23 3. Special Exception and Review Process

24 89. Under the digital billboard ordinance, a billboard operator in the restricted area
25 must remove either 4:1 (existing) or 8:1 (banked) the square footage of the proposed digital
26 billboard in order to convert a static billboard to a digital billboard. RMC 18.16.905(n)(14)(a-c).
27

28

1 90. If an operator cannot meet the standards outlined in RMC § 18.16.904(b)(4)—
2 (7)(locational criteria) or § 18.16.905(n)(14)(a.—c)(removal requirements), he can apply for a
3 special exception under RMC § 18.16.905(n)(15) ("Special Exception").

4 91. Saunders argues that the Special Exception is facially unconstitutional and
5 discriminatory because it improperly favors speakers located within certain restricted areas over
6 speakers located outside the restricted areas. In addition, Saunders argues that RMC §
7 18.16.905(n)(15)(d) (the "Review Process") grants the City Council unbridled discretion in
8 approving or denying applications for a Special Exception.

9 92. To apply for a Special Exception, an operator must submit an application to the
10 City containing: (1) provisions that are being requested to be excepted and an explanation of
11 why the standards cannot be met; (2) site plans showing the location of all existing and proposed
12 off-premises displays and residentially zoned properties within 1,000 feet; (3) elevations of
13 proposed sign(s); and, (4) proposed exchange rate to install the digital off-premises advertising
14 display(s). RMC § 18.16.905(n)(15)(c).

15 93. City staff receives the application, verifies the information, and makes a
16 recommendation to City Council to approve or disapprove the application.

17 94. The City Council approves the application subject to the following findings:

- 18 a. The location of the proposed digital off-premises
19 advertising display does not vary more than two of the
20 standards contained within Section 18.16.904(b)(4)—(7)
21 and Section 18.16.905(n)(14);
- 22 b. The proposed digital off-premises advertising display is
23 smaller than the square footage of existing or banked off-
24 premises advertising displays being exchanged by a
25 minimum of 672 square feet.
- 26 c. The proposed digital off-premises advertising display does
27 not either fully or partially block views from any arterial
28 roadway, freeway, or residentially zoned and used property
of the Downtown Reno Skyline, Mount Rose/Sierra
Nevada Range, Pea Vine Mountain, the Truckee River.

RMC § 18.16.905(n)(15)(d)(3).

1 95. The Special Exception approval process is not comparable to the permit approval
2 process cited by Saunders in City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750
3 (1988). In City of Lakewood, a municipal ordinance required newspaper companies to apply for
4 a permit to display newspapers on sidewalk coin-operated newspaper boxes. The ordinance
5 granted the mayor unbridled discretion to approve or deny permits. The ordinance did not
6 contain any objective standards to circumscribe the Mayor's discretion. The ordinance presumed
7 the Mayor would act in good faith and lacked any objective standards to temper his discretion.

8 96. In the present case, in contrast, the findings City Council must make are clear and
9 objective in nature, and not subject to the unfettered discretion of city officials; specifically: (i)
10 either the location of the proposed digital billboard varies more than two of the standards
11 contained within Section 18.16.904(b)(4)—(7) and Section 18.16.905(n)(14), or it doesn't; (ii)
12 either the proposed digital off-premises advertising display is smaller than the square footage of
13 existing or banked off-premises advertising displays being exchanged by a minimum of 672
14 square feet, or it isn't; or (iii) either the digital billboard fully or partially block views from any
15 arterial roadway, freeway, or residentially zoned and used property of the Downtown Reno
16 Skyline, Mount Rose/Sierra Nevada Range, Pea Vine Mountain, the Truckee River, or it doesn't.
17 Unlike the ordinance in City of Lakewood, these standards are objective, and do not grant City
18 Council unfettered discretion to deny a Special Exception application. The digital billboard
19 ordinance does not rely on the fact that the City Council will act in good faith.

20 97. It is worth noting that even in cases where the operator cannot comply with the
21 4:1 or 8:1 removal requirements, under finding 3(b), the operator must still remove a minimum
22 of 2:1 (existing or banked) the square footage of the proposed digital display. RMC §
23 18.16.905(n)(15)(d)(3)(b). Similarly, in an unrestricted area a billboard operator must remove
24 the equivalent of 2:1 (existing or banked) the square footage of the proposed digital display.
25 RMC 18.16.905(n)(14)(e).

26 98. When an application is approved, the City Council has limited discretion in
27 imposing conditions under which the digital billboard may be used or constructed. Any added
28 condition must be designed to mitigate material harm to properties within 1,000 feet, and can

1 only address: (a) hours of operation; (b) structure height and size; (c) duration of message; and
2 (d) spacing. RMC § 18.16.905(n)(15)(d)(4).

3 99. Unlike cases in other jurisdictions, RMC § 18.16.905(n)(15)(d)(4) is notably
4 lacking a general "catch all" provision that would be sufficient to establish a claim of prior
5 restraint based on unbridled discretion, e.g., "preserves the health, safety, and welfare of the
6 public, and is in harmony with the general purpose and intent of this ordinance." See, e.g., CBS
7 Outdoor, Inc. v. City of Kentwood, 2010 U.S. Dist. LEXIS 107172, 25, 2010 WL 3942842.

8 100. If the City Council denies the application for Special Exception for any reason, it
9 must issue a written decision to that effect. See, RMC § 18.16.970. The Code also allows for
10 expedited judicial review. RMC § 18.16.965.

11 101. Because the digital billboard ordinance requires specific information be set forth
12 in the application on which the City will make a decision; requires the City to make objective
13 findings and/or set forth explanations for its decisions; and limits the type and nature of
14 acceptable conditions, the Special Exception and Review Process are both reasonable, narrowly
15 tailored means to accomplish the ends of alleviating exceptional practical difficulties or undue
16 hardship arising from the strict application of the Code, while still advancing the City's interests
17 in reducing billboard clutter. The scope of the Special Exception is in proportion to the interests
18 served.

19 102. Thus, for these reasons, the City's the Special Exception and Review Process
20 survives constitutional scrutiny under Central Hudson.

21 **III. LIST OF SUMMARIES AND EXHIBITS**

22 See Joint Exhibit List prepared for trial.

23 **IV. IDENTIFY OF WITNESSES EXPECTED TO TESTIFY**

24 Claudia Hanson.

25 **V. ANY OTHER APPROPRIATE COMMENT, SUGGESTION, OR**
26 **INFORMATION FOR THE ASSISTANCE OF THE COURT**

27 None.

1 VI. SPECIAL QUESTIONS REQUESTED TO BE PROPOUNDED TO
2 PROSPECTIVE JURORS (VOIR DIRE)

3 Not applicable, bench trial.

4 VII. MOTIONS IN LIMINE

5 None.

6 AFFIRMATION PURSUANT TO NRS 239B.030

7 The undersigned does hereby affirm that the preceding document filed in this court does
8 not contain the social security number of any person.

9 Dated this 13TH day of FEBRUARY, 2014.

10 JOHN J. KADLIC
11 Reno City Attorney

12 By 

13 JONATHAN D. SHIPMAN
14 Deputy City Attorney
15 P.O. Box 1900
16 Reno, NV 89505
17 (775) 334-2050

18 *Attorneys for City of Reno*
19
20
21
22
23
24
25
26
27
28

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1
2
3 CERTIFICATE OF SERVICE

4 Pursuant to NRCP 5(b), I certify that I am an employee of the RENO CITY
5 ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on
6 the party(s) set forth below by:

7 _____ Placing an original or true copy thereof in a sealed envelope placed for collection
8 and mailing in the United States Mail, at Reno, Nevada, postage prepaid,
9 following ordinary business practices.

10 _____ Personal delivery.

11 X

12 ECF electronic notification system to:

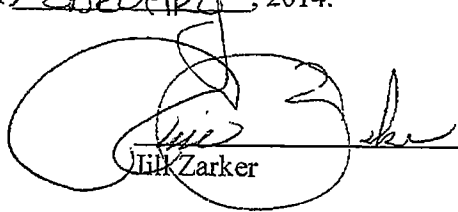
13 MARK WRAY, ESQ.
14 FRANK C. GILMORE, ESQ.

15 _____ Facsimile (FAX).

16 _____ Federal Express or other overnight delivery.

17 _____ Reno/Carson Messenger Service.

18 DATED this 13th day of FEBRUARY, 2014.

19 
20 Jill Zarker
21
22
23
24
25
26
27
28

Reno City Attorney
P.O. Box 1900
Reno, NV 89505

1 **4220**
2 MARK WRAY, #4425
3 608 Lander Street
4 Reno, Nevada 89509
5 (775) 348-8877
6 (775) 348-8351 fax
7 Attorney for Plaintiff
8 SCENIC NEVADA, INC.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

SCENIC NEVADA, INC.,

Plaintiff,

Case No. CV12-02863

vs.

Dept. No.: 7

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

Defendant.

**PLAINTIFF SCENIC NEVADA,
INC.'S TRIAL STATEMENT**

Date: February 20, 2014

Time: 9:00 a.m.

SAUNDERS OUTDOOR
ADVERTISING, INC., a Utah
corporation,

Plaintiff,

Case No. CV12-02917

vs.

Dept. No.: 7

THE CITY OF RENO, a municipal
corporation

Defendant.

Pursuant to WDCR 5 and this Court's Pretrial Order entered August 27, 2013,
Plaintiff Scenic Nevada, Inc. respectfully submits the following trial statement.

1 **A. A concise statement of the claimed facts supporting the party's claims**
2 **or defenses**

3 Billboards are litter on a stick. They are public nuisances. This is not just the
4 opinion of Scenic Nevada, it is written into the law. Nevada statutes strictly limit
5 construction of billboards outside city limits. When the City Council refused to stop the
6 proliferation of these urban eyesores in Reno, Scenic Nevada sponsored a ballot initiative
7 to ban them from being built anymore anywhere in the city.

8 The evidence will show that almost immediately after passage of the billboard
9 ban, the City Council undermined the people's vote with ordinances whose aim was to
10 allow Clear Channel and other operators to keep building new billboards. These post-ban
11 ordinances first allowed billboards to be taken down, banked and relocated, which
12 essentially eviscerated the ban. Then, in 2012, the City passed a new ordinance allowing
13 the industry to "upgrade" to digital billboards (Scenic Nevada does not consider an
14 ordinance that makes a nuisance even more obnoxious to be an "upgrade").

15 As soon as the City made it known that it would be allowing digital billboards,
16 Scenic Nevada began fighting it. Scenic Nevada fought long and hard against digital
17 billboards from 2008 through 2012, and when the Council passed the ordinance over
18 Scenic Nevada's objection, Scenic Nevada filed this action. The Court is somewhat
19 familiar with the course of events during the years 2000 through 2012, from Scenic
20 Nevada's First Amended Complaint to Invalidate City of Reno Digital Billboard
21 Ordinance, because the City tried three times to get the case thrown out before trial, with
22 motions to dismiss and for summary judgment.

23 The City has admitted the majority of the 50 paragraphs of factual allegations in
24 Scenic Nevada's First Amended Complaint, but Scenic Nevada intends to prove that all
25 50 of those paragraphs are true.

26 To that end, Lori Wray attended the hearings and workshops on digital billboards
27 from 2008 through 2012 on behalf of Scenic Nevada. She will testify for perhaps 90
28 minutes to two hours. The purpose of her testimony is to prove that the allegations that

1 the City denied in its Answer should have been admitted, and that Scenic Nevada has
2 proven its case on the facts.

3 Following Wray, Scenic Nevada expects to call Claudia Hanson, a city staffer who
4 chiefly was responsible for shepherding the digital billboard ordinance through the
5 administrative process. Her deposition was taken recently. The Court may find it
6 interesting as Ms. Hanson attempts to explain how issuing permits for new billboard
7 construction does not violate the voter initiative.

8 Scenic Nevada is not intending to call Dwight Dortch to the stand, but his
9 deposition also was taken recently, the transcript is marked as Exhibit 200, and excerpts
10 will be provided to the Court as part of Scenic Nevada's case. The deposition also was
11 on video, if the Court is interested in viewing the evidence in that form.

12 Having argued this case three times already in motion practice, Scenic Nevada
13 believes the Court has heard all the legal arguments, but Scenic Nevada is prepared to
14 argue the case once again after the witnesses are done on February 20th.

15 **B. Admitted or Undisputed Facts**

16 The parties have stipulated to admission of all the trial exhibits.

17 The City's Answer admits certain allegations of Scenic Nevada's First Amended
18 Complaint, which will be referred to during trial.

19 **C. Issues of Law and Points and Authorities**

20 The parties have argued, re-argued, and re-re-argued their legal positions in two
21 motions to dismiss and one motion for summary judgment. Succinctly as possible,
22 Scenic Nevada contends that billboards are public nuisances, and everyone knows it, and
23 thus the people of Reno in their wisdom banned them from ever being built again, and
24 they are entitled to have their vote honored by the City Council of Reno.

25 In beautiful locales across the globe, there are no billboards to be seen. People
26 who value scenic beauty are aligned with people who simply don't want to see their
27 property values negatively affected by an ugly billboard down the street. No one wants a
28 billboard anywhere near their home or business.

1 NRS 405.020 declares that if a billboard is erected without complying with the
2 restrictions of state law, it is a public nuisance. Unfortunately, one of the allowances is
3 that billboards are allowed within city limits, and the city fathers over the years have
4 tolerated a proliferation of billboards that is not allowed either in Washoe County or in
5 the City of Sparks. The citizens' initiative of 2000 was a response to the spread of a
6 public nuisance, and the law that was passed should be enforced.

7 Nationally, of course, the Highway Beautification Act recognizes that billboards
8 are blights on the scenic vistas of our country, and therefore, the intermittent lighting that
9 characterizes digital billboards is banned by the Act. When the *Scenic Arizona* case came
10 along in November 2011, at the same time that Scenic Nevada was arguing its case to the
11 Planning Commission, Scenic Nevada cited the case as additional legal support for its
12 position. Unfortunately, the City Attorney took the view that the *Scenic Arizona* case and
13 provisions of federal law had no import to the City Council. Scenic Nevada respectfully
14 disagrees, and bases its lawsuit in part on the provisions of federal law that are violated
15 when a digital billboard is erected alongside a federal aid highway.

16 Ironically, the City's own sign code prohibits off-premises signs using intermittent
17 lighting, which is an additional reason why the digital ordinance is unlawful.

18 (1) The Citizens' Initiative Bans New Billboards

19 The strength of Scenic Nevada's case is both in the facts and the law. The citizen
20 initiative is clear and direct.

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 In *City of Reno v. Citizens for Cold Springs*, 236 P.2d 10, 17 (Nev. 2010), the
24 court rejected the City of Reno's unreasonable interpretation of its own ordinance and
25 held "courts should read each sentence, phrase, and word to render it meaningful within
26 the context of the purpose of the legislation." *Id.* at 18.

27 The initiative not only bans construction of new billboards, it also bans the
28 issuance of permits for their construction. If only a "cap" were intended, the law would

1 say permits are okay for replacement billboards up to the cap number. Instead, the law
2 states explicitly that no permits can be issued, which refutes any argument that this law is
3 merely a “cap” on billboard numbers.

4 When a statute uses words which have a definite and plain meaning, the words
5 will retain that meaning unless it clearly appears that such meaning was not so intended.
6 *Balboa Ins. Co. v. Southern Distrib. Corp.*, 101 Nev. 774, 710 P.2d 725 (1985); *City of*
7 *Las Vegas, v. Macchiaverna*, 99 Nev. 256, 661 P.2d 879 (1983). If language is plain and
8 unambiguous, it must be given effect. *State v. State of Nevada Employees Ass’n, Inc.*,
9 102 Nev. 287, 289-290, 720 P.2d 697, 699 (1986); *see also, Kay v. Nunez*, 122 Nev.
10 1100, 1104, 146 P.3d 801, 804 (2006) (absent an ambiguity, the courts interpret a law
11 according to its plain meaning).

12 The citizens’ initiative should be given its plain and ordinary meaning. “Statutes
13 are generally construed with a view to promoting, rather than defeating, legislative policy
14 behind them.” *Motion, p. 23, citing Dept. of Motor Vehicles v. Lovett*, 110 Nev. 473,
15 477, 874 P.2d 1247, 1249-1250 (1994). The policy behind this law is to ban new
16 billboards, at least according to the law’s author, Scenic Nevada. By issuing permits for
17 new billboard construction, the City attempts to defeat the legislative policy behind the
18 law.

19 The City justifies the banking and relocation ordinance of 2003 with the rationale
20 that so long as the aggregate number of billboards does not increase, existing billboards
21 can be “maintained, repaired, replaced or relocated.” The City similarly justifies the
22 digital ordinance of 2012 with the rationale that as long as the aggregate number does not
23 increase, the law allows “repair, relocation or *upgrading*” of existing billboards. *See*
24 *Motion, p. 10, line 11-14, citing Staff Report, COR 192, emphasis added.*

25 As Scenic Nevada previously pointed out in the motion practice, the scope of the
26 “exceptions” is swallowing the rule. First, replacement and relocation, and now,
27 “upgrades” (translated, “digitals”) supposedly are consistent with an ordinance that bans
28 construction of new billboards. The City simply refuses to admit that repair, relocation

1 and “upgrading” actually require new permits for new billboard construction, which
2 directly conflicts with the billboard initiative.

3 **(2) The Digital Ordinance Violates the Constitution of Nevada**

4 The only ordinance that Scenic Nevada is seeking to declare void is the digital
5 ordinance of 2012. The digital/banking and relocation ordinance constitutes an ongoing
6 violation of constitutional rights guaranteed by Article 19 of the Nevada Constitution.
7 Contrary to the City’s argument, there is no “statute of limitations” on laws violating the
8 Constitution. A statute of limitations cannot insulate continued enforcement of an
9 unconstitutional law merely because no one challenges it within so many years of its
10 enactment. *Virginia Hosp. Ass’n v. Baliles*, 868 F.2d 653, 663 (4th Cir. 1989); *Kuhnle*
11 *Bros. v. County of Geauga*, 103 F.3d 516, 522 (6th Cir. 1997). If a statute of limitations
12 immunized unconstitutional laws, decisions like *Brown v. Board of Education*, 347 U.S.
13 483, 98 L.Ed. 873, 74 S.Ct. 686 (1954) would not have been possible and separate but
14 equal would still be the law of the land.

15 In this declaratory relief action, Scenic Nevada is going after the billboards.
16 Should Scenic Nevada prevail, the only ordinance that would be invalidated is the 2012
17 digital ordinance. The City’s inflammatory suggestion that invalidating the digital
18 ordinance would affect existing, vested rights of billboard owners is preposterous. No
19 one will lose their “banked” receipts for static billboards granted under the 2002 and
20 2003 ordinances. This lawsuit does not ask for the 2002 or 2003 ordinances to be
21 invalidated. This suit goes after digital billboards which have always been unlawful in
22 the City of Reno. The City’s attempt to alarm the Court over the impact of this case on
23 existing banked receipts is a red herring.

24 The City is wrong when it claims that the Council could repeal, annual or set aside
25 the billboard initiative “at any time for any reason.” If this were true, the initiative
26 powers of the citizens would be meaningless, because immediately upon the voters’
27 approval of an initiative, the Council could veto it. Under Article 19, § 3 of the Nevada
28 Constitution, an initiative measure so approved by the voters “shall not be amended,

1 annulled, repealed, set aside or suspended” within three years from the date it takes
2 affect. The City maintains this three-year rule only applies to statewide initiatives, under
3 Article 19, § 2. Yet as Scenic Nevada has pointed out before, the initiative powers
4 provided for in Article 19, § 2 are further reserved to the registered voters of each
5 municipality as to all local, special and municipal legislation of every kind. *See*, Article
6 19, §4. Because Section 4 states that initiative powers provided for in Article 19 apply to
7 municipal initiatives, the three-year prohibition on amendment, annulment, or repeal that
8 is found in Section 2 of Article 19 applies to municipal initiatives.

9 Scenic Nevada’s straightforward interpretation of Article 19, § 4 makes sense, and
10 additionally, the organization or structure of Article 19 makes clear that Scenic Nevada’s
11 interpretation is correct. Section 2 concerning statewide initiative deals with many
12 aspects of initiative petitions that are not restated or rehashed in Section 4 dealing with
13 municipal initiatives. Instead, Section 4 incorporates provisions of Section 2 by stating
14 the other provisions of Article 19 apply to municipal initiatives. Section 4 only adds the
15 percentage of signatures required for municipal initiative petitions.

16 The back-up argument by the City is that a municipal initiative is subject to
17 immediate repeal by the Council, because NRS 295.220 states a municipal initiative
18 “shall be treated in all respects in the same manner as ordinances of the same kind
19 adopted by the council,” and a city council can amend any municipal ordinance at any
20 time. The City has been known to assert unreasonable interpretations of its own
21 ordinances. *City of Reno v. Citizens for Cold Springs*, 236 P.3d 10, 17 (Nev. 2010). This
22 pattern and practice continues. The City is interpreting NRS 295.220 as overriding the
23 Nevada Constitution, although NRS 295.220 simply reflects the fact that a ballot
24 initiative passed by the voters must be treated as the law, the same as any other
25 ordinance. The statute does not override the Constitution.

26 In another unreasonable interpretation of the law, the City has argued that the
27 citizen initiative “cannot impinge upon the Legislature’s express grant of legislative
28 authority to the City Council under the city charter.” The City’s argument is meritless.

1 The City Charter states that the Council can pass a law “not repugnant to the Constitution
2 of the United States or the State of Nevada . . .,” so on its face, the charter recognizes the
3 right to challenge an unconstitutional ordinance. *See Reno City Charter*, §2.080(1).

4 The City has also cited *Personhood Nev. v. Bristol*, 245 P.3d 572, 574 (Nev. 2010)
5 for the proposition that this Court cannot grant the relief sought by Scenic Nevada
6 because “the alleged procedural constitutional violation at issue” is “moot.” In *Bristol*,
7 the initiative proponent had been unable to acquire the necessary number of signatures to
8 put the measure on the ballot, and the election already had occurred before the case was
9 heard by the Supreme Court, so the challenge to the proposed initiative was moot. The
10 court in *Bristol* held that despite the mootness, the district judge’s injunction order would
11 have no preclusive effect if the initiative qualified for the ballot at the next election.

12 In contrast, this case involves an initiative placed on the ballot and approved by
13 the voters, following which the Council adopted a digital ordinance flouting the law. In
14 the instant case, the ballot initiative actually was codified in the Reno Municipal Code at
15 the time the offending digital ordinance was adopted. *See RMC §18.16.902 (a)*.
16 Furthermore, in the face of challenges by *both* Scenic Nevada and Saunders Outdoor
17 Advertising, the ordinance has been suspended with a moratorium on constructing digital
18 billboards pending the outcome of these proceedings. Therefore, it is specious for the
19 City to argue under *Bristol* that the instant case is “moot”.

20 (3) The Digital Ordinance Violates Federal Law

21 The City argues that the Nevada Department of Transportation adopts and
22 enforces regulations for signage along federal highways, and therefore, the City
23 ordinance cannot override NDOT’s prerogative as to whether to issue a permit for a
24 billboard that lies within NDOT’s jurisdiction. The City asks this Court to ignore any
25 violation of federal law by the City, because NDOT has concurrent jurisdiction, and
26 NDOT ultimately will determine whether a digital billboard can be constructed.

27 The simple response is that Scenic Nevada is seeking declaratory relief against the
28 City of Reno on the basis that the digital billboard ordinance violates the federal Highway

1 Beautification Act, 23 U.S.C. §131 et seq. Scenic Nevada is not presently seeking any
2 relief against NDOT. The violation of federal law by the City cannot be condoned
3 merely because the City claims that NDOT also may be violating it, or because the City
4 asserts that NDOT can prevent a billboard from being constructed.

5 In *Scenic Arizona v. City of Phoenix Board of Adjustment*, 268 P.3d 370
6 (Ariz.App. 2011) the court held all digital billboards are prohibited adjacent to federal aid
7 highways because they use intermittent light to display rotating advertisements as
8 frequently as every eight seconds, which violates Nevada's and most states' FSAs.
9 Notably, Scenic Arizona filed the action against the City of Phoenix, but the decision also
10 discusses the position of the Arizona version of NDOT before reaching its conclusion
11 that digitals are barred by federal law.

12 Nevada law is the same in all material respects as Arizona's and most other states.
13 Following passage of the HBA in 1965, Nevada wanted to maintain a certain level of
14 federal funding for highways and entered into an agreement with the federal government.
15 Indeed, our legislature adopted NRS 410.220 to 410.410 requiring Nevada to enter into a
16 FSA with the federal government. In 1972 and 1999, Nevada entered into FSAs to
17 ensure continued federal funding of highways, and Nevada promised that its regulations
18 would be consistent with federal highway standards, on "spacing, size and lighting."

19 Nevada's FSA states that billboards: "shall not include or be illuminated by
20 flashing, intermittent or moving lights (except that part necessary to give public service
21 information such as time, date, temperature, weather or similar information) and shall not
22 cause beams or rays of light to be directed at the traveled way if such light is of such
23 intensity or brilliance or is likely to be mistaken for a warning or danger signal as to
24 cause glare or impair vision of any driver, or to interfere with a driver's operation of a
25 motor vehicle." *SN I-9*. Nevada's agreement not to allow signs with intermittent lights
26 remains the same today as when the first FSA was signed by Nevada 41 years ago.

1 Consistent with the FSA's and Nevada statutes, Scenic Nevada asserts a valid
2 claim against the City for a judicial declaration that the digital ordinance violates federal
3 law. Whether NDOT also is violating federal law is immaterial.

4 Finally, the City's reliance on the discredited 2007 "guidance memo" by the
5 Federal Highway Administration is misplaced. *See, Sharpe, Susan C., "Between Beauty*
6 *and Beer Signs: Why Digital Billboards Violate the Letter and Spirit of the Highway*
7 *Beautification Act of 1965,"* 64 Rutgers Law Review 515 (2012). It is the same memo
8 that was rejected in *Scenic Arizona*. The memo states on its face that it is intended to
9 provide information to divisions within the federal agency evaluating proposals; that it is
10 not intended to amend applicable legal requirements; that divisions should work with
11 states to review existing FSAs; that if appropriate, the agency divisions should assist in
12 pursuing amendments; and that the divisions should also confirm that the state provided
13 for appropriate public input, consistent with applicable state law and requirements. *See*
14 *Rutgers Law Review article, filed May 13, 2013 with Scenic Nevada's Opposition to*
15 *Motion to Dismiss*. The memo does not justify the City's digital billboard ordinance.

16 (4) The Digital Ordinance Violates the Sign Code

17 The First Amended Complaint alleges the digital ordinance violates the sign code,
18 and the City demurs, arguing that the sign code is a law made by the City, and since "we
19 made the law, so we can break it." The City meanwhile concedes that Scenic Nevada is
20 correct that the sign code does not allow intermittent lighting, but calls it a "hyper-
21 technical legal interpretation" leading to the "unreasonable conclusion" that the sign code
22 bans LED billboards "across the board."

23 The City appears to forget what happened in 2012. In that year, the City legalized
24 digital billboards for the first time. Prior to 2012, they were *illegal* under the Reno sign
25 code. Therefore, Scenic Nevada's "hyper-technical legal interpretation" is in fact the
26 accurate expression of the law that existed before 2012.

27 The Council can argue that it is entitled to break its own laws, but as long as the
28 intermittent lighting prohibition is part of the sign code, the Council is violating the law

1 with its digital billboard ordinance. And contrary to the City's argument, even the
2 Council is obliged to comply with city ordinances. *City of Reno v. Citizens for Cold*
3 *Springs*, 236 P.3d 10, 17 (Nev. 2010). Declaratory relief should be granted in favor of
4 Scenic Nevada for violation of the sign code.

5 **D. List of Summaries Referring to Attached Itemized Exhibits.**

6 None

7 **E. The Names and Addresses of All Witnesses, Except Impeaching**
8 **Witnesses**

- 9 1. Lori Wray, Scenic Nevada director, c/o Law Offices of Mark Wray, 608
10 Lander Street, Reno, NV 89509, (775) 348-8877.
11 2. Claudia C. Hanson, Planning Manager, City of Reno, c/o Reno City
12 Attorney's Office, 1 East First Street, Reno, NV 89501-1609,
13 (775) 334-2381.
14 3. Ryan Saunders, Saunders Outdoor, c/o Robison Belaustegui Sharp & Low,
15 71 Washington Street, Reno, NV 89503, (775) 329-3151

16 **F. Any other appropriate comment, suggestion, or information for the**
17 **assistance of the court in the trial of the case**

18 None

19 **G. Any practical matters which may be resolved before trial.**

20 None

21 **H. A statement of any unusual evidentiary issues, with appropriate**
22 **citations to legal authorities on each issue.**

23 None

24 **I. Certification.**

25 The undersigned counsel certifies that discovery has been completed, unless late
26 discovery has been allowed by order of the court.

27 / / /

28 / / /

1 The undersigned counsel certifies that prior to the filing of the trial statement,
2 counsel were unable to resolve the case by settlement.
3

4 DATED: Feb. 13, 2014

LAW OFFICES OF MARK WRAY

6 By Mark Wray
7 MARK WRAY
8 Attorney for Plaintiff SCENIC NEVADA, INC.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned employee of the Law Offices of Mark Wray certifies that a true copy of the foregoing document was delivered via email delivery to the following on

Feb. 13, 2014 addressed as follows:

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

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

Theresa M. Yeace

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: Feb. 13, 2014

LAW OFFICES OF MARK WRAY

8
9
10 By: Mark Wray

11 MARK WRAY
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

12 SCENIC NEVADA, INC.,

Case No. CV12-02863

13 Plaintiff,

Dept. 7

14 vs.

ORDER DENYING MOTION FOR
SUMMARY JUDGMENT

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

18 Defendant.

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

Case No. CV12-02917

21 Plaintiff,

Dept. 7

22 vs.

23
24 CITY OF RENO, a municipal corporation
25 and political subdivision of the State of
26 Nevada,

27 Defendant.

1 Before the Court is a motion for summary judgment, filed on behalf of Defendant
2 the City of Reno, represented by City Attorney John J. Kadlic, by Deputy City Attorney
3 Jonathan D. Shipman, against Plaintiff Scenic Nevada, Inc., represented by Mark Wray.

4 The Court has read and considered the City's motion filed November 26, 2013, the
5 Scenic Nevada opposition filed December 24, 2013, and the City's reply filed January 8,
6 2014, including the evidence and arguments asserted in each of these filings.

7 The burden to establish the nonexistence of material facts is on the City. *City of*
8 *Boulder v. State*, 106 Nev. 390, 392, 793 P.2d 845 (1990). In this case, the City has not
9 filed a separate statement of facts establishing the nonexistence of material facts. *See*
10 *NRCP 56(c)*. In the reply, the City essentially offers concessions as to the facts asserted
11 by Scenic Nevada. Thus, the city has not met its initial burden. *NRCP 56(c)*; *Wood v.*
12 *Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

13 Meanwhile, in its separate statement of alleged disputed facts under *NRCP 56(c)*,
14 Scenic Nevada lists 23 issues of fact.

15 The City argues issues are time barred under the applicable statute of limitations.
16 When a statute of limitations period begins to run is subject to the discovery rule and is a
17 question of fact. *Winn v. Sunrise Hosp. & Med. Ctr.*, 277 P.3d 458, 463 (Nev. 2012)

18 Certain facts are not in dispute. The City does not dispute that the Reno voters
19 enacted the initiative in 2000. The City does not dispute that the City Council adopted
20 the digital billboard ordinance in 2012 and the City does not dispute that the initiative
21 was codified when the digital billboard ordinance was adopted. Both parties agree that
22 the city council adopted the digital billboard ordinance, that the Federal Highway
23 Beautification Act governs highway billboards and that the Federal Highway
24 Administration guidance letter is in evidence.

25 The Nevada Supreme Court has a policy of adjudicating matters on their merits,
26 and while summary judgment is not a disfavored procedural tool, in this particular case,
27 Scenic Nevada is entitled to its day in court.

1 IT IS THEREFORE ORDERED that the Defendant City of Reno's motion for
2 summary judgment is DENIED.
3

4 Patrick Flanagan
5 PATRICK FLANAGAN
6 District Judge

7 DATED: FEBRUARY 18, 2014
8
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

| | | | |
|----|---------------------------|---|---------------------|
| 11 | SCENIC NEVADA, INC., et |) | |
| | al., |) | |
| 12 | |) | |
| | Plaintiffs, |) | |
| 13 | |) | Case No. CV12-02863 |
| | vs. |) | |
| 14 | |) | Department 7 |
| | CITY OF RENO, a Political |) | |
| 15 | Subdivision of the State |) | |
| | of Nevada, |) | |
| 16 | | | |
| | Defendants. | | |

17 _____
18
19 TRANSCRIPT OF PROCEEDINGS
20 TRIAL
21 February 24, 2014
22 9:00 a.m.
23 Reno, Nevada

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

1 APPEARANCES:

2 For the Plaintiff:

3 LAW OFFICES OF MARK WRAY
4 By: MARK WRAY, ESQ.
5 608 Lander Street
6 Reno, Nevada

7 ROBISON, BELAUSTEGUI, SHARP & LOW
8 By: FRANK GILMORE, ESQ.
9 71 Washington
10 Reno, Nevada

11 For the Defendant:

12 JONATHAN SHIPMAN, ESQ.
13 Deputy City Attorney
14 One E. First Street
15 Reno, Nevada
16
17
18
19
20
21
22
23
24

1 RENO, NEVADA, February 24, 2014, 9:00 a.m.

2

3 --oOo--

4 THE CLERK: CV12-02863, Scenic Nevada, Inc. versus
5 the City of Reno. Matter set for a nonjury trial. Counsel,
6 please state your appearance.

7 MR. WRAY: Good morning, your Honor. My name is
8 Mark Wray and I'm representing Scenic Nevada, Inc., the
9 plaintiff in the first case number. Also with me is Lori
10 Wray of the Board of Directors of Scenic Nevada.

11 THE COURT: Thank you. Good morning.

12 MR. GILMORE: Good morning, your Honor. Frank
13 Gilmore representing the plaintiff in the consolidated case,
14 Saunders Outdoor Advertising. With me is the representative
15 and principal of Saunders Outdoor, Ryan Saunders.

16 THE COURT: Good morning, sir.

17 MR. SHIPMAN: Good morning, your Honor. Jon
18 Shipman representing the City of Reno. I have with me
19 Claudia Hanson from the city's planning department.

20 THE COURT: Good morning, ma'am. Good morning,
21 counsel. Thank you very much. Mr. Wray, you filed first.

22 MR. WRAY: Your Honor, on November 7th of the year
23 2000 was an auspicious election year. There was on the
24 ballot here in the City of Reno a proposition for the voters

1 to approve and they were told in that proposition that the
2 yes vote means no more new billboards in the City of Reno.
3 And as you know --

4 THE COURT: In fact, they would be capped at the
5 present number, 289.

6 MR. WRAY: It says a yes vote means no more new
7 billboards in the City of Reno.

8 THE COURT: Correct. Said, quote, would prohibit
9 any more in the present number 278 of billboards and it does
10 place a cap on their number and it passed by 57.7 percent of
11 the vote.

12 MR. WRAY: And after that vote was taken, very
13 shortly after, the City of Reno began issuing permits for
14 billboards, new billboards, for new billboard construction.
15 And the methodology was to bank and relocate billboards on
16 the theory that the industry was entitled to replace
17 billboards that were taken down.

18 THE COURT: Did they do that prior to passing that
19 ordinance, what is it, 62.58, in 2000? Did they issue those
20 permits prior to that?

21 MR. WRAY: Evidence is going to show, your Honor,
22 I propose to put on evidence in this case in the following
23 way, but, yes, the answer is yes, and the evidence is going
24 to show, as I put on the evidence, that the city council

1 almost immediately upon certification of the ordinance on
2 November 14th of 2000 entered into a written agreement with
3 Outdoor Media Distributions, the successor, as to some of
4 these signs to indeed Saunders Outdoor. In December of 2000,
5 they began issuing permits pursuant to agreements.

6 Yesco Outdoor had a lawsuit, Clear Channel had a
7 lawsuit, there was a train trench coming through the City of
8 Reno. There was a lot of reasons why the city council had a
9 different agenda than the people's vote. And that agenda was
10 to issue permits to billboard companies, to remove
11 billboards, to bank those permits for a period of time up to
12 ten years at that time to allow them to then relocate those
13 billboards and erect new billboards to replace the ones that
14 had been taken down. That's what the evidence is going to
15 show.

16 There was no doubt that the city council had that
17 agenda immediately upon the election results being certified.
18 They went about issuing permits.

19 The evidence is going to show this was done by the
20 city under the guise or attempted guise through an attorneys'
21 memo you saw, that the billboard merely capped the numbers
22 and did not prohibit the city for continuing to allow new
23 billboards to be built. This was called banking relocation,
24 even maintenance.

1 In year the 2008, Dwight Dortch on the city
2 council had the city council pursue a new path, which was
3 called upgrading billboards into the new digital age and to
4 allow digital billboards now to take over where static
5 billboards had been before. Scenic Nevada diligently fought
6 that battle through the administrative process within the
7 city until 2012 and then this lawsuit was filed.

8 My proposal would be that as you look at the
9 allegations in my complaint, the first 50 allegations are
10 factual in nature. And while the city has properly admitted
11 most of those allegations, there are approximately 21 of them
12 that the city has denied. My proposal would be to show you
13 that the allegations of the complaint of a factual nature, 1
14 through 50, all of those factual allegations are true. And
15 that whatever decisions need to be made, the facts are as
16 stated in our complaint.

17 After Lori Wray testifies to that, I would call
18 Claudia Hanson for a few questions regarding the city's
19 position on why the city's part B section for relocation and
20 banking does not violate the citizens' initiative. But as I
21 go through this part of it and then I would rest for Saunders
22 to present what they need to present.

23 As I go through this part of it, your Honor, I
24 wanted you to know that I took the first amended complaint

1 and I'm going through it. For each denial, there's a D in
2 front of the denial paragraph. And then across from it is
3 going to be the exhibits that support the evidence that that
4 paragraph should not have been denied. And simply to go
5 through that process with Lori Wray, who is the one who
6 drafted initially the factual presentation you're seeing here
7 in paragraphs 1 through 50.

8 THE COURT: All right.

9 MR. WRAY: Do you have any questions for me in
10 opening?

11 THE COURT: No, counsel. Thank you very much.
12 Mr. Gilmore.

13 MR. GILMORE: Thank you, your Honor. May I use
14 the podium, judge?

15 THE COURT: Certainly.

16 MR. GILMORE: Your Honor, as you know, I represent
17 Saunders Outdoor and Saunders Outdoor is grateful to have
18 this opportunity to present its case in court today. And as
19 the Court is probably aware, this may well be an issue of
20 first impression in the State of Nevada and its important
21 this be given consideration. We're thankful to the Court for
22 the time that has been allocated for trial today.

23 As the Court knows, plaintiff Saunders Outdoor and
24 plaintiff Scenic Nevada both sit at the same table today, but

1 we are not aligned and we present very different cases for
2 this Court's consideration. Both parties seek judgments in
3 their favor, but they do so for very different reasons.

4 That said, one thing Scenic and Saunders can agree
5 on is that the City of Reno does what it feels like. It does
6 what it wants, regardless of whether that's right or wrong,
7 proper or improper. The ratio system that we will be
8 challenging today is one of those examples.

9 The ratio system is what pork barrel politicians
10 call the win-win. With a promise from the industry giant to
11 reduce their billboard clutter, the city scores a political
12 victory in exchange for a mechanism that solidifies the
13 industry giants' digital billboard monopoly. Unfortunately
14 for the city and for Clear Channel, when the win-win comes at
15 the expense of the First and the Fourteenth Amendment, it
16 cannot be permitted to stand.

17 Judge, the ratio system is the result of a plan
18 concocted by the city planning staff, coincidentally, the same
19 people who receive, approve and deny permit applications.
20 It's a plan between city staff and Clear Channel
21 Communication, who the Court may know is the 800-pound
22 national gorilla in the outdoor advertising industry. This
23 is the win-win.

24 While it's impossible for anybody to know what

1 happened behind closed doors several years ago, there are a
2 few things that we know and this is what the facts will show,
3 most of which is stipulated. In early 2008, Councilman
4 Dwight Dortch proposed a text amendment to the current sign
5 code. This text amendment would have provided for the
6 elimination of the portion of the ordinance that precluded
7 digital upgrades.

8 In the original ordinance, there was a provision
9 that required that light be faced at the board rather than
10 away from it, and it was that technical provision that in
11 fact resulted in the denial of the permit application from
12 Saunders back in '04 or '05.

13 MR. SAUNDERS: '05 or '06.

14 MR. GILMORE: So what Dwight Dortch proposed in
15 2008 was a text amendment to remove that provision so that
16 there could be the three upgrade to digital boards. That
17 proposed text amendment prompted a response from planning and
18 from Scenic to address whether or not the implementation of
19 digital boards violated the Ladybird Johnson Act, which as
20 the Court probably knows is the federal law.

21 THE COURT: Highway beautification.

22 MR. GILMORE: Correct. Thank you, your Honor.
23 And there were also council members on the council at the
24 time that were very anti-billboard, as you might have

1 surmised Scenic Nevada is. The anti-billboard council
2 members and Scenic began discussing their concerns with
3 existing billboard clutter in the downtown and midtown
4 corridors.

5 THE COURT: You concede that's a legitimate
6 governmental interest.

7 MR. GILMORE: Absolutely. We do not challenge
8 that as being a legitimate governmental interest on the
9 Central Hudson test whatsoever.

10 THE COURT: You're conceding the first and second
11 prongs of Central Hudson. You're just focusing on the third
12 and fourth prongs, which the third prong is whether or not
13 that legislation directly advances the State's interest and,
14 finally, whether it's narrowly tailored to fit the State's
15 interest.

16 MR. GILMORE: Thank you, your Honor, well-said.
17 So that the fit between --

18 THE COURT: The Supreme Court said it, I didn't.

19 MR. GILMORE: Well, the Court knows it well by
20 now. The question really is the fit, whether between the
21 speech that is being restricted fits the ends that are
22 attempted to be achieved, and I think we'll be able to show how
23 this ordinance does not do that.

24 THE COURT: I apologize for interrupting.

1 MR. GILMORE: No worries, your Honor.

2 THE COURT: Go ahead.

3 MR. GILMORE: What ended up happening as a result
4 of the communications and the conversations between Scenic
5 and the anti-billboard council members, there came this idea
6 that there were questions posed to the industry members, and
7 these are in quotes, whether the industry, quote, would be
8 willing to remove some of their regular billboards in
9 exchange for permission to install digital billboards. These
10 types of conversations were the birth of the quid pro quo,
11 the win-win.

12 Now, why is this critical? Well, this is a
13 situation where the city council is saying to the industry
14 members and even to the city at large, before we will allow
15 you to display speech in a method which we were likely to
16 approve, we ask that you give something. You must give
17 something in order to have permission to speak.

18 And I think I can present to you, your Honor, both
19 in evidence today and in my closing arguments and parallel
20 Supreme Court cases through the ages that show that quid pro
21 quo requiring somebody to pay before they can speak violates
22 the First and Fourteenth Amendments.

23 After that conversation of the win-win began, for
24 the next two years, Clear Channel spent a considerable amount

1 of time working with planning and the city council to show
2 that digital billboards were safe. They were compliant with
3 federal law. There's a memo in the file that shows from the
4 City Attorney's Office where they analyzed the Ladybird
5 Johnson Act and they decided that ultimately -- digital
6 billboards on the highways did not run afoul of that act.
7 And council came to the industry with this idea that if the
8 city was -- if the industry was willing to give up boards,
9 the city would give permission. These are not my words,
10 these are the city's words.

11 Clear Channel explained to the city that it had
12 been doing its part to try to reduce billboards so that they
13 can, quote, provide at the end of the day we are going to
14 reduce the overall number of billboards. This was a deal
15 struck between the city and the overwhelming giant of the
16 industry.

17 THE COURT: Isn't that the goal of Scenic Nevada
18 to reduce billboards?

19 MR. GILMORE: I'm not going to speak for Scenic.

20 THE COURT: I apologize.

21 MR. GILMORE: I understand Scenic's position to be
22 that billboards are evil, they don't have a place in the city
23 and if they can have a way to remove them all, they would do
24 that. I think the position they made today in the case is

1 that the way that the city has gone about legislating the
2 sign code from the original ban runs afoul of the original
3 ban.

4 THE COURT: All right. We'll let the Scenic
5 Nevada talk about it. Focus on the ratio.

6 MR. GILMORE: What the city loved about the
7 ratio --

8 THE COURT: Why don't you explain the ratio.
9 There's a 1-to-1, 2-to-1 and a 4-to-1 based on where the
10 billboards are located?

11 MR. GILMORE: The concept of the ratio is really
12 what's important. The number is sort of the gravy. The
13 concept of the ratio is that if you want to upgrade a sign
14 from static to digital, you have to give up existing boards,
15 not just take the sign face down that is static and put up a
16 digital, but that you have to take down additional boards in
17 order to utilize that technology.

18 What's the problem with that? The problem with
19 that is and the evidence will show, originally, 20 years ago,
20 billboards were wood, they were wood-faced. They had people
21 go up and paint them.

22 THE COURT: They were barns.

23 MR. GILMORE: That's right. Barn doors or side of
24 a barn or whatever. People would go in there and paint a

1 picture, Vote for Clinton, or whatever. And then as the
2 progression of the technology, printers, vinyl, those kinds
3 of things progressed, advertisers who are the ones that fund
4 billboard companies through revenues, right, billboard
5 companies sell advertising, advertising builds signs.

6 What ends up happening was advertisers liked the
7 idea that now that there's a computer and a printer, you can
8 print a big vinyl that's 672 square feet and that vinyl can
9 be taken up and put right on the board face and you don't
10 have to have a painting crew, you don't have to scrape down
11 paint. So that was the efficiency model that was basically
12 the result of modern progression.

13 So they went from wood facing to vinyl facing.
14 Advertisers like vinyl facing. It's cleaner. It looks
15 better. You don't have that weird distortion that you would
16 have when paint would get applied to the wood.

17 Well, there was no problem in upgrading from wood
18 to vinyl. It looks better. It didn't run afoul of any of
19 the city's requirements. There wasn't additional permits.
20 There wasn't any a quid pro quo built into the upgrade. It
21 was simply the industry utilizing modern technology to do its
22 job, which is what every single industry in this country
23 does. I would even say the world.

24 We don't write letters anymore, judge, because we

1 have computers to send e-mail. We have faxes instead of
2 sending by courier. There are all kinds of things that every
3 industry in this world uses to do their job better, to be
4 more attractive.

5 You go to the airport now, it's no longer the flip
6 boards. It's now digital boards showing where your time,
7 flights and delays and it can be changed instantaneously.
8 Every industry uses this. But now the ratio systems says, if
9 you want to use the natural progression of billboards from
10 wood to vinyl to tri-vision to now digital, if you want to
11 now make that latest step and keep up with the rest of the
12 industry, the rest of the cities, we're going to require that
13 you give us something that we want in exchange for that right
14 to upgrade. That's the crux of this case, the right to
15 upgrade from static to digital.

16 Well, what is it, judge, that is inherent about
17 the upgrade from static to digital? Well, there are a couple
18 things and the city examined them. They are things that
19 relate to the health, safety and welfare and esthetics of the
20 City of Reno. Things like location, size, luminosity,
21 location, all the kinds of things that city council and
22 planning have legislated in the past with respect to
23 billboards.

24 Well, they've now added a new step and that step

1 is if you want to upgrade to the natural progression of
2 billboards, now you have to give up something. Well, judge,
3 that runs afoul of the First Amendment. Because the
4 restriction on the ability to upgrade is not tied to the
5 dangers or evils, as the Supreme Court would say, that are
6 not tied to the evils associated with the difference between
7 a static board and a digital board. That's really what we're
8 talking about, boiled down, and I think that's what the
9 evidence will show.

10 And I'll be able to in my summation show how the
11 facts applicable to how this ordinance was made, the facts
12 applicable to what the ordinance says and tied to what the
13 First Amendment requires with respect to the Central Hudson
14 test and restricting commercial speech to show that this quid
15 pro quo runs afoul of the constitution.

16 This became a hot topic. I'll show your Honor
17 there's an exhibit where one of the commissioners says, this
18 exchange ratio is a hot topic. What was Clear Channel's
19 response? Clear Channel's response was to speak on behalf of
20 the industry. Clear Channel said, this is a quote, if the
21 goal is to reduce the number of billboards, then digital
22 billboards are the best bet. This is a quote from Clear
23 Channel. I hope you'll consider the offer from the industry
24 to remove three conventional faces for each digital

1 installed, close quote. This was the industry giant's
2 proposal for the win-win, quid pro quo.

3 The problem is, judge, this was not an industry
4 offer. Even if Clear Channel had the ability to make the
5 offer for the industry, it was not the industry offer. The
6 facts are that the industry is made up of Clear Channel,
7 which owns 65 percent of the boards in this city. There are
8 two or three other national chains, like CBS and Yesco, that
9 own the other majority. The rest are Saunders and the other
10 mom and pop shops that own one or two signs that have no
11 ability to make meaningful use of this exchange ratio.

12 Make no mistake, judge, this ratio was enacted
13 with the purpose and the knowledge that the only speaker in
14 this city that would be able to make meaningful use of the
15 ratio upgrade is Clear Channel. That's what the facts will
16 show and it's pretty undisputed.

17 It was premised on the promise made by Clear
18 Channel to the city that if they were given permission to
19 make this upgrade from static to digital, that they would
20 show a massive reduction in the cluttered corridors. This is
21 not a win-win for regular citizens. It's not a win-win for
22 regular speakers. It's not a win-win for mom and pop sign
23 owners. It's win-win for Clear Channel Communications and
24 the anti-billboard council members.

1 This was, judge, in a very real sense, the
2 old-fashioned backroom deal. You scratch my back, I'll
3 scratch yours. The only problem was that it was done in wide
4 open. It was done with city council's approval. It was done
5 without apologies from Clear Channel or from planning. And
6 it was done in violation of the First Amendment. And it's
7 the last of those issues that Saunders takes issue with.

8 There are all kinds of deals made between the city
9 and industry members that affect and help industry members,
10 affect and help city council, help to achieve political
11 objectives, but when it runs afoul of the First Amendment,
12 then we have a problem.

13 Clear Channel knew it, city planning knew it, city
14 hall knew it and Saunders knew it. What planning and
15 Saunders also knew was that Clear Channel had sufficient
16 inventory, the idea of these banked receipts, and standing
17 boards, worthless signs that are found down here on Plumb
18 Street that don't generate much income that can easily be
19 taken down in order to create inventory to allow for a
20 conversion on the ratio system to a 395 sign that has high
21 traffic, high visibility.

22 What Saunders and planning also knew was that the
23 day the ratio went into effect, it was going to be Clear
24 Channel that was going to run to city hall and apply for the

1 permits, flood their locations, of which most of them are
2 theirs, flood those locations and space out all the
3 competitors. It really was a win-win for Clear Channel
4 without the guarantee that it would result in a meaningful
5 reduction of inventories, because of the way Clear Channel
6 holds their banked inventories and because of the way they
7 hold all these other worthless inventories that can be
8 converted.

9 Nobody really even knows and nobody will tell you
10 today whether a meaningful reduction in billboards would
11 actually even result from the ordinance. It was the promise
12 of the win-win that sold the ordinance in its current form.
13 As Clear Channel said, and this is a quote I'll show you in
14 the evidence, we cannot mow down ten structures out of the
15 goodness of our heart, but if we can mow down ten and put up
16 two digitals, then that's a win for the city. We can come to
17 the table with offers to make this right. That's what Clear
18 Channel told the city and they did so unabashedly.

19 Clear Channel proposed that if the city is on
20 board with this conversion ratio, they will offer the city
21 whatever the city wanted in order to get its political
22 victory. As the proposals went from 2-to-1 to 8-to-1 and
23 then back down again through the negotiation of the
24 ordinance, council members began to recognize that this was

1 going to have a disparate impact on all the industry members
2 besides Clear Channel. Council members began to speak, and
3 the Court will see these in the meeting minutes, they start
4 to speak of working for equitable ratios for smaller
5 billboard companies.

6 Council recognized, and this is a quote from
7 Councilman Dortch, recognized that the ratio system in its
8 current iteration would create a monopoly for the industry
9 giant. In response to the inequities that this ratio would
10 create, council discussed this issue multiple times over
11 several months, as the Court I'm sure has seen.

12 The final decision was to enact the current ratio,
13 2-to-1, outside the restricted corridors. Inside the
14 restricted corridors, it's 4-to-1, or if they are exchanging
15 banked receipts, it's 8-to-1 or some proportional ratio.

16 The irony of the ultimate vote on the ratio is
17 that the last substantive discussion on the matter, which was
18 in October of 2012, Councilman Hascheff, himself a lawyer,
19 acknowledged, and this is a quote, the simple solution would
20 be to simply prohibit digital billboards in order to avoid
21 complaints about things such as ratios. That's exactly what
22 we propose. Either make it fair or ban them entirely.

23 And the city has the ability to and the city has
24 admitted in their depositions, they have the ability to

1 legislate a total ban, as long as it's a total ban. They
2 also have the ability to legislate the allowance of digitals,
3 as long as it's fair and as long as it meets health, safety,
4 welfare and aesthetic needs of the city. They didn't do
5 that. Councilman Hascheff was right.

6 The options to the city were to make upgrades
7 available to all, under the appropriate health, safety,
8 welfare, aesthetic factors, which are actually found in the
9 code, subsection 905, sub N, 1 through 13. Those are all the
10 health, safety, welfare factors that the city can freely
11 legislate or to ban altogether.

12 In order to be legal, the city ordinance has to be
13 a win-win for all people, not just for those with the ability
14 to make a deal with the city so the city can obtain its
15 political objectives.

16 Your Honor, it is apparent that this Court is
17 well-familiar with this issues. The Court has read the
18 pleadings, the motions, the oppositions, the respective trial
19 statements. Saunders has presented those exhibits and has
20 some deposition testimony to present showing that this ratio
21 system violates the First Amendment.

22 The ratio system is, number one, an impermissible
23 restriction of speech in violation of the tenets of Central
24 Hudson, because the restriction does not directly advance the

1 city's intended purpose and it's not sufficiently narrowly
2 tailored. And, number two, the facts will show that the
3 ordinance, particularly the ratio system, favors the city's
4 preferred speakers by creating two classes of speakers and
5 then giving all the benefits of digital advertising to the
6 one class and placing additional burdens on the other class.
7 This violates rights to equal protection.

8 Saunders would respectfully request that the Court
9 enter judgment in its favor and enter a permanent injunction
10 against enforcement of the ordinance. Thank you, your Honor.

11 THE COURT: Thank you, Mr. Gilmore. Mr. Shipman.

12 MR. SHIPMAN: Thank you, your Honor. Good
13 morning.

14 THE COURT: Good morning, counsel.

15 MR. SHIPMAN: Start off today by saying, if we
16 look at who we have in the Court today, we have the city kind
17 of in the middle and we have Scenic Nevada on one end and we
18 have Saunders on the other end. They represent two opposite
19 sides of the spectrum in terms of billboards, what they want,
20 what they're looking for.

21 The city must have done something right at the end
22 of the day, because like any good compromise, you know,
23 you're never going to please everybody. And if everybody
24 walks away from the table feeling like they didn't get

1 everything they wanted, that really at its core is the nature
2 of democracy. That really is the conundrum of the city
3 council having to make tough policy decisions, having to
4 weigh, you know, different interests, public interests. For
5 instance, billboard clutter, how are we going to address
6 that? There's a number of ways that that can be addressed.

7 So what we're going to show today, and I think as
8 the parties have already talked about, very few of the facts
9 are in dispute. I think the record really stands as the
10 record. And so, you know, what we're going to show today or
11 what the city is going to show today relative to Scenic
12 Nevada, first off, is that, A, the digital billboard
13 ordinance and its predecessor, the conforming billboard,
14 banking billboard ordinance and the initiative, they do not
15 violate Article 19, section 2.3 of the Nevada Constitution.
16 That's the first thing that we're going to show.

17 We're going to show in addition to that --

18 THE COURT: Is that the amendment of initiative
19 petitions within three years?

20 MR. SHIPMAN: Yeah. That talks about how statutes
21 that are adopted by initiative can't be amended, annulled,
22 modified within three years and the city will show that
23 because the initiative itself is an ordinance and is not
24 subject to that particular provision of the constitution.

1 We'll talk about that.

2 We will also talk about the fact of the matter
3 that even if that is the case and it violates the Nevada
4 Constitution, the statute of limitations on challenging that
5 action is well beyond the pale. We're probably seven to
6 ten years beyond the applicable period of limitations for
7 challenging what the city has done with the initiative
8 petition. In addition, the city will show evidence that the
9 arguments relative to the digital billboard ordinance are in
10 fact moot.

11 Relative to the Federal Highway and Beautification
12 Act, we will have evidence, specifically, we will have --
13 well, we'll have evidence to show that the standards that the
14 highway beautification acts promulgates are essentially
15 exactly what is codified in the digital billboard ordinance.
16 They are very similar. There isn't any direct conflict.

17 To the extent that there is a conflict, our code,
18 city's code cannot pre-empt the Federal Highway and
19 Beautification Act. So it's just legally it doesn't have the
20 capacity to do so. We will show that.

21 Scenic Nevada also is alleging that the case,
22 Scenic Arizona versus the City of Phoenix, is totally on
23 point and the digital billboard ordinance should be struck.

24 THE COURT: On point?

1 MR. SHIPMAN: The argument is that the digital
2 billboard ordinance should be stricken because of the Scenic
3 Arizona case, and the city will, again, argue and show that
4 that's not the case. There's a big difference between what
5 the statutory framework was in Arizona versus what we have in
6 Nevada.

7 And then, finally, there's an allegation from
8 Scenic Nevada that the billboard ordinance is internally
9 inconsistent, because on one hand, it allows digital
10 billboards, and on the other hand, it says you can't have
11 flashing. We'll show how from a statutory interpretation
12 standpoint that needs to be reconciled. And, in fact, the
13 city council's permission to allow digital billboards is the
14 proper determination there.

15 Relative to the Saunders case, again, there's a
16 lot of agreement on those first two items, you know, the
17 first two prongs of the Central Hudson case. The city does
18 in fact have substantial government interest here. But we
19 want to talk about the removal requirement, specifically, and
20 for that we have Claudia Hanson, the city's planning and
21 engineering manager. She's going to walk through the
22 ordinance just to show how it works from a planning
23 standpoint to give a good framework and a good understanding
24 of what we're talking about here.

1 And it's going to be shown that the removal
2 requirements do in fact directly advance the city's interest
3 in decreasing billboard clutter, and, in fact, they are
4 narrowly tailored to serve those interests.

5 And then, finally, we'll look at the approval
6 process and show that there is no unbridled discretion that
7 is being wielded by the city here. These are very objective
8 criteria that have to be met for a digital billboard
9 ordinance to go up. If those criteria are met, the applicant
10 gets the billboard as a matter of right. So we want to make
11 sure that there's no confusion about exactly how much
12 discretion the city actually has to make those
13 determinations. So with that, I would thank you, your Honor.

14 THE COURT: Thank you. Mr. Wray.

15 MR. WRAY: Scenic Nevada calls Lori Wray.

16 (One witness sworn at this time.)

17 THE COURT: Mr. Wray.

18 MR. WRAY: Your Honor, preliminarily, the
19 Exhibit 222, first amended complaint, the annotated version
20 that the witness is referring to has been provided to your
21 clerk and to you.

22 THE COURT: Before we go any further, counsel,
23 let's get these exhibits into evidence.

24 MR. WRAY: I move all the exhibits into evidence,

1 your Honor.

2 THE COURT: Any objection?

3 MR. SHIPMAN: No objection, your Honor.

4 MR. GILMORE: No objection here, your Honor.

5 THE COURT: Thank you, Mr. Gilmore.

6 MR. WRAY: This annotated version refers to the
7 first 50 paragraphs.

8 THE COURT: Just a minute. Ms. Clerk, the
9 exhibits, plaintiff's 1 through 71 is admitted, 100 through
10 102 is admitted, 200 through 237 is admitted. I'm sorry,
11 Mr. Wray, a little housekeeping.

12 MR. WRAY: So I provided photocopies of this
13 Exhibit 222, if you will, with the annotations on it that the
14 witness is using for everyone to follow along, because we're
15 talking about a lot of numbers and a lot of exhibits and this
16 keeps a record.

17 LORI WRAY
18 called as a witness and being duly sworn did testify as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. WRAY:

22 Q. Would you please introduce yourself to the Court
23 and where you live.

24 A. My name is Lori Wray. I live at 2802 Outlook

1 Drive.

2 Q. Is that in Reno?

3 A. Yes, it is.

4 Q. How long have you lived in Reno?

5 A. 22 years.

6 Q. What is your business, profession or occupation?

7 A. I'm the office administrator for the Law Offices
8 of Mark Wray.

9 Q. And how long have you been the office
10 administrator?

11 A. Since the beginning of the business, for about
12 16 years.

13 Q. Now, where are you from originally?

14 A. Southern California, Long Beach, Lakewood.

15 Q. Where did you attend school?

16 A. High school Saint Anthony Girl's High School,
17 college Long Beach State.

18 Q. What year did you graduate?

19 A. From college, 1978.

20 Q. With a degree in what?

21 A. Journalism.

22 Q. What did you do with that degree?

23 A. I worked as a reporter for newspapers in Southern
24 California and then went back East in Boston.

1 Q. Now, what is Scenic Nevada?

2 A. It's a nonpartisan, nonprofit group that is
3 dedicated to the preservation and enhancement of scenic
4 beauty in Nevada.

5 MR. WRAY: Your Honor, I would point out that the
6 capacity of Scenic Nevada was admitted in the complaint.

7 BY MR. WRAY:

8 Q. When you first became involved with what this
9 Scenic Nevada organization or group, what year was it?

10 A. It was approximately the summer of 2003.

11 Q. At that time, in the summer of 2003, can you
12 identify for us from your recollection who the people were
13 that were the core group of Scenic Nevada?

14 A. Doug Smith, who was the founder of Scenic Nevada
15 and was probably the chairman of the board at the time.
16 Peter Chase Neumann was in the group, his wife Renati
17 Neumann, the Roskowskis.

18 Q. Just a second.

19 A. I'm sorry.

20 Q. Could you spell Roskowski?

21 A. R-o-s-k-o-w-s-k-i.

22 Q. Who else?

23 A. The Ronsheimers, R-o-n-s-h-e-i-m-e-r.

24 Q. Okay.

1 A. Chuck Swuezey was the treasurer at the time.

2 Q. How is his name spelled?

3 A. S-w-u-e-z-e-y. Is that enough or do you want more

4 people?

5 Q. If that's the core group. Is that the core group?

6 A. Scott Gibson, his wife Mercedes.

7 Q. What role did you have in the organization

8 starting from the beginning in 2003?

9 A. I was a member. I joined as a member in 2003.

10 Q. Then what happened?

11 A. The following year, I was asked to join the Board

12 of Directors, which I did. And then I think in 2005, I was

13 president and I was president for three years.

14 Q. So you were president in the year 2008?

15 A. No. I think I was done in 2007. I was just a

16 board member by 2008.

17 Q. Did something happen in 2008 that was an issue for

18 Scenic Nevada?

19 A. Yes.

20 Q. What was that?

21 A. Well, Councilman Dwight Dortch introduced -- asked

22 that the digital billboard -- I'm sorry. Dwight Dortch asked

23 that it would be agendized to put digital billboards in text

24 amendment.

1 Q. Do you recall what your understanding was at the
2 very beginning what it was that Mr. Dortch wanted to do?

3 A. Yes. I understood that he wanted to change the
4 ordinance that existed to allow billboards to be converted to
5 digital.

6 Q. Okay. And in response to that proposal to allow
7 digital billboards in the City of Reno, did Scenic Nevada do
8 anything?

9 A. Yes. At that first -- when he proposed it in late
10 January of 2007. Is that right? I'm getting -- no, it was
11 January 2008, we heard about it and Doug Smith and Neil Cobb
12 went to the meeting where it was actually agendized, and they
13 asked that the city council not move forward with the text
14 amendment on digital billboards.

15 Q. Beginning at that earliest date when it was first
16 proposed and continuing to when the digital billboard
17 ordinance was adopted, did Scenic Nevada continue to oppose
18 during those years?

19 A. Yes.

20 Q. The proposed adoption of a digital billboard
21 ordinance in Reno?

22 A. Yes. We opposed it throughout.

23 Q. Did you personally participate?

24 A. Yes, I did.

1 Q. Were there city council meetings?

2 A. Many city council meetings, yes.

3 Q. Were there planning commission meetings?

4 A. Yes, many.

5 Q. Were there workshops?

6 A. Yes.

7 Q. Over those years from 2008 until the adoption in

8 2012, how many different meetings did you personally attend?

9 A. I think there was probably close to 16, 17

10 meetings, and I attended all but the July 18th meeting and

11 then the first meeting where it was agendized where they said

12 should we move forward with the text amendment, I wasn't at

13 that one.

14 Q. Were other members of Scenic Nevada also present

15 with you during this process?

16 A. Yes.

17 Q. Did they speak in opposition or in support of the

18 proposed ordinance?

19 A. Always in opposition.

20 Q. Now, after the adoption of the ordinance in 2012,

21 there was a lawsuit filed, which is Exhibit 222. We call it

22 the First Amended Complaint to Invalidate City of Reno

23 Digital Billboard Ordinance. Are you familiar with this?

24 A. Yes, I am.

1 Q. Did you have a hand in proposing what we're
2 calling Exhibit 222?

3 A. Yes, I did.

4 Q. Did you draft some portions of it?

5 A. Yes, I did.

6 Q. In particular, what was your role in that?

7 A. Well, paragraph sort 1 through 50 has a lot to
8 with the history and the meetings and the record. Since I
9 was at those meetings and I was aware of the history, I
10 drafted those -- tried to draft those paragraphs.

11 Q. The first paragraph and the third paragraph --
12 well, as we look through the paragraphs, we see at the
13 beginning of paragraph number one, someone has handwritten in
14 the word denies and the word D, who wrote that?

15 A. I did.

16 Q. And you look at the next page, it has the letter A
17 and the word admits, who wrote that?

18 A. I did.

19 Q. Did you go through the entire complaint writing
20 like this?

21 A. Yes.

22 Q. What for? What were you trying to show?

23 A. Well, everything we said in our complaint was true
24 and for someone to deny it, it was hard to understand why

1 they would deny it.

2 Q. Who is they?

3 A. The city.

4 Q. Okay. So when the city denied an allegation of
5 the complaint, did you know that from their answer?

6 A. Yes.

7 Q. From the city's answer?

8 A. Yes, I did.

9 Q. Did you correspond the answer to the complaint?

10 A. Yes.

11 Q. And so the first paragraph starts off, the
12 citizens of Reno passed an initiative. What is this
13 paragraph's nature. What is it about?

14 A. It's actually just a summary, an introduction of
15 what's to follow in the case.

16 Q. The next paragraph is admitted, which is the
17 capacity of the plaintiff, the plaintiff Scenic Nevada as a
18 nonprofit Nevada corporation. That's admitted, correct?

19 A. Correct.

20 Q. But the next paragraph is denied. In this
21 paragraph, Scenic Nevada alleges that it's an aggrieved party
22 and has exhausted its administrative remedies, right?

23 A. Right.

24 Q. As far as the denial of the allegation that Scenic

1 Nevada is an aggrieved party, who was the sponsor of the
2 citizens initiative of 2000?

3 A. It was Scenic Nevada. They had a former name, but
4 it was Scenic Nevada that sponsored and drafted that
5 initiative.

6 Q. And who put the time into gathering the signatures
7 on the initiative?

8 A. The founders of Scenic Nevada.

9 Q. Specifically?

10 A. Doug Smith, Chuck Swuezey, Ronsheimer, Roskowski,
11 people like that.

12 Q. Now, there's an Exhibit 223 that gives a narrative
13 history of the organization. Are you familiar with that?

14 A. Yes, I am.

15 Q. In that history, does it layout what was done in
16 those formative stages before the initiative was passed?

17 A. Yes, it does.

18 Q. Who did that work? As a group, who did the work
19 for the citizens initiative to be passed?

20 A. As I recall, the Citizens for Scenic Reno. That
21 was the first name that they had.

22 Q. Now, in addition to being the sponsors of the
23 initiative, when the initiative was on the ballot and there
24 was a campaign going on, who were the people going out to

1 support the initiative through the campaign process?

2 A. The Citizens for Scenic Reno.

3 Q. Okay. You yourself are a member, right?

4 A. Yes.

5 Q. When you drive, do you see billboards?

6 A. Yes.

7 Q. And do you see on the streets of Reno places where
8 billboards are more common than others?

9 A. Yes.

10 Q. For example, your office is located where?

11 A. We're at 608 Lander Street not far from the corner
12 of California and South Virginia Street.

13 Q. As we drive that South Virginia Street from that
14 California intersection to the south, are there billboards?

15 A. Yes.

16 Q. Can you describe what it's like?

17 A. Well, it's like billboard alley. There's
18 billboards on either side of the street, every couple of
19 blocks. And sometimes the billboards are in disrepair.
20 Sometimes there is graffiti on the poles of the billboards.

21 Q. The advertisements themselves, do you have to see
22 those?

23 A. Yes.

24 Q. Are you subjected to the advertising that is on

1 the digital billboards on a daily basis?

2 A. Yes.

3 Q. And does this include not just the areas we talked
4 about, but the entire city?

5 A. Yes.

6 Q. If a digital billboard ordinance passes, is that
7 something that is inconsistent with the goals and mission of
8 Scenic Nevada?

9 A. Yes, it is.

10 Q. What is the goal and mission of Scenic Nevada?

11 A. To preserve, protect and enhance the scenic
12 character and scenic beauty of Nevada.

13 Q. How do billboards controvert that mission?

14 A. Billboards are public advertising on our tax
15 supported roads. They're -- we feel they're a blight in our
16 community. They detract from the neighborhood character.
17 They obstruct scenic views. And we're just subjected to
18 advertising that we can't turn it off, we can't turn the
19 page, we can't shut off the computer, it's always there.

20 Q. You have members, correct?

21 A. Yes.

22 Q. When you solicit members to your organization, do
23 you solicit those members through letting them know what your
24 mission is?

1 A. Oh, sure. Yes.

2 Q. If your mission is thwarted by the city allowing
3 billboards and specifically digital billboards, does that
4 harm your ability to increase your membership?

5 A. Well, yeah, it's very frustrating and sort of --
6 it's just a frustrating exercise. Every time we try to
7 protect scenic beauty, we are thwarted by the city's codes
8 that allow these things.

9 Q. When the digital billboard ordinance was proposed,
10 can you say how many hours, can you even estimate how many
11 hours of time the organization and its lawyers spent trying
12 to keep the digital billboard ordinance from being adopted?

13 A. It's hundreds and hundreds of hours.

14 Q. I want to turn now to whether Scenic Nevada has
15 exhausted its administrative remedies, which the city has
16 denied. Now, there's some exhibits, for example, Exhibit 41,
17 do you know what that is?

18 A. I think it's our -- let me look at it. It's the
19 paper work that we filled out to have an appeal and it's
20 dated February 8th, 2012.

21 Q. And what was Scenic Nevada appealing?

22 A. This appeal was a planning commission decision
23 that failed. The vote was 2 to 3, I believe, and the motion
24 was should the city continue to not allow digital billboards

1 and that failed and we appealed that decision.

2 Q. To whom?

3 A. The city council.

4 Q. What's Exhibit 46?

5 A. That would be the second motion.

6 Q. Is that a motion or an appeal?

7 A. I'm sorry. It's an appeal of a motion and a
8 planning commission recommendation to the city council to
9 approve digital billboards with regulations, and we appealed
10 that decision as well.

11 Q. When you say we, you mean Scenic Nevada?

12 A. Yes.

13 Q. Or yourself on behalf of it?

14 A. Yes, myself on behalf of Scenic Nevada, correct.

15 Q. As further evidence concerning whether Scenic
16 Nevada exhausted its administrative remedies or not, could
17 you look at Exhibit 52?

18 A. Yes.

19 Q. What is Exhibit 52?

20 A. It's minutes of a July 18th city council public
21 hearing and our appeal.

22 Q. So was there eventually a hearing to be held about
23 these appeals?

24 A. Yes. It was held on that date, July 18th.

1 Q. And so these minutes are prepared by whom?

2 A. The city clerk.

3 Q. Do they reflect that Scenic Nevada was prosecuting
4 an appeal?

5 A. Yes. It says this project was appealed by Lori
6 Wray on behalf of Scenic Nevada. This appeal will be heard
7 at this time.

8 Q. Taking another attack on this, showing evidence
9 that we exhausted administrative remedies saying we, being
10 Scenic Nevada. There's an Exhibit 205, which is an article
11 written by Susan Boyles of the Reno Gazette Journal dated
12 March 10th, 2008, just for taking us in that period of time.
13 How long after Mr. Dortch's proposal to allow digital
14 billboards did this article?

15 A. Well, that was February 13th, I think, so it's
16 about a month later.

17 Q. The headline is activists target LED lighting
18 billboards, correct?

19 A. Yes.

20 Q. Is activists in the story Scenic Nevada?

21 A. Yes.

22 Q. Now, Exhibit 225 is a CD disk of different things.
23 Is part of this CD disk that's in Exhibit 225 relate to the
24 subject matter of Scenic Nevada exhausting administrative

1 remedies?

2 A. Yes.

3 Q. Why how does it do that?

4 A. Well, a videographer came to Reno and filmed some
5 of the activity that was going on and was there on
6 February -- it was actually February 8th of 2012 when our
7 appeal was to be heard and he taped us trying to move forward
8 with our appeal. At that time, the city council asked that
9 it be postponed and our appeal be postponed and we wanted to
10 go forward.

11 Q. But the disk shows what? What does it actually
12 show on the disk?

13 A. Me up at the podium addressing the city council
14 trying to move forward with our appeal.

15 Q. Is there literally videotape evidence of Scenic
16 Nevada exhausting its administrative remedies?

17 A. Yes, because the city takes video of every public
18 hearing.

19 Q. Besides Exhibit 225?

20 A. Yes.

21 Q. Have you seen those videos of Scenic Nevada's
22 hearings?

23 A. Yes, I have.

24 Q. So can you conceive of any reason why the city is

1 denying that Scenic Nevada exhausted its administrative
2 remedies?

3 A. No.

4 Q. When at the end, did Scenic Nevada actually get a
5 ruling from the city council on its two appeals of the two
6 votes from the planning commission?

7 A. No, they didn't. They didn't rule on it.

8 Q. Did the city council nonetheless adopt the
9 ordinance?

10 A. They did.

11 Q. The city admits that it is a public subdivision of
12 the State of Nevada in paragraph four and it admits the
13 relief that's being sought in paragraph five. But in
14 paragraph six, the city denies that following repeated
15 attempts by Reno citizens to persuade the Reno Planning
16 Commission and Reno City Council to enact stronger billboard
17 controls, a grassroots volunteer organization called Citizens
18 for Scenic Reno formed on January 20th, 2000.

19 Would you look at Exhibit 33 just for a moment,
20 please? Specifically, Exhibit 33 being a multi-page copy of
21 Reno Planning Commission minutes. I'm directing your
22 attention to the page that's labeled COR 566. Are you at
23 that page?

24 A. Yes, I am.

1 Q. Directing your attention to the sections at the
2 bottom where it says, Mr. Smith explained, do you see that?

3 A. Yes.

4 Q. Mr. Smith explained that the final ordinance was
5 not what has been envisioned and that the 2000 petition was
6 the last resort to address Scenic Nevada's concerns. This is
7 in a November 5th, 2009 meeting, is that right?

8 A. Yes, planning commission.

9 Q. So Mr. Smith, the original founder, was still
10 appearing before the planning commission to remind them what
11 had happened in 2000?

12 A. Correct.

13 Q. Would you look at Exhibit 36? And, specifically,
14 there's a page I'm asking you to look at that is page number
15 585, COR 585. This is under the section of another planning
16 commission meeting in September of 2011 where the topic was
17 presentation and discussion from Scenic Nevada on how
18 technology has revolutionized the sign industry, et cetera.
19 And there's a paragraph that starts off, Chris Wicker will be
20 speaking on behalf of Scenic Nevada, right?

21 A. Correct.

22 Q. That Mr. Chris Wicker is who?

23 A. He's an attorney for Woodburn and Wedge and a
24 member of Scenic Nevada.

1 Q. What does he say in the second paragraph,
2 Mr. Wicker added?

3 A. That the planning commission did not pay attention
4 to the concerns of citizens. So their concerns were taken to
5 the city council who did not pay attention to the concerns of
6 the citizens at that time. So the citizens of Reno put forth
7 a ballot question to limit billboards in this community,
8 which was challenged vigorously by the billboard industry.

9 Q. And it goes on to describe some of that battle,
10 correct?

11 A. Correct.

12 Q. Now, the city has denied that following attempts
13 by Reno citizens to enact stronger controls, the city council
14 wouldn't do that, so the citizens acted themselves?

15 A. Correct.

16 Q. Did the people who actually took those actions in
17 2000 testify in hearings before the planning commission?

18 A. Yes.

19 Q. Now, Exhibit 223 -- I'm sorry to move you around
20 in these books.

21 A. That's all right.

22 Q. I know it's a little cumbersome up there. But
23 Exhibit 223 is one of the Scenic Nevada exhibits and it's
24 entitled, the billboard controversy in Reno and it's signed

1 on the first page by Charles F. Swuezey. Can you tell us
2 generally what is this exhibit?

3 A. It's a chronicle, too, a written one, a history of
4 the controversy in Reno, and what Citizens for Scenic Reno,
5 eventually renamed Scenic Nevada, went through to try to
6 limit or stop the proliferation of billboards in the city.

7 Q. Okay. And at the bottom of the first -- the
8 second page of this exhibit, which is Scenic Nevada 27, do
9 you see the author, Mr. Swuezey? You knew him to be whom?

10 A. Chuck Swuezey was the treasurer of Scenic Nevada
11 for many years.

12 Q. Was he there at the beginning with Mr. Smith?

13 A. Yes.

14 Q. And he's writing this about Smith and other Reno
15 residents voiced their concerns over the makeup of the
16 subcommittee, the fast track nature. Do you see this?

17 A. Yes.

18 Q. And their objections ignored, this is on the next
19 page, their objections ignored, Smith and his associates
20 decided to act, and it proceeds to tell about the actual
21 campaign to get the initiative on the ballot?

22 A. Yes.

23 Q. So as you look at that, can you understand or
24 comprehend how the city can deny the genesis of the citizens

1 initiative in the year 2000?

2 A. No. It doesn't seem possible.

3 Q. The next page of Exhibit 222, which is page three
4 at the top is paragraph number seven. And it simply says,
5 the Citizens for a Scenic Reno filed nonprofit articles on a
6 certain date in 2000. The city denies that. Do you have an
7 exhibit that shows that that in fact happened?

8 A. Yes. Exhibit 226 are incorporation papers with
9 the secretary of state's office.

10 Q. And Exhibit 223, which is the narrative, does it
11 also refer to this?

12 A. At the top of Scenic Nevada 29.

13 Q. So you have two exhibits to establish that fact.
14 Can you conceive of why the city would deny these things?

15 A. No.

16 Q. Paragraph eight is admitted that an initiative
17 petition was filed stating new off-premise advertising
18 display slash billboards in the City of Reno are prohibited
19 and the City of Reno may not issue permits for their
20 construction. That's admitted.

21 It's admitted in paragraph nine that opponents
22 filed a petition, that is, the opponents of Scenic Nevada,
23 stating off-premise advertising display billboards in the
24 City of Reno shall only be permitted on properties zoned

1 commercial and industrial. They admit that.

2 They admit, the next paragraph, that the
3 initiative, the ballot question R1 was put on the ballot
4 stating, the construction of new off-premises advertising
5 displays slash billboards is prohibited and the City of Reno
6 may not issue permits for their construction. So those facts
7 are admitted.

8 But the next paragraph is paragraph 11 and it
9 says, on July 29th of 2000, opponents withdrew their
10 initiative petition, stating the dueling petition drive
11 confused voters. The group will not concentrate its efforts
12 on defeating the referendum. Now, do you have Exhibit 223,
13 which is the narrative?

14 A. Correct.

15 Q. Tell us the specific quotation marks came from
16 what source within your records?

17 A. Our history is also on our website and I pulled
18 that quote off of our website. But it's also chronicled in
19 Chuck Swuezey's piece on what happened with billboards. And
20 on the bottom of page 32, Scenic Nevada 32 on Exhibit 223,
21 says that they withdrew their petition as well. It says,
22 when our petition was certified by the city, the billboard
23 people withdrew their phony petition.

24 Q. Next paragraph that the city denied as being

1 truthful was that Citizens for Scenic Reno spent about \$3,000
2 in a successful fight for passage of question R1. Opponents,
3 that would be the other people, we would call them the anti
4 people, Nevadans to Save Jobs and Fight Extremism, spent
5 \$226,823 fighting a losing battle to stop the petition.
6 Where does that information come from?

7 A. It comes from the same Exhibit 223, and it's on
8 page -- Scenic Nevada 31 at the top and it repeats that
9 number, that Eller Media reported spending \$226,823 to defeat
10 R1, while CFASR spend a total of \$3,221.

11 Q. The city admits the allegation in paragraph 13
12 that the opponents led by Eller Media as plaintiffs filed a
13 lawsuit in Court to stop the initiative from going on the
14 ballot. They admit that. The city admits that Judge Polaha
15 in this court found in favor of the city to keep it on the
16 ballot.

17 They admit, paragraph 15, that at the polls on
18 November 7th, 2000 of 57,782 votes cast, 32,755 or 57 percent
19 voted in favor of ballot question R1. They also admit that
20 those results in paragraph 16 of the complaint, first amended
21 complaint, those results were certified by the city on
22 November 14th, 2000. And we've got this law in place, which
23 is now, do you see the code section?

24 A. Yes.

1 Q. RMC 1816902 A?

2 A. Correct.

3 Q. Now, during the time that -- I want to stop for a
4 minute and diverge a little bit. You can see in your outline
5 I put Exhibit 219. Could you go to 219? Do you have that
6 open in front of you?

7 A. Yes, I do.

8 Q. Now, during the time of the years 2008 through the
9 year 2012, did you ever ask the question why the city did
10 this? Why did the city council after the ballot initiative
11 was passed, passed banking relocation and now digital
12 billboards if the citizens said no new billboards? Did you
13 ever ask the question they didn't follow that?

14 A. Yes, I did.

15 Q. Okay. Had you any information received from city
16 staff as this process went on of what their explanation was?

17 A. Can you rephrase that? I'm sorry.

18 Q. Sure. What was it that the city said or used as
19 an excuse as to why they had to do what they did back in
20 2000, 2001, 2002, passing the banking and relocation
21 ordinance?

22 A. Right. Throughout the hearings, I noticed that a
23 planning commission or city council person or staff person
24 might mention that there was settlement agreements that took

1 place between the billboard companies and the city. And
2 there was some sort of a need to be able to provide permits
3 and new construction. They didn't say it like that, but it
4 was always a talk of a settlement agreement.

5 And then there was also that came up quite a few
6 times, well, didn't we pass this ordinance because of the
7 trench boards? By that, I mean when the city built the
8 RETRAC, which the two-and-a-half-mile underground extension
9 of the railroad tracks, billboards were lined along and had
10 to be removed. That was sort of the excuse was we had to
11 remove these billboards, what were we going to do?

12 And so those were the things I was looking at and
13 I was trying to determine how that happened and why they came
14 to that conclusion.

15 Q. Exhibit 219 is a collection of documents and who
16 put this collection of documents together?

17 A. I did.

18 Q. The first page is what?

19 A. It's a reprint from the Nevada Revised Statutes
20 regarding results of elections as one item. And I underlined
21 the part where it says that when a ballot initiative is
22 approved, when does it become law? Well, it becomes law when
23 the vote is certified.

24 Q. The next page is a November 17th, 2000 document

1 from Dan Burke, the registrar of voters for this county, from
2 Donald Cook City Clerk of Reno. What is this letter in here
3 for?

4 A. He's certifying the results of the November 7th,
5 2000 election, which included the ballot initiative vote.

6 Q. That certification took place at what date?

7 A. November 14th, 2000.

8 Q. The next document in this packet is a docket sheet
9 from United States District Court for the District Court
10 Nevada case called Outdoor Media Dimensions versus City of
11 Reno.

12 A. Right.

13 Q. Why is this docket sheet in this exhibit packet?

14 A. I had heard about the settlement and I asked
15 Claudia Hanson from the planning department, what settlement
16 are we talking about? And she said -- she told me about this
17 one. And I said, could I get a copy of the settlement
18 agreement? And so this docket sheet is about that case and
19 that settlement agreement.

20 Q. As you go through the docket sheet to the most
21 recent latest dates, this is the dates around the time period
22 of the election and afterwards, you can see, I'm on docket
23 numbers 76, 77, 80, 79, those are the docket numbers and it
24 has action items, December 8th of 2000, December 13th of 2000

1 and December 13th of 2000, again, do you see that?

2 A. Yes.

3 Q. And these docket entries refer to what's
4 happening?

5 A. That the parties agreed to -- they stipulated and
6 agreed to a settlement and so the case was going to be
7 dismissed.

8 Q. The next question is called settlement agreement
9 and mutual release between Outdoor Media Dimensions and the
10 City of Reno, correct?

11 A. Yes.

12 Q. And when is this settlement agreement dated?

13 A. December 2000.

14 Q. And in the settlement agreement, did anything come
15 to your attention in particular that was important to your
16 analysis of why the city was doing what it did?

17 A. One month after the voters passed the ban on new
18 construction and new permits, the city signed an agreement
19 with a billboard company saying that they would give them
20 \$50,000 and grant them 12 billboard permits, new permits.

21 Q. Okay. And why was that of concern to you knowing
22 what the initiative said?

23 A. Well, the initiative says no new construction and
24 the city shall not issue permits for their construction, and,

1 in fact, the city one month after the vote was going to do
2 that.

3 Q. Not was going to, the exhibit shows they what?

4 A. They signed a settlement agreement that 12 permits
5 would be granted.

6 Q. In fact, that's what the last page of the
7 agreement says, their signature is right there?

8 A. Yes.

9 Q. To be bound?

10 A. Yes, they are bound.

11 Q. So given that, would it have been difficult for
12 the city to enforce an ordinance when a month after its
13 adoption, they're already issuing permits? Had they already
14 taken on a different agenda is what I'm asking?

15 A. Yes, they did, and they had to fix that, too.
16 They had to do something.

17 Q. Do you see the last couple of pages of the Exhibit
18 consist of a letter from the lawyer for Saunders Outdoor.
19 Why is this included?

20 A. Well, because he also identifies that settlement
21 agreement and as its date of December 2000. I thought that
22 was important, just --

23 Q. A month after?

24 A. Yes. And then the letter discusses what interests

1 they have in those boards and that those were the boards that
2 were granted, the permits that were granted through that
3 settlement agreement that found their way to Saunders.

4 Q. All right. Saunders' board in this case, at least
5 some of them, came initially to Saunders as a result of a
6 settlement agreement issuing permits after the 2000
7 initiative was adopted?

8 A. Correct. Yes.

9 Q. So you're answering the why question. We're
10 talking about the why question. Were there other settlements
11 referred to, other billboard companies that sued the city?

12 A. Yes. I think Yesco, and I'm not sure, but Clear
13 Channel alluded to a settlement agreement with Clear Channel
14 and I don't know about that, though.

15 Q. So the city had to deal with lawsuits?

16 A. Correct.

17 Q. Filed by billboard companies that were still
18 pending or ongoing at the time of the adoption of the
19 citizens initiative, right?

20 A. Uh-huh.

21 Q. What else did the city have to deal with? I'm
22 looking at Exhibit 202.

23 A. They had to deal with RETRAC and this is a
24 document that -- I found a booklet in city hall and it was

1 called Discover It and it's obviously a City of Reno booklet
2 describing projects in town and they had a page on RETRAC.
3 It didn't have a date on it, but it does say about RETRAC,
4 that the project start date was September 13th, 2002.

5 Q. What does that have to do with billboards?

6 A. Well, the ballot initiative was passed in 2000.
7 They started looking at -- in 2001, they started looking at
8 developing an ordinance that would incorporate the ballot
9 initiative, but they also were changing the regulations as
10 well. And while they were doing it, there were billboards
11 that had to be removed from the RETRAC project. And my
12 thought was that it was another part of their agenda. They
13 don't want to have to pay for the billboards as required by
14 state law, they wouldn't have to if they could bank them, if
15 they could bank the permits.

16 Q. So the next page of Exhibit 202 is an excerpt from
17 pages of the Reno Planning Commission minutes from
18 October 5th of 2011. Do you see in the middle of the page
19 there's Commissioner Romeo was asking a question to a
20 gentlemen named Mr. West?

21 A. Yes.

22 Q. Do you know who Mr. West is?

23 A. Yes. He represents Clear Channel Outdoors
24 throughout the hearings.

1 Q. He says in response to the question on the record,
2 he says, from Clear Channel's perspective, what?

3 A. The billboards that were banked from the train
4 trench project were not compensated for and there was a
5 settlement agreement that was entered into that actually
6 provided those banked receipts. The financial liability to
7 the City of Reno was transferred into the banked receipts.

8 Q. You also provided to me something that is not an
9 exhibit, but a copy of a banked receipt?

10 A. Correct.

11 Q. An actual piece of paper that is a banked receipt.
12 And it has to do with what we call Young Electric Sign
13 Company, Yesco?

14 A. Yes.

15 Q. On the banked receipt itself, what does the
16 receipt refer to as it relates to litigation?

17 A. Oh, the settlement, taken down in the settlement.

18 Q. You can't go back on the court records 12 years
19 and look at the documents that are in the file anymore, but
20 you can see on the banked receipt that Yesco had a lawsuit?

21 A. As well.

22 MR. WRAY: With the Court's permission, I'd like
23 the Court to look at a banked receipt.

24 THE COURT: Is it filed here in the District

1 Court?

2 MR. WRAY: It is filed in the court.

3 THE COURT: I'll take judicial notice of it.

4 MR. WRAY: I would like the Court to take judicial
5 notice of Young Electric Sign Company v. City of Reno.

6 THE COURT: All right.

7 MR. WRAY: CV02-03571.

8 THE COURT: The Court will accept that pursuant to
9 NRS 47.130. Go ahead, Mr. Wray.

10 BY MR. WRAY:

11 Q. Okay. So do you have a handle, you think, on the
12 why question, why the city did not want to literally stop the
13 construction of new billboards?

14 A. Yes. They had a different agenda. They could not
15 pay for all the billboards that they wanted to have come
16 down. So they could not allow the ballot initiative to
17 stand. They could not allow no new construction and they
18 could not allow -- they could not stop handing out permits,
19 because they didn't want to pay for the billboards that they
20 wanted to have come down.

21 Q. So they spent how many hundreds of millions? I
22 withdraw that. I apologize, your Honor. Paragraph 17, the
23 first part of this is admitted. The part that is denied is
24 the phrase, notwithstanding the mandate of the voters enacted

1 into law as RMC 1816902 A. Now, there's a line drawn up
2 there and it says formerly 1806920 and then it says, parens,
3 Exhibit 4. Do you see that?

4 A. Yes.

5 Q. What is that referring to for everyone's
6 edification?

7 A. In the banking of billboards -- I'm sorry. In the
8 banking and relocation ordinance, they had a different
9 numbering system.

10 Q. Was that an old numbering system?

11 A. Yes, that's the old one.

12 Q. What's the new number? Is it the 1816902 A?

13 A. Yes.

14 Q. Because there could be confusion, you wanted to
15 cross reference it?

16 A. Right.

17 Q. The numbering system has changed, but the actual
18 laws that were adopted for the banking and relocation have
19 been those laws since 2002, 2003?

20 A. Correct.

21 Q. Now, there's another cross reference here in the
22 exhibit under line ten. It says, the billboard banking and
23 relocation system, and above it is written 1806.950, and
24 that's also Exhibit 4, and that provision of codes relates

1 specifically to what?

2 A. The number of permits that you have to surrender
3 to get a new billboard.

4 Q. Okay. Is that banking?

5 A. Banking, yes.

6 Q. And relocation?

7 A. Yes.

8 Q. If we wanted to go to the exhibit to see the
9 banking and relocation system, would we be able to see it in
10 1806950, Exhibit 4?

11 A. Yes.

12 Q. Now, the city denied that the banking relocation
13 system allows a billboard company to remove a billboard in
14 one location and bank it for up to ten years until another
15 location is selected. They deny that using those banked
16 receipts, a billboard company could construct a new
17 billboard, often in a new location where no billboard stood
18 before by obtaining a new building permit for the new
19 billboard contrary to the mandate of the voters in ballot
20 question R1. They're denying that, that the system was new
21 billboards, new permits. So I would like you to look at
22 Exhibit 207 and what is Exhibit 207?

23 A. They are minutes from a Reno City Planning
24 Commission workshop held on September 20th, 2011.

1 Q. In particular in this exhibit, what did you want
2 to show to respond to this denial here by the city?

3 A. They say they're not -- the 39 new billboard, new
4 locations and things like that. In here, we have Aaron West
5 representing Clear Channel Outdoor and testifying at that
6 meeting. He said, as far as our opponent --

7 Q. Just a second. Where are you? On page SN 501?

8 A. Yes, I am.

9 Q. Where are you at?

10 A. It's the second full paragraph.

11 Q. What does it say?

12 A. As far as our opponents take on, for ten years
13 Clear Channel Outdoor has been working under the current
14 criteria. Within that ten years we have actually removed and
15 relocated 36 structures with new permits, new sites, new
16 structures under the current system.

17 Q. So the city is denying that you can take a
18 billboard down, bank it for up to ten years and move it to a
19 new location?

20 A. Correct.

21 Q. And here's Mr. West of the industry telling the
22 city in a city we've done that 36 times?

23 A. Yes.

24 Q. Can you understand how the city can deny that's

1 exactly what's going on?

2 A. No, I cannot.

3 Q. Exhibit 211, please.

4 A. Also, there's a picture on that other one, on 207.

5 Q. And?

6 A. It shows new construction on Market Street, a new
7 billboard being erected there.

8 Q. So we're at Exhibit 207, the second page is
9 photograph, who took the photo?

10 A. I did.

11 Q. It shows a truck with a crane and some pillars
12 made out of steel with a pole, a big steel pole there and you
13 took this picture to show what?

14 A. New construction of a new billboard erected along
15 395.

16 Q. When did you take that picture?

17 A. I believe it was in 2011.

18 Q. Whose billboard was this?

19 A. Yesco.

20 Q. Exhibit 211, please. Collectively, what is
21 Exhibit 211?

22 A. They are applications for erecting -- permit
23 applications to the City of Reno to erect a new billboard.

24 Q. The first one says received May 24th, 2011, has a

1 case number on it, and it says a parcel number. It's a
2 building permit application, right?

3 A. Right.

4 Q. The tenant is Yesco Outdoor Media. What is the
5 work they're seeking the permit to do?

6 A. To erect a new billboard.

7 Q. Does it say literally, erect a new billboard?

8 A. Yes. Under description of work, they write, erect
9 new billboard. And this is the application that went with
10 the last picture.

11 Q. That's the billboard we just saw the picture of?

12 A. Yeah, that's Market Street.

13 Q. The next page of the exhibit is, looks like a city
14 internal document?

15 A. Yes. It's an application status trail report
16 documenting the process of getting a new permit.

17 Q. I see under the same case number and the location,
18 it says, new billboard construction bank receipt Y 10, et
19 cetera, yes?

20 A. Yes.

21 Q. At this point, the city itself is saying this is
22 new billboard construction?

23 A. Yes.

24 Q. The next document?

1 A. Is another billboard permit application submitted
2 by Clear Channel Outdoor.

3 Q. This particular date is hard for me to locate, but
4 it says received July 3rd by -- it's not dated at all, but
5 its stamp says July 3rd of 2012, correct?

6 A. Yes.

7 Q. What is the description of work?

8 A. The description of work is new billboard structure
9 to replace two units removed by Moana Lane widening.

10 Q. So in paragraph 17, the city is denying that using
11 banked receipts, a billboard company could construct new
12 billboards in a new location where no one has been before by
13 obtaining a new building permit for the new billboard
14 contrary to the mandate of the voters, the city denies that?

15 A. Yes.

16 Q. Can you conceive of how they can deny that?

17 A. No. The next page is the actual building permit
18 that they granted them and it's dated September 4th, 2012.

19 Q. Could you turn to the page in the exhibit that is
20 COR 3959 at the bottom? It's an e-mail string.

21 A. I'm sorry, which exhibit?

22 Q. I'm sorry. I'm going too fast. I'm on the same
23 exhibit, 211, I passed through a couple more pages.

24 A. Okay.

1 Q. There's page COR 3924 and the next one is 3959,
2 correct?

3 A. Yes.

4 Q. It's an e-mail string, do you see it?

5 A. Yes.

6 Q. In this e-mail string, if you look at it, it's
7 between who?

8 A. Aaron West of Clear Channel and Daneilla Montero
9 who is a planner for the City of Reno.

10 Q. Ms. Montero says, the following permit has been
11 reviewed by the planning and placed on hold for the following
12 reasons, six reasons, right?

13 A. Yes.

14 Q. What's reason number six?

15 A. Please revise application to remove reference of
16 new, and that's in quotes, to remove reference of new
17 billboard as no new billboards are allowed in the city.

18 Q. So the billboard companies are saying the truth,
19 we're putting up a new billboard?

20 A. Yes.

21 Q. The city says, take out the word new, and then
22 it's not a new billboard?

23 A. Yes.

24 Q. Is that how silly this really is?

1 A. Yes.

2 Q. Exhibit 217, and this is a very long exhibit, I
3 would estimate as I hold it in my hand, you've got 150 pages
4 of photocopying here?

5 A. Correct.

6 Q. And this is a Scenic Nevada exhibit. How did
7 Scenic Nevada get this?

8 A. I requested it from the city's permit, it's called
9 permit place, and I asked to get all the documentation on the
10 Moana Lane new construction of a billboard, and this is what
11 they gave me in digital format and I had it printed out.

12 Q. So we're not going to go through this, but what is
13 in this?

14 A. Well, it starts obviously with the building permit
15 application and the geotechnical investigation. There's a
16 cover letter saying that this geotechnical firm will make
17 recommendations for the design and construction of the
18 project. It talks a lot about, and I don't understand it
19 all, but there's lot of engineering stuff about load and wind
20 and things like that. And it goes on to show the plans, the
21 designs of the new billboard. And it finishes up with a
22 chart that shows how the city followed the process of and to
23 approve the permit and allow the new construction.

24 Q. So the engineering behind the erection of one

1 digital billboard on Moana Lane looks like this?

2 A. It's actually a traditional billboard.

3 Q. Traditional billboard, one traditional billboard,
4 the engineering looks like this?

5 A. Yes.

6 Q. And the city is saying that's not new
7 construction?

8 A. Correct.

9 Q. The city denied paragraph 18, the adoption of the
10 banking relocation system effectively repealed the ballot
11 initiative barely 14 months after it was approved by the
12 voters. Do you have an exhibit to show us on that?

13 A. 220.

14 Q. What is Exhibit 220, please?

15 A. It's a memorandum from the city attorney to the
16 city council dated May 8th, 2003.

17 Q. Now, the author of the memorandum is the City
18 Attorney's Office? Did I say that right?

19 A. Chief Deputy City, it said.

20 Q. And the subject matter of the memo is written in
21 the subject line, what does it say?

22 A. Constitutionality for billboard regulation and
23 legality of ordinance allowing relocation of billboards.

24 Q. Okay. And it's dated what date?

1 A. May 8th, 2003.

2 Q. And in any part of this memorandum, does the City
3 Attorney's Office refer to discussing the billboard
4 initiative of 2000 with Scenic Nevada?

5 A. Yes. It's on page three of six.

6 Q. Okay. Could you take us there?

7 A. Yes.

8 Q. Which part on page three?

9 A. If you draw your eyes down to the first big
10 paragraph, in the middle, it says that Doug Smith, chairman
11 of Scenic Nevada, has adamantly insisted that relocation of
12 existing billboards is prohibited under the initiative and
13 that it was never the intent of the drafters of the
14 initiative to merely place a cap on the number of billboards.

15 Q. And that's evidenced in the city attorney's own
16 handwriting on his own memo to the city council on May 8th of
17 2003?

18 A. Correct.

19 THE COURT: Mr. Wray, would this be a good time to
20 take our morning break?

21 MR. WRAY: Absolutely.

22 THE COURT: Thank you. Ms. Wray, you may step
23 down. Watch your step, please.

24 THE WITNESS: Thank you very much.

1 THE COURT: Counsel, be seated here for a second.
2 I just wanted to try and get an overview for case management
3 purposes. I'm certainly going to permit all sides to present
4 whatever evidence they feel is important for this Court to
5 consider before it renders a decision. However, just because
6 we have time doesn't mean that we have to use it.

7 Perhaps if going through this complaint, if we can
8 just focus not on the items that are admitted, I will
9 certainly listen to that in closing arguments, and they're
10 important terms of a contextual understanding of your
11 argument, but just for purposes of our record and putting the
12 evidence into the record, if we can just focus on those
13 matters that are denied or disputed. I'll certainly accept
14 those allegations that have been admitted as having been
15 established as fact. But that might more clearly focus this
16 Court on what's in dispute as opposed to what is admitted and
17 what's agreed to by parties.

18 MR. WRAY: You understand, I had a motion for
19 summary judgment against me before the trial started. I said
20 that there are disputed issues of fact, because the city
21 denied these allegations. Had they admitted them, I wouldn't
22 have to put on any evidence. But I feel compelled because of
23 the record in a case that has been referred to as one of
24 first impression to make sure that the record shows that

1 every single allegation of a factual nature that was put
2 forth in our first amended complaint is in fact true.

3 THE COURT: I'm not going to preclude you from
4 doing that. I'm just saying, if it's admitted, then it's
5 admitted as true.

6 MR. WRAY: I will not refer to admitted paragraphs
7 from this point forward.

8 THE COURT: Thank you very much. This Court's in
9 recess.

10 (A short break was taken.)

11 THE COURT: Ms. Wray, if you want to resume the
12 stand, please. You remain under oath. Mr. Wray, your
13 witness.

14 BY MR. WRAY:

15 Q. Looking at the second half of paragraph 18 of the
16 first amended complaint, Exhibit 222, we're now in the part
17 where we're talking about an allegation that relocation would
18 be permitted. And then it says, the defendant city council
19 again amended the sign ordinance shortly thereafter to
20 formally establish a permit bank. Could you look at
21 Exhibit 203?

22 A. All right.

23 Q. What is Exhibit 203?

24 A. It's the banking and relocation ordinance.

1 Q. When you look at Exhibit 203, it's dated -- do you
2 have the date? Besides your handwriting at the top where it
3 says 2002?

4 A. 2002, yes.

5 Q. In the back it's dated 2003?

6 A. Yes.

7 Q. By this ordinance, can you see, there's language
8 in here, formally establishing the bank?

9 A. Yes. It says in the third whereas, that a legally
10 established off-premise advertising display may be relocated
11 to a bank.

12 Q. Moving on to paragraph 19, the city denied that
13 the Citizens for Scenic Nevada changed its name to Scenic
14 Nevada. Is that a fact?

15 A. Yes, it is.

16 Q. Are there Exhibits 223 and 226 to prove it?

17 A. Yes. Specifically on page 37, it describes that,
18 SN 37.

19 Q. In the first amended complaint, the next paragraph
20 that the city denied was a paragraph numbered 21. And in
21 this paragraph, there's a discussion about why there was a
22 need to adopt a digital billboard ordinance, do you agree?

23 A. Yes.

24 Q. It says, during the years 2002 through 2012, all

1 billboard lighting was required to be directed toward the
2 billboard and not toward the street. This requirement was
3 codified in 1816905 L. And, of course, what was the
4 counterpart old numbering system?

5 A. In Exhibit 4, it's codified as 18.06.930 K.

6 Q. Okay. And these two provisions are two different
7 numbered, both provided what, or both provide what in
8 shorthand?

9 A. That the billboard lighting has to shine towards
10 the billboard and can not be into the street.

11 Q. Because of that, could you have a digital
12 billboard?

13 A. No.

14 Q. Now, the city has denied that. So were you
15 present for the deposition of Dwight Lionel Dortch?

16 A. Yes, I was.

17 Q. Could you turn to Exhibit 200, page 83, please?

18 A. Okay.

19 Q. I'm referring you to the discussion that starts
20 off with the question, is digital billboard new technology,
21 and his answer was?

22 A. It says, yeah, it's new technology.

23 Q. Go ahead.

24 A. That's the reason we had to change it, because our

1 ordinance was outdated on the way that you could light a
2 billboard. That was really the only thing that was wrong
3 with the ordinance was just the way you could light a
4 billboard. And as long as we fixed that language, then
5 digital billboards would have been fine.

6 Q. This is paragraph 25 talking about that very law
7 that had to be changed in Mr. Dortch's opinion, right?

8 A. Yes.

9 Q. And it says, light had to shine, the regulation
10 says --

11 A. Light has to shine towards the billboard.

12 Q. Paragraph 22, City of Reno alleges in this
13 paragraph, on February 13th, 2008 a majority of the Reno City
14 Council led by Councilman Dwight Dortch, and that part is
15 denied, and the rest of the paragraph is admitted. So
16 they're denying that Mr. Dortch led the city council in this
17 measure. Could you look at Exhibit 39 in the same exhibit we
18 were just in, that's Exhibit 200?

19 A. Correct.

20 Q. What do you see at page 39 relative to whether Mr.
21 Dortch was the leader of this measure?

22 A. First he says, I don't know what that quote,
23 unquote, led by refers to. And the question is, the person
24 who initiates and asks for the action to be taken. That's

1 what we're asking. That's what we're saying. Is that false?
2 And the answer is, no, I think that's fair.

3 Q. So in his deposition, he was referred to this very
4 statement in the first amended complaint, Mr. Dortch was?

5 A. Yes.

6 Q. He was asked, is that true?

7 A. Yes.

8 Q. And what was his answer?

9 A. Yes, it is true.

10 Q. Now, page 77 of his deposition, was Mr. Dortch
11 asked in his deposition how it came to be that he was
12 proposing to change the billboard initiative?

13 A. Yes.

14 Q. Billboards from static to digital?

15 A. Yes, he was asked.

16 Q. Did he give an answer?

17 A. Yes.

18 Q. What was it?

19 A. That the representative of Clear Channel Outdoor
20 had approached him and asked him to put it on the agenda.
21 That's at the top of page 77. He says, if my recollection is
22 correct, someone from Clear Channel approached me and asked
23 me to put it on the agenda.

24 Q. Okay. Paragraph 23 -- before we get to paragraph

1 23, I have a note in here about upgrade. You heard the
2 mention this morning of upgrade. Did you hear that during
3 the hearings?

4 A. Yes.

5 Q. And the upgrade meaning what?

6 A. They think it's an improvement, but we don't.

7 Q. How is it an improvement, according to them?

8 A. Because it's easier to change the advertising
9 message and you can put more ads on our tax supported roads
10 so that we're just always having to deal with more
11 advertising.

12 Q. So the digital billboard ordinances is an
13 outgrowth of something and it's being referred to as an
14 upgrade here today by Saunders Outdoor?

15 A. Correct.

16 Q. And by who else, do you remember specifically
17 calling it an upgrade?

18 A. I think Councilman Dortch did.

19 Q. And Scenic Nevada is not agreeing that a digital
20 billboard is an upgrade to static?

21 A. No. We don't agree with that. We don't think
22 that it's an improvement, no.

23 Q. Why don't you see it as an improvement?

24 A. Because it puts more advertising on the streets in

1 which we have voted to say that we wanted less of that.

2 Q. When you have a static billboard, do you have a
3 light shining on it at night?

4 A. Yes.

5 Q. In the daytime, it's not?

6 A. No.

7 Q. When you have a digital billboard, does the light
8 ever stop?

9 A. No, it's 24/7, and it's flipping every eight
10 seconds, one ad after another.

11 Q. If you look at a digital billboard as any
12 billboard would as a public nuisance, if you look at it that
13 way, if have a more prominent billboard that's more
14 noticeable that's even harder to ignore, is that an
15 improvement?

16 A. No.

17 Q. Is that an upgrade?

18 A. No.

19 Q. Could you look at paragraph 23? In this
20 paragraph, Scenic Nevada defines digital billboards as
21 computer controlled variable message electronic signs, whose
22 informational content can be changed or altered by means of
23 computer driven electronic impulses. If nothing else, you
24 agree we should have at least a common definition of what a

1 digital billboard is?

2 A. Correct.

3 Q. Is there such a place to find a definition?

4 A. In the digital billboard ordinance that was
5 approved in 2012 and it's the City's Exhibit --

6 Q. Exhibit 3, perhaps?

7 A. Yes, Exhibit 3. Sorry.

8 Q. Does Exhibit 3 actually have something at COR 21
9 in Exhibit 3?

10 A. Yes. But before that is COR 5. In the ordinance
11 introduction it says that -- sorry. It talks about
12 definition of signs to establish additional standards
13 regarding digital off-premise advertising displays, including
14 light emitting diode, LED.

15 Q. That's the title of the ordinance, right?

16 A. Correct.

17 Q. It's right in the title, it says light emitting
18 diode digital --

19 A. LED, yes.

20 Q. And then in the ordinance?

21 A. In COR 21, the first full paragraph at the top, it
22 says --

23 Q. What does it say?

24 A. Computer controlled variable message electronic

1 signs, period. These signs whose informational content --

2 Q. These are signs?

3 A. Sorry. These are signs whose informational
4 content can be changed or altered by means of computer driven
5 electronic impulses.

6 Q. So when Scenic Nevada defined a digital billboard,
7 it used the definitions that the city used in its own digital
8 billboard ordinance?

9 A. Yeah, that everybody was using.

10 Q. And the city denied Scenic Nevada's allegation?

11 A. Yes.

12 Q. So it also says in Scenic Nevada's complaint, LED
13 bulbs turn off and on every eight seconds?

14 A. Correct.

15 Q. Is there a part in the same statute, in the same
16 exhibit where exactly the definition of a digital billboard
17 is contained?

18 A. COR 10.

19 Q. And it says?

20 A. Each message or copy shall remain fixed for a
21 minimum of eight seconds.

22 Q. Now, Scenic Nevada also alleges this goes on, this
23 changing of messages every eight seconds goes on day and
24 night?

1 A. Yes.

2 Q. Is that in fact what happens?

3 A. Yes.

4 Q. In the ordinance, it allows it day and night?

5 A. Yes.

6 Q. It doesn't say only in the daytime, only in
7 nighttime?

8 A. No.

9 Q. Paragraph 24, the city denied that paragraph. It
10 says digital billboard displays are by definition a new type
11 of billboard using new technology and requiring mostly new
12 construction and new building permits.

13 A. Correct.

14 Q. If you turn, if you still have Exhibit 200, which
15 is Mr. Dortch's deposition in front of you --

16 A. Yes.

17 Q. -- to pages 68 and 69 and tell me what Mr. Dortch
18 said about the subject matter of digital billboards being new
19 technology?

20 A. Well, the question is, do you understand what I'm
21 saying? There's no question a digital billboard is something
22 new, it's new technology, isn't it? It his answer is, it is
23 new technology, correct.

24 Q. Now, the city also denied, though, that it

1 requires mostly new construction and new building permits,
2 right?

3 A. Yes.

4 Q. And you then referenced exhibits we've seen
5 before, remember the photograph, Exhibit 211, of Market
6 Street?

7 A. Yes.

8 Q. The new permits in Exhibit 211?

9 A. Yes.

10 Q. Exhibit 217, which is?

11 A. The other Moana Lane widening billboard.

12 Q. The exhibit I held up that had all those pages in
13 it?

14 A. Yes.

15 Q. For the engineering needed for one static
16 billboard?

17 A. Yes. That shows new construction and new building
18 permits, yes.

19 Q. But also there's an Exhibit 218?

20 A. Yes.

21 Q. And Exhibit 218 appears to be a printout of an
22 article written by Brian Johnson February 4th, 2014.

23 A. Correct.

24 Q. And how did you get this exhibit?

1 A. I heard about it through an e-mail contact, and
2 Scenic Nevada is an affiliate of Scenic America, and across
3 the country, we keep in touch with each other over digital
4 issues and billboard issues. And we found out from them that
5 this story had been written and the state of Minnesota had to
6 pay Clear Channel Outdoor, \$4.32 million to remove one
7 digital billboard because of a road improvement project. And
8 they thought it was the first digital billboard removal in
9 the country.

10 Q. So as opposed to the cost to a municipality of
11 allowing a billboard company in to build a static board and
12 then having to build a train trench or widen Moana Lane and
13 replacing the static board --

14 A. Uh-huh.

15 Q. -- the cost to the municipality here in this case
16 for a digital billboard is exponentially larger?

17 A. Yes. Because regular billboards, if you look on
18 the permit application, they ask the value. They have
19 \$100,000. We're told that these digitals cost between 250
20 and \$300,000 just to erect. And then, of course, they have a
21 multiple advertising for multiple years, which is far greater
22 than it would cost to take down a traditional billboard and
23 pay for it.

24 Q. So the question then becomes, you're talking here

1 about a new technology requiring new construction, new
2 building permits, does it have a whole new thing?

3 A. Yes.

4 Q. Compared to what we had before?

5 A. Yes, and it has a big cost.

6 Q. All right. The next paragraph was 25, the city
7 denied that, too. They denied that on April 25th, 2008, very
8 soon after Mr. Dortch's announcement that he wanted this to
9 happen, the community development department held a workshop
10 to gather suggestions, ideas and recommendations for
11 inclusion in the proposed draft ordinance. Representatives
12 from the billboard industry and Scenic Nevada attended. And
13 you have Exhibit 227?

14 A. Yes.

15 Q. And 227 is?

16 A. It's e-mails exchanges between staff and the
17 stakeholders inviting them to a workshop.

18 Q. Did you attend?

19 A. Yes.

20 Q. You yourself?

21 A. Yes.

22 Q. Did Scenic Nevada attend besides yourself?

23 A. Yes.

24 Q. Exhibit 206?

1 A. That shows the fallout or the outfall from that
2 meeting was a draft ordinance, and 206, Scenic Nevada 202
3 says, it's an e-mail exchange from -- actually, it's from
4 Claudia Hanson to the stakeholders. It says that this
5 ordinance was produced by staff based upon the ideas,
6 suggestions and recommendations made during the workshop held
7 by the City of Reno on April 25th, 2008.

8 Q. And do you have any conception why the city is
9 denying that that happened?

10 A. No, I don't.

11 Q. Okay. Exhibit 2222, continuing the next page,
12 paragraph 26, this paragraph simply says that at all times
13 since the initial draft, and we just looked at Exhibit 206,
14 the text amendment for the proposed digital billboard
15 ordinance was based upon and depended upon the banking and
16 relocation system. Now, you have exhibit marked here 227.
17 Again, what is that exhibit?

18 A. Well, it shows that the first -- that's the
19 invitation to the workshop and it also shows the discussion
20 items that were going to be discussed at the workshop. And
21 in the discussion items is a -- it's got draft ideas for an
22 actual ordinance to allow digitals. And on Scenic Nevada
23 300, it talks about removal requirements. And in that
24 paragraph, it says that the removal of one existing

1 off-premises sign or redemption of three banked receipts. So
2 you can see that they're using the idea of banking and
3 relocation from the get-go, from the very first draft.

4 Q. You heard counsel for Saunders Outdoor this
5 morning talking about the fact that this is all about ratios
6 and returning and using, turning in banked receipts?

7 A. Banked receipts.

8 Q. In order to get a digital?

9 A. Yes.

10 Q. In fact, was that exactly what happened, what they
11 were proposing from the very beginning and all the way
12 through to the adopted ordinance?

13 A. Yes.

14 Q. Again, can you understand why the city is denying
15 this?

16 A. No.

17 Q. Paragraph 27 starts off with a phrase, due to
18 meddling by some city council members, right?

19 A. Yes.

20 Q. The proposed ordinance became bogged down in a
21 series of continuances. Can you explain just briefly how
22 long this bogging down took place, what years, what time
23 period?

24 A. Well, it started in 2009.

1 Q. Okay. That was March and April. When was the
2 next time they actually came forward and did anything?

3 A. I think it was 2011.

4 Q. You can see in the progress of the paragraphs.
5 I'll ask that question in a different way.

6 A. I get confused.

7 Q. In Exhibit 206, which we have in front of us,
8 right?

9 A. Yes.

10 Q. What was happening there?

11 A. This was the -- I actually just described it in
12 the previous, but what we're doing is they're inviting
13 stakeholders to look at the draft ordinance that was
14 developed from the workshop and the --

15 Q. Then what happened to that draft?

16 A. It got pulled.

17 Q. And were you present as this was happening, as
18 part of the workshop, as part of the next meeting, as part of
19 the next --

20 A. Yes. If you flip through this exhibit, you'll see
21 e-mail strings between staff and then -- telling staff that
22 they need to pull that draft and you're not going to take
23 that to the planning commission and it didn't along with the
24 scope and the intention of what Councilman Dortch wanted, and

1 you got to pull that back and limit the scope of the draft
2 the ordinance.

3 So the next e-mail on Scenic Nevada 202, it shows
4 staff telling us that they're pulling the draft, the scope is
5 going to be limited and you're allowed -- stakeholders are
6 allowed to propose alternatives, but that's all you can do is
7 just make a proposal. That it is not going to be --

8 Q. Originally, the council took some action
9 originally. What action did Mr. Dortch get the council to
10 take in 2008? Initially, what did he want to happen?

11 A. A text amendment.

12 Q. And he proposed that text amendment to change
13 what?

14 A. The off-premise advertising sign ordinance to
15 allow digital billboards.

16 Q. And how did he propose to do that?

17 A. To send it to the planning commission and draft an
18 ordinance.

19 Q. So now you're in front of the planning commission
20 and even though you were in front of the planning commission,
21 was Mr. Dortch still involved?

22 A. Yes.

23 Q. Can you look at Exhibit 206, the second page at
24 the bottom. This is Mr. Hester writing internally to people

1 named Marilyn and Cara, right?

2 A. Yes.

3 Q. He says in the beginning, and this the bottom half
4 of the page on SN 188, this is to clarify the scope of the
5 code amendment on billboards initiated by council at the
6 request of Dwight Dortch, right?

7 A. Yes.

8 Q. He says at the bottom, let me know if you need any
9 more information, ask questions et cetera. Otherwise, this
10 is the scope of the amendment that I and Councilman Dortch
11 are expecting, thanks, John Hester, Community Development
12 Director, right?

13 A. Uh-huh.

14 Q. So when Scenic Nevada alleges in the complaint,
15 due to meddling by some city council members, it became
16 bogged down in a series of continuances, is that in fact
17 exactly what happened?

18 A. Yes.

19 Q. It also says that Dwight Dortch was pushing the
20 interests of the billboard industry, a bit little of a
21 provocative statement. Do you know that to be true, too?

22 A. Yes.

23 Q. How do you know that, among other ways? Look at
24 his deposition, Exhibit 200. Do you remember being present

1 for his deposition?

2 A. Yes.

3 Q. Does Dwight Dortch have a financial relationship
4 with billboard companies due to his being elected to public
5 office?

6 A. Yes. He stated in his deposition that he was --
7 he purchased or got in kind billboard advertisements in all
8 three of his campaigns and that also that the billboard
9 industry donated campaign money to his campaigns and he was
10 pretty sure it was Clear Channel for all three, but he didn't
11 have the documents.

12 Q. He could not remember any other billboard company
13 other than Clear Channel, if I recall.

14 A. He said they might have, but he was very -- more
15 certain that it was Clear Channel Outdoor that had
16 contributed.

17 Q. Did he talk in his deposition, and the deposition
18 is in evidence, at the pages we've referenced here in your
19 outline about his relationship with the billboard industry,
20 as far as his personal communications when it came to the
21 digital billboard ordinance?

22 A. Yes. He said that they would contact him and he
23 would meet with them. He might have met at their office and
24 they probably had e-mails and telephone calls. And he

1 also --

2 Q. Go ahead.

3 A. Well, he said on page -- sorry. I lost it.

4 Q. It's all right. We're moving along here. I just
5 wanted to establish a point that the city denied that Mr.
6 Dortch was pushing the interest of the industry.

7 A. Well, I can't find the reference, but I remember
8 he said in his deposition that you asked if -- he was asked,
9 what did you talk about? And he said, well, all the things
10 they wanted, all the regulations and things they wanted in
11 the ordinance.

12 Q. I believe it's at page 22 to 25, your Honor. Now,
13 did Mr. Dortch want any restrictions whatsoever on digital
14 billboards compared to static billboards?

15 A. No. He believed they were the same.

16 Q. How do we know that? How do we know that's
17 exactly what he wanted?

18 A. I think it's in his deposition, but I also met
19 with him personally, Sue Smith and I, the president of Scenic
20 Nevada, and he said that in a personal conversation that he
21 didn't see a difference between the two. But I think it's in
22 here, too.

23 Q. What about his connection and involvement with the
24 mayor and a gentlemen named Chris Barrett? How did that come

1 up?

2 A. I was at a public meeting on digital billboards,
3 I'm pretty sure it was planning commission, but not positive.
4 And the Clear Channel Outdoor Group was sitting in front of
5 us, along with John Frankovich, the attorney, and I noticed a
6 gentlemen I'd seen before on other issues and I just looked
7 at him and I said, what are you doing here? And he said, I
8 was hired to be here. And I said, to do what? And he didn't
9 answer me and he sat down. And John Frankovich turned around
10 and he said to me, he's the fixer.

11 Q. He's the fixer, Chris Barrett. And did this come
12 up in Mr. Dortch's deposition, too, who Chris Barrett is?

13 A. Yes. Because apparently the e-mails -- throughout
14 the process, we would have our supporters and friends and
15 members send e-mails to the city council about their
16 objections to digital billboards, to show them that there was
17 support in the community to not have digital billboards. And
18 Chris Barrett apparently had asked Dwight Dortch to forward
19 the e-mails concerning digitals to him and there's an e-mail
20 in the exhibit.

21 Q. About Mr. Barrett?

22 A. Yes. The e-mail is from -- my memory is that the
23 e-mail is from Councilman Dwight Dortch to Chris Barrett and
24 it just says, FYI, do you want the rest, or something like

1 that.

2 Q. And according to Mr. Dortch, Mr. Barrett is the
3 mayor's what, do you call it?

4 A. Friend.

5 Q. Friend.

6 A. Yes.

7 Q. And did you notice who Mr. Barrett was working
8 for?

9 A. Clear Channel Outdoor.

10 Q. And Mr. Frankovich represents Clear Channel, does
11 he not?

12 A. Correct.

13 Q. And his protege on the city council is who?

14 A. Naomi Jardine.

15 Q. She's elected to the current council?

16 A. Correct.

17 Q. She works for McDonald Carano?

18 A. Correct.

19 Q. And for Mr. Frankovich at this time still?

20 A. Yes. That's what I've been told.

21 Q. So they got that going for them, don't they?

22 A. Yes.

23 Q. Exhibit 31, this is paragraph 28, a new draft was
24 being circulated. The city admits it was happening on

1 May 6th of 2009, but the draft was pulled. And then Scenic
2 Nevada alleges, the city staff reported it was awaiting the
3 results of a federal safety study. But two weeks later, at
4 the city council meeting, members of the defendant city
5 council instructed Hester, regardless of the safety studies,
6 he was to move forward with the draft ordinance. Don't wait
7 for the safety studies, correct?

8 A. Correct.

9 Q. City denies that, denies that it happened.

10 A. Well, it's in the minutes of the meeting.

11 Q. Could you look at Exhibit 31?

12 A. Okay.

13 Q. What does it say?

14 A. Well, the motion -- well, it shows that the
15 billboard -- the staff made a presentation. They recommended
16 they hold the -- they stop -- that they hold the draft, they
17 don't move it through the process until after the highway
18 administration releases the study. The billboard industry is
19 there urging them to go forward. Scenic Nevada is there
20 urging them to wait until after the study is out. And then
21 the council at the table discussion unanimously agrees to
22 move it forward and the motion was made and seconded to move
23 it through the process and that's what they did.

24 Q. That's the third page where it says, motion

1 carried with council persons Hascheff and Zadra absent, the
2 third page of Exhibit 31, motion carried?

3 A. Yes.

4 Q. Now, Exhibit 234, you put in here to give some
5 color or depth to what had just happened. Exhibit 234 is
6 what?

7 A. That was the news story that came out, that Reno
8 Gazette Journal news story that came out after that meeting,
9 after that city council meeting, and it says --

10 Q. Is this the new news story that quotes the council
11 members about their action?

12 A. Yes.

13 Q. In not waiting for a safety study, but going
14 forward anyway?

15 A. Yes.

16 Q. And you circled one?

17 A. Yes. What the mayor said, I haven't seen anything
18 about running off the road or running over Aunt Nellie
19 because of distracting billboards, Mayor Bob Cashell said.

20 Q. So with that logic, the council went forward?

21 A. Yes.

22 Q. Look at paragraph 30, it says a denial of
23 paragraph 30, and it says citizen opposition to new
24 billboards remain strong and according to the results of a

1 study or survey, if you will, a poll.

2 A. I'm sorry. What exhibit?

3 Q. It's Exhibit 228, but we're at paragraph 30,
4 talking about the poll. And what is Exhibit 228?

5 A. Scenic Nevada commissioned a poll of registered
6 Reno voters.

7 Q. By whom?

8 A. RJ Ross.

9 Q. Where is that located?

10 A. Portland, Oregon.

11 Q. Did they do a poll?

12 A. Yes.

13 Q. Did Scenic Nevada report the results of that poll
14 at the city council and planning commission meetings?

15 A. Yes. And there was a newspaper story, too.

16 Q. Whatever it says in here about what the results of
17 the poll were, did it actually happen that there was a poll?

18 A. Yes.

19 Q. That it was done by someone from the outside and
20 it was reported to the city when the results were received?

21 A. Yes.

22 Q. And that's Exhibit 228?

23 A. Yes.

24 Q. But the city denies that happened?

1 A. Yes.

2 Q. Can you understand why?

3 A. No.

4 Q. Now, paragraph 31, the city only denied a small
5 part of paragraph 31, but it said, the proposed digital
6 billboard ordinance did not resurface until May 24th, 2011.
7 Do you remember we were talking about that being slowed down?

8 A. Yeah.

9 Q. From 2009 to 2011?

10 A. Correct.

11 Q. Because of meddling?

12 A. Yes.

13 Q. It says, the proposed digital billboard ordinance
14 did not resurface until May 24th, 2011, and you brought in
15 Exhibit 235, which is what?

16 A. They're e-mail exchanges between Claudia Hanson
17 and myself and also Claudia and the stakeholders and the
18 newspaper story.

19 Q. The e-mails are you doing what?

20 A. I'm asking her when things are going to start
21 happening again. No. I apologize. She's e-mailed to me,
22 it's an e-mail string, and she says, okay, let's get this
23 going again. I'm looking at having a workshop on May 24th at
24 4:00. Does this time work for you?

1 Q. One of the exhibits, one of the pages of this
2 Exhibit 235 is an article written by Brian Dugan of the RGJ
3 with the headline, Reno Council to ask, are flashing
4 billboards distracting, dangerous, question mark? And what's
5 the lead on this story?

6 A. It says, after a year and a half hiatus, talk of
7 digital billboards in Reno will surface again today.

8 Q. So when Scenic Nevada literally put its complaint,
9 did not resurface again until May 24th, 2011, that was
10 actually right out of the -- not only was it factual, but the
11 newspaper is reporting it?

12 A. That's correct.

13 Q. Exhibit -- I mean, paragraph number 33 talks about
14 an October 11th, 2011 planning commission meeting where
15 Scenic Nevada was present. And the allegation simply is that
16 Scenic Nevada says, you should be proceeding forward with a
17 draft digital billboard ordinance in light of the 2000 ballot
18 initiative. And the commissioners said, come back next
19 meeting with two recommendations. One is not to continue
20 with this ordinance drafting at all, because of the citizen
21 vote, and the other alternative is to draft an ordinance?

22 A. Correct.

23 Q. Now, the city denies that happened. They denied
24 that happened. What does Exhibit 38 show us?

1 A. Well, it's the Reno Planning Commission meeting
2 minutes of October 5th, 2011. And on COR 630, at the top of
3 the page, it says, Commissioner Houghton stated that if they
4 continue to direct staff to bring forward a completed digital
5 billboard text amendment, that they have then given their
6 implied support of digital billboards. He would like the
7 planning commission to vote as to whether or not digital
8 billboards should be allowed in the City of Reno.

9 Q. Did that proceed down through these minutes to
10 telling the staff to come back after that meeting?

11 A. Yes. And they came back in November, the November
12 meeting, where they voted on that.

13 Q. Remember the first appeal you were talking about,
14 Exhibit 41?

15 A. Yes.

16 Q. The vote of two to three, two were voting not to
17 go forward with the draft?

18 A. Yes.

19 Q. Three said, yes, we will?

20 A. Yes.

21 Q. Is that the first appeal?

22 A. Yes.

23 Q. The city denies that happened, but that's right in
24 the minutes?

1 A. Yes.

2 Q. Were you present for all of this?

3 A. Yes.

4 Q. Can you understand why the city is denying this
5 happened?

6 A. No.

7 Q. Okay. Another one, paragraph 36, prior to the
8 December 2011 planning commission meeting, Scenic Nevada
9 presented evidence and argument in writing followed by
10 testimony at the public hearing that digital billboards would
11 violate not only existing municipal codes, but state and
12 federal law as well. We're talking now about Scenic Arizona,
13 are we not?

14 A. Yes.

15 Q. How did you get come about Scenic Arizona being a
16 part of this?

17 A. Again, we're an affiliate of Scenic America. I
18 was made aware through my connections with the Scenics across
19 the nation, we found out about the Arizona appeal and the
20 ruling and it was quite a victory for Scenics and so I knew
21 it was going to have an impact on Reno. So I read the
22 51-page opinion and I wrote an e-mail to the planning
23 commissioners suggesting they better wait and check this out.

24 Q. Okay. And what is Exhibit 229 specifically?

1 A. That's my e-mail to the planning commission. It
2 says to Fornier, but that's the secretary for the planning
3 commission. That's where you direct your e-mails to the
4 planning commission is through that secretary.

5 Q. Lori Wray to Ms. Fornier?

6 A. Yes.

7 Q. Dear Planning Commissioners, an Arizona appellate
8 court in November ruled?

9 A. Yes.

10 Q. And it's a two-page e-mail spelling out what that
11 was about?

12 A. Yes.

13 Q. Quoting from that case?

14 A. Correct.

15 Q. The city denies that happened, do you realize
16 that?

17 A. Yes.

18 Q. Paragraph 42, I'm going to page nine of this
19 exhibit. It's paragraph 42, please. In paragraph 42, the
20 city admits that there was two more public workshops after
21 this matter got back up to the city council. Remember in
22 February 2012, what happened when you were supposed to hear
23 your appeals?

24 A. They said we're going to take it to workshops, so

1 we're not going to hear your appeal now.

2 Q. And there were two workshops?

3 A. Correct.

4 Q. March 6th and April 25th?

5 A. Yes.

6 Q. Were you at those workshops?

7 A. Yes.

8 Q. Were other members of Scenic Nevada at those
9 workshops?

10 A. Yes.

11 Q. Did they contribute by way of offering testimony
12 and evidence?

13 A. Yes.

14 Q. Then it says, the city denies that the Scenic
15 members opposed adoption of the ordinance on numerous
16 grounds, including violation of the voter initiative?

17 A. Yes.

18 Q. The ban on intermittent lighting?

19 A. Yes.

20 Q. And asked the city council to consider eliminating
21 the billboard banking and relocation system to help reduce
22 billboard blight?

23 A. Yes.

24 Q. Do you have exhibits, for example, Exhibit 48?

1 A. Yes.

2 Q. That are from these meetings?

3 A. Yes.

4 Q. March 6th?

5 A. That's the first workshop.

6 Q. And the next one, April 25th, which is Exhibit 50.

7 A. Yes.

8 Q. Okay. And did these exhibits, does the person

9 recording the minutes actually reflect you talking about

10 discussing voter issues and other members of Scenic

11 discussing it?

12 A. Yes.

13 Q. Mr. Saunders discussing it. Mr. Saunders was

14 present, Mr. Ryan Saunders was present. And Exhibit 47,

15 Ms. Wray requested that the council persons consider the

16 future of billboard banked receipts?

17 A. Yes.

18 Q. And what specifically did you say to them?

19 A. To close the bank, to consider closing the bank.

20 Q. So on Exhibit 50 and on COR 695, the minutes

21 reflect at the bottom of that page, COR 695 of Exhibit 50,

22 Scenic member states that the council was complicating the

23 issue. The people's vote was that no new billboards should

24 be constructed and there should be no banking or additional

1 billboards?

2 A. Correct.

3 Q. The city denies it happened, but did it happen?

4 A. It did happen.

5 Q. Paragraph 43, there's an allegation by Scenic
6 Nevada in this paragraph that members of the city council and
7 representatives of billboard industry after these two
8 workshops met and came to an understanding on how they wished
9 to proceed. That's denied. It's denied. When was that
10 meeting?

11 A. I think it was the April meeting, the April
12 workshop.

13 Q. I have June 19th on my notes here on the top.

14 A. Oh, yeah. Okay.

15 Q. The workshop was March and April, right?

16 A. Okay. What I was referring to was that at that
17 workshop on April 25th, Clear Channel Outdoor came forward
18 with a draft proposal and it included something called a
19 relocation agreement, which later came to be known as the
20 special exceptions permit. So when he came forward with
21 that, the city council immediately grabbed on to that idea
22 and said, okay, take this back, staff, meet with the
23 stakeholders, anybody else has any ideas and work out a new
24 draft that includes what they want.

1 Q. Special exceptions?

2 A. Special exceptions, yes.

3 Q. You mean exceptions to exceptions?

4 A. Yes.

5 Q. What special exceptions?

6 A. Well, what they did was they said that if you
7 don't have enough billboards, if you don't want to -- if you
8 don't have any banked receipts and you don't want to take
9 down your billboards that are existing on the street, you can
10 ask for a special exception to get an exemption from having
11 to take down too many billboards or exemption from having to
12 turn in too many banked receipts. That was the idea and it
13 went through a lot of iterations before they came up with the
14 final ordinance on that.

15 Q. Did they finally adopt the special exceptions into
16 the final ordinance?

17 A. Yes.

18 Q. It wasn't just that you could upgrade, quote,
19 unquote, to a digital. If you couldn't meet the standards,
20 you could get a special exception and get a new digital
21 billboard for yourself anyway?

22 A. Yes. In the June 19th, 2012 was that stakeholder
23 meeting where the billboard companies met with the staff.
24 And then I asked if I could attend, and they said yes, so I

1 was there at that time.

2 Q. So it was you yourself personally?

3 A. Yes.

4 Q. On behalf of Scenic Nevada?

5 A. Scenic Nevada.

6 Q. And the rest of the people in the room were city
7 staff and who?

8 A. Billboard industry and their representatives.

9 Q. And so Mr. Gilmore wasn't there?

10 A. He actually was the first time Mr. Gilmore was
11 present at a meeting that I remember was June 19th.

12 Q. Okay. And did they come to an understanding how
13 they wanted to proceed?

14 A. They went through the draft ideas and exchanged
15 their feelings on it. And I think it was that's when
16 Saunders Outdoor got the idea of having a two-tier ratio
17 system where the cluttered areas you'd have to surrender
18 more, and outside the clutter area you'd have to surrender
19 less.

20 Q. Okay. So you opposed the draft? That is, it says
21 here in the allegations of your complaint, consistent with
22 its opposition at the hearings for the past four years,
23 Scenic Nevada opposed the draft?

24 A. Yes.

1 Q. Presented arguments against its passage?

2 A. Yes. In fact, at that stakeholders meeting, John
3 Frankovich asked me, he said, what would it take to get you
4 to allow digital billboards? I said, nothing. We're against
5 them. They're not allowed. They're banned. They're new
6 construction. And he said, then why are you here?

7 Q. So everyone knew what the program was?

8 A. Yes.

9 Q. Except Scenic Nevada wasn't on board?

10 A. Correct.

11 Q. Now, Exhibit 231, what is Exhibit 231?

12 A. That's a letter that I drafted on behalf of Scenic
13 Nevada that would get to the city council before the
14 July 18th appeal.

15 Q. So originally the appeal had been February?

16 A. Uh-huh.

17 Q. Continued for workshops?

18 A. Uh-huh.

19 Q. And a draft meeting?

20 A. Uh-huh.

21 Q. To come up with other things like special
22 exceptions?

23 A. Yes.

24 Q. And then the appeal was going to be heard?

1 A. Yes.

2 Q. When was it actually to be heard after that?

3 A. Well, we had heard and Claudia and I had exchanged
4 e-mails, and she thought it was going to be -- she was
5 shooting for July 11th. And I was really glad of that,
6 because I was going on vacation on July 18th. And, in fact,
7 the meeting got changed and it was switched to July 18th and
8 I couldn't attend.

9 Q. It was this letter, then?

10 A. Was my -- was what I could -- it was what I wanted
11 the city council to know on behalf of Scenic Nevada, because
12 I wasn't going to be there, they could at least have this
13 letter.

14 Q. So you wrote what we now call Exhibit 231?

15 A. Yes.

16 Q. Which is this multi-page document spelling out
17 what had been happening and what your position was?

18 A. Yes. Exactly. And what we thought, you know, was
19 wrong with the ordinance, where the problems were going to
20 occur, what was a better idea, some better ideas are in there
21 from our point of view, things like that.

22 Q. And I notice you mention in here on the last page
23 that at that time, St. Paul Minnesota was going through the
24 process of having to pay for removing a digital billboard.