

FILED

2012 NOV 16 AM 9:08

JOEY BROOKA HASTINGS
CLERK OF THE COURT

BY J. Ames

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.

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 02863

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 PARTIES

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

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

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 that are subject to Chapter 278 of the Nevada
20 Revised Statutes and Reno Municipal Code, Title 18.

21 RELIEF SOUGHT

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

26 FACTS

27 6. Following repeated attempts by Reno citizens to persuade the Reno
28 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 (l), 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 (l)
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 (l) 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
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

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

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

VIOLATION OF RENO SIGN CODE

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

Recognizing that the City of Reno is a unique city in which **public safety, maintenance, and enhancement of the city's esthetic qualities** are important and effective in promoting quality of life for its inhabitants and the City of Reno's 24-hour gaming/ entertainment/ recreation/ tourism economy; recognizing that the promotion of tourism generates a commercial interest in the environmental attractiveness of the community; and recognizing that the visual landscape is more than a passive backdrop in that it shapes the character of our city, community, and region, the purpose of this article is to establish a comprehensive system for the regulation of the commercial use of off-premises advertising displays. It is intended that these regulations impose reasonable standards on the number, size, height, and location of off-premises 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.

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;

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