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

SCENIC NEVADA, INC.,
Plaintiff,

Case No.: CV12-02863
Dept. No.: 7

vs.

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

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.

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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.

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9 **PATRICK FLANAGAN**
10 District Judge 

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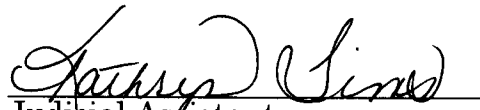
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CERTIFICATE OF SERVICE

Pursuant to NRCF 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 29 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

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