

1 **Code: 2200**
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
of the State of Nevada, and the CITY
14 COUNCIL thereof,

15 Defendant.

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

17 Plaintiff,

Case No. CV12-02917

18 vs.

Dept. No. 7

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

21 Defendant.
22

23
24 **DEFENDANT CITY OF RENO'S MOTION FOR SUMMARY JUDGMENT AGAINST**
PLAINTIFF SCENIC NEVADA

25
26 COMES NOW Defendant CITY OF RENO ("City"), by and through its counsel of
27 record, JOHN J. KADLIC, Reno City Attorney, and JONATHAN D. SHIPMAN, Deputy City
28 Attorney, hereby moves this Court for summary judgment regarding Plaintiff SCENIC

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

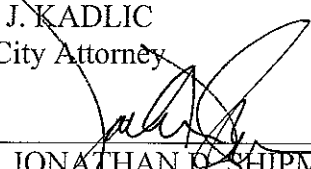
1 NEVADA'S ("Scenic Nevada") claims for declaratory relief—alleged violations of Ballot
2 Question R-1, Federal Highway Beautification Act of 1965, 23 U.S.C. § 131(a) (2002), and the
3 City of Reno sign code. This Motion is made pursuant to Nevada Rule of Civil Procedure 56 and
4 is based on the Memorandum of Points and Authorities, exhibits and affidavits attached hereto,
5 the papers and pleadings on file with this court, and any other evidence this Court may wish to
6 consider.
7

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

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

11 Dated this 26th day of November, 2013.

12 JOHN J. KADLIC
13 Reno City Attorney

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

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF CITY’S MOTION FOR SUMMARY JUDGMENT**

3 **I. INTRODUCTION**

4 On November 14, 2000, City of Reno voters passed Ballot Question R-1 enacting Reno
5 Municipal Code (“RMC” or “Code”) § 18.16.902(a), which states: “The construction of new
6 off-premises advertising displays/billboards is prohibited, and the City of Reno may not issue
7 permits for their construction.”¹ Exhibit 1-1, COR-00004 (the “initiative”). At the same
8 meeting, the City Council adopted City Ordinance No. 5206 establishing a moratorium on the
9 filing and acceptance of applications for billboards pending the amendments to the City’s
10 existing billboard ordinance. Exhibit 1-2, at 00117-00129 (the “moratorium ordinance”).

11 On January 22, 2002, the City Council enacted Ordinance No. 5295, entitled “An
12 ordinance amending Chapter 18.06 of Title 18 of the Municipal Code entitled ‘Zoning’ by
13 adding language to and deleting language from Sections 18.06.910-18.06.985 which govern how
14 Off-Premises Advertising Displays will be regulated; together with other matters properly related
15 thereto.” Exhibit 1-1, at COR-00027-00061 (the “conforming billboard ordinance”).

16 On October 24, 2012, the City enacted Ordinance No. 6258, entitled “Digital Off-
17 Premises Advertising Displays, including Light-Emitting Diode (LED).” Id., at 00005-00026
18 (the “digital billboard ordinance”).

19 On November 16, 2012, Scenic Nevada filed a Complaint for Judicial Review to
20 invalidate the digital billboard ordinance. On April 15, 2013, Scenic Nevada filed its First
21 Amended Complaint to Invalidate City of Reno Digital Billboard Ordinance (the “Complaint”)
22 requesting declaratory relief pursuant to NRS 30.040.
23

24
25 ¹ NRS 268.017 states that the charter and all ordinances, rules, resolutions or other regulations of
26 an incorporated city shall be received as prima facie evidence in all courts without pleading the
27 contents thereof. Such charter, ordinances, rules, resolutions or other regulations may be pleaded
28 by title only and may be proved by introduction of:

1. The original entry thereof on the records of the city council or other governing body.
2. A copy of such original entry certified by the city clerk.
3. A printed copy published or purported to have been published by authority of the city council or other governing body.

1 Scenic Nevada challenges the digital billboard ordinance on three legal grounds. First,
2 Scenic Nevada alleges that the digital billboard ordinance is invalid because it is based on the
3 conforming billboard ordinance adopted by the City Council in 2002 which, in turn, is invalid
4 because it is inconsistent with the initiative adopted by Reno voters in 2000. See, Complaint, at
5 ¶¶ 56 and 57. Second, Scenic Nevada alleges that the digital billboard ordinance violates the
6 Federal Highway Beautification Act of 1965, 23 U.S.C. § 131(a) (2002) (the “FHBA”). Id., at
7 12:26 - 13:2. Finally, Scenic Nevada alleges that the digital billboard ordinance violates RMC §
8 18.16.905(n)(5) which states that off-premises digital advertising displays shall not flash or move
9 during a display period. See, Id., at 16:12-16.

10 As to Scenic Nevada’s first claim, the administrative record² (the “record”) clearly
11 demonstrates that the conforming billboard ordinance does not contradict the terms of the
12 initiative. Rather, the City Council intended the conforming billboard ordinance to be consistent
13 with, and fully implement, the initiative, which it does. The conforming billboard ordinance
14 does not authorize the construction of additional billboards over the number that existed on
15 November 14, 2000. Today, ten+ years after the fact, Scenic Nevada is time barred from
16 challenging the validity of the conforming billboard ordinance. Moreover, because more than
17 three years has passed since the enactment of the initiative, the City Council had the right under
18 Article 19 of the Nevada Constitution to lawfully amend, annul, repeal, set aside and/or suspend
19 the initiative in 2012. Thus, as a matter of law, the initiative enacted in 2000 cannot serve as the
20 basis for invalidating the digital billboard ordinance enacted in 2012.

21 As to Scenic Nevada’s second claim, as will be shown, the FHBA only applies to
22 billboards in close proximity to interstate highways, and the FHBA allows digital billboards.
23 Moreover, in Nevada, the City and NDOT have concurrent jurisdiction over digital highway
24 billboards, and the City’s digital billboard ordinance cannot preempt NDOT regulations. As a
25 result, the legal reasoning set forth in Scenic Ariz. v. City of Phoenix Bd. of Adjustment, 228
26 Ariz. 419, 268 P.3d 370 (2011) is not applicable in the present case.

27
28

² For the full administrative record, see Exhibit 1-1 to 1-7, COR-00001-00903.

1 Finally, as will be shown, RMC § 18.16.905(n)(5) does not ban digital billboards, and the
2 digital billboard ordinance does not violate any law against LED bulbs using flashing,
3 intermittent lights to display advertising messages.
4

5 **II. STANDARD FOR GRANTING CITY'S MOTION FOR SUMMARY**
6 **JUDGMENT**

7 A party against whom a declaratory judgment is sought may, at any time, move with or
8 without supporting affidavits for a summary judgment in the party's favor as to all or any part
9 thereof. NRCP 56(b). Summary judgment is appropriate if the pleadings and other evidence on
10 file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine
11 issues of material fact remain in dispute and that the moving party is entitled to judgment as a
12 matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026, 1029 (2005). To
13 withstand summary judgment, the nonmoving party cannot rely solely on general allegations and
14 conclusions set forth in the pleadings, but must instead present specific facts demonstrating the
15 existence of a genuine factual issue supporting her claims. NRCP 56(e); Wood, 121 Nev. at 731,
16 121 P.3d at 1030-31.

17 **III. LEGAL ARGUMENT**

18 a. **The administrative record confirms that the conforming billboard**
19 **ordinance is consistent with the initiative adopted by Reno voters in 2000**

20 The fact that Scenic Nevada has styled this action as one for declaratory relief does not
21 change the character of the case. The validity of the digital and conforming billboard ordinances
22 must be determined based upon the record. Attached to this motion are certified excerpts from
23 the record which demonstrate that the City is entitled to a judgment as a matter of law.

24 In this case, Scenic Nevada alleges that the digital billboard ordinance is invalid because
25 the conforming billboard ordinance is inconsistent with the initiative adopted by Reno voters in
26 2000.³ The record clearly shows, however, that the conforming billboard ordinance does not
27

28 ³ At the outset, it is worth noting that Scenic Nevada's characterization of City Ordinance No.
5295 as the "banking ordinance" is misleading. The terms "bank" and "banking" are not found
anywhere within the body of Ordinance No. 5295. In truth, the conforming billboard ordinance

1 contradict the terms of the initiative. Instead, the City Council intended to implement a
2 conforming billboard ordinance that incorporates the initiative.

3 In 2000, the registered voters of Reno proposed Ballot Question R-1 pursuant to Nev.
4 Const. Art. 19, § 4⁴ and NRS 295.195 to NRS 295.220, inclusive (the “municipal initiative
5 laws”). The initiative read, “[t]he construction of new off-premises advertising
6 displays/billboards is prohibited, and the City of Reno may not issue permits for their
7 construction.” Exhibit 1-1, at COR-00004. On August 15, 2000, the City Council
8 acknowledged receipt of the initiative, and submitted the petition to city voters for approval in
9 November’s general election. Id., at 00062-00074; NRS 295.215(1). Reno voters approved the
10 initiative on November 8, 2000. Upon certification on November 14, 2000, NRS 295.220
11 required the City treated the initiative “in all respects in the same manner as ordinances of the
12 same kind adopted by the council.” Id., at 00075-00099.

13 At that same meeting, the City adopted the moratorium ordinance establishing a
14 moratorium on the filing and acceptance of applications for billboards. Exhibit 1-1, at 00100-
15 00104;Exhibit 1-2, at 00105-00140. Prior to the approval of the initiative, the City Council had
16 undertaken a process to amend the existing billboard ordinance. The preamble to the
17 moratorium ordinance recounts actions taken in this regard. Exhibit 1-2, at 00107-00109. The
18 record indicates that in August, 1989 the City started the process to revise the existing ordinance
19 regulating billboard. That process continued through the passage of the initiative in 2000. Id., at
20 00107. With regard to the initiative, the moratorium ordinance noted:

21 WHEREAS, the City Council needs the opportunity to more
22 thoroughly consider all aspects of the location of off-premise
23

24 *is a comprehensive legislative scheme intended to regulate and control the location, soundness*
25 *and proliferation of billboard structures within the City of Reno.* In addition to setting a
26 maximum number of allowable billboards within the City, the conforming billboard ordinance
27 established a wide variety of reasonable time, place and manner requirements on billboards, e.g.,
permitted locations, height, spacing, structural design, and requirements relating to billboard
repair, replacement and relocation.

28 ⁴ Nev. Const. Art. 19, § 4 states that municipal initiative powers are reserved to the registered
voters of each municipality as to all local, special and municipal legislation of every kind in or
for such municipality.

1 advertising displays/billboards, including, but not limited to, the
2 voters action on the Initiative; Id., at 00109.

3 After the City Council meeting on November 14, 2000, the City considered Code
4 amendments to address the initiative and other issues relating to billboards. The efforts consisted
5 of public workshops, meetings, discussions and negotiations with a billboard working group,
6 consisting of members of the billboard industry and representatives of Scenic Nevada and City
7 staff, as well as public hearings before the City Planning Commission and City Council.

8 The City Council formally reviewed and considered the conforming billboard ordinance
9 for the first time on December 18, 2001. Id., at 00143-00189. A staff memo dated December
10 12, 2001, provided to Council indicated that there would be a forthcoming list of recommended
11 changes to the existing billboard ordinance. Id., at 00171. The memo specifically referenced
12 ongoing meetings and discussions between representatives of the billboard industry, including
13 Clear Channel and Young Sign Company, members of the Citizens for Scenic Northern Nevada,
14 the City Attorney and staff. Id. In addition, the memo indicated that the working group
15 scheduled another meeting for December 17, 2001. Id. Thereafter, the record contains minutes
16 of the meeting and discussion of the working group held on December 17, 2001, including
17 representatives of Scenic Nevada, the billboard industry and the City Attorney's office and City
18 staff. Id., at 00173. The memo reflects an agreement among the parties relating to many of the
19 issues codified in the conforming billboard ordinance in 2002. It is significant that the minutes
20 do not reflect any opposition to the proposal to allow relocation of billboards. Rather, the record
21 mainly reflects that the group could not agree upon the "height" of billboards. Id. On
22 December 18, 2001, the City Council continued that matter until January 8, 2002. Id., at 00175-
23 00189.

24
25 On January 8, 2002, the City Council conducted a first reading of the conforming
26 billboard ordinance. Exhibit 1-4, at 00352-00437. Up to this point, Scenic Nevada had not
27 expressed opposition to the relocation of existing billboards. The minutes reflect, *inter alia*, that
28 Mr. Chris Wicker, representing Scenic Nevada "addressed the relocation issue and the height
restrictions;" Mr. Ed Lawson of YESCO [a sign company] expressed his anger because all of the

1 meetings of the working group had been wasted because Scenic Nevada “will not adhere to the
2 agreement they made just two weeks ago”; the minutes further indicate that Mr. John
3 Frankovich, representing Clear Channel, stated that productive meetings were held with the
4 billboard industry and the Citizens group and that “until 20 minutes ago, he believed that an
5 agreement was reached.” Ms. Buffy Jo Dreiling of Scenic Nevada “addressed the issue of
6 billboards in the City’s gateway.” Id., at 00426-00427. The minutes then reflect the following:
7

8 Lengthy discussions took place with respect to the past restrictions
9 placed on the billboard industry and how those restrictions could
10 be fully enforced to address the concerns of the citizens for a
11 scenic Northern Nevada and to comply with the spirit of the ballot
12 question that passed regarding billboards.” Id.

11 The City Council referred the conforming billboard ordinance to the committee as a
12 whole. Id., at 00361.

13 At its second reading on January 22, 2002, Scenic Nevada appeared through counsel and
14 according to the minutes, the only issue raised concerned billboards in the “South gateway”.
15 Exhibit 1-5, at 00526. The PREAMBLE to the conforming billboard ordinance specifically
16 references the initiative election results certified on November 14, 2000:

17 WHEREAS, the City wishes to incorporate the Initiative into
18 Chapter Chapter 18.06 [Reno Municipal Code]; . . .

19 WHEREAS, the City wishes to provide an improved visual
20 environment for the inhabitants of and visitors to the City; . . .

21 WHEREAS, the City desires to amend Sections 18.06.910-
22 18.06.914 and add and delete language thereto to make the Reno
23 Municipal Code consistent with the Initiative and to more fully
24 recognize the role of the City’s visual environment and aesthetic
25 qualities and set forth other matters relating thereto; . . .”
26 (emphasis added). Id., at 00027-00028.

24 The City Council adopted the conforming billboard ordinance. Id., at 00523.

25 Thus, in 2002, the City interpreted the “no new billboards” language in the initiative to
26 mean that “no additional billboards” could be built in the City of Reno, and the initiative capped
27 the number of billboards in the City to the number that existed on November 14, 2000. Under
28 this interpretation, so long as the number of billboards did not increase, existing billboards could

1 be maintained, repaired, replaced or relocated. The conforming billboard ordinance codified this
2 interpretation in RMC § 18.06.920; specifically:

- 3
- 4 A. The construction of new off-premise advertising
5 displays/billboards is prohibited, and the City of Reno may
6 not issue permits for their construction. . .
- 7 B. In no event shall the number of off-premise advertising
8 displays exceed the number of existing off-premise
9 advertising displays located within the City on November
10 14, 2000. Exhibit 1-1, at 00031.

11 In RMC § 18.06.922, the conforming billboard ordinance provided that existing legally
12 established billboards were deemed conforming and could be maintained and replaced in their
13 original position, so long as the operator complied with other requirements of the Code. Id., at
14 00031-00032. The ordinance also defined areas where billboards could be located, and the
15 general standards for such billboards. See, Exhibit 1-1, at 00032; RMC §§ 18.06.925 and
16 18.06.930. The conforming billboard ordinance specifically provided that existing billboards
17 may be relocated to permitted locations defined in the ordinance. Exhibit 1-1, at 00035-00037;
18 RMC § 18.06.950. Such a relocation required two permits, one for the removal of the existing
19 billboard, and one for the relocated billboard. Exhibit 1-1, at 00035; RMC § 18.06.950(B).

20 The ordinance further provided that the owner of a removed billboard shall have “10
21 years in which to apply for and secure a permit to relocate the off-premise display.” Exhibit 1-1,
22 at 00034; RMC § 18.06.950(E)(3). This is the provision Scenic Nevada refers to as “banking”.
23 Even though the ordinance allows for the temporary banking and relocation of billboards, the
24 banking concept remains consistent with the initiative *because it does not authorize additional*
25 *billboards over and above the number that existed in 2000*. After passage, *Scenic Nevada took*
26 *no legal action to challenge the conforming billboard ordinance*. Since the adoption of the
27 conforming billboard ordinance, the billboard industry has banked and relocated a number of
28 billboards in reliance on RMC § 18.06.950(E)(3).⁵

⁵ Currently the City has 91 signs in the “bank”, which represent billboards that were in existence at the time of the passage of the initiative and that were subsequently removed and have not yet been replaced or relocated.

1 Like the conforming billboard ordinance, the process adopting the digital board ordinance
2 began in 2007, five years before its ultimate passage. The record is voluminous. See generally,
3 Exhibit 1-3:Exhibit 1-4, COR-00340-00351; Exhibit 1-5, COR-00539-00901. The City
4 conducted numerous workshops, committee meetings and public hearings before the Planning
5 Commission and the City Council. Again, Scenic Nevada, together with representatives of the
6 billboard industry, City staff and legal counsel were actively involved in the process. A synopsis
7 of the process is set forth in a staff report dated January 4, 2012. Exhibit 1-3, COR-00190;
8 Exhibit 1-6, COR-00727-00728. The record indicates that Scenic Nevada objected to the digital
9 board ordinance because it violated the initiative. Exhibit 1-3, at COR-00220; 00226-00228.
10 The Staff Report also reiterates that:

11
12 The City's interpretation of the 2000 referendum on billboards is
13 that it capped the total number of billboards allowed within the
14 City, it does not preclude the repair, relocation or upgrading of the
existing billboards within the City." Exhibit 1-3, at 00192.

15 See also Minutes of the City Reno Planning Commission meeting on November 2, 2011. Exhibit
16 1-6, at 00637-00648. On October 24, 2012, the City Council approved the digital billboard
17 ordinance over the objections of Scenic Nevada. Exhibit 1-7, at 00847-00848.

18 Scenic Nevada's claims that the digital billboard ordinance is unconstitutional because
19 the underlying conforming billboard ordinance adopted in 2002 is unconstitutional; specifically:

20 55. The voter Initiative of 2000, codified as RMC § 18.16.902, prohibited new
21 construction of billboards and banned the issuance of building permits for their
22 construction. Since RMC § 18.16.902 resulted from an Initiative petition, the
23 Defendant City Council had no authority to "amend, annul, repeals, set aside or
suspend" the voter Initiative for a period of three years following its adoption on
Nov. 7, 2000.

24 56. By adopting the "banking" and relocation system in 2002, which allowed
25 billboard companies to "bank" receipts from existing billboards and obtain
26 building permits for billboards in new locations, the Defendant City of Reno and
27 City Council violated the rights of Scenic Nevada and the citizens of Reno under
the Nevada Constitution by amending, annulling repealing and setting aside the
28 voter Initiative codified as RMC § 18.16.902 less than three years after the
Initiative had passed. See, Complaint, at 12:4-15.

1 The record does not support these allegations, however. Rather, the record shows that the
2 City Council intended the conforming billboard ordinance to incorporate, extend, and be
3 consistent with the spirit and intent of the initiative. Allowing the temporary “banking” of
4 billboards does not increase the aggregate number of billboards allowed. Thus, Scenic Nevada’s
5 first claim is completely without merit. Scenic Nevada actively participated in the adoption of
6 the conforming billboard ordinance. If Scenic Nevada truly believed that the conforming
7 billboard ordinance was inconsistent with the initiative, it should have challenged the ordinance
8 in 2002. Instead, *Scenic Nevada chose to wait more than 10 years to seek judicial review.*

9
10 On this basis alone, the City should be entitled to summary judgment. As is more fully
11 discussed below, not only is Scenic Nevada time barred from challenging the conforming
12 billboard ordinance, but after 2003 the initiative could not limit the City Council’s legislative
13 discretion, and the City had every right to amend or repeal it in any fashion it saw fit. Thus,
14 Scenic Nevada’s claim that the conforming billboard ordinance was invalid is contrary to the
15 undisputed facts.

16 **b. The initiative approved by Reno voters in 2000 may be amended, annulled,**
17 **repealed, set aside or suspended by the City Council at any time for any**
18 **reason in accordance with NRS 278.020 and the city charter**

19 Non-home rule municipalities like the City of Reno only have powers expressly
20 conferred upon them, implied powers necessary to effectuate the granted powers, and essential
21 powers. 1-24 ANTIEAU ON LOCAL GOVERNMENT LAW, SECOND EDITION § 24.01. Sec. 2.080(1)
22 of the city charter⁶ authorizes the City Council to “make and pass all ordinances, resolutions and
23 orders not repugnant to the Constitution of the United States or the State of Nevada, or to the
24 provisions of Nevada Revised Statutes or of this Charter, necessary for the municipal
25 government and the management of the affairs of the City, and for the execution of all the
26 powers vested in the City.” In addition, for the purpose of promoting health, safety, morals, or
27 the general welfare of the community, the Nevada Legislature authorized the City Council to
28

⁶ The Reno City Charter is state law, enacted and amended by the Nevada Legislature.

1 regulate and restrict the improvement of land and to control the location and soundness of
2 structures, including billboards, within the corporate limits of the city. NRS 278.020.

3 Generally, the power to enact local legislation implies the power to suspend, amend or
4 repeal it, providing that no property or contract rights have vested by reason of the passage of the
5 enactment. 2-25 ANTIEAU ON LOCAL GOVERNMENT LAW, SECOND EDITION § 25.18. As the duly
6 recognized legislative body for the City of Reno, the City Council may adopt, modify and/or
7 repeal city ordinances. City ordinances may be enacted on one day, and subsequently amended,
8 annulled, repealed, set aside or suspended any time thereafter provided the City Council
9 complies with § 2.100 of the city charter.⁷

10 Unlike Nev. Const. Art. 19, § 2.3, § 4 does not expressly limit a city council's ability to
11 amend, annul, repeal, set aside or suspend initiative ordinances. Moreover, neither the city
12 charter nor NRS chapter 268 (Powers and Duties Common to Cities and Towns Incorporated
13 under General or Special Laws) limits the City Council's ability to amend, annul, repeal, set
14 aside or suspend city ordinances or initiative ordinances. To the contrary, NRS 295.220 requires
15

16 ⁷ **Sec. 2.100 Ordinances: Enactment procedure; emergency ordinances.**

17 1. All proposed ordinances when first proposed must be referred to a committee for
18 consideration, after which an adequate number of copies of the proposed ordinance must be filed
19 with the City Clerk for public distribution. Except as otherwise provided in subsection 3, notice
20 of the filing must be published once in a newspaper qualified pursuant to the provisions of
chapter 238 of NRS, and published in the City at least 10 days before the adoption of the
ordinance. The City Council shall adopt or reject the ordinance, or an amendment thereto, within
45 days after the date of publication.

21 2. At the next regular meeting or adjourned meeting of the City Council held at least 10
22 days after the date of publication, the committee shall report the ordinance back to the City
Council. Thereafter, it must be read as first proposed or as amended, and thereupon the proposed
ordinance must be finally voted upon or action thereon postponed.

23 3. In cases of emergency or where the ordinance is of a kind specified in section 7.030,
24 by unanimous consent of the City Council, final action may be taken immediately or at an
emergency meeting called for that purpose, and no notice of the filing of the copies of the
25 proposed ordinance with the City Clerk need be published.

26 4. All ordinances must be signed by the Mayor, attested by the City Clerk and published
27 by title, together with the names of the Councilmen voting for or against passage, in a newspaper
qualified pursuant to the provisions of chapter 238 of NRS, and published in the City for at least
one publication, before the ordinance becomes effective. The City Council may, by majority
28 vote, order the publication of the ordinance in full in lieu of publication by title only.

5. The City Clerk shall record all ordinances in a book kept for that purpose, together
with the affidavits of publication by the publisher.

1 that municipal initiatives be treated in all respects in the same manner as ordinances of the same
2 kind adopted by the council. Therefore, like all ordinances, the initiative cannot conflict with §
3 2.080 of the city charter, or operate to change or limit the effect of the charter. See, *MUNICORP*
4 § 15:17 (3rd Edition) (“an ordinance must conform to, be subordinate to, not conflict with, and
5 not exceed the city charter, and can no more change or limit the effect of the charter than a
6 legislative act can modify or supersede a provision of the constitution of the state.”).

7 In *Horne v. City of Mesquite*, 120 Nev. 700, 100 P.3d 168 (2004), the Nevada Supreme
8 Court considered a case where two voter approved local initiatives conflicted with state law. The
9 first initiative dealt with public land sales, requiring the City to conduct all public land sales by a
10 public auction or a public sealed bid process. The second initiative governed candidacy
11 eligibility, requiring an elected official or public employee to resign from his office/employment
12 before seeking election as mayor or city council member. *Horne*, 120 Nev. at 701, 100 P.3d at
13 168. Ultimately, the court struck down both initiatives, holding that that the citizens of the City
14 of Mesquite did not have the legislative power to pass ordinances that conflicted with NRS
15 266.267(1)(public land sales) or NRS 266.405(1)(candidate eligibility). *Horne*, 120 Nev. at 707,
16 100 P.3d at 172. The court reasoned that initiative petitions passed by the voters of a city are
17 treated the same in all respects as ordinances passed by the city council of that city, and that the
18 citizens have only those legislative powers that the local governing body possesses. *Horne*, 120
19 Nev. at 705, 100 P.3d at 171.

20
21 In the present case, as made clear in *Horne*, citizens of Reno have only those legislative
22 powers that the City Council possesses, so the initiative adopted by Reno voters in 2000 cannot
23 impinge upon the Legislature’s express grant of legislative authority to the City Council under
24 the city charter. *Horne*, 120 Nev. at 705, 100 P.3d at 171. Because the city charter preempts
25 conflicting local legislation, the initiative may be amended, annulled, repealed, set aside or
26 suspended by the City Council at any time for any reason provided the Council complies with §
27 2.100 of the city charter. To hold otherwise would conflict with and be repugnant to the
28 provisions of NRS 295.220 and § 2.080 of the city charter.

1 c. The conforming billboard ordinance could lawfully amend the initiative in
2 accordance with §§ 2.080 and 2.100 of the city charter

3 Scenic Nevada argues that the Nevada Constitution places a three year limitation on the
4 City Council's ability to amend, annul, repeal, set aside, or suspend the initiative.⁸ See, Nev.
5 Const. Art. 19, § 2.3 ("An initiative measure so approved by the voters shall not be amended,
6 annulled, repealed, set aside or suspended *by the Legislature* within 3 years from the date it takes
7 effect." [Emphasis added]). When a statute uses words which have a definite and plain meaning,
8 the words will retain that meaning unless it clearly appears that such meaning was not so
9 intended. Balboa Ins. Co. v. Southern Distrib. Corp., 101 Nev. 774, 710 P.2d 725 (1985); City of
10 Las Vegas v. Macchiaverna, 99 Nev. 256, 661 P.2d 879 (1983). If language is plain and
11 unambiguous, it must be given effect. State v. State of Nevada Employees Ass'n, Inc., 102 Nev.
12 287, 289-290, 720 P.2d 697, 699 (1986).

13 When interpreting the Constitution, specific provisions should be read in the light of the
14 whole constitution. Ex parte SHELOR, 33 Nev. 361, 373, 111 P. 291 (1910). In light of Ex
15 parte Shelor, it is clear from the plain meaning of Art. 19, § 2.1⁹, that § 2.3 only pertains to
16 "statutes and amendments to statutes and amendments to this Constitution." "Statutes",
17 "Legislature" and "constitutional amendments" are words which have definite, plain and
18 unambiguous meanings. Municipal ordinances are not statutes or constitutional amendments.
19 Nevada is not a home-rule state. Unlike statutes and constitutional amendments, (i) municipal
20 ordinances pertain only to local matters, not statewide concerns; (ii) a city council, as opposed to
21 a state legislature, enacts municipal ordinances; (iii), the power to enact ordinances is derived
22 through statute and the legislative grant of a municipal charter, so local ordinances are inferior to
23 state law.

24
25
26 ⁸ City Council enacted the digital billboard ordinance 12 years after the adoption of the initiative.
27 ⁹ Nev. Const. Art. 19, § 2.1: "Notwithstanding the provisions of Section 1 of Article 4 of this
28 Constitution, but subject to the limitations of Section 6 of this Article, the people reserve to
themselves the power to propose, by Initiative petition, *statutes and amendments to statutes and*
amendments to this Constitution, and to enact or reject them at the polls." [Italics/emphasis
added.]

1 Art. 19, § 2.3 applies to “statutes” and “constitutional amendments.” In contrast, Nev.
2 Const. Art. 19 § 4 applies to “local, special and municipal legislation,”¹⁰ i.e., municipal
3 ordinances. In interpreting legislation, Nevada follows the rule that “*expression unius est*
4 *exclusion alterius*”, which translates as the expression of one thing is the exclusion of the other.
5 See, State v. Javier C., 289 P.3d 1194 (2012). The fact that the Nevada Constitution
6 distinguishes between initiative petitions relating to statutes and constitutional amendments in
7 Art. 19, § 2.3, and initiative petitions relating to local, special and municipal legislation in Art.
8 19, § 4, indicates that the framers intended that municipal initiatives be treated differently than
9 statewide initiative petitions relating to statutes and constitutional amendments. As evidence of
10 this fact, *nowhere in § 4 does it state that municipal initiatives approved by the voters of a city*
11 *cannot be amended, annulled, repealed, set aside or suspended by a city council within 3 years*
12 *from the date of adoption.*

13 Further supporting this interpretation, based on the framer’s clear intent, the Legislature
14 enacted NRS 295.220. NRS 295.220 requires municipal initiative to be treated in all respects in
15 the same manner as ordinances of the same kind adopted by the council. This is consistent with
16 Home, namely, citizens of a locality have only those legislative powers that the local governing
17 body possesses, and an initiative ordinance cannot impinge upon state law or city charter.
18 Home, 120 Nev. at 705, 100 P.3d at 171. Accordingly, it follows that the three year prohibition
19 set forth in Article 19, § 2.3 applies only to statutes and constitutional amendments, not
20 municipal initiatives, and specifically, not to the initiative adopted in 2000. Thus, even if the
21 conforming billboard ordinance was inconsistent with the initiative, the City did not violate
22 Article 19 of the Nevada Constitution by adopting the conforming billboard ordinance because
23 the three year prohibition does not apply to the initiative.
24

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

1 d. Assuming, *arguendo*, that the City violated the Nevada Constitution by
2 amending, annulling, repealing, and setting aside the initiative less than
3 three years after its passage by adopting the conforming billboard
4 ordinance, Scenic Nevada is time barred from challenging the conforming
5 billboard ordinance

6 A cause of action challenging the constitutionality of the conforming billboard ordinance
7 accrued on January 22, 2002, the date the City Council adopted the conforming billboard
8 ordinance. Regardless of which statute of limitations applies, Scenic Nevada is 6-10+ years
9 beyond the applicable period of limitations for challenging the conforming billboard ordinance.
10 *See, e.g.*, NRS 278.0235 (25 days)¹¹, NRS 11.190(3)(a) (three years), and NRS 11.220 (four
11 years).

12 e. Scenic Nevada's constitutional challenge pursuant to Article 19 became
13 moot three years from the date of adoption of the initiative

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

21 In this case, the voters of Reno adopted the initiative on November 14, 2000. The City
22 Council adopted the conforming billboard ordinance approximately 14 months later. The claim

23 ¹¹ The City Council adopted the conforming and digital billboard ordinances pursuant to NRS
24 278.020 ("For the purpose of promoting health, safety, morals, or the general welfare of the
25 community, the governing bodies of cities and counties are authorized and empowered to
26 regulate and restrict the improvement of land and to control the location and soundness of
27 structures"). The short limitation period of NRS 278.0235 is important in connection with
28 municipal actions because both the City and the general public need to be able to rely upon the
29 ordinance going forward.

30 This case is a perfect illustration of this point. Since the adoption of the conforming
31 billboard ordinance, the City has allowed relocated billboards to be constructed and banked. For
32 the last 10 years, billboard companies have removed and "banked" billboards in reliance on the
33 rights granted under the conforming billboard ordinance to subsequently relocate that billboard.
34 It is disingenuous and unreasonable for Scenic Nevada to claim 10 years after the fact that the
35 banking provisions in the conforming billboard ordinance are invalid and therefore, the billboard
36 industry loses the right to construct the banked billboards.

1 that the conforming billboard ordinance violates the three year prohibition found in Article 19
2 became moot when Scenic Nevada failed to seek judicial relief declaring the conforming
3 billboard ordinance unconstitutional on or before November 14, 2003, three years after the date
4 of adoption of the initiative. Nearly ten years after the fact, the court cannot grant effective relief
5 with respect to the alleged procedural constitutional violation at issue, and this matter should be
6 dismissed as moot. Personhood Nev. v. Bristol, 245 P.3d 572, 574, 126 Nev. Adv. Rep. 56
7 (2010).

8 Furthermore, even under Scenic Nevada's reasoning, three years after the enactment of
9 the initiative in 2000 the City Council had the full right to pass an ordinance regulating
10 billboards without reference to, or compliance with, the initiative. Here, the City Council
11 adopted the digital billboard ordinance in 2012, 12 years after the passage of the initiative. The
12 initiative did not bind the City Council in any manner when it passed the digital billboard
13 ordinance in 2012. Scenic Nevada's position that the digital billboard ordinance is invalid
14 because it somehow included provisions that may have been invalid in 2002 is not supported by
15 any logic, reason or authority. In fact, in the worst case scenario, the City Council could have
16 repealed the initiative in 2003 or any time thereafter. Thus, the initiative did not bind or limit the
17 City Council's legislative discretion in 2012 when it adopted the digital board ordinance. Any
18 inconsistency between the digital billboard ordinance and the initiative is not material.

19
20 **f. The digital billboard ordinance does not violate Article 19 of the Nevada**
21 **Constitution even if the conforming billboard ordinance violates Article 19**
22 **of the Nevada Constitution**

23 Scenic Nevada's claim regarding the constitutionality of the digital billboard ordinance is
24 derivative of an underlying claim that the conforming billboard ordinance is unconstitutional. In
25 the words of Scenic Nevada:

26 *57. The Digital Billboard Ordinance of 2012 is entirely dependent upon the*
27 *unconstitutional underpinning of a "banking" and relocation system adopted by*
28 *the Defendant City Council in violation of Article 19 of the Nevada Constitution.*
Without the unconstitutional banking and relocation system embedded in the
new ordinance, there can be no Digital Billboard Ordinance, and the ordinance
therefore must be invalidated in its entirety. [Italics and emphasis added.] See,
Complaint, at 12:15-21.

1
2 In simple terms, Scenic Nevada argues that since the conforming billboard ordinance is
3 unconstitutional because it violates Article 19 of the Nevada Constitution, then similarly, the
4 digital billboard ordinance adopted ten years later is unconstitutional because it violates Article
5 19 of the Nevada Constitution. However, there is simply no authority for such a contention. It
6 is beyond dispute that the City had the authority to amend or repeal the initiative after three
7 years, and the digital billboard ordinance was adopted 12 years later. The City was no longer
8 restricted by the initiative or Article 19 of the Nevada Constitution. As discussed above, the
9 conforming billboard ordinance does not violate Article 19 of the Nevada Constitution, and is
10 consistent with and lawfully amends the initiative in accordance with NRS 278.020 and the city
11 charter. See, NRS 295.220; Horne, 120 Nev. at 705, 100 P.3d at 171. Similarly, the digital
12 billboard ordinance lawfully amends RMC § 18.16.901 to RMC § 18.16.1010, inclusive, in
13 accordance with NRS 278.020 and the city charter. In addition, the digital billboard ordinance
14 includes many of the same provisions as the conforming billboard ordinance. In 2012, the City
15 was free to repeal or amend the initiative in any way. Thus, the digital billboard ordinance does
16 not and could not violate Article 19 of the Nevada Constitution.

17 **VIOLATION OF HIGHWAY BEAUTIFICATION ACT**

18 In the Complaint, Scenic Nevada alleges that the digital billboard ordinance violates the
19 FHBA for the reasons given in Scenic Ariz. v. City of Phoenix Bd. of Adjustment, 228 Ariz.
20 419, 268 P.3d 370 (2011). Complaint, at 14:5-8.

21 In Scenic Ariz., a city granted a permit to a billboard company to operate an electronic
22 billboard. Scenic Ariz., 228 Ariz. at 420, 268 P.3d at 372. Billboard opponents argued that the
23 permit violated a state law ban on intermittent lighting on billboards adjacent to interstate
24 highways (“highway billboards”). Id. The lower court affirmed the permit, holding that the city
25 did not act in excess of its authority. The court of appeals, however, reversed the lower court,
26 holding that state law, A.R.S. § 28-7903(A)¹², expressly prohibited intermittent lighting on
27

28

¹² Under a section titled "Outdoor Advertising Prohibited," A.R.S. § 28-7903(A) provides in pertinent part as follows:

1 highway billboards. Id., at 387. The court reasoned that state law did not preempt local zoning
2 authorities from enforcing outdoor advertising ordinances provided the local law was at least as
3 restrictive as the applicable state law. Id., at 378; A.R.S. § 28-7912(B) (1998) ("Cities, towns or
4 counties shall not assume control of advertising under this section if the ordinance is less
5 restrictive than this article."). In this case, however, the city permit purportedly allowed
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 a. **The City and NDOT have concurrent jurisdiction over highway billboards,**
10 **and the digital billboard ordinance cannot preempt NDOT regulations, or**
11 **the FHBA**

12 Pursuant to NRS 278.020 and the city charter, the City Council enacted the digital
13 billboard ordinance which establishes standards for off-premises advertising displays. See, RMC
14 § 18.16.905(n); Exhibit 1-1, COR-00005-00026.

15 Concurrently, for the purpose of regulating outdoor advertising consistent with federal
16 policy in areas adjacent to the interstate and primary highway systems¹³, the Nevada Legislature
17 authorized the Board of Directors of the Department of Transportation ("NDOT") to regulate and
18 restrict the erection and maintenance of outdoor advertising located within 660 feet of the nearest
19 edge of the right-of-way and visible from the main-traveled way of the interstate and primary
20 highway systems within this state. See, NRS 410.220 to NRS 410.410, inclusive.

21 An applicant seeking to erect and maintain a digital billboard within the City limits and
22 within 660 feet of an interstate highway must obtain permits from both the City of Reno and
23 NDOT. Both the City and NDOT may regulate highway billboards, and therefore

24
25 Outdoor advertising shall not be placed or maintained adjacent to the interstate,
26 secondary or primary systems at the following locations or positions, under any of the following
27 conditions or if the outdoor advertising is of the following nature:

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.

¹³ Not all billboards are located in such areas.

1 exercise *concurrent* jurisdiction over highway billboards. In concurrent jurisdiction cases, the
2 most restrictive standards govern. So, for example, if the City’s billboard ordinance permits
3 digital billboards, but NDOT regulations do not, the more restrictive NDOT standard will
4 control, and digital billboards will not be permitted—the City’s billboard ordinance cannot
5 preempt the more restrictive NDOT regulations. See, RMC § 18.02.109(a) (“If the provisions of
6 this Title 18 are inconsistent with those of the state or federal governments, the more restrictive
7 provision will control, to the extent permitted by law.”).¹⁴ Thus, in cases where the digital
8 billboard ordinance is inconsistent in FHBA, digital billboards will not be permitted by NDOT.

9 Our case is readily distinguishable from Scenic Ariz. in two key respects. First, in Scenic
10 Ariz., the Arizona Legislature banned intermittent lighting on highway billboards across the
11 state. Scenic Ariz., 268 P.3d at 378; A.R.S. § 28-7903(A). In our case, in contrast, state law
12 does not ban intermittent lighting on highway billboards. Instead, state law expressly authorizes
13 NDOT to *prescribe regulations governing the issuance of permits for the erection and*
14 *maintenance of highway billboards consistent with the Federal Highway Beautification Act.*
15 NRS 410.330. NDOT, not the Nevada Legislature, adopts regulations governing intermittent
16 lighting on highway billboards in Nevada. See, NAC 410.350(1). If a company proposed to
17 erect a highway billboard in violation of NAC 410.350(1), NDOT would not issue the permit.
18 Notwithstanding the fact that a highway billboard fully comports with the City’s billboard
19 ordinance, without a NDOT permit, the billboard would be subject to removal by NDOT as a
20 public nuisance pursuant to NRS 410.360(1).¹⁵

21
22
23
24 ¹⁴ Please note, as discussed below, NDOT regulations do not prohibit digital billboards as they
currently exist in the City of Sparks and in Clark County

25 ¹⁵ 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 Second, in Scenic Ariz., Arizona law expressly preempted municipalities from adopting
2 highway billboard ordinances less restrictive than state law. Scenic Ariz., 268 P.3d at 378;
3 A.R.S. § 28-7912(B). In our case, however, Nevada law does not expressly preempt
4 municipalities from adopting highway billboard ordinances less restrictive than NDOT
5 regulations. Instead, state law grants both the City and NDOT the right to issue permits, and
6 exercise jurisdiction over highway billboards. See, NRS 278.020; NRS 410.220 to NRS
7 410.410, inclusive; and specifically, NRS 410.365. However, under the framework established
8 by the Nevada Legislature, an applicant must obtain both a City permit and a NDOT permit to
9 erect a highway billboard. To the extent a permit issued by the City is less restrictive than a
10 permit issued by NDOT, the more restrictive standard governs, and the City permit yields to the
11 NDOT permit pursuant to RMC § 18.02.109(a). In other words, in cases involving highway
12 billboards, the digital billboard ordinance does not have the legal capacity to preempt more
13 restrictive NDOT regulations or federal law.

14 Scenic Nevada cited the Scenic Ariz. case before the Reno Planning Commission and
15 City Council. In the record, the City Attorney's Office prepared a memorandum explaining why
16 Scenic Ariz. had no applicability in Nevada. Exhibit 1-7, COR-00883-00897. As explained in
17 the memo, billboards are not regulated by statute in Nevada, but are instead regulated by
18 regulations adopted by the NDOT and approved by the Federal Highway Administration
19 ("FHA"). In addition, NDOT only regulates highway billboards as opposed to billboards in
20 other areas of the City. Pursuant to the FHBA, on January 28, 1977, NDOT entered into a State
21 Federal Agreement relating to the regulation of billboards in Nevada. Pursuant to the Nevada
22 regulations, as approved by FHA, digital billboards are not considered flashing or intermittent
23 lighting. Thereafter, on December 11, 1998, NDOT adopted administrative regulations
24 regarding billboards which provided in part as follows:
25

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

28 2. A commercial electronic variable message sign, including, without
limitation, a tri-vision sign, may be approved as an off premises outdoor
advertising sign in an urban area if the sign does not contain flashing, intermittent

1 or moving lights, does not cause a glare on the roadway and the following
2 conditions are met: . . .

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

5 (e) Prior to approval from the Department is required to modify existing
6 signs to include commercial or electronic variable message sign.” NAC
7 410.350

8 As billboard technology evolved, FHA recognized that its agreements with the States and
9 regulations needed to be clarified. By a Memorandum dated September 25, 2007 from FHA, the
10 utilization of digital billboards was authorized. Specifically, FHA concluded as follows:

11 Proposed laws, regulations, and procedures that would allow permitting CEVMS
12 [i.e digital billboards] subject to acceptable criteria (as described below) do not
13 violate a prohibition against “intermittent” or “flashing” or “moving” lights as
14 those terms are used in the various FSA’s [federal/state agreements] that have
15 been entered into during the 1960’s and 1970’s. Exhibit 1-7, COR-00885.

16 Thus, under NDOT’s agreement with FHA, digital billboards are not considered to be
17 intermittent or flashing lights and therefore, in Nevada, digital billboards are allowed, and the
18 Scenic Ariz. case has no applicability. See also Assembly Bill No. 305 which was passed and
19 signed into law by the Governor in 2013, which further confirms that digital billboards are
20 allowed in Nevada. Exhibit 1-7, COR-00902-00903.

21 VIOLETION OF RENO SIGN CODE

22 Scenic Nevada alleges that the digital billboard ordinance violates the law against LED
23 bulbs using flashing intermittent lights to display advertising messages.¹⁶ Complaint, at 16:12-

24 ¹⁶ See, Complaint, ¶¶ 74-75:

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

75. Based on these definitions, the digital ordinance violates city code with respect to
flashing or intermittent lights in that RMC § 18.16.905(n)(5) states that:
“**Displays shall not flash** or move during a display period.” (Emphasis added).
Flashing is defined as intermittent illumination, which includes digital billboards,

1 18. In support of this claim, Scenic Nevada states that RMC § 18.24.203.4570 defines “flashing
2 sign” as a sign which uses blinking, flashing or intermittent illumination, either direct, or indirect
3 or internal. Complaint, at 16:9-11. In addition, Scenic Nevada argues that LED technology is a
4 type of intermittent illumination. Scenic Nevada argues that “flashing” illumination should be
5 construed as the legal equivalent of “intermittent” illumination. Complaint, at 16:14-16. Since
6 RMC § 18.16.905(n)(5) states that “[d]isplays shall not flash or move during a display period”,
7 Scenic Nevada concludes that the digital billboard ordinance as written violates the law against
8 LED bulbs using flashing intermittent lights to display advertising messages. Complaint, at
9 16:12-18.

10 a. **The digital billboard ordinance does not violate the law against LED bulbs**
11 **using flashing intermittent lights to display advertising messages**

12 As discussed in previous sections, the City Council has the right to adopt, amend, annul,
13 repeal, set aside and/or suspend the billboard ordinance at any time and for any reason in
14 accordance with the city charter and NRS 278.020, and certainly has such right after three years.
15 This right extends to the initiative approved in 2000.

16 Whether a legislative enactment is wise or unwise is not a determination to be made by
17 the judicial branch. Koscot Interplanetary v. Draney, 90 Nev. 450, 456, 530 P.2d 108, 112
18 (1974). Where a statute is susceptible to more than one interpretation it should be construed in
19 line with what reason and public policy would indicate the legislative body intended. Statutes
20 are generally construed with a view to promoting, rather than defeating, legislative policy behind
21 them. Department of Motor Vehicles v. Lovett, 110 Nev. 473, 477, 874 P.2d 1247, 1249-1250
22 (1994). Moreover, multiple legislative provisions be construed as a whole, and where possible, a
23 statute should be read to give plain meaning to all its parts. Other words or phrases used in the
24 statute or separate subsections of the statute can be reviewed to determine the meaning and
25 purpose of the statute. Gilman v. Nev. State Bd. of Veterinary Med. Examiners, 120 Nev. 263,
26

27 as established in the *Scenic Arizona* case. Accordingly, in addition to violating
28 RMC § 18.16.901 and 902(a) of the off-premise sign code, the digital ordinance
violates the law against LED bulbs using flashing, intermittent lights to display
advertising messages. See, Complaint, at 16:5-18.

1 271, 89 P.3d 1000, 1006 (2004). Statutory provisions should, whenever possible, be read in
2 harmony provided that doing so does not violate the ascertained spirit and intent of the
3 legislature. City Council of Reno v. Reno Newspapers, 105 Nev. 886, 892, 784 P.2d 974 (1989).

4 Here, the City Council adopted the billboard ordinance—including the conformed and
5 digital billboard ordinances—for the stated purpose of establishing a comprehensive system for
6 the regulation of the commercial use of off-premises advertising displays; specifically:

7 *It is intended* that these regulations impose reasonable standards on the number,
8 size height, and location of off-premises advertising displays to prevent and
9 alleviate needless distraction and clutter resulting from excessive and confusing
10 off-premises advertising displays; to safeguard and enhance property values; and
11 to promote the general welfare and public safety of the city’s inhabitants and to
12 promote the maintenance and enhancement of the city’s esthetic qualities and
13 improve the character of our city. [Italics/emphasis added.] See, RMC §
14 18.16.901(a); Complaint, at 14:12-25

15 In contrast to the City Council’s express purpose and intent, Scenic Nevada argues that
16 the digital billboard ordinance is fundamentally “unhealthy, unsafe, unaesthetic, anti-
17 environmental and injurious to public welfare.” Complaint, at 15:16-17. In Scenic Nevada’s
18 estimation, the City Council has no evidence to rebut or refute the fact that digital billboards are
19 harmful to the citizens of Reno, and injurious to public safety, property values and esthetics.¹⁷
20 Id., at 15:3-5.

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

27 There can be little argument that the City Council adopted the digital billboard
28 ordinance with the intent of allowing digital off-premises advertising displays. In Roberts v.
State, Univ. of Nevada System, 104 Nev. 33, 37, 752 P.2d 221, 223 (1988), the court held that

¹⁷ The City Council, however, held otherwise based on the substantial evidence in the record.
Exhibit 1-1, COR-00004-00903.

1 the title of act or statute may be considered in construing a statute. Here, the digital billboard
2 ordinance is entitled “Ordinance amending the Reno Municipal Code Title 18, ‘Annexation and
3 Land Development’ by adding certain wording to and deleting certain wording from Chapter
4 18.16, ‘Signs’ Off-Premise Advertising Displays, and Section 18.24.203.4570 (Definition of
5 Sign) to establish additional standards regarding Digital Off-Premises Advertising Displays,
6 including Light-Emitting Diode (LED), together with other matters properly relating thereto.”
7 Clearly, Scenic Nevada’s interpretation completely disregards the legislative intent of the City
8 Council in light of the title of the ordinance.

9
10 Furthermore, the unreasonableness of the result produced by one interpretation of a
11 statute is reason for rejecting that interpretation in favor of another that would produce a
12 reasonable result. Sheriff, Washoe County v. Smith, 91 Nev. 729, 733, 542 P.2d 440, 443
13 (1975). Adopting Scenic Nevada’s hyper-technical legal interpretation of RMC §
14 18.16.905(n)(5) leads to the unreasonable conclusion that the City Council intended to ban
15 digital/LED billboards across the board. A cursory review of the digital billboard ordinance
16 proves otherwise. The City Council clearly intended to allow digital billboards, subject to
17 certain terms and conditions. See, generally, RMC § 18.16.905(n). For these reasons, the court
18 should reject Scenic Nevada’s unreasonable interpretation.

19
20 Scenic Nevada’s legal interpretation of RMC § 18.16.905(n)(5) ignores other important
21 provisions and subsections of the digital billboard ordinance. As directed in Gilman and Reno
22 Newspapers, however, the court must interpret RMC § 18.16.905(n)(5) in harmony with the
23 other subsections of the ordinance to determine the meaning and purpose of the ordinance. In
24 particular, RMC § 18.16.905(n)(5) must be read in concert with RMC § 18.16.905(n)(4) and
25 RMC § 18.16.905(n)(1). RMC § 18.16.905(n)(5) prohibits flashing or moving “during a display
26 period.” Similarly, RMC § 18.16.905(n)(4) prohibits changing illumination “during a display
27 period.” Finally, RMC § 18.16.905(n)(1) states that “[e]ach message or copy shall remain fixed
28 for a minimum of eight seconds.” When read together, it is clear that the City Council intended
to prohibit intermittent lighting on billboards in periods of less than eight seconds “during a

1 display period". Read in this light, the intent of RMC § 18.16.905(n)(5) is not to ban digital
2 billboards.

3 Although a ban is certainly within its power, the City Council did not digital billboards
4 like the Arizona Legislature did in the case of Scenic Ariz.¹⁸ As further evidence supporting this
5 interpretation, consider RMC § 18.16.907. RMC § 18.16.907 spells out what off-premises
6 advertising displays are prohibited within the City of Reno. Nowhere in RMC § 18.16.907 does
7 it expressly state that digital off-premises advertising displays employing intermittent lighting
8 are prohibited.¹⁹ Instead, RMC § 18.16.905(n) expressly allows digital billboards, subject to
9 certain minimum standards being met. When viewed in this light, the digital billboard ordinance
10 does not violate any local, state or federal law against LED bulbs using flashing intermittent
11 lights to display advertising messages.

12 As indicated above, FHA has determined that digital billboards are not considered
13 "intermittent" lighting. In addition, Scenic Nevada's argument is directly contrary to the purpose
14 and intent of the digital billboard ordinance. The whole purpose of the amendments to the
15 existing ordinance was to allow digital billboards and establish appropriate standards for them.
16 It makes no sense for Scenic Nevada to argue that the language in the same ordinance should be
17 interpreted to prohibit digital billboards. RMC § 18.16.905(n)(5) does not ban digital billboards,
18 and the digital billboard ordinance does not violate any law against LED bulbs using flashing,
19 intermittent lights to display advertising messages.

20 ///
21

22 ¹⁸ See footnote 12.

23 ¹⁹ **Section 18.16.907. Prohibited Types of Off-Premises Advertising Displays.**

24 The following off-premises advertising displays are prohibited:

- 25 (a) Signs which emit noise via artificial devices.
- 26 (b) Roof signs.
- 27 (c) Signs which produce odor, sound, smoke, fire or other such emissions.
- 28 (d) Stacked signs.
- (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
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

VI. CONCLUSION


Given the pleadings and evidence on file, the City has demonstrated that no genuine issues of material fact remains in dispute. Accordingly, the City of Reno is entitled to summary judgment as a matter of law.

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 26TH day of November, 2013.

JOHN J. KADLIC
Reno City Attorney

By 

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

Attorneys for City of Reno

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.
FRANK C. GILMORE, ESQ.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

DATED this 26th day of November, 2013.



Will Zarker

EXHIBIT LIST

Exhibit 1 - 1

COR-00001 – 00003 -	Certification of Clerk's Office
COR-00004 -	Section 18.16.902. Restrictions on Permanent Off-Premises Advertising Displays
COR-00005 – 00026 -	Ordinance No. 6258 passed and adopted on October 24, 2012
COR-00027 – 00061 -	Ordinance No. 5295 passed and adopted on January 22, 2002
COR-00062 – 00071 -	Staff report for Item 14A for Reno City Council Meeting from August 15, 2000
COR-00072 – 00074 -	Question No. R-1 (Billboard Ballot Question)
COR-00075 – 00079 -	Agenda for Reno City Council Meeting from November 14, 2000
COR-00080 – 00099 -	Staff report for Item 6A for Reno City Council Meeting from November 14, 2000
COR-00100 – 00104 -	Staff report for Item 13E for the Reno City Council Meeting from November 14, 2000

Exhibit 1 - 2

COR-00105 – 00116 -	Agenda, Ordinance & Staff report for Item 13E1 for Reno City Council Meeting from November 14, 2000
COR-00117 – 00129 -	Ordinance No. 5208 passed and adopted on November 17, 2000
COR-00130 – 00140 -	Minutes for Reno City Council meeting from November 14, 2000
COR-00141 – 00142 -	Section 18.16.901 of the Reno, Nevada Land Development Code
COR-00143 – 00151 -	Agenda for the Reno City Council Meeting from December 18, 2001
COR-00152 – 00169 -	Staff report for Item 13C1 for Reno City Council Meeting from December 18, 2001
COR-00170 - 00174 -	Staff report for Item 13C for Reno City Council Meeting from December 18, 2001
COR-00175 – 00189 -	Minutes for Reno City Council Meeting from December 18, 2001

Exhibit 1 - 3

COR-00190 – 00339 -	Staff report for the Reno City Planning Commission Meeting from January 4, 2012
---------------------	---

Exhibit 1 - 4

COR-00340 – 00351 -	Continuation of Staff report for the Reno City Planning Commission Meeting from January 4, 2012
COR-00352 – 00358 -	Agenda for the Reno City Council Meeting from January 8, 2002
COR-00359 – 00380 -	Staff report for Item 15A for Reno City Council Meeting from January 8, 2002
COR-00381 – 00402 -	Staff report for Item 15A1 for Reno City Council Meeting from January 8, 2002
COR-00403 – 00419 -	Draft Minutes for Reno City Council Meeting from January 8, 2002

COR-00420 – 00437 - Minutes for Reno City Council Meeting from January 8, 2002
COR-00438 – 00444 - Agenda for the Reno City Council Meeting from January 22, 2002
COR-00445 – 00477 - Minutes and Staff report for Item 8B for Reno City Council Meeting from January 22, 2002

Exhibit 1 – 5

COR-00478 – 00523 - Staff report for Item 8B for Reno City Council Meeting from January 22, 2002
COR-00524 – 00538 - Minutes for Reno City Council Meeting from January 22, 2002
COR-00539 – 00541 - Partial Minutes for Reno City Council Meeting from February 13, 2008
COR-00542 – 00547 - Agenda for Reno City Planning Commission from May 6, 2009
COR-00548 – 00550 - Partial Minutes for Reno City Council Meeting from May 13, 2009
COR-00551 – 00556 - Staff report for Case No. AT-32-07 for Reno City Planning Commission from November 5, 2009
COR-00557 - 00569 - Partial Minutes for Reno City Planning Commission from November 5, 2009
COR-00570 - 00579 - Draft Minutes for Billboards Workshop from May 24, 2011
COR-00580 – 00581 - Agenda for Reno City Planning Commission Workshop from September 20, 2011
COR-00582 – 00599 - Minutes for Reno City Planning Commission Workshop from September 20, 2011
COR-00600 – 00617 - Minutes for Reno City Planning Commission Workshop from September 20, 2011 Exhibit 2
COR-00618 – 00631 - Partial Minutes for Reno City Planning Commission from October 5, 2011

Exhibit 1 - 6

COR-00632 – 00636 - Staff report for Case No. AT-32-07 for Reno City Planning Commission from November 2, 2011
COR-00637 – 00648 - Partial Minutes for Reno City Planning Commission from November 2, 2011
COR-00649 – 00650 - Appeal from Scenic Nevada for Case No. AT-32-07 received on November 14, 2011
COR-00651 – 00653 - Partial Minutes for Reno City Planning Commission from December 8, 2011
COR-00654 – 00668 - Memorandum from Reno City Attorneys (Exhibit 7) from December 19, 2011
COR-00669 – 00674 - Staff report for Case No. AT-32-07 for Reno City Planning Commission from January 4, 2012
COR-00675 – 00677 - Partial Minutes for Reno City Planning Commission from January 4, 2012
COR-00678 – 00679 - Appeal from Scenic Nevada for Case No. AT-32-07 received on January 9, 2012
COR-00680 – 00683 - Partial Agenda for Reno City Council Meeting from February 8, 2012
COR-00684 – 00688 - Minutes for Special Session Reno City Council Meeting from March 6, 2012
COR-00689 – 00692 - Staff report for Item A.6 for Special Session Reno City Council Meeting from March 6, 2012

COR-00693 – 00699 - Minutes for Special Session Reno City Council Meeting from April 25, 2012

COR-00700 – 00709 - Staff report for Item A.5 for Special Session Reno City Council Meeting from April 25, 2012

COR-00710 – 00715 - Partial Agenda for Reno City Council Meeting from July 18, 2012

COR-00716 – 00718 - Staff report for Item N.2 for Reno City Council Meeting from July 18, 2012

COR-00719 – 00721 - Partial Minutes for Reno City Council Meeting from August 22, 2012

COR-00722 – 00725 - Staff report for Item G.3 for Reno City Council Meeting from August 22, 2012

COR-00726 – 00732 - Staff report for Item I.1.1 for Reno City Council Meeting from September 12, 2012

COR-00733 – 00735 - Partial Minutes for Reno City Council Meeting from October 10, 2012

COR-00736 – 00738 - Staff report for Item I.1.1 for Reno City Council Meeting from October 10, 2012

COR-00739 – 00745 - Staff report for Item I.1.2 for Reno City Council Meeting from October 10, 2012

COR-00746 – 00750 - Staff report for Item G.6.1 for Reno City Council Meeting from October 24, 2012

COR-00751 – 00755 - Staff report for Item G.6.2 for Reno City Council Meeting from October 24, 2012

COR-00756 – 00757 - Staff report for Item G.6.3 for Reno City Council Meeting from October 24, 2012

COR-00758 – 00759 - Staff report for Item G.6.4 for Reno City Council Meeting from October 24, 2012

COR-00760 – 00779 - Agenda for Reno City Council Meeting from October 24, 2012

Exhibit 1 - 7

COR-00780 – 00801 - Ordinance No. 6258 passed and adopted January 24, 2013

COR-00802 – 00806 - Staff report for Item G.6.1 for Reno City Council Meeting from October 24, 2012

COR-00807 – 00830 - Staff report for Item G.6.2 for Reno City Council Meeting from October 24, 2012

COR-00831 – 00882 - Minutes for Reno City Council Meeting from October 24, 2012

COR-00883 – 00897 - Memorandum from City Attorney dated December 19, 2011

COR-00898 – 00901 - Partial Minutes for Reno City Council Meeting from December 12, 2012

COR-00902 – 00903 - Assembly Bill No. 305