

2017

Lawrence and Sarah Jean Colosimo, Individually and as the Natural Parents and Heirs of Adam Colosimo, Deceased, Appellants, vs. Gateway Community Church, a Appellants'replybrief District Court Case No. 120414704 Wd Appellate No. 20140852a Utah Corporation; And Does 1-50, Supreme Court No. 20160838 - Sc Appellee.

Utah Supreme Court

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IN THE SUPREME COURT

LAWRENCE AND SARAH JEAN
COLOSIMO, individually and as the
natural parents and heirs of ADAM
COLOSIMO, deceased,

Appellants,

vs.

GATEWAY COMMUNITY CHURCH, a
Utah corporation; and DOES 1-50,

Appellee.

APPELLANTS' BRIEF

District Court Case No. 120414704 WD

Appellate No. 20140852A

Supreme Court No. 20160838 - SC

**ON WRIT OF CERTIORARI TO REVIEW DECISION
OF COURT OF APPEALS**

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UTAH APPELLATE COURTS

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IDENTIFICATION OF PARTIES

Appellants

Lawrence Colosimo

Sarah Jean Colosimo

Adam Colosimo

Appellee

Gateway Community Church

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I. JURISDICTION

On September 15, 2016, the Utah Court of Appeals issued an Opinion in this matter, *Lawrence Colosimo and Jean Colosimo v. Gateway Community Church*, 2016 UT App 195, 382 P.3d 667 (the “Opinion”), Addendum A hereto. On January 7, 2017, this Court granted Appellants Colosimos’ (the “Colosimos” or “Appellants”) Petition for Writ of Certiorari. Accordingly, this Court has jurisdiction pursuant to Utah Code Section 78A-3-102(3)(a).

II. ISSUES PRESENTED FOR REVIEW

Pursuant to this Court’s January 7, 2017 Order, the following issues are presented for review.

ISSUE NO. 1.

Whether the Court of Appeals erred in concluding Gateway could not be held liable for the death of Adam Colosimo, a resident of Draper City, under a municipal ordinance regulating use of electric signs? With regard to this question, three specific questions are presented:

- a. Under Utah law, can a legislative enactment, i.e. an ordinance, create a duty toward a class of persons only if the legislative enactment expressly states that it modifies common law and lists defenses available to persons violating it?
- b. Under what circumstances can a safety ordinance create a duty independent of the common law?

- c. Is a person classified as a “wrongdoer” unable to assert that a duty is owed to him or her under a legislative enactment?

Standard of Review. Whether the trial court applied the correct legal standard is a question of law reviewed for correctness. *Chen v. Stewart*, 2004 UT 82, ¶ 19, 100 P.3d 1177. On certiorari, the Court of Appeals’ decision is reviewed for correctness. *Richards v. Brown*, 2012 UT 14, ¶ 12, 274 P.3d 911.

Preservation of Issue. Appellants argued that an ordinance, which does not expressly state that it modifies common law and which does not expressly list defenses available to persons violating it, can create a duty to a class of persons, which includes “wrongdoers” such as trespassers, independent of the common law. (R. 833-37; 1758-59; 1803-04; 1882 (40:24-47:23).) Appellants also argued this issue to the Court of Appeals. (April 7, 2015 Appellants’ Brief, at pp. 23-34.)

ISSUE NO. 2.

Whether the Court of Appeals erred in concluding Gateway could not be held liable for the death of Adam Colosimo under a common law theory of negligence? With respect to this question, two issues are presented:

- a. Under Utah R. Civ. P. 56(c)(1) and *Orvis v. Johnson*, 2008 UT 2, 177 P.3d 600, is the non-moving party required to present affirmative evidence creating a genuine issue of material fact where the movant, in its moving papers, expressly concedes the fact is disputed or fails to present any evidence to demonstrate absence of genuine issues of material fact?

- b. Did the Court of Appeals err in determining, as a matter of law, that a landowner had no reason to know of likely child trespassers or habitual trespassers when the Colosimos presented evidence of two known instances of trespassing children and testimony by the landowner's board member that, based on facts known to him, he believed the area was "public" and children were likely to trespass?

Standard of Review. Whether the trial court applied the correct legal standard is a question of law reviewed for correctness. *Chen v. Stewart*, 2004 UT 82, ¶ 19, 100 P.3d 1177. The subsidiary factual determination is reviewed in the light most favorable to the non-moving party. *Jensen v. Young*, 2010 UT 67, ¶ 10, 245 P.3d 731. On certiorari, the Court of Appeals' decision is reviewed for correctness. *Richards v. Brown*, 2012 UT 14, ¶ 12, 274 P.3d 911.

Preservation of Issue.

As to sub-issue (a), Gateway argued that it, as the non-moving party, was not required to present affirmative evidence creating a genuine issue of material fact where Appellee, the movant, in its moving papers, expressly conceded that there are fact issues that preclude summary judgment as to whether Appellee knew or had reason to know it was likely that children would trespass onto its Building where Appellee failed to present any evidence in its moving papers demonstrating any alleged absence of genuine issues of material fact. (R. 831-32; 1882 (49:1-51:24).) Appellants also argued this issue to the Court of Appeals. (April 7, 2015 Appellants' Brief, at pp. 22-23.)

As to sub-issue (b), even though Gateway conceded in its moving papers that there are issues of fact as to whether children were likely to trespass under Restatement (Second) of Torts Section 339, Appellants argued to the trial court that, under several other Restatement Sections, there are issues of fact as to whether Gateway knew or had reason to know that trespassers habitually intruded onto Appellee's roof where the dangerous condition existed. (R. 791-95; 862; 1882 (49:1-51:21).) Appellants also argued this issue to the Court of Appeals. (April 7, 2015 Appellants' Brief, at pp. 48-50.)

III. DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS

This Appeal is governed by the provisions of Draper City Ordinance Nos. 205, 505 and 963, Addendum B, C and D hereto. These are collectively referred to herein as the "Draper City Sign Ordinance" or the "Ordinance."

IV. STATEMENT OF CASE

On or around June 30, 2012, Appellants Larry and Jean Colosimos' sixteen-year-old son, Adam Colosimo ("Adam") and his two cousins climbed a permanently-affixed access ladder onto the roof of a one-story commercial building ("Building") located in a Draper City strip mall, which was owned, managed, maintained and occupied by Appellee Gateway Community Church ("Gateway"). Gateway's roof flashing and other portions of the Building were electrified with 220 volts, due to Gateway's dangerously defective electric sign (the "Sign") which was hanging on Gateway's Building. Adam was electrocuted as he attempted to leave the roof, and he subsequently died from his injuries on July 7, 2012.

The Colosimos filed a Complaint against Gateway on November 16, 2012 and an Amended Complaint on February 8, 2013. (R. 1-32.) They asserted a wrongful death and survival action for negligence/premises liability. *Id.*¹

On January 6, 2014, Gateway filed a motion for summary judgment on Appellants' claims. (R. 335-738.) In its moving papers, Gateway sought summary judgment regarding the child trespasser's exception under Restatement (Second) of Torts Section 339. After setting forth the elements under Section 339, Gateway expressly stated that it did "not dispute that there may be fact issues that preclude summary judgment" on several elements, including whether "the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass." (R. 357, fn. 2 & 3.) Additionally, nowhere in its moving papers did Gateway argue that it lacked knowledge of child trespassers on its roof.

Gateway also presented, in support of its position that it could not be imputed with knowledge of the hazard, only an inadmissible declaration from its new Pastor who speculated that Gateway had not installed the Sign.² In fact, the Sign had been in place for years before he joined Gateway and he had no knowledge, one way or the other, of

¹ The Colosimos also sought leave to file a second amended complaint on February 24, 2014. (R. 1395-1433; 1720-25.) Gateway opposed the motion only with respect to the proposed public nuisance claim and allegations of willful and wonton acts. (R. 1572-74.) The trial court held that the motion was futile in light of its finding that Gateway owed no duty to Adam. (R. 1870.)

² Gateway did not dispute, and the trial court also later acknowledged that Gateway would be legally imputed with knowledge of the Sign's danger if the jury determined at trial that Gateway likely installed the defective Sign. (R. 1856, n.3; *Canfield v. Albertsons, Inc.*, 841 P.2d 1224, 1226-27 (Utah Ct. App. 1992); *Jex v. JRA*, 2008 UT 67, ¶ 26, 196 P.3d 576; Restatement (Second) of Torts § 302 (1965).)

who had installed the Sign. (R. 1366-68.) Appellants moved to strike the declaration. (R. 1352-76; 1730-36; 1882(36:8-15).) Appellants also presented evidence that Gateway knew or had a reason to know that children were likely to trespass onto its Building (under Section 339) and that it had a reason to know of habitual trespassers (under Sections 334, 335 and 337). (R. 792-93.)

On July 25, 2014, the trial court heard oral argument on the motions. (R. 1795-97.) On August 25, 2014, the court issued a ruling, granting Gateway summary judgment. In the ruling, the trial court found, among other things, that Gateway had no reason to know that children or persons habitually climbed its Building. (R. 1857-62.) It also found that, even where Gateway merely argued, based on an inadmissible declaration that “it does not know who installed the sign,” that Plaintiffs, nevertheless, assumed the burden to prove, and did not prove that Gateway installed the Sign. (R. 1856, n.3.)³ Relatedly, the trial court refused to strike the inadmissible Pastor’s declaration on the basis that it was “immaterial” to its finding that Gateway did not install the Sign. (R. 1870.)

³ The trial court disregarded key circumstantial evidence – that the only evidence related to the Sign is that it has always been Gateway’s Sign. Indeed, courts have found that this kind of evidence alone created an issue of material fact as to installation. *See Hinkley v. Village of Ballston Spa*, 306 A.D.2d 612, 613-14 (N.Y. Supreme Court Appellate Div. 2003) (where “plaintiffs established through testimony, as well as photographs, that the grate in question is contained within [defendant’s property], a jury certainly would be entitled to reasonably infer that defendant either installed the grate or contracted for a third party to install the grate on its behalf.” The trial court also disregarded other circumstantial evidence on this issue. *See Statement of Facts* ¶¶ 1-10.

Appellants appealed the trial court's order and on September 15, 2016, the Court of Appeals issued its Opinion affirming the trial court's decision. *Colosimo*, 2016 UT App 195. The Opinion affirmed the trial court's ruling on the grounds that Gateway did not owe a duty to Adam, who was a wrongdoer, because the Sign Ordinance did not explicitly (1) state that it modifies common law and (2) list defenses available to Gateway. Opinion at ¶ 26. The Opinion also affirmed the trial court's ruling as to common law claims and specifically found that Gateway had no reason to know children or habitual trespassers were likely to trespass. Opinion at ¶¶ 14-16. In reaching that conclusion, the Opinion created a bright line rule that direct evidence of two instances of known, admitted trespass was, as a matter of law, and regardless of any other circumstantial evidence, insufficient to create an issue of fact as to whether Gateway knew or had reason to know that children were likely to trespass or that persons habitually trespassed onto its roof. *Id.*

Relatedly, the Opinion held that the trial court did not abuse its discretion in denying the Colosimos' Motion to Strike the Pastor's inadmissible declaration concerning the installation of the Sign, stating in a conclusory manner and without any basis, that it trusted that, because the trial court said the declaration was "immaterial," it must have "played no role in the district court's decision on summary judgment." Opinion at ¶¶ 29-30.⁴

⁴ Appellants argued to the Court of Appeals, that using the same flawed analysis in failing to require the movant to meet its initial burden on a motion for summary judgment, the trial court erred in deciding the question of whether Gateway installed the Sign, whether it had other reasons to know of the hazard, and certain other material issues

On January 7, 2017, this Court granted Appellants' Petition for Writ of Certiorari.

V. STATEMENT OF FACTS ("SOF")

Gateway's Dangerous Electric Sign

1. At all relevant times, Gateway owned, managed, maintained and occupied the Building located at 584 East and 12300 South, in Draper City. (R. 384-85 (16:13-18:18).) The one-story Building is situated in a small strip mall on a busy road, proximate to fast food restaurants and several other businesses open to the public. (R. 871; 387 (25:17-24).)

2. Gateway has occupied the Building since 1999 and purchased the Building in 2003. (R. 337; 384 (16:13-21).) Gateway had five board members and between fifty and ninety church attendees. The facility was open to the public during the day, and in the evenings for various adult and child activities. (R. 383 (11:11-12); 384 (15:25-16:5); 889-90 (44:16-45:8); 916-17 (7:7-8:25); 931-32(21:18-22:18).) Shawn Bagley ("Bagley") acted as pastor, employee, and the governing board chair at Gateway from the time he joined Gateway in 2007. (R. 382 (8:16); 383 (10:19-25); 384 (13:17-19).)

3. In 1998, the original builders of the Building constructed the "shell building only" to conform to a "***Gateway*** Master Plan." (R. 338; 371; 1192; 1194-1201 (emphasis added).) Upon completion in 1999, Gateway became a tenant in the Building. (R. 337.) In 2003, Gateway purchased the Building. *Id.* Gateway has never alleged the existence,

of fact. Because the Opinion did not address directly and rule on these other errors, these issues are not addressed in this Brief. *See State v. Topanotes*, 2003 UT 30, ¶ 8, 76 P.3d 1159 ("on certiorari, [Supreme Court] review[s] the decision of the court of appeals, not the ... trial court").

nor is there any evidence, of any other tenants in the Building before 2003. (*See e.g.* R. 1609-10.) After purchasing the Building, Gateway expanded its space and built out several suites in the remaining portions of the Building for future leasing to third parties. (R. 384 (16:13-21); 558 (24:1-25).)

4. Gateway understood that if electrical signs are not managed properly, electricity could injure humans. (R. 880 (23:8-18.) Gateway also knew that electrical signs on the exterior of its Building needed to comply with the Draper City Sign Ordinance and that the installation of each sign needed to be inspected. (*See e.g.* R. 1615 (¶¶ 39-42); 1203; 1184-85 (¶¶ 5(u), 9); *see also* R. 1609 (¶ 22).)

5. Since at least 1996, Draper City Ordinance § 9-14-060(a) has required, for example, “a permit prior to the erection, installation, or use of a sign ... separate and distinct from any additional permit required by the Inspections Division of Draper City or otherwise required by the City” in order to protect the Draper City residents from hazards resulting from improperly installed and maintained outdoor electrical signs. (Addendum B (p. 8); R. 1049.) In that regard, Section 9-14-060(c)(4) provides:

Because of the **potential hazards to the public resulting from improperly constructed or installed signs, all signs shall be inspected** by a designated officer of the City immediately after installation . . . [and any] signs found not to conform with the requirements of this Chapter shall be made to conform or be removed...

(Addendum B (p. 9); R. 1050.) Sections 9-26-010(h) (2003) and 9-26-010 (¶ 13) (2011) similarly state:

PURPOSE. The purpose of this chapter is to **protect and promote the health, safety and welfare of City residents** ... by regulating the design,

construction, and installation of signs ... to [minimize...safety hazards and] promote public safety.

(Addendum C (p. 1); R. 1079) and Addendum D (pp. 1-2); R. 1126-27),

respectively.) Section 9-14-090 (1996) provides:

- (b) **To protect the safety and welfare of the people of the City, to minimize traffic hazard and distraction and to promote the community appearance, the following signs shall not be permitted, erected, or maintained within the City of Draper:**

- (9) any sign or sign structure which:
- (i) constitutes a hazard to safety or health by reason of **inadequate installation, maintenance or dilapidation**; or
 - (ii) Does not conform to section 9-10-070(c).

(Addendum B (pp. 15-16); R. 1056-57) (emphasis added).) Section 9-14-070(c) (1996), states:

- (c) **Design, Construction, and Maintenance.**

- (2) **All signs shall be designed, constructed, and maintained** in accordance with the following standards:

- (i) **All signs shall comply with applicable provisions of the Uniform Building Code and the electrical code of the City at all times; and,**

- (iii) **All signs shall be maintained in good and safe structural condition, in compliance with all building and electrical codes and in conformance with this code, at all times.**

(Addendum. B (p. 11); R. 1052; 1180; 1758-59) (emphasis added).)

Finally, Sections 9-26-070(g) (2003) and 9-26-050(H)(6) (2011), provide:

- (g) **Liability for Damages.** The provisions of this ordinance shall not be construed to relieve or to limit in any way, the responsibility or **liability of any person, firm, or corporation which erects or owns any sign, for personal injury or property damaged caused by the sign...**

(Addendum C (p. 17); R. 1075 and Addendum D (p. 16) (R. 1141) (emphasis added), respectively.)

6. Directly above the entrance to Gateway's main suite, there is a 44" x 96" electric sign (the "Sign" or "Electric Sign") with Gateway's logo. (R. 1038.)

7. Both experts who examined all records produced in this case related to the Gateway Building, noted that there are no records of any kind related to the Sign's installation, except for a reference in August 2003, around the time of Gateway's purchase of the Building, when Gateway purchased and installed, through its agent, an acrylic faceplate with its new logo and the wording "Welcome to Gateway" inside the casing of the Sign. (R. 1038; 1184-85 (¶ 5(u); 9-10); 1761.)

8. Although Gateway alleged that it does not know who installed the Sign, Gateway has never specifically denied that it installed the Sign or provided any admissible evidence to support a finding that it did not install the Sign. (See e.g. R. 391 (43:5-23); 399; 1610-11.)

9. Also, Appellants' electrical expert Dr. Kimbrough opined that, based on his review of the records, "the sign was not installed as part of the original construction of the strip mall..., but occurred after the church took occupancy of the building." (R. 1184 (¶ 7); see also R. 1192, 1203 (the initial building permit stating "[f]uture tenant finishes

will be permitted separated”).) (R. 1223-24 (91:3-92:23); R. 1038; 1184 (¶ 7).)

Additionally, a witness from the sign company which installed one of Gateway’s *permitted* signs on the Building in 1999, testified that (1) he did not recall the Sign being on the Building in 1999 and (2) his company did not install the Sign. (R. 1217 (23:14-19); 1219 (54:4-24); 1205-14.) There were also no allegations or any evidence presented of other tenants in the Building before Gateway purchased the Building in 2003. (*See e.g.* R. 1609-10.)

10. It is undisputed that the Sign was installed in violation of the Draper City’s Sign Ordinance. (R. 1882 (17:21-22); 1184-88; 1758-61 (¶¶ 18, 25); 1856; 1865.) Appellants presented evidence that the installation was done so poorly and unprofessionally, that the Sign must have been installed by amateurs, and likely Gateway’s handymen, rather than a licensed electrician. (R. 1184-85 (¶¶ 7-9); 1758-62; 910-11; 1234 (11:1-14); 1242-43; 943 (42:12-16); 563 (41:25-42:9); 1234-35 (11:25-12:4); 1241 (18:1-7).)

11. Also, it is undisputed that, from the moment the Sign was installed, the Sign created a very dangerous condition and a risk of fire or electrocution on various parts of Gateway’s Building. (R. 1759-61; 1185-88 (¶¶ 10-17); 1245-46 (63:17-64:23); 1248-52; 1764; 1780-81 (58:15-59:6).) Because Gateway failed to properly install the Sign, there was a substantial likelihood of a short circuit, fire, and related electrical problems. (R. 1185-89.)

12. Because Gateway failed to properly install and maintain the Sign, in or around May 2012, there was a short circuit in the Sign which caused various parts of the

Building, including the front metal downspouts by Gateway's main entrance and the flashing on the edge of the roof, to become energized to "over 200 volts." (R. 1188 (¶¶ 11, 17).)

Trespass Onto Gateway's Roof

13. Gateway's Building has a flat roof accessible by a ladder on its west side. (R. 871.) As mentioned above, Gateway conceded in its moving papers that there are genuine issues of material fact as to whether it knew or had reason to know that children were likely to trespass onto its roof. (R. 357, n.3.) Gateway also conceded that there are genuine issues of material fact as to whether it failed to exercise reasonable care to eliminate the danger or otherwise to protect the trespassers on its Building. (*Id.*)

14. In 2004, Gateway learned that a young man, between the age of seventeen and nineteen, had climbed up on the roof without permission. (R. 918-20 (9:5-11:22).)

15. In 2010, Gateway's member and designated maintenance person LeBaron's then-thirteen-year-old son, and another boy of similar age also climbed, without permission, onto the roof during Gateway's movie night. According to LeBaron, his son, who was "average" height, "maybe 5'2, 5'3," "probably skipped over the [locked] cage and got up the ladder to get on the roof" to "*explore*" or "*venture*." (R. 932-35 (22:1-24:11; 24:20-25:4); 936 (27:8-21).)

16. Bowling, Gateway's board member from 2009 until 2013, agreed that Gateway's roof was a "**public place**," that "kids are kids" and that it was "reasonably foreseeable that kids may go up on the roof." (R. 560 (29:23-30:4); 572 (77:23-78:1).)

17. In fact, Sam and Dominic, Adam's sixteen-year-old cousins, testified that they had also previously climbed on Gateway's roof without permission. (R. 975-76 (24:19-25:3); 1002-03 (44:13-45:14).)

18. Both the trespassers and Gateway's members, including Bagley himself, testified about how easy it was for them to climb the ladder, skip the "locked cage" and reach the roof. (R. 388 (32:15-33:3); 392 (48:7-23); 957-61.)

19. On June 30, 2012, Appellants' sixteen-year old son Adam, a resident of Draper City, and his cousins went for a walk and eventually decided to climb Gateway's ladder onto the roof to enjoy a nice view. (R. 1267 (44:1-6); 1268 (45:1-4); 1286 (77:8-14); 1269-70 (46:14-47:7); 1273-74 (51:22-52:9); 1285 (74:8-24); 981 (32:6-10); 1011 (71:3-11).)

20. Access to Gateway's roof was made even easier on June 30, 2012, because, according to Gateway itself, since the Spring of 2012, there had been a wooden box sitting right next to the ladder. (R. 1283-84 (65:16-66:16); 901 (17:1-5); 532; 1304; 391 (41:21-24).)

21. After spending approximately ten minutes on Gateway's Building, Adam's cousins went down the ladder first. When Adam tried to leave the roof, he got caught between the ladder and the flashing on the roof, and was electrocuted for ten to fifteen seconds. (R. 994-95 (49:23-50:25); 996 (55:4-13); 1314; 1316.)

22. Adam was taken to the emergency room, where he survived for ten days. He passed away on July 10, 2012. (R. 1314.)

VI. SUMMARY OF ARGUMENT

Appellants argued to the trial court that Gateway owed a duty prescribed by the Draper City Sign Ordinance to Adam, who was a Draper City resident, to comply with the safety requirements of the Sign Ordinance, which explicitly stated that it was promulgated in order to “protect Draper City residents.” Specifically, Appellants argued that, under Utah law, and consistent with numerous other jurisdictions, such duty under an ordinance can be imposed independently and regardless of whether a duty exists under common law. However, the trial court held, and the Court of Appeals affirmed, that there can be no independent duty pursuant to a statute or ordinance toward a trespasser.

The Court of Appeals’ Opinion, in fact, adopted an analysis which was never even urged by Gateway and which was based on cases never before cited by either party. The Opinion was primarily based on the incorrect, long-rejected principles that wrongdoers and persons guilty of contributory negligence cannot recover for injuries. In that regard, the Opinion imposed an erroneous new standard that ordinances must be construed “strictly” and that in order for an ordinance to create a duty and “derogate” common law, the ordinance must (1) expressly state that it modifies the common law and (2) expressly state defenses available to the person violating the ordinance. Opinion at ¶¶ 21-26. These new requirements are contrary to this Court’s prior decisions concerning when a duty arises under legislative enactments.

It is well-established that Utah courts can adopt and apply to a negligence action the standard of conduct provided by a legislative enactment, such as the Draper City Ordinance, and impose liability if the ordinance was intended to protect a class of persons

from the type of harm the party suffered. There does not need to be a finding of a common law duty, even in the context of wrongdoers. Other jurisdictions have also followed the same analysis specifically in the context of trespassers. Also, it is well established that legislative enactments must be analyzed applying standard, not strict, statutory construction. Finally, this Court, and even the antiquated, inapposite cases cited in the Opinion, have never required that an ordinance or a statute *explicitly* state that common law will be modified, or required that an ordinance list “defenses,” “excuses,” or “justifications” before liability is imposed.

This Court should reverse the Opinion and hold that, as a result of the Sign Ordinance, Gateway had a duty, independent of any common law duties, to Adam, because Adam was a member of the class the enactment sought to protect. Additionally, this Court should affirmatively reject the Opinion’s new requirements that ordinances need to be analyzed applying *strict* construction and that an independent duty will only arise when a legislative enactment (1) explicitly states that common law is modified and (2) lists “defenses,” “excuses,” or “justifications.”

With regard to Appellants’ independent common law claims, Appellants argued that Gateway owed a duty to Adam as a trespasser under Restatement (Second) of Torts Sections 339, as well as Sections 334, 335 and 337 – all of which, like here, involve situations where a landowner has created or maintains a potentially dangerous condition and has a reason to anticipate that children (under Section 339), or persons generally (Section 334, 335 and 337), will likely trespass onto its property. The Opinion erroneously affirmed the trial court’s decision on the ground that Gateway, as a matter of

law, did *not* anticipate that children would likely trespass onto its property under Section 339 or that persons habitually trespasses onto the Building (Sections 334, 335 and 337). Opinion at ¶ 17.

This Court should reverse the Opinion and hold that, where the movant expressly concedes the fact is disputed *or* fails to present any admissible evidence showing there are no genuine issues of material fact, such fact is to be considered disputed and the non-moving party is not required to present affirmative evidence creating a genuine issue of material fact. Alternatively, the Court should reverse the Opinion's new bright-line rule that evidence of two known trespassings is insufficient, as a matter of law, to demonstrate that a landowner had reason to know persons were likely to trespass. First, such a rule invades the province of the jury's fact finding where all of the surrounding facts are considered. Second, such a holding ignored testimony from Gateway's board member that it was reasonably foreseeable that children would trespass on the roof of the Building.

VII. ARGUMENT

C. **THIS COURT SHOULD HOLD THAT, BECAUSE THE SIGN ORDINANCE INTENDED TO PROTECT ADAM FROM THE VERY HARM HE SUFFERED, GATEWAY OWED ADAM A DUTY INDEPENDENT OF ANY COMMON LAW DUTIES.**

Appellants argued to the trial court that Gateway owed a duty to Adam, a Draper City resident, under the Draper City Sign Ordinance, independent of any common law duties which Gateway owed to him, to protect Adam from harms caused by defective electric Signs on Draper Buildings. Contrary to the well-established Utah law, and the

law from other jurisdictions, the trial court found that an ordinance could not impose duties on Gateway toward wrongdoers such as trespassers, except where there is already a duty established by the common law. (R. 1867-68.)

On appeal, not only did the Court of Appeals generally sanction the trial court's ruling that there must be a showing of common law duties as a prerequisite for a finding of a duty under the Draper City Ordinance, but it went even further when it adopted an analysis never before raised or argued by any party. Opinion at ¶ 26. Specifically, the Court of Appeals held that an ordinance which modifies the common law rules vis-à-vis tortfeasors and wrongdoers, such as trespassers, must be construed *strictly* and can only create an independent duty if it (1) explicitly states so in the ordinance and (2) if it lists all defenses available to the violating party in the ordinance language. *Id.* The Court of Appeals' analysis was erroneous.

1. **In Utah, Duties Can Be Imposed By Safety Statutes and Ordinances, Regardless Of Whether A Duty Exists Under Common Law, Even With Regard to "Wrongdoer Victims" If The Ordinance Is Intended To Protect the Victim.**

It is basic Utah law that courts can adopt and apply to a negligence action the standard of conduct provided by a legislative enactment, such as the Draper City Ordinance, and impose liability where the ordinance was intended to protect a class of persons from the type of harm the party suffered. *See Christensen v. Lelis Aut. Trans. Serv.*, 467 P.2d 605, 608 (Utah 1970) ("negligence may be predicated upon the violation of an ordinance or statute," and, *where the purpose "appears to be to protect and to promote the public health, safety and welfare* by establishing rules regulating the

conduct of individual, ... *a violation of the statute may give rise to civil liability*") (emphasis added); *see also* Restatement (Second) of Torts Sections 286, 288, 874A (1965); *Tallman v. City of Hurricane*, 1999 UT 55, ¶¶ 21-22, 985 P.2d 892; *see also Hall v. Warren*, 632 P.2d 848, 850-51 (Utah 1981) ("*Hall I*") and *Hall v. Warren*, 692 P.2d 737, 738-40 (Utah 1984) ("*Hall II*") (reversing the trial court's judgment adverse to plaintiff under a building code ordinance, upon finding that plaintiff was in the class the ordinance sought to protect).

It is also well-established that a legal duty may arise from legislative enactments such as statutes and ordinances, *independently* of any common law duties. *See Jackson v. Mateus*, 2003 UT 18, ¶¶ 7, 21, 70 P.3d 78 (considering whether defendant owed plaintiff a duty under the common law, Salt Lake County ordinances, and state statute, and noting that "it is a well-recognized principle that the common law may be modified by statute or ordinance"). Indeed, in *Hall I* and *II*, this Court instructed that duties imposed by a legislative enactment *are entirely independent and separate* from duties arising pursuant to common law, and held that a landowner can be subject to a duty of care imposed by an ordinance. *Hall I* at 850-51; *Hall II* at 738-39.

In *Hall*, a tenant brought an action against the landlord for injuries resulting from gas emission from a defective gas furnace, relying on a Vernal City ordinance which, similar to the Draper City Ordinance, prohibited persons from installing, converting or servicing any gas furnace without obtaining a permit and an inspection. Like the Draper City Ordinance, the Vernal City ordinance also created an affirmative duty on the part of the owner to maintain the gas system in a safe condition. *Hall II* at 738. Plaintiff alleged

that defendant did not have the furnace inspected or permitted and that it failed to maintain the furnace. *Id.* The court found that (1) plaintiff was in the class intended to be covered by the ordinance and (2) that the ordinance was enacted to prevent general harms such as malfunctions, carbon monoxide fumes, gas leakage or explosions. *Id.* Relying on plaintiff's expert, the court found the furnace was in bad condition and poorly maintained, ultimately leading to plaintiff's injury. *Id.* at 739. Based on these facts, and regardless of any duties owed under common law, the Supreme Court reversed the trial court's findings and determined that plaintiff established a prima facie evidence of negligence under the ordinance. *Id.*

In fact, even where, as in this case, under common law, a person owes a limited common law duty to others (i.e. under common law exceptions), an ordinance can nevertheless modify common law and create an independent duty. *See Jackson v. Mateus*, 2003 UT 18, ¶¶ 9, 20-21, 70 P.3d 78; *Torrie v. Weber County*, 2013 UT 48, ¶¶ 10-11, 309 P.3d 216.

Torrie is particularly instructive on several material issues. In *Torrie*, this Court considered the issue of how courts are to analyze *to whom* a duty is owed under a statute. This Court specifically found that liability can be imposed even where the victim is a wrongdoer. In that case, the trial court found that the law enforcement officers who chased a fleeing suspect did not owe a statutory or common law duty to the fleeing suspect. *Torrie*, 2013 UT 48, at ¶ 8. This Court disagreed and followed the well-established law that legislative enactments can modify common law and create a duty. *Id.* at ¶ 11. The Court then instructed that, to determine *to whom* the duty is owed under

a statute, courts must “look first to the statute itself and give effect to its plain language” and that only if the language is ambiguous, should courts “seek guidance from legislative history and relevant policy considerations.” *Id.* at ¶ 12. In looking at the plain language of the statute which, like the Draper Sign Ordinance, stated that its purpose was to protect all persons and “*did not carve out any exceptions for [wrongdoers such as] fleeing suspects,*” this Court concluded that, like innocent third parties, even fleeing suspects are included in the class of the general public to whom a duty is owed *under the statute*. *Id.* at ¶ 11 (emphasis added). As such, this Court stated that it did not need to determine whether a common law duty should be imposed; it reversed the summary judgment allowing the negligence action to proceed based on a duty owed to the fleeing suspect under the statute. *Id.* at ¶ 8.

2. **Other Jurisdictions Impose Liability Against Parties Violating An Ordinance Where the Victim Was a Trespasser.**

Courts in several other jurisdictions have followed the same analysis as Utah courts in the context of trespassers. They specifically addressed the very issue of “how the common law duty of a landowner *to a trespasser* affects the statutory duty of [landowners],” and instructed that, in fact, “there [is] *no need* for the district court to look to the common law duty owed to trespassers once it determine[s] the statutory duty applied.” *See e.g. O’Guin v. Bingham County*, 122 P.3d 308, 310-11 (Idaho 2005) (emphasis added). As the Idaho Supreme Court recently explained, and consistent with *Torrie*, because the duty *to the protected class* is already independently prescribed by the statute, a violation of the statute as to the protected class, even in the context of

trespassers, “*conclusively establish[es] the first two elements* of a cause of action in negligence [duty of care and breach of that duty] ... [and] *a common law duty of care [is replaced] with a duty of care from a statute or regulation.*” *Id.* at 311 (emphasis added).

The Maryland Court of Appeals in *Paul v. Blackburn Ltd. Partnership*, 63 A.3d 1107, 1119, 1134 (Md. Ct. App. 2013) similarly rejected the focus on common law duties to trespassers and emphasized that “duties may arise from multiple sources.” The *Paul* court held, in the context of trespassers, that “appellee’s argument—that for there to be a statutory or regulatory duty, there must first be a common law duty—is without merit” as such duty “is not dependent upon the existence of an underlying common law duty.” *Id.* at 1134. Like this Court did in *Christensen*, 467 P.2d at 608, the *Paul* court also held that where the regulation was enacted to “protect and promote the public health and safety of individuals,” and protect a class of people which includes the plaintiff who happened to be a trespasser, the court would adopt the standard of care set forth in the regulation, treat the violation of the regulations as evidence of negligence, and allow a civil tort action. *Id.* at 1139; *see also Allen v. Dackman*, 991 A.2d 1216, 1231 (Md. Ct. App. 2010) (“[c]ases [that] concern the common law rule”... are “inapplicable to the present case because the duty [to trespasser] here is based on the Housing Code, not the common law.”).

In *Langazo v. San Joaquin Light & Power Corp.*, 90 P.2d 825, 831 (Cal. Ct. App. 1939), the California court explained:

The status of Plaintiff, if we assume that he was a mere trespasser, cannot be used to limit the measure of care in this case.... Notwithstanding the general rule that the owner or person in charge of property owes to

trespassers or mere licensees thereon, no duty to keep the premises safe, it has been held that violation of a statutory duty with respect to the condition of property, **imposed for the safety of the individuals composing the general public**, may result in liability to one who is injured in consequence thereof, **although he is a mere licensee or even a trespasser**.

Id. at 831(internal citations and quotations omitted) (emphasis added). Similarly, in *Bell v. Page*, 156 S.E.2d 711, 714-15 (N.C. 1967), where a trespassing child drowned in motel's unfenced swimming pool, the North Carolina Supreme Court recognized that common law duties to trespassers "that they must not be willfully or wantonly injured," were irrelevant since the plaintiff did not bring an action under common law. Instead, where plaintiff based "his action on the legal duty imposed on defendant by the terms of [an] ordinance" and, like *Torrie*, ***because the ordinance did not explicitly exclude trespassers***, the landowner had a legal duty to the trespasser. *Id.* at 714-15; *see also Curry v. Fruin-Colnon Contracting Co.*, 202 So.2d 345, 352-53 (La. Ct. App. 1967) (Louisiana court stating the construction company violated public safety Highway Regulations, failing to exercise reasonable care even toward trespassers); *Eddy v. Oklahoma Hotel*, 228 F.2d 106, 108 (10th Cir. (Colo.) 1955) (where the regulation was "enacted for the protection of the public in general[,] [a duty is owed to] all classes of persons, whether licensee, invitee, or trespasser...").

3. **The Opinion's Holding Concerning Duties Under Legislative Enactments in the Context of "Wrongdoers" Is Erroneous.**

The Court of Appeals' Opinion goes out of its way to construct an entirely new, virtually impossible to meet test as to when a duty to a tortfeasor or wrongdoer (including trespassers) can arise under legislative enactments. Specifically, the Opinion requires

that the enactment state expressly that it is modifying common law, and requires that the enactment lists defenses. Opinion at ¶¶ 26. This test conflicts with Utah law.

a. The Opinion Improperly Instructs That Wrongdoers Have Greater Burdens In Seeking Liability Under Legislative Enactments.

First, the Opinion relies heavily on a 1908 Texas case and a 1926 Utah case, both of which were premised on the notion that wrongdoers and persons guilty of contributory negligence cannot recover for injuries. Opinion at ¶¶ 24-25, citing *Burnett v. Ft. Worth*, 112 S.W. 1040 (Tex. 1908) (stating that “a person guilty of contributory negligence [in that case, a trespasser] should not recover, even when the injury arises from neglect to observe a statutory duty, is not only reasonable, but clear law”) and *Daley v. SL & U.R. Co.*, 247 P. 293 (Utah 1926).

As an initial matter, this principle plainly violates the Utah Liability Reform Act (“LRA”), which permits the jury to compare and allocate fault between negligent and intentional conduct among plaintiff(s) and defendant(s). See Utah Code §§ 78B-5-818, 819; *Field v. Boyer Co.*, 952 P.2d 1078, 1080 (Utah 1998); *Graves v. North Eastern Services, Inc.*, 2015 UT 28, ¶ 75, 345 P.3d 619; *Jacobsen Const. Co., Inc. v. Structo Lite Engineering, Inc.*, 619 P.2d 306, 309 (Utah 1980) (“[t]he complete bar to recovery [for assumption of risk and contributory negligence] has been abolished by the Utah comparative negligence statute to avoid the harshness visited upon plaintiffs as a result of the all-or-nothing nature of the former rule of law.”

Just as importantly, this principle was also specifically rejected in *Torrie*, even where, as this Court recognized, certain other jurisdictions with similar statutes held that

the duty did not extend to fleeing suspects, because, for example, they are “wrongdoers,” *or no duty otherwise existed*. *Torrie*, 2013 UT 48, ¶ 12, n.18. As stated above, this Court in *Torrie* “decline[d] to depart from [its] established plain language analysis” and permitted an action by the “wrongdoer.” *Id.*

b. The Opinion Incorrectly Holds That Legislative Enactments “Derogating” Common Law Must Be Construed Strictly.

The Opinion’s errors are compounded by its reliance on several inapposite cases involving *zoning* issues. Opinion at ¶ 21. The Opinion instructs that, whenever a legislative enactment modifies or “derogates” common law, it must be construed *strictly*. *Id.* at ¶¶ 21, 26. Of course, the Opinion disregards the fact that ordinances and statutes *are* typically promulgated in order to modify and, often to, “derogate” common law. In any event, the Opinion is directly contrary to this Court’s decisions in *Jackson* and *Torrie*, which were addressed above and which involved a similar issue of “derogation” of common law. *Jackson*, 2003 UT 18, at ¶¶ 7, 21 (holding that “[i]n interpreting the meaning of *ordinances*, [courts] are guided by the *standard rules of statutory construction...*”) (emphasis added) (internal citations omitted); Utah Code Section 68-3-2 (statutes in derogation of common law shall not be strictly construed); *Torrie*, 2013 UT 48, at ¶ 12; *Salt Lake City v. Ronnenburg*, 674 P.2d 128, 129 (Utah 1983).

In fact, even the *zoning* cases the Opinion cites do not support the Opinion. Opinion at ¶ 21. These cases instruct that *standard* construction generally applies to construction of ordinances. *See, e.g., Brown v. Sandy City Bd. Of Adjustment*, 957 P.2d 207, 210 (Utah Ct. App. 1998) (stating that “in interpreting the meaning of ...

[o]rdinance[s], we are guided by the standard rules of statutory construction”). Not surprisingly, it is only in very special circumstances involving zoning ordinances which restrict the use of the land that *strict* construction as to the *meaning of the language* should be applied. See, e.g., *Brown*, 957 P.2d at 210 (construing strictly only the language of a portion of the ordinance to determine the appropriate use of a housing unit). In fact, in *Patterson v. Utah County Bd. Of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995), which the Opinion cites, the Court specifically warned that there could *not* be a strict interpretation of the zoning ordinance as *a whole* where there were requirements related to promoting public health, safety and welfare. *Id.* at 608. Like *Brown*, *Patterson* instructed that only the provisions in the zoning ordinance which restrict the actual use of land or property should be interpreted strictly. *Id.* at 606.

Of course, the Sign Ordinance was promulgated to ensure safety of Draper residents and it does not restrict use of land or property. Gateway was absolutely free to hang the electric outdoor Sign, but it simply needed to comply with the Ordinance’s safety requirements as to the *manner* of installation and maintenance. Notably, there is also no dispute as to the interpretation of any portion of the Ordinance with respect to Gateway’s operation of the Sign; Gateway even admits it violated the Ordinance.

c. The Opinion’s Reliance on *Wells* and *Apanovich* Was Also Misguided.

In holding that an ordinance must specifically state that common law is modified and list defenses, the Opinion relied on *Wells v. Henry W. Kuhs Realty Co.*, 269 S.W.2d 761 (Mo. 1954) and *Apanovich v. Wright*, 226 F.2d 656 (1st Cir. 1955). Opinion at ¶¶

22-23, 26. However, these cases are also entirely inapposite. Both courts' decisions as to whether there could be an independent duty under a legislative enactment only turned on the question of whether the legislative enactments made any mention about a right of recovery, or were "only" penal. In both cases, the courts noted that there could not be independent duty *because* the enactments were "merely" penal. *Apanovich*, 226 F.2d at 659; *Wells*, 269 S.W.2d at 767.

This analysis is directly contrary to Utah law (and numerous other jurisdictions discussed above) which do not require an explicit statement concerning a right of recovery before independent liability can be imposed. Furthermore, in this instance the Draper City Sign Ordinance contains a provision stating there is no limitation as to electrical signs' owners and operators' liability and damages in personal injury actions. Clearly, the Draper City demonstrated that it contemplated that there would be causes of action by persons injured due to the negligence of sign owners and operators. (SOF ¶ 5; *see also* Restatement (Second) Section 874A, cmt. d.) Indeed, even the *Apanovich* court emphasized that, where the ordinance mentioned liability to persons injured, as is the case here, "it is difficult to escape the conclusion that the legislature created duties to all the persons intended to be safeguarded by regulations designed to eliminate practices deemed to be 'dangerous to the lives or safety of citizens.'" 226 F.2d at 659.

As to the Opinion's requirement that the ordinance list defenses, no Utah court has ever required that an *ordinance* or a statute list "defenses," "excuses," or "justifications" in order for it to create a duty. In fact, as this Court stated in *Hall v. Warren* cases, the

defenses that are available to a person violating legislative enactments are already listed in the Restatement (Second) of Torts Sections 288 and 288A. *Hall I*, 632 P.2d at 850-51.

4. **Gateway Had A Duty to Adam Based On The Plain Language of Draper City Sign Ordinance, Independent of Common Law.**

Whether applying standard or strict construction, the plain language of the Draper City Ordinance provides that Gateway owed a duty to Adam, regardless of his status as a trespasser. As stated above, the Ordinance specifically states that installers, owners and operators of electric outdoor signs in Draper City owe a duty to comply with requirements of the Draper City Ordinance, *at all times*, to protect Draper City residents. Draper City used the terms “[*Draper*] *City residents*,” “*people of the City*” and “*public*” to describe the class of persons it intended to protect. (SOF ¶ 5.) A trespasser is not excluded from such classes as the “public” or the “people” in a municipality.

This is consistent with the cases addressed above, which explicitly instructed that, if a statute or ordinance is intended to protect a class such as the “residents,” “general public,” or “the people,” a property owner owes a duty to all members of that class, including trespassers. *See supra* at pp. 21-23; *see also Utah County v. Butler*, 2008 UT 12, ¶ 20, 179 P.3d 175 (noting that because the Dedication Statute applied to the use of roads by the “public,” which means “the people as a whole,” *even criminal trespassers were included*). Similarly, as stated above, in *Torrie*, where the statute did not specifically exclude wrongdoers and fleeing suspects, the duty was owed to them because they too could reasonably be victims if the statute was violated.

There is also no question that the Ordinance was designed to prevent the type of hazard present on Gateway's Building and the harm which Adam suffered – electrocution due to a defectively installed Sign. See SOF ¶ 5 (the purpose of the Ordinance is to “*protect the health, safety and welfare of City residents...*” by eliminating “*potential hazards to the public resulting from improperly constructed or installed signs.*”). The Ordinance specifically required that the electric signs are “maintained in good and safe structural condition, *in compliance with all building and electrical codes* and in conformance with this code, *at all times.*” *Id.* As Draper City recognized, stray electricity is highly dangerous and there are serious risks of injury to persons if they are exposed to it. As stated above, the Ordinance even plainly anticipated there likely would be *personal injury* actions due to the violations of the Ordinance. *Id.* Certainly, Gateway itself admitted it understood the importance of proper inspections and maintenance of electric signs because electricity could lead to serious injury or death. (SOF ¶ 4.)

D. THE OPINION IS ERRONEOUS WITH RESPECT TO APPELLANTS' COMMON LAW CLAIMS.

1. **The Opinion Erroneously Instructs That a Moving Party Has No Burden To Demonstrate With Factual Evidence That There Are No Genuine Issue of Material Fact and That, Regardless of Movant's Concessions Or Failure to Meet the Initial Burden, the Non-Movant Must Bear Burden to Prove Its Case to Overcome Summary Judgment.**

Gateway moved for summary judgment solely on Restatement (Second) of Torts Section 339, also sometimes referred to as the attractive nuisance doctrine. Restatement Section 339, provides as follows:

A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if (a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and (b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and (c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and (e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

As a movant, Gateway had a clear burden of showing, in its moving papers, an absence of genuine issues of material fact related to one or more of the elements above. Utah R. Civ. P. 56(c)(1); *Orvis v. Johnson*, 2008 UT 2, 177 P.3d 600; *Connor v. Union Pac.*, 972 P.2d 414 (Utah 1998). In *Orvis*, this Court specifically addressed the issue of parties' burdens on motion for summary judgment where the non-moving party has a burden at trial, as is the case here, and explained:

Unless the moving party meets its initial burden ... 'the party opposing the motion is under *no obligation* to demonstrate that there is a genuine issue of material fact for trial' ... Utah law does not allow a summary judgment movant to merely point out a *lack of evidence in the nonmoving party's case*, but instead requires a movant to *affirmatively provide factual evidence* establishing that there is no genuine issue of material fact.

Orvis, 2008 UT 2, at ¶ 16 (emphasis added) (internal citations omitted); *see also Connor*, 972 P.2d. Furthermore, Rule 56(c)(1) requires that "[a] party asserting that a fact cannot be genuinely disputed ... must support the assertion by *admissible* evidence." Utah R. Civ. P. 56(c)(1) (emphasis added).

In its moving papers, Gateway explicitly conceded that there was a material factual issue precluding summary judgment on the question of whether Gateway knew children were likely to trespass (element (a) above).⁵ (R. 357, n.3.) Relatedly, it provided no further discussion or evidence on the issue of likely trespassers onto its roof. Although it was under no obligation to do so under Utah law, out of an abundance of caution, Appellants provided evidence that Gateway knew or had a reason to know that children were likely to trespass and that there were habitual trespassers under Sections 334-339. Yet, the trial court ignored the fact that Gateway did not meet its initial burden on the issue of likely trespassers, it shifted the burden to the Appellants, it disregarded most of the evidence presented by the Appellants on this issue, and found that Appellants did not prove that Gateway knew or had reason to know that there were habitual trespassers. (R. 1869.)

In its Opinion, the Court of Appeals adopted Gateway's and the trial court's proposed legal analysis, reasoning that, because Adam was a trespasser and Appellants would have a burden *at trial*, this issue was "dispositive," and therefore (1) Gateway had no burden, whatsoever, on its motion for summary judgment, and (2) *Appellants* had to prove their case to survive a motion for summary judgment, regardless of Gateway failing to meet its initial burden. Opinion at ¶ 9, n.3. The Opinion is in error.

⁵ Gateway also conceded that there are genuine issues of material fact as to sections (d) and (e) of Section 339. *Id.* Gateway argued that there were no genuine issues of material fact as to element (c); however, that argument was not considered by the trial court or by the Court of Appeals.

a. The Opinion Incorrectly Imposes A Burden On the Non-Movant To Dispute A Fact Which the Movant Already Conceded Is Disputed.

The Opinion erroneously instructs that even where a moving party explicitly concedes that a material fact is disputed, the non-movant still must present evidence proving that fact. Where Gateway explicitly conceded in its moving papers that the material factual issue of whether Gateway believed children were likely to trespass, *was disputed*. (R. 357, n.3.) Under Rule 56(c)(1) and *Orvis*, Appellants did not then need to present evidence to show that the fact was disputed. What is more, the Opinion finds, *contrary to Gateway's concession that the fact was disputed*, that the question of whether children were likely to trespass was *undisputed*. Opinion at ¶¶ 17, 35.

b. The Opinion Also Erroneously Instructs That Movant Can Merely Claim Lack of Evidence in Non-Movant's Case and Need Not Present Admissible Evidence To Meet Its Initial Burden.

Even without Gateway's concession on the issue of whether children were likely to trespass, if Gateway contended that this fact was *undisputed*, Gateway as the movant had the initial affirmative duty to present admissible evidence in its moving papers demonstrating that a fact is not disputed. Gateway failed to do so.

In *Connor*, this Court dealt with a question of burdens on a motion for summary judgment on the similar material question of whether a reasonable jury could find that persons habitually trespass onto landowner's property. The Court reversed the trial court's summary judgment explaining that, where defendant merely argued that "[t]here is no evidence indicating that trespassers 'habitually' congregate, loiter or otherwise trespass the area of track where plaintiff was injured" but *failed to present any evidence*

to meet its initial burden, the burden should not have shifted to plaintiff, and “*there was a genuine issue of material fact.*” *Connor*, 972 P.2d 417-18 (emphasis added).

In this case, the Court of Appeals disregarded these basic rules and did not require Gateway to demonstrate with any evidence that this fact is *undisputed*. Opinion at ¶¶ 12-17. Under *Orvis* and *Connor*, Appellants clearly should not have been required to present evidence disputing this fact.

3. **The Opinion Creates Bad Law That Plaintiff Trespasser Must Present Evidence of More Than Two Specific Instances of Trespass in a Particular Period of Time, Regardless of Other Circumstantial Evidence, To Show That a Landowner Had Reason to Know Children Are Likely to Trespass.**

The Opinion sets forth a bright-line rule that evidence of *two* instances of trespass which *defendant admits to knowing* is, as a matter of law, insufficient under common law Section 339 governing likely children trespassers and Sections 334, 335 and 337 governing habitual trespassers, *regardless of any other evidence*. Opinion at ¶¶ 12-17. As such, the Opinion is erroneous on at least two counts.

First, this type of bright line rule invades the province of the jury which is supposed to consider all evidence. As this Court clearly instructed in *Connor*, 972 P.2d 417-18 and *Lopez v. Union Pacific R.R Co.*, 932 P.2d 601, 606 (Utah 1997), the question of what the defendant knew or had reason to know is properly left to the jury to decide. Utah law has never endorsed a bright line rule in an analysis governing landowner's belief as to the likelihood of trespassers and no Utah case has ever set a minimum number of known, admitted instances of trespass before liability is found.

Second, by ignoring even Gateway's own Board member's testimony that he believed, based on facts known to him, that children were likely to trespass and that the roof was a public place, the Opinion improperly instructs Utah courts to disregard circumstantial evidence upon which a reasonable jury may find that a landowner had a reason to know of likely or habitual trespassers. In that regard, the Opinion instructs that *courts* can weigh the evidence; that they can view evidence in light most favorable to the moving party; and that they can make a factual determination based on only *some* of the evidence. Moreover, the Opinion improperly requires courts to only consider direct evidence, i.e. defendants' admissions as to specific knowledge of trespassing.

Of course, this is directly contrary to the well-established Utah law that courts must view all evidence in totality. *See Lopez*, 932 P.2d at 605 and *Connor*, 972 P.2d at 417-18. They must also assess ***all facts and all reasonable inferences*** in the light most favorable to the party opposing the motion. *Id.*; *see also USA Power, LLC v. PacifiCorp*, 2010 UT 31, ¶ 33, 235 P.3d 749 (explaining that even ***disputed inferences*** from the underlying facts (as opposed to disputed *facts*) can create an issue of fact).

In this case, notwithstanding Gateway's concession, Appellants presented, in addition to the two admitted instances of trespass, circumstantial evidence that Gateway had a reason to know that children were likely to trespass (Section 339) and that persons *habitually* trespassed onto its property (Sections 334, 335 and 337). As stated above, Appellants presented Gateway's board member's testimony that he agreed children were likely to trespass and that the roof was a "public" place. (SOF ¶ 16; R. 792.) They also presented other circumstantial evidence: i.e., evidence related to the ease of access to the

roof; that Gateway knew there was a box next to the ladder for many months that made climbing the roof even easier; that Gateway knew that children and persons often loitered around the roof ladder; that there were many break-ins and repeated instances of graffiti on this one-story building; and that it was a well-known fact, according to several witnesses, that children climbed roofs in that area. (*See* R. 792-93.) However, the Opinion disregarded all such evidence. The Opinion also ignores a reasonable inference that Gateway had a reason to know there were likely even more trespassing incidents where it had actual knowledge of the two instances of trespassing without any systematic method of monitoring trespassers on Gateway's Building.

Based on all information presented by Appellants, a reasonable jury could infer that Gateway had a reason to know that there likely were a lot more trespassing incidents on Gateway's roof than the two admitted instances. Indeed, where Gateway's own board member agreed, based on facts known to him, that Gateway's roof was a public place where children would likely trespass, certainly, a reasonable jury reviewing the same information could reach the same conclusion.

VIII. CONCLUSION

The Opinion should be reversed and Appellants should be awarded their costs on appeal. Furthermore, this case should be remanded to the Court of Appeals for issuance of a new opinion consistent with this Court's decision and to address Appellants' other issues on appeal which were not addressed or fully resolved by the Opinion.

DATED this 6th day of March, 2017.

BURBIDGE MITCHELL & GROSS

By *Aida Verma*
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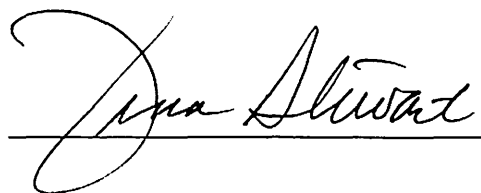
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A handwritten signature in cursive script, reading "Dana Stewart", is written over a horizontal line.

Tab A

ADDENDUM A

2016 UT App 195

SEP 15 2016

THE UTAH COURT OF APPEALS

LAWRENCE COLOSIMO AND SARAH JEAN COLOSIMO,
Appellants,
v.
GATEWAY COMMUNITY CHURCH,
Appellee.

Opinion
No. 20140852-CA
Filed September 15, 2016

Third District Court, West Jordan Department
The Honorable Barry G. Lawrence
No. 120414704

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JUDGE KATE A. TOOMEY authored this Opinion, in which JUDGE
STEPHEN L. ROTH and SENIOR JUDGE PAMELA T. GREENWOOD
concurred.¹

TOOMEY, Judge:

¶1 In this opinion we must decide whether the district court correctly granted summary judgment to Gateway Community Church (Gateway) in determining Gateway owed no duty to a trespasser, either imposed by a city ordinance or under common

1. Senior Judge Pamela T. Greenwood sat by special assignment as authorized by law. *See generally* Utah R. Jud. Admin. 11-201(6).

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law, and whether the court abused its discretion in its rulings on the parties' motions to strike certain testimony. We affirm.

BACKGROUND

¶2 In June 2012, sixteen-year-old A.C. and two of his cousins climbed a ladder onto the roof of a building owned by Gateway. The ladder "had a locked box at the bottom to prevent unauthorized individuals from accessing the ladder and roof," and the boys climbed over it by stepping on a nearby box. It is undisputed that the boys climbed onto the roof of the building without permission. Teenagers are known to have gone onto Gateway's roof on two other occasions, once in 2004 and again in 2010.

¶3 While climbing up and exploring, the boys felt electricity on a "panel on the top of the roof." Climbing back down, A.C.'s foot was caught between the ladder and the electrified metal flashing of the roof. A.C. "was in contact with the hot metal flashing for a period of up to ten seconds and received over 200 volts of electricity." He lost consciousness and was taken to the emergency room. He died ten days later from electrocution-related injuries.

¶4 Gateway moved into the building in 1999 and purchased it in 2003. Attached to the building is an electric sign that reads "Welcome to Gateway." Its installation date is unknown, but sometime in 2003 or 2004 Gateway had an acrylic faceplate with its new logo installed in the existing sign cabinet.²

2. The work order for the sign is dated August 7, 2003, and Gateway's pastor testified that the new faceplate was installed in 2004.

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¶5 After the accident, A.C.'s parents had the sign inspected by an electrical engineer. Gateway also inspected the sign, assisted by a drywaller who often helped with inspections, a journeyman mechanic, an apprentice electrician, a Draper City building inspector, an officer from the Draper City police department, and a fire marshal. Ultimately, the inspections revealed that the sign was defectively wired, and, among other things, the wiring used was intended for interior use instead of waterproof conduit appropriate for outdoor use. In addition, the wiring was not grounded and the output lead wires were routed "under the sharp edge of one of the elements of the metal frame of the sign," and were in metal-to-metal contact with the building's flashing.

¶6 Draper City adopted several ordinances (together, the Sign Ordinances) that require "a sign permit prior to the erection, installation, or use of any sign." Draper City, Utah, Ordinance 205, § 9-14-060 (1996), <http://sirepub.draper.ut.us/sirepub/cache/25/gf3msmwz0eb4nzbmaofo3if/6925308262016093213861.PDF> [<https://perma.cc/4UG3-PBMS>]. To "protect the safety and welfare of the people of the City," the Sign Ordinances prohibit any sign that "constitutes a hazard to safety or health by reason of inadequate installation, maintenance or dilapidation." *Id.* § 9-14-090(a)(9)(i). All signs must be "maintained in good and safe structural condition, [and] in compliance with all building and electrical codes" at all times. *Id.* § 9-14-070(c)(1)(iii). The Sign Ordinances also provide that any "person, firm or corporation" that violates the Sign Ordinances is "guilty of a Class B misdemeanor," Draper City, Utah, Ordinance 505, § 9-26-070(d) (2003), <http://sirepub.draper.ut.us/sirepub/cache/25/gf3msmwz0eb4nzbmaofo3if/323208262016094012556.PDF> [<https://perma.cc/D4T5-ZZMG>], and indicate that "[t]he provisions of [the] ordinance[s] shall not be construed to relieve or limit in any way, the responsibility or liability of any person, firm, or corporation which erects or owns any sign,

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for personal injury or property damage[] caused by the sign," *id.* § 9-26-070(g).

¶7 Lawrence and Sarah Jean Colosimo, A.C.'s parents and heirs, brought a wrongful death and survival action against Gateway for negligence. During discovery the Colosimos deposed Gateway's pastor and a journeyman mechanic who occasionally assisted Gateway with its routine inspections. The pastor testified about his involvement with Gateway and the inspections and maintenance of the building. The Colosimos also had their electrical engineer expert witness provide a declaration describing the problems with the sign, concluding it was not safely installed, and stating that its defects would have been "plainly visible" to a professional electrician. The Colosimos filed a motion to strike the pastor's declaration and the mechanic's testimony, and Gateway moved to strike the electrical engineer's declaration.

¶8 After discovery was completed, Gateway moved for summary judgment, which the district court granted, concluding Gateway owed no duty to A.C. because he was a trespasser. The district court also denied the Colosimos' and Gateway's motions to strike, "as being immaterial to the Court's ruling with one exception[:] [t]he portions of the [Colosimos' expert witness's] Declaration concluding [Gateway] was 'on notice' of the condition" was stricken as "an inappropriate legal conclusion." The Colosimos timely appealed.

ISSUES AND STANDARDS OF REVIEW

¶9 The Colosimos challenge the district court's ruling and order granting Gateway's motion for summary judgment on two grounds. They "contend that Gateway owed a duty to [A.C.] prescribed by the [Sign Ordinances] and, alternatively a duty under common law as set forth in Restatement (Second) of Torts [s]ections 333–339 (1965)." "Summary judgment is appropriate

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where 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.'" *Massey v. Griffiths*, 2007 UT 10, ¶ 8, 152 P.3d 312 (omission in original) (quoting an earlier version of rule 56 of the Utah Rules of Civil Procedure). "An appellate court reviews a trial court's legal conclusions and ultimate grant or denial of summary judgment for correctness, and views the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." *Orvis v. Johnson*, 2008 UT 2, ¶ 6, 177 P.3d 600 (citations and internal quotation marks omitted).³

¶10 The Colosimos also argue the district court erred in refusing to strike the pastor's declaration and the mechanic's testimony and in granting Gateway's motion to strike a portion of their expert witness's declaration. "We review the district court's evidentiary rulings under an abuse of discretion standard," *Anderson v. Larry H. Miller Commc'ns Corp.*, 2015 UT App 134, ¶ 17, 351 P.3d 832 (citation and internal quotation marks omitted), and "deference . . . is the hallmark of abuse-of-discretion review," *General Elec. Co. v. Joiner*, 522 U.S. 136, 143 (1997).

ANALYSIS

I. Duty

¶11 To "prevail on a negligence claim, a plaintiff must establish . . . that the defendant owed the plaintiff a duty . . .

3. The parties also dispute their relative burdens under *Orvis v. Johnson*, 2008 UT 2, 177 P.3d 600, to demonstrate there is no genuine issue of material fact in order for summary judgment to be appropriate. But because it is undisputed that A.C. was trespassing at the time of the accident and this fact is dispositive, we do not address this issue further.

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[and] that the defendant breached that duty.” *Hunsaker v. State*, 870 P.2d 893, 897 (Utah 1993). The district court granted summary judgment because it determined Gateway did not owe a duty to A.C. under either the Sign Ordinances or common law. We first address the Colosimos’ common law arguments and then consider whether Gateway owed a duty under the Sign Ordinances.

A. Gateway Did Not Owe A.C. a Duty Under Common Law

¶12 The Colosimos argue Gateway owed A.C. a duty under common law. We note that “because negligence cases often require the drawing of inferences from the facts, which is properly done by juries rather than judges, summary judgment is appropriate in negligence cases only in the clearest instances.” *Castellanos v. Tommy John, LLC*, 2014 UT App 48, ¶ 7, 321 P.3d 218 (citation and internal quotation marks omitted). But, “without a duty, there can be no negligence as a matter of law, and summary judgment is appropriate.” *Tallman v. City of Hurricane*, 1999 UT 55, ¶ 5, 985 P.2d 892 (citation and internal quotation marks omitted).

¶13 As a general rule, “a possessor of land is not liable to trespassers for physical harm caused by his failure to exercise reasonable care.” *Whipple v. American Fork Irrigation Co.*, 910 P.2d 1218, 1220 (Utah 1996) (quoting Restatement (Second) of Torts § 333 (Am. Law Inst. 1965)). “A trespasser is a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor’s consent or otherwise.” Restatement (Second) of Torts § 329 (Am. Law Inst. 1965). A.C. was on the roof without permission, and therefore he was trespassing when he was electrocuted.

¶14 Even so, the Restatement (Second) of Torts recognizes some exceptions to the general rule, and the Colosimos argue that these apply. Specifically, sections 334, 335, and 339 impose liability when “a possessor of land” “knows, or from facts within

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his knowledge should know," that "trespassers constantly intrude" or "children are likely to trespass," and the possessor "fails to exercise reasonable care" in carrying on an activity or maintaining "an artificial condition" involving a "risk of . . . serious bodily harm." See Restatement (Second) of Torts §§ 334, 335, 339.⁴

¶15 The Colosimos contend "the court erred when it found as a matter of law that Gateway's actual knowledge of two instances of trespass over a decade was insufficient to put Gateway on notice of habitual trespassers." (Emphasis omitted.) They rely on our supreme court's decision in *Lopez v. Union Pacific Railroad Co.*, 932 P.2d 601 (Utah 1997), to support their argument that two instances are sufficient to establish habitual trespassing.

¶16 In *Lopez*, the plaintiff worked in an "industrial area serviced by several sets of railroad spur tracks belonging to the occupants of the adjacent businesses." *Id.* at 602. He was injured one night as he crossed the railroad tracks to reach a parking lot. *Id.* at 602–03. The Colosimos point to the fact that the railroad company "on two separate occasions . . . noted that employees [of neighboring businesses] were crossing between the rail cars

4. "The exceptions stated in sections 334 to 339 deal generally with activities and artificial conditions highly dangerous to constant trespassers on a limited area or to known trespassers, controllable forces dangerous to known trespassers, and artificial conditions highly dangerous to trespassing children." *Whipple v. American Fork Irrigation Co.*, 910 P.2d 1218, 1220 (Utah 1996). The Colosimos do not address the exceptions separately and because all of the sections upon which they rely have the common requirement that the possessor of land know or should know that trespassers are likely to intrude, we likewise do not analyze the exceptions separately.

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while cars were being switched and indicated that [this] practice must be stopped.” *Id.* at 605. But *Lopez* involved more than two instances of trespassing. Rather, the “[p]laintiff produced evidence that workers *habitually* crossed over the cuts of rail cars to reach parking lots,” and management was aware of the practice. *Id.* at 602, 605 (emphasis added). And although the company made note of the trespassing “on two separate occasions,” that does not mean the trespassing occurred only twice: it was a “practice” and not an isolated couple of instances. *Id.* at 605. Thus, we agree with the district court that “[t]hose facts are different from [the facts of this case] under which there were two isolated incidents of people accessing the roof over a 14-year period.” Two incidents of trespassing over so many years do not rise to the level of constant intruding and are not enough to put Gateway on notice that “children are likely to trespass” as expressed in the exceptions outlined in the Restatement. *See* Restatement (Second) of Torts §§ 334, 335, 339.

¶17 Because A.C. was a trespasser and we conclude no exceptions apply to the general rule that “a possessor of land is not liable to trespassers for physical harm caused by his failure to exercise reasonable care,” *Whipple*, 910 P.2d at 1220 (citation and internal quotation marks omitted), “there can be no negligence as a matter of law, and summary judgment is appropriate” on this issue, *see Tallman v. City of Hurricane*, 1999 UT 55, ¶ 5, 985 P.2d 892 (citation and internal quotation marks omitted). We therefore affirm the district court’s determination that Gateway did not owe A.C. a duty under common law.

B. Gateway Did Not Owe A.C. a Duty Under the Sign Ordinances.

¶18 The Colosimos also contend Gateway “owed a duty to [A.C.] prescribed by the . . . Sign Ordinance[s],” and the “court erroneously determined that a necessary predicate for a duty under an ordinance toward a trespasser is a showing of a duty under common law.” (Emphasis omitted.)

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¶19 “When the State has granted general welfare power to local governments, those governments have independent authority . . . to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals, and welfare.” *State v. Hutchinson*, 624 P.2d 1116, 1126 (Utah 1980). Further, “courts will not interfere with the legislative choice . . . unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws” *Id.*; see also *Walker v. Union Pacific R.R.*, 844 P.2d 335, 339 (Utah Ct. App. 1992) (“Utah permits local governments to legislate by ordinance those subjects already covered by state legislation, provided . . . the ordinance in no way conflicts with existing state law.” (citation and internal quotation marks omitted)).

¶20 “As a general rule, violation of a standard of safety set by a statute or ordinance is prima facie evidence of negligence.” *Hall v. Warren*, 632 P.2d 848, 850 (Utah 1981). In this case, the Colosimos assert a duty under the Sign Ordinances that would skirt the common law defense that a possessor of land does not owe a duty to a trespasser. In general, “[s]tatutes which impose duties or burdens or establish rights or provide benefits not recognized by the common law have frequently been held subject to strict, or restrictive, interpretation.” 3 Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* § 61:1 (7th ed. 2007). “[W]here a statute creates a new and onerous obligation not recognized at common law, it must be shown that such meaning is very plain in order to have the rule apply.” *Id.* And “legislation creating liability where no liability existed at common law should be construed most favorably to the person or entity subjected to the liability, and against the claimant for damages.” *Id.*

¶21 The Utah Legislature has stated that this rule of statutory construction “does not apply to the Utah Code.” See Utah Code Ann. § 68-3-2(1) (LexisNexis 2014). But some Utah cases have

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continued to adhere to the rule in interpreting ordinances. *See, e.g., Brown v. Sandy City Board of Adjustment*, 957 P.2d 207, 210–11 (Utah Ct. App. 1998) (explaining that “because zoning ordinances are in derogation of a property owner’s common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed” (citation and internal quotation marks omitted)); *Patterson v. Utah County Board of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995) (same).

¶22 Although “violation of a standard of safety set by a statute or ordinance” may be evidence of negligence, *Hall*, 632 P.2d at 850, where “[t]he ordinance does not purport to extend or modify the common-law rule of the nonliability of landowner to trespassers . . . the duty . . . should be determined in accordance with the common law governing the relationship of [plaintiff] and defendant.” *Wells v. Henry W. Kuhs Realty Co.*, 269 S.W.2d 761, 767 (Mo. 1954). Thus, “defendant’s conduct (even though made negligent by ordinance) [is] actionable negligence as to those persons who were rightfully on defendant’s premises (or as to those who came within an exception to the general rule of nonliability of landowners to trespassers . . .).” *Id.* (emphasis omitted).

¶23 An ordinance “dealing not at all with defenses, would presumably be interpreted as intended to be fitted into the common law background, imposing merely a prima facie liability, but leaving the courts free to apply familiar common law rules . . .” *Apanovich v. Wright*, 226 F.2d 656, 659 (1st Cir. 1955). Case law has followed this general framework and violations of city ordinances have been held to be subject to common law defenses.

¶24 Indeed, the case the Colosimos rely on to assert a duty under the Sign Ordinances itself recognizes common law defenses as “justification or excuse” for the defendant’s conduct. *See Hall*, 632 P.2d at 850–51 (citing the defenses in Restatement

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(Second) of Torts 2a, section 288A). And in a case factually similar to the circumstances here, *Burnett v. Fort Worth Light & Power Co.*, 112 S.W. 1040 (Tex. 1908), a twelve-year-old boy went to the roof of a building "through a trap-door, and was there instantly killed by coming in contact with a live guy wire, which had become charged with electricity through the failure of the [company] to comply with one or more [of] the . . . ordinances of the city." *Id.* at 1040. The parents of the boy brought suit against the power company "to recover damages on account of [its] failure to observe [the] ordinances." *Id.* The Supreme Court of Texas held that the plaintiffs were not entitled to recover "since the deceased boy was clearly a trespasser upon the roof of the building where [the company's] wires were strung." *Id.* at 1042. The court explained that

[t]he civil action is maintainable when, and only when, the person complaining is of a class entitled to take advantage of the law, is a sufferer from the disobedience, is not himself a partaker in the wrong of which he complains, or is not otherwise precluded by the principles of the common law from his proper standing in court.

Id. (citation and internal quotation marks omitted).

¶25 The Utah Supreme Court has similarly held that the estate of a deceased trespasser was not entitled to recover despite the defendant's violation of a city ordinance. See *Daley v. Salt Lake & U.R. Co.*, 247 P. 293 (Utah 1926). In *Daley*, the deceased was standing on the "private premises and right of way of [the] defendant" railroad company when he was "struck and killed by an electric car operated by" the company. *Id.* at 294. At the time of the accident, the train car was traveling at twenty-five or thirty-six miles per hour in violation of a city ordinance that restricted the speed of the cars to twelve miles per hour. *Id.* The supreme court determined that, despite the fact the railroad company was violating the city ordinance at the time of the

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accident, the plaintiff was precluded "from recovering any judgment at all" because the "deceased was wrongfully on the private right of way of defendant at a place where he could not have reasonably been expected to be, and that he was therefore a trespasser." *Id.*

¶26 In this case, the ordinances at issue state that "[t]he provisions of [the] ordinance[s] shall not be construed to relieve or limit in any way, the responsibility or liability of any person, firm, or corporation which erects or owns any sign, for personal injury or property damage[] caused by the sign." Draper City, Utah, Ordinance 505, § 9-26-070(g) (2003), <http://sirepub.draper.ut.us/sirepub/cache/25/gf3msmwz0eb4nzbznbnma3if/323208262016094012556.PDF> [<https://perma.cc/D4T5-ZZMG>]. Because the Colosimos would "impose duties or burdens or establish rights or provide benefits not recognized by the common law" under the Sign Ordinances, those ordinances should be strictly construed. See 3 Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutes and Statutory Construction* § 61:1 (7th ed. 2007). The ordinances do not explicitly "extend or modify the common-law rule of the nonliability of landowner to trespassers," *Wells*, 269 S.W.2d at 767, nor do they address any defenses available to those who might violate the ordinance. See *Apanovich*, 226 F.2d at 659. Thus, the duty "should be determined in accordance with the common law governing the relationship of [plaintiff] and defendant," *Wells*, 269 S.W.2d at 767, and the court is "free to apply familiar common law rules," *Apanovich*, 226 F.2d at 659. Here, it is undisputed that A.C. was trespassing on Gateway's roof at the time of the accident. We therefore conclude that the district court did not err in determining that, although "Gateway was . . . negligent in maintaining its property, and that would potentially have legal consequences for Gateway had [A.C.] been an invitee or licensee," Gateway did not owe A.C. a duty under the Sign Ordinances because he was a trespasser.

II. Motions to Strike

A. The District Court Did Not Abuse its Discretion in Denying the Colosimos' Motion to Strike.

¶27 The Colosimos argue the district court abused its discretion by denying their motion to strike, thereby "accept[ing] certain evidence from witnesses lacking personal knowledge on the key issues related to the [s]ign installation and notice of electrical problems." Specifically, they object to portions of the pastor's declaration and the mechanic's testimony "[b]ecause neither . . . had any personal knowledge of the facts at issue" as required by Utah Rule of Evidence 602 and rule 56(e) of the Utah Rules of Civil Procedure.⁵ "We review a district court's decision on a motion to strike . . . for an abuse of discretion." *Portfolio Recovery Assocs., LLC v. Migliore*, 2013 UT App 255, ¶ 4, 314 P.3d 1069. "To constitute an abuse of discretion, the ruling must have been harmful error." *State v. Dibello*, 780 P.2d 1221, 1228 (Utah 1989).

¶28 Rule 602 states that "[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Utah R. Evid. 602. Rule 56(e) of the Utah Rules of Civil Procedure further specifies that affidavits supporting or opposing summary judgment "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show

5. In their motion to strike the Colosimos address the testimonies of the pastor, the mechanic, and the Draper City police officer. In its order, the district court only mentions the pastor's declaration and indicates that the testimony to which the Colosimos object was immaterial to its decision. On appeal the Colosimos object to the pastor's declaration and the mechanic's testimony, but not the police officer's.

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affirmatively that the affiant is competent to testify to the matters stated therein.” Utah R. Civ. P. 56(e) (2014).⁶

¶29 The Colosimos argue that because the pastor joined Gateway in 2007 he did not have sufficient personal knowledge to testify about the purchase, manufacture, design, or installation of the sign or the electrical issues prior to that. The portions of the pastor’s declaration to which the Colosimos object state: “To the best of my knowledge, in 2004, the Church arranged for the acrylic face of the above exterior sign to be replaced to reflect the words, ‘Welcome to Gateway’”; “As far as I am aware, the Church did not purchase, manufacture, design, or install the oval exterior sign”; and, “To the best of my knowledge, the oval exterior sign was affixed to the property prior to the Church’s purchase of the property.” The Colosimos point to the pastor’s deposition testimony as evidence that he did not have any personal knowledge of “facts relevant to the [s]ign before he joined Gateway in 2007.” The Colosimos similarly argue that the mechanic’s testimony is inadmissible for lack of personal knowledge because he did not join Gateway until 2008.⁷

¶30 But in its order granting summary judgment, the court denied the Colosimos’ motion to strike as “immaterial” to its ruling. Because the testimony “played no role in the district court’s decision on summary judgment, the [Colosimos] cannot show that they were prejudiced by the district court’s denial of

6. The requirements of rule 56(e) have been moved to subsection 56(c)(4). Because the motions to strike and the briefs on appeal refer to 56(e), we cite to the Utah Rules of Civil Procedure as amended in 2014.

7. The Colosimos’ brief states that the mechanic joined Gateway in 2009. His testimony, however, is that he joined Gateway in 2008 and became a member of its board in 2009.

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their motion to strike [and] . . . we will not reverse the district court on this basis." See *Mitchell v. ReconTrust Co.*, 2016 UT App 88, ¶ 42, 373 P.3d 189, petition for cert. filed, July 29, 2016 (No. 20160635); see also *GNS P'ship v. Fullmer*, 873 P.2d 1157, 1165 (Utah Ct. App. 1994) (holding that plaintiff was not prejudiced by the trial court's admission of portions of an affidavit because it "had no bearing on the court's ultimate ruling"). We thus conclude the Colosimos have not shown harmful error in the district court's denial of their motion to strike.

B. The District Court Did Not Abuse its Discretion in Granting Gateway's Motion to Strike Portions of the Colosimos' Expert Witness's Declaration.

¶31 The Colosimos also argue the court abused its discretion in striking a portion of their electrical engineer expert's declaration. Paragraphs nineteen and twenty of the expert's declaration state that "Gateway had notice of the hazardous electrical condition throughout its operation of the sign," and "Gateway Church also likely had . . . notice that there were electrical problems with electricity and the sign." The court struck these statements as "inappropriate legal conclusion[s]." The Colosimos assert that their expert's statements are admissible "factual inferences and opinions, not legal conclusions." (Emphasis omitted.)

¶32 The Colosimos rely on *Eskelson v. Davis Hospital & Medical Center*, 2010 UT 59, 242 P.3d 762, and rule 704 of the Utah Rules of Evidence. Our supreme court in *Eskelson* stated that "an expert can rely on his own interpretation of facts that have a foundation in the evidence, even if those facts are in dispute." *Id.* ¶ 16. Rule 704 of the Utah Rules of Evidence also states that "[a]n opinion is not objectionable just because it embraces an ultimate issue." Utah R. Evid. 704. "Nevertheless, opinions that . . . give legal conclusions continue to be impermissible under rule 704." *State v. Davis*, 2007 UT App 13, ¶ 15, 155 P.3d 909 (citation and internal quotation marks omitted).

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¶33 There is no “bright line between [opinions] that embrace an ultimate issue and those that provide an impermissible legal conclusion.” *State v. Tenney*, 913 P.2d 750, 756 (Utah Ct. App. 1996). But legal conclusions “tend to blur the separate and distinct responsibilities of the judge, jury, and witness.” *Steffensen v. Smith’s Mgmt. Corp.*, 862 P.2d 1342, 1347 (Utah 1993). Statements that “tell the jury what result to reach,” *id.*, or “tie their opinions to the requirements of Utah law” are not permitted, *Tenney*, 913 P.2d at 756.

¶34 The Colosimos’ expert’s statements that Gateway had notice of the electrical problems and condition imply that Gateway knew or should have known of the hazard and thus impermissibly “tie” into the “requirements of Utah law.” *See id.* at 756–57. Accordingly, we determine the court did not abuse its discretion in striking these portions of the expert’s declaration. But the court struck only those paragraphs that conclude Gateway had notice. His statements “as to everything except his final conclusion” were allowed and would enable a fact-finder to “draw[] its own conclusions from the evidence presented.” *Davidson v. Prince*, 813 P.2d 1225, 1231–32 (Utah Ct. App. 1991). We therefore conclude the district court did not abuse its discretion in granting in part Gateway’s motion to strike.

CONCLUSION

¶35 In sum, we determine the district court did not err in concluding that Gateway owed no duty to A.C. under common law or under the Sign Ordinances. We also conclude the court did not abuse its discretion in striking portions of the Colosimos’ expert’s declaration as a legal conclusion. In addition, we conclude the Colosimos were not harmed by the district court’s denial of their motion to strike. We therefore affirm.

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of September, 2016, a true and correct copy of the attached DECISION was sent by standard or electronic mail to be delivered to:

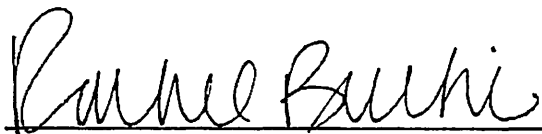
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Judicial Secretary

TRIAL COURT: THIRD DISTRICT, WEST JORDAN, 120414704
~~APPEALS CASE NO.:~~ 20140852-CA

Tab B

ADDENDUM B

ORDINANCE NO. 205

AN ORDINANCE AMENDING CERTAIN SECTIONS OF TITLE 9 SECTION 14 OF THE CITY OF DRAPER LAND USE AND DEVELOPMENT ORDINANCE OTHERWISE KNOWN AS THE DRAPER CITY SIGN ORDINANCE

WHEREAS, Draper City is desirous of regulating signs within the city in a fair and consistent manner; and

WHEREAS, Draper City has determined that certain amendments are necessary to clarify and improve the sign ordinance; and

WHEREAS, Draper City has held the required public hearing and received comment from interested parties;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DRAPER CITY, UTAH AS FOLLOWS:

Section 1. Amendment. Section 9-14-020 of the Draper City Municipal Code is hereby amended and adopted to include the following definitions at the appropriate point in the existing alphabetical listing and to amend the numbering sequence accordingly.

9-14-020 Definitions.

(a) Purpose. For the purpose of this Ordinance, certain terms, phrases, words and their derivatives shall be construed as specified in either 9-14-040 or as specified in the Building Code. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used.

(b) Rules of Construction. The following rules of construction shall govern the provisions of this Ordinance:

(1) The word "shall" is mandatory and not permissive; the word "may" is permissive and not mandatory.

(2) Words used in the singular include the plural, and words used in the plural include the singular, unless the context indicates the contrary.

(3) Words used in the present tense include the future tense and words used in the future tense include the present tense.

(4) The particular or specific controls over the general.

(5) All words, terms and phrases not defined herein but defined in other ordinances, regulations or codes of the City relative to land development or construction shall be construed as defined in such

ordinances, regulations or codes unless the context of this Ordinance indicates a different meaning was intended.

(6) All words, terms and phrases neither defined herein nor in such other ordinances, regulations or codes shall be given their usual and customary meanings, unless the context of this Ordinance indicates a different meaning was intended.

(c) Definitions. As used in this Ordinance the following words shall have these specific meanings:

(1) "A-frame Sign" means any portable sign, structure, or configuration of one or two sign faces mounted or attached back-to-back in such a manner as to form a basically triangular vertical cross-section.

(2) "Accessory" means subordinate or incidental to, and on the same lot or on a contiguous lot in the same ownership, as the principle building or use being identified or advertised.

(3) "Business, Commercial, Industrial or Office Parks" means a group of three (3) or more free-standing buildings containing uses related to commercial activity that developed as a planned unit with common open space and landscape areas on the property.

(4) "Business sign" means a sign that identifies or directs attention to the business, profession, commodities, services, entertainment or activities conducted, sold, displayed, offered or stored on the premises where the sign is located.

(5) "Changeable Copy Sign" means a sign on which the copy is changed manually or electronically such as a message center or reader boards with changeable letters or changeable pictorial panels, or electrically controlled time and temperature signs. It ~~does~~ not include poster panels or painted bulletins.

(6) "Canopy Sign" means any sign that is a part of or attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, windows, or outdoor service area. Sign area will be calculated only on the commercial message represented on the canopy.

(7) "City Council" refers to the City Council for the City of Draper, Utah.

(8) "Construction sign" means a temporary sign announcing subdivision, development, construction or other improvement of a property by a building contractor or other person furnishing services, materials or labor to the premises, but does not include a "real estate sign."

(9) "Double Faced Sign" means a sign where the faces are mounted back to back and which has an interior angle between the two faces of 30 degrees or less.

(10) "Electric sign" means any sign containing electric wiring, but not including signs illuminated by exterior light sources, such as flood lights.

(11) "Free-standing building" means any permanent, non-residential structure containing a principal use on the property that has no party wall or common wall with any other structure.

(12) "Frontage, building" means the horizontal, linear dimension of that side of a building that abuts a street, a parking area, a mall or other circulation area open to the general public and that has either a main window display of the enterprise or a public entrance to the building; in industrial districts, a building side with an entrance open to employees is a building frontage; where more than one use occupies a building, each such use having a public entrance or main window display for its exclusive use shall be considered to have its own building frontage, which shall be the front width of the portion of the building occupied by that use.

(13) "Frontage, street" means the linear frontage of a lot or parcel abutting a private or public street that provides principal access to or visibility of the premises.

(14) "Gross leasable floor area - (G.L.A.)" means the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines and upper floors, if any, expressed in square feet measured from centerline of joint partitions and exteriors of outside walls.

(15) "Height" means the vertical distance measured from the elevation of the nearest top back of curb, or, if there is no curb within twenty-five (25) feet, from the lowest point of the finished grade on the lot upon which the sign is located and within twenty-five (25) feet of the sign, to the uppermost point on the sign or the sign structure.

(16) "Holiday Decorations" means non-commercial displays of a primarily decorative nature, clearly incidental and customarily and commonly associated with any national, local, or religious holiday.

(17) "Illumination, internal" means lighting by means of a light source that is within a sign having a translucent background, silhouetting opaque letters or designs, or that is within letters or designs that are themselves made of translucent material.

(18) "Kiosk" means a small structure, typically located within a pedestrian walkway or similar circulation area, intended for uses as a small shop, or for use as a display space for posters, notices and exhibits.

(19) "Light source" means neon, fluorescent or similar tube lighting, an incandescent bulb, including the light-producing elements therein, and any reflecting surface that, by reason of its construction or placement, becomes the light source.

(20) "Lot" means a portion or parcel of land, including a portion of a platted subdivision, occupied or intended to be occupied by a building or use and its accessories, together with such yards as required under the provisions of the Zoning Ordinance for the City of Draper, which is an integral unit of land held under unified ownership in fee or co-tenancy, or under legal control tantamount to such ownership.

(21) "Maintenance" means the replacing, repairing, or repainting of a portion of a sign structure, periodic changing of bulletin board panels, or renewing of copy that has been made unusable by ordinary wear and tear, weather or accident.

(22) "Monument Sign" means a sign mounted directly, or in close proximity, to the ground, and not over six (6) feet tall from the top of the required landscaped berm to the top of the cabinet.

(23) "Off-premises advertising sign" means any off-premises sign, including without limitation, a billboard or general outdoor advertising device, that advertises or directs attention to a business, commodity, service or activity conducted, sold or offered elsewhere than on the same lot or within the same building upon which such sign is located.

(24) "Open House/Real Estate Sign" means a temporary sign advertising real property for sale which is open for inspection by potential buyers of the property.

(25) "Owner" means a person, who, alone, jointly or severally with others, or in a representative capacity (including without limitation, an authorized agent, executor or trustee) has legal or equitable title to any property in question.

(26) "Planning Commission" refers to the Planning Commission for the City of Draper, Utah.

(27) "Pole Sign" means a sign which is supported by a pole (sometimes more than one) and otherwise separated from the ground by air. Pole signs are almost always separate from buildings and other structures.

(28) "Project sign" means a sign whose principal purpose is to identify a business or induce a purchase of a good or service, including without limitation, any sign naming a brand of good or service.

(29) "Projecting sign" means a sign attached to a building or extending in whole or in part fifteen (15) inches or more horizontally beyond the surface of the building to which the sign is attached.

(30) "Public entrance" means an entrance to a building or premises that is customarily used or intended for use by the general public, and excludes fire exits, special employee entrances, and loading dock entrances not generally used by the public.

(31) "Real estate sign" means a sign indicating the availability for sale, rent or lease of the specific lot, building or portion of a building upon which the sign is erected or displayed.

(32) "Roof line" means the highest point on any building where an exterior wall encloses usable floor space (including roof areas for housing mechanical equipment) and the highest point on any parapet wall if the parapet wall extends around the entire perimeter of the building.

(33) "Roof sign" means a sign painted on the roof of a building, supported by poles, uprights, or braces extending from the roof of a building, or projecting above the roof of a building, but does not include a sign projecting from or attached to a wall.

(34) "Shopping center" means a group of three (3) or more commercial establishments on a site of three (3) or more acres (excluding public streets), planned, developed and generally managed as a unit with common areas for off-street parking and landscaping provided on the property.

(35) "Sign" means any writing, pictorial representation, decoration (including any material used to differentiate sign copy from its background), form, emblem or trademark, flag or banner, or any other figure of similar character that:

(i) Is a structure or any part thereof (including the roof or wall of a building); or,

(ii) Is written, printed, projected, painted, constructed or otherwise placed or displayed upon or designed into a building, board, plate, canopy, awning, or vehicle or upon any material object or device whatsoever; and,

(iii) By reason of its form, wording, symbol, design or illumination, attracts or is designed to attract attention to the subject thereof or is used as a means of identification, advertisement or announcement.

(36) "Sign face" means the surface of a sign upon, against or through which the message is displayed or illustrated.

(37) "Snipe Sign" means a sign which is either not permitted by this ordinance or for which a permit is required and has not been obtained and which is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes, or other objects with the message appearing thereon.

(38) "Structure" means anything constructed or erected with a fixed location on the ground above grade but does not include poles, lines, cables, or other transmission or distribution facilities of public utilities.

(39) "Temporary sign" means a sign, banner or similar device or display that is intended for a temporary period of display for the purpose of announcing a special event or advertising or directing persons to a subdivision or other land or building development.

(40) "Time-temperature-date sign" means a sign that displays the current time, outdoor temperature, date of the month or any combination of that information.

(41) "Vehicle-mounted sign" means a sign displayed upon a trailer, van, truck, automobile, bus, railroad car, tractor, semi-trailer or other vehicle, whether or not such vehicle is in operating condition.

(42) "Wall sign" means a sign displayed upon or against the wall of an enclosed building, where the exposed face of the sign is in a plane parallel to the plane of the wall and extends not more than fifteen (15) inches horizontally from the face of the wall, including a sign erected upon or against the side of a roof having an angle of forty-five (45) degrees or less from the vertical.

(43) "Wind sign" means a sign consisting of one or more banners, flags, pennants, ribbons, spinners, streamers, captive balloons, or other objects or material fastened in such a manner as to move upon being subjected to pressure by wind.

(44) "Window sign" means a sign that is painted on, applied or attached to, or located within three (3) feet of the interior of a window and that can be seen through the window from the exterior of the structure, but excludes merchandise included in a window display.

Section 2. Amendment. Section 9-14-030 is hereby amended and adopted to read in its entirety as follows:

9-14-030 Violations and Enforcement

(a) Action or Proceedings. The Community Development Director, or his or her designee, shall be empowered to institute any appropriate action or proceeding in any case where a sign is erected, constructed, reconstructed, altered, repaired, ~~converted~~, maintained, or used in violation of this Chapter or

the Draper City Zoning Ordinances. The purpose of such action shall be to prevent unlawful uses and restrain, correct, or abate violations, and may include, but shall not be limited to, any of the following:

- (1) Issue a Notice of Violation to the Owner of any unsafe, dangerous, or illegal sign;
- (2) Issue a Criminal Citation to the Owner of any unsafe, dangerous, or illegal sign;
- (3) Institute an action for abatement of public nuisance or injunction against the Owner for any unsafe, dangerous, or illegal sign; and/or
- (4) Remove or impound any unsafe, dangerous, or illegal sign at the expense of the Owner.

(b) Notice. When emergency action is not deemed necessary, the Community Development Director may issue a Notice of Violation to the Owner stating the nature of the violation, the required repair or remedial action to be taken. In the case of a permanent sign, the Owner shall have fifteen (15) days from the date of the Notice, or in the case of a temporary sign, the Owner shall have three (3) days in which to correct the alleged violation or to appeal to the City's Board of Adjustment.

(c) Failure to Comply. If the Owner fails to comply with the Notice of Violation within the time frame provided, the Community Development Director may cause such sign to be removed or altered to comply with this Chapter. Such action by the City shall be at the expense of the Owner and shall include the actual cost of repair or removal of the sign, plus fifteen percent (15%) of such amount for administrative or overhead costs. If the Owner fails to pay the amount within thirty (30) days from the date of billing, the City may initiate legal action against the Owner as provided by law to collect such costs and expenses, including interest at the legal rate and reasonable attorney fees.

(d) Abatement or Injunction. When deemed necessary to protect public safety, or if the Owner disputes or denies the existence, placement, construction, or maintenance of a sign, or refuses to remove or permit its removal, the City may bring an action to abate the sign as a public nuisance and/or may seek injunctive relief. If the City is granted a judgement, the City may recover from the Owner the costs and expenses of having the nuisance abated and/or obtaining injunctive relief.

(e) Citation. If a sign is found to be in violation of this Chapter, the Community Development Director may issue or cause to be issued a criminal citation against the Owner.

(f) Removal or Impound. When a sign is illegally located within a City right-of-way, or in the case of an emergency, or an identified hazard, the

Community Development Director may, without notice, cause the immediate removal and/or impoundment of such dangerous or defective sign(s) which present a hazard to the public or which is in the public right-of-way. Unless otherwise stated in this Chapter, signs which are impounded by the City shall be held by the City awaiting retrieval by their owners for no fewer than fifteen (15) calendar days, after which unretrieved impounded signs may be discarded or destroyed in a manner of the City's own choosing. Such action by the City shall be at the expense of the Owner in the amount set forth in Subsection (c).

Section 3. Amendment. Section 9-14-060 of the Draper City Municipal Code is hereby amended and adopted to read in its entirety as follows:

9-14-060 Sign Permit Procedure

(a) Sign Permit. Unless otherwise provided for by this Chapter, all signs within the City of Draper shall require a sign permit prior to the erection, installation, or use of any sign. The sign permit is separate and distinct from any additional permit required by the Inspections Division of Draper City or otherwise required by the City.

(b) Submittal Requirements. Any person desiring a sign permit shall submit the following materials to the Community Development Department for the consideration of the permit request:

(1) Completed application form (application forms are available from the Community Development Department).

(2) Application fee.

(3) Any other supplemental materials deemed necessary by the City for the review of the permit request.

(c) Review Procedure. The following procedure shall be followed prior to the issuance of a sign permit:

(1) A completed application form, fee and any other related materials will be submitted to the Community Development Department. The Planning Office shall check each application submittal for its completeness.

(2) The application will then be reviewed by the Community Development Department staff for its conformity with this Chapter.

(3) When the sign permit application is found to be in conformance with the provisions of this Chapter, the Zoning Administrator or designee shall issue a sign permit to the applicant.

(4) Because of the potential hazard to the public resulting from improperly constructed or installed signs, all signs shall be inspected by a designated officer of the City immediately after installation. It shall be the responsibility of the permittee to request the inspection within five (5) business days after installation. Any signs found not to conform with the requirements of this Chapter shall be made to conform or be removed as provided in this Chapter.

(5) Because signs which are large or contain electrical parts may require more extensive or complicated inspection, those signs whose cost, rental value or lease value exceeds \$500.00 shall be required to obtain a building permit, electrical permit or both in addition to a sign permit.

(d) Special Exceptions. The Planning Commission may grant special exceptions relating to the size, height, location, illumination, number and type of signs, and other exceptions to the standards set forth in this Ordinance. Such exceptions shall be granted on the basis of the criteria set forth below:

(1) Upon recommendation of the Historic Preservation Commission and presentation to the Planning Commission of documentation which authenticates the historical nature of a structure and sign, the Planning Commission may grant a special exception for a sign which is a replica of a historic sign and which shall be displayed as part of a restoration of the historic structure upon which said sign was originally located; or

(2) Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of this Chapter, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of this Chapter would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property, the Planning Commission may authorize, upon appeal relating to the property, a special exception from such strict application so as to relieve such difficulties or hardship as long as such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Title. No such exception shall be authorized by the Planning Commission unless it finds that:

(i) The strict application of the Chapter would produce undue hardship;

(ii) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

(iii) The authorization of such exception will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the exception; and

(iv) The granting of such exception is based upon reasons of demonstrable and exceptional hardship as distinguished from exceptions for purposes of convenience, profit or caprice.

(3) No special exception shall be authorized unless the Planning Commission finds that the condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Chapter.

(e) Sign Special Exception Procedure. The procedure for applying for an exception to this Chapter shall be as follows:

(1) The applicant shall submit a completed sign application and applicable fees to the Community Development Department.

(2) The applicant shall also submit a narrative letter describing the nature of the special exception request as well as the hardship placed on the applicant.

(3) The Community Development Department shall set a time before the Planning Commission to consider the request at a Public Hearing, upon receipt of the complete application.

(4) Notice of the date and matter to be discussed shall be posted in three public places at least ten (10) calendar days prior to the meeting and must be forwarded by mail at least ten (10) days prior to the meeting to all property owners within four hundred (400) feet of the affected property.

Section 4. Amendment. Section 9-14-070. is hereby amended and adopted to read in its entirety as follows:

9-14-070 General Provisions

(a) Sign Area Computation. The measured area of a sign shall be the entire area within the smallest square, circle, rectangle, or triangle enclosing the extreme limits of a writing, representation, emblem, or any figure of similar character, together with any material or color forming an integral part of the display or used to differentiate a sign designed with more than one exterior surface. The supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure are designed in such a manner as to form an integral background of the display. Where a sign has two (2) or more display faces, the area of all faces shall be included in determining the area of the sign.

(b) Projection and Clearance Requirements.

(1) Clearance from High Voltage Power Lines: Signs shall be located not less than six (6) feet horizontally or twelve (12) feet vertically from overhead electrical conductors which are energized in excess of seven hundred and fifty (750) volts. The term "overhead conductors" as used in this section means any electrical conductor, either bare or insulated, installed above the ground, except such conductors as are enclosed in iron pipe or other material covering of equal strength.

(2) Clearance from Fire Escapes, Exits or Standpipes: No sign or sign structure shall be erected in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit or standpipe.

(3) Obstruction of Openings: No sign shall obstruct any openings to such an extent that light or ventilation is reduced to a point below that required by the City.

(c) Design, Construction, and Maintenance.

(1) All signs shall be designed, constructed, and maintained in accordance with the following standards:

(i) All signs shall comply with applicable provisions of the Uniform Building Code and the electrical code of the City at all times; and,

(ii) Except for banners, flags, temporary signs and window signs conforming in all respects with the requirements of this ordinance, all signs shall be constructed of permanent material and shall be permanently attached to the ground, a building or another structure by direct attachment to a rigid wall, frame or structure; and,

(iii) All signs shall be maintained in good and safe structural condition, in compliance with all building and electrical codes and in conformance with this code, at all times.

(iv) All signs shall be designed so as to be an integral part of the overall design of the site and architecturally compatible with the building.

(d) Illumination Requirements. For the protection of community appearance and to minimize light pollution and traffic hazards caused by glare, illuminated signs shall be subject to the following conditions:

(1) Any external light source used for the illumination of a sign shall be shielded so that the beams or rays of light will not shine directly onto surrounding areas.

(2) Neither the direct nor the reflected light from any light source shall create a traffic hazard, distraction to operators of motor vehicles on public thoroughfares or create a nuisance to surrounding properties.

(3) Signs illuminated from an external light source:

(i) No un-frosted light source, fluorescent light source or light source in excess of twenty-five (25) watts shall be directly visible to any motor vehicle or pedestrian located in a public right-of-way or street or from any residential area within a distance of three hundred (300) feet measured from the light source;

(ii) No portion of the sign, including any frame, bracing or support structure shall be constructed of a reflective surface.

(4) Signs illuminated from an internal light source:

(i) The light source shall not be visible from the exterior of the sign;

(ii) The wattage shall not exceed the following requirements:

(A) Fluorescent lights not to exceed five (5) watts per square foot of sign area.

(B) Incandescent lights not to exceed twenty-five (25) watts per square foot of sign area.

(5) One (1) internally illuminated sign which is displayed in a window shall be permitted in all areas where internally illuminated signs are permitted. Such a sign shall not exceed four (4) square feet and it will not be counted towards the aggregate sign area for the use to which it is attached.

(e) Signs Not Requiring a Permit. The following signs shall be permitted in all zoning districts, and all applicable provisions of Chapter shall apply, unless otherwise modified, except that a sign permit and sign permit fee shall not be required for the following situations:

(1) On premises street address identification signs, attached to buildings, which do not exceed two (2) square feet in total surface area and limited to one such sign per use or building, whichever is the greater number.

(2) Each single family residential use shall be allowed four (4) square feet of sign area for the purpose of identifying the address and

(17) Signs promoting community non-profit events sponsored by the City or any of its agencies such as but not limited to Draper Days or events sponsored by the Draper Arts council. Community signs may be placed within the public right-of-way so long as they conform to all traffic safety standards.

(f) Window Signs. Window signs not required to have a sign permit and not prohibited by other provisions of this Chapter shall be allowed.

Section 5. Amendment. Section 9-14-090 is hereby amended and adopted to read in its entirety as follows:

9-14-090 Prohibited Signs

(a) To protect the safety and welfare of the people of the City, to minimize traffic hazard and distraction and to promote the community appearance, the following signs shall not be permitted, erected, or maintained within the City of Draper:

(1) Signs with visible moving, revolving, or rotating parts or visible mechanical movement of any description, except for traditional barber poles and gauges and dials which may be animated to the extent necessary to display correct measurement.

(2) Signs with optical illusion of movement by means of a design which presents a pattern capable of reversible perspective, giving the illusion of motion or changing of copy.

(3) Signs with lights or illuminations which flash, move, rotate, scintillate, blink, flicker, vary in intensity, vary in color, or use intermittent electrical pulsations.

(4) Strings of light bulbs used in connection with commercial premises for commercial purposes, other than traditional holiday decorations during the holiday season.

(5) Signs which emit, or designed so wind will create, any sound which is intended to attract attention, involve the use of live or preserved animals or create unsafe glare.

(6) Any sign (together with its supporting structure) now or hereafter existing which, seven (7) days or more after the premises have been vacated, advertises an activity, business, product or service no longer produced or conducted upon the premises upon which such sign is located. If the sign or sign structure is covered or the identifying symbols or letters removed, an extension of time may be granted by the Planning Commission upon good cause for such extension being shown. This provision shall not apply to permanent signs accessory to businesses which

are open only on a seasonal basis, provided there is clear intent to continue operation of the business.

(7) Any sign which is installed or erected in or projects into or over any public right-of-way, except in the case of a sign for which a permit has been issued in conformance with the requirements of this Ordinance.

(8) Signs not permanently affixed or attached to the ground or to any structure except for real estate signs attached to posts driven into the ground, and temporary signs and barriers as addressed elsewhere in this Chapter.

(9) any sign or sign structure which:

(i) constitutes a hazard to safety or health by reason of inadequate installation, maintenance or dilapidation; or

(ii) Does not conform to section 9-14-070 (c).

(10) Any sign or sign structure which:

(i) In any other way obstructs the view of, may be confused with, or purports to be an official traffic sign, signal or device or any other official sign; or,

(ii) Creates in any way an unsafe distraction for motor vehicle operators; or,

(iii) Obstructs the view of motor vehicle operators entering a public roadway from any parking area, service drive, private driveway, alley or other thoroughfare.

(11) Any sign which obstructs free ingress to or egress from a required door, window, fire escape or other required exit way.

(12) Any sign not in compliance with the provision of this Chapter.

(13) Off-premise advertising signs or any other sign not pertinent and clearly incidental to the permitted use on the property where located, except as provided for elsewhere in this Code.

(14) Portable signs which are not permanently affixed to any structure on the site or permanently mounted to the ground, or otherwise located on one or more wheels.

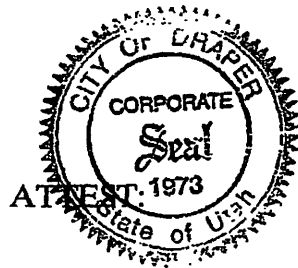
(15) Signs mounted, attached or painted on motor vehicles, trailers or boats when used as additional advertising signs on or near the premises or not used in conducting a business or service.

remaining portions of these Ordinances and such remaining portions shall remain in full force and effect.

Section 9. Effective Date.

This Ordinance shall take effect immediately upon publication or posting, or thirty days after passage, whichever occurs first.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY,
STATE OF UTAH, ON THIS 16th DAY OF July, 1996.
DRAPER CITY



By: Elaine Redd
Mayor

Barbara L. Adler
City Recorder

Tab C

ADDENDUM C

ORDINANCE NO. 505

AN ORDINANCE AMENDING TITLE 9 CHAPTER 26 AND TITLE 9 CHAPTER 3 OF THE DRAPER CITY MUNICIPAL CODE WHICH REGULATE ALL FORMS OF SIGNAGE AND ESTABLISHES DEFINITIONS AND STANDARDS FOR SIGN DEVELOPMENT

WHEREAS, the City Council previously established and adopted provisions for regulating all forms of signage and sign development standards and definitions as set forth in Chapter 9-26 and 9-3 of the Draper City Municipal Code; and

WHEREAS, the regulations established by Chapter 9-26 and 9-3 were established to allow for and regulate the orderly development all forms of signage within Draper City; and

WHEREAS, Draper City desires to update and amend Chapter 9-26 in its entirety to establish new sign processing provisions, sign regulation, and sign development requirements and amend sign definitions of Chapter 9-3; and

WHEREAS, Draper City desires that all signs and signage devices are regulated with consistency through an expanded and comprehensive code.

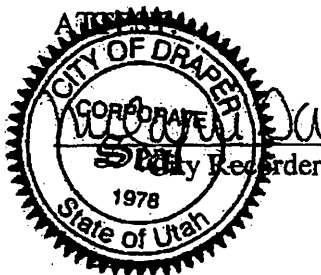
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DRAPER, STATE OF UTAH:

Section 1. Replace. Title 9 Chapter 26 of the Draper City Municipal Code shall be replaced in its entirety by the text attached to this ordinance as 'Exhibit A'; and

Section 2. Amend. Title 9 Chapter 3 of the Draper City Municipal Code shall be amended by the text attached to this ordinance as 'Exhibit B'.

Section 3. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all provisions, clauses and words of this Ordinance shall be severable.

Section 4. Effective Date. This Ordinance shall become effective upon publication or posting, or thirty (30) days after passage, whichever occurs first.



DRAPER CITY

By: 
Mayor

SECTION 9-26-020 SCOPE

The provisions of this Chapter shall apply to the display, construction, erection, alteration, use, location and maintenance of any sign within the City unless the sign is a legal nonconforming sign as provided for in 9-26-140 or is exempt under other provisions of this Title. The requirements of this Chapter shall not be construed to prohibit or limit other applicable provisions of this Title, the Draper Municipal Code, and other laws.

SECTION 9-26-030 DEFINITIONS

Abandoned Sign: A sign which, remains on a property which has been vacated or which, remains unused for a period of time in excess of ninety (90) days.

Alteration of Sign: Changing or rearranging any structural part, enclosure, lighting type, component, or location of a sign.

Animation: The movement or the optical illusion of movement of any part of the sign structure, design or pictorial segment, including the movement of any illumination or the flashing or varying of light intensity; the automatic changing of all or any part of the facing of a sign, the movement of a sign set in motion by the atmosphere. Time and temperature devices shall be considered animated signs. Banners and flags shall be exempted from this definition.

Architectural Sign: A sign incorporated into an architectural element such as an archway, fountain or sculptured garden, which is integrated with, but subordinate to, the overall architectural element.

Area of a Sign: For signs other than individual letters, words, insignias or symbols, the area is the total areas of the facing of the sign or the total area within the outer edge of any existing border. The sign area can be computed by measuring the maximum width of the sign structure times its height.

In the case of individual letters used as a sign, the area is ninety percent (90%) of the area enclosed within the smallest regular geometric figure needed to completely encompass all letters, insignias or symbols of the sign, including horizontal spacing between letters, insignias or symbols, except otherwise provided herein.

Awning Sign: Signs, which are placed on or integrated into fabric or other material canopies, which are mounted on the exterior of a building.

Backlighting: Illumination, the source of which is not itself visible, positioned inside or behind a sign face such as behind raised letters and awnings or inside sign cabinets.

Billboard: A freestanding sign located on industrial, commercial, or residential property, designed or intended to direct attention to a business, product, or service that is not sold, or offered, or existing on the property where the sign is located.

Building Front Foot or Frontage: The horizontal, linear dimension of that side of a non-residential building abutting a street, a parking area, a mall or other circulation area open to the general public and having a main window display of the enterprise or a public entrance to the building.

(1) In industrial districts, a building side with an entrance that opens to employees or clients;

(2) Where more than one use occupies a building, the front width of that portion of a building occupied by a use having a public entrance or main window display for its exclusive use.

Building Identification Sign: A sign displaying the name and/or address of a building, which sign is located on the same site as the building.

Building Surface: the total surface of a building face to which the sign is attached.

Business Identification Sign: A sign displaying the name of the business to which it pertains and/or the names of the products or services sold or offered by such business at the site on which the business and sign are located.

Canopy Sign: A sign that is attached to, supported from, applied to, suspended from, or constructed as part of a canopy or awning, or any other protective cover over a door entrance, window, or outdoor service area.

Change Panel: A sign designed to permit immediate change of copy with language other than the name of the business.

Clear View Area: See Driveway Vision Corner Clearance, Chapter 9-26-030

Community Sign District: A group of businesses in a specified area in the City, which have been organized into a coordinated group for the purposes of common signage and sign control.

Comprehensive Sign Program: A sign program, submitted under the guidelines of a comprehensive sign district, which encourages flexible signage opportunities greater than what is allowed in the underlying district.

Construction Sign: Any sign announcing the names of those individuals or businesses directly involved with the construction, alteration, or repair of a building project or announcing the character of the building enterprise for the purpose for which the project is intended.

Development Sign: A temporary sign used to identify an approved future and/or current development.

Directional or Warning Sign: An on-premise sign in front of the building containing information relative to expediting pedestrian or vehicular traffic flow and parking.

Directory Sign: A sign, which provides a listing of the names of businesses, activities, addresses, locations, uses or places within a building or complex of buildings for the purpose of identification only.

Driveway Vision Corner Clearance or Clear View Area: A triangular space at the intersection of the driveway an adjoining property line. The triangular space is determined by a diagonal line connecting two points measured thirty (30) feet equidistant from the point of the intersection along the property line and the driveway, then connecting those points to form a triangle. No mobile signs shall be permitted in this triangular space.

Electronic Message Sign: A display consisting of an array of light sources, panels or disks, which are electronically activated.

Electric Sign: Any sign containing electric wiring, but not including signs illuminated by exterior light sources, such as flood lights.

Embellishment: Letters, figures, characters or representatives in irregular form, which are to be used as a supplement to the primary sign structure.

Entrance Sign: A sign used to identify a planned district or platted subdivision with the intention of providing knowledge about the complete project and not a single entity or unit. This sign must be within fifty (50) feet of the entry driveway.

Face of Sign (Sign Face): The surface of a sign upon, against or through which a message is displayed or illustrated.

Fascia Sign: A sign attached to or erected against a wall of a building.

Freestanding Building: An independent building which is physically separated from any other structure on the same parcel and is further identified by it's own parking lot and landscaping layout, circulation flow, and other features which qualify a building as a complete independent unit.

Freestanding Sign: A sign, which is self-supported by poles, pylons or other structural supports mounted in the ground.

Frontage: The length of the property line of any parcel along each street, which it borders.

Grand Opening: The introduction, promotion or announcement of a new business, store, shopping center or office, or the announcement, introduction, or promotion of an established business changing ownership. A business qualifies for a grand opening sign when it has been closed to the public for more than thirty (30) days.

Grand Open Sign: A temporary banner sign, which calls attention to the opening of a new business.

Ground Level: The finished grade of the adjacent street curb or where there is no street curb, six (6) inches above street grade. In areas within the hillside areas, ground level shall be the existing natural grade.

Ground Sign: A low-profile, on-premise sign completely self-supported by posts or other sign apparatus independent of any building or other structure.

Height of Sign: The vertical distance measured from the base ground level to the highest point of the sign.

Identification Sign: An on-premise sign which indicates the identity of the owner or occupant of a parcel, structure or use.

Illegal Sign: Any sign erected without first obtaining a sign permit, other than a legal non-conforming sign.

Illuminated or Lighted Sign: A sign equipped with artificial lighting devices for the purpose of improving the sign's visibility.

Indirect Lighting: A source of external illumination located away from the sign, which lights the sign, but which is itself not visible to persons viewing the sign from any street, sidewalk or adjacent property.

Individual Letters: A cutout, etched letter, or logo, which is individually placed on a landscape screen wall, building wall, or ground sign.

Inflated Sign: Any advertising device, which is supported by heated or forced air or lighter-than-air gases

Internal Lighting: A source of illumination entirely within the sign which makes the contents of the sign visible at night by means of the light being transmitted through a translucent material but wherein the source of illumination is not visible.

Landscape Wall Sign: A freestanding sign architecturally integrated with the building, mounted on a screen or perimeter wall and having individual letters. The sign is mounted on, or to, a wall, which may or may not be an attachment of a building wall.

Landscaping: See Required Landscaping, Chapter 9-26-030

Legal Nonconforming Signs: All permanently attached or affixed signs legally existing prior to the enactment of this subsection shall be regarded as legal nonconforming signs and may be continued, subject to being properly repaired and maintained, so long as the existing sign is not expanded in size or materially altered. Signs moved, altered or destroyed as a result of condemnation or construction by a public entity, relocated or rebuilt shall be considered a legal nonconforming sign.

Logo: A graphic symbol representing an activity, use or business.

Maintenance (of Sign): The replacing, repairing, or repainting of a portion of a sign structure, periodic changing of bulletin board panels, or renewing of copy that has been made unusable by ordinary wear and tear, weather or accident.

Master Planned Community: A project of at least one hundred (100) acres, which is planned, developed, or closely coordinated with a unified character and land use scheme, and having a master property owners association which includes all lands within the master planned community.

Menu Sign: A temporary sign used to inform the public of the list of dishes, foods, and/or entrees available in a restaurant and may include the corresponding prices.

Modifiers: Words describing uses and activities other than the business name, trademark or registered slogan. Each sign is allowed up to two modifiers.

Monument Sign: A freestanding cabinet sign mounted on a base, which is detached from the building.

Multiple Tenant Commercial Development: A commercial development in which there exists two or more separate commercial activities, in which there are appurtenant shared facilities (such as parking and pedestrian mall) and which is designed to provide a single area in which the public can obtain varied products and services.

Multi-faced Sign: Any sign in a three-dimensional configuration, including but not limited to cubes, spheres, and cylinders.

Nameplate: A small sign, which identifies a resident's name and address or the name of a farm, ranch or commercial stable. Such signs may be shingle, building wall or archway-mounted signs.

Nonconforming Sign: Any sign that is not allowed under this ordinance, but which, when first constructed, was legally allowed by the City of Draper or political subdivision then having control and regulation over construction of signs.

Off-premise Sign: A sign, which is located on property other than where a business is located, the product is sold, or the service is offered.

On-premise Sign: Any sign identifying or advertising a business, person, activity, goods, product, or service located on the premises where the sign is located.

Open House or Real Estate Sign: A temporary sign advertising real property for sale, rent, or lease, which is open for inspection by potential buyers of the property.

Pan Formed/Channel Letter: An individual letter, which is three-dimensional and is constructed by means of a three-sided channel. The open side of the channel may face a wall or be faced with a translucent panel, which is placed away from the wall.

Permanent Sign: Any sign which is intended to be and is so constructed as to be a lasting and enduring condition remaining unchanged in character, condition (beyond normal wear) and position, and in a permanent manner affixed to the ground, wall or building, provided the sign is listed as a permanent sign in the ordinance.

Pole Sign: A freestanding sign supported by one or more poles or base and a minimum clearance of 6 feet from grade mounted permanently in the ground. See tower sign.

Political Sign: Any temporary sign pertaining to an election or a referendum or carrying the picture or name of a person seeking election or appointment to a public office.

Portable or Movable Sign: Any sign or signs which are prominently displayed to identify, advertise, direct, or promote, any person, product, company, entity of service, and which is moveable in nature such as "A-frames", pedestal, signs on vehicles, banners attached to free standing poles, or similar signs which are not permanently installed in the ground.

Projection of Sign: A sign attached to a building or extending in whole or in part a maximum of twelve (12) inches horizontally beyond the surface of the building to which the sign is attached.

Real Estate Sign: See Open House Sign, Chapter 9-26-030

Required Landscaping: The specific area (on-site) to be landscaped at the base of the freestanding sign.

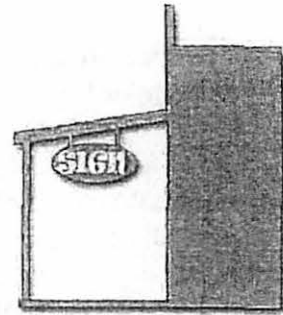
Residential Entry Sign: A sign that is placed at the entrance to a multi-family or single-family development only in order to identify the name of the development.

Right-of-way: That portion of real property reserved and appropriated by the City or any other governmental unit to be used for easements for utility purposes or street improvements. In determining the boundary lines of real property located within the City, such lines shall not extend into any legal right-of-way.

Sales, Lease and Rent Signs: Temporary signs which indicate that a premises, building or vacant lot is currently for sale, lease or rent.

Setback of Sign: The horizontal distance between a property line and the closest edge of the sign structure.

Shingle Sign: A sign suspended from a roof overhang of a covered porch or walkway, which identifies the tenant of the adjoining space.



Sign: Any identification, description, illustration, or device which is in view of the general public and which directs attention to a person, place, commodity, activity, institution, organization, or business. SIGN shall include any and all supportive apparatus identification, description, illustration, or device. The term "sign" shall not include any flag or insignia of the United States, State of Utah, Salt Lake County, City of Draper, or official historical plaques of any governmental agency.

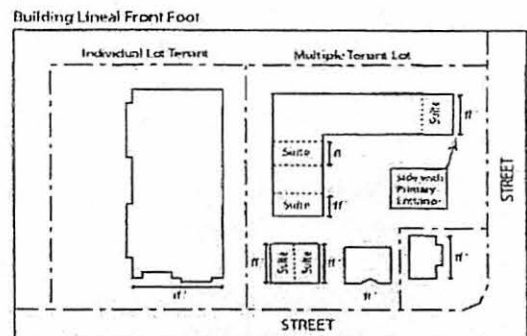
Sign Budget: The total cumulative sign area for all types of signs allowed to a parcel or project.

Sign Wall: Any surface (excluding windows) of a building within twenty-five percent (25%) degree vertical. Signs on a wall shall be limited to business identification and modifiers.

Special Event: A promotional event such as, but not limited to; bazaars, street fairs, shows, exhibitions, sporting events, runs, bicycling events and block parties. This does not include sidewalk sales occurring on private property where merchandise normally sold indoors and is transferred from the indoor to outdoor for sale.

Street or Street Frontage: Any right of way that is adjacent to a project, complex or property running the entire length of the project, complex or property.

Sum Total Sign Area: Aggregate area of all signs for any individual use. In every event, computation of allowable sign area includes all existing signs on the premises, whether such signs be conforming or nonconforming unless specifically accepted by the terms of this ordinance.



Temporary Sign: Any sign, banner, pennant or valance of advertising display, constructed of cloth, canvas, wallboard or like materials, with or without frames. Any sign not permanently attached to the ground, wall or building, intended to be displayed for a short period of time only.

Tower Sign: A high profile, on-premise sign completely self-supported by supports or other sign apparatus independent of any building or other structure. See pole sign.

Traffic Directional Sign: Signs used at driveways to improve public safety and to enhance public access to the site. This sign provides information that will assist the operators of vehicles in the flow of traffic. Such signs may use names, logos, or symbols of buildings, businesses, activities, uses or places as a means of direction.

Vehicle-Mounted Sign: A sign displayed upon a trailer, van, truck, automobile, bus, railroad car, tractor, semi-trailer or other vehicle, whether or not such vehicle is in operating condition.

Wall Sign: An on-premise sign attached to, or erected against a wall of a building or structure.

Window Sign: Any poster, cut-out letters, painted text or graphics, or other text or visual presentation affixed behind a window pane or within three feet (3') of a window pane which is placed to be read from the exterior of a building. A window sign may occupy a maximum of twenty-five percent (25%) of the window it is placed in.

Zoning Administrator: Staff person designated by the City Manager to implement this Chapter of the Municipal Code. Generally the Community Development Director.

SECTION 9-26-040 REQUIREMENT OF CONFORMITY

No sign, for which a permit is issued after the effective date of this ordinance, may be placed or maintained in the City except as provided herein. All signs maintained contrary to the provisions of this Chapter are declared to be nuisances, and as such may be removed as provided by law.

SECTION ~~9-26-050~~ NONCONFORMING SIGNS

In order to minimize confusion and unfair competitive disadvantage to those businesses which are required to satisfy the current sign ordinance standards, the City intends to apply regulation of existing nonconforming signs with a view to their eventual elimination. This goal shall be achieved by imposing limits on change, expansion, alteration, abandonment, and restoration of legally existing nonconforming signs. Except as otherwise provided herein, the provisions of Chapter 9-6 of the City Zoning Ordinance regarding nonconforming uses and structures shall apply to nonconforming signs.

(a) Lawful Legal Nonconforming Signs. A permanently attached or affixed sign legally established prior to the enactment of this subsection, shall be regarded as a legal nonconforming sign and may be continued, subject to being properly repaired and maintained, so long as the existing sign is not expanded in size, relocated, or altered in

SECTION 9-26-060 PERMITS, APPLICATIONS, AND FEES

(a) Permits.

(1) Sign Permit Required. Unless otherwise provided by this Chapter, every sign within the City shall require a sign permit prior to its erection, installation, or use. Such permit is separate and distinct from any other permit that may be required by applicable provisions of the Draper Municipal Code.

(2) Conditions of Permit Issuance:

(i) If a specific occupancy or use displays illegal or nonconforming signs, sign permits shall not be issued in response to;

- a. Requests for new or additional signs; and/or
- b. Requests for changes to an existing nonconforming sign.

A sign permit may be issued for a specific occupancy or use provided the terms thereof specify modifications or removal of nonconforming signs resulting in conformity with the provisions of this Chapter.

(ii) If there is a requesting tenant having illegal or nonconforming signs displayed within a multi-tenant development or shopping center, permits shall not be issued in response to:

- a. Requests for new or additional signs; and/or
- b. Requests for changes to any existing nonconforming freestanding sign.

A permit for a freestanding sign may be issued for a multi-tenant building, development, or shopping center provided the terms thereof specify modification or removal of the nonconforming freestanding sign(s) resulting in conformity with the provisions of this Chapter.

(b) Application and Submission Requirements. To obtain a sign permit, the applicant shall complete and submit an application to the Community Development Department on a form prescribed by the city. The application is to be accompanied by the sign permit application documents, and any other necessary information requested by the department. All applications shall include the written consent of the owner, lessee, agent, or trustee having charge of the property on which the sign is proposed to be located.

(1) Submission Requirements. The required number of fully dimensional sign plans shall be submitted by the applicant and shall include the following:

(i) Monument and Freestanding Signs.

- a. Plot plan showing relationship of sign to buildings, property lines, and setback from public rights-of-way, intersections, easements and driveways.
- b. Two accurately dimensioned, scaled drawings showing height, color, square foot dimensions, landscaping, sign composition, type of illumination, and how the sign will appear from the street.
- c. Details of sign construction including name of sign maker, electrical plan, foundation scheme, and name of the licensed contractor that will install sign.
- d. Drawings must also include, 1) the number of acres and length of lineal frontage of property and, 2) the height of sign in relation to Ground Level (six inches above street grade).

(ii) Wall Signs.

- a. Two scaled drawings showing square foot dimensions of the building and the sign, sign composition, and type of illumination.
- b. A profile drawing of how the sign will appear from the street/parking area and on the building.
- c. Details of sign construction and attachment including electrical plan.
- d. Details of sign construction including name of sign maker, electrical plan, and name of the licensed contractor that will install sign.

(iii) Temporary Signs.

- a. Plot plan showing the relationship of sign(s) to buildings, property lines, and setback from public rights-of-way, intersections, easements and driveways.
- b. Length of period for display, type of request.

(iv) Additional Information Required.

- a. Proof of current Draper City business license.
- b. Business address and phone number.
- c. Address of property owner and phone number.
- d. General or electrical contractor license number, phone and address.

(2) Permits authorizing the use, construction, reconstruction, or alteration of any sign structure may be withheld when inadequate information is submitted to determine if the proposed action is in conformance with the provisions of these sign regulations.

(c) Permit Fees.

(1) Sign Permit Fees are based on the current Draper City Consolidated Fee Schedule.

(2) All permit fees are subject to the following regulations:

(i) The owner of a legal nonconforming sign which is brought into conformance voluntarily shall not be required to pay a permit fee in order to obtain a permit for a replacement sign

(ii) Where construction for a sign has begun for which a permit is required by this ordinance before a permit has been obtained, the standard fees shall be doubled, but the payment of such double fee shall not relieve any persons from complying fully with the requirements of this ordinance in the execution of the work or from any penalties prescribed herein.

(d) Review and Approval Procedures.

(1) Upon submittal, the application will be reviewed for conformance with the standards of this chapter, and a permit will be issued provided the proposed sign meets all applicable requirements of this Chapter and the required fees are paid.

(2) Inspections. All signs for which a permit is required shall be subject to the following inspections:

- (i) Footing (structural) inspection on all freestanding signs and monument signs;
- (ii) Electrical inspection on all illuminated signs;
- (iii) Inspection of braces, anchors, supports and connections on all wall signs.
- (iv) Site inspection to insure the sign has been constructed according to approved application and valid sign permit.

(3) Inspection Markings.

(i) Temporary signs shall be marked by a temporary permit sticker furnished by the City.

(e) Permit Limitations.

(1) **Transferability.** Permits, permit numbers, or permit application and attachments shall not be transferable to other sites. They are valid only for a specific sign at the designated location. If at any time, a sign or sign structure is altered, removed, or

relocated in a manner different from the terms of the sign permit, such existing sign permit will become void and a new application shall be made for the new sign installation when necessary.

(2) Revocation. The Community Development Department personnel, with the written approval of the Zoning Administrator, may, in writing, suspend or revoke a permit issued under provisions of this section, should they determine that the permit was issued on the basis of a material omission or misstatement of fact, or in violation of this ordinance or the Draper City Code.

(i) Notice. Notice of the Zoning Administrator's decision to revoke a sign permit shall be served upon the holder of the permit, (a) by delivering in person a copy of the notice to the holder of the permit, or to one of it's officers, or (b) by leaving a copy of the notice with any person in charge of the premises, or (c) in the event no such person can be found on the premises, by affixing a copy of the notice in a conspicuous place at an entrance to the premises and by the certified mailing of another copy of the notice to the last know post office address of the holder of the permit.

(ii) Appeal. The holder of the permit may appeal the decision of the Zoning Administrator to revoke the permit to the Board of Adjustment, in writing, within fifteen (15) days from the date when the notice was served.

(iii) If no appeal has been made at the end of the fifteen (15) days, the permit is revoked. The Zoning Administrator shall then initiate the process for the removal of the illegal sign.

(3) Authority. No permit for a sign issued by the City may be deemed to constitute permission or authorization to maintain a public or private nuisance, nor shall any permit issued hereunder constitute a defense in any action to abate a nuisance.

(4) Violations. If Zoning Administrator finds that any requested or existing sign(s) or use(s) directly related to the application, ownership, and control of the permit applicant violate any applicable provision of this ordinance or any other city code or ordinance, they shall not issue the sign permit until the violation(s) is (are) corrected.

(5) Sign permits for new or additional signs shall not be issued for a specific occupancy if such occupancy displays illegal or nonconforming signs. A sign permit may be issued for a specific occupancy provided the terms of such permit specify modification or removal of nonconforming signs resulting in conformity of all signs with the provisions of this chapter.

SECTION 9-26-070 ENFORCEMENT

(a) Enforcement Official. The Zoning Administrator shall have the authority to enforce this ordinance, and to make all inspections required to ensure enforcement, and to hear

appeals of all decisions relating to the current building and electrical codes being used by the City.

(b) **Inspections.** [See: 9-26-060(d) (2)]

(c) **Markings and Tags.**

(1) **New Sign.** Each new sign requiring a sign permit shall have affixed to the sign a certification tag issued by the Community Development department. Tags must be visible from the sidewalk or nearest convenient location.

(2) **Tag Number and Date.** Each tag shall be of weatherproof material and will have a tag number and date which corresponds to the issuance date and permit number retained in the Community Development department.

(3) **Tag Installation.** The Draper City Inspector shall apply tags only to sign(s) for which a permit has been issued at a designated place on the sign where it is readily seen by Draper City inspectors. The tag certifies to the Community Development department that the placement and construction of the signs are in conformance with representations made in permit applications and that the work is completed.

(d) **Penalties for Violations.** Any person, firm or corporation violating any provisions of this Chapter, or failing to comply with any order or regulation made hereunder, shall be guilty of a Class B misdemeanor subject to the written approval of the City Manager. The misdemeanor charge can be avoided by a showing of reasonable cause and that the sign owner acted in good faith with the provisions of this Chapter.

(e) **Revocation of Permits.** The Zoning Administrator/or designee shall have the authority to revoke any permit authorizing the erection of a sign, which has been constructed or is being maintaining in violation of the permit.

(1) **Notice.** Notice of the Zoning Administrator's decision to revoke a sign permit shall be served upon the holder of the permit, (a) by delivering in person a copy of the notice to the holder of the permit, or by one of it's officers, or (b) by leaving a copy of the notice with any person in charge of the premises, or (c) in the event no such person can be found on the premises, by affixing a copy of the notice in a conspicuous place at an entrance to the premises and by the certified mailing of another copy of the notice to the last know post office address of the holder of the permit.

(2) **Appeal.** The holder of the permit may appeal the decision of the Zoning Administrator to revoke the permit to the Board of Adjustment, in writing, within fifteen (15) days from the date when the notice was served.

(3) If no appeal has been made at the end of the fifteen (15) days, the permit is revoked. The Zoning Administrator shall then initiate the process for the removal of the illegal sign.

(f) Removal of Signs.

(1) Authority. The Zoning Administrator is hereby authorized to require removal of any illegal sign except for Legal Nonconforming signs defined in Section 9-26-020 and 140.

(i) Notice. Before bringing action to require removal of any illegal sign, the Zoning Administrator shall give written notice to the owner of the sign or the owner of the premises on which such sign is located. The notice shall state the violation charged, and the reasons and grounds for removal, specifying the deficiencies or defects and what repairs, if any, will make the sign conform to the requirements of this ordinance, and specify that the sign must be removed or made to conform with the provisions of this ordinance within the notice period provided below.

Service of notice shall be made personally on the owner or lessee, or by certified mail addressed to the owner or lessee at the address specified in the permit or the last known address.

(ii) Notice Period.

- a. The notice period for permanent signs shall be ten (10) days.
- b. The notice period for temporary signs shall be forty-eight (48) hours.
- c. Re-erection of any sign or substantially similar sign on the same premises after a notice of violation has been issued shall be deemed a continuation of the original violation.

(iii) Prosecution. If the owner or lessee of the premises upon which the sign is located has not demonstrated to the satisfaction of the Zoning Administrator that the sign has been removed or brought into compliance with the provisions of this ordinance by the end of the notice period, then the Zoning Administrator shall certify the violations to the City Prosecutor for prosecution.

(2) Removal. The Zoning Administrator may remove any illegal temporary sign which is maintained or re-erected after the expiration of the notice period, if the owner or lessee of the premises has been issued a notice of violation at least once before for the same violation involving the same or similar sign.

(3) Safety Hazard. Notwithstanding above, the Zoning Administrator may cause the immediate removal or repair (without notice to the owner of the sign, or the

property on which it is located) of any unsafe or defective sign or signs that create an immediate hazard to persons or property.

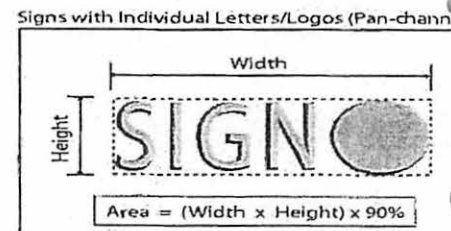
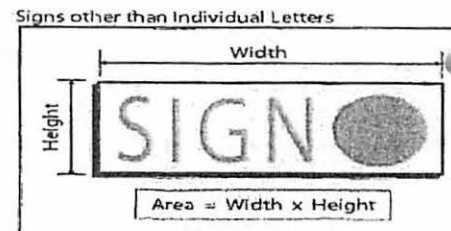
(4) **Costs of Removal.** The costs of removal of a sign by the City shall be borne by the owner of the sign and of the property on which it is located; and the City therefore may bring an action for recovery.

(g) **Liability for Damages.** The provisions of this ordinance shall not be construed to relieve or to limit in any way, the responsibility or liability of any person, firm, or corporation which erects or owns any sign, for personal injury or property damaged caused by the sign; nor shall the provisions of this ordinance be construed to imposed upon the City, its officers, or its employees, any responsibility or liability by reason of the approval of any sign under the provisions of this ordinance.

SECTION 9-26-080 GENERAL PROVISIONS

(a) **Sign Area Measurement.** For signs other than individual channeled letters, words, insignias or symbols, the area is the total areas of the facing of the sign or the total area within the outer edge of any existing border or the sign by measuring the maximum width of the sign structure times its height.

In the case of individual letters used as a sign, the area is ninety percent (90%) of the area enclosed within the smallest regular geometric figure needed to completely encompass all letters, insignias or symbols of the sign, including horizontal spacing between letters, insignias or symbols, and any extension of support structures not enclosed within the area of all individual letters, except otherwise provided herein.



(1) The supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure are designed in such a manner as to form an integral background of the display.

(2) Sign area shall be calculated from one (1) sign face except as otherwise stated for particular sign types in this Chapter.

(3) Total Sign Area sum calculations shall include all on-premise signs unless under the provisions of this Chapter a particular type of sign;

(i) Is expressly excluded from the calculation of total sign area; or

(ii) Has a separate basis for calculating sign area.

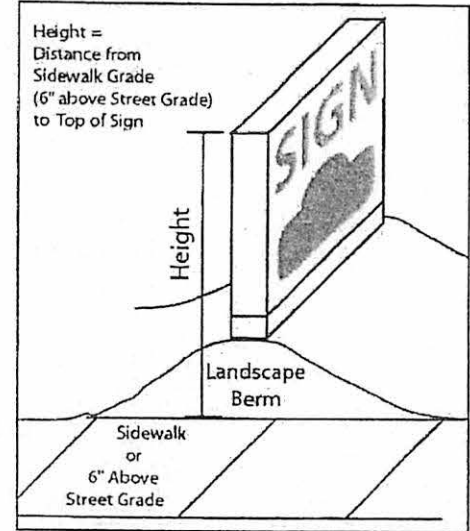
(b) **Sign Height Measurement.** Sign height is measured as follows:

(1) **Freestanding/Monument Signs.** Sign height is the distance measured from grade, the finished grade of the adjacent street curb or where there is no street curb, six (6) inches above street grade to the topmost portion of a sign, excluding decorative embellishments as permitted in this Chapter. The height of any monument sign base or other structure erected to support or adorn the sign is measured as part of the sign height.

When existing site topography prevents reasonable sign height measurement at six (6) inches above street grade the sign height may be measured from grade at base of sign upon staff review and approval of preexisting onsite topography conditions.

(2) **Building and Wall Mounted Signs.** The height of a wall, fascia, mansard, parapet or other building mounted signs is the vertical distance measured from the base of the wall on which the sign is located to the top of the sign or structure.

Sign Height Measurement
(Freestanding Signs)



Sign Height Measurement (Existing Natural Topography)

Upon staff approval of existing site topography conditions sign height may be measured from ground level at the base of such sign as topography may require.

(c) **Projection and Clearance Requirements.** Every sign shall meet the following clearance standards:

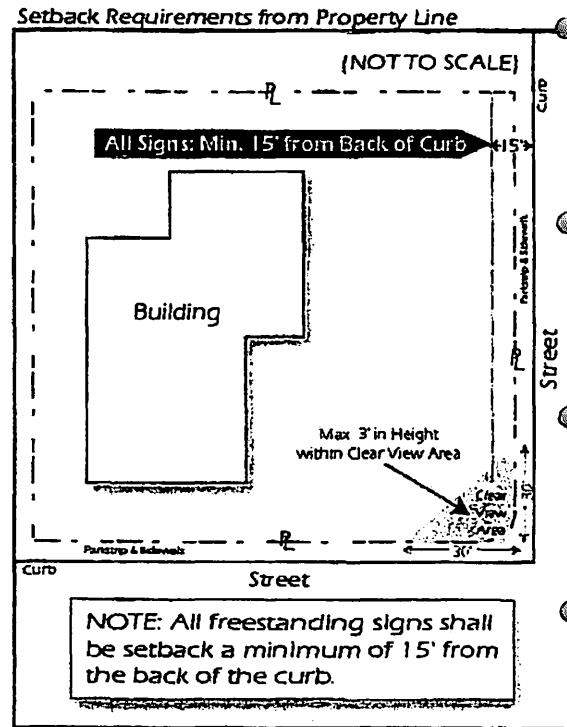
- (1) No sign or sign structure shall be erected in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit or standpipe.
- (2) No sign shall obstruct any openings to such an extent that light or ventilation is reduced to a point below that required by the City.
- (3) Freestanding/Monument signs shall not extend over any pedestrian or vehicular access area unless specifically approved by the Traffic Engineer.
- (4) No sign shall be erected or maintained which has less horizontal or vertical clearance from communication lines and energized electrical power lines than that prescribed by the laws of the State of Utah or its agencies.
- (5) No sign shall be located on publicly owned land or inside street rights-of-way, except signs owned and erected by permission of an authorized public agency or specifically authorized herein.

(d) **Setback Requirements.** To determine setback distances, measurements shall be taken from a vertical line at the edge or surface of the sign or sign structure which is closest to the street, right of way, district line, or property line from which the sign is to be set back.

(1) All freestanding and monument signs must be set back a minimum of fifteen (15) feet from the back of the curb to allow for park strip and sidewalk. Setbacks from property lines are in addition to minimum curb setback.

(2) Signs in any commercial or manufacturing zoning district shall be located not less than twenty (20) feet from any adjacent residential zoning district line.

(3) Sign structures of three (3) feet or higher in height shall meet clear-view requirements of this Title.



(e) **Traffic Safety.** No sign or other advertising structure shall be erected which in any manner may be confused with an official traffic sign or signal, or which bears words normally used in such signs, i.e., stop, go slow, caution, danger, warning, etc. No sign or any advertising structure shall be erected which by reason of its size, location, shape, content, coloring, or manner of illumination might be confused as a traffic control device. No sign shall have lighting which impairs the vision of anyone traveling upon a public street or distracts any driver so as to create a public nuisance. Specifically, no sign or group of signs may not exceed 1 foot candle in brightness as measured at the property line.

(f) **Design, Construction, and Maintenance.** All signs shall be designed, constructed, and maintained in accordance with the following design, construction, and maintenance standards:

(1) All signs shall comply with applicable provisions of the International Building Code and the electrical code of the City at all times.

(2) Except for flags, temporary signs and window signs conforming in all respects with the requirements of this Chapter all signs shall be constructed of permanent material and shall be permanently attached to the ground, a building or another structure by direct attachment to a rigid wall, frame or structure.

(3) All signs shall be maintained in good and safe structural condition, in compliance with all building and electrical codes and in conformance with the provisions of this Chapter. The landscaped area in which any sign is placed shall be kept free from

weeds, garbage, and debris. Maintenance shall not include structural alterations, cosmetic or style changes, enlargements, or face changes.

(4) All permanent signs shall be designed so as to be an integral part of the overall design of a site and architecturally compatible with the building.

(g) **Illumination Requirements.** Signs may be illuminated unless otherwise specified. Illumination may be either by direct, internal, or internal indirect as allowed herein, and shall be so installed as required in lighting ordinance.

For the protection of community appearance and to minimize light pollution and traffic hazards caused by glare, illuminated signs shall be subject to the following illumination standards:

(1) Any external light source used for the illumination of a sign shall be shielded so that the beams or rays of light will not shine directly onto surrounding areas.

(2) Neither the direct nor the reflected light from any light source shall create a traffic hazard, distraction to operators of motor vehicles on public thoroughfares, or create a nuisance to surrounding properties.

(3) Signs illuminated from an internal light source shall meet the following standards:

(i) The light source shall not be visible from the exterior of the sign.

(4) One (1) internally illuminated sign which is displayed in a window shall be permitted in all areas where internally illuminated signs are permitted. Such a sign shall not exceed two (2) square feet and shall be counted towards the aggregate sign area for the use to which it is attached.

(h) **Prohibited Lighting and Movement.**

(1) **Lighting.** No flashing, blinking, or rotating lights, exposed neon or similar tube type illumination, bare incandescent, fluorescent, metal halide, or high or low pressure sodium light bulbs shall be permitted for either permanent or temporary signs. In no case shall mercury vapor light sources be used.

(2) **Action Signs.** No sign shall be permitted which moves by mechanical or electrical means except flags as allowed in this ordinance.

(i) **Signs Not Requiring a Permit.** The following types of signs shall be permitted in all zoning districts subject to applicable provisions of this Chapter unless otherwise modified in this section. No sign permit or sign permit fee shall be required.

- b. No sign shall exceed one hundred (100) square feet in area (sign face).
- c. In lieu of having an identification pole sign, any business which meets the criteria for an identification pole sign may have up to one hundred (100) square feet of additional wall sign area so long as the total sign area on any wall is no greater than fifteen percent (15%) of the wall area.

(ii) Monument and wall signs allowed under Section 9-26-100 of this Chapter, except that only a single pole or monument sign may be located on any single lot or parcel.

SECTION 9-26-130 AREAS OF SPECIAL DESIGNATION

RESERVED.

SECTION 9-26-140 PROHIBITED SIGNS

(a) **Purpose.** The intent of prohibiting signs listed in this section is to protect the safety and welfare of the people of the City, to minimize traffic hazards and distraction, and to promote beneficial community appearance.

(b) **Signs Prohibited.** The following signs shall not be permitted, erected, or maintained within the City:

- (1) Signs with visible moving, revolving, or rotating parts or visible mechanical movement of any description.
- (2) Signs with optical illusion of movement by means of a design which presents a pattern capable of reversible perspective, giving the illusion of motion or changing of copy.
- (3) Signs with lights or illumination, which flash, move, rotate, scintillate, blink, flicker, vary in intensity, vary in color, or use intermittent electrical pulsations.
- (4) Strings of light bulbs used in connection with commercial premises for commercial purposes, other than traditional holiday decorations during the holiday season.
- (5) Signs which:
 - (i) Emit, or are designed to emit, by any means, a sound intended to attract attention.
 - (ii) Involve the use of live or preserved animals.

(iii) Create unsafe glare.

(6) Any sign (together with its supporting structure) now or hereafter existing which, seven (7) days or more after the premises have been vacated, advertises an activity, business, product or service no longer produced or conducted upon the premises where such sign is located. If the sign or sign structure is covered or the identifying symbols or letters removed, an extension of time may be granted by the Planning Commission upon good cause shown for such extension. This provision shall not apply to permanent signs accessory to businesses, which are open only on a seasonal basis, provided there is clear intent to continue operation of the business.

(7) Any sign which is installed or erected in or projects into or over any public right-of-way, except in the case of a sign for which a permit has been issued in conformance with the requirements of this Chapter.

(8) Signs not permanently affixed or attached to the ground or to any structure except for real estate signs attached to posts driven into the ground, and temporary signs and barriers as addressed elsewhere in this Chapter.

(9) Any sign or sign structure which:

(i) Constitutes a hazard to safety or health by reason of inadequate installation, maintenance or dilapidation; or

(ii) Does not conform to section 9-26-080 (f).

(10) Any sign or sign structure which:

(i) In any other way obstructs the view of, may be confused with, or purports to be an official traffic sign, signal or device or any other official sign; or,

(ii) Creates in any way an unsafe distraction for motor vehicle operators; or,

(iii) Obstructs the view of motor vehicle operators entering a public roadway from any parking area, service drive, private driveway, alley or other thoroughfare.

(11) Any sign which obstruct free ingress to or egress from a required door, window, fire escape or other required exit way.

(12) Any sign with a change panel or removable text or panel feature, except where specifically allowed under the provisions of this Chapter.

(13) Off-premise advertising signs or any other sign not pertinent and clearly incidental to the permitted use on the property where located, except as provided for elsewhere in this Title.

(14) Portable signs not permanently affixed to any structure on the site or permanently mounted to the ground, or otherwise located on one or more wheels.

(15) Signs mounted, attached or painted on motor vehicles, trailers or boats when used as additional advertising signs on or near the premises, not used in conducting a business or service, or used in an unusual way not associated with normal business operating or vehicle parking procedures.

(16) Signs for the purpose of general outdoor advertising of products or services, or signs advertising a use, service or attraction not located in the City, except as provided for elsewhere in this Title.

(17) Flags, banners, wind signs or other devices designed or allowed to wave, flap or rotate with the wind except for flags, pennants, and insignias permitted pursuant to section 9-26-080 (g) (11) of this Chapter. Company flags or banners on flag-poles shall be permitted as part of the allowable sign area as defined elsewhere in this Chapter. Flags and banners shall be allowed as part of a "grand opening" or designated "holiday period" permit as defined elsewhere in this Chapter.

(18) Sign Banners that are not associated with an approved "grand opening" period, or otherwise permitted in this Chapter.

(19) Decorative Banners, except as allowed under Town Center District Signage as stated in this Chapter.

(20) Inflatable objects, except those specifically allowed elsewhere in this Chapter.

(21) Roof-mounted signs or signs which project above the highest point of the roof line or fascia of the building.

(22) Sign of an advertising nature posted or glued directly on an exterior wall, fence or roof or affixed directly on such wall, fence or roof by any means of similar adhesive substance. No paper, cloth, vinyl or other non-rigid materials sign, except for flags as provided for elsewhere in this Chapter, shall be tacked directly on any exterior wall, fence or roof, except those allowed as temporary signs as defined elsewhere in this Chapter.

(23) Off-premise advertising signs.

(24) Billboards; except for those billboards existing prior to the adoption of this Chapter, as may be allowed under Utah State Law.

(25) Graffiti.

(26) Handbills posted on public places or objects.

(27) Commercial signs in residential and agricultural zones except where a conditional-use permit has been granted pursuant to the provisions of this Title.

(28) Any sign not in compliance with the provisions of this Chapter and/or any applicable provisions of this Title.

Tab D

ADDENDUM D

ORDINANCE NO. 963

AN ORDINANCE OF DRAPER CITY AMENDING CHAPTER 9-26 OF THE
DRAPER CITY MUNICIPAL CODE RELATING TO SIGNS.

WHEREAS, Utah State law grants to Draper City the authority to regulate and approve signs; and

WHEREAS, the legal case law has determined that municipal authority over signs is limited to aspects of time, place, and manner; and

WHEREAS, the City has the desire to provide allowances for signage that is complimentary to and effective for the businesses it represents; and

WHEREAS, the City Council of Draper City has determined that it is in the best interest of the city and its citizens to provide adequate signage to promote the businesses located in Draper;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. Amendment. Chapter 9-26 of the Draper City Municipal Code is hereby amended in part to read as set forth in Exhibit "A," attached hereto and incorporated herein by reference.

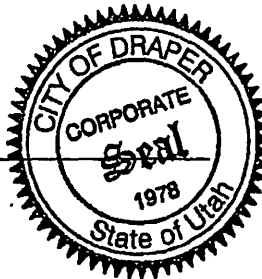
Section 2. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

Section 3. Effective Date. This Ordinance shall become effective 20 days after publication or posting, or 30 days after final passage, whichever is closer to the date of final passage.

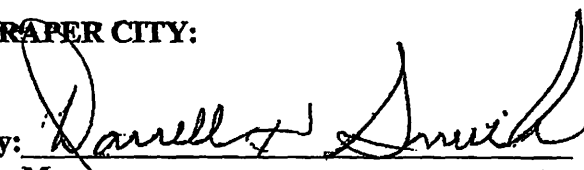
PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS 15th DAY OF February, 2011.

ATTEST:


City Recorder



DRAPER CITY:

By: 
Mayor

Title 9 Land Use and Development Code for Draper City

Chapter 9-26 SIGNS

Sections:

<u>9-26-010</u>	<u>Purpose</u>
<u>9-26-020</u>	<u>Scope</u>
<u>9-26-030</u>	<u>Definitions</u>
<u>9-26-040</u>	<u>Requirement of Conformity</u>
<u>9-26-050</u>	<u>Approvals, Permits, Applications, and Enforcement</u>
<u>9-26-060</u>	<u>General Provisions</u>
<u>9-26-070</u>	<u>Permitted On-Premise Permanent Signs</u>
<u>9-26-080</u>	<u>Temporary Signage</u>
<u>9-26-090</u>	<u>Areas of Special Designation</u>
<u>9-26-100</u>	<u>Signs Not Requiring a Permit</u>
<u>9-26-110</u>	<u>Nonconforming Signs</u>
<u>9-26-120</u>	<u>Prohibited Signs</u>
<u>9-26-130</u>	<u>Severability</u>

SECTION 9-26-010 PURPOSE. The purpose of this chapter is to protect and promote the health, safety and welfare of City residents and businesses by regulating the design, construction, and installation of signs in a content neutral manner that does not favor any type of speech over another in order to achieve the following objectives:

1. to provide a reasonable system for controlling signs within the community;
2. to permit signs that are well designed and pleasing in appearance, while allowing latitude for variety, good design relationships, and spacing between signs and adjacent uses;
3. to foster a community character that has a minimum of visual clutter;
4. to enhance the economic strength of the City;
5. to provide on-site identification for private enterprises;
6. to provide for public convenience by directing persons to various activities and enterprises;
7. to encourage signs that are compatible with land uses;
8. to minimize light pollution, glare, visual obstructions, distraction, and traffic and safety hazards with the free flow of travel and activity for vehicles and pedestrians;
9. to provide business owners the flexibility to have signs that meet the needs of the individual businesses;
10. to provide aesthetic protection for entry areas and primary corridors of Draper;

11. to provide protection from visual clutter;
12. to promote public safety; and
13. for the protection and promotion of community appearance.

SECTION 9-26-020 SCOPE. Nothing in this chapter is intended or interpreted to favor any one type of sign or content and where necessary should be interpreted to be content neutral. The intent of this policy is to provide flexibility in the allowance of signs as a part of the possible range of communication options available while being narrowly tailored to achieve the purposes identified in Section 9-26-010. The provisions of this chapter shall apply to the display, construction, erection, alteration, use, location, and maintenance of signs in the City. The requirements of this chapter shall not be construed to prohibit or limit other applicable provisions of this Title, the Draper City Municipal Code (DCMC), or the Utah Code Annotated (UCA). In the instance where provisions of this chapter conflict with other provisions of the DCMC, the terms of this chapter shall govern.

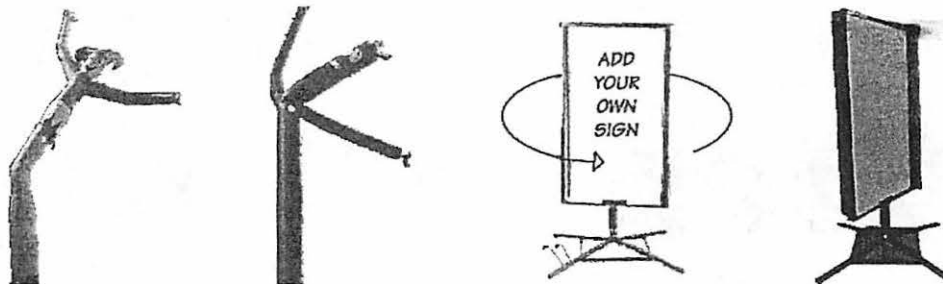
SECTION 9-26-030 DEFINITIONS. The following terms shall be defined as provided in this Section for the purpose of use within this chapter.

Alteration of Sign. Changing or rearranging, other than the sign copy, any structural part, enclosure, lighting type, component, or location of a sign.

Animation or Animated Signs. A sign which exhibits any of the following:

- A. the movement or the optical illusion of movement of any part of the sign structure, design, or a pictorial segment, including the movement of any illumination;
- B. flashing or strobe effects; or
- C. the spinning or other movement of a sign, or portion thereof;

however, electronic message center signs, digital time and temperature signs, and analog time devices shall not be considered animated.

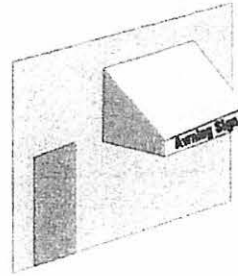


Area of a Sign.

- A. For signs designed with a cabinet, the area of the sign will be that of the cabinet face, excluding the outer edge of any border.

- B. For signs not designed with a cabinet, the area of the sign is the smallest regular geometric shape needed to completely encompass all letters, logos, and insignias of the sign, including horizontal spacing between letters, logos, and insignias. Words, abbreviations, logos, and insignias may be calculated independently to determine the area of such signage.

Awning Sign. Signs, placed on or integrated into canopies mounted on the exterior of a building.

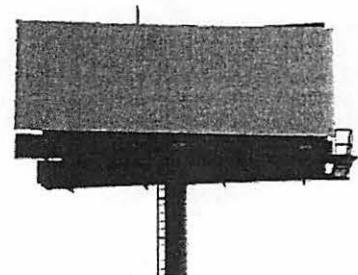
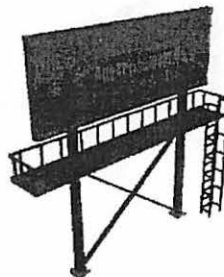
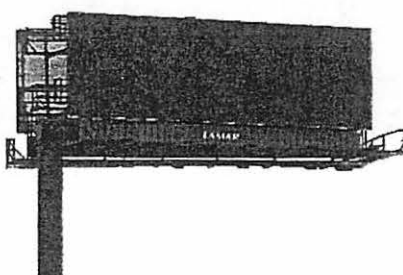


Backlighting. Illumination, the source of which is not itself visible, positioned inside or behind a sign face such as behind raised letters and awnings or inside sign cabinets where the illumination is seen through the letters or sign face.

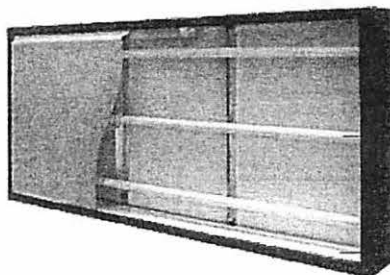
Banner. Plastic, fabric, or any other pliable material intended to be hung either with or without a frame, typically placed between two poles or hung on the wall of a building, but does not apply to flags and emblems of political, professional, religious, educational, or corporate organizations flown on a flag pole.



Billboard. A high-profile freestanding ground sign on one or more poles typically located along freeways or major highways designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

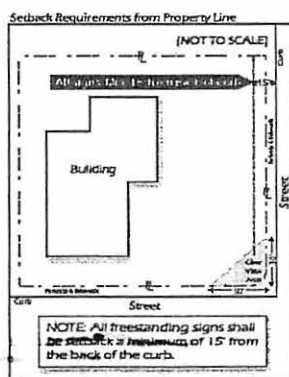


Cabinet. The enclosure of a sign, not including the mounting structure or decorative elements of the sign structure, upon which text, logos, and insignia are mounted and within which the majority of electrical components, if needed, are located.



Change of Copy Panel. A sign or portion of a sign designed to permit regular manual change of copy with language other than the name of the business.

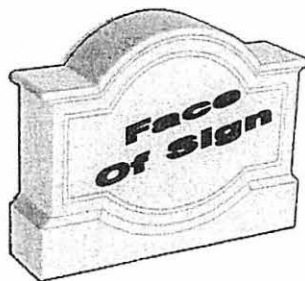
Clear View Area. A triangular space at the intersection of the driveway and adjoining curb determined by a diagonal line connecting two points measured 30 feet equidistant from the point of the intersection along the curb and the driveway, then connecting those points to form a triangle.



Commercial Speech. Any speech which bears advertising, reference to a specific product, or commercial transaction on behalf of a company or individual who is economically motivated for the speech.

Electronic Message Center Sign. An on-premise sign capable of displaying words, symbols, figures, or images that can be electronically or mechanically changed by remote or automatic means.

Face of Sign or Sign Face. The surface of a sign cabinet upon, against, or through which letter, logos, or insignias are displayed or illustrated.



Freestanding Sign. Any permanent sign type that is constructed independent of and not connected to a building or other structure.

Halo or Reverse Channel Illumination. Illumination, the source of which is not itself visible, positioned inside or behind the text of a sign where the illumination is seen around and not through the letters of the sign.

Handbill. A poster, flier, handout, brochure, leaflet, or other advertisement, typically made of non- or semi-durable materials, attached to permanent signage, traffic signage, utility elements, vehicles, or passed out to persons.



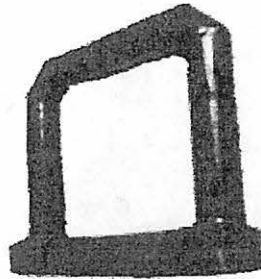
Height of Sign. The vertical dimension of a sign.

Illegal Sign. Any sign:

- A. erected without first obtaining a sign permit that would otherwise be a permitted sign;
- B. not otherwise established to be a legal non-conforming sign by the terms of this chapter; or
- C. erected after the effective date of this chapter that has been determined to be a non-permitted sign type.

Indirect Lighting. A source of external illumination located away from the sign, which lights the sign, but which may or may not itself be visible.

Inflatables. Any device supported by heated air, forced air, or other gases for the purpose of drawing attention to a business.



Informational Sign. A sign which provides information such as directional flow of vehicular or pedestrian traffic, entrance, exit, no parking, handicapped parking, loading area, and bears ~~no advertising or logos and~~ does not exceed four square feet of sign area.

Legal Nonconforming Sign. Any sign no longer allowed under this chapter, but which, when first constructed, was legally allowed.

Logo. A graphic symbol representing an activity, use, or business.

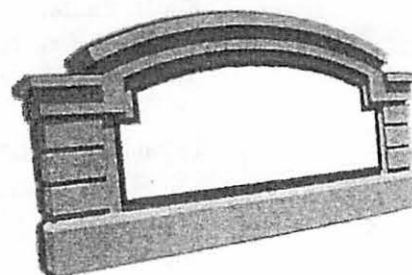
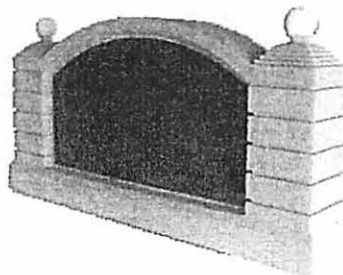
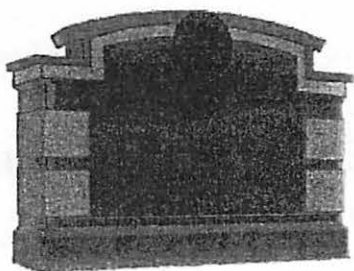
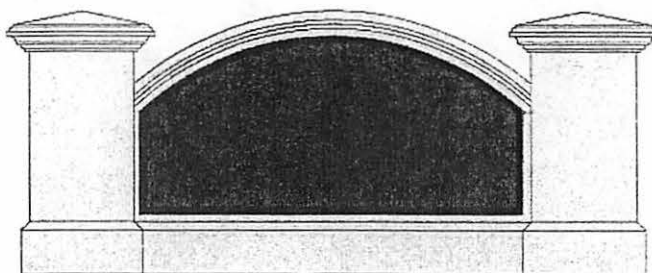
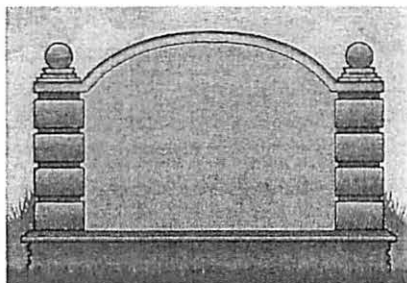
Maintenance of a Sign. The replacing, repairing, or repainting of a portion of a sign structure made undesirable by ordinary wear and tear, weather, or accident. Maintenance does not include the changing of colors or materials of any part of the sign.

Master Sign Program. Sign specifications and details approved as a package that define or identify allowed signage allotted to individual businesses throughout a multi-business commercial center.

Monolithic Sign. A high profile on-premise sign where the sign face and supports are within the same cabinet structure, independent of any building or other structure.



Monument Sign. A freestanding, typically low-profile sign mounted on a base, detached from the building.



Off-Premise Sign. A sign located outside of the property or development boundary where the referenced business is located, the referenced product is sold, or the referenced service is offered.

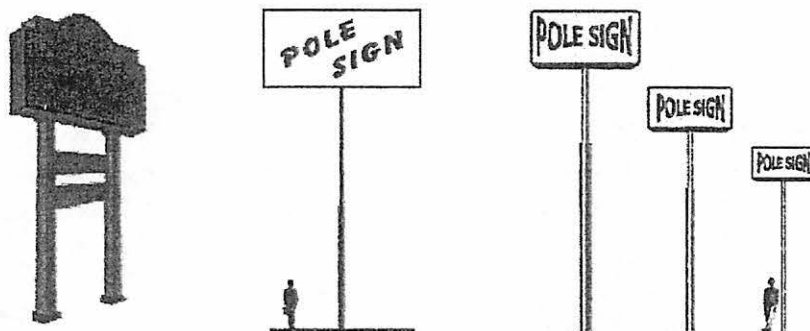
On-Premise Sign. Any sign identifying or advertising a business, person, activity, goods, product, or service located within the property or development boundary where the sign is located.

Pan Formed/Channel Letter. An individual letter, which is three-dimensional and is constructed by means of a three-sided channel, the open side of which may face a wall or be faced with a translucent panel, which is placed away from the wall.

Permanent Sign. Any permitted sign type which is:

- A. intended to be and is so constructed:
 - 1. of a lasting and enduring material;
 - 2. to remain unchanged in character, position, and condition exclusive of wear and tear;
 - 3. as a freestanding sign or wall or building; and
- B. identified as a permanent sign type within this chapter.

Pole Sign. A permanent freestanding sign mounted atop one or more poles where the bottom of the banner is at least six feet from the ground.



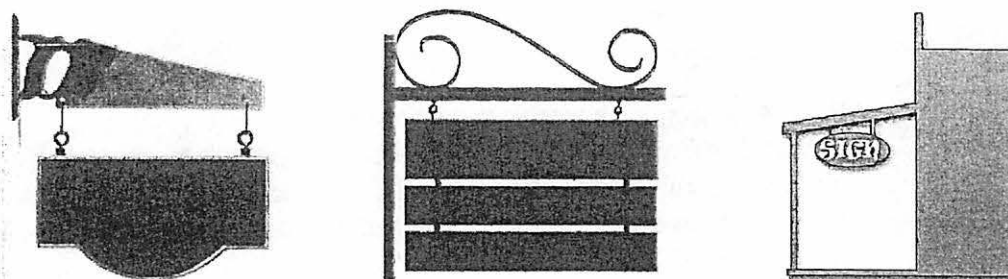
Political Sign. Any sign designed for the purpose of supporting or opposing a candidate, proposition, or other measure at an election or for any other noncommercial expression not related to the advertisement of any product, service, or the identification of any business.

Portable, Movable, and Handheld Sign. Any sign which varies its location basis, not otherwise classified in this chapter as a permanent or temporary sign, which may or may not be carried, worn, maneuvered, or manipulated as a means to draw attention from passers-by, including the use of vehicles.

Pylon Sign. A freestanding, high profile, on-premise sign completely self-supported where the cabinet is significantly elevated above the ground and of a larger size than freestanding signs allowed by this chapter. By reference, *Pylon Sign* also includes pole signs and tower signs.

Shingle Sign. A sign identifying the tenant of the adjoining space and which:

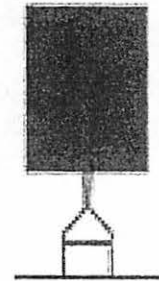
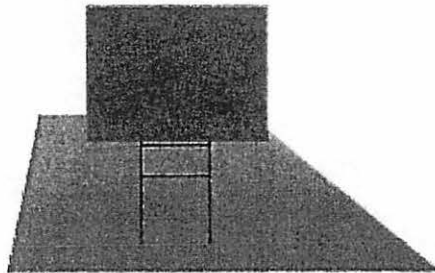
- A. is suspended from a roof overhang, covered porch, or covered walkway; or
- B. hangs or swings freely from a support mounted to the wall of a building.



Sign. Any identification, description, illustration, or device which is in view of the general public and which directs attention to a person, place, commodity, activity, institution, organization, or business. SIGN shall include any and all structural and supportive apparatus, identification, description, illustration, or device. SIGN shall not include any flag or insignia of the United States, State of Utah, Salt Lake County, City of Draper, official historical plaques of any governmental agency, or emblems of professional, religious, educational, or corporate organizations flown on a flag pole.

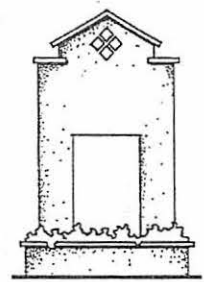
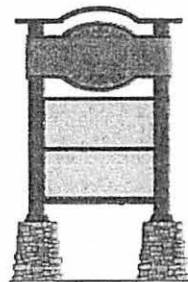
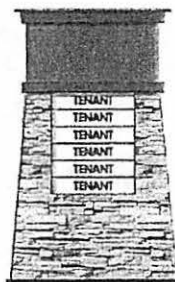
Sign Allowance. The total cumulative sign type and area for all signs allowed to any one business, development, or applicant.

Snipe Sign. A sign or other advertisement, typically made of non- or semi-durable materials, mounted to a tree, or utility pole, or to the ground by nails, staples, a wire frame, or similar device within a right-of-way including public or private parkstrips and medians or on public property.

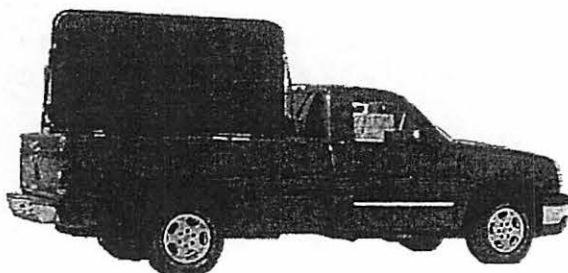


Temporary Sign. Any sign not permanently attached to the ground, wall, or building, intended to be displayed for a limited period of time.

Tower Sign. A high-profile, on-premise sign completely self-supported by supports or other sign apparatus independent of any building or other structure with architectural or decorative elements incorporated into the supports as well as the sign.



Vehicle Sign. Any magnetic, painted, permanently attached, or temporarily attached sign which is affixed to a vehicle or trailer. This definition does not apply to banner signs attached to vehicles, signs or lettering on public transit vehicles, taxis or company vehicles operating during the normal course of business or parked in a legally designated on-site parking space at the location of the company owning the vehicle.



Wall Sign. An on-premise sign attached to or erected against a wall.



Window Sign. Any sign, graphic, or visual presentation which is placed to be read from the exterior of a building that is:

- A. painted or drawn onto a window pane;
- B. mounted onto the outside of a window pane; or
- C. mounted within three feet of the window pane on the inside of the building.

SECTION 9-26-040 REQUIREMENT OF CONFORMITY. No sign for which a permit is issued after the effective date of this chapter, may be placed or maintained in the City except as provided in this chapter. All signs maintained contrary to the provisions of this chapter are declared to be non-conforming and, as such, may be dealt with or removed as provided herein. Any sign that poses a public safety hazard may be removed as specified in Section 9-26-050(H)(4).

SECTION 9-26-050 APPROVALS, PERMITS, APPLICATIONS AND ENFORCEMENT

- A. **Signs Associated with New Development.** Development projects which are intended to contain signage shall identify and be reviewed for a sign allowance as a part of the development review according to the following:
 - 1. **Sign Allowance Approval.** All development applications for non-residential projects shall also be approved, as a part of the application for site plan approval, for the development's desired sign allowance. Development sign allowance approval need only identify the location and size of all on-site permanent signs. Signage allowance approval shall not constitute approval of a Sign Permit. All signage shall require application for and approval of a Sign Permit prior to installation.
 - 2. **Master Sign Program Approval.** Non-residential multi-tenant developments shall pursue development signage approval by way of a Master Sign Program as a part of the application for site plan approval. Master Sign Program approval need only identify the location and size of all desired on-site permanent signs for each unit, pad, or business within the development. The Master Sign Program shall also include details regarding a signage theme. Approval of a Master Sign Program

shall not constitute approval of a Sign Permit. All signage shall require application for and approval of a Sign Permit prior to installation.

3. Amendments. Amendments to approved sign allowances or Master Sign Programs shall be approved by the Zoning Administrator if the amendments fully comply with this chapter. Amendments which do not fully conform to this chapter may be reviewed for possible approval by the Planning Commission by way of a Site Plan Amendment.
- B. Signs Not Associated with New Development. Signs associated with an existing building or developments, or for new developments that do not have an approved sign allowance need only pursue a sign permit and will be reviewed by the Zoning Administrator or their designee based on independent sign allowances for each sign.
- C. Sign Permit Review.
1. Sign Permit Required. Unless otherwise provided by this chapter, every sign within the City shall require a Sign Permit prior to its erection, installation, or use. Such permit is separate and distinct from any Building Permit or other permit that may be required by applicable provisions of the Draper City Municipal Code.
 2. Conditions of Permit Issuance.
 - i. If a specific occupancy or use displays an illegal or nonconforming sign, a new Sign Permit may not be issued for that occupancy or use without modifications to or removal of the nonconforming sign resulting in conformity with the provisions of this chapter.
 - ii. If there is a requesting tenant having an illegal or nonconforming sign displayed within a multi-tenant development or shopping center, new permits may not be issued for that space without modifications or removal of nonconforming signs resulting in conformity with the provisions of this chapter.
 - iii. A permit for a freestanding sign may be issued for a multi-tenant building, development, or shopping center provided the terms thereof specify modification or removal of all nonconforming freestanding signs resulting in conformity with the provisions of this chapter.
- D. Applications for Sign Permit.
1. Sign Permit Application. To obtain a permit, the applicant must submit a complete Sign Permit Application to the Community Development Department on a form prescribed by the City. Each sign must apply for and be issued its own Sign Permit unless approved as part of a Master Sign Program. The application must be accompanied by the information specified in this Section. Additional information may be required on a case-specific basis when determined to be

necessary to verify the engineering or construction of the sign or to assure the health, safety, and general welfare of the community, tenant, or business.

2. **Submission Requirements.** The following drawings and information must be submitted with each Sign Permit Application based on the type of permit requested:
 - i. **Monument and Freestanding Signs.**
 - (a) Two copies of a plot plan for the entire site, drawn to scale, showing the distance of the sign to all buildings, dimensioned property lines, and sign setbacks from public and private rights-of-way, intersections, easements, and driveways.
 - (b) Two fully dimensioned, scaled elevation drawings showing height, color, area dimensions, sign design, type of illumination, and aesthetics of the sign as will appear from the street. Elevations must be provided for all four sides of the sign.
 - (c) One complete set of detail drawings of the sign's construction including name of sign maker, electrical plan, foundation scheme, and name of the licensed contractor who will install the sign.
 - ii. **Wall Signs.**
 - (a) Two fully dimensioned, scaled elevation drawings showing the linear and area dimensions of the sign and the building elevation on which the sign is to be placed, color, sign design, type of illumination, and aesthetics of the sign as will appear from the street.
 - (b) Details of the sign's construction and attachment to the wall or building, including an electrical plan, the name of sign maker, and the name of the licensed contractor who will install the sign.
 - iii. **Temporary Signs.**
 - (a) Two fully dimensioned, scaled elevation drawings showing the linear and area dimensions of the sign and the building elevation on which the sign is to be placed, color, sign design, and aesthetics of the sign as it will appear from the street.
 - (b) Statements related to the length of time for display.
 - iv. **Additional Information Required.** The following information shall be required for all sign permit applications:

- (a) Written consent of the owner, lessee, agent, or trustee having charge of the building or property on which the sign is proposed to be located.
 - (b) Proof of application for or issuance of a current Draper City Business License.
 - (c) Address and phone number of the property owner, lessee, agent, or trustee having charge of the building or property on which the sign is proposed to be located.
 - (e) The license number, phone number, and address for the general or electrical contractor who will install the sign.
3. Permits authorizing the use, construction, reconstruction, or alteration of any sign may be withheld when inadequate information is submitted to determine if the proposed action is in conformance with the provisions of this chapter.

E. Review and Approval Procedures.

1. Upon submittal, the application will be reviewed for conformance with the standards of this chapter. A permit will be issued provided the proposed sign meets all applicable requirements of this chapter and the required fees are paid.
2. Inspections. All signs for which a permit is required shall be subject to the following inspections:
 - i. a footing or structural inspection on all freestanding signs;
 - ii. an electrical inspection on all illuminated signs;
 - iii. an inspection of braces, anchors, supports, and connections on all wall signs; and
 - iv. a final inspection to insure the sign has been located and constructed according to the approved Sign Permit.
3. Inspection Markings and Tags.
 - i. Certification Tags. Each permanent and temporary sign requiring a Sign Permit shall have a certification tag issued by the Community Development Department affixed to the sign.
 - ii. Tag Number and Date. Each certification tag shall be of weatherproof material and will have a tag number and date which corresponds to the issuance date and permit number.

- iii. Tag Installation. The Draper City inspector shall apply tags only to signs for which a permit has been issued at a designated place on the sign where it may be readily seen by Draper City inspectors. The tag certifies to the Community Development Department that the placement and construction of the signs are in conformance with representations made in permit applications and that the work is completed.
- F. Permit Fees. Sign Permit fees shall be assessed according to the current Draper City Consolidated Fee Schedule. When a permit is obtained in order to voluntarily bring a legal nonconforming sign into compliance with the terms of this chapter, there will be no fees assessed to the permit.
- G. Permit Limitations.
 - 1. Transferability. Permits, permit numbers, permit applications, and supporting information shall not be transferable to other sites or signs and shall valid only for a specific sign at the designated location. If at any time a sign or sign structure is altered, removed, or relocated in a manner different from the terms of an issued Sign Permit, such existing sign permit will become void and a new application must be made for the sign as altered or relocated. Signs associated with a business that has its ownership transferred with no proposed alteration to the business name, building, or signage shall, upon notification to the City, have its permits transferred to the new business owner without need of a new application.
 - 2. No permit for a sign may be deemed to constitute permission or authorization to maintain a public or private nuisance, nor shall any permit issued hereunder constitute a defense in any action to abate a nuisance.
- H. Enforcement.
 - 1. Violations. If the Zoning Administrator finds a sign for which a permit has been issued violates any applicable provision of this chapter, the Administrator shall pursue correction of the violation including revocation of the permit and removal of the sign, at the cost of the permit holder, as outlined in this subsection.
 - 2. Penalties for Violations. Any person, firm, corporation, or entity violating any provision of this chapter or failing to comply with any regulation hereunder shall be considered a violation of this Title punishable as outlined in Section 9-7-060 of this Title.
 - 3. Revocation of a Sign Permit. The Zoning Administrator may, in writing, revoke a Sign Permit issued under provisions of this Section, upon determining that the sign was constructed in violation of the terms of this chapter, the permit was issued on the basis of a material omission or misstatement of fact, or the permit was issued in violation of this chapter. Revocation of a sign permit which is to include or involve removal of a sign shall also comply with the provisions of subsection 4 herein.

- i. Notice. Notice of the Zoning Administrator's decision to revoke a Sign Permit shall be served to the holder of the permit:
 - (a) by delivering in person a copy of the notice to the holder of the permit, or their agent when specified;
 - (b) by leaving a copy of the notice with any person in charge of the premises; or
 - (c) in the event no such person can be found on the premises, by the certified mailing of a copy of the notice to the permit holder.
 - ii. If no appeal has been made at the end of the 15 days, the permit will be considered revoked and the sign illegal. The Zoning Administrator shall then initiate the process for the removal of the illegal sign at the permit holder's cost.
4. Removal of Signs.

- i. Authority. The Zoning Administrator is hereby authorized to require removal of any sign.
 - (a) Before bringing action to require removal of any sign, the Zoning Administrator shall give written notice to the owner of the sign or the owner of the premises on which such sign is located. The notice shall state the violation charged and the reasons and grounds for removal, specifying the deficiencies or defects and what repairs, if any, will make the sign conform to the requirements of this chapter. The notice shall also specify that the sign must be removed or made to conform with the provisions of this chapter within the notice period. Service of notice shall be made personally on the owner or lessee, or by certified mail addressed to the owner or lessee at the address specified in the permit or the last known address.
 - (b) Notice Period.
 - (1) The notice period for permanent signs shall be 14 days.
 - (2) The notice period for temporary signs shall be 48 hours.
 - (c) Prosecution. If the owner or lessee of the premises upon which the sign is located has not demonstrated to the satisfaction of the Zoning Administrator that the sign has been removed or brought into compliance with the provisions of this chapter by the end of

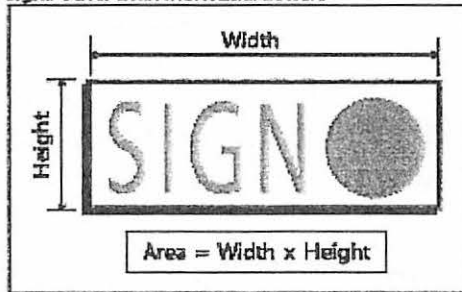
the notice period, the Zoning Administrator shall submit the violations to the City Prosecutor for prosecution.

- (d) Re-erection of any sign or substantially similar sign on the same premises after a notice of violation has been issued shall be deemed a continuation of the original violation.
- ii. Removal of Temporary Signs. The Zoning Administrator may remove any illegal temporary sign which is maintained or re-erected after the expiration of the notice period, if the owner or lessee of the premises has been issued a notice of violation at least once before for the same violation involving the same or similar sign. When temporary signs are removed by City Staff, the responsible party shall be notified within two business days of the reason for the removal and the location from which the sign was removed. Removed signs shall be made available for the responsible party to pick up for three calendar days. After that time, removed signs will be destroyed
- iii. Safety Hazard. Notwithstanding other provisions of this Subsection 4, the Zoning Administrator may cause the immediate removal, following notice to the owner of the sign or the property on which it is located of any unsafe or defective sign that creates an immediate hazard to persons or property.
- iv. Costs of Corrective Action. The costs of removal of a sign by the City shall be borne by the owner of the sign.
- 5. Cost of Enforcement. The City shall be entitled to recover all costs incurred, including attorney's fees, in the enforcement of actions under this chapter and in accordance with Sections 10-9a-802 and 803 of the Utah Code Annotated, as amended.
- 6. Liability for Damages. The provisions of this chapter shall not be construed to relieve or limit in any way, the responsibility or liability of any person, firm, or corporation which erects or owns any sign for personal injury or property damage caused by the sign. In addition, this chapter shall not be construed to impose upon the City, its officers, or its employees any responsibility or liability by reason of the approval of any sign under the provisions of this chapter.
- I. Appeal. An applicant for a Sign Permit or a permit holder may appeal the decision of the Zoning Administrator to revoke the permit to the Appeals and Variance Hearing Officer by filing an Appeal Application within 15 days of the date when the notice was served or the date of the certified mailing.

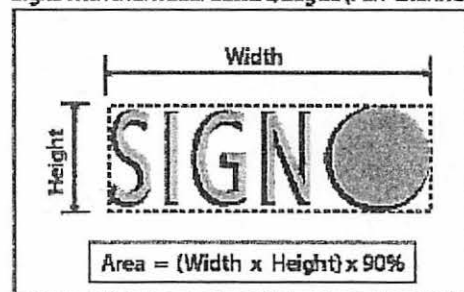
SECTION 9-26-060 GENERAL PROVISIONS.

- A. Sign Area Measurement. Signs which use a cabinet shall have their area determined to be the area of the entire cabinet face, excluding its border, visible from the outside of the sign. In the case of individual letters used as a sign, the area is 90 percent of the area enclosed within the smallest regular geometric shape needed to completely encompass all letters, insignias, and symbols of the sign including horizontal spacing between letters, insignias, symbols, and any extension of support structures not enclosed within the area of all individual letters. Sign measurements shall also be subject to the following:

Signs other than Individual Letters

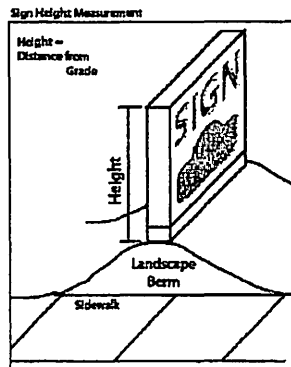


Signs with Individual Letters/Logos (Pan-channel)



1. The supports, uprights, or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights, or structure are designed in a manner as to form an integral background of the display.
 2. Sign area shall be calculated for one sign face except as otherwise stated for particular sign types in this chapter.
 3. Sign allowances shall include all on-premise signs unless under this chapter a particular type of sign:
 - i. is expressly excluded from the calculation of sign allowances; or
 - ii. has a separate basis for calculating sign area.
 4. For signs using individual letters, the area of the entire sign shall be calculated using a single regular geometric shape.
- B. Sign Height Measurement.
1. Freestanding Signs. Sign height for all freestanding signs is the distance measured from the average finished grade at the base of the sign to the topmost portion of a sign, excluding decorative embellishments.

2. Building and Wall Mounted Signs. The height of any building or wall mounted sign is the vertical distance measured for the cabinet or geometric shape used to determine the sign's area.

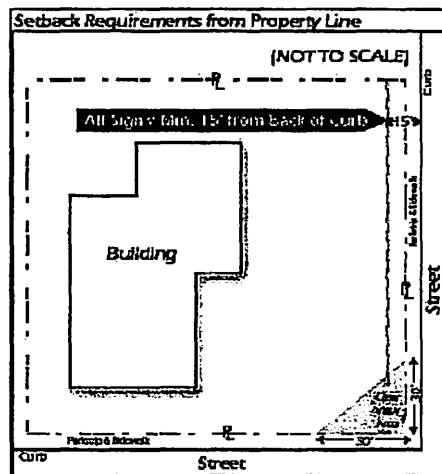


C. Clearance Requirements.

1. No sign or sign structure shall be erected in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit, or standpipe.
2. No permanent or temporary sign shall obstruct any door or window opening.
3. Freestanding signs shall not extend over any pedestrian or vehicular access area unless specifically approved by the City Engineer and the fire department.
4. No sign shall be erected or maintained which has less clearance from communication lines and energized electrical power lines than that prescribed by the laws of the State of Utah.
5. No sign shall be located on publicly-owned land or inside or over street rights-of-way, except as specifically authorized in this chapter.

D. Setback Requirements. To determine setback distances, measurements shall be taken from the point of the sign or sign structure which is closest to the street, right-of-way, district line, or property line from which the sign is to be set back. (See illustration.)

1. All freestanding and monument signs shall be set back a minimum of 15 feet from the back of the curb to allow for park strip and sidewalk. Setbacks from property lines are in addition to minimum curb setback.
2. Signs in any commercial or manufacturing zoning district shall be located not less than 20 feet from any adjacent residentially zoned property.
3. No signs greater than three feet in height shall be permitted in the triangular clear view area.



- E. Traffic Safety. No sign or other advertising structure shall be erected which in any manner may be confused with an official traffic sign or signal or which bears words normally used in such signs, i.e., stop, go slow, caution, danger, warning, etc., in a manner that resembles traffic signs. No sign shall have lighting which impairs the vision or anyone traveling upon a public or private street or distracts any driver so as to create a public nuisance. No sign or group of signs may exceed one foot-candle in brightness as measured at the property line.
- F. Design, Construction, and Maintenance.
1. All signs shall comply with applicable provisions of all codes, including building and electrical codes adopted by the City.
 2. Permanent signs shall be constructed of permanent material and shall be attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame, or structure.
 3. All signs shall be maintained in good and safe structural condition. The landscaped area in which any freestanding sign is placed shall be kept free from weeds, garbage, and debris.
 4. Permanent signs shall be designed so as to be an integral part of the overall design of a site and architecturally compatible with the buildings to which they relate.
- G. Illumination Requirements. Permanent signs may be illuminated according to this subsection unless otherwise specified in this chapter. Illumination may be either by direct, internal, or internal indirect means and shall be so installed according to all applicable codes and regulations.

1. Any external light source used for the illumination of a sign shall be shielded so all direct light shines onto the sign area only.
2. Neither direct nor reflected light from any source shall create a traffic hazard, distraction to operators of motor vehicles on public thoroughfares, or create a nuisance to surrounding properties.
3. For signs illuminated from an internal light source:
 - i. the light source shall not be visible from the exterior of the sign; and
 - ii. no direct lighting shall shine beyond the sign area.
4. The following illumination types shall be prohibited for all signs:
 - i. flashing, blinking, or rotating lights;
 - ii. exposed neon or similar tube-type illumination except as specifically permitted elsewhere in this chapter;
 - iii. visible bare incandescent, fluorescent, metal halide, or high or low pressure sodium light bulbs; and
 - iv. mercury vapor lights.
5. All applicable illumination standards of Chapter 9-20 of the Draper City Municipal Code shall be adhered to at all times.

H. Standards For Permitted Sign Types.

1. Sign Integration and Design Standards. Sign locations shall be integrated with landscape plans to avoid obstruction of the sign and traffic.
 - i. Wall sign copy is strongly recommended to be designed with individual letters and logos rather than cabinets.
 - ii. Signage located facing residential areas or which present the risk of light nuisances to adjacent properties shall utilize signage consisting of reverse pan-channel lettered and lit designs.
 - iii. Where tower signs are permitted, the poles and other structural supports shall be covered or concealed with pole covers architecturally and aesthetically designed to match the building.
 - iv. Monument signs shall have at least a one-foot opaque pedestal designed as part of the foundation which conceals supports. The pedestal shall run

2. The maximum display period for temporary banner signs used during periods of street construction shall only be for the duration of the construction period.
3. Businesses may qualify for this exception only if the street construction is materially impairing the primary access to the business.
4. Such signs shall be removed within ten business days after construction is done and the material impairment to the primary access to the business is concluded.

SECTION 9-26-110 NONCONFORMING SIGNS. To minimize confusion and avoid unfair competitive disadvantage to businesses required to satisfy the standards of this chapter, the City intends to apply regulation of existing nonconforming signs with a view toward their eventual elimination. This goal shall be achieved by imposing limits on change, expansion, alteration, abandonment, and restoration of legally existing nonconforming signs. Except as otherwise provided herein, the provisions of Chapter 9-6 of the Draper City Zoning Ordinance regarding nonconforming uses and structures shall apply to nonconforming signs except where the terms of this chapter conflict in which case the terms of this chapter shall govern.

- A. **Legal Nonconforming Signs.** A sign legally established prior to the enactment of this chapter which does not fully comply with the terms of this chapter shall be regarded as a legal nonconforming sign. Such signs may be continued subject to being properly repaired and maintained, so long as the existing sign is not expanded in size, relocated, or altered in any way unless the relocation or alteration brings the sign into compliance with this chapter. The following alterations are exempt from this provision:
 1. panel changes for a new business in a legal nonconforming sign; and
 2. copy changes in nonconforming permanent signs which were originally approved by the City with a changeable copy feature.
- B. **Destroyed or Damaged Sign.** Whenever a legal nonconforming sign is destroyed or damaged by explosion, fire, windstorm, flood, earthquake, vandalism, act of God, or any other means beyond the control of the sign owner, such sign may be restored to its exact size and design immediately prior to its damage or destruction or brought into full and complete compliance with the provisions of this chapter.
 1. Any destroyed or damaged legal nonconforming sign requiring repairs, must be repaired back to its exact size and design immediately prior to its damage or destruction within 180 days. If a destroyed or damaged sign is not repaired within 180 days it will be considered abandoned and must be repaired to conform to the provisions of this chapter, removed, or it may be dealt with or removed as specified under Section 9-26-050(H)(4) of this chapter.
 2. A sign destroyed or damaged as a result of a public improvement project may be replaced to its exact size and design immediately prior to its damage or destruction, maintaining its legal non-conforming status, and all permitting fees shall be waived. Such replacement may also include relocation. Any such

relocation must be to an on-site location fully complying with the terms of this chapter.

- C. Abandonment. Abandonment of a sign shall occur after 180 days from the first issuance of a notice of abandonment from the City. Any nonconforming sign deemed abandoned must be removed or brought into compliance with this chapter by the property owner. If removal or compliance does not occur, the City may have the nonconforming sign removed through the processes specified in Section 9-26-050(H)(5). An abandoned sign shall not regain any legal nonconforming status under any circumstance.
- D. Voluntary Conformance Fee Waiver. When any existing legal nonconforming sign is voluntarily brought into conformance with the provisions of this chapter, all fees associated with application and permitting procedures for any resulting conforming replacement sign shall be waived by the City. If multiple signs are to be replaced, only nonconforming signs shall be eligible for the fee waiver.
- E. Signs Rendered Nonconforming by Capital Improvements Projects or Public Action. Sites experiencing a reduction in setback for the benefit of a capital improvements project or public action shall be allowed:
 - 1. to maintain existing signage as legal nonconforming signage; or
 - 2. if a sign is altered or required to be relocated by the action, the site shall be allowed the signage opportunities allowed by this chapter.
- F. Billboards. Billboards may be relocated, removed, or altered according to the terms of the Utah Code Annotated.

SECTION 9-26-120 PROHIBITED SIGNS. The following signs shall not be permitted, erected, or maintained within the City:

- A. animated signs or signs with:
 - 1. visible moving, revolving, or rotating parts or visible mechanical or electrical movement of any kind;
 - 2. the optical illusion of movement or giving the illusion of motion; or
 - 3. lights or illumination which flash, move, rotate, blink, flicker, or use intermittent electrical pulsations;
- B. strings of light bulbs other than that needed to illuminate outdoor seating or patio areas or traditional holiday decorations during a holiday season, applicable to non-residential uses only;
- C. signs which:

1. emit or are designed to emit a sound intended to attract attention, by any means;
 2. involve the use of live or preserved animals; or
 3. create unsafe glare;
- D. any sign determined to be abandoned or illegal;
- E. any sign which is installed or erected in or projects into or over any public or private right-of-way, parkstrips, medians, or roundabouts, except as expressly permitted by the terms of this chapter;
- F. signs not permanently affixed or attached to the ground or to any structure except for temporary signs expressly permitted by this chapter;
- G. any sign or sign structure which constitutes a hazard to safety or health by reason of inadequate installation, maintenance, or dilapidation;
- H. any sign or sign structure which:
1. in any way obstructs the view of, may be confused with, or purports to be an official traffic sign, signal, or device or any other traffic control, warning, or public safety device; or
 2. creates an unsafe distraction for or obstructs the view of vehicle operators entering a public roadway from any parking area, service drive, private driveway, alley, or other thoroughfare;
- I. any sign which obstructs the free ingress to or egress from any door, window, fire escape, or other building entrance or exit way;
- J. any sign with a changeable or removable text or panel feature, except where specifically allowed by the provisions of this chapter;
- K. off-premise advertising signs or any other sign not pertinent and clearly incidental to the permitted use on the property where located, except as expressly provided for elsewhere in this chapter;
- L. portable signs or signs not otherwise permanently affixed to any structure on the site, permanently mounted to the ground, or otherwise located on one or more wheels;
- M. signs for the purpose of general outdoor advertising of products or services, or signs advertising a use, service or attraction not located in the City, except as provided for elsewhere in this chapter;

- N. flags, banners, pennants or strings of pennants, wind or forced air powered signs, or other devices designed or allowed to wave, flap, or rotate with the wind except for flags, pennants, and insignias expressly permitted by this chapter;
- O. banners of any size for which a Temporary Sign Permit has not been issued according to this chapter;
- P. inflatables, unless expressly permitted by this chapter.;
- Q. roof-mounted signs or signs which project above the roof line or the bottom of the eaves of a building whichever is lower, but signs within a gable shall not be considered above the eaves and, for the purpose of this subsection, dormers shall not be considered a permissible gable area for signage;
- R. sign of an advertising nature posted or glued directly on an exterior wall, roof or affixed directly on the same by any means of a similar adhesive substance. No paper, cloth, vinyl, or other non-rigid material sign, except for flags as provided for elsewhere in this chapter, shall be tacked directly on any exterior wall, or roof, except those allowed as temporary signs as defined elsewhere in this chapter;
- S. off-premise advertising signs and billboards, except for those legally existing prior to the adoption of this chapter;
- T. graffiti;
- U. handbills and snipe signs;
- V. business signs in residential and agricultural zones, or on properties containing a residential use except as expressly permitted in this chapter for an operating and licensed home occupation on the same property;
- W. any sign not in compliance with this chapter or any applicable provisions of this Title;
- X. any sign type not expressly permitted by this chapter;
- Y. electronic message center signs containing video animation, flashing, or the appearance of movement of any kind , but this provision does not prohibit electronic message center signs operating in accordance with this Chapter; and
- Z. portable signs within any public or private right-of-way, sidewalks, parkstrips, medians, or roundabouts.

SECTION 9-26-130 SEVERABILITY. If any section, part or provision of this chapter is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this chapter, and all sections, parts and provisions of this chapter shall be severable.

Affidavit of Posting

SALT LAKE COUNTY, STATE OF UTAH

I, the Recorder of Draper City, by my signature below, certify that copies of **Ordinance No. 963** for the **City of Draper**, which **Passed and Adopted by the City Council of Draper City, State of Utah on the 15th day of February, 2011** were posted at the following places: Draper City Bulletin Board, Salt Lake County Library, Draper Senior Citizens Center, within the municipality.

Posting Period: February 16, 2011 through March 8, 2011

City Seal



A handwritten signature in black ink, which appears to read "Tracy B. Norr", is written over a horizontal line.

Tracy B. Norr, MMC
City Recorder
Draper City, State of Utah