

2017

The State of Utah, Petitioner /Cross-Respondent, v. Thomas Randall Ainsworth, Respondent/Cross-Petitioner. Respondent/Cross-Petitioner Is Incarcerated.

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

OUTFRONT MEDIA, LLC, fka
CBS OUTDOOR,

Plaintiff / Appellant,

vs.

SALT LAKE CITY CORPORATION;
CORNER PROPERTY, L.C., and UTAH
OUTDOOR ADVERTISING, INC.,

Defendants /Appellees.

Case No. 20160150

Brief of Appellee Corner Property

Appeal from Third District Court, Salt Lake County, Judge Todd M. Shaughnessy
Civil No. 160900413

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STATEMENT OF JURISDICTION

Corner Property adopts the position and reasoning taken by Salt Lake City, in its recently filed brief that this Court does not have original appellate jurisdiction over this matter because it is an appeal from a district court's review of a land use decision by a municipality. *Bradley v. Payson City Corp.*, 2003 UT 16, ¶¶ 32-35 and 37, 70 P.3d 47. Where the City has already filed a Motion to Transfer to Utah Supreme Court (August 12, 2016), Corner agrees and stipulates that this matter and all briefing to date should be transferred to the Utah Supreme Court, which may then retain or reassign the matter.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

ISSUE 1: Was Salt Lake City's denial of CBS's application to relocate its already demolished billboard arbitrary, capricious, or illegal?

STANDARD OF REVIEW: Courts presume a land use decision is valid and determine only whether or not the decision is arbitrary, capricious, or illegal. *See* Utah Code § 10-9a-801(3)(a) and *Carlsen v. Bd. of Adjustment of City of Smithfield*, 2012 UT App 260, ¶ 4, 287 P.3d 440. Administrative decisions are determined not to be arbitrary and capricious if they are supported by substantial evidence. *Id* at ¶ 4. *See also* Utah Code § 10-9a-801(3)(c). This Court review is limited to the record before the decision making body in making that decision. *Carlsen* at ¶ 5. The Court is not to weigh the evidence anew but to review the evidence before the decision making body and determine if a reasonable mind could reach the same conclusion. *Id*.

A decision is illegal if it “violates a law, statute, or ordinance in effect at the time the decision was made.” Utah Code § 10-9a-801(3)(d). This court reviews interpretations of relevant statutory provisions for correctness giving no deference to a lower tribunal. *State Farm Mut. Auto. Ins. Co. v. Green*, 2003 UT 48, ¶ 44, 89 P.3d 97. Interpretations of relevant ordinances are similarly reviewed for correctness, but some deference is given to the interpretation of the ordinance advanced by the municipal interpretation. *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 28, 104 P.3d 1208.

ISSUE 2: If Salt Lake City’s denial of CBS’s application to relocate its already demolished billboard was not arbitrary, capricious, or illegal, does CBS have standing to challenge the City’s approval of Corner’s billboard relocation application?

STANDARD OF REVIEW: Standing is a jurisdictional requirement. *Brown v. Div. of Water Rights of the Dep't of Natural Res.*, 2010 UT 14, ¶ 12, 228 P.3d 747. Standing is also “[A]n issue that a court can raise sua sponte at any time.” *State v. Tuttle*, 780 P.2d 1203, 1207 (Utah 1989). This issue was preserved below. (R.513, ¶2; 530-531).

ISSUE 3: Was Salt Lake City’s approval of Corner Property’s application to relocate its billboard arbitrary, capricious, or illegal?

STANDARD OF REVIEW: The standard of review for this issue is the same as set forth for issue number one.

STATUTORY PROVISIONS

Utah Code § 10-9a-511(3)(c), Utah Code § 10-9a-513(2)(a)(iv), Utah Code § 10-9a-513(2)(d), Utah Code § 10-9a-701, Utah Code § 10-9a-707, Utah Code § 59-2-102(30)(e) (formerly Utah Code § 59-2-102(29)(e)), SLC Ord. § 2.02.020.B, SLC Ord. §§ 21A.16.010-050, SLC Ord. §§ 21A.46.010(A)(3)-(4), and SLC Ord. § 21A.46.160. These provisions are set forth in this brief's addendum pursuant to Utah R. App. P. 24(a)(6).

STATEMENT OF THE CASE

NATURE OF THE CASE

On November 25, 2015, Salt Lake City (hereafter also "SLC" or "City"), at the direction of Mayor Becker, granted Corner a permit (BLD2014-07984) allowing Corner to relocate its existing, downtown, double-faced billboard at 280 West 500 South (where Corner owns that property) to property owned by Corner located at 726 West South Temple pursuant to the City's discretionary authority set forth in Utah Code § 10-9a-511(3)(c)(i). But for this Utah statute, Corner's previously filed application would otherwise have been prohibited by SLC Ord. § 21A.46.160(N), which prohibits new billboards on City Gateways.

That same day, the City, also at the direction of Mayor Becker, denied Outfront Media, LLC, fka CBS Outdoor's (hereafter "CBS") previously filed permit application (BLD2014-07688) to relocate a demolished billboard previously located on the Corner

property at 726 West South Temple to neighboring 738 West South Temple pursuant to Utah Code § 10-9a-511(3)(c)(i). CBS administratively appealed both decisions and lost. CBS then appealed both decisions to the trial court pursuant to Utah Code § 10-9a-801. The trial court ultimately affirmed that the City's decisions were not arbitrary or capricious or illegal. CBS now petitions this court to overturn both decisions by the City.

STATEMENT OF RELEVANT FACTS

1. At all times relevant to this appeal, Corner owned the land located at 726 West South Temple (hereafter "726 Property") in Salt Lake City. (R.128;514)
2. CBS and its predecessors had leased the 726 Property from Corner (and prior to that Corner's predecessors) in connection with a billboard that had been constructed on the property. (R.127;514)
3. Billboards are Personal Property, not Real Property. Utah Code § 59-2-102(29)(e).
4. Corner notified CBS in writing in late July of 2014 that its 726 Property lease with Corner would not be renewed when it expired effective September 1, 2014. (R.127;514)
5. Pursuant to the CBS lease with Corner, CBS had a grace period of ninety (90) days after the lease expiration to remove the billboard structure. (R.127;514)
6. Corner had advised CBS in writing (long before the expiration of the ninety (90) day time period) that if the 726 Property billboard was not removed by the expiration

of the ninety (90) day time period, the structure would be considered abandoned property belonging to Corner. (R.127)

7. Pursuant to Utah Code § 72-7-507(2)(a), CBS lost its outdoor advertising permit by operation of law as of September 1, 2014, when CBS lost its lease to and right to use the 726 Property and, as a result, was also prohibited from further outdoor advertising at that location pursuant to Utah Code § 72-7-507(1)(a).

8. On October 16, 2014, Reagan Outdoor Advertising (hereafter “Reagan”) entered into an outdoor advertising lease agreement with Sons of A Gunn, LC, pertaining to 738 West South Temple (land adjacent to Corner’s 726 Property, hereafter “738 Reagan Property”). (R.2;514-15;R.746,SLCC258-59)

9. Thereafter, at some time between October 16, 2014, and October 21, 2014, CBS entered into a sub-lease of the 738 Reagan Property. (R.2;514-15;R.746, SLCC258-59)

10. CBS's permit application to the City, when filed on October 21, 2014, was an application pursuant to Utah Code § 72-7-510.5 to raise the height and relocate the billboard structure located at Corner’s 726 Property to the 738 Reagan Property. (R.2,¶7;514-15)

11. CBS voluntarily applied for a City demolition permit for the billboard structure on Corner’s 726 Property on October 30, 2014. (R.3,¶17;515, ¶8)

12. At all times relevant to this appeal, Corner has owned a lawful, dual-faced

outdoor advertising billboard (and the land) located at 280 West 500 South in Salt Lake City (hereafter “500 South Billboard”), which is the only billboard located between 300 West and 700 East on 500 South in the City. (R.128,¶10;515,¶9)

13. On October 31, 2014, just days after CBS’s initial permit application, Corner filed its own City permit application, pursuant to Utah Code § 10-9a-511(3)(c)(i), seeking to relocate Corner’s 500 South Billboard to Corner’s 726 Property. (R.515,¶10;142)

14. In late November of 2014, just a day or two prior to the expiration of the ninety (90) day post-lease time period during which CBS was allowed onto Corner’s 726 Property for purposes of removing the billboard structure, CBS voluntarily demolished (after obtaining a permit from the City) its billboard structure on Corner’s 726 Property. (R.515,¶11;269,¶12)

15. Pursuant to SLC Ord. § 21A.46.160(E), after CBS voluntarily demolished its nonconforming billboard structure on Corner’s 726 Property after obtaining a permit from the City, the City was obligated to create a “billboard bank account” for CBS.

16. On December 4, 2014, the City denied CBS's application to relocate and raise the billboard pursuant to Utah Code § 72-7-510.5. (R.268,¶6;130-31)

17. In its denial letter of that date, the City notified CBS that it could modify its application to “bank the billboard credits for the now demolished Sign under City Code 21A.46.160(E-G)” or modify its application to relocate the billboard under Utah Code §

10-9a-511(3)(c)(i), subject to any City obligation to pay just compensation pursuant to Utah Code § 10-9a-513(2) upon a denial under that section. (R.130-31)

18. Instead of pursuing the option to modify its application in accordance with the City's notification, CBS filed a lawsuit against the City on January 2, 2015. See Outfront Media LLC f/k/a CBS Outdoor v. Salt Lake City Corporation, Civil No. 150900004, Third Judicial District Court, Salt Lake City Dept. (hereinafter "the lawsuit"). (R.516-17)

19. In the lawsuit identified in the preceding paragraph, CBS claimed it had the right to relocate and raise the billboard pursuant to Utah Code § 72-7-510.5. (R.517)

20. On August 18, 2015, the court ruled in the lawsuit that CBS did not have the right to both relocate and raise the height of the billboard under Utah Code § 72-7-510.5 and affirmed the City's denial of the CBS application and issued a written "Order of Dismissal" on September 14, 2015. (R.204-207)

21. Because CBS' predecessor had previously raised the billboard at the 726 Property in 2003 with the consent and assistance of Corner after the adjacent portion of I-15 had been raised and remodeled, CBS had no further options under Utah Code § 72-7-510.5. (R.204-07;127,¶9)

22. On September 15, 2015, almost a month after the City's denial was orally affirmed by the court in its verbal ruling, more than a year after CBS lost the Corner lease, and almost ten months after the billboard structure had been demolished, CBS first

requested the City to allow it to construct a billboard at the 738 Reagan Property pursuant to Utah Code § 10-9a-511(3)(c)(i) (the same Code provision used by Corner application to relocate the 500 South billboard). (R.3,¶16;517,¶19)

23. Utah Code § 72-7-505(3) provides that billboards adjacent to interstate highways, like those applied for with the City by Corner and CBS, cannot be within 500 feet of each other.

24. The properties where Corner and CBS applied to construct a new billboard are within 500 feet of each other so, both could not be granted pursuant to Utah law even if the City wished to do so. (R.3,¶20;4,¶26)

25. Utah Code § 10-9a-511(3)(c)(i) provides statutory discretion for a “municipality” to waive its zoning ordinances and to permit an applicant to relocate a billboard despite a contrary municipality ordinance.

26. City ordinance precludes construction of a new billboard within 600 feet of a road that is defined as a “Gateway.” SLC Ord. § 21A.46.160(N).

27. I-15 is defined by City ordinance as a “Gateway.” SLC Ord. § 21A.46.160(B)(3).

28. On November 25, 2015, the City, at the direction of Mayor Becker, denied CBS’s application to relocate to the 738 Reagan Property. (R.70;155)

29. On the same date, November 25, 2015, the City, at the direction of Mayor Becker, approved Corner’s request to demolish the 500 South billboard and construct a

new billboard at the 726 Property. (R.70;157)

30. As part of the approval process for Corner's permit, the City and Corner had executed a Billboard Relocation Agreement setting forth terms pursuant to which Corner was allowed to relocate the 500 South Billboard to the 726 Property once a permit was issued. (R.159-161)

31. The Billboard Relocation Agreement was properly recorded on November 30, 2015, after Corner was granted the permit to relocate. (R.161)

32. CBS administratively appealed both the granting of Corner's Permit by Salt Lake City (PLNAPP 2015-00973) and the City's denial of a permit to CBS on November 25, 2015 (PLNAPP 2015-00974). (R.363-376)

33. The assigned Hearing Officer for the administrative appeal took evidence before and at the time of the hearing of the appeal on January 14, 2016, and issued a ruling on each appeal on January 15, 2016, affirming that the City's decisions were not arbitrary or capricious or illegal. (R.385-395)

34. CBS then appealed both decisions to the trial court pursuant to Utah Code Ann. § 10-9a-801 and the trial court, after briefing and a trial/hearing, ultimately affirmed that the City's decisions were not arbitrary or capricious or illegal. (R.550-568)

35. CBS then filed the present appeal.

SUMMARY OF ARGUMENTS

CBS is appealing two decisions by Salt Lake City issued on November 25, 2015. The first decision denied CBS's previously filed permit application (BLD2014-07688) to relocate a demolished billboard previously located on the Corner property at 726 West South Temple to neighboring 738 West South Temple pursuant to Utah Code § 10-9a-511(3)(c)(i) at land it has subleased from Reagan Outdoor Advertising. The second decision granted Corner's previously filed permit application (BLD2014-07984) allowing Corner to relocate its existing, downtown, double-faced billboard at 280 West 500 South (where Corner owns that property) to property owned by Corner located at 726 West South Temple. Corner's application was also made pursuant to Utah Code § 10-9a-511(3)(c)(i). Neither of these two decisions are arbitrary, capricious, or illegal.

The City's denial of CBS Section 511 application was not arbitrary or capricious since it was supported by substantial evidence. At the time of CBS's Section 511 application, more than a year had passed since CBS had lost its lease on Corner's 726 Property, thus losing the right to advertise at that location, and most of ten months had passed since CBS had voluntarily demolished the billboard sign (after obtaining a City permit to do so) from Corners 726 Property. At that point, CBS was left with only a "billboard bank account" and a demolished sign. City ordinance prohibits "New Billboards" within 600 feet of any gateway and the location where CBS wished to build the billboard at 738 West South Temple was within the gateway limitations.

Section 511(3)(c)(i) is a state statute that, despite any ordinances to the contrary, allows a municipality in its discretion to relocate a billboard to any location to which the municipality and the billboard owner can agree. The competing Section 511(3)(c)(i) applications of CBS and Corner where they wished to relocate were within 500 feet of each other and thus, even if the City wished to grant both applications, it could only grant one of them.

The competing applications were submitted to Mayor Becker as chief executive of the City to make a determination. Mayor Becker, on behalf of the City, elected to deny CBS's application and to grant Corner's application. The Mayor's application grant to Corner instead of CBS resulted in a net reduction of one billboard, which is in harmony with the City's Billboard Purpose Statement, which indicates it is "intended to limit the maximum number of billboards in Salt Lake City to no greater than the current number. It also resulted in the only downtown billboard on 500 South between 300 West and 700 East (a "Gateway" location) being moved further from downtown to the West by I-15 and arguably improved the appearance of the more central downtown area. CBS failed to make a comparable offer. If Corner's application had not been granted, the City was unlikely to ever be able to easily remove the 500 South Billboard where Corner owned both the sign and the property upon which it was located.

CBS has incorrectly argued that denial of its application was illegal. CBS first argues denial was illegal since the decision was made by the City's Mayor rather than the

City Council. CBS argues that where denial of its Section 511(3)(c)(i) application results (or potentially results) in acquisition of the billboard pursuant to Utah Code § 10-9a-511(3)(c)(ii) and Utah Code § 10-9a-513(2)(a)(iv), the “eminent domain” identified in these sections of MLUDMA are governed by the Utah Eminent Domain statute and limit the power to the “governing body” of the City, the City Council. The Utah Eminent Domain statute does not apply because the City is not exercising a power of eminent domain under that statute, and the objectives, purposes, and procedures are not consistent with the MLUDMA eminent domain procedures particularized for billboards nor does MLUDMA make any reference the Utah Eminent Domain statute.

CBS’ second illegality argument is that SLC Ord. § 21A.46.160(CC) prevents the City from denying CBS’s application. SLC Ord. § 21A.46.160(CC) states,

"Except as otherwise authorized herein, existing billboards may not be relocated except as mandated by the requirements of Utah State law."

CBS’s interpretation is conflict with the plain language interpretation of that statutory provision. Furthermore, even if CBS’s interpretation were correct, the Ordinance would be in direct conflict with Section 511(3)(c)(i) which allows the municipality to grant a relocation of a billboard "Notwithstanding a prohibition in its zoning ordinance." Where there is a conflict, State law must prevail.

Where the denial of CBS’s Section 511 application was not arbitrary, capricious, or illegal, then CBS does not have (or no longer has) standing to challenge the City’s grant of Corner’s Section 511 application. CBS has never argued that Corner's Permit

was a matter "of great public importance" and that CBS had a cause of action against Corner pursuant to "the public interest standing test." Furthermore, CBS's current objections to the location, height, size, and double-faced nature of the Corner billboard must fail where its administrative "Notice of Appeal" failed to attack and preserve any of the specific details of the grant of that permit to Corner as required by SLC Ord. § 21A.16.030A.

The Billboard Relocation Agreement entered into between the City and Corner and the grant of Corner's Section 511(3)(c)(i) relocation application by the City were not illegal because Section 511(3)(c)(i) allowed City authority to make that agreement. That action also was not arbitrary or capricious where there is substantial evidence showing that the City was able to benefit by moving Corner's 500 South Billboard from a downtown gateway property owned by Corner to a property further West by I-15 where such billboards are more common and furthered the City's objectives of reducing billboards.

ARGUMENT

I. The Standard of Review and Decisions Subject to that Review

Pursuant to Utah R. App. P. 24(i), Corner adopts Part IA - IB (pgs 13-18) of the brief of the City pertaining to the Standard of Review and the decisions subject to that review.

II. The City's Denial of CBS's Application to relocate its already demolished billboard Was Not Arbitrary, Capricious, or Illegal

The City's denial of CBS's Utah Code §10-9a-511(3)(c)(i) application to allow CBS to reconstruct a demolished billboard in a gateway was not arbitrary, capricious, or illegal because the City has discretionary authority, because the Mayor properly exercised that discretionary authority, and because the decision was supported by substantial evidence.

A. Billboards within 600 Feet of a City Gateway are Prohibited by Ordinance

It is undisputed that SLC Ord. § 21A.46.160(B) establishes that "Interstate 15," "500 South from Interstate 15 to 700 East," and "300 West from 900 North to 900 South" are all within the definition of a City "Gateway." SLC Ord. § 21A.46.160(N) specifically states,

"New Billboards Prohibited on Gateways: Except as provided in subsection O of this section, or its successor, no new billboard may be constructed within six hundred feet (600') of the right of way of any gateway."

SLC Ord. § 21A.46.160(B) defines "New Billboard" as "*A billboard for which a permit to construct is issued after December 31, 1993.*" Based upon this City Ordinance both

Corner and CBS are prohibited from placing a billboard within a Gateway location. This is true even though Corner's 500 South Billboard was located on the 500 South Gateway and adjacent to the 300 West Gateway (except for the Safelite AutoGlass building between it).

B. State Law Provides an Exception to the City's Gateway Billboard Ban

The Utah Code provides a specific, discretionary exception to the City's ban of Billboards within 600 feet of a Gateway. This exception is located at Utah Code § 10-9a-511(3)(c)(i) and states,

"Notwithstanding a prohibition in its zoning ordinance, a municipality may permit a billboard owner to relocate the billboard within the municipality's boundaries to a location that is mutually acceptable to the municipality and the billboard owner."

The keys to this exception are three. First, it is at the discretion of the municipality ("a municipality may permit"). Second, the relocation must be within the boundaries of the municipality. Last, the location must be acceptable to both the municipality and the billboard owner.

C. The City is Not Required to Grant CBS's Application

The plain language of Utah Code § 10-9a-511(3)(c)(i) states that the "municipality may permit" (underline emphasis added) an appropriate relocation request, not that it must do so. "*When construing a statute, we first look to its plain language.*" *K & T, Inc. v. Koroulis*, 888 P.2d 623, 627 (Utah 1994).

D. The Mayor, as Chief Executive of the Municipality, Had Authority to Decide for the City

SLC Ord. § 2.02.020.B states, in pertinent part, “*The mayor shall be elected at large by the voters of the municipality and shall exercise the executive powers of the government.*” Where Utah Code § 10-9a-511(3)(c)(i) confers this discretionary exception power upon the “municipality,” the Mayor, as the chief executive of the City in a council-mayor form of government, properly exercised his executive powers in making this decision pursuant to Utah Code § 10-9a-511(3)(c)(i). *See also Scherbel v. Salt Lake City Corp.*, 758 P.2d 897, 899 (Utah 1988)(internal citations omitted) (“[W]e hold that the authority to resolve zoning disputes is properly an executive function rather than a legislative one. . . . Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty to make such enforcement. The latter are executive functions.”).

E. The City’s Decision to Deny CBS’s Application Was Not Arbitrary or Capricious.

The municipal enabling statute known as the “Municipal Land Use, Development, and Management,” located at Utah Code § 10-9a-101, et seq. (hereafter “MLUDMA”), has for one express purpose, “[T]o . . . *promote the . . . aesthetics of each municipality.*” Utah Code § 10-9a-102(1). To that end, “[M]unicipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and

development of land within the municipality . . .” Utah Code § 10-9a-102(2). MLUDMA also provides that the required, long-range general plan for each municipality “may provide for . . . aesthetics.” Utah Code § 10-9a-401(2)(a). One stated purpose under the "Purpose Statement" located in SLC Ord. § 21A.46.010(A)(4) states,

"A. Purpose: The regulations of this chapter are intended to:

. . .

4. Preserve and **improve the appearance of the city** as a place in which to live and to work, and **create an attraction to nonresidents to come to visit or trade;**"

[Bold Emphasis Added]

The "chapter" referred to is SLC Ord. § 21A.46 ("Signs"), of which SLC Ord. § 21A.46.160 ("Billboards") is one section. SLC Ord. § 21A.46.160 ("Billboards"), has for its stated purpose:

"A. Purpose Statement: This section is **intended to limit** the maximum number of billboards in Salt Lake City **to no greater than** the current number. This chapter further provides reasonable processes and methods for the replacement or relocation of existing nonconforming billboards to areas of the city where they will have **less negative impact on the goals and policies of the city which promote the enhancement of the city's gateways, views, vistas and related urban design elements** of the city's master plans."

[Bold Emphasis Added]

SLC Ord. § 21A.46.160(A). Corner was the only applicant to offer to relocate a billboard from a more centrally located City Gateway (where Corner owned the property) out further towards the I-15 corridor (where such billboards abound), as enticement to the City to exercise its discretionary authority pursuant to Utah Code § 10-9a-511(3)(c)(i). This offer, which was ultimately accepted by the City, accomplished two valuable city

objectives. First, as stated by Terry Reid, a former employee of Reagan Outdoor Advertising, during the December 14, 2015, public hearing, the opportunity to relocate Corner's 500 South billboard was of great value since Corner owns the property where that billboard is located. (R.746,SLCC 2234-2236). Mr. Reid explained that in that situation, it is unlikely such a billboard will ever be moved without a similar kind of deal since there is no lease on the billboard which will eventually expire and the billboard will remain as an eyesore in the heart of downtown Salt Lake City. (R.746,SLCC 2234-2236). Mr. Reid also stated that he felt he was objective in his comments since he had no interest in any of the property at issue. (R.746,SLCC 2234-2236). Removing such a billboard, particularly where it is the only billboard on 500 South between 300 West and 700 East (R.515,¶9), beautifies the city by "improving the appearance" of this Gateway and a more central part of the City, while also improving the view toward the Center of the City. This clearly falls within the stated aesthetic purposes of these cited Ordinances.

The second objective accomplished by granting Corner's request to relocate the 500 South billboard closer to I-15 is that it effectively reduces the number of billboards in the City by one billboard. CBS has vociferously disputed that the City has a policy to reduce billboards. In addition to the City's own briefing, the previously highlighted portions of SLC Ord. § 21A.46.160 stress that section "is intended to limit" the number of billboards "to no greater than the current number." Reducing the number of billboards is not inconsistent with the "no greater" language of that section. Additionally, a reduction

does appeared desired when this previously identified language is combined with the language from that section which states, "relocation of existing nonconforming billboards to areas of the city where they will have less negative impact on the goals and policies of the city which promote the enhancement of the city's gateways, views, vistas and related urban design elements." A billboard relocation can improve or enhance the city's "views," "vistas," and "gateways." If only for these reasons, the granting of the permit to Corner was a reasonable exercise of the City's stated purpose and within the exercise of its discretion by the executive branch.

Furthermore, at the time of CBS's Utah Code § 10-9a-511(3)(c)(i) application to the City on September 15, 2015, CBS had already lost its lease with Corner more than a year previous (R.127; 514) and thus its right to advertise (Utah Code § 72-7-507(2)(a)). Additionally, at that time, most of ten months had passed since CBS voluntarily demolished its own billboard structure (R.515, ¶11; 269, ¶12) after obtaining a permit from the City (R.3, ¶17; 515, ¶8), and, pursuant to SLC Ord. § 21A.46.160(E), CBS was left only with a "billboard bank account" credit and a demolished sign. Unlike Corner, CBS failed to make an offer of significant interest to the City. There is no doubt that the applications by both CBS and Corner pursuant to Utah Code § 10-9a-511(3)(c)(i) were considered at the same time by the Mayor in his capacity as chief executive of the City and that the Mayor knew that if one of the applications was granted, state law restrictions would preclude the other application from being granted. (R.70).

“It is incumbent upon the party challenging the . . . decision to marshal all of the evidence in support thereof and show that despite the supporting facts, and in light of conflicting or contradictory evidence, the findings and decision are not supported by substantial evidence.” *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, fn.7 (UT App. 1995). CBS has failed to meet this marshaling requirement and cannot, as there is substantial evidence supporting the City’s decision to deny CBS’s application and would be even without consideration of the Corner application under the discretionary standard.

F. The City’s Decision to Deny CBS’s Application Was Not Illegal

As previously set forth, the plain language of Utah Code § 10-9a-511(3)(c)(i) allows but does not require the municipality to relocate a billboard to any location mutually acceptable to the municipality and applicant despite any contrary zoning ordinance prohibition of the municipality.

Where the municipality and the Section 511 applicant cannot agree upon a location, then Utah Code § 10-9a-511(3)(c)(ii) controls the outcome. Utah Code § 10-9a-511(3)(c)(ii) states that, “If the municipality and the billboard owner cannot agree to a mutually acceptable location within 90 days after the owner submits a written request to relocate the billboard, the provisions of Subsection 10-9a-513(2)(a)(iv) apply.” Utah Code § 10-9a-513(2)(a)(iv) identifies that, “A municipality is considered to have initiated the acquisition of a billboard structure by eminent domain if the municipality

prevents a billboard owner from . . . relocating a billboard into any commercial, industrial, or manufacturing zone within the municipality's boundaries, if" certain other conditions are met. There is no dispute that the other conditions of that section are met with regards to CBS where it voluntarily made the written request to relocate pursuant to Utah Code § 10-9a-511(3)(c), where CBS and the City could not agree upon a location, and where the location CBS was seeking to relocate the billboard was "within 5,280 feet of its previous location . . . and . . . no closer than the distance allowed under . . . Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act . . . between the relocated billboard and an off-premise sign existing on the same side of the interstate or limited access highway."

Utah Code § 10-9a-513(2)(d) provides:

"If a municipality is considered to have initiated the acquisition of a billboard structure by eminent domain under Subsection (2)(a) or any other provision of applicable law, the municipality shall pay just compensation to the billboard owner in an amount that is:

- (i) the value of the existing billboard at a fair market capitalization rate, based on actual annual revenue, less any annual rent expense;
- (ii) the value of any other right associated with the billboard structure that is acquired;
- (iii) the cost of the sign structure; and
- (iv) damage to the economic unit described in Subsection 72-7-510(3)(b), of which the billboard owner's interest is a part.

The fact that the City has denied CBS's Section 511 application to relocate only means that the City is obligated to "pay just compensation" to CBS pursuant to Utah Code § 10-9a-513(2)(d).

**(1) The Utah Eminent Domain statute, Utah Code § 78B-6-501, *et seq.*,
Does Not Govern the Denial of the billboard relocation application**

CBS incorrectly argues that the City's denial of its application was illegal because the City Council must approve the denial. CBS's illegality claim depends upon a provision from the Utah Eminent Domain statute, Utah Code § 78B-6-504(2), limiting the power to the "governing body" of the City. While Utah Code § 10-9a-513(2)(a)(iv) does indicate that in some circumstances (like that of CBS), the "municipality is considered to have initiated the acquisition of a billboard structure by eminent domain," it does not anywhere state that the type of eminent domain referenced in this MLUDMA provision is governed by the Utah Eminent Domain statute or even cite to that statute. As rule of statutory construction, courts are to "seek to give effect to omissions in statutory language by presuming all omissions to be purposeful." *Marion Energy, Inc. v. KFJ Ranch Partnership*, 2011 UT 50, ¶14, 267 P.3d 863 (2011). Instead of invoking the Utah Eminent Domain statute, when MLUDMA eminent domain provisions are met, Section 513 specifically refers to the "just compensation" remedy located in MLUDMA at Utah Code § 10-9a-513(2)(d), rather than some remedy from the Utah Eminent Domain statute. Ironically, CBS, contrary to the previously cited rule of statutory construction, would have the court assume the Utah Eminent Domain statute is applicable because Sections 511 and 513 of MLUDMA do not specifically exclude it.

Even if there was some ambiguity to Section 513, a review of the statute and its legislative history controvert CBS's position. The City, in the record below, provided

evidence that in 2010, a bill was introduced which proposed to modify Section 513 to require a municipality to “initiate eminent domain proceedings in the district court” if the municipality prevented the modifications or relocation within the scope of Section 513. (R.209-224). The bill failed to pass and reinforced that eminent domain remedies for billboards under MLUDMA Section 513 remain in that statutory provision providing for “just compensation.”

It is also helpful to review that MLUDMA Section 511 treats nonconforming billboards differently from other nonconforming uses. In particular, Utah Code § 10-9a-511(2)(b) states, “The legislative body may provide for: . . . (b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any.” (Underline Emphasis Added). The fact that nonconforming billboards were particularly excepted helps explain the specific rationale for the inclusion of the “just compensation” provision for nonconforming billboards deemed to be taken by eminent domain pursuant to Sections 511 and 513.

Additionally, a careful review of the Utah Eminent Domain statute shows that it is not crafted for eminent domain situations like those raised in Sections 511 and 513. Utah Code § 78B-6-504(1)(b) identifies that, “Before property can be taken it must appear that: . . . (b) the taking is necessary for the use.” The MLUDMA provision has no such requirement and Sections 511 and 513 are only activated where the billboard owner

makes a written application. Likewise, the compensation provisions of Utah Code § 78B-6-511 are different than the MLUDMA Section 513 “just compensation” provisions.

Furthermore, the Utah Eminent Domain statute requires a disclosed purpose for which the property is being taken (Utah Code § 78B-6-504(1)(b)) and a right to repurchase property sold under threat of eminent domain if the property is not used for the disclosed purpose for which it is acquired. *See* Utah Code § 78B-6-520.3(2)-(3). Such provisions simply do not make sense in conjunction with the eminent domain proceedings for nonconforming billboards identified in MLUDMA Sections 511 and 513.

CBS argues that the MLUDMA eminent domain proceedings for billboards should be used in conjunction with the Utah Eminent Domain statute but these statutes are not *in pari materia* where they do not “relate to the same person or thing, to the same class of persons or things, or have the same purpose or object.” *Utah County v. Orem City*, 699 P.2d 707,709 (Utah 1985). However, statutes are only construed together when they are *in pari materia*. In the present instance, these statutes are not *in pari materia*. As previously identified, MLUDMA clearly intends to treat nonconforming billboards differently from other nonconforming uses. The Utah Eminent Domain statute is essentially an unforeseen, hostile takeover of land or other property for a disclosed, public purpose. MLUDMA Section 511, on the other hand, is initiated by the application of the billboard owner with statutory notice that if certain conditions are met and the municipality elects not to grant the application, the municipality will have acquired the

nonconforming billboard and is required to pay “just compensation” as set forth in MLUDMA Section 513.

Finally, as recognized by the trial court, “[W]here two statutes treat the same subject matter, and one statute is general while the other is specific, the specific provision controls.” *Floyd v. Western Surgical Assocs.*, 773 P.2d 401, 404 (Utah Ct. App. 1989). Where MLUDMA Sections 511 and 513 are specifically geared towards billboards and far more specific and simply regulated than items covered under the Utah Eminent Domain statute, the Utah Eminent Domain statute should be held not to apply to nonconforming billboards clearly covered under MLUDMA. Such an interpretation will also best promote the protection of the public by limiting unnecessary, irrelevant, and burdensome provisions under the Utah Eminent Domain statute. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037, 1045 (Utah 1991).

(2) SLC Ord. § 21A.46.160(CC) Does Not Preclude the Denial of CBS’s Billboard Relocation Application

CBS also argues that the City’s denial of its Section 511 application was illegal because SLC Ord. § 21A.46.160(CC) prevents the City from denying CBS’s application. SLC Ord. § 21A.46.160(CC) states,

"Except as otherwise authorized herein, existing billboards may not be relocated except as mandated by the requirements of Utah State law."

As noted by the trial court, “According to CBS, this language amounts to a fiscal directive to the executive branch that condemnation of billboards be avoided at all costs.” (R.562).

The plain language of SLC Ord. § 21A.46.160(CC) gives no indication that supports CBS's interpretation. It simply indicates that existing billboards may not be relocated except in compliance with the other provisions of that ordinance or pursuant to state law. This section must be read in conjunction with the remainder of the ordinance which establishes a billboard banking system as the sole method for billboard relocation under City law. When it is read as the conclusion to that section it seems to emphasize that billboards may only be removed under that ordinance or as established by state statute.

Utah Code § 10-9a-511(3)(c)(i) is very clear in stating that, "*Notwithstanding a prohibition in its zoning ordinance*, a municipality may permit a billboard owner to relocate . . ." (Italicized Emphasis Added). In this regard, Section 511(3)(c)(i) trumps SLC Ord. § 21A.46.160(CC) (or any other conflicting city ordinance). *See State v. Hutchinson*, 624 P.2d 1116, 1121 (Utah 1980) ("A state cannot empower local governments to do that which the state itself does not have authority to do. In addition, local governments are without authority to pass any ordinance prohibited by, or in conflict with, state statutory law."). Interpreting SLC Ord. § 21A.46.160(CC) in the manner CBS proposes puts the city ordinance in direct conflict with Section 511(3)(c)(i)'s plain language and the city ordinance must give way to the state statute.

Furthermore, as indicated in the standard of review, some deference is to be accorded to a City's interpretation of its own ordinance. review a local agency's interpretation of ordinances for correctness, but also afford some level of non-binding

deference to the interpretation advanced by the local agency. *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 28, 104 P.3d 1208 (2004). Previously, the City has denied prior relocation applications which resulted in an obligation to pay just compensation. *See e.g., Salt Lake City v. ROA General Inc dba Reagan Outdoor Advertising, et al.*, Appellate Case No. 20150608-CA.

III. CBS Lack's Standing to Challenge the City's Approval of Corner Property's Billboard Relocation Application If Its Permit Was Properly Denied

Each of CBS's claims stated in its administrative "Notice of Appeal" pertaining to the Grant of Corner's Billboard Permit (BLD2014-07984) (PLNAPP2014-00973) (R.370-372) and the Denial of its requested permit ((BLD2014-07688) (PLNAPP2014-00973) (R.363-366) relate the following:

1. Granting Corner's permit when CBS's permit application was allegedly first in time and right;
2. Granting Corner's permit on a basis of City policy retiring billboards;
3. Granting Corner's permit and denying CBS was allegedly illegal, arbitrary and/or capricious (and therefore unsubstantiated by substantial evidence);
4. Granting Corner's permit was allegedly illegal as a violation of Art. 1 Sec. 24 of the Utah Constitution and the Equal Protection Clause of the 14th Amendment of the U.S. Constitution where CBS asserted itself to be similarly situated;
5. Granting Corner's permit and denying CBS where the proposed locations were within the same "gateway."

(R.746,SLCC 203-209). "As a general rule, a person can sustain a cause of action only

where he has sustained some injury to his legal personal or property rights, the injury and the cause of action being contemporaneous." *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983)(internal citation omitted). If CBS's permit was properly Denied by the City, then CBS has no standing to argue that Corner's Permit was improperly granted. See SLC Ord. § 21A.16.030A:

"Filing Of Appeal: An appeal shall be made in writing within ten (10) days of the administrative decision by the zoning administrator, historic landmark commission or planning commission and shall be filed with the zoning administrator. **The appeal shall specify** the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including **every theory of relief that can be presented in district court.**"

[Bold Emphasis Added]

Accordingly, to the extent the hearing officer and the trial court had authority to hear this appeal, CBS has failed to preserve many of the arguments it raises as they were not identified in its Notice of Appeal as required. Such failure to preserve would include but not be limited to the size, height, double-sided nature, and location for the footings of the Billboard Permit granted to Corner. Once CBS's own permit denial has been sustained, it has absolutely no Standing to argue against Corner's Permit where CBS has never argued that Corner's Permit was a matter "of great public importance" and that CBS had a cause of action against Corner pursuant to "the public interest standing test." See *Haymond v. Bonneville Billing & Collections, Inc.*, 2004 UT 27, ¶ 6, 89 P.3d 171, 173.

IV. The City's Approval of Corner's Application to relocate its billboard Was Not Arbitrary, Capricious, or Illegal

Corner submitted its Utah Code § 10-9a-511(3)(c)(i) application to relocate Corner's 500 South Billboard to Corner's 726 Property on October 21, 2014. (R.515, ¶10;142). The plain language of Utah Code § 10-9a-511(3)(c)(i) allowed the City to Grant Corner's application by making a relocation agreement with Corner if it chose to do so. All three requirements of Section 511(3)(c)(i) were met since the City elected to exercise its discretion, the relocation was within the boundaries of the City, and the location was acceptable to both the City and Corner.

Corner's contract with the City, the "Billboard Relocation Agreement," (R.159-161) by its plain language is not dependent upon the square footage of its 500 South Billboard or the number of said Billboard's faces. Paragraph 2 (page one) of the contract specifically says, "The size of the face of the New Billboard at the South Temple Location may not exceed 14 feet by 48 feet," that the "New Billboard may be double-sided," and "The height of the New Billboard may not exceed 85 feet." (R.159-161). The contract also cites Utah Code § 10-9a-511(3)(c)(i) as the lawful basis for the authority for the City and Corner to make this agreement. (R.159-161). The contract was signed by both the representative for Corner and by then Salt Lake City Mayor Becker, the chief executive officer of Salt Lake City and then properly recorded with the City Recorder on November 30, 2015. (R.161). Even if the court determines that CBS had standing to challenge the size, height, and dual sided nature of Corner's permit and

billboard (it has since been erected since obtaining a UDOT permit some weeks after the decision of the trial court), Section 511(3)(c)(i) allows relocation “to a location that is mutually acceptable to the municipality and the billboard owner.” When CBS’s billboard had been located at that location, it was at a height of 86 feet (one foot higher than approved by the City for Corner’s board). (R.199). CBS, itself, in its application to relocate and raise the height of its billboard pursuant to Utah Code § 72-7-510.5 of October 20, 2014, requested to raise the height of the billboard to 116 feet in order to make it visible. (R.199;202). Because a billboard needed to stand 85 feet to be visible at the 726 Property from I-15, the City waived its ordinances which would have restricted the height to 60 feet. (R.746, SLCC 1417, (C), last paragraph). Section 511(3)(c)(i) allows for this change in height and size in order to make a deal that both the municipality and the billboard owner can approve.

Corner's 500 South Billboard, contrary to any claim by CBS, has been a dual-sided billboard for over twenty (20) years [since at least 1993] which has been continuously leased (both faces) for virtually that entire time period. (R.128,¶10;515,¶9). Given that CBS's challenge to the lawfulness of the dual-sided billboard is of very recent origin, records from that time period are no longer easily available, if at all within even the City no longer having all the records. What Corner can state is that its 500 South Billboard has always been a dual-sided billboard and was properly permitted with the City when constructed. (R.128,¶10;515,¶9). Additionally, at the time the 500 South Billboard was

constructed, UDOT did not regulate Corner's Billboard because it was East of 300 West on 500 South. (R.746,SLCC 1421). Even if, as alleged by CBS, this Corner Billboard later became governed by UDOT, it would have been "grandfathered in" as a pre-existing, dual-sided structure. Finally, it is Corner's contention that even if this is the case, under any governing regulations, UDOT would only have jurisdiction on the East Side of the Billboard (the Right Read) facing the traffic exiting the City Center heading West and would have no jurisdiction over the other side of Corner's Billboard. *See* Utah Code §§ 72-7-502(17) and 72-7-504(2), Utah Outdoor Advertising Act and (R.746,SSLC 2271). Finally, Salt Lake City has recognized the dual-sided nature of the 500 South Billboard in issuing Corner the demolition permit for a dual-sided billboard. (R.746,SLCC 1680).

The Billboard Relocation Agreement and grant of Corner's Section 511(3)(c)(i) relocation application was not illegal because Section 511(3)(c)(i) allowed City authority to make that agreement. That action also was not arbitrary or capricious where there is substantial evidence showing that the City was able to benefit by moving Corner's 500 South Billboard from a downtown gateway property owned by Corner to a property further West by I-15 where such billboards are more common. In fact, Corner's 500 South Billboard was the only billboard located between 300 West and 700 East on 500 South in the City. (R.128,¶10;515,¶9). CBS made no such comparable offer.

CONCLUSION

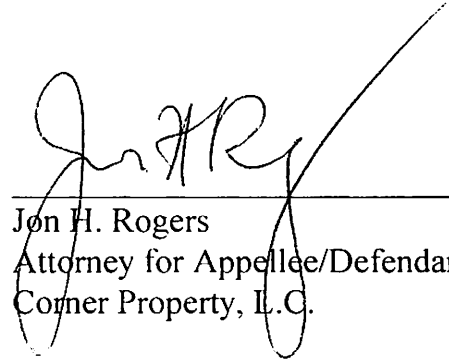
The Court should affirm the City's denial of CBS's application. The City's denial

of CBS's permit application was not arbitrary, capricious, or illegal. Pursuant to Utah Code § 10-9a-511(3)(c)(i), the City had authority to grant CBS's application but was not required to do so and elected to deny CBS's application for reasons that carried a rational basis, particularly in light of the City's existing ban on billboards in City "gateways," the fact that a denial of the CBS application would result in one less billboard (one of the policies of the City's administration), improve views within the City boundaries, and would allow the City to grant Corner's application which removed Corner's 500 South Billboard from a more sensitive position toward the City center to a position along I-15.

Once it is determined that the City's denial of CBS's permit application was not arbitrary, capricious, or illegal, the Court should find that CBS does not have (or no longer has) standing to challenge the City's grant of Corner's application. Alternatively, the Court should affirm the City's grant of Corner's application since its issuance was not arbitrary, capricious, or illegal and was supported by substantial evidence.

Finally, even if the Court should agree with CBS that approval of the City Council was necessary to deny its application, the appropriate remedy is not to grant CBS the permit and revoke Corner's permit. Instead, the appropriate remedy in that instance would be a remand to the City for it submit the applications for a review and determination by the City Council.

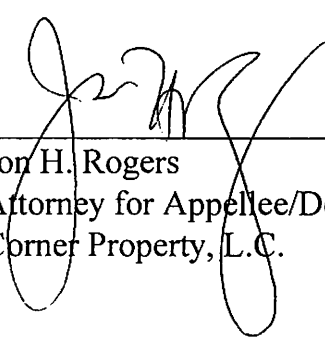
DATED this 17th day of August, 2016.



Jon H. Rogers
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Utah R. App. P. 24(f)(1) Certification

Pursuant to Utah R. App. P. 24(f)(1), I hereby certify that this Brief of Appellee Corner Property, L.C., complies with the type-volume limitation. The word processing system used to prepare this brief states that it contains 9276 words and 923 lines in Times New Roman type which is a proportionally spaced font.



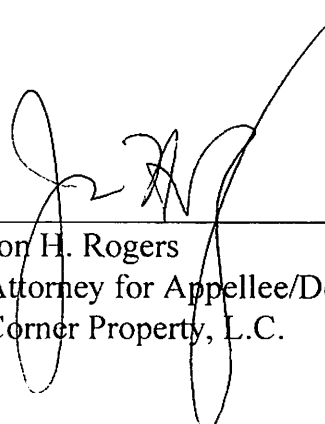
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2016, a true and correct copy of the “BRIEF OF APPELLEE CORNER PROPERTY, L.C.” was served via U.S. Mail, postage pre-paid to the following:

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ADDENDUM of

Appellee Corner Property

Effective 5/12/2015

10-9a-511 Nonconforming uses and noncomplying structures.

- (1)
 - (a) Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.
 - (b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.
 - (c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.
- (2) The legislative body may provide for:
 - (a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use ordinance;
 - (b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and
 - (c) the termination of a nonconforming use due to its abandonment.
- (3)
 - (a) A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.
 - (b) A municipality may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:
 - (i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or
 - (ii) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.
 - (c)
 - (i) Notwithstanding a prohibition in its zoning ordinance, a municipality may permit a billboard owner to relocate the billboard within the municipality's boundaries to a location that is mutually acceptable to the municipality and the billboard owner.
 - (ii) If the municipality and billboard owner cannot agree to a mutually acceptable location within 90 days after the owner submits a written request to relocate the billboard, the provisions of Subsection 10-9a-513(2)(a)(iv) apply.
- (4)
 - (a) Unless the municipality establishes, by ordinance, a uniform presumption of legal existence for nonconforming uses, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.
 - (b) Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.
 - (c) Abandonment may be presumed to have occurred if:
 - (i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;
 - (ii) the use has been discontinued for a minimum of one year; or

- (iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.
- (d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(b) has not in fact occurred.
- (5) A municipality may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

Amended by Chapter 205, 2015 General Session

10-9a-513 Municipality's acquisition of billboard by eminent domain -- Removal without providing compensation -- Limit on allowing nonconforming billboards to be rebuilt or replaced -- Validity of municipal permit after issuance of state permit.

(1) As used in this section:

- (a) "Clearly visible" means capable of being read without obstruction by an occupant of a vehicle traveling on a street or highway within the visibility area.
- (b) "Highest allowable height" means:
 - (i) if the height allowed by the municipality, by ordinance or consent, is higher than the height under Subsection (1)(b)(ii), the height allowed by the municipality; or
 - (ii)
 - (A) for a noninterstate billboard:
 - (I) if the height of the previous use or structure is 45 feet or higher, the height of the previous use or structure; or
 - (II) if the height of the previous use or structure is less than 45 feet, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than 45 feet; and
 - (B) for an interstate billboard:
 - (I) if the height of the previous use or structure is at or above the interstate height, the height of the previous use or structure; or
 - (II) if the height of the previous use or structure is less than the interstate height, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than the interstate height.
- (c) "Interstate billboard" means a billboard that is intended to be viewed from a highway that is an interstate.
- (d) "Interstate height" means a height that is the higher of:
 - (i) 65 feet above the ground; and
 - (ii) 25 feet above the grade of the interstate.
- (e) "Noninterstate billboard" means a billboard that is intended to be viewed from a street or highway that is not an interstate.
- (f) "Visibility area" means the area on a street or highway that is:
 - (i) defined at one end by a line extending from the base of the billboard across all lanes of traffic of the street or highway in a plane that is perpendicular to the street or highway; and
 - (ii) defined on the other end by a line extending across all lanes of traffic of the street or highway in a plane that is:
 - (A) perpendicular to the street or highway; and
 - (B)
 - (I) for an interstate billboard, 500 feet from the base of the billboard; or
 - (II) for a noninterstate billboard, 300 feet from the base of the billboard.

- (2)
 - (a) A municipality is considered to have initiated the acquisition of a billboard structure by eminent domain if the municipality prevents a billboard owner from:
 - (i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged by casualty, an act of God, or vandalism;
 - (ii) except as provided in Subsection (2)(c), relocating or rebuilding a billboard structure, or taking other measures, to correct a mistake in the placement or erection of a billboard for which the municipality has issued a permit, if the proposed relocation, rebuilding, or other measure is consistent with the intent of that permit;
 - (iii) structurally modifying or upgrading a billboard;

- (iv) relocating a billboard into any commercial, industrial, or manufacturing zone within the municipality's boundaries, if:
 - (A) the relocated billboard is:
 - (I) within 5,280 feet of its previous location; and
 - (II) no closer than:
 - (Aa) 300 feet from an off-premise sign existing on the same side of the street or highway; or
 - (Bb) if the street or highway is an interstate or limited access highway that is subject to Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, the distance allowed under that act between the relocated billboard and an off-premise sign existing on the same side of the interstate or limited access highway; and
 - (B)
 - (I) the billboard owner has submitted a written request under Subsection 10-9a-511(3)(c); and
 - (II) the municipality and billboard owner are unable to agree, within the time provided in Subsection 10-9a-511(3)(c), to a mutually acceptable location; or
- (v) making the following modifications, as the billboard owner determines, to a billboard that is structurally modified or upgraded under Subsection (2)(a)(iii) or relocated under Subsection (2)(a)(iv):
 - (A) erecting the billboard:
 - (I) to the highest allowable height; and
 - (II) as the owner determines, to an angle that makes the entire advertising content of the billboard clearly visible; and
 - (B) installing a sign face on the billboard that is at least the same size as, but no larger than, the sign face on the billboard before its relocation.
- (b) A modification under Subsection (2)(a)(v) shall comply with Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, to the extent applicable.
- (c) A municipality's denial of a billboard owner's request to relocate or rebuild a billboard structure, or to take other measures, in order to correct a mistake in the placement or erection of a billboard does not constitute the initiation of acquisition by eminent domain under Subsection (2)(a) if the mistake in placement or erection of the billboard is determined by clear and convincing evidence to have resulted from an intentionally false or misleading statement:
 - (i) by the billboard applicant in the application; and
 - (ii) regarding the placement or erection of the billboard.
- (d) If a municipality is considered to have initiated the acquisition of a billboard structure by eminent domain under Subsection (2)(a) or any other provision of applicable law, the municipality shall pay just compensation to the billboard owner in an amount that is:
 - (i) the value of the existing billboard at a fair market capitalization rate, based on actual annual revenue, less any annual rent expense;
 - (ii) the value of any other right associated with the billboard structure that is acquired;
 - (iii) the cost of the sign structure; and
 - (iv) damage to the economic unit described in Subsection 72-7-510(3)(b), of which the billboard owner's interest is a part.
- (3) Notwithstanding Subsection (2) and Section 10-9a-512, a municipality may remove a billboard without providing compensation if:
 - (a) the municipality determines:

- (i) by clear and convincing evidence that the applicant for a permit intentionally made a false or misleading statement in the applicant's application regarding the placement or erection of the billboard; or
- (ii) by substantial evidence that the billboard:
 - (A) is structurally unsafe;
 - (B) is in an unreasonable state of repair; or
 - (C) has been abandoned for at least 12 months;
- (b) the municipality notifies the owner in writing that the owner's billboard meets one or more of the conditions listed in Subsections (3)(a)(i) and (ii);
- (c) the owner fails to remedy the condition or conditions within:
 - (i) except as provided in Subsection (3)(c)(ii), 90 days following the billboard owner's receipt of written notice under Subsection (3)(b); or
 - (ii) if the condition forming the basis of the municipality's intention to remove the billboard is that it is structurally unsafe, 10 business days, or a longer period if necessary because of a natural disaster, following the billboard owner's receipt of written notice under Subsection (3)(b); and
- (d) following the expiration of the applicable period under Subsection (3)(c) and after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the municipality finds:
 - (i) by clear and convincing evidence, that the applicant for a permit intentionally made a false or misleading statement in the application regarding the placement or erection of the billboard; or
 - (ii) by substantial evidence that the billboard is structurally unsafe, is in an unreasonable state of repair, or has been abandoned for at least 12 months.
- (4) A municipality may not allow a nonconforming billboard to be rebuilt or replaced by anyone other than its owner or the owner acting through its contractors.
- (5) A permit issued, extended, or renewed by a municipality for a billboard remains valid from the time the municipality issues, extends, or renews the permit until 180 days after a required state permit is issued for the billboard if:
 - (a) the billboard requires a state permit; and
 - (b) an application for the state permit is filed within 30 days after the municipality issues, extends, or renews a permit for the billboard.

Amended by Chapter 170, 2009 General Session

Amended by Chapter 233, 2009 General Session

10-9a-701 Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.

- (1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:
 - (a) requests for variances from the terms of the land use ordinances;
 - (b) appeals from decisions applying the land use ordinances; and
 - (c) appeals from a fee charged in accordance with Section 10-9a-510.
- (2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.
- (3) An appeal authority:
 - (a) shall:
 - (i) act in a quasi-judicial manner; and
 - (ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
 - (b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.
- (4) By ordinance, a municipality may:
 - (a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;
 - (b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;
 - (c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;
 - (d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and
 - (e) provide that specified types of land use decisions may be appealed directly to the district court.
- (5) If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:
 - (a) notify each of its members of any meeting or hearing of the board, body, or panel;
 - (b) provide each of its members with the same information and access to municipal resources as any other member;
 - (c) convene only if a quorum of its members is present; and
 - (d) act only upon the vote of a majority of its convened members.

Amended by Chapter 92, 2011 General Session

10-9a-707 Standard of review for appeals.

- (1) A municipality may, by ordinance, designate the standard of review for appeals of land use authority decisions.
- (2) If the municipality fails to designate a standard of review of factual matters, the appeal authority shall review the matter de novo.
- (3) The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of a land use ordinance.
- (4) Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.

Enacted by Chapter 254, 2005 General Session

Effective 5/10/2016

Superseded 1/1/2017

59-2-102 Definitions.

As used in this chapter and title:

- (1) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of engaging in dispensing activities directly affecting agriculture or horticulture with an airworthiness certificate from the Federal Aviation Administration certifying the aircraft or rotorcraft's use for agricultural and pest control purposes.
- (2) "Air charter service" means an air carrier operation which requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.
- (3) "Air contract service" means an air carrier operation available only to customers who engage the services of the carrier through a contractual agreement and excess capacity on any trip and is not available to the public at large.
- (4) "Aircraft" means the same as that term is defined in Section 72-10-102.
- (5)
 - (a) Except as provided in Subsection (5)(b), "airline" means an air carrier that:
 - (i) operates:
 - (A) on an interstate route; and
 - (B) on a scheduled basis; and
 - (ii) offers to fly one or more passengers or cargo on the basis of available capacity on a regularly scheduled route.
 - (b) "Airline" does not include an:
 - (i) air charter service; or
 - (ii) air contract service.
- (6) "Assessment roll" means a permanent record of the assessment of property as assessed by the county assessor and the commission and may be maintained manually or as a computerized file as a consolidated record or as multiple records by type, classification, or categories.
- (7) "Base parcel" means a parcel of property that was legally:
 - (a) subdivided into two or more lots, parcels, or other divisions of land; or
 - (b)
 - (i) combined with one or more other parcels of property; and
 - (ii) subdivided into two or more lots, parcels, or other divisions of land.
- (8)
 - (a) "Certified revenue levy" means a property tax levy that provides an amount of ad valorem property tax revenue equal to the sum of:
 - (i) the amount of ad valorem property tax revenue to be generated statewide in the previous year from imposing a school minimum basic tax rate, as specified in Section 53A-17a-135, or multicounty assessing and collecting levy, as specified in Section 59-2-1602; and
 - (ii) the product of:
 - (A) new growth, as defined in:
 - (I) Section 59-2-924; and
 - (II) rules of the commission; and
 - (B) the school minimum basic tax rate or multicounty assessing and collecting levy certified by the commission for the previous year.
 - (b) For purposes of this Subsection (8), "ad valorem property tax revenue" does not include property tax revenue received by a taxing entity from personal property that is:
 - (i) assessed by a county assessor in accordance with Part 3, County Assessment; and

- (ii) semiconductor manufacturing equipment.
- (c) For purposes of calculating the certified revenue levy described in this Subsection (8), the commission shall use:
 - (i) the taxable value of real property assessed by a county assessor contained on the assessment roll;
 - (ii) the taxable value of real and personal property assessed by the commission; and
 - (iii) the taxable year end value of personal property assessed by a county assessor contained on the prior year's assessment roll.
- (9) "County-assessed commercial vehicle" means:
 - (a) any commercial vehicle, trailer, or semitrailer which is not apportioned under Section 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or property in furtherance of the owner's commercial enterprise;
 - (b) any passenger vehicle owned by a business and used by its employees for transportation as a company car or vanpool vehicle; and
 - (c) vehicles that are:
 - (i) especially constructed for towing or wrecking, and that are not otherwise used to transport goods, merchandise, or people for compensation;
 - (ii) used or licensed as taxicabs or limousines;
 - (iii) used as rental passenger cars, travel trailers, or motor homes;
 - (iv) used or licensed in this state for use as ambulances or hearses;
 - (v) especially designed and used for garbage and rubbish collection; or
 - (vi) used exclusively to transport students or their instructors to or from any private, public, or religious school or school activities.
- (10)
 - (a) Except as provided in Subsection (10)(b), for purposes of Section 59-2-801, "designated tax area" means a tax area created by the overlapping boundaries of only the following taxing entities:
 - (i) a county; and
 - (ii) a school district.
 - (b) Notwithstanding Subsection (10)(a), "designated tax area" includes a tax area created by the overlapping boundaries of:
 - (i) the taxing entities described in Subsection (10)(a); and
 - (ii)
 - (A) a city or town if the boundaries of the school district under Subsection (10)(a) and the boundaries of the city or town are identical; or
 - (B) a special service district if the boundaries of the school district under Subsection (10)(a) are located entirely within the special service district.
- (11) "Eligible judgment" means a final and unappealable judgment or order under Section 59-2-1330:
 - (a) that became a final and unappealable judgment or order no more than 14 months prior to the day on which the notice required by Section 59-2-919.1 is required to be provided; and
 - (b) for which a taxing entity's share of the final and unappealable judgment or order is greater than or equal to the lesser of:
 - (i) \$5,000; or
 - (ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year.
- (12)

- (a) "Escaped property" means any property, whether personal, land, or any improvements to the property, subject to taxation and is:
 - (i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed to the wrong taxpayer by the assessing authority;
 - (ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to comply with the reporting requirements of this chapter; or
 - (iii) undervalued because of errors made by the assessing authority based upon incomplete or erroneous information furnished by the taxpayer.
- (b) Property that is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology is not "escaped property."
- (13) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.
- (14) "Farm machinery and equipment," for purposes of the exemption provided under Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities, feed handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage tools, scales, combines, spreaders, sprayers, haying equipment, including balers and cubers, and any other machinery or equipment used primarily for agricultural purposes; but does not include vehicles required to be registered with the Motor Vehicle Division or vehicles or other equipment used for business purposes other than farming.
- (15) "Geothermal fluid" means water in any form at temperatures greater than 120 degrees centigrade naturally present in a geothermal system.
- (16) "Geothermal resource" means:
 - (a) the natural heat of the earth at temperatures greater than 120 degrees centigrade; and
 - (b) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium.
- (17)
 - (a) "Goodwill" means:
 - (i) acquired goodwill that is reported as goodwill on the books and records:
 - (A) of a taxpayer; and
 - (B) that are maintained for financial reporting purposes; or
 - (ii) the ability of a business to:
 - (A) generate income:
 - (I) that exceeds a normal rate of return on assets; and
 - (II) resulting from a factor described in Subsection (17)(b); or
 - (B) obtain an economic or competitive advantage resulting from a factor described in Subsection (17)(b).
 - (b) The following factors apply to Subsection (17)(a)(ii):
 - (i) superior management skills;
 - (ii) reputation;
 - (iii) customer relationships;
 - (iv) patronage; or
 - (v) a factor similar to Subsections (17)(b)(i) through (iv).

(c) "Goodwill" does not include:

(i) the intangible property described in Subsection (21)(a) or (b);

(ii) locational attributes of real property, including:

(A) zoning;

(B) location;

(C) view;

(D) a geographic feature;

(E) an easement;

(F) a covenant;

(G) proximity to raw materials;

(H) the condition of surrounding property; or

(I) proximity to markets;

(iii) value attributable to the identification of an improvement to real property, including:

(A) reputation of the designer, builder, or architect of the improvement;

(B) a name given to, or associated with, the improvement; or

(C) the historic significance of an improvement; or

(iv) the enhancement or assemblage value specifically attributable to the interrelation of the existing tangible property in place working together as a unit.

(18) "Governing body" means:

(a) for a county, city, or town, the legislative body of the county, city, or town;

(b) for a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, the local district's board of trustees;

(c) for a school district, the local board of education; or

(d) for a special service district under Title 17D, Chapter 1, Special Service District Act:

(i) the legislative body of the county or municipality that created the special service district, to the extent that the county or municipal legislative body has not delegated authority to an administrative control board established under Section 17D-1-301; or

(ii) the administrative control board, to the extent that the county or municipal legislative body has delegated authority to an administrative control board established under Section 17D-1-301.

(19)

(a) For purposes of Section 59-2-103:

(i) "household" means the association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses; and

(ii) "household" includes married individuals, who are not legally separated, that have established domiciles at separate locations within the state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "domicile."

(20)

(a) Except as provided in Subsection (20)(c), "improvement" means a building, structure, fixture, fence, or other item that is permanently attached to land, regardless of whether the title has been acquired to the land, if:

(i)

(A) attachment to land is essential to the operation or use of the item; and

(B) the manner of attachment to land suggests that the item will remain attached to the land in the same place over the useful life of the item; or

(ii) removal of the item would:

(A) cause substantial damage to the item; or

(B) require substantial alteration or repair of a structure to which the item is attached.

(b) "Improvement" includes:

(i) an accessory to an item described in Subsection (20)(a) if the accessory is:

(A) essential to the operation of the item described in Subsection (20)(a); and

(B) installed solely to serve the operation of the item described in Subsection (20)(a); and

(ii) an item described in Subsection (20)(a) that:

(A) is temporarily detached from the land for repairs; and

(B) remains located on the land.

(c) Notwithstanding Subsections (20)(a) and (b), "improvement" does not include:

(i) an item considered to be personal property pursuant to rules made in accordance with Section 59-2-107;

(ii) a moveable item that is attached to land:

(A) for stability only; or

(B) for an obvious temporary purpose;

(iii)

(A) manufacturing equipment and machinery; or

(B) essential accessories to manufacturing equipment and machinery;

(iv) an item attached to the land in a manner that facilitates removal without substantial damage to:

(A) the land; or

(B) the item; or

(v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that transportable factory-built housing unit is considered to be personal property under Section 59-2-1503.

(21) "Intangible property" means:

(a) property that is capable of private ownership separate from tangible property, including:

(i) money;

(ii) credits;

(iii) bonds;

(iv) stocks;

(v) representative property;

(vi) franchises;

(vii) licenses;

(viii) trade names;

(ix) copyrights; and

(x) patents;

(b) a low-income housing tax credit;

(c) goodwill; or

(d) a renewable energy tax credit or incentive, including:

(i) a federal renewable energy production tax credit under Section 45, Internal Revenue Code;

(ii) a federal energy credit for qualified renewable electricity production facilities under Section 48, Internal Revenue Code;

(iii) a federal grant for a renewable energy property under American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Section 1603; and

(iv) a tax credit under Subsection 59-7-614(5).

(22) "Livestock" means:

(a) a domestic animal;

(b) a fish;

- (c) a fur-bearing animal;
 - (d) a honeybee; or
 - (e) poultry.
- (23) "Low-income housing tax credit" means:
- (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code; or
 - (b) a low-income housing tax credit under:
 - (i) Section 59-7-607; or
 - (ii) Section 59-10-1010.
- (24) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.
- (25) "Mine" means a natural deposit of either metalliferous or nonmetalliferous valuable mineral.
- (26) "Mining" means the process of producing, extracting, leaching, evaporating, or otherwise removing a mineral from a mine.
- (27)
- (a) "Mobile flight equipment" means tangible personal property that is:
 - (i) owned or operated by an:
 - (A) air charter service;
 - (B) air contract service; or
 - (C) airline; and
 - (ii)
 - (A) capable of flight;
 - (B) attached to an aircraft that is capable of flight; or
 - (C) contained in an aircraft that is capable of flight if the tangible personal property is intended to be used:
 - (I) during multiple flights;
 - (II) during a takeoff, flight, or landing; and
 - (III) as a service provided by an air charter service, air contract service, or airline.
 - (b)
 - (i) "Mobile flight equipment" does not include a spare part other than a spare engine that is rotated:
 - (A) at regular intervals; and
 - (B) with an engine that is attached to the aircraft.
 - (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "regular intervals."
- (28) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts, sand, rock, gravel, and all carboniferous materials.
- (29) "Part-year residential property" means property that is not residential property on January 1 of a calendar year but becomes residential property after January 1 of the calendar year.
- (30) "Personal property" includes:
- (a) every class of property as defined in Subsection (31) that is the subject of ownership and not included within the meaning of the terms "real estate" and "improvements";
 - (b) gas and water mains and pipes laid in roads, streets, or alleys;
 - (c) bridges and ferries;
 - (d) livestock; and
 - (e) outdoor advertising structures as defined in Section 72-7-502.
- (31)
- (a) "Property" means property that is subject to assessment and taxation according to its value.
 - (b) "Property" does not include intangible property as defined in this section.

(32) "Public utility," for purposes of this chapter, means the operating property of a railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline company, electrical corporation, telephone corporation, sewerage corporation, or heat corporation where the company performs the service for, or delivers the commodity to, the public generally or companies serving the public generally, or in the case of a gas corporation or an electrical corporation, where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use. Public utility also means the operating property of any entity or person defined under Section 54-2-1 except water corporations.

(33)

(a) Subject to Subsection (33)(b), "qualifying exempt primary residential rental personal property" means household furnishings, furniture, and equipment that:

- (i) are used exclusively within a dwelling unit that is the primary residence of a tenant;
- (ii) are owned by the owner of the dwelling unit that is the primary residence of a tenant; and
- (iii) after applying the residential exemption described in Section 59-2-103, are exempt from taxation under this chapter in accordance with Subsection 59-2-1115(2).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "dwelling unit" for purposes of this Subsection (33) and Subsection (36).

(34) "Real estate" or "real property" includes:

- (a) the possession of, claim to, ownership of, or right to the possession of land;
- (b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining to these; and
- (c) improvements.

(35) "Relationship with an owner of the property's land surface rights" means a relationship described in Subsection 267(b), Internal Revenue Code:

- (a) except that notwithstanding Subsection 267(b), Internal Revenue Code, the term 25% shall be substituted for the term 50% in Subsection 267(b), Internal Revenue Code; and
- (b) using the ownership rules of Subsection 267(c), Internal Revenue Code, for determining the ownership of stock.

(36)

(a) Subject to Subsection (36)(b), "residential property," for the purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence.

(b) Subject to Subsection (36)(c), "residential property":

- (i) except as provided in Subsection (36)(b)(ii), includes household furnishings, furniture, and equipment if the household furnishings, furniture, and equipment are:
 - (A) used exclusively within a dwelling unit that is the primary residence of a tenant; and
 - (B) owned by the owner of the dwelling unit that is the primary residence of a tenant; and
- (ii) does not include property used for transient residential use.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "dwelling unit" for purposes of Subsection (33) and this Subsection (36).

(37) "Split estate mineral rights owner" means a person who:

- (a) has a legal right to extract a mineral from property;
- (b) does not hold more than a 25% interest in:
 - (i) the land surface rights of the property where the wellhead is located; or

- (ii) an entity with an ownership interest in the land surface rights of the property where the wellhead is located;
 - (c) is not an entity in which the owner of the land surface rights of the property where the wellhead is located holds more than a 25% interest; and
 - (d) does not have a relationship with an owner of the land surface rights of the property where the wellhead is located.
- (38)
- (a) "State-assessed commercial vehicle" means:
 - (i) any commercial vehicle, trailer, or semitrailer which operates interstate or intrastate to transport passengers, freight, merchandise, or other property for hire; or
 - (ii) any commercial vehicle, trailer, or semitrailer which operates interstate and transports the vehicle owner's goods or property in furtherance of the owner's commercial enterprise.
 - (b) "State-assessed commercial vehicle" does not include vehicles used for hire which are specified in Subsection (9)(c) as county-assessed commercial vehicles.
- (39) "Subdivided lot" means a lot, parcel, or other division of land, that is a division of a base parcel.
- (40) "Taxable value" means fair market value less any applicable reduction allowed for residential property under Section 59-2-103.
- (41) "Tax area" means a geographic area created by the overlapping boundaries of one or more taxing entities.
- (42) "Taxing entity" means any county, city, town, school district, special taxing district, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or other political subdivision of the state with the authority to levy a tax on property.
- (43) "Tax roll" means a permanent record of the taxes charged on property, as extended on the assessment roll and may be maintained on the same record or records as the assessment roll or may be maintained on a separate record properly indexed to the assessment roll. It includes tax books, tax lists, and other similar materials.

Amended by Chapter 98, 2016 General Session

Amended by Chapter 368, 2016 General Session

2.02.020: ESTABLISHMENT OF BRANCHES:

The municipal government of the city is divided into separate, independent and equal branches of government:

- A. The executive branch, which consists of the elected mayor of the city, and the administrative departments of the city, together with department heads, officers and employees; and
- B. The legislative branch, which consists of a municipal council and their staff. The mayor shall be elected at large by the voters of the municipality and shall exercise the executive powers of the government. The council shall consist of seven (7) members, who are residents of and elected from their respective council districts. (Prior code § 24-1-2)

Chapter 21A.16

APPEALS OF ADMINISTRATIVE DECISIONS

This section has been affected by a recently passed ordinance, 10-2016 - LAND USE PROVISIONS .
[Go to new ordinance.](#)

21A.16.010: AUTHORITY:

As described in section 21A.06.040 of this title, the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by the zoning administrator or the administrative hearing officer in the administration or enforcement of this title, as well as administrative decisions of the historic landmark commission; and the planning commission.

In addition, the appeals hearing officer shall hear and decide applications for variances as per chapter 21A.18 of this title. (Ord. 61-12, 2012)

21A.16.020: PARTIES ENTITLED TO APPEAL:

An applicant or any other person or entity adversely affected by a decision administering or interpreting this title may appeal to the appeals hearing officer. (Ord. 31-12, 2012)

This section has been affected by a recently passed ordinance, 10-2016 - LAND USE PROVISIONS .
[Go to new ordinance.](#)

21A.16.030: PROCEDURE:

Appeals of administrative decisions by the zoning administrator, historic landmark commission or planning commission to the appeals hearing officer shall be taken in accordance with the following procedures:

- A. Filing Of Appeal: An appeal shall be made in writing within ten (10) days of the administrative decision by the zoning administrator, historic landmark commission or planning commission and shall be filed with the zoning administrator. The appeal shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.

B. Fees: The application shall be accompanied by the applicable fees shown on the Salt Lake City consolidated fee schedule. The applicant shall also be responsible for payment of all fees established for providing the public notice required by chapter 21A.10 of this title.

C. Stay Of Proceedings: An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination, or interpretation was made unless the zoning administrator certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

D. Notice Required:

1. Public Hearing: Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in chapter 21A.10 of this title.
2. Notice Of Appeals Of Administrative Decisions Of The Historic Landmark Commission Or Planning Commission: Appeals from a decision of the historic landmark commission or planning commission are based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent.
 - a. Upon receipt of an appeal of a decision by the historic landmark commission or planning commission the appeals hearing officer shall schedule a public meeting to hear arguments by the appellant and respondent. Notification of the date, time and place of the meeting shall be given to the appellant and respondent a minimum of twelve (12) calendar days in advance of the meeting.
 - b. The city shall give e-mail notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to title 2, chapter 2.60 of this code.

E. Standard Of Review:

1. The standard of review for an appeal, other than as provided in subsection E2 of this section, shall be de novo. The appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below.
2. An appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below.
 - a. No new evidence shall be heard by the appeals hearing officer unless such evidence was improperly excluded from consideration below.
 - b. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.
 - c. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision

was made.

- F. Burden Of Proof: The appellant has the burden of proving the decision appealed is incorrect.
- G. Action By The Appeals Hearing Officer: The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. A decision by the appeals hearing officer shall become effective on the date the decision is rendered.
- H. Notification Of Decision: Notification of the decision of the appeals hearing officer shall be sent by mail to all parties to the appeal within ten (10) days of the appeals hearing officer's decision.
- I. Record Of Proceedings: The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the appeals hearing officer. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.
- J. Appeals: Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.
- K. Policies And Procedures: The planning director shall adopt policies and procedures, consistent with the provisions of this section, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal. (Ord. 54-14, 2014: Ord. 58-13, 2013: Ord. 61-12, 2012)

21A.16.040: APPEAL OF DECISION:

Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered. (Ord. 8-12, 2012)

21A.16.050: STAY OF DECISION:

The appeals hearing officer may stay the issuance of any permits or approvals based on its decision for thirty (30) days or until the decision of the district court in any appeal of the decision. (Ord. 8-12, 2012)

21A.46.010: PURPOSE STATEMENT:

A. Purpose: The regulations of this chapter are intended to:

1. Eliminate potential hazards to motorists and pedestrians by requiring that signs are designed, constructed, installed and maintained in a manner that promotes the public health, safety and general welfare of the citizens of Salt Lake City;
2. Encourage signs which, by their good design, are integrated with and harmonious to the buildings and sites, including landscaping, which they occupy;
3. Encourage sign legibility through the elimination of excessive and confusing sign displays;
4. Preserve and improve the appearance of the city as a place in which to live and to work, and create an attraction to nonresidents to come to visit or trade;
5. Allow each individual business to clearly identify itself and the nature of its business in such a manner as to become the hallmark of the business which will create a distinctive appearance and also enhance the city's character;
6. Safeguard and enhance property values;
7. Protect public and private investment in buildings and open space; and
8. Permit on premises signs as provided by the specific zoning district sign regulations included in this chapter. (Ord. 13-04 § 22, 2004; Ord. 88-95 § 1 (Exh. A), 1995)

21A.46.160: BILLBOARDS:

A. Purpose Statement: This section is intended to limit the maximum number of billboards in Salt Lake City to no greater than the current number. This chapter further provides reasonable processes and methods for the replacement or relocation of existing nonconforming billboards to areas of the city where they will have less negative impact on the goals and policies of the city which promote the enhancement of the city's gateways, views, vistas and related urban design elements of the city's master plans.

B. Definitions: The definitions in this section apply in addition to those in section 21A.46.020 of this chapter.

BILLBOARD: A form of an off premises sign. A freestanding ground sign located on industrial, commercial or residential property if the sign is 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.

BILLBOARD BANK: An accounting system established by the city to keep track of the number and square footage of nonconforming billboards removed pursuant to this chapter.

BILLBOARD CREDIT: An entry into a billboard owner's billboard bank account that shows the number and square footage of demolished nonconforming billboards.

BILLBOARD OWNER: The owner of a billboard in Salt Lake City.

DWELL TIME: The length of time that elapses between text, images, or graphics on an electronic billboard or electronic sign.

ELECTRONIC BILLBOARD: Any off premises sign, video display, projected image, or similar device with text, images, or graphics generated by solid state electronic components. Electronic billboards include, but are not limited to, billboards that use light emitting diodes (LED), plasma displays, fiber optics, or other technology that results in bright, high resolution text, images, and graphics.

ELECTRONIC SIGN: Any on premises sign, video display, projected image, or similar device with text, images, or graphics generated by solid state electronic components. Electronic signs include, but are not limited to, signs that use light emitting diodes (LED), plasma displays, fiber optics, or other technology that results in bright, high resolution text, images, and graphics.

EXISTING BILLBOARD: A billboard which was constructed, maintained and in use or for which a permit for construction was issued as of July 13, 1993.

FOOT-CANDLE: The English unit of measurement for luminance, which is equal to one lumen, incident upon an area of one square foot.

GATEWAY: The following streets or highways within Salt Lake City:

1. Interstate 80;
2. Interstate 215;
3. Interstate 15;
4. 4000 West;
5. 5600 West;
6. 2100 South Street from Interstate 15 to 1300 East;
7. The 2100 South Expressway from I-15 west to the city limit;
8. Foothill Drive from Guardsman Way to Interstate 80;
9. 400 South from Interstate 15 to 800 East;
10. 500 South from Interstate 15 to 700 East;
11. 600 South from Interstate 15 to 700 East;
12. 300 West from 900 North to 900 South;
13. North Temple from Main Street to Interstate 80;
14. Main Street from North Temple to 2100 South Street;
15. State Street from South Temple to 2100 South; and
16. 600 North from 800 West to 300 West.

ILLUMINANCE: The intensity of light falling on a subsurface at a defined distance from the source.

MOTION: The depiction of movement or change of position of text, images, or graphics. Motion shall include, but not be limited to, visual effects such as dissolving and fading text and images, running sequential text, graphic bursts, lighting that resembles zooming, twinkling, or sparkling, changes in light or color, transitory bursts of light intensity, moving patterns or bands of light, expanding or contracting shapes, and similar actions.

NEW BILLBOARD: A billboard for which a permit to construct is issued after December 31, 1993.

NONCONFORMING BILLBOARD: An existing billboard which is located in a zoning district or otherwise situated in a way which would not be permitted by the provisions of this chapter.

SPECIAL GATEWAY: The following streets or highways within Salt Lake City:

1. North Temple between 600 West and 2200 West;
2. 400 South between 200 East and 800 East;

3. State Street between 600 South and 2100 South; and

4. Main Street between 600 South and 2100 South.

TEMPORARY EMBELLISHMENT: An extension of the billboard resulting in increased square footage as part of an artistic design to convey a specific message or advertisement.

TWIRL TIME: The time it takes for static text, images, and graphics on an electronic billboard or electronic sign to change to a different text, images, or graphics on a subsequent sign face.

C. Limit On The Total Number Of Billboards: No greater number of billboards shall be allowed in Salt Lake City than the number of existing billboards.

D. Permit Required For Removal Of Nonconforming Billboards:

1. **Permit:** Nonconforming billboards may be removed by the billboard owner only after obtaining a permit for the demolition of the nonconforming billboard.
2. **Application:** Application for demolition shall be on a form provided by the zoning administrator.
3. **Fee:** The fee for demolishing a nonconforming billboard shall be as shown on the Salt Lake City consolidated fee schedule.

E. Credits For Nonconforming Billboard Removal: After a nonconforming billboard is demolished pursuant to a permit issued under subsection D1 of this section, or its successor, the city shall create a billboard bank account for the billboard owner. The account shall show the date of the removal and the zoning district of the demolished nonconforming billboard. The account shall reflect billboard credits for the billboard and its square footage. Demolition of a conforming billboard shall not result in any billboard credit.

F. Priority For Removal Of Nonconforming Billboards: Nonconforming billboards shall be removed subject to the following priority schedule:

1. Billboards in districts zoned residential, historic, residential R-MU or downtown D-1, D-3 and D-4 shall be removed first;
2. Billboards in districts zoned commercial CN or CB, or gateway or on gateways shall be removed second;
3. Billboards which are nonconforming for any other reason shall be removed last; and
4. A billboard owner may demolish nonconforming billboards of a lower priority before removing billboards in a higher priority; however, the billboard credits for removing the lower priority billboard shall not become effective for use in constructing a new billboard until two (2) billboards specified in subsection F1 of this section, or its successor, with a total square footage equal to or greater than the lower priority billboard, are credited in the billboard owner's billboard bank

account. If a billboard owner has no subsection F1 of this section, or its successor, nonconforming billboards, two (2) subsection F2 of this section, or its successor, priority billboards may be credited in the billboard owner's billboard bank account to effectuate the billboard credits of a subsection F3 of this section, or its successor, billboard to allow the construction of a new billboard. For the purposes of this section, the two (2) higher priority billboards credited in the billboard bank account can be used only once to effectuate the billboard credits for a lower priority billboard.

G. Life Of Billboard Credits: Any billboard credits not used within thirty six (36) months of their creation shall expire and be of no further value or use except that lower priority credits effectuated pursuant to subsection F4 of this section, or its successor, shall expire and be of no further value or use within sixty (60) months of their initial creation.

H. Billboard Credits Transferable: A billboard owner may sell or otherwise transfer a billboard and/or billboard credits. Transferred billboard credits which are not effective because of the priority provisions of subsection F of this section, or its successor, shall not become effective for their new owner until they would have become effective for the original owner. The transfer of any billboard credits do not extend their thirty six (36) month life provided in subsection G of this section, or its successor.

I. Double Faced Billboards: Demolition of a nonconforming billboard that has two (2) advertising faces shall receive billboard credits for the square footage on each face, but only as one billboard.

J. New Billboard Construction: It is unlawful to construct a new billboard other than pursuant to the terms of this chapter. In the event of a conflict between this chapter and any other provision in this code, the provisions of this chapter shall prevail.

K. Permitted Zoning Districts: New billboards may be constructed only in the area identified on the official billboard map.

L. New Billboard Permits:

1. Application: Anyone desiring to construct a new billboard shall file an application on a form provided by the zoning administrator.

2. Fees: The fees for a new billboard construction permit shall be:

a. Building permit and plan review fees required by the uniform building code as adopted by the city; and

b. Inspection tag fees as shown on the Salt Lake City consolidated fee schedule.

M. Use Of Billboard Credits:

1. A new billboard permit shall only be issued if the applicant has billboard credits of a sufficient number of square feet and billboards to allow construction of the new billboard.
2. When the permit for the construction of a new billboard is issued, the zoning administrator shall deduct from the billboard owner's billboard bank account:
 - a. The square footage of the new billboard; and
 - b. The number of billboards whose square footage was used to allow the new billboard construction.
3. If the new billboard uses less than the entire available billboard credits considering both the number of billboards and square footage, any remaining square footage shall remain in the billboard bank.

N. New Billboards Prohibited On Gateways: Except as provided in subsection O of this section, or its successor, no new billboard may be constructed within six hundred feet (600') of the right of way of any gateway.

O. Special Gateway Provisions:

1. If a nonconforming billboard is demolished within a special gateway, the billboard owner may construct a new billboard along the same special gateway in a zoning district equal to or less restrictive than that from which the nonconforming billboard was removed and subject to subsections P, Q, R and S of this section, provided that the size of the new billboard does not exceed the amount of billboard credits in the special gateway billboard bank.
2. The demolition of a nonconforming billboard pursuant to this section shall not accrue billboard credits within the general billboard bank. Credits for a billboard demolished or constructed within a special gateway shall be tracked within a separate bank account for each special gateway. A permit for the construction of a new billboard pursuant to this section must be taken out within thirty six (36) months of the demolition of the nonconforming billboard.

P. Maximum Size: The maximum size of the advertising area of any new billboard shall not exceed fifteen feet (15') in height and fifty feet (50') in width.

Q. Temporary Embellishments:

1. Temporary embellishments shall not exceed ten percent (10%) of the advertising face of any billboard, and shall not exceed five feet (5') in height above the billboard structure.
2. No temporary embellishment shall be maintained on a billboard more than twelve (12) months.

R. Height: The highest point of any new billboard, excluding temporary embellishments shall not be more than:

1. Forty five feet (45') above the existing grade; or
2. If a street within one hundred feet (100') of the billboard, measured from the street at the point at which the billboard is perpendicular to the street, is on a different grade than the new billboard, twenty five feet (25') above the pavement elevation of the street.
3. If the provisions of subsection R2 of this section, or its successor subsection, apply to more than one street, the new billboard may be the higher of the two (2) heights.

S. Minimum Setback Requirements: All freestanding billboards shall be subject to pole sign setback requirements listed for the district in which the billboard is located. In the absence of setback standards for a particular district, freestanding billboards shall maintain a setback of not less than five feet (5') from the front or corner side lot line. This setback requirement shall be applied to all parts of the billboard, not just the sign support structure.

T. Spacing:

1. Small Signs: Billboards with an advertising face three hundred (300) square feet or less in size shall not be located closer than three hundred (300) linear feet from any other small billboard or eight hundred feet (800') from a large billboard on the same side of the street;
2. Large Signs: Billboards with an advertising face greater than three hundred (300) square feet in size shall not be located closer than eight hundred (800) linear feet from any other billboard, small or large, on the same side of the street.
3. Electronic Billboards: Electronic billboards shall not be located closer than one thousand six hundred (1,600) linear feet from any other electronic billboard on the same or opposite side of the street.

U. Electronic Billboards:

1. Prohibitions: Except as provided in subsection U2 of this section, after the effective date of this subsection U:
 - a. No electronic billboard shall be constructed or reconstructed for any reason, and
 - b. The conversion, remodeling, or rehabilitation of any existing billboard to an electronic format is prohibited.
2. Standards When Construction/Conversion Required By Law: If after the effective date of this subsection U the city is required by law to allow construction of a new electronic billboard, or to allow conversion of an existing billboard to an electronic format, any such electronic billboard shall be operated pursuant to the following standards:
 - a. Any motion of any kind is prohibited on an electronic sign face. Electronic billboards shall have only static text, images, and graphics.

(1) The dwell time of any text, image, or display on an electronic billboard may not exceed more than once every eight (8) seconds. Twirl time between subsequent text, images, or display shall not exceed one-fourth (0.25) second.

(2) The illumination of any electronic billboard shall not increase the ambient lighting level more than three-tenths (0.3) foot-candle when measured by a foot-candle meter perpendicular to the electronic billboard face at:

(A) One hundred fifty feet (150') for an electronic billboard with a surface area of not more than two hundred forty two (242) square feet;

(B) Two hundred feet (200') for an electronic billboard with a surface area greater than two hundred forty two (242) square feet but not more than three hundred seventy eight (378) square feet;

(C) Two hundred fifty feet (250') for an electronic billboard with a surface area greater than three hundred seventy eight (378) square feet but not more than six hundred seventy two (672) square feet; and

(D) Three hundred fifty feet (350') for an electronic billboard with a surface area greater than six hundred seventy two (672) square feet.

b. Electronic billboards may not be illuminated or lit between the hours of twelve o'clock (12:00) midnight and six o'clock (6:00) A.M. if they are located in, or within six hundred feet (600') of a residential, mixed use, downtown, Sugar House business district, gateway, neighborhood commercial, community business, or community shopping center zoning district.

c. Controls shall be provided as follows:

(1) All electronic billboards shall be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's brightness and display period as provided above.

(2) Prior to approval of any permit to operate an electronic billboard, the applicant shall certify that the sign has been tested and complies with the motion, dwell time, brightness, and other requirements herein.

(3) The owner and/or operator of an electronic billboard shall submit an annual report to the city certifying that the sign complies with the motion, dwell time, brightness, and other requirements herein.

V. Landscaping In Residential And Commercial CN And CB Zoning Districts: Properties in any residential zone and commercial CN or CB zones on which a billboard is the only structure shall be landscaped as required by sections 21A.26.020 and 21A.26.030 and chapter 21A.48 of this title, or its successor chapter. No portion of such property shall be hard or gravel surfaced.

W. Landscaping In Other Zoning Districts: Property in all districts other than as specified in subsection V of this section, or its successor subsection, upon which a billboard is the only structure, shall be landscaped from the front of the property to the deepest interior point of the billboard for fifty (50) linear feet along the street frontage distributed, to the maximum extent possible, evenly on each side of the billboard.

X. Xeriscape Alternative: If all the properties adjacent to and across any street from the property for which billboard landscaping is required pursuant to subsection W of this section, or its successor subsection, are not developed or, if a water line for irrigation does not exist on the property or in the street right of way adjacent to such property, the zoning administrator may authorize xeriscaping as an alternative for the required landscaping.

Y. Existing Billboard Landscaping: Existing billboards shall comply with the landscaping provisions of this section on or before January 1, 1996.

Z. Compliance With Tree Stewardship Ordinance: Construction, demolition or maintenance of billboards shall comply with the provisions of the Salt Lake City tree stewardship ordinance.

AA. Subdivision Registration: To the extent that the lease or other acquisition of land for the site of a new billboard may be determined to be a subdivision pursuant to state statute no subdivision plat shall be required and the zoning administrator is authorized to approve, make minor subsequent amendments to, and record as necessary, such subdivision.

BB. Special Provisions:

1. Applicability: The provisions of this section shall apply to specified billboards located:

a. Four (4) existing billboards between 1500 North and 1800 North adjacent to the west side of Interstate 15; and

b. One existing billboard on the east side of Victory Road at approximately 1100 North.

2. General Applicability: Except as modified by this section, all other provisions of this chapter shall apply to the five (5) specified billboards.

3. Special Priority: The five (5) specified billboards shall be considered as gateway billboards for the purposes of the priority provisions of subsection F of this section, or its successor subsection.

4. Landscaping: The five (5) specified billboards shall be landscaped pursuant to the provisions of subsection W of this section, or its successor subsection.

CC. State Mandated Relocation Of Billboards: Except as otherwise authorized herein, existing billboards may not be relocated except as mandated by the requirements of Utah state law. (Ord. 4-12, 2012: Ord. 24-11, 2011)