

2016

**Outfront Media, LLC, Fka Cbs Outdoor, Plaintiff and Appellant, v.  
Salt Lake City Corporation; Corner Property, l.c., and Utah Outdoor  
Advertising, Inc., Defendants and Appellees.**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

OUTFRONT MEDIA, LLC, fka  
CBS OUTDOOR,

Plaintiff and Appellant,

v.

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

Defendants and Appellees.

APPELLANTS' BRIEF

Appeal No. 20160150

Civil No. 160900413

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### Statement of Jurisdiction

This Court has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(a)(ii) (district court review of an informal adjudicative proceeding).

### Issues Presented For Review

1. Whether the Hearing Officer erred when he determined that, pursuant to relevant statutes, the mayor had the authority to initiate eminent domain proceedings. This is a matter of statutory interpretation, reviewed for correctness. *Lieber v. ITT Hartford Ins. Ctr., Inc.*, 2000 UT 90, ¶7, 15 P.3d 1030. This issue was preserved below pursuant to CBS' Motion for Summary Judgment/Trial Brief. (See R.266-91.)
2. Whether the Hearing Officer erred when he interpreted Salt Lake City Ordinance 21A.46.160. Utah courts "interpret . . . ordinances . . . according to our well-settled rules of statutory interpretation and construction," *Pinetree Associates v. Ephraim City*, 2003 UT 6, ¶ 13, 67 P. 3d 462, which is for correctness, though courts "afford some level of non-binding deference to the interpretation advanced by the local agency. *M & S Cox Investments v. Provo City Corp.*, 2007 UT App 315, ¶ 29, 169 P. 3d 789. This issue was preserved below pursuant to CBS' Motion for Summary Judgment/Trial Brief. (See R.266-91.)
3. Whether the Hearing Officer erred when he authorized approval of the Corner Property application despite violations of city law. This issue is reviewed as

set forth above in issue no. 2. This issue was preserved below pursuant to CBS' Motion for Summary Judgment/Trial Brief. (See R.266-91.)

4. Whether the Hearing Officer erred when he ruled that the bases provided by the City for denying CBS' application and for granting Corner Property's application were not arbitrary and capricious. A decision is "arbitrary" or "capricious" if it is not "supported by substantial evidence." *Bradley v. Payson City Corp.*, 2003 UT 16, ¶¶ 10-15, 70 P.3d 47. "Substantial evidence" is "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." *Carlsen v. Bd. of Adjust. of City of Smithfield*, 2012 UT App 260, ¶ 4, 287 P.3d 44. This issue was preserved below pursuant to CBS' Motion for Summary Judgment/Trial Brief. (See R.266-91.)

### **Determinative Statutory Provisions**

Utah Code Ann. §§ 10-9a-511 through -513, 78B-6-504 and Salt Lake City Ordinance 21A.46.160. Each of the statutes and the ordinance are included in Addendum Ex. 1.

### **Statement of the Case**

#### Nature of the case.

On November 25, 2015, Salt Lake City ("the City") denied a request made by Appellant Outfront Media fka CBS Outdoor ("CBS") to relocate a billboard previously located at 726 West South Temple to 738 West South Temple (BLD2014-07688).

On the same day, the City issued a permit to Utah Outdoor Advertising and/or

Corner Property, L.C. (collectively "Corner Property"), allowing construction of a new billboard on the property previously utilized by CBS, 726 West South Temple (BLD2014-07984). Due to certain restrictions found in state law, only one of the applications can be granted due to the space between the proposed billboards.

CBS properly appealed each decision per City ordinance and a Land Use Hearing Officer was appointed. The parties submitted briefs and the Hearing Officer heard oral arguments.

The City argued that former Mayor Ralph Becker personally made the decision to condemn CBS's sign and grant a permit to Corner Property, that this decision was based upon a "longstanding policy to reduce the total number of billboards within the City," Becker Decl., ¶ 7 (R.69-71), and that the former Mayor had unfettered discretion to determine how to treat the applications at issue, including the right to condemn CBS' sign in making this decision. (See R.55-68.)

CBS argued that the former Mayor's decision was arbitrary, capricious and illegal. Under state law, the former Mayor did not have the discretion to unilaterally condemn CBS' sign without the approval and authority of the city council. Moreover, the "policy" relied upon by the former Mayor did not exist in any enforceable form, rendering the decision arbitrary and capricious. (See R.32-54.)

The Hearing Officer issued two decisions, determining that Corner Property's application was properly granted and that CBS's application was properly denied. (See R.75-85.)



CBS timely appealed these decisions to the trial court pursuant to Utah Code section 10-9a-801(2)(a). (See R. 1-8.) The trial court, after considering CBS' motion for summary judgment/trial brief and the opposing parties' pleadings, and after hearing oral argument, affirmed the Hearing Officer's decisions. (See R. 565-68.)

CBS filed a timely appeal of this ruling. (See R. 569-70.)

Statement of relevant facts.

1. CBS is the owner of an outdoor advertising sign that was located at 726 W. South Temple, Salt Lake City, Utah, (the "Billboard"), and the owner of all of the rights associated with the Billboard. (See R.1-5.)

2. The City is a Utah municipality located in Salt Lake County, State of Utah. (See *id.*)

3. Corner Property is a Utah limited liability co. doing business in Salt Lake County. (See *id.*)

4. Utah Outdoor Advertising, Inc. ("UOA") is a Utah corporation or a dba for a limited liability company, which was issued permit no. BLD2014-07984 (one of the permits at issue here). Corner Property has represented to the Court that UOA is its agent, and has no ownership or control over the permit. (See *id.*; see also R.259-63).

5. On October 20, 2014, CBS applied to the City for a permit to relocate and increase the height of the Billboard pursuant to Utah Code section 72-7-510.5. The request was to relocate the Billboard approximately 50 feet, from 726 West

South Temple to 738 West South Temple, and raise it to avoid it from being obstructed by UDOT improvements. (See Compl., Ex. A (R.32-54); see also R.296-301).

6. In a December 4, 2014 letter, the City told CBS that its relocation request was denied because state law did not allow both relocation and a height increase. (R.303-04).

7. In its letter, the City invited CBS to modify its application, and request relocation under Utah Code section 10-9a-511(3)(c)(i), but cautioned: "Please be advised, however, that the City reserves the right to condemn the Sign under Utah Code § 10-9a-513(2)." (*Id.*)

8. Believing the City had misinterpreted the statute, CBS filed an administrative appeal of the December 4, 2014 decision, but the City refused to hear it. (See R.306-09.)

9. CBS then filed an appeal in the Third District Court, asking the Court to determine that the City had misinterpreted section 71-7-501.5. (See R.311).

10. On August 18, 2015, on cross-motions for summary judgment, the court disagreed with CBS's interpretation of the state statute, and ruled that CBS did not have the right to both relocate and raise the height under the statute. The court affirmed the City's denial of CBS's application on that basis and dismissed the appeal. (See R.315.)



11. On September 15, 2015, CBS accepted the invitation to modify its application that the City had advanced in its December 4, 2014 offer, and requested relocation of the billboard to 738 West South Temple under Utah Code § 10-9a-511(3)(c)(i). (See R.320.)

12. Almost a year earlier, in November 2014, in anticipation of relocating to the adjacent property, CBS removed its billboard from the 726 West South Temple location. (See R. 3.)

13. Shortly before CBS removed the sign from 726 West South Temple, Corner Property had applied pursuant to Utah Code §10-9a-511(3)(c)(i) to relocate a sign from 280 West 500 South to 726 West South Temple location. (See R.321-32). The distance between these two sites was greater than 5,280 feet. (See R.334-35).

14. According to documents supplied by the City and UDOT, the sign located at 280 West 500 South was permitted for one sign face of "672 square feet." (See R.321-24; 342.)

15. Corner Property's application was submitted on October 31, 2014, which was eleven days after CBS had submitted its application to move to the adjacent property. (See R.321-32).

16. On November 25, 2015, the City denied CBS's application on this basis:

In this case, [CBS]'s request to relocate to 738 West South Temple is prohibited under City Code because the billboard is within a "gateway" as such term is defined under City Code 21A.46.160(B). Thus, in order to grant [CBS]'s request to relocate, the City would have to waive the prohibition in its ordinance, which the City is not willing

to do because the City has a longstanding policy in favor of retiring and removing billboards as the opportunity to do so arises.

(R. 343.)

17. On that same day, the City approved Corner Property's request to relocate to the same "gateway" location. According to City records, the Corner Property permit was issued before the application process was even complete, before fees were paid and before a Billboard Relocation Agreement was fully signed and effective. (R.345-47).

18. In addition, the City's approval allowed Corner Property to raise the height of its billboard to 85 feet and two include two 672 square foot faces. (See R.321-32.)

19. Both CBS's and Corner Property's proposed new billboards would be located in a "gateway", which is defined in City Code to include signs that front Interstate 15. See SLC Code § 21.46.160.B.

20. Pursuant to City Code, "no new billboard may be constructed within six hundred feet (600') of the right of way of any gateway. See *id.* at 21A.46.160.N.

21. The state statute on which both CBS and Corner Property rely for their relocation requests allows a municipality to grant such a request "notwithstanding any prohibition in its zoning ordinance." Utah Code § 10-9a-511(3)(c)(i).

22. Under Utah law, billboards may not be within 500 feet of each other. Utah Code § 72-7-505(3). Therefore both applications could not be granted.



23. According to the City, it approved Corner Property's building permit because it has a policy interest in removing billboards from the 500 South gateway. This decision was supported by a declaration signed by former Mayor Ralph Becker, a copy of which is attached to the Complaint as Exhibit C (R.69-71).

24. Corner Property's 500 South billboard is located in a gateway that has no higher priority than the West South Temple proposed billboard locations (oriented to I-15). The 500 South billboard is in zone D-2, which been excluded from the downtown priority area for removing billboards. (*See* R.352; Ord. 21A.46.160.F.)

25. 738 West South Temple and 726 West South Temple are located within the same "gateway" referred to by the City. (*See id.*)

26. CBS filed an administrative appeal of both of the City's November 25, 2015 decisions, designated PLNAPP 2015-00973 and PLNAPP 2015-00974 (R.363, *et seq.*)

27. A hearing was held on the matter on January 14, 2015.

30. The next day, the Hearing Officer issued decisions in each of the administrative appeals. (R.75-85.)

31. With respect to the appeal of the Corner Property application decision, the Hearing Officer found that CBS was required "to demonstrate that the Mayor's exercise of discretion in approving the permit which is the subject of this appeal is beyond "the bounds of reasonableness." (*Id.*) The Hearing Officer upheld the City's grant of the permit to Corner Property. (*See id.*)

32. The Hearing Officer also ruled that a zoning official had power to condemn property, as did the Mayor, without proper input and decision making from the appropriate body, the City Council, and upheld the City's permit denial to CBS. (*Id.*)

33. These decisions were appealed to the trial court pursuant to Utah Code Ann. § 10-9a-801. After briefing and oral argument, the trial court upheld the Hearing Officer's decisions. (*See* R. 565-68.)

34. This decision was timely appealed to this Court. (*See* R. 569-70.)

### **Summary of Argument**

1. State law provides that, as between the legislative (city council) and executive (the mayor) branches of municipal government, only the city council can exercise the power of eminent domain. The Hearing Officer in this case held that, despite such law, a mayor has the power to initiate condemnation proceedings. This ruling is contrary to law and, therefore, illegal.

2. The Hearing Officer also erred when it interpreted Salt Lake City Ord. 21A.46.160.CC in a manner that rendered the ordinance meaningless. This interpretation is contrary to Utah law and should be reversed.

3. The Hearing Officer erred when he interpreted Utah Code section 10-9a-511(c) in a manner that allowed the City to waive any and all provisions of the City Code that might otherwise affect and prevent Corner Property's billboard.

4. Last, the Hearing Officer erred when he affirmed the City's decision to

reject CBS' application and accept Corner Property's application, despite the fact that there was no evidence to support the reasoning behind the City's respective decisions. In other words, the Hearing Officer erred when he ruled that the City's actions were not arbitrary or capricious.

## **Argument**

### **I. Standard of Review.**

This case involves review of an administrative land use decision. This Court reviews the administrative decision "just as if the appeal had come directly from the agency and accord[s] no particular deference to the [trial] court's decision." *Rogers v. West Valley City*, 2006 UT App 302, ¶ 12, 142 P.3d 554 (citing *Wells v. Board of Adjustment of Salt Lake City Corp.*, 936 P.2d 1102, 1104 (Utah Ct. App. 1997)); see also *Pen & Ink, LLC v. Alpine City*, 2010 UT App 203, ¶ 16, 238 P.3d 63. The task for this Court is to determine whether the administrative decision "is arbitrary, capricious, or illegal." Utah Code Ann. § 10-9a-801(3)(a)(ii); see also *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 604 (Utah Ct. App. 1995) (same).

Determining illegality "requires a determination that the decision...violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted." Utah Code Ann. § 10-9a-801(3)(d); see also *Carlsen v. Bd. of Adjust. of City of Smithfield*, 2012 UT App 260, ¶ 4, 287 P.3d 44 ("Determination of whether such a decision is illegal depends on a proper interpretation and application of the law."). Because a determination of illegality is



based on the land use authority's interpretation of zoning ordinances, Utah courts review such determinations for correctness, but “also afford some level of non-binding deference to the interpretation advanced by” the land use authority. *Fox v. Park City*, 2008 UT 85, ¶ 11, 200 P.3d 182.

A decision is “arbitrary” or “capricious” if it is not “supported by substantial evidence.” *Id.*, § 10-9a-801(3)(c); *Bradley v. Payson City Corp.*, 2003 UT 16, ¶¶ 10-15. “Substantial evidence” is “that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.” *Carlsen*, 2012 UT App 260, ¶ 4.

## **II. The Hearing Officer’s Decision Affording Eminent Domain Power to the Mayor is Illegal.**

CBS argued below that the City’s decision to condemn CBS’ billboard was illegal because the decision was made solely by the mayor, as opposed to the city council. The Hearing Officer determined that, pursuant to the relevant statutes, the mayor had the authority to initiate eminent domain proceedings. This ruling is contrary to Utah law and therefore illegal.

The City operates under the “council-mayor” form of government, comprised of a five-person city council and the mayor. *See* Utah Code Ann. § 10-3b-201. By statute, the council is the legislative body and the mayor is the “chief executive” who “execute[s] the policies adopted by the council,” *id.*, § 10-3b-202, -203.

The specific question at issue here, given this separation of powers, is: which entity has authority to take property by eminent domain, the city council or the



mayor? State law answers this question: only the city council can make this decision. A decision made solely by the mayor, without the input and approval of the city council, is therefore illegal.

Section 78B-6-504, part of the Eminent Domain statute, specifically limits the power of eminent domain to a “governing body.” Utah Code Ann. § 78B-6-504 (2). For a city, the “governing body” is specifically defined as the “legislative body,” here the city council. *Id.* This statute makes clear that a “condition precedent” to any taking is the approval of the city council. Absent such approval, “[p]roperty may not be taken.” *Id.*, § 78B-6-504(2)(b). This is the *only* statute that, as between mayor and city council, specifically designates the proper decision making entity.

The legislature has also made clear that, absent an agreement or mutual consent, a “municipality may only require termination of a billboard and associated property rights through . . . eminent domain.” Utah Code Ann. § 10-9a-512.

If a billboard can only be terminated by eminent domain, and a decision regarding eminent domain can only be made by the legislative body, it follows that the decision to take CBS’ billboard by eminent domain had to be made by the city council. There is no dispute that the city council had no part in the action taken by the City in this case.

Instead, the City argued that other sections of the Municipal Land Use, Development and Management Act allow for the mayor alone to make decisions regarding eminent domain. Specifically, the City argued that sections 10-9a-511 and

- 513 allow complete discretion to the mayor to determine whether a billboard can be condemned. This argument, adopted by the Hearing Officer, is incorrect.

Section 10-9a-511 states in relevant part:

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. 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.

Utah Code Ann. § 10-9a-511(c).

Section 10-9a-513(2)(a) then provides:

A municipality is considered to have initiated the acquisition of a billboard structure by eminent domain if the municipality prevents a billboard owner from:

(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 . . .

*Id.*, § 10-9a-513(2)(a)(iv).

These two statutes are relevant because each of the billboard owners, CBS and Corner Property, requested relocation of a billboard pursuant to section 511. CBS' application was denied, though CBS otherwise met the requirements of section 513, including its provision that a municipality is "considered to have initiated the acquisition of a billboard structure by eminent domain." *Id.*

The City argued that: (1) section 511 allows the mayor complete discretion to relocate a billboard; (2) if that decision leads to condemnation of CBS' billboard pursuant to section 513, so be it, but that is a decision the mayor is allowed to make; and (3) despite the clear language of section 78B-6-504(2)(b) (requiring approval of the city council), that section does not apply to decisions made by the mayor under section 511 and 513.

The Hearing Officer agreed with the City on the following basis:

Another argument advanced by CBS is that only the City Council can initiate eminent domain procedures. To agree with that position would be contrary to the duty of an appeal authority to reconcile statutes so they operate harmoniously. The 511 provision does not state that the next step after the "initiation" of eminent domain is to seize the property and write out a check. Every procedure provided for in the eminent domain statute at Utah Code Ann. §78B-6-501 *et seq* may still be utilized. While a taking can only be finalized by the City Council, under the provisions of Utah Code Ann. §78B-6-504(2)(b), Section 513 of the land use code refers to the "initiation" of the process, not the finalization of it. It is true that 78B-6-505 describes how eminent domain is initiated under typical circumstances – the commencement of negotiations. There is nothing in Section 513 that waives that requirement, and logically that negotiation would be the next step after refusing the relocation subject to the provision of Section 513.

(R.77.) This ruling is erroneous.

First, there is no basis to pick and choose applicable provisions of the Eminent Domain statute. Application of this statute requires application of the "conditions precedent" to condemnation – in this case approval of the city council. Utah Code Ann. § 78B-6-504. This can easily be read in conjunction with section 513. Section 513 lets the City know that, if a billboard relocation request such as the one made by CBS is not allowed, the City is "considered to have initiated the acquisition of a billboard structure by eminent domain." *Id.*, § 10-9a-513(a). Accordingly, for this particular decision to be made, it needs to be made in advance by the city council.

This reading is consistent with Utah law on statutory interpretation. When interpreting and applying separate statutes, Utah courts hold "it is our duty to construe each act of the Legislature so as to give it full force and effect." *Jerz v. Salt Lake County*, 822 P.2d 770, 773 (Utah 1991). Utah courts "avoid interpretations that will render portions of a statute superfluous or inoperative." *Hall v. State Dep't of Corr.*, 2001 UT 34, ¶ 15, 24 P.3d 958. Statutes must be interpreted "together . . . with a view to reconciling any such apparent conflict and giving each its intended effect insofar as that can be accomplished without nullifying the other." *In re: Utah Savings & Loan Ass'n*, 442 P.2d 929, 931-32 (Utah 1968). Ultimately, a court's duty is to "construe the acts to be in harmony and avoid conflicts." *Jerz*, 822 P.2d at 773. When one reads section 513 in conjunction with 78B-6-504 as proposed by CBS, there is



no conflict or inconsistency.

This reading is also consistent with the view of the Utah Supreme Court. In *UDOT v. Carlson*, 2014 UT 24, 332 P.3d 900, UDOT sought to condemn property pursuant to Utah Code section 72-5-103. That statute states that “the department may acquire any real property or interests in real property necessary for temporary, present, or reasonable future state transportation purposes by gift, agreement, exchange, purchase, condemnation, or otherwise.” Utah Code Ann. § 72-5-103(1). In *Carlson*, no one questioned the application of the Eminent Domain statute, *id.*, § 78B-6-501, *et seq.* However, Mr. Carlson argued that, because the language contained in section 78B-6-501 did not include the specific public use sought by UDOT, no public use should be found. The Utah Supreme Court did not simply choose one statute over another, instead holding that section 78B-6-501 was a “starting point” which includes “all other public uses authorized by the Legislature.” *Carlson*, 2014 UT 24, ¶ 20 (quoting Utah Code Ann. 78B-6-501(2)). Other public uses found in other statutes were seen as “supplementing” the Eminent Domain statute, not supplanting it. *Id.* at ¶¶ 21-22. *See also Salt Lake City v. Evans Dev. Group*, 2016 UT 15 (ruling that taking was improper where the City failed to follow the statutory requirements contained in the Eminent Domain statute).

Section 511 makes no reference to an eminent domain proceeding. Section 513 merely states that failure to allow for relocation has the effect of the *initiation* of “the acquisition of a billboard structure by eminent domain.” Utah Code Ann. § 10-

9a-513(2)(a)(iv). No procedural guidelines are contained in this statute and there is no statement therein that the “conditions precedent” or procedural requirements contained in the Eminent Domain statute do not apply. The only matter this section does specify is how damages should be calculated. *See id.*, § 10-9a-513(2)(d). Similarly, nothing in section 78B-6-504 precludes its applicability here.

The assignment of eminent domain authority to the legislative body makes sense in terms of other statutes that assign to the city council the responsibility of drafting ordinances, *see* Utah Code Ann. § 10-3b-203, control of finances and property, *see id.*, §§ 10-6-101, *et seq.*, 10-8-1, and for purchases of property, *see id.*, §§ 10-3b-203(1), 10-8-1.

Conversely, the Hearing Officer’s decision that the mayor may “initiate” eminent domain proceedings makes little sense if it is the legislative body that must discern whether the City can pay for the taking. A city council could not be expected to raise or set aside sufficient funds to pay for a billboard taken by eminent domain unless it had time to consider this decision beforehand. But this decision would already have been made if the mayor was allowed to initiate eminent domain proceedings. By operation of section 10-9a-513, the taking will already have been achieved.

Accordingly, the Hearing Officer’s decision was contrary to statute and therefore illegal. As a consequence, this ruling should be reversed.

### III. The Trial Court Erred in its Interpretation of the Relevant Statutes.

The trial court's decision is not, strictly speaking, part of this Court's review. Nevertheless, the City is likely to argue in the same manner as the trial court did on the issue on statutory interpretation. Any such argument should not succeed.

The trial court, differing from the ruling of the Hearing Officer, held that section 10-9a-513 should be read without reference to section 78B-6-504. Reciting *Floyd v. Western Surgical Assocs.*, 773 P.2d 401, 404 (Utah Ct. App. 1989) for the proposition that, "where two statutes treat the same subject matter, and one statute is general while the other is specific, the specific provision controls," the trial court held:

[T]he very statutes that require a municipality to pay just compensation in this context establish the governing standards for such a proceeding. If a Section 511 relocation request is denied, and the billboard owner meets the standards set forth in Section 513, then with the denial "the municipality is considered to have initiated the acquisition of a billboard structure by eminent domain...." Utah Code § 10-9a-513(2)(a) . . . . Read together, the court concludes that once a relocation permit requested under Section 511 is denied, and the applicant shows he meets the standards of Section 513, the City is deemed, by statute, to have "initiated the acquisition of a billboard structure." Upon such an initiation, the City must pay just compensation in accordance with Section 513(2)(d). These statutes, on their face, do not contemplate the inclusion of the additional procedures required by the Eminent Domain statutes. Indeed, if the legislature had intended parties to follow eminent domain procedures, it could easily have inserted a cross-reference in Section 513, as it has done elsewhere. Here, the specific provisions of Section 513 govern these circumstances not the more general Eminent Domain statutes . . . The eminent domain statutes do not apply so the failure of the City Council to comply with them is irrelevant and does not render the Mayor's decision illegal.

(R.560.) This ruling is erroneous for two reasons.

First, there is no conflict between sections 78B-6-504 and 10-9a-513. The rule of construction described by the trial court need apply only if there is a "conflict in [the]

operation” of two statutes. *Taghipour v. Jerez*, 2002 UT 74, ¶ 11, 52 P.3d 1252 (“when two statutory provisions conflict in their operation, the provision more specific in application governs over the more general provision.”). *See also Hall*, 2001 UT 34, ¶ 15, (“when two statutory provisions conflict in their operation, the provision more specific in application governs over the more general provision”).

Instead, when interpreting and applying separate statutes, Utah courts hold “it is our duty to construe each act of the Legislature so as to give it full force and effect.” *Jerz*, 822 P.2d at 773. Utah courts “avoid interpretations that will render portions of a statute superfluous or inoperative.” *Hall*, 2001 UT 34, ¶ 15. Statutes must be interpreted “together . . . with a view to reconciling any such apparent conflict and giving each its intended effect insofar as that can be accomplished without nullifying the other.” *In re: Utah Savings & Loan Ass’n*, 442 P.2d at 931-32. Thus, even if there is a construction of an act that “will bring it into serious conflict with another act, our duty is to construe the acts to be in harmony and avoid conflicts.” *Jerz*, 822 P.2d at 773.

In this case, no conflict was shown, nor does one exist, between the two relevant statutes. Section 513 simply states that, upon denying relocation of a billboard such as CBS’ billboard, a municipality is “considered to have initiated the acquisition of a billboard structure by eminent domain.” Section 78B-6-504 makes clear that this decision needs to be made by the city council. Thus, if a municipality is going to deny relocation of a billboard that otherwise meets the requirements of section 513, it needs to make sure the city council has approved and authorized that decision.

Similarly, the trial court’s decision was erroneous to the extent the court ruled that



sections 511 and 513 contained their own “governing standards” for an eminent domain proceeding. (R.560.) No such language can be found in either section. Section 511 makes no reference to an eminent domain proceeding. Section 513 merely states that failure to allow for relocation has the effect of the *initiation* of “the acquisition of a billboard structure by eminent domain.” Utah Code Ann. § 10-9a-513(2)(a)(iv). No procedural guidelines are contained in this statute and there is no statement therein that the “conditions precedent” or procedural requirements contained in the Eminent Domain statute do not apply. The only matter this section does specify is how damages should be calculated. *See id.*, § 10-9a-513(2)(d). Similarly, nothing in section 78B-6-504 precludes its applicability here.

Utah courts assume that, “whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter” and that “the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together.” *Murray City v. Hall*, 663 P.2d 1314, 1318 (Utah 1983). Whether section 10-9a-513 or section 78B-6-504 was drafted first, each is presumed to include and incorporate the other, not to preclude such application. Accordingly, the trial court’s ruling to the contrary is erroneous.<sup>1</sup>

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<sup>1</sup> The trial court erred when it stated that “CBS cites no other authority to support its argument that the Mayor lacked authority to deny its application.” Ruling & Final Order, p. 14. In fact, CBS cited to the other provisions of Title 10 set forth in this brief and also cited to Utah Code Ann. § 57-12-13 “[a]ny agency acquiring real property as to which it has the power to acquire under the eminent domain or condemnation laws of this state” must satisfy further statutory requirements, including an appraisal of property, *id.*, § 57-12-3(1) (2) and “formal condemnation proceedings.” *Id.*, § 57-12-3(8).

#### **IV. The Hearing Officer Erred When Interpreting City Ordinance 21A.46.160.CC.**

CBS argued below that, by virtue of enactment and retention of City ordinance 21A.46.160.CC ("Except as otherwise authorized herein, existing billboards may not be relocated except as mandated by the requirements of Utah State law"), the city council had already determined that the City must allow a billboard to be relocated if denying the request would mandate condemnation under state law.

The basis for this argument was that, in order to make this ordinance mean anything, it must be construed with Utah Code §§ 10-9a-511 and -513. While -511 gives the City authority to waive its zoning ordinances to allow a relocation, the city council has determined in its adoption of Ord. 21A.46.160.CC that the ordinances will not be waived to allow a relocation unless the billboard would otherwise have to be condemned under -513. That would be one such "mandate" anticipated by the ordinance.

The City's interpretation of Ord. 21A.46.160.CC is that a municipality's right to ignore zoning ordinances granted by Section 10-9a-511 trumps this ordinance and renders it meaningless. The Hearing Officer ultimately agreed with this analysis, essentially deferring to the City's interpretation:

According to the City, Section 511 of MLUDMA trumps this language and renders it meaningless. ...

In this case, the City's decision to grant the permit is consistent with its own discretion as well as its obligation to interpret and apply the law in favor of the applicant, Corner Property.

(R.79.)

This interpretation is contrary to Utah law. Statutes and ordinances must be interpreted in a way "that they will not be rendered meaningless." *State in Interest of E.H. v. A.H.*, 880 P.2d 11, 13 (Utah App. 1994); *see also Summit Operating, LLC v. Utah State Tax Commission*, 2012 UT 91, ¶ 11, 293 P.3d 369 (courts "interpret[] statutes to give meaning to all parts, and avoid[] rendering portions of the statute superfluous.").

Here, if Ord. 21A.46.160.CC is read together with Utah Code sections 10-9a-511 and -513, the ordinance makes sense and need not be rendered a nullity. While -511 gives the City authority to waive its zoning ordinances to allow a relocation, the city council has determined that the ordinances will only be waived to allow a relocation if state law mandates that the billboard would otherwise have to be condemned under -513.

Such a mandate, for instance, would occur when a billboard owner like CBS wants to relocate its billboard within 5,280 feet as set forth in Utah Code section 10-9a-513, and the City is obligated to allow for the relocation or condemn the billboard. *See* Utah Code Ann. § 10-9a-513(2)(a)(iv). No such mandate exists in regard to a billboard owner who, like Corner Property, seeks to move its billboard further than 5,280 feet from the original location. *Id.*

In light of Ord. 21A.46.160.CC, the City had no discretion to grant Corner Property's application (because the move is more than 5,280 feet away and denying the request will not require condemnation), or to reject CBS application (which mandates condemnation of CBS's sign). The Hearing Officer's contrary ruling, based on a ruling that ignores the relevant ordinance entirely, is incorrect as a matter of law and should be reversed.

**V. The Hearing Officer Erred When He Authorized Approval of the Corner Property Application Despite Violations of City Law.**

The Hearing Officer held that, based on his interpretation of Utah Code section 10-9a-511(c), the City has the right to waive any provisions of the City Code that might otherwise affect and prevent the billboard at issue. This ruling was erroneous.

CBS argued that, while section 511 allows a City to "permit a billboard owner to relocate," "notwithstanding a prohibition in its zoning ordinance," section 511 did not allow the City to grant Corner Property's particular request. This was because Corner Property's request was not simply about relocation of a billboard, but included a request to raise that billboard higher than allowed by City law and to add a second face to the billboard not previously permitted, also contrary to City law. This, argued CBS, was more than just a request to "relocate," but one to change the billboard in ways not allowed by City law and not authorized by section 511.

In response, the City argued that such changes were within the scope of section 511 as that section 511 allowed the City to waive any and all applicable ordinances.



The Hearing Officer agreed with the City, again on the basis that it would defer to the City's reading and interpretation of its own ordinances. (See R.79-80.)

The City authorized Corner Property not only to relocate its billboard, but to raise it and add another face. The City's ordinance allows signs near streets that intersect on different grades to be built to a height of 25 feet above the grade of the intersecting street. Ord. 21A.46.160.R. The grade of I-15 at the proposed relocation is 35 feet, so the maximum height that could be granted to Corner Property is 60 feet. Corner Property's proposed sign, at the 85 feet the City granted, is far taller than the City ordinance allows.

As for adding a second face to the sign, the City's billboard ordinance, at Ord. 21A.46.160M, states that "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." Ex. 206, p. 2 (citing 21A.46.160M).

Adding a second face to an existing billboard, or to a newly constructed billboard, would double the square footage of that billboard, contrary to the provisions of the City Code. *Id.* Here, the existing billboard on 500 South has been permitted by the City and by UDOT for only one face, at a maximum size of 672 sq. feet. Corner Property has asked to add a second 672 square foot face, thereby doubling the size of its sign. The request would have to be denied under City ordinance.

Nothing in section 511 provides the City authority to ignore these provisions in order to allow for relocation of a billboard. The phrase "notwithstanding a prohibition in its zoning ordinance" refers, by its plain terms to relocation, not to other substantive limitations a City may impose. The City ordinances at issue do not

relate to relocation, but to height and facing restrictions. Utah law is clear that a City is not at liberty to make land use decisions in derogation of its zoning ordinances, and "change the rules halfway through the game." *Springfield Citizens ... v. City of Springfield*, 1999 UT 25, ¶ 30, 979 P.2d 332; *see also R.O.A. Gen., Inc. v. Utah DOT*, 966 P.2d 840, 842 (Utah 1998)("[A]dministrative regulations are presumed to be reasonable and valid and cannot be ignored or followed by the agency to suit its own purposes.").

Because the City improperly ignored its own ordinances on height and facing for a billboard, its decision to grant Corner Property's permit was arbitrary and capricious, as well as illegal, and should be reversed.

**VI. The Bases Provided by the City for Denying CBS' Application and for Granting Corner Property's Application Were Arbitrary and Capricious.**

A decision is "arbitrary" or "capricious" if it is not "supported by substantial evidence." Utah Code Ann. § 10-9a-801(3)(c); *Bradley v. Payson City Corp.*, 2003 UT 16, ¶¶ 10-15. "Substantial evidence" is "that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. It is more than a mere scintilla of evidence and something less than the weight of the evidence." *Fierro v. Park City Mun. Corp.*, 2014 UT App 71, ¶ 8, 323 P. 3d 601 (quotations and citations omitted).

Here, the City rejected CBS' application on the basis of a "longstanding policy in favor of retiring and removing billboards as the opportunity to do so arises."

11/25/15 Letter. The City also argued that it approved Corner Property's

application on the basis of a policy that prioritizes the removal of billboards from 500 South. Neither “policy” exists in written form and each is contrary to the City’s actual ordinances. Moreover, city ordinances make clear that the City does not govern by unwritten policy. Accordingly, there is no factual basis, let alone “substantial evidence,” to support the City’s decision. Such a decision is “necessarily arbitrary and capricious.” *Fierro*, ¶ 12.

The Hearing Officer did not address this specific argument, instead deferring generally to the mayor’s discretion.

**a. Purported policy to retire and remove billboards.**

The City based its decision on a purported “policy” regarding confiscation of billboards. According to the City, “Policies are reviewed by the cabinet, which recommends them to the mayor for his signature.” (City website.) There is no dispute that no such written policy exists in regard to confiscation of billboards. The City’s reliance on a non-existent policy for its decision to deny CBS permit is therefore arbitrary and capricious.<sup>2</sup>

Further, this purported policy is contrary to the City’s billboard ordinance. Billboards are governed by City Ordinance 21A.46.160. The purpose of this ordinance is set forth therein: “This section is intended to limit the maximum number of billboards in Salt Lake City to no greater than the current number.” SLC Ord. 21A.46.160(A). The ordinance then describes the manner in which billboards

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<sup>2</sup> Further confirming the arbitrary and capricious nature of this decision, Corner Property’s 500 South billboard remains in place to this day, though it erected a billboard at the new 726 West South Temple location shortly after the district court’s decision below.

may be relocated, pursuant to a "cap and replace" system involving a billboard bank. *See id.*, (E). There is no statement in the ordinance regarding a policy to retire or eliminate billboards.

The mayor asked the city council several years ago to specifically include his "policy" of reduction into the billboard ordinance. The mayor proposed eliminating the billboard bank, and also altering the purpose statement: "This chapter is intended to limit and reduce the maximum number of billboards in Salt Lake City to ~~no greater than the current number.~~" Exhibit 131 (Briefing to Planning Commission, with City's redlined proposed change), pp. 20, 24-25. The city council did not adopt the mayor's proposal. The mayor cannot achieve this result through other means, regardless of the City's assertion that the mayor has unfettered discretion.

**b. Purported policy favoring removal of billboards from 500 South.**

This purported "policy" also does not exist in written form. Moreover, any such policy would, once again, contravene City ordinances. The relevant ordinance, 21A.46.160F, established the priorities regarding relocation of billboards. Both the 500 South location and the I-15 oriented West South Temple locations share identical "gateway" priority. *See id.* No part of this ordinance gives the 500 South location priority. Instead, Corner Property's sign location is located in zone D-2. Ex. 128. The higher priority downtown areas set forth in the ordinance do not include Zone D-2. *Id.*



**c. Cities do not govern via "policy."**

Even if evidence of such a policy existed, it cannot serve as the basis for the City's decision. Under Utah law, a city derives its authority to act from state enabling statutes. *See Hatch v. Boulder Town Council*, 2001 UT App 55, 21 P.3d 245. Utah Code section 10-3-701 states that "the governing body of each municipality shall exercise its legislative powers through ordinances." Section 10-3-704 specifies the "form of ordinance," including a statement of an effective date, proper signatures and recording. A city also has authority to regulate certain items pursuant to a "resolution" under section 10-3-717. The "form of resolution," governed by section 10-3-718, "shall be in a form and contain sections substantially similar to that prescribed for ordinances."

There is no enabling legislation providing for governance by "policy", whether written or oral. Moreover, in regard to the mayor's powers, Utah Code section 10-3b-202(1)(c)(ii) specifies the mayor can only "execute the policies adopted by the council." This is particularly important here, given that it is a land use ordinance at issue, which bears even more requirements under Utah Code section 10-9a-501, *et seq.* Utah law requires that even ordinances that deal with land use by strictly followed and construed against the City. *Hatch v. Boulder*, *id.*

Utah law is clear that a City is not at liberty to make land use decisions in derogation of its zoning ordinances, and "change the rules halfway through the game." *Springfield Citizens ... v. City of Springfield*, 1999 UT 25, ¶ 30; *see also R.O.A.*


*Gen., Inc.*, 966 P.2d at 842 ("[A]dministrative regulations . . . cannot be ignored or followed by the agency to suit its own purposes. Such is the essence of arbitrary and capricious action."). By citing to a non-existent policy in order to favor Corner Property over Appellant, and by selectively enforcing its purported policies over the written, applicable ordinances, the City acted arbitrarily and capriciously. See *Fierro*, 2014 UT App 71, ¶ 12; *Ralph L. Wadsworth Constr., Inc. v. West Jordan City*, 2000 UT App 49, ¶¶ 17-18, 999 P.2d 1240.

### CONCLUSION

For each of the reasons set forth above, the Hearing Officer's decision should be reversed. CBS is entitled to a grant of its application and to denial of Corner Property's application.

DATED this 14<sup>TH</sup> day of June, 2016.


COHNE KINGHORN, P.C.



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### **RULE 24(f)(1)(C) CERTIFICATION**

I certify that this Brief contains 8,137 words and therefore complies with the maximum limit of 14,000 words, as required of Utah Rules of Appellate Procedure, Rule 26(f)(1)(A).

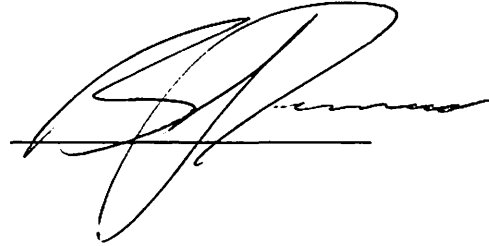
  
Bradley M. Strassberg

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was mailed per U.S. Mail, postage fully prepaid, on the 14<sup>th</sup> day of June, 2016, to the following:

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A handwritten signature in black ink, appearing to read "Jon H. Rogers", written over a horizontal line.



## **ADDENDUM**

**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-512 Termination of a billboard and associated rights.**

(1) A municipality may only require termination of a billboard and associated property rights through:

- (a) gift;
- (b) purchase;
- (c) agreement;
- (d) exchange; or
- (e) eminent domain.

(2) A termination under Subsection (1)(a), (b), (c), or (d) requires the voluntary consent of the billboard owner.

Renumbered and Amended by Chapter 254, 2005 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

**78B-6-504 Conditions precedent to taking.**

(1) Before property can be taken it must appear that:

- (a) the use to which it is to be applied is a use authorized by law;
- (b) the taking is necessary for the use;
- (c) construction and use of all property sought to be condemned will commence within a reasonable time as determined by the court, after the initiation of proceedings under this part; and
- (d) if already appropriated to some public use, the public use to which it is to be applied is a more necessary public use.

(2)

- (a) As used in this section, "governing body" means:
  - (i) for a county, city, or town, the legislative body of the county, city, or town; and
  - (ii) for any other political subdivision of the state, the person or body with authority to govern the affairs of the political subdivision.
- (b) Property may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking.
- (c) Before taking a final vote to approve the filing of an eminent domain action, the governing body of each political subdivision intending to take property shall provide written notice to each owner of property to be taken of each public meeting of the political subdivision's governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking.
- (d) The requirement under Subsection (2)(c) to provide notice to a property owner is satisfied by the governing body mailing the written notice to the property owner:
  - (i) at the owner's address as shown on the records of the county assessor's office; and
  - (ii) at least 10 business days before the public meeting.

Renumbered and Amended by Chapter 3, 2008 General Session



## **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)