

## **INITIAL STATEMENT OF REASONS**

### **Outdoor Advertising Permit Renewal Process Regulations**

#### **PROBLEM STATEMENT**

Current statute mandates that Caltrans develop and adopt functional specifications and standards for outdoor advertising permit renewals. In the Superior Court case 34-2015-00180811 (*Outfront Media LLC v. State of California, Department of Transportation*), Judge Alan G. Perkins cited in his decision that the provisions of section 2424 of the California Code of Regulations, were “rife with ambiguity regarding the procedures for pro-rata renewals and the renewal payment process.” Due to lack of clarity in our current language in the California Code of Regulations §2424, the court ruled in favor of Outfront Media, LLC. Pursuant to the judgment, Caltrans paid a grand total of \$302,936.00 for the principal payment, prejudgment interest on principal amount, post-judgment interest, and cost of suit.

The ODA seeks to address the issues raised in the decision by amending the current language in the permit renewal process regulation to provide clarifying definitions and other non-substantive changes.

#### **BENEFITS**

The proposed regulation will ensure that the permit renewal process is clear and understandable and allows Permittees the option to pay their renewal fee on an annual basis or pay one-fifth of the five-year renewal fee during the five-year renewal term. It also provides clarification with regards to when a renewal fee is due and when a penalty fee is assessed.

#### **PURPOSE OF THE REGULATION**

The proposed amendment to the regulation clarifies the existing permit renewal process. Currently, there is a distinction between outdoor advertising Permittees that hold ten or more permits (pro-rata) and those that hold nine or less permits (non-pro-rata). The proposed regulation will remove the distinction between Permittees and allow each Permittee the option to pay their permit renewal fee on an annual basis or one-fifth of the five-year renewal fee during the five-year renewal term. Other non-substantive changes are necessary to provide clarifying definitions.

#### **NECESSITY**

In January 2014, ODA accepted a late payment penalty fee from advertising company, Outfront Media, LLC. Outfront Media paid under protest to avoid the revocation of their

2,336 permits. With the appeals process futile as all administrative remedies were exhausted, Outfront filed a complaint against Caltrans. The case went to Superior Court in August 2017, and due to lack of clarity in our current language in the California Code of Regulations §2424, the court ruled in favor of the plaintiff, Outfront Media, LLC. Pursuant to the judgement, Caltrans paid a grand total of \$302,936.00 in restitution.

If the regulations are not amended, there is a risk of continued misinterpretation of the current permit renewal process and potential for another lawsuit. The ODA is aiming to radically simplify our regulatory framework of the permit renewal process so that it takes away the confusion and vagueness.

**Section 2424, subdivision (a):** The proposed amendments in this section now provides a permit holder an additional 15 days (45 days total) to renew their outdoor advertising permit(s) without them incurring any penalties or late fees. This necessitates the issue raised in the decision that the renewal “notice was not timely mailed to the Plaintiff.”

As noted in the current regulation, the form number is outdated. Due to economic changes and the refinement of the permit renewal process with these proposed regulations, removing of the form number allows the Department to make the necessary changes to update the form without the possibility of having underground regulations.

**Section 2424, subdivision (b):** To address the issue raised in the decision that “the regulation does not address the pro rata payment process,” the Department finds it necessary to amend this section to clearly define the distinction between outdoor advertising permittees that hold ten or more permits (pro-rata) and those that hold nine or less permits (non-pro-rata) by allowing each permittee the option to pay their permit renewal fee on an annual basis or one-fifth of the five-year renewal fee during the five-year renewal term.

**Section 2424, subdivision (c):** The decision also raised an issue relating to the “penalty fee” and its implication that it only applied to pro-rata permit holders. The amendments to this section are necessary to clarify that a late payment penalty fee is applicable to both the types of permit holders, pro-rata and non-pro-rata.

**Section 2424, subdivision (d):** Amendments to this subdivision addresses the issue regarding a clearly defined expiration date. Although a December 31 date has always been provided, there is room for interpretation as to which year that date is based on depending on if the permit holder is pro-rata or non-pro-rata. These amendments now clearly define the year for both pro-rata and non-pro-rata permit holders.

**Section 2424, subdivision (e):** For clarity and to avoid continued misperception, it was necessary to consolidate several subdivisions specifying when a permit must be renewed to avoid cancellation of a permit into a clearly defined subdivision.

**Section 2424, subdivision (f):** This subdivision was amended to meet the operative terms of the statutory renewal requirements in Section 5360 of the Business and Professions Code.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

Caltrans relied upon Superior Court case 34-2015-00180811 (*Outfront Media LLC v. State of California, Department of Transportation*), to address issues raised in the decision made by Judge Alan G. Perkins in regards to the “ambiguity” of section 2424 of the California Code of Regulations.

No specific technology or equipment is required to implement or abide by the proposed regulations by either Caltrans or the public.

## **ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

The economic impact will be minimal and will not add any additional paperwork or costs to Caltrans. The proposed regulations will impact approximately 90 percent of the Outdoor Advertising small businesses. Should these proposed regulations be approved, small businesses may apply for more permits.

### Creation or Elimination of Jobs Within the State of California

The regulations are designed to assist the ODA in processing outdoor advertising permit renewals. These activities are currently being performed by existing state staff and the regulations establish sustainable efficiencies. Therefore, no jobs in California will be created or eliminated.

### Creation of New or Elimination of Existing Businesses Within the State of California

The regulations are designed to assist the ODA in processing outdoor advertising permit renewals. These activities are currently being performed by existing state staff and the regulations establish sustainable efficiencies. Therefore, no new businesses in California will be created or existing businesses eliminated.

### Expansion of Businesses or Elimination of Existing Business Within the State of California

The regulations are designed to assist the ODA in processing outdoor advertising permit renewals. These activities are currently being performed by existing state staff and the regulations establish sustainable efficiencies. Therefore, no existing businesses in California will be expanded or eliminated.

### Benefits of the Regulations

The anticipated benefits to this regulation are increased consumer protections through industry compliance with clearly defined rules and regulations. The proposed regulation will ensure that the permit renewal process is clear and understandable and allow permittees the option to pay their renewal fee on an annual basis or pay one-fifth of the five-year renewal fee during the five-year renewal term. It also provides clarification with regards to when a renewal fee is due and when a penalty fee is assessed. These regulations may indirectly benefit the health and welfare of California residents by potentially lessening the burden on small business of having to pay the full sum of all permits for the entire five-year renewal term fee in one lump sum. These regulations may also indirectly benefit California residents by reducing the possibility of assessing late payment penalty fees due to the language being rife with ambiguity regarding the permit expiration date. These regulations do not impact worker safety and the state's environment.

### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

Although the proposed regulations *will* directly affect businesses statewide, including small businesses, Caltrans concludes the economic impact, *will not* be significant. Small businesses could potentially benefit from having the option to pay their permit renewal fees annually as opposed to paying a lump sum before the five-year renewal term starts. Large business benefit from having this option as well. With these proposed regulations, both small and large businesses, may opt to pay the lump sum of the entire permit renewal term five-year renewal in full or annually. Ensuring compliance with state statutory law will not result in a significant adverse economic impact on any businesses.

### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT'S REASON FOR REJECTING THOSE ALTERNATIVES**

#### Recommended Alternative:

Amend regulations to ensure the permit renewal process is clear and understandable; adds clarifying definitions and removes outdated language. These amendments will bolster the Department's ability to enforce and regulate provisions of the Outdoor Advertising Act as well as the outdoor advertising requirements mandated under the federal Highway Beautification Act.

No Action Alternative:

This alternative is not acceptable. If no action is taken, the Department will continue to put itself at risk for misinterpretation of the current permit renewal process due to ambiguity and outdated language. Using this alternative could also lead to the potential for another lawsuit where a judge does not rule in favor of the Department.

No other alternatives were presented to or considered by the Department.

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**EFFORTS TO AVOID CONFLICT OR DUPLICATION OF FEDERAL REGULATIONS**

The proposed regulations are not in conflict with any other State statute or regulation. The Department is the only State agency that has the authority to issue an outdoor advertising permit for displays placed on the National Highway System in California.

Outdoor Advertising permits are administered by the Department, under guidelines developed by the Department, and do not conflict with any federal statute or regulations.

\*\*\*\*\* END \*\*\*\*\*