

NOTICE OF PROPOSED RULEMAKING

TO ALL INTERESTED PERSONS:

The California Department of Transportation ("Department") proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action. Following the public hearing and comment period, the proposal may be adopted substantially as set forth without further notice.

PUBLIC HEARING

The Department will hold a public hearing starting at 10:00 a.m. on October 30, 2006, at 1120 N Street, Sacramento, California. The building is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on October 30, 2006. The Department will consider only comments received at the Department by that time. Submit comments to:

Kenneth Parmelee
Division of Traffic Operations, Outdoor Advertising Program
California State Department of Transportation
1120 N Street, MS-36
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Authority: Business and Professions Code section 5250.

Reference: Business and Professions Code section 5200 et seq., 23 U.S. C. 131; title 4, Code of California Regulations, sections 2240, 2241, 2243; "Memorandum and Order Re: Motions for Summary Judgement," *Maldonado v. Will Kempton, in his capacity as Director of the California Department of Transportation*, United States District Court (N.D.Cal.), March 23, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California has regulated advertising displays since 1933. However, until the provision of the federal Highway Beautification Act were implemented by California in 1967, there were no substantive State law provision regarding the placing of billboards.

The Highway Beautification Act of 1965 (23 U.S.C. 131) requires each state to adopt and implement its provisions or lose 10 percent of its federal aid highway funds. California is allocated \$3.36 billion in this fiscal year, so noncompliance would cost the State \$336 million for the rest of this fiscal year alone. This penalty would continue on an annual basis as long as California is not in compliance with federal law.

California's Outdoor Advertising Act, Business and Professions Code section 5200 et seq., is implemented by regulations found in title 4 of the California Code of Regulations, division 6, chapter 1. These provision are designed to comply with the federal requirements, as well as including other, more stringent requirements adopted by the State to control the location, size, and spacing of billboards.

On March 23, 2006, Judge Charles Breyer, of the United States District Court, ruled the Outdoor Advertising Act was unconstitutionally chilled First Amendment rights by allowing "commercial" messages such as "on-premise business identification signs: in areas where off-premise noncommercial messages would be prohibited (for example, political signs). This regulation will clarify that the regulations do not prohibit placing noncommercial messages on any lawfully erected Display, including on-premise displays, as required by the Court.

The proposed regulatory action will implement the Outdoor Advertising Act and national requirements concerning the placement of outdoor advertising, conduct of outdoor advertising activities, administration of permit and licensing requirements, violations and the enforcement process. Moreover, this regulatory action updates language and terminology used by the Department and the industry.

In conclusion, this regulatory action proposes to amend and adopt regulations in Title 4, Division 6 of the California Code of Regulations for consistency and to effectively serve the Department and the public.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: The Department has determined this regulation will not impose a mandate on local agencies or school districts.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings to any state agency: Failure to impose required controls could result in \$336 million in fiscal year 2006/2007 for the California Department of Transportation.

Cost or savings in federal funding to the state: Failure to impose required controls could result in \$336 million in fiscal year 2006/2007 for the California Department of Transportation.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Adoption of this regulatory action will not:

- (1) create or eliminate jobs within the state of California;
- (2) create new businesses or eliminate existing businesses within the state of California; or
- (3) affect the expansion of businesses currently doing business within the state of California..

Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the proposed regulatory action will not affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Department of Transportation is charged with enforcing the Outdoor Advertising Act and make orders and regulations in that regard, Business and Professions Code section 5250.

The Department invites interested persons to presents statements or arguments with respect to alternatives to the proposed regulatory action at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed regulatory action may be directed to:

Kenneth Parmelee
Division of Traffic Operations, Outdoor Advertising Program
California Department of Transportation
1120 N Street, MS-36
Sacramento, CA 95814
Telephone: (916) 651-9327

Please direct requests for copies of the proposed text (the "express terms") of the regulatory action, the initial statement of reasons, the modified text of the regulatory action, if any, or other information upon which the rulemaking is based to Mr. Parmelee at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during regular business hours. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Kenneth Parmelee at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the public hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to Kenneth Parmelee at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Kenneth Parmelee at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations in underline can be accessed through the Department's website at www.dot.ca.gov/oda.