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Final Regulation Agency Background Document

Agency name	Department of General Services
Virginia Administrative Code (VAC) citation(s)	1 VAC30-150
Regulation title(s)	Regulations for Public Use of Robert E. Lee Monument
Action title	Issuance of Regulations for Public Use of Robert E. Lee Monument
Date this document prepared	March 21, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

The Robert E. Lee Monument, located at 1700 Monument Avenue, is the largest monument on the City of Richmond's Monument Avenue. The 60-foot high statue is composed of a granite base and a 14-foot tall bronze equestrian statue of Robert E. Lee that stands in the middle of Lee Circle, a traffic circle at the intersection of Monument Avenue and Allen Avenue. The purpose of this regulation is to establish and codify regulation governing the use of this state-owned property.

Acronyms and Definitions

For the purpose of this regulation the following terms are defined as follows:

"DGS" means the Department of General Services.

“Lee Monument” is defined as the statue of Robert E. Lee and the surrounding 25,000 square feet of state-owned property located at 1700 Monument Avenue in the City of Richmond. The Lee Monument does not include the abutting sidewalk or streets, which are the property of the City of Richmond.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

Department of General Services Director approved the Regulations for Public Use of Robert E. Lee Monument on March 23, 2019.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

No new information or mandates since the proposed stage.

Legal Basis

Section 2.2-1102 A.1 of the *Code of Virginia* authorizes the Department of General Services to prescribe regulations necessary or incidental to the performance of the Department's duties or execution of powers conferred by the *Code*. For this regulation, EO67 (2017) directed DGS to promulgate this regulation

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This regulation is promulgated to make the Proposed Regulation permanent. The Emergency Regulation was issued in response to the events of August 2017, when a “Unite the Right” rally evolved into a violent incident of civil unrest in Charlottesville, Virginia, and necessitated a State of Emergency declaration by Governor McAuliffe to address the violence. Executive Order 67 details the rationale for requiring a review of the regulations at the Lee Monument, and that rationale is incorporated by reference here. See 34 Va. Reg. 393 (Sept. 18, 2017). The Proposed Regulation replaced the Emergency Regulation. The goal of this regulation is to ensure property and public safety when public assemblies have gathered at the Monument to exercise their First Amendment Rights.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

No changes from the Proposed Stage.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public.

As with the proposed regulation, the primary advantage of this regulation is that it offers guidelines for public assembly at Lee Monument that seek to protect public safety, Commonwealth-owned property, and the residents and property around the Monument while providing a space for the public to exercise their First Amendment rights. The primary disadvantage is the limits the regulation places on the times for public assembly, items allowed during a permitted event, and the number of attendees in an effort to maximize safety in this unique space situated in a residential area in the middle of a heavily traveled intersection.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no applicable Federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected: Virginia Capitol Police

Localities Particularly Affected: City of Richmond

Other Entities Particularly Affected: None known

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted:

including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
130	These commenters do not want the Lee Monument removed, however the comments are not relevant to the regulation.	The comments are irrelevant to the regulation and the agency has no response.
15	These commenters do not support the regulation.	DGS promulgated the regulation to support EO67 (2017) and to ensure the safety of those who use the Robert E. Lee Monument. The general purpose for this regulation is outlined in the background document and EO67.
24	These commenters want the Lee Monument removed, however the comments are not relevant to the regulation.	The comments are irrelevant to the regulation and the agency has no response.
7	These commenters support the regulation with changes.	The agency has reviewed the suggested changes and made some technical and clerical changes to the regulation, however some of the substantial changes that were suggested would impact the safety of those who use the property for general purposes and permitted events.
3	These commenters made comments irrelevant to the regulation or did not express a concern.	The agency has no response to these commenters.
3	These commenters support the regulation as written.	The agency appreciates the comments in support of the regulation.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current chapter - section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
1VAC30-150-30	N/A	Item C.8. reads: Food, alcohol, or beverages of any type.	Item C.8. will be amended to read: Food, alcohol , or beverages of any type.	Public alcohol consumption is prohibited by law, this change eliminates redundancy.

1VAC30-150-30	N/A	Item C. 15 reads: Any, mask hood, or other device whereby a substantial portion of the face is hidden or covered, unless otherwise permitted by law.	Item C.15 Any, mask hood, or other device whereby a substantial portion of the face is hidden or covered, unless otherwise permitted by law.	This conduct is prohibited by law, this change eliminates redundancy.
1VAC30-150-50	N/A	Item C. Reads: Violations of this chapter shall result in immediate revocation of the permit by the Director of the Department of General Services or the director's designee, and in the event such revocation occurs, all participants shall be required to immediately vacate the monument. Failure of any person to immediately vacate the monument after proper notice shall be considered trespassing in violation of §18.2-119 of the Code of Virginia.	Item C. will be amended to read: Violations of this chapter, <u>or of any other provision of State Law</u> , shall result in immediate revocation of the permit by the Director of the Department of General Services or the director's designee, and in the event such revocation occurs, all participants shall be required to immediately vacate the monument. Failure of any person to immediately vacate the monument after proper notice shall be considered trespassing in violation of §18.2-119 of the Code of Virginia.	This language reiterates the prohibition of unlawful activity.

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of updated requirements