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Final Regulation Agency Background Document

Agency name	Department of General Services
Virginia Administrative Code (VAC) citation(s)	1VAC-30-150
Regulation title(s)	Regulation for Public Use of Robert E. Lee Monument
Action title	Issuance of Regulations for Robert E. Lee Monument
Date this document prepared	July 13, 2018

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

The Director of the Department of General Services approved the Emergency and Proposed Regulation on November 17, 2017. This regulation is entitled Regulation for Public Use of Robert E. Lee Monument, Richmond, Virginia.

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

This regulation is promulgated 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). This stage of the regulatory process will make the Proposed Regulations permanent.

Substance

No substantive changes from the proposed regulations.

Issues

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 regulation places limits on the times for public assembly, items allowed during a permitted event, and 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

There are no applicable federal requirements.

Localities particularly affected

The City of Richmond is affected as the adjacent landowner and the municipality with jurisdiction of the adjacent property.

Family impact

None

Changes made since the proposed stage

Section number	Requirement at proposed stage	What has changed	Rationale for change
1VAC-30-150-20	The following rules apply to any person, including but not limited to permit applicants and permit holders at the Monument: A. The Monument shall be closed to the public from sunset each night until sunrise the following morning. B. Any event that is expected to draw ten (10) or more participants requires a Special Event Permit. C. The maximum occupancy of the Monument is 500 persons. D. There shall be no motor vehicles on the Monument at any time. E. No banners, flags, posters or other objects shall be placed on or affixed to the statue itself. F. No persons shall climb on the statue itself. This provision also applies to the steps of the statue. Unlawful activity is prohibited.	B. Any gathering that is expected to draw ten (10) or more participants requires a Special Event Permit.	Changed event to gathering to be all inclusive
1VAC30-150-40	A. Requests for a special event permit must be submitted in writing, on the forms required by the Department of General Services, and must be submitted to the Director of the Division of Engineering and Buildings at least 45 days prior to the requested event date. B. All applications shall contain at a minimum, the following information: 1. Type and purpose of event, meeting or function. 2. Name, address, telephone numbers, and email address of the Applicant.	All references to "Director of the Division of Engineering and Buildings" in the regulation are changed to read "Director of the Department of General Services." Item B. #12 was relocated from 1VAC-30-150-50. Changed "permits" to "permit applications" in Items B.10 and C.4.	Changes made here are reflecting changes in DGS administration and to correct items that may have caused confusion for applicants and general public.

	3. Name of the organization, date of origin, status (corporation, unincorporated association, partnership, nonprofit corporation etc.), address and telephone numbers. If applicable, the federal tax ID number, registered agent's address, telephone numbers and email address. 4. Organization's primary point of contact, to include name, title, permanent address, telephone numbers and email addresses. 5. Organization's primary and alternative point of contact who will be on-site at the Monument for the event, to include name, address, telephone numbers and email addresses. The organization's on-site primary point of contact shall be responsible for the conduct of participants at the event. 6. If the event is designed to be held by, or on behalf of or for, any person other than the Applicant, the Applicant shall file with the Director written documentation from the person or organization seeking to host the event, authorizing the Applicant to apply for the permit on behalf of the person or organization. 7. The estimated number of participants for the event. The maximum occupancy for the Monument is 500 persons. 8. Requested date and start and end times. 9. Whether the event is being advertised, to include advertising on social media platforms. 10. Proof that all needed permits have been submitted to the City of Richmond, to include a road closure permit if necessary. The Applicant understands that if the City of Richmond will require road closure, authorized events will be permitted to last one (1) hour, with an additional 30 minutes to set-up and 30 minutes to break down the event. All events will begin at the agreed upon time and must fall within the allowable time periods addressed in this section. 11. List of requested items or equipment to be used during the event. C. Notwithstanding the 45-day requirement for a special event permit, the Applicant may	Moved "The Director of the Department of General Services shall not grant final approval until proof that a permit has been approved by the City of Richmond, to include a road closure permit if necessary," from Item D to Item E. Changed Item E to add that a "complete" application must be received; changed DGS action time on receiving a spontaneous event permit application to "as soon as practicable but not more than three (3) business days," clarified that DGS will approve or deny a permit application within the specified time if no permits are required by the City of Richmond, but when one or more permits are required by the City, DGS shall acknowledge receipt of the application within the required timeframe but not grant approval until required City permits are obtained.	
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	apply for a permit for an event that is proposed to be conducted in less than six (6) days, provided: 1. The Applicant submits a completed special event permit application in accordance with this regulation. 2. A showing by the Applicant, in writing, clearly describing why the circumstances giving rise to the proposed event did not reasonably allow the Applicant to apply for a permit within the time 45-day period. 3. The event has not been planned for more than six (6) days in advance of the proposed event. 4. Proof that all needed permits have been submitted to the City of Richmond, to include a road closure permit if necessary. The Applicant understands that if the City of Richmond will require road closure based on the size of the event, authorized events will be permitted to last one (1) hour, with an additional 30 minutes to set-up and 30 minutes to break down the event. All events will begin at the agreed upon time and must fall within the allowable time periods addressed in this section. D. Permit applications may be submitted up to one year in advance of the proposed event. The Director of the Division of Engineering and Buildings shall not grant final approval until proof that a permit has been approved by the City of Richmond, to include a road closure permit if necessary. E. The Director of the Division of Engineering and Buildings shall take action on all permit applications within (10) ten business days of receiving a special event permit application, and within three (3) business days of receiving a special event permit that is proposed to be conducted within six (6) days of the application as outlined in section III.C of this regulation. All actions by the Director are pending proof of a final determination from the City of Richmond on whether any permits, to include a road closure permit, are required by the City. If any permits are required by the City, the Applicant shall be required to furnish proof to the Director that the proper permits have been obtained. F. The Director of Engineering and Buildings shall deny a request for a permit if: 1. Another application has been previously submitted with a		
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	request for the same date and time; 2 Upon advisement from law enforcement, the Director determines that approving the permit and allowing the event to occur would pose a significant threat to public safety; 3 Any of the conditions are not agreed to by the Applicant; 4 The Director concludes that the event could not possibly conform to the conditions prescribed in this regulation; 5 Any of the information contained in the application is found to be false or inaccurate; or 6 The City of Richmond denies a needed permit. G. If a Permit request is denied, the Director shall send, in writing, an explanation of why the event permit was denied and if applicable, provide the Applicant with alternative times or dates. H. If a Permit is denied due to a pre-existing application for the same time and date, the Director shall notify the Applicant if the originally requested date and time become available. I. Authorization for the use of the Monument will be set forth in a letter addressed to the Applicant. The Director or his/her designee may contact the Applicant and the event organizer at any time to discuss or clarify the contents of the application or any additional conditions or restrictions to be applied.		
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Public comment

Commenter	Comment	Agency response
Daphne Cole	"The statue is lovely and well placed. Remove the name if you must."	None
Claire Gastanaga, ACLU	Comments in brief are: (submitted a white paper as well) "Our analysis of the validity of the Emergency Regulations is based on the fact that the Lee Monument grounds are and have been a traditional public forum. The Governor and Attorney General erroneously allege that the area around the Lee Monument is not a "traditional public forum." Lee Monument has	None

	always been used as a public park and a public gathering space, which has routinely held large events including protests, rallies, Easter Parades, and live music events. Moreover, the Fourth Circuit has ruled that even mere median strips are in fact traditional public forums. The U.S. Supreme Court has said that “the nature of a place, the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable.” Because it includes a public walkway and grassy area and has been used traditionally as a public park, the Lee Monument grounds are, in fact a public forum and should be regulated as such.”	
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All changes made in this regulatory action

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
1VAC30-150-10. Purpose, applicability and definitions		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 composed of a granite base and 14-foot tall bronze equestrian statue of Robert E. Lee, stands in the middle of Lee Circle, a traffic circle at the intersection of Monument Avenue and Allen Avenue. The purpose of these regulations is to establish and codify regulations governing the use of this state-owned property. For the purposes of this regulation, the following terms are defined as follows: “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.	Changed “ft2” to “square feet” in second paragraph.
1VAC30-150-20. General Rules		The following rules apply to any person, including but not limited to permit applicants and permit holders at the Monument: A. The Monument shall be closed to the public from sunset each night until sunrise the following morning. B. Any gathering that is expected to draw ten (10) or more participants requires a Special Event Permit. C. The maximum occupancy of the Monument is 500 persons.	Changed “event” to “gathering” in B.

		D. There shall be no motor vehicles on the Monument at any time. E. No banners, flags, posters or other objects shall be placed on or affixed to the statue itself. F. No persons shall climb on the statue itself. This provision also applies to the steps of the statue. G. Unlawful activity is prohibited.	
1VAC30-150-30. Rules regarding permitted events		A. All permitted events must be coordinated with the City of Richmond to ensure that such event will not interfere with major vehicular traffic within the traffic circle. The areas surrounding the Monument are Residential Zones. In conjunction with <i>Code of Virginia</i> §18.2-419 and the City of Richmond's noise ordinance level restrictions, events at the grounds may only occur during the following hours, unless the times referenced below conflict with section 1VAC30-150-20.A of this regulation: 1. Monday through Friday: i. 9:00 a.m. to 4:00 p.m. ii. 7:00 p.m. to 9:00 p.m. 2. Saturday: i. 9:00 a.m. to 9:00 p.m. 3. Sunday: i. 2:00 p.m. to 9:00 p.m. B. Permitted events may last a maximum of two (2) hours, with an additional 30 minutes to set up and 30 minutes to break down the event. If the City of Richmond will require road closure, permitted events will be authorized to last one (1) hour, with an additional 30 minutes to set up and 30 minutes to break down the event. Permitted events shall not exceed these time parameters. C. The following items and activities are prohibited on the Monument and any violation will result in an immediate revocation of the permit and removal from the Monument: 1. Weapons: any pistol, rifle, shotgun or other firearm of any kind, whether loaded or unloaded, air rifle, air pistol, paintball gun, paintball rifle, explosive, blasting cap(s), knife, hatchet, ax, slingshot, blackjack, metal knuckles, mace, iron buckle, ax handle, chains, crowbar, hammer, or any club, bludgeon or any other instrumentality used, or intended to be used, as a dangerous weapon. 2. Bricks, stones, rocks, pieces of asphalt or concrete.	Changed section reference to "1VAC30-150-20.A" rather than "I.B" in Item A. Changed "set-up" to "set up" in Item B. Changed the last sentence in Item F to "by the Department of General Services and" rather than "within the Commonwealth or."

		3. Glass bottles, glass jars or glass containers of any kind. 4. Tents, tables, scaffolding or staging. 5. Penetration of the ground by any object. 6. Stick holding placards. 7. Solicitations, sales, collections or fundraising activities. 8. Food, alcohol or beverages of any type. 9. Auxiliary and portable lights. 10. Open air burning. Hand-held candles with drip guards are acceptable. 11. The use of unmanned aircraft systems (drones). 12. Hazardous, flammable, or combustible liquids or materials. 13. Animals, except service animals that are individually trained to do work or perform tasks for people with disabilities. 14. Fossil fuel powered generators. 15. Any mask, hood or other device whereby a substantial portion of the face is hidden or covered unless otherwise permitted by law. D. Nothing in this regulation shall prohibit a disabled person from carrying, possessing or using a wheelchair, cane, walker, or similar device necessary for providing mobility so that the person may participate in a permitted event. E. Nothing in this regulation shall prohibit certified law enforcement officers or other public safety officials acting in their official capacity from carrying or possessing materials, weapons and/or devices used in the performance of law enforcement duties. F. Certain portions of sections 1VAC30-150-30.A, B and C may not apply to established events, which have been approved for more than three (3) consecutive years by the Department of General Services and City of Richmond permitting processes prior to the enactment of this regulation.	
1VAC30-150-40. Special event permit process		J. Requests for a special event permit must be submitted in writing, on the forms required by the Department of General Services, and must be submitted to the Director of the Department of General Services at least 45 days prior to the requested event date. K. All applications shall contain at a minimum, the following information: 1. Type and purpose of event, meeting or function.	All references to "Director of the Division of Engineering and Buildings" in the regulation are changed to read "Director of the Department of General Services."

		2. Name, address, telephone numbers, and email address of the Applicant. 3. Name of the organization, date of origin, status (corporation, unincorporated association, partnership, nonprofit corporation etc.), address and telephone numbers. If applicable, the federal tax ID number, registered agent's address, telephone numbers and email address. 4. Organization's primary point of contact, to include name, title, permanent address, telephone numbers and email addresses. 5. Organization's primary and alternative point of contact who will be on-site at the Monument for the event, to include name, address, telephone numbers and email addresses. The organization's on-site primary point of contact shall be responsible for the conduct of participants at the event. 6. If the event is designed to be held by, or on behalf of or for, any person other than the Applicant, the Applicant shall file with the Director written documentation from the person or organization seeking to host the event, authorizing the Applicant to apply for the permit on behalf of the person or organization. 7. The estimated number of participants for the event. The maximum occupancy for the Monument is 500 persons. 8. Requested date and start and end times. 9. Whether the event is being advertised, to include advertising on social media platforms. 10. Proof that all needed permit applications have been submitted to the City of Richmond, to include a road closure permit if necessary. The Applicant understands that if the City of Richmond will require road closure, authorized events will be permitted to last one (1) hour, with an additional 30 minutes to set up and 30 minutes to break down the event. All events will begin at the agreed upon time and must fall within	Item B. #12 was relocated from 1VAC-30-150-50. Changed "permits" to "permit applications" in Items B.10 and C.4. Moved "The Director of the Department of General Services shall not grant final approval until proof that a permit has been approved by the City of Richmond, to include a road closure permit if necessary," from Item D to Item E. Changed Item E to add that a "complete" application must be received; changed DGS action time on receiving a spontaneous event permit application to "as soon as practicable but not more than three (3) business days;" clarified that DGS will approve or deny a permit application within the specified time if no permits are required by the City of Richmond, but when one or more permits are required by the City, DGS shall acknowledge receipt of the application within the required timeframe but not grant approval until required City permits are obtained.
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		the allowable time periods addressed in this section. 11. List of requested items or equipment to be used during the event. 12. Waste management plan and a point of contact for the plan, including name and telephone number. L. Notwithstanding the 45-day requirement for a special event permit, the Applicant may apply for a permit for an event that is proposed to be conducted in less than six (6) days, provided: 1. The Applicant submits a completed special event permit application in accordance with this regulation. 2. A showing by the Applicant, in writing, clearly describing why the circumstances giving rise to the proposed event did not reasonably allow the Applicant to apply for a permit within the time 45-day period. 3. The event has not been planned for more than six (6) days in advance of the proposed event. 4. Proof that all needed permit applications have been submitted to the City of Richmond, to include a road closure permit if necessary. The Applicant understands that if the City of Richmond will require road closure based on the size of the event, authorized events will be permitted to last one (1) hour, with an additional 30 minutes to set up and 30 minutes to break down the event. All events will begin at the agreed upon time and must fall within the allowable time periods addressed in this section. M. Permit applications may be submitted up to one year in advance of the proposed event. N. The Director of the Department of General Services shall take action on all permit applications within (10) ten business days of receiving a complete special event permit application, and as soon as practicable but not more than three (3) business days for applications submitted for events to be held within six (6) business days. If no permits are required by the City of Richmond, the Department shall approve or deny the application within 10 days. If one or more permits are required by the City of Richmond, the	
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		Department of General Services shall acknowledge receipt of the application within ten (10) business days, but the Director shall not grant final approval until proof that all permits required by the City, to include a road closure permit, have been issued. O. The Director of the Department of General Services shall deny a request for a permit if: 7 Another application has been previously submitted with a request for the same date and time; 8 Upon advisement from law enforcement, the Director determines that approving the permit and allowing the event to occur would pose a significant threat to public safety; 9 Any of the conditions are not agreed to by the Applicant; 10 The Director concludes that the event could not possibly conform to the conditions prescribed in this regulation; 11 Any of the information contained in the application is found to be false or inaccurate; or 12 The City of Richmond denies a needed permit. P. If a Permit request is denied, the Director shall send, in writing, an explanation of why the event permit was denied and if applicable, provide the Applicant with alternative times or dates. Q. If a Permit is denied due to a pre-existing application for the same time and date, the Director shall notify the Applicant if the originally requested date and time become available. R. Authorization for the use of the Monument will be set forth in a letter addressed to the Applicant. S. The Director or his/her designee may contact the Applicant and the event organizer at any time to discuss or clarify the contents of the application or any additional conditions or restrictions to be applied.	
1VAC30-150-50. Permit holder responsibilities		A. The event organizer is responsible for providing a safe and secure event and may be required to provide general security, crowd control, and assistance to participants based on the size of the event. If general security is required, by the Commonwealth, it shall be provided by law enforcement personnel licensed by the Commonwealth of Virginia.	Changed Item A to restore dropped “the” before ‘size of the event’ and add “by the Commonwealth” to security requirement.

		B. By submitting an application for a special event permit under this section, the Applicant understands the following statements and conditions and agrees to comply with all rules, conditions and restrictions: 1. The Applicant agrees to all prohibitions and restrictions identified in this regulation. 2. The Applicant and organization agree to indemnify the Commonwealth of Virginia against any loss or damage to the Monument, which may occur in connection with the Applicant or event organizer's use of the property. 3. The Applicant agrees to leave the premises clean and orderly. 4. The Applicant and participants agree to obey all state and local laws and ordinances. 5. The Applicant agrees to notify law enforcement, to include the Division of Capitol Police, if any unlawful activities occur during the permitted event. In addition to 9-1-1, the Applicant should call the Capitol Police emergency number at (804) 786-4357. For non-emergencies, Applicants should call (804) 786-2568. 6. Unlawful activities will be handled by law enforcement, to include the Division of Capitol Police. 7. The Applicant shall be required to notify the Director of the Department of General Services of any changes to the information contained in the permit application as soon as practicable. C. Violations of this chapter shall result in immediate revocation of the permit by the Director of the Department of General Services or his 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 VA Code §18.2-119.	
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