



**COMMONWEALTH of VIRGINIA**  
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FROM: Phillip O. Figura  
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DATE: July 28, 2022

SUBJECT: Department of Forensic Science Parking Regulations 6 VAC 40 - 15.

In response to a request from the Department of Forensic Science (“Department”), I reviewed the proposed Parking Regulations in 6 VAC 40 - 15 to ensure statutory authority and Constitutionality. This is a Fast-Track regulation issued pursuant to Virginia Code § 2.2-4012.1 of the Administrative Process Act. The primary issue to be addressed by these regulations is that the Department facility in Norfolk continually has its parking spots taken up by individuals who neither work nor have business to conduct at the facility. These spots are mostly taken by residents or guests of a nearby housing complex. When those parking spots are so occupied, Department employees and law enforcement officers must park off-site a considerable distance away from the facility.

In reviewing these proposed regulations, I note that the Department is authorized to enter into contracts for the purchase of real estate pursuant to Virginia Code § 9.1-1101(C)(2). Further, the Department is required to “[p]rovide forensic laboratory services to all law-enforcement agencies throughout the Commonwealth”<sup>1</sup> Also, Virginia Code § 9.1-1102, provides that “A. The Department and its facilities shall be *located so as to ensure the protection of evidence*. [and] B. The Department *shall provide for security and protection of evidence*, official samples, and all other samples submitted to the Department for analysis or examination.” (Italics added for emphasis)

Here, the Department is authorized to enter into contracts for the purchase of real estate. It necessarily follows that the Department implicitly has the authority to control who enters their facilities and how they access them. Because the Department must perform mandatory forensic testing, its employees must be able to make it to the facility to perform this work. If Department employees must continually seek parking far off-site because none is available at the facility, they cannot conduct this statutorily mandated work in a timely manner.

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<sup>1</sup> See, Virginia Code § 9.1-1101(B)(1).

Further, law enforcement transports illegal narcotics to the Department's various facilities every month. These samples are most vulnerable after officers leave their transport vehicles and before they enter Department facilities. The further an officer must park away from Department facilities, the longer the illegal narcotics and other samples are vulnerable. Again, the Department is mandated to ensure that its facilities are "located so as to ensure the protection of evidence" and that the Department "provide for security and protection of evidence." See, Virginia Code § 9.1-1102

A necessary and fairly implied grant of power from the grant of authority in Virginia Code § 9.1-1101(C)(2) and the mandate in § 9.1-1102(A) and (B), is the ability to not only regulate who enters Department facilities, but also to provide secure adequate parking for those accessing them. I find therefore, that the proposed Parking Regulations are Constitutional, in conformity with existing statutory provisions, and consistent with and necessarily and fairly implied from the grant of power Virginia Code § 9.1-1101(C)(2) and the mandates in Virginia Code § 9.1-1102 (A) and (B).

*Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that a certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action*