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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of General Services
Virginia Administrative Code (VAC) Chapter citation(s)	1 VAC30-100
VAC Chapter title(s)	Regulation for Use of Capitol Square
Action title	Revise existing regulations
Date this document prepared	August 20, 2020

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Virginia's Capitol Square is the Commonwealth's executive and legislative center and an architecturally and historically significant area located in downtown Richmond. The Department of General Services, pursuant to 2.2-1100 et seq., Code of Virginia, is charged with maintaining and operating the historic Capitol Square. Under this authority, the Department establishes this regulation for use of Capitol Square.

The Department of General Services permits persons, organizations, or groups to use Capitol Square grounds for various purposes and events when the use will not interfere with or disrupt governmental functions. The purpose of this regulation is to establish standards for the use of Capitol Square as well as the acceptance, processing, review, and disposition of Permit applications for events on Capitol Square to ensure the health, safety, and welfare of the public; coordinate multiple uses of public grounds; preserve public spaces; preserve the aesthetic appearance of historic buildings and grounds; preserve the rights of individuals to free expression; and to protect the Commonwealth from financial losses.

Acronyms and Definitions

For purposes of this regulation, the following terms have the meanings set forth below:

- Capitol Police means the Division of Capitol Police.
- Capitol Square is defined as the grounds and structures in that area in the City of Richmond bounded by Bank Street, to include Bank Street, 9th Street, Broad Street and Governor Street, to include Governor Street as well as 10th Street from Bank Street to Main Street and 12th Street from Bank Street to Main Street, 10th Street from Broad St to Darden Garden, and 11th Street from Broad Street to Darden Garden, including adjacent sidewalks controlled by the Commonwealth.
- Commercial activity means any activity or action undertaken by one or more business entities and/or individuals, whose purpose in whole or in part, directly or indirectly, is to derive or realize a present or future financial gain for the individual(s) or business entity or entities.
- Department means the Department of General Services.
- Director means the Director of the Department.
- Event means the assemblage on Capitol Square of ten (10) or more persons for any demonstration, rally, march, performance, picketing, speechmaking, holding of vigils, sit-ins, or other activities that involve the communication or expression of views or ideas having the effect, intent, or propensity to draw a crowd or onlookers. Event does not include casual use of Capitol Square by visitors or tourists.
- Government Function means a function sponsored by a Commonwealth of Virginia government entity in support of the agency's mission.
- Permit means a written authorization from the Department allowing use of Capitol Square as set forth in the Permit. A Permit serves as a reservation to use a portion of Capitol Square with the priority for use set forth in these rules.
- Permit Area means the area adjacent to the Bell Tower where the Event's speaker(s) and/or programmed activities must be located.
- Permittee means the individual, group, or entity identified in the Permit as the holder of the Permit.

Mandate and Impetus

The Code of Virginia, §2.2-1144 specifically, puts the control of Capitol Square public grounds, under the direction and control of the Governor, with the Department of General Services, except areas under the control of the legislature. The impetus for promulgating this regulation is to update the regulation in place since 1970, that are outdated and to not provide guidelines for agency response to the events that are increasing in frequency and number of participants.

Legal Basis

The Department of General Services is the promulgating agency. The Code of Virginia §§ 2.2-1102 A.1, 2.2-1129 and 2.2-1144 are the state legal authorities for promulgating this regulation.

Purpose

The current regulation for use of Capitol Square was promulgated in 1970. The existing regulation contains outdated or irrelevant references, and does not adequately equip the Department or law enforcement to ensure the safety of participants at events that continue to increase in size and frequency. This regulation is being proposed with emphasis on ensuring the right to free speech, the safety of participants, visitors to Capitol Square, and protecting the buildings and grounds at historic Capitol Square.

Substance

The proposed regulation updates the 1970 existing regulation and consolidates current practices and requirements found in the application for a permitted event, permit rules and other documents, as per this table:

Section	Existing Requirement	Proposed change
Definitions	None	Defines Capitol Square as “the grounds and structures in that area in the City of Richmond bounded by Bank Street, to include Bank Street, 9th Street, Broad Street and Governor Street, to include Governor Street as well as 10th Street from Bank Street to Main Street and 12th Street from Bank Street to Main Street, 10th Street from Broad St to Darden Garden, 11th Street from Broad Street to Darden Garden, including adjacent sidewalks controlled by the Commonwealth.”
Threshold to require a permit	1 person	10 people
Permit area	Bell Tower	Identified area near the Bell Tower as where the event’s speaker(s) and/or programmed activities must be located
Government function	None	Adds definition; requires government entities to complete and submit “State Agency Application for Use of Capitol Square”
Rules for Capitol Square use	Some listed on application and permit	States that all activity must adhere to DGS rules, which can be found on the DGS website
Capitol Square hours	6 a.m. to 11 p.m.	6 a.m. to 9 p.m.
Permittee responsibilities	Listed on the application and permit	Adds section defining what a permittee must do, includes that the permittee and alternate contact must be 18 years of age (to enter into an agreement)
Permit hours	6 a.m. to 11 p.m.	Sunrise to sunset
Multiple events	Not addressed, but in practice is not allowed	No more than one event will be scheduled for the same time on the same day
Application deadline	Six days	Six days; 45 days for those events with over 1,000 participants; allows for spontaneous events in fewer than six days

Spontaneous event	Not addressed	Defines the steps to obtain a permit in fewer than six days
Application	Not addressed	Defines information, at a minimum, that must be included on the application
Application submission period	Not addressed	Applicants may submit up to 180 days in advance
Application processing	Not addressed	DGS will have five business days to grant or deny a permit application
Event cancellation	Not addressed	DGS can cancel if location is required for an official state function
Rules for permitted events	Some addressed in regulation, others on the permit and application	Section added and expanded
Required amenities	Not addressed	DGS Director can require special facilities such as portable toilets, at the applicant's expense, and give direction on how many portable toilets may be required per event size
Sound amplification	Addressed in application and permit	Amplification is permitted but only with DGS equipment with fewer than 1,000 attendees
Marches	Prohibited	Permitted into and out of the Square as long as march does not disrupt business
Denials/revocations	Some addressed	Adds a section that identifies grounds for denying or revoking a permit
Contacts not present	Addressed in application and permit	States primary or secondary contact must be present or permit can be revoked
Previous violations	Not addressed	Gives DGS grounds to deny a permit if the permittee twice violates the terms of prior permits
Appeals process	None exists	Creates a process by which an applicant can appeal DGS' decision

Alternatives to Regulation

There are no alternatives being considered by the Department.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

The Department of General Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments also may be submitted by mail, email to Rhonda Bishton, 1100 Bank Street, Richmond, VA 23219 or email: rhonda.bishton@dqs.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage and notice of the hearing will posted on the Virginia Regulator Town Hall website: (<https://townhall.virginia.gov>). Both oral and written comments may be submitted at that time.