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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Commissioner of Highways of the Virginia Department of Transportation
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	24 VAC30-640
<b>VAC Chapter title(s)</b>	Parking on Primary & Secondary Highways
<b>Action title</b>	Parking on Primary & Secondary Highways
<b>Date this document prepared</b>	3/10/2021

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

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

Section 46.2-1223 of the *Code of Virginia* provides that the Commissioner of Highways may, by regulation, regulate parking on any part of the primary and secondary systems of state highways. However, no such regulation has yet been established. Therefore, this action is to establish a new regulation to address the parking-related issues of concern to the Virginia Department of Transportation ("VDOT") that are not in conflict with localities' authority to regulate parking under other sections of the Code of Virginia. Such parking-related issues of concern to VDOT include areas along highways where parking impedes the safe or efficient flow of vehicular traffic or the proper operation of the highway. It is highly desirable that counties and towns continue to address, through their ordinances, parking issues on their local streets within their boundaries and that are otherwise maintained by VDOT. Such streets are typically classified as local (or collectors that serve a similar purpose) and primarily serve to provide access to residences or businesses (including parking for those residences and businesses). These streets typically have speed limits of 25 mph and are within a neighborhood or subdivision or in a "residence district" or "business district" of a town.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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“VDOT” means the Virginia Department of Transportation

The following definitions for “Highway”, “Business district” and “Residence district” are from § 46.2-100 of the Code of Virginia:

“Highway” means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys, and, for law-enforcement purposes, (i) the entire width between the boundary lines of all private roads or private streets that have been specifically designated “highways” by an ordinance adopted by the governing body of the county, city, or town in which such private roads or streets are located and (ii) the entire width between the boundary lines of every way or place used for purposes of vehicular travel on any property owned, leased, or controlled by the United States government and located in the Commonwealth.

“Business district” means the territory contiguous to a highway where 75 percent or more of the property contiguous to a highway, on either side of the highway, for a distance of 300 feet or more along the highway, is occupied by land and buildings actually in use for business purposes.

“Residence district” means the territory contiguous to a highway, not comprising a business district, where 75 percent or more of the property abutting such highway, on either side of the highway, for a distance of 300 feet or more along the highway consists of land improved for dwelling purposes, or is occupied by dwellings, or consists of land or buildings in use for business purposes, or consists of territory zoned residential or territory in residential subdivisions created under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

The following definitions for “Parking”, “Stopping” and “Standing” are drawn from the Uniform Vehicle Code (UVC) for purposes of this regulation. They are not defined in the Code of Virginia.

“Parking” means the “standing” of a vehicle, whether occupied or not, otherwise than temporarily, for the purpose of, and while actually engaged in, loading or unloading property or passengers.

“Standing” means halting a vehicle while still occupying the vehicle, otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers.

“Stopping” means halting, even momentarily, a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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Per § 46.2-1223 of the Code of Virginia, the Commissioner of Highways may, by regulation, regulate parking on any part of the primary and secondary systems of state highways. However, no such

regulation has yet been established. Therefore, to regulate parking as VDOT is compelled to do from time to time on its highways, this regulation is necessary and required.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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The promulgating agency is the Commissioner of Highways for the Virginia Department of Transportation who is granted the authority through § 46.2-1223 to regulate parking on any part of the primary and secondary systems of state highways by regulation.

The Commissioner of Highways' authority to regulate parking under § 46.2-1223 is limited by specific language in other sections of Article 3 of Chapter 12 in Title 46.2 of the Code of Virginia.

### Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

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The Virginia Department of Transportation is responsible for the safe and efficient flow of traffic on state maintained highways. Preserving the safe and efficient flow of vehicular traffic entails controlling and limiting access and the manner of use of highways including parking where the extent, character, or frequency of such parking impedes the safe or efficient flow of vehicular traffic or the proper operation of the highway.

### Substance

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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The proposed regulation will essentially characterize and distinguish the specific instances on a primary or secondary highway when VDOT will regulate parking (e.g., when it impedes the safe or efficient flow of vehicular traffic or the proper operation of the highway).

Similarly, the regulation will clarify when VDOT will not regulate parking (e.g., on local streets otherwise maintained by VDOT in a county or town where the primary function is to provide access to residences and businesses or on highway that are not under the jurisdiction of VDOT). Historically, on such streets VDOT has left the control of parking to the locality.

## Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

Section 46.2-1223 specifies that VDOT may regulate parking, by regulation. There is no other mechanism where VDOT may otherwise lawfully regulate parking except through this proposed regulation.

## Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."*

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

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

The Virginia Department of Transportation (VDOT) is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose 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://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to: Michael Nichols, P.E. Virginia Dept. of Transportation / Traffic Engineering Division / 1401 East Broad Street / Richmond, VA 23219 / [michael.nichols@vdot.virginia.gov](mailto:michael.nichols@vdot.virginia.gov) / ph 804.786.5709 / fax 804.225.4978. 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 not be held following the publication of the proposed stage of this regulatory action.

