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Proposed Regulation Agency Background Document

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| Agency name | Virginia Department of Transportation |
| Virginia Administrative Code (VAC) Chapter citation(s) | 24 VAC30-640 |
| VAC Chapter title(s) | Parking on Primary and Secondary Highways |
| Action title | Adoption |
| Date this document prepared | 09/10/2021 |

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the 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 used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

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."

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.

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."

Purpose

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.

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, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed regulation characterizes and distinguish the specific factors that VDOT will consider in determining whether to restrict or prohibit parking, stopping or standing on a portion of a primary or secondary highway Such factors include when the parking impedes the safe or efficient flow of vehicular traffic or the proper operation or maintenance of the highway. The regulation specifies that the restriction or prohibition shall be indicated by signs that meet the relevant standards for traffic control devices.

The regulation includes enforcement provisions that meet the requirements specified in § 46.2-1227 of the Code of Virginia.

Similarly, the regulation will clarify when VDOT will not regulate parking, such as where localities or other state agencies have authority to regulate parking pursuant to the Code of Virginia.

Issues

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. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

.The proposed regulation provides clarity as to the prohibition or restriction of parking on primary and secondary state highways.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other State agencies are affected by the proposed amendments.

Localities Particularly Affected

This regulation does not affect local authority to regulate parking, so no local governments are affected by the proposed amendments.

Other Entities Particularly Affected

No other entities are particularly affected by the proposed amendments.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

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| <i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources | The proposed regulation is not associated with any projected changes in costs, savings or revenues. |
| <i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures. | N/A |
| <i>For all agencies:</i> Benefits the regulatory change is designed to produce. | The proposed regulation clarifies where VDOT may regulate parking and the means for doing so. |

Impact on Localities

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | N/A |
| Benefits the regulatory change is designed to produce. | N/A |

Impact on Other Entities

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| Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect. | N/A |
| Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; | N/A |

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| b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. | N/A |
| Benefits the regulatory change is designed to produce. | N/A |

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 requires the Commissioner of Highways to adopt a regulation in order to restrict or prohibit parking on the systems of state highways. The proposed regulation is the least burdensome means for allowing parking where appropriate while also ensuring the safety of the travelling public and the efficient flow of goods and services on the systems of state highways.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulation imposes no compliance or reporting requirements, design or operational standards, or other requirements on small businesses.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This action is not being used to conduct a periodic review/small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

| Commenter | Comment | Agency response |
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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.

The Commonwealth Transportation Board 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, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of this background document.

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 may also be submitted by mail or email to Steven Jack, Governance and Legislative Affairs Division, VDOT Central Office, 1401 E. Broad Street,

Richmond, Virginia 23219 or steven.jack@vdot.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 not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

| Current chapter-section number | New chapter-section number, if applicable | Current requirements in VAC | Change, intent, rationale, and likely impact of new requirements |
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

| New chapter-section number | New requirements to be added to VAC | Other regulations and laws that apply | Change, intent, rationale, and likely impact of new requirements |
|----------------------------|--|---------------------------------------|--|
| 24VAC30-640-10 | This section just adds definitions of terms used in the regulation. It adds no new requirements to the VAC. | | |
| 24VAC30-640-20 | Subsection A authorizes VDOT to restrict or prohibit parking, stopping or standing on any portion of the right-of-way of a primary or secondary highway where, in the Department’s discretion, such parking, stopping or standing impedes the safe | | A. Allows VDOT to preserve the safe and efficient flow of traffic on the systems of state highways as the Commissioner is charged with doing pursuant to § 33.2-223 of the Code of Virginia. |

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| | <p>or intended use of the highway.</p> <p>B. Parking, stopping or standing is prohibited on any bridge or in any tunnel and on any bicycle lane or shared use path unless otherwise indicated by the Department.</p> <p>C. VDOT shall consider the intended use of the highway, roadway design, speed and traffic, the possibility of parking causing damage to the roadway or shoulder, and obstruction of VDOT operations when determining where to restrict parking.</p> | | <p>Parking is already prohibited on bridges pursuant to 24VAC30-21-30. Bicycle lanes and shared use paths are intended for the use of pedestrians and bicycles, and not motor vehicles. This will help enforcement of parking in such bicycle facilities.</p> <p>Provides guidance to VDOT staff as to proper locations for restriction on parking.</p> |
| 24VAC30-640-30 | <p>This section specifies the mechanism by which VDOT will inform the public as to locations where parking is restricted or prohibited. Signs are required to be erected in locations where parking is restricted or prohibited, and those signs must conform with the uniform traffic control standards adopted by the Commissioner of Highways.</p> | | <p>Section 46.2-380 of the Code of Virginia requires the Commissioner to adopt uniform standards for marking and classifying state highways.</p> |
| 24VAC30-640-40 | <p>This section specifies how violation of the regulation are to be enforced.</p> | | <p>The language in this section is required by § 46.2-1227 of the Code of Virginia.</p> |
| 24VAC30-640-50 | <p>This section provides exceptions to VDOT's authority to regulate parking. The parking regulation does not apply to law-enforcement or emergency vehicles, or VDOT vehicles during the performance of their official duties. The regulation is not intended to interfere with localities' authority to regulate parking consistent</p> | | <p>Numerous sections of the Code of Virginia authorize localities to adopt ordinances regulating traffic in the jurisdiction, including 46.2-1220, 46.2-1221, 46.2-1222, 46.2-1222.1, 46.2-1222.2, 46.2-1224, and 46.2-1224.1. Additionally, sections 46.2-1228 and 46.2-1229 authorizes several state agencies or educational</p> |

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| | <p>with the Code of Virginia. The regulation is not intended to interfere with other state agencies' authority to regulate parking consistent with the Code of Virginia.</p> | | <p>institutions to regulate parking on their properties.</p> |
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*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.*

*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

Table 3: Changes to the Emergency Regulation

| Emergency chapter-section number | New chapter-section number, if applicable | Current <u>emergency</u> requirement | Change, intent, rationale, and likely impact of new or changed requirements since emergency stage |
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