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

<b>Agency name</b>	Department of General Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	1VAC-30-150
<b>Regulation title(s)</b>	Regulations for Public Use of Robert E. Lee Monument
<b>Action title</b>	Issuance of Regulations for Robert E. Lee Monument
<b>Date this document prepared</b>	October 31, 2017

### Brief summary

This Regulation implements Executive Order 67 (2017), which directs the Department of General Services (“DGS”) to promulgate emergency regulations to govern any public use of the Lee Monument located in Richmond, Virginia on Monument Avenue (the “Lee Monument”). This Regulation comes at the recommendation of the Governor’s Task Force on Public Safety Preparedness and Response to Civil Unrest (the “Task Force”), as directed in Executive Orders 67 and 68 (2017).

In response to the “Unite the Right” rally that evolved into a violent incident of civil unrest in Charlottesville, Virginia on August 12, 2017, the Governor, through Executive Order 67 (2017) suspended demonstrations at the Lee Monument and ordered DGS to undertake a thorough review of the permitting rules for the monument. The Governor also directed DGS to base its issuance of emergency regulations on the recommendations of the Task Force, which was established by Executive Order 68 (2017).

A key finding of the Task Force in recommending this regulation is that implementing robust permitting processes is one of the most important parts of preparing for mass demonstrations and preventing violence, which was not used effectively by the City of Charlottesville in preparing for the August 12

protests. This regulation reflects the results of the comprehensive review conducted by the Task Force, which included substantial input from public safety officers, local permitting officials, and legal experts on various issues related to the Lee Monument and how to update the rules for public use of the Lee Monument. Rules regarding use of the Lee Monument had never been codified in the Virginia Administrative Code, and no comprehensive review had been done in decades.

In addition to beginning the normal process for making the emergency regulations permanent, DGS is notifying the public of its intent to review 1 VAC 30-100-10, *et seq.*, which are regulations governing the use of Capitol Square.

## Acronyms and Definitions

DGS = Department of General Services

“Lee Monument” is defined as the statue of Robert E. Lee and the surrounding 25,000 sq. ft. of state-owned property located at 1700 Monument Avenue in the City of Richmond, Virginia. The Lee Monument does not include the abutting sidewalk or streets, which are the property of the City of Richmond.

## Emergency Authority

Va. Code § 2.2-4011(A) allows emergency regulations where the necessity for the action has been approved by the Governor. Here, the Governor has directed the action through his Executive Order 67.

## Legal basis

DGS has been directed by the Governor to issue these regulations. Authority for DGS to issue such regulations exists through Virginia Code § 2.2-1100(B) and Virginia Code § 2.2-1102(A)(1).

## Purpose

This regulation is promulgated in response to the events of August 2017, where 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 lays out 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. Regs. 393 (Sept. 18, 2017).

## Need

As stated in Executive Order 67, the Governor has determined there is an immediate need to promulgate regulations governing the use of the Lee Monument. See 34 Va. Reg. Regs. 393 (Sept. 18, 2017). The Governor also established the Task Force to study and recommend regulations to govern safe use of the Lee Monument. See *id.* at 394. After careful study by the Task Force, it recommended to the Governor that a new set of permitting regulations be adopted that would set general rules for use of the Lee Monument, limit the maximum capacity for assemblies, and set rules for permitting and permitted events. These are necessitated by the many factors surrounding the Lee Monument, including its presence in a traffic rotary without cross-walk access to the property; its presence in a residential neighborhood; the size of the Lee Monument; the control of the sidewalk and streets surrounding the Lee Monument by another jurisdiction (the City of Richmond); and public safety best practices for limiting public safety risk during large assemblies.

**Substance**

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>
<p>1VAC30-150-10.</p> <p>Purpose, applicability and definitions.</p>	<p>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.</p> <p>For the purposes of this regulation, the following terms are defined as follows:</p> <p>“Lee Monument” is defined as the statue of Robert E. Lee and the surrounding 25,000 ft<sup>2</sup> 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.</p>		<p>The intent is to define the Lee Monument and its parameters.</p>
<p>1VAC30-150-20.</p> <p>General Rules</p>	<p>The following rules apply to any person, including but not limited to permit applicants and permit holders at the Monument:</p> <ul style="list-style-type: none"> <li>A. The Monument shall be closed to the public from sunset each night until sunrise the following morning.</li> <li>B. Any event that is expected to draw ten (10) or more participants requires a Special Event Permit.</li> <li>C. The maximum occupancy of the Monument is 500 persons.</li> <li>D. There shall be no motor vehicles on the Monument at any time.</li> <li>E. No banners, flags, posters or other objects shall be placed on or affixed to the statue itself.</li> </ul>		<p>The intent is to ensure the safety of the public who use the Lee Monument by outlining hours of use, maximum occupancy and general rules for its use.</p>

	<p>F. No persons shall climb on the statue itself. This provision also applies to the steps of the statue.</p> <p>G. Unlawful activity is prohibited.</p>		
<p>1VAC30-150-30.</p> <p>Rules regarding permitted events</p>	<p>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 1VAC30-150-40.B of this regulation:</p> <ol style="list-style-type: none"> <li>1. Monday through Friday:             <ol style="list-style-type: none"> <li>i. 9:00 a.m. to 4:00 p.m.</li> <li>ii. 7:00 p.m. to 9:00 p.m.</li> </ol> </li> <li>2. Saturday:             <ol style="list-style-type: none"> <li>i. 9:00 a.m. to 9:00 p.m.</li> </ol> </li> <li>3. Sunday:             <ol style="list-style-type: none"> <li>i. 2:00 p.m. to 9:00 p.m.</li> </ol> </li> </ol> <p>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.</p> <p>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:</p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Bricks, stones, rocks, pieces of asphalt or concrete.</li> <li>3. Glass bottles, glass jars or glass containers of any kind.</li> <li>4. Tents, tables, scaffolding or staging.</li> <li>5. Penetration of the ground by any object.</li> <li>6. Stick-holding placards.</li> </ol>		<p>The intent is to specify hours events are allowed and other parameters of requested events.</p>

	<ol style="list-style-type: none"> <li>7. Solicitations, sales, collections or fundraising activities.</li> <li>8. Food, alcohol or beverages of any type.</li> <li>9. Auxiliary and portable lights.</li> <li>10. Open air burning. Hand-held candles with drip guards are acceptable.</li> <li>11. The use of unmanned aircraft systems (drones).</li> <li>12. Hazardous, flammable, or combustible liquids or materials.</li> <li>13. Animals, except service animals that are individually trained to do work or perform tasks for people with disabilities.</li> <li>14. Fossil-fuel powered generators.</li> <li>15. Any mask, hood or other device whereby a substantial portion of the face is hidden or covered unless otherwise permitted by law.</li> </ol> <p>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.</p> <p>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.</p> <p>F. Certain portions of sections 1VAC30-150-30.A., 1VAC30-150-30.B., and 1VAC30-150-30.C. may not apply to established events, which have been approved for more than three (3) consecutive years within the State or City of Richmond permitting processes prior to the enactment of this regulation.</p>		
<p>1VAC30-150-40.</p> <p>Special event permit process</p>	<p>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.</p> <p>B. All applications shall contain at a minimum, the following information:</p> <ol style="list-style-type: none"> <li>1. Type and purpose of event, meeting or function.</li> <li>2. Name, address, telephone numbers, and email address of the Applicant.</li> <li>3. Name of the organization, date of origin, status (corporation, unincorporated association, partnership, nonprofit corporation etc.), address and telephone</li> </ol>		<p>The intent is to outline the permit process, including information required from an applicant requesting a permit to use the Lee Monument and DGS' responsibilities to act on permit applications.</p>

	<p>numbers. If applicable, the federal tax ID number, registered agent's address, telephone numbers and email address.</p> <ol style="list-style-type: none"> <li>4. Organization's primary point of contact, to include name, title, permanent address, telephone numbers and email addresses.</li> <li>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.</li> <li>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.</li> <li>7. The estimated number of participants for the event. The maximum occupancy for the Monument is 500 persons.</li> <li>8. Requested date and start and end times.</li> <li>9. Whether the event is being advertised, to include advertising on social media platforms.</li> <li>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.</li> <li>11. List of requested items or equipment to be used during the event.</li> </ol> <p>C. 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:</p> <ol style="list-style-type: none"> <li>1. The Applicant submits a</li> </ol>		
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	<p>completed special event permit application in accordance with this regulation.</p> <ol style="list-style-type: none"> <li>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.</li> <li>3. The event has not been planned for more than six (6) days in advance of the proposed event.</li> <li>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.</li> </ol> <p>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.</p> <p>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.</p> <p>F. The Director of Engineering and Buildings shall deny a request for a permit if:</p> <ol style="list-style-type: none"> <li>1 Another application has been previously submitted with a request for the same date and time;</li> <li>2 Upon advisement from law enforcement, the Director</li> </ol>		
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	<p>determines that approving the permit and allowing the event to occur would pose a significant threat to public safety;</p> <ol style="list-style-type: none"> <li>3 Any of the conditions are not agreed to by the Applicant;</li> <li>4 The Director concludes that the event could not possibly conform to the conditions prescribed in this regulation;</li> <li>5 Any of the information contained in the application is found to be false or inaccurate; or</li> <li>6 The City of Richmond denies a needed permit.</li> </ol> <p>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.</p> <p>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.</p> <p>I. Authorization for the use of the Monument will be set forth in a letter addressed to the Applicant.</p> <p>J. 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.</p>		
<p>1VAC30-150-50.  Permit holder responsibilities</p>	<p>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 size of the event. If general security is required, it shall be provided by law enforcement personnel licensed by the Commonwealth of Virginia.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. The Applicant agrees to all prohibitions and restrictions identified in this regulation.</li> <li>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.</li> <li>3. The Applicant agrees to leave the</li> </ol>		<p>The intent is to clearly set out the responsibilities of permittees and ensure the permit holder is aware of all responsibilities regarding the permit.</p>



	<p>premises clean and orderly. The Applicant will provide a waste management plan and a point-of-contact for the plan.</p> <ol style="list-style-type: none"> <li>4. The Applicant and participants agree to obey all state and local laws and ordinances.</li> <li>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.</li> <li>6. Unlawful activities will be handled by law enforcement, to include the Division of Capitol Police.</li> <li>7. The Applicant shall be required to notify the Director of the Division of Engineering and Buildings of any changes to the information contained in the permit application as soon as practicable.</li> </ol> <p>C. Violations of this chapter shall result in immediate revocation of the permit by the Director of the Division of Engineering and Buildings 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.</p>		
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**Alternatives**

In reviewing the Lee Monument regulation, the Task Force considered numerous alternatives throughout its consideration of this regulation. The Task Force considered whether the Lee Monument should be open to the public at all, as one alternative, since it has not historically been open to the public and poses significant public safety risks for anyone accessing the Lee Monument. It was decided, however, that a comprehensive permitting regime would be the least restrictive mechanism to allow some continued public use of the Lee Monument while limiting threats to public safety. Much research and consideration was given to all aspects of the regulation, and the rules contained herein represent the balance the Task Force believed best. For instance, rather than banning firearms entirely at the Lee Monument, the regulations only prohibit firearms when there is an assembly of over the 10 person limit. While other alternatives were considered for each part of the regulation, consideration of First Amendment strictures on permitting regulations guided the decision-making, in consultation with public safety professionals from across the Commonwealth.

**Public participation**

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Rhonda Bishton, Department of General Services, 1100 Bank Street, Suite 420, Richmond VA 23219; email: [Rhonda.Bishton@dgs.virginia.gov](mailto:Rhonda.Bishton@dgs.virginia.gov); fax: 804/371-8305. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action.

In addition to public comments on this regulation, DGS invites comments for consideration in drafting any changes to the Capitol Square Regulations (1 VAC 30-100-10, *et seq.*). If DGS decides to propose any changes, in considering the model permitting program outlined by the Task Force, then it will likely bifurcate its regulatory process in order to consider separately specific changes to the Capitol Square regulations.

**Family impact**

None

**Periodic review/small business impact review announcement**

N/A