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Final Regulation Agency Background Document

Agency name	Department of General Services
Virginia Administrative Code (VAC) Chapter citation(s)	1 VAC 30-100
VAC Chapter title(s)	Regulation for Use of Capitol Square
Action title	Revise Existing Regulation
Date this document prepared	October 29, 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

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" means the historic grounds and structures surrounding the Virginia Capitol that are bound by a decorative iron fence designed by Sabbaton in 1818.
- 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 of holder of the Permit.

Statement of Final Agency Action

The Director of the Department of General Services approved this revision to the existing regulation, Regulation for Use of Capitol Square (1VAC 30- 100) on August 16, 2021.

Mandate and Impetus

There are no new mandates or new information since the proposed stage.

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 and visitors to Capitol Square, and protecting the buildings and grounds at historic Capitol Square.

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 current regulation for use of Capitol Square is extremely outdated and not inclusive of all present-day situations and circumstances.

Issues

The primary advantage for the public, the agency and other constituents that utilize or wish to utilize Capitol Square is the adoption of these changes will set out clear guidelines for all and provide additional detail that currently is lacking.

Requirements More Restrictive than Federal

No requirements are more restrictive than federal.

Agencies, Localities, and Other Entities Particularly Affected

Other State Agencies Particularly Affected
Division of Capitol Police

Localities Particularly Affected
None

Other Entities Particularly Affected
None

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
96 commenters	Commented on Bank Street bicycle access and to keep it open	The comments address areas beyond the scope of the regulation and the agency has no response.
2 commenter2	Please maintain public access to Capitol Square for pedestrians and cyclists.	The regulation does not prohibit these activities, the agency has no response
1 commenter	Please revised the proposal to allow for 24/7 access to pedestrian and active transportation through and near Capitol Square.	Capitol Square is not open to the public 24/7 and has not been since at least 1970.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
No changes made				

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements

<p>1VAC30-100-10 Regulations for Capitol Square</p>			<p>1VAC30-100-10 was repealed</p>
	<p>1VAC30-100-15 Purpose</p>	<p>A. 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. of the 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.</p> <p>B. 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.</p>	<p>This section addresses the need to amend the regulation.</p>
	<p>1VAC30-100-20 Definitions</p>	<p>A. "Capitol Police" means the Division of Capitol Police.</p> <p>B. "Capitol Square" means the historic grounds and structures surrounding the Virginia Capitol that are bound by a decorative iron fence designed by Sabbaton in 1818.</p> <p>C. "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</p>	<p>The definitions in this section were not previously set out in the regulation.</p>

		<p>indirectly, is to derive or realize a present or future financial gain for the individual(s) or business entity or entities.</p> <p>D. "Department" means the Department of General Services.</p> <p>E. "Director" means the Director of the Department.</p> <p>F. "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.</p> <p>G. "Government Function" means a function sponsored by a Commonwealth of Virginia government entity in support of the agency's mission.</p> <p>H. "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.</p> <p>I. "Permit Area" means the area adjacent to the Bell Tower where the Event's speaker(s) and/or programmed activities must be located.</p> <p>J. "Permittee" means the individual, group, or entity identified in the Permit as the holder of the Permit.</p>	
	<p>1VAC30-100-30 General Regulation Requirements</p>	<p>A. All Events scheduled on Capitol Square must be permitted through the Department. An "Application for Use of Capitol Square" form must be completed and the application and the "Rules of Capitol Square" must be signed by the individual who will be the Permittee. For Government Functions on Capitol Square, the government entity must complete and submit an "Agency Application</p>	<p>This section outlines clear requirements for permitted events. Obsolete requirements were removed and new requirements added to ensure free speech and public safety.</p>

		<p>for Use of Capitol Square" to the Department for approval. The application for each type of event can be found at dgs.virginia.gov.</p> <p>B. All activity must adhere to the Department's Rules for Use of Capitol Square. These rules can be found on the Department's website at dgs.virginia.gov.</p> <p>C. Capitol Square shall be closed to the public from 9 p.m. until 6 a.m. daily, except for the conduct of official Commonwealth business. Capitol Square may be closed at any time for inclement weather or other necessity, or to protect the public from health or safety hazards, in the determination of the Governor or Department. The Division of Capitol Police may close Capitol Square temporarily for law-enforcement purposes. The Chief of Police shall immediately notify the Director or his or her designee if the Capitol Police close Capitol Square.</p> <p>D. Capitol Square is primarily for the operation and function of government and nothing will be permitted that would interfere with those functions.</p> <p>E. No activities will be permitted that will harm or destroy the natural, horticultural, or architectural beauty, or that will harm the physical condition or safety of Capitol Square or structures on Capitol Square, including surrounding historic fence.</p> <p>F. No activities will be permitted that violate Virginia or federal law or threaten the health, safety, or welfare of persons on Capitol Square.</p> <p>G. Commercial activities are not permitted on Capitol Square.</p> <p>H. An Event is not considered approved until the Department has issued a permit.</p>	
	<p>IVAC30-100-40 Permittee Responsibilities</p>	<p>A. The Permittee and alternate contact for the Permit shall be at least 18 years of age.</p> <p>B. The Permittee shall indemnify the Commonwealth of Virginia</p>	<p>This section sets out clear direction for permittees for applying and using Capitol Square to ensure all who visit and work on the square along</p>

		<p>against any loss or damage that may occur in connection with the Permittee's use of and presence at the property.</p> <p>C. A Permittee shall be required to notify the Department of any changes to the information contained in the Permit application as soon as practicable.</p> <p>D. A Permittee should identify an alternate contact in the Application for Use of Capitol Square, and either the Permittee or alternate contact person must be present during the entire activity, including setup and cleanup. The Permit and any authorizations will be suspended if these requirements are not met.</p> <p>E. A Permittee must work directly with the designated Department coordinator and Capitol Police regarding setup, access, security, logistics and all other aspects of the planned Event. An in-person pre-meeting may be required by the Department to discuss the details of the requested Event.</p> <p>F. A Permittee is responsible for returning the areas used in conducting its Event to their original condition, including removal of any materials and debris connected to the Event. Any costs incurred by the Department to restore the area to its original condition will be charged to the Permittee.</p> <p>G. A Permittee shall comply with all federal and Virginia laws, and the Department's Rules for Use of Capitol Square.</p> <p>H. The Permittee agrees to notify law enforcement if any unlawful activities occur during the permitted Event. For emergencies, the Permittee shall call 911 and the Capitol Police emergency number at (804) 786-4357. For non-emergencies, the Permittee shall call (804) 786-2568.</p>	<p>with permittees have access and use when requested.</p>
	<p>1VAC30-100-50 Permit Process</p>	<p>A. The Governor will have priority over use of Capitol Square.</p> <p>B. The Department may not issue permits for any Event in Capitol</p>	<p>As above this section adds clarity to processes as well as ensures that permittees requesting events understand</p>

		<p>Square coinciding or conflicting with inaugural events, including activities associated with inauguration.</p> <p>C. Requests generally will be considered on a first-come, first-served basis.</p> <p>D. Capitol Square is available for permitted Events from sunrise to sunset daily, subject to the restrictions of Section III above.</p> <p>E. Permitted Events may last a maximum of one hour, with an additional 30 minutes to set up the Event and 30 minutes to take down.</p> <p>F. No more than one Event will be scheduled for the same time on the same day. This includes permitted setup and takedown time.</p> <p>G. Applications for Permits shall be made in writing on an "Application for Use of Capitol Square" and submitted to the Department at least six (6) days prior to the planned Event when the expected attendance is less than 1,000 individuals. Application for Events when expected attendance is more than 1,000 individuals shall be submitted 45 days in advance, except as specified in subsection I below.</p> <p>H. Applications for Events must contain, at a minimum, the following information:</p> <ol style="list-style-type: none"> 1. Type and purpose of Event, meeting, or function. 2. Name, address, telephone number, and email address of Permittee. 3. Name, address, telephone number, and email address of alternate contact. 4. Name of organization, date of origin, status (corporation, unincorporated association, partnership, nonprofit corporation, etc.) and name, address, telephone number, and email address of registered agent, if the Permittee is a corporation or other business entity. 5. Approximate number of people who will attend the Event. 	<p>the circumstances when events can and cannot occur on Capitol Square. This section also provides for information to be provided by permittees to help the Department manage events.</p>
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		<p>and may not be assigned to a third party.</p> <p>N. Events should not be announced, promoted, or advertised until the applicant receives a Permit.</p> <p>O. Permit applications, issued permits, and supporting documentation are subject to release under Virginia's Freedom of Information Act, 2.2-3700, et seq. of the Code of Virginia.</p> <p>P. All permitted activities on Capitol Square must strictly adhere to the times as scheduled to ensure that the activities will not conflict with other scheduled and permitted activities.</p> <p>Q. The Department reserves the right to limit the use of Capitol Square, at any time, due to unforeseen operational circumstances, including but not limited to emergency maintenance or urgent public health or security concerns. Every reasonable effort will be made to alleviate the effects of any such limitation.</p> <p>R. The Department may cancel a scheduled Event if the location is required for an official government function. In such cases, the Department will notify the contact person as soon as possible, and every reasonable effort will be made to allow for rescheduling the Event.</p>	
	<p>1VAC30-100-60 Rules for Permitted Events</p>	<p>A. All activities shall be performed in compliance with the Department's Rules for Use of Capitol Square, as well as any federal or Virginia laws. Unlawful activity is prohibited.</p> <p>B. At no time shall any entrance or exit of any building be obstructed in such a way as to impede free access to or from the building by its occupants or the public.</p> <p>C. No banners, flags, posters, or other objects shall be placed on or affixed to Capitol Square grounds or structures.</p> <p>D. All Event items and materials are to be removed upon conclusion of the Event. All areas must be</p>	<p>This section adds information on event requirements that were previously not set out and establishes consistent rules for all events.</p>

		<p>returned to their pre-Event condition.</p> <p>E. Props, equipment, and other moveable materials that do not require power to be used in connection with the Event are allowed provided that prior notice is given on the application and the size, location, and structure of the items conforms to the reasonable conditions, limitations, and restrictions provided for by the Department. The Permittee shall bear all risk related to the use of any such props, equipment, and other moveable materials.</p> <p>F. The Department reserves the right at all times to immediately remove or cause to be removed any and all items of display it determines would damage government property, inhibit movement, or raise safety issues of the government property, attendees, or the public.</p> <p>G. Items/props used for the Event may not impede normal business operations or create safety concerns.</p> <p>H. Due to the presence of underground utilities, irrigation, and other lines, nothing shall be driven into the ground or placed on the grounds anywhere without the location and method of placement approved in advance and in writing by the Department.</p> <p>I. Temporary structures of any kind may not be erected on Capitol Square. This includes tents, cabanas, canopies, stages, and all other types of covered or enclosed structures, as well as tables, stages, projectors, screens, or other structures.</p> <p>J. The Director reserves the right to require that special facilities, such as portable toilet facilities, be provided at the Permittee's expense.</p> <p>K. Sound amplification is permitted; however, the sound must not disrupt the orderly business of government bodies and agencies located on Capitol Square or</p>	
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		<p>unreasonably disturb other persons who are visiting Capitol Square. For Events with fewer than 1,000 attendees, the Department, at Permittee's request, will provide a microphone, podium, and speaker for use during the Event. All other electric sound amplification equipment is prohibited for Events with fewer than 1,000 attendees. For Events with more than 1,000 attendees, the Department will consider the use of amplification equipment provided by the Permittee. If the Department approves use of amplification equipment provided by the Permittee, the Department will supply power. The Permittee shall bear all risk related to the use of any such amplification equipment provided by the Permittee. L. Use of sound systems will be discontinued after the permitted Event time limit expires. M. If the Permittee desires to use available Department-provided sound amplification equipment, the equipment will be set up by Department staff and this setup will not be moved or altered by the Permittee or other Event attendees without the express permission of the Department. N. Activities that create loud or unusual noise, or are disruptive to the performance of official duties or delivery of services may be denied, ceased, or interrupted by the Department or Capitol Police. O. Permittees shall not offer any item for sale, or solicit money or items of value, or display any form of advertising on Capitol Square. P. Marches may be permitted into and out of Capitol Square provided the march does not disrupt the orderly business of government or impede the access by others visiting the grounds or buildings therein.</p>	
	<p>1VAC30-100-70 Denials/ Revocations</p>	<p>A. The Department may deny a request for a Permit or revoke a Permit (before or during an Event) upon determination of the Director,</p>	<p>This section outlines avenues for the Department to deny/revoke permits that was not clearly set out previously.</p>

		<p>or his or her designees, that any of the following conditions has occurred:</p> <ol style="list-style-type: none"> 1. A completed application for an Event at the same time already has been received from another applicant, and a Permit has been or will be granted for the Event. In such a case, an alternate date or time, if available, will be proposed. 2. Incomplete information, false statement(s), or misrepresentation have been made on the Permit application. 3. Fraud was committed or misrepresentation made in obtaining the Permit. 4. The Permittee or the alternate contact persons are not present for the duration of the Event, including during setup and take down times. 5. The conduct of either the Permittee or persons attending the Event involves a violation of the Permit, this regulation, Virginia or federal law, or the Department's Rules for Use of Capitol Square. 6. The number of persons engaged in the Event exceeds the number of permitted attendees or cannot be safely accommodated. 7. The Permittee twice (i) violated the terms of prior Permits issued to the Permittee or (ii) violated applicable law while applying for or using a prior Permit. In such instances, the Permittee is banned from obtaining a Permit for eighteen (18) months from the date of the most recent violation. 8. The Governor's Office will be using all or part of the Permit Area during all or part of the requested time. 9. The Senate of Virginia or the Virginia House of Delegates will be using all or part of the Permit Area during all or part of the requested time for a government function. 10. The Permit applicant has not certified that the applicant will comply with this regulation or applicable law. 11. The Permit application is not submitted within the required 	
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		<p>timeframes of six (6) or 45 days depending on the number of planned attendees, or the application submitted does not justify an exception to the time requirements.</p> <p>12. The Permit application was submitted more than 180 days in advance of the proposed Event.</p> <p>13. The requested use would cause a clear and present danger to the orderly processes of Commonwealth of Virginia government or to the use of Capitol Square due to:</p> <ul style="list-style-type: none"> i. Advocacy of the imminent violent overthrow of government of the United States or the government of the Commonwealth of Virginia or any political subdivision thereof; ii. The willful damage or destruction, or seizure and subversion of public property; iii. The forcible disruption or impairment of or interference with the regularly scheduled functions of the Commonwealth of Virginia; iv. Causing harm to or violating the lawful rights of any person; or v. Other disorders of a violent nature. <p>B .Prior to commencement of the permitted Event, the Department finds it necessary to revoke the Permit due to previously unknown circumstances.</p> <p>C. During an Event, the Capitol Police may require discontinuation of the Event if activity presents a clear and present danger to public safety, good order or health, or for any violation of applicable statutes, regulations, rules, or policies.</p>	
	<p>1VAC30-100-80 Appeals</p>	<p>A. This section and the appeal procedures set forth herein shall apply only in cases when a timely and complete Permit application was filed in accordance with this regulation and the Permit was denied. No appeal shall be available if a timely and complete Permit application was not filed.</p> <p>B. If an application is denied, the applicant will be informed in writing of the reason(s) for the denial, and</p>	<p>This section outlines opportunities permittees have to appeal decisions by the Department that were not previously set out.</p>

		<p>will be advised that the denial may be appealed by written request to the Director submitted within five (5) business days of receipt of notice of such denial. The Director may reverse, affirm, or modify the original determination. The Director's written determination on the appeal shall be provided no later than 24 hours prior to the requested Event time, provided it is received by the Department at least 48 hours prior to the requested time.</p> <p>C. The appeal shall include the name, address, and contact information of the applicant; a concise statement of the reason the appeal should be granted; and a description of the Event for which the Permit is sought.</p>	
	<p>1VAC30-100-90 Violations</p>	<p>A. Violations of this regulation or of any other provision of Virginia or federal law shall result in the immediate revocation of the Permit by the Department or discontinuation of the Event by the Department or Capitol Police. In the event such revocation or discontinuation occurs, all participants shall immediately leave Capitol Square. Remaining in Capitol Square after proper notice that the Permit has been revoked or the Event discontinued shall be considered trespass in violation of § 18.2-119 of the Code of Virginia.</p>	<p>This section states the actions of the Department for any violation or unlawful activity at permitted events.</p>
	<p>1VAC30-100-9998 Forms</p>	<p>Application for Special Event Permitting https://dgs.virginia.gov/division-of-real-estate-and-facilities-management/deb-notices/special-event-permitting2/bell-tower2/ https://dgs.virginia.gov/division-of-real-estate-and-facilities-management/deb-notices/special-event-permitting2/agency-application-for-use-of-capitol-square</p>	<p>Adding forms link applicable to this chapter</p>

