

RESOLUTION NO. 20171005-031

WHEREAS, the institution of American slavery caused and perpetuated brutal physical, mental, and emotional abuse and impeded opportunities for equality in all aspects of life for freed slaves from Africa and their descendants; and

WHEREAS, the Confederacy and its military fought to preserve slavery and deny equality at the cost of our American Union; and

WHEREAS, even after the slow and hard-won gains made from the Civil Rights Movement, Americans of African descent are still denied equality by a society that discriminates against them; and

WHEREAS, memorials and monuments of the Confederacy, far removed from Civil War battlefields, often have little to do with history but are public announcements of racial bigotry erected in the early- to mid-twentieth century during the Civil Rights Movement; and

WHEREAS, monuments of the Confederacy along with streets, schools, and other public places named for prominent members of the Confederacy have continued to be glaring symbols of some's refusal to allow full and equal participation in society by Americans of African ancestry; and

WHEREAS, these monuments and other commemorations of the Confederacy were made for the explicit purpose of distorting the violent and oppressive history of the Confederacy and to preserve the cause of white supremacy as the law of the land; and

WHEREAS, it is deeply unjust to require Americans of African descent in our community to continuously support the City's upkeep of these hateful symbols with their tax dollars; and

WHEREAS, the continued public display of monuments and commemorations of the Confederacy is antithetical to the stated public policy of the City of Austin to be a welcoming city to people of all backgrounds; and

WHEREAS, the continued public display of monuments and commemorations of the Confederacy is harmful to the peace and tranquility of the City of Austin; and

WHEREAS, the people of Austin have observed the brave example of the people of New Orleans, Baltimore, Dallas, and Charlottesville in removing monuments of the Confederacy; and

WHEREAS, the time has come for a robust public discussion of the history of the monuments and commemorations, and the policy of the City of Austin regarding the standards for public commemoration of any person or event; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City of Austin strongly condemns the displaying of monuments and memorials of the Confederacy and the naming of public places for prominent members of the Confederacy.

BE IT FURTHER RESOLVED:

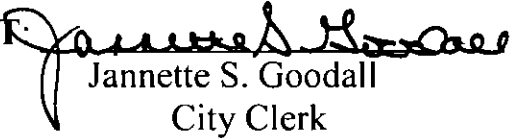
- A. City Council directs the City Manager to identify and develop recommendations for accomplishing removal or renaming of City-owned monuments and memorials of the Confederacy located on City-owned property, including, and without limitation, streets and buildings, and encourages the City Manager to consult with the Equity Office and other City departments as needed to develop the findings and recommendations. City Council directs the City Manager to present these findings and recommendations in a report to City Council.
- B. The scope of this report shall include:
 - (1) Identifying all City-owned monuments and memorials of the Confederacy located on City-owned property, including, and without limitation, streets and buildings located on City of Austin property;

- (2) Producing an analysis of the cost of removal, replacement, or renaming of these icons, monuments, and memorials of the Confederacy; and
- (3) Making recommendations for disposition of artifacts of historic value, including preservation, storage, and maintenance for educational purposes.

BE IT FURTHER RESOLVED:

The City Manager is directed to submit the report to Council within 90 days.

ADOPTED: October 5, 2017

ATTEST: 
Jannette S. Goodall
City Clerk

Confederate Monuments Resoulution - Assets Slated for Initial Review

Name of Asset	Type of Asset	Notes/Historical Context	Civil War	Liability	Priority	Department	Recommendation	Comments
Robert E. Lee Road	Street Name	Has been refereneed by this name since the 1920s; NAACP chairman and Reverend Robert E. Lee was active in 1950s, so likely named after the Civil War general; he traveled along a route departing from Barton Springs in Austin after being stationed in the city following the annexation of Texas to the Union. This road was listed as "River Road" in city directories up until 1939, but it had fallen out of use in the 1920s. A dispute arose over the future of the road that required mitigation by the Austin City Council, and Andrew Zilker, an Austin political figure and one-time private owner of Barton Springs, demanded the road be reopened citing its historical significance (in relation to Robert E. Lee) Council is eurrently considering renaming the street after Azie-Taylor Morton.	Yes	City	High	Austin-Transportation-Department	Rename	District 5; Street already renamed
Jeff Davis Avenue	Street Name	Davis was the President of the Confederacy; a statue of him was removed from UT's campus in 2015.	Yes	City	High	Austin-Transportation-Department	Rename	District 7; Street already renamed
Austin C.S.A.	Historical Marker	Texas Historical Commission marker, located at intersection of Cesar Chavez and Congress Avenue on west side of Congress, dedicated 1965; one of 3 markers that incorporate the Confederate States of America in the marking title	Yes	City/State	High	PARD	Removal	District 9
Fort MacGruder C.S.A.	Historical Marker	Texas Historical Commission marker; 3900 S. Congress Ave, reported missing	Yes	City/State	High	PARD	Missing	District 3

Name of Asset	Type of Asset	Notes/Historical Context	Civil War	Liability	Priority	Department	Recommendation	Comments
Texas Newspapers C.S.A.	Historical Marker	Texas Historical Commission marker; 718 W. 5th St. These markers are among more than 100 C.S.A. others across the state that are representative of the Texas Civil War Centennial era of 1961-65 during which the State of Texas convened the Texas Civil War Centennial Commission and the Texas State Historical Survey Committee. (text taken from PARD memo)	Yes	City/State	High	PARD	Removal	District 9
Metz Recreation Center/Park and Pool	Park Name	Hamilton M. Metz: Captain Co. E, 33rd Texas Cavalry (Confederate Vet), also longtime school board member 1903-1915	Yes	City	High	PARD	Interpretive Signage/Educational Programming	District 3
Jefferson Davis	Highway Marker	Davis was the President of the Confederacy; a statue of him was removed from UT's campus in 2015. Located 6812 South Congress Avenue	Yes	State/City	High	Austin Transportation	Removal	District 2
Littlefield Street	Street Name	George Littlefield: Confederate Army Major - Terry's Texas Rangers; slave owner; UT's Littlefield Fountain was established as a war memorial. Commissioned statues of Confederate Generals, including Robert E. Lee, at UT, which was taken down in 2017; he is the namesake of the Austin chapter of Sons of Confederate Veterans (Camp 59)	Yes	City	High	Austin Transportation Department	Rename	District 9
Tom Green Street	Street Name	General in Civil War, died in battle, first company raised in Austin and one of the first organized in the State was named after him (1861)	Yes	City	High	Austin Transportation Department	Rename	District 9
Sneed Cove	Street Name	Sebron Sneed: owned 21 slaves; Confederate provost marshal and volunteered his home also called "Comal Bluff" as a Confederate recruiting station.	Yes	City	High	Austin Transportation Department	Rename	District 2
Reagan Hill Dr.	Street Name	in same area as Reagan H.S., so presumably named after John H. Reagan.	Yes	City	High	Austin Transportation Department	Rename	District 4
Dixie Drive	Street Name	De facto/unofficial anthem of the Confederate States of America; Confederate Pres. Jeff Davis had it played at his inauguration	Yes	City	High	Austin Transportation	Rename	District 2

Name of Asset	Type of Asset	Notes/Historical Context	Civil War	Liability	Priority	Department	Recommendation	Comments
Confederate Avenue	Street Name	Located within Clarksville, historically Black neighborhood; didn't show up in City Directories until 1924	Yes	City	High	Austin Transportation Department	Rename	District 9
Plantation Road	Street Name	Recalls 19th century when plantation landowners owned black slaves	Yes	City	High	Austin Transportation Department	Rename	District 5/borders District 8, where Thomas Kincheon St is (former slave, namesake of Kincheonville)

Confederate Monuments Resolution - Assets for Secondary Review

Asset Name	Asset Type	Notes/Context	Civil War	Liability	Priority	Department	Comments
Pease Park	Park Name	Elisha M. Pease: one-time Governor of Texas, Unionist, but was a slave owner. Pease's plantation in Old West Austin and nearby slave quarters resided in Clarksville. Dave Pease and S.L. Whitley were former slaves of the family.	Yes	City	Medium	PARD	District 9
Bouldin Creek	Neighborhood Name	Colonel James Bouldin: big land owner and slave owner; after emancipation, freedmen settled in what is now Brackenridge neighborhood		City	Medium	Watershed	
Waller Creek	Soon to be Park Name	Edwin Waller: Chosen by Lamar to design downtown grid; first Mayor of Austin; owned 17 slaves.		City	Medium	PARD/Watershed	
Barton Springs (Pool, Bathhouse)	Other	William Barton: "Daniel Boone of Texas"; slave owner; settled on Comanche land in 1830s near now Barton Springs - fought Comanches		City	Medium	PARD	
Sons of Confederate Veterans Memorial	Memorial	Major George W. Littlefield Camp #59 10' granite obelisk located in the northeastern section of Oakwood Cemetery, near the intersection of Comal St. and MLK, Jr. Blvd.	Yes	Private/City	Medium	PARD	District 1
Major William Martin "Buck" Walton	Historical Marker	Texas Historical Commission marker in Oakwood Cemetery, dedicated 1999. Major in Confederate Army; owned slaves; was a lawyer who practiced with Sneed and A.J. Hamilton, later governor of Texas; Walton building – 2nd Travis County Courthouse	Yes	City/State	Medium	PARD	District 1
Johann Jacob Groos	Historical Marker	Texas Historical Commission marker in Oakwood Cemetery, dedicated 1974; was Texas Land Commissioner for 4 years; served in Confederacy	Yes	City/State	Medium	PARD	District 1
Andrew Jackson Hamilton	Historical Marker	Texas Historical Commission marker in Oakwood Cemetery; slave owner; he was appointed acting state Attorney General in 1849, and in 1850 was elected to a term in the State House of Representatives. Hamilton was elected to the United States House of Representative as an Independent Democrat in 1858, representing the Western District of Texas. He did not seek re-election in 1860 and later moved to New Orleans, Louisiana. During the Civil War, he was commissioned a Brigadier General of Volunteers and in 1862 was appointed Military Governor of Texas, with headquarters at federally-occupied New Orleans and Brownsville. In June 1865 Hamilton was appointed by President Andrew Johnson as the 11th Governor of Texas, a provisional post in the early Reconstruction period; he served for 14 months. He was a Texas Supreme Court justice in 1866, and a delegate to the Loyalist Convention in Philadelphia in 1866. After the war, he came to oppose Black suffrage and became one of Texas' leading Republicans, but he lost the seat for Governor of Texas in 1869.	Yes	City/State	Medium	PARD	District 1

Asset Name	Asset Type	Notes/Context	Civil War	Liability	Priority	Department	Comments
Bouldin Avenue	Street Name	Colonel James Bouldin: one of South Austin's pioneer settlers and slave owner; after emancipation, freedmen settled in what is now Brackenridge neighborhood		City	Medium	Austin Transportation Department	segregated neighborhood, could not be a person of color to live there
Pease Road	Street Name	Elisha M. Pease: one-time Governor of Texas, Unionist, but was a slave owner. Pease's plantation in Old West Austin and nearby slave quarters resided in Clarksville. Dave Pease and S.L. Whitley were former slaves of the family.	Yes	City	Medium	Austin Transportation Department	
Duval Street	Street Name	named for Captain John Crittenden Duval or Captain Burr H. Duval?; Texas Revolution (both served) + Confederate soldier & Texas Ranger (John C.)	Yes	City	Medium	Austin Transportation Department	
Burnet Road & Burnet Lane	Street Name	David G. Burnet: Served as VP under Lamar and Interim President of the new Republic of Texas (1839 – 1841); Slave-owner		City	Medium	Austin Transportation Department	
Burleson Road	Street Name	Gen. Edward Burleson: slaughtered Native Americans (Cherokees and Comanches); known as "Old Indian Fighter," VP of Republic of Texas; commonly known for killing more Mexicans and Indians than any other Texan.		City	Medium	Austin Transportation Department	
Lamar Blvd	Street Name	Mirabeau Lamar: President of the Republic of Texas, Occupied/Colonized Native land that is now Austin. Slave owner, Native American removal; In 1840, he signed "An Act Concerning Free Persons of Color," which gave all free blacks then living in Texas two years to get out or face being sold into slavery, and mandating that any free black entering Texas would be enslaved for one year. At the end of that year, if that free person of color could not post bond, they became a slave for life. Convinced that Texas statehood was necessary to protect slavery, lobbied for annexation.		City	Medium	Austin Transportation Department	
Hancock Drive & Hancock Rec Center	Street Name	The street named for John Hancock in 1938: prominent judge and Austinite in Civil War era, Unionist but owned at least 21 slaves and supported U.S. Grants' policy for placing Native Americans on reservations. Emancipated slaves, Rubin and Elizabeth Hancock, bought land and established a farm in the area that is now Loop 1 and Parmer Lane. Rec Center is said to be named after Lewis (George's son) - Austin County Club founder, "father of golf," banker, mayor (1895-1897) and segregationist (sold tracts of land in Aldridge Place with racial deed restrictions); neighborhood said to be named after Lewis Jr.	Yes	City	Medium	Austin Transportation Department	

Asset Name	Asset Type	Notes/Context	Civil War	Liability	Priority	Department	Comments
Stephen F. Austin Drive, Austin city name, & Rec Center	Street Name	Fought to defend slavery in spite of Mexico's effort to ban it; believed slave labor indispensable for Texas to flourish in its production of sugar and cotton; believed that if slaves were emancipated they would turn into "vagabonds, a nuisance and a menace." Wanted slaveowners to be compensated if their slaves were emancipated. (From Eugene Barker's The Life of Stephen F. Austin, 1926)		City	Medium	Austin Transportation Department	
Waller Street	Street Name	Edwin Waller: Chosen by Lamar to design downtown grid; first Mayor of Austin; owned 17 slaves.		City	Medium	Austin Transportation Department	
William Barton Dr. & all associated Barton names: Barton Blvd, Barton Hills, Barton Parkway, Barton Point Circle, Barton Point Drive, Barton Skyway, Barton View Dr, Barton Village Circle, Barton's Bluff Ln	Street Name	"Daniel Boone of Texas"; slave owner; settled on Comanche land in 1830s near now Barton Springs - fought Comanches		City	Medium	Austin Transportation Department	
Oliphant Street	Street Name	William James Oliphant: soldier in Civil War; studied photography with Alexander Gardner, major photographer of the Civil War; United Daughters of the Confederacy Austin chapter is named after him.	Yes	City	Medium	Austin Transportation Department	
Lanier Dr.	Street Name	Named after Sidney Lanier?	Yes	City	Medium	Austin Transportation Department	
Mirabeau Street	Street Name	Named after Lamar?		City	Medium	Austin Transportation Department	
Fort Sumter Circle	Street Name	Charleston, South Carolina: first shots of the Civil War, fired by Confederacy	Yes	City	Medium	Austin Transportation Department	
Fort Sumter Road	Street Name	Charleston, South Carolina: first shots of the Civil War, fired by Confederacy	Yes	City	Medium	Austin Transportation Department	

CHAPTER 14-1. - DEDICATION OF OR NAMING A PUBLIC FACILITY OR PROPERTY.

ARTICLE 1. - GENERAL PROVISIONS.

§ 14-1-1 - DIRECTOR DEFINED.

In this article, "director" means the director of the Watershed Protection and Development Review Department.

Source: Ord. 031204-12; Ord. 031211-11.

§ 14-1-2 - GENERAL REQUIREMENTS.

- (A) A person may voluntarily dedicate property or an easement to the City in accordance with this article.
- (B) The city manager may accept property dedicated for a limited use or in fee simple as required by the intended use. The city manager may not accept a dedication containing a restriction that effectively reduces public use of the dedicated property.

Source: 1992 Code Section 15-7-1; Ord. 031204-12; Ord. 031211-11.

§ 14-1-3 - DEDICATION LIMITED TO USE FOR EASEMENT.

The city manager may accept an easement dedicated by plat for:

- (1) right-of-way for street or alley;
- (2) utility use;
- (3) drainage use, including surface water, enclosed storm sewer, or culvert;
- (4) access for public use or service vehicle and equipment use;
- (5) recreational use, including a trail;
- (6) conservation;
- (7) franchise cable communication use, including voice, data, or video; or
- (8) other special use or purpose.

Source: 1992 Code Section 15-7-2; Ord. 031204-12; Ord. 031211-11.

ARTICLE 2. - DEDICATION AND ACCEPTANCE OF PROPERTY BY PLAT.

§ 14-1-11 - PROCEDURE FOR DEDICATION BY PLAT.

- (A) A person must use a statement substantially identical to the language in Subsection (B) if a dedication to the City by plat is for a limited use and does not include the fee title to the property. To dedicate the fee title to property to the City, a person must execute a separate instrument under Article 3 (*Conveyance and Acceptance of Property by Deed*).
- (B) A person dedicating property to the City by plat shall include a statement on the plat approved by the city manager.

- (C) The city manager may not accept a dedication by plat that includes or is subject to a restriction containing a reversionary clause or a clause that imposes liability on the City for activity in a dedicated area.
- (D) A person may not include the words "park" or "public park" on a plat unless a plat note:
 - (1) states that the park easement rights are reserved to the developer or its assigns, or are granted to:
 - (a) the City;
 - (b) another public entity, including a municipal utility district; or
 - (c) a homeowners' association; and
 - (2) identifies the entity responsible for maintenance of the park easement.
- (E) A person may not identify the City as the entity responsible for maintenance of a park easement dedicated to the City unless the director of the Parks and Recreation Department agrees in writing to accept the condition and signs the plat.

Source: 1992 Code Section 15-7-3; Ord. 031204-12; Ord. 031211-11.

§ 14-1-12 - COORDINATION AND ACCEPTANCE.

- (A) The director shall coordinate acceptance of a proposed dedication by plat with other affected City departments.
- (B) The director must obtain:
 - (1) the approval of the director of the Public Works Department before a street dedication may be accepted; and
 - (2) the approval of the director of the Parks and Recreation Department before a parkland dedication may be accepted.
- (C) After approval of a plat, the director may accept a dedication by issuing a certificate of acceptance.

Source: 1992 Code Section 15-7-4; Ord. 031204-12; Ord. 031211-11.

ARTICLE 3. - CONVEYANCE AND ACCEPTANCE OF PROPERTY BY DEED.

§ 14-1-21 - DEED REQUIRED UNDER CERTAIN CIRCUMSTANCES.

- (A) A person may convey an easement or right-of-way to the City by deed if a subdivision or re-subdivision of the underlying property is not required.
- (B) A person must convey fee simple title to property to the City by deed.

Source: 1992 Code Section 15-7-15; Ord. 031204-12; Ord. 031211-11.

§ 14-1-22 - PROCEDURE FOR CONVEYANCE OF EASEMENT OR RIGHT-OF-WAY BY DEED.

- (A) A person offering an easement or right-of-way dedication by deed to the City must submit the following documents to the director:
 - (1) a letter including:
 - (a) the reason for the proposed easement;

- (b) the name, address, and telephone number of the person offering the dedication;
 - (c) the type of easement or right-of-way offered;
 - (d) the location of the easement or right-of-way; and
 - (e) if applicable, a City file number, including a subdivision, zoning case, or development permit number; and
- (2) the original and one copy of:
- (a) an executed deed or other dedication document on a form acceptable to the director;
 - (b) the original field notes, signed, dated, and sealed by a surveyor; and
 - (c) a sketch of the property offered for dedication in a form that is reproducible.
- (B) The director shall send a copy of the offer documents to:
- (1) each affected City department for a recommendation on acceptance; and
 - (2) the director of the Public Works Department to confirm the accuracy of the offer documents.
- (C) If the affected City departments recommend acceptance and the director of the Public Works Department approves the offer documents, the director of the Watershed Protection and Development Review shall:
- (1) obtain additional approvals necessary to accept the dedication, if any; and
 - (2) deliver the original offer documents to the director of the Public Works Department to verify and record the deed.

Source: 1992 Code Section 15-7-16(A); Ord. 031204-12; Ord. 031211-11.

§ 14-1-23 - PROCEDURE FOR CONVEYANCE OF FEE TITLE BY DEED.

- (A) A person who intends to convey a fee title interest in property to the City by deed shall file an offer with the director of the Public Works Department on the form approved by the director of the Public Works Department.
- (B) The director shall send a copy of an offer received under this section to each affected City department. If the directors of the affected departments recommend that the offer be accepted, the director of the Public Works Department shall contact the offeror to coordinate preparation of a deed and property description.
- (C) The director of the Public Works Department shall present an offer that includes a specific use restriction or is likely to cause the City to incur unusual operating or maintenance costs to the advisory board the director determines has jurisdiction over the specified use for a recommendation. If the director cannot identify an advisory board with appropriate jurisdiction, the director shall present the offer to the Planning Commission for a recommendation. The director shall present the offer and the recommendation of the appropriate advisory board or the Planning Commission to the Council for action.

Source: 1992 Code Sections 15-7-16(B)(1), (2), and (4); Ord. 031204-12; Ord. 031211-11.

§ 14-1-24 - APPROVAL AND ACCEPTANCE.

- (A) The director of the Public Works Department may accept fee title dedications on behalf of the City if the conveyance does not contain a building, subsurface condition, or improvement that is likely to cause the City to incur unusual operating or maintenance costs.

- (B) The director of the Public Works Department may accept property conveyed by deed that includes a restriction for park or street use.
- (C) The director of the Public Works Department may refuse to accept property subject to a tax lien for late-paid taxes. The director may not accept or recommend acceptance of property subject to tax liens that exceed 50 percent of the property's fair market value.
- (D) Council approval and acceptance, or rejection is required for a conveyance of property by deed that includes a reversionary clause, a condition or restriction in addition to a dedication for public use, or is subject to the review and recommendation procedure established in Subsection 14-1-23(D) (*Procedure for Conveyance of Fee Title by Deed*). The council shall take action under this subsection by resolution.
- (E) The council approval and acceptance is required for a conveyance that includes a requirement to name the property or facility. Property or a facility accepted under this section must be named in accordance with Article 4 (*Approval of a Name for a Public Facility or Property*).

Source: 1992 Code Sections 15-7-16(B)(3) and 15-7-17; Ord. 031204-12; Ord. 031211-11.

ARTICLE 4. - APPROVAL OF A NAME FOR A PUBLIC FACILITY OR PROPERTY.

§ 14-1-31 - DEFINITIONS.

In this article:

- (1) FACILITY includes a City building, structure, or other facility directly used by the public, excluding a police facility under Section 14-1-35 (*Procedure for Naming a Police Facility*) and a park facility under Section 14-1-36 (*Requirement for Naming or Renaming a Park Facility*).
- (2) DIRECTOR means the director of the Public Works Department.

Source: 1992 Code Section 15-7-18; Ord. 031204-12; Ord. 031211-11; [Ord. No. 20160324-021, Pt. 1, 4-4-16](#).

§ 14-1-32 - NAMING POLICY.

- (A) A feature in a facility may be dedicated to a person to recognize a valuable contribution to the community without naming or renaming the facility in which the feature is located. A plaque recognizing a deserving person may be placed in a facility without naming or renaming the facility in which the plaque is placed.
- (B) A facility may be named for an individual, living or dead, or something other than an individual. A facility may be named for an individual only if the individual has provided creditable service to the community and to the City.
- (C) A facility named for an individual may not be renamed.
- (D) Naming or renaming a facility must follow the procedure set forth in this article. The renaming of a facility must be initiated by the council or the city manager.
- (E) If the city has financed the facility with the proceeds of obligations, the interest on which is excludable from gross income for federal income tax purposes, the city may reject a name to preserve the exemption from federal income taxation of the interest on the proceeds of the obligations.

Source: 1992 Code Section 15-7-19; Ord. 031204-12; Ord. 031211-11; [Ord. No. 20160324-021, Pt. 1, 4-4-16](#).

§ 14-1-33 - PROCEDURE FOR NAMING A FACILITY.

- (A) A person may submit a suggestion for naming a facility or endorse a previously submitted suggestion. A suggestion or endorsement must be submitted to the director as provided by this section. The director may promulgate forms for this purpose.
- (B) A suggestion for naming a facility must include:
 - (1) if the suggestion is an individual's name, a biographical sketch of the individual whose name is suggested, a description of the individual's involvement in the community, and the individual's connection, if any, to the facility or to the activity for which the facility will be used; or
 - (2) if the suggestion is not an individual's name, justification for the suggested name.
- (C) Not later than the date construction of a new facility begins, the director shall notify the council, the city manager, the head of the City department that will operate or maintain the facility, the City advisory board that the director finds to have appropriate jurisdiction, and the City's public information officer that a new facility is to be named.
- (D) Immediately on receipt of notice from the director, the City's public information officer shall take reasonable steps to inform persons who are likely to have an interest in the naming of the facility. The public information officer shall consider the nature and location of the facility and whether a particular community is likely to be especially interested in the process, and disseminate the information in a way designed to reach those communities. Information disseminated under this subsection shall include a statement of the deadline for submitting suggestions.
- (E) A suggestion or endorsement must be received by the director not later than the 90th day after date of the director's notice under Subsection (C).
- (F) As soon as practicable after the deadline for receiving suggestions and endorsements, the director shall submit completed suggestions and endorsements to the chair of the City advisory board that the director finds to have appropriate jurisdiction.
- (G) On receipt of the suggestions and endorsements, the City advisory board shall schedule and conduct a public hearing on naming the facility. The advisory board shall make a written recommendation to the council not later than the 45th day after the date the chair receives the suggestions and endorsements, and shall provide a copy of the recommendation to the city manager. If the advisory board fails to meet the deadline prescribed in this section, the board is considered to have no recommendation.
- (H) The city manager shall provide to each councilmember a copy of the advisory board's recommendation and the suggestions and endorsements received by the director. The city manager shall place an item regarding the naming of the facility on the council's agenda as soon as practicable after the advisory board makes its recommendation, or after the period prescribed by Subsection (G) expires, whichever is earlier.
- (I) The council may by resolution establish different criteria and procedures for the naming of a particular facility. If a facility is partially funded by another entity, the council shall consider that entity's concerns in naming the facility.

Source: 1992 Code Section 15-7-20; Ord. 031204-12; Ord. 031211-11.

§ 14-1-34 - PROCEDURE FOR RENAMING A FACILITY.

- (A) A person may submit a suggestion for renaming a facility or endorse a previously submitted suggestion. A suggestion or endorsement must be submitted to the director as provided by this section. The director may promulgate forms for this purpose.
- (B) On initiation of the renaming of a City facility under Subsection 14-1-32(D) (*Naming Policy*), the director shall notify the persons listed in Subsection 14-1-33(C) (*Procedure for Naming a Facility*),

and the public information officer shall disseminate the information as provided in Subsection 14-1-33(D) (*Procedure for Naming a Facility*). A notice under this section shall state that the facility is being renamed.

- (C) A suggestion for renaming a facility must include:
 - (1) if the suggestion is an individual's name, a biographical sketch of the individual whose name is suggested, a description of the individual's involvement in the community, and the individual's connection, if any, to the facility or to the activity for which the facility will be used; or
 - (2) if the suggestion is not an individual's name, justification for the suggested name; and
 - (3) an estimate of cost to the City for replacement of signs and plaques.
- (D) A suggestion or endorsement must be received by the director no later than the 90th day after the date of the director's notice under Subsection (B).
- (E) As soon as practicable after the deadline for receiving suggestions and endorsements, the director shall submit completed suggestions and endorsements to the chair of the City advisory board that the director finds to have appropriate jurisdiction.
- (F) On receipt of the suggestions and endorsements the City advisory board shall hold a public hearing and provide its recommendation in the same manner and within the same time prescribed in Subsection 14-1-33(G) (*Procedure for Naming a Facility*). The city manager shall provide information to the council, and place an item on the council's agenda regarding the renaming of the facility in the same manner as prescribed Subsection 14-1-33(H) (*Procedure for Naming a Facility*).
- (G) The council may by resolution establish different criteria and procedures for the renaming of a particular facility. If a facility is partially funded by another entity, the council shall consider that entity's concerns in renaming the facility.

Source: 1992 Code Section 15-7-21; Ord. 031204-12; Ord. 031211-11.

§ 14-1-35 - PROCEDURE FOR NAMING A POLICE FACILITY.

- (A) This section applies to a facility primarily used by the Police Department, excluding the police headquarters building.
- (B) A police facility may be named for an Austin Police Department police officer slain in the line of duty after June 1, 1995. The officer's name shall be assigned chronologically based on the date of the officer's death.
- (C) The police chief shall advise the city manager when a police facility is available for naming.
- (D) As soon as practicable after the police chief advises the city manager, the city manager shall place an item regarding the naming of the police facility on the council's agenda.

Source: 1992 Code Section 15-7-22; Ord. 031204-12; Ord. 031211-11.

§ 14-1-36 - REQUIREMENTS FOR NAMING OR RENAMING A PARK FACILITY.

DEFINITIONS. In this article:

- (1) PARK FACILITY means a park, significant building, sports complex, pool facility, or trail owned by the City and dedicated or used for park purposes. Significant building includes recreation, senior, cultural centers and other significant facilities used for parks and recreational purposes.
- (2) PARK FEATURE means a recreational improvement that is not considered a park facility and is a major component in the park facility.
- (3) DIRECTOR means the director of the Parks and Recreation Department.

Source: [Ord. No. 20160324-021, Pt. 2, 4-4-16](#) .

§ 14-1-37 - PARK NAMING POLICY.

- (A) Subject to a valid agreement governing the naming of a park facility or park feature, a park feature in a park facility may be dedicated to an individual or group to recognize a culturally significant contribution, other valuable contribution, or creditable service to the park system or the community without naming or renaming the park facility in which the feature is located. A plaque recognizing a deserving individual or group may be placed by the park feature without naming or renaming the park facility in which the plaque is placed. Additional plaques recognizing other individuals or groups may be placed at the same feature location. Each plaque may be removed only when the park feature is removed and repurposed into another park feature. Naming a park feature can be done administratively without City Council approval.
- (B) A park facility may be named for:
 - (1) an individual who has provided a valuable contribution and creditable service to the park system and the City;
 - (2) an individual or entity that deeds the land to the City for a park facility, contributes the estimated cost of at least 50% of the development of the park facility, and provides an endowment for the estimated 20-year maintenance costs of the park facility as estimated by the director; or
 - (3) an individual or entity that has provided a culturally significant contribution to the surrounding area or community in which the facility exists.
- (C) A non-refundable application fee must be paid at the time of submission of the application for naming or renaming a feature or facility.
- (D) If a name is approved by council or the director, a sign fabrication, plaque and installation fee must be paid prior to fabrication.
- (E) The application must contain documentation of public support for the proposed name. Public support materials must be provided to the Parks and Recreation Department.
- (F) If the city has financed the park facility or feature with the proceeds of obligations, the interest on which is excludable from gross income for federal income tax purposes, the city may reject a name to preserve the exemption from federal income taxation of the interest on the proceeds of the obligations.

Source: [Ord. No. 20160324-021, Pt. 2, 4-4-16](#) .

§ 14-1-38 - PROCEDURE FOR NAMING A FEATURE.

- (A) A person may submit a nomination for naming a park feature or endorse a previously submitted nomination. A nomination or endorsement must be submitted to the director as provided by this section. The director may promulgate forms for this purpose.
- (B) A nomination for naming a feature must include:
 - (1) if the nomination is an individual's name, a biographical sketch of the individual whose name is nominated, their valuable contribution or creditable service to the park system or the community, including their involvement, and the individual's connection, if any, to the park feature or to the activity for which the park feature will be used;
 - (2) if the nomination is not an individual's name, justification for the suggested name; or

- (3) if the basis of the nomination is a culturally significant contribution, a description of the cultural, geographic, or historic significance to the surrounding area or community in which the feature exists.
- (C) the director may notify the Parks and Recreation Board that the director finds that the nomination has appropriate justification to name the park feature for the person or for the entity.

Source: [Ord. No. 20160324-021, Pt. 2, 4-4-16](#).

§ 14-1-39 - PROCEDURE FOR NAMING OR RENAMING A FACILITY.

- (A) A person may submit a nomination for naming or renaming a facility or endorse a previously submitted nomination. A nomination or endorsement must be submitted to the director as provided by this section. The director may promulgate forms for this purpose.
- (B) A nomination for naming or renaming a facility must include:
 - (1) if the nomination is an individual's name, a biographical sketch of the individual whose name is suggested, their valuable contribution or creditable service to the park system or the community. This sketch should include the person's involvement, and connection, if any, to the park facility or to the activity for which the park facility will be used;
 - (2) if the suggestion is not an individual's name, justification for the suggested name; or
 - (3) if the basis of the nomination is a culturally significant contribution, a description of the cultural, geographic, or historic significance to the surrounding area or community in which the facility exists.
- (C) Not later than the date construction of a new facility begins, the director shall notify the council, the city manager, the Parks and Recreation Board, and the City's public information officer that a new facility is to be named.
- (D) To promote community engagement and input from the stakeholders in the geographic area surrounding the facility prior to referral to the Parks and Recreation Board, immediately on receipt of notice from the director, the City's public information officer shall take reasonable steps to inform persons who are likely to have an interest in the naming of the facility. The public information officer shall consider the nature and location of the facility and whether a particular community is likely to be especially interested in the process, and disseminate the information to reach those communities. Information disseminated under this subsection shall include a statement of the deadline for submitting nominations.
- (E) A nomination or endorsement must be received by the director not later than the 90th day after date of the director's notice under Subsection (C).
- (F) As soon as practicable after the deadline for receiving nominations and endorsements, the director shall submit completed nominations and endorsements to the chair of the Parks and Recreation Board that the director finds to have appropriate justification.
- (G) On receipt of the nominations and endorsements, the Parks and Recreation Board shall schedule and conduct a public hearing on naming or renaming the facility. The Parks and Recreation Board shall make a written recommendation to the Council not later than the 45th day after the date the chair receives the nominations and endorsements, and shall provide a copy of the recommendation to the city manager. If the Parks and Recreation Board fails to meet the deadline prescribed in this section, the board is deemed to have made no recommendation.
- (H) The city manager shall provide each council member a copy of the Parks and Recreation Board's recommendation, if any, and the nominations and endorsements received by the director. The city manager shall place an item regarding the naming or renaming of the facility on the council's agenda as soon as practicable after the Parks and Recreation Board makes its recommendation, or after the period prescribed by Subsection (G) expires, whichever is earlier.

- (l) The council may establish different criteria and procedures for the naming or renaming of a particular facility. If a facility is partially funded by another entity the council shall consider that entity's nomination for naming or renaming the facility.

Source: [Ord. No. 20160324-021, Pt. 2, 4-4-16](#) .

CHAPTER 14-5. - STREET NAME CHANGE.

§ 14-5-1 - DEFINITIONS.

In this chapter:

- (1) DEPARTMENT means the Financial and Administrative Services Department.
- (2) DIRECTOR means the director of the Financial and Administrative Services Department.
- (3) OWNER means the person shown on the City's real property ad valorem tax rolls who is responsible for payment of property taxes.

Source: Ord. 031204-12; Ord. 031211-11.

§ 14-5-2 - APPLICATION AND FEES.

- (A) An application to change a street name may be filed with the director by:
 - (1) not less than 50 percent of the owners of property abutting the subject street;
 - (2) an officer or attorney representing a governmental subdivision, agency, or department; or
 - (3) both (A)(1) and (2).
- (B) An application must include:
 - (1) the current official street name;
 - (2) the proposed new street name;
 - (3) the name, address, and telephone number of a person authorized to represent the applicant and to execute any necessary documents;
 - (4) the name of each person, group, agency, or entity requesting the street name change; and
 - (5) one or more reasons prescribed in Section 14-5-4 (*Allowed Reasons for Street Name Change*) for the street name change.
- (C) An applicant, other than the City, shall pay by cash, a cashier's check, or a certified check:
 - (1) an application processing fee established by ordinance; and
 - (2) the estimated cost of the manufacture and installation of new street name signs, calculated under Section 14-5-3 (*Fee for New Street Signs; Refund*).

Source: 1992 Code Sections 15-5-2(A), (B), and (C); Ord. 031204-12; Ord. 031211-11.

§ 14-5-3 - FEE FOR NEW STREET SIGNS; REFUND.

- (A) The city manager shall determine the fee that is charged under Section 14-5-2(C)(2) (*Application and Fees*) based on an average cost for a sign calculated by the City at the beginning of each fiscal year multiplied by the number of signs that are necessary to implement the name change.
- (B) In setting the annual average cost for a sign, the city manager shall consider prevailing and projected market costs, prior bid costs, or both for the labor and material necessary to install a standard street sign.

- (C) If an application for a street name change is denied by the council, the new street sign manufacture and installation fee shall be refunded to the applicant by the City.

Source: 1992 Code Sections 15-5-3(D) and 15-5-4(B); Ord. 031204-12; Ord. 031211-11; Ord. 20060504-039.

§ 14-5-4 - ALLOWED REASONS FOR STREET NAME CHANGE.

The director may consider an application for a street name change if the name change is:

- (1) to establish continuity of a street name, including establishing one name for a roadway with staggered center lines that is commonly traveled as a single thoroughfare;
- (2) to eliminate duplication of name spelling or phonetics;
- (3) to correct a misspelling;
- (4) to enhance ease of location;
- (5) for consistency with the street numbering system designation, including compass direction;
- (6) to provide a necessary roadway designation, including: "street," "road," "lane," "circle," "drive," or "boulevard;"
- (7) to honor a person, place, institution, group, entity, or event; or
- (8) to enhance a neighborhood through the association of a street name with its location, area characteristics, and history.

Source: 1992 Code Section 15-5-3(C); Ord. 031204-12; Ord. 031211-11.

§ 14-5-5 - ADMINISTRATIVE REVIEW.

- (A) The department shall distribute copies of the application for review and comment to:
- (1) the City's traffic engineer;
 - (2) the Fire Department;
 - (3) the Police Department;
 - (4) the county engineer of the county or counties in which the subject street is located;
 - (5) Southern Union Gas Company;
 - (6) the United States Post Office; and
 - (7) any other department or entity the department may determine is appropriate.
- (B) The City's traffic engineer shall advise the director if the proposed name is composed of a non-English alphabet or number of letters that may require a nonstandard or outside sign.

Source: 1992 Code Sections 15-5-2(D) and 15-5-3(A); Ord. 031204-12; Ord. 031211-11; Ord. 20060504-039.

§ 14-5-6 - OWNER NOTIFICATION.

- (A) Except as provided in Subsection (B), the department shall notify the owners of property abutting the subject street of the proposed name change. Notice under this section may be made in personal, by mail, or by telephone.

- (B) The department shall not issue an owner notification unless the applicant has paid the fee established in Section 14-5-2(C)(2) (*Application and Fees*).

Source: 1992 Code Sections 15-5-2(C) and 15-5-3(B); Ord. 031204-12; Ord. 031211-11.

§ 14-5-7 - RECOMMENDATION TO COUNCIL AND COUNCIL ACTION.

- (A) The director shall present an application for a street name change that meets the requirements of this chapter with comment from any City department to the council for action.
- (B) Except as provided in Subsection (C), the council may act on an application for a name change without a public hearing.
- (C) If an owner of property abutting the subject street opposes the proposed street name change, the council shall hold a public hearing before taking action on the application for a street name change.

Source: 1992 Code Section 15-5-3(E); Ord. 031204-12; Ord. 031211-11.

§ 14-5-8 - IMPLEMENTATION OF APPROVED STREET NAME CHANGE.

- (A) The department shall administratively implement a street name change approved by the council.
- (B) The City's traffic engineer shall install new street signs. The City's traffic engineer shall notify the department and the city clerk in writing when installation of new street name signs is complete.

Source: 1992 Code Sections 15-5-4(A) and (C); Ord. 031204-12; Ord. 031211-11; Ord. 20060504-039.

§ 14-5-9 - NOTICE OF NAME CHANGE TO GOVERNMENTAL ENTITIES.

The city manager shall provide a copy of each recorded street name change ordinance and a copy of a sketch map that shows the affected street to:

- (1) each governmental entity, City department, or other person that participated in the review and comment process;
- (2) the tax appraisal district for the county or counties in which the affected street is located; and
- (3) any other person the department requests.

Source: 1992 Code Section 15-5-4(D); Ord. 031204-12; Ord. 031211-11; Ord. 20070125-009.

CHAPTER 10-1. - CEMETERIES.

ARTICLE 1. - ADMINISTRATION.

§ 10-1-1 - CITY CEMETERIES DESIGNATED.

The city council designates as a city cemetery:

- (1) a tract of land within the city that is designated for burial purposes and documented on a map filed with the cemetery administrator; and
- (2) a tract the council establishes as a city cemetery.

Source: 1992 Code Section 12-1-15; Ord. 031023-11; Ord. 031211-11.

§ 10-1-2 - CEMETERY ADMINISTRATOR.

- (A) The city manager shall appoint or contract with a cemetery administrator.
- (B) The administrator shall prescribe rules necessary to administer this article.
- (C) The administrator shall maintain a cemetery record book and a map of each city cemetery that shows:
 - (1) the name of the portion of land, numbers of a block, all or part of a lot, or space for a single interment; and
 - (2) the name of the owner of the cemetery lot or the person buried in the burial space.

Source: 1992 Code Sections 12-1-17 and 12-1-19; Ord. 031023-11; Ord. 031211-11.

§ 10-1-3 - INTERMENT; FEE.

- (A) The cemetery administrator shall:
 - (1) bury the dead body of a person presented for interment in the appropriate place;
 - (2) timely prepare the ground to receive a body without covering or damaging other graves;
 - (3) ensure that each grave is at least four feet deep;
 - (4) superintend the burial of the body; and
 - (5) refill and properly finish a grave after a burial.
- (B) The administrator shall preserve order and quiet during a burial.
- (C) The administrator shall charge and collect a fee established by ordinance for services performed under this section. A fee may be effected by a lien as permitted by law.

Source: 1992 Code Section 12-1-18; Ord. 031023-11; Ord. 031211-11.

§ 10-1-4 - SALE OF LOTS AND EXECUTION OF DEEDS.

- (A) The cemetery administrator may sell a cemetery lot or burial space in the manner and for the consideration prescribed by the city council.

- (B) The administrator shall sell a cemetery lot or burial space in a city cemetery:
 - (1) for cash; or
 - (2) by installment.
- (C) The administrator may not execute a deed to the purchaser until the administrator receives full payment for the cemetery lot or burial space.

Source: 1992 Code Sections 12-1-19 and 12-1-20; Ord. 031023-11; Ord. 031211-11.

§ 10-1-5 - TRANSFER OF CEMETERY LOT OR BURIAL SPACE.

The cemetery administrator may execute a consent to transfer a cemetery lot or burial space as prescribed by the city council.

Source: 1992 Code Section 12-1-21; Ord. 031023-11; Ord. 031211-11.

§ 10-1-6 - RECORDATION OF DEED; COSTS.

- (A) The cemetery administrator shall record a deed conveying a cemetery lot or burial space in the county clerk's office of the county where the property is located.
- (B) The administrator shall include the recording costs in the purchase price of the cemetery lot or burial space.

Source: 1992 Code Section 12-1-22; Ord. 031023-11; Ord. 031211-11.

ARTICLE 2. - PERPETUAL CARE TRUST FUND.

§ 10-1-11 - ESTABLISHMENT OF TRUST FUND.

The City of Austin Perpetual Care Trust Fund is established in accordance with Chapter 713 (*Local Regulation of Cemeteries*) of the Texas Health and Safety Code to:

- (1) assure the perpetual maintenance of the cemetery lots and graves in the city cemeteries;
- (2) invest and reinvest money in trust accounts in the Trust Fund; and
- (3) apply the income earned by the Trust Fund that is in excess of the amount necessary to maintain the individual cemetery lots or graves to the beautification of the city cemeteries generally.

Source: 1992 Code Sections 12-1-50(A) and (B); Ord. 031023-11; Ord. 031211-11.

§ 10-1-12 - ADMINISTRATION OF FUND.

- (A) The city clerk may accept funds in trust for the Trust Fund.
- (B) The clerk and the cemetery administrator may prescribe rules to administer this article and to protect the Trust Fund and the city.
- (C) After consultation with the administrator, the clerk shall determine the amount of money necessary for the permanent care and upkeep of individual graves or family lots.

Source: 1992 Code Sections 12-1-51(A) and (B) and 12-1-54; Ord. 031023-11; Ord. 031211-11.

§ 10-1-13 - APPLICATION TO CREATE TRUST.

- (A) A person may submit a written application to the city clerk under this article to act as trustee for the person or a decedent.
- (B) An application under this section must be on a form prescribed by the clerk. The application must include:
 - (1) the applicant's name and mailing address;
 - (2) for an application made on behalf of a decedent, the applicant's relationship to the decedent, if any;
 - (3) the location of the cemetery lot or burial space owned by the applicant or the location of the decedent, as applicable; and
 - (4) the amount of the trust deposit.
- (C) The clerk may not accept a deposit that is less than the amount the clerk determines is necessary for the permanent maintenance of a cemetery lot or burial space.

Source: 1992 Code Section 12-1-51(C); Ord. 031023-11; Ord. 031211-11.

§ 10-1-14 - APPLICATION TO ACCEPT EXISTING TRUST.

- (A) A person may apply to the city clerk to accept an existing trust.
- (B) In addition to the information required in Section 10-1-13 (*Application to Create Trust*), an application for the acceptance of an existing trust must be accompanied by:
 - (1) the original or an accurate copy of the trust indenture or comparable document, if any;
 - (2) the name and mailing address of the trustees, if any;
 - (3) the written consent of each trustee; and
 - (4) an instrument of indemnity with corporate surety in a form approved by the city attorney payable to the city for all acts and events relating to the existing trust that occur before the trust transfer.
- (C) Unless the indenture provides for the transfer of the trust estate without the trust beneficiary's written consent, the application must be accompanied by:
 - (1) the beneficiary's written consent on a form prescribed by the city attorney; or
 - (2) the final order of a court of competent jurisdiction that authorizes the transfer.

Source: 1992 Code Sections 12-1-51(D); Ord. 031023-11; Ord. 031211-11.

§ 10-1-15 - CERTIFICATE OF ACCEPTANCE.

- (A) The city clerk shall issue a certificate of acceptance in the name of the city that bears the city seal to the person who deposits funds under this article.
- (B) A certificate must state:
 - (1) the name of the depositor;
 - (2) the amount and purpose of the deposit; and
 - (3) the location of the cemetery lot or grave to be maintained.

Source: 1992 Code Section 12-1-51(E); Ord. 031023-11; Ord. 031211-11.

§ 10-1-16 - ACKNOWLEDGMENT OF ACCEPTANCE.

Each certificate holder, heir, successor, and assign must submit a signed statement to the city clerk that acknowledges the city's rules relating to:

- (1) the trust account;
- (2) the trust fund;
- (3) the city cemeteries; and
- (4) other information and designation that the clerk considers necessary.

Source: 1992 Code Section 12-1-51(E); Ord. 031023-11; Ord. 031211-11.

§ 10-1-17 - COPIES OF TRUSTS TO CEMETERY ADMINISTRATOR.

The city clerk shall promptly provide to the cemetery administrator copies of the records of each trust accepted.

Source: 1992 Code Section 12-1-51(G); Ord. 031023-11; Ord. 031211-11.

§ 10-1-18 - APPEAL BY APPLICANT.

- (A) If the city clerk refuses to accept a deposit under this article, the clerk shall mail a notice of refusal to the applicant.
- (B) A person may appeal the clerk's refusal to accept a trust offered under this article to the city manager.
- (C) The appeal must be filed not later than the 10th day after the date the applicant receives a notice of refusal from the clerk. A notice is considered received by the applicant on the third day after the date the clerk mails the notice.
- (D) The city manager shall prescribe rules for an appeal under this section.

Source: 1992 Code Section 12-1-51(F); Ord. 031023-11; Ord. 031211-11.

§ 10-1-19 - TRUST FUND RECORD BOOK.

The cemetery administrator shall keep a permanent, bound record book for each deposit made to the Perpetual Care Trust Fund, including:

- (1) the name of each depositor in alphabetical order;
- (2) the amount and purpose of the deposit;
- (3) the name and location of the cemetery lot or grave subject to the trust;
- (4) the condition and status of the trust imposed; and
- (5) other information that the administrator requires.

Source: 1992 Code Section 12-1-52; Ord. 031023-11; Ord. 031211-11.

§ 10-1-20 - INVESTMENT AND USE OF FUNDS.

- (A) The director of the Financial and Administrative Services Department shall invest and reinvest the money deposited with the City in interest-bearing bonds or governmental securities.
- (B) The director shall keep the principal of the funds deposited intact as a principal trust fund. The director may not use the principal.
- (C) The cemetery administrator shall first use the interest, revenue, or other accrual or increase in the funds deposited for a specific cemetery lot, grave, or burial space to maintain the cemetery lot, grave, or burial space.
- (D) The director may authorize the administrator to use the revenue that is greater than the amount necessary to accomplish the trust for a specific cemetery lot or grave to beautify the cemetery where the cemetery lot or grave is located.

Source: 1992 Code Sections 12-1-53(A) and (B); Ord. 031023-11; Ord. 031211-11.

§ 10-1-21 - REPORTS BY DIRECTOR AND ADMINISTRATOR.

- (A) The director of finance shall regularly report to the cemetery administrator the status of each trust account created under this article.
- (B) The administrator shall regularly report to the director the charges made to each trust account for perpetual care of a grave or burial space.

Source: 1992 Code Section 12-1-53(C); Ord. 031023-11; Ord. 031211-11.

ARTICLE 3. - OFFENSES.

§ 10-1-30 - RESTRICTION ON USE OF CEMETERY LAND.

A person may not engage in temporary construction staging or other construction-related activities within a designated city cemetery unless such activities serve construction or maintenance projects within the cemetery or contribute to projects related to public health and safety.

Source: Ord. 20090312-018.

§ 10-1-31 - BURIAL OUTSIDE CEMETERY PROHIBITED.

A person may not bury, cause to be buried, or assist in the burial of a dead body within the city limits except in the State Cemetery, the Mount Calvary Cemetery, a city cemetery, or other cemetery.

Source: 1992 Code Section 12-1-1; Ord. 031023-11; Ord. 031211-11.

§ 10-1-32 - USE OF CEMETERY STREETS RESTRICTED.

- (A) A person may not use or permit another person to use a street within a city cemetery to haul heavy materials or vehicles.
- (B) A person may not use a street within a city cemetery except to conduct business related to the cemetery or to visit a cemetery lot or grave.

Source: 1992 Code Sections 12-1-16(A) and (B); Ord. 031023-11; Ord. 031211-11.

§ 10-1-33 - BURIAL WITHOUT APPROVAL PROHIBITED.

A person may not dig or cause another person to dig a grave or bury a dead body in a city cemetery without the cemetery administrator's approval and the written consent of the owner of the cemetery lot or burial space.

Source: 1992 Code Section 12-1-23; Ord. 031023-11; Ord. 031211-11.

§ 10-1-34 - PENALTY.

A person who violates this chapter commits a misdemeanor and is subject to the penalty prescribed by Section 1-1-99 (*Offenses; General Penalty*).

Source: 1992 Code Sections 12-1-16 and 1-1-99; Ord. 031023-11; Ord. 031211-11.

Mitch Landrieu, "In the Shadow of Statues: A White Southerner Confronts History."

Mitch Landrieu, [Speech on Confederate Statute Removal](#).

W.E.B. DuBois, "Black Reconstruction in America, 1860-1880"

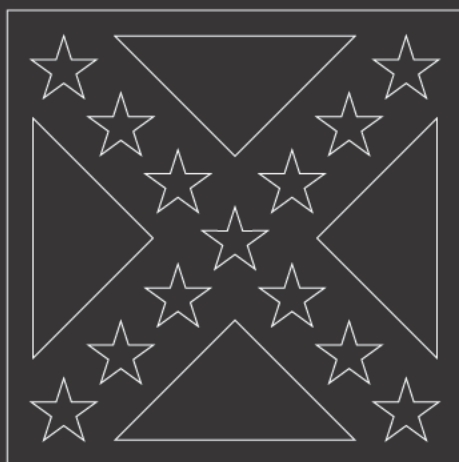
Pleasant Grove City v. Summum, 555 U.S. 460 (2009) (placement of donated monument in park, government speech).

Griffin v. Dep't of Veterans Affairs, 274 F.3d 818 (4th Cir. 2001) (display of confederate flag in a national cemetery; private speech in a government forum).

Jackson v. City of Stone Mountain, 232 F. Supp.2d 1337 (N.D. Ga. 2002) (Sons of Confederate Veterans erect flagpole in cemetery, city removed flagpole).

Warner v. City of Boca Raton, 64 F.Supp.2d 1272 (S.D. Fla. 1999) (First Amendment Challenge of City prohibition on vertical grave markers).

Lower v. Bd. of Dirs. of Haskell County Cemetery Dist., 56 P.3d 235 (Kan. 2002) (First Amendment challenge to board's removal of cemetery monument).



WHOSE HERITAGE?

PUBLIC SYMBOLS OF THE CONFEDERACY

WHOSE HERITAGE?

PUBLIC SYMBOLS OF THE CONFEDERACY

ABOUT THE SOUTHERN POVERTY LAW CENTER

The Southern Poverty Law Center, based in Montgomery, Ala., is a nonprofit civil rights organization founded in 1971 and dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society.

For more information about
THE SOUTHERN POVERTY LAW CENTER

SPLCENTER.ORG



“The Confederate flag is coming to mean something to everybody now. It means the southern cause. It means the heart throbs of the people of the South. It is becoming to be the symbol of the white race and the cause of the white people. The Confederate flag means segregation.”

—ROY V. HARRIS, EDITOR OF AUGUSTA COURIER, 1951

“[I]t should have never been there. These grounds are a place that everybody should feel a part of. What I realized now more than ever is people were driving by and felt hurt and pain.”

—SOUTH CAROLINA GOV. NIKKI HALEY, JULY 10, 2015, ON
THE CONFEDERATE BATTLE FLAG ON THE STATE HOUSE GROUNDS IN COLUMBIA

COMMUNITY ACTION GUIDE

Across the South, Americans of all races, ethnicities and creeds are asking why governmental bodies in a democracy based on the promise of equality should display symbols so closely associated with the bondage and oppression of African Americans.

It's a movement that has risen from the ground up — one driven by local activists and civic leaders raising questions and making decisions about their values and the kind of community they want to be.

And their voices are being heard in city after city.

They're being heard in places like Mobile, Alabama, where city officials voted to remove the Confederate flag from the city's seal.

In places like Gainesville, Florida, where a Confederate statue was moved to a museum.

And in places like Stuart, Virginia, where a judge removed a portrait of the city's namesake — Confederate General J.E.B. Stuart — from his courtroom. For many people, this debate may be

their first experience in local activism. The following guide provides tools for building a campaign, including:

- Step-by-step instructions for organizing a campaign;
- Advice for countering objections to the removal of a symbol; and
- Useful information about the Confederacy and its symbols.

Removing offensive Confederate symbols may be a long and difficult task. But whether successful or not, activists can take important steps toward building the kind of community where the values of equal justice and equal opportunity are shared by all.

What you can do in your community

Removing symbols of the Confederacy from public spaces in your community can be daunting, but with proper planning, you can launch a successful campaign.

Research the symbol

It's important to find out the history of the symbol in your community. The popular lore about why the symbol is displayed may not reflect the true history. Even historical markers and brochures for some displays may not accurately tell the story. This means taking the time to conduct research online, at the library or state archives.

Keep the following tips and questions in mind:

- Go to records, such as newspaper reports, to get a better understanding of the history — and the motivation — behind the display of the symbol.
- If the symbol is the name of a figure from the Confederacy, research that person's history. Document why their legacy doesn't reflect the values of the community.
- Find out when the symbol was first displayed in your community. Many Confederate symbols began appearing after the U.S. Supreme Court's school desegregation ruling in 1954 and continued to appear in the 1960s to protest the civil rights movement.

Confederate battle flags were raised on government property throughout the South to commemorate the Civil War centennial during the 1960s. If that's why the flag is displayed on government property in your community, don't let it stop your efforts. Find out why it continues to fly decades after the commemoration.

Map the path to change

Find out what governmental body is responsible for overseeing or maintaining the display. If the symbol is the name of a city park, for example, the city council and mayor would be the parties to contact. If it is a school name, the local school board would be the appropriate entity. An online search or call to your city hall, county courthouse or state legislature can point you in the right direction.

Once you've determined the pertinent governmental body, ask about the process for removing the symbol. You might, for example, need to appear before your city council or county commission, or you might need to persuade your state legislator to sponsor a bill. A clear understanding of the process is crucial for a successful effort.

Organize and raise awareness

After you conduct the research, it's important to build public support. Policymakers may be hesitant to remove the symbol if they believe there is no public demand for such action or that it will raise the ire of constituents. Demonstrating public support for the symbol's removal can overcome this obstacle.

Here are ways to build support for your effort:

IDENTIFY COMMUNITY GROUPS AND LEADERS that may support your effort. Enlisting these groups can quickly amplify your campaign. These groups can contact their members and can sign on to a letter to the appropriate governmental body, for example.

WRITE LETTERS TO THE EDITOR of your local newspaper. If you have already enlisted civic groups in your cause, encourage each group to send its own letter to the local newspaper to show broad support.

CONTACT LOCAL MEDIA. Try to get the news media in your community to cover your campaign. This can be done by calling your local newspaper, television station or radio station. Ask to speak to an assignment editor. Explain your campaign, but be brief and to the point. Ask for the name and contact information of someone to whom you can email a press release or other information updating them on the campaign's progress. Maintain a list of local media contacts, with names, phone numbers and email addresses.

BUILD AN EMAIL LIST OF SUPPORTERS. You can use this list to send regular updates about the campaign, to send alerts about meetings or rallies, and to have discussions about strategies.

USE SOCIAL MEDIA to raise awareness. Don't stop with just introducing the topic to people. Give them a reason to follow you on social media. Update them with your progress. Set up a Facebook page and use it and other social media outlets such as Twitter to regularly provide facts from your research that show why this symbol should be removed. Share success stories from other communities or other news related to your campaign.

AN ONLINE PETITION can help generate interest. There are a variety of websites to help you create a petition, including petitions.moveon.org. As it receives signatures, update your social media followers, and mention the signatures in your letter to the editor and when you speak with officials and potential supporters.

ORGANIZE A RALLY or other peaceful demonstration to raise awareness and generate media interest. Designate a spokesperson to speak at the event and to any media. Be sure to alert your local news media with information about the time and place, and be conscious of the timing so it occurs far enough in advance of the noon or evening TV news programs to be included in the broadcast. Try to make your event visually interesting (signs and banners can help) so that newspaper photographers and TV camera people will be able to capture compelling images that will make it more likely your event will make the news.

CONTACT POLICYMAKERS to support your effort. These can be policymakers with the governmental body that can remove the symbol as well as other influential officials. Call the office of the appropriate public official to arrange a meeting. Use your research to clearly explain why the symbol should be removed. You might describe how it's a divisive symbol rooted in a history of slavery and racism. Regardless of the response, be courteous and thank them for taking the time to meet with you.

Officially make your case

The process for removing the Confederate symbol from your community may require you — or a spokesperson for your effort — to speak before a governmental body. Be prepared for this possibility.

Use your research as the basis for a clear, concise and respectful presentation. Do not allow hecklers or opponents to rattle you or throw you off your prepared remarks. Stick to your points.

But you should be prepared for other speakers — and policymakers — to oppose your effort. Your presentation should include historical facts to counter objections. Describe how the display was racially motivated or how it represents values that have no place in the community today. The display may be part of an area's history, but you should emphasize that the community must answer the question, "Who are we as a community today?" Ask what message the display sends to visitors and residents.

Responding to Objections and Myths

When you begin your campaign, you will likely encounter opposition. In fact, you may encounter very vocal, even hostile, opposition. You should be prepared to respond in a calm, respectful manner that shows you have given thoughtful consideration to the issue, and have taken into account the sentiments of people opposing your effort.

The following are common claims used to defend public displays of Confederate symbols. Sample responses you can use and adapt for your campaign are provided. Please keep in mind that this list is not all-inclusive. Every campaign and each community is unique.

As you prepare your campaign, brainstorm more objections that may be raised. Use the Internet to research campaigns in other communities. Study the statements made by critics of those efforts. How did those campaigns respond? How would you have responded?

CLAIM: It's heritage not hate.

RESPONSE: While some people see Confederate symbols as emblems of Southern pride and heritage, the question must be asked: Whose heritage?

The "heritage, not hate" argument ignores the near-universal heritage of African Americans who were enslaved by the millions in the South and later subjected to brutal oppression under the white supremacist regime of Jim Crow. Our democracy is based on equality under the law, and public entities should not prominently display symbols that undermine that concept and alienate an entire segment of the population.

CLAIM: The Confederate battle flag is not racist. Hate groups hijacked the flag, causing people to associate it with racism.

RESPONSE: Hate groups didn't transform the flag into a symbol of white supremacy. The Confederacy was founded on the very idea of white supremacy, and soldiers who served under its banner — regardless of their individual honor or motives — fought to defend the institution of slavery. In his "Cornerstone Speech," the vice president of the Confederacy, Alexander Stephens, noted that the new government's cornerstone rested "upon the great truth that the negro is not equal to the white man."

CLAIM: The Civil War wasn't about slavery. It was about states' rights.

RESPONSE: The desire to preserve slavery was the cause for secession. Secession documents for several states cite slavery as their reason for leaving the Union. The vice president of the Confederacy, Alexander Stephens, said the country was founded on the belief that all men *are not* created equal, but that slavery is the "natural and normal condition" of African Americans. It doesn't get any clearer than that.

CLAIM: Slaves fought for the Confederacy, which proves the Civil War wasn't about slavery.

RESPONSE: For most of the war, the Confederacy did not allow enslaved men to serve. It changed its policy only in the final weeks of the war — a time when it desperately needed men. Few joined voluntarily.

CLAIM: We shouldn't remove things just because someone may be offended. What about the First Amendment's guarantee of freedom of expression? If we remove this symbol, what's next?

RESPONSE: Individual citizens still have the right to fly a Confederate flag — even if it offends people. That is their First Amendment right. But our government, which is supposed to serve *all citizens*, shouldn't endorse a symbol that represents the oppression of a group of its citizens. This is not a freedom-of-expression issue.

CLAIM: Slavery existed under the American flag, too. Does that mean we should take it down?

RESPONSE: There's no denying that slavery existed under the U.S. flag. There is, however, a key difference: The U.S. flag represents a country that ultimately freed its slaves. The Confederate flag represents a government founded to preserve slavery.

CLAIM: There are great figures in American history who were not members of the Confederacy but were slave owners. Should we tear down statues and other monuments to them?

RESPONSE: No. The difference is that, unlike the Confederacy, those historical figures are not generally being honored *because* of things so closely associated with white supremacy and oppression.

CLAIM: Removing this Confederate symbol is erasing history in the name of political correctness.

RESPONSE: This is not an attempt to erase history. It is an effort to end the government's endorsement of a symbol that has always represented the oppression of an entire race. These historical symbols belong in museums and other educational settings where people can see them and learn the full history of slavery, the Confederacy, the Civil War and Jim Crow.

Questions to help frame the debate

How can people of color be confident of equitable treatment if their local city hall or county courthouse pays homage to the Confederacy?

How can we as a nation heal deeply engrained racial divisions when signs of this romance with the "Lost Cause" speckle urban and rural landscapes across the South?

How can we address the inequalities of today when government officials won't acknowledge the raw and brutal racism endorsed by the Confederacy 150 years ago?

CLAIM: This symbol can't be racist because I want to keep it and I'm not racist.

RESPONSE: Our personal beliefs can't change the history of the Confederacy, which was founded upon a belief in white supremacy — nor can they change the effect a symbol has on others.

.....
CLAIM: This [school/team/mascot] has long been named after a Confederate leader. There's no need to change it. It's just part of the community.

RESPONSE: The students are as much a part of this community as this name. It sends the wrong message to these students — especially students of color — when their school honors someone loyal to a government founded on the idea that one group of people is inherently superior to another and should be able to enslave them. It also sends the wrong message about our community.

[If applicable to your school] We should look not only at the history of the school's namesake, but our community's history. This school was not named shortly after the Civil War. It was named during the civil rights movement when many schools in this country were named after Confederate leaders as a protest against school desegregation. Our community shouldn't continue sending this message.

CLAIM: My ancestor bravely served the Confederacy in the Civil War. He didn't own slaves. He was just defending his home. Removing this symbol disrespects him and the ancestors of others in this community.

RESPONSE: This issue isn't about the personal motivations of one soldier. It is clear that *as a government*, the Confederacy endorsed slavery and white supremacy. It can be found in the Confederate Constitution and in statements of the Confederacy's leadership. And it can be found in the secession documents of the states. This symbol represents *the Confederate government*, which endorsed these beliefs.

It is worth noting that many Confederate veterans attended "Blue and Gray" reunions after the Civil War. These reunions brought veterans from both sides of the war together for reconciliation and celebration of their collective identity *as Americans*. »

The Confederacy: In its Own Words

The desire to preserve slavery was the cause for secession by Southern states. But 150 years after the war, many continue to cling to myths. As recently as 2011, 48 percent of Americans in a Pew Research Center survey cited states' rights as the reason for the war, compared to 38 percent citing slavery. This finding is all the more astonishing because a review of statements and documents by Confederate leaders makes their intentions clear. The following is a sample:

"We hold as undeniable truths that the governments of the various States, and of the confederacy itself, were established exclusively by the white race, for themselves and their posterity; that the African race had no agency in their establishment; that they were rightfully held and regarded as an inferior and dependent race, and in that condition only could their existence in this country be rendered beneficial or tolerable."

TEXAS DECLARATION OF CAUSES FOR SECESSION, FEBRUARY 2, 1861

"Our position is thoroughly identified with the institution of slavery — the greatest material interest of the world."

MISSISSIPPI DECLARATION OF CAUSES FOR SECESSION

"They assume that the negro is equal, and hence conclude that he is entitled to equal privileges and rights with the white man. If their premises were correct, their conclusions would be logical and just but their premise being wrong, their whole argument fails."

ALEXANDER H. STEPHENS, VICE PRESIDENT OF THE CONFEDERACY
CORNERSTONE SPEECH, MARCH 21, 1861

"Our new government is founded upon ... the great truth that the negro is not equal to the white man; that slavery subordination to the superior race is his natural and normal condition."

ALEXANDER H. STEPHENS, VICE PRESIDENT OF THE CONFEDERACY
CORNERSTONE SPEECH, MARCH 21, 1861

"A geographical line has been drawn across the Union, and all the States north of that line have united in the election of a man to the high office of President of the United States, whose opinions and purposes are hostile to slavery."

SOUTH CAROLINA DECLARATION OF CAUSES FOR SECESSION,
DECEMBER 24, 1860



ESSAY

Confederate Statute Removal

Aneil Kovvali*

Abstract. Certain state governments have adopted statutes that are designed to prevent city governments from eliminating memorials to Confederate forces and leaders. Critics of these controversial statutes generally focus on the moral issue of preserving statues honoring white supremacy. This Essay highlights a different set of concerns: These statutes suppress the speech of cities while compelling them to make statements they disagree with, and they distort the political process in troubling ways. These concerns have clear echoes in constitutional doctrine, and represent a separate reason for removal of these statutes.

Introduction

Various city and local governments have sought to remove memorials to Confederate forces and leaders.¹ In response, state governments have adopted measures that are designed to prevent removal.²

These “Confederate statutes” vary in form. North Carolina’s “Cultural History Artifact Management and Patriotism Act of 2015” provides that an “object of remembrance located on public property may not be permanently removed”³ South Carolina adopted a measure in 2000 that protected monuments to the “War Between the States,” among other conflicts, while revealing its focus by honoring the “South Carolina Infantry Battle Flag of the Confederate States of America.”⁴

Alabama’s “Memorial Preservation Act of 2017” similarly prevents the removal of any “statue . . . intended at the time of dedication to be a permanent memorial to an event, a person, a group, a movement, or military service that

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1. See, e.g., Mitch Landrieu, *We Can’t Walk Away from This Truth*, ATLANTIC (May 23, 2017), <https://perma.cc/2PDN-DBKM> (quoting a statement by the mayor of New Orleans urging removal of monuments to the Confederacy).

2. See Kaeli Subberwal, *Several States Have Erected Laws to Protect Confederate Monuments*, HUFFINGTON POST (Aug. 17, 2017, 9:09 PM ET), <https://perma.cc/UJN2-289H>.

3. Cultural History Artifact Management and Patriotism Act of 2015 § 3(c), 2015 N.C. Sess. Laws 170.

4. 2000 S.C. Acts 292 §§ 1, 3.

is part of the history of the people or geography now comprising the State of Alabama”⁵ that has been in place for 40 years or more.⁶ Through this statute, Alabama Attorney General Steve Marshall filed suit against the city of Birmingham and its mayor for covering a Confederate monument.⁷

Critics of these controversial state measures tend to focus on the moral issue of preserving monuments to white supremacy.⁸ But the measures also raise a separate set of issues, because they run contrary to constitutional values regarding free speech and the fairness of the political process. While these issues may or may not make for a winning legal challenge to the statutes, they clearly represent an important aspect of the debate over their propriety.

I. Free Speech

The free speech objection is simply stated. When a city government erects or maintains a monument, it is speaking. A statute forcing a city to retain a Confederate monument thus compels the city to engage in speech it finds offensive. This runs against free speech principles.⁹

The Supreme Court has already determined that a statue in a city park is speech. In *Pleasant Grove City v. Summum*,¹⁰ the Supreme Court held that a city government was entitled to select the monuments it displayed in a public

5. 2017 Ala. Laws 354 § 2(6) (defining “monument”).

6. *Id.* § 3(a) (providing in part that no monument in place for 40 or more years may be removed).

7. Joshua Barajas, *Alabama Attorney General Sues Birmingham for Partially Covering Confederate Monument*, PBS NEWSHOUR (Aug. 17, 2017, 9:10 AM EDT), <https://perma.cc/2STY-HJTZ>.

8. See, e.g., Rhonda Brownstein, *SPLC: Alabama’s Memorial Preservation Act is About Protecting Confederate Monuments*, SOUTHERN POVERTY LAW CENTER (May 25, 2017), <https://perma.cc/HBL3-5LQA> (“These racist symbols have no place on government property, where they counter our nation’s core principle to ensure liberty and justice for all.”); David A. Graham, *The Stubborn Persistence of Confederate Monuments*, ATLANTIC (Apr. 26, 2016), <https://perma.cc/ZCS7-V7NU> (“Establishing monuments to Confederate war heroes, in turn, celebrates men who committed treason and sought to break the nation apart in the name of slavery.”). But see Ira C. Lupu & Robert W. Tuttle, *The Debate Over Confederate Monuments*, TAKE CARE (Aug. 25, 2017), <https://perma.cc/8VGU-TNJG> (analyzing issue from a legal instead of a moral perspective).

9. Professors Ira C. Lupu and Robert W. Tuttle have also urged that the statutes represent unconstitutional viewpoint discrimination. See Lupu & Tuttle, *supra* note 8. While Lupu and Tuttle seem to suggest that a state statute mandating removal of Confederate monuments would also be objectionable, that claim is not entirely obvious. There is a basic asymmetry at work—it would be hard for a reasonable observer to interpret an empty park as a statement by the city government about Confederate values, but a reasonable observer could easily interpret a park with a Confederate statue as a statement by the city and state governments. The state government might have a legitimate interest in preventing such a statement from being made in its name.

10. 555 U.S. 460 (2009).

park.¹¹ As explained in a majority opinion authored by Justice Alito, “A monument, by definition, is a structure that is designed as a means of expression. When a government entity arranges for the construction of a monument, it does so because it wishes to convey some thought or instill some feeling in those who see the structure.”¹² Because of the city’s “freedom to express its views,”¹³ the Court held that Pleasant Grove was entitled to refuse to display a monument setting out the tenets of a small religious group.¹⁴

Courts have been less clear as to whether cities can assert free speech protections against state governments.¹⁵ After all, cities are merely creatures of state law. But recent Supreme Court precedent is instructive. In *Citizens United v. Federal Election Commission*,¹⁶ the Supreme Court held that the First Amendment protects for-profit corporations, which are generally organized under state law.¹⁷ Granting free speech protection to for-profit corporations while denying them to municipal corporations would amount to discrimination by type of speaker—a practice that the *Citizens United* Court generally rejected.¹⁸

Of course, even if these arguments would not prevail in federal court, they may prevail in the court of public opinion. Much commentary has sought to defend the speech of protestors seeking to preserve a Confederate monument in Charlottesville.¹⁹ Surely it is worth defending the speech of Charlottesville itself, a city that had rejected the monument and what it stands for.

11. *Id.* at 481.

12. *Id.* at 470.

13. *Id.* at 468.

14. *Id.* at 465, 468, 481.

15. For a general treatment, see Josh Bendor, *Municipal Constitutional Rights: A New Approach*, 31 YALE L. & POL'Y REV. 389, 425-27 (2013) (arguing in favor of municipal free speech rights, and addressing conflicting Supreme Court precedent).

16. 558 U.S. 310 (2010).

17. *Id.* at 329.

18. Bendor, *supra* note 15, at 426. As Bendor observes, this conception of free speech rights would involve federal courts in sensitive disputes between different parts of state governments. *Id.* at 426-27. But the Supreme Court has proven willing to entertain suits by one state agency against another. See *Virginia Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 261 (2011) (concluding that federal courts could hear a suit by a state agency against state officials alleging violation of federal law).

19. See, e.g., William McGurn, *Hurrah for the ACLU: In Charlottesville, a Principled Stand for the Speech Rights of Even Odious Speakers*, WALL ST. J. (Aug. 14, 2017), <https://perma.cc/42B6-GCSR> (praising the ACLU for its support of protestors seeking to preserve monument).

II. Political Process

A. Geographic

Apart from free speech concerns, the statutes are problematic in that they distort the political process. The presence or absence of a statue is a distinctly local issue—it only directly impacts people in the vicinity. Yet the state laws generally take the issue out of the hands of the local government, and place it in the hands of an entity operating at a higher level. As a result, opponents of a statue cannot prevail simply by convincing their neighbors; they have to convince some different and geographically more diffuse group.

The Supreme Court has recognized that it violates equal protection to restructure the political process in a way that places special impediments in the way of people seeking protection from discrimination. In the 1969 case of *Hunter v. Erickson*,²⁰ the Supreme Court struck down a city charter amendment that required a voter referendum before the city could adopt any ordinance dealing with racial, religious, or ancestral discrimination.²¹ The amendment was put in place as part of the backlash to a city council ordinance on fair housing.²²

This doctrine has seen some successes, and some major defeats. After some Colorado municipalities adopted ordinances limiting discrimination based on sexual orientation, Colorado voters adopted an amendment to the state constitution that precluded that type of law.²³ In 1996, the Supreme Court struck down the amendment, relying in part on political process concerns with its effect:²⁴

[Under the amendment,] Homosexuals are forbidden the safeguards that others enjoy or may seek without constraint. They can obtain specific protection against discrimination only by enlisting the citizenry of Colorado to amend the State Constitution or perhaps, on the State's view, by trying to pass helpful laws of general applicability. This is so no matter how local or discrete the harm, no matter how public and widespread the injury.²⁵

In other words, the amendment was problematic partly because it forced people seeking redress for discrimination (including discrimination at the local level) to convince a different and geographically more diffuse group at the state level.²⁶ The invidious intent behind this restructuring of the political process

20. 393 U.S. 385 (1969).

21. *Id.* at 393.

22. *Id.* at 386-87.

23. *See Romer v. Evans*, 517 U.S. 620, 623-24 (1996).

24. *Id.* at 623.

25. *Id.* at 631.

26. *See id.*

was made clear by the fact that it applied even if the harm was “local or discrete.”²⁷

The Supreme Court moved in the opposite direction in *Schuette v. Coalition to Defend Affirmative Action*,²⁸ by refusing to strike down a state constitutional amendment that, amongst other things, banned the use of race in the college admissions process.²⁹ To the *Schuette* plurality, the political process doctrine only seemed to apply where “the state action in question . . . had the serious risk, if not purpose, of causing specific injuries on account of race.”³⁰

To the editors of the Harvard Law Review, the *Schuette* plurality “effectively interred the political-process doctrine,” because it limited the application of the doctrine to circumstances where “conventional equal protection doctrine” would apply.³¹ But it is possible to take a less dramatic view. Unlike the amendment in *Romer*, the amendment in *Schuette* did not shift decision-making authority from the local to the state level, but rather from unelected university administrators to the voters.³² And unlike the policies under attack in *Hunter* or *Romer*, which straightforwardly protected minorities from discrimination, the policy under attack in *Schuette* was affirmative action—a policy that the Court only tolerates on the ground that it confers benefits on institutions as a whole, not on racial minorities in particular.³³

In many ways, the state statutes preventing removal of Confederate statues are more similar to the measures struck down in *Hunter* and *Romer* than the measure sustained in *Schuette*. In *Hunter*, the measure prevented efforts to address housing discrimination.³⁴ Here, the state measures are preventing cities from addressing Confederate statues that have similarly been used to achieve and enforce racial segregation.³⁵ In *Romer*, the state sought to take issues out of

27. *Id.*

28. 134 S. Ct. 1623 (2014) (plurality opinion).

29. *Id.* at 1629, 1638.

30. *Id.* at 1633; *see also id.* at 1636 (distinguishing *Hunter* based on assertion that *Schuette* did not involve a “specific injury”).

31. *See Leading Cases: Constitutional Law*, 128 HARV. L. REV. 191, 286 (2014).

32. *See Schuette*, 134 S. Ct. at 1650 (Breyer, J., concurring).

33. *See Grutter v. Bollinger*, 539 U.S. 306, 330-31 (2003) (rejecting equal protection attack on affirmative action by citing the benefits that diversity confers on students and the legitimacy of the overall system). Of course, this approach is subject to serious challenge. *See, e.g.,* RANDALL KENNEDY, FOR DISCRIMINATION: RACE, AFFIRMATIVE ACTION, AND THE LAW 199-205 (2013) (urging that the Supreme Court had erred in rejecting the justification that affirmative action remedies societal discrimination against minorities while insisting that programs be justified by reference to diversity benefits).

34. *Hunter v. Erickson*, 393 U.S. 385, 386 (1969).

35. Sophie Abramowitz et al., *Tools of Displacement*, SLATE (June 23, 2017, 3:20 PM), <https://perma.cc/7WMF-8FE3>.

the hands of local governments, much like measures considered here.³⁶ And again, even if a city would not prevail in a federal lawsuit based on these arguments, the arguments are available to advocates.

B. Temporal

The political process issue is not just geographic. The statutes generally shift decisions from a geographically concentrated electorate that is matched to the concerns raised by a local monument to a geographically diffuse electorate. But they also shift decisions from a *modern* electorate that is matched to the current meaning of the monuments to the *past* electorates that installed and maintained the monuments. For example, the Alabama statute most strongly protects monuments that have been in place for forty years or more.³⁷ By protecting a long-lasting status quo in this way, the statute gives special weight to the views of past generations of voters.

It is not uncommon to treat a long-lasting status quo as settled and uncontroversial,³⁸ but it is problematic. Among other issues, demographic change³⁹ can change meanings. In an overwhelmingly Christian community like eighteenth century Cambridge, a social club's mandatory weekly pork dinner may only communicate a desire for good food and consistent fellowship. In a community that has come to incorporate a significant population of Jews, Muslims, Hindus, and Buddhists, stubborn insistence on that same practice means something very different.⁴⁰ Even on the (highly dubious) assumption

36. *Romer v. Evans*, 517 U.S. 620, 623-24 (1996).

37. See 2017 Ala. Laws 354 § 3(a).

38. For example, in his concurrence in *Van Orden v. Perry*, Justice Breyer cited the fact that a Ten Commandments monument had been in place for forty years without being challenged as support for his conclusion that it should remain in place notwithstanding strong Establishment Clause concerns. 545 U.S. 677, 700-03 (2005) (Breyer, J., concurring).

39. Individual events can also change meanings. After a terrorist attack in Charlottesville, the city's mayor advocated for removal of the statue that had precipitated the event, remarking: "It became very clear to me that the historical meaning of this statute has been inalterably changed . . . It's changing every day in part because we're getting new threats on a daily basis from terrorists who see it as a lightning rod and want to come back here." Madeline Conway, *Charlottesville Mayor Calls for Virginia to Change Law on Removing Monuments*, POLITICO (Aug. 18, 2017, 5:21 PM EDT), <https://perma.cc/Q2VE-SRXU> (quoting Charlottesville Mayor Michael Signer).

40. See Herbert H. Denton, Jr., *Behind the Velvet Curtain: A Look At Harvard's Final Clubs*, HARVARD CRIMSON (May 25, 1965), <https://perma.cc/35SF-KDP3> (discussing the origins of the Porcellian Club at Harvard College, and referencing the "tacit ban on Jews" that had prevailed at Harvard's social clubs); cf. *Pleasant Grove City v. Summum*, 555 U.S. 460, 477 (2009) (noting that the symbolic meaning of the Statue of Liberty had changed over time from "international friendship and the widespread influence of American ideals" to "a beacon welcoming immigrants to a land of freedom").

that Confederate memorials sent an acceptable and uncontroversial message when built, they can send a very different message now.

The concern here is also unique. To some extent, all durable laws raise the question of whether past generations had the right to make decisions binding following generations.⁴¹ But the Confederate statutes raise the question of whether it is appropriate to take power out of the hands of current voters and amplify the effect of decisions by past voters. Enactments like Alabama's 2017 statute are not simply holdovers from a previous era. They are a current attempt to privilege the decisions of a past voting pool over the decisions of the very different modern voting pool.

Such maneuvers are particularly questionable in light of changes to the voting pool. In the United States, the undeniable trend has been toward greater racial diversity.⁴² While legal changes have not always moved in one direction, it is also undeniable that racial minorities have greater freedom to express their concerns now than they did a century ago. Against this backdrop, a statute that locks in the decisions of previous generations of officials amounts to an attempt to empower a different and less diverse electorate than the electorate that has to live with the monuments. In other contexts, attempts to place decisions in the hands of less diverse bodies prompt serious judicial skepticism.⁴³ The temporal effect of these statutes may merit similar skepticism—if not by the courts, then by the public.

Conclusion

The state statutes protecting Confederate monuments are anomalous, and fit uncomfortably alongside constitutional values of free speech and fair play. While constitutional doctrine may or may not support a lawsuit toppling the statutes, the doctrine has valuable lessons for the public debate. Constitutional doctrine—and the moral deliberation it incorporates—provides an additional ground for skepticism of statutes that suppress the speech of cities and that restructure political processes to take power out of the hands of the voters who actually have to live with the monuments. The Confederate statutes should be removed.

41. Thomas Jefferson famously suggested they didn't, declaring, "The earth belongs to the living"; the point has some salience in debates about memorials. Scott Jaschik, *Why Honor Thomas Jefferson?*, SLATE (Nov. 25, 2015, 2:00 PM), <https://perma.cc/F5HZ-HASL>.

42. See SANDRA L. COLBY & JENNIFER M. ORTMAN, CENSUS BUREAU, U.S. DEP'T OF COMMERCE, P25-1143, PROJECTIONS OF THE SIZE AND COMPOSITION OF THE U.S. POPULATION: 2014 TO 2060, at 8 (2015) ("The United States is projected to become more racially and ethnically diverse in the coming years.").

43. See, e.g., *Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017) (applying searching and skeptical analysis to racial gerrymander); *Batson v. Kentucky*, 476 U.S. 79, 86-87 (1986) (criticizing use of peremptory challenges to jurors on racial grounds).



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY
CIVIL DIVISION / BIRMINGHAM**

STATE OF ALABAMA,)
Ex rel, ATTORNEY GENERAL STEVE MARSHALL)
Plaintiff,)

v.)

CITY OF BIRMINGHAM; and,)
RANDALL L. WOODFIN, in his OFFICIAL CAPACITY)
As MAYOR OF THE CITY OF BIRMINGHAM,)
Defendants,)

CV 17-903426-MGG

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

On May 1, 2018, the Court issued an ORDER [Doc. 68] in which it requested post-hearing briefing on the interpretation of several portions of the Alabama Memorial Preservation ACT of 2017 (*"the ACT"*) and Defendants CITY OF BIRMINGHAM and MAYOR RANDALL WOODFIN's (collectively, *"the CITY"*) affirmative defenses to enforcement of the ACT on the grounds that it violated their federal free speech and equal protection rights. In response, the CITY filed its POST-HEARING BRIEF [Doc. 70].

Shortly thereafter, the SOUTHERN POVERTY LAW CENTER (*"SPLC"*) filed its MOTION FOR LEAVE TO FILE BRIEF OF AMICUS [Doc. 74] urging this Court to grant the CITY's CROSS-MOTION FOR SUMMARY JUDGMENT [Doc. 51] and deny the MOTION FOR SUMMARY JUDGMENT [Doc. 43] filed by the STATE OF ALABAMA (*"the STATE"*). As no opposition was filed to SPLC's MOTION FOR LEAVE, it is due to be **GRANTED**. The Court has **CONSIDERED** its BRIEF OF AMICUS CURIAE SOUTHERN POVERTY LAW CENTER IN SUPPORT OF DEFENDANTS.

Finally, the STATE then filed its CONSOLIDATED RESPONSE TO THE DEFENDANTS' POST-HEARING BRIEF AND BRIEF OF AMICUS CURIAE SOUTHERN POVERTY LAW CENTER [Doc. 84]. Each of the foregoing have Exhibits that are set out in the official record of this ACTION.

DISCUSSION

The STATE contends this Court need not reach the issues of statutory interpretation the Court posed in its ORDER [Doc. 68] as to the cited provisions of the ACT because the only

ORDER FOR POST-HEARING BRIEFING
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portions of the ACT at issue in this suit—and the only portions the Court accordingly has jurisdiction to apply—are whether the CITY violated ALA CODE § 41-9-232(a) (1975)¹ “altered” or “otherwise disturbed” the Confederate Soldiers and Sailors Monument in Linn Park (*“the Monument”*) (stipulated to have been situated in Linn Park for more than forty years) by placing a plywood screen around it; and, whether the STATE may enforce the penalty provision against the CITY on a \$25,000.00 per-day basis.

Generally, the STATE contends that because an Alabama municipality is a mere instrumentality of the STATE, the STATE can restrict the CITY's power to express its disagreement with the ACT. Likewise, the STATE further contends, this Court need not reach the issues raised with respect to the CITY's federal constitutional defenses “... because a well-established line of federal cases holds that municipalities lack standing to assert state statutes violate their rights under the United States Constitution because they are creatures or instrumentalities of their states of origin” [Doc. 84, p. 2], and not private citizens.

The STATE contends that it brought suit under specific provisions of the ACT, and the CITY lacks standing to assert it is injured by the potential application of other portions of the ACT not at issue in this case. The STATE emphasizes “Standing . . . turns on whether the party has been injured in fact and whether the injury is to a legally protected right.” *State v. Property at 2018 Rainbow Drive known as Oasis*, 740 So. 2d 1025, 1028 (Ala. 1999) (internal quotation and citation omitted). [Emphasis added] To suggest this lawsuit is simply whether the CITY's placing a twelve-foot high wooden screen around the Monument “altered” or “otherwise disturbed” the monument in violation of the ACT, presumes simply that the ACT cannot be challenged, period. To so argue makes the STATE's power unassailable, period.

However, there is a well-established line of cases establishing that a state's power over its municipalities—like any state power—is subject to constraints. Although a state's legislative control over municipalities is extensive, the U.S. Supreme Court has never acknowledged the states' “plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations.” *Rogers v. Brockette*, 588 F.2d 1057, 1068 (5th Cir. 1979)². Rather, municipalities, including those in Alabama, have rights not conferred by state legislative

¹ The ACT is codified at ALA. CODE §§ 41-9-231, *et. seq.* (1975).

² Unless later superseded by Eleventh Circuit precedent, a Fifth Circuit decision issued before October 1, 1981, binds this court. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (*en banc*); *Muhammad v. Muhammad*, 2016 WL 3509529 (11th Cir.)

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grace, which include: (1) a "legally protected right" to free speech, and, (2) a "legally protected right" not to be deprived of its property without due process of law.

LEGALLY PROTECTED RIGHT TO FREE SPEECH

Although the U. S. Supreme Court has not articulated a precise test for distinguishing government speech from private speech, the Courts have identified three relevant factors from *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239 (2015), and *Pleasant Grove City³ v. Summum*, 555 U.S. 460, 467-68 (2009) (citing *Bd. of Regents v. Southworth*, 529 U.S. 217, 229 (2000), to-wit: (1) the history of the speech at issue; (2) a reasonable observer's perception of the speaker; and (3) control and final authority over the content of the message. The result reached in *Summum* was the conclusion, “[p]ermanent monuments displayed on public property typically represent government speech.” *Id.* at 470. Therefore Pleasant Grove City's speech (action regarding the display) is protected, and citizens cannot force the city to propound speech or ideas with which it does not agree. Importantly, the Court also found that a monument's message “may change over time,” noting that “[a] study of war memorials found that people reinterpret the meaning of these memorials as historical interpretations and the society around them changes.” *Id.* at 477 (internal quotations omitted).

As to the whether the CITY enjoys protected speech, the Court examines the three relevant factors from *Walker* and *Summum*. First, the history of the Monument need not be set out here, as it is extensively set out in the SPLC's BRIEF. Briefly, as stipulated [Doc. 38]:

- in 1905, the Pelham Chapter of the United Daughters of the Confederacy dedicated the Monument to Confederate soldiers who fought in the Civil War in Capitol Park, since renamed Linn Park;
- the Monument contains the phrases “In Honor of the Confederate Soldiers and Sailors” ... “The manner of their death was the crowning glory of their lives” ... “To the memory of the Confederate soldiers and sailors. Erected by the Pelham Chapter, United Daughters of the Confederacy. Birmingham, Ala. April 26, 1905.”; and,
- The Monument contains inscriptions of crossed sabers, muskets, and an anchor, with four stone artillery balls lying at its base

The fact that the CITY has had for many years an overwhelmingly African-American population and a majority African-American elected Mayor and City Councilors also need not be set out, again, because it is set out in the BRIEFS. It is undisputed that an overwhelming majority of the body politic of the CITY is repulsed by the Monument.

³ This is not "Pleasant Grove, Alabama"; rather a city in the State of Utah.

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As to a reasonable observer's perception of the Monument, in *Summum*, the Court held that Pleasant Grove City was exercising its right to government speech in rejecting a privately-donated monument for permanent display in the city's Pioneer Park. *Id.* at 472. Despite being donated by a private organization, the Court determined that the display of the monument at issue would be government, as opposed to private, speech because persons observing the monument on city property would reasonably interpret the monument as conveying a message on the city's behalf. *Id.* at 470-471 ("Just as government-commissioned and government-financed monuments speak for the government, so do privately financed and donated monuments that the government accepts and displays to the public on government land."). The Court found that "[p]ublic parks are often closely identified in the public mind with the government unit that owns the land. City parks . . . commonly play an important role in defining the identity that a city projects to its own residents and to the outside world." *Id.* at 472.

As to control and final authority over the content of the message of the Monument, per § 41-9-232(a), since it has sat in Linn Park for more than forty years, it cannot be "... relocated, removed, altered, renamed, or otherwise disturbed." § (b) addresses whether a defined structure has been situated or otherwise for twenty years but less than forty years; and, §(c) addresses schools which fall under the pertinent definitions. § 41-9-235(a) establishes a waiver process to avoid the ACT's restrictions for those things described under § 41-9-232(b) and (c), but not as described under § (a), which, of course, the subject Monument falls. In short, under any reading of the ACT, there is simply no way, no process, no procedure available for the CITY to petition for relief to do anything to the Monument despite how much it does not want to be perceived as honoring what it honors. Thus, the ACT establishes absolute control and final authority over the content of the message, i.e., homage to the Confederacy.

A city has a right to speak for itself, to say what it wishes, and to select the views that it wants to express. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Rust v. Sullivan*, 500 U.S. 173, 194 (1991); *Nat'l Endowment for Arts v. Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring)); *see also Creek v. Vill. of Westhaven*, 80 F.3d 186, 192 (7th Cir. 1996) (observing that municipalities ACT as amplified voices for their constituents and that "the marketplace of ideas would be unduly curtailed if municipalities could not freely express themselves on matters of public concern.") (Posner, J.). Thus, for example, a city may exercise editorial control over privately-donated monuments situated on city land. *Summum*, 555 U.S. at 471-72.

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This is not the first time the STATE has “invoke[d] generalities expressing the State’s unrestricted power” over municipalities to impose its will. *Gomillion v. Lightfoot*, 364 U.S. 339, 342 (1960). In *Gomillion*, the STATE OF ALABAMA raised this same unrestricted, unassailable power to contend that African American residents of the City of Tuskegee could not challenge a legislative change to municipal boundaries as discriminatory under the Fourteenth and Fifteenth Amendments. *Id.* at 340. The U. S. Supreme Court rejected the argument “that the States have power to do as they will with municipal corporations regardless of consequences.” *Id.* at 344. Rather, the Court reaffirmed that “[l]egislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution.” *Id.* at 344–45

The U. S. Constitution’s limitations on speech regulation apply to states, *City of Ladue v. Gilleo*, 512 U.S. 43, 45 n.1 (1994), and the STATE cannot flout those limitations and restrict the CITY’s expressive conduct vis-à-vis the Monument. The STATE acknowledges that the CITY is generally free to engage in government speech, (Doc. 62 at 13), but explains that the ACT withdraws from the CITY the right to engage in a particular expressive message, (Doc. 62 at 10–12). This explanation is impermissibly content-based. Just as the STATE cannot manipulate a city’s boundaries to pursue the illegitimate purposes of discrimination and disenfranchisement, *Gomillion*, 364 U.S. at 344–45, it also cannot manipulate the CITY’s speech for the illegitimate purpose of favoring certain content or viewpoints.

Here, the STATE’s interest in preserving the Monument, and its means of doing so, are bound up with the Monument’s expressive content. For example, the STATE does not own the property on which the Monument is situated, (Doc. 58 at ¶ 3), and therefore the STATE has no property interest to protect. And, as the leading cases on government speech establish, the CITY’s ownership of the park all but determines that the CITY is the speaker. *See, e.g., Sumnum*, 555 U.S. at 471–72. When “considered [in] the context in which it occurred,” *Johnson*, 491 U.S. at 405—the aftermath of racially-motivated violence in other Southern states, (Doc. 54 at 13–14)—the CITY’s conduct here is only expressive disassociation from a pro-Confederacy message. The STATE has not articulated an interest in penalizing this conduct other than disagreement with the message.

Despite the CITY’s desire to reject a pro-Confederacy message, the STATE contends the ACT compels the CITY to do so. This cannot be. *Sumnum* and its progeny establish that the CITY, as the park’s owner, is the entity communicating at the park. Just as the STATE could not force any particular citizen to post a pro-Confederacy sign in his or her front lawn, so too can the STATE

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not commandeer the CITY's property for the State's preferred message. That the ACT compels the CITY to express the STATE's preferred message does not transform the message into the STATE's speech. The relevant speaker in Linn Park is, under *Sumnum*, the CITY. The STATE can substitute its speech for the CITY's only through constitutional means, which necessarily excludes unjustified compelled ideological speech. *Id.* Thus

The practical ramification of the STATE's position is that the ACT renders pro-Confederate speech immune from a local political process that rejects a message of white supremacy. But the Constitution protects "an open marketplace where ideas, most especially political ideas, may compete without government interference," *N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 208 (2008), and "it is the democratic electoral process that first and foremost provides a check on government speech," *Walker*, 135 S. Ct. at 2245. The democratic process here flew into motion after the people of Birmingham witnessed race-based violence across the South and decided, through their elected officials, to reject a message of African American inferiority. Under the ACT, however, the people of Birmingham cannot win. No matter how much they lobby CITY officials, the STATE has placed a thumb on the scale for a pro-Confederacy message, and the people, acting through their CITY, will never be able to disassociate themselves from that message entirely. This is so because the ACT makes no provision for removing those monuments most likely to convey a pro-Confederacy message. It is no answer that the CITY could erect *other* monuments or signs criticizing the Confederacy (Doc. 62 at 13-14); the CITY has the right to disassociate from a pro-Confederacy message entirely. By rendering that result impossible no matter how much the people of Birmingham lobby or vote, the ACT risks the further harm that "[m]any persons . . . will choose simply to abstain from protected speech"—advocacy to remove pro-Confederate messages—"harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003).

The STATE's power over the CITY is no answer where, as here, the basis for the exercise of state power is a distortion of the marketplace of ideas that the Constitution does not allow. *Cf. Gomillion*, 364 U.S. at 344-45 ("Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution."). Just as when the Supreme Court recognized municipal rights as enforceable against the federal government, protecting the CITY's speech here advances the interests not only of "the public entity," but of "the persons served by it." *50 Acres of Land*, 469 U.S. at 31. In short, the STATE

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is impermissibly forcing the City to speak in favor of the Confederacy and its values, and as such, is denying the CITY its right to government speech.

LEGALLY PROTECTED RIGHT TO DUE PROCESS

The ACT also violates the Fourteenth Amendment to the U. S. Constitution because it deprives the CITY of property without due process of law. As already discussed, the power of a state over its municipalities, while broad, is not limitless; it is circumscribed by “the relevant limitations imposed by the United States Constitution.” *Gomillion*, 364 U.S. at 344-45.

That the CITY is being deprived of property is clear. *First*, the STATE seeks to recover at least \$25,000.00 from the CITY. *Second*, the STATE seeks to control what the CITY may or may not build on its own land, thus restricting its exercise of its rights as the owner of Linn Park. The STATE also seeks to control how and even whether the CITY maintains the Monument, thus restricting its exercise of its rights as the owner of the Monument and also forcing it to spend some of its monies on preservation of this Monument. (*See* Doc. 58 at ¶ 8). The Court **RECOGNIZES** the CITY's argument as to violation of Amendment 621 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, and **AGREES** it unconstitutionally imposes an increased expenditure of municipal funds. [Doc. 70, p.16] That the CITY's property interests are affected by this case is not in dispute.

What process is due under the Fourteenth Amendment before deprivation of property is a question for the United States Constitution, not a state statute. *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 541 (1985). A state's deprivation of real property can be accomplished only with notice and an adequate hearing. “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

Under the ACT, there is no process at all – no notice and no hearing. According to the STATE, it may decide what the CITY can and cannot do with its own property, Linn Park and the statuary inside it. There is no provision in the ACT for the CITY or its citizens to be heard concerning the use of Linn Park and the Monument. And while of course the current litigation provides due process before the STATE will take \$25,000.00 or more in fines, under the STATE's reading of the law, the Court's role would be merely pro forma, since the CITY has no rights as against the STATE. (Doc. 62 at 11). The absence under the ACT of an opportunity to be heard at all, much less at a meaningful time and in a meaningful manner, violates the Fourteenth Amendment.

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THE LACK OF A SEVERABILITY CLAUSE IN THE ACT

The ACT does not contain a repeal clause. A general act may amend or repeal a local act by express words or by necessary implication. *Vaughan v. Moore*, 379 So.2d 1240 (Ala.1980). It is well established that repeal by implication is not favored. *Willis v. Kincaid*, 983 So.2d 1100 (Ala.2007). More specifically, this Court has recognized “[t]he rule that implied repeal is disfavored when the earlier act is specific and the subsequent act is general.” *Marks v. Tenbrunsel*, 910 So.2d 1255 (Ala. 2005). A later statute may repeal an earlier statute by implication only under certain circumstances, such as when the two statutes, taken together, are so repugnant to each other that they become irreconcilable. *Hurley v. Marshall County Comm'n*, 614 So.2d 427, 430 (Ala.1993)

By way of example, municipalities in Alabama have authority, but are not required, to repair or demolish unsafe structures, or seek such actions, pursuant to several different provisions of the ALA. CODE (1975) including statutes that provide authority through Class legislation for Class 2, 4, 5, 6, and 8 municipalities. Most of these statutes contain "Cumulative" clauses which state that the provisions “...shall be cumulative in its nature, and in addition to any and all power and authority which any such city may have under any other law.” As stated, repeal by implication is not favored. Implied repeal is essentially a question of determining the legislative intent as expressed in the statutes. *Shiv-Ram, Inc. v. McCaleb*, 892 So.2d 299 (Ala.2003) (quoting *Fletcher v. Tuscaloosa Fed. Sav. & Loan Ass'n*, 314 So.2d 51 (1975), quoting in turn *State v. Bay Towing & Dredging Co.*, 90 So.2d 743 (1956)). Statutes should be construed together so as to harmonize provisions as far as practical, and in event of conflict between two statutes, specific statute relating to specific subject is regarded as exception to, and will prevail over, general statute relating to broad subject. *Ex parte Jones Mfg. Co., Inc.* 589 So.2d 208 (1991); *Murphy v. City of Mobile*, 504 So.2d 243 (Ala.1987); *Bouldin v. City of Homewood*, 174 So.2d 306 (1965). Moreover, “ ‘the last expression of the legislative will is the law, in cases of conflicting provisions in the same statute, or in different statutes, the last enacted in point of time prevails.’ ” *Williams v. State ex rel. Schwarz*, 197 Ala. 40, 54, 72 So. 330, 336 (1916).

The ACT also does not contain a severability clause. The inclusion of a severability clause is a clear statement of legislative intent to that effect, but the absence of such a clause does not necessarily indicate the lack of such an intent or require a holding of inseverability. The judiciary's severability power extends only to those cases in which the invalid portions of an act are not so intertwined with the remaining portions that such remaining portions are rendered meaningless by

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the extirpation. *State ex rel. Pryor ex rel. Jeffers v. Martin*, 735 So.2d 1156 (Ala.1999). The lack of a severability clause does not end the court's inquiry, because "courts will strive to uphold acts of the legislature." *City of Birmingham v. Smith*, 507 So.2d 1312 (Ala.1987).

Where a statute is partly infected with invalidity, a severable or saving clause is persuasive that the legislature intended that should an invalid portion be stricken, the valid part should survive. *Hamilton v. Autauga County*, 268 So.2d 30 (Ala.1972). If after the deletion of the invalid part, the remaining portions of an Act are complete within themselves, sensible, and capable of execution, the Act will stand notwithstanding its partial invalidity. *Springer v. State ex rel. Williams*, 157 So. 219 (Ala.1934).

If any part of an Act is declared invalid or unconstitutional, that declaration shall not affect the part which remains unless an unconstitutional provision in the Act is overbroad and unreasonable and is "so intertwined with the remaining portions" of the Act that the Act would be meaningless without it. *State ex rel. Jeffers v. Martin*, 735 So.2d 1156 (Ala.1999) ("Under these well-established principles, the judiciary's severability power extends only to those cases in which the invalid portions are 'not so intertwined with the remaining portions that such remaining portions are rendered meaningless by the extirpation.'") *Hamilton v. Autauga County*, 268 So.2d 30 (1972) (quoting *Allen v. Walker County*, 199 So.2d 854 (1967)). If they are so intertwined, it must be assumed that the legislature would not have passed the enactment thus rendered meaningless. In such a case, the entire act must fall as the objectionable portion cannot be severed, and the Act in its entirety is unconstitutional. *State v. Lupo*, 984 So.2d 395 (Ala. 2007).

The subject part of the ACT that combines to deprive the CITY of its Constitutionally protected speech, as well as to deny its Constitutional right to due process is § 41-9-235(a). This section permits a waiver process for protected things at least twenty years old, but less than forty years old, and, schools. The Court cannot rewrite § 41-9-235(a) by inserting language to allow structures sitting on public property for more than forty years to apply for a waiver, or otherwise modify § (a). § (a) is clearly intertwined in the entire ACT because it is the "gatekeeper" of who can apply for a waiver. As such, it is also overbroad and unreasonable.

Under these principles of statutory interpretation, having already DETERMINED those parts and aspects of the ACT that deprive the CITY of its Constitutionally protected rights, this Court has no choice but to, reluctantly, **DECLARE** that ACT 217 of the 2017 Regular Session of the Legislature of the State of Alabama, popularly known as the Alabama Memorial Preservation Act, is **VOID** and of **NO** legal effect or authority.

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Accordingly, it is hereby **ADJUDGED, ORDERED** and **DIRECTED** as follows:

1. ACT 217 of the 2017 Regular Session of the Legislature of the State of Alabama, popularly known as the Alabama Memorial Preservation Act, is **VOID** and of **NO** legal effect or authority;
2. The MOTION FOR LEAVE TO FILE BRIEF OF AMICUS [Doc. 74] SOUTHERN POVERTY LAW CENTER [Doc. 74] is **GRANTED**;
3. The MOTION FOR SUMMARY JUDGMENT [Doc. 43] filed by the STATE OF ALABAMA is **DENIED**;
4. The CROSS-MOTION FOR SUMMARY JUDGMENT [Doc. 51] filed by the CITY OF BIRMINGHAM and MAYOR RANDALL WOODFIN, is **GRANTED**; and,
5. Costs are **TAXED** as paid.

DONE and **ORDERED** this date, *January 14, 2019*.

S/Michael G. Graffeo

MICHAEL G. GRAFFEO

Circuit Judge