

CAUSE NO. DC-19-07054

CHRIS CARTER, ET AL.,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
VS.	§	14TH JUDICIAL DISTRICT
	§	
CITY OF DALLAS, ET AL.,	§	
Defendants.	§	DALLAS COUNTY, TEXAS

DEFENDANTS’ SUPPLEMENT TO THEIR PLEA TO THE JURISDICTION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Defendants the City of Dallas (“City”) and the City Plan Commission (the “CPC”) (collectively “Defendants”) and file this supplement to their plea to the jurisdiction.

I. OVERVIEW

This is the fourth lawsuit attempting to block the City’s removal of City owned symbols of the Confederacy from City property. The three previous cases were dismissed for various reasons including the lack of jurisdiction.¹ Many of Plaintiffs’ contentions have been directly rejected in the prior rulings in those related cases. Any “new” claim is without merit. Plaintiffs lack standing to assert the claims alleged and there is no applicable waiver of governmental (sovereign) immunity for the asserted claims. Plaintiffs have not and cannot allege a viable or valid cause of action within any granted statutory standing or waiver of governmental immunity.

II. FACTUAL BACKGROUND

The Court may take judicial notice that the Civil War ended over 150 years ago. On June 17, 2015, a white supremacist entered a church in Charleston, South Carolina and shot and killed

¹ See *Return Lee to Lee Park v. Rawlings*, No. DC-18-05460 (14th Judicial District Court of Dallas County, Texas), *Patterson v. Rawlings*, 287 F. Supp. 3d 632 (N.D. Tex. 2018); *Johnson v. Rawlings*, No. 3:19-CV-0180-C (N.D. Tex.). Defendants request that the Court take judicial notice of the filings and proceedings in these three cases. Copies of the final judgments and orders are attached as Exhibits 26-28.

nine people. The killer had previously wrapped himself in the Confederate battle flag. On July 7, 2016, another individual using racial hatred as justification shot and killed five peace officers in Dallas, Texas. On August 12, 2017, in Charlottesville, Virginia, there was a demonstration by torch-wielding, Nazi-flag waving, and Confederate flag bearing individuals who circled around a statue of Robert E. Lee. Violence erupted that night and the following day, culminating in another hate filled individual driving a car into a crowd, killing one and injuring others.

On August 24, 2017, the Mayor of the City of Dallas created the Mayor’s Task Force on Confederate Monuments. (Ex. 1). The Task Force was to consider whether to remove symbols of the Confederacy currently on City property and whether to rename streets and other public places named for Confederate figures. (Ex. 1).

One of the Confederate symbols is a series of statues known as the Confederate Monument or Confederate Memorial located in Pioneer Cemetery Historic District, just across the street from Dallas City Hall.² The Confederate Monument was originally installed in Old City Park in 1896 and was moved to Pioneer Plaza in 1961. (Ex. 15). Because the Confederate Monument is located within a City-created historic district, any removal would first require that the City obtain a certificate of removal from the City’s Landmark Commission. (Dallas City Ordinance No. 24938, § 1.4). The governing City ordinance provides that structures in a historic overlay district may only be removed for certain specified reasons. Dallas, Tex., City Code § 51A-4.501(h). One of the permitted reasons for removal is “[t]he structure is noncontributing to the historic overlay district because it is newer than the period of historic significance.” *Id.* § 4.501(h)(B)(iv).

² The monument consists of four statues in a circle and a center obelisk with another statue on top. The four lower statues are of Jefferson Davis, Robert E. Lee, “Stonewall” Jackson, and Albert Sidney Johnston and the center statue is a Confederate soldier. (Ex. 15).

On September 6, 2017, the Dallas City Council passed a resolution concerning Confederate monuments, symbols, and names. Among other things, the resolution directed the Task Force to conduct public meetings, receive public input, and recommendations. (Exs. 2-4). The Task Force held several public meetings and formed recommendations. (Ex. 1). In addition to the Task Force, various City entities and the City Council held public meetings, received public comments, and was briefed on the recommendations. (Ex. 5-15). Plaintiffs spoke at several of these meeting. (Ex. 9, 12, 14)

On February 13, 2019, the City Council held a public meeting and passed a resolution directing the City Manager to seek “all necessary approvals for the disassembly, removal, and transfer to storage” of the Confederate Monument. The same resolution authorized and directed the City manager to procure and enter into a contract for the removal. (Ex. 16-18).

The City applied for the certificate of removal and requested that the Landmark Commission hear the matter on March 4, 2019. (Ex. 19).

On March 4, 2019, the Landmark Commission heard the application. (Ex. 19-20). Plaintiff Pieroni had previously sent an email sharing her views to the Landmark Commission. (Ex. 22). Both Plaintiffs appeared and spoke at the hearing. (Ex. 23). The Landmark Commission granted the application. (Ex. 20).

Pursuant to City Code, both Plaintiffs appealed the Landmark Commission’s decision to the CPC. (Ex. 21). A hearing was held on May 16, 2019 and the CPC affirmed the decision of the Landmark Commission. (Ex. 31). Plaintiffs filed this suit the following day.

III. PLEA TO THE JURISDICTION

A. Standards for a Plea to the Jurisdiction.

The plaintiff has the burden to allege and prove facts affirmatively demonstrating that the trial court has subject-matter jurisdiction. *See Tex. Ass'n of Business v. Tex. Air Control*, 852 S.W.2d 440, 446 (Tex. 1993). A plea to the jurisdiction contests a trial court's subject-matter jurisdiction. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999).

When a plea to the jurisdiction challenges the pleadings, the court determines whether the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *Tex. Ass'n of Bus.*, 852 S.W.2d at 446. The pleadings are construed liberally in favor of the plaintiff and look to the pleader's intent. *Id.* If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend. *County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002).

If a plea to the jurisdiction challenges the existence of jurisdictional facts, the court considers the relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000). If the challenge implicates the merits of the plaintiff's cause of action and the relevant evidence is undisputed or fails to raise a fact question regarding subject-matter jurisdiction, the trial court rules on the plea to the jurisdiction as a matter of law. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227-28 (Tex. 2004).

B. The standards for standing.

Standing is a necessary component of subject-matter jurisdiction. *Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998); *Barshop v. Medina Cnty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex. 1996). Under common

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law, a plaintiff must demonstrate that he “possesses an interest in a conflict distinct from that of the general public, such that the defendant’s actions have caused the plaintiff some particular injury.” *Williams v. Lara*, 52 S.W.3d 171, 178-79 (Tex. 2001); *see also Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984) (standing consists of some interest peculiar to the person as an individual and not as a member of the general public). Common law standing requires that a plaintiff personally suffer a concrete and particularized, actual or imminent, and not hypothetical injury. *Heckman v. Williamson County*, 369 S.W.3d 137, 155 (Tex. 2012). The claimed injury must be fairly traceable to the defendant’s alleged conduct and plaintiff’s claimed injury will likely be redressed by the requested relief. *Id.*

The legislature may exempt litigants from the common law injury requirement, making the statute itself the proper analytical framework to determine standing. *Everett v. TK-Taito, L.L.C.*, 178 S.W.3d 844, 850 (Tex. App.—Fort Worth 2005, no pet.). For statutory standing to apply, the plaintiff must allege and show how he has been injured or wronged within the parameters of the statutory language. *Id.* at 851. For statutory standing, “the statute itself serves as the proper framework of a standing analysis” that “begins and ends with the statute itself.” *Id.*; *Marauder Corp. v. Beall*, 301 S.W.3d 817, 820 (Tex. App.—Dallas 2009, no pet.).

C. Standards for governmental immunity.

Absent waiver by the legislature, sovereign or governmental immunity generally deprives courts of subject-matter jurisdiction over suits against governmental entities or officers or employees acting within their official capacity. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 369–76 (Tex. 2009); *Miranda*, 133 S.W.3d at 224. For the waiver to be effective, a plaintiff must plead and establish a constitutional or legislative waiver with facts that make the waiver applicable. *See Gen. Servs. Comm’n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 599 (Tex. 2001); *Tex. Ass’n*

of Bus., 852 S.W.2d at 446. For there to be a waiver of governmental immunity, the plaintiff must plead a valid claim. *See Kaufman Cnty. v. Combs*, 393 S.W.3d 336, 345 (Tex. App.—Dallas 2012, pet. denied).

IV. PLAINTIFFS LACK STANDING

A. Plaintiffs lack standing to complain about any free speech deprivation.

Plaintiffs have failed to allege and cannot establish an injury in fact sufficient to establish individual or common law standing. Plaintiffs do not allege that they own any interest in the Confederate Monument. To the contrary, it is City-owned property situated on City property. (E.g. Ex. 15). Plaintiffs’ pleadings allege no connection whatsoever between Plaintiffs and the Confederate Monument. Except for vague and conclusory allegations, Plaintiffs’ pleading does not allege any type of harm, damage, or injury.

Plaintiffs assert they have standing because “this is a facial constitutional challenge to the City Resolution.” (Pls. First Am. Pet. at 3 [¶ 10]). Elsewhere they assert a First Amendment Claim based on the September 6, 2017 City Council’s resolution. (Pls. First Am. Pet. at 29-31 [¶¶ 86-88]). That resolution did not direct the removal of the Confederate Monument. (*See* Exs. 2-4). Even assuming that they complain about the resolution and other actions authorizing the removal of the Confederate Monument, Plaintiffs make no allegation as to how the removal or any other action has infringed on Plaintiffs’ First Amendment rights. They do not even allege that they have ever visited the Confederate Monument. Plaintiffs do not allege that they have been prevented or restricted from exercising their right of free speech.

To the contrary, Plaintiffs have appeared at and spoken at City Council, Landmark Commission, and CPC meetings. (Ex. 9, 12, 14, 20, 31). Ms. Pieroni has sent an email to the Landmark Commission expressing her opposition to the removal. (Ex. 22). Mr. Carter has

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spoken to the media about his efforts.³ See

[https://www.dallasnews.com/opinion/commentary/2019/05/20/dallas-vows-not-remove-](https://www.dallasnews.com/opinion/commentary/2019/05/20/dallas-vows-not-remove-confederate-war-memorial-14-days-case-reaches-courtroom)

[confederate-war-memorial-14-days-case-reaches-courtroom](https://www.dallasnews.com/opinion/commentary/2019/05/20/dallas-vows-not-remove-confederate-war-memorial-14-days-case-reaches-courtroom). The City's actions regarding the Confederate Monument have not restricted or limited Plaintiffs' free speech rights in any way. Plaintiffs have not alleged any concrete and particularized or actual or imminent injury that has occurred or will occur to them because of City actions concerning Confederate symbols. As the court in *Williams v. Parker*, 843 F.3d 617, 622, 623 (5th Cir. 2016) found, "bare assertions" or "unadorned contentions" of violations of First Amendments rights are insufficient to confer standing.

In *Patterson*, a different set of plaintiffs also complained that the City's removal of Confederate symbols impacted their First Amendment rights. Judge Fitzwater, presiding, concluded they lacked standing. The holding applies with equal force to Plaintiffs' claim:

In this case, however, plaintiffs have not alleged that Patterson has been deprived of any First Amendment freedom for any period of time. Plaintiffs contend that Patterson holds the political viewpoint that "the men who fought for the Confederacy in the Civil War deserve our respect." *Id.* at 9. But they do not allege that the City has ever taken any action that would prevent Patterson from expressing this political view. They have at most alleged that Patterson shares the political viewpoint communicated to the general public by the Confederate monuments. This allegation, however, does not explain how the removal of Confederate monuments from City-owned property prevents Patterson from expressing his political viewpoint. *See, e.g., Serra v. U.S. Gen. Servs. Admin.*, 847 F.2d 1045, 1049 (2d Cir. 1988) (noting that "the Government's action in this case [(removing a sculpture from a federal plaza)] is limited to an exercise of discretion with respect to the display of its own property" and that "nothing GSA has done here encroaches in any way on Serra's or any other individual's right to communicate."). Plaintiffs have failed to cite any case in which a plaintiff's agreement with the message conveyed by someone else's speech—here, the City's—transforms that speech into the plaintiff's speech for First Amendment standing purposes. Accordingly, the court concludes that plaintiffs have failed to plausibly allege that the City's removal

³ After filing this lawsuit, Mr. Carter also appeared unannounced at a City councilmember's home in an attempt to speak about the issue.

of the Lee Statue and forthcoming removal of other Confederate monuments infringes Patterson's First Amendment free speech rights.

Patterson, 287 F. Supp. 3d at 641-42. Also see *McMahon v. Fenves*, 323 F.Supp.3d 874, 879-881 (W.D. Tex. 2018) (holding removal of an inanimate object conveying shared ideological interest insufficient for standing); *Brewer v. Nirenberg*, No. SA:17-CV-837-DAE (W.D. Tex. Sept. 17, 2018) (attached as Ex. 25 at 8-10) (plaintiffs suffered no injury in fact from removal of Confederate symbols). Like the plaintiffs in those cases, Plaintiffs have not suffered any injury or harm and, therefore, lack standing.

Additionally, Plaintiffs do not plead how their alleged injuries are different or distinct from the general public. In another lawsuit involving the removal of Confederate monuments from government property, the Sixth Court of Appeals of Texas held that the plaintiffs in that suit did not plead or prove a particularized injury distinct from the general public sufficient to confer standing under Texas law. See *Bray v. Fenves*, No. 06-15-00075-CV, 2016 WL 3083539, *5-8 (Tex. App.—Texarkana Mar. 24, 2016, pet. denied); see also *Moore v. Bryant*, 853 F.3d 245, 249-51 (5th Cir. 2017) (holding plaintiff lacked standing to complain about the presence of the Confederate battle flag as part of the state flag of Mississippi); *Callan v. Fischer*, No.3:16-CV-734-TBR, 2017 WL 4273106, *4 (W.D. Ky. Sept. 26, 2017) (holding plaintiff's complaint about removal of a Confederate monument was no more than a generalized grievance and failed to confer standing); *Gardner v. Mutz*, 360 F. Supp. 3d 1269, 1276 (M.D. Fla. 2019) (same). Plaintiffs have not alleged and cannot establish any injury distinct from the general public and, therefore, lack standing to complain about the removal of any Confederate symbol.

Finally, no First Amendment rights of anyone are implicated. The Supreme Court has held that "the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause." **Defendants' Supplement to Plea to the Jurisdiction**

Pleasant Grove City v. Summum, 555 U.S. 460, 464 (2009). The Court reasoned that “[w]hen 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.” *Id.* at 470. Indeed, “[g]overnments have long used monuments to speak to the public.” *Id.* Further, a government entity “is entitled to say what it wishes” and “select the views that it wants to express.” *Id.* at 467-468. “Therefore, the removal of the [M]onument [] is a form of government speech and is exempt from First Amendment scrutiny.” *Monumental Task Comm., Inc. v. Foxx*, 157 F. Supp. 3d 573, 994 (E.D. La. 2016), *aff’d*, 678 F. App’x 250 (5th Cir. 2017).

Whether a city installs or removes a monument, it is exercising its government speech. The Defendants’ actions are not limiting the First Amendment rights of Plaintiffs or anyone else. *See Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239 (2015) (symbols on license plates were government speech and state was entitled to refuse and could not be forced to include Confederate battle flag on its license plates); *Gardner*, 360 F. Supp. 3d at 1276 (planned removal of Confederate monument was government speech and First Amendment claim was dismissed because plaintiff lacked a legally protected interest in that speech); *United Veterans Memorial and Patriots Ass’n of City of New Rochelle v. City of New Rochelle*, 72 F. Supp. 3d 468 (S.D. N.Y. 2014) (city decision to remove Gadsden flag from city flagpole was government speech and did not implicate the First Amendment); *Dawson v. City of Grand Haven*, No. 329154, 2016 WL 7611556 (Mich. Ct. App. Dec. 29, 2016) (per curiam) (city decision to prohibit previously allowed display of cross on city monument was government speech and removal did not implicate the First Amendment).

Under both a facial and factual challenge, Plaintiffs lack standing based on any claimed right of free speech.

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B. Plaintiffs lack standing to complain about any purported violation of the Texas Antiquities Code.

Plaintiffs assert the removal of the Confederate Monument will violate the Texas Antiquities Code. Initially, Plaintiffs do not allege and cannot establish a particular injury, an injury distinct from that of the general public, or a concrete and particularized, actual or imminent, and not hypothetical injury. *Williams*, 52 S.W.3d at 178-79; *Heckman*, 369 S.W.3d at 155. They cannot establish constitutional or common law standing for a purported violation of the Texas Antiquities Code.

The Texas Antiquities Code provides that a Texas citizen may seek injunctive relief to enjoin threatened violations of the Antiquities Code. Tex. Nat. Res. Code, § 191.173(a). However, Plaintiffs have not alleged and cannot establish any violation within the parameters of the statutory grant of standing in Section 191.173(a) of the Texas Natural Resources Code. As Plaintiffs' pleadings acknowledge, the Court has already heard and rejected an identical claim brought in another case by the same counsel. (*See* Pl.'s Pet. at 18 (note 5)). In *Return Lee to Lee Park*, the plaintiffs also alleged that any removal of the Confederate Monument without a permit from the Texas Historical Commission would violate the Antiquities Code. The Court concluded Plaintiffs lacked standing as well as granting summary judgment against the claim. The assertion is equally without merit in this case.

Plaintiffs repeat that the Confederate Monument is protected as a State Archeological Landmark. (Pl.'s Org. Pet. at 18-19, 32, 39). However, to qualify as a State Archeological Landmark, two steps are required. First, the site, object, or building must be listed on the National Register of Historic Places. *Id.* § 191.092(g); *see also* Tex. Atty Gen. Op. JM-958 (Sept. 28, 1988) (“Before the committee may designate a structure or building as a state historical landmark, it must be listed on the National Register of Historic Places.”). Second, the Texas Historical Commission (formerly named the Texas Antiquities Committee) must designate the site, object, or building as

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a State Archeological Landmark. *Tex. Antiquities Comm. v. Dallas Comm’n Coll. Dist.*, 554 S.W. 2d 924, 926 (Tex. 1977) (no permit needed for buildings not designated as a State Archeological Landmark); *Bd. of Regents v. Walker Cnty. Historical Comm’n*, 608 S.W.2d 252, 253 (Tex. Civ. App.—Houston [14th Dist.] 1980, no writ).⁴

Plaintiffs do not allege and cannot establish that the Confederate Monument is listed on the National Register of Historic Places and has been designated as a State Archeological Landmark by the Texas Historical Commission. (*See* Ex. 29). There can be no plausible or valid claim of a violation of the Texas Natural Resources Code. As a matter of law, no possible claim is possible within the parameters of the statutory standing. Therefore, Plaintiffs lack standing. *Also see Bacon*, 411 S.W.3d at 178-182 (concluding plaintiff lacked standing to complain about the historical accuracy of a historical marker).⁵ Plaintiffs have not alleged and cannot establish a violation within the parameters of the statutory grant of standing in Section 191.173(a) of the Texas Natural Resources Code.

C. Plaintiffs lack standing to assert a claim under Tex. Gov’t Code § 2166.5011.

Plaintiffs assert that removal of the Confederate Monument will violate Section 2166.5011 of the Texas Government Code. (Pl.’s Pet. at 20). As with their other claims, Plaintiffs do not allege and cannot establish a particular injury, an injury distinct from that of the general public, or

⁴ *See also* Tex. Atty Gen. Op. MW-378 at 3 (Oct. 22, 1981) (“the Antiquities Committee has no jurisdiction over buildings which it has not designated as state archeological landmarks”); Tex. Atty Gen. Op. JM-104, at 1 (Dec. 29, 1983) (stating the Commission’s jurisdiction is limited to “properties designated as state archaeological landmarks”).

⁵ In their pleadings, Plaintiffs reference Texas Attorney General Opinion H-620. (Pl.’s Pet, at 4, 19). Just like the plaintiffs in *Return Lee to Lee Park*, Plaintiffs fail to note that H-620 was overruled by the supreme court in *Texas Antiquities Commission v. Dallas Community College District*, 554 S.W. 2d at 927-31. The Texas Attorney General regards H-620 as overruled. (Ex. 14).

a concrete and particularized, actual or imminent, and not hypothetical injury. *Williams*, 52 S.W.3d at 178-79; *Heckman*, 369 S.W.3d at 155. They cannot establish constitutional or common law standing.

Additionally, nothing in the statute grants statutory standing to others to seek enforcement of the statute. However, even if such a grant existed, Plaintiffs would lack standing because the grant would not apply to matters outside the reach of the statute. The statute defines a protected monument or memorial as an object “located on state property.” Tex. Gov’t Code § 2166.5011(a, b). The Confederate Monument is located on City property, not State property. Any contention that Section 2166.5011 applies to the Confederate Monument is frivolous.

D. Plaintiffs lack standing to complain about a claimed violation of the Texas Open Meetings Act.

Plaintiffs assert vague and conclusory claims that the City and the Landmark Commission violated the Texas Open Meetings Act (“TOMA”). (*See* Pls. Pet. at 1, 12, 21, 31-32). While TOMA does provide a limited grant of statutory standing, Plaintiffs do not allege a violation of TOMA but rather assert purported violations of the City’s and the Landmark Commission’s rules of procedure. Plaintiffs have not alleged and cannot establish that they were wronged or injured within the parameters of TOMA’s statutory grant of standing.

“An interested person” may seek by mandamus or injunctive relief “to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.” Tex. Gov’t Code § 551.142. TOMA provides that “a governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the government body.” Tex. Gov’t Code § 551.041. Generally, a notice is to be posted at least seventy-two hours before the scheduled time of the meeting. Tex. Gov’t Code § 551.043. If the facts of the content of a notice are undisputed, the adequacy of the notice is a question of law. *Friends of Canyon Lake, Inc. v.*

Guadalupe–Blanco River Auth., 96 S.W.3d 519, 529 (Tex. App.—Austin 2002, pet. denied). A

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notice is adequate as long as it is sufficiently descriptive to alert a reader that a particular subject will be addressed. *Id.* at 531.

Plaintiffs do not complain that the notices given for the hearings before the Landmark Commission, the CPC, or the City Council were not adequate or timely or otherwise failed to comply with TOMA's requirements. The evidence establishes compliance. (Exs. 15, 19, 21). Instead of complaining about a TOMA violation, Plaintiffs complain that the City's application for the certificate of removal was incomplete and that the hearing before the Landmark Commission was scheduled contrary to the instructions given to the public on the City's website. (Pls. Pet. at 8-11, 31). Plaintiffs do not complain about a violation of TOMA and no statutory standing is granted to complain about the Landmark Commission's claimed failure to follow its rules.

Additionally, the Dallas court of appeals has concluded that a person who attended an open meeting and had the opportunity to participate in a meeting that was improperly noticed lacks standing to complain about a TOMA violation. *Dallas Indep. Sch. Dist. v. Peters*, No. 05-14-00759-CV, 2015 WL 8732420, *9-10 (Tex. App.—Dallas Dec. 14, 2016, no pet.). Both Plaintiffs attended and spoke at the Landmark Commission hearing and the CPC hearing.⁶ (Exs. 20, 31). Under *Peters*, the Open Meetings Act does not confer standing on either Plaintiff.

In the section concerning TOMA, Plaintiffs make conclusory references to ultra vires claims. (Pl.'s Pet. at 32). It is unclear if Plaintiffs are attempting to assert an ultra vires claim but if they are, it is without merit. Ultra vires claims cannot be asserted against the City or the CPC. *Heinrich*, 284 S.W.3d at 372-73, 380. Standing is still required to assert an ultra vires claim. *See Tex. Dep't of Pub. Safety v. Salazar*, 304 S.W.3d 896, 905-906 (Tex. App.—Austin 2009, no pet.)

⁶ A representative for plaintiff Pieroni spoke on her behalf at the CPC hearing.

(declining to reach the validity of an ultra vires claim because plaintiffs lacked standing). Plaintiffs have not alleged any basis by which they have standing to assert ultra vires claims.

E. Plaintiffs lack standing to appeal the CPC's decision.

Plaintiffs seek to appeal the CPC's decision affirming the Landmark's Commission's decision to grant an application for removal. (Pl.'s Pet. at 17, 25-29). However, Plaintiffs do not allege and cannot establish a particular injury, an injury distinct from that of the general public, or a concrete and particularized, actual or imminent, and not hypothetical injury. *Williams*, 52 S.W.3d at 178-79; *Heckman*, 369 S.W.3d at 155. They cannot establish constitutional or common law standing to complain about the CPC's decision.

Plaintiffs attempt to rely on a City Code provision that states an appeal of a CPC decision is to the state district court under a substantial evidence rule review. Dallas, Tex. City Code 51A-4.501(p). (Pl.'s Pet. at 17, 25). The City of Dallas does not have the authority to grant or deny standing. That authority rests with the courts and the Texas legislature. There is no statutory grant of standing. Plaintiffs lack standing to seek review of a decision that has not caused them an injury in fact.

F. Plaintiffs lack standing to assert an anti-SLAPP claim.

Plaintiffs assert that the City and the Landmark Commission somehow violated the Texas Citizen Participation Act ("TCPA") found in Chapter 27 of the Texas Civil Practice and Remedies Code. (Pl.'s Pet. at 22-25, 33-34). Not only do Plaintiffs misstate and misapply the TCPA, they have failed to allege any standing by which they could assert a TCPA motion. Their contention is frivolous.

The TCPA provides that "[i]f a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action." Tex. Civ. Prac. & Rem. Code § 27.003(a). A legal action is defined as "a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any

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other judicial pleading or filing that requests legal or equitable relief.” *Id.* at § 27.001(6). While Plaintiffs reference “anti-SLAPP”, they ignore that the acronym stands for anti-Strategic *Lawsuits Against Public Participation*. There is no lawsuit except the one filed by Plaintiffs; therefore, it is unclear what “legal action” Plaintiffs seek to dismiss. Defendants have not filed “a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing.” Neither the Landmark Commission hearing nor the CPC hearing constitute “legal actions” within the meaning of the TCPA. In addition, the City’s and the CPC’s conduct do not constitute “legal actions.” Further, Plaintiffs do not allege that any conduct by the City or the Landmark Commission was in response to Plaintiffs’ exercise of their right to free speech, to associate, or to petition. The City’s and Landmark Commission’s conduct was to seek and grant a certificate of removal of City-owned property from a City park through a City-created process before a City-created board. Plaintiffs were not “a party” to any of those matters and the City’s and Landmark Commission’s conduct had nothing to do with Plaintiffs. To the extent that the TCPA creates statutory standing to file a motion to dismiss, Plaintiffs do not fit within the statute’s grant of standing.

G. Plaintiffs cannot establish taxpayer standing.

Plaintiff Pieroni makes the conclusory alleges that she is a property taxpaying resident of the City of Dallas and has standing as a taxpayer because of the events described in the original petition will result in the expenditure of taxpayer dollars without proper authority. (Pl.’s Pet. at 2, 3). To establish taxpayer standing, Plaintiff Pieroni must show that (1) she is a taxpayer, and (2) public funds are to be expended on allegedly illegal activity. *Williams v. Huff*, 52 S.W.3d 171, 179 (Tex. 2001). The proposed expenditure must be illegal, not “merely ‘unwise or indiscreet.’” *Id.* at 180 (quoting *Osborne v. Keith*, 177 S.W.2d 198, 200 (Tex. 1944)). Citizens do not ordinarily have

a right to bring suit challenging governmental decision-making because “[g]overnments cannot operate if every citizen who concludes that a public official has abused his discretion is granted the right to come into court and bring such official's public acts under judicial review.” *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000) (citing *Osborne*, 177 S.W.2d at 200). Thus, to establish that a decision was illegal, the party attacking the order must present a ‘very clear showing of abuse of discretion.’” *City of Dallas v. Vanesko*, 189 S.W.3d 769, 771 (Tex. 2006) (quoting *City of San Angelo v. Boehme Bakery* 190 S.W.2d 67, 71 (1945)) (reviewing board of adjustment decision). The appealing party must establish that the council or commission could have reasonably reached only one decision. *Id.*

Initially, there is nothing illegal about the City removing City-owned property from City parks. The Supreme Court has held that “the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the Free Speech Clause.” *Summum*, 555 U.S. at 464, 470 (2009). A government entity “is entitled to say what it wishes” and “select the views that it wants to express.” *Id.* at 467-468. *Also see Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239 (2015); *Monumental Task Comm., Inc.*, 157 F. Supp. 3d at 994; *Gardner* 360 F. Supp. 3d at 1276. A plausible claim of free speech infringement is not alleged and cannot be established. Any claimed illegality does not exist and, therefore, taxpayer standing does not plausibly exist.

Any claim that the proposed removal is illegal under the Texas Antiquities Code or Section 2166.5011 of the Texas Government Code is not plausible since the Confederate Monument is not a State Archeological Landmark or on State property. Any claimed illegality does not exist and, therefore, taxpayer standing does not plausibly exist.

Any claim that the proposed removal violated TOMA is not plausible since proper and timely notice of all hearings was given and TOMA has no application to the City's or the Landmark Commission's purported rules of procedure. Any claimed illegality does not exist and, therefore, taxpayer standing does not plausibly exist.

Any claim that the removal violates the anti-SLAPP statute is not plausible since the TCPA is not applicable.

Any claim that the removal violates the Landmark Commission's rules does not constitute illegality. The Landmark Commission is charged with discretion in deciding the adequacy of applications, setting its own agenda, and deciding the matters pending before it. Exercising that discretion does not render any decision illegal.

Finally, there will be no funding with taxpayer funds. After the statue of Robert E. Lee was removed, it was placed for sale by auction. The winning bid amount was in excess of \$1.4 million. (Ex. 30). This amount exceeds the costs incurred in moving the Lee statue and procured costs for moving the Confederate Monument. (Ex. 30). In *Patterson*, Judge Fitzwater rejected taxpayer standing holding that the plaintiff there had failed to allege that tax money would be spent and that the City would not obtain full reimbursement. *Patterson*, at 287 F. Supp. 3d at 642-43. The City has obtained full reimbursement. Plaintiff Pieroni lacks taxpayer standing for any claim.

H. Plaintiffs lack standing to assert a Declaratory Judgment claim.

The Uniform Declaratory Judgments Act “merely serves as a procedural device for the determination of controversies already within the powers of the court, and it does not confer new substantive rights upon the parties nor does it confer any additional subject-matter jurisdiction on a court. *El Paso Cnty. Hosp. Dist. v. Gilbert*, 64 S.W.3d 200, 203 (Tex. App.—El Paso 2001, pet. denied). Nearly twenty years ago, the Dallas court of appeals observed:

The declaratory judgment act does not, however, establish jurisdiction, but is merely a procedural device for deciding cases already within a court's jurisdiction. *See Chenault v.*

Defendants' Supplement to Plea to the Jurisdiction

Phillips, 914 S.W.2d 140, 141 (Tex. 1996); *State v. Morales*, 869 S.W.2d 941, 947 (Tex. 1994). Thus, the declaratory judgment act is not a statute which confers standing on appellees.

City of Dallas v. Robinson, No. 05-98-02113-CV, 1999 WL 460065, *3 (Tex. App.—Dallas July 8, 1999, pet. denied). Since Plaintiffs lack standing under all their other theories, they likewise lack standing to seek a declaratory judgment.

V. GOVERNMENTAL IMMUNITY HAS NOT BEEN WAIVED FOR PLAINTIFFS' CLAIMS

A. Free speech claim.

Plaintiffs assert a claim under 42 U.S.C. § 1983 for claimed violation of their First Amendment rights. (Pl.'s Pet. at 29). Generally, Congress, through a Section 1983 claim, has created a means of seeking relief for claimed violations of the Constitution. *Hearth, Inc. v. Dep't of Pub. Welfare*, 617 F.2d 381, 382 (5th Cir. 1980); also see *Burns–Toole v. Byrne*, 11 F.3d 1270, 1273 n.3 (5th Cir. 1994) (“[T]he proper vehicle for [First and Fourteenth Amendment] allegations is § 1983.”).

To establish liability against a municipality under 42 U.S.C. § 1983, a plaintiff must establish three elements: “a policymaker; an official policy; and a violation of constitutional rights whose ‘moving force’ is the policy or custom.” *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). It is the plaintiff's burden to identify the policy, connect it to the city, and demonstrate that injury occurred because of the policy. *Graham v. Dallas Area Rapid Transit*, 288 F. Supp. 3d 711, 725 (N.D. Tex. 2017). The plaintiff is further required to establish that the moving force behind the alleged constitutional deprivations was the city's deliberate conduct. *Id.* The description of a policy or custom and its relationship to the underlying constitutional violation cannot be conclusory; it must contain specific facts. *Spiller v. City of Texas City Police Dep't*, 130 F.3d 162, 167 (5th Cir. 1997).

Defendants' Supplement to Plea to the Jurisdiction

Although municipal governments do not have immunity under Section 1983, a plaintiff must still allege viable claims under Section 1983 in order to fall within the limited waiver of the municipality's governmental immunity. See *City of Dallas v. Saucedo-Falls*, 268 S.W.3d 653, 657-58 (Tex. App.—Dallas 2008, pet. denied); *Rocha v. Potter County*, 419 S.W.3d 371, 376 (Tex. App.—Amarillo 2010, no pet.). Plaintiffs, here, have wholly failed to plead any of the elements of a valid Section 1983 claim. Also, as discussed above, they cannot establish the underlying First Amendment violations for their Section 1983 claims, and therefore, they have not sufficiently pled and cannot establish any claim that falls within the limited waiver of the City's governmental immunity for claims under Section 1983 in order to invoke this Court's jurisdiction.

B. Texas Antiquities Code claim.

As explained above, to the extent the Texas Antiquities Code creates a waiver of governmental immunity, it is limited to alleged violations of the Texas Antiquities Code. Since the Confederate Monument has not been designated a State Archeological Landmark, its removal is not governed the Texas Antiquities Code. No possible violation is alleged or can be established within the limited waiver of governmental immunity. Governmental immunity bars any claim of a violation of the Texas Antiquities Act.

C. Section 2166.5011 claim.

Section 2166.5011 has no terms suggesting a waiver of governmental immunity. Tex. Gov't Code § 2166.5011. Even if there were, no possible violation could be alleged or established since the Confederate Monument is not located on State property. Governmental immunity bars any claim of a violation of Section 2166.5011.

D. Texas Open Meetings Act claim.

In *City of Friendswood v. Horn*, 489 S.W.3d 515 (Tex. App.—Houston [1st Dist.] 2016, no pet.), the plaintiffs claimed an open meeting violation against the City of Friendswood and its mayor. The court of appeals held that the undisputed evidence established that there was compliance with TOMA and, therefore, concluded there was no subject-matter jurisdiction for the claim against the mayor or city. *Id.* at 529. The same is true here. As a matter of law, the City’s notice complied with TOMA and the claim provides no basis for jurisdiction.

Furthermore, Plaintiffs have not alleged and there is no waiver of governmental immunity for a claim regarding purported City’s or CPC’s rules of procedure. Neither TOMA nor the Uniform Declaratory Judgment Act provide a waiver of governmental immunity to complain about whether a city council or the CPC properly complied with its own rules of procedure. In the absence of a waiver of governmental immunity, the Court lacks jurisdiction. *See Heinrich*, 284 S.W.3d at 369–76.

As noted above, in the TOMA section of their pleading, Plaintiffs make conclusory and unclear references to ultra vires claims. (Pl.’s Pet. at 32). Ultra vires is a limited exception to governmental immunity and allows certain claims against government officials in their official capacities. *Heinrich*, 284 S.W.3d at 369–76. But ultra vires claims provide no exception to or waiver of governmental immunity against the governmental entities. *Id.* at 372-73, 380. Ultra vires claims are not available against governmental entities. *Id.* Finally, a valid ultra vires claim exists only if the governmental official acted without legal authority or failed to perform a purely ministerial act. *Id.* at 373-74. Plaintiffs have failed to assert a claim against an official or that any official violated a ministerial duty.

Plaintiffs have not alleged any basis by which governmental immunity has been waived for their claims. Governmental immunity applies and the Court lacks jurisdiction.

E. Appeal of the Landmark Commission’s or CPC’s decisions claim.

Plaintiffs do not allege and no statutory waiver of governmental immunity exists waiving governmental immunity for Plaintiffs’ appeal of the Landmark Commission’s or the CPC’s decision. Governmental immunity applies and the Court lacks jurisdiction.

F. Anti-SLAPP claim.

The TCPA does not provide a waiver of governmental or sovereign immunity. *State ex rel. Best v. Harper*, 562 S.W.3d 1, 16-17 (Tex. 2018). In that case, the Texas Supreme Court did conclude “that sovereign immunity does not protect the state from a counterclaim for attorney’s fees under the TCPA.” *Id.* at 19. Defendants did not initiate a lawsuit and Plaintiffs do not bring a counterclaim. There is no waiver for Plaintiffs’ claims.

Further, any waiver under *Best v. Harper* is limited to the term of the TCPA. As discussed above, no “legal action” is involved; Plaintiffs are not “parties”; and the City’s, the Landmark Commission’s, and the CPC’s conduct were not related or in response to Plaintiffs’ exercise of the right of free speech, right to petition, or right of association. Plaintiffs have not pled and cannot establish any claim that falls within any limitation of the City’s governmental immunity for anti-SLAPP motions. Governmental immunity applies and the Court lacks jurisdiction.

G. Declaratory Judgment Act claim.

The Texas Uniform Declaratory Judgment Act provides a limited waiver of governmental immunity to challenge the validity of an ordinance or a statute. *Heinrich*, 284 S.W.3d at 377. Plaintiffs do not seek to challenge the validity of an ordinance or statute. Governmental immunity applies and the Court lacks jurisdiction.

Defendants’ Supplement to Plea to the Jurisdiction

VI. THE POLITICAL QUESTION/SEPARATION OF POWERS DEPRIVES THE COURT OF JURISDICTION.

The political question doctrine implicates jurisdiction and forecloses as nonjusticiable actions which would improperly require judicial review of decisions exclusively within the purview of the political branches of government. *American K-9 Detection Servs., LLC v. Freeman*, 556 S.W. 3d 246, 252-532 (Tex. 2018). Whether a particular case raises a political question is to be determined by considering various factors. *Id.* at 252, n. 18. The issue of what statues and monuments are to be installed on or removed from a local government's parks is a political question.

First, actions such as removing or retaining statues of Confederate figures is government speech. *See Sumnum*, 555 U.S. at 464; *Monumental Task Comm. 'n, Inc.*, 157 F. Supp. 3d at 594. The issue is committed to state and local legislatures and executives and not to the courts.

Second, there is no manageable judicial standard for resolving what statues or monuments should be placed or remain on City property. The issue is a nonjudicial, policy determination. Courts do not decree whose name should be on a building or whose statue should be placed in the city square. In the specific context of Confederate related symbols, a court cannot balance the opposing claims for retention or removal.

Third, any court resolution of the issue would disrespect and disregard the local executive or legislative branch's decision whether to install or remove particular statues and monuments from government-owned property. There is a vigorous political debate as to state and local governments' use or display of Confederate names, symbols, or figures. The courts should adhere to the decisions of the elected officials.

Finally, there is the very real potential of differing decisions by state and local governments on the continued governments' use or display of Confederate names, symbols, or figures. The decisions will be made by state and local governments weighing the various political factors.

A consideration of the various applicable factors establishes that only a political question is presented and the case should be dismissed. *See Bacon*, 411 S.W.3d at 183 (concluding that historical accuracy of a historical marker was not within the judiciary's jurisdiction).

CONCLUSION AND PRAYER

WHEREFORE, Defendants request that the Court sustain Defendants' plea to jurisdiction in whole, or alternatively in part, that Plaintiffs' case and claims be dismissed with prejudice, and, subject to and without waiving their immunity from suit, recover their costs, including attorney fees, and for such other and further relief, general or special, at law or in equity, as to which the Defendants may be entitled.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DALLAS, TEXAS
Christopher J. Caso
Interim Dallas City Attorney

By Charles S. Estee
Charles S. Estee
Senior Assistant City Attorney
State Bar of Texas No. 06673600
Email: charles.estee@dallascityhall.com

Stacy Jordan Rodriguez
Executive Assistant City Attorney
State Bar of Texas No. 11016750
Email: stacy.rodriguez@dallascityhall.com

Justin H. Roy
Assistant City Attorney
State Bar of Texas No. 24013428
Email: justin.roy@dallascityhall.com

7BN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201
Telephone – 214/670-3519
Telecopier – 214/670-0622

CERTIFICATE OF SERVICE

I certify that opposing counsel was served with a true and correct copy of the foregoing document via e-service through and electronic filing service provider on this 6th day of June 2019.

s/ Charles S. Estee
Charles S. Estee

SUPPORTING EVIDENCE

- Exhibit 1 Mayor's Task Force on Confederate Monuments Report, September 29, 2017
- Exhibit 2 Excerpt of September 6, 2017 City Council agenda notice and item
- Exhibit 3 Excerpt of City Council minutes for September 6, 2017 meeting
- Exhibit 4 September 6, 2017 City Council resolution
- Exhibit 5 Oct. 10, 2017 agenda notice for Public Art Committee of the Cultural Affairs Commission
- Exhibit 6 Oct. 12, 2017 agenda notice for Cultural Affairs Commission
- Exhibit 7 Excerpt of 10-23-17 briefing re Task Force recommendations to City Council committee
- Exhibit 8 Excerpt of October 25, 2017 City Council agenda notice and item
- Exhibit 9 Excerpt of City Council minutes for October 25, 2017 meeting
- Exhibit 10 Excerpt of Nov. 1, 2017 City Council agenda notice and item
- Exhibit 11 Excerpt of March 21, 2018 City Council agenda notice and item
- Exhibit 12 Excerpt of City Council minutes for March 21, 2018 meeting
- Exhibit 13 Excerpt of April 25, 2018 City Council agenda notice and item
- Exhibit 14 Excerpt of City Council minutes for April 25, 2018 meeting
- Exhibit 15 Excerpt of February 6, 2019 City Council agenda notice and item
- Exhibit 16 Excerpt of February 13, 2019 City Council agenda notice and item
- Exhibit 17 Excerpt of City Council minutes for February 13, 2019 meeting
- Exhibit 18 February 13, 2019 resolution
- Exhibit 19 Excerpt of March 4, 2019 Landmark Commission agenda notice and item
- Exhibit 20 Excerpt of Landmark Commission minutes for March 4, 2019 meeting
- Exhibit 21 Excerpt of May 16, 2019 City Plan Commission agenda notice and item

- Exhibit 22 Feb. 24, 2019 email from Ms. Pieroni to Landmark Commission
- Exhibit 23 Excerpt of transcript of Landmark Commission March 4, 2019 meeting
- Exhibit 24 Excerpt of Attorney General of Texas website re status of Attorney General opinions
- Exhibit 25 Order from *Brewer v. Nirenberg*, No. SA:17-CV-837-DAE (W.D. Tex. Sept. 17, 2018)
- Exhibit 26 Final judgment and order from *Return Lee to Lee Park v. Rawlings*, No. DC-18-05460 (14th Judicial District Court of Dallas County, Texas)
- Exhibit 27 *Patterson v. Rawlings*, 287 F. Supp. 3d 632 (N.D. Tex. 2018)
- Exhibit 28 Final judgment and order from *Johnson v. Rawlings*, No. 3:19-CV-0180-C (N.D. Tex.).
- Exhibit 29 Affidavit by Greg Smith
- Exhibit 30 Affidavit of John Ingram
- Exhibit 31 Authenticating Affidavit⁷

⁷ Defendants request that the Court also take judicial notice of Exhibits 1-28.

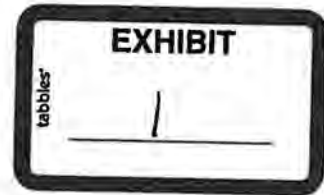
Memorandum



CITY OF DALLAS

DATE September 29, 2017

Honorable Mayor and Members of the City Council
TO Members of the Cultural Affairs Commission
Members of the Park and Recreation Board
Members of the Public Art Committee of the Cultural Affairs Commission



SUBJECT Recommendations of the Mayor's Task Force on Confederate Monuments

On August 24, 2017, Mayor Michael S. Rawlings appointed a task force charged with providing recommendations related to the removal and relocation of public Confederate monuments and symbols, and renaming of public places, including parks and streets. The task force received further instructions related to this charge from the City Council through Council Resolution No. 17-1385, approved on September 6, 2017. Specifically, the Task Force was instructed to provide recommendations to the City Council:

1. regarding the costs associated with removal and relocation of public Confederate monuments and symbols and with the renaming of public places, including parks, and streets along with available options for private funding;
2. regarding the process of disposal or relocation of Confederate monuments and symbols if deemed necessary;
3. suggesting additional standards for the naming of public places, including parks, and streets going forward if deemed necessary;
4. suggesting replacements for Confederate monuments and symbols recommended for removal to promote a more welcoming and inclusive Dallas if deemed necessary; and
5. suggesting replacement names for public places, including parks, and streets that also promote a more welcoming and inclusive Dallas if deemed necessary.

The Task Force held five public meetings between August 31, 2017 and September 22, 2017. City staff provided briefings on City processes related to public art, historic preservation and landmarks, park and street naming. Additional briefings were provided on the historical context of Confederate monuments, symbols and names, as well as a presentation by author Joyce King on the historical context of Dallas in the 1890s and 1930s. All briefing materials, handouts and other information presented to the Task Force were immediately published online at DallasCulture.org/ConfederateMonuments. Additionally, public comments were heard at two meetings of the Task Force, and written comments were received throughout the process and entered into the record of the Task

DATE September 29, 2017
 SUBJECT Recommendations of the Mayor's Task Force on Confederate Monuments

Force's proceedings. A total of 160 public comments were recorded on this matter. The public's position on this issue is summarized below.

Residency	Manner Received	In Favor of removal	Opposed to removal	General Information	TOTAL
Dallas	In Person	6	21	5	32
Dallas	Written	14	49	6	69
Total Dallas		20	70	11	101
Outside Dallas	In Person	0	2	0	2
Outside Dallas	Written	1	51	5	57
Total Outside Dallas		1	53	5	59
GRAND TOTAL		21	123	16	160

Following briefings and discussions of each of these matters, the Task Force adopted the following recommendations and submits them to the City Council and other boards, commissions and City departments, as each recommendation may appertain.

Confederate Monuments

1. The Task Force recommends that the City of Dallas seek to place the statue of Robert E. Lee designed by Alexander Phimister Proctor, which was recently removed from Oak Lawn Park (formerly Robert E. Lee Park), and the base of said statue, designed by Mark Lemmon and currently remaining in Oak Lawn Park, as well as the Confederate Monument designed by Frank Teich currently located within Pioneer Cemetery, on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that they may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

Fair Park

2. Recognizing that Fair Park is a local, state, and national landmark, the Task Force recommends that the historic art and architecture of Fair Park which contains symbols of, or references to, the Confederate States of America or persons associated therewith, remain in place as a piece of the history of Texas as presented at Fair Park. However, the Task Force recommends that appropriate

DATE September 29, 2017

SUBJECT Recommendations of the Mayor's Task Force on Confederate Monuments

signage, markers, digital tour guides, public art, educational programming, and/or exhibitions be added as necessary to provide the full context of the Civil War, Reconstruction, "Lost Cause" mythology, the "Jim Crow" era, and the creation of Fair Park for the 1936 Texas Centennial. Historical context should include reference to the many contributions of Mexicans, Tejanos and indigenous peoples made during the colonization of Texas, the Texas Revolution, and during and after the Mexican War leading to the 20th Century, to also include the participation or exclusion of various communities in those historic events.

3. The Task Force further recommends that the City of Dallas Park and Recreation Department and Landmark Commission work with the Dallas Historical Society concerning the foregoing, as well as with the African American Museum and the Public Art Committee in adding a substantive commemoration of the Hall of Negro Life, which was built for the 1936 Texas Centennial, recognition of the "Jim Crow" era and South Dallas bombings, and that the City of Dallas should allocate funding and seek additional private and grant funding for the accomplishment of this work.
4. The Task Force further recommends that attempts be made by the City to return to Dallas, or recreate, the murals which previously occupied the Hall of Negro Life at Fair Park.

Park Names

5. The Task Force recommends removal of the Robert E. Lee Park name. (The Park Board subsequently approved the name change to Oak Lawn Park on September 22, 2017.)
6. The Task Force recommends removal of the Confederate Cemetery name and requests the Park Board rename it in a proper context.
7. The Task Force recommends that a citywide engagement process be initiated to consider renaming City parks with placeholder names for historical abolitionists, the formerly enslaved, civil and human rights leaders, people from marginalized and underrepresented communities, and victims of police brutality.

Street Names

8. The Task Force recommends that streets named after a Confederate leader and/or general, who made a significant contribution to the Confederacy, specifically Gano, Lee and Cabell, be changed.

DATE September 29, 2017
SUBJECT Recommendations of the Mayor's Task Force on Confederate Monuments

9. The Task Force further recommends that the street names Stonewall and Beauregard be changed.
10. The Task Force further recommends that the renaming of these streets be accomplished on a priority basis within 90 days and the comment process be expanded to include the voices of people throughout the city whose ideas and testimony shall be given equal weight with those of adjacent property owners.

Other Recommendations

11. The Task Force recommends that this process be directed and led by paid local and regional artists, architects, preservationists, and historians.
12. The Task Force recommends that the City erect a marker at Akard and Main streets memorializing the lynching of Allen Brooks.
13. The Task Force recommends that the City of Dallas create a racial equity policy after public acknowledgement and apology for the policies and practices of the City that have furthered institutional racism and segregation.

Much thought and deliberation went into each recommendation submitted. All briefing materials, handouts, and other information presented to the Task Force, as well as video recordings will remain published online for public review at DallasCulture.org/ConfederateMonuments.

On behalf of the Task Force, I thank you for the opportunity to serve and represent the residents of Dallas on this important matter. Sincere gratitude is also expressed to the dedicated staff from each City department who participated in this process.



Frances Cudjoe Waters, J.D., Chair
Mayor's Task Force on Confederate Monuments

c: Members of the Mayor's Task Force on Confederate Monuments
T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Billerae Johnson, City Secretary (Interim)
Daniel F. Solis, Administrative Judge
Kimberly Bizzor Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager

Jo M. (Jody) Puckett, P.E., Assistant City Manager (Interim)
Jon Fortune, Assistant City Manager
Joey Zapata, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Nadia Chandler Hardy, Chief of Community Services
Raquel Favela, Chief of Economic Development & Neighborhood Services
Theresa O'Donnell, Chief of Resilience
Directors and Assistant Directors

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CITY SECRETARY
DALLAS, TEXAS



COUNCIL BRIEFING AGENDA

September 6, 2017

Date

	EXHIBIT
tabbles	<u>2</u>

(For General Information and Rules of Courtesy, Please See Opposite Side.)
(La Información General Y Reglas De Cortesía Que Deben Observarse
Durante Las Asambleas Del Consejo Municipal Aparecen En El Lado Opuesto, Favor De Leerlas.)

AGENDA
CITY COUNCIL BRIEFING MEETING
WEDNESDAY, SEPTEMBER 6, 2017
CITY HALL
1500 MARILLA STREET
DALLAS, TEXAS 75201
9:00 A.M.

9:00 am Invocation and Pledge of Allegiance 6ES

 Special Presentations

 Open Microphone Speakers

VOTING AGENDA 6ES

1. Approval of Minutes of the August 16, 2017 City Council Meeting
2. Consideration of appointments to boards and commissions and the evaluation and duties of board and commission members (List of nominees is available in the City Secretary's Office)

ITEMS FOR INDIVIDUAL CONSIDERATION

Mayor and City Council

3. A resolution **(1)** acknowledging that public Confederate monuments and the names of public places, including parks and streets, named for Confederate figures do not promote a welcoming and inclusive city; **(2)** supporting the Mayor's Task Force on Confederate Monuments, which is made up of a diverse group of city leaders who will provide various recommendations to the city council; **(3)** providing timelines for the Mayor's Task Force and the Cultural Affairs Commission, as well as requiring that the Task Force hold at least two public meetings to receive public input; **(4)** providing for the city council to take further action as needed, including authorizing the renaming of certain public places, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law; **(5)** directing the city manager to immediately remove and store the Alexander Phimster Proctor monument (of Robert E. Lee); **(6)** authorizing the city manager to transfer funds or appropriate funds from excess revenue, as necessary, to remove all public Confederate monuments; and **(7)** acknowledging that, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda - Financing: Current Funds

KEY FOCUS AREA: E-Gov
AGENDA DATE: September 6, 2017
COUNCIL DISTRICT(S): 1, 2, 6, 9, 14
DEPARTMENT: Mayor and City Council
CMO: T.C. Broadnax, 670-3297
MAPSCO: N/A

SUBJECT

A resolution **(1)** acknowledging that public Confederate monuments and the names of public places, including parks and streets, named for Confederate figures do not promote a welcoming and inclusive city; **(2)** supporting the Mayor's Task Force on Confederate Monuments, which is made up of a diverse group of city leaders who will provide various recommendations to the city council; **(3)** providing timelines for the Mayor's Task Force and the Cultural Affairs Commission, as well as requiring that the Task Force hold at least two public meetings to receive public input; **(4)** providing for the city council to take further action as needed, including authorizing the renaming of certain public places, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law; **(5)** directing the city manager to immediately remove and store the Alexander Phimster Proctor monument (of Robert E. Lee); **(6)** authorizing the city manager to transfer funds or appropriate funds from excess revenue, as necessary, to remove all public Confederate monuments; and **(7)** acknowledging that, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda - Financing: Current Funds

BACKGROUND

Following unrest across the country over the presence of Confederate Monuments in city centers, Councilmembers are requesting consideration and action on recommendations of policies and procedures for the removal of confederal monuments and symbols such as:

- Costs associated with the removal and relocation of the monuments and symbols, and with the renaming of public places;
- Process for disposal or relocation;

BACKGROUND (continued)

- Suggesting additional standards for the naming of public places going forward; and
- Replacement for the Confederate monuments and names for public places.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

This item has no prior action.

FISCAL INFORMATION

Current Funds

September 6, 2017

WHEREAS, the enslavement of the then Africans was one of the causes of the Civil War, which divided our country over 150 years ago;

WHEREAS, the Confederacy lost its war against the United States and the “negro” slave was then freed from slavery, transferring names from “negro” to “colored”;

WHEREAS, “colored” individuals continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era;

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, those now referred to as “blacks” were still denied equality by a society that discriminated against them even when hard-won laws call for equal treatment;

WHEREAS, through the progression of history, those African descendants who were formerly known as “negro” slaves, then “coloreds,” and then “blacks” are now referred to as African Americans;

WHEREAS, in spite of every obstacle placed in their path, the African-American community has always persisted and has in the most fundamental way prevailed;

WHEREAS, now, we are faced with the decision of keeping, removing, or replacing public monuments, images, and symbols, as well as names of public places, including parks, and streets that are continuous reminders of the Civil War;

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates continue to be glaring symbols of our country’s division, and create racial barriers in our city;

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures distort the violent and oppressive history of the Confederacy and preserve the principles of white supremacy;

WHEREAS, for many years, leaders of diverse backgrounds have consistently called for the removal of Confederate monuments and symbols from public property;

WHEREAS, the city of Dallas strives to be a welcoming and inclusive city for all its residents and visitors, regardless of their cultural or ethnic backgrounds; and

WHEREAS, it is time for a robust public discussion of the history of the Confederate monuments and commemorations, and the city of Dallas’ policy regarding the standards for public commemoration of persons, places, and historical events.

Now, Therefore,

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

SECTION 1. That the display of public Confederate monuments and the names of public places, including parks, and streets named for Confederate figures do not promote a welcoming and inclusive city and, thus, are against the public policy of the city of Dallas.

SECTION 2. That, to accomplish the removal of these public Confederate monuments and symbols and the renaming of public places, including parks, and streets, the city council supports the Mayor's Task Force on Confederate Monuments ("Task Force"), which is made up of a diverse group of city leaders who will provide recommendations to the city council:

- a. regarding the costs associated with removal and relocation of public Confederate monuments and symbols and with the renaming of public places, including parks, and streets; and
- b. regarding the process of disposal or relocation of Confederate monuments and symbols; and
- c. suggesting additional standards for the naming of public places, including parks, and streets going forward; and
- d. suggesting replacements for Confederate monuments and symbols recommended for removal to promote a more welcoming and inclusive Dallas; and
- e. suggesting replacement names for public places, including parks, and streets that also promote a more welcoming and inclusive Dallas.

SECTION 3. That the Task Force shall convene at least two public meetings to receive public input and shall work with, and make recommendations to, the Cultural Affairs Commission by October 12, 2017.

SECTION 4. That the Cultural Affairs Commission shall make a final presentation to city council on November 1, 2017, reporting its findings and making its recommendations.

SECTION 5. That the city council shall take any further action, as needed, including authorizing the renaming of certain public places, including parks, and streets, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law.

SECTION 6. That the city manager shall immediately remove the Alexander Phimster Proctor monument (of Robert E. Lee) at Lee Park and store it at a safe location until the conclusion of the recommendations of the Task Force as this monument is not a designated city landmark.

SECTION 7. That the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove all public Confederate monuments.

SECTION 8. That, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda.

SECTION 9. That this resolution shall take effect on September 6, 2017, and it is accordingly so resolved.

MINUTES OF THE DALLAS CITY COUNCIL
WEDNESDAY, SEPTEMBER 6, 2017

17-1380

CITY COUNCIL BRIEFING
CITY COUNCIL CHAMBER, CITY HALL
CITY HALL, ROOM 6ES
MAYOR MICHAEL RAWLINGS, PRESIDING

PRESENT: [15] Rawlings, Caraway, Medrano (*9:30 a.m.), Griggs, Thomas (*9:12 a.m.), Callahan, Narvaez, Felder (*9:14 a.m.), Atkins, Clayton (*9:12 a.m.), McGough, Kleinman, Greyson (*9:18 a.m.), Gates, Kingston

ABSENT: [0]

The meeting was called to order at 9:06 a.m. with a quorum of the city council present.

The invocation was given by Pastor Brad Weir, Senior Pastor, City Church International.

Councilmember Kleinman led the pledge of allegiance.

The meeting recessed at 12:07 p.m. and convened to closed session at 1:40 p.m. which ended at 2:37 p.m. The meeting reconvened to open session at 2:40 p.m. (Caraway [*2:46 p.m.], Medrano [*2:41 p.m.], Thomas [*2:41 p.m.], McGough [*2:41 p.m.]), Kingston [*2:41 p.m.]

The meeting agenda, posted in accordance with Chapter 551, "OPEN MEETINGS," of the Texas Government Code, was presented.

After all business properly brought before the city council had been considered, the city council adjourned at 5:08 p.m.

Mayor

ATTEST:

Interim City Secretary

Date Approved

The annotated agenda is attached to the minutes of this meeting as EXHIBIT A.

The actions taken on each matter considered by the city council are attached to the minutes of this meeting as EXHIBIT B.

Ordinances, resolutions, reports and other records pertaining to matters considered by the city council, are filed with the City Secretary as official public records and comprise EXHIBIT C to the minutes of this meeting.

* Indicates arrival time after meeting called to order/reconvened



OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

SEPTEMBER 6, 2017

17-1385

Item 3: A resolution **(1)** acknowledging that public Confederate monuments and the names of public places, including parks and streets, named for Confederate figures do not promote a welcoming and inclusive city; **(2)** supporting the Mayor's Task Force on Confederate Monuments, which is made up of a diverse group of city leaders who will provide various recommendations to the city council; **(3)** providing timelines for the Mayor's Task Force and the Cultural Affairs Commission, as well as requiring that the Task Force hold at least two public meetings to receive public input; **(4)** providing for the city council to take further action as needed, including authorizing the renaming of certain public places, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law; **(5)** directing the city manager to immediately remove and store the Alexander Phimster Proctor monument (of Robert E. Lee); **(6)** authorizing the city manager to transfer funds or appropriate funds from excess revenue, as necessary, to remove all public Confederate monuments; and **(7)** acknowledging that, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda - Financing: Current Funds

Prior to the item being read into the record, Councilmember Callahan moved to defer the item to the November 15, 2017 voting agenda meeting of the city council and further moved to call a referendum on the issue to allow the voters (the people) to decide the outcome of whether to keep the statues in place or not.

Mayor Rawlings stated the motion was out of order due to the item not being read into the record.

At Councilmember Callahan's request, the city attorney clarified because the item had not been read into the record, the motion was out of order.

Prior to further discussion and as a result of Councilmember Kingston's procedural inquiry on how the item was placed on the briefing agenda, Mayor Rawlings stated the item is consistent with past agenda items of emergencies, construction contracts, architectural contracts and supplemental agreements.

The following individuals addressed the city council regarding the item:

Linda Abramson Evans, 5822 Clendenin Ave., representing Thanksgiving Square Inter-Faith Council

Will Hartnett, 4722 Walnut Hill Ln.

Michael Waters, 3203 Holmes St., representing North Texans for Historical Justice

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

17-1385

Page 2

John Fullinwider, 1851 Fuller Dr., representing Mothers Against Police Brutality
Jo Trizilla, 6818 South Point Dr., representing Mayor's Task Force on Confederate Monuments
Barvo Walker, 1010 E. Clarendon Dr., representing Mayor's Task Force on Confederate Monuments
Sam L. Hocker, 6154 Yorkshire Dr.
Sam Ratcliffe, 6915 Dalhart Ln.
Allen West, 9925 Wood Forest Dr.
Larry Waldrop, 17312 Village Ln.
Arnold Mozisek, 3708 Brown St.
Buddy Apple, 729 N. Winnetka Ave., representing Preservation Dallas
John Clay, 511 N. Akard St.
Linda Parsel, 3401 Lee Pkwy.
Eddie Morgan, 2426 Hondo Ave.
Joseph Hill, 6036 Birchbrook Dr.
Diane Ragsdale, 3611 Dunbar St.
Kirby White, 8650 Southwestern Blvd.
Bryce Weigand, 3733 Normandy Ave., Highland Park, representing Mayor's Task Force on Confederate Monuments
Gerald Britt, 1610 S. Malcolm X Blvd., representing North Texans For Historical Justice/CitySquare
Dick Zinnendorf, Private
Kristian Craige, 2122 Kidwell St., representing Mystic Media Foundation
Dominique Alexander, 2512 E. Overton Rd., representing Next Generation Action Network
Baker Hughes, 2533 Cheyenne Ln., Crowley, TX
Beth Biesel, 3608 Southwestern Blvd., University Park, TX
Carole Haynes, 44 Indian Trl., Hickory Creek, TX
Robin Dillard, 329 Murray Farm Dr., Fairview, TX, representing Texas Freedom Force
John W. Lee, 3131 Turtle Creek Blvd.
Alia Salem, 301 Las Colinas Blvd., Irving, TX
Pete Rainone, 605 Westview Terrace, Arlington, TX, representing Rainone Galleries
Jacqueline Espinal, 1200 Main St.
Mark Enoch, 1805 Faulkner Dr., Rowlett, TX
Jeff Hood, 2723 Northcrest Rd., Denton, TX
Katherine McGovern, 4364 Royal Ridge Dr.
Noelle Brisson, 3611 Cole Ave.
Frank Elam, 927 Elliott Dr., Cedar Hill, TX
Mary Hogan, 6139 N. Jim Miller Rd.

The interim city secretary read the item into the record.

Mayor Pro Tem Caraway moved to adopt the item with the following changes:

- Section 1 is amended to read as follows: That the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community;

- Section 2 is amended to read as follows: That the city council supports the Mayor’s Task Force on Confederate Monuments (“Task Force”), which is made up of a diverse group of city leaders who will provide recommendations to the city council:
 - Section 2(a) is amended to add the following at the end of the sentence: “along with available options for private funding;”
 - Section 2(b) through 2(e) is amended to add the following at the end of each sentence: “if deemed necessary;”
- Section 7 is amended to read as follows: That the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove the Alexander Phimster Proctor monument of Robert E. Lee at Lee Park. The city manager will take all appropriate actions to seek private funding to reimburse the expenses associated with this action.

Motion seconded by Councilmember Atkins.

At Mayor Pro Tem Caraway’s request the interim city secretary read the amended resolution into the record; there was no objection voiced to the request.

WHEREAS, the enslavement of the then Africans was one of the causes of the Civil War, which divided our country over 150 years ago;

WHEREAS, the Confederacy lost its war against the United States and the “negro” slave was then freed from slavery, transferring names from “negro” to “colored”;

WHEREAS, “colored” individuals continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era;

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, those now referred to as “blacks” were still denied equality by a society that discriminated against them even when hard-won laws call for equal treatment;

WHEREAS, through the progression of history, those African descendants who were formerly known as “negro” slaves, then “coloreds,” and then “blacks” are now referred to as African Americans;

WHEREAS, in spite of every obstacle placed in their path, the African-American community has always persisted and has in the most fundamental way prevailed;

WHEREAS, now, we are faced with the decision of keeping, removing, or replacing public monuments, images, and symbols, as well as names of public places, including parks, and streets that may be continuous reminders of the Civil War;

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates may continue to be symbols of our country's division, and may create racial barriers in our city;

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures may distort the violent and oppressive history of the Confederacy and may preserve the principles of white supremacy;

WHEREAS, for many years, leaders of diverse backgrounds have consistently called for the removal of Confederate monuments and symbols from public property;

WHEREAS, the city of Dallas strives to be a welcoming and inclusive city for all its residents and visitors, regardless of their cultural or ethnic backgrounds; and

WHEREAS, it is time for a robust public discussion of the history of the Confederate monuments and commemorations, and the city of Dallas' policy regarding the standards for public commemoration of persons, places, and historical events.

Now, Therefore, **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

Section 1. That the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the city of Dallas.

Section 2. That the city council supports the Mayor's Task Force on Confederate Monuments ("Task Force"), which is a made up of a diverse group of city leaders who will provide recommendations to the city council:

- a. regarding the costs associated with removal and relocation of public Confederate monuments and symbols and with the renaming of public places, including parks, and streets along with available options for private funding;
- b. regarding the process of disposal or relocation of Confederate monuments and symbols if deemed necessary;

- c. suggesting additional standards for the naming of public places, including parks, and streets going forward if deemed necessary;
- d. suggesting replacements for Confederate monuments and symbols recommended for removal to promote a more welcoming and inclusive Dallas if deemed necessary; and
- e. suggesting replacement names for public places, including parks, and streets that also promote a more welcoming and inclusive Dallas if deemed necessary.

Section 3. That the Task Force shall convene at least two public meetings to receive public input and shall work with, and make recommendations to, the Cultural Affairs Commission by October 12, 2017.

Section 4. That the Cultural Affairs Commission shall make a final presentation to city council on November 1, 2017, reporting its findings and making its recommendations.

Section 5. That the city council may take any further action, as needed, including authorizing the renaming of certain public places, including parks, and streets, on November 8, 2017, and directing city staff to take any and all appropriate actions to implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law.

Section 6. That the city manager shall immediately remove the Alexander Phimster Proctor monument (of Robert E. Lee) at Lee Park and store it at a safe location until the conclusion of the recommendations of the Task Force as this monument is not a designated city landmark.

Section 7. That the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove the Alexander Phimster Proctor monument (of Robert E. Lee) at Lee Park. The city manager will take all appropriate actions to seek private funding to reimburse the expenses associated with this action.

Section 8. That, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda.

Section 9. That this resolution shall take effect on September 6, 2017, and it is accordingly so resolved.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

17-1385

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Mayor Pro Tem Caraway requested a record vote on the item.

Councilmember Callahan moved a substitute motion to defer the item to the November 15, 2017 voting agenda meeting of the city council and further moved to call a referendum on the issue to allow the voters (the people) to decide the outcome of whether to keep the statues in place or not.

Motion seconded by Councilmember Greyson.

After discussion, Mayor Rawlings called a record vote on Councilmember Callahan's substitute motion to defer the item to the November 15, 2017 voting agenda meeting of the city council and also to call a referendum on the issue to allow the voters (the people) to decide the outcome of whether to keep the statues in place or not:

Voting Yes: [3] Medrano, Callahan, Greyson

Voting No: [12] Rawlings, Caraway, Griggs, Thomas,
Narvaez, *Felder, Atkins, Clayton,
McGough, Kleinman, Gates, Kingston

The interim city secretary declared the substitute motion failed.

*During discussion, Councilmember Felder stated his previous vote was in error and requested for the record to reflect his vote on Councilmember Callahan's substitute motion as "No."

After discussion, Mayor Rawlings called a record vote on Mayor Pro Tem Caraway's amended motion:

Voting Yes: [13] Rawlings, Caraway, Medrano, Griggs,
Thomas, Narvaez, Felder, Atkins, Clayton,
McGough, Kleinman, Gates, Kingston

Voting No: [1] Greyson

Absent when vote taken: [1] Callahan

The interim city secretary declared the amended item adopted.



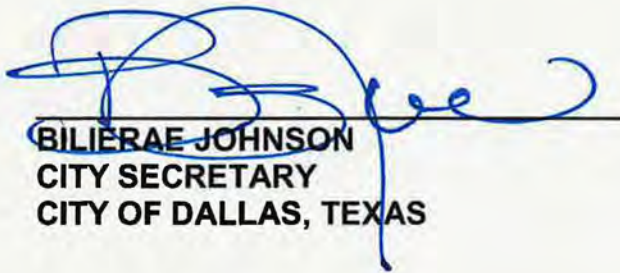
STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DALLAS §

I, **BILIERAE JOHNSON**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

RESOLUTION NO. 17-1385

which was passed by the Dallas City Council on **September 6, 2017**.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the **15th** day of **August, 2018**.


BILIERAE JOHNSON
CITY SECRETARY
CITY OF DALLAS, TEXAS



PREPARED BY: LJ



September 6, 2017

WHEREAS, the enslavement of the then Africans was one of the causes of the Civil War, which divided our country over 150 years ago;

WHEREAS, the Confederacy lost its war against the United States and the "negro" slave was then freed from slavery, transferring names from "negro" to "colored";

WHEREAS, "colored" individuals continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era;

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, those now referred to as "blacks" were still denied equality by a society that discriminated against them even when hard-won laws call for equal treatment;

WHEREAS, through the progression of history, those African descendants who were formerly known as "negro" slaves, then "coloreds," and then "blacks" are now referred to as African Americans;

WHEREAS, in spite of every obstacle placed in their path, the African-American community has always persisted and has in the most fundamental way prevailed;

WHEREAS, now, we are faced with the decision of keeping, removing, or replacing public monuments, images, and symbols, as well as names of public places, including parks, and streets that may be continuous reminders of the Civil War;

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates may continue to be symbols of our country's division, and may create racial barriers in our city;

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures may distort the violent and oppressive history of the Confederacy and may preserve the principles of white supremacy;

WHEREAS, for many years, leaders of diverse backgrounds have consistently called for the removal of Confederate monuments and symbols from public property;

WHEREAS, the city of Dallas strives to be a welcoming and inclusive city for all its residents and visitors, regardless of their cultural or ethnic backgrounds; and

WHEREAS, it is time for a robust public discussion of the history of the Confederate monuments and commemorations, and the city of Dallas' policy regarding the standards for public commemoration of persons, places, and historical events.

Now, Therefore, **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

Section 1. ~~That the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community~~ ~~That the display of public Confederate monuments and the names of public places, including parks, and streets named for Confederate figures do not promote a welcoming and inclusive city and, thus, are against the public policy of the city of Dallas.~~

Section 2. ~~That, to accomplish the removal of these public Confederate monuments and symbols and the renaming of public places, including parks, and streets, the city council supports the Mayor's Task Force on Confederate Monuments ("Task Force"), which is a made up of a diverse group of city leaders who will provide recommendations to the city council:~~

a. regarding the costs associated with removal and relocation of public Confederate monuments and symbols and with the renaming of public places, including parks, and streets along with available options for private funding;

b. regarding the process of disposal or relocation of Confederate monuments and symbols if deemed necessary;

c. suggesting additional standards for the naming of public places, including parks, and streets going forward if deemed necessary;

d. suggesting replacements for Confederate monuments and symbols recommended for removal to promote a more welcoming and inclusive Dallas if deemed necessary; and

e. suggesting replacement names for public places, including parks, and streets that also promote a more welcoming and inclusive Dallas if deemed necessary.

Section 3. That the Task Force shall convene at least two public meetings to receive public input and shall work with, and make recommendations to, the Cultural Affairs Commission by October 12, 2017.

Section 4. That the Cultural Affairs Commission shall make a final presentation to city council on November 1, 2017, reporting its findings and making its recommendations.

Section 5. That the city council may take any further action, as needed, including authorizing the renaming of certain public places, including parks, and streets, on November 8, 2017, and directing city staff to take any and all appropriate actions to

implement the city's policy in accordance with the Charter, City Code, and other rules, regulation, and policies as well as all applicable state and federal law.

Section 6. That the city manager shall immediately remove the Alexander Phimster Proctor monument (of Robert E. Lee) at Lee Park and store it at a safe location until the conclusion of the recommendations of the Task Force as this monument is not a designated city landmark.

Section 7. That the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove the Alexander Phimster Proctor monument of Robert E. Lee at Lee Park ~~all public Confederate monuments~~. The city manager will take all appropriate actions to seek private funding to reimburse the expenses associated with this action.

Section 8. That, consistent with City Council Rules of Procedure, Rule 6.2(b), the Mayor shall not place any item on the agenda that has been voted on by the city council within the one-year period preceding the date requested for placement of the item on the agenda.

Section 9. That this resolution shall take effect on September 6, 2017, and it is accordingly so resolved.



017 OCT -6 AM 11:14



PUBLIC ART COMMITTEE OF THE CULTURAL AFFAIRS COMMISSION

Tuesday, October 10, 2017
4:00 pm
Dallas City Hall, Council Briefing Room 6ES
1500 Marilla Street
Dallas, Texas 75201

AGENDA

1. CALL TO ORDER
2. PUBLIC SPEAKERS
3. Briefings, Discussion, and Recommendations related to Confederate Monuments
 - a. Robert E. Lee Monument and base
 - b. Confederate Monument
 - c. Fair Park Confederate Symbols
4. Recommendations for New Art Commissions
5. ADJOURN



Public Notice

17 10 08

POSTED CITY SECRETARY
DALLAS, TX



City of Dallas

**CULTURAL AFFAIRS COMMISSION
MEETING AGENDA**

Thursday, October 12, 2017
4:30 p.m.

Dallas City Hall, Council Briefing Room (6ES)
1500 Marilla Street
Dallas, Texas 75201

Call to Order

Public Speakers

Briefings, Discussion, and Recommendations Related to Confederate Monuments

- a. Robert E. Lee Monument and base
- b. Confederate Monument
- c. Fair Park Confederate Symbols

Director Report

- a. Bond Program Update
- b. Upcoming Council Agenda Items
- c. Cultural Planning Update

Chair Report

New Business

Adjournment



Public Notice

171024

POSTED CITY SECRETARY
DALLAS, TX

NOTE: Public speakers must register with the Commission Coordinator by 5 p.m., Wednesday, September 20, 2017. Contact: Jessica Trevizo at (214) 670-7952 or jessica.trevizo@dallascityhall.com.

EXECUTIVE SESSION NOTICE

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would

Memorandum



CITY OF DALLAS

DATE October 17, 2017

TO Honorable Members of the Quality of Life, Arts & Culture Committee: Sandy Greyson (chair), Mark Clayton (Vice Chair), Rickey D. Callahan, Jennifer S. Gates, Scott Griggs, B. Adam McGough, Omar Narvaez

SUBJECT Recommendations from Mayor's Task Force on Confederate Monuments

On Monday, October 23, 2017, you will be briefed on the Recommendations from Mayor's Task Force on Confederate Monuments. The briefing materials are attached for your review.

Please contact me if you have any questions or concerns.

A handwritten signature in blue ink that reads "Joey Zapata".

Joey Zapata
Assistant City Manager

[Attachment]

c: Honorable Mayor and Members of City Council
T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Bilieraë Johnson, City Secretary (Interim)
Daniel F. Solis, Administrative Judge
Kimberly Bizar Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager

Jo M. (Jody) Puckett, P.E., Assistant City Manager (Interim)
Jon Fortune, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Nadia Chandler Hardy, Chief of Community Services
Raquel Favela, Chief of Economic Development & Neighborhood Services
Theresa O'Donnell, Chief of Resilience
Directors and Assistant Directors



Recommendations from Mayor's Task Force on Confederate Monuments

**Quality of Life, Arts and Culture Committee
October 23, 2017**

**Jennifer Scripps, Director
Office of Cultural Affairs
City of Dallas**



Purpose

- Review recommendations by the Mayor's Task Force on Confederate Monuments



Background

- Mayor's Task Force on Confederate Monuments was created on August 18, 2017
- The Task Force was charged to make recommendations on the following:
 - *Robert E. Lee and the Confederate Soldier*
 - *Confederate Monument*
 - Fair Park Art
 - Streets with Confederate Names
 - Places with Confederate Names
 - Robert E. Lee Park
 - Confederate Cemetery
 - See appendix for member list
- On September 6, 2017, City Council voted to immediately remove the *Robert E. Lee and the Confederate Soldier* and place it in storage, pending Task Force recommendations

3



Background

- The Task Force met on:
 - August 31, 2017
 - September 7, 2017
 - September 15, 2017
 - September 19, 2017
 - September 22, 2017
- Public comments were allowed at the September 7th and September 15th meetings, and online comments were open for two weeks
- All Task Force materials (agendas, briefings, videos, meeting minutes) are available on www.dallasculture.org/confederatemonuments



Background

- Briefings presented to the Task Force to inform their deliberations included:
 - Role of Public Art, the Dallas policies governing it, and its history
 - Public monuments honoring Confederates
 - Art at Fair Park with Confederate symbols
 - Parks with Confederate names and buildings
 - Landmarks process
 - Research regarding street names with confirmed Confederate linkages
 - Street name changing process
 - History of The Lost Cause
 - History of Dallas during the 1890s and 1930s – with a special emphasis on the history of Black Codes, Jim Crow, and segregation

5



History

- Monuments are common in America and have been supported, commissioned, and installed since the 1800s
 - Address our desire to memorialize individuals, groups and events of significance, e.g.:
 - Washington Monument
 - Jefferson Memorial
 - Vietnam Veterans Memorial
 - JFK Memorial
 - MLK Memorial
 - Rosa Parks Plaza in Dallas
 - Make a public statement about the social and historical viewpoints of the individuals and groups who commission them
 - Intentionally built to last – expecting that their significance will endure for a long time
 - While they are made by artists, they are not independent artistic expressions
 - The Confederate Monuments were donations to the City of Dallas before a public art process for the review of donations existed

6



History

- American Historical Association

- "History comprises both facts and interpretations of those facts."
- To remove a monument or to change the name of a school or street, is not to erase history, but rather to alter or call attention to a previous interpretation of history
- "A monument is not history itself; a monument commemorates an aspect of history, representing a moment in the past when a public or private decision defined who would be honored in a community's public spaces."
- Communities need to decide what is worthy of civic honor and those decisions will change over time as the communities values shift
- "Nearly all monuments to the Confederacy and its leaders were erected without anything resembling a democratic process."
- "African Americans had no voice and no opportunity to raise questions about the purposes or likely impact of the honor accorded to the builders the Confederate States of America."



The American Historical Association recommends that it is time to reconsider these decisions

7

Sources: American Historical Association Statement:
<http://blog.historians.org/2017/08/aha-statement-confederate-monuments/>

Quality of Life, Arts and Culture



City of Dallas

Monuments Recommendations

1a. (Task Force Recommendation #1) That the City of Dallas seek to place the statue of *Robert E. Lee* and the base of the sculpture on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that it may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

1b. (Task Force Recommendation #1) That the City of Dallas seek to place the Confederate Memorial on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that it may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

8



Timeline

- The Public Art Committee met on Tuesday, October 10, 2017 and the Cultural Affairs Commission met on Thursday, October 12, 2017
 - Both committees heard additional public comment and unanimously approved the two recommendations in their purview concerning Confederate monuments and art at Fair Park with Confederate images and symbols
- Quality of Life, Arts and Culture Committee discussion and recommendations, October 23, 2017



Confederate Monuments in Dallas

Title of Work	Artist	Date	Location	Information
Confederate Monument	Frank Teich	1896-97	Pioneer Cemetery, Young Street	<p>Donated by the United Daughters of the Confederacy</p> <p>Has Dallas Landmark Status</p> <p>1897 installed at Old City Park</p> <p>Relocated 1961</p>
Robert E. Lee and the Confederate Soldier	Alexander P. Proctor	1936	Lee Park, 3400 Turtle Creek Blvd	<p>Donated by the Southern Memorial Association</p> <p>On Park Property</p>

RECEIVED

2017 OCT 11 PM 2: 23

CITY SECRETARY
DALLAS, TEXAS

SPECIAL CALLED CITY COUNCIL MEETING

WEDNESDAY, OCTOBER 25, 2017

**DALLAS CITY HALL
1500 MARILLA ST
COUNCIL CHAMBERS
DALLAS, TEXAS 75201
6 P.M.**

1. Receive public comments on the recommendations made by the Mayor's Task Force on Confederate Monuments.

Citizens who wish to speak at the meeting are encouraged to register prior to the meeting. You may sign up with the City Secretary's Office no later than 5 p.m. on Tuesday, October 24.

Public Notice

Note: There will be no City Council action at this meeting.

171035

POSTED CITY SECRETARY
DALLAS, TX

HANDGUN PROHIBITION NOTICE FOR MEETINGS OF GOVERNMENTAL ENTITIES

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"De acuerdo con la sección 30.06 del código penal (Ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"De acuerdo con la sección 30.07 del código penal (Ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."

EXECUTIVE SESSION NOTICE

A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]



MINUTES OF THE DALLAS CITY COUNCIL
MONDAY, OCTOBER 25, 2017

17-1707

CITY COUNCIL SPECIAL MEETING
COUNCIL CHAMBER, CITY HALL
MAYOR MICHAEL S. RAWLINGS, PRESIDING

PRESENT: [14] Rawlings, Caraway, Medrano, Griggs, Thomas, Callahan, Narvaez,
Felder, Atkins, Clayton, McGough, Greyson, Gates, Kingston

ABSENT: [1] Kleinman

The meeting was called to order at 6:04 p.m. with a quorum of the city council present.

The meeting agenda, which was posted in accordance with Chapter 551, "OPEN MEETINGS," of the Texas Government Code, was presented.

After all business properly brought before the city council had been considered, the city council adjourned at 7:56 p.m.

ATTEST:

Mayor

Interim City Secretary

Date Approved

The annotated agenda is attached to the minutes of this meeting as EXHIBIT A.



CITY COUNCIL SPECIAL MEETING

OCTOBER 25, 2017

17-1708

Receive public comments on the recommendations made by the Mayor’s Task Force on Confederate Monuments.

The following individuals addressed the city council on the item:

	SPEAKER NAME	RESIDENT ADDRESS	REPRESENTING (FIRM OR ORGANIZATION)
1	Katherine McGovern	4364 Royal Ridge Dr.	
2	John Heimburger	1627 Hollywood Ave.	
3	Mike Leger	3401 Lee Pkwy.	Mayfair HOA
4	Chris Carter	9523 Highedge Dr.	
5	Jean Robinson	3940 Northaven Rd.	
6	James Henderson	10118 Mapleridge Dr.	
7	Brent Sonntag	3223 Lockmoor Ln.	
8	Dee Genova	3401 Lee Pkwy.	
9	Dee Holley	3401 Lee Pkwy.	
10	Jim Temborius	3401 Lee Pkwy.	
11	Linda Parsel	3401 Lee Pkwy.	
12	Karen Pieroni	2927 Renaissance Cir.	
13	R.D. Dignan	1433 San Rafael Dr.	
14	Bill Ceverha	3401 Lee Pkwy.	
15	Sue Krider	3401 Lee Pkwy	
16	Mac Smith	3938 Vinecrest Dr.	
17	Deborah Cook	4021 Wellingshire Ln.	
18	Buddy Apple	821 N. Windomere Ave.	
19	John DuPre	3053 Allister St.	
20	Chandler Vaughan	2901 Turtle Creek Plz.	Juanita Craft Foundation Dallas Citizens for Unity and Reconciliation
21	Sam Hocker	6154 Yorkshire Dr.	
22	Coy Murchison	4624 Weehaven Dr.	
23	Peter Brodsky	9950 Strait Ln.	
24	Diane Benjamin	6530 Waggoner Dr.	
25	Margie Powe	7460 E. Northwest Hwy.	The Liberty Tree DFW
26	Soraya Colli	1920 Holcomb Rd.	Indivisible DFW
27	David Preziosi	2229 Lawndale Dr.	Preservation Dallas
28	Elaine Everitt	5106 Kelsey Rd.	
29	Matthew Jacobs	3615 Brown St.	Dallas Citizens for Unity and Reconciliation

CITY COUNCIL SPECIAL MEETING
 OCTOBER 25, 2017
 17-1708
 Page 2

	SPEAKER NAME	RESIDENT ADDRESS	REPRESENTING (FIRM OR ORGANIZATION)
30	Henry Tatum	4858 Forest Bend Rd.	Dallas Citizens for Unity and Reconciliation
31	Robert Wagon	4061 Travis St.	Dallas Citizens for Unity and Reconciliation
32	Jane Manning	3621 Turtle Creek Blvd.	Dallas Citizens for Unity and Reconciliation
33	Caroline Austin	5121 Kelsey Rd.	
34	Jacques Vroom III	5535 Wenonah Dr.	
35	Nan Coulter	4415 Shirley Dr.	
36	William Murchison	4625 Greenville Ave.	Dallas Citizens for Unity and Reconciliation
37	Alden Nellis	409 W. Westhill Dr. Cleburne, TX	
38	Linda Leach Johnston	4709 E. FM 4 Grandview, TX	Cleburne Cultural Arts Center
39	Beth Biesel	3608 Southwestern Blvd. University Park, TX	
40	Jeff Scoggin	7206 Augusta St., The Colony, TX	
41	Arthur Fleming	822 Westover Dr., Lancaster, TX	
42	Carole Haynes	44 Indian Trl. Hickory Creek, TX	Citizens Matter
43	Jerushea Royal	1225 Saturn Dr. Cedar Hill, TX	
44	Clint Wolverton	4356 Westside Dr. Highland Park, TX	
45	Bobby Clarkston	2325 Chandelle Dr. Irving, TX	
46	Terry Hulsey	1515 Postbridge Ct. Arlington, TX	
47	Robert Capps	4323 University Blvd. University Park, TX	
48	Thomas Vastine	4067 Beltway Dr. Addison, TX	
49	Julio Acosta	1644 Blackstone Dr. Carrollton, TX	Faith in Texas

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CITY SECRETARY
DALLAS, TEXAS



COUNCIL BRIEFING AGENDA

November 1, 2017
Date

	EXHIBIT
tabbles	<u>10</u>

(For General Information and Rules of Courtesy, Please See Opposite Side.)
(La Información General Y Reglas De Cortesía Que Deben Observarse
Durante Las Asambleas Del Consejo Municipal Aparecen En El Lado Opuesto, Favor De Leerlas.)

AGENDA
CITY COUNCIL BRIEFING MEETING
WEDNESDAY, NOVEMBER 1, 2017
CITY HALL
1500 MARILLA STREET
DALLAS, TEXAS 75201
9:00 A.M.

9:00 am Invocation and Pledge of Allegiance 6ES

 Special Presentations

 Open Microphone Speakers

VOTING AGENDA 6ES

1. Approval of Minutes of the October 18, 2017 City Council Meeting
2. Consideration of appointments to boards and commissions and the evaluation and duties of board and commission members (List of nominees is available in the City Secretary's Office)

BRIEFINGS 6ES

- A. Recommendations from Mayor's Task Force on Confederate Monuments
- B. Financial Management Performance Criteria - Reinvestment Zones

Lunch

Open Microphone Speakers 6ES

The above schedule represents an estimate of the order for the indicated briefings and is subject to change at any time. Current agenda information may be obtained by calling (214) 670-3100 during working hours.

Note: An expression of preference or a preliminary vote may be taken by the Council on any of the briefing items.

Memorandum



CITY OF DALLAS

DATE October 27, 2017

TO Honorable Mayor and Members of the City Council

SUBJECT **Recommendations from Mayor's Task Force on Confederate Monuments**

On Wednesday, November 1, 2017, you will be briefed on the Recommendations from Mayor's Task Force on Confederate Monuments. The briefing materials are attached for your review.

Please feel free to contact me if you have any questions or concerns.

A handwritten signature in blue ink, appearing to read 'Joey Zapata'.

Joey Zapata

Assistant City Manager

c. T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Biliera Johnson, City Secretary (Interim)
Daniel F. Sols, Administrative Judge
Kimberly Bizar Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager

Jo M. (Jody) Puckett, Assistant City Manager (Interim)
Jon Fortune, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Nadia Chandler Hardy, Chief of Community Services
Raquel Favela, Chief of Economic Development & Neighborhood Services
Theresa O'Donnell, Chief of Resilience
Directors and Assistant Directors

Recommendations from Mayor's Task Force on Confederate Monuments

City Council Briefing
November 1, 2017

Jennifer Scripps, Director
Office of Cultural Affairs
City of Dallas



Purpose

- Review recommendations by the Mayor's Task Force on Confederate Monuments



Background

- Mayor's Task Force on Confederate Monuments was created on August 18, 2017
 - See appendix for member list
- On September 6, 2017, City Council voted to immediately remove the *Robert E. Lee and the Confederate Soldier* and place it in storage
- The Task Force met on:
 - August 31, 2017
 - September 7, 2017
 - September 15, 2017
 - September 19, 2017
 - September 22, 2017
- Public comments were allowed at the September 7th and September 15th meetings, and online comments were open for two weeks
- All Task Force materials (agendas, briefings, videos, meeting minutes) are available on www.dallasculture.org/confederatemonuments



Background

- The Task Force was charged to make recommendations on the following:
 - *Robert E. Lee and the Confederate Soldier*
 - *Confederate Monument*
 - *Fair Park Art*
 - *Streets with Confederate Names*
 - *Places with Confederate Names*
 - *Robert E. Lee Park*
 - *Confederate Cemetery*



Background

- Briefings presented to the Task Force to inform their deliberations included:
 - Role of Public Art, the Dallas policies governing it, and its history
 - Public monuments honoring Confederates
 - Art at Fair Park with Confederate symbols
 - Parks with Confederate names and buildings
 - Landmarks process
 - Research regarding street names with confirmed Confederate linkages
 - Street name changing process
 - History of The Lost Cause
 - History of Dallas during the 1890s and 1930s – with a special emphasis on the history of Black Codes, Jim Crow, and segregation



History

- Monuments are common in America and have been supported, commissioned, and installed since the 1800s
 - Address our desire to memorialize individuals, groups and events of significance, e.g.:
 - Washington Monument
 - Jefferson Memorial
 - Vietnam Veterans Memorial
 - JFK Memorial
 - MLK Memorial
 - Rosa Parks Plaza in Dallas
 - Make a public statement about the social and historical viewpoints of the individuals and groups who commission them
 - Intentionally built to last – expecting that their significance will endure for a long time
 - While they are made by artists, they are not independent artistic expressions
 - The Confederate Monuments were donations to the City of Dallas before a public art process for the review of donations existed



History

- American Historical Association

- "History comprises both facts and interpretations of those facts."
- To remove a monument or to change the name of a school or street, is not to erase history, but rather to alter or call attention to a previous interpretation of history.
- A monument is not history itself; a monument commemorates an aspect of history, representing a moment in the past when a public or private decision defined who would be honored in a community's public spaces."
- Communities need to decide what is worthy of civic honor and those decisions will change over time as the communities values shift.
- "Nearly all monuments to the Confederacy and its leaders were erected without anything resembling a democratic process."
- "African Americans had no voice and no opportunity to raise questions about the purposes or likely impact of the honor accorded to the builders the Confederate States of America."



The American Historical Association recommends that it is time to reconsider these decisions

7

Monuments Recommendations

1a. (Task Force Recommendation #1) That the City of Dallas seek to place the statue of *Robert E. Lee* and the base of the sculpture on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that it may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

1b. (Task Force Recommendation #1) That the City of Dallas seek to place the Confederate Memorial on long-term loan or by donation to a museum, educational institution, or educational site located within North Texas so that it may be preserved and used for educational purposes through display within the full historical context of the Civil War, Reconstruction, 'Lost Cause' mythology, and the 'Jim Crow' era. If the City is unsuccessful in its efforts and the statues remain in storage after three years, the City Council should revisit this issue.

8



Timeline

- The Public Art Committee met on Tuesday, October 10, 2017
- The Cultural Affairs Commission met on Thursday, October 12, 2017
 - Both committees heard additional public comment and unanimously approved the two recommendations in their purview concerning Confederate monuments and art at Fair Park with Confederate images and symbols
- Briefed Quality of Life, Arts and Culture Committee on Monday, October 23, 2017



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CITY SECRETARY
DALLAS, TEXAS



COUNCIL BRIEFING AGENDA



March 21, 2018

Date

Public Notice

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POSTED CITY SECRETARY
DALLAS, TX

(For General Information and Rules of Courtesy, Please See Opposite Side.)
(La Información General Y Reglas De Cortesía Que Deben Observarse
Durante Las Asambleas Del Consejo Municipal Aparecen En El Lado Opuesto, Favor De Leerlas.)

**AGENDA
CITY COUNCIL BRIEFING MEETING
WEDNESDAY, MARCH 21, 2018
CITY HALL
1500 MARILLA STREET
DALLAS, TEXAS 75201
9:00 A.M.**

9:00 am Invocation and Pledge of Allegiance 6ES

Special Presentations

Open Microphone Speakers

VOTING AGENDA 6ES

1. Approval of Minutes of the February 7, 2018 City Council Meeting and February 21, 2018 City Council Retreat
2. Consideration of appointments to boards and commissions and the evaluation and duties of board and commission members (List of nominees is available in the City Secretary's Office)

BRIEFINGS 6ES

A. Confederate Monuments Recommendations and Next Steps

B. FY 2018-19 and FY 2019-20 General Fund Budget

Lunch

Open Microphone Speakers 6ES

The above schedule represents an estimate of the order for the indicated briefings and is subject to change at any time. Current agenda information may be obtained by calling (214) 670-3100 during working hours.

Note: An expression of preference or a preliminary vote may be taken by the Council on any of the briefing items.

Memorandum

CITY OF DALLAS

DATE March 16, 2018

TO Honorable Mayor and Members of the City Council

SUBJECT **Confederate Monuments Recommendations and Next Steps**

On Wednesday, March 21, 2018, you will be briefed on the Confederate Monuments Recommendations and Next Steps. The briefing materials are attached for your review.

Please feel free to contact me if you have any questions or concerns.

Joey Zapata

Assistant City Manager

c: T.C Broadnax, City Manager
 Larry Casto, City Attorney
 Craig D. Kinton, City Auditor
 Billerae Johnson, City Secretary (Interim)
 Daniel F. Sof's, Administrative Judge
 Kimberly Bizer Tolbert, Chief of Staff to the City Manager
 Majed A. Al-Ghafry, Assistant City Manager

Jo M (Jody) Puckett, Assistant City Manager (Interim)
 Jon Fortune, Assistant City Manager
 M. Elizabeth Reich, Chief Financial Officer
 Nadia Chandler Hardy, Chief of Community Services
 Raquel Favela, Chief of Economic Development & Neighborhood Services
 Theresa O'Donne, Chief of Resilience
 Directors and Assistant Directors

Confederate Monuments Recommendations and Next Steps

City Council Briefing
March 21, 2018

Jennifer Scripps, Director
Office of Cultural Affairs
City of Dallas



180415

Presentation Outline

- Background
- Purpose
- Task Force Recommendations
- Implementation Options & Alternatives, with Impacts
- Proposed Action
- Next Steps

Quality of Life, Arts & Culture



City of Dallas

180415

Background

The Mayor's Task Force on Confederate Monuments was created in August 2017 to make recommendations on the following:

- *Robert E. Lee and the Confederate Soldier (the "Lee")*
- *The Confederate Monument*
- Fair Park Art
- Streets with Confederate Names
- Places with Confederate Names
 - Robert E. Lee Park
 - Confederate Cemetery

Background

- On September 6, 2017, City Council voted to immediately remove the Lee and place it in storage, pending Task Force recommendations
- The Confederate Monuments Task Force met from August 18 to September 22, 2017
 - All Task Force materials (agendas, briefings, videos, meeting minutes) are available on www.dallasculture.org/confederatemonuments
- City Council was briefed on October 23, 2017
 - Staff committed to prepare implementation options by March 2018



Purpose

- Review implementation options based on recommendations made by the Mayor's Task Force on Confederate Monuments and staff recommendations

Quality of Life, Arts & Culture



City of Dallas

180415

Task Force Recommendations

- 1a/1b: Place both monuments with a North Texas institution for preservation, education and full historical context
- 2: Maintain artistic pieces in place at Fair Park, using various media to promote full historical context
- 3: Add commemoration of the Hall of Negro Life at Fair Park
- 4: Return/recreate the Hall of Negro Life murals at Fair Park
- 5: Remove the Robert E. Lee Park name
- 6: Remove the Confederate Cemetery name and request the Park Board rename it in a proper context
- 7: Use citywide engagement to consider naming City parks with placeholder names for rights leaders, the marginalized, underrepresented, and victims of police brutality

Implementation Options/Alternatives

1a/1b: As recommended by the Task Force, seek to place both monuments with the Texas Civil War Museum near Fort Worth

- *1a: Robert E. Lee and the Confederate Soldier*
 - Display in front of the museum with new base, fencing, and contextual signage as part of a long-term loan (~\$75,000 to move and place on new foundation)
 - Remove remaining plinth and granite seating areas around former site and pursue option of selling the granite (~\$125,000 to remove base and surrounding steps)
- *1b: The Confederate Monument*
 - Given the height and size of the entire piece, the most practical feasible option is to remove statues from their columns and display at museum with contextual signage (~\$150,000)
 - Demolition of remaining base (~\$280,000)

Implementation Options/Alternatives

- Alternative 1a: Sell the *Lee* via a fine art auction house
 - Considerable interest in the *Lee* owing to its artistic quality and the artist's prominence
 - Appraised value of \$950,000, exclusive of the base
 - Fine art auction house commission range of 10-20% and increase assurance of a beneficial sale
 - If a reserve price were not met, the work would not sell and could still be placed on long-term loan or storage
 - Seek first right of purchase to prevent unwanted sale






STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DALLAS §

I, **BILIERAE JOHNSON**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

FILE NO. 18-0415

filed in my office as official records of the City of Dallas, and that I have custody and control of said records.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the 7th day of **August, 2018**.


BILIERAE JOHNSON
CITY SECRETARY
CITY OF DALLAS, TEXAS



PREPARED BY: LJ



OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

MARCH 21, 2018

18-0415

Briefing A: Confederate Monuments Recommendations and Next Steps

The city manager briefed the city council on the item.

The following individuals addressed the city council regarding the item:

John Fullinwider, 1851 Fuller Dr.

Chris Carter, 9523 Highedge Dr.

Maggie Murchison, 10131 Gaywood Rd.

David Preziosi, 2229 Lawndale Dr.

Mary Orsak, 6351 Waggoner Dr.

Linda Evans, 5822 Clendenin Ave.

Edward Sebesta, 1502 Seevers Ave.

Dee Latimer-Holley, 3401 Lee Pkwy.

Carole Haynes, 44 Indian Trail, Hickory Creek, TX

Alden Nellis, 409 W. Westhill Dr., Cleburne, TX (handout provided)

Bryce A. Weigand, 3733 Normandy Ave., Highland Park, TX

William Maddox, 5901 Still Forest Dr.

AGENDA
CITY COUNCIL MEETING
APRIL 25, 2018
CITY OF DALLAS
1500 MARILLA STREET
COUNCIL CHAMBERS, CITY HALL
DALLAS, TEXAS 75201
9:00 A.M.

Invocation and Pledge of Allegiance (Council Chambers)

Agenda Item/Open Microphone Speakers

VOTING AGENDA

1. Approval of Minutes of the April 11, 2018 City Council Meeting

CONSENT AGENDA

City Attorney's Office

2. Authorize settlement of the lawsuit styled Marko Princip v. City of Dallas, Cause No. CC-16-00202-B - Not to exceed \$75,000 - Financing: Current Funds
3. Authorize an Interlocal Agreement between the City of Dallas and the Dallas County District Attorney's Office to use designated space at the J. Erik Jonsson Central Library to run a homeless diversion program for a one year term - Financing: No cost consideration to the City
4. Authorize Supplemental Agreement No. 1 to the professional services contract with Carter Arnett PLLC, for additional legal services necessary in the lawsuit styled Petrina L. Thompson v. City of Dallas, Cause No. DC-18-3928 - Not to exceed \$50,000, from \$50,000 to \$100,000 - Financing: Current Funds



ITEMS FOR INDIVIDUAL CONSIDERATION (continued)**Department of Transportation**

32. Authorize **(1)** an Interlocal Agreement with the North Central Texas Council of Governments related to the transfer of ownership of Transportation Investments Generating Economic Recovery funded Modern Streetcar Project assets and streetcar project-related funds; **(2)** the receipt and deposit of funds from SLF III - The Canyon TIF, L.P. in an amount not to exceed \$3,000,000 in the Streetcar Developer Fund; **(3)** the establishment of appropriations in an amount not to exceed \$535,000 in the Streetcar Developer Fund; and **(4)** payment to Dallas Area Rapid Transit for operation and maintenance costs for the Dallas Streetcar System for Fiscal Year 2018 - Total not to exceed \$1,510,000 - Financing: General Funds (\$975,000) and Streetcar Developer Funds (\$535,000)
33. Authorize an amendment to the Interlocal Agreement with Dallas Area Rapid Transit to establish a \$1 fare for the Dallas Streetcar - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

Mayor and City Council Office

34. A resolution **(1)** directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks; **(2)** providing that streets with names linked to the Confederacy shall not be renamed; **(3)** directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*; and **(4)** directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

Office of Budget

35. An ordinance amending Ordinance No. 30651, previously approved on September 20, 2017, as amended by Ordinance No. 30752, previously approved on January 24, 2018, authorizing certain transfers and appropriation adjustments for FY 2017-18 for various departments, activities, and projects; and authorize the City Manager to implement those adjustments - Financing: No cost consideration to the City

STRATEGIC PRIORITY: Quality of Life

AGENDA DATE: April 25, 2018

COUNCIL DISTRICT(S): N/A

DEPARTMENT: Mayor and City Council Office

CMO: T.C. Broadnax, 670-3297

MAPSCO: N/A

SUBJECT

A resolution **(1)** directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks; **(2)** providing that streets with names linked to the Confederacy shall not be renamed; **(3)** directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*; and **(4)** directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

BACKGROUND

On August 24, 2017, Mayor Michael S. Rawlings appointed a task force charged with providing recommendations related to the removal and relocation of public Confederate monuments and symbols, and renaming of public places, including parks and streets. The task force received further instructions related to this charge from the City Council through Council Resolution No. 17-1385, approved on September 6, 2017.

The Task Force held five public meetings between August 31, 2017 and September 22, 2017. City staff provided briefings on City processes related to public art, historic preservation and landmarks, park and street naming. Additional briefings were provided on the historical context of Confederate monuments, symbols and names, as well as a presentation by author Joyce King on the historical context of Dallas in the 1890s and 1930s. All briefing materials, handouts and other information presented to the Task Force were immediately published online at DallasCulture.org/ConfederateMonuments.

BACKGROUND (continued)

Additionally, public comments were heard at two meetings of the Task Force, and written comments were received throughout the process and entered into the record of the Task Force's proceedings. Following briefings and discussions of each of these matters, the Task Force adopted several recommendations and submitted them to the City Council and other relevant boards, commissions and City departments.

Further consideration followed in the fall of 2017 by the Public Art Committee of the Cultural Affairs Commission, the full Cultural Affairs Commission, the City Council's Quality of Life, Arts and Culture Committee, and the full City Council, including extensive public comment periods. The City Council further discussed the Task Force recommendations in March 2018.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On September 6, 2017, City Council authorized a resolution directing the City Manager to immediately remove and store the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*, and providing for related matters.

On September 22, 2017, the Mayor's Task Force on Confederate Monuments adopted recommendations related to the removal and relocation of public Confederate monuments and symbols, renaming of public places, including parks and streets, and other related matters.

The Public Art Committee of the Cultural Affairs Commission was briefed on the Task Force recommendations on October 10, 2017.

The Cultural Affairs Commission was briefed on the Task Force recommendations on October 12, 2017.

The Quality of Life, Arts and Culture Committee was briefed on the Task Force recommendations on October 23, 2017.

City Council received public comments related to the Task Force recommendations on October 25, 2017.

City Council was briefed on the Task Force recommendations on November 1, 2017.

City Council was further briefed on recommendations related to Confederate monuments on March 21, 2018.

FISCAL INFORMATION

This action has no cost consideration to the City. Future costs to demolish and remove *The Confederate Monument* will be limited to an amount not to exceed \$400,000. Future costs to demolish and remove the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area will be limited to an amount not to exceed \$125,000. Future costs to create a proper memorial of the lynching of Allen Brook will be limited to an amount not to exceed \$100,000. Expenses will be paid for using funds from excess revenue or contingency funds subject to future City Council approval.

April 25, 2018

WHEREAS, the enslavement of African-Americans was the primary cause of the Civil War, which divided our country over 150 years ago; and

WHEREAS, the Confederacy lost its war against the United States; and

WHEREAS, the formerly enslaved continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era; and

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, blacks were still denied equality by a society that discriminated against them even when hard-won laws called for equal treatment; and

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates continue to be symbols of our country's division, and create racial barriers in our city; and

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures distort the violent and oppressive history of the Confederacy and preserve the principles of white supremacy; and

WHEREAS, the City of Dallas strives to be a welcoming and inclusive city for all its residents and visitors; and

WHEREAS, the City of Dallas is developing a comprehensive City equity policy for an equitable, inclusive and welcoming Dallas through its resilience and welcoming communities projects; and

WHEREAS, the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the City of Dallas; and

WHEREAS, the City of Dallas convened a Mayor's Task Force on Confederate Monuments ("Task Force") for a robust public discussion of the history of the Confederate monuments, symbols, names, and commemorations, and the City of Dallas' policy regarding the standards for public commemoration of persons, places, and historical events; and

WHEREAS, the Confederate Monument Task Force convened five public meetings and gathered public input to make recommendations for consideration by the City Council; and

April 25, 2018

WHEREAS, the Task Force recommendations were briefed in public meetings to the Public Art Committee of the Cultural Affairs Commission on October 10, 2017, the Cultural Affairs Commission on October 12, 2017 and the City Council's Quality of Life, Arts, and Culture Committee on October 23, 2017; and

WHEREAS, the City Council discussed the Task Force recommendations at briefing meetings on November 1, 2017 and March 21, 2018.

Now, Therefore,

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

SECTION 1. That the City Manager shall form a working group of local artists, historians, designers, educators, and community members to recommend **(1)** the scope for adding a full historical context to Confederate art and symbols at Fair Park and commemorating the Hall of Negro Life, including appropriate signage, markers, digital tour guides, public art, educational programming and/or exhibitions; and **(2)** a proper memorial of the lynching of Allen Brooks at the corner of Akard Street and Main Street to be located at Pegasus Plaza.

SECTION 2. That Dallas streets with names linked to the Confederacy, including Lee Parkway, Gano, Stonewall, Beauregard, and Cabell, shall not be renamed because of the significant residents' opposition on Lee Parkway, the contributions to Dallas of the Gano and Cabell families, and the unclear origins and associations (based on inconclusive City of Dallas records and archives) of the Beauregard and Stonewall street names.

SECTION 3. That the City Manager is hereby directed to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*.

SECTION 4. That the City Manager is hereby **(1)** directed to procure services to demolish and remove *The Confederate Monument* located in Pioneer Cemetery; **(2)** directed to obtain the required Certificate of Demolition from the Landmark Commission; and **(3)** authorized to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to demolish and remove *The Confederate Monument*, limited to an amount not to exceed \$400,000, and to demolish and remove the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area, limited to an amount not to exceed \$125,000, and to create a proper memorial of the lynching of Allen Brooks, limited to an amount not to exceed \$100,000.

SECTION 5. That this resolution shall take effect on April 25, 2018, and it is accordingly so resolved.



City of Dallas

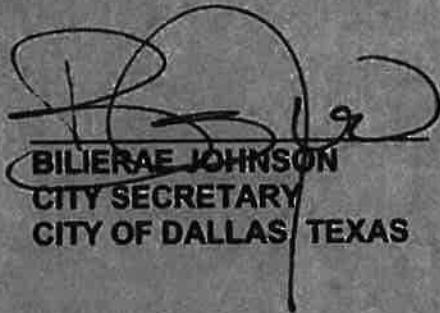
STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DALLAS §

I, **BILIERAE JOHNSON**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

FILE NO. 18-0626

filed in my office as official records of the City of Dallas, and that I have custody and control of said records.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the 7th day of August, 2018.


BILIERAE JOHNSON
CITY SECRETARY
CITY OF DALLAS, TEXAS



PREPARED BY: LJ



OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

APRIL 25, 2018

18-0626

- Item 34: A resolution (1) directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks; (2) providing that streets with names linked to the Confederacy shall not be renamed; (3) directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee* and *Confederate Soldier*; and (4) directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee* and *Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

The following individuals addressed the city council on the item:

James Henderson, 10118 Mapleridge Dr.
John Fullinwider, 1851 Fuller Dr.
Dory Wiley, 6457 Glendora Ave.
Chris Carter, 9523 Highedge Dr.
Warren Johnson, 3883 Turtle Creek Blvd.
Marshall Miles, 5824 Ravendale Ln.
Linda Russell, 9016 Maguires Bridge Dr.
Rebecca Pratt, 9848 Robin Hill Ln.
Leslie Anderson, 2222 N. St. Augustine Rd.
David Preziosi, 2229 Lawndale Dr.
Deborah Hopes, 421 Penguin Dr.
Lawrence Cottle, 5086 Matilda St.
Michael Waters, 3203 Holmes St., representing Faith Forward Dallas
Albert Hendricks, 607 Mayrant Dr.
Erica Cole, 9246 Forest Hills Blvd.
Paul Holtzclaw, 11036 Paddock Cir.
Carmen Chapa, 3883 Turtle Creek Blvd.
Margie Powe, 7460 E. Northwest Hwy.
Linda Evans, 5822 Clendenin Ave.
Charles Henne, 9310 County View Rd.
Karen Pieroni, 2927 Renaissance Cir.
Ralph Green, 3502 Villaverde Ave.
William Russell, 9016 Maguires Bridge Dr.
Buddy Apple, 821 N. Windomere Ave.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

18-0626

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The following individuals addressed the city council on the item:

(Continued)

Arthur Fleming, 822 Westover Dr., Lancaster, TX, representing NAACP
Confederate Symbol Task Force
Arnold Mozisek, 3708 Brown St.
Carole Haynes, 44 Indian Trl., Hickory Creek, TX
Rhonda Tarr, 204 Jefferson Ave., New Castle, TX
James Williamson, 254 Private Rd., Hawkins, TX
Bryan Sorens, 4815 Live Oak St.
Elaine Everitt, 5106 Kelsey Rd.
Charles Coppedge, 7370 Lakeview Dr., Venus, TX
Brandon Burkhardt, 9110 E. Valley View Ln., San Antonio, TX, representing
Texas Freedom Force
Charlotte Niedemayer, 3555 Creston Ct., Fort Worth, TX
JoAnn Henry, 21 Old York Town Rd., York Town, TX
Robert Clark, 905 Westfield Dr., Anna, TX
Monica Clark, 905 Westfield Dr., Anna, TX
Lamar Henry, 21 Old York Town Rd., York Town, TX
Keri Hillyer, 6018 Flower Meadow, San Antonio, TX
Andrew J. Duncomb, 1235 Main St., Seminole, TX
Paul Dille, 1235 Dalhart Dr., Richardson, TX
Liz Case Pickens, Not Provided
Ruth Torres, Not Provided
Brandon Vance, 1819 Dancliff Dr., representing Stonewall Democrats/Texas
Coalition of Black Democrats
Asad Shalani, 7013 Portobello Dr., Plano, TX

Mayor Rawlings announced the item would be separated in order to consider each section individually; there was no objection voiced by the city council.

The city secretary read section (1) of the item as follows:

"A resolution:

directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks."

Councilmember Thomas moved to adopt section (1) of the item.

Motion seconded by Councilmember Atkins.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

18-0626

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During discussion, Councilmember Kingston asked Councilmember Thomas if he would accept a friendly amendment to Section I of the resolution to read as follows:

“That the Cultural Affairs Committee shall recommend (1) the scope for adding a full historical context to Confederate art and symbols at Fair Park and commemorating the Hall of Negro Life, including appropriate signage, markers, digital tour guides, public art, educational programming and/or exhibitions; and (2) a proper memorial of the lynching of Allen Brooks at the corner of Akard Street and Main Street to be located at Pegasus Plaza.”

Councilmember Thomas did not accept the friendly amendment as part of his motion.

Councilmember Kingston moved a substitute motion to Section I of the resolution to read as follows:

“That the Cultural Affairs Committee shall recommend (1) the scope for adding a full historical context to Confederate art and symbols at Fair Park and commemorating the Hall of Negro Life, including appropriate signage, markers, digital tour guides, public art, educational programming and/or exhibitions; and (2) a proper memorial of the lynching of Allen Brooks at the corner of Akard Street and Main Street to be located at Pegasus Plaza.”

Motion seconded by Councilmember Narvaez.

After discussion, Mayor Rawlings called a record vote on Councilmember Kingston's substitute motion:

Voting Yes: [6 5] ~~Caraway~~, Medrano, Griggs, Narvaez, Felder, Kingston

Voting No: [9 10] Rawlings, *Caraway, Thomas, Callahan, Atkins, Clayton, McGough, Kleinman, Greyson, Gates

The city secretary declared the motion failed.

Mayor Rawlings called a record vote on Councilmember Thomas' motion to adopt section (1) of the item:

Voting Yes: [15] Rawlings, Caraway, Medrano, Griggs, Thomas, Callahan, Narvaez, Felder, Atkins, Clayton, McGough, Kleinman, Greyson, Gates, Kingston

Voting No: [0]

The city secretary declared section (1) of the item adopted.

*Note: Mayor Pro Tem Caraway stated his previous vote was in error and requested for the record to reflect his vote on Councilmember Kingston's substitute motion as “No.”

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

18-0626

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The city secretary read section (2) of the item as follows:

"A resolution:

providing that streets with names linked to the Confederacy shall not be renamed"

Councilmember Callahan moved to adopt section (2) of the item.

Motion seconded by Councilmember Greyson.

After discussion, Mayor Rawlings called a record vote on Councilmember Callahan's motion:

Voting Yes: [10] Rawlings, Caraway, Griggs, Callahan, Atkins, Clayton,
McGough, Kleinman, Greyson, Gates

Voting No: [5] Medrano, Thomas, Narvaez, Felder, Kingston

The city secretary declared section (2) of the item adopted.

The city secretary read section (4) of the item as follows:

"A resolution:

directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee* and *Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval"

Councilmember Atkins moved to defer section (4) of the item with conditions.

Motion seconded by Councilmember Callahan.

During discussion, Councilmember Griggs called a point of order to specify the timeframe of the deferral.

The city attorney stated the motion was a deferral with conditions and will return once the conditions have been satisfied. The conditions were stated as follows:

- The city manager reviews proposals for other ideas that we have not yet considered to potentially enhance and improve Pioneer Cemetery;
- Include possible creation to new statues or plaques and any alterations to The Confederate Monument; and
- Review should also include potential changes to the Robert E. Lee and Confederate Soldier sculpture plinth and seating area in Lee Park.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

18-0626

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During further discussion, Councilmember Kingston moved a substitute motion to separate section (4) subsection 3.

Motion seconded by Councilmember Narvaez.

Mayor Rawlings called a record vote on Councilmember Kingston's substitute motion:

Voting Yes: [6] Medrano, Griggs, Narvaez, Felder, Clayton, Kingston

Voting No: [9] Rawlings, Caraway, Thomas, Callahan, Atkins, McGough, Kleinman, Greyson, Gates

The city secretary declared the substitute motion failed.

After discussion, Mayor Rawlings called a record vote on Councilmember Atkins' motion to defer section (4) of the item with conditions:

Voting Yes: [9] Rawlings, Caraway, Thomas, Callahan, Atkins, McGough, Kleinman, Greyson, Gates

Voting No: [6] Medrano, Griggs, Narvaez, Felder, Clayton, Kingston

The city secretary declared section (4) of the item deferred with conditions.

At 11:30 a.m., Mayor Rawlings announced a recess of city council and reconvened at 1:07 p.m.

The city secretary read section (3) of the item as follows:

"A resolution:

directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*"

Councilmember Greyson moved to deny section (3) of the item.

Motion seconded by Councilmember Callahan.

Mayor Rawlings called a record vote on Councilmember Greyson's motion to deny section (3) of the item:

Voting Yes: [10] Rawlings, Caraway, Thomas, Callahan, Atkins, Clayton, McGough, Kleinman, Greyson, Gates

Voting No: [5] Medrano, Griggs, Narvaez, Felder, Kingston

The city secretary declared section (3) of the item denied.

April 25, 2018

WHEREAS, the enslavement of African-Americans was the primary cause of the Civil War, which divided our country over 150 years ago; and

WHEREAS, the Confederacy lost its war against the United States; and

WHEREAS, the formerly enslaved continued to face discriminatory laws, legal practices, and unpunished violence specifically aimed at preventing them from achieving equality from Reconstruction through the Jim Crow Era; and

WHEREAS, even after the economic, social, and legal gains made by the Civil Rights Movement, blacks were still denied equality by a society that discriminated against them even when hard-won laws called for equal treatment; and

WHEREAS, Confederate monuments, along with public places, including parks, and streets that are named for prominent Confederates continue to be symbols of our country's division, and create racial barriers in our city; and

WHEREAS, these Confederate monuments, symbols, images, and public places, including parks, and streets named for Confederate figures distort the violent and oppressive history of the Confederacy and preserve the principles of white supremacy; and

WHEREAS, the City of Dallas strives to be a welcoming and inclusive city for all its residents and visitors; and

WHEREAS, the City of Dallas is developing a comprehensive City equity policy for an equitable, inclusive and welcoming Dallas through its resilience and welcoming communities projects; and

WHEREAS, the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the City of Dallas; and

WHEREAS, the City of Dallas convened a Mayor's Task Force on Confederate Monuments ("Task Force") for a robust public discussion of the history of the Confederate monuments, symbols, names, and commemorations, and the City of Dallas' policy regarding the standards for public commemoration of persons, places, and historical events; and

WHEREAS, the Confederate Monument Task Force convened five public meetings and gathered public input to make recommendations for consideration by the City Council; and

WHEREAS, the Task Force recommendations were briefed in public meetings to the Public Art Committee of the Cultural Affairs Commission on October 10, 2017, the Cultural Affairs Commission on October 12, 2017 and the City Council's Quality of Life, Arts, and Culture Committee on October 23, 2017; and

WHEREAS, the City Council discussed the Task Force recommendations at briefing meetings on November 1, 2017 and March 21, 2018.

Now, Therefore,

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

SECTION 1. That the City Manager shall form a working group of local artists, historians, designers, educators, and community members to recommend (1) the scope for adding a full historical context to Confederate art and symbols at Fair Park and commemorating the Hall of Negro Life, including appropriate signage, markers, digital tour guides, public art, educational programming and/or exhibitions; and (2) a proper memorial of the lynching of Allen Brooks at the corner of Akard Street and Main Street to be located at Pegasus Plaza.

SECTION 2. That Dallas streets with names linked to the Confederacy, including Lee Parkway, Gano, Stonewall, Beauregard, and Cabell, shall not be renamed because of the significant residents' opposition on Lee Parkway, the contributions to Dallas of the Gano and Cabell families, and the unclear origins and associations (based on inconclusive City of Dallas records and archives) of the Beauregard and Stonewall street names.

SECTION 3. That this resolution shall take effect on April 25, 2018, and it is accordingly so resolved.

APPROVED BY
CITY COUNCIL

APR 25 2018

CITY SECRETARY

AGENDA ITEM # 34

STRATEGIC PRIORITY: Quality of Life

AGENDA DATE: April 25, 2018

COUNCIL DISTRICT(S): N/A

DEPARTMENT: Mayor and City Council Office

CMO: T.C. Broadnax, 670-3297

MAPSCO: N/A

SUBJECT

A resolution **(1)** directing the City Manager to form a working group to recommend the scope for adding a full historical context to Fair Park, commemorating the Hall of Negro Life, and for a proper memorial of the lynching of Allen Brooks; **(2)** providing that streets with names linked to the Confederacy shall not be renamed; **(3)** directing the City Manager to procure a fine auction house for the sale of the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*; and **(4)** directing the City Manager to procure services for the demolition and removal of *The Confederate Monument* located in Pioneer Cemetery; to obtain a Certificate of Demolition from the Landmark Commission; and authorizing the City Manager to transfer funds or appropriate funds from excess revenue or contingency funds, as necessary, to remove *The Confederate Monument* and the *Robert E. Lee and Confederate Soldier* sculpture plinth and seating area, and to create a proper memorial of the lynching of Allen Brooks, subject to future City Council approval - Financing: This action has no cost consideration to the City (see Fiscal Information for potential future costs)

BACKGROUND

On August 24, 2017, Mayor Michael S. Rawlings appointed a task force charged with providing recommendations related to the removal and relocation of public Confederate monuments and symbols, and renaming of public places, including parks and streets. The task force received further instructions related to this charge from the City Council through Council Resolution No. 17-1385, approved on September 6, 2017.

The Task Force held five public meetings between August 31, 2017 and September 22, 2017. City staff provided briefings on City processes related to public art, historic preservation and landmarks, park and street naming. Additional briefings were provided on the historical context of Confederate monuments, symbols and names, as well as a presentation by author Joyce King on the historical context of Dallas in the 1890s and 1930s. All briefing materials, handouts and other information presented to the Task Force were immediately published online at DallasCulture.org/ConfederateMonuments.

BACKGROUND (continued)

Additionally, public comments were heard at two meetings of the Task Force, and written comments were received throughout the process and entered into the record of the Task Force's proceedings. Following briefings and discussions of each of these matters, the Task Force adopted several recommendations and submitted them to the City Council and other relevant boards, commissions and City departments.

Further consideration followed in the fall of 2017 by the Public Art Committee of the Cultural Affairs Commission, the full Cultural Affairs Commission, the City Council's Quality of Life, Arts and Culture Committee, and the full City Council, including extensive public comment periods. The City Council further discussed the Task Force recommendations in March 2018.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On September 6, 2017, City Council authorized a resolution directing the City Manager to immediately remove and store the Alexander Phimister Proctor sculpture, *Robert E. Lee and Confederate Soldier*, and providing for related matters.

On September 22, 2017, the Mayor's Task Force on Confederate Monuments adopted recommendations related to the removal and relocation of public Confederate monuments and symbols, renaming of public places, including parks and streets, and other related matters.

The Public Art Committee of the Cultural Affairs Commission was briefed on the Task Force recommendations on October 10, 2017.

The Cultural Affairs Commission was briefed on the Task Force recommendations on October 12, 2017.

The Quality of Life, Arts and Culture Committee was briefed on the Task Force recommendations on October 23, 2017.

City Council received public comments related to the Task Force recommendations on October 25, 2017.

City Council was briefed on the Task Force recommendations on November 1, 2017.

City Council was further briefed on recommendations related to Confederate monuments on March 21, 2018.

RECEIVED

Public Notice

2019 FEB -1 PM 2:01 City of Dallas

190111

CITY SECRETARY
DALLAS, TEXAS

1500 Marilla Street
Dallas, Texas 75201

POSTED CITY SECRETARY
DALLAS, TX



COUNCIL BRIEFING AGENDA

February 6, 2019



(For General Information and Rules of Courtesy, Please See Opposite Side.)
(La Información General Y Reglas De Cortesía Que Deben Observarse
Durante Las Asambleas Del Consejo Municipal Aparecen En El Lado Opuesto, Favor De Leerlas.)

9:00 a.m. Invocation and Pledge of Allegiance 6ES

Special Presentations

Open Microphone Speakers

VOTING AGENDA 6ES

1. 19-242 Approval of Minutes of the January 2, 2019 City Council Meeting
2. 19-243 Consideration of appointments to boards and commissions and the evaluation and duties of board and commission members (List of nominees is available in the City Secretary's Office)

BRIEFINGS 6ES

A. Options for *The Confederate Monument*

B. Bulk and Brush Collections Program – Update

PUBLIC HEARING

MISCELLANEOUS HEARING

Police Department

3. 19-178 A public hearing to receive comments on the reinstatement of the Dallas juvenile curfew ordinance, which provides daytime and nighttime curfew hours for minors - Financing: No cost consideration to the City

Closed Session

Attorney Briefings (Sec. 551.071 T.O.M.A.)

- Legal issues related to the Texas Horse Park and the contract between the City of Dallas and River Ranch Educational Charities.
- E. Tobolowsky, deceased, Cause No. DC-18-17620
- Three Expo Events LLC v. City of Dallas, Cause No. 3:16-CV-00513-D; Cause No. 17-10632.

Memorandum



CITY OF DALLAS

DATE February 1, 2019

TO Honorable Mayor and Members of the City Council

SUBJECT **Options for *The Confederate Monument***

On Wednesday, February 6, 2019, you will be briefed on the Options for *The Confederate Monument*. The briefing materials are attached for your review. As noted in the presentation materials, the options, steps and timelines are as follows:

- **OPTION 1: Re-envision the monument and site**
 - OCA will contract with the artist and brief the proposal to City Council within 120 days
 - Upon approval by Council, staff will seek review from the Public Art Committee and the Arts and Culture Advisory Commission
 - Staff will file a certificate of appropriateness (CA) with the Landmark Commission and include the Arts and Culture Advisory Commission recommendation
 - Landmark Commission will hear the certificate application within 30 days and has 65 days to approve/deny the application
 - Only the applicant/city may appeal CA denial by the Landmark Commission within 30 days after the decision
 - City Plan Commission has no timeline to hear and decide an appeal
 - Future budget considerations
 - The cost and funding sources to make alterations to the monument and site are unknown at this time but will be determined through the proposal and public art process, and may require procurement
- **OPTION 2: Remove the monument**
 - Pending a record vote on an upcoming agenda to exhaust all options to remove the monument, staff will file a certificate for demolition or removal (CD) and Landmark Commission will hear the certification
 - Of five potential standards for CD, the only appropriate standard is "Noncontributing to the historic overlay district because it is newer than the period of significance"
 - City Manager's Office and OCA staff would present the case to Landmark Commission
 - Landmark Commission has 65 days to approve/deny the application
 - Any interested person may appeal a decision of the Landmark Commission within 30 days after their decision
 - If requested to "exhaust all options" for removal, staff would automatically appeal a Landmark Commission denial to the City Plan Commission (CPC), which must decide the appeal within 65 days after the appeal is filed
 - On appeal, CPC would not hear any new evidence and only decide whether the Landmark Commission erred in its decision
 - Estimated removal and storage cost is ~\$480,000
 - Future budget considerations
 - The final cost and funding sources to remove the monument are unknown at this time and may require procurement and City Council authorization
 - Note: Both Landmark Commission and CPC would be functioning as quasi-judicial bodies and therefore City Council members shall not speak to members of either board about the case once it is filed
- **OPTION 3: Take no further action**

Please feel free to contact me if you have any questions or concerns.



Joey Zapata
Assistant City Manager

c: T.C. Broadnax, City Manager
Chris Caso, City Attorney (I)
Carol Smith, City Auditor (I)
Biliera Johnson, City Secretary
Preston Robinson, Administrative Judge
Kimberly Bizer Tolbert, Chief of Staff to the City Manager

Majed A. Al-Ghafry, Assistant City Manager
Jon Fortune, Assistant City Manager
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer
M. Elizabeth Reich, Chief Financial Officer
Laila Aleqresh, Chief Innovation Officer
Directors and Assistant Directors

Options for *The Confederate Monument*

Briefing to City Council
February 6, 2019

Jennifer Scripps, Director
Kay Kallos, Public Art Program Manager
Office of Cultural Affairs



City of Dallas

Presentation Overview

- Purpose
- Background
- Related Projects and Approaches
- New Option: Re-envision the monument and site
- Options and Timelines
- Next Steps
- Appendix

Purpose

- Review and discuss options for *The Confederate Monument* and Pioneer Cemetery, including a new option requested by City Council to make enhancements and improvements to the site
 - Contract with artist lauren woods for a proposal to re-envision the monument and site

Background: Monument and Site

- *The Confederate Monument*
 - Designed by Frank Teich in 1896 and erected in 1897
 - Consists of five Confederate statues: three generals (Lee, Jackson, Johnston) and CSA president (Davis) and a Confederate soldier at center
 - Base inscribed with tributes to Confederate seamen, infantry, cavalry, and Southern women
 - Relocated to Pioneer Cemetery from Old City Park in 1961 due to highway construction
- **Pioneer Cemetery**
 - Pioneer Cemetery site was on the southern edge of Dallas when the first burial occurred in 1840's
 - The last body was interred in 1921
 - Originally comprised of four separate and historic cemeteries: Masonic, Odd Fellows, Jewish, and the City cemetery
 - Designated a Dallas Landmark in May 2002 (Historic overlay No. 114)



Background: Prior Actions

- **October 23, 2017: City Council Briefing**
 - Mayor's Task Force on Confederate Monuments recommended removal and either a long-term loan or donation to an institution in North Texas or storage for future disposition (see Appendix)
- **March 21, 2018: City Council Briefing**
 - Staff recommended an alternative approach to add historical context and information
 - Otherwise, removal and storage of the monument
- **April 25, 2018: City Council Resolution Adopted**
 - City Council directed the City Manager to present options to enhance and improve Pioneer Cemetery, such as new statues, plaques and alterations to the monument
 - City Manager committed to provide options by Fall 2018
 - By memorandum on October 15, 2018, Councilman Atkins, Councilman Felder and Mayor Pro Tem Thomas requested that consideration be scheduled after a District 4 Council Member was seated

Summary of Options and Timelines

- **OPTION 1: Re-envision the monument and site**
 - Contract with lauren woods for a proposal to re-envision the monument and site
 - Brief proposal to City Council within 120 days
 - Estimated cost is ~\$10,000 through concept proposal, with additional future budget considerations
- **OPTION 2: Remove the monument**
 - Schedule a record vote on an upcoming City Council agenda to exhaust all options to remove the monument
 - File a certificate for demolition or removal (CD) as a non-contributing structure in the Pioneer Cemetery landmark and Landmark Commission will hear the certification
 - Estimated removal and storage cost is ~\$480,000
- **OPTION 3: Take no further action**

Options and Timelines

- **OPTION 1: Re-envision the monument and site**
 - OCA will contract with the artist and brief the proposal to City Council within 120 days
 - Upon approval by Council, staff will seek review from the Public Art Committee and the Arts and Culture Advisory Commission
 - Staff will file a certificate of appropriateness (CA) with the Landmark Commission and include the Arts and Culture Advisory Commission recommendation
 - Landmark Commission will hear the certificate application within 30 days and has 65 days to approve/deny the application
 - Only the applicant/city may appeal CA denial by the Landmark Commission within 30 days after the decision
 - City Plan Commission has no timeline to hear and decide an appeal
 - Future budget considerations
 - The cost and funding sources to make alterations to the monument and site are unknown at this time but will be determined through the proposal and public art process, and may require procurement

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Options and Timelines

- **OPTION 2: Remove the monument**
 - Pending a record vote on an upcoming agenda to exhaust all options to remove the monument, staff will file a certificate for demolition or removal (CD) and Landmark Commission will hear the certification
 - Of five potential standards for CD, the only appropriate standard is "Noncontributing to the historic overlay district because it is newer than the period of significance"
 - City Manager's Office and OCA staff would present the case to Landmark Commission
 - Landmark Commission has 65 days to approve/deny the application
 - Any interested person may appeal a decision of the Landmark Commission within 30 days after their decision
 - If requested to "exhaust all options" for removal, staff would automatically appeal a Landmark Commission denial to the City Plan Commission (CPC), which must decide the appeal within 65 days after the appeal is filed
 - On appeal, CPC would not hear any new evidence and only decide whether the Landmark Commission erred in its decision
 - Estimated removal and storage cost is ~\$480,000
 - Future budget considerations
 - The final cost and funding sources to remove the monument are unknown at this time and may require procurement and City Council authorization
 - Note: Both Landmark Commission and CPC would be functioning as quasi-judicial bodies and therefore City Council members shall not speak to members of either board about the case once it is filed

Options and Timelines

- OPTION 3: Take no further action

RECEIVED

2019 FEB -8 PM 5: 24

CITY SECRETARY
DALLAS, TEXAS

**ADDENDUM
CITY COUNCIL MEETING**

WEDNESDAY, FEBRUARY 13, 2019

PARIS IN THE WOODS RECREATION CENTER

6801 MOUNTAIN CREEK PARKWAY

DALLAS, TX 75249

2:00 P.M.

Public Notice

19 01 5 2

POSTED CITY SECRETARY
DALLAS, TX

REVISED ORDER OF BUSINESS

Agenda items for which individuals have registered to speak will be considered no earlier than the time indicated below:

2:00 p.m. **INVOCATION AND PLEDGE OF ALLEGIANCE**

OPEN MICROPHONE

CLOSED SESSION

MINUTES

Item 1

CONSENT AGENDA

Items 2 - 36

ITEMS FOR INDIVIDUAL CONSIDERATION

No earlier
than 2:15 p.m.

Items 37 - 41

Addendum Items 1 - 4

PUBLIC HEARINGS AND RELATED ACTIONS

6:00 p.m.

Items 42 - 51



ADDITIONS:ITEMS FOR INDIVIDUAL CONSIDERATION**City Secretary's Office**

1. 19-249 An ordinance ordering a general election to be held in the City of Dallas on Saturday, May 4, 2019, for the purpose of electing 15 members to the City Council of the City of Dallas to represent Places 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 for the term beginning June 17, 2019 - Financing: No cost consideration to the City

Mayor and City Council Office

2. 19-288 A resolution declaring that *The Confederate Monument* in Pioneer Cemetery is a noncontributing structure for the historic overlay district and authorizing the City Manager to (1) take action necessary to secure approval from the Landmark Commission, and any related appeals, if necessary, to remove and store *The Confederate Monument*; (2) procure services to disassemble, remove, and transfer to storage *The Confederate Monument* with a vendor selected by the City Manager pursuant to a request for competitive sealed proposals and to enter into a contract, approved as to form by the City Attorney, in an amount not to exceed \$480,000.00; and (3) increase appropriations in an amount not to exceed \$480,000.00 in the Office of Cultural Affairs budget from General Fund Contingency Reserve - Not to exceed \$480,000.00 - Financing: Contingency Reserve Funds

Office of Procurement Services

3. 19-193 Authorize (1) an Advance Funding Agreement with the Texas Department of Transportation (TxDOT) (Contract No. CSJ 0918-47-245) to accept funding from the State Highway (SH) 161 Subaccount in the amount of \$1,000,000 for the development of a strategic mobility plan for the City; (2) the receipt and deposit of Regional Toll Revenue (RTR) Funds from TxDOT in the amount of \$1,000,000 in the TxDOT RTR SH 161-Strategic Mobility Plan Project Fund; (3) the establishment of appropriations in the amount of \$1,000,000 in the TxDOT RTR SH 161-Strategic Mobility Plan Project Fund; (4) a required local match in the amount of \$250,000 from General Fund; and (5) a eighteen-month consultant contract for the development of a five-year strategic mobility plan for the City - Kimley-Horn and Associates, Inc. in an amount not to exceed \$1,194,000, most advantageous proposer of four - Total amount of \$1,250,000 - Financing: General Fund (\$250,000) (subject to annual appropriations) and Regional Toll Revenue Funds (\$1,000,000)

MINUTES OF THE DALLAS CITY COUNCIL
WEDNESDAY, FEBRUARY 13, 2019

19-0240

VOTING AGENDA MEETING
PARK IN THE WOODS RECREATION CENTER
6801 MOUNTAIN CREEK PARKWAY
DALLAS, TX 75249
MAYOR MICHAEL S. RAWLINGS, PRESIDING

PRESENT: [15] Rawlings, Thomas, Medrano, Griggs, Arnold, Callahan, Narvaez (*2:29 p.m.), Felder, Atkins, Clayton (*2:20 p.m.), McGough, Kleinman, Greyson, Gates, Kingston

ABSENT: [0]

The meeting was called to order at 2:11 p.m. with a quorum of the city council present.

The invocation was given by Pastor Robert Summers of Mountain Creek Community Church.

Mayor Pro Tem Thomas led the pledge of allegiance.

The meeting agenda, posted in accordance with Chapter 551, "OPEN MEETINGS," of the Texas Government Code, was presented.

The meeting recessed at 5:37 p.m. and reconvened to open session at 6:18 p.m. [*Greyson (6:19 p.m.)]

After all business properly brought before the city council had been considered, the city council adjourned at 10:58 p.m.

Mayor

ATTEST:

City Secretary

Date Approved



The annotated agenda is attached to the minutes of this meeting as EXHIBIT A.

The actions taken on each matter considered by the city council are attached to the minutes of this meeting as EXHIBIT B.

Ordinances, resolutions, reports and other records pertaining to matters considered by the city council, are filed with the City Secretary as official public records and comprise EXHIBIT C to the minutes of this meeting.

* **Indicates arrival time after meeting called to order/reconvened**

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

FEBRUARY 13, 2019

19-0296

Addendum Item 2: A resolution declaring that The Confederate Monument in Pioneer Cemetery is a noncontributing structure for the historic overlay district and authorizing the City Manager to (1) take action necessary to secure approval from the Landmark Commission, and any related appeals, if necessary, to remove and store The Confederate Monument; (2) procure services to disassemble, remove, and transfer to storage The Confederate Monument with a vendor selected by the City Manager pursuant to a request for competitive sealed proposals and to enter into a contract, approved as to form by the City Attorney, in an amount not to exceed \$480,000.00; and (3) increase appropriations in an amount not to exceed \$480,000.00 in the Office of Cultural Affairs budget from General Fund Contingency Reserve - Not to exceed \$480,000.00 - Financing: Contingency Reserve Funds

The following individuals addressed the city council on the item:

John Fullinwider, 1851 Fuller Dr.
Gerald Britt, 1610 S. Malcolm X Blvd.
Alia Salem, 465 Bordeaux Ave.
Danna Miller Pyke, 10716 Lathrop Dr.
Akwte Tyehimba, 2804 Thomas Tolbert Ave.
Elaine Everitt, 5106 Kelsey Rd.

Mayor Pro Tem Thomas moved to adopt the item.

Motion seconded by Councilmember Atkins.

At the request of Councilmember Felder, the following individual addressed the city council on the item:

Arthur Fleming, 822 Westover Dr., Lancaster, TX

Councilmember Gates moved a substitute motion to re-envision the [confederate] monument and site.

Substitute motion seconded by Councilmember Callahan.

During discussion and after consulting with the city attorney, Mayor Rawlings stated Councilmember Gates' substitute motion was out of order.

Councilmember Gates moved a substitute motion to hold the item under advisement until the June 12, 2019 voting agenda meeting of the city council; to allow Lauren Woods an opportunity to re-envision the [confederate] monument and site, before the city council makes a decision.

Substitute motion seconded by Councilmember Callahan.

OFFICIAL ACTION OF THE DALLAS CITY COUNCIL

19-0296

Page 2

After discussion, Mayor Rawlings called a record vote on Councilmember Gates' substitute motion:

Voting Yes: [5] Rawlings, Callahan, McGough, Greyson, Gates

Voting No: [10] Thomas, Medrano, Griggs, Arnold, Narvaez,
Felder, Atkins, Clayton, Kleinman, Kingston

The city secretary declared the motion failed.

Mayor Rawlings called a record vote on Mayor Pro Tem Thomas' original motion to adopt the item:

Voting Yes: [11] Rawlings, Thomas, Medrano, Griggs, Arnold,
Narvaez, Felder, Atkins, Clayton, Kleinman,
Kingston

Voting No: [4] Callahan, McGough, Greyson, Gates

The city secretary declared the item adopted.

February 13, 2019

WHEREAS, on April 25, 2018, the City Council adopted Resolution No. 18-0626 directing the City Manager to take certain actions related to Confederate art and symbols; and

WHEREAS, Section 4 of that resolution as presented for City Council consideration provided for the disassembly and removal of *The Confederate Monument* located in Pioneer Cemetery; and

WHEREAS, on April 25, 2018, the City Council deferred any disassembly and removal of *The Confederate Monument* until the City Manager reviewed other ideas to enhance and improve Pioneer Cemetery, including creating new statues or plaques or other alterations, such as recontextualizing *The Confederate Monument*; and

WHEREAS, the Office of Cultural Affairs briefed the City Council on recontextualization options on February 6, 2019; and

WHEREAS, the City Council reaffirms the recitals in Council Resolution No. 18-0626 that the display of public Confederate monuments glorifying Confederate causes does not promote a welcoming and inclusive community and is against the public policy of the City of Dallas.

Now, Therefore,

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

SECTION 1. That *The Confederate Monument* in Pioneer Cemetery is a noncontributing structure that is newer than the period of historic significance for the historic overlay district, and demolition or removal of the noncontributing structure will not adversely affect the historic character of Pioneer Cemetery or the integrity of the historic overlay district.

SECTION 2. That the City Manager is hereby authorized and directed to exhaust all options to obtain the necessary approvals for disassembly, removal, and transfer to storage.

SECTION 3. That the City Manager is authorized to (1) procure services to disassemble, remove, and transfer to storage *The Confederate Monument* located in Pioneer Cemetery with a vendor to be selected by the City Manager pursuant to a request for competitive sealed proposals; and (2) execute a contract, approved as to form by the City Attorney, in an amount not to exceed \$480,000.00.



190296

February 13, 2019

SECTION 4. That the Chief Financial Officer is hereby authorized to transfer funds in an amount not to exceed \$480,000.00 from Fund 0001, Department NBG, Unit 1000, Revenue Code RTRF, to Fund 0001, Department OCA, Unit 4804, Revenue Code 9229; and a clearing entry, in the same amount, to Fund 0001, Department BMS, Balance Sheet Account 0991 (Debit) and to Fund 0001, Department BMS, Balance Sheet Account 0950 (Credit).

SECTION 5. That the City Manager is hereby authorized to increase the Office of Cultural Affairs appropriations in an amount not to exceed \$480,000.00, from \$19,973,188.00 to \$20,453,188.00 in the General Fund, Fund 0001, Department OCA, Unit 4804, Object 3070; total General Fund expenditure appropriations by \$480,000.00 from \$1,366,121,406.00 to \$1,366,601,406.00; and to increase total General Fund revenue appropriations by \$480,000.00 from \$1,366,121,406.00 to \$1,366,601,406.00.

SECTION 6. That the Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$480,000.00 from Fund 0001, Department OCA, Unit 4804, Object 3070, Activity CA04, Encumbrance No./Contract No. OCA-2019-00009491, in an amount not to exceed \$480,000.00.

SECTION 7. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.



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CITY SECRETARY
DALLAS, TEXAS



Public Notice

19 02 08

POSTED CITY SECRETARY
DALLAS, TX

**PUBLIC HEARING POSTING
LANDMARK COMMISSION HEARING
Monday, March 4, 2019**

Briefings: **5ES*** **9:00 a.m.**

(The Landmark Commission may be briefed on any item on the agenda if it becomes necessary.)

PUBLIC HEARINGS **Council Chambers*** **1:00 p.m.**

PURPOSE: To consider the attached agenda and any other business that may come before this Commission.

*** All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas**

Handgun Prohibition Notice for Meetings of Governmental Entities

"Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."

"Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."



Landmark Commission Agenda
Monday, March 4, 2019

Section 51A-4.501(g)(6)(C)(ii).

5. Paint main structure. Brand: Pittsburgh Paint. Color: Main - PPG1041-3 "Billowing Clouds." Trim - PPG1013-6 "Gray Flannel." Accent - PPG1161-4 "Blue Promise"- Approve - Approve specifications dated 3/4/2016 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).

Task Force Recommendation:

1. Remove two windows on the south elevation of main structure - Approve
2. Replace eight aluminum windows with new wood windows on rear of main structure - Approved with conditions - Provide more detail on each window. 1-over-1 is typical, introducing 3-over-1 isn't approved.
3. Replace front and rear entry door with new doors and remove three door openings on rear of main structure. - Deny without prejudice - Deny door selection. Revise door selection as discussed to be period appropriate.
4. Plant twelve boxwood hedges in front yard - Approve - Approve trees in front easement.
5. Paint main structure. Brand: Pittsburgh Paint. Color: Main - PPG1041-3 "Billowing Clouds." Trim - PPG1013-6 "Gray Flannel." Accent - PPG1161-4 "Blue Promise" - Approve - Approve colors.

DISCUSSION ITEMS:

1. 1201 MARILLA ST
Pioneer Cemetery
CD189-007(LC)
Liz Casso

Request:

Remove Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance.

Applicant: City of Dallas - Jennifer Scripps

Application Filed: 02/07/19

Staff Recommendation:

Remove Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance. - Approve - The proposed removal meets the standards in City Code Section 51A-4.501(h)(4)(D). The monument is non-contributing to the historic overlay district; it was installed after the period of significance; and removal of the monument will not adversely affect the historic character of the property or the integrity of the historic overlay district.

Task Force Recommendation:

Remove Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance - Pending the Task Force on Monday,



CITY OF DALLAS

LANDMARK COMMISSION

MARCH 4, 2019

FILE NUMBER: CD189-007(LC)
LOCATION: 1201 Marilla St (1102 Young St)
STRUCTURE: Non-Contributing
COUNCIL DISTRICT: 2
ZONING: CA-1(A)

PLANNER: Liz Casso
DATE FILED: February 20, 2019
DISTRICT: Pioneer Cemetery (H-114)
MAPSCO: 45-P
CENSUS TRACT: 0204.00

APPLICANT: City of Dallas, Office of Cultural Affairs

REPRESENTATIVE: Jennifer Scripps

OWNER: CITY OF DALLAS

REQUEST:

Remove Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance.

BACKGROUND / HISTORY:

7/1/2002 – Landmark Commission approved the removal of the Texas 36 World War II monument from the cemetery (no case number).

11/4/2002 – Landmark Commission approved installation of a grave marker for Pierre Dusseau (no case number).

7/7/2003 – Landmark Commission approved installation of a grave marker for John W. Lane (no case number).

ANALYSIS:

On February 13, 2019, Dallas City Council voted to move forward with procedures to remove the Confederate Monument from Pioneer Cemetery. Pioneer Cemetery is a City of Dallas landmark, therefore a Certificate of Demolition or Removal from the Landmark Commission is required. This application is for removal of the monument from the cemetery only. It is not a request to demolish or destroy the monument. Should this request be approved, the monument would be removed in pieces and appropriately put into storage.

Pioneer Cemetery was designated a City of Dallas Landmark in 2002. Its designation **was intended to honor Dallas' early pioneers** buried in the cemetery who contributed to the early development of the city. Pioneer Cemetery includes the remnants of four

separate cemeteries: the Masonic Cemetery, the Odd Fellow's cemetery, the Jewish cemetery and the City cemetery. Notable citizens buried in the cemetery include multiple Dallas mayors like John Crockett, mayor in 1857 and 1859; multiple elected officials like Nicholas Darnell, who was Speaker of the House in 1842 and a member of the Constitutional Convention in 1845, and multiple doctors, etc. The period of significance for the cemetery is 1849, the date of the earliest known burial, to 1921, the date of the last burial.

The Confederate Monument is a feature in the cemetery that was installed there in 1961, after the period of significance for the cemetery. It is located at the southeast corner of the cemetery, in front of the easternmost portion of the Dallas Convention Center. The monument consists of a Confederate soldier facing south on top of the obelisk (based on Robert Hugh Gaston (1844-1862)). At the southwest corner is Jefferson Davis, President of the Southern States of the Confederacy (holding scroll); southeast corner is General Albert Sydney Johnson (hand at waist with short saber); at the northeast is Brigadier-General Stonewall Jackson (holding a hat and a saber) and at the northwest is General Robert E. Lee, commander in chief of the Confederate Army (holding binoculars with long saber.) The monument is marble with a granite base; the dimension of the central figure and obelisk is 60-ft high and the four figures are 19-ft high including the base. There are inscriptions on all four sides of the base of the obelisk and portrait rondel representing General W. T. Cabell on the west side.

The monument was commissioned by the Daughters of the Confederacy and installed in Old City Park in 1896. It was designed by Frank Teich, a San Antonio sculptor, originally from Germany, who is believed to have constructed at least one-third of all Confederate monuments in Texas. Due to the construction of R. L. Thornton Freeway in the 1960s, which erased most of the park, the monument had to be relocated. Pioneer Cemetery was selected as the new location because it had ample space available for the monument, would be more visible to the public brought in by events held at the Memorial Auditorium, and was to be part of a larger plan to restore the neighboring cemetery.

The original portions of the Dallas Convention Center, first opened in 1973, wrapped around the eastern and southern exposures of the monument, essentially blocking off the monument from public view from those directions. Concrete steps and retaining walls were also installed close to the eastern and southern sides of the monument as part of an entrance plaza for the Convention Center.

Although the landmark nomination form makes note of the Confederate Monument and its move near the cemetery, no specific mention of the monument is made in the **preservation criteria, with the monument notated oddly as the 'Civil War Memorial'** on the Exhibit B, which shows the limits of the historic overlay. While the preservation criteria notes that monuments are protected, there are several monuments and sculptures within the cemetery proper that the language might be referencing instead of just the Confederate Monument.

The Confederate Monument, and the area around the monument may have also been included as part of the historic overlay in an effort to protect unmarked graves like those

unearthed in 1999 when Ceremonial Drive was constructed on the southern side of the cemetery.

While Staff acknowledges the Confederate Monument is an impressive historic sculpture, as well as the oldest piece of city-owned art, it unfortunately is removed from its original historic context (Old City Park), although its placement closer to the burial place of Civil War veterans is admirable. However, Pioneer Cemetery is significant for being a cemetery, and the monument was not part of the original development of the cemetery or part of an overall landscaping or plan for the cemetery.

In addition, guidance from the National Park Service is that if a building is moved into a National Register district or a National Register structure is moved from its original location or context, the structure is automatically considered 'non-contributing.' Regardless of whether the monument has been on site for 58 years, Staff would consider it 'non-contributing' based on that National Park Service guidance. Plus, most City of Dallas historic districts that are also National Register districts encompass 'non-contributing' structures based on age or inappropriate alterations so the inclusion of a 'non-contributing' structure like the Confederate Monument to a local historic overlay district is not unusual or out of the ordinary.

Considering the following facts that the monument is not an original historic feature of the cemetery, was moved to its current location after the cemetery's period of significance, and its removal and storage would not have an adverse impact on the historic character and integrity of historic overlay district, Staff is recommending approval of the Certificate for Demolition or Removal.

STAFF RECOMMENDATION:

Remove Confederate monument from cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance. – Approve – The proposed removal meets the standards in City Code Section 51A-4.501(h)(4)(D). The monument is non-contributing to the historic overlay district; it was installed after the period of significance; and removal of the monument will not adversely affect the historic character of the property or the integrity of the historic overlay district.

TASK FORCE RECOMMENDATION:

Remove Confederate monument from cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance. – Pending the Task Force meeting on Monday, March 4, 2019.

Staff note: The application for removal of the monument was submitted after the regular Task Force meeting took place at the request of the City Manager's Office. Therefore there is no Task Force recommendation for this item at this time. A special Task Force meeting has been scheduled to take place on March 4th prior to the Landmark Commission public meetings. The Task Force recommendation will be presented to the Landmark Commission during their meetings on March 4th.

March 4, 2019



CITY OF DALLAS
LANDMARK COMMISSION MINUTES

The Dallas Landmark Commission held a meeting on March 4, 2019 with a briefing at 12:09 p.m. in room 5ES, the public hearing at 1:18 p.m. in the Council Chambers of City Hall.

The following Commissioners were present for the meeting:

* Alternates

Michael Amonett
Sam Childers
Krista De La Harpe
Mattia James Flabiano, Vice Chair
Rosemary Hinojosa
Evelyn Montgomery

Donald Payton
Courtney Peach
Leigh Richter
Katherine Seale - Chair
*Diane Sherman
Robert Swann

Renee Strickland
Courtney Spellicy
Katy Slade
Emily Williams

The following ex-officio member was present for the meeting: **No one**

The following ex-officio member was absent for the meeting: **No one**

The following Commissioners were absent from the Meeting:

No One

The following Commissioners were absent from the briefing:

No One

The following Positions are vacant: District 3

The following Staff was present:

Jennifer Anderson
Casey Burgess
Chris Caso
Liz Casso
Neva Dean

Mark Doty
Elaine Hill
Anna Lamberti Holmes
Melissa Parent
Theresa Pham

Marsha Prior
Kris Sweckard
Bert Vanderberg



Install two flat attached signs on south elevation. – Approve – Approve drawings dated 3/4/19 with the finding the proposed work is consistent with preservation criteria Section 5.6 for signs, Section 51A-7.1005(c) for flat attached signs on Type A facades and meets the standards in City Code Section 51A-4.501(g)(6)(C)(i).

9. 509 MAIN ST

West End Historic District
CA189-332(LC)
Liz Casso

Replace windows on Criminal Courts Building. – Approve – Approve drawings and images dated 3/4/19 with the finding the proposed work is consistent with preservation criteria Section 5.0 for construction and renovation and meets the standards in City Code Section 51A-4.501(g)(6)(C)(i).

10. 305 S WILLOMET AVE

Winnetka Heights Historic District
CA189-286(MLP)
Melissa Parent

1. Remove two windows on the south elevation of main structure. – Approve – Approve site plan dated 3/4/2019 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).
2. Replace eight aluminum windows with new wood windows on rear of main structure. – Approve – Approve specifications dated 3/4/2019 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).
3. Replace front and rear entry door with new doors and remove three door openings on rear of main structure. – Approve – Approve specifications dated 3/4/2019 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).
4. Plant twelve boxwood hedges in front yard. – Approve – Approve site plan dated 3/4/2019 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).
5. Paint main structure. Brand: Pittsburgh Paint. Color: Main - PPG1041-3 "Billowing Clouds." Trim - PPG1013-6 "Gray Flannel." Accent - PPG1161-4 "Blue Promise"– Approve – Approve specifications dated 3/4/2016 with the finding the proposed work meets the standards in City Code Section 51A-4.501(g)(6)(C)(ii).

DISCUSSION ITEMS

1. 1201 MARILLA ST

Pioneer Cemetery
CD189-007(LC)
Liz Casso

Speakers:

For:

Jennifer Scripps, John Fullinwider, Edward M. Sebesta, Gerald Britt, Gary Moore

Against:

Allison Reaves Poggi, Stephen McNallen, Carole Haynes, Judith Edwards, Rosa Rodriguez, Deborah Franklin, Rick Range, Landon

Simmons, Connie Marshall, Warren Johnson, Karen Pieroni, David Preziosi, Joanna Hampton, David Hendricks, James Henderson, Chris Carter, Larry Johnson, Sandra Crenshaw, Tami Brown Rodriguez, Serrano Baldeo

Motion #1

Deny the application to remove the Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because the proposed work does not meet the standard in Section 51A-4.501(h)(4)(D) in that having been built in 1896, it is not newer than the period of significance for the historic overlay district. This same Dallas City Code specifies that all existing grave markers, monuments, and tombs are protected. Protected is defined, within the ordinance, as an architectural or landscape feature that must be retained and maintain its historic appearance, as near as practical in all aspects. Therefore, as a monument, it is protected according to the ordinance.

Maker:	Williams				
Second:	Swann				MOTION FAILED
Results:	6/9				
		Ayes:	-	6	Childers, Flabiano, Richter, Williams Seale, Swann
		Against:	-	9	Amonett, De La Harpe, Hinojosa, Montgomery Payton, Peach, Slade, Spellicy, Strickland
		Absent:	-	0	
		Vacancies:	-	1	Dist. 3

Motion #2

Approve the removal of the Confederate monument from Pioneer Cemetery pursuant to Section 51A-4.501(h)(4)(D). The monument is non-contributing to the historic overlay district. The monument was installed after the period of historic significance for the historic overlay district and the removal of the monument will not adversely affect the historic character of the property or integrity of the historic overlay district.

Maker:	Strickland				
Second:	Hinojosa				
Results:	10/5				
		Ayes:	-	10	Amonett, De La Harpe, Hinojosa, Montgomery, Payton, Peach, Richter, Slade, Spellicy, Strickland
		Against:	-	5	Childers, Flabiano, Seale, Swann, Williams
		Absent:	-	0	
		Vacancies:	-	1	Dist. 3

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2019 MAY 10 PM 3:27

CITY SECRETARY
DALLAS, TEXAS



CITY OF DALLAS

PUBLIC HEARING POSTING
CITY PLAN COMMISSION
HEARING
Thursday, May 16, 2019

BRIEFINGS:

5ES*

10:00 a.m.

(The City Plan Commission may be briefed on any item on the agendas if it becomes necessary.)

PUBLIC HEARINGS:

Council Chambers*

1:30 p.m.

PURPOSE: To consider the attached agendas and any other business that may come before this Commission.

*** All meeting rooms and chambers are located in Dallas City Hall, 1500 Marilla, Dallas, Texas**

Handgun Prohibition Notice for Meetings of Governmental Entities

"Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."

"De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."

"Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."

"De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."



Authorization of a Hearing – Under Advisement:

Mark Doty
(CC District 6)

Consideration of authorizing a public hearing to determine the proper zoning on property zoned Subdistrict 2A within Planned Development District No. 714, Subdistrict 3 within Planned Development District No. 732, and CS Commercial Service in an area generally on the west side of Sylvan Avenue between Seale Street on the north and Ft. Worth Avenue on the south and containing approximately 3.714 acres with consideration being given to an historic overlay for Belmont Hotel. This is a hearing to consider the request to authorize the hearing and not the rezoning of the property at this time.

U/A From: March 21, 2019

Landmark Commission Appeal:

CD189-007(LC)
Liz Casso
(CC District 2)

An appeal of the Landmark Commission's approval of a Certificate for Demolition or Removal of the Confederate monument from Pioneer Cemetery using the standard demolition or removal of a non-contributing structure because it is newer than the period of significance (51A-4.501(h)(4)(D)) located at 1201 Marilla Street within the Pioneer Cemetery Historic District.

Staff Recommendation: **Approve.**

Landmark Commission Recommendation: **Approve.**

Other Matters:

Reconsideration:

Z178-223(CY)
Carolina Yumet
(CC District 2 & 14)

1. Suspension of the CPC Rules of Procedure to allow reconsideration of Z178-223(CY).

If #1 is approved then consideration of #2.

2. Reconsideration of action taken on April 4, 2019, which was to move to **hold** this case under advisement until such time as the item has been amended, reauthorized, and a community meeting held; or if the amendment fails to be reauthorized the item shall return as currently authorized on the agenda of considering determine proper zoning on property zoned Subarea C-1 within Subdistrict C; Subareas D-1, D-2, D-3, D-4, and D-5 within Subdistrict D; and Subdistricts E, E1, E2, F, G, H, H1 of Planned Development District No. 305, Cityplace; generally on the east and west sides of North Central Expressway with Carroll Avenue to the north, Hall Street to the south, Turtle Creek Boulevard to the west, and Ross Avenue to the east and consisting of approximately 116.62 acres with

Hill, Phyllis (Elaine)

From: Karen Pieroni [REDACTED]
Sent: Sunday, February 24, 2019 2:37 PM
To: Hill, Phyllis (Elaine); Doty, Mark
Cc: Karen Pieroni
Subject: Confederate War Memorial - Deny CD
Attachments: Pieroni Attachment - Landmark 2-2019.pdf

February 24, 2019

To Landmark Commission
Attn: Katherine Seale

I am writing to you as one who has lived in Dallas City and/or Dallas County for 31 years. I am writing to you also as an ancestor of over 40 Confederate veterans. I am writing as a private citizen and a registered voter.

First to address the Certificate of Demotion and Removal (CD) submitted by Dallas City Manager T.C. Broadnax upon the 11-4 vote of the Dallas City Council. I am dismayed, distressed, and disappointed in the less than ethical behavior of our City Leaders forcing this upon you as early as March 4th. They did **NOT** file by the first Thursday of the month by noon in order for it to be reviewed by the Landmark Commission on the first Monday of the following month and therefore I do not understand why you have it on your March 4th agenda. Nevertheless, it is.

In reviewing an application, the only demotion standard the City could possibly come up with is the one they did – non-contributing structure because newer than period of significance.

For this I beg to disagree:

The monument was erected in June of 1896. Because of the City, it was moved to Pioneer Cemetery in the early 1960's. The City and the Office of Cultural Affairs took part in its re-dedication in 1997. I'm sure at the time that seemed like a wonderful idea because there were already Confederate soldiers buried in that same cemetery and some of them, former Dallas dignitaries and citizens:

1. John Martin Stemmons – 16th Missouri Infantry
2. Robert M. Cooke – 19th Texas Cavalry (Burford's)
3. Nicholas Henry Darnell (Historical Marker) – 18th Texas Cavalry (Regiment named for him)
4. Alexander Harwood (Historical Marker) – Capt. – Field & Staff, TX Confederate States Army
5. James K. P. Record (Historical Marker) – Johnston's Mounted Volunteer – Field & Staff, CSA
6. D.W Broughton - Major – Company C, 20th (not 13th) Texas Cavalry
7. John Jay Good (Historical Marker) – Capt. TX Artillery (Unit named for him)
8. John W. Lane – 2nd Lieutenant, 18th TX Cavalry (under Darnell's leadership)
9. Samuel B. Pryor – 1st Lieutenant, Good's Artillery (under Good's leadership)
10. Barton Warren Stone – Colonel, Field & Staff, 6th Texas Cavalry (Unit named for him)

These are just ten that I have been able to research. I would think that there are other Confederate veterans buried in Pioneer Cemetery but as you know, there are many, many missing headstones.



In addition, William Lewis Cabell, is framed on the monument. The Confederate soldier at the top is said to be fashioned after W.H. Gaston. While those men are not buried at Pioneer Cemetery, (they are nearby at Greenwood Cemetery), they follow the same vein as those ten men previously mentioned. They are both also famous Dallas historical dignitaries.

I do not believe that there is enough to substantiate the monument being non-contributing nor is it newer than the period of significance. In 1962, it made sense to move the monument to Pioneer Park and it still does today. In 1997, when it was re-dedicated, no less than Dallas City Mayor Ron Kirk, an African-American, was present.

The **second** point I want to bring up is political in nature although I hope it actually ends up playing no part in the decision made by the Landmark Commission.

I realize that every commissioner was nominated by one of the City Council. However, I also understand that the Landmark Commission is a quasi-judicial functioning entity. Since the filing of the CD, no City Council member should have been contacting the Commissioner.

What this also means, is that no member of the Landmark Commission should do the bidding of the City Council, nor should any political aspiration of each's own come into play. As I mentioned, it is my fervent hope that I am concerned with this for no reason.

Lastly, this monument just like all the other hundreds throughout the country, was built as a Memorial. My own personal Confederate ancestors fought because they felt it was their obligation to do so. Their state went to war so they went to war. Is that any different today of men and women serving in today's military to protect their country? None of us were there in 1861 – 1865. None of us know exactly what their thought process was, but I, in my heart of hearts, cannot place blame nor fault on any one of them for joining the Confederacy. And for that, whether it be in Dallas, my home, or any other city/town which has a Confederate monument, I honor their memory as a perpetual memorial to their sacrifice.

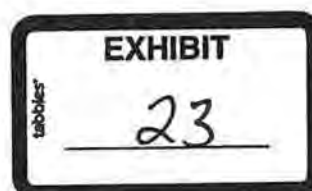
The Landmark Commission is there for one thing and one thing only - To demonstrate outstanding interest in historic preservation and have knowledge and experience in the fields of history, art, architecture, or historic preservation.

The Certificate for Demolition and Removal does NOT fit the standard and therefore should be Denied (not Denied without Prejudice).

Sincerely,

Karen Ann Pieroni
2927 Renaissance Circle, Dallas TX 75287
214-502-2971
karen.pieroni@yahoo.com

TRANSCRIPTION OF EXCERPTS OF AUDIO RECORDING
LANDMARK COMMISSION PUBLIC HEARING
CITY OF DALLAS, TEXAS
CASE CD189-007(LC)
1201 -MARILLA STREET (PIONEER CEMETERY)
DATE OF HEARING: MARCH 4, 2019
DATE OF TRANSCRIPTION: APRIL 8, 2019



1 for the political Taliban, the cultural Taliban. This
2 one is in a cemetery and now it's being targeted for
3 destruction because of politics and fake emergencies.

4 No one can force the city to open a library
5 or a park. But when a city pulls a book or removes a
6 statue already there because the message -- because of a
7 message they gave it, that's a First Amendment issue.

8 Free speech is impacted. Criminal penalties
9 come into play for those responsible for it. Save the
10 city council from this. Save historic preservation in
11 Dallas. Deny the city's request. Thank you.

12 MS. PERONI: Good afternoon, my name is
13 Karen Peroni, 2927 Renaissance Circle in Dallas. I'm
14 speaking as a Dallas city resident of over 30 years and
15 speaking as a private citizen and a registered voter.

16 I'm a descendent of over 40 Confederate
17 soldiers and I also happen to be a member of Dallas 6,
18 that's our monument. I'm begging you not to take it
19 down and read the letter that Dallas Preservation sent
20 you yesterday.

21 It says everything it needs to say and it
22 rebuts everything the city is trying to tell you. So
23 please read their letter from March 3rd. Thank you.

24 MR. PRESIOSI: David Presiosi with
25 Preservation Dallas, 2922 Swiss Avenue. The certificate

1 MR. MOORE: Thank you. My name is Gary
2 Moore. My wife and I are Vietnam vets who no longer
3 reside in the City of Dallas. We live in Lewisville
4 now. But we came to tell you that the world is
5 watching. The world is seeing everything that the city
6 council does.

7 The world is watching everything that this
8 Landmark Commission does. It is being spread throughout
9 the Web and it will be visible to everyone. Anything
10 that you do to destroy this monument, anything that you
11 have done to continue to keep this going simply means
12 that you're boldly saying and standing in the face of
13 history and saying this history was simply not good
14 enough for me.

15 This history was too nasty. It was too
16 ugly. We want to get rid of it. You did it when you
17 let the city rip out the Robert E. Lee statue and now
18 this is going again. I vote against it. I hope you
19 will vote against it. I hope you will stand tall.
20 Thank you.

21 MR. CARTER: My name is Chris Carter, I live
22 at 9523 Hige Drive here in Dallas. I have attended
23 every city council meeting regarding the Confederate
24 monuments as well as the mayor's task force.

25 In every meeting the public speakers have

1 been five to one against the removal of our Confederate
2 monuments. In the city council, this is not an issue of
3 history, it is not an issue of morality.

4 This is a bunch of young cravenly ambitious
5 city councilmen using these monuments as a political
6 football to further their own political career.

7 They are now attempting to co-op the
8 Landmark Commission, a deliberative, non-political body,
9 to rubber stamp this monument removal so as to
10 circumvent the wishes of the people of Dallas.

11 We have said many times, put this issue to a
12 public referendum and let the people of Dallas decide.
13 You cannot allow the Landmark Commission to be used as a
14 political tool. This is not what it was established
15 for.

16 You must go back to the city council with a
17 firm no. You must say that the Confederate monument is
18 not only a contributing structure, but a relevant
19 integral part of Pioneer Cemetery.

20 The monument is a memorial to the people
21 that settled Dallas most of whom were political -- were
22 Confederate Army veterans. Thank you.

23 MS. CRENSHAW: Sandra Crenshaw, a descendent
24 of Africans who have lived in Texas under all six flags
25 and never were enslaved, but fought in all the wars on

THE ATTORNEY GENERAL OF TEXAS

KEN PAXTON

Opinions Overruled, Modified, Affirmed, Withdrawn

This list of overruled, modified, affirmed, and withdrawn opinions is not entirely complete as there may be a recently enacted statute or a court of appeals or Texas Supreme Court decision that affects the conclusion of an attorney general opinion. However, we strive to stay abreast of such decisions and enactments. Please feel free to notify the Opinion Committee if you know of a court decision or statute that affects the conclusion of an attorney general opinion. All opinions affected by recent attorney general opinions should be accurate and up-to-date.

Ken Paxton	(2015 - present)	
KP-0062 (2016)	Superseded by statute	Tex. Special Districts Local Laws Code § 1118.055
Greg Abbott	(2002 - 2014)	
GA-0999 (2013)	Superseded by statute	Tex. Gov't Code § 2268.055(b)
GA-0700 (2009)	Superseded by statute	Tex. Gov't Code § 52.057(f)
GA-0668 (2008)	Modified by statute	Tex. Gov't Code Ann. § 551.0415
GA-0665 (2008)	Superseded by statute	Tex. Tax Code § 313.021 (2)(A)
GA-0649 (2008)	Superseded by statute	Tex. Hum. Res. Code § 42.041(b)(17)
GA-0615 (2008)	Overruled by	<i>Van Houten v. City of Fort Worth</i> , 827 F.3d 530, 538 (5th Cir. 2016)
GA-0612 (2008)	Superseded by statute	Tex. Loc. Gov't Code §§ 142.009, 157.906
GA-0600 (2008)	Superseded in part by	Tex. Tax Code § 312.402

EXHIBIT

24

H-1250 (1978)	Overruled by	Court Decision See Appendix item #28 and GA-0700 (2009)
H-1229 (1978)	Withdrawn by	H-1229A (1978)
H-1201 (1978)	Overruled by	JM-250 (1984)
H-1113 (1978)	Overruled by	JM-947 (1988) See Appendix item #11
H-1042 (1977)	Overruled by	JM-1092 (1989)
H-1028 (1977)	Superseded by statute	DM-421 (1996)
H-1027 (1977)	Overruled to extent inconsistent with	GA-0365 (2005)
H-998 (1977)	Overruled to extent inconsistent with	GA-0021 (2003)
H-993 (1977)	Overruled to the extent inconsistent with	MW-437 (1982)
H-948 (1977)	Overruled by	JM-1161 (1990)
H-922 (1977)	Overruled by	JM-947 (1988) See Appendix item #11
H-908 (1976)	Overruled by	JM-947 (1988) See Appendix item #11
H-895 (1976)	Affirmed by	JM-922 (1988)
H-876 (1976)	Superseded by statute	JC-0562 (2002)
H-856 (1976)	Affirmed by	Court Decision See Appendix item #13
H-741 (1976)	Cited and Approved by	Court Decision See Appendix item #8
H-727 (1975)	Overruled in part by	GA-0214 (2004)
H-715 (1975)	Overruled by	JM-19 (1983)
H-708 (1975)	Overruled	JM-399 (1985)
H-698 (1975)	Superseded by statute	JC-0562 (2002)
H-620 (1975)	Overruled by	Court Decision See Appendix item #18

O-1263 (1939)	Overruled in part by	GA-0214 (2004)
O-1258 (1939)	Affirmed by	M-872 (1971)
O-561 (1939)	Affirmed by	H-507 (1975)
O-360 (1939)	Overruled by	M-872 (1971)
O-283 (1939)	Overruled by	O-4454 (1942)
O-125 (1939)	Overruled to the extent inconsistent with	LA-85 (1974)
O-48 (1939)	Overruled by	M-872 (1971)

Attorney General Opinions**(1893 - 1938)**

No. 1809

Overruled by

JM-1161 (1990)

APPENDIX**CASES AFFECTING OPINIONS**

1. *Bradley v. Swearingen*, 525 S.W.2d 280 (Tex. Civ. App.-Eastland 1975, no writ) **overrules C-602**
2. *Broom v. Tyler County Commissioners Court*, 560 S.W.2d 435 (Tex. Civ. App.-Beaumont 1977, no writ) **affirms H-572 and H-39**
3. *Buel v. Jones*, No. 3-5464D (N.D. Tex., Apr. 1, 1974) **affirms H-367**
4. *Calvert v. Thompson*, 472 S.W.2d 311 (Tex. Civ. App.-Austin 1971) *judgm't aff'd in part, rev'd in part*, 489 S.W.2d 95 (Tex. 1972) **affirms M-449**
5. *Cartwright v. State*, 527 S.W.2d 535, 539 (Tex. Crim. App. 1975) **affirms H-569**
6. *City of Amarillo v. Paramount Terrace Christian Church*, 530 S.W.2d 323 (Tex. Civ. App.-Amarillo 1975, writ ref'd n.r.e.) **affirms H-399**

7. *City of Corpus Christi v. Herschbach*, 536 S.W.2d 653, 656 (Tex. Civ. App.-Corpus Christi 1976, writ ref'd n.r.e.) **affirms H-338 in part**
8. *City of San Antonio v. San Antonio Indep. Sch. Dist.*, 535 S.W.2d 671 (Tex. Civ. App.-El Paso 1976, writ ref'd n.r.e.) **affirms H-741**
9. *City of Waco v. Texas Retired Teachers Residence Corp.*, 484 S.W.2d 346 (Tex. 1971) **overrules WW-1424**
10. *City of West Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681, 684 (Tex. Civ. App.-Waco 1980, no writ) **overrules H-304**
11. *Commissioners Court v. Criminal District Att'y*, 690 S.W.2d 932 (Tex. App.-Austin 1985, writ ref'd n.r.e.) **overrules H-1113, H-922, and H-908**
12. *Gilmore v. Carr*, No. CA-3-1777 (N.D. Tex.) **overrules M-16**
13. *Hokr v. State*, 545 S.W.2d 463, 465 (Tex. Crim. App. 1977) **affirms H-856**
14. *International Fidelity Ins. Co. v. Sheriff of Dallas County*, 476 S.W.2d 115 (Tex. Civ. App.-Beaumont 1972, writ ref'd n.r.e.) **affirms M-1060**
15. *Ex Parte Menefee v. State*, 561 S.W.2d 822 (Tex. Crim. App. 1977) possibly **overrules M-1151**
16. *Pena v. Rio Grande City Consol. Indep. Sch. Dist.*, 616 S.W.2d 658 (Tex. 1981) **overrules MW-56**
17. *Texarkana Indep. Sch. Dist. v. Lewis*, 470 S.W.2d 727 (Tex. Civ. App.-Texarkana 1971, no writ) **sustains M-395**
18. *Texas Antiquities Comm'n v. Dallas County Community College Dist.*, 554 S.W.2d 924 (Tex. 1977) **overrules H-620**
19. *Vinson v. Burgess*, 773 S.W.2d 263 (Tex. 1989) **overrules JM-792**
20. *In the Matter of B.A.M.*, 980 S.W.2d 788 (Tex. App.-San Antonio 1998, pet. denied) **overrules DM-200**
21. *Alabama-Coushatta Indian Tribe v. Mattox*, 650 F.Supp 282 (W.D. Tex. 1986) **overrules JM-17**
22. *Ex parte Schroeter*, 958 S.W.2d 811 (Tex. Crim. App. 1997) **overrules LO-96-128**
23. *Trinity Indep. Sch. Dist. v. Walker County*, 287 S.W.2d 717 (Tex. Civ. App. - Galveston, 1956, writ ref'd n.r.e.) **overrules S-121 (1954)**
24. *Owens v. State*, 19 S.W.3d 480 (Tex. App.-Amarillo 2000, no pet.) **overrules in part DM-466 (1998)**
25. *Garcia v. State*, 800 S.W.2d 872, 879 (Tex. App.-San Antonio 1990, writ denied) **overrules JM-678 (1987)**
26. *HEB Ministries, Inc. v. Tex. Higher Educ. Coordinating Bd.*, 235 S.W.3d 627 (Tex. 2007) **Overrules JC-0200 (2000).**
27. *Desoto Wildwood Dev., Inc. v. City of Lewisville*, 184 S.W.3d 814 (Tex. App.-Fort Worth 2006, not pet.) **overrules LO-97-048**
28. *Gilt-Massar v. Dallas County*, 781 S.W.2d 612 (Tex. App.-Dallas 1989, no writ) **overrules H-1250 (1978)**

[ADDITIONAL LINKS](#)

[ACCESSIBILITY & PRIVACY](#)

[REPORT FRAUD](#)

matters suitable for disposition without a hearing. Upon careful consideration of the arguments asserted in the parties' memoranda, the Court, for the reasons that follow, **GRANTS** the Motion for Summary Judgment (Dkt. # 54), and **DENIES AS MOOT** the Motion to Dismiss (Dkt. # 59).

BACKGROUND

The Sons of Confederate Veterans ("Confederate Veterans") is an organization dedicated to preserving the memory of Americans who fought for the Confederacy during the Civil War.¹ (See Dkt. # 44.) According to the Confederate Veteran's website, its membership is limited to male descendants of Confederate Veterans. See <http://www.scv.org/new/>. Defendants are the Mayor and City Council members of the City of San Antonio. (Dkt. # 44 at 1–3.)

In August 2017, the San Antonio City Council enacted an ordinance for the removal of a Confederate Monument ("the Monument") located in Travis Park in downtown San Antonio. On August 31, 2017, the City Council voted to remove the Monument. One day before, on August 30, 2017, Plaintiffs Richard Brewer and the Texas Division of the Confederate Veterans (collectively, "Plaintiffs"), filed suit against Defendants in this Court, alleging federal claims under the First Amendment and for Due Process, as well as state law claims for attempted trespass to land and for breach of an easement. (Dkt. # 1.) Plaintiffs

¹ Although not clear from Plaintiffs' filings, the individual Plaintiff is presumably a member of the Confederate Veterans. (See Dkts. ## 1, 2.)

simultaneously filed a motion for Temporary Restraining Order (“TRO”), asking the Court to immediately restrain Defendants from removing the Monument. (Dkt. # 2.) After a hearing, the Court denied the motion for TRO, but directed that the removal of the Monument be carried out in such a manner as to preserve the integrity of the Monument, and that the Monument be stored in a secure location in order to protect it from damage or from being defaced pending resolution of this lawsuit. (Dkt. # 7 at 8–9.) On September 1 and 2, 2017, the City removed the Monument.

After several other filings in this case, Plaintiffs were granted leave to file a second amended complaint. (Dkt. # 44.) Plaintiffs’ second amended complaint added a new defendant, the City of San Antonio (“the City”), and added that suit be brought against each council member in both their official and individual capacities. (Id.) The complaint alleges causes of action for violation of free speech, violation of the Texas Antiquities Code, a claim for charitable trust/gift, and a conversion claim. (Id.)

On July 16, 2018, Defendants filed the motion for summary judgment or, in the alternative, motion to dismiss. (Dkt. # 54.) On August 13, 2018, Plaintiffs filed a response in opposition. (Dkt. # 56.) Defendants filed a reply on August 27, 2018. (Dkt. # 58.) On September 4, 2018, Defendant council members, in their individual capacities, filed the motion to dismiss. (Dkt. # 59.)

LEGAL STANDARD

I. Summary Judgment

A movant is entitled to summary judgment upon showing that “there is no genuine dispute as to any material fact,” and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); see also Meadaa v. K.A.P. Enters., L.L.C., 756 F.3d 875, 880 (5th Cir. 2014). A dispute is only genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party meets this burden, the nonmoving party must come forward with specific facts that establish the existence of a genuine issue for trial. Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc., 738 F.3d 703, 706 (5th Cir. 2013) (quoting Allen v. Rapides Parish Sch. Bd., 204 F.3d 619, 621 (5th Cir. 2000)). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” Hillman v. Loga, 697 F.3d 299, 302 (5th Cir. 2012) (quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)).

In deciding whether a fact issue has been created, the court must draw all reasonable inferences in favor of the nonmoving party, and it “may not make

credibility determinations or weigh the evidence.” Tiblier v. Dlabal, 743 F.3d 1004, 1007 (5th Cir. 2014) (quoting Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000)). However, “[u]nsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment.” United States v. Renda Marine, Inc., 667 F.3d 651, 655 (5th Cir. 2012) (quoting Brown v. City of Hous., 337 F.3d 539, 541 (5th Cir. 2003)).

II. Federal Rule of Civil Procedure 12

Rule 12(c) provides that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” The standard for deciding a motion under Rule 12(c) is the same as the one for deciding a motion to dismiss under Rule 12(b)(6). See Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 305, 313 n.8 (5th Cir. 2002) (“A number of courts have held that the standard to be applied in a Rule 12(c) motion is identical to that used in a Rule 12(b)(6) motion.” (citation and internal quotation marks omitted)).

Under Rule 12(b)(6), the court evaluates the pleadings by “accept[ing] ‘all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff[s].’” In re Katrina Canal Breaches Litig., 495 F.3d 191, 205 (5th Cir. 2007) (quoting Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit, 369 F.3d 464, 467 (5th Cir. 2004)). To survive defendants’ motions, plaintiffs’ pleadings

must allege enough facts “to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff[s] plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” Id. (quoting Twombly, 550 U.S. at 556); see also Twombly, 550 U.S. at 555 (“Factual allegations must be enough to raise a right to relief above the speculative level[.]”). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘shown’—‘that the pleader is entitled to relief.’” Iqbal, 556 U.S. at 679 (alteration omitted) (quoting Rule 8(a)(2)).

Furthermore, under Rule 8(a)(2), a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although “the pleading standard Rule 8 announces does not require ‘detailed factual allegations,’” it demands more than “‘labels and conclusions.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555). And “‘a formulaic recitation of the elements of a cause of action will not do.’” Id. (quoting Twombly, 550 U.S. at 555).

DISCUSSION

Defendants' motion for summary judgment seeks dismissal of Plaintiffs' claims on the basis that: (1) Plaintiffs lack standing to bring some or all of the claims; (2) Plaintiffs have failed to state a claim on which relief can be granted; (3) there is no evidence to support one or more element of Plaintiffs asserted causes of action; and (4) the Court lacks jurisdiction over some of the claims. (Dkt. # 54.) The Court will first consider whether Plaintiffs have standing to bring any of their claims.

Defendants argue that Plaintiffs do not have standing to bring some or all of their claims. (Dkt. # 54.) Defendants contend that Plaintiffs have not alleged any particularized interest and therefore have not alleged a sufficient injury in fact to confer standing. Defendants also assert that Plaintiff Brewer does not have taxpayer standing nor do Plaintiffs have organizational standing.

To have standing to sue, a plaintiff must show that he personally suffered some actual or threatened injury, that the injury is fairly traceable to the defendant's challenged action, and that the relief requested will redress the injury. Doe v. Tangipahoa Parish Sch. Bd., 494 F.3d 494, 496 (5th Cir. 2007); Center for Individual Freedom v. Carmouche, 449 F.3d 655, 659 (5th Cir. 2006) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)). In addition, the injury must be an "invasion of a legally protected interest which is (a) concrete and

particularized, and (b) actual or imminent, not conjectural or hypothetical.” Lujan, 504 U.S. at 560. The Fifth Circuit strictly enforces the standing requirement as an essential element of subject matter jurisdiction. See Doe, 494 F.3d at 498 (citing Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541–42 (1986)).

A. Concrete and Particularized

To satisfy the injury-in-fact prong, a plaintiff must allege an invasion of a “legally protected interest,” that is both “concrete and particularized.” Plaintiffs assert they have standing to sue on the basis that “Defendants impermissible restriction of plaintiffs’ right to expression of their political viewpoint is a restriction of a legally protected interest.” (Dkt. # 56 at 17–18.) In other words, Plaintiffs contend that the City engaged in viewpoint discrimination when the City removed the Monument. According to Plaintiffs, their viewpoint—glorifying a Confederate legacy—was reflected in the Monument. (Id.) Additionally, they allege they were injured “by [Defendants] rendering impossible the public charitable gift of political speech intended to benefit plaintiffs and expressed by the Monument group.” (Id.)

Plaintiffs further assert that their injuries were particularized because Defendants’ removal of the Monument terminated political speech that Defendants and Plaintiffs had jointly established in 1908. (Dkt. # 56 at 17.) Plaintiffs argue that “[t]his injury is particularized[] because no one else was involved in the

mutually joined speech act of placing the Monument ensemble, except plaintiffs and defendants.” (*Id.* at 17–18.) According to Plaintiffs, when the Monument was removed, Defendants “terminated plaintiffs’ jointly established political speech,” injuring Plaintiffs alone because Plaintiffs had “directed the establishment of the speech act and defendants acted in agreement for 110 years.” (*Id.* at 18.)

When standing is contested, the appropriate inquiry is whether the interest is cognizable in the abstract, and then, whether such interest is concrete and particularly felt by those bringing suit; if the interest alleged is both cognizable and particularly felt, it is an injury in fact. *See Lujan*, 504 U.S. at 563 (“[T]he injury in fact test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.”). Here, Plaintiffs’ interest is cognizable and Plaintiffs have satisfied a concrete interest—free speech. *See Pleasant Grove City, Utah v. Summum*, 555 U.S. 460 (2009); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). Concreteness, however, is not enough—the interest must also be particularized.

Notably, Plaintiffs have not complained that Defendants have taken any direct action against either Brewer or the Confederate Veterans. Instead, they complain, as stated above, that they “directed the establishment of the speech [contained in the Monument] and defendants acted in agreement for 110 years,” and were thus injured by the Monument’s removal. However, as our sister court in

Austin recently held on a very similar case, “[s]ubjective ideological interests—no matter how deeply felt—are not enough to confer standing.” McMahon v. Fenves, No. 1:17-CV-822-LY, 2018 WL 3118692, at *4 (W.D. Tex. June 25, 2018) (citing Sierra Club v. Morton, 405 U.S. 727, 729–35 (1972)). “Our system of governance assigns the vindication of value preferences to the democratic political process, not the judicial process, see Lujan, 504 U.S. at 576, 112 S.Ct. 2130, because limiting the right to sue to those most immediately affected ‘who have a direct stake in the outcome’ prevents judicial review ‘at the behest of organizations who seek to do no more than vindicate their own value preferences.’” Id. (quoting Sierra Club, 405 U.S. at 740). Here, Plaintiffs seek to do just that. Plaintiffs are likely more deeply attached to the values embodied by the Monument than the average person walking through Travis Park, “but their identities as descendants of Confederate veterans do not transform an abstract ideological interest in preserving the Confederate legacy into a particularized injury.” See id. Thus, the alleged free-speech injury of Plaintiffs, while perhaps cognizable in the abstract, is not an injury in fact.

B. Taxpayer Standing

Still, Plaintiff Brewer asserts that he has taxpayer standing to bring his claims. (Dkt. # 44.) Taxpayer standing is an exception to the general rule that the plaintiff must show a particularized injury distinct from that suffered by the public.

See Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 555–56 (Tex. 2000); Hendee v. Dewhurst, 228 S.W.3d 354, 373–74 (Tex. App.—Austin 2007, pet. denied). A plaintiff relying on taxpayer standing can seek to enjoin *prospective* expenditures of public funds, but cannot recover funds *already expended*.

Williams v. Huff, 52 S.W.3d 171, 180 (Tex. 2001) (emphasis added). To establish taxpayer standing, a plaintiff must show that (1) he is a taxpayer, and (2) public funds *are to be* expended on the allegedly illegal activity. Id. at 179; Ehm v. San Antonio City Council, 269 F. App'x 375, 377 (5th Cir. 2008) (per curiam).

The “illegal expenditure” exception is a long-recognized, but narrowly limited, exception to the general prohibition against recognizing taxpayer standing. See Williams, 52 S.W.3d at 180; Bland Indep. Sch. Dist., 34 S.W.3d at 555 (both quoting Osborne v. Keith, 177 S.W.3d 198, 200 (Tex. 1944)). The limited standing permitted a taxpayer under this exception applies only when the taxpayer seeks (1) to challenge a proposed, allegedly illegal, expenditure and (2) to enjoin the expenditure. See Williams, 52 S.W.3d at 181; Bland Indep. Sch. Dist., 34 S.W.3d at 556 (both citing Hoffman v. Davis, 100 S.W.2d 94, 96 (1937)).

Brewer asserts that he has taxpayer standing because he is a resident taxpayer of San Antonio and he has contested the removal of the Monument as unconstitutional. (Dkt. # 44 at 11.) He further argues that Defendants expended taxpayer funds in the illegal removal. (Id.) In response, Defendants contend that

Plaintiffs have no evidence that the City is *currently* spending taxpayer funds in relation to the Monument, nor any evidence that taxpayer funds will be spent in the future. (Dkt. # 54 at 12.) Defendants further argue that Brewer cannot maintain taxpayer standing because Plaintiffs' second amended complaint fails to plead any request for injunctive relief. (Id.)

Here, the Court must consider the issue of Brewer's standing as a taxpayer in context. Plaintiffs filed suit in this case just prior to the removal of the Monument, and thus it would seem likely, at that time, Brewer had taxpayer standing to challenge and enjoin the removal of the Monument since taxpayer funds were proposed to be prospectively spent on its removal. (See Dkt. # 56-1.) Thus, the Court proceeded to consider the merits of Plaintiffs' challenge in its Order on Plaintiffs' Motion for Temporary Restraining Order. (Dkt. # 7.) While the Court noted in its Order that Plaintiffs had not alleged how they had standing to challenge the removal, the Court nonetheless proceeded to review Plaintiffs' motion, stating that "even if Plaintiffs can demonstrate standing, they have not established the elements necessary for the Court's issuance of a TRO." (Id. at 4.) Thus, even though Plaintiffs had not yet pled or demonstrated standing, given the sensitive timing of the request, the Court assumed that Plaintiffs had, or could at least demonstrate, taxpayer standing.

Since that time, the Monument was removed and the taxpayer funds used on its removal were previously expended. As a result, there is nothing left to enjoin from Plaintiffs' original complaint. Indeed, Plaintiffs' second amended petition no longer seeks injunctive relief. (See Dkt. # 44.) Accordingly, the original issue for which Plaintiffs filed suit is moot. See Envtl. Conserv. Org. v. City of Dall., 529 F.3d 519, 524–25 (5th Cir. 2008) (“Mootness is the doctrine of standing in a time frame. The requisite personal interest that must exist at the commencement of litigation (standing) must continue throughout its existence (mootness).” (quoting U.S. Parole Comm’n v. Geraghty, 445 U.S. 388, 397 (1980))). Given this, the Court does not see how Plaintiffs can now maintain taxpayer standing to assert the claims alleged in their second amended complaint. The taxpayer funds have already been spent to remove the Monument, and Plaintiffs' second amended complaint no longer seeks to enjoin future, allegedly illegal expenditures of public funds. The second amended complaint alleges only that “Defendants *expended* taxpayer funds in the illegal removal.” (Dkt. # 44 at 11.)

While not binding on this Court, the Texas Supreme Court has determined that a taxpayer may maintain an action solely to challenge *proposed* illegal expenditures; he or she may not sue to recover funds *previously* expended or challenge expenditures that are merely “unwise or indiscreet.” Williams,

52 S.W.3d at 180 (citing Hoffman, 100 S.W.2d at 96; Osborne, 177 S.W.2d at 200). Only the public entity affected by an allegedly illegal expenditure has standing to sue to recover already expended funds. See Bland Indep. Sch. Dist., 34 S.W.3d at 556 (quoting Hoffman, 100 S.W.2d at 96). Accordingly, because Plaintiffs no longer seek to enjoin the prospective expenditure of taxpayer funds on allegedly illegal activity, the Court finds that Brewer lacks taxpayer standing to bring the claims alleged in Plaintiffs' second amended complaint.

C. Organizational Standing

To the extent the Confederate Veterans rely on associational or organizational standing to bring their claims, this too fails. An association seeking to "bring suit on behalf of its members" has standing only if "its members would otherwise have standing to sue in their own right." Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977).

Here, the Confederate Veterans have not alleged any injury different from that of Brewer. Though the Confederate Veterans argue the injury is unique to its members, it is the same injury alleged by Brewer and is not sufficient to confer standing. Because the Confederate Veterans plead no injury to its members other than an injury rejected by this Court, as stated above, it has not pleaded that "its members would otherwise have standing to sue in their own right."

Accordingly, the Confederate Veterans lack associational standing to bring this lawsuit.

An “organization can establish standing in its own name if it meets the same standing test that applies to individuals.” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). Plaintiffs’ response to Defendants’ motion for summary judgment fails to produce any argument or evidence in support of organizational standing. In any case, as addressed above, Plaintiffs have failed to allege a concrete, particularized, and imminent injury; therefore, Plaintiffs have not demonstrated that they have organizational standing.

D. State-Law Claims and Supplemental Jurisdiction

To the extent Plaintiffs have standing to bring any state-law causes of action, the Court will decline to exercise supplemental jurisdiction over them. A court may decline to exercise supplemental jurisdiction over state-law claims when it has “dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3); *see also Artis v. District of Columbia*, — U.S. —, 138 S. Ct. 594, 597–98 (2018) (“When district courts dismiss all claims independently qualifying for the exercise of federal jurisdiction, they ordinarily dismiss as well all related state claims.”); *accord Heggemeier v. Caldwell Cty., Texas*, 826 F.3d 861, 872–73 (5th Cir. 2016). The Sixth Court of Appeals of Texas considered and rejected similar state-law claims brought by some of these Plaintiffs. *See Bray v. Femes*,

No. 6-15-00075-CV, 2016 WL 3083539 (Tex. App.—Texarkana Mar. 24, 2016, pet. denied). Since all federal law claims have been dismissed for lack of standing,² this Court will not exercise its supplemental jurisdiction over any remaining state-law claims.

CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' Motion for Summary Judgment or, in the Alternative, Motion to Dismiss (Dkt. # 54), and **DENIES AS MOOT** Defendants Nirenberg, Trevino, Shaw, Viagran, Saldana, Gonzales, Brockhouse, Sandoval, Palaez, Courage and Perry, in their individual capacities' Rule 12(b)(6) Motion to Dismiss (Dkt. # 59). Plaintiffs' federal law claims are **DISMISSED** for **LACK OF STANDING**; Plaintiffs' state law claims are **DISMISSED WITHOUT PREJUDICE**. The Clerk's Office is **INSTRUCTED** to **CLOSE THE CASE**.

IT IS SO ORDERED.

DATED: San Antonio, Texas, September 17, 2018.



David Alan Ezra
Senior United States District Judge

² The Court takes no position on whether Plaintiffs' alleged injuries finds support in First Amendment case law or would ultimately be successful on the merits. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998) (refusing to decide merits before resolving Article III jurisdictional questions "because it carries the courts beyond the bounds of authorized judicial action").

CAUSE NO. DC-18-05460

RETURN LEE TO LEE PARK,
ET AL.,

Plaintiffs,

VS.

MIKE RAWLINGS, ET AL,
Defendants.

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IN THE DISTRICT COURT

14TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FINAL JUDGMENT

On February 1, 2019, the Court considered Defendants' Plea to the Jurisdiction, and in the alternative Second Motion for Summary Judgment as to Plaintiffs' remaining claims. Plaintiffs, Return Lee to Lee Park, Katherine Gann, and Warren Johnson, appeared though counsel. Defendants, Mike Rawlings, Scott Griggs, Adam Medrano, Casey Thomas II, Dwaine Caraway, Rickey Callahan, Omar Narvaez, Kevin Felder, Tennell Atkins, Mark Clayton, Adam McGough, Lee Kleinman, Sandy Greyson, Jennifer Gates, and Philip Kingston, in their official capacities, and the City of Dallas, , appeared through counsel. The Court partially granted the plea and motion and directed the parties to provide further briefing on the mootness of the Plaintiffs' claim regarding alleged violation of the Texas Open Meetings Act. The parties submitted the briefing and the Court has reviewed the briefing, evidence submitted, and arguments of counsel, and the Court finds good cause to grant Defendants' plea to the jurisdiction and alternative summary judgment motion as to Plaintiffs' claims regarding the Texas Open Meetings Act.

IT IS, THEREFORE, ORDERED that the Court grants the Defendants' Pleas to the Jurisdiction and Motion to Dismiss and Plaintiffs' case and causes of action are dismissed with prejudice.

Final Judgment.



IT IS FURTHER ORDERED, in the alternative, that Defendants' second motion for summary judgment is granted, and that judgment is entered in favor of Defendants and against Plaintiffs.

IT IS FURTHER ORDERED, that based on this order and the Court's prior orders, dated November 14, 2018 and February 5, 2019, granting Defendants' pleas to the jurisdiction and the first summary judgment motion and part of the second summary judgment motion, that all of Plaintiffs' claims and causes of action have been dismissed with prejudice, or in the alternative, that summary judgment has been granted against all of Plaintiffs' claims and causes of action. Therefore, it is FURTHER ORDERED that Plaintiffs take nothing.

This is a final judgment that disposes of all claims and all parties and is appealable.

Costs are awarded in favor of Defendants.

SIGNED this 2 day of April 2019.



JUDGE PRESIDING

CAUSE NO. DC-18-05460

RETURN LEE TO LEE PARK, ET AL,
Plaintiffs,

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IN THE DISTRICT COURT

VS.

14TH JUDICIAL DISTRICT

MIKE RAWLINGS, ET AL,
Defendants.

DALLAS COUNTY, TEXAS

**ORDER GRANTING IN PART DEFENDANTS' PLEAS TO THE JURISDICTION,
MOTION TO DISMISS, AND IN THE ALTERNATIVE,
SECOND MOTION FOR SUMMARY JUDGMENT**

On February 1, 2019, the Court considered Defendants Mike Rawlings, Scott Griggs, Adam Medrano, Casey Thomas II, Dwaine Caraway, Rickey Callahan, Omar Narvaez, Kevin Felder, Tennell Atkins, Mark Clayton, Adam McGough, Lee Kleinman, Sandy Greyson, Jennifer Gates, and Philip Kingston, and the City of Dallas ("City") (collectively "Defendants") Pleas to the Jurisdiction, and in the alternative Second Motion for Summary Judgment as to Plaintiffs' remaining claims. The Court finds that good cause has been shown for the granting of the pleas and motion, except as limited below.

IT IS, THEREFORE, ORDERED that the Court defers its ruling on Plaintiffs' claim and cause of action regarding an alleged violation of the Open Meetings Act related to the removal of the Lee monument. The Court orders Plaintiffs to file a response by February 8, 2019 strictly limited to the issue of whether Plaintiffs' Open Meetings Act claim and cause of action is moot. The Court orders Defendants to file a reply by February 15, 2019 strictly limited to the issue of whether Plaintiffs' Open Meetings Act claim and cause of action is moot.


IT IS FURTHER ORDERED, the Court will rule on any remaining claims following the above submissions without hearing.

Order on City of Dallas's Pleas to Jurisdiction; Motion to Dismiss; and Second Motion for Summary Judgment.

IT IS FURTHER ORDERED that, except as limited above, the Court grants the Defendants' Pleas to Jurisdiction and Motion to Dismiss and Plaintiffs' case and causes of action are dismissed with prejudice.

IT IS FURTHER ORDERED, in the alternative, except as limited above, that Defendants' second motion for summary judgment is granted, and that judgment is entered in favor of Defendants and against Plaintiffs.

SIGNED this 5 day of February 2019.



JUDGE PRESIDING

CAUSE NO. DC-18-05460

RETURN LEE TO LEE PARK,
KATHERINE GANN
Plaintiffs,

VS.

MIKE RAWLINGS, ET AL,
Defendants.

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IN THE DISTRICT COURT

14TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**ORDER GRANTING IN PART
DEFENDANTS' PLEA TO JURISDICTION, MOTION TO DISMISS, AND IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

On November 7, 2018, the Court considered the Plea to Jurisdiction, Supplement to Plea to Jurisdiction, Motion to Dismiss, and in the alternative Motion for Summary Judgment filed by Defendants Mike Rawlings, Scott Griggs, Adam Medrano, Casey Thomas II, Dwaine Caraway, Rickey Callahan, Omar Narvaez, Kevin Felder, Tennell Atkins, Mark Clayton, Adam McGough, Lee Kleinman, Sandy Greyson, Jennifer Gates, and Philip Kingston, and the City of Dallas's ("City") (collectively "Defendants"). After considering the pleadings, motions, responses, evidence on file, and arguments of counsel, the Court finds that the plea and motions should be GRANTED IN PART, as follows.

IT IS ORDERED that the Court GRANTS the Defendants' plea to the jurisdiction and summary judgment motion and dismisses with prejudice all claims concerning the Texas Antiquities Code, the Texas Uniform Declaratory Judgment Act, and requested injunctive and mandamus relief.

Defendants' Proposed Order on City of Dallas's Plea to Jurisdiction; Motion to Dismiss, and Motion for Summary Judgment.

IT IS FURTHER ORDERED that the Court GRANTS the Defendants' plea to the jurisdiction and summary judgment motion regarding competitive bidding claims pursuant to Section 252.061 of the Texas Local Government Code, dismissing such claims with prejudice only as to those claims made by plaintiffs Return Lee to Lee Park and Katherine Gann.

IT IS FURTHER ORDERED that the Court reserves for future resolution Defendants' challenge to Plaintiffs' supplementation of their First Amended Petition filed November 6, 2018 and the competitive bidding claims pursuant to Section 252.061 of the Texas Local Government Code made by new plaintiff Warren Johnson.

IT IS FURTHER ORDERED that the Court reserves for future resolution the adjudication of Plaintiffs' claims involving the Texas Open Meetings Act.

SIGNED this 14 day of November 2018.


JUDGE PRESIDING

APPROVED AS TO FORM

Charles S. Estee
Attorney for Defendants

Warren Norred
Attorney for Plaintiffs

Defendants' Proposed Order on City of Dallas's Plea to Jurisdiction; Motion to Dismiss, and Motion for Summary Judgment.

287 F.Supp.3d 632

United States District Court, N.D. Texas, Dallas Division.

Hiram PATTERSON and Texas Division, Sons of Confederate Veterans, Inc., Plaintiffs,

v.

Mike RAWLINGS, In His Official Capacity as Mayor of the City of Dallas, et al., Defendants.

Civil Action No. 3:17CV-2361-D

Signed 02/07/2018

Synopsis

Background: Activist organization brought suit against mayor and city council, in their official capacities, alleging violations of organization’s constitutional rights to free speech and due process, breach of copyright interest, breach of term in grant of title, and sought a temporary restraining order to prevent removal of monuments. City filed motion to dismiss for lack of standing.

Holdings: The District Court, Sidney A. Fitzwater, J., held that:

[1] organization did not have standing to sue for copyright infringement under the Copyright Act;

[2] organization did not have standing to claim breach of revisionary term;

[3] organization did not have standing to sue for quiet title to cemetery;

[4] removal of Confederate statue did not infringe on individual activist’s First Amendment free speech rights;

[5] individual activist lacked taxpayer standing;

[6] organization failed to show that one of its members had standing in own right; and

[7] organization failed to allege organizational standing on own behalf.

Motion granted.

West Headnotes (31)

[1] **Federal Civil Procedure**

— In general; injury or interest

Federal Courts

— Case or Controversy Requirement

Requirement that a claimant have standing is an essential and unchanging part of the case-or-controversy requirement of Article III. U.S. Const. art. 3; Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[2] **Federal Civil Procedure**

— In general; injury or interest

“Standing” involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[3] **Federal Civil Procedure**

— In general; injury or interest

Federal Civil Procedure

— Causation; redressability

The irreducible constitutional minimum of standing contains three elements, which are (1) an injury-in-fact that is concrete and actual or imminent, not hypothetical, (2) a fairly traceable causal link between the injury and the defendant’s actions, and (3) that the injury will likely be redressed by a favorable decision. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote



¹⁴¹ **Injunction**
↪ Persons entitled to apply; standing

For purposes of standing, to obtain injunctive relief, a plaintiff must be likely to suffer future injury. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

¹⁵¹ **Federal Courts**
↪ Injunctions
Injunction
↪ Persons entitled to apply; standing

For purposes of standing, past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

¹⁶¹ **Federal Civil Procedure**
↪ In general; injury or interest

For purposes of standing, the threat of future injury to the plaintiff must be both real and immediate, not conjectural or hypothetical. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

¹⁷¹ **Federal Civil Procedure**
↪ In general; injury or interest

Prudential standing does not emanate from the Constitution, and embodies judicially self-imposed limits on the exercise of federal jurisdiction. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

¹⁸¹ **Constitutional Law**
↪ Civil Remedies and Procedure
Federal Civil Procedure
↪ In general; injury or interest
Federal Civil Procedure
↪ Rights of third parties or public

The doctrine of prudential standing asks whether a plaintiff's grievance arguably falls within the zone of interests protected by the statutory provision invoked in the suit, whether the complaint raises abstract questions or a generalized grievance more properly addressed by the legislative branch, and whether the plaintiff is asserting his or her own legal rights and interests rather than the legal rights and interests of third parties. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

¹⁹¹ **Federal Courts**
↪ Pleadings and motions
Federal Courts
↪ Evidence; Affidavits

When challenging subject matter jurisdiction for lack of standing, a party can make a facial attack or a factual attack. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

¹¹⁰¹ **Federal Courts**
↪ Pleadings and motions
Federal Courts
↪ Presumptions and burden of proof

If the party merely files a motion to dismiss for lack of standing, it is considered a facial attack, and the court looks only at the sufficiency of the allegations in the pleading and assumes them to be true. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [111] **Federal Courts**
↪ Pleadings and motions

If allegations in a pleading are sufficient to allege jurisdiction, the court must deny a motion to dismiss for lack of standing. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [112] **Federal Courts**
↪ Evidence; Affidavits

A party can make a factual attack on subject matter jurisdiction by submitting evidence, such as affidavits or testimony. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [113] **Federal Courts**
↪ Evidence; Affidavits

A factual attack on the subject matter jurisdiction of the court challenges the facts on which jurisdiction depends and matters outside of the pleadings, such as affidavits and testimony, are considered. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [114] **Federal Courts**
↪ Necessity of Objection; Power and Duty of Court
Federal Courts
↪ Evidence; Affidavits

When presented with a factual attack on subject matter jurisdiction by filing a motion to dismiss for lack of standing, a court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [115] **Federal Courts**
↪ Evidence; Affidavits
Federal Courts
↪ Presumptions and burden of proof

When presented with a factual attack on subject matter jurisdiction by filing a motion to dismiss for lack of standing, no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [116] **Federal Courts**
↪ Evidence; Affidavits
Federal Courts
↪ Weight and sufficiency

The plaintiff in a factual challenge arising from a motion to dismiss for lack of standing, as the party seeking to invoke jurisdiction, must submit facts through some evidentiary method and prove by a preponderance of the evidence that the trial court does have subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

- [117] **Copyrights and Intellectual Property**
↪ Persons entitled to sue

Activist organization did not have standing to

sue for copyright infringement based on city's removal of Confederate statue from city property; organization did not own copyright to the statue, had not been granted exclusive license by copyright owner, and was not in process of negotiating any such ownership or license rights. 17 U.S.C.A. § 101 et seq.; Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

^[18] **Copyrights and Intellectual Property**

➤ Persons entitled to sue

Only two types of claimants have standing to sue for copyright infringement under the Copyright Act: (1) owners of copyrights, and (2) persons who have been granted exclusive licenses by owners of copyrights.

Cases that cite this headnote

^[19] **Associations**

➤ Actions by or Against Associations

Cemeteries

➤ Title and rights of owners of lots in general

Cemeteries

➤ Tombstones and monuments

Activist organization did not have standing to claim breach of revisionary term in grant of title to cemetery to City and subsequent removal of Confederate monument by City, where interests or rights in cemetery were never transferred to organization, and monument was not located on granted property. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

^[20] **Associations**

➤ Actions by or Against Associations

Activist organization did not have standing to sue for quiet title to cemetery which was granted

to City, where warranty deed transferring cemetery to City was recorded in the county land records, City had performed mowing, maintenance, and litter removal at cemetery and had not authorized or approved anyone else's taking such action, and organization was not formed until after granting of deed. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

^[21] **Constitutional Law**

➤ Particular Issues and Applications in General
Constitutional Law

➤ Parks and forests

Municipal Corporations

➤ Parks and Public Squares and Places

City's removal of Confederate statues and forthcoming removal of other Confederate monuments did not infringe on individual activist's First Amendment free speech rights, absent showing that activist had been deprived of any First Amendment freedom. U.S. Const. Amend. 1; Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

^[22] **Civil Rights**

➤ Injury and Causation

The loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury sufficient to satisfy Article III's standing requirement. U.S. Const. Amend. 1.

Cases that cite this headnote

^[23] **Municipal Corporations**

➤ Restraining Action by Municipality or Officers

Individual activist lacked taxpayer standing in action related to City's removal of Confederate

statue from cemetery, absent showing that tax money was spent in connection with removal of statue or other Confederate monument. Fed. R. Civ. P. 12(b)(1).

2 Cases that cite this headnote

[24] **Municipal Corporations**
← Nature and scope in general

A plaintiff only meets the injury requirement of municipal taxpayer standing if he shows that he pays taxes to the relevant entity and tax revenues are expended on the disputed practice.

1 Cases that cite this headnote

[25] **Associations**
← Actions by or Against Associations

An association has standing to bring a suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right, (2) the interests it seeks to protect are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members.

Cases that cite this headnote

[26] **Associations**
← Actions by or Against Associations

When a defendant contests an organization's standing based on a factual challenge to the standing of a member whose standing to sue in his own right controls the organization's standing, the motion to dismiss for lack of standing is also a factual attack. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[27] **Associations**
← Actions by or Against Associations

City's challenge to activist organization's standing on own behalf was facial, where City did not produce any evidence challenging organization's standing on own behalf. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[28] **Associations**
← Actions by or Against Associations

To establish standing on its own behalf, an organization must show that it has constitutional standing in the same manner as any individual.

Cases that cite this headnote

[29] **Associations**
← Actions by or Against Associations

Because an organization that has standing on own behalf does not rely on independent standing of any of organization's members or any other plaintiff, a challenge to this form of standing is facial unless defendant adduces evidence attacking a jurisdictional fact on which standing relies. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

[30] **Associations**
← Actions by or Against Associations

Activist organization failed to show that one of its members had standing in own right, and thus organization did not have representational standing in action related to City's removal of

Confederate statue from cemetery, where only identified member did not have standing to bring suit. Fed. R. Civ. P. 12(b)(1).

Cases that cite this headnote

removal of a statue of General Robert E. Lee from City property and to bring claims related to the removal of other Confederate monuments and to title to two cemeteries located within the City of Dallas. Concluding that plaintiffs lack standing, the court grants defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(1) and dismisses this action without prejudice by judgment filed today.

1311 Constitutional Law

Government property in general

Activist organization failed to allege organizational standing on own behalf to bring First Amendment claim against City related to City's removal of Confederate statue from City property, absent showing that organization had been deprived of any First Amendment freedom, or that tax money was spent in connection with removal of statue or other Confederate monument. U.S. Const. Amend. 1; Fed. R. Civ. P. 12(b)(1).

1 Cases that cite this headnote

I

In 2017 the City's Mayor and City Council adopted a resolution ("Resolution") directing the City Manager to immediately remove the Alexander Phimster Proctor monument of Robert E. Lee at Lee Park ("Lee Statue"), located on City property, and safely store it until a mayoral task force ("Task Force") could make recommendations concerning the statue's disposition. The Resolution authorized the City Manager to transfer funds or appropriate funds from excess revenue to remove the Lee Statue and to take appropriate actions to seek private funding to reimburse the expenses associated with this action.

The same day the Resolution was adopted, plaintiffs Hiram Patterson ("Patterson") and Texas Division, Sons of Confederate Veterans, Inc. ("SCV") filed this lawsuit against the Mayor and City Council, in their official capacities, alleging violations of plaintiffs' constitutional rights to free speech and due process and seeking a temporary restraining order ("TRO") preventing the removal of the Lee Statue and Confederate monuments at Pioneer Park in Dallas. The court temporarily restrained the removal of the Lee Statue. At the conclusion of a hearing held the following day, the court concluded that plaintiffs had failed to show that they were entitled to a restraining order and dissolved the TRO.

A few days after the court dissolved the TRO, the City removed the Lee Statue and placed it in storage. Plaintiffs then filed an amended complaint and a second amended complaint ("SAC"). In the SAC, plaintiffs bring a claim under 42 U.S.C. § 1983 for alleged violations of their First Amendment free speech rights. They also assert that the City breached SCV's copyright interest in the Lee Statue; that the City breached the reversionary term in the grant of title in the Pioneer Park Cemetery; and that title to the Confederate Cemetery resides in the SCV because title was never delivered, and the City has not exercised possession of the property. Plaintiffs seek damages and

Attorneys and Law Firms

*635 Kirk David Lyons, Black Mountain, NC, David Duane Vandenberg, Austin, TX, Warren V. Norred, The Law Office of Warren V. Norred, Arlington, TX, for Plaintiffs.

Stacy Jordan Rodriguez, Charles Estee, Christopher J. Caso, Dallas City Attorney's Office, Dallas, TX, for Defendants.

MEMORANDUM OPINION AND ORDER

SIDNEY A. FITZWATER, UNITED STATES DISTRICT JUDGE

*636 The court must decide whether plaintiffs have standing to challenge the City of Dallas' ("City's")

declaratory and injunctive relief.

Defendants now move under Rules 12(b)(1) and 12(b)(6) to dismiss the SAC.¹ Plaintiffs oppose the motion.

II

The court first considers defendants' motion to dismiss under Rule 12(b)(1) for lack of standing.

A

¹¹¹ ¹²¹ “[T]he requirement that a claimant have ‘standing is an essential and unchanging part of the case-or-controversy requirement of Article III.’ ” *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 733, 128 S.Ct. 2759, 171 L.Ed.2d 737 (2008) (quoting *637 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). Standing “involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.” *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975).

¹³¹ ¹⁴¹ ¹⁵¹ ¹⁶¹ It is well-settled that “the irreducible constitutional minimum of standing contains three elements.” *Lujan*, 504 U.S. at 560, 112 S.Ct. 2130. These elements are (1) an injury-in-fact that is concrete and actual or imminent, not hypothetical; (2) a fairly traceable causal link between the injury and the defendant’s actions; and (3) that the injury will likely be redressed by a favorable decision. *See, e.g., Bennett v. Spear*, 520 U.S. 154, 167, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997); *Little v. KPMG LLP*, 575 F.3d 533, 540 (5th Cir. 2009). To obtain injunctive relief, a plaintiff must be “likely to suffer future injury.” *City of L.A. v. Lyons*, 461 U.S. 95, 105, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983). “Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief[.]” *O’Shea v. Littleton*, 414 U.S. 488, 495, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974). The threat of future injury to the plaintiff “must be both real and immediate, not conjectural or hypothetical.” *Lyons*, 461 U.S. at 102, 103 S.Ct. 1660 (internal quotation marks and citations omitted).

¹⁷¹ ¹⁸¹ Prudential standing, by contrast, does not emanate

from the Constitution, and it instead “embodies ‘judicially self-imposed limits on the exercise of federal jurisdiction.’ ” *Cibolo Waste, Inc. v. City of San Antonio*, 718 F.3d 469, 474 (5th Cir. 2013) (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004)). The doctrine asks

whether a plaintiff’s grievance arguably falls within the zone of interests protected by the statutory provision invoked in the suit, whether the complaint raises abstract questions or a generalized grievance more properly addressed by the legislative branch, and whether the plaintiff is asserting his or her own legal rights and interests rather than the legal rights and interests of third parties.

Ass’n of Cmty. Orgs. for Reform Now v. Fowler, 178 F.3d 350, 363 (5th Cir. 1999).

B

¹⁹¹ ¹⁰¹ ¹¹¹ When challenging subject matter jurisdiction under Rule 12(b)(1), a party can make a facial attack or a factual attack. *See Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. May 1981). If the party merely files its Rule 12(b)(1) motion, it is considered a facial attack, and the court looks only at the sufficiency of the allegations in the pleading and assumes them to be true. *Id.* If the allegations are sufficient to allege jurisdiction, the court must deny the motion. *Id.* This is akin to a Rule 12(b)(6) motion in that the “pleading’s allegations are presumed to be true, and ‘[i]f those allegations sufficiently allege a claim for recovery the complaint stands and the federal court must entertain the suit.’ ” *Vinmar Overseas, Ltd. v. OceanConnect, LLC*, 2012 WL 3599486, at *4 (S.D. Tex. Aug. 20, 2012) (quoting *Jones v. SuperMedia Inc.*, 281 F.R.D. 282, 286 (N.D. Tex. 2012) (Boyle, J.)).

¹²¹ ¹³¹ ¹⁴¹ ¹⁵¹ ¹⁶¹ A party can also make a factual attack on subject matter jurisdiction by submitting evidence, such as affidavits or testimony. *IBEW–NECA Sw. Health & Benefit Fund v. Winstel*, 2006 WL 954010, at *1 (N.D. Tex. Apr. 12, 2006) (Fitzwater, J.) (citing *Paterson*, 644

F.2d at 523). “A factual attack on the subject matter jurisdiction of the court... challenges the facts on which jurisdiction depends and matters outside of the pleadings, such as affidavits and testimony, are considered.” *Vinmar Overseas*, 2012 WL 3599486, at *4 (quoting *Oaxaca v. Roscoe*, 641 F.2d 386, 391 (5th Cir. Unit A April 1981)). The “court is free *638 to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. May 1981). “[N]o presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” *Id.* The plaintiff in a factual challenge, as the party seeking to invoke jurisdiction, must “submit facts through some evidentiary method and...prov[e] by a preponderance of the evidence that the trial court does have subject matter jurisdiction.” *Paterson*, 644 F.2d at 523.

III

The court begins with defendants’ contention that the evidence establishes that plaintiffs lack standing, which constitutes a factual attack on the court’s subject matter jurisdiction.

A

¹⁷The court first considers plaintiffs’ copyright claim. In the SAC, plaintiffs allege:

[w]hen the City removed the [Lee Statue], it separated the pedestal from the bronze monument that had been one integral design of the sculptor and had been intended to remain in perpetuity. The City intentionally and with gross negligence destroyed and mutilated an artistic work of recognized international stature, thereby, infringing the sculptor’s estate’s copyright.

SAC ¶ 23; *see also id.* ¶ 35 (“Defendants willfully infringed the Proctor Estate’s copyrighted work.”). In support of their request for preliminary injunction, plaintiffs contend that “the Proctor Estate has [the] copyright, has orally agreed to assignment of title to the SCV, and defendants have infringed [the] copyright by damaging the [Lee Statue], as well as removing the Monument from permanent public display in Lee park.” *Id.* ¶ 62 (footnote omitted). In a footnote, plaintiffs contend that SCV and the Proctor Estate “are negotiating a written assignment of the Estate’s copyright interest to the SCV.” *Id.* ¶ 62 n.7.

Defendants move to dismiss plaintiffs’ copyright claim, contending that plaintiffs do not have even a potential interest in the copyright to the Lee Statue. In support, defendants cite an email from Laura Proctor Ames (“Ames”), on behalf of the Proctor Foundation, in which Ames states that “the Proctor Foundation is not involved with any legal complaint against the City of Dallas,” *Ds. App. 42*, does not approve of being included in the SAC, and is “not in any way connected to the attorney who prepared [the SAC], or the organization filing the complaint,” *id.* Ames also states that she had spoken with plaintiffs’ attorney “and he acknowledged we were included without our approval and agreed to remove us immediately.” *Id.* Defendants contend that this evidence establishes plaintiffs’ lack of standing for any claimed copyright violation.

¹⁸Plaintiffs do not respond to defendants’ motion to dismiss their copyright claim, do not dispute defendants’ evidence that SCV has no interest or even potential interest in the copyright to the Lee Statue, and do not offer any evidence that would demonstrate that they suffered any injury-in-fact as a result of any alleged copyright violation. “[O]nly two types of claimants have standing to sue for copyright infringement under the Copyright Act: (1) owners of copyrights, and (2) persons who have been granted exclusive licenses by owners of copyrights.” *Isbell v. DM Records, Inc.*, 2004 WL 1243153, at *4 (N.D. Tex. June 4, 2004) (Fish, C.J.). The undisputed evidence shows that plaintiffs do not own the copyright to the Lee Statue, have not been granted an exclusive license by *639 the copyright owner, and are not in the process of negotiating any such ownership or license rights. Accordingly, the court grants defendants’ motion to dismiss plaintiffs’ copyright claim alleged in count 1 of the SAC.²

B

The court now turns to plaintiffs' claim that defendants breached the reversionary term in the grant of title in the Pioneer Park Cemetery.

¹¹⁹In count 3 of the SAC, plaintiffs allege that the City took title to Pioneer Park Cemetery from Tannehill Lodge No. 52 and Dallas Lodge No. 44 (the "Lodges"), with the understanding that the City would "use and maintain" the property as a "Memorial Cemetery Park." SAC ¶ 53. Plaintiffs assert that, by publicly announcing that it would remove the Confederate War Memorial in Pioneer Park Cemetery, the City "refus[ed] and fail[ed] to use the memorial park for the purpose mandated in the transfer of title to the City," and that, as a result, title must revert to the Lodges. *Id.* ¶¶ 53, 55. Without citing supporting authority, plaintiffs request that the court "[e]nter judgment that quiets title to Pioneer Cemetery Park in favor of plaintiffs." *Id.* ¶ 71(f).

Defendants move to dismiss count 3, contending that plaintiffs have failed to allege, and there is no supporting evidence, that any of the Lodges' interests or rights was ever transferred to plaintiffs; that Dallas Lodge No. 44 expressly denies conveying any interest to plaintiffs, *Ds. App.* 133–34; that plaintiffs do not allege that the Confederate monument is located on the property previously owned by the Lodges (and the documents located so far indicate that it was not placed on the local Lodges' former property); and that the evidence therefore establishes that plaintiffs lack standing for any claimed interest in Pioneer Cemetery Park.

As with plaintiffs' copyright claim, they have failed to respond to defendants' motion to dismiss count 3. Because plaintiffs have neither pleaded nor introduced any evidence showing that they have any interest in Pioneer Cemetery Park, the court grants defendants' motion to dismiss count 3 based on plaintiffs' lack of standing.³

C

The court next considers plaintiffs' claim for a judgment quieting title to the Confederate Cemetery.

¹²⁰In count 4 of the SAC, plaintiffs allege that the Sterling Price Camp of the United Confederate Veterans—to which SCV is the successor association—gave the

Confederate Cemetery to the Dallas Parks and Recreation Department in 1936. They assert that, because no record exists of *640 conveyance of title, title still resides with the grantor—the SCV—and they request that the court enter judgment quieting title to the Confederate Cemetery in their favor.

Defendants move to dismiss count 4, contending that plaintiffs lack standing. They have produced evidence that, contrary to plaintiffs' allegations, the property was conveyed to the City on November 17, 1936, and the warranty deed was recorded in the Dallas County land records⁴; that, contrary to the allegations in the SAC, the City has performed the mowing, maintenance, and litter removal at the cemetery and has not authorized or approved anyone else's taking such action at the Confederate Cemetery; and that Sterling Price Camp Number 31, a unit of United Confederate Veterans, became inactive in 1917, SCV was not formed until 2001, and none of SCV's corporate filings suggests that it is a successor to Sterling Price Camp Number 31.

Plaintiffs do not respond to defendants' motion to dismiss count 4. Because plaintiffs have failed to introduce any evidence that they have an interest in the Confederate Cemetery, the court grants defendants' motion under Rule 12(b)(1) to dismiss count 4 on the ground that plaintiffs lack standing.⁵

IV

The court now turns to defendants' contention—framed as a facial challenge to this court's subject matter jurisdiction—that plaintiffs lack standing to bring a First Amendment claim.

A

Defendants maintain that plaintiffs' First Amendment claim must be dismissed because plaintiffs do not allege any concrete and particularized or actual or imminent injury that has occurred or will occur to them caused by moving the Lee Statue or any other action by the City regarding its other property; plaintiffs do not plead how their injuries are different or distinct from the general public's; and, to the extent Patterson asserts standing

based on his status as a city taxpayer, he has not alleged and cannot demonstrate facts that would support a suit in that narrowly-prescribed capacity.

Plaintiffs respond⁶ that, as a resident taxpayer of the City, Patterson has standing to challenge the City's allegedly unconstitutional removal and planned removal of Confederate monuments; that plaintiffs have suffered a concrete injury-in-fact because the City has removed the Lee Statue and is planning to remove the Confederate War Memorial in Pioneer Park Cemetery, *641 the Confederate Memorial in Confederate Cemetery, and the Confederate public art in Fair Park, which has infringed and will infringe plaintiffs' political viewpoint communicated by the monuments; that their injury is particularized because it is distinct from any effect on the general public, and SCV membership is limited in number and restricted to males who can prove descent from, and blood kinship with, Confederate veterans; that SCV and its members were uniquely injured because they have a dissenting political viewpoint that was communicated by the Lee Statue; that the City has imputed repugnant (and erroneous) political viewpoints onto the Lee Statue; and the City's imminent plans to remove other Confederate monuments will have the identical effect that the City's removal of the Lee Statue had, i.e., impairment of viewpoint and denial of free speech.

Defendants argue in reply that the court should not consider allegations in plaintiffs' response that are not pleaded in the SAC; that the removal of the Lee Statue and other Confederate monuments is government speech to which the First Amendment Free Speech Clause does not apply, and because no possible infringement of free speech is alleged, no possible harm is alleged and plaintiffs lack standing; that plaintiffs do not allege that they have been restricted in any way from exercising *their* First Amendment rights; and that plaintiffs' claim of harm is only a generalized grievance since plaintiffs do not assert that they have ever visited or ever saw any of the City's Confederate symbols.

B

The court first addresses whether Patterson has standing.

1

¹²¹Defendants argue that Patterson lacks standing because he has not suffered an injury-in-fact. Reduced to its essence, plaintiffs' responsive argument appears to be that, because Patterson holds the political viewpoint that "the men who fought for the Confederacy in the Civil War deserve our respect," Ps. Br. 9, and because the Confederate monuments at issue also communicate the same viewpoint, the removal of these monuments from City property somehow infringes Patterson's First Amendment rights.

¹²²The court acknowledges that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" sufficient to satisfy Article III's standing requirement. *Id.* at 8 (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)). In this case, however, plaintiffs have not alleged that *Patterson* has been deprived of any First Amendment freedom for any period of time. Plaintiffs contend that Patterson holds the political viewpoint that "the men who fought for the Confederacy in the Civil War deserve our respect." *Id.* at 9. But they do not allege that the City has ever taken any action that would prevent *Patterson* from expressing this political view. They have at most alleged that Patterson *shares* the political viewpoint communicated to the general public by the Confederate monuments. This allegation, however, does not explain how the removal of Confederate monuments from City-owned property prevents Patterson from expressing *his* political viewpoint. *See, e.g., Serra v. U.S. Gen. Servs. Admin.*, 847 F.2d 1045, 1049 (2d Cir. 1988) (noting that "the Government's action in this case [removing a sculpture from a federal plaza] is limited to an exercise of discretion with respect to the display of its own property" and that "nothing GSA has done here encroaches in any way on Serra's or any other individual's right to communicate."). Plaintiffs have failed to cite any case in which a plaintiff's *642 agreement with the message conveyed by someone else's speech—here, the City's—transforms that speech into the plaintiff's speech for First Amendment standing purposes. Accordingly, the court concludes that plaintiffs have failed to plausibly allege that the City's removal of the Lee Statue and forthcoming removal of other Confederate monuments infringes *Patterson's* First Amendment free speech rights.

2

¹²³Patterson also lacks taxpayer standing. Plaintiffs do not actually plead taxpayer standing in the SAC: they allege only that Patterson “is a citizen of the State of Texas, a resident taxpayer of Dallas, and a descendant of Confederate veterans.” SAC ¶ 1.7 In their response, however, plaintiffs contend that “[s]ince Mr. Patterson is a resident taxpayer in the City of Dallas and he has contested that the removal and planned removal of the Confederate Monuments is unconstitutional, Mr. Patterson has taxpayer standing in this matter.” Ps. Br. 7. The court disagrees.

¹²⁴It is insufficient for plaintiffs merely to allege that Patterson is a taxpayer and that the City’s conduct is unconstitutional.⁸ “A plaintiff [only] meets the ‘injury’ requirement of municipal taxpayer standing if he shows that ‘he pays taxes to the relevant entity’ and ‘tax revenues are expended on the disputed practice.’” *Ehm v. San Antonio City Council*, 269 Fed. Appx. 375, 377 (5th Cir. 2008) (per curiam) (citing *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 408 (5th Cir. 1995); *Cammack v. Waihee*, 932 F.2d 765, 770 (9th Cir. 1991)); see also *Freedom From Religion Found. v. Zielke*, 845 F.2d 1463, 1470 (7th Cir. 1988) (stating that “[a] plaintiff’s status as a municipal taxpayer is irrelevant for standing purposes if no tax money is spent on the allegedly unconstitutional activity.”); *Shea v. Brister*, 26 F.Supp.2d 943, 945 (S.D. Tex. 1998) (holding that plaintiff’s status as taxpayer did not confer standing where no “expenditure of public revenues [was] utilized in connection with the acquisition, installation, preservation, maintenance, or display of the copy of the Ten Commandments” and there was a “total absence of any connection between public funds and the display challenged.”).

In the SAC, plaintiffs allege that the Resolution “directs the city manager to transfer funds to remove all public Confederate monuments.” SAC ¶ 31. But what the Resolution *actually* states⁹ is that the City Manager is *authorized* to transfer or appropriate funds from excess revenue to remove the Lee Statue, and that he is to seek private funding to reimburse the removal expenses. See Ds. App. 13 (§ 7 of the Resolution, which states that “the city manager is hereby authorized to transfer funds or appropriate funds from excess revenue, as necessary, to remove the [Lee *643 Statue]. The city manager will take all appropriate actions to seek private funding to reimburse the expenses associated with this action.”). Plaintiffs do not allege that the City Manager used (or intends to use) tax revenues in connection with the removal of the Lee Statue or any other Confederate monuments, or that, assuming the City Manager *did* use such revenue in connection with the removal of the Lee Statue, he did not obtain full reimbursement from “private

funding,” as the Resolution directs. Accordingly, because, at the very least, plaintiffs have failed to adequately plead that tax money was spent in connection with the removal of the Lee Statue or any other Confederate monument, the court holds that Patterson lacks taxpayer standing.

C

The court now considers whether plaintiffs have plausibly alleged that SCV has associational standing.

1

¹²⁵ ¹²⁶There are two ways for an organization to demonstrate standing. First, the organization can assert representational standing on behalf of its members.

An association has standing to bring a suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members.

Texans United for a Safe Econ. Educ. Fund v. Crown Cent. Petroleum Corp., 207 F.3d 789, 792 (5th Cir. 2000) (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977); *Friends of the Earth, Inc. v. Chevron Chem. Co.*, 129 F.3d 826, 827–28 (5th Cir. 1997)). When a defendant contests an organization’s standing based on a factual challenge to the standing of a member whose standing to sue in his own right controls the organization’s standing, the Rule 12(b)(1) motion is also a factual attack.

¹²⁷ ¹²⁸ ¹²⁹Second, an organization may have standing on its own behalf. To establish standing on its own, the

organization must show that it has constitutional standing in the same manner as any individual. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982). Because this method of establishing standing does not rely on the independent standing of any of the organization’s members or any other plaintiff, a challenge to this form of standing is facial unless the defendant adduces evidence attacking a jurisdictional fact on which standing relies. Defendants have not produced any evidence challenging SCV’s standing on its own behalf, and therefore the court treats this challenge as facial. *See Jones*, 281 F.R.D. at 286.

2

¹³⁰SCV has failed to show representational standing because the only member it identifies is Patterson, who does not have standing to bring this suit. SCV has therefore failed to show that one of its members has standing in his own right.

3

¹³¹SCV has not adequately alleged organizational standing. Although plaintiffs do not separately address whether SCV has organizational standing, they contend in their response that

[t]he SCV’s purpose is to protect Confederate–American memorials, images, symbols, monuments, and gravesites for the communication of the political viewpoint that Confederate–American heroes sacrificed for a noble cause that the victors in the war have almost uniformly *644 whitewashed from history. Individual plaintiff, the SCV, and all SCV members have made public affirmations of the values of the military service of their ancestors in the Civil War and in the restoration and reconciliation of the nation subsequently. When

the City of Dallas removed [the Lee Statue] and is now threatening all other Confederate–American memorials and symbols in the city, the City’s actions established past and imminent concrete injury-in-fact to plaintiffs by the infringement of their political viewpoint communicated by the Monuments....The City’s suppression of the political viewpoint communicated in the [Lee Statue] injured plaintiffs, because the suppressed political viewpoint is the same viewpoint that plaintiffs have long protected and promoted.

Ps. Br. 10–11, 13–14. This argument is no different from plaintiffs’ standing arguments in relation to Patterson. Accordingly, for the reasons explained above, *see supra* § IV(B), the court holds that plaintiffs have failed to adequately plead that SCV has standing on its own behalf to bring a First Amendment claim.

D

Because plaintiffs lack standing to bring a First Amendment-based § 1983 claim based on the City’s removal of the Lee Statue or the forthcoming removal of other Confederate monuments, the court grants defendants’ motion to dismiss this claim.¹⁰

V

Also pending before the court are plaintiffs’ motion to strike defendants’ second brief, plaintiffs’ amended motion to strike, plaintiffs’ motion for sanctions, and defendants’ objection and motion to strike affidavits. The court denies these motions.

A

On September 15, 2017 the court filed a preliminary injunction application scheduling order that directed plaintiffs to file their supporting materials and a separate brief. Plaintiffs filed their brief on motions for preliminary injunction and declaratory judgment on September 26, 2017. After moving on September 29, 2017 to dismiss plaintiffs' SAC, defendants responded on October 12, 2017 to plaintiffs' brief on motions for preliminary injunction. Plaintiffs seek to strike defendants' October 12, 2017 response on various grounds, including that defendants have submitted a redundant pleading, that the court expressly limited defendants to a single response brief, and that defendants' second brief, although styled as a responsive pleading, is formatted as a brief. In their amended motion to strike, plaintiffs maintain that the court should strike defendants' October 12, 2017 brief because it is redundant and was submitted in violation of the court's scheduling order; the court should strike both of defendants' briefs because the briefs are legally insufficient; and, if the court does not strike defendants' second brief, it should consolidate the two briefs and permit plaintiffs to reply to the consolidated brief.

On October 27, 2017 defendants filed their reply in support of their motion to dismiss. On November 8, 2017 plaintiffs filed a motion for sanctions, characterizing the reply as a surreply and a "second unauthorized pleading," Ps. 11/8/17 Br. 3, and requesting "sanctions against defendants and defendants' attorneys for disobedience of the Court's Scheduling Order by filing unauthorized briefs or pleadings and subsequently refusing to withdraw *645 these pleadings when given the opportunity." *Id.* at 4.

B

The court has reviewed defendants' filings and holds that

Footnotes

- 1 Several other motions are currently pending, *see infra* § V, including plaintiffs' motion for preliminary injunction. Because the court is dismissing this action today under Rule 12(b)(1) for lack of standing, it denies plaintiffs' motion for a preliminary injunction.
- 2 Defendants also make a facial attack on plaintiffs' copyright claim, contending that plaintiffs have failed to allege an injury in fact, to allege causation between defendants' action and any claimed injury, and to allege how any claimed injury would be redressed by a favorable decision. The court agrees that plaintiffs have failed to plead standing with respect to their copyright claim.

they are procedurally proper. Defendants' October 12, 2017 response to plaintiffs' motion for preliminary injunction was expressly permitted by the court's preliminary injunction application scheduling order. And their October 27, 2017 reply brief filed in support of their motion to dismiss is authorized under the local civil rules. Accordingly, because defendants have complied with the requirements of the federal and local civil rules and have not violated any applicable scheduling order, the court denies plaintiffs' motions to strike and motion for sanctions.

C

Because the court is granting defendants' motion to dismiss, it denies as moot their November 3, 2017 objection and motion to strike affidavits.

* * *

Accordingly, for the reasons explained, the court grants defendants' motion under Rule 12(b)(1) to dismiss plaintiffs' action for lack of standing, and it dismisses this action without prejudice by judgment filed today. All other pending motions are denied.

SO ORDERED.

All Citations

287 F.Supp.3d 632, 2018 Copr.L.Dec. P 31,225

- 3 As with plaintiffs' copyright claim, defendants also mount a facial challenge to plaintiffs' claim related to Pioneer Cemetery Park. Defendants contend that plaintiffs do not allege any relationship to the original grantors or otherwise explain how they have any rights or interest in the property; fail to allege that the monument is even located on the property formerly owned by the Lodges; and fail to allege how removing a monument that was moved to the property after its transfer to the City violates maintaining the property as a memorial cemetery park. In sum, defendants posit that plaintiffs have failed to allege an injury in fact, causation, or that any claimed injury would be redressed by a favorable decision. The court agrees with these grounds for defendants' motion and holds that plaintiffs have failed to plead standing with respect to count 3.
- 4 Defendants contend that plaintiffs have misstated a question and answer page from the Mayor's Task Force. Defendants maintain that plaintiffs allege that certain statements are admissions of non-ownership when, in fact, the actual statements are that, as of the time the questions and answers were written, there was no official action found accepting the cemetery, but that further research was ongoing.
- 5 Defendants also bring a facial challenge to plaintiffs' quiet title action in the Confederate Cemetery. They contend that plaintiffs have not alleged a plausible basis for their ownership of, or any legal interest in, the Confederate Cemetery; that plaintiffs do not plausibly allege any basis to believe they have any of the rights of the Sterling Camp Number 31; and that plaintiffs do not allege any type of injury from the supposed lack of filing of the record of conveyance. The court agrees and holds for these and the reasons discussed above that plaintiffs lack standing to assert the claim alleged in count 4.
- 6 Although plaintiffs' brief is entitled "plaintiffs' reply brief for motions for preliminary injunction & declaratory judgment," the brief is in substance a response to defendants' motion to dismiss. Accordingly, the court will therefore treat it as a response brief.
- 7 Moreover, plaintiffs do not allege that Patterson *actually paid* any taxes to the City of Dallas. See SAC ¶ 1.
- 8 The court assumes *arguendo*, for purposes of Patterson's taxpayer standing arguments, that the City's removal of Confederate monuments is unconstitutional.
- 9 Defendants maintain that their standing challenge to plaintiffs' First Amendment-based § 1983 claim is facial. In deciding defendants' facial challenge to this court's jurisdiction, the court is permitted, as in a Rule 12(b)(6) motion, to consider the contents of the Resolution, which is [a publicly-available document that is] referenced in the SAC. See *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010) ("The court's review [of a Rule 12(b)(6) motion] is limited to the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.").
- 10 Because the court concludes that plaintiffs have not alleged an injury-in-fact in relation to their First Amendment claim, it does not address defendants' contention that plaintiffs have failed to plead a justiciable claim, and, instead, plead only a political question.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

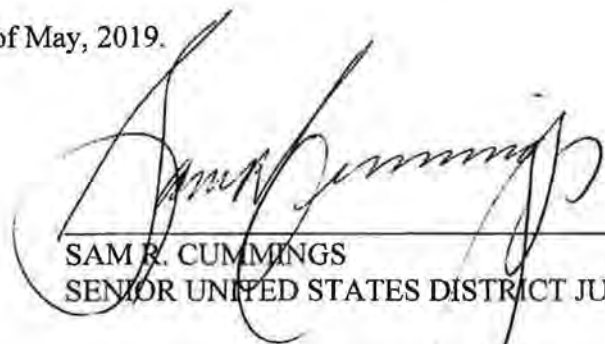
WARREN JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF DALLAS, <i>et al.</i> ,)	
)	
Defendants.)	Civil Action No. 3:19-CV-0180-C

ORDER

On this day, the Court considered Defendants’ Motion to Dismiss, filed May 1, 2019. The Court notes the docket in this civil action reflects that Plaintiff has failed to file a timely response to the pending Motion.¹ Thus, it appears Plaintiff is unopposed to the relief sought therein.

Accordingly, the Court is of the opinion that Defendants’ Motion to Dismiss should be **GRANTED** in its entirety. It is therefore **ORDERED** that all claims asserted in the above-styled and -numbered civil action are hereby **DISMISSED** with prejudice for the reasons stated in Defendants’ Motion.

SO ORDERED this 24th day of May, 2019.



 SAM R. CUMMINGS
 SENIOR UNITED STATES DISTRICT JUDGE

¹ See N.D. Tex. L.R. 7.1(e) “[a] response and brief to an opposed motion must be filed within 21 days from the date the motion is filed.”



AFFIDAVIT OF GREG SMITH

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Greg Smith, who, being by me first duly sworn, deposed and stated as follows:

“My name is Greg Smith. I am over 21 years of age and have never been convicted of any felony or crime involving dishonesty or moral turpitude. I am an employee of the Texas Historical Commission. I have personal knowledge of all the facts stated herein and they are true and correct.

I have researched and reviewed the records of the Texas Historical Commission and have found no records indicating that the following properties and structures located in the City of Dallas are currently listed on the National Register of Historic Places or currently designated as State Archeological Landmarks as of the date of this affidavit.

- Confederate Monument located at Pioneer Cemetery
- Pioneer Cemetery
- The Robert E. Lee Statue formerly located at Lee Park (now known as Oak Lawn Park)
- Lee Park (now known as Oak Lawn Park)

Further Affiant Sayeth Not.”



Greg Smith

SUBSCRIBED AND SWORN TO BEFORE ME on May 8, 2018 by Greg Smith to witness my hand and seal of office.





NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS



AFFIDAVIT OF JOHN INGRAM

THE STATE OF TEXAS §
COUNTY OF DALLAS §


Before me, the undersigned authority, personally appeared JOHN INGRAM, who, being by me duly sworn, deposed as follows:

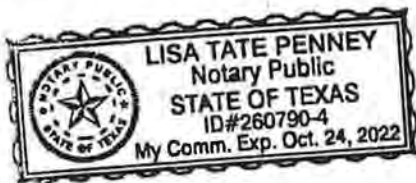
My name is John Ingram and I am of sound mind, capable of making this affidavit, have personal knowledge of the matters stated herein, and they are true and correct.

I am a Manager I for the City of Dallas's Office Procurement Services. As part of my job duties I have been charged with the responsibility of overseeing the sale of the statue of Robert E. Lee that had been located at what used to be known as Lee Park. The City retained the services of an auctioning services to solicit bids for the sale of the statue. Bids closed during the week of June 3, 2019 and the highest bid was more than \$1.4 million. The winning bidder is expected to tender payment by June 6, 2019. The sale will be presented to Dallas City Council and once approved and any contract executed, the sale will be complete. I am also generally familiar with the costs incurred by the City for removing the Lee statue and the Council-approved amount for the removal of the Confederate Monument. The winning bid amount for the Lee statue is more than the total of those costs.


JOHN INGRAM, Affiant

SWORN TO AND SUBSCRIBED before me on the 6th day of June, 2019.


Notary Public, State of Texas



AFFIDAVIT

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a notary public in and for the State of Texas, on this day appeared Charles S. Estee who is personally known to me, and who, after being duly sworn according to law, upon oath deposed and said:

“My name is Charles S. Estee. I am an attorney licensed to practice law in the State of Texas and before this Court. I have been employed as an attorney by the Dallas City Attorney’s Office since 2000. I am competent to testify, I have personal knowledge of the matters stated herein, and they are true and correct. I am one of the attorneys representing the City of Dallas and the City Plan Commission (collectively “Defendants”) in this lawsuit. I have also served as one of the attorneys representing the City and in its officials in *Patterson v. Rawlings*, No. 3:17-cv-2361-D (N.D. Tex.); *Return Lee to Lee Park, et al. v. Rawlings, et al.*, No. DC-18-05460 (14th Judicial District Court of Dallas County) (“*Return Lee to Lee Park case*”); and *Johnson v. Rawlings*, No. 3:19-CV-0180-C (N.D. Tex.). I also represented the Landmark Commission in the appeal by the Plaintiffs in this case to the City Plan Commission. The City Plan Commission affirmed the Landmark Commission’s decision. Chris Carter appeared in person and Ms. Pieroni was represented by a representative at the City Plan Commission hearing.

Attached as Exhibit 24 is a true and correct copy of records obtained from the Texas Attorney General’s website. I confirmed that the record of the information concerning Opinion H-620 had not changed on June 5, 2019.

Attached as Exhibit 25 is a true and correct copy of the court order from *Brewer v. Nirenberg*, No. SA:17-CV-837-DAE (W.D. Tex. Sept. 17, 2017). I obtained the copy from the Fifth Circuit’s PACER website, the federal courts docket/filing platform.

Attached as Exhibit 26 is a true and correct copy of the final judgment and prior orders entered in the *Return Lee to Lee Park case*. All of the Plaintiffs’ claims in the *Return Lee to Lee Park case* have been dismissed for lack of jurisdiction or in the alternative disposed of by summary judgment. Attached as Exhibit 27 is the reported opinion in *Patterson v. Rawlings case*. Attached as Exhibit 28 are the order and final judgment in *Johnson v. Rawlings*, No. 3:19-CV-0180-C (N.D. Tex.). Exhibit 29 is an affidavit from Greg Smith and was also filed in the *Return Lee to Lee Park case*.

Exhibits 1 to 23 are true and correct copies of excerpts of documents maintained on the City’s public website. All are public records. Exhibits 22 and 23 are also excerpts from the record from the Landmark Commission which has been separately filed with the Court.



Further, Affiant sayeth not.”



CHARLES S. ESTEE

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 6th day of June 2019.



NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS