POLITICAL HOT TOPICS IN THE LAND USE WORLD

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Topics to be Addressed

- Confederate Monuments and Statues
- Regulating Bike-Shares
- Low-Income Housing Tax Credit Projects

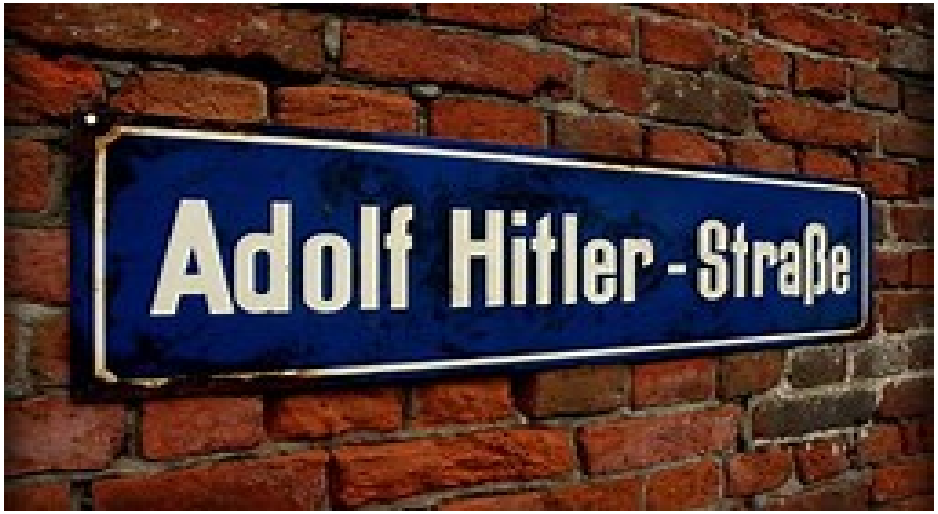
Confederate Monuments and Statues



But first, how have other nations (or victors) dealt with statues and monuments later deemed politically incorrect?



The Easy Way to Address Offensive Monuments!


Adolf Hitler - Straße





And in the not-too-distant past. . .



Purging East Germany of Communist Memorials After Reunification in 1990



While Lenin goes (except in Schwerin)



Marx and Engels Stay. . .





Now back to the present



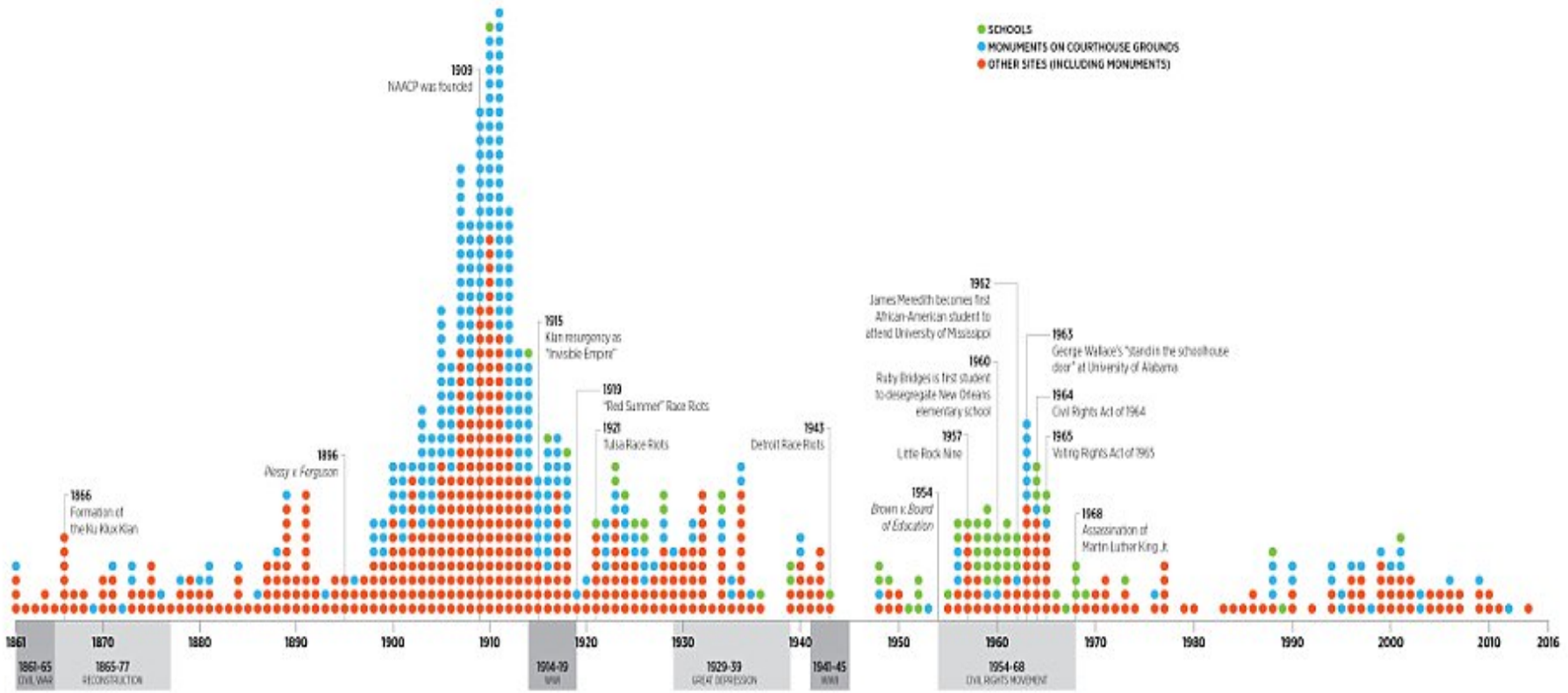
What is the scope of this issue?

In 2016, the Southern Poverty Law Center launched an effort to catalog and map Confederate place names and other symbols in public spaces, both in the South and across the nation.

This study, while far from comprehensive, identified a total of 1,503, including:

- **718 monuments and statues, nearly 300 of which are in Georgia, Virginia or North Carolina;**
- **109 public schools named for Robert E. Lee, Jefferson Davis or other Confederate icons;**
- **80 counties and cities named for Confederates;**
- **9 official Confederate holidays in six states; and**
- **10 U.S. military bases named for Confederates.**

Timeline of Monument Installations in the United States



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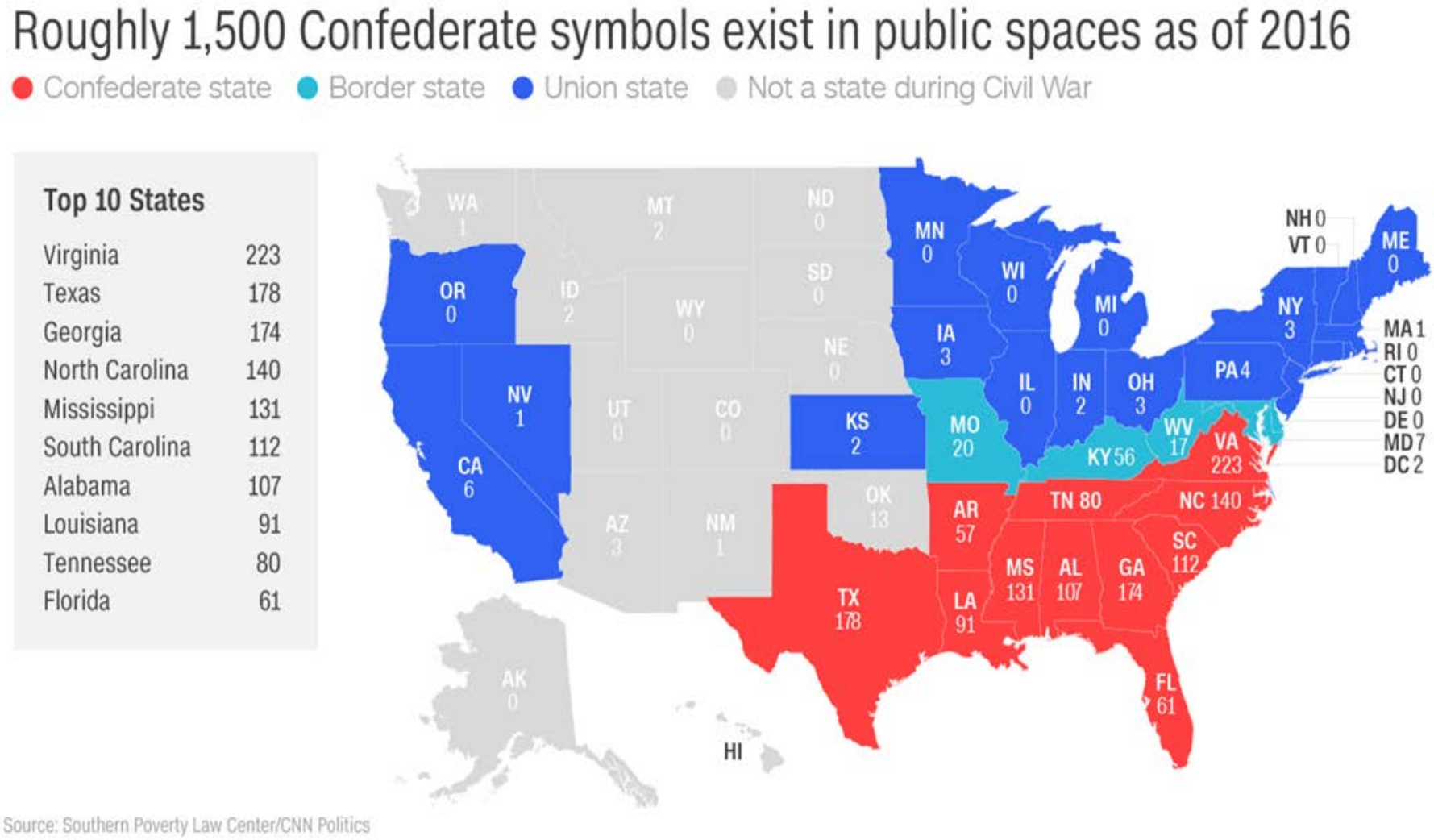
Confederate Monuments and Symbols around the Nation, by State



Source: Southern Poverty Law Center/CNN Politics

How Are Governments Responding?

Three responses:

1. **State Preemption**
2. **Monument Removal**
3. **Adding “Context”**

Option 1: State Preemption

- **Mississippi, Georgia, North Carolina, Tennessee, South Carolina and Alabama prohibit the removal of Confederal monuments by local governments without a vote of the legislature or a state commission (the statutes are termed "heritage preservation")**
- **The Alabama Memorial Preservation Act provides that "[n]o architecturally significant building, memorial building, memorial street, or monument which is located on public property and has been so situated for 40 or more years may be relocated, removed, altered, renamed, or otherwise disturbed"**
- **In South Carolina, a two-thirds vote in both the House of Representatives and Senate is required to remove a Confederate monument**
- **In 2017, legislation was introduced in Louisiana bar all structures, plaques, statues or monuments that mark certain wars, including the Civil War, from being altered or removed, but local governments would have been allowed to remove such structures, plaques, statues or memorials if voters approved the action at an election held for that purpose**
- **Current litigation in Virginia over the Charlottesville City Council's proposal to remove the Robert E. Lee statue since a state law bans cities that attempt to "disturb or interfere with" historic monuments and memorials**

In Birmingham, the City responds:





Option 2: Monument Removal

Dallas

- August 24, 2017, Dallas Mayor Mike Rawlings appointed the Mayor's Task Force on Confederate Monuments
- The Task Force was to provide recommendations related to the cost and process of disposal or relocation of monuments, suggesting additional standards for the naming of public places, suggesting replacements for Confederate monuments and symbols recommended for removal, and suggesting replacement names for public places
- 5 public meetings held in an approximate 3-week period
- At those meetings City staff provided briefing materials and presentations, and ultimately the Task Force issued its final recommendations on September 22, 2017

Dallas

American Historical Association information presented:

- **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 [of] the Confederate States of America**

Dallas

- The Task Force recommended the removal of the Confederate War Memorial near the Convention Center in downtown Dallas
- Change the names of five Dallas streets (Lee Parkway, Cabell Drive, Gano Street, Stonewall Street and Beauregard Drive)
- Did not recommend several other expensive, sweeping changes to Fair Park and the Dallas street grid
- It estimated removal of the Confederate War Memorial would cost approximately $800,000
- Concluded that the City must be consistent in its repudiation of Confederate symbols

Dallas

- City Council briefing on Wednesday, March 21, 2018
- Dallas staff recommended:
  - Place Lee monument on loan with local museum
  - Form a Fair Park Art Working Group to add historical context
  - Keep Confederate Monument at current site at the Convention Center and add context
  - Change some street names but not all
  - Rename or remove the Confederate Cemetery, but left to Park Board to determine
  - Public engagement process for renaming parks
- On April 25, 2018, City Council deferred most action other than to appoint a working group to add historical context to the Confederate symbols Fair Park

Confederate War Memorial



Dallas' Fair Park



Dallas’ Fair Park



But this had already come down




TEREX

Option 3: Adding Context

Denton County

- **In October 2017 Denton County appointed a Confederate Soldier Memorial Advisory Committee to evaluate the future of the Confederate monument on the south side of the Denton County Courthouse-on-the-Square**
- **The Advisory Committee was formed following months of protests and public participation in the Commissioners Court's meetings from individuals who both opposed and supported the statue**
- **The Confederate Soldier Memorial is the only Confederate monument in the county and was erected in 1918 by the Daughters of the Confederacy**

Denton County

- **A nearby plaque explains the monument to be “a reminder of historic events and is intended as a memorial to Denton County citizens who sacrificed themselves for the community. Now, let this be a testimony that God created all men equal with certain inalienable rights. We are all one, citizens of Denton County”**
- **The text on the monument itself says it is “in memory of our confederate soldiers, who in heroic self-sacrifice and devoted loyalty gave their manhood and their lives to the South in her hour of need”**




THIS IS RACIST

Denton County

- **The Advisory Committee held public forums and on February 6, 2018, the 15-member Advisory Committee unanimously recommended that the statue remain at its current location and that significantly more historical context be added**
- **Specifically, the Advisory Committee believed that a plaque be added below the statue with a statement that, in effect, decries slavery and racial superiority**
- **The Advisory Committee also suggested the installation of an interactive kiosk near the monument that "tell[s] the story of all deceased veterans from Denton County from all wars and list all their names; an accurate story of race relations through all of American history, with 'no candy coating' and with an emphasis on civil rights movements in Denton County" as well as "tell the story of who we are in Denton County and where we want to go"**
- **The exact wording and means of expressing the additional context will be determined at a later time**

Now let's drive south to Orange, Texas to the Confederate Veterans Memorial Park



Proud of Your Ancestors?

Make a Stand on I-10!

Honor your ancestor by helping the Texas Division SCV construct a Confederate Flag Memorial on Interstate 10. The Memorial is located 5 miles west of the Texas Louisiana state line on I-10. Your support will enable passengers in over 55,000 cars per day see Confederate Flags flying proudly in the Texas breeze.

Help us make this dream become a reality, become a sponsor with your tax deductable donation. Please pick a sponsorship level and make your donation today.



Sponsor a Memorial Brick at $50, $100 and $300, or a Memorial Bench at $800 by check payable to "Texas Division-SCV". Or go to bricksrus.com/order/texasdivscv and use your Credit Card on our secure PayPal account. Memorial Bricks and Benches will be engraved with the inscription of the donor's choice.

Sponsor one of the 20 Memorial Flagpoles available at $1,100 each, or one of the 13 State Memorial Column for $2,000. Mail check payable to "Texas Division-SCV"

Flagpoles and Columns will bear a plaque with an inscription of the donor's choice.

Receive a "Texas Division Crest" for each $10.00 donation to the memorial fund. Mail check payable to "Texas Division-SCV"

Make checks payable to "Texas Division-SCV" and mail to

Texas Division Sons of Confederate Veterans
c/o Lt. Commander Granvel Block
1604 Buckingham Dr
Orange, Texas 77632

Please contact Granvel Block Lt. Cmdr. Of the Texas Division with questions and additional information by

Email: granvelb@gt.rr.com Cell Phone: (409) 779-6657

On Private Property

- A giant concrete ring of 13 columns was built in 2013 on private land at the intersection of Interstate 10 and Martin Luther King, Jr., Drive
- Built by the Sons of Confederate Veterans (SCV)
- In an April 2013 resolution, the Orange city council declared that it "strongly opposes the Confederate Veterans Memorial Park on its current design and location; and urges the Sons of Confederate Veterans, Inc. to consider alternative designs and locations that express the sacrifice made in an appropriate and acceptable manner to all"
- The city has managed to limit the height of the monument's flagpoles (thus ensuring they will not be visible from Interstate 10) and it has stymied the completion of the site by forcing the SCV to create ample parking
- Periodic protests at the site

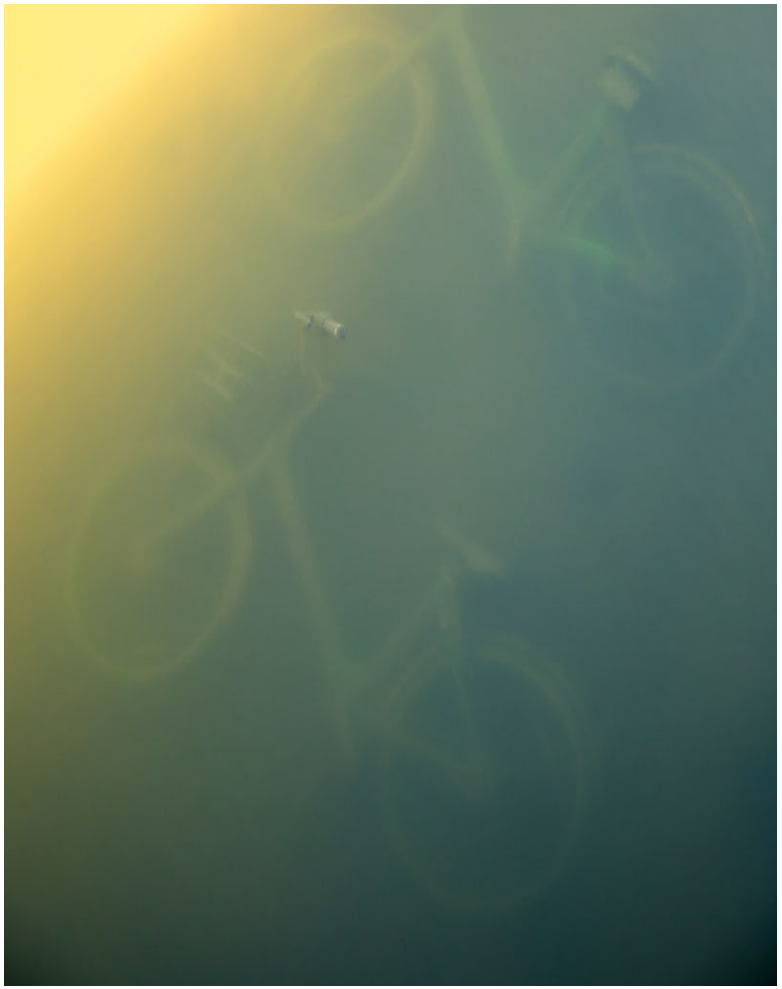

NO
PARKING
PLEASE REPURPOSE
THIS SITE!

Bike-Share Services

A Little Background

- Generally, a short-term rental of a bike, paid for through an app, and a customer rents a bike at Point A and returns it to Point B (“dock” or “dockless”)
- Bike-share began in Europe in mid-1960s and has expanded worldwide, with 13 of the 15 largest bike-share programs in China
- In the USA, Seattle has been the pioneer, having adopted a one-year pilot program in July 2017
- Includes an extensive regulatory scheme, including maximum number of bikes per company, insurance, a performance bond for public property repair and costs incurred by the city for removing and storing improperly parked bicycles
- 24-hour staffed customer service/operations center for questions, reporting safety concerns or taking complaints

Single Biggest Issue: Parking





Bike-share in Texas

- Highland Park, Denton and Plano have recently adopted regulatory ordinances for dockless systems
- Denton has a 6-month pilot program, with many restrictions and requirements (not unlike Seattle)
- Highland Park simply outlaws improper parking and imposes an impoundment fee for offenses ($30 per bike for first offense, up to $100 for fourth or more offense). If bike not claimed in 15 days, may be sold by sealed bid or auction
- Plano allows no bike parking in right-of-way without a bike-share permit, and bikes must be parked upright, current contact information provided to the city by companies, 24-hour customer service line and other reporting requirements



Problems in Big D

- **No regulatory scheme (yet), but 18,000-20,000 bikes in Dallas**
- **In January 2018, city manager sent letter to all bike shares, “clean up your act”**
- **LimeBike, Mobike and Vbikes all responded with action plans**
- **Ofo wrote “we confess that the behavior of some of our fellow bike operators worries us deeply and tarnishes the reputation of the industry that Ofo created”**
- **On June 27, 2018, Dallas adopted an ordinance to address dockless vehicles, including scooters as well as bicycles**

Low Income Housing Tax Credit Developments



- Very controversial in many Texas cities, with what often seems to be great public support or no public support
- Regardless of a city's decision, pro or con, become acquainted with relevant provisions of the federal Fair Housing Act, 42 USC § 3601 *et seq*., and *Texas Dep't of Housing and Community Affairs v. The Inclusive Communities Project*, a 2015 U.S. Supreme Court case that address LIHTC in Texas
- The *ICP* case and its progeny are more deferential to cities than in the past



Practical Pointers

- **Be consistent in reviewing proposals for all types of developments**
- **But, make reasonable accommodations for proposed developments involving a protected class**
- **If a proposed development involving a protected class nevertheless must be denied due to legitimate reasons, enunciate those reasons clearly and the bases therefor on the record. Some legitimate reasons may include:**
  - **cost (including increased cost to city services)**
  - **traffic patterns**
  - **preserving historic architecture**
  - **quality of life (must be careful with this one)**
  - **no racial quotas**
  - **no artificial, arbitrary or unnecessary barriers**
  - **other sites in the city where the multifamily project could be better located (for a variety of reasons)**

Practical Pointers

- **Develop fair housing policy (with help of city attorney and experts) of inclusion and objective factors**
- **Do not ignore seriousness of issues or federal court authority "An accommodation is reasonable under the FHA if it does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve**
- **The City of McKinney, Texas, for example, has adopted a Low Income Housing Tax Credits Resolution Policy "[t]o provide administrative procedures by which the City will review and process requests for resolutions to be considered by the City Council . . . on housing development projects utilizing low income housing tax credits as a component of project financing, consistent with the City of McKinney Affordable Housing Policy, City ordinances, and applicable law"**

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