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## Coates' Canons Blog: Statues and Statutes: Limits on Removing Monuments from Public Property

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Article: <https://canons.sog.unc.edu/statues-statutes-limits-removing-monuments-public-property/>

This entry was posted on August 22, 2017 and is filed under General Local Government (Miscellaneous), Land Use & Code Enforcement, Purchasing, Construction, Property Transactions

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Monuments to Confederate soldiers stand outside the county courthouse in many North Carolina counties. Other Civil War monuments and statues are located in public parks and cemeteries, and one stands in a prominent location at the University of North Carolina at Chapel Hill. What, if anything, can a local government do with such a monument? That question has come into sharp focus in recent days. Protests in Charlottesville, Virginia, related to that city's decision to remove a Confederate statue turned violent, and a white nationalist protestor killed a woman when he drove his car into a crowd of counter-protestors. Two days later demonstrators in North Carolina toppled the Confederate Soldiers Monument at the old Durham County Courthouse.

Governor Roy Cooper and other leaders have called for Confederate monuments to come down, but Cooper stated that there is a better way to go about it than demonstrators tearing down statues. There are legal limits, however, for the State or subdivisions of the State to remove or relocate such monuments. A North Carolina law, adopted in 2015 and codified as North Carolina General Statute (G.S.) § 100-2.1, requires that objects of remembrance on public property cannot be removed or relocated except in certain circumstances. On the surface that law seems straightforward—cities and counties can't remove a Confederate monument. The crafting of the law and the many ways that scenarios might play out, however, raise questions about the precise scope and effect of the law. This blog seeks to identify those questions and offer some (but certainly not all) answers about the scope of local government authority for removing objects of remembrance.

### What are the Civil War monuments in North Carolina?

The law limiting removal of objects of remembrance applies generally, but the focus of recent public discussion is Confederate monuments. With that in mind, it is useful to get a sense of the Civil War monuments in North Carolina.

The North Carolina Department of Natural and Cultural Resources has compiled a database listing 121 North Carolina Civil War Monuments, identifying the monument, location, and date of dedication. Using that data, the Charlotte Observer created a map of the monuments. Around half of North Carolina's county courthouses have a Confederate Soldiers Monument—from the Old Jackson County Courthouse in the mountains to the Pasquotank County Courthouse along the coast and many courthouses in between. There are also monuments in cemeteries and parks. A Confederate Soldiers Monument was erected at the University of North Carolina in Chapel Hill in 1913. The monuments are mostly statues on pedestals but also include plaques, markers, obelisks, fountains, and arches.

Most of these Civil War Monuments were erected between 1900 and 1930. During that time the General Assembly authorized North Carolina local governments to become more involved with such monuments. In 1905 the General Assembly adopted what is now G. S. § 100-9 to authorize North Carolina counties to expend public funds "to erect a substantial iron fence around" any monument "erected to the memory of our Confederate dead or to perpetuate the memory and virtues of our distinguished dead." In 1919 in the wake of World War I, the General Assembly authorized cities and counties to participate as members in "any memorial association or organization for perpetuating the memory of the soldiers and sailors of North Carolina who served the United States in the great world war" and to help fund memorials for such soldiers and sailors. In 1923 that law was amended to give local governments the same power to support and fund Civil War monuments (G.S. § 100-10).

While the vast majority of North Carolina Civil War monuments commemorate Confederate soldiers, there are other



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monuments. At Bennett Place in Durham County, the site of the largest troop surrender of the Civil War, a Unity Monument was erected in 1923 to recognize the reunification of the United States at the end of the Civil War. Henderson County has two monuments, one in Etowah and one in Hendersonville, to the Union Soldiers from the county. First Baptist Church in Herford has a United States Colored Troops Monument dedicated around 1912. The New Bern National Cemetery includes monuments to Union soldiers from Connecticut, New Jersey, Massachusetts, and Rhode Island. The Salisbury National Cemetery similarly includes a Maine Monument, Pennsylvania Monument, and monument to the Unknown Union Dead. McDowell County and Catawba County have Veterans Memorials that honor veterans of all U.S. wars including county residents who died in the Civil War.

### What is an “object of remembrance”?

G.S. § 100-2.1 defines the term “object of remembrance” to mean “a monument, memorial, plaque, statue, marker, or display of a permanent character that commemorates an event, a person, or military service that is part of North Carolina’s history.” While much of the discussion around this law focuses on Confederate memorials, note that this law applies to any objects of remembrance on public property: a World War II memorial, a plaque or marker to recognize an important event in North Carolina’s industrial history, or a statute of a notable athlete or coach at a university. There is an exception for highway markers erected by the North Carolina Department of Transportation, but not for local historic plaques. Notably the definition provides the qualifier “of a permanent character.” That language indicates that flags do not fall under the definition of “object of remembrance” because they are temporary in nature. Street names and street signs raise an interesting question that is discussed in more detail below.

“Object of remembrance” is defined and used in subsection (b) of the statute which contains general limitations on removal and relocation. Interestingly, subsection (a) of G.S. 100-2.1, which deals with State approval of moving State-owned monuments, omits the phrase “object of remembrance.” That subsection applies to “a monument, memorial, or work of art owned by the State.” As discussed more below, under the plain language of the statute, the requirement for State approval applies only to objects owned by the State. Moreover, “work of art” is defined broadly in the prior section of the statutes, G.S. § 100-2, to include paintings, stained glass, tablets, fountains and other decoration. In large part these terms—“objects of remembrance” and “monument, memorial, or work of art”—are overlapping, but it is worth noting that the State-owned items to which the statute applies include items that do not fit within the definition of “object of remembrance.” Consider an abstract painting. If it is owned by the State of North Carolina, G.S. § 100-2.1(a) applies, but if it is owned by a political subdivision of the State G.S. § 100-2.1 does not apply at all. It is also worth noting that the definition of an “object of remembrance” is not limited to those owned by governmental entities, but the limitations on removal and relocation, which are discussed below, apply only to those located on public property. Thus, a privately-owned monument located on private property is not covered by the statute.

### What are the limits on removal and relocation?

An object of remembrance on public property may not be removed permanently. There are three limited exceptions to that rule; they are discussed more in the next section. An object may be relocated, either temporarily or permanently, but only when necessary to preserve the object or when necessary for a construction project. Here are the provisions for when and how an object of remembrance may be relocated.

**To preserve the object.** An object of remembrance may be relocated “[w]hen a pppropriate [sic] measures are required by the State or a political subdivision of the State to preserve the object” (G.S. § 100-2.1(b)(1)). If an object is worn from years of exposure to the elements a county may need to take action to relocate the object in order to repair and preserve it. Similarly, if an object is at risk of damage from a flood or hurricane, a city might determine that relocating the object is an appropriate measure required to preserve the object. In the same line of thinking, a local government or other political subdivision of the State may determine that an object is at risk of destruction or significant damage from vandalism. The statue portion of the Confederate memorial in Durham County, for example, was crushed when protestors pulled it down from the stone base. Under the statute a local government or political subdivision can relocate the object, temporarily or permanently, to preserve the object from vandalism or destruction by protestors.

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**When necessary for construction.** An object of remembrance may be relocated “[w]hen necessary for construction, renovation, or reconfiguration of buildings, open spaces, parking, or transportation projects” (G.S. § 100-2.1(b)(2)). The statute recognizes that roads may be widened, buildings may be expanded, and parks and plazas may be renovated. For any of those construction projects, an object of remembrance may be relocated temporarily or permanently.

**Time limit for temporary relocation.** The object of remembrance must be returned within 90 days of completion of the project that required the temporary relocation (G.S. § 100-2.1(b)). So, if a city temporarily moved an object for a road-widening project, then it must be returned to the site within 90 days of completing the road widening project. That timeline, though, presumes that there was a particular project that created the need for relocation. If the relocation was required to preserve the object from vandalism, one could argue that the object must be returned within 90 days of the end of the threat of vandalism. The statute, however, does not contemplate *indefinite* temporary relocation.

**Similar prominence for permanent relocation.** In the case of permanent relocation, the object “shall be relocated to a site of similar prominence, honor, visibility, availability, and access that are within the boundaries of the jurisdiction from which it was relocated” (G.S. § 100-2.1(b)). For many Confederate monuments it may be challenging to find a relocation site of similar prominence. Not many places are comparable to the courthouse square with regard to prominence, honor, visibility, availability, and access. The statute specifically states that an object may only be relocated to a museum, cemetery, or mausoleum if it was originally placed at a museum, cemetery, or mausoleum.

As discussed more below, a local government does not need State approval to take these actions for relocating an object unless the object is owned by the State.

#### **When do the restrictions on removal not apply?**

The statute provides an exception for three categories. The limits on removal and relocation do not apply in cases where there is a threat to public safety, in certain cases where the object on public property is privately-owned, and in cases where the object is a State historic highway marker. Let’s consider those exceptions.

**Public safety exception.** The limits on removal and relocation do not apply to “[a]n object of remembrance for which a building inspector or similar official has determined poses a threat to public safety because of an unsafe or dangerous condition” (G.S. § 100-2.1(c)(3)). This is a fairly common provision—relaxing a rule or permit requirement when a public safety concern has been determined by a public official. In historic preservation districts, for example, a property owner does not have to seek the standard certificate of appropriateness if the building inspector has ordered certain construction or demolition to remedy a dangerous condition. Typically these provisions are triggered when some physical element of the object or building itself creates a public safety hazard (for instance, a collapsed roof, a leaning tower, or downed power lines). With regard to objects of remembrance, a building inspector might determine a threat to public safety is created by a memorial arch that is structurally unsound or stones falling from the top of an obelisk monument. An object damaged by storms or protests may become a threat to public safety. With the determination by the building inspector or similar official of an unsafe or dangerous condition, an object of remembrance may be removed under the statute.

Protests and counter-protests in Charlottesville, Virginia, showed the potential for threats to public safety surrounding an object of remembrance. Moreover, the toppled statute in Durham displayed the potential of an unsafe and dangerous condition when protestors pull down a monument. Could the public safety exception apply when the dangerous condition arises from actions related to the object rather than from the physical object itself? Possibly, but the statute is not clear. The plain language of the statute refers to “an unsafe or dangerous condition.” It does not require “an unsafe or dangerous condition [of the physical object],” so one could argue that the dangerous condition could be something beyond the physical character of the object. The statute also allows for the determination from “a building inspector or similar official.” With this language one could argue that issues beyond basic building code standards could come into the public safety determination. On the other hand, the statute does refer to “[a]n object of remembrance . . . [that] poses a threat to public safety.” The explicit mention of the building inspector frames the safety considerations around typical building safety matters. And, this type of public safety exception typically concerns threats arising from the object itself (the building or structure or monument).

**Private ownership exception.** The limits on removal and relocation do not apply to “[a]n object of remembrance owned by a private party that is located on public property and that is the subject of a legal agreement between the private party and

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the State or a political subdivision of the State governing the removal or relocation of the object” (G.S. § 100-2.1(c)(2)). So, for example, imagine that the Daughters of the Confederacy or another organization provided a monument placed on the courthouse grounds. If the private organization still owns the monument and a private agreement governs removal and relocation, then that monument is not subject to the statutory limits on removal. In that case removal would be governed by the agreement between the organization and the local government on whose property the statute is located.

**Highway markers.** Additionally, the limits on removal and relocation do not apply to “[h]ighway markers set up by the Board of Transportation in cooperation with the Department of Environmental Quality and the Department of Natural and Cultural Resources as provided by Chapter 197 of the Public Laws of 1935” (G.S. § 100-2.1(c)(1)).

### **Does a local government need approval from the State?**

Ownership matters. If the object is owned by the State of North Carolina then more restrictions apply. In addition to the limitations described above, an object owned by the State cannot be removed, relocated or altered without approval from the North Carolina Historical Commission. This provision of G.S. § 100-2.1(a) specifically applies to “a monument, memorial, or work of art *owned by the State*.” If a monument is owned by a city, county, or other political subdivision of the State with corporate powers to own property—or if a monument is privately owned and placed on public property—then there is no requirement to seek approval from the North Carolina Historical Commission. Such monuments are still subject to the limitations on removal and relocation discussed above.

### **Can a local government make alterations?**

Again, ownership matters. Under subsection (a), “a monument, memorial, or work of art owned by the State may not be removed, relocated, or *altered* in any way without the approval of the North Carolina Historical Commission.” That language specifically applies to objects owned by the State of North Carolina. Notably, subsection (b) which applies more broadly to any “object of remembrance located on public property” governs only removal and relocation. So, under the statute, it is possible that a local government could alter but not remove an object of remembrance that the local government owns. A local government or other political subdivision might add an explanatory plaque, situate other objects around the object in question, or re-purpose the object of remembrance at the same site. Under the statute a local government or other political subdivision could cover or otherwise conceal an object of remembrance while leaving it in place. And, as noted in the overview of Confederate monuments around North Carolina, counties are authorized to expend public funds “to erect a substantial iron fence around” a monument.

### **Is a local government obligated to make repairs?**

What if a monument has been damaged? At the Durham County Courthouse, for example, protestors pulled down the statue from the Confederate Soldiers Monument and it was badly damaged. Is the local government obligated to repair the object? There is no apparent requirement for repair. As a general rule local governments are not required to repair or replace damaged public property. If a county soccer field was damaged by flood, the county could choose to leave it as open space and not repair the field. If a city office building is damaged by a hurricane, the city is not required to build back the office. In limited circumstances the statutes may require certain maintenance and repair of public property. Cities have a duty to keep public streets in proper repair and free from unnecessary obstructions, for example. There is no such obligation for objects of remembrance.

While there is no apparent requirement for repair, what about removing the pieces of a broken statue or a significantly damaged monument? The statute simply does not address this. If the object has minor cosmetic damage (no safety concerns), the prohibition on removal remains. The statue or monument might be temporarily relocated to preserve the object. If a building inspector determines that there is a threat to public safety because of an unsafe or dangerous condition, the restrictions on relocation and removal do not apply. So, the extent of the damage and the threat to public safety will inform whether a damaged object must be returned to its original (or similar) position or if it may be removed.

It is also important to keep in mind that individuals vandalizing public property are subject to criminal prosecution.

### **What about street names and street signs?**

Street names and street signs raise an interesting question about the scope of the protection for objects of remembrance.

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Street names are not objects subject to the limitations of removal, and local governments have statutory authority for naming and renaming streets under their jurisdiction. Counties have explicit authority under G.S. § 153A-239.1, and cities have authority under the general regulatory powers over municipal streets outlined at G.S. § 160A-296. Street signs, however, are objects. So, can the local government remove the old signs? A standard street sign is merely a traffic control message; its purpose is to identify the street and guide traffic, not to commemorate. In the case of commemorative street names, the name of the street—not the sign—is the commemoration. So, it seems unlikely that a standard street sign would fall under the limits for objects of remembrance discussed above. In some cases, though, there may be an actual monument or marker separate from the standard street sign to commemorate, for example, the Jefferson Davis Highway. Such a marker likely is an object of remembrance. It is a “marker . . . that commemorates an event, a person, or military service that is part of North Carolina’s history.” So, such markers may be subject to the limitations on removal and relocation discussed above.

### **Do local historic preservation rules apply?**

In addition to the state rules, local historic preservation rules may apply to moving or altering an object of remembrance. Cities and counties have authority to identify, protect, and regulate local historic landmarks (starting at G.S. § 160A-400.1). If an object is recognized as a local historic landmark or is within a local historic district then the owner must obtain a certificate of appropriateness from the local historic preservation commission before making any changes.

That authority, though, may be limited. G.S. § 100?2.1 supersedes the historic preservation statutes with regard to the removal or relocation of an object that is designated as a historic landmark (G.S. § 160A-400.13).

### **Conclusion**

North Carolina law limits the extent to which the objects of remembrance may be removed from public property or relocated. That law applies to a broad array of memorials, monuments, statues and other objects, including the many Confederate monuments found on county courthouse grounds and other public property across the State. The impact of the law on the authority of a local government to remove or relocate a particular object of remembrance depends on the ownership of the object, the character of the site where it is located, and concerns of public safety.

## **Links**

- [www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_100/GS\\_100-2.1.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_100/GS_100-2.1.pdf)
- [ncmonuments.ncdcr.gov/MonList.aspx?qry=Text&Search=](http://ncmonuments.ncdcr.gov/MonList.aspx?qry=Text&Search=)
- [www.charlotteobserver.com/news/local/article167705737.html](http://www.charlotteobserver.com/news/local/article167705737.html)
- [www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_100/GS\\_100-9.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_100/GS_100-9.pdf)
- [www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_100/GS\\_100-10.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_100/GS_100-10.pdf)
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