

Order
June 2020

MEMORANDUM

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To:

From:

Re:

Date:

On June 26, 2020, President Trump issued his Executive Order on Protecting American Monuments, Memorials, and Statues and Combatting Recent Criminal Violence: ("Presidential Executive Order"). This memorandum will summarize this order; in particular, its application to the City.

Section 2 of the Presidential Executive Order contains five subsections, each of which sets forth policies of the United States.

Subsection 2(a) begins by stating the policy of the United States inherent in any federal law declaring an act to be criminal, i.e., that U.S. Government will prosecute to the fullest extent permitted those federal laws which prohibit and punish those who "destroy [], damage[], vandalize [], or desecrate" "a monument, memorial, or statue within the United States or otherwise vandalize [] government property." This policy, on its face, with its reference to "prosecut[ions]: . . . under Federal law," does not purport to modify the policy of the United States. It is always the policy of the United States to enforce federal law. While the "order vaguely references "monument[s]," "memorial[s]," "statue[s]" and "government property" the introductory clause relating to federal law limits monuments, memorials, statues and government property to those things protected by federal statute. Generally speaking, federal law protects federal interests such as federal property.

Section 2(a), then, does not signify a modification of federal policy. Instead, it signifies a change in the importance of the federal laws that protect monuments, etc. Despite its size, even the federal government cannot prosecute each and every violation of each and every federal law. Consequently, a policy statement such as that contained in subsection 2(a) indicates an important shift in priorities or, at a minimum, a restatement of the importance of the referenced laws.

Subsection 2(a) also references a few statutes of particular importance. 18 U.S.C. §1361 protects federal property. 18 U.S.C. §1369 protects "any structure, plaque, statue, or other monument on public property commemorating the service of any person or persons in the armed forces of the United States." 18 U.S.C. § 1952 prohibits "travel[ing] in interstate . . . commerce . . . , with intent to . . . promote, manage, establish, carry on, or facilitate the promotion, management, establish and, or carrying on, of any unlawful activity, . . ."

Relevant to monuments, Section 1952 prohibits interstate travel to commit arson in violation of state law. Consequently, Section 1952 prohibits engaging in interstate commerce for the purposes of committing arson of a any property, including any monument or statue of any sort.

The Presidential Executive Order describes 18 U.S.C. 1369 as punishing “destruction of . . . state-maintained monuments that honor military veterans.” To be clear, however, the statute only protects monuments, etc., honoring “service . . . in the armed forces of the United States.” This limitation excludes service in the armed forces of any government other than the United States government, including, but not limited to service in the armed forces of the Confederate States of America. In addition, the statute limits its protection to monuments, etc., “located on property owned by, or under the jurisdiction of the Federal Government.” This statute, then, does not apply to monuments, on any city or state parks, or other property, unless the federal government owns the park, or other property, and the city or state maintains the park or other property for the benefit, or under contract with, the Federal Government.

Presidential Executive Order Section 2(b) states that it is the policy of the United States, as already set forth in 18 U.S.C. 2101, to punish those who engage in interstate commerce, e.g., use a cell phone, with intent to incite a riot. Section 2(c) restates the policy in 18 U.S.C. 247 to punish those who “intentionally deface [], damage[], or destroy [] any religious real property because of the religious character of that property.”

Sections 2(d) and 2(e) directly impact the City and the Sheriff’s Office. Section 2(d) states that it is now federal policy to withhold federal monetary support for local government public spaces where that local government fails to protect “public monuments, memorials, and statues for destruction or vandalism.” Section 4 of the Presidential Executive Order enforces this policy by requiring each executive department to ensure that federal monies for public spaces do not go to local governments that fail to protect “public monuments, memorials, and statues.”

The City, then, would be subject to losing federal grants for public spaces, if the City fails to protect monuments, memorials, and statues. This policy and its enforcement do not in any manner restrict the City’s authority and power to operate its own parks. The City continues to have its full First Amendment right and governmental power to choose to install, keep, or remove its monuments in its parks.

Similarly to Section 2(d) and Section (4), Section 2(e), along with its enforcement, provision, i.e., Section (5), provides that local law enforcement agencies are subject to losing the federal monetary support if the law enforcement agency “fail[s] to protect public monuments, memorials, and statues from destruction and vandalism.” For the reasons set out in the previous paragraph, this does not require the Sheriff to prevent the Mayor from removing a statue from a City park.

Summary. The Presidential Executive Order sets out (1) a policy to enforce various federal laws and (2) a policy to encourage, through financial penalty, local governments to protect public monuments. The Presidential Executive Order does not purport to regulate the City’s operation of its own parks. In particular, the Presidential Executive Order does not seek to restrict the right of the City to choose what monuments adorn City Parks.