

Memorandum

TO: PUBLIC ART COMMITTEE

FROM: Michael Ogilvie

**SUBJECT: THOMAS FALLON STATUE
DEACCESSION**

DATE: April 26, 2021

Approved *Kerry Adams Hapner*

Date: April 27, 2021

COUNCIL DISTRICT: 3

RECOMMENDATION

Review and take action to recommend to the Arts Commission the deaccession of the *Thomas Fallon Statue* by artist Robert Glen located at W. Julian Street.

OUTCOME

To make a recommendation to the Arts Commission regarding the deaccession of the *Thomas Fallon Statue* and conveyance of the statue to a City storage facility.

BACKGROUND

The *Thomas Fallon Statue* was commissioned by the San José Redevelopment Agency (SJRDA) in 1988 with art funds from private developments (Fairmont Hotel/Kimball Small properties, Goldrich and Kest for the Paseo housing developments, etc.) to commemorate the raising of the U.S. flag in San José in 1846, when California was still part of Mexico. Mayor McEnery and Frank Taylor, Director of the SJRDA, in 1987 organized a small committee of local officials and historians. Based on their advice, the concept for the statue was conceived. It did not go through a broad public art process, an artist was not involved, nor was any feedback from the community-at-large sought during the concept phase. These public art best practices are now standard measures that are incorporated in the City of San José Public Art Program's projects to tailor public art to the community. When the *Thomas Fallon Statue* design was unveiled in 1990, the idea of the statue inspired significant community protest. To recognize this concern, Mayor McEnery created a Historical Art Advisory Committee (HAAC) to understand the issues fomenting the controversy. The HAAC, composed of a diverse panel of fifteen residents, conducted twenty hours of community meetings and twenty hours of deliberation meetings in 1990. The HAAC ultimately recommended that the City acknowledge four aspects of its heritage at downtown gateways: agriculture, Ohlone, Mexican heritage, and the placement of the flag in San José (attachment H). The *Thomas Fallon Statue* moved forward based on the HAAC recommendations. The other

artworks completed and installed were: *Remembering Agriculture*, located on Santa Clara Street at 87; two Mexican commemorative works - *Founding of the Pueblo*, located at Market and South First Streets and *Man of Fire*, a tribute to Dr. Ernesto Galarza, on Paseo de San Antonio; and *The Weaver's Gifts* at Confluence Point. All other artworks were completed before the *Thomas Fallon Statue* was installed. After all artworks were completed and the statue was installed in 2002, the significant public protest over the statue continued unabated. There is a twenty year record of a journalism and media (Attachment E), public input (Attachment F), and sample images of vandalism (Attachment G) which affirm that significant adverse reaction has continued unabated over an extended period of time.

In 2020, the controversy surrounding the *Thomas Fallon Statue* was re-invigorated by protests over racial injustice across the United States that led to the successful removal of Confederate statues and monuments. Though Thomas Fallon was not associated with the Confederacy, some local protestors have associated him with atrocities resulting from Spanish and European colonialism. These protests were recognized by Mayor Liccardo and he requested a community meeting be called to discuss the issues. That meeting was held on Friday, January 29, 2021 and 162 members of the public attended. The video of that meeting can be found here:

https://www.youtube.com/watch?v=gH5vvuJISGs&ab_channel=CityofSanJose%2CCA

The community members that attended this meeting overwhelmingly requested the removal of the *Thomas Fallon Statue*. In response and with research into the notorious history of the statue and the history of Captain Thomas Fallon, Mayor Liccardo issued a memorandum to the Rules and Open Government Committee recommending that the City begin the deaccession process to remove the statue. The Rules and Open Government Committee met on February 10, 2021 to discuss this item and unanimously approved of the Mayor's recommendation. That item and the Mayor's memo can be found here:

<https://sanjose.legistar.com/LegislationDetail.aspx?ID=4774399&GUID=90803B78-1E0B-490A-80CD-98205CAF3C37&Options=&Search=>

According to the City of San José's process, the Policy for Deaccession and/or Removal of Artworks (Attachment A), artworks can be removed from San José's Public Art Collection when:

- The condition or security of the artwork cannot be reasonably guaranteed;
- The artwork requires excessive maintenance or has defaults of design or workmanship and repair or remedy is impractical or unfeasible, or the artwork endangers public safety; and
- Significant adverse public reaction has continued unabated over an extended period of time.

ANALYSIS

The *Thomas Fallon Statue* is comprised of two statues and a flagpole. The statues are 16 feet high, weigh roughly 12,000 lbs. of bronze, and have a spread steel footing embedded into three feet of concrete. Though only one criteria is enough to qualify an artwork for deaccession, the following three criteria for deaccessioning the *Thomas Fallon Statue* have been met.

1. Significant adverse public reaction has continued unabated over an extended period of time. Over the course of its 30+ year history, the *Thomas Fallon Statue* has been the subject of significant adverse public reaction. For many members of the San José community, it has been an activator of community distress and has resulted in numerous protests, vandalism, and public outcry (see Attachments C, E, F, G for documentation attesting to this troubled history).
2. The condition or security of the artwork cannot be reasonably guaranteed. The security of the *Thomas Fallon Statue* cannot be guaranteed as the statue is a location for continual protest and vandalism. Recent vandalism has resulted in road closures, violent and threatening language directed toward City staff, City officials, and residents. There has also been damage to auxiliary City property, private property, and numerous cleanups (Attachment G).
3. The artwork requires excessive maintenance. Two staff, at an average of six hours per cleanup, have had to remove tagging, paint spills, signage, burn marks, debris, and other forms of residue. The cleanups have been a regular occurrence for the life of the statue, but the need has been more demanding since May 2020, resulting in cleanups on a weekly basis (Attachment G).

An art appraisal by a certified fine art appraiser accredited by the Appraisers Association of America (AAA) has been completed (Attachment B). The value to auction this statue is not enough to recover the costs to de-install it. The appraisal value, or Estimated Fair Market Value, of the statue is \$6,000. Per the art market analysis section of the art appraisal, there is also not a viable art market for the statue. Its large size and controversial history render it difficult to sell to public agencies or collecting institutions. The declining interest in the Western Art market and its size result in the difficulty to sell it to private art collectors. In January 2021, the average melt price in California for bronze was \$1.40 per pound. A metal recycler will need to make a profit, usually 70% to 80% of the gross melt value, which represents a hypothetical sale price bracket of \$5,880–\$6,720 to melt one of the statues, and \$11,760 - \$13,440 for both. It is not uncommon for the melt value of metal works such as estate silver and large bronzes to be worth more than the object itself (exclusive of costs to sell such as de-installation and transportation). The artwork is worth more in melt value, but that value will not be enough to pay for the costs to de-install it which is estimated to be up to \$150,000 to: barricade road, shut down a lane of traffic, jackhammer concrete

foundation, de-install the statues with crane, build two stabilizing re-bar transportable foundations with crates for statues, transport to storage, and cleanup/build back of the concrete demolition.

For disposition of a deaccessioned artwork, the City deaccession policy (Attachment A) requires that the artist (if alive) be offered the first rights of buyback. Artist Robert Glen currently resides in Tanzania, Africa, and was responsive to email. Robert was notified of the deaccession process and responded to the City on February 2, 2021. He stated he would not be willing or interested in buying back the statue, but requested the statue not be melted. After receiving his decline, the City reached out to History San José to determine their level of interest in perhaps receiving the statue and using it as an educational tool. History San José expressed no interest and declined for three reasons:

1. The *Thomas Fallon Statue* is seen as a symbol of racism.
2. They do not have space for such a large statue.
3. They do not have proper security to protect the statue from vandalism.

Their letter is included in Attachment D.

City staff do not recommend re-installing the statue at another public location within the City because:

1. The *Thomas Fallon Statue* is culturally problematic and unsettling for a large portion of our local population.
2. The cost to build a new foundation at a new location and relocate the statue is estimated to be \$350,000, and there are no available City funds to do this.
3. There is no way to stop on-going vandalism at any publicly available location in the City.
4. To install the statue at another City location would void the deaccession process and perpetuate the ill regard many residents have for this statue.

CONCLUSION

The *Thomas Fallon Statue* Estimated Fair Market Value, and melt value, are not enough to cover the costs of de-installation. The artist has requested the statue not be melted and has stated he is not interested in buying back the statue. It is not recommended that the statue be melted or sold at Fair Market Value because the fiscal gain from either action would not be enough to pay for the costs of de-installation. It is not recommended that the statue be installed at another City location as this would circumvent the purpose of deaccessioning the work.

Given the contentious history of the *Thomas Fallon Statue* and that:

- significant adverse public reaction has continued unabated over an extended period of time;
- an exorbitant amount of time and cost is required to clean/maintain the artwork;
- the artwork endangers public safety, as protests have become violent at times;
- the condition or security of the artwork cannot be reasonably guaranteed;

- the lack of fiscal value of the artwork; and
- the recommendation from the Mayor and the Rules and Open Government Committee to go through the deaccession process;

It is recommended that the statue be deaccessioned and conveyed to a City storage facility for holding. Should a viable opportunity within the art market for the City to sell the sculpture be identified in the future, the City can pursue it.

EVALUATION AND FOLLOW-UP

Any recommendation of the Public Art Committee will be carried forward to the Arts Commission for review and recommendation to the full City Council for a final decision.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

Mayor Liccardo held a public art forum meeting on Friday, January 29, 2021 to discuss with the community the *Thomas Fallon Statue* and 162 members of the public attended. Based on community input the Mayor wrote a memo and submitted it to the Rules and Open Government Committee on February 10, 2021, recommending the process to deaccession and remove the statue begin. The Rules and Open Government Committee unanimously agreed. The Public Art Committee is to take up the conversation to deaccession and remove the statue at their meeting on Tuesday, May 4, 2021 at 5:30 pm.

COORDINATION

Preparation of this memo has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the City Manager's Office.

COMMISSION RECOMMENDATION/INPUT

The Public Art Committee will meet on May 4, 2021 to discuss this recommendation. If the Committee agrees, it will submit a recommendation to the Arts Commission on June 21, 2021.

COST SUMMARY/IMPLICATIONS

The estimated cost of the de-installation is up to \$150,000 to: barricade the road, shut down a lane of traffic, jackhammer concrete foundation, de-install and remove the statues with crane, build two stabilizing re-bar transportable foundations with crates for statues, transport to storage, cover

unforeseen costs, and cleanup/buildback of damage left from concrete demolition. Costs for staff time, procurement, contracting, managing construction, and continuing to manage community input is estimated at approximately \$25,000. The total estimated cost to execute the de-installation and conveyance to storage is \$175,000.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memorandum and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2020-2021 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	5393	Unanticipated/ Emergency Maintenance	3,098,014	175,000	IX-64	10/20/2020, No. 30494

CEQA

Project exempt per File No. ER20-225.

/s/
MICHAEL OGILVIE
PUBLIC ART DIRECTOR

For questions, please contact Michael Ogilvie, Public Art Director, at (408) 793-4338.

Attachments:

- A) Policy for the deaccession and/or removal of permanent public art
- B) Fair Market Value appraisal of *Thomas Fallon Statue*
- C) Mayor Liccardo's memo
- D) History San José letter
- E) Press/documentation of a troubled history
- F) Other public Input
- G) Sample maintenance images
- H) Historic Arts Advisory Committee documents (1990-1991)
- I) Fallon Research (1990)

PUBLIC ART COMMITTEE

April 26, 2021

Subject: DEACCESSION ARTWORK

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