

City of Alexandria, Virginia

MEMORANDUM

DATE: MAY 4, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: CONSIDERATION OF DEACCESSION OF A MICHAEL CURTIS PLAY SCULPTURE LOCATED AT SIMPSON PARK

ISSUE: Council consideration of deaccession of a Michael Curtis play sculpture located at Simpson Park.

RECOMMENDATION: That City Council approve the recommendation of the Alexandria Commission for the Arts (ACA) to:

- (1) Deaccession the Michael Curtis play sculpture located at Simpson Park (Attachment 1); and
- (2) Request staff to dispose of the play sculpture.

BACKGROUND: On August 19, 1996, Michael Curtis, a local artist, contacted the City and expressed an interest in creating a public art piece with his Art League students for one of Alexandria's parks. The artist proposed a play sculpture which children would climb on and which would also add a sculptural element to the park. Based on the subsequent meetings with Mr. Curtis, it was decided that all of his artists fees would be waived and that he and his students would create a dragon-like play sculpture.

Since the play sculpture was not purchased from a play equipment catalog and was created by Mr. Curtis and his Art League students, its acquisition fell under the City's "Policy on Acquired and Accessed Art" (Attachment 2), which required that the information about the dragon-like play sculpture be sent to the Commission's Public Art Committee for its consideration.

At its meeting on December 17, 1996, the Commissioners recommended that the Alexandria City Council accept the Art League class project of a Michael Curtis play sculpture as part of the Simpson Park renovation project. At the February 11, 1997 meeting, the Alexandria City Council accepted the Commission's recommendation and acquired the play sculpture into the City's permanent collection of public art.

DISCUSSION: In fall 2003, the Recreation, Parks and Cultural Activities staff, while conducting a regular inspection of Simpson park, observed the deterioration of the sculpture, and the unsafe conditions of the footings and foundation (Attachment 3). The sculpture was removed immediately from Simpson park and placed in the Department's maintenance shop. There were no funds available to repair the structure, and the City no longer wanted to have it on display as public art.

The "Policy on Acquired Art" states, "if a work originally received as a gift for a still-living donor or purchase from a still-living artist, the City will, as a matter of courtesy, notify that person of any determination made by the City to deaccession that work."

Subsequently, the Director of the Recreation, Parks and Cultural Activities sent a letter to Michael Curtis informing him that the play sculpture was removed and that the process for deaccession had begun (Attachment 4). A letter was received from Mr. Curtis stating he was not interested in the play sculpture and that it was, in part, a project of The Art League (Attachment 5). The Director of the Department sent a letter to the President of the Art League to request their interest in the play sculpture (Attachment 6). A letter was received, and The Art League felt that they had no claim, nor interest in having the play sculpture returned to them (Attachment 7).

The Public Art Committee and the Alexandria Commission for the Arts reviewed this information and recommend to deaccess the play sculpture from the City permanent collection.

ATTACHMENTS:

- Attachment 1. Photograph of the Michael Curtis play sculpture
- Attachment 2. City of Alexandria's Policy on Acquired and Accessed Art
- Attachment 3. Photographs of current conditions of the sculpture
- Attachment 4. October 17, 2003, letter from Director of Recreation, Parks and Cultural Activities to Michael Curtis
- Attachment 5. October 23, 2003, letter received from Mr. Curtis
- Attachment 6. November 18, 2003, letter from Director of Recreation, Parks and Cultural Activities to the President of the Art League
- Attachment 7. December 1, 2003, letter received from the Art League

STAFF:

- Kirk Kincannon, Director, Recreation, Parks and Cultural Activities
- Janet Barnett, Deputy Director, Recreation, Parks and Cultural Activities
- Cheryl Lawrence, Supervisor, Special Events/Cultural Arts, Recreation, Parks and Cultural Activities
- Cheryl Anne Powalisz, Cultural Arts Administrator, Special Events/Cultural Arts, Recreation, Parks and Cultural Activities



**Policy
On
Acquired Art**

City of Alexandria

Adopted by City Council
September 8, 1987

**POLICY
FOR THE PURCHASE OF WORKS OF ART
BY THE CITY OF ALEXANDRIA**

SECTION ONE -- PROCEDURE

- 1.1. **RESPONSIBILITY.** The ultimate responsibility for the purchase, including the commissioning of works of art by the City of Alexandria (the "City") rests with the City Council. It shall be the policy and practice for the City Council to seek a formal recommendation from the Alexandria Commission for the Arts (the "Commission") when a work of art is to be purchased. The Commission and its subordinate bodies shall act in accordance with this Policy Statement and any internal guidelines established by the Commission.
- 1.2. **REVIEW PANEL.** The Commission shall establish and appoint the members of a Public Art Committee (the "Committee") to advise the Commission on the purchase of works of art.
- 1.2.1. The Committee will consist of five members, as follows:
- two artists or arts professional who reside or work in the City;
- two artists or art professional who may or may not reside in the City;
and
- one citizen resident of the City.
- 1.2.2. Committee members will serve three-year terms. Initial terms will be two three-year terms, two two-year terms and one one-year term to be determined by lot. Committee members may serve a maximum of one full three-year term.
- 1.2.3. The Committee will have the right as it deems appropriate to appoint subordinate bodies and to consult Commission Resource Panels for advice on the acquisition of particular works of art.
- 1.2.4. The Committee will make its recommendations regarding acquisitions of particular works of art at the next regular Commission meeting held after the Commission requests the Committee's assistance unless a different timetable is agreed upon by the Commission and the Committee.
- 1.2.5. Members of the Committee are subjects to all conflict-of-interest policies of the Commission, the City of Alexandria and Commonwealth of Virginia as detailed in Appendix A.

- 1.3. **CITIZEN INVOLVEMENT.** The public will be encouraged to express opinions, in writing, to the Commission.
 - 1.3.1. A photograph or model of a prospective purchase (including as much information about the work as possible) will be displayed for public viewing in one or more prominent areas within the City at least two weeks before the Commission meets to consider the acquisition.
- 1.4. **COMMISSION RECOMMENDATION.** The Commission shall adopt a formal recommendation to the City Council relating to the proposed acquisition of any work of art by the City.
- 1.5. **FUNDING.** Commission funds will be set aside for the acquisition of art in accordance with this Policy Statement. The Commission may also seek other sources of funding for this purpose.
- 1.6. **REFUSAL.** The Commission reserves the right to recommend that the City Council refuse any work of art.
- 1.7. **WORKS OF HISTORIC VALUE.** This policy shall not apply to any existing or future policies and procedures of the City of Alexandria and the Office of Historic Alexandria relating to works of historic interest and/or value.
- 1.8. **COMMISSION REVIEW REQUIRED.** Except as provided for in Paragraph 1.7, all works of art purchased with City funds are subject to this Policy Statement.
- 1.9. **PRIOR APPROVAL OF CITY ATTORNEY.** No work of art owned by, under the control of or fabricated by a City employee shall be eligible for purchase or commission by the City without the prior approval of the City Attorney.

SECTION TWO - RIGHTS AND RESPONSIBILITIES OF THE ARTIST AND THE CITY

- 2.1. **PURCHASE AGREEMENT.** No work will be purchased without a written agreement between the artist and the City which has been approved by the City Council and signed by the City Manager. Such agreement shall, prior to its submission to the City Council, be approved by the Commission and, as to its legal sufficiency, by the City Attorney. Sample standard contracts indicative of a typical agreement for the purchase of a work of art and typical agreement for the Commission of a work of art are attached to this Policy Statement. The Commission and the City Council may vary the terms of either if these sample agreements as circumstances require.
- 2.2. **SITE-SPECIFIC WORKS OF ART.** Unless otherwise agreed by contract, the artist will be responsible for fabrication, transportation and installation of works. The City will not assume liability for injuries to persons or property during installation of works.
- 2.3. **DEACCESSIONING.** Deaccessioning means the formal process used to remove a work of art from the City's collection.
- 2.3.1. This Policy Statement specifically contemplates that works from the City's collection may, from time to time, be sold or otherwise disposed of.
- 2.3.2. Proposals to the City Council with respect to deaccession of works from the City's collection shall be previously considered by the Commission and the Panel.
- 2.3.3. In determining whether any work is to be deaccessioned, consideration is given to:
- The City's ability to continue properly to preserve or care for the work;
 - The extent to which the work may, in the context of the collection, be surplus, redundant, or a duplicate of inferior quality;
 - The extent to which the disposition of the work may, whether by exchange or through use of proceeds derived from its sale, permit the City to upgrade and refine the collection; and/or
 - Whether such work has been found to have been falsely documented, described or attributed and/or to be a forgery.
- 2.3.4. No work that has been acquired by the City with a restriction as to its retention may be deaccessioned while such restriction remain in force. The Commission of its agent shall be notified by the City Council of all such restrictions at the time of acquisition and will maintain a record of those restrictions.

- 2.3.5. If a work originally received as a gift for a still-living donor or purchase from a still-living artist, the City will, as a matter of courtesy, notify that person of any determination made by the City to deaccession that work.
- 2.3.6. The manner in which a collection work which has been deaccessioned is to be disposed of shall be determined by the City Council with the advice of the commission. Except in the case of a work which has been found to have been falsely documented, described or attributed and/or to be a forgery, no single method is considered preferable for every instance. Among the methods which may be considered are:
- Exchange
 - Public auction; and
 - Private Sale.
- 2.3.7. In the case of a work which is found to have been falsely documented, described or attributed and/or to be a forgery and which is subsequently deaccessioned, additional consideration must be given to the protection of the public's interest. Depending upon the manner in which the work was originally acquired and all of the surrounding circumstances, consideration may be given to:
- Rescinding any purchase by which the work was required;
 - Depositing the work on a long-term basis in a scholarly archive devoted to the study of such material; and/or
 - Except in the case of a forgery and only if any error in the work's documentation, description or attribution will not thereby be perpetuated, public auction or private sale.
- 2.3.8. The details of the manner in which any deaccessioned work has been disposed of shall be a matter of public record.
- 2.3.9. If a work of art purchased by the City from an artist is sold by the City during the lifetime of that artist, the artist shall be entitled to a royalty equal to seven (7) per cent of the difference between the City's purchase price and the gross sale price or fair market value of any property received in exchange for the work. This paragraph will not apply to the following:
- 2.3.9.1. The resale of a work for a gross sale price less than \$500, or in exchange for property with a fair market value of less than \$500; and
 - 2.3.9.2. The resale of a work for a gross sale price of less than 140 per cent of the purchase price paid by the City, or in exchange for property with a fair market value of less than 140 per cent of the purchase price paid by the City.

- 2.3.10. Proceeds from the disposition of deaccessioned works will be returned to the Commission's purchase fund.
- 2.4. **RECORDS.** The Commission of its agent(s) will maintain a permanent record of works owned by the City.
- 2.4.1. The Artist must complete a catalog worksheet supplied by the City before final payment for the work will be processed. The worksheet will include such information as the artist's name and the medium used.
- 2.5. **CREDITS.** A notice, including the artist's name and mentioning the City's ownership, will be publicly displayed and identified with the work. This notice will be fabricated, installed and paid for by the City. The Commission will approve the design of the notice.
- 2.6. **INSURANCE.** The City will insure, through commercial insurance or its won policy of self-insurance, all completed works of art purchased by the City for amounts and under conditions the City, with the advice of the Commission, deems appropriate.

**POLICY
FOR THE ACCEPTANCE OF DONATIONS
OF WORKS OF ART
BY THE CITY OF ALEXANDRIA**

SECTION ONE -- PROCEDURE

- 1.1. **RESPONSIBILITY.** The ultimate responsibility for the acceptance of donations of works of art by the City of Alexandria (the "City") rests with the City Council. It shall be the policy and practice for the City Council to seek a formal recommendation from the Alexandria Commission for the Arts (the "Commission") when a work of art is offered to the City as a gift. The Commission and its subordinate bodies shall act in accordance with this Policy Statement and any internal guidelines established by the Commission.
- 1.2. **REVIEW PANEL.** The Commission shall establish and appoint the members of a Public Art Committee (the "Committee") to advise the Commission on the acceptance of donated works of art.
- 1.2.1. The Committee will consist of five members, as follows:
- two artists or arts professionals who reside or work in the City;
 - two artists or arts professionals who may or may not reside or work in the City; and
 - one citizen resident of the City.
- 1.2.2. Committee members will serve three-year terms. Initial terms will be two three-year terms, two two-year terms and one one-year term, to be assigned by lot. Committee members may serve a maximum of one full three-year term.
- 1.2.3. The Committee will have the right as it deems appropriate to appoint subordinate bodies and to consult Commission Resource Panels for advice on the acquisition of particular works of art.
- 1.2.4. The Committee will make its recommendations regarding acquisitions of particular works of art at the next regular monthly Commission meeting held after the Commission requests the Committee's assistance, unless a different timetable is agreed upon by the Commission and the Committee.

- 1.2.5. Members of the Committee are subject to all conflict-of-interest policies of the Commission, the City of Alexandria and the Commonwealth of Virginia as detailed in Appendix A.
- 1.3. **CITIZEN INVOLVEMENT.** The public will be encouraged to express opinions, in writing, to the Commission.
- 1.3.1. A photograph or model of prospective donation (including as much information about the work as possible) will be displayed for public viewing in one or more prominent areas within the City at least two weeks before the commission meets to consider the acquisition.
- 1.4. **COMMISSION RECOMMENDATION.** The Commission shall adopt a formal recommendation to the City Council relating to the proposed acquisition of any work of art by the City.
- 1.5. **REFUSAL.** The Commission reserves the right to recommend that the City Council refuse any work of art.
- 1.6. **WORKS OF HISTORIC VALUE.** This policy shall not apply to any existing or future policies and procedures of the City of Alexandria and the Office of Historic Alexandria relating to works of historic interest and/or value.
- 1.7. **COMMISSION REVIEW REQUIRED.** Except as provided in paragraph 1.6, all works of art offered as gifts to the City are subject to this Policy Statement.
- 1.8. **PRIOR APPROVAL OF CITY ATTORNEY.** No work of art owned by, under the control of or fabricated by a City employee shall be eligible for purchase or commission by the City without the prior approval of the City Attorney.

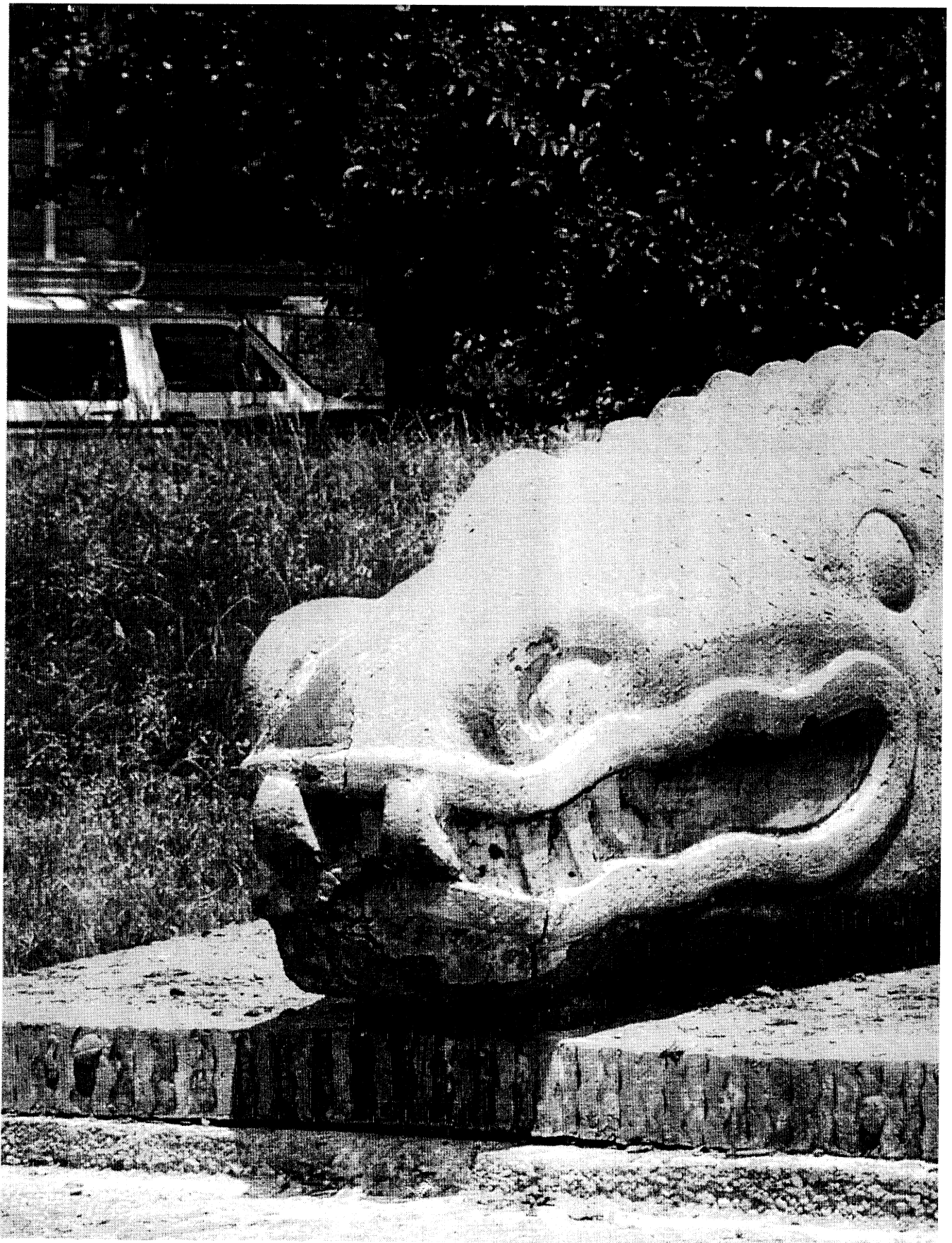
SECTION TWO -- RIGHTS AND RESPONSIBILITIES OF THE DONOR AND THE CITY

- 2.1. **LOANS.** The City will consider accepting works of art on loan where it determines that acceptance of loan of the work will benefit the City. All such loans shall be for a definite time period based on the life of the donor.
- 2.2. **LIFE ESTATES.** The City will consider accepting the donation of any work of art in which the donor or one other person retains an interest for life where it determines that acceptance of the work will the City.
- 2.3. **FRACTIONAL INTERESTS.** The City will consider accepting the donation of fractional interest of any work of art where it determines that acceptance of the work will benefit the City.
- 2.4. **COPYRIGHT.** Each donation must be accompanied by a clear statement from the donor regarding ownership of the copyright for that work of art.
- 2.5. **DEACCESSIONING.** Deaccessioning mead the formal process used to remove a work of art from the City's collection.
 - 2.5.1. This Policy Statement specifically contemplate that works from the City's collection may, from time to time, be sold or otherwise disposed of.
 - 2.5.2. Proposals to the City Council with respect to deaccession of works from the City's collection shall be previously considered by the Commission and the Panel.
 - 2.5.3. In determining whether any work is to be deaccessioned, consideration is given to:
 - The City's ability to continue to properly preserve or care for the work;
 - The extent to which the work may, in the context of the collection, be surplus, redundant, or a duplicate of inferior quality;
 - The extent to which the disposition of the work may, whether by exchange or through the use of proceeds derived from its sale, permit the City to upgrade and refine the collection; and/or
 - Whether such work has been found to have been falsely documented, described or attributed and/or to be a forgery.
 - 2.5.4. No work which has been acquired by the City with a restriction as to its retention may be deaccessioned while such restriction remains in force. The

Commission or its agent shall be notified by the City Council of all such restrictions at the time of acquisition and shall maintain a record of those restrictions.

- 2.5.5. If a work was originally received as a gift from a still-living donor or purchased from still-living artist, the City will, as a matter of courtesy, notify that person of any determination made by the City to deaccession that work.
- 2.5.6. The manner in which a collection of work that has been accursed is to be disposed of shall be determined by the City Council with the advice of the Commission. Except in the case of a work that has been found to have been falsely documented, described or attributed and/or to be forgery, no single method is considered preferable for every instance. Among the methods which may be considered are: Exchange; Public auction; and Private sale.
- 2.5.7. In the case of work which is found to have been falsely documented, described or attributed and/or to be a forgery and which is subsequently deaccessioned, additional consideration must be given to the protection of the public's interest. Depending upon the manner in which the work was originally acquired and all of the surrounding circumstances, consideration may be given to:
- Rescinding any purchase by which the work was acquired;
 - Depositing the work on a long- term basis in a scholarly archive devoted to the study of such material; and/or
 - Except in the case of a forgery and only if an error in the work's documentation, description or attribution will not hereby be perpetuated, public auction or private sale.
- 2.5.8. The details of the manner in which any deaccessioned work has been disposed of shall be a matter of public record.
- 2.5.9. If a work which was donated to the City by an artist is sold by the City during the lifetime of that artist, the artist shall be entitled to a royalty equal to seven (7) per cent of the difference between the City's purchase price and the gross sale price or the fair market value of any property received in exchange for the work. This paragraph will not apply to the following:
- 2.5.9.1. The resale of a work for a gross sale price of less than \$500, or in exchange for property with a fair market value of less than \$500; and

- 2.5.9.2. The resale of a work for a gross sale price of less than 140 per cent of the purchase price paid by the City, or in exchange for property with a fair market value of less than 140 per cent of the purchase price paid by the City.
- 2.5.10. Proceeds from the disposition of deaccessioned works will be returned to the Commission's purchase fund.
- 2.6. **RECORDS.** The Commission or its agent(s) shall maintain a permanent record of works owned by the City.
- 2.6.1. Donors will complete a catalog worksheet for each work of art, including such information as the artist's name and the medium used.
- 2.7. **CREDITS.** The donor will be named in the City's permanent record and whenever a work of art is exhibited unless the donor requests to be anonymous.
- 2.8. **APPRAISALS.** Neither the Commission nor the Panel will provide to donors appraisals of donated works of art. The Commission will require a donor to submit an appraisal of the donated work by a member of the American Society of Appraisers for insurance purposes. This requirement may be waived at the discretion of the Commission.
- 2.9. **INSURANCE.** The City will insure, through commercial insurance or its own policy of self-insurance, all completed works of art accepted for its collection for amounts and under conditions the City, with the advice of the Commission, deems appropriate. The City will not necessarily insure works or art for the amount at which such works are valued in appraisals submitted by donors or solicited by the city or the Commission.









DEPARTMENT OF RECREATION, PARKS
AND CULTURAL ACTIVITIES

1108 Jefferson Street
Alexandria, Virginia 22314-3999

Phone (703) 838-4343
Fax (703) 838-6344

Sandra Whitmore
Director

October 17, 2003

Michael Curtis
110 South Columbus Street
Alexandria, Virginia 22314

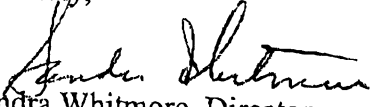
Dear Mr. Curtis:

This letter is to inform you that we have removed the Simpson Dragon play sculpture from Simpson Park, because the sculpture and its base have cracks. This poses a safety concern for the children who play on it. The sculpture is currently in storage at our Maintenance Shop at 133 Quaker Lane.

I have requested staff to begin the process for recommending that the sculpture be removed from the City's collection because of the conservation needs and the City's ability to continue to properly preserve the sculpture. This deaccession process includes informing both the Public Art Committee and the Alexandria Commission for the Arts, and the City Council.

We are happy to return the sculpture to you. If you do not want it, please let me know.

Sincerely,


Sandra Whitmore, Director
Recreation, Parks and Cultural Activities

THE CLASSICAL GALLERY

October 23, 2003

Sandra Whitmore
Director, Recreation, Parks and Cultural Activities
1108 Jefferson Street
Alexandria, VA 22314

Dear Ms. Whitmore:

There has been a confusion about the Simpson Dragon that I would like to clear up. The play sculpture was a project of The Art League, a gift from The Art League, and made by Art League students who were supervised by me - chair of the Sculpture Department at that time. I was not paid for the sculpture - it was not mine; instead, all the money was used for materials, molding, and casting.

To avoid maintenance problems, I suggested that the sculpture be cast in bronze; the cost for casting would have been \$1,500 more than was paid. As this was not done, I have looked in on the sculpture from time to time; most recently late this summer when I found the sculpture gone. I might have repaired it with caulking and a rubber paint.

I expect that when you inform the Public Art Committee, the Alexandria Commission for the Arts, and the City Council of deaccessioning my name will not be on it: The sculpture was not, is not, nor will it be mine.

Wishing you the best in your good work for the city, I remain

Yours Sincerely,



Michael Curtis

*City of Alexandria, Virginia*

Department of Recreation, Parks and Cultural Activities
1108 Jefferson Street
Alexandria, Virginia 22314-3999



Sandra Whitmore
Director

(703) 838-4343
Fax (703) 838-6344

November 18, 2003

Betsy Anderson, President
The Art League Gallery and School
9301 Craig Avenue
Alexandria, VA 22309

Dear Ms. Anderson:

This letter is to inform the Art League that the Department of Recreation, Parks and Cultural Activities removed the Simpson Dragon play sculpture from Simpson Park, because the sculpture and its base are in disrepair and this poses a safety concern for the children who play on it. The sculpture is currently in storage at our Maintenance Shop at 133 Quaker Lane.

Michael Curtis, a teacher with the Art League School at the time of the acquisition of the Simpson Dragon sculpture, was provided with this information. We offered to return the sculpture to Mr. Curtis, but he recommended that we work directly with the Art League. If the Art League is not interested in having the sculpture returned to them, please let us know.

I requested staff to begin the process for recommending that the sculpture be removed from the City's collection because of the conservation needs and the City's ability to continue to properly preserve the sculpture. This deaccession process includes informing both the Public Art Committee and the Alexandria Commission for the Arts, and the City Council. If you have questions, please call Cheryl Anne Powalisz at 703.838.6348.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Whitmore".

Sandra Whitmore, Director
Recreation, Parks and Cultural Activities

THE CLASSICAL GALLERY

October 23, 2003

Sandra Whitmore
Director, Recreation, Parks and Cultural Activities
1108 Jefferson Street
Alexandria, VA 22314

Dear Ms. Whitmore:

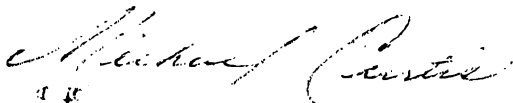
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I expect that when you inform the Public Art Committee, the Alexandria Commission for the Arts, and the City Council of deaccessioning my name will not be on it: The sculpture was not, is not, nor will it be mine.

Wishing you the best in your good work for the city, I remain

Yours Sincerely,


Michael Curtis

theartleague

50 years of living, making, and appreciating art

105 North Union Street
Alexandria, Virginia 22314
tel. 703.683.1780
fax 703.683.5786
www.theartleague.org

a nonprofit organization

December 1, 2003

Sandra Whitmore, Director
Recreation, Parks and Cultural Activities
1108 Jefferson Street
Alexandria, Virginia 22314

Dear Ms. Whitmore:

Thank you for your letter about the Simpson Dragon. I have talked to the Art League School Director and she says that we are not interested in having the Simpson Dragon sculpture returned to us. Michael Curtis no longer teaches for the Art League and we do not feel that we have any claim to it nor do we want it returned to us.

Thank you again for contacting us.

Sincerely,



Betsy Anderson, President
The Art League Board of Directors