

## Timeline and overview for the removal of the Early Days portion of the Pioneer Monument

- For over 25 years, the Native American community and supporters have been trying to remove the Early Days portions of the Pioneer Monument, located at Civic Center. This statue glorifies the subjugation of a Native American man at the feet of a Catholic missionary and a Spanish cowboy and perpetuates damaging and historically inaccurate stereotypes about Native people.
- In response to requests for removal during the 1990s, the San Francisco Arts Commission responded with a plaque next to the statue to provide more context. The plaque, obstructed from view by foliage, reads:

“The Pioneer Monument, created in 1894, represents a conventional attitude of the 19<sup>th</sup> Century. It commemorated the settlement of California by ‘western civilization.’ This plaque, added in 1996 seeks to acknowledge the effect of this settlement on the California Native Americans. The three figures of “Early Days,” a Native American, a missionary, and a vaquero, represent the three cultures of early California. At least 300,000 Native people, and perhaps far more-lived in California at the time of the first European settlement in 1769. During contact with colonizers from Europe and the United States, the Native population of California was devastated by disease, malnutrition and armed attacks. The most dramatic decline of the Native population occurred in the years following the discovery of gold in 1848. By 1900, according to the US census, California’s Native American population had been reduced to 15,377. In the 20<sup>th</sup> Century, California’s Indian population steadily rebounded, reaching 236,078 in 1990.”

- In August, 2017, after events in Charleston, the community renewed their efforts to have this statue removed.
- Both the San Francisco Arts Commission (who owns the statue) and the Historic Preservation Commission (who is responsible for issuing permits pertaining to items in the Civic Center) unanimously agreed on three separate occasions that the statue glorifies the genocide that was enacted upon California natives and it was time for it to be removed.

Excerpt from SFAC rebuttal: On March 5, 2018 at a Meeting of the Full Arts Commission, Commissioners voted unanimously to pass Resolution No. 035-18-057 authorizing the removal and placement in storage of "Early Days" after completion of the process described in Section 7 of the Guidelines of the Civic Art Collection of the City and County of San Francisco, and upon determination that removal of the artwork is appropriate under the criterion of "significant adverse public reaction over an extended period of time."

- As the removal process was underway, a Petaluma lawyer named Frear Stephen Schmid filed an appeal to stop the removal, claiming that to remove the statue would be no different than book burning by the Nazis or destroying statues by the Taliban. Even if the statue was viewed as ‘unpleasant’ by some, it was California history and must remain. The basis of his appeal is as follows:
  - 1) The Arts Commission did not have authority to remove the statue;
  - 2) The Historic Preservation Commission erred in issuing a Certificate of Appropriateness;
  - 3) The removal of one statue is “tantamount to the destruction of Early Days-its presence for human perception is destroyed by hiding it.”
  - 4) The purpose of the Historic Preservation Commission is to preserve and to allow the removal of the statue abuses and ignores their purpose;
  - 5) The approval of the permit for removal violates the First Amendment and Constitutional Protections;
  - 6) CEQA required at the very least an EIR since the monument is a public resource.
- The SFAC and HPC’s rebuttal, dated April 12<sup>th</sup>, addresses these points as follows:
  1. The San Francisco Arts Commission had no standing to apply for the COA.

- a. The San Francisco Arts Commission has adequate standing to apply for a COA related to public art pursuant to San Francisco Charter Section 5.103, and Administrative Code Sections 2A.150 and 2A.150.1 (Exhibit 2).
2. It is illegal under California Civil Code to destroy or alter art.
  - a. The proposal is not to destroy or alter the “Early Days” sculpture. Instead, the proposal is a choice to not publicly display the art at this time and to place it in long term, secure, fine art storage.
3. The removal of the “Early Days” sculpture will distort the symmetry, balance, and axial alignment of Pioneer Monument with City Hall.
  - a. The axial alignment and current balanced, symmetrical layout of the monument components will not be altered as part of the proposal. The placement of the five granite bases that make up the overall footprint of the monument will remain unchanged, as will the placement of the four remaining sculptures.
4. The Commission wrongly found the proposal to meet the Secretary of the Interior’s Standards considering the changes to Pioneer Monuments physical presence and character.
  - a. The Commission determined that the proposed work, overall, maintains the character-defining features of the Civic Center Landmark District because it is limited to the removal of only one out of five historic bronze sculptures on a single monument within the district. Pioneer Monument is only one part of the much larger landmark district, which also includes City Hall, the War Memorial Complex, and the Civic Auditorium. The Commission also found that the proposed alteration to the monument and related repair work to the granite base will not affect the monument’s overall craftsmanship, setting, or relationship to the landmark district.
  - b. The Commission further found that the proposal would meet the Secretary of the Interior Standards, as detailed in Commission Motion 0331.
5. The Appellant raises the question of whether issuance of the COA and the placement of a plaque explaining its removal will violate the First Amendment and the corresponding California Constitutional provisions by favoring some expression over others.
  - a. The Pioneer Monument, including the “Early Days” sculptural group displayed on City property, has the effect of conveying a government message and represents government speech (See *Pleasant Grove City, Utah v. Summum* (2009) 555 U.S. 460, 472). Because the First Amendment does not regulate government speech, the City has the right to speak for itself and to select the views it wants to express by continuing to display the sculpture or by removing it (*Id.*, at 467-68.). The removal of “Early Days” is consistent with the City’s message that it has a responsibility to oppose the systematic racism towards indigenous peoples, and to recognize the historic discrimination and violence inflicted upon indigenous people (See S.F. Administrative Code section 16.4 (Indigenous Peoples Day). Likewise, the City may select the views it wants to express on any plaque explaining the removal of “Early Days” (*Pleasant Grove, 555 U.S. at 472.*). In sum, the City’s decision to remove “Early Days” from display on city property and any decision to place a plaque explaining its removal are lawful government speech.
6. An Environmental Impact Report (EIR) should have been required.

a. The Department and Commission found the proposal to be categorically exempt from the California Environmental Quality Act (CEQA). The project qualifies for a Class 1 Categorical Exemption for the following reasons:

i. The scope of work amounts to an alteration of a property within the Civic Center Landmark District amounting to less than 10,000 square feet.

ii. The project was evaluated using the Secretary of the Interior's Standards for Rehabilitation and found to be conforming with those standards, as outlined in the Planning Department's case report.

- On April 18<sup>th</sup>, this matter went before the Board of Appeals. The Board of Appeals went against the two other City Commissions and voted to uphold Schmid's appeal and block removal. There was no meaningful discourse by the Board of Appeals about what they were charged with: determining whether or not the Historic Preservation Commission issued the permits legally and in keeping with their normal processes. City staff were not asked pertinent questions beyond their individual statements and several Board members were completely silent. It became apparent that they had discussed the matter behind closed doors and came up with their determination before coming to the meeting. This would indicate an illegal seriatim meeting took place and violated:

- State law: The Brown Act (Government Code sec. 54950 et. seq.)
- Local law: The Sunshine Ordinance (S.F. Admin. Code chapter 67)

- One member focused instead on his personal opinion that there weren't enough people wanting removal 'to fill a comic book' and that he was an expert on these matters because his family's name is on multiple museums and buildings in the city.

Ultimately, their determination was that since the HPC seldom approves permits for removal, than this permit was out of the ordinary for them and thereby incorrect.

ACTION: Upon motion by Vice President Swig, the Board voted 5-0 to grant the appeal and deny the Certificate of Appropriateness on the basis that the Historic Preservation Commission acted incorrectly because their review was inconsistent with the typical review of historic pieces and the Historic Preservation Commission did not satisfy Standard 2 of the Secretary of Interior's Standards.

**Minutes from the meeting:**

<http://sfgov.org/bdappeal/sites/default/files/Board%20of%20Appeals%20Meeting%20Minutes%20April%2018%2C%202018%20%28Final%29.pdf>

**Video from the meeting (Item 9):**

[http://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=30322](http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=6&clip_id=30322)

- On April 19<sup>th</sup>, a community member spoke by phone to Board of Appeals member, Ann Lazurus, who stated that "she and the other board members felt that the sculpture was accurate about what happened -- that it accurately represents the genocide that occurred. She also said there were many other statues that are offensive to different communities around the city, and she worried about precedent."

This raises 2 questions: 1) When were these points discussed? During the April 18<sup>th</sup> public meeting, none of these points were deliberated. This would further imply that an unlawful seriatim meeting took place. 2) These points were not under the Board of Appeals purview. Their responsibility was to determine whether or not the

Historic Preservation Commission acted consistently with their typical review of historic pieces. If this is what they based their decision on, then they erred since that was not the decision before them.

- On April 25, 23 community members spoke during public comment to let the Board of Appeals know they did not agree with their ruling and requested a rehearing.

**Minutes from the meeting:**

<http://sfgov.org/bdappeal/sites/default/files/Board%20of%20Appeals%20Meeting%20Minutes%20April%2025%2C%202018%20%28Final%29.pdf>

**Video from the meeting (public comment):**

[http://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=30393](http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=6&clip_id=30393)

- On April 27<sup>th</sup>, The San Francisco Arts Commission and the Historic Preservation Commission jointly filed a request for a rehearing. The rehearing request will be heard on June 13<sup>th</sup>.
- On May 1<sup>st</sup>, the Board of Supervisors unanimously passed a resolution:

[Supporting the Removal of the Pioneer Monument’s “Early Days” Sculpture - Urging the Board of Appeals to Rehear the Appeal Regarding the Pioneer Monument] 180431 Sponsors: Peskin; Kim, Fewer and Ronen Resolution supporting the San Francisco Arts Commission's (SFAC) determination to remove the “Early Days” sculptural group of the Pioneer Monument and the Historic Preservation Commission's (HPC) approval of a Certificate of Appropriateness under Article 10 of the Planning Code for such removal; urging the Board of Appeals to hear the rehearing requests of the SFAC and HPC; and directing the Clerk of the Board to transmit this Resolution to the Board of Appeals, Arts Commission and Historic Preservation Commission upon final passage. Supervisor Ronen requested to be added as a co-sponsor.

**Video of the meeting (180431):**

[http://sanfrancisco.granicus.com/MediaPlayer.php?view\\_id=10&clip\\_id=30425](http://sanfrancisco.granicus.com/MediaPlayer.php?view_id=10&clip_id=30425)

- Also on May 1<sup>st</sup>, San Francisco’s Human Rights Commission also wrote a letter urging the Board of Appeals to rehear and reconsider their decision.