

# MILLS ACT

## TAILORED PROGRAM OUTLINE

January  
2018

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## INTRODUCTION

Enacted by the State of California in 1972, the Mills Act grants participating local governments the authority to enter into contracts with owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief (CGC 12.50280-50290, CRTC 1.9.439-439.4). It is the “*single most important economic incentive program in California for the restoration and preservation of qualified historic buildings by private property owners.*”<sup>1</sup>

An important feature of the Mills Act program is its flexibility. Although the State has certain requirements that must be included in all individual Mills Act policies, the program allows jurisdictions to develop additional requirements to insure that unique local goals and needs are met. By implementing a tailored Mills Act program in Palo Alto, with finely tuned eligibility criteria and contract requirements, the City can both incentive the thoughtful preservation of our shared heritage and wisely address the community’s priorities and needs. Tailored programs have been successfully adopted in other California cities that have similar complications like high property values and schools supported by Basic Aid.<sup>2</sup>

### Tailored Program Summary

The Tailored Mills Act Program for Palo Alto will be program, where all tax relief received by a property owner will be reinvested in the rehabilitation, preservation or restoration of the historic property. Work will be reviewed and approved by the Historic Resources Board (HRB) and will comply with the Secretary of the Interior’s Standards (Standards). Mills Act contracts will be open to all property types but will be limited in length, the maximum being 15 years. For educational purposes, property owners will be required to fund, with tax redirection, and display an interpretive panel along the public right of way that is visible to the public. The Mills Act program is voluntary and requires owner consent.

### COMMUNITY PRIORITIES AND NEEDS ADDRESSED BY THE TAILORED MILLS ACT PROGRAM

- |   |  |
|---|--|
| 1. contributes to <b>Affordable Housing</b> | 2. encourages <b>Seismic Safety</b>          |
| 3. safeguards a <b>Sense of Place</b>       | 4. promotes <b>Heritage Tourism</b>          |
| 5. fosters <b>Civic Pride</b>               | 6. preserves <b>Neighborhood Character</b>   |
| 7. protects <b>Palo Alto’s History</b>      | 8. supports <b>Environmentally Conscious</b> |
| 9. provides <b>Preservation Incentive</b>   | <b>Development</b>                           |

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<sup>1</sup> California Office of Historic Preservation, “Mills Act Program,” [http://www.ohp.parks.ca.gov/?page\\_id=21412](http://www.ohp.parks.ca.gov/?page_id=21412).

<sup>2</sup> Other nearby communities with successful Mills Act programs includes Oakland, Berkeley, San Francisco, Saratoga, Los Altos, San Jose and Campbell. Cities that have both basic aid school districts and Mills Act program include Beverley Hills, Campbell, Los Altos and Saratoga.

**Role of the Applicant**

The Applicant is responsible for the maintenance and upkeep of the property during the duration of the Mills Act contract and must follow the approved Rehabilitation and Maintenance plan. The Applicant is responsible for obtaining appropriate documents, signatures and recordation attachments as well as associated fees prior to work and successful contract recordation.

**Role of the Planning Department**

The Planning Department oversees all Mills Act applications and monitors existing Mills Act properties. The Historic Preservation Planner will work with property owners to complete their applications and develop rehabilitation and maintenance plans that are specific to each property. The Planning Department will keep the applicant(s) informed throughout the year, as the application moves forward through HRB review, City Council and the Assessor's Office. Once a Mills Act contract is entered into, all subsequent work on the property during the duration of the contract will require staff approval which includes compliance with the Standards.

**Role of the Historic Resources Board**

The HRB will first hold a hearing to consider a recommendation to City Council whether to approve, modify or deny the initial Mills Act application. Once a Mills Act contract is entered into, all subsequent work on the property during the duration of the contract will require staff approval. If staff determines proposed work does not comply with the Standards, staff will refer the application to the HRB.

**Role of Santa Clara County Assessor's Office**

The role of the Assessor's Office is to locate and accurately assess all taxable property Palo Alto and also serve as the county's official record-keeper of documents such as deeds, liens, maps and property contracts. In a Mills Act Historical Property contract, the Assessor's Office assesses qualified properties based on a state prescribed approach and records the fully executed contract. All Mills Act properties will receive an initial valuation during the application process and will be assessed annually by the January 1st lien date and in subsequent years, as required by state law. The State Board of Equalization has strict guidelines the assessor must follow in order to value Mills Act properties (Revenue and Taxation Code Section 439.2).

**Role of the California Office of Historic Preservation**

OHP provides Mills Act information to local governments and uses information provided by local governments to maintain a list of communities participating in the Mills Act program as well as copies of Mills Act ordinances, resolutions, and contracts that have been adopted. OHP does not participate in the contract negotiations, is not a signatory to the contract and has no authority over the administration of the Mills Act program.

## MILLS ACT STATE POLICY

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Effective March 7, 1973, Chapter 1442 of the Statutes of 1972 (also known as the Mills Act) added sections 50280 through 50289 to the Government Code to allow an owner of qualified historical property to enter into a preservation contract with local government. When property is placed under such a contract, the owner agrees to restore the property if necessary, maintain its historic character, and use it in a manner compatible with its historic characteristics.

### **State Criteria for Eligibility**

As set forth in California's Government Code 50280.1, a property is eligible for the Mills Act as follows: "Qualified historical property" for purposes of this article, means privately owned property which is not exempt from property taxation and which meets either of the following:

- (a) Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2 (b) of Title 26 of the Code of Federal Regulations.
- (b) Listed in any state, city, county or city and county official register of historical or architecturally significant sites, places or landmarks.

### **State Contract Requirements**

As set forth by California Government code 50281, the following requirements must be included in the language of any Mills Act contract:

- (a) The term of the contract shall be for a minimum period of 10 years.
- (b) Where applicable, the contract shall provide the following:
  - (1) For the preservation of the qualified historical property and, when necessary, to restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation, and the State Historical Building Code.
  - (2) For the periodic examinations of the interior and exterior of the premises by the assessor, the Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the owner's compliance with the contract.
  - (3) For it to be binding upon, and inure to the benefit of all successors in interest of the owner. A successor in interest shall have the same rights and obligations under the contract as the original owner who entered into the contract.

## PROPOSED LOCAL MILLS ACT POLICY

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The proposed Tailored Mills Act Program must include all the State contract requirements above. In addition, staff is proposing to include the following more restrictive criteria to balance historic preservation with the significant competing goals of the community, which is allowed under the State's Mills Act program.

### Local Mills Act Criteria for Eligibility

As allowed by the State, staff proposes the following local modifications of the term "qualified historical property" which will be defined as any property that meets any of the following:

- (a) Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2 (b) of Title 26 of the Code of Federal Regulations;
- (b) Listed in the California Register of Historical Resources;
- (c) Listed on the City's Historic Inventory as Category 1 through 4, as defined in Section 16.49.020 of PAMC (b); or
- (d) Contributing to a Local Historic District, as defined in Section 16.49.020 of PAMC (c).

### Local Mills Act Program Regulations

As allowed by the State, staff proposes the following local regulations, which do not invalidate State requirements:

- (a) *Term Limitations*: Mills Act Contracts will have a minimum term of ten years and a maximum term of 15 years. This is accomplished by the City issuing a notice of nonrenewal in the 5<sup>th</sup> year of the agreement, after which the remaining 10-year term of the contract occurs before the agreement formally terminates. During the 10 year phase-out period, the property tax benefits enjoyed by the Mills Act property gradually decrease until they reach the full regularly assessed value of the property at the end of the final year (Figure 1).
- (b) *Tax Redirection Limitations*: A limit will be set on the total tax redirection that can be associated with Mills Act properties. Program impact on City revenues will be limited to \$150,000/year, to be adjusted annually in amount equivalent to the percent change of the overall assessed valuation of the City for the previous year, excluding those properties that have been issued a notice of nonrenewal.
- (c) *Property Value Limitations*: A limit will be set on total property value that would be eligible for Mills Act contract. Pre-contract assessed valuation limits will be \$5,000,000 or less for residential and \$10,000,000 or less for commercial.<sup>3</sup>

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<sup>3</sup> To be adjusted for inflation

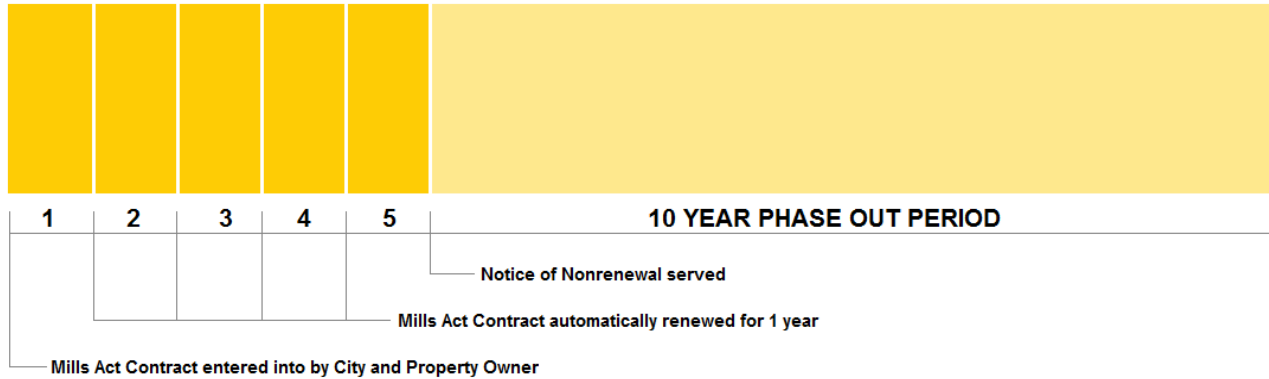


Figure 1. Mills Act Contract Timeline

(c) *Ranking System:* A ranking system will be employed by the HRB when reviewing Mills Act applications that is based on community priorities and needs and utilizes the criteria listed below. Staff considers that the scope of the required rehabilitation plan will ensure that all applications for a Mills Act will bestow a major public benefit on the community by extensively rehabilitating and maintaining historic properties. Public access to private homes is not a requirement. A higher ranking will be given to those applications that demonstrate that entering into a Mills Act contract:

- Will result in more affordable housing units;
- Will substantially reduce the threat to the historic property of demolition, deterioration, abandonment and/or general neglect;
- Will result in the greatest number of improvements to the historic property, resulting in the greatest benefit to the public.

(d) *Cancellation Penalty:* Noncompliance with the provisions of a Mills Act contract will result in either legal action against the owner or contract cancellation. A contract may be cancelled if the City determines that the owner has breached any of the conditions of the contract or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The contract may also be canceled if it is determined that the owner has failed to restore or rehabilitate the property in the manner specified in the contract. No contract shall be canceled until property owner has been properly noticed and a public hearing is held. If the contract is cancelled, the owner must pay a penalty of 12.5% of the market value of the property at the time of cancellation, per state law.<sup>4</sup> The cancellation fee shall be paid to the City Tax Collector at such time and in such manner as the City shall prescribe.

(e) *Fees:* Initial permit and planning fees will be waived for Mills Act participants. There will be no application fee for submitting a Mills Act contract application but a one-time activation fee of \$250 will be required if the contract is selected and initiated.

<sup>4</sup> California Government Code, Article 12, Section 50286

- (f) *Submittal Date*: Applications will only be accepted and approved during the month of June in any given year in order to allow sufficient time for the City and Assessor's Office to determine the cumulative financial impact, to record contracts prior to January 1<sup>st</sup> in any given year and to reduce the cost of processing applications.

### **Local Mills Act Contract Requirements**

As allowed by the State, staff proposes the following local additions to the State's contract requirements:

- (a) *HRB Review*: All Mills Act applications, including rehabilitation and maintenance plans and subsequent work, will be reviewed and approved by the Historic Resources Board.
- (b) *Rehabilitation and Maintenance Plans*: A rehabilitation and maintenance plan will be required to be submitted for attachment to the Mills Act contract. All work performed must conform to the rules and regulations of the California Office of Historic Preservation, including compliance with the Secretary of the Interior's Standards and the State Historic Building Code. The rehabilitation plan must include restoration of the identified character defining features of the property and the removal or compatible replacement of incompatible alterations. The rehabilitation plan can include exterior and interior work that has been pre-approved. Qualified rehabilitation and restoration work that commenced up to two years before the establishment of the contract may be indicated on the ten-year rehabilitation plan. An annual report detailing the rehabilitation and restoration work performed during the past year along with the overall cost of the work performed will also be required. In general, work that is directly related to the repair or improvement of structural and architectural features of the historic building will qualify. Examples of eligible and ineligible work include but are not limited to:

#### **Eligible Work**

- Seismic upgrading
- Foundation repair
- Re-roofing and downspout restoration
- Exterior siding and trim repair and restoration
- Historic windows repair and restoration
- Paint exterior
- Removal of inappropriate additions and construction
- Plumbing system upgrades



- Electrical system upgrades
- Original door, hardware and other features restoration
- Front iron fencing restoration
- Chimney stabilization
- Consulting/Professional fees (limit this?)
- Repair and restoration of original interior features (like original built-ins and woodwork) must get HRB approval to be considered eligible
- HVAC systems (heating, ventilation and air conditioning)
- Solar panels must be essential to the operation or maintenance of the rehabilitated historic building and must get HRB approval to be considered eligible<sup>5</sup>

#### **Ineligible Work**

- New construction and additions
- Landscaping
- Homeowner labor
- Acquisition/furnishing costs
- Parking lot

- (c) *Tax Redirection*: All tax savings must be redirected into rehabilitation work for the property and the anticipated construction must be equal to or greater than tax savings.
- (d) *Property Inspection*: The property will be inspected **annually/ every two years/ dependent on work proposed** by the Historic Preservation Planner (accompanied by the Building Official if necessary) to determine compliance with the Mills Act contract and approved Rehabilitation and Maintenance plan.
- (e) *Educational Component*: For educational purposes, property owners will be required to fund, with tax redirection, and display an interpretive panel along the public right of way that is visible to the community. The panel will include information on the history and architectural merit of the home for the public to enjoy. The property will also be used for exterior home tours at the discretion of the City and other promotional material with proper notification.

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<sup>5</sup> See National Park Service, Historic Tax Credit Qualified Expenses explanation on solar panels. Generally, HVAC features are included as eligible cost so the function and purpose of a renewable energy system will determine if it is an eligible expense. Systems that produce electricity to back feed the power grid may not qualify (<https://www.nps.gov/tps/tax-incentives/before-apply/qualified-expenses.htm>).

## APPLICATION CHECKLIST

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