



CITY OF
**PALO
ALTO**

CITY OF PALO ALTO
Historic Resources Board
Regular Meeting
Thursday, May 09, 2024
8:30 AM

Agenda Item

3. Tailored Mills Act Program Recommendation to City Council

MILLS ACT TAILORED PROGRAM OUTLINE

January
2018

Prepared by the City of Palo Alto & the Historic Resources Board

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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.”¹

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.²

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

¹ California Office of Historic Preservation, “Mills Act Program,” http://www.ohp.parks.ca.gov/?page_id=21412.

² 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

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

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 5th 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.³

³ 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.⁴ 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.

⁴ 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 1st 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 eligible⁵

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.

⁵ 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

Mills Act Property Tax Abatement Program

Technical Assistance Bulletin #12

CALIFORNIA OFFICE OF HISTORIC PRESERVATION Department of Parks & Recreation

1416 9th Street Room 1442-7
Sacramento, CA 95814

PO Box 942896
Sacramento, CA 94296

916-653-6624

calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov



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December 2004

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Mills Act Property Tax Abatement Program

Purpose of the Mills Act Program

Economic incentives foster the preservation of residential neighborhoods and the revitalization of downtown commercial districts. The Mills Act is the single most important economic incentive program in California for the restoration and preservation of qualified historic buildings by private property owners.

Enacted in 1972, the Mills Act legislation grants participating local governments (cities and counties) 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.

Benefits to Local Governments

The Mills Act allows local governments to design preservation programs to accommodate specific community needs and priorities for rehabilitating entire neighborhoods, encouraging seismic safety programs, contributing to affordable housing, promoting heritage tourism, or fostering pride of ownership. Local governments have adopted the Mills Act because they recognize the economic benefits of conserving resources and reinvestment as well as the important role historic preservation can play in revitalizing older areas, creating cultural tourism, building civic pride, and retaining the sense of place and continuity with the community's past.

A formal agreement, generally known as a Mills Act or Historical Property Contract, is executed between the local government and the property owner for a minimum ten-year term. Contracts are automatically renewed each year and are transferred to new owners when the property is sold. Property owners agree to restore, maintain, and protect the property in accordance with specific historic preservation standards and conditions identified in the contract. Periodic inspections by city or county officials ensure proper maintenance of the property. Local authorities may impose penalties for breach of contract or failure to protect the historic property. The contract is binding to all owners during the contract period.

Benefits to Owners

Owners of historic buildings may qualify for property tax relief if they pledge to rehabilitate and maintain the historical and architectural character of their properties for at least a ten-year period. The Mills Act program is especially beneficial for recent buyers of historic properties and for current owners of historic buildings who have made major improvements to their properties.

Mills Act participants may realize substantial property tax savings of between 40% and 60% each year for newly improved or purchased older properties because valuations of Mills Act properties are determined by the Income Approach to Value rather than by the standard Market Approach to Value. The income approach, divided by a capitalization rate, determines the assessed value of the property. In general, the income of an owner-occupied property is based on comparable rents for similar properties in the area, while the income amount on a commercial property is based on actual rent received. Because rental values vary from area to area, actual property savings vary from county to county. In addition, as County Assessors are required to assess all properties annually, Mills Act properties may realize slight increases in property taxes each year.

Qualified Historic Property

A qualified historic property is a property listed on any federal, state, county, or city register, including the *National Register of Historic Places*, *California Register of Historical Resources*, California Historical Landmarks, State Points of Historical Interest, and locally designated landmarks. Owner-occupied family residences and income-producing commercial properties may qualify for the Mills Act program.

OHP's Role

OHP provides technical assistance and guidance to local governments and property owners. OHP maintains a current list of communities participating in the Mills Act program and copies of Mills Act ordinances, resolutions, and contracts that have been adopted. OHP does not participate in the negotiations of the agreement and is not a signatory to the contract.

For Additional Information

Contact the planning department of the city or county within which the historic property is located.

California's four largest cities (Los Angeles, San Diego, San Francisco, and San Jose) as well as more than 75 other city and county governments have instituted Mills Act programs. A list of communities participating in the Mills Act Program is available online at http://www.ohp.parks.ca.gov/default.asp?page_id=21412.

For additional information on the Mills Act, please contact Maryln Lortie in the Office of Historic Preservation, PO Box 942896, Sacramento CA 94296-0001, (916) 653-8911, mlort@ohp.parks.ca.gov.

California State Codes Relating to Mills Act Program

California Government Code, Article 12, Sections 50280 - 50290

50280. Restriction of property use.

Upon the application of an owner or the agent of an owner of any qualified historical property, as defined in Section 50280.1, the legislative body of a city, county, or city and county may contract with the owner or agent to restrict the use of the property in a manner which the legislative body deems reasonable to carry out the purposes of this article and of Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code. The contract shall meet the requirements of Sections 50281 and 50282.

50280.1. Qualified historic property.

"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.

50281. Required contract provision.

Any contract entered into under this article shall contain the following provisions:

- (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.
- (c) The owner or agent of an owner shall provide written notice of the contract to the Office of Historic Preservation within six months of entering into the contract.

50281.1. Fees.

The legislative body entering into a contract described in this article may require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program.

50282. Renewal.

(a) Each contract shall provide that on the anniversary date of the contract or such other annual date as is specified in the contract, a year shall be added automatically to the initial term of the contract unless notice of nonrenewal is given as provided in this section. If the property owner or the legislative body desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract on the other party in advance of the annual renewal date of the contract. Unless the notice is served by the owner at least 90 days prior to the renewal date or by the legislative body at least 60 days prior to the renewal date, one year shall automatically be added to the term of the contract.

(b) Upon receipt by the owner of a notice from the legislative body of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The legislative body may, at any time prior to the renewal date, withdraw the notice of nonrenewal.

(c) If the legislative body or the owner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

(d) The owner shall furnish the legislative body with any information the legislative body shall require in order to enable it to determine the eligibility of the property involved.

(e) No later than 20 days after a city or county enters into a contract with an owner pursuant to this article, the clerk of the legislative body shall record with the county recorder a copy of the contract, which shall describe the property subject thereto. From and after the time of the recordation, this contract shall impart a notice thereof to all persons as is afforded by the recording laws of this state.

50284. Cancellation.

The legislative body may cancel a contract if it determines that the owner has breached any of the conditions of the contract provided for in this article or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The legislative body may also cancel a contract if it determines that the owner has failed to restore or rehabilitate the property in the manner specified in the contract.

50285. Consultation with state commission.

No contract shall be canceled under Section 50284 until after the legislative body has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be mailed to the last known address of each owner of property within the historic zone and shall be published pursuant to Section 6061.

50286. Cancellation.

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(a) If a contract is canceled under Section 50284, the owner shall pay a cancellation fee equal to 12 1/2 percent of the current fair market value of the property, as determined by the county assessor as though the property were free of the contractual restriction.

(b) The cancellation fee shall be paid to the county auditor, at the time and in the manner that the county auditor shall prescribe, and shall be allocated by the county auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.

(c) Notwithstanding any other provision of law, revenue received by a school district pursuant to this section shall be considered property tax revenue for the purposes of Section 42238 of the Education Code, and revenue received by a county superintendent of schools pursuant to this section shall be considered property tax revenue for the purposes of Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1 of the Education Code.

50287. Action to enforce contract.

As an alternative to cancellation of the contract for breach of any condition, the county, city, or any landowner may bring any action in court necessary to enforce a contract including, but not limited to, an action to enforce the contract by specific performance or injunction.

50288. Eminent domain.

In the event that property subject to contract under this article is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the legislative body to frustrate the purpose of the contract, such contract shall be canceled and no fee shall be imposed under Section 50286. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

50289. Annexation by city.

In the event that property restricted by a contract with a county under this article is annexed to a city, the city shall succeed to all rights, duties, and powers of the county under such contract.

50290. Consultation with state commission.

Local agencies and owners of qualified historical properties may consult with the State Historical Resources Commission for its advice and counsel on matters relevant to historical property contracts.

California Revenue and Taxation Code, Article 1.9, Sections 439 – 439.4

439. Historical Property Restrictions; enforceably restricted property.
For the purposes of this article and within the meaning of Section 8 of Article XIII of the Constitution, property is "enforceably restricted" if it is subject to an historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

439.1. Historical Property; definitions.
For purposes of this article "restricted historical property" means qualified historical property, as defined in Section 50280.1 of the Government Code, that is subject to a historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. For purposes of this section, "qualified historical property" includes qualified historical improvements and any land on which the qualified historical improvements are situated, as specified in the historical property contract. If the historical property contract does not specify the land that is to be included, "qualified historical property" includes only that area of reasonable size that is used as a site for the historical improvements.

439.2. Historical Property; valuation.
When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available, the income shall be the fair rent that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.

(2) Where sufficient rental information is not available, the income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.

(3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated. For purposes of this section, income shall be determined in accordance with rules and

regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted. Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the revenue. Those expenditures to be charged against revenue shall be only those which are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest 1/4 percent.

(2) A historical property risk component of 4 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(c) The capitalization rate to be used in valuing all other restricted historical property pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than September 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Board, rounded to the nearest 1/4 percent.

(2) A historical property risk component of 2 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

(e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).

(f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.

439.3. Historical Property; notice of nonrenewal.

Notwithstanding any provision of Section 439.2 to the contrary, if either the county or city or the owner of restricted historical property subject to contract has served notice of nonrenewal as provided in Section 50282 of the Government Code, the county assessor shall value that restricted historical property as provided in this section.

(a) Following the hearing conducted pursuant to Section 50285 of the Government Code, subdivision (b) shall apply until the termination of the period for which the restricted historical property is enforceably restricted.

(b) The board or assessor in each year until the termination of the period for which the property is enforceably restricted shall do all of the following:

(1) Determine the full cash value of the property pursuant to Section 110.1. If the property is not subject to Section 110.1 when the restriction expires, the value shall be determined pursuant to Section 110 as if the property were free of contractual restriction. If the property will be subject to a use for which this chapter provides a special restricted assessment, the value of the property shall be determined as if it were subject to the new restriction.

(2) Determine the value of the property by the capitalization of income method as provided in Section 439.2 and without regard to the fact that a notice of nonrenewal or cancellation has occurred.

(3) Subtract the value determined in paragraph (2) of this subdivision by capitalization of income from the full cash value determined in paragraph (1).

(4) Using the rate announced by the board pursuant to paragraph (1) of subdivision (b) of Section 439.2, discount the amount obtained in paragraph (3) for the number of years remaining until the termination of the period for which the property is enforceably restricted.

(5) Determine the value of the property by adding the value determined by the capitalization of income method as provided in paragraph (2) and the value obtained in paragraph (4).

(6) Apply the ratios prescribed in Section 401 to the value of the property determined in paragraph (5) to obtain its assessed value.

439.4. Historical Property; recordation.

No property shall be valued pursuant to this article unless an enforceable restriction meeting the requirements of Section 439 is signed, accepted and recorded on or before the lien date for the fiscal year in which the valuation would apply.

Mills Act Fact Sheet

- The Mills Act (a state sponsored legislation enacted in 1972) is a self-directed, economic incentive program for owners of historic buildings that are listed on the National Register of Historic Places or on a State, County or City official register like the California Register of Historical Resources or the Palo Alto Historic Inventory.
- It is the single most important economic incentive program available in California for private property owners of qualified historic buildings.
- A Mills Act program must be developed according to two California State Codes: California Government Code, Article 12, Sections 50280-50290 and California Revenue and Taxation Code, Article 1.9, Sections 439-439.4.
- Under the program, property owners receive a significant reduction in local property taxes in exchange for their active participation in restoring, rehabilitating, repairing and preserving their properties. Participants enter into a perpetual 10-year contract with the City.
- Contracts are automatically renewed each year and are transferred to new owners when the property is sold.
- City, County or State officials may periodically inspect properties to ensure proper maintenance.
- Penalties may be imposed for breach of contract or failure to maintain the historic property.
- The County Assessor's Office re-assesses property taxes based on a capitalization of income formula rather than on market value. Mills Act participants may realize a property tax savings of approximately 50% each year depending on property value, net operating income and other variables.

- Limit on the total tax loss that can be associated with Mills Act properties or number of Mills Act properties in any given year
 - Cap at \$25,000, to be adjusted annually in an 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 (Belvedere)
 - Program impact on City revenues limited to \$25,000/year and \$25,000/year in any single redevelopment area with a cumulative limit of \$250,000/year for all redevelopment areas (with exception of Central Business District). In CBD limit of the program impact on Redevelopment revenues to \$100,000/building/year/ with a cumulative limit of \$250,000/year. Anything that exceeds these limits may request special consideration by City Council. (Oakland)
 - 3 Mills Act contracts a year (Saratoga)
 - Lottery/rankings/higher ranking based on following criteria (Campbell):
 - Result in greatest number or value of improvements
 - Reduce the threat to historic property
 - Result in preservation and maintenance
 - Highest percentage of tax savings used to finance property maintenance
 - Applications only during month of July (Gilroy)
 - Reviewed at one time each year so that the cumulative financial impact can be determined
 - Contracts must be recorded prior to January 1
 - Assessor's office has more available time
 - Reduces cost of processing applications
 - Addresses School District concerns (Palo Alto basic aid, crunch numbers, data science intern)

- Limit on total property value that would be eligible (exceptions allowed)
 - Residential – pre-contract assessed valuation of \$3,000,000 or less (San Francisco)
 - Except if it is an exceptional property
 - Commercial – pre-contract assessed valuation of \$5,000,000 or less (San Francisco)
 - Except if it is an exceptional property

- What would we require from participants?
 - 10 year work plan/Rehabilitation Plan (San Francisco)
 - Interpretive signage
 - Onsite visit every five years (San Francisco), periodic examinations (Napa County, San Diego)
 - Spend the property tax money that is saved through the Mills Act on preserving and/or restoring the property (Berkeley)
 - Anticipated construction must be equal to or greater than tax savings (Oakland)
 - Expend an amount equal to a minimum of 10% of the tax savings attributed to the Mills Act agreement for the preservation and maintenance of the property (San Jose) and must include all of the following tasks:
 - Year 1 – foundation repairs
 - Year 2 – plumbing upgrades
 - Year 3 – electrical upgrades
 - Year 4 – basement waterproofing
 - Year 5 – repaint exterior
 - Year 6 – original door, window and hardware restoration
 - Year 7 – re-roofing and downspout restoration
 - Year 8 – repair exterior trim and siding
 - Year 9 – front iron fencing restoration
 - Year 10 – repaint exterior
 - General Application (photos, location map, legal description, etc.)

- Ordinance changes
 - Defined (Los Altos)
 - Incentives section (Los Altos)

In the County of Santa Clara there are 296 active contracts. In 2016 there were 7 new contracts. Some properties do not benefit from Mills Act value as their base year values are lower than the tax incentive value Mills Act provides. Lowest reduction given: 0%. The largest reduction in the county was 92.37% for 2016. Average reduction was 56.39% for 2016.

This large range and continually changing market conditions makes it difficult for the Assessor to forecast the exact savings for any potential Mills Act property prior to the actual assessment.

Each local government establishes their own criteria and determines how many contracts they will allow in their jurisdiction. For answers to specific questions such as local eligibility criteria, application procedures, and contract terms, contact the city or county official for your jurisdiction.

The Mills Act allows local governments to design preservation programs to accommodate specific community needs and priorities for rehabilitating entire neighborhoods, encouraging seismic safety programs, contributing to affordable housing, promoting heritage tourism, or fostering pride of ownership. Local governments have adopted the Mills Act because they recognize the economic benefits of conserving resources and reinvestment as well as the important role historic preservation can play in revitalizing older areas, creating cultural tourism, building civic pride, and retaining the sense of place and continuity with the community's past.



City of Palo Alto City Manager's Report

TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER DEPARTMENT: PLANNING AND
COMMUNITY ENVIRONMENT

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DATE: DECEMBER 15, 1997 CMR:501:97

SUBJECT: FUTURE PROCESSING OF MILLS ACT CONTRACT REQUESTS

RECOMMENDATION

Staff recommends that the City Council direct that no new Mills Act requests be accepted until appropriate policies and procedures are examined as part of the new Historic Regulations.

BACKGROUND

A Mills Act contract is a voluntary agreement between a qualified owner of a historic property and the local jurisdiction that provides property tax relief in exchange for compliance with certain preservation restrictions. The local government has the option to choose the properties that are suitable for the incentive by evaluating various factors such as the significance of the building to the community, development pressure on the site, and the need for rehabilitation. A more detailed discussion of the Mills Act and its provisions is contained on page 3 of the report to the Historic Resources Board, dated November 5, 1997, and the draft Historic Property Preservation Agreement for the same report.

DISCUSSION

As referenced in the associated item regarding 420 Maple Street, no policy or procedures currently exist in the City for the processing and implementation of Mills Act contract requests. This issue is a part of the work program for the development of the new Historic Regulations. Staff believes that a significant amount of public interest exists in the Mills Act and that, as a result, additional requests are forthcoming.

Absent a coherent policy on this issue, staff expects that the questions raised by the Historic Resources Board regarding 420 Maple Street will be revisited each time a new request is received.

PREPARED BY: George White, Senior Planner

DEPARTMENT HEAD: *Kenneth R. Schreiber*
KENNETH R. SCHREIBER
Director of Planning and Community Environment

CITY MANAGER APPROVAL: *E. Harrison*
EMILY HARRISON
Assistant City Manager

HISTORIC RESOURCES BOARD

Wednesday, November 5, 1997 - Regular Meeting

8:10 - 11:45 AM

Council Conference Room (First Floor)

Civic Center, 250 Hamilton Avenue, Palo Alto

A. ROLL CALL

Present: Kohler Backlund, Anderson, Willis, Bernstein, Mario, Murden

Absent: None

Staff Present: Riel, White, Warheit, Cauble

Council Liaison Present: Wheeler

Contract Planner Present: Judy

B. ORAL COMMUNICATIONS: None

C. AGENDA CHANGES, ADDITIONS AND DELETIONS: None.

D. APPROVAL OF MINUTES FROM THE OCTOBER 15, 1997 HRB MEETING.

MOTION: BM Anderson moved to approve the minutes as amended by board member comments. The motion was seconded by BM Mario.

VOTE: 5-0-0-2 (Kohler and Bernstein not yet present)

I. PUBLIC HEARINGS

1. 420 Maple Street 97-HRB-235 Kathy and Michael Levinthal

Application for Historic Resources Board review and recommendation to City Council for the City to enter into a Historic Property Preservation Agreement, pursuant to the provisions of the Mills Act of the State of California with the Owners of 420 Maple Street.

BM Mario not participating due to possible conflict of interest.

Staff Report; George White summarized the application, the background of the property, the proposed property preservation agreement, and the requested action from the HRB as being a recommendation to City Council regarding approval or denial of the proposed Mills Act for the subject property.

BM Anderson asked whether it has been established that the landscape design is extant and significant?

White: Its significance has not been confirmed at the moment, but there are indications that the landscape may be significant.

BM Anderson asked why staff had not requested documentation prior to processing the application for the Mills Act?

White: the scope of preservation and historic significance for this property goes beyond the potential merits of the landscape.

BM Anderson asked where in the contract is the 10 year maintenance plan? What of significance is the City getting back in exchange for the requested tax relief?

White: The contract includes a 10-year list of intended maintenance and repairs. Also, the City has negotiated to get interior preservation of significant spaces, and an annual tour of the property.

BM Anderson asked what value is the tax relief?

White replied that the exact amount is uncertain as it had not yet been calculated.

However, it will be based on a formula - note the Staff Report reference to a previous tax payment of \$18,172 - the formula would grant up to 90% relief for this amount.

Chair Willis commented that what is lacking is a policy decision regarding which properties in Palo Alto should receive this relief.

BM Murden commented that in theory all the tax relief should go back into maintenance of the property, but the agreement specifies only \$2,000 to this end.

BM Anderson observed that the total incentive is approximately \$150,000 over the 10-year duration of the contract, with only \$20,000 obligated to go back to maintenance of the house.

White responded that that is correct.

Public Hearing

Public comment was received from :

Guy Blase, attorney for the applicant.

Mr. Blase commented that there seems to be some misinformation about the Mills Act. There is no requirement in the Act that the savings be used to preserve the property. In the original act, there was a public access requirement - this inhibited use of the Mills Act. Since its removal, there has been a modest increase in use of the Act.

During the Squire House Mills Act, the public discussion was that this was an important tool to encourage preservation. Both staff and the board seem to be of the opinion that

the applicant should give a great deal to the city in exchange for implementation of a Mills Act. Mr. Blase indicated that he would be glad to help the City develop policy in this regard. Meanwhile, the Levinthals have agreed to an annual tour of no more than 20 people. Most Mills Acts address the exteriors of the property; this agreement is unusual in agreeing to preserve the interiors and the landscape. It is a very interesting landscape; one wall contains shards of Stanford University stones, and there is a wishing well that is interesting.

Comment was received from Michael Levinthal, owner.

Mr. Levinthal added this information; there is a lower garden wall that is constructed of stones reported to come from Stanford University. There are some substantial trees that may be from original planting.

BM Murden asked whether the current remodeling was done by them.

Mr. Levinthal; yes, that project was reviewed by the HRB. A new structure was added, and the existing exterior walls of the garage wing, for example the windows to the courtyard, were altered and the garage doors removed on the north side of the house. The footprint remained unchanged.

BM Bernstein asked for an explanation of why a Mills Act application is being brought forward now.

Mr. Levinthal commented that he and his wife love the house and want to preserve it. They have had to modify the house to update it - things like the kitchen have been remodeled.

BM Backlund asked, given the National Register status, is there a statement that the house is still in the form that it existed when listed on the register?

Mr. Blase responded that the National Register form has not been updated. This is also a Category 2 property, which is the local historic designation, and this status alone should be an adequate historic status to qualify for the Mills Act.

Chair Willis asked again - given the current level of integrity of the property with alterations considered, would the property still qualify for the National Register?

Mr. Levinthal commented that the documentation on the property does not go into detail on the building interiors.

BM Kohler commented that part of the board's goal is to encourage preservation. He recollected some Redwood City projects that received Mills Act contracts that included specific 10-year descriptions of how the money would be used, as contrasted with the

current agreement that is vague on these matters.

Mr. Blase replied that a tremendous investment has been made to put the property in the good condition that it currently is in. Much more than \$2,000 a year will be spent on the property to maintain its condition. The proposed Property Preservation Agreement grants annual tours, limited to 20 people total, once a year, these people to be selected by the Levinthals. Also, the City has the right to inspect the residence once a year.

Comment was received from Ted Carlstrom.

Mr. Carlstrom indicated that he will not comment on the specifics of the contract, but would like to address the broad policy issue. Essentially, preservation of private property has two government approaches. One is the voluntary incentives approach - including the Mills Act - and the other approach is mandatory and imposes involuntary requirements - such as the Interim Historic Ordinance. He encourages pursuing the Mills Act because it is cooperative. The other approach results in confusion and anger. If there is going to be imposition of involuntary requirements, then the Mills Act ought to be extended across the board to owners of all qualified historic structures and create a community/property owner cooperative partnership in preservation.

Levinthal commented that the tour would work with the city and would be done in cooperation with a local historic society.

Public hearing closed.

Discussion:

Chair Willis commented that the Mills Act can serve us well in Palo Alto, and we are looking forward to it. Perhaps it will be extended to all major landmarks and perhaps even some contributing buildings. But this particular residence is not threatened, and that fact may give us the time to develop a comprehensive incentives policy.

BM Backlund commented that he supported the Staff Report direction. The Historic Preservation portion of the Comprehensive Plan was approved last night, including endorsement of an incentives plan and preservation goals as proposed by the HRB. The HRB should support a Mills Act request that meets these goals. The residence appears to be a qualifying historic building fit for the Category 1 or 2 designation, with intact exteriors and an interesting garden.

MOTION: BM Backlund moved that the HRB and City Council support a Mills Act for 420 Maple Street.

BM Murden seconded the motion.

BM Anderson commented that he is a supporter of the Mills Act, but will not support this proposal because of the modest public benefit contained in the proposed agreement when compared to other Mills Acts. Also, the preservation program will be better served if we wait for a permanent ordinance with a policy to address granting this act among other incentive options. Also, it is worrisome that the landscape may not be significant. Finally, the contract doesn't tell us what will happen to the house each year - it should be clearly defined. Overall, the arrangements are too loose. Also, this property has already been rehabilitated and this sets a bad precedent for alteration of a significant structure as it is retroactive application of the incentive.

BM Kohler commented that he is struggling with this a bit. The Mills Act conference he attended left him with a distinct sense that during the 10-year period there would be a definite return in preservation. The proposed format is too vague. With more staff/applicant work toward definition, it might be supportable. Also, recollecting the last Council discussion of this issue in which the Council stated that they wanted a developed policy regarding the Mills Act, we need to be careful now because the early Mills Acts set a precedent for later ones.

Chair Willis commented that immediate development pressure and the need for rehabilitation are reasons for speedily deciding on a Mills Act. As these are not issues for the subject property, the HRB may defer acting. It may ultimately be legitimate to reward the owners of 420 Maple for a good rehabilitation job. However, there is a need to assess the whole tool - the Mills Act and other incentives - with Council input. It may be that a decision will be made to use the Mills Act only sparingly to encourage preservation where it would not otherwise occur.

BM Murden concurred with comments by other board members, but added that this house is very important to preserve, as it is among the most important in the city. Also, it would not be for rewarding the work to date, but rather to ensure a continued high level of preservation. The future of any building is uncertain - the Mills Act is a vehicle to ensure preservation and reduce that uncertainty.

VOTE: 3-3-1-0 (Willis, Anderson and Kohler against; Mario not participating)
(Motion fails)

MOTION: BM Anderson moved that the Mills Act proposal for 420 Maple be denied, as the public benefit is not strong enough when balanced with the return to the applicant. The contract should be more detailed, with the monies dedicated to preservation efforts defined for each year of the contract.

Chair Willis seconded the motion.

BM Backlund commented that he was concerned about the basic rules of the Mills Act. For example, if due to voluntary choice one Mills Act property goes beyond the

requirements of the act - this approach should not be imposed on all properties.

BM Murden asked whether it is realistic, when some maintenance is done as needed - to predict maintenance needs.

Chair Willis commented that the Mills Act allows the latitude for the local community to define these matters. However, the key policy issues need to be worked out in the context of larger considerations of tax dollars and other incentives. This is not an appropriate time to recommend that the City make these commitments, as the broader discussion of these issues is still pending.

BM Kohler commented that he does not fully support the current motion. His issue is the that the contract is not clear. Actually, it is possible to have a list of anticipated work items, and introducing them into this contract would make himself and perhaps others more comfortable with the request.

SUBSTITUTE MOTION; BM Kohler moved that the contract be amended to address work to the building for the 10-year period of the contract in detail - reference p. 4, item 10 - this is the item of the contract that would be augmented by more detail. (Motion failed due to lack of a second.)

Riel observed that in light of today's discussion, staff's preference would be to delay the matter rather than deny it.

MOTION (Revised): BM Anderson revised his motion to state that the matter of granting a Mills Act for 420 Maple Street be postponed until the broader context of Mills Act policy is resolved.

BM Bernstein seconded the motion.

VOTE: 4-2-0-1 (Backlund and Murden against; Mario not participating)

Cauble summarized the effect of this action:

The intent of the HRB motion was to recommend deferral of action on the item, as immediate action is not appropriate in light of pending discussion of the permanent ordinance and related policy.

That recommendation will go forward to the City Council with this motion being the recommendation from the HRB to the Council.

2. 730 Bryant: Application for Historic Merit Evaluation of a single family residence constructed prior to 1940 in the RM-30 Zone District (File No. 97-HRB-233).