

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council

FROM: Ken MacNab, Senior Planner

VIA: Charlene Gallina, Director of Planning & Building

DATE: September 7, 2010

SUBJECT: Mills Act Program for Restoration and Preservation of Historic Buildings

APPROVAL FOR FORWARDING:


 William C. Norton, Interim City Manager

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2 **ISSUE:** Consideration of a Mills Act program to foster preservation of qualified historic
3 buildings by private property owners.

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5 **RECOMMENDATION:** Adopt a Resolution (Attachment 1).

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7 **BACKGROUND:** The Mills Act (Government Code Section 50280 et seq.) is a State
8 law that provides incentives for the restoration and preservation of qualified historic
9 buildings by private property owners. Enacted in 1972, the Mills Act legislation grants
10 participating local governments (cities and counties) the authority to enter into contracts
11 with owners of qualified property who actively participate in the rehabilitation,
12 restoration, preservation and maintenance of their historic property. In exchange,
13 participating property owners may be eligible for a reduction in their property taxes.

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15 The Mills Act is recognized as one of the most important incentive programs available in
16 California for use by private property owners of qualified historic buildings. Over 80
17 communities in the state have established a Mills Act program. In Napa County, the
18 City of St. Helena is the only jurisdiction with a formal Mills Act program. Since the
19 inception of their program in 2009, St. Helena has approved one Mills Act contract. The
20 City of Napa has also approved a Mills Act contract for the Napa Valley Opera House
21 property even though the City does not have a formal Mills Act program.

22 On June 15, 2010, the City Council approved a work plan for implementation of
23 outstanding program actions contained in the 2003 General Plan. Development and
24 adoption of a Mills Act program is one of the tasks identified for implementation in the
25 approved work program.

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27 **DISCUSSION:** Conservation of Calistoga's historic, architectural and cultural resources
28 is one of the goals identified in the Community Identity Element of the General Plan
29 (Goal CI-3). The Community Identity Element encourages use of proactive techniques
30 to encourage owners to preserve and maintain their historic properties. Adoption of a
31 Mills Act Program will implement this directive by providing a significant economic
32 incentive for owners to participate in the rehabilitation, restoration, preservation and
33 maintenance of their historic property.

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35 The Mills Act allows the City to enter into a historical property preservation agreement,
36 also known as a "Mills Act contract" with the owner of a qualified owner-occupied or
37 income-producing property for the purpose of protecting and preserving properties of
38 historical significance. As a general rule, a building is considered historic if it is at least
39 50 years old and considered to be a good example of a particular architectural style or if
40 it is associated with a person or event of local, statewide, or national historic
41 importance. For the purposes of this program, staff and the Planning Commission
42 recommend that a "qualifying" historic property be defined consistently with the criteria
43 set forth in the Mills Act, as summarized below:

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45 A. A property listed in the National Register of Historic Places or located in a
46 registered historic district; or

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48 B. A property listed in any state, city, county, or city and county official
49 register of historical or architecturally significant sites, places, or
50 landmarks.

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52 Because the City does not have a formally adopted register of locally significant historic
53 sites, places or landmarks, the number of properties eligible to take immediate
54 advantage of the program would be limited to those that are currently listed on a
55 national or state register. The Planning Commission has recommended that the City
56 Council direct staff to prepare a historic preservation ordinance that would set forth the
57 necessary procedures and criteria for establishing a local register of historic places (see
58 Planning Commission Review section of this report). Establishment of a historic
59 preservation ordinance would provide a process for owners of qualified historic
60 properties to become eligible to participate in the Mills Act program. Attachment 4

61 illustrates properties currently listed on a national or state register and properties that
62 are believed to be eligible for listing.

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64 State law mandates that the following provisions be included as part of any Mills Act
65 contract:

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67 • The property shall be rehabilitated, restored and/or maintained in
68 conformance with the rules and regulations of the Office of Historic
69 Preservation of the State Department of Parks and Recreation, and the
70 United States Secretary of the Interior's Standards for Rehabilitation and
71 the State Historical Building Code (as applicable).

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73 • The contract shall have a minimum term of 10 years.

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75 • Each year on the anniversary date of the contract one year shall be
76 automatically added to the term of the contract unless a notice of non-
77 renewal is given.

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79 • The contract shall remain with the property when transferred to a new
80 owner, who would be bound by the contract and have the same rights and
81 obligations as the original owner who entered into the contract.

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83 • The contract shall contain a cancellation provision for breach of contract
84 with a penalty equal to 12.5% of the current fair market value of the
85 property.

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87 Once a property owner enters into a contract, the County Assessor will determine the
88 value of the property as of January 1 of each year based upon an income approach to
89 valuation ("restricted value") rather than the property's market value. The income
90 projected for an owner-occupied property is based on comparable rents for similar
91 properties in the area or, if sufficient rental information is unavailable, the income that it
92 could reasonably be expected to produce under prudent management. In the case of an
93 income producing property, the income amount is based on rent actually received and
94 on typical rents received for similar properties having similar uses. The restricted value
95 can be considerably lower than the market value thereby creating a tax savings to the
96 property owner, especially if the building was recently purchased.

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98 During the term of the contract, the property owner is required to allow for periodic
99 examinations of the interior and exterior of the premises by the County Assessor, the

100 Department of Parks and Recreation, the State Board of Equalization, and the City or its
101 agent as may be necessary to determine the Owner's compliance with the Agreement.

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103 Applications for a Mills Act contract will be presented to the City Council for review and
104 approval. Staff has developed an application packet that includes an overview of the
105 Mills Act program and detailed submittal requirements necessary for the processing of a
106 Mills Act contract request (Attachment 2). A draft contract has been prepared and is
107 attached to this staff report as Attachment 3. A non-refundable deposit of \$500 will be
108 required to cover costs associated with processing the application.

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110 **PLANNING COMMISSION REVIEW:** On August 25, 2010, the proposed Mills Act
111 program was presented to the Planning Commission for review and comment. The
112 initial program presented to the Planning Commission proposed that the City use the
113 inventory of potentially significant historic resources contained in the Community Identity
114 Element of the General Plan as its "local register" pursuant to the requirements of the
115 Mills Act. Upon review of this proposal, the City Attorney expressed some concern that
116 use of an inventory of potentially significant historic properties versus a formally adopted
117 list of designated historic properties could be construed as not meeting the "local
118 register" requirements of the Mills Act. Staff surveyed a number of Bay Area
119 communities with adopted Mills Act programs and found that all who responded had a
120 formally adopted list of historic properties. In addition, all of these communities had an
121 adopted ordinance containing criteria and procedures for local listing.

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123 In response to the City Attorney's concern, staff recommended that the inventory
124 contained in the General Plan not be used as criteria for determining eligibility to
125 participate in the Mills Act program and that the criteria for participation be revised to be
126 in general conformance with the criteria stated in the Mills Act. The Planning
127 Commission accepted this recommendation. Further, the Planning Commission is also
128 recommending that an ordinance establishing local listing criteria and procedures be
129 adopted so that owners of historic properties that are not currently listed on a national or
130 state register can participate in the Mills Act program

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132 The Planning Commission received several suggestions from the public regarding the
133 proposed Mills Act program. One was to include a provision in the preservation
134 agreement stating the City would forward all Mills Act contracts to the County Assessor
135 for reassessment of the historic property pursuant to Revenue and Taxation Code
136 Section 439 et seq. This language has been added to the recitals section of the draft
137 preservation agreement (Attachment 3). It was also suggested that property owners be
138 provided with the opportunity to "opt out" of being listed on any local register. Should
139 the City Council support establishment of a local register, staff envisions that the

140 register would initially be comprised of properties that are already listed on a national or
141 state register. Qualifying properties would be added over time at the request of the
142 property owner, not by mandate of the City.
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144 The Planning Commission concluded its deliberations by recommending the City
145 Council proceed with establishing the proposed Mills Act program. The Planning
146 Commission also recommends that the City Council direct staff to prepare a historic
147 preservation ordinance that would set forth the necessary procedures and criteria for
148 establishing a local register of historic places.
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150 **CONCLUSION:** The Mills Act is one of the most important incentive programs available
151 to owners of historic properties to encourage renovation, and ongoing maintenance
152 repair of their properties. The Mills Act was designed specifically to meet this need,
153 providing an opportunity for local governments to assure that their historic resources are
154 properly maintained by private owners. The benefit to private property owners who
155 invest in maintaining, rehabilitating or restoring their property is eligibility for a reduction
156 in their property tax.
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158 **ENVIRONMENTAL REVIEW:** It has been determined that the proposed action is
159 exempt from the California Environmental Quality Act (CEQA) pursuant to
160 Section 15061(b)(3) of the CEQA guidelines which states that CEQA applies only to
161 projects that have the potential for causing a significant effect on the environment. It
162 can be seen with certainty that there is no possibility that the action being contemplated,
163 establishment of a Mills Act program will have any impact on the environment. In
164 addition, Section 15378(b)(4) of the guidelines states that a program related to
165 government fiscal activity (e.g., property taxation) that does not involve a commitment to
166 any specific project is not considered a project for the purposes of CEQA.
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168 **FISCAL IMPACT:** Mills Act participants may realize substantial property tax savings of
169 between 40% and 60% each year. The exact amount of tax loss incurred by the City
170 cannot be determined in advance since the County Assessor makes the final decision
171 after receiving a signed Mills Act contract from the City. Once a contract is recorded
172 prior to January 1 of any year, the Assessor values the property using a formula set
173 forth in Revenue and Taxation Code sections 439 through 439.4. This formula involves
174 a number of variables that are too complex to detail in this report. A simplified scenario
175 based on a percentage decrease in assessed value is presented below to illustrate the
176 potential fiscal impact to the City. It should be clear that the scenario shown below IS
177 NOT representative of the methodology used by the County Assessor for re-assessing
178 properties that have entered into a Mills Act contract.
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TABLE 1 – ESTIMATED FISCAL IMPACT OF MILLS ACT

Property Type:	Single-Family Residential
Prop. 13 Factored Base Year Value (Market)	: \$ 750,000
Estimated Annual Property Tax	: \$ 7,500
City Share of Annual Property Tax (20%)	: \$ 1,500
Mills Act Re-Assessed Value (60% of Market)	: \$ 450,000
Estimated Annual Property Tax	: \$ 4,500
City Share of Annual Property Tax (20%)	: \$ 900
ESTIMATED LOSS IN PROPERTY TAX REVENUE:	\$ 600

To limit the fiscal impact of a Mills Act program on City revenues, a program provision has been added that would limit the number of Mills Act contracts that can be approved to three per calendar year.

Staff believes that preparation of a historic preservation ordinance can be prepared “in-house” and would not require expenditures for consultant services (should the City Council support the recommendation of the Planning Commission at this time).

ATTACHMENTS:

1. Draft City Council Resolution 2010-XXX
2. Draft Mills Act Program and Application Materials
3. Draft Mills Act Historic Preservation Agreement
4. Map Illustrating Eligible and Potentially Eligible Mills Act Properties