



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: January 5, 2011 REPORT NO.11-006

ATTENTION: Land Use and Housing Committee
Agenda of January 12, 2011

SUBJECT: Request to Waive a Portion of the Council Policy for Certain Mills Act Applicants

REFERENCE: City Council Hearings of November 24, 2008 and December 2, 2008;
Report to Council No. 08-176

REQUESTED ACTION:

Recommend that the City Council approve a waiver to a portion of the Council Policy to allow certain property owners who submitted nominations for historical designation in 2008, that were not acted on by the Historical Resources Board by December 31, 2010, to apply for a Mills Act agreement in 2011, if the property would otherwise qualify.

STAFF RECOMMENDATIONS:

Approve the requested action.

SUMMARY:

BACKGROUND

The Mills Act was enacted in 1972 by the State of California to enable local jurisdictions “to enter into contracts with property owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief.” The San Diego City Council adopted Council Policy 700-46 in 1995 “to provide a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego.” The Mills Act Program was modified by the City Council in December 2008 through revisions to Council Policy 700-46 (Attachment 1) to improve accountability of the overall program and to understand and manage the fiscal impacts of the program on an annual basis.

Approved changes to the City’s program include a requirement for property owners to demonstrate how their tax savings would be invested into their historic property through a 10-year work plan, formal inspection and monitoring of Mills Act properties and agreements by City staff, a fiscal threshold of \$200,000 new tax revenue reduction to the general fund on an annual basis, a Mills Act agreement application deadline of March 31 each year with a requirement that the property must have been designated prior to December 31st of the previous year, and fees to recover the costs of implementing the program.

DISCUSSION

A prerequisite to applying for a Mills Act agreement is historical designation by the City’s Historical Resources Board (HRB). Due to the popularity of this program, there is a backlog of nominations for historical designation by property owners that often reaches 18 to 24 months. Nominations are reviewed by staff in the order received and taken to the HRB for action as staffing levels and program priorities allow. During the last five years, the backlog has not exceeded 24 months until now. There were 59 historic designation nominations submitted by homeowners in 2008. Of these, 16 were not taken to the HRB for action during the 2010 calendar year (see table below). This is largely due to reduction in staff in February 2010.

The Mills Act reforms approved in December 2008 require that a property be historically designated by December 31 of a given year to be eligible to apply for a Mills Act agreement by the application deadline of March 31, the following year. Therefore, these 16 property owners would not be eligible to apply for an agreement this calendar year (2011), delaying any benefits until the 2013 tax year.

Property Address	Date Received	Council District	Community Planning Area	Fee Paid
1545 29th Street	4/30/2008	3	Greater Golden Hill	\$500
2335 Juan Street	7/29/2008	2	Uptown	\$500
1856 Viking Way	8/6/2008	1	La Jolla	\$500
3435 Texas Street	8/27/2008	3	Greater North Park	\$500
2044 3rd Avenue	9/4/2008	2	Uptown	\$500
3747 Milan Street	10/10/2008	2	Peninsula	\$500
3223 2nd Avenue	10/17/2008	2	Uptown	\$500
2310 Presidio Drive	10/21/2008	2	Uptown	\$500
3264 Curlew Street	10/23/2008	2	Uptown	\$500
1955 Sunset Boulevard	11/8/2008	2	Uptown	\$500
2806 Gregory Street	11/8/2008	3	Greater North Park	\$500
2427 Presidio Drive	11/20/2008	2	Uptown	\$500
3819 Pringle Street	11/25/2008	2	Uptown	\$500
3674 Louisiana Street	12/1/2008	3	Greater North Park	\$500
4640 Biona Drive	12/1/2008	3	Kensington-Talmadge	\$500
1007 Cypress Avenue	12/1/2008	3	Uptown	\$500

While staff does not commit to a specific timeframe for processing a historic designation nomination, we have always been able to process them within two years of submittal. These 16 properties, submitted in 2008, have been scheduled for a designation hearing in January, February or March of 2011. The property owners have paid the nomination fees and staff has reviewed the reports. In order to allow these property owners to apply for a Mills Act agreement this year, along with the other property owners who submitted nominations in 2008, the City Council would need to waive that portion of the Council Policy related to the December 31st designation deadline from Implementation Section 1.B.:

Application Deadline: The City will recognize and accept into the Mills Act Program those properties included on the local San Diego Register of Historical Resources. The deadline for requesting a Mills Act Agreement, through formal submittal of an application shall be March 31st of each year. The property for which the agreement is requested must have been designated a historical resource by the City of San Diego Historical Resources Board at a noticed public hearing by December 31st of the year prior to the year an agreement is requested [excerpt from Council Policy 700-46.]

No other provisions of the Council Policy would be required to be waived to allow these property owners to apply for a Mills Act agreement in 2011. The application deadline would remain March 31st and a 10-year work plan showing investment of anticipated tax savings would be required, as would the payment of fees. The fiscal threshold of \$200,000 in new property tax reduction to the City's general fund would remain and formal inspection and monitoring of these and other Mills Act properties and agreements by City staff would be unchanged.

CONCLUSION

In conclusion, it is recommended that the City Council approve a waiver to a portion of the Council Policy to allow certain property owners who submitted nominations for historical designation in 2008 that were not acted on by the Historical Resources Board by December 31, 2010 to apply for a Mills Act agreement in 2011, if the property would otherwise qualify.

ALTERNATIVES

Do not waive the portion of the Council Policy related to the designation deadline. The identified properties would be eligible to apply for a Mills Act agreement next year, if designated by the HRB prior to December 31st of this year.

FISCAL CONSIDERATION:

No fiscal considerations are anticipated; the approved annual threshold of new property tax reduction would not be modified. All fees for processing the historical nomination and Mills Act agreements are required to be paid by the property owner.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

In December 2008, the City Council approved revisions to the Mills Act Program (Council Policy 700-46).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

No public outreach has occurred related to this specific action. Significant community participation and public outreach occurred prior to the City Council adoption of revisions to the Mills Act Program in 2008.

Respectfully submitted,



Cathy Winterrowd, Principal Planner
City Planning & Community Investment



William Anderson, FAICP, Director
City Planning & Community Investment

ANDERSON/WINTERROWD/cw

Attachment: Council Policy 700-46, effective December 15, 2008

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

SUBJECT: MILLS ACT AGREEMENTS FOR PRESERVATION OF HISTORIC
PROPERTY
POLICY NO.: 700-46
EFFECTIVE DATE: December 15, 2008

BACKGROUND:

California state law authorizes cities to enter into contracts (“Mills Act Agreements”) with the owners of qualified historical properties to provide a property tax reduction for the use, maintenance and restoration of historically designated properties. “Qualified Properties” are defined in Government Code Section 50280.1 as: “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 126 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.”

The minimum requirements for a Mills Act Agreement, as mandated by state law include:

- 1) Minimum Agreement term of ten (10) years, automatically renewable on an annual basis, to be recorded against title to the property and running with the land.
- 2) Owner shall maintain the regulated characteristics of historical significance of the Historic Site in accordance with the rules and regulations published by the U.S. Secretary of the Interior.
- 3) Owner must allow reasonable periodic examination of the Historic Site, if a request is made and by prior appointment, by representatives of the County Assessor, State Department of Parks and Recreation and the State Board of Equalization.
- 4) City may cancel the agreement following a duly noticed public hearing if it is determined that the owner breached any mandatory conditions of the Agreement.

In 1995, the City Council determined that there was significant public benefit in granting Mills Act contracts to qualified properties and a City program was established.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

PURPOSE:

This policy is adopted to enable a granting of a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego. A properly recorded Mills Act Agreement automatically triggers an alternative method for determining the assessed value of the affected historic property, thus potentially resulting in significant property tax savings for the owner of the historic property.

This policy is intended to set the general parameters within which the City Council will allow property tax benefits to be gained by individual property owners who, in exchange, restore and maintain their historic properties, thus generating a public benefit.

POLICY:

It is the policy of the City of San Diego to foster and encourage the preservation, maintenance, rehabilitation and restoration of historically designated properties. It is recognized by the City that a reduction in property taxes afforded by the Mills Act will serve as a key monetary incentive for citizens to acquire, maintain and restore historic property within the City of San Diego. However, it is also recognized that the reduction in property taxes affects the City's General Fund and in order to understand and manage this fiscal impact new Mills Act Agreements shall be subject to the Implementation delineated below.

It is also recognized that the historic preservation goals of the Mills Act may overlap and conflict with the neighborhood revitalization mission, goals, policies and programs of the Redevelopment Agency of the City of San Diego. Because of the negative impact on tax increment financing and other measures available to promote historic preservation through redevelopment, Mills Act Agreements shall be applied in redevelopment project and study areas as delineated below.

IMPLEMENTATION:

1. Areas Outside of Redevelopment Project Areas and Study Areas

The City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of a historically designated property, upon application by the owner, subject to the following:

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

- A) Property Conditions: The Agreement shall contain the minimum mandatory conditions required by state law, including, but not limited to, provisions related to maintenance or rehabilitation of the property, explanation of conditions for non-renewal or revocation, and requirements for access by government officials for owner's compliance with the Agreement.
- B) Application Deadline: The City will recognize and accept into the Mills Act Program those properties included on the local San Diego Register of Historical Resources. The deadline for requesting a Mills Act Agreement, through formal submittal of an application shall be March 31st of each year. The property for which the agreement is requested must have been designated a historical resource by the City of San Diego Historical Resources Board at a noticed public hearing by December 31st of the year prior to the year an agreement is requested.
- C) Investment of Tax Savings: The Mills Act agreement application shall include a 10-year tailored work plan and shall demonstrate investment of the anticipated tax savings into the historic property. Work done prior to historic designation that was necessary to restore or rehabilitate the property to meet minimum requirements for designation, can be included in the work plan to demonstrate an investment in the historic property.
- D) Property Tax Reduction Threshold: The City Manager or designee shall evaluate the anticipated tax reduction of each application, based on the County Tax Assessor's formula. The City Manager is authorized to enter into all agreements that collectively fall within an annual threshold of \$200,000 projected reduction in property tax revenue to the City's General Fund. The applications shall be evaluated and processed in the order received until the total projected reduction in property tax revenue to the City has reached \$200,000 on an annual fiscal basis.
- E) Exceeding the Threshold: If in any fiscal year, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$200,000, the City Manager or designee shall seek Council authorization to exceed the threshold. The City Council may authorize the processing of Mills Act Agreements exceeding the \$200,000 threshold by making a finding that the fiscal health of the City is such that additional reduction in tax revenue can be supported by the budget.

If in any calendar year, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$200,000, and the City Council does not make a finding to authorize the processing of those Agreements, the property owner's application will be automatically rolled over to the next fiscal year.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

- F) Fees: The owner shall pay, in accordance with state law, a fee established by the City Council to cover the City's reasonable cost of administering the program, including: Mills Act Agreement preparation, processing, recording, monitoring, and enforcement. This fee is in addition to a City Council-adopted fee for processing historical nominations submitted in accordance with Land Development Code Section 123.0202(a).
- G) Monitoring and Enforcement: Inspections will be performed on a periodic basis by City staff to verify that the designated site is being maintained in a condition that meets the U.S. Secretary of the Interior's Standards, the City of San Diego Land Development Code, and the specific conditions of the Mills Act Agreement for the property.
- H) Public Benefit: The Owner must allow or create visibility of the exterior of the structure from the public right-of-way.

2. Areas within Redevelopment Project Areas and Study Areas

Only after approval by the Redevelopment Agency, the Centre City Development Corporation, or the Southeast Economic Development Corporation, the City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of a historically designated property located within a Redevelopment Project or Study area, upon application by the owner, subject to the provisions of Item 1 above, and the following:

Redevelopment Study Areas

Within a Redevelopment Study Area, Mills Act Agreements shall be permitted in conformance with this City Council Policy 700-46 and State law requirements, until adoption of the redevelopment project area. Within the Sherman Heights and Grant Hill Historic Districts, however, should they become part of a redevelopment project area, Mills Act Agreements shall be implemented as in Item 1 above.

Redevelopment Project Areas

Within a redevelopment project area, with the exception of the College Community Redevelopment Project Area, Mills Act Agreements shall be permitted as follows:

1. Owner-occupied single-family homes (including properties which may have a second residential unit) shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and state law requirements.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

2. All other properties shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and State law requirements, on a case by case basis and only when all of the following criteria are met:
 - (1) The property requires rehabilitation; and
 - (2) The owner agrees to rehabilitate the property in accordance with plans approved by the Agency; and
 - (3) The owner demonstrates that, through a project pro forma which is independently evaluated by the Agency, a Mills Act Agreement is necessary to achieve a financially feasible project, and the Agency concurs that a Mills Act Agreement is the appropriate form of public financial assistance.

No Mill Act Agreement shall be entered into within the College Community Redevelopment Project Area.

The City Manager shall report on annual basis to the City Council, with respect to the number of Mills Act Agreements executed and the effectiveness of the program. The form of the report may be the required Certified Local Government Annual Report to the State Office of Historic Preservation which is also forwarded to the City Council.

MILLS ACT AGREEMENT PROCESSING

The City Manager or designee is authorized to process a Mills Act Agreement consistent with this Council Policy and subject to the following:

- (a) Owners of private property that are subject to property taxation may request a Mills Act Agreement from the City in pursuit of a property tax reduction in accordance with Government Code Sections 50280 – 50290. The prerequisites for a property owner seeking a Mills Act Agreement are:
 - (1) the site is a designated historical resource [either individually designated or a contributor to a historical district] on the City's Register of Historical Resources,
 - (2) an application has been submitted to the City consistent with this Council Policy, as amended,
 - (3) if the site is in a Redevelopment Area, the property owner has obtained approval from an official of the Redevelopment Agency; and,

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

- (4) all fees established by the City Council have been paid for processing the historical nomination, processing the Mills Act Agreement, and the initial Mills Act monitoring fee.
- (b) Upon completion of items in (a), the City staff shall provide a draft Agreement to the property owner, consistent with this Council Policy, as amended. The property owner may then submit the signed and notarized Mills Act Agreement for City processing.
- (c) The Agreement shall contain:
 - (1) conditions imposed by the Historical Resources Board or City staff that are specific to the submitted property;
 - (2) the property owner's commitment to investment of the tax savings into the maintenance and improvement of the property as part of a 10-year work plan and in accordance with the intent of the state law;
 - (3) the property owner's agreement to comply with the U.S. Secretary of the Interior's Standards for the Treatment Historic Properties;
 - (4) the property owner's acknowledgement that, in accordance with state law, that the Mills Act Agreement may be revoked for non-compliance with the Agreement provisions, including payment of established fees; and,
 - (5) a provision to allow or create visibility of the exterior of the structure from the public right-of-way.
- (d) City staff is authorized to establish cut-off dates for processing of Mills Act Agreements for that calendar year, including but not limited to, the date City staff must receive properly signed and notarized Mills Act Agreements to allow forwarding to the County of San Diego by the close of the calendar year.

STATE LAW

If any provision of Government Code Sections 50280 – 50290 are amended in the future and it conflicts with any provision of this policy, staff is directed to follow state law and to bring forward an amendment to this Policy or to applicable provisions of the Land Development Code.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

CROSS REFERENCE:

Land Development Code, Chapter 12, Article 3, Division 2: Designation of Historical Resources Procedures; Land Development Code, Chapter 14, Article 3, Division 2: Historical Resources Regulations.

Government Code Sections 50280 – 50290.

HISTORY:

Adopted by Resolution R-285410	02/27/1995
Amended by Resolution R-286051	07/18/1995
Amended by Resolution R-304532	12/15/2008