

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Historic Landmarks Commission

SUBJECT: SEE BELOW

DATE: December 3, 2009

COUNCIL DISTRICT: 3
SNI: 13th Street

SUBJECT: MA09-007, Mills Act Historical Property Contract for the Tommie Smith House,
located at 55 N. Eleventh Street

RECOMMENDATION

The Historic Landmarks Commission (HLC) recommends (5-0-1; Peak absent) that the City Council adopt a resolution approving Historical Property Contract File No. MA09-007.

OUTCOME

Approval of the Historical Property Contract would allow the property owner to utilize property tax relief to maintain the property. By approving the contract, the City and the applicant become partners in the preservation of the landmark property.

BACKGROUND

The property owner, Brian Boguess, submitted an application for a Historic Property Contract of the Tommie Smith House in August 2009. A historical property contract is an agreement between the City of San Jose and the owner of a designated City Landmark which allows the owner to enjoy a reduced property tax rate from the County Assessor in exchange for the preservation, and in some cases restoration and rehabilitation, of the owner's historic property.

The residence at 55 N. Eleventh Street is significant primarily for its association with Tommie Smith, who won the Olympic gold medal in Mexico City in the summer of 1968. Tommie Smith remains a highly significant figure in San José, and his former home is an integral part of that history.

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The City Council designated the building as a City Landmark Structure No. HL09-181 on May 19, 2009 – Resolution No. 74914. The applicant is currently in the process of redeveloping the site. In July 2008, a Planned Development Rezoning (PDC08-005) was approved to allow the renovation and addition to the existing single-family residence and the construction of three single-family attached residential units. The associated Planned Development Permit and Historic Preservation Permits were approved on October 23, 2009.

On November 4, 2009, the Historic Landmarks Commission voted to continue the item to the December 2, 2009 meeting requesting changes to the Preservation Plan and clarification regarding the extent of the tax savings that would result from the Contract.

The Preservation Plan has been revised to address the Commission's concerns. The first three years of the Plan are to be used for on-site relocation of and additions to the Tommie Smith House. The remaining years of the contract are for the ongoing restoration, repairs and maintenance needed to preserve the Landmark (see attached Exhibit C for the complete list).

The tax savings would be based on the value of the original house. The addition to the house and the new structures would be assessed at fair market value.

On December 2, 2009, the Historic Landmarks Commission held a public hearing to consider the proposed Historical Property Contract. The Commission voted to recommend the City Council adopt a resolution approving the Historical Property Contract (File Number MA09-007) and make the following findings (5-0-1; Peak absent):

- The proposed contract is consistent with the San José 2020 General Plan;
- The proposed contract would provide greater protection for the landmark property than is otherwise provided by the provisions of Chapter 13.48 of the municipal code; and
- The proposed contract complies with the requirements of Section 13.48.520 of the San José Municipal Code.

The Historic Landmarks Commission recommended approval of the proposed Preservation Plan associated with the historic property contract.

ANALYSIS

The Historic Landmark Preservation Agreement is an incentive for ownership of City Landmarks. It is a contract between the City of San José and the owner of a designated City Landmark which allows the owner to enjoy a reduced property tax rate from the County Assessor in exchange for the preservation, and in some cases restoration and rehabilitation, of the owner's historic property. The purpose of the agreement is to provide greater protection for the City Landmark property than is otherwise provided by the historic preservation regulations in the

City Municipal Code. The County Assessor sets the property tax rate based on an appraisal of the market value of the land and improvements. A property under contract will receive a property tax reduction based on an appraisal of the rental value of the land and improvements.

The draft contract is attached. As is typical for Mills Act historical property contracts, the contract is currently being finalized by the City Attorney's Office and the property owner and will be forwarded to the City Council under separate cover prior to the public hearing.

Required Provisions of Historical Property Contracts

Municipal Code Chapter 13.48 requires provisions of Historical Property Contracts as follows:

- A. A description of the Landmark Property subject to the Contract;
- B. A provision that the term of the contract is a minimum period of ten years;
- C. Specific conditions requiring preservation of the Landmark Property and where appropriate, restoration and rehabilitation of the Landmark Property to conform to the requirements of the City, and the rules and regulations of the Office of Historic Preservation of the State of California Department of Parks and Recreation;
- D. Provision for the periodic examination of the interior and exterior of the Landmark Property by the City of San José, Santa Clara County Assessor, and the State Board of Equalization as may be necessary to determine the owner's compliance with the Contract.
- E. A requirement that the property owner annually expend an amount equal to a minimum of 10% of the tax savings attributed to the Contract to the preservation and maintenance of the Landmark Property; and
- F. A provision that the Contract is binding upon and shall inure to the benefit of, all successors in interest of the owners; and that a successor in interest shall have the same rights and obligations under the Contract as the original owners who entered into the Contract.

Required Findings of Historic Property Contracts

The Historic Landmarks Commission recommends that the City Council adopt a resolution making the following findings and approving the proposed associated Historical Property Contracts, based on the text added in italics.

- A. The proposed Contract is consistent with the General Plan;

Preservation of specific structures or special areas is a part of the San José 2020 General Plan Urban Conservation/Preservation Major Strategy. The proposed Contract is consistent with General Plan Historic, Archeological and Cultural Resources Policies, which state that

the City should utilize a variety of techniques and measures to serve as incentives toward fostering the rehabilitation of individual buildings and districts of historic significance.

- B. The proposed Contract would provide greater protection for the Landmark Property than is otherwise provided by the provisions of Municipal Code Chapter 13.48;

The proposed Contract provides greater protection for the Landmark Property than is otherwise provided by the provisions of Municipal Code because the owner, in partnership with the City, may use property tax relief to rehabilitate and maintain the property in accordance with the preservation plans, Exhibit "C".

- C. The proposed Contract complies with the required provisions of Historical Property Contracts listed above.

The proposed Contracts incorporate the Municipal Code's required provisions for Historical Property Contracts.

POLICY ALTERNATIVES

The City Council could opt to decline to approve the Mills Act historical property contract, in which case the property would remain at their current assessment level; tax savings would not be available for the property owner to carry out the preservation work being proposed in the historical property contract.

Pros: This alternative would not appear to confer any benefits, from a public policy perspective.

Cons: A decision not to approve the Mills Act historical property contract would not further the objectives of the General Plan policies and the Historic Preservation Ordinance to promote and enhance the preservation of historically and architecturally significant sites and structures (see Fiscal/Policy Alignment section, below).

Reason for not recommending: To follow through with approval of the Mills Act historical property contract as proposed would promote the General Plan and Municipal Code objectives relative to historic preservation.

PUBLIC OUTREACH/INTEREST



Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater.

(Required: Website Posting)

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- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff has followed Council Policy 6-30: Public Outreach Policy. The contract was initiated by the property owner. Public hearing notices for the project were published in a local newspaper, posted at the site, and mailed to all property owners and tenants within at least 300 feet of the subject site. Information about the proposed project and the associated public hearings has been made available through the Planning Division web site, and staff has been available to answer questions.

The Historic Landmarks Commission held public hearings on the proposed Historical Property Contract November 4, 2009 and December 2, 2009 as noted above. No members of the public spoke about the project.

COORDINATION

City Council resolutions to designate the Landmarks and the associated Historical Property Contracts have been coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with City Council Policy: Preservation of Historic Landmarks, and the Historic, Archaeological, and Cultural Resources San José 2020 General Plan policies.

COST SUMMARY/IMPLICATIONS

Under a Historical Property Contract, a property receives a lower tax bill based on the property's potential rental income rather than its full market value. The amount of tax savings varies from property to property and year to year, depending on circumstances such as the size of the building and current rental rates. Because of Proposition 13, the percent difference between a new "income-based" assessment and a property's current assessment level is also affected by how long a given property owner has owned a building. The average per-house property tax

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reduction experienced by other cities in California reportedly ranges from approximately \$2,000 to \$4,000 per year (the assessment formula is the same statewide). The property tax reduction in San José may be somewhat higher because of higher average property values.

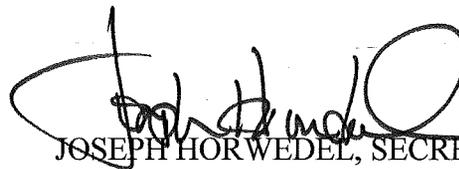
In San José, the Historical Property Contract is an incentive that is available only to individually designated City Landmark Structures. There are approximately 150 City Landmark Structures in San José, out of a total of approximately 307,000 housing units. Currently there are approximately 40 approved or pending Historical Property Contracts in the city.

BUDGET REFERENCE

Not applicable.

CEQA

The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that the project has been determined exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15331. The project is limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.



JOSEPH HORWEDEL, SECRETARY
Historic Landmarks Commission

For questions, please contact Project Manager Lori Moniz at 535-7841.