



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Historic Landmarks
Commission

SUBJECT: SEE BELOW

DATE: May 11, 2012

COUNCIL DISTRICT: 3

**SUBJECT: MA12-002. MILLS ACT HISTORICAL PROPERTY CONTRACT (MA) FOR
387 S. 1ST STREET, THE W. PRUSSIA BUILDING - CITY LANDMARK
HL01-130**

RECOMMENDATION

The Historic Landmarks Commission had a lack of quorum for this item (Colombe absent, Nunez abstained). Commission comments support Council approval with modifications to Exhibit C of contract.

ANALYSIS

On May 2, 2012, the Historic Landmarks Commission held a public hearing on the proposed Historic Property Contract. No one from the public gave testimony on these items.

The Commissioners present were in favor of the Historic Property Contract. The staff report containing an analysis of this proposal has been distributed to the Council under separate cover.

/s/

JOSEPH HORWEDEL, SECRETARY
Historic Landmarks Commission

For questions please contact Laurel Prevetti at 408-535-7901.

STAFF REPORT
HISTORIC LANDMARKS COMMISSION

FILE NO.: MA12-002, 371-387 S. First Street, W. Prussia Building

APPLICATION TYPE:

Mills Act Historical Property Contract (MA)

PROJECT DESCRIPTION:

Historical Property Contract (Mills Act) to allow partial property tax relief to rehabilitate and maintain the subject building

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|-------------------------|----------------------------------|
| Existing Zoning | DC – Downtown Primary Commercial |
| General Plan | Downtown |
| Council District | 3 |
| Annexation Date | Original City |
| Historic Classification | City Landmark |
| Historic Area | n/a |
| SNI | n/a |
| Redevelopment Area | Market Gateway |
| Specific Plan | n/a |



BACKGROUND

On January 25, 2012, the applicant submitted an application for a historical property contract for the property located at 371-387 S. First Street. 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 W. Prussia Building was designated as City Landmark No. HL01-130 on October 2, 2001 due to its identifications with Willard L. Prussia, who was active in the San Jose business community; the Cahill Brothers of San Francisco, who constructed the structure; and the architectural firm of Weeks and Day, as a distinguished example of the firms' designs.

ANALYSIS

The Historic Landmark Preservation Agreement is an incentive for ownership and rehabilitation of City Landmarks. It is a contract 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 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.

Required Provisions of Historical Property Contracts

Municipal Code Chapter 13.48 requires Historical Property Contracts to contain the following information:

- 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 Jose, 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 the tax savings attributed to the Contract to the preservation and maintenance of the Landmark Property; averaged over the ten- year span of the contract; 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.

In addition to the Municipal Code provisions above, State legislation requires the City Clerk to record a Historic Property Contract with the County Recorder by December 31st of any calendar year in order to be effective during the following calendar year.

The Mills Act Historical Property Contract is a standardized form document, the majority of which is the same for each individual property. The proposed year-by-year repairs, upgrades, and maintenance are described in the Preservation Plan (Exhibit "C" of the contract). The Preservation Plan differs from property to property, based on the specific needs of each individual historical building and situation. Exhibit C with the proposed Preservation Plan is attached to this report.

The Preservation Plan (Exhibit "C") includes an itemized list of proposed upgrades, maintenance, and repair tasks for the first ten years of the Historical Property Contract. Each of the Preservation Plans identifies specific anticipated work that is planned to be performed. However, the Preservation Plan should be viewed as an outline of anticipated work, representing the amount of work that will be done to preserve and enhance the historic resource given the annual tax savings afforded by the Historical Property Contract. For any given year, other preservation work that would represent a similar expenditure may be substituted as different site-specific needs arise over time. All work being done to meet the requirements of the Contract remains subject to approval of any applicable permits, including Historic Preservation Permits (or Permit Amendment/Adjustments) and building permits. Any work being reviewed under a Historic Preservation Permit/Amendment/Adjustment undergoes design review to ensure compatibility with the guidelines.

Required Findings of Historic Property Contracts

In accordance with Municipal Code Chapter 13.48, the City Council may approve a Historic Property Contract only if the following findings are made. Planning staff recommends that the Historic Landmarks Commission recommend the City Council make the following findings and approve the proposed Historical Property Contract, 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 Jose 2040 General Plan *Policy LU-13.13* to foster the rehabilitation of buildings, structures, areas, places, and districts of historic significance. Utilize incentives permitting flexibility as to their uses; transfer of development rights; tax relief for designated landmarks and districts; easements; alternative building code provisions for the reuse of historic structures; and financial incentives.

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 proposed 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 plan, Exhibit "C".

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

The proposed Contracts incorporate the required provisions for Historical Property Contracts listed in Section 13.48.520 of the San José Municipal Code. Furthermore, the Historic Property Contract incorporates the required provisions of State law requiring the City to inspect the landmark property prior to bringing a contract to Council for consideration and to inspect the landmark property at least every 5 years thereafter for compliance with the contract.

GENERAL PLAN CONFORMANCE

The Landmark Designation for the Geer House conforms to, and furthers, the Envision San Jose 2040 General Plan. Historic sites and structures provide an educational link to San José's past and foster a sense of place and community identity for San José. The preservation of appropriate remnants of a city's past provides multiple benefits important to the health and progress of the city. Historical resources:

- Are instructive, telling the story of a community's past;
- Provide a sense of civic identity and unique character;
- Are typically an interesting and pleasing aesthetic in the urban environment;
- Can generate economic advantage for a property or neighborhood;
- Give a community a sense of permanency. A place with a clear past can expect to also have a definite future;
- Once lost, cannot be recovered.

Staff considers the project consistent with the applicable goals and policies of the General Plan; in particular:

Goal LU-13 – Landmarks and Districts. Preserve and enhance historic landmarks and districts in order to promote a greater sense of historic awareness and community identity and contribute toward a sense of place.

Policy LU-13.6 Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for Treatment of Historic Properties and/or appropriate State of California requirements regarding historic buildings and/or structures, including the California Historical Building Code.

Policy LU -13.12 Develop and encourage public/public and public/private partnerships as a means to support, expand, and promote historic preservation.

Policy LU -13.13 Foster the rehabilitation of buildings, structures, areas, places, and districts of historic significance. Utilize incentives permitting flexibility as to their uses; transfer of development rights; tax relief for designated landmarks and districts; easements; alternative building code provisions for the reuse of historic structures; and financial incentives.

Goal LU-16 – Sustainable Practices. Preserve, conserve, and/or rehabilitate historic structures as a means to achieve the City of San José's environmental, economic, and fiscal sustainability goals.

Policy LU -16.5 Utilize the aesthetic and cultural qualities of historic resources of all types as means of promoting San José as a place to live, work and visit consistent with the City's economic development goals.

The landmark designation process of the Historic Preservation Ordinance promotes and enhances the preservation of historically or architecturally significant sites and structures. In addition, the proposed historical property contracts specifically further the objectives.

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 of the CEQA Guidelines. 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.

COMMUNITY OUTREACH

The proposed Landmark nomination and Historical Property Contract was initiated by the property owner. A public hearing notice for the project was published in a local newspaper, posted at the site, and mailed to all property owners and tenants within at least 500 feet of the subject site. Information about the proposed projects and the associated public hearings has been made available through the Planning Division web site, and staff has been available to answer questions.

RECOMMENDATIONS

Planning staff recommends that the Historic Landmarks Commission, after holding a public hearing on the subject proposal, recommend that the City Council make the following findings and approve the Historic Property Contract of the W. Prussia Building at 371-387 S. First Street at the City Council hearing scheduled for May 22, 2012 at 1:30 PM.

- The proposed contract is consistent with the San José 2040 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.

Project Manager: Lori Moniz **Approved by:** Samuel Perrett **Date:** 04/25/12

Attachments: Article regarding Mills Act
Draft Proposed Preservation Plan (Exhibit "C")

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| OWNERS/APPLICANTS |
|--------------------------|

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| Thang Do, 14901 Fruitvale Avenue, Saratoga, CA 95070-6138 |
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Reducing Property Taxes with the Mills Act

By Ken Fowler

Anyone who owns an older home would love to have more money available to maintain and restore it. The good news is that the state Mills Act can help free up those funds by reducing your real estate taxes. If you promise to use those tax savings to preserve your property's historic character, your recalculated property taxes using the special Mills Act assessment method can be reduced 50% or more!

What Property Is Eligible and How It Works

The City of San Jose has adopted the Mills Act and will enter into contracts only with property owners of designated city landmarks. The landmarking process must be completed before a Mills Act contract is initiated. See the accompanying story for how PAC* SJ member Rusty Lutz just obtained city landmark status for his North Second Street apartment building. (If you outside San Jose, check with your local planning office for what they have deemed a qualified historic property. Property owners in unincorporated Santa Clara County should contact the County Historical Heritage Commission.)

A Mills Act contract runs for 10 years and renews itself automatically. If the city or property owner chooses not to renew, the contract

will terminate at the end of the current 10-year term. The city or property owner may also cancel the contract, but a penalty may be assessed.

How the Reduced Property Tax Is Computed

Mills Act contracts are available for income property and for owner-occupied property. Property valuation is determined by the "income" method. Generally, the income, or projected income, less certain expenses, is divided by a capitalization rate to determine the assessed value of the property. When a property is owner occupied, the determination of "income" is based on what a property could reasonably be expected to yield in rental income. In the case of income-producing property, the income amount is based on rent actually received and on typical rents received for similar property in similar use.

Here's an example of how much money would be saved on a historic residence assessed at \$800,000. At a 1% property tax rate, current taxes would be \$8,000. Let's say the property does or could generate a \$5,000 monthly income, or a \$60,000 annual gross. Let's say expenses (things like insurance, repairs, and utilities) run \$10,000 a year. That would be a net income of \$50,000. To determine the



capitalization rate, we add up four components:

1. Your mortgage rate (for this example, let's say 4%)
2. A historical property risk component (4% for owner-occupied single-family residences, 2% for other cases)
3. Amortization (for this example, let's say 5%)
4. Your property tax rate (for this example, 1%)

These four components add up to 14%. Divide \$50,000 by 0.14, and you get the new assessed value of the residence, \$357,143. Instead of the original \$8,000 in property taxes, the new taxes would be \$3,571. That's a yearly savings of \$4,429.

City Landmark Name: W. PRUSSIA BUILDING
City Landmark Number: HL 01-130
Property Address: 371 – 387 S. FIRST ST., SAN JOSE, CA 95113

EXHIBIT C Preservation Plan

OWNER shall annually expend an amount equal to a minimum of 10% of the tax savings attributed to this Agreement for the preservation and maintenance of the Historic Landmark. The rehabilitation of the Historic Landmark shall be completed on or before the 10th anniversary of the Effective Date of this Agreement, and such rehabilitation shall include all of the following tasks:

Year Description

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|-------|--|
| One | Structural Upgrade + Interior Renovation (2 nd and 3 rd floor) |
| Two | Structural Upgrade + Interior Renovation (1 st , 2 nd and 3 rd floor) |
| Three | Interior Renovation (1 st floor) + façade repair (wood panels and door/windows) |
| Four | Façade repair (terra cotta) |
| Five | Façade repair (store front and signage) |
| Six | Re-roofing |
| Seven | Renovate rear courtyard |
| Eight | Renovate rear courtyard |
| Nine | Interior Renovation (2 nd floor) |
| Ten | Repaint Exterior |

After the 10th Anniversary date of the Effective Date of this Agreement, Owner shall expend an amount to a minimum of 10% of the tax savings attributed to this Agreement for the continued preservation and maintenance of the Historic Landmark and more specifically shall perform and complete but without limitation the following tasks each year:

Maintenance
Painting
Repairs