



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/17/2019

ITEM NO: 12

DATE: September 10, 2019
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Discussion and Direction on Mills Act Ordinance and Implementation Program Preparation

RECOMMENDATION:

Staff recommends that Council discuss and provide direction on whether staff should draft a Mills Act Ordinance and implementation program.

BACKGROUND:

In 1972, the state of California enacted the Mills Act, an economic incentive program to encourage the preservation of historic buildings. State codes related to the Mills Act include California Government Code, Article 12, Sections 50280 – 50290 and California Revenue and Taxation Code, Article 1.9, Sections 439 – 439.4.

The Mills Act grants local governments the authority to establish, administer, and implement Mills Act Historic Preservation Tax Relief Programs (Mills Act programs). Cities and counties with Mills Act programs can enter into contracts with owners of qualified historic properties who actively participate in the preservation, restoration, and maintenance of their historic properties while potentially receiving property tax relief. Property owners must use any tax savings to extend the life of the structure(s) and protect the historic and aesthetic value of the property.

The Town Council decided in January 2019 to not include this topic as a priority and goal or as an Ordinance for the Town Attorney to work on. Due to public comment at subsequent Council meetings, the Mayor requested this item be placed on the agenda. Therefore, this report only provides a brief overview of the Mills Act. Due to the FPPC conflict of interest of

PREPARED BY: Robert Schultz
Town Attorney

Reviewed by: Town Manager and Assistant Town Manager, and Community Development Director

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BACKGROUND (continued):

four of the five Council members, only three Council members are hearing this item. Therefore, the three Council members must unanimously agree to move forward with the future consideration of a Mills Act Ordinance and associated implementation program.

DISCUSSION:

Most jurisdictions participate in the Mills Act to encourage maintenance and upkeep of older properties. The Town is fortunate in that its citizens take pride in improving and maintaining their properties. In addition, the Town's Historic Preservation Ordinance and Design Guidelines further protect historical structures and promote an excellence in design which is expected by the public. Therefore, the Town does not have the same challenges as other jurisdictions in encouraging the upkeep and improvement of historic properties.

However, if the Council desires to establish a Mills Act program, the Council would need to adopt an enabling Ordinance and implementation program. The process would require the Town to adopt its own criteria for establishing qualified historic properties. Since the Town defines historic properties as contributing structures located within designated historic districts, individually designated historic structures/sites, or primary structures built prior to 1941 unless determined not to have significance, the Town could adopt all or some of those definitions for establishing qualified historic properties under the Mills Act. Attachment 1 is the Town's property information on historical residential and commercial properties as a reference for how many properties could be affected by a Mills Act Ordinance.

The Town would also have to develop an application process and determine how many contracts will be allowed within its jurisdiction since a formal agreement is required between the Town and property owner for each Mills Act contract. This is typically done by Council resolution. As an example, the City of Saratoga limits the number of contracts awarded per year to three and Campbell allows an annual maximum of ten Mills Act contracts. As part of the Mills Act application, the applicant would be responsible for preparing an historic report for the property to document the significance criteria, describe the character defining features, and provide a detailed list of exterior and interior improvements planned for the property over the next ten years.

The Town would also have to develop approval, monitoring, and inspection processes for each individual contract to ensure the owner complies with their contract. The criteria and processes are very important to ensure that qualifying historic properties are preserved in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. Depending on the number of contracts, this can be a significant staff commitment potentially requiring additional staff and/or contractors to administer a Mills Act program. In

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DISCUSSION (continued):

addition, penalties would need to be established and enforced in the event of a breach of contract.

It is also important to understand that a Mills Act contract provides only the potential for property tax reduction. It is not a guarantee. Each property varies according to its income-generating potential and current assessed value. The property valuation is determined by the "income method" set out in U.S. Revenue and Tax Code Section 439.21. A property's income, or projected income, less certain yearly expenses, is divided by a capitalization rate to determine the Mills Act assessed value of the qualified historic property.

Attachment 2 contains various scenarios of potential property valuations of Mills Act property tax savings on property assessed at \$450,000 to \$3,000,000. From the scenarios, Mills Act participants only begin to receive a tax savings each year for property assessed over \$450,000. Therefore, long time homeowners who have Proposition 13 benefits would not be expected to experience any savings.

In addition, some Mills Act programs have property valuation thresholds in place to ensure that revenue loss for a jurisdiction is minimized and properties with assessed values higher than \$1,500,000 must apply for an exemption to the threshold valuations and undergo more rigorous scrutiny of the property's need for the property tax subsidy.

ALTERNATIVES:

As an alternative to the Mills Act, the Town Council could consider other historic preservation options as future Strategic Priorities, such as a review of the existing Code and Guidelines, additional historic surveys and inventory work, or other items.

CONCLUSION AND NEXT STEPS:

The Mills Act is especially beneficial for recent buyers of historic sites, or owners who may have recently had a property transfer or tax reassessment. Due to the Town's current development standards, the Council's current Strategic Priorities, the workload involved in implementing and processing Mills Act contracts, and the current Community Development Department workload, including the General Plan update, there are insufficient staff resources to research, prepare the analysis, draft an Ordinance, determine appropriate fees, and develop an implementation program unless the Town Council adjusts work priorities. If the Town Council decides to move forward, the Council may modify work priorities at the Strategic Priority discussion in late 2019/early 2020.

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COORDINATION:

This staff report was coordinated with the Community Development Department and Town Manager's Office.

FISCAL IMPACT:

If the Council decides to prepare a Mills Act Ordinance, analysis would be required to determine the fiscal impact to the Town if implemented.

Attachments:

1. Table 1, Property Information
2. Tables 2 - 7, Mills Act Property Tax Calculator Examples
3. Public Comment received by 11:00 a.m. Thursday, September 12, 2019