

ORDINANCE NO. 16-

AN ORDINANCE ADDING ARTICLE 27 TO CHAPTER 10 OF THE HAYWARD MUNICIPAL CODE REGARDING THE MILLS ACT PROGRAM

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Provisions. Upon the effective date of this ordinance, Article 27 is added to Chapter 10 of the Hayward Municipal Code and is hereby enacted to read as follows:

HAYWARD MUNICIPAL CODE
CHAPTER 10, ARTICLE 27
MILLS ACT PROGRAM

Section	Subject Matter
10-27.010	PURPOSE
10-27.020	DEFINITIONS
10-27.030	PROGRAM ELIGIBILITY REQUIREMENTS
10-27.040	CONTRACTUAL REQUIREMENTS
10-27.050	PROCEDURAL REQUIREMENTS
10-27.060	DUTY TO KEEP IN GOOD REPAIR

ARTICLE 27

MILLS ACT PROGRAM

SEC. 10-27.010 PURPOSE. The purpose of the Article is to implement the Mills Act, California Government Code Sections 50280 *et. seq.* The Mills Act authorizes local governments to enter into contracts with owners of private historical property who will rehabilitate, restore, preserve, and maintain a qualified historical property. The City may provide certain property tax reductions in accordance with Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code in order to assist in the financing of such work. The cost of properly rehabilitating, restoring and preserving historic building may be prohibitive for property owners. The Mills Act Program will help alleviate these cost prohibitive considerations.

SEC. 10-27.020 DEFINITIONS. Terms used in this Article are defined as follows:

- a. "Authorized Agent" means the individual or entity an owner identifies as a party authorized to act on behalf of the owner.
- b. "Buildings" means structures created to shelter human activity. Historic buildings are considered in their entirety.
- c. "Integrity" means the ability of a property to convey its historical significance. Evaluation of integrity is grounded in an understanding of a property's physical features and how they relate to its historical significance. There are seven aspects or qualities that, in various combinations, define integrity: location, design, setting, materials, workmanship, feeling and association. To retain historic integrity, a property will possess several, and usually most, of the aspects. Determining which of the seven aspects are most important to a property requires knowing why, where and when the property is significant.
- d. "Historic District" means a geographically-definable area—urban or rural, small or large—possessing a significant concentration, linkage, or continuity of sites, buildings, structures and/or objects united by past events or aesthetically by plan or physical development. A historic district may also comprise individual elements separated geographically but linked by association or history. A contributing resource within an historic district is a historical resource which contributes to the character of a historic district as described in National Register Bulletin 15.
- e. "Historical Property Contract" means a contract entered into between the City of Hayward and the owner(s) of a Qualified Historical Property per California Government Code Section 50280 *et.seq.*

- f. "Location" means the place where the historic property was constructed.
- g. "Owner" means the individual(s) or entity(ies) who hold the title of a Qualified Historical Property.
- h. "Preservation" means the act or process of applying measures necessary to sustain the existing form, integrity and materials of a historical property. Work, including preliminary measure to protect and stabilize the resource, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.
- i. "Qualified Historical Property" means a privately owned property which is not exempt from property taxation and which meets either of the following on or before December 31 of the year before submission of an application:
 - 1. 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 26 of the Code of Federal Regulations.
 - 2. Listed in any state, city, or county official register of historical or architecturally significant sites, places, or landmarks.
- j. "Rehabilitation" means the act or process of making possible a compatible use for a resource through repair, alterations and additions while preserving those portions or features which convey its historical, cultural, or architectural value.
- k. "Restoration" means the act or process of accurately depicting the form, features and character of a resource as it appeared at a particular period in time by means of the removal of features from other periods in its history and reconstructing missing features from the restoration period.

SEC. 10-27.030 PROGRAM ELIGIBILITY REQUIREMENTS. Owners or authorized agents of owners of Qualified Historical Properties are eligible to participate in the Hayward Mills Act Program.

SEC. 10-27.040 CONTRACTUAL REQUIREMENTS. The required provisions of a Mills Act Program Contract shall be at least those required by California Government Code Section 50281 and 50282, as amended from time to time, including but not limited to the following:

- a. Minimum term of ten (10) years;
- b. The owner's commitment and obligation to preserve and, when necessary, restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the State of California Department of Parks and Recreation, the United States Secretary of the Interior's Standard of Rehabilitation, and the State Historical Building Code;
- c. Permission to conduct periodic examinations of the interior and exterior of the Qualified Historical Property by the City of Hayward, the Alameda County Assessor-Recorder, the Office of Historic Preservation of the California Department of Parks and Recreation, and/or the State Board of Equalization, as may be necessary to determine the owner's compliance with the Historical Property Contract;

- d. That the Historical Property Contract is binding upon, and shall inure to the benefit of, all successors in interest of the owner;
- e. A requirement that the owner provide written notice of the contract to the Office of Historic Preservation within six months of entering into the contract; and
- f. Automatic annual renewal(s) of the contract, absent timely written notice of nonrenewal by the owner or the City as prescribed in California Government Code Section 50282;
- g. A provision that the City may cancel the contract, following the procedures specified in California Government Code Sections 50285 and 50286, if it determines that the owner has breached any of its conditions or has allowed the property to deteriorate to the point that it no longer meets the standards applicable to a Qualified Historical Property. The Contract shall also state that, if the City cancels the contract for either of the above reasons, the owner shall pay the County Auditor a cancellation fee as set forth in California Government Code Section 50286, as amended from time to time;
- h. A provision that if, pursuant to an owner's application, the City Council determines that preservation, restoration or rehabilitation has become infeasible due to damage caused by a natural disaster (i.e. earthquake, fire, flood, etc.), the City may cancel the contract without the owner being required to pay the cancellation fee as described in SEC 10-27.040(g), to the extent that non-payment is permitted by law; and
- i. The property owner's indemnification of the City for, and agreement to hold the City harmless from, any claims arising from any use of the property.

SEC. 10-27.050 PROCEDURAL REQUIREMENTS.

- a. The annual application deadline for a Historical Property Contract shall be June 15. Application for a Historical Property Contract may be submitted to the Development Services Department, Planning Division between January 1 and June 15 of each year.
- b. The Historical Property Contract application shall include the following:
 - 1. An application fee as established by City Council resolution; and
 - 2. A complete legal description of the property; and
 - 3. A scope of the nature and cost of the rehabilitation, restoration, preservation, or maintenance work to be conducted on the property; and
 - 4. Any other information as determined necessary by the Director of Development Services and as set forth on the application submittal form.
- c. The Development Services Director or designee shall initially determine the eligibility of the property for a Historical Property Contract within 60 days of receipt of a complete application.
- d. If the application is eligible for a Historical Property Contract, the Director of Development Services shall prepare a recommendation to City Council to either approve or deny the application.
 - 1. In order to recommend approval of an application of an Historical Property Contract, the Director of Development Services must find that approval of the contract is consistent with and supportive of the General Plan goals and policies for historic preservation and the provisions of this article.

2. In the recommendation, the Director of Finance shall provide a report on the estimated fiscal impact of the proposed Historical Property Contract.
- e. If the property owner wishes to make an application for exterior modifications to structures or objects on the property, the owner must do so concurrent with his/her application for an Historical Property Contract. The City Council shall not take action on an application for an Historical Property Contract until it has acted on any concurrent applications for exterior modifications.
- f. The City Council shall conduct a noticed public hearing to review the proposed Historical Property Contract and the recommendations of the Director of Development Services and the Director of Finance. The City Council shall have full discretion to determine whether it is in the public interest to enter into a Historical Property Contract regarding a particular Qualified Historical Property. The City Council may also approve, disapprove, or modify and approve the terms of the proposed Historical Property Contract.
- g. In order to approve the contract, the City Council must find it is consistent with and supportive of the General Plan goals and polices for historic preservation and the provisions of this chapter.

Where the City Council approves an application for a Historical Property Contract, the City Manager shall be authorized to sign the contract on behalf of the City. Upon signature of the contract by the owner and the City Manager, the City Clerk shall forthwith record with the County Recorder a copy of the executed Historical Property Contract.

SEC. 10-27.060 DUTY TO KEEP IN GOOD REPAIR. In accordance with Hayward Municipal Code SEC. 10-11.150, the owner, occupant or other person in actual charge of a historical resource, or an improvement, building or structure in an historic district shall keep in good repair all of the exterior portions of such improvement, building or structure as necessary to prevent deterioration and decay of any exterior architectural feature.

Section 2. Severance. Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 3rd day of May, 2016, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2016, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____

Mayor of the City of Hayward

DATE: _____

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward