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MILLS ACT PROGRAM

In 1972 Senator James Mills introduced a little-publicized bill for owners of qualified historical properties. This bill would allow a city to have an agreement with an owner of a qualified historically significant structure. This agreement, known as the “Mills Act” program, binds the owner to maintain the property under the guidelines of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior’s Standards for Rehabilitation, and the State Historical Building Code. In exchange, the property owner may benefit from a property tax reduction.

Properties ranging from residential to income producing commercial properties are recognized under the Act. There are historical properties that may not benefit from this program due to their low base year value. It is important to compare your current assessed value with an estimated historic property value to determine if the Mills Act program would be feasible. Assessment under this program does not change the original base year value and is a valuation that is recalculated every year.

It is up to the discretion of the city whether or not to participate in this program and which properties to grant this contract. Contact your local planning department for information regarding the implementation of the Mills Act program or the Special Properties division of the Orange County Assessor’s Department for assessment information (714) 834-2727.

The following is a list of participating cities, contact name, and number:

ANAHEIM	Christine Nguyen, Associate Planner	(714) 765-4942
BREA	Maribeth Tinio, Senior Planner	(714) 990-7674
COSTA MESA	Willa Bownes-Killen, Principal Planner	(714) 754-5153
COUNTY OF ORANGE	Ruby Maldonado, Planning Manager	(714) 667-8855
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HUNTINGTON BEACH	Jason Kelley, Senior Planner	(714) 374-1553
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TUSTIN	Scott Reekstin, Principal Planner or Elaine Dove, Senior Planner	(714) 573-3016 (714) 573-3136

The following pages contain:

- Revenue and Taxation code sections 439–439.4, sections dictating historical property value methodology.
- Government code sections 50280–50290, sections defining contract requirements.
- Hypothetical historical property valuation.

**CALIFORNIA CODES
REVENUE AND TAXATION CODE
SECTION 439-439.4**

439. "Enforceably restricted" defined. For the purposes of this article and within the meaning of Section 8 of Article XIII of the Constitution, property is "enforceably restricted" if it is subject to an historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

439.1. "Restricted historical property" defined. For purposes of this article "restricted historical property" means qualified historical property, as defined in Section 50280.1 of the Government Code, that is subject to a historical property contract executed pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code. For purposes of this section, "qualified historical property" includes qualified historical improvements and any land on which the qualified historical improvements are situated, as specified in the historical property contract. If the historical property contract does not specify the land that is to be included, "qualified historical property" includes only that area of reasonable size that is used as a site for the historical improvements.

439.2. Valuing enforceable restricted historical property. When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

- (1) Where sufficient rental information is available, the income shall be the fair rent that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.
- (2) Where sufficient rental information is not available, the income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.
- (3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated.

For purposes of this section, income shall be determined in accordance with rules and regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted.

Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the revenue. Those expenditures to be charged against revenue shall be only those that are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

- (1) An interest component to be determined by the board and announced no later than October 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as most recently published by the Federal Housing Finance Agency as of September 1, rounded to the nearest one-fourth of 1 percent.

- (2) A historical property risk component of 4 percent.
 - (3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.
 - (4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.
- (c) The capitalization rate to be used in valuing all other restricted historical property pursuant to this article shall not be derived from sales data and shall be the sum of the following components:
- (1) An interest component to be determined by the board and announced no later than October 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance Agency September 1, rounded to the nearest one-fourth of 1 percent.
 - (2) A historical property risk component of 2 percent.
 - (3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.
 - (4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.
- (d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.
- (e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).
- (f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.

439.3. Valuing enforceably restricted historical property where notice of nonrenewal given. Notwithstanding any provision of Section 439.2 to the contrary, if either the county or city or the owner of restricted historical property subject to contract has served notice of nonrenewal as provided in Section 50282 of the Government Code, the county assessor shall value that restricted historical property as provided in this section.

(a) Following the hearing conducted pursuant to Section 50285 of the Government Code, subdivision (b) shall apply until the termination of the period for which the restricted historical property is enforceably restricted.

(b) The board or assessor in each year until the termination of the period for which the property is enforceably restricted shall do all of the following:

- (1) Determine the full cash value of the property pursuant to Section 110.1. If the property is not subject to Section 110.1 when the restriction expires, the value shall be determined pursuant to Section 110 as if the property were free of contractual restriction. If the property will be subject to a use for which this chapter provides a special restricted assessment, the value of the property shall be determined as if it were subject to the new restriction.
- (2) Determine the value of the property by the capitalization of income method as provided in Section 439.2 and without regard to the fact that a notice of nonrenewal or cancellation has occurred.
- (3) Subtract the value determined in paragraph (2) of this subdivision by capitalization of income from the full cash value determined in paragraph (1).
- (4) Using the rate announced by the board pursuant to paragraph (1) of subdivision (b) of Section 439.2, discount the amount obtained in paragraph (3) for the number of years remaining until the termination of the period for which the property is enforceably restricted.
- (5) Determine the value of the property by adding the value determined by the capitalization of income method as provided in paragraph (2) and the value obtained in paragraph (4).
- (6) Apply the ratios prescribed in Section 401 to the value of the property determined in paragraph (5) to obtain its assessed value.

439.4. Valuing property under this article. No property shall be valued pursuant to this article unless an enforceable restriction meeting the requirements of Section 439 is signed, accepted and recorded on or before the lien date for the fiscal year in which the valuation would apply.

**CALIFORNIA CODES
GOVERNMENT CODE
SECTION 50280-50290**

50280. Application. Upon the application of an owner or the agent of an owner of any qualified historical property, as defined in Section 50280.1, the legislative body of a city, county, or city and county may contract with the owner or agent to restrict the use of the property in a manner which the legislative body deems reasonable to carry out the purposes of this article and of Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code. The contract shall meet the requirements of Sections 50281 and 50282.

50280.1. Qualified historical property. "Qualified historical property" for purposes of this article, means 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 26 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.

50281. Contract provisions. Any contract entered into under this article shall contain the following provisions:

- (a) The term of the contract shall be for a minimum period of 10 years.
- (b) Where applicable, the contract shall provide the following:
 - (1) For the preservation of the qualified historical property and, when necessary, to restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation, and the State Historical Building Code.
 - (2) For an inspection of the interior and exterior of the premises by the city, county, or city and county, prior to a new agreement, and every five years thereafter, to determine the owner's compliance with the contract.
 - (3) For it to be binding upon, and inure to the benefit of, all successors in interest of the owner. A successor in interest shall have the same rights and obligations under the contract as the original owner who entered into the contract.

50281.1. Fee requirements. The legislative body entering into a contract described in this article may require that the property owner, as a condition to entering into the contract, pay a fee that shall not exceed the reasonable cost of providing the service pursuant to this article for which the fee is charged.

50282. Automatic renewal or notice of nonrenewal. (a) Each contract shall provide that on the anniversary date of the contract or such other annual date as is specified in the contract, a year shall be added automatically to the initial term of the contract unless notice of nonrenewal is given as provided in this section. Each contract shall also provide that after five years, and every five years thereafter, the city, county, or city and county shall inspect the interior and exterior of the premises to determine the owner's continued compliance with the contract. If the property owner or the legislative body desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract on the other party in advance of the annual renewal date of the contract. Unless the notice is served by the owner at least 90 days prior to the renewal date or by the legislative body at least 60 days prior to the renewal date, one year shall automatically be added to the term of the contract.

- (b) Upon receipt by the owner of a notice from the legislative body of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The legislative body may, at any time prior to the renewal date, withdraw the notice of nonrenewal.
- (c) If the legislative body or the owner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.
- (d) The owner shall furnish the legislative body with any information the legislative body shall require in order to enable it to determine the eligibility of the property involved.

(e) No later than 20 days after a city or county enters into a contract with an owner pursuant to this article, the clerk of the legislative body shall record with the county recorder a copy of the contract, which shall describe the property subject thereto. From and after the time of the recordation, this contract shall impart a notice thereof to all persons as is afforded by the recording laws of this state.

50284. Cancellation of contract. If the legislative body determines that the owner has breached any of the conditions of the contract provided for in this article or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property, the legislative body shall do one of the following:

(a) Cancel the contract by following the procedures specified in Sections 50285 and 50286.

(b) Bring any action in court necessary to enforce a contract, including, but not limited to, an action to enforce the contract by specific performance or injunction.

50285. Notice of cancellation and hearing. No contract shall be canceled under Section 50284 until after the legislative body has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be mailed to the last known address of each owner of property within the historic zone and shall be published pursuant to Section 6061.

50286. Cancellation fee. (a) If a contract is canceled under Section 50284, the owner shall pay a cancellation fee equal to 12½ percent of the current fair market value of the property, as determined by the county assessor as though the property were free of the contractual restriction.

(b) The cancellation fee shall be paid to the county auditor, at the time and in the manner that the county auditor shall prescribe, and shall be allocated by the county auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.

(c) Notwithstanding any other provision of law, revenue received by a school district pursuant to this section shall be considered property tax revenue for the purposes of Section 42238 of the Education Code, and revenue received by a county superintendent of schools pursuant to this section shall be considered property tax revenue for the purposes of Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1 of the Education Code.

50287. Court action as alternative to cancellation. As an alternative to cancellation of the contract for breach of any condition, a landowner that is a party to the contract may bring any action in court necessary to enforce a contract including, but not limited to, an action to enforce the contract by specific performance or injunction.

50288. Acquisition by eminent domain. In the event that property subject to contract under this article is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the legislative body to frustrate the purpose of the contract, such contract shall be canceled and no fee shall be imposed under Section 50286. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

50289. Property under contract annexed to city. In the event that property restricted by a contract with a county under this article is annexed to a city, the city shall succeed to all rights, duties, and powers of the county under such contract.

50290. Consultation by local agencies and owners. Local agencies and owners of qualified historical properties may consult with the State Historical Resources Commission for its advice and counsel on matters relevant to historical property contracts.

**STATE BOARD OF EQUALIZATION
LETTER TO ASSESSOR NO. 2005/035**

Although the assessor is required to establish a new base year value upon a change in ownership or completed new construction involving restricted historical property, such property is not subject to supplemental assessment. As provided in Revenue and Taxation Code section 75.14.

Note: Parcel that is subject to a Mills Act contract may receive a partial supplemental assessment if a portion of that property is not recognized as a “qualified historic structure”.

TERMS USED TO DETERMINE NET OPERATING INCOME

REVENUE

Revenue shall be the amount of money or money’s worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted.

EXPENSES

Those expenditures to be charged against revenue shall be only those that are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

The following examples are not all inclusive nor do all categories apply to every property:

DO INCLUDE expenses like these if paid by the property owner:

1. Property insurance
2. Water and sewer
3. Utilities
4. Garbage collection
5. Property management
6. Maintenance and repairs*
7. Landscaping
8. Professional fees

*A repair keeps your property in good operating condition. It does not materially add to the value of your property or substantially prolong its life. Repainting your property inside or out, fixing gutters or floors, fixing leaks, plastering, and replacing broken windows are examples of repairs. Remodeling a kitchen or bathroom, replacing a roof, or extensive restoration are considered capital expenditures/improvements.

NEVER INCLUDE:

1. Property taxes
2. Investor income taxes
3. Replacement reserves
4. Capital improvements
5. Depreciation

EXAMPLES OF HISTORICAL PROPERTY VALUATIONS UNDER R&T CODE 439 FOR 2019

The following examples are for demonstrative purposes only. Applicant’s actual calculation may differ depending on varying factors.

OWNER OCCUPIED SINGLE FAMILY RESIDENCE EXAMPLE			
1,300 square foot, 3 bedroom, 2 bathroom, single-family residence built in 1909.			
2017 Base Year value			\$550,000
Estimated allocated values		land	\$440,000 80%
		improvements	\$110,000 20%
Factored Base Year Value	2018 CPI	2.000%	\$561,000
	2019 CPI	2.000%	\$572,220
Current fair market value as of 01/01/19			625,000
Estimated remaining life			30 years
Owner occupied (eligible for a Homeowner’s Exemption)			
Valuation			
Potential Gross Income (annual @ 2,200 per month)			\$26,400
Less Vacancy & Collection loss		-5%	(\$1,320)
Effective Gross Income			\$25,080
Less annual expenses		-25%	(\$6,270)
Net Operating Income			\$18,810
Capitalization rate:			
1) Interest component	4.75000%	(State reported rate)	
2) Risk component	4.00000%	(owner occupied SFR rate)	
3) Property tax component	1.10733%	(tax rate from area)	
4) Amortization component	<u>0.66700%</u>	20% * (1/30)	
Total			10.52433%
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">Improvement allocation</div>		
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">Reciprocal of the remaining improvement life</div>		
Capitalized Net Operating Income	\$18,810	/ 0.1052433	\$178,728
Annual Roll Value			
Factored Base Year Value:			\$572,220
Fair Market Value:			\$625,000
Historic Property Value:			\$178,728
Enrolled value:			\$178,728

NON-OWNER OCCUPIED SINGLE FAMILY RESIDENCE EXAMPLE

1,300 square foot, 3 bedroom, 2 bathroom, single-family residence built in 1909.

2017 Base Year value			\$550,000
Estimated allocated values		land	\$440,000 80%
		improvements	\$110,000 20%
Factored Base Year Value	2018 CPI	2.000%	\$561,000
	2019 CPI	2.000%	\$572,220
Current fair market value as of 01/01/19			\$625,000
Estimated remaining life			30 years
Non-owner occupied (not eligible for a Homeowner's Exemption)			

Valuation

Potential Gross Income (annual @ \$2,200 per month)		\$26,400
Less Vacancy & Collection loss	-5%	(\$1,320)
Effective Gross Income		\$25,080
Less annual expenses	-25%	(\$6,270)
Net Operating Income		\$18,810

Capitalization rate:

1) Interest component	4.75000%	(State reported rate)	
2) Risk component	2.00000%	(non-owner occupied rate)	
3) Property tax component	1.10733%	(tax rate from area)	
4) Amortization component	<u>0.66700%</u>	20% * (1/30)	
Total			8.52433%

Improvement allocation %

Reciprocal of the remaining improvement life

Capitalized Net Operating Income \$18,810 / 0.0852433 \$220,663

Annual Roll Value

Factored Base Year Value:	\$572,220
Fair Market Value:	\$625,000
Historic Property Value:	\$220,663
Enrolled value:	\$220,663