

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING ARTICLE 17 TO CHAPTER 12 OF THE FRESNO MUNICIPAL CODE, ADOPTING A MILLS ACT PROGRAM.

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

SECTION 1. Article 17 is added to Chapter 12 of the Fresno Municipal Code is to read:

SECTION 12-1701. TITLE. This article shall be known as the “Mills Act Program.”

SECTION 12-1702. FINDINGS AND PURPOSE. Pursuant to California Government Code Sections 50280-50290, the City may contract with an owner or agent of the owner of any qualified historical property provided the contract meets the requirements of Sections 50281 and 50282. Pursuant to Article 1.9 of the California Revenue and Taxation Code, historical properties that are “restricted” by the type of contracts referenced in the previous sentence shall be reassessed by the County Assessor in a manner that may result in lower real property taxes. The purpose of this article is to implement state law permitting the approval of such Historical Property Contracts by establishing a uniform procedure for the owners of qualified historic properties within the City to follow when applying for approval of Historical Property Contracts.

SECTION 12-1703. CONTRACTS TO RESTRICT USE OF QUALIFIED HISTORICAL PROPERTY. Upon the application of an owner or the agent of an owner

of any qualified historical property, the city may contract with the owner to restrict the use of the property for its preservation, restoration, and rehabilitation as set forth in Section 12-1704 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 this article and Government Code Sections 50280-50290.

SECTION 12-1704. QUALIFIED HISTORICAL PROPERTY.

(a) “Qualified historical property” for purposes of this article, means privately owned property within the City of Fresno, which is not exempt from property taxation and which meets either of the following:

(1) The property is listed in the National Register of Historic Places or located in a registered historic district, as defined in Title 26 of the Code of Federal Regulations.

(2) The property is listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.

(b) “Qualified historical property” for the purposes of this article, does not include “Heritage Properties” as defined by Fresno Municipal Code Section 12-1603(n).

SECTION 12-1705. REQUIRED CONTRACT PROVISIONS. Any contract entered into under this article shall contain the following provisions:

- (a) A minimum term of ten years;
- (b) A provision obligating the owner 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 Department of Parks and Recreation, the Secretary of the Interior's Standards for the Treatment of Historic Properties, and the State Historical Building Code;
- (c) A provision granting city officials permission to inspect the interior and exterior of the premises, prior to the execution of a new contract, and every five years thereafter, to determine the owner's continued compliance with the contract;
- (d) A provision binding all successors in interest of the owner to the benefits and burdens of the contract;
- (e) Automatic annual renewal(s) of the contract, absent timely written notice of nonrenewal by the owner or the city, as discussed in Section 12-1709, and prescribed by Government Code Section 50282(a);
- (f) A provision requiring the owner furnish the city with any information the city requests in order to enable the city to determine the eligibility of the property involved; and
- (g) A provision requiring the owner or agent of the owner to provide written notice of the contract to the Office of Historic Preservation within six months of entering into the contract.

The Development and Resource Management Department shall maintain a sample “Historical Property Contract” containing all required provisions specified by this article and Government Code Sections 50280-50290. Contracts submitted on the city’s form shall be deemed to contain all provisions necessary for a Historical Property Contract with the city. Additional provisions desired by the owner or the agent of the owner shall be subject to approval by the Director of the Development and Resource Management Department and the City Attorney.

SECTION 12-1706. APPLICATION PROCEDURE. Applications to the city shall be initially evaluated and reviewed by the Historic Preservation Commission. The Historic Preservation Commission shall hold a public hearing on every application for a Historical Property Contract. The public hearing shall be scheduled for a date not less than ten days but not more than ninety days from the date the application is filed. After the hearing, the Historic Preservation Commission shall recommend to the Director of the Development and Resource Management Department that the application be denied, granted in whole or in part, or modified subject to such conditions as it deems appropriate. The Director of the Development and Resource Management Department may, in the Director’s discretion, enter into Historical Property Contracts if all of the conditions of this article are met. The Director of the Development and Resource Management Department shall be responsible for assuring performance of the Historical Preservation Contracts including contract administration, extension, cancellation, and enforcement.

SECTION 12-1707. RIGHT OF APPEAL. The decision of the Director of the Development and Resource Management Department may be appealed to the City Council within ten days. Hearings before the City Council shall be scheduled by the City Clerk for a date not less than ten days but not more than ninety days from the date the appeal is filed.

SECTION 12-1708. FEES. As a condition of entering into the Historic Preservation Contract, the City may require the property owner to pay an application and processing fee to the City of Fresno prior to processing the application. Such fee, if any, shall be limited to the reasonable cost of administrating the Mills Act Program, and shall be provided for in the Master Fee Schedule.

SECTION 12-1709. EXTENSION OR NON-RENEWAL OF CONTRACT;
RECORDATION; AND NOTICE OF CONTRACT.

(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. If the property owner or the city 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 ninety days prior to the renewal date or by the city at least sixty 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 city of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The city may, at any time prior to the renewal date, withdraw the notice of nonrenewal.

(c) If the city 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 city with any information the city shall require in order to enable it to determine the eligibility of the property involved.

(e) No later than twenty days after the city enters into a contract with an owner pursuant to this article, the City Clerk 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.

SECTION 12-1710. CANCELLATION OF CONTRACT FOR OWNER'S BREACH. The city may cancel a contract if it 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 city may also cancel a contract if it determines that the owner has failed to restore or rehabilitate the property in the manner specified in the contract.

SECTION 12-1711. NOTICE AND HEARING BEFORE CANCELLATION OF CONTRACT. No contract shall be canceled under Section 12-1710 until after the city

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 Government Code Sections 6060 and 6061.

SECTION 12-1712. CANCELLATION FEE.

(a) If a contract is canceled under Section 12-1710, the owner shall pay a cancellation fee equal to twelve and one-half 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. (Gov. Code, § 50286(a).)

(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 County Auditor allocates the annual tax increment in that tax rate area in that fiscal year.

SECTION 12-1713. ACTION TO ENFORCE CONTRACT. As an alternative to cancellation of the contract for breach of any condition, the city, or any 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.

SECTION 12-1714. NULLIFICATION OF CONTRACT ON ACQUISITION OF PROPERTY 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 city to frustrate the purpose of the contract, such contract shall be canceled and no fee shall be imposed under Section 12-1712. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

SECTION 12-1715. CONSULTANT. The city and owners of qualified historical properties may consult with the Historic Preservation Commission for its advice and counsel on matters relevant to historical property contracts.

SECTION 12-1716. IMPLEMENTING RULES AND REGULATIONS. The Director of the Development and Resource Management Department may make such rules and regulations, as are not inconsistent with the provisions of this article, and as may be necessary or desirable to aid in the implementation of the Mills Act Program and in the administration and enforcement of the provisions of this article.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2016.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2016
Mayor Approval/No Return: _____, 2016
Mayor Veto: _____, 2016
Council Override Vote: _____, 2016

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Seth Mehrten [Date]
Deputy City Attorney

SGM:nd (72981nd/sgm)