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**To:** [Crane, Fatema](#)  
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Hi Fatema, this comment I wrote to the Berkeley Daily Planet 13 years ago is applicable today. Can you please forward this email to the members of the commission so they may be able to read it prior to tonight's meeting. Thanks, Paul Schwartz

## Public Comment

### Tax Breaks for Millionaires in Berkeley at City Council Tonight

*By Paul M. Schwartz*

*Tuesday December 06, 2011 - 09:04:00 AM*

Are you fed up with Millionaires not paying their fair share of federal taxes  and not paying their fair share of state taxes? If so, would you be interested in knowing the City of Berkeley has an item on their agenda to provide city tax breaks for local well heeled people?

My name is Paul Schwartz. I am a resident and taxpayer in the City of Berkeley. I am also an attorney with my practice in the City of Berkeley. I was appointed in March of this year to the Landmark Preservation Commission. I was quite surprised to discover there is a mechanism that gives very large property tax breaks to owners of landmarked properties for maintenance and upkeep. Most if not all of these property owners do not need these tax breaks to maintain their properties. I find this particularly galling when the City is suffering from a significant deficit and is in need of all the revenue it receives from property taxes.

I am one of 9 commissioners on the Landmark Preservation Commission in Berkeley, California. I was appointed to the commission by my councilperson Susan Wengraf. I want to be clear I am not speaking for the Landmark Preservation Commission nor for my councilperson. This is solely my opinion.

At the September and October meeting of our commission (we meet monthly), we were presented with four Mills Act applications. According to our chair we do not vote to approve or disapprove Mills Act applications, we merely vote whether the properties are eligible for consideration by the City Council and to forward the applications to the City Council. Mills Act contracts give tax breaks to property owners who own landmarked buildings.

To date there are 300 landmarked properties in the City of Berkeley and 23 of these properties have been Mills acted. I calculate the revenue loss to the city from already enacted Mills Act contracts to be approximately \$6,000 per year per property for a total yearly revenue loss of \$138,000

There are currently four applications pending before the City of Berkeley,(see item 17 on the consent calendar of the agenda for the Dec. 6, 2011 meeting) which would result in significant additional tax loss to the City of Berkeley, the School District, the special districts and the County of Alameda, of close to an additional \$120,000 per year. The following is the link to the Dec. 6, 2011 City of Berkeley council meeting.

<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=63006> .

The analysis of the planning department recommending approval of these Mills Act contracts (see the above link) is flawed in at least two ways. One, it states our commission unanimously approved these applications. This is not accurate. We voted to forward them to the City Council. We were told we are required to vote to forward them to the city council and it is up to the city council to approve or disapprove the applications. Two, the amount of tax loss is grossly understated. It fails to properly calculate the amount of tax reduction for each property and it fails to include the tax loss to the school district, the special districts and the county. All these entities suffer from property tax reductions.

The Mills act is a California statute passed by the legislature in the 1970s. It gives cities discretion whether or not to grant property tax breaks to owners of landmarked properties. The idea behind the act was to help property owners maintain their historic or "landmarked" properties by giving them property tax breaks. The property owners are required to use their tax savings for the upkeep of their properties. The tax breaks per property are significant, amounting to between a 70% to 80% reduction in the property tax bill.

Who loses revenue when a city approves a Mills Act contract? Property tax bill revenue is disbursed as follow: 33% of your property taxes go to the City of Berkeley. 43% of your property taxes go to the School District. The remaining 24% is divided between "special districts" (e.g. mosquito abatement) and the County of Alameda (for their countywide services).

The four properties on the City Council agenda are as follows:

The First of the applications is for a property on Roble Road. The property was purchased for \$2.3 million dollars, and is currently undergoing remodeling and improvements totaling close to \$2 million dollars. With its purchase price, remodeling cost (which will be added to the assessment) and its square footage, Mills Acting this property will represent a significant tax loss to the residents of Berkeley and Alameda County.

A very interesting property, it was recently landmarked. I was pleased the property was recently purchased and is being improved, as I believed it would bring in close to \$80,000 a year in property taxes, an amount the city of Berkeley sorely needs for its budget. If the property is successfully Mills acted (a new verb), it would bring in significantly less, I estimate between \$15,000 to \$20,000 per year, a loss of \$60,000-\$65,000 per year. I know there is no means test for a property to be eligible for a Mills Act property tax reduction, but I think there should be a means test. I am strongly opposed to any, let alone, significant tax breaks for wealthy individuals, especially when most cities are having trouble raising revenue and facing deficits. Owners of upscale homes are able to maintain them without significant tax reduction incentives.

The second property is located on Benvenue Avenue. This is a beautiful large home. I estimate it to be worth between \$2-4mil. Sorry, I can't be more accurate. I am not a realtor. It has been owned for a long period of time and consequently due to prop 13 has taxes well below its current value. Mills acting this property will likely result in a tax loss of between \$6-8,000 per year. The tax loss to the City would not be as significant with this home because it is assessed under proposition 13 and already pays relatively low taxes in relation to its value. There are two problems with Mills acting this property. One is the yearly revenue loss, and two is the Mills Act runs with the property, meaning it will continue on to the next owner. If and when it has a new owner, the city will not be the beneficiary of significant property tax increase revenue. A Mills Act contract is for 10 years and automatically renews each year. It stays with the property and can go on in perpetuity.

The third property was recently purchased. It is on Arch Street and according to the County records was purchased for \$2,150,000. Its property tax bill should be a welcome addition to city, school district and county needs, unless it is given a Mills Act contract by the City of Berkeley. I believe the total property tax loss could be close to \$40,000 per year on this property alone.

The fourth property, on San Antonio Road was the carriage house for the Spring Mansion. I don't know what it recently sold for, I estimate approximately \$700,000. It is currently assessed as a school and according to the county tax records has not yet been reassessed. If it is Mills acted by the City of Berkeley, it will represent yet another drain on our revenue.

Since the Mills Act is a 10 year contract, which renews each year in an ongoing manner, the tax losses to the City are significant. The above four properties could represent a loss to the City of Berkeley of approximately \$1,000,000 (without interest) over a ten year period.

I have been informed that the City of Los Angeles has worried about the loss of revenue and has capped the # of properties it is willing to Mills Act. I have also been told the City of Beverly Hills was thinking of limiting their Mills Act properties to those worth more than \$10,000,000. It makes you want to laugh.

I am in favor of the Mills Act, but I think it should not be used by any city unless that city is running a significant surplus. Why the taxpayers of a city should subsidize anybody, let alone wealthy residents of the city for repairs and maintenance to their properties is beyond me.

If a city enters into a Mills Act contract with a property owner, I strongly believe the city should have a clause in the Mills Act contract that either party may withdraw from the contract upon one years notice terminating the contract and any tax breaks at that time. That way a city would not be locked into a 10 year decrease in property tax revenues.

If a city wants a property maintained and the property owners cannot afford to maintain the property, I believe the city should receive a lien on the property in the amount of any tax savings received by the property owner. That way, when the owner dies or transfers the property, the city would receive its delayed property taxes. This would allow individuals who have insufficient income to maintain landmarked property the opportunity to maintain the property by in essence receiving a city loan, not a city tax break. .

The city should have a Mills Act unit within its planning department, a unit that in conjunction with their city attorney has the ability to monitor Mills Act compliance and the ability to enforce compliance. I don't believe the city of Berkeley has such a unit in place and it clearly presents a problem.

Do the property owners comply and use their property tax savings for the upkeep of their homes? We do not know. We have no enforcement mechanism in force through either the Planning Department and or the City Attorney's office to follow through and monitor these properties. We basically rely on these property owners to honor their commitments under their Mills Act contracts. Compliance needs to be effectively monitored.

Drafting of the Mills Act contract with the property owner must be carefully done in a detailed and careful manner clearly outlining all obligations of the parties, penalties and enforcement mechanisms. A well drafted contract will protect both parties and more likely prevent litigation in the future which would be an additional expense to the city. I believe under the Mills Act, cities can draft the contracts to fit their needs.

To sum up, I believe the City of Berkeley should put in place a moratorium. It should not Mills Act any more properties until the City budget is no longer in deficit territory. It should

invite these Mills Act applicants to reapply when our City budget is running a healthy surplus. We can ill afford to give upscale property owners property tax breaks.

The City of Berkeley has a strong Landmark Preservation Ordinance. That alone should provide the necessary protection to maintain historic properties. Owners of historic properties should maintain them at their own expense as a public service and not receive subsidies from their fellow taxpayers.