



CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 3, 2020
ORDERS OF BUSINESS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Marnie Waffle, AiCP – Acting Community Development Planning & Building Director
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Review the current Mills Act policy and contract language and provide direction to staff.

RECOMMENDATION:

Review the current Mills Act policy and contract language and provide direction to staff.

BACKGROUND/SUMMARY:

The Mills Act was adopted by the State of California in 1972 and the City of Carmel-By-The-Sea adopted a Mills Act contract program as part of the Local Coastal Plan. In 2010, the City Council adopted Resolution 2010-042 limiting the number of Mills Act contracts to 3 per calendar year. In 2016, the City Council adopted Resolution 2016-068 amending the policy to allow for up to 15 Mills Act contracts during any 3 calendar year period. Resolution 2016-068 also included a provision requiring the City Council to evaluate the Mills Act program again in 3 years (Attachment 1).

The Mills Act contract program is an agreement between the City and a property owner of a historic building whereby the property owner benefits from a reduction in property taxes while assuring the City that the historic resource is rehabilitated, maintained and preserved. Properties must be included on both the Carmel Historic Inventory and the Carmel Register of Historic Resources prior to being eligible for a Mills Act contract.

To be listed on the Carmel Register, a property owner must submit a request in writing and their request must be approved by the Historic Resources Board. Listing on the Register provides benefits such as, waiver of on-site parking requirements; preservation of existing non-conformities; Federal rehabilitation tax credits; building permit fee reduction of 25%; and, participation in the Mills Act contract program.

The City Council has approved 11 Mills Act contracts since 2011 (Attachment 2). Three contracts have been approved since the policy was last updated in 2016; however, two (2) of those contracts, both approved in 2019, are still pending execution.

Mills Act Policy Direction

In accordance with the 2016 policy, staff is providing the City Council with a report on the number of Mills

Act contracts approved over the past 3 years and seeking direction on whether to continue offering Mills Act contracts and if so, whether to amend the policy.

If the City Council directs staff to explore discontinuing the Mills Act contract program, all existing contracts would remain effective for a minimum of 10 years from the effective date of the respective contract and up to 20 years should the City Council decide not to terminate the contract after the minimum required 10 years. Staff would need to prepare amendments to Title 17 and the Local Coastal Plan and the amendments would be presented to the Planning Commission, City Council and the California Coastal Commission. Staff notes that the City is a certified local government and elimination of the Mills Act program may result in losing our certification. This should be further explored to fully understand the impacts of discontinuing the Mills Act contract program.

If the City Council opts to continue the Mills Act contract program, staff is seeking direction from the Council on whether the current policy of allowing up to 15 contracts over any 3 year period should be modified. This results in an average of 5 contracts per year. The City currently averages 1-2 contracts per year with the exception of 2016, when 4 contracts were approved.

Standard Contract Language

Assuming that the Mills Act contract program continues, Staff is asking the City Council to adopt standard contract language (Attachment 3). The City Attorney has reviewed the current contract and provided staff with revisions to ensure the contract is consistent with State law and our local Mills Act contract program.

In accordance with State law, a Mills Act contract must be for a minimum of 10 years with one additional year added upon the anniversary date of the contract. This effectively provides a property owner with a 20 year contract. At the 20th year, the City may choose to not renew the contract or may allow the contract to continue on a year-to-year basis. All of the adopted Mills Act contracts indicate the maximum term of the contract to be 20 years. Based on this language, staff would issue a Notice of Nonrenewal during the 20th year of each Mills Act contract.

FISCAL IMPACT:

Specific to Mills Act contracts, the Monterey County Assessor will calculate the property valuation based on the “income” method. If the home is owner-occupied, the determination of “income” is based on what the property could reasonably be expected to yield, minus expenses, based on comparable rents for similar property in the area or what could reasonably be expected under prudent management. For income producing properties (i.e. rentals), the “income” amount is based on the rent collected. The fiscal impact to the City is a diminished property tax base from the property for a minimum term of 10 years, and up to 20 years depending on whether the City chooses to renew the contract at the 10-year mark.

PRIOR CITY COUNCIL ACTION:

In 2010, the City Council adopted Resolution 2010-042 limiting the number of Mills Act contracts to 3 per calendar year. In 2016, the City Council adopted Resolution 2016-068, revising the policy to allow for up to 15 Mills Act contracts during any 3 calendar year period. Since 2011, the City Council has approved 11 Mills Act contracts; in the last 3 years the City Council has approved 3 contracts.

ATTACHMENTS:

- Attachment 1 - Resolution 2016-068
- Attachment 2 - Mills Act Contract Table
- Attachment 3 - Draft Standard Mills Act Contract

CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL

RESOLUTION NO. 2016-068

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA ESTABLISHING A LIMIT ON THE NUMBER OF MILLS ACT CONTRACTS THAT CAN BE APPROVED TO FIFTEEN DURING ANY THREE CALENDER YEAR PERIOD AND REQUIRING THE CITY COUNCIL TO EVALUATE THE PROGRAM AFTER THREE YEARS

WHEREAS, the City has adopted a General Plan and Municipal Code that strive to protect the village character through clear policies and regulations that guide historic preservation; and

WHEREAS, the Mills Act was adopted by the State of California in 1972; and

WHEREAS, jurisdictions are not required to implement the Mills Act, but participating jurisdictions may establish specific application requirements to suit local needs; and

WHEREAS, the City adopted the Mills Act as a potential benefit to property owners of historic resources as part of the Local Coastal Program; and

WHEREAS, the City Council recognizes the potential benefits of the program but also the potential fiscal impacts that could result from the unlimited approval of Mills Act Contracts; and

WHEREAS, establishing a limit on the number of contracts that can be approved will allow the City to implement the Mills Act Program without significantly impacting a revenue source that is vital to the City's operating budget; and

WHEREAS, in 2010 the City Council adopted Resolution 2010-42 which limited the number of Mills Act contracts to 3 per calendar year; and

WHEREAS, Resolution 2010-42 will be superseded by the adoption of this resolution; and

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:

1. Limit the number of Mills Act Contracts that can be approved to fifteen (15) in any three calendar year period.
2. Require the City Council to review the Mills Act Program in three (3) years, in the year 2018, to determine whether to continue offering Mills Act Contracts of make revisions as necessary.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 13th day of September, 2016 by the following roll call vote:

AYES:	COUNCILMEMBERS:	Hardy, Reimers, Richards, Theis, Dallas
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None

SIGNED:

ATTEST:



Steve G. Dallas, Mayor



Ashlee Wright, City Clerk

CITY OF CARMEL-BY-THE-SEA APPROVED MILLS ACT CONTRACTS ¹				
APN	Property Owner	Address / Block and Lot	Document # / Year approved by city	20 Year Contract Term Limit ²
010-232-030	David DiGirolamo & Diana Morshead	Lopez St 3 NW of 4 th Ave Block: LL, Lot: ¼ N. of 7 & 9	TBD/2019	2039
010-423-001	Wellington S. Henderson Jr	26336 Scenic Road Block: N/A, Lot: N/A	TBD/2019	2039
010-039-007	Sandra J. Markowski	NW Santa Rita St & Ocean Ave Block: 66, Lots: 2, 3, 4 (south part)	2017067462 / 2017	2037
010-154-005	Scott and Robbin Lonergan	NEC Dolores St & 12th Ave Block: 131, Lot: 14	2016069522 / 2016	2036
010-115-006	Ken Rheaume	Vista Ave, 2 NW of Mission Ave Block: 4 ½, Lots: W. ½ of 17 & 19	2016069521 / 2016	2036
010-165-015	Brad Slingerlend and Anna Speers	NWC of Santa Lucia Ave & San Carlos St Block: 143, Lots: 31, 33 and 35	2016069520 / 2016	2036
010-164-001	The Sharon B. Holtkamp and Kenneth W. Holtkamp AB Living Trust	SWC San Carlos St & 12th Ave Block: 137, Lot: 1	2016069519 / 2016	2036
010-041-001	Charles Whittington	SWC Ocean & Forest Ave Block: 83, Lot: 1	2014064199 / 2014	2034
009-164-008	Kim & Roy Sheingart	NEC Carpenter & 5th Block: 2A, Lot: 14	2013078015 / 2013	2033
010-287-006	Buff LaGrange	2552 Santa Lucia Ave Block: Z, Lots: east part 14 & 16	2012062739 / 2012	2032
010-108-012	Stephanie Ager Kirz	Junipero Ave, 2 NW of 3 rd Ave Block: 27 Lot: 15	2011066366 / 2011	2031

¹ Contracts approved before 2011 are not listed herein.

² Notice of Nonrenewal would need to be issued at Year 10.

RECORDING REQUESTED BY
CITY OF CARMEL-BY-THE-SEA

AND WHEN RECORDED MAIL TO

Carmel City Hall
Attn: Community Planning & Building
P.O. Box CC
Carmel-By-The-Sea, CA 93921

This space reserved for the Recorder's use only

CITY OF CARMEL-BY-THE-SEA
MILLS ACT HISTORIC PROPERTY PRESERVATION CONTRACT

THIS AGREEMENT is made and entered by and between the CITY OF CARMEL-BY-THE-SEA a municipal corporation (hereinafter referred to as "City"), and **PROPERTY OWNER** (hereinafter referred to as "Owner").

RECITALS

- (i) California Government Code Section 50280, et seq. (known as the Mills Act) authorizes cities to enter into contracts with the owners of qualified historic properties to provide for their appropriate use, maintenance and restoration such that these historic properties retain their historic characteristics;
- (ii) The Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, located at **ADDRESS** (APN: **123-456-789**), Carmel-By-The-Sea, California, (hereinafter referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as "**Exhibit A**" and is incorporated herein by reference;
- (iii) The property is identified as a historic resource on the City of Carmel-By-The-Sea's Historic Inventory and Register of Historic Resources and is further described in the DPR 523A Form attached hereto, marked as "**Exhibit B**" and is incorporated herein by reference;
- (iv) City and Owner, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historic Property, as it exists at the date of this contract and as described in the City's Register of Historic Resources and the National Register of Historic Places, and to qualify the Historic Property for an assessment of valuation pursuant to the provisions of Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions contained herein, do hereby agree as follows:

1. **INCORPORATION OF RECITALS.** All recitals are incorporated into this Agreement.
2. **EFFECTIVE DATE AND TERM.** This Agreement shall be effective and commence on the date the Agreement is signed by the City, unless otherwise indicated by the County of Monterey, and shall remain in effect for a minimum term of ten (10) years thereafter.
3. **AUTOMATIC RENEWAL.** Each year, upon the anniversary of the effective date of this Agreement (hereinafter referred to as “annual renewal date”), one (1) year shall be added automatically to the term of this Agreement, unless timely notice of nonrenewal is given as provided in paragraph 4 of this Agreement. The total length of the contract shall not exceed twenty (20) years.
4. **NOTICE OF NONRENEWAL.** If City or Owner desires in any year not to renew this Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of this Agreement as follows: Owner must serve written notice of nonrenewal at least ninety (90) days prior to the annual renewal date; City must serve written notice of the nonrenewal at least sixty (60) days prior to the annual renewal date. If notice is not received, the Agreement shall automatically be renewed for another year. Upon receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. At any time prior to the annual renewal date, City may withdraw its notice of nonrenewal.
5. **EFFECT OF NOTICE OF NONRENEWAL.** If either City or Owner serves timely notice of nonrenewal in any year, and this contract is not renewed, this Agreement shall remain in effect shall remain in effect for the balance of the period remaining since the original execution or the last annual renewal date.
6. **FEES.** The City may require that the Owner(s) of the Historic Property pay a fee that shall not exceed the reasonable cost of providing services, such as inspections, pursuant to Government Code Section 50281.1 (Article 12 of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code), for which the fee is charged.
7. **VALUATION OF PROPERTY.** During the term of this Agreement, Owner is entitled to seek assessment of valuation of the Historic Property pursuant to the provisions of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.
8. **PRESERVATION OF PROPERTY.** Owner shall preserve and maintain the characteristics of historical significance of the Historic Property and agrees to complete rehabilitation and/or maintenance activities as defined in the Rehabilitation/Restoration and Maintenance Plan attached as “**Exhibit C**”. Requests for revisions to the Maintenance and

Rehabilitation plan shall be reviewed by the Historic Resources Board prior to implementation. In addition, Owner shall comply with the terms of the City's Historic Preservation Ordinance (CMC 17.32). Owners shall not be permitted to further impede any view corridor with any new structure, including but not limited to walls, fences, or shrubbery, so as to prevent the viewing of the Historic Property from the public right-of-way.

9. **RESTORATION OF PROPERTY.** Owner shall, where necessary, restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, U. S. Secretary of the Interior's Standards for Rehabilitation, the State Historical Building Code, and the City of Carmel-by-the-Sea, all as amended.
10. **INSPECTIONS.** Owner shall allow periodic examinations, at least every five (5) years, with reasonable notice thereof, of the interior and exterior of the Historic Property by representatives of the County of Monterey Assessor and the City of Carmel-By-The-Sea as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. The City will coordinate inspections by such other agencies that have jurisdiction and will keep them to the minimum necessary to determinate such compliance.
11. **PROVISION OF INFORMATION.** Owner shall furnish City with any and all information required by City, in order to determine the eligibility of the Historic Property, and that City deems necessary or advisable to determine compliance with the terms and provisions of this Agreement.
12. **ANNUAL REPORT.** Owner shall submit an annual report at least 90 days prior to each annual renewal date (October 1st) to the Department of Planning and Building specifying all work that has been done to maintain and preserve the historic resource over the preceding year in compliance with the approved maintenance plan.
13. **CANCELLATION.** The City has the right to cancel the contract if the owner allows the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The City also has the right to cancel this contract if the owner(s) breaches the provisions of paragraph's # 8, 9, 10 or 12 of this Agreement after the City has provided reasonable notice of any failure to comply with the agreement, and a public hearing. Notice of the hearing shall be mailed to the last known address of each owner of the property, with the notice conforming to the provisions of Government Code section 6061., If after notice and a hearing, the contract is cancelled, termination of the Agreement is immediate, and the owner shall pay a cancellation fee equal to 12.5 percent of the current fair market value of the property, as determined by the Monterey County Assessor as though the property were free of the contractual restriction. The cancellation fee shall be paid to the Assessor, at the time and in the manner that the Assessor shall prescribe. City's right to cancel this Agreement pursuant to this paragraph

shall in no way limit or restrict its rights or legal remedies arising from City's Historic Preservation Ordinance and Municipal Code.

14. **ENFORCEMENT OF AGREEMENT.** In lieu of and/or in addition to any provisions to cancel this Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement.
15. **WAIVER.** City does not waive any claim or default by Owner if City does not enforce or cancel this Agreement. All remedies at law or in equity, which are not otherwise provided for this Agreement or in City's regulations governing historic properties are available to City to pursue in the event there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.
16. **BINDING EFFECT OF AGREEMENT.** Owner hereby subjects the Historic Property to the covenants, reservations and restrictions set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations, and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors and assigns in title or interest to the Historic Property. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who executed the Agreement. Each and every contract, deed or other instrument hereinafter executed, governing or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that it restricts development of the Historic Property. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the cultural and historic characteristics and significance of the Historic Property for the benefit of the public and Owner.
17. **NOTICE.** Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below, by personal delivery or United States mail, postage prepaid, addressed as follows:

City: Carmel-By-The-Sea
 Community Planning & Building Department
 Attn: Community Planning & Building Director
 P.O. Box CC
 Carmel-By-The-Sea, CA 93921

Owner: Name
 Address
 City, State, Zip

Notice to successors in interest to either party shall be sent to the appropriate address. In the case of future Owner(s) of the Historic Property, notice shall be sent to the address on file with the county property tax office in power at the time.

18. **RECORDATION.** No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the Office of the County Recorder of the County of Monterey. From and after the time of the recordation, this Agreement shall impart a notice thereof to all persons as is afforded under state law.
19. **STATE LAW.** The Owner or agent of Owner shall provide written notice of this Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement.
20. **GOVERNING LAW; VENUE.** This Agreement shall be constructed and governed in accordance with the laws of the State of California. Should either party to this agreement bring legal action against the other, the case shall be handled in Monterey County, California and the party prevailing in such action shall be entitled to a reasonable attorney fee which shall be fixed by the judge hearing the case and such fee shall be included in the judgment together with all costs.
21. **AMENDMENTS.** This agreement may be amended in whole or in part, only by a written-recorded instrument executed by the parties hereto.
22. **DESTRUCTION OF PROPERTY; EMINENT DOMAIN; CANCELLATION.** If the Historic Property is destroyed by earthquake, fire, flood, or other natural disaster such that in the opinion of the City Building Official more than sixty percent (60%) of the original fabric of the structure must be preplaced, this Agreement shall be cancelled because the historic value of the structure will have been destroyed. If the Historic Property 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 Council to frustrate the purpose of this Agreement, this Agreement shall be cancelled. No cancellation fee pursuant to Government Code Section 50286 shall be imposed if the Agreement is cancelled pursuant to this paragraph. Such Agreement shall be null and void for all purposes of determining the value of the property so acquired.
23. **INDEMNIFICATION.** Owner shall defend, indemnify, and hold harmless City and its elected officials, officers, agents and employees from any actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any

federal, state or local government agency, arising out of or incident to the direct or indirect use, operation, or maintenance of the Historic Property by Owner or any contractor, subcontractor, employee, agent, lessee, licensee, invitee, or any other person; (ii) Owner’s activities in connection with the Historic Property; and (iii) any restriction on the use of development of the Historic Property, from application or enforcement of the City’s Municipal Code, or from the enforcement of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys’ fees, and related costs or expenses, and the reimbursement of the City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. Owner’s obligation to indemnify shall survive the termination, cancellation, or expiration of this Agreement and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, employees, or agents.

- 24. **SEVERABILITY.** In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

IN WITNESS THEREOF, the City and Owners have executed this Agreement on the day and year written above.

CITY OF CARMEL-BY-THE-SEA:

By: _____

Date: _____

Name: Richard L. Rerig (“Chip”)
Title: City Administrator

PROPERTY OWNER(S):

By: _____

Date: _____

Name:
Title: Property Owner

By: _____

Date: _____

Name:
Title: Property Owner

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
DPR 523A FORM

EXHIBIT C
REHABILITATION/RESTORATION AND MAINTENANCE PLAN