

Attachment C
Historic Resources
Review Board Resolution

REF130101

*Before the Historic Resources Review Board in and for the
County of Monterey, State of California*

Resolution No. PLN080298-3 (Mills Act Program)
Resolution by the Monterey County Historic Resources Review Board (HRRB) to recommend that the Board of Supervisors adopt an ordinance establishing an ongoing Mills Act Program for Monterey County (Mills Act Program/PLN080298, County-wide)

WHEREAS, on January 3, 2013 the Historic Resources Review Board (HRRB) received a report on recommended changes and updates to the Chapter 18.27 of the Monterey County Code (The Mills Act program for Monterey County); and

WHEREAS, the HRRB recognizes the numerous historic, cultural, and community benefits of Historic Preservation in Monterey County and the significant role the Mills Act Program plays in accomplishing historic preservation goals of the County, including providing incentives for private property owners to preserve resources; and

WHEREAS, the HRRB weighed many factors in rendering their recommendation including financial factors, process, staff administration, benefits of the program, applicability of the program, and optimal use of the program to accomplish County historic preservation goals; and

WHEREAS, at the conclusion of the hearing, the matter was submitted to the HRRB for a recommendation. Having considered all the written and documentary information submitted, oral testimony, and other evidence presented before the HRRB, the HRRB rendered its decision to recommend that the Board of Supervisors adopt an ordinance updating Chapter 18.27 of the Monterey County Code in substantial conformance with Exhibit 1 attached hereto and incorporated herein by reference.

THEREFORE, it is the decision of the Monterey County Historic Resources Review Board to recommend that the Board of Supervisors adopt an ordinance amending Chapter 18.27 of the Monterey County Code to establish an ongoing Mills Act program in Monterey County, in substantial conformance with Exhibit 1 attached hereto and incorporated herein by reference with the following suggested changes incorporated:

1. Remove the property value limit from the definition of a "Qualified Historical Property" and amend the language added in Section 18.27.040.C (Limitations on Historic Property Contracts) consistent with the language deleted under the definition of "Qualified Historical Property".
2. Re-order items 2 and 3 under Section 18.27.060.B to reflect the chronological order of events.
3. Be consistent on how numbers are stated, spelled out or just numbers, within the ordinance.

4. Correct inconsistency in Section 18.27.130.A and Section 18.27.130.B.1 regarding the conditions under which the County may cancel a contract.

Passed and adopted on this 7th day of March, 2013, upon motion of Judy MacClelland, seconded by Salvador Munoz, by the following vote:

AYES: 6
NOES: 0
ABSENT: 0
ABSTAIN: 0

Attest:


Craig Spencer, HRRB Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING CHAPTER 18.27 TO THE MONTEREY COUNTY CODE TO ESTABLISH A PROGRAM TO IMPLEMENT CALIFORNIA GOVERNMENT CODE SECTIONS 50280, ET SEQ., COMMONLY KNOWN AS THE "MILLS ACT"

County Counsel Summary

This ordinance amends Chapter 18.27 of the Monterey County Code to establish a program under which the Board of Supervisors may, in its discretion, enter into historic property contracts. The contracts allow the owners of selected qualified historical properties within the unincorporated area of the County of Monterey to obtain preferential property tax assessment in exchange for restrictions on the property to help preserve, restore, and maintain the historic property under the terms outlined in the contract. The ordinance provides uniform procedures to carry out the program, including procedures for contract application, selection, monitoring, renewal or non-renewal, and cancellation.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Chapter 18.27 of the Monterey County Code is amended to read as follows:

CHAPTER 18.27

MILLS ACT PILOT PROGRAM

Sections:

- 18.27.010 Authority for adoption**
- 18.27.020 Purpose**
- 18.27.030 Definitions**
- 18.27.040 Limitations on Historic Property Contracts**
- 18.27.050 Required provisions of Historic Property Contracts**
- 18.27.060 Application for Historic Property Contracts**
- 18.27.070 Fees**
- 18.27.080 Review of Applications**
- 18.27.090 Recordation of Approved Historic Property Contracts**
- 18.27.100 Review of Approved Historic Property Contracts**
- 18.27.110 Nonrenewal of Historic Property Contracts**
- 18.27.120 Amendment of Historic Property Contracts**
- 18.27.130 Cancellation of Historic Property Contracts**
- 18.27.140 Notice of hearings**
- 18.27.150 Annexation**

18.27.160 Contracts approved under the Pilot Program

18.27.010 Authority for adoption.

This Chapter is adopted pursuant to California Government Code Sections 50280 – 50290, commonly known as the “Mills Act”.

18.27.020 Purpose.

State law provides that the legislative body of a county may contract with the Owner of any Qualified Historical Property in a manner which the legislative body deems reasonable to carry out the purposes of the Mills Act. The purpose of this Chapter is to establish a pilot program to provide uniform procedures under which the Board of Supervisors of the County of Monterey may, in its discretion, enter into Historic Property Contracts with the Owners of certain selected Qualified Historic Properties within the unincorporated area of Monterey County. The Historic Property Contract allows the Owner of a Qualified Historical Property to obtain preferential property tax assessment in exchange for restrictions on the property to help preserve, restore, and maintain the historic property. The duration of the pilot program shall be two years from the effective date of the ordinance enacting this Chapter or until the Board of Supervisors approves a maximum of five Historic Property Contracts, whichever occurs first. The purpose of the pilot program is to gather data and experience to enable the County to evaluate the establishment of a long term Mills Act program.

It is also the purpose of this ordinance to update the Mills Act Pilot Program (Ordinance No. 5159) to create an ongoing Mills Act Program within Monterey County. The regulations contained within this Chapter shall apply to those contracts approved pursuant to the Pilot Program (between 2010 and 2012), in addition to contracts approved pursuant to this update.

18.27.030 Definitions.

The following definitions shall apply for the purposes of this Chapter:

A. “Anniversary Date” means the date of final execution by all parties of the Historic Property Contract and the same date each subsequent year that the Historic Property Contract is in effect.

B. “Contributing Structure” means a resource within a Historic District which by location, design, setting, materials, workmanship, feeling and/or association adds to the sense of historical authenticity, historical development, or value of a historic district.

C. “Director of Planning” means the Director of the Resource Management Agency-Planning Department of the County of Monterey or his or her designee.

D. “Historic District” means a National, State, or Local registered geographic area, including a non-contiguous thematic area, which contains a concentration of historic buildings, structures or sites united historically, culturally or architecturally within specific boundaries.

E. “Historic Property Contract” means a contract between the Owner of a Qualified Historic Property and the County of Monterey, meeting all requirements of state law and this Chapter. The “Historic Property Contract” may also be referred to in this Chapter as “Contract.”

F. “Historic Resources Review Board” or “HRRB” means the Historic Resources Review Board established by Chapter 2.56 of the Monterey County Code.

G. “Owner” means all persons and entities that have a right, title, or interest in the

property which is the subject of the Historic Property Contract. The term "Owner" includes agents authorized in writing by the Owner to act on Owner's behalf. The term "Owner" also includes Owner's successors-in-interest.

H. "Qualified Historical Property" means a privately owned property, inclusive of the qualified historical improvements and any land on which the qualified historical improvements are located, which is not exempt from property taxation and which meets any one of the following criteria:

1. A property or structure listed individually in the National Register of Historic Places;
2. A property or structure listed individually in the California Register of Historical Resources;
3. A property or structure listed individually in the County of Monterey's Register of Historical Resources;
4. A property or structure listed as a Contributing in a registered Historic District; or
5. A property or structure within a registered Historic District, if the structure is not currently a "Contributing Structure" but would qualify as such, as determined by a qualified historian, upon the implementation of the provisions of the specific Historic Property Contract.

18.27.040 Limitations on Historic Property Contracts.

A. The Board of Supervisors of the County of Monterey may, in its sole discretion and pursuant to the terms of this Chapter, enter into Historic Property Contracts with the Owners of Qualified Historical Properties that are located within the unincorporated area of the County of Monterey.

~~B. This Chapter establishes a pilot program. The pilot program allows for the County to enter into Historic Property Contracts for a period of two years from the date the ordinance enacting this Chapter takes effect or until the Board of Supervisors approves a maximum of five (5) Historic Property Contracts, whichever occurs first. This pilot program allows for approval and recordation of only five Historic Property Contracts. Once the fifth contract has been approved by the Board of Supervisors or two years have passed from the effective date of the ordinance enacting this Chapter, whichever occurs first, no other Historic Property Contracts may be approved under the pilot program established by this ordinance. Notwithstanding the limitation for entry into contracts under this pilot program, the provisions of this Chapter shall survive and have continuing application in regard to Historic Property Contracts that were approved during the pilot period.~~

~~B.~~ Only Qualified Historical Properties shall be eligible to enter into Historical Property Contracts.

C. Eligibility for Historic Property Contracts properties shall be limited to properties not exceeding the maximum pre-contract market value unless an exception to this limit is granted pursuant to Section 18.27.080 the requirements of this Chapter. The pre-contract market value shall be \$3,000,000 or less for residential buildings and \$5,000,000 or less for commercial/industrial buildings as demonstrated by a certified appraisal prepared no more than one (1) year prior to the application.

D. Applications for Historic Property Contracts must be received prior to July 1 of any calendar year to be processed during that calendar year. Historic Property Contracts must be approved, signed, and recorded in the Office of the Recorder of the County of Monterey on or

before December 31 of a calendar year to be eligible for property tax reassessment for the following fiscal year.

E. For the purpose of this Chapter, “assessed valuation” does not include any portion of the value of a mixed-use structure which is already exempt from payment of property taxes as determined by the County Assessor.

F. The intent of this Chapter is to establish procedures whereby property subject to an Historical Property Contract approved, executed, and recorded pursuant to this Chapter will be eligible for property tax valuation as an enforceably restricted historical property pursuant to state law (sections 439 through 439.4 of the California Revenue and Taxation Code, as may be periodically amended). In the event that only a portion of a property or structure is the subject of a Historic Property Contract, only that portion of the property or structure covered by the Historic Property Contract shall be considered for preferential property tax assessment treatment under state law. The rest of the property or structure shall be subject to standard property tax assessment, and the total assessed value shall be a combination of the two methods as determined by the County Assessor. This section shall not be construed to circumvent or diminish the requirements of the Subdivision Map Act in any way.

G. Properties with recorded Historic Property Contracts must comply with all applicable County rules, regulations, policies, permit requirements, and associated fees, including those needed to carry out the provisions of the Historic Property Contract. Entry into a Historic Property Contract does not relieve the property which is the subject of the Contract from compliance with any and all applicable federal and state laws and County regulations.

H. Applications for Historic Property Contracts on properties on which a Notice of Violation has been recorded will not be accepted under this Chapter until the violation has been cleared.

I. Nothing in this Chapter limits the authority or obligation of the County to hold necessary public hearings as may be required by law or limits the County’s lawful exercise of its discretion.

18.27.050 Required provisions of Historic Property Contracts.

A. The Historic Property Contract shall be in a form acceptable to County Counsel and the Director of Planning and shall be retained in the records of the County Resource Management Agency-Planning Department, or its successor. The Planning Department may develop and maintain a “Historic Property Contract” template.

B. Each Historic Property Contract shall at a minimum include, without limitation, the following terms, conditions, restrictions, and requirements:

1. The Contract shall contain a legal description of the property which is the subject of the Contract.

2. The Contract shall have a minimum term of ten years. Each year 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 the Owner or the County has given timely written notice of non-renewal in accordance with the requirements of this Chapter;

3. The Contract shall run with the land and be binding upon, and insure 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.

4. The Contract shall include a written commitment to restore, rehabilitate, and/or preserve the subject property in conformance with all of the following as applicable:
 - a. The rules and regulations of the California Office of Historic Preservation;
 - b. The Secretary of the Interior's Standards for the Treatment of Historic Properties;
 - c. The California Building Standards Code (Title 24 of the California Code of Regulations), including the State Historic Building Code (Part 8 of Title 24) where applicable; and
 - d. The requirements, provisions, and conditions set forth in the Historic Property Contract.
5. The Contract shall require that the Owner provide written notice of the Contract to the California Office of Historic Preservation within six months of entering into the Contract.
6. The Contract shall permit the periodic examination of the interior and exterior of the premises by State and local officials as may be necessary to determine the Owner's compliance with the Contract.
7. The Contract shall provide that the County may cancel the Contract, subject to the terms of this Chapter, if the County determines that any of the following have occurred:
 - a. The Owner has breached any of the conditions of the Contract;
 - b. The Owner has failed to restore or rehabilitate the property in the manner specified in the Contract; or
 - c. The Owner has allowed the property to deteriorate to the point that it no longer meets the definition of a Qualified Historical Property.
8. The Contract shall contain a clause, in a form acceptable to County Counsel that requires the Owner to defend, indemnify, and hold harmless the County, its agents, officers, and employees from any claim, action or proceeding against the County or its agents, officers, and employees arising in connection with the Historic Property Contract.
9. The Contract may contain such other provisions as the Board of Supervisors may deem appropriate, including but not limited to allowing for a yearly public tour of the property conducted by a group whose event is sanctioned by the County.-
 - C. At the time rehabilitation or restoration of the subject property is achieved and so long as the Contract is in effect, the Owner shall commit to and be responsible for appropriate maintenance and preservation of the subject property in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

18.27.060 Application for Historic Property Contracts.

- A. Only Qualified Historical Properties, as defined by this Chapter, are eligible for Historic Property Contracts under this Chapter. The Owner of a Qualified Historical Property may file an application to enter into a Historic Property Contract. Only the Owner or agent of the Owner may file the application. If the application is made by an agent of the Owner, the agent must provide documentation as part of the application of the Owner's authorization of the agent to act on the Owner's behalf.
- B. All applications for Historic Property Contracts shall be filed with the Director of Planning on the form and in the manner prescribed by the Director of Planning. The application shall contain, without limitation, the following information and documentation:
 1. The name and address of the Owner and signature of the applicant and the names and addresses of all persons and entities having any right, title, or interest in the property which

is the subject of the proposed Historic Property Contract;

2. Written consent to make the application from all persons and entities having a right, title, or interest in the real property which is the subject of the proposed Historic Property Contract;~~A nonrefundable application fee as set by the Board of Supervisors;~~

3. ~~Written consent to make the application from all persons and entities having a right, title, or interest in the real property which is the subject of the proposed Historic Property Contract;~~A nonrefundable application fee as set by the Board of Supervisors;

4. A legal description of the real property and a listing of the Assessor's parcel number for the property;

5. Color photos and low contrast black and white photos of the property and each elevation of the subject structure(s);

6. Site plans drawn to scale (The number of site plans required shall be as determined by the Director of Planning);

7. An itemized ten-year maintenance/rehabilitation work program containing, at a minimum, the following information:

a. A description of the improvements to be done. The proposed improvements must be appropriate to restore, preserve, and/or maintain the historic structure in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

b. Schedule of improvements;

c. Cost estimates associated with the proposed improvements;

d. Preliminary plans, elevations, or any appropriate documentation needed to substantiate and illustrate proposed improvements.

8. Proof that the property is a "Qualified Historical Property". Such proof may include the California Department of Parks Primary Record forms (DPR-523a and b), proof of National Register application form listing, proof of California Register application form listing, Monterey County Board of Supervisor's resolution placing the property or structure on the County of Monterey's Register of Historical Resources, or evidence pertaining to the contributing status of a property or structure within a Registered Historic District.

9. ~~A priority consideration worksheet describing how entering into a Historic Property Contract will:~~

a. ~~Result in a substantially reduced threat to the historic property from demolition, deterioration, abandonment, and/or neglect.~~

b. ~~Be visible to the general public either due to use or by its location and visibility within a road corridor or neighborhood.~~

e. ~~Result in the greatest value of improvements to the historic property and make the best use of the anticipated property tax savings in order to result in the greatest benefit to the public; and~~

d. ~~Promote the goals and policies of the General Plan and this Chapter, including by providing affordable housing, promoting heritage tourism, or providing similar public benefits.~~

10. A property tax adjustment worksheet, on a form acceptable to the Director of Planning, providing the Owner's calculated estimate of the property tax reassessment that would result from the Contract.

11. A copy of the most recent real property tax bill for the property.

11. An appraisal of the pre-contract market value of the property, including all improvements, prepared by a certified appraiser no more than one (1) year prior to the

application for the Contract.

12. Such other information as the Director of Planning may request to evaluate and process the application.

C. All applications for Historic Property Contracts exceeding the pre-contract market value limitation established in Section 18.27.040 (C) of this Chapter shall also file a request for an exemption from the property value limits together with the application required in Subsection B of this Section. The request for an exemption from the property value limits shall contain, without limitation, the following information and documentation:

1. A Historic evaluation of the property prepared by a qualified historian describing the historic significance and integrity of the property;

2. A written statement by the owner, including supporting evidence where applicable, explaining the risk of demolition, substantial alteration, and/or disrepair to the historic structure and how those risks necessitate a Historic Property Contract to address the risk.

D. A separate application shall be filed for each property on which a Historic Property Contract is requested.

E. The fees for processing the initial application shall be those fees that have been set by the Board of Supervisors and are in effect as of the date the application is deemed complete.

18.27.070 Fees.

The applicant for a Historic Property Contract shall pay such application fees as have been adopted by the Board of Supervisors by ordinance or resolution. Such fees shall not exceed the reasonable cost of administering the program. The fees may include an initial fee for processing the application through the Historic Resources Review Board's ranking process ~~eligibility recommendation~~, and an additional fee applicable to applications selected through the ranking process ~~determined eligible by the Historic Resources Review Board and the Director of Planning~~ for processing of the Historic Property Contract, including fees for environmental review as applicable, and a fee for processing requests for exemptions from the property tax value limitations if applicable. All fees and any remaining balance shall be paid prior to Board approval of any Historic Property Contract.

18.27.080 Review of applications.

A. The Director of Planning shall review the applications for completeness and accuracy and may require such additional information from the applicant as is needed to make the application complete. Only applications filed on or before July 1 of a calendar year shall be eligible for consideration for a Historic Property Contract for the subsequent fiscal year.

B. All applications filed on or before July 1 and deemed complete by the Director of Planning shall be referred ~~together to the Historic Resources Review Board (HRRB) for recommendation to the Board of Supervisors~~ Director of Planning -on eligibility of the property for a Historic Property Contract, including a recommendation on an exemption from the property value limit, if applicable and ranking.

C. The HRRB shall hold a noticed public hearing to make a recommendation on the eligibility of the property for a Historic Property Contract to the Director of Planning including, if applicable, any request for an exemption from the property valuation limit, and ranking of the applications for Historic Property Contracts referred by the Director of Planning. The HRRB shall ~~first~~ determine eligibility by making the three findings below. If the findings cannot be

made, the HRRB shall recommend to the Board of Supervisors/Director of Planning that the applications be ranked as ineligible, and no further ranking according to subsection D below is required/denied:

1. The application is consistent with the County's historic preservation goals and policies, as set forth in the County's General Plan and ordinances.
2. The application is consistent with the applicable Secretary of the Interior's Standards for the Treatment of Historic Properties.
3. The application is consistent with the requirements of this Chapter.

D. When a request for an exemption from the property valuation limit is associated with an application for a Historic Property Contract, the HRRB shall make the following findings in addition to the findings required in subsection C of this Section. If these findings cannot be made, the HRRB shall recommend to the Director of Planning that the application be denied:

1. The site, building, object, or structure is a particularly important resource and represents an exceptional example of an architectural style, the work of a master, or is associated with the lives of significant persons or events important to history; and
2. Granting the exemption will result in the preservation of a site, building, object, or structure that would otherwise be in danger of demolition, substantial alteration, or disrepair.

~~D. For applications have been determined to be eligible according to subsection C above, a contract evaluation system shall be used to assist the HRRB and the County in evaluating the merits of the various applications received by the July 1 deadline. It is the intent of this evaluation system to make relative comparisons between proposed applications rather than granting approvals on a first come, first served basis. The purpose of the evaluation process is to select those projects best conforming to the goals and policies of the General Plan and this Chapter. In evaluating and deciding on the merits of the applications, the HRRB will rank applications based on the following criteria:~~

- ~~1. The existing condition and vulnerability of the Qualified Historic Property:
 - ~~a. The highest rankings will be given to those applications that will result in the stabilization of major structural systems, where the project would substantially reduce or avoid the risk of deterioration or demolition of the historic resource.~~
 - ~~b. Cosmetic improvements including improvements to character-defining features will also be evaluated and included in the ranking process but will not be given priority over stabilization of major structural systems.~~~~
- ~~2. The use and visibility of the property:
 - ~~a. The highest rankings will be given to those properties which are highly visible to the public. Visibility includes, but is not limited to, any public access or use of the property, location of the property near a major roadway, and/or location within a prominent place within a neighborhood.~~
 - ~~b. Private structures within low visibility areas will also be evaluated and included in the ranking process, particularly those properties that are representative of a region or area; however, these properties will not be given priority over the visually prominent properties.~~~~
- ~~3. The information contained in the proposed work program:
 - ~~a. The highest rankings will be given to the work programs that make the best use of the tax dollars to be saved including programs that are responsive and appropriate to the needs of the property in question with the goal of restoring properties to the best condition possible.~~
 - ~~b. Applications with limited improvements or maintenance only contracts will also~~~~

be considered; however, these applications will not be given priority over those applications that propose the best use of the tax savings.

4. The goals and policies of the Monterey County General Plan and this Chapter:

a. The highest rankings will be given to those applications that provide or maintain affordable housing, heritage tourism, or other similar public benefits promoted by the General Plan and this Chapter.

b. Applications that benefit mainly the property owner will also be considered; however, these applications will not be given priority over those applications that provide countywide benefits.

E. Upon receipt of the ~~a~~ HRRB recommendation for approval ~~on all of the~~ applications ranked pursuant to subsections C and D above, the Board of Supervisors shall evaluate the HRRB's recommendations and rank the applications at a noticed public hearing. The applications with the highest rankings, ~~not to exceed five applications total,~~ the Director of Planning shall be entitled to negotiate to enter into Historic Property Contracts with qualifying properties for the following tax year, subject to appropriate environmental review and payment of such further application fees as have been established by the Board of Supervisors for processing the Historic Property Contract. ~~and successful contract negotiation.~~ For each eligible application, the County shall prepare a draft of the Historic Property Contract consistent with the requirements of this Chapter and state law. The County is not obligated to negotiate and prepare a draft Historic Property Contract on applications recommended for denial. Contracts shall be in a form acceptable to the Director of Planning and approved as to form by County Counsel. ~~In~~ ease the County or the Owner of an application within the top five ranked applications elects not to enter into a Historic Property Contract or the County and an Owner are unable to negotiate a mutually agreeable Contract, the application with the next highest ranking shall take its place among the top five, except that no more than five contracts may be allowed under this pilot program.

F. If an application is within the top five applications and if a selected applicant desires to proceed with his or her application, the applicant shall pay such further application fees as have been established by the Board of Supervisors for processing the Historic Property Contract. For each selected application, the County and Owner shall prepare a draft of the Historic Property Contract consistent with the requirements of this Chapter and state law, and the County shall conduct all appropriate environmental review. The Contract shall be in a form acceptable to the Director of Planning and approved as to form by County Counsel. ~~For final~~ action on each such Historic Property Contract application, including applications recommended for denial, the Director of Planning shall make a recommendation to the Board of Supervisors. The Board of Supervisors must take final action on each Historic Property Contract. The County shall not execute the Contract until authorized by the Board of Supervisors and until all persons and entities having any right, title, or interest in the property which is the subject of the Contract have signed the Contract or provided written authorization for an agent to execute the Contract on their behalf and until the Owner has submitted to the County the appropriate fee for recordation of the Contract.

18.27.090 Recordation of Approved Historic Property Contracts.

A. No later than twenty (20) calendar days after execution by all parties of the Historic Property Contract, the Clerk of the Board shall cause a copy of the executed Historic

Property Contract to be recorded in the Office of the Recorder of the County of Monterey.

B. The Owner shall provide written notice of the Contract to the California Office of Historic Preservation within six months of entering into the Contract.

18.27.100 Review of Approved Historic Property Contracts.

A. The Owner shall allow for inspection of the interior and exterior of the premises and the property by the California Department of Parks, the State Board of Equalization, the County Assessor, the Director of Planning, other County officials, and/or their designated representatives as may be necessary to determine the Owner's compliance with the Historic Property Contract.

B. No later than 90 days prior to each annual Anniversary Date of the Historic Property Contract, the Owner shall submit documentation to the Director of Planning in sufficient detail to demonstrate compliance with the Historic Property Contract's work program, including but not limited to the following documentation:

1. Color photos of actual work done in conformance with the Contract;
2. Receipts and copies of financial transactions related to work carried out in conformance with the recorded Contract;
3. Copies of Building Permits and/or Planning entitlements for work carried out in conformance with the recorded Historic Property Contract; and
- ~~4. Responses to the questionnaire provided by the Director of Planning; and~~
4. Such other information as may be required by the Director of Planning

C. The Director of Planning shall review the documentation to determine compliance with the recorded Historic Property Contract. If documentation is not submitted within the required timeframe or the materials submitted demonstrate in the determination of the Director of Planning that the Owner is out of compliance with the Historic Property Contract, the Director shall begin the process for cancellation of the Contract pursuant to Section 18.27.130 of this Chapter.

D. At least 60 days prior to the tenth Anniversary Date of the Historic Property Contract, the Owner shall submit a report from a qualified historian to the Director of Planning. The report shall describe the work carried out pursuant to the Contract and shall recommend any appropriate improvements needed to achieve rehabilitation, restoration, or preservation of the property. Based on the recommendations, the County may require an amendment to the Contract. If the Director of Planning determines, as part of the tenth year review, that rehabilitation or restoration for the subject property has been achieved, the Owner shall commit to and be responsible for appropriate maintenance and preservation of the subject property in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties so long as the Contract remains in effect.

18.27.110 Nonrenewal of Historic Property Contracts.

A. Each year on the Anniversary Date of the Contract or such other date as is specified in the Contract, a year shall be added automatically to the initial term of the Contract, unless the Owner or the County has given timely written notice of nonrenewal in accordance with the requirements of state law and this Chapter. If the Owner desires in any year not to renew the Contract, the Owner shall serve written notice of nonrenewal of the Contract on the Director of Planning and the Clerk of the Board at least 90 days in advance of the annual renewal date of the

Contract. If the County Board of Supervisors determines in any year not to renew the Contract, the County Board of Supervisors or their authorized designee shall serve written notice of nonrenewal of the Contract on the Owner. The County Board of Supervisors shall serve a notice of nonrenewal only after the Board of Supervisors has conducted a noticed public hearing to consider the nonrenewal. Unless the notice of nonrenewal is served by the Owner or the County in accordance with these requirements, one year shall automatically be added to the term of the Contract.

B. If the County or the Owner serves notice of nonrenewal in any year and the Owner does not file a written protest, 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.

C. Upon receipt by the Owner of a notice from the County for nonrenewal of the Contract, the Owner may make a written protest of the notice to the Board of Supervisors. Such protest must be in writing and filed with the Clerk of the Board of Supervisors within 10 days after the written notice of nonrenewal was mailed to the Owner. If a written notice of protest is timely filed, the Clerk of the Board shall schedule the protest for a noticed public hearing before the Board of Supervisors within 60 days of the filing of the protest and notify the Owner of the hearing date. The Board of Supervisors may, at any time prior to the renewal date, withdraw the notice of non-renewal. Following the hearing, the Board may withdraw or affirm the notice of non-renewal. If the Board of Supervisors affirms the notice of nonrenewal, 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. Following the nonrenewal of the Contract, the property shall be assessed in accordance with state law (section 439.3 of the Revenue and Taxation Code, as may be periodically amended).

18.27.120 Amendment of Historic Property Contracts.

A. A Historic Property Contract may be amended, in whole or in part, upon mutual agreement of the Owner and the County. Such amendments must be in writing and approved by the Owner and the Board of Supervisors.

B. For Owner-initiated amendments to a Historic Property Contract, the Owner must file an application for an amendment with the Director of Planning on the form and in the manner prescribed by the Director of Planning. The Owner shall pay such amendment application fees as have been set by the Board of Supervisors. The Director of Planning shall review the amendment application for completeness and adequacy. The Director may request additional information as necessary to evaluate the amendment.

C. At such time that the Director has determined the amendment to be complete, the Director shall refer the amendment to the Historic Resources Review Board (HRRB) for a recommendation to the Board of Supervisors.

D. Following receipt of the HRRB recommendation and following all appropriate environmental review, the Board of Supervisors shall render a decision on the proposed amendment. The County shall not execute the Historic Property Contract amendment until all persons and entities having a right, title, or interest in the property which is the subject of the Historic Property Contract have signed the amendment or provided written authorization for an agent to execute the contract amendment on their behalf and until the Owner has submitted to the

County the appropriate fee for recordation of the Contract amendment.

E. No later than ~~twenty~~(20) calendar days after County execution of the amendment to the Historic Property Contract, the Clerk of the Board of Supervisors shall cause a copy of the executed amendment to be recorded in the Office of the Recorder of the County of Monterey.

F. The Owner shall provide written notice of the amendment of the Historic Property Contract to the California Office of Historic Preservation within six months of amending the Contract.

18.27.130 Cancellation of Historic Property Contracts.

A. The County may cancel a Historic Property Contract, subject to the process described in this section, if the County finds that one of the following conditions has occurred:

1. The Owner has breached any of the conditions of the Historic Property Contract;
2. The Owner has failed to restore or rehabilitate the property in the manner specified in the Contract; or
3. The Owner has allowed the property to deteriorate to the point that it no longer meets the definition of a Qualified Historical Property.

B. The following process shall be followed for cancellation of a Historic Property Contract:

1. If the Director of Planning determines at any time that the Owner has breached any of the conditions of the Historic Property Contract, has failed to restore or rehabilitate the property in the manner specified in the Contract, or has allowed the property to deteriorate to the point that it no longer meets the definition of a Qualified Historical Property or if the Owner has not submitted the documentation required for the annual review for compliance with the Historic Property Contract's work program, the Director of Planning shall notify the Owner in writing describing the deficiencies. If the Owner has not corrected the deficiencies to the satisfaction of the Director within 60 days of the issuance of the notification, the Director may refer the cancellation of the Contract to the Historic Resources Review Board for a recommendation to the Board of Supervisors on the cancellation.

2. The HRRB shall, at a noticed public hearing, evaluate the evidence in the record and provide a written recommendation to the Board of Supervisors as to whether one of the conditions for cancellation has occurred.

3. Following receipt of the HRRB recommendation, the Board of Supervisors shall, at a noticed public hearing, consider whether to cancel the Contract. No contract shall be canceled until after the Board of Supervisors has given notice of and has held a public hearing on the cancellation.

C. To cancel the Contract, the Board of Supervisors must make a finding, based on substantial evidence that one of the following conditions has occurred:

1. The Owner has breached a condition of the Historic Property Contract;
2. The Owner has failed to restore or rehabilitate the property in the manner specified in the Contract; or

3. The Owner has allowed the property to deteriorate to the point that it no longer meets the definition of a Qualified Historical Property.

D. If a Historic Property Contract is cancelled under this section, the Owner shall, in accordance with Government Code sections 50284 and 50286, pay a cancellation fee equal to twelve and one half percent (12 ½ %) of the property's current fair market value, as determined

by the County Assessor as though the property were free of the contractual restriction. The cancellation fee shall be paid to the County Auditor, at the time and in the manner that the County Auditor shall prescribe. The cancellation fee 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.

E. As an alternative to cancellation of the Contract for breach of any condition, the County or Owner 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.

F. In the event that a property subject to a contract under this chapter 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 Board of Supervisors to frustrate the purpose of the contract, such contract shall be canceled and no cancellation fee shall be imposed. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

18.27.140 Notice of hearing.

Whenever a noticed public hearing is required by this Chapter, notice of the hearing shall be published in at least one newspaper of general circulation at least 10 days prior to the hearing date. Notice shall also be mailed at least 10 days prior to the hearing date to the owners of the properties which are the subject of the public hearing. In the event that the property which is the subject of the hearing is located within a registered historic district, notice shall also be mailed at least 10 days prior to the hearing date to the last known address of each owner of property within the district.

18.27.150 Annexation.

In the event that property restricted by an Historic Property Contract with the County of Monterey is annexed to a city, the city shall succeed to all rights, duties, and powers of the County under such contract.

18.27.160 Contracts approved under the Pilot Program.

Contracts approved pursuant to the Monterey County Mills Act Pilot Program (Ord. No. 5159) shall be subject to the regulations contained in Sections 18.27.100 through 18.27.150 of this Chapter.

SECTION 2. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. EFFECTIVE DATE.

This ordinance shall become effective on the 31st day after its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2014, by the following vote,
to-wit:

AYES: Supervisors
NOES:
ABSENT:

ATTEST:

GAIL T. BORKOWSKI
Clerk of the Board

By _____
Deputy

APPROVED AS TO FORM:

Wendy S. Strimling
Senior Deputy County Counsel