

Pacaso®

September 26, 2022

DELIVERED VIA EMAIL: citycouncil@newportbeachca.gov ; cityclerk@newportbeachca.gov

Mayor Kevin Muldoon & Honorable City Council Members
City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660

RE: Residential Co-Ownership in Newport Beach

Dear Mayor Muldoon & Honorable City Council Members:

We write to you today to offer our commitment to work in good faith with the City of Newport Beach (“City”), community members, and other interested parties to study and develop rules and accepted practices to address any secondary effects that may be associated with residential co-ownership in the City.

The City has a long and storied history of being a vacation destination and a large percentage of the homes owned in the City are owned by an LLC, trust, or other form of ownership that involves multiple owners. We are not presently aware of any City investigations or complaints relating to a home owned by a member of our Pacaso community; however, to the extent there may be any concerns we stand ready to work with the City and community to address those concerns.

The City already has a number of tools in their tool box to address any potential secondary effects associated with a residential property, including, but not limited to, the following:

- (1) Short Term Lodging— Newport Beach Municipal Code (“NBMC”) Section 5.95.020 requires a short term lodging permit for any person desiring to advertise or rent their home for short term lodging purposes. NBMC Section 5.95.010(M) defines short term lodging as renting or leasing a home for less than 30 consecutive days.
- (2) Noise—All land uses are required to comply with the noise standards provided in NBMC Section 20.30.080, NBMC Chapter 10.26 (community noise control), and NBMC Chapter 10.28 (loud and unreasonable noise).
- (3) Loud and Unruly Gatherings—All homes are prohibited from having loud or unruly gatherings under NBMC Chapter 10.66. A loud and unruly gathering is

generally understood to be an out-of-control party, and is broadly defined to include excessive noise or traffic, public drunkenness, litter, *etc.* The definition of a home owner in NBMC Section 10.66.010(D) includes any “...corporation, company or entity, who owns the residential unit...”

(4) Nuisance—It is illegal for any home to be maintained as a public nuisance under NBMC Section 10.50.020. A nuisance is defined to include fire hazards, stagnant ponds and swimming pools, accumulation of trash or automobile parts, or generally unsafe, unsightly or poorly maintained property.

(5) Trash Containers—Under NBMC Section 6.04.120(B)(4), each homeowner in the City is required to store their trash containers as soon as possible after collection, but no later than 7:00 p.m. on the day of collection.

(6) No Yard Cars—NBMC Section 10.50.020(J) makes it illegal to park or store a vehicle in the required front yard setback.

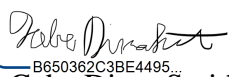
(7) Vegetation—NBMC Section 10.50.020(D) makes it illegal to have overgrown or dead trees, shrubbery, grass or plants.

(8) Unruly Conduct—NBMC Section 10.50.020(K) makes it illegal to have “repetitive, boisterous or unruly conduct by the owner or occupants of the property that occurs on the property when that conduct: (1) is offensive to a person of ordinary sensibility; (2) continues after a written or oral request to terminate the conduct; (3) is offensive to a considerable number of people; and (4) in the opinion of the Enforcement Officer results in any of the impacts described in Section 10.50.005.

If, however, there is a secondary effect associated with residential co-ownership that is not already addressed by the City’s existing regulations, we desire to work with the City to create rules and policies that address the unregulated secondary effect. We believe this process should follow the ordinary course of business that allows for staff involvement, Planning and Coastal Commission consideration, and public input from members of the community and interested parties.

We respectfully offer our assistance and cooperation to engage with the City and the community in a thoughtful and collaborative process.

Sincerely,
DocuSigned by:



B650362C3BE4495...
Gabe Dima-Smith

Manager, Public Affairs

cc: Grace Leung, City Manager (gleung@newportbeachca.gov)
Aaron C. Harp, City Attorney (aharp@newportbeachca.gov)
Leilani I. Brown, City Clerk (lbrown@newportbeachca.gov)
Seimone Jurjis, Community Development Director (sjurjis@newportbeachca.gov)

September 27, 2022, City Council Special Meeting Comments

The following comments on the item on a Newport Beach City Council special agenda are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item 1. Resolution No. 2022-61: Initiation of Zoning Code and Local Coastal Program Amendments Related to Fractional Homeownership (PA2022-0202)

I do not understand why this rather normal-appearing business matter is the subject of a “special meeting” at 4:00 p.m., rather than an item on the same day’s regular agenda. If the intent is to give it greater visibility, scheduling it at a workday afternoon hour would seem to me to give it less visibility, rather than more.

As to the substance of the matter, the present brief staff report references the November 16, 2021, study session, where my impression was that (as [Item SS3](#)) staff informed the public that the Pacaso fractional ownership model did not fit the City’s definition of “time share” and for purposes of regulation could not be distinguished from the 56% of single-family properties owned by LLC’s, Trusts and other forms of multiple ownership.

But at the September 13, 2022, study session (as [Item SS2](#)), after receiving the Sagecrest [Fractional Homeownership Report](#), that conclusion seems to have changed, and it is now believed that that regulations *can* distinguish ownership models in which an owner’s right to occupancy of a dwelling is limited in time, and such forms of ownership constitute a distinguishable land use; but a use not currently regulated in Newport Beach, prompting the present agenda item.

As a non-attorney, I agree with Carmen Rawson’s comments at the recent meeting, to the effect that the Newport Beach Municipal Code *already* prohibits the Pacaso ownership model.

I believe the reason for the disagreement arises from sloppy amendments to a code that has long been intended to prohibit such use. In particular, as Carmen pointed out “fractional ownership” is specifically included in the definition of “Time share project” in NBMC [Sec. 21.70](#) of our Coastal Implementation Plan, and while not in the parallel definition of NBMC [Sec. 20.70](#) of the Zoning Code, both are non-exclusive and include *any* form of ownership or use that limits time of occupancy.

In rejecting this interpretation in 2021, and again at the Council’s last meeting, staff emphasized the definition they find elsewhere in the code of the word “development” that appears in the definition of “Time share project” and which, in their view, makes the current prohibition of fractional ownership inapplicable to changes of *ownership* of *existing* properties.

But one of the many defects of our City’s system of codes is that it provides no means (such as capitalization or a different type face) to distinguish when a common word is being used in its common sense as opposed to in some limited, specifically defined sense.

For the reasons that follow, I believe that the Council’s adoption of the definitions of “development and “project” that staff has found in the code were never intended to alter the code’s longstanding definition of “Time share project.”

Based on the City’s archives, Newport Beach first addressed the issue of residential timeshares in 1981, prompted by a proposal for a 20-unit residential timeshare project at 3336 Via Lido on what

were then lots used for low-rise, waterfront office buildings at the south end of the present Lido Village commercial area. The application went to the Planning Commission on November 5, 1981 (see [page 1](#) of the minutes) and was denied on December 10, 1981 (see [page 2](#) of the minutes). An appeal of the denial was to be heard by the Council on January 11, 1982 (see [page 8](#) of the minutes), but tabled pending development of a timeshare ordinance. An ordinance prohibiting all timeshares was introduced at the July 12, 1982, meeting (see [page 4](#) of the minutes) and adopted as [Ordinance No. 82-14](#) on July 26, 1982. Based on the findings in the new ordinance, the appeal was heard and denied on August 23, 1982 (see [page 1](#) of the minutes).

Ordinance No. 82-14 added what was then labeled Chapter 20.76 to the Municipal Code. The preamble indicates it was intended not only to prohibit construction of new timeshare projects, but also conversion of existing dwellings into “time share projects,” and the body of the code specifically prohibits the **conversion** of an existing single family residence, condominium or multi-family units to “time-share **use**.”

Ordinance No. 82-14 is the origin of the words “project” and “development” that appear in relation to timeshares in the City’s current code. And as confirmed by the City’s collection of [Historic Zoning Codes](#), “project” and “development” were also not assigned clarifying specialized definitions elsewhere in the Title 20 of 1982. So, especially since Ordinance No. 82-14 introduced the words without definition, the context makes clear they were intended to have broad meaning, not the highly technical, specialized ones our staff now tries to assign to them.

Fourteen years later, on January 22, 1996, a new Council relaxed the total ban on timeshare ownership in Newport Beach by adopting [Resolution No. 96-9](#), which initiated amendments to allow timeshares in commercial districts (note that unlike at the present meeting, in 1996 “initiating” code amendments seems to have meant introducing a very specific language proposal for the Planning Commission to consider). This led to [Ordinance No. 96-7](#), another [Resolution No. 96-29](#), and some final tweaks with [Ordinance No. 96-18](#).

While this revised code allowed timeshare uses in commercial districts, it did so only if they exceeded a minimum number units, which may have contributed to staff’s misimpression that the timeshare prohibition in the remaining districts was also meant to apply only to such multi-unit timeshare developments.

The timeshare code adopted in 1996 survived as NBMC [Chapter 20.84](#) in the 1997 comprehensive revision of the City’s Zoning provisions, in which “[development](#)” continued undefined, but “[project](#)” was, for the first time, defined elsewhere in the code as “*Any proposal for new or changed use, or for new construction, alterations, or enlargement of any structure, that is subject to the provisions of this code.*”

Even if that definition of “project” was intended to modify the earlier definition of “time-share project,” which seems unlikely, it would seem broad enough to me to include a change in ownership model as a “*changed use*.”

The next and most recent revision of the Zoning Code in 2010 introduced, for the first time, a definition of “development” and a new definition of “project” that would both, for the first time, seem to *exclude* a change of ownership model. And those are the definitions that now seem to trouble staff. But there is no evidence either new definition was intended to amend the meaning of the 1982 time-share ordinance as refined in 1996.

On the contrary staff seems to have been unaware of the conflict they were creating, for the City's 2010 [Comprehensive Zoning Code Update Summary of Change](#) document, which guided Council approval of the 2010 amendments, says (on page 13 of the PDF):

Section 20.48.220 - Time Share Facilities (page 4-41)

Current provisions are within Chapter 20.84 and the standards were updated to address operational plans. The requirement for all time share developments to obtain Development Agreements remains unchanged.

In my view, our staff is chasing red herrings when it attempts to attach meanings to the words "project" and "development" that were never intended when they were enacted in association with the definition of "time-share project" in 1982.

The 1982 ordinance was explicitly enacted to prevent the conversion of homes to time-share use through ownership, lease or any other arrangement – which would certainly include the Pacaso model.

The 1996 amendments allowed timeshares, but only in commercial districts as does the current code.

The 2010 Comprehensive Zoning Code Update sloppily added definitions elsewhere in Title 20 that seem to contradict the broad intent of the words "project" and "development" in the Time-Share chapter. But the 2010 Summary of Changes clearly states the new code was adopted with no change intended other than an update to "operational plans."

As Carmen pointed out at the last Council meeting, Title 21, added in 2017, explicitly identifies fractional ownership as a form of timeshare in the Coastal Zone, and Title 21, like Title 20, allows timeshare uses *only* in a subset of the commercial districts where hotels and motels are allowed. However, Title 21 does suffer from the unintentionally conflicting definitions of "project" and "development" that were adopted at the same time.

In summary, **I believe it has been the clear intent of the Newport Beach Municipal Code to prohibit time-shared home ownership since 1982**, the present flawed language notwithstanding.

In that case, the present problem is, as Carmen suggested, more one of code enforcement than code amendment. Nor should one need a moratorium to outlaw something not presently allowed.

Nonetheless, it would be good to explicitly add "fractional ownership" to Title 20 as an example of a mechanism by which a timeshare use can be created. And to replace "project" and "development" in the definition of "time share" with words that more accurately express the original intent and that do not conflict with the definitions of "project" and "development" more recently added to the codes.

Newport Beach's Fractional Homeownership Highlights

- In 1982, Newport Beach banned the “development” of a time-share “project” anywhere in the City, finding it to be a detrimental form of land use.
 - “Time-share project” very broadly defined.
 - Included conversion of existing residential dwelling units into time-shared use.
- In 1996, the City Council relaxed the ban to allow larger-scale time-share ventures in commercially-zoned districts, subject to special permitting restrictions.
 - Did not remove prohibition on “*conversion of existing **residential** dwelling units into time-share units.*”
- Subsequent reorganizations of the Zoning Code consolidating seemingly conflicting definitions of “development” and “project” relevant to other zoning provisions were never intended to alter the 1982/1996 time-share regulations.
- Conclusion: The Pacaso-type model of ownership was banned in 1982 and remains banned.

Newport Beach's Fractional Homeownership Regulation History

- In 1982, a former City Council adopted [Ordinance No. 82-14](#) *prohibiting* the “development” of time-share “projects” anywhere in Newport Beach.
 - It banned any kind of arrangement in which a purchaser obtained an exclusive right to occupy a living space for limited, recurring intervals of time.
 - Despite the use of the words “project” and “development,” both the statement of intent and the substance of Ord. No. 82-14 made clear the prohibition was on a type of land *use* and *not* confined to new construction.
 - It explicitly *prohibited* the *conversion* of any *existing residential* or hotel/motel units in the City to a time-shared model, including Pacaso-like *shared ownership*.¹
- In 1996, a later City Council relaxed the ban to *allow*, subject to special permitting restrictions, larger-scale timeshare ventures in commercially-zoned districts ([Ordinances No. 96-7](#) and [96-18](#)), including *allowing* the conversion of some existing *hotel/motel* units to a time-share model.
- However, in allowing limited permitting of hotel-type timeshares, there was *no change* in:
 - The 1982 definition of “time-share.”
 - 1982’s blanket prohibition on the “*conversion of existing residential dwelling units into time-share units.*”
- Subsequent well-intentioned comprehensive restatements and reorganizations of the City’s Zoning Code in 1997 and 2010 caused the code adopted in 1982 and 1996 to become increasingly fragmented and difficult to follow, but never with any stated intent to change its meaning.
- In the City’s current Zoning Code the essentials of Ordinance No 82-14 remain intact:
 - 1982’s *definition* of “Time share project” remains as originally written, but moved to [Sec. 20.70.020.V](#) under “Visitor Accommodations (Land Use) – 7.”
 - 1982’s *prohibition* on converting existing residential units of any kind to a time-shared model continues in [Sec. 20.48.220.A.2](#).
 - 1996’s *allowance* of a time-shared land use in (and *only* in) certain commercially-zoned districts where hotel/motel land use would be allowed remains in Tables 2-4 and 2-5 of [Sec. 20.20.020](#) (under “Visitor Accommodations, Nonresidential”) and in Tables 2-8 and 2-9 of [Sec. 20.22.020](#) (under “Visitor Accommodations”).
- None of the revisions, rearrangements of code, or addition of definitions of “project” or “development” relevant to other sections of Title 20 provide any evidence of any intent by any Council to rescind the 1982 prohibition on conversion of residences to timeshares.
- **Conclusion: The Pacaso-type model of ownership was banned in 1982 and remains banned in non-commercial districts.**

¹ Subsec. 20.76.015.B of Ord. No. 82-14 made it “*unlawful to sell any right of occupancy in a time-share estate.*” Subsec. 20.76.015.C could be read as contradicting this, but appears to be an attempt at a grandfathering clause for time share estates existing at the time of enactment. In any event, Subsec. 20.76.015.C clearly prohibits conversion of existing dwellings to any form of timeshared arrangement, including “time-share estates” -- which is what Pacaso and others seem to be doing.

Mulvey, Jennifer

Subject: FW: In support of Pacaso

From: Aaron Clark <aaronsclark@gmail.com>

Sent: September 21, 2022 10:08 AM

To: Dixon, Diane <ddixon@newportbeachca.gov>; Avery, Brad <bavery@newportbeachca.gov>; Duffield, Duffy <dduffield@newportbeachca.gov>; Muldoon, Kevin <kmuldoon@newportbeachca.gov>; Blom, Noah <NBlom@newportbeachca.gov>; Brenner, Joy <JBrenner@newportbeachca.gov>; O'Neill, William <woneill@newportbeachca.gov>

Cc: Dept - City Council <CityCouncil@newportbeachca.gov>

Subject: In support of Pacaso

Hello to all!

I wanted to write to express my support for Pacaso in advance of the city council meeting on 9/27 discussing the moratorium on co-ownership. As a current Pacaso owner, we have been very impressed with the company and its true spirit of enhancing communities. The last thing we would want to do is own a home where our other co-owners are disruptive or disrespectful to our fellow neighbors. Pacaso has been very active in echoing this sentiment and has made clear that there will be consequences, as our property manager, should these values be violated. My family of four (43, 42, 20, and 14) currently maintain our primary residence in Scottsdale, Arizona. We have greatly enjoyed participating and supporting the community of Newport Beach since we invested into our Pacaso in October 2021. Over that period of time, we have spent a minimum of 6 weeks and have supported countless local businesses, met new friends/neighbors (we actually have one of those neighbors visiting and staying with us this weekend in Scottsdale), and been a good citizen. We have a club soccer player daughter where we travel many weekends of the year making a full-time vacation home wasteful. As time goes by and kids age, we anticipate making Newport Beach a bigger and bigger piece of our lives.

A few facts:

- We invested \$840,000 into our Pacaso at 1703 Plaza Del Sur. Our intent is to purchase additional shares of this home as they become available.
- We pay roughly \$1500 per month in ongoing maintenance, taxes, insurance, utilities, etc
- We eat out nearly meal while in town, rent Duffy boats, shop in local boutiques

It is clear our initial and ongoing investment into Newport Beach is much more meaningful than an Airbnb rental or hotel stay. As an owner, we WANT to maintain the sense of community, support our local businesses, and be neighborly. We have met resistance from 2-3 people since purchasing our new home. I do not believe that the opinions of the few should represent the majority. Those 'few', in our case, made their opinions at the beginning before experiencing any negative outcomes. As the initial owner of our Pacaso, I reached out to our neighbors by taking over a bottle of wine and introducing our family. This was met with resistance. We respectfully accept their opinion and choose to focus on all the wonderful things Newport Beach has to offer and the other very friendly people we come in contact with.

Thank you for your time!

Aaron

Aaron S. Clark, CFA

C: 918-640-5892

Mulvey, Jennifer

Subject: FW: Proposed Restrictions on Residential Co-Ownership

From: Steve Hayes <texdevil1@gmail.com>

Sent: Thursday, September 22, 2022 12:10:56 PM (UTC-08:00) Pacific Time (US & Canada)

To: City Clerk's Office <CityClerk@newportbeachca.gov>

Cc: Harp, Aaron <aharp@newportbeachca.gov>; Dept - City Council <CityCouncil@newportbeachca.gov>; Leung, Grace <gleung@newportbeachca.gov>; Brown, Leilani <LBrown@newportbeachca.gov>; Jurjis, Seimone <sjurjis@newportbeachca.gov>

Subject: Proposed Restrictions on Residential Co-Ownership

Honorable Mayor and City Councilmembers,

My wife, Linda and I are both 62 and have 3 adult children with one grandchild and another one on the way. For many years, we vacationed at beaches on the East Coast, but after our middle son and his wife were transferred to SoCal for a couple of years for work, we found ourselves being drawn to the California beaches, warm weather and endless things to do. In particular we fell in the love with the friendly people, the restaurants and shops at Lido Marina Village and the convenience of the local Pavillions grocery store- not to mention some surprisingly good Italian food.

We're like you and we agree that short term rentals aren't the most well kept properties and have guests that don't care about how they leave the properties or impact the neighborhood. It's the same reason that we would never buy a rental car.

So that's why about 6 months ago, we made a decision to invest as a homeowner in a Pacaso property in Newport Beach- and we didn't do it to rent it out and a make a profit, we did it for our family. Like you, we want to live in a home that has high standards, is well maintained and only allows people to stay in the house that have a vested interest in the property- owners. Since our purchase, we have gladly paid property, sales and rental car taxes. We frequent local establishments and stores, enjoy riding our bikes up and down the coast and have had the opportunity to play both pickleball and golf with some very warm and welcoming local people.

That's why we've been surprised by the uproar that the fractional ownership model of 10 or so homes has caused with the community. Unlike the 1500 already approved short term rentals (7 of those are on our street by the way), we want what's best the for the community and are more than willing to pay our share of taxes to make sure that the local infrastructure and schools are not only maintained but improved as time goes on- and we won't/can't rent it out to strangers that don't feel the same way.

In our case- and since I am still working- we honestly are both looking at the next several years as a "trial run" to see if we want to have more of a long term presence in Newport Beach that we can share with our children and grandchildren- and you- as we grow old.

So the next time we're around, I'd be more than happy to introduce our family to you- as long as it's not too late because we like to go to bed early too! 😊

Thanks for considering our thoughts,

Steve Hayes

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Steve

September 27, 2022
Special Meeting

From: [Rieff, Kim](#)
To: [Mulvey, Jennifer](#)
Subject: FW: Fractional Timeshares/Ownerships
Date: September 26, 2022 9:34:49 AM

-----Original Message-----

From: Lynn Friedman <haus2ful@icloud.com>
Sent: September 26, 2022 9:29 AM
To: Dept - City Council <CityCouncil@newportbeachca.gov>
Subject: Fractional Timeshares/Ownerships

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear City Council members,

Please vote to stop Fractional Ownership/timeshares in Newport Beach.
We have just made good progress on limiting and strengthening rules regarding STRs. Please, we do NOT want more of the same (Fractional Ownerships) impacting on our residential neighborhoods.

Please oppose Pacaso and other of these Fractional Ownerships in our city.

Sincerely,
Lynn Friedman
3704 Channel Pl, NB

Sent from my iPhone

City Council Meeting 2022-09-27 – Special Meeting at 4:00 pm – Fractional Homeownership

City Council Members and City Staff,

Timeshares are Not Allowed in Newport Beach’s Residential Coastal Zoning Districts

As mentioned during the 2022-09-13 City Council Mtg (SS2 Fractional Home Ownership Update) the business model being operated by Pacaso, Ember Homes, Nelson Family Estates (and potentially other companies we still do not know about) in residential zoning districts of Newport Beach is not allowed by the Newport Beach Municipal Code (NBMC) as their business model is a “*Shared Deed Ownership Timeshare*”.

NBMC Chapter 21.18 Residential Coastal Zoning Districts

Time Shares are not allowed per Table 21.18-1 (under Visitor Accommodations only Bed and Breakfast Inns and STLs are allowed in R-2 and RM zoning)

The City of Newport Beach already has the tools to issue to Pacaso, Ember Homes and the Nelson Family Estates an “Immediately Cease and Desist Unlawful Operations” letter as done by other cities dealing with the proliferation of this business model in their communities. Or as an option a Moratorium on “Fractional Ownership (Timeshare)” must be urgently issued.

Note Pacaso is mailing flyers to Newport Beach homeowners actively encouraging the “fractional ownership” concept. See attached copy of the Pacaso’s flyer we received this week.

Pacaso/Ember/Nelson Business Model is a “Shared Deed OwnershipTimeshare”

These companies disguise their “*shared deeded ownership timeshare*” business under the term of “*fractional ownership*”.

Please refer to Investopedia where, under the definition of Timeshare, two (2) types of Timeshare Ownership are described. Timeshares are typically structured as shared deeded ownership or shared leased ownership interest.

Shared Deeded Ownership: Shared deeded ownership gives each buyer a percentage share of the physical property, corresponding to the time period purchased. Shared deeded ownership interest is often held in perpetuity and can be resold to another party or willed to one's estate.

Shared Leased Ownership Interest: Shared leased ownership interest entitles the buyer to use a specific property for a fixed or floating week (or weeks) each year for a certain number of years. In this structure, the timeshare developer retains the deeded title to the property, unlike the shared deeded ownership structure where the owner holds the deed.

Due to the bad reputation associated with traditional (shared leased ownership interest) timeshares companies such as Pacaso have cleverly use a different term for their business model. And “fractional ownership” is not the only term being used in the industry. As City Staff looks into this matter please ensure all other terms are addressed (private residence club, destination club, vacation club, condotel, etc). For your reference see attached Adobe file named “*Sirkin Law_Fractional Ownership Resources and Articles*” where the replacement of the term “timeshare” by terms such as “fractional ownership” is discussed.

“Fractional Ownership” versus “Shared Deeded (Fractional) Ownership Timeshare”

The issue under review is not a fractional ownership (co-ownership) through an LLC, Trust, etc where the fractional owners are family members and/or friends. What is under review is a fractional ownership where specific/structured time restrictions exist for the use of the dwelling by the various co-owners (who are mostly strangers among them).

Several family members or friends (co-owners) co-owning a property through an LLC, Trust, etc is allowed as they do not have the time restrictions Pacaso’s business model has. For said LLCs, Trusts, etc several co-owners may occupy the dwelling simultaneously and if one co-owner does not use the dwelling other co-owners may use the dwelling instead with no specific time limit.

Pacaso’s “fractional ownership” business model has a structured/restrictive control of the time each fractional owner can spend at the dwelling. Pacaso’s website clearly states, under FAQs and for an 1/8 ownership (see attached file), a) each fractional owner can have a maximum of 6 stays, b) each stay must be no less than 2 nights and no more than 14 nights, c) each owner has the right to a maximum of 44 nights in a year. That is a “Shared Deeded Ownership Timeshare” – no matter what “label” Pacaso (or Ember Homes or Nelson Family Estates) uses to name it.

Regarding the fact that a large percentage of properties in Newport Beach have titles held under LLCs, Trusts, etc, as Pacaso highlighted during the 2022-09-13 city council meeting, is immaterial to this discussion. Many property titles are held by LLCs, Trusts, etc due to Estate Planning or even to reduce liability - not because the properties have “fractional ownership”.

Timeshares are allowed in Newport Beach’s Mixed-Use and/or Commercial Coastal Zoning Districts

The Newport Beach Municipal Code does allow timeshares in other areas of the city:

NBMC Chapter 21.20 Commercial Coastal Zoning Districts

Time Share Facilities are only allowed in specific commercial zoning, per Table 21.20-1 (under Visitor Accommodations only allowed in CG and CV zoning)

NBMC Chapter 21.22 Mixed-Use Coastal Zoning Districts

Time Shares are allowed in all mixed-use zoning districts, per Table 21.22-1 (under Visitor Accommodations)

However, all the Newport Beach properties so far identified as part of Pacaso, Ember Homes and Nelson Family Estates “porfolio” are located in residential zoning districts.

Time Share Definitions in the Newport Beach Municipal Code

The following definitions are listed under NBMC Chapter 21.70 – Definitions, Section 21.70.020 – Definitions of Specialized Terms and Phrases, Under “Visitor Accommodations (Land Use)”

“Time share project” means a development in which a purchaser receives the right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of an ownership interest in a lot, unit, room(s), or segment of real property, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided and shall include, but not be limited to, time share estate, interval ownership, **fractional**

ownership, vacation license, vacation lease, club membership, time share use, hotel/condominium, or uses of a similar nature See also “Limited-Use Overnight Visitor Accommodations (LUOVA).”

“Time share estate” means a right of occupancy in a time share project that is coupled with an estate in the real property.

On 2022-09-13, during the city council meeting break, I was told by City Staff (Mr. Seimone Jurjis and Mr. Campbell) that the concern was the inclusion of the word “development” as part of the “Time share project” definition. And my question is why is that a concern?

The following definition is listed under NBMC Chapter 21.70 – Definitions, Section 21.70.020 – Definitions of Specialized Terms and Phrases, Under “Visitor Accommodations (Land Use)”

“Development” means **on land**, in or under water, **the placement or erection of solid material or a structure**; discharge or disposal of dredged material or of gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of materials; change in the density or intensity of use of land, including, but not limited to, subdivision in compliance with the Subdivision Map Act (commencing with Government Code Section 66410), and another division of land, including lot splits, except where the land division is brought about in connection with the purchase of the land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of a structure, including a facility of a private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes and kelp harvesting.

Having an existing single family (or duplex or multi-family) dwelling (a structure) on a plot of land is covered by the “Development” definition contained in the NBMC.

Note the above listed definition of “Time share project” (as shown in the NBMC) is not stating the “development” has to be “new” (non existing, in the future). It also does not specify the “development” has to be a large number of units (as it may apply to “Time Share Facilities”). So I would like to understand why the inclusion of the word “development”, in the “Time share project” definition, is a concern for City Staff.

I urge City Council members and City Staff to take immediate action to stop the “*Shared Deed Ownership Timeshare*” operations in our city’s residential areas. Prompt action is needed.

Sincerely,
Carmen Rawson



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Fractional Ownership Resources and Articles

Introduction To Fractional Ownership

The phrase “fractional ownership” is typically used to describe shared ownership of a vacation or resort property by people in an arrangement which allocates usage rights based on time. In other words, only one owner will be allowed to use a particular home or apartment at a particular time. The terms, private residence club (or “PRC”), destination club, vacation club, quartershare, timeshare, and vacation home partnership are also used to describe variations on these arrangements, and there are no consistent distinctions in the use of these descriptions. Fractional ownership arrangements should not be confused with condohotels or condotels, in which each participant has whole ownership of a particular hotel room or suite.

Fractional ownership arrangements can be applied to a single home or apartment (typically referred to as a “one-off fractional”) or to a multi-unit building or resort development. In multi-unit developments, each co-owner may have ownership rights to all the units, some of the units, or only one unit, and his/her usage rights, and cost obligations, may or may not correspond to his/her ownership rights. Groups can be assembled by a real estate development or hotel company, an individual builder, Realtor or seller, one or more of the prospective buyers/users, or groups of friends or family members.

In recent years, there has been an explosion of interest in fractional ownership arrangements involving a single home or apartment led by the launch of several web-based platforms designed to organize, facilitate and manage these arrangements. For example, SirkinLaw client Pacaso locates suitable properties, solicits and qualifies prospective members for each owner group, provides purchase money

financing, renovates and outfits the shared home, provides ongoing calendaring, maintenance and management services, and even offers an “assessment guarantee” under which it effectively removes the risk theoretically created when a group member does not pay his/her share of costs.

The advent of well-capitalized and comprehensive marketing and support platforms has created a disruption or inflection point in the fractional ownership/timeshare industry similar to those spawned by Uber in the taxi industry and AirBNB in the hotel industry. Recall that there was a time when private, independent car owners carrying paying passengers, or individual homeowners hosting paying guests on a nightly basis, were considered fringe economic activities that would never become serious alternatives to taxis and hotels (respectively). For many years, that same skepticism applied to the idea of small groups of strangers sharing a vacation home. (Believe me, I know: for over 15 years, I touted the idea of single-home fractional ownership at fractional ownership/timeshare industry conventions and symposia around the world, and was routinely treated with respectful dismissiveness.) Today, single-home vacation fractionals represent the fastest-growing segment of fractional ownership.

The Difference Between Fractional Ownership and Timeshare

It is incorrect to say that timeshare involves the sale of time, weeks or usage, while fractional ownership involves full titled ownership. Today, many timeshare properties involve titled ownership. The real differences between timeshares and fractional ownership arrangements are:

- Fractional ownership typically involves more usage than timeshare for each owner each year
- Fractional ownership typically involves fewer owners than timeshare
- Fractional ownership is typically more expensive than timeshare

Why Is Fractional Ownership Becoming So Popular?

Although many people dream of owning vacation property, most either can't afford the type of property they want, or reason that they would not use the vacation home often enough to justify the expense. Fractional ownership provides a solution to these problems by allowing each co-owner to pay only a fraction of the costs and ongoing expenses of vacation home ownership, and share the risks of unforeseen maintenance problems and value depreciation with others.

Fractional ownership is increasingly popular among those who already own a vacation home (or even a primary residence in a resort community) but feel burdened by the expense, upkeep and management of a property they use infrequently or are regularly absent from during certain seasons. Rather than sell a home they love, these people opt to sell one or more fractional ownership interests to others who will

use the home when the original owner does not and will help share the costs and burdens. Besides lowering cost and time burdens, shared ownership can free capital for the purchase of other resort property, or for alternative investments. It can also provide an alternative when selling the entire home proves difficult due to market conditions.

Fractional ownership can be a significantly less expensive and more attractive alternative offering in a new development, giving some buyers an incentive or opportunity to purchase that would otherwise be lacking. The builder or developer can thus open up a new market and access a different group of potential customers by offering fractional ownership, a particularly attractive opportunity when whole ownership sales are slow. Marketing a less costly ownership option may also increase the overall visibility of, and traffic to, the project sales sites, and increase sales volume of whole ownership. Finally, opening a project to fractional ownership will generally increase overall usage of the property, which can enhance the viability and financial performance of amenities and ancillary services such as a spa, golf course, ski resort, or restaurant.

Learn More About Fractional Ownership

This page is a gateway to many articles on all aspects of fractional ownership, categorized for easy navigation under the links below.

[General Information on Fractional Ownership](#)

Get started with the basics of fractional ownership and other vacation home sharing arrangements with a short overview of fractional ownership, a more comprehensive explanation of fractional ownership, definitions of fractional ownership terms and lingo, characteristics of fractional ownership and timeshare product categories, and essential tips for smaller, less formal vacation home sharing partnerships and family ownership groups.

[Designing and Creating Fractional Ownership Arrangements](#)

Guides and tips for vacation home owners, developers, and real estate professionals interested in selling property as fractional ownership, and individual buyers interested in organizing a fractional ownership group. Step-by-step instructions for analyzing the fractional ownership potential of individual homes and condominiums, and assessing the feasibility of offering fractional ownership within a resort or other real estate development. A detailed article describing the various fractional ownership usage arrangements, and another explaining how to price fractional ownership offerings.

Marketing and Selling Fractional Ownership

Learn the most effective marketing and sales techniques for fractional ownership, private residence clubs, destination clubs, and quartershares. Most people quickly understand the benefits of fractional ownership arrangements, but can find many reasons to delay the decision to buy. To sell out a fractional ownership project quickly and cost-effectively, it is critical to understand how to expose the property to the right customers, explain the concept of fractional ownership in a clear and compelling way, and then convince the customer to buy now instead of later. These articles will explain the best practices used with the most successful fractional ownership properties, from individual homes to large private residence clubs.

Fractional Ownership and Residence Club Buyer Guide

Discover how to compare and choose between different fractional offerings. Which fractional is the best deal, and why? Which one will remain a good deal over time when owner dues are compared with other accommodations? Which ones will remain attractive and make you want to return? Which will best hold resale value? How valuable are exchange programs, and which ones are best? Get the tools you need to make an informed fractional buying decision.

Operating and Managing Fractional Ownership Groups

Everything you need to know to smoothly start and operate a fractional ownership group, whether you are a professional property manager or just someone who wants to manage a fractional with your family and friends. Learn what tax and governmental filings you need to make, how to open bank accounts, what records to keep, how to call and run meetings, how to create a budget and collect dues, how to keep repair replacement reserves, and how to organize and control decision-making. Most important, learn how to keep your fractional ownership associations running smoothly and without arguments or disputes.

Fractional Ownership and Timeshare Law

Articles on fractional ownership and timeshare law throughout the United States and Europe as well as resources to help you find the law in your jurisdiction.

Fractional Ownership Resources

Additional articles, podcasts and lists on various fractional ownership related topics including a list of books on fractional ownership, and sources for fractional ownership financing.

From: [City Clerk's Office](#)
To: [Mulvey, Jennifer](#); [Rieff, Kim](#)
Subject: FW: Resolution 2022-61
Date: September 26, 2022 3:58:10 PM

From: Jinx Hansen <jinxst@pacbell.net>
Sent: Monday, September 26, 2022 3:57:47 PM (UTC-08:00) Pacific Time (US & Canada)
To: City Clerk's Office <CityClerk@newportbeachca.gov>
Subject: Resolution 2022-61

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Ms. Brown,

It is my understanding that there will be a Special Meeting tomorrow, September 27, 2022 regarding Resolution 2022-61 which relates to Zoning Code and LCP Amendments Related to Fractional Homeownership.

Last week my husband and I received a mailing from Pacaso which offered to "Make your second home work for you" which I thought the City Council should be aware of if they are not already. This mailer states, "Make your second home work for you. Sell what you're not using with Pacaso and keep ownership of the rest."

Watching a portion of the video that explains how this would work indicates that a homeowner would sell their home to Pacaso, an LLC would be formed, and Pacaso would take over ownership, refurbishing the house. Sellers will maintain the portion of ownership they would like and the rest would be sold to others who are interested in owning a second home without the hassle of upkeep, etc (i.e. a fractional interest in the property).

This may not be significantly different from what Pacaso is currently doing but thought the City Council should at least be aware that they are actively seeking out properties from residents/owners in the City of Newport Beach.

Below are photos of the mailer. There is a QR code, or you can find out more about the program at pacaso.com/sell-down. I would also be happy to drop the mailer off at your office tomorrow if you would like to have it for the meeting and/or to share with City Council members.

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