



NEWPORT BEACH

City Council Staff Report

March 14, 2023
Agenda Item No. 12

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Code Update Recommendations Related to Fractional Homeownership (PA2022-0202)

ABSTRACT:

Staff will provide the City Council with an update on the Planning Commission's efforts and recommendations related to potential code updates pertaining to the regulation of fractional homeownership.

RECOMMENDATIONS:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15262 of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Receive presentation and provide staff direction related to code revisions.

DISCUSSION:

Fractional homeownership is when multiple owners purchase a property and split the allowed time at the property through a formal arrangement. In the fractional homeownership model, the allocated time for each owner is based on their percentage of ownership.

On November 16, 2021, the City Council conducted a study session to discuss fractional homeownership. Information was presented that there were four homes that had either been fully sold or marketed for sale as fractional homeownership. The City Council directed staff to monitor fractional homeownership activity in the city and investigate how other jurisdictions were dealing with such issues and report back.

Staff retained the services of Sagecrest Planning+Environmental (Sagecrest) to study jurisdictions with known fractional homeownership properties and prepare a report. Due to bulk, the report and appendices are available online at <http://www.newportbeachca.gov/fractionalownership>.

On September 13, 2022, the City Council held a study session to discuss the results of the Sagecrest study. The study found that of the 22 jurisdictions surveyed, 15 classify these properties as a form of timeshare. Public testimony provided during the study session included concerns about increases in traffic and noise, as well as fractional homeownership properties having an adverse impact on the character of the existing residential neighborhoods. In some instances, fractional homeownership properties operate in a similar manner as short-term lodgings by limiting occupancy by owners of a fractional interest in a property to less than 30 consecutive days. By the end of the study, the number of fractional homeownership residential properties within the City increased to 11.

At the conclusion of the study session, the City Council directed staff to return with: 1) a moratorium to pause the transactions of new fractional homeownerships; and 2) an initiation of a code amendment to revise the Newport Beach Municipal Code (NBMC) to regulate the practice.

On September 27, 2022, the City Council held a special meeting and adopted Resolution No. 2022-61 initiating Zoning Code and Local Coastal Program Amendments related to fractional homeownership. Public testimony provided included the need for the City Council to adopt a moratorium to prevent the continued growth of fractional homeownership properties while the code amendments are prepared and reviewed through the various legislative bodies (i.e., Planning Commission, City Council and California Coastal Commission). Ultimately, the City Council chose not to pursue a moratorium due to the lack of findings, but directed staff to work expeditiously with the Planning Commission to develop code amendments to better regulate fractional homeownership to protect the character of residential neighborhoods.

On October 6, 2022, the Planning Commission conducted a study session and received public testimony. Staff presented a comprehensive overview of the topic, shared results of the Sagecrest study, and shared potential options for regulations. Due to the complexity of the issue, the Commission expressed the desire to form an ad hoc committee and work closely with staff to formulate appropriate regulations.

On October 20, 2022, the Planning Commission formed an ad hoc committee consisting of Commissioners Lee Lowery, Mark Rosene and now former Commissioner Erik Weigand. The expectation was to have the ad hoc committee meet as necessary to consider regulations that would then be presented to the Planning Commission at a future public hearing for consideration and recommendation to the City Council.

Planning Commission Ad Hoc Committee Efforts and Recommendation

The ad hoc committee met a total of seven times, including meeting with representatives from Pacaso as well as concerned residents. In a good faith effort to cooperate with the City of Newport Beach, Pacaso representatives submitted a draft ordinance (Attachment A) establishing a regulatory framework they would support and that they felt would adequately address community concerns.

Input from residents included concerns related to commercialization of residential neighborhoods, impacts similar to short-term lodging, and overall opposition to permitting fractional homeownership. The ad hoc committee has consulted with staff from the Community Development Department and City Attorney’s Office. After careful consideration of the input received, the ad hoc committee concluded its efforts on February 14, 2023, and prepared its final recommendations to present to the Planning Commission at its February 24, 2023, meeting. A summary of the recommendations is included in the table below.

Requirement	Ad-Hoc Committee Recommendations
Regulatory Process	Regulate similar to short-term lodging. Create a permit process within Title 5 of NBMC for both dwelling unit and property manager.
Location Restrictions	Limit in all residential zones by a <u>maximum cap</u> . Cap to be established by Planning Commission.
Parking Requirements	Dwelling units must provide code-compliant parking (number and size) and remain clear and available for use at all times.
Noise Restrictions	Comply with City standards and no amplified sound between hours of 10 p.m. - 10 a.m.
Management Plan	Require preparation and submittal of a management plan addressing property maintenance (landscape and trash) and identifying a local contact person (24 hour, within 25 miles, respond within 30 minutes).
Subletting	Prohibit short-term lodging and guest use.
Good Neighbor Policy	Posted in unit outlining rules.
Owner Acknowledgement	Signed and submitted by each fractional owner acknowledging rules.
Grandfathering Provisions	Permit existing legal nonconforming units to remain.

February 24, 2023, Planning Commission Meeting and Recommendation

On February 24, 2023, the Planning Commission heard a presentation from staff (Attachment B), follow up comments from ad hoc committee members, and public input (Attachment C). Draft meeting minutes are included as Attachment D for reference. At the conclusion of the meeting, the Planning Commission provided the following two recommendations for the City Council’s consideration.

Preferred Recommendation	Broaden the definition of timeshare to include fractional homeownership.
<p>The majority consensus of the Planning Commission was that fractional homeownership is like a timeshare use, resulted in the commercialization of residential neighborhoods and impacted residents like short-term lodging. The preference of the Planning Commission is to broaden the definition of timeshare to clearly include fractional homeownership units. As a timeshare use, fractional homeownership would effectively be prohibited in all residential zoning districts. This approach is similar to what other jurisdictions have taken to prohibit these uses in residential zoning districts, including Palm Desert, Truckee, St. Helena and Sonoma. Currently, St. Helena is in active litigation with Pacaso.</p>	
Alternative Recommendation	If the City Council desires to create a separate regulatory process for Fractional Homeownership, include certain components.
<p>Should the City Council desire to create a regulatory framework allowing fractional homeownership within residential zoning districts, the Planning Commission recommends the City Council incorporate the following components.</p>	
Requirement	Planning Commission Recommendations
Location Restrictions	Prohibit in the Single-Family (R-1) Zoning Districts.
Maximum Cap	Establish a reasonable cap. Number to be decided by City Council.
Transparency Requirement	Consider adding a public noticing component prior to permit issuance to inform surrounding property owners.
Enforcement	Add ability to suspend permits and use for violations of permit conditions.
Practical Regulations	Incorporate components of ad hoc committee recommendations, including parking requirements, noise restrictions, management plan, prohibition on subletting, good neighbor policy, and owner acknowledgements.

FISCAL IMPACT:

If the City Council decides to allow a limited number of fractional homes through a regulatory permit, then staff will return with more information on the resources required to implement such a permit.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15262 (Feasibility and Planning Studies) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. This exemption applies to feasibility or planning studies for possible future actions which the City has not approved, adopted, or funded.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Draft Ordinance Submitted by Pacaso

Attachment B – February 23, 2023 Planning Commission and Ad Hoc Committee Recommendations

Attachment C – Public Comments Received at the February 23, 2023 Planning Commission Meeting

Attachment D – February 23, 2023 Draft Planning Commission Meeting Minutes

Attachment E – Correspondence