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# **NEWPORT BEACH**

## **City Council Staff Report**

May 9, 2023  
Agenda Item No. 12

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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**TITLE:** Ordinance Nos. 2023-4 and 2023-5: Code Amendments Related to Time Shares (PA2022-0202)

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### **ABSTRACT:**

For the City Council's consideration is an amendment to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) modifying the definition of time share to clearly include fractional ownership units. As a time share use, fractional homeownership would be prohibited in all residential zoning districts and only allowed in certain commercial and mixed-use zoning districts subject to existing time share regulations.

### **RECOMMENDATIONS:**

- a) Conduct a public hearing;
- b) Find proposed amendments to Titles 20 and 21 of the NBMC are not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) and 15061(b)(3) of the CEQA Guidelines, because it would not result in a direct or reasonably foreseeable indirect physical change in the environment and is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Additionally, the proposed amendments to Titles 20 and 21 of the NBMC are categorically exempt pursuant to Section 15308 because the ordinances involve regulatory actions to assure protection of the environment;
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2023-4, *An Ordinance of the City Council of the City of Newport Beach, California, Approving an Amendment to Title 20 (Planning and Zoning) of the Newport Beach Municipal Code Related to Time Shares (PA2022-0202)*, and pass to second reading on May 23, 2023; and
- d) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2023-5, *An Ordinance of the City Council of the City of Newport Beach, California, Approving and Authorizing Submittal of a Local Coastal Program Amendment to the California Coastal Commission Amending Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code Related to Time Shares (PA2022-0202)* and pass to second reading on May 23, 2023.

## **BACKGROUND:**

Fractional homeownership is when multiple owners (usually 4-8) equally share property ownership through a formal agreement, often managed by a private company or are self-organized. Each owner's time at the property depends on their share, such as 45 days for a 1/8 share, typically spent in one- or two-week increments. Owners pay for their share of the home, as well as maintenance, management fees, home owner association fees, cleaning costs, utilities, taxes, insurance, and a reserve fund for long-term repairs. Staff is aware of a total of 12 fractional ownership homes in the city (Attachment C).

### *Previous Study Sessions*

As a result of community concerns received regarding the commercialization of residential neighborhoods that fractional ownership uses create, including increases in traffic, parking, noise and trash, the Planning Commission and City Council have held multiple study sessions to discuss the best approach to address potential impacts.

A summary of the actions conducted to date is as follows:

- On November 16, 2021, the City Council conducted a study session to discuss the emerging trend of fractional ownership use of dwelling units. After accepting public testimony on the issue, the Council directed staff to monitor the use and investigate how other jurisdictions were dealing with the establishment of fractional ownership uses.
- Staff retained the services of Sagecrest Planning + Environmental (Sagecrest) to research the benefits and impacts of fractional ownership uses operating within the city and to determine how other jurisdictions were handling the use. The study, which surveyed 22 jurisdictions, found that a majority of the jurisdictions classified fractional ownership uses as a time share and/or adopted a moratorium to study the matter further. Due to bulk, the report and appendices are available online at [www.newportbeachca.gov/fractionalownership](http://www.newportbeachca.gov/fractionalownership).
- On September 13, 2022, the City Council conducted a second study session to discuss fractional ownership use. After accepting public testimony on the issue, the Council directed staff to return with an initiation of a code amendment to revise the NBMC to regulate the use.
- On September 27, 2022, the City Council adopted Resolution 2022-61, initiating amendments to Title 20 and Title 21 of the NBMC and directed staff to work with the Planning Commission to develop regulations that would regulate fractional ownership uses in the best manner that would protect the character of residential neighborhoods.
- On October 6, 2022, the Planning Commission conducted a study session to discuss fractional ownership uses and accept public testimony. At the conclusion of study session, the Planning 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 former Commissioner Erik Weigand. Over the four-month period, the ad hoc committee met seven times to discuss potential options. The ad hoc committee consulted with Community Development staff, the City Attorney's Office, representatives from Pacaso, and a group of concerned citizens.
- On February 23, 2023, the ad hoc committee presented its findings to the Planning Commission. The Planning Commission approved forwarding two recommendations to the City Council: 1) the preferred recommendation to broaden the definition of time shares to include fractional ownership uses thereby prohibiting them in residential zoning districts, and 2) the alternative recommendation to create a separate regulatory scheme to allow fractional ownership uses in all zones, except the Single-Unit Residential (R-1) Zoning Districts.
- On March 14, 2023, the City Council discussed the Planning Commission's recommendations. The City Council directed staff to move forward with a code amendment and Local Coastal Program (LCP) amendment to implement the Planning Commission's preferred option of broadening the definition of time share to include fractional ownership uses, effectively prohibiting them in residential zoning.

Meeting minutes from the aforementioned meetings have been compiled and included as Attachment D.

#### *Planning Commission Recommendation*

On April 20, 2023, the Planning Commission held a public hearing to discuss draft Zoning Code and LCP amendments. Seven people spoke (six in favor and one against). The Planning Commission recommended approving the amendments and suggested two additional changes for the City Council's consideration: 1) prohibit advertising time shares for sale, and 2) clarify time share definitions to exclude shared vacation homes by family or friends so that it is clear what is not intended. Planning Commission resolutions and draft meeting minutes are in Attachments D, E and F.

#### *Proposed Amendments*

The proposed amendments to Title 20 and Title 21 of the NBMC would modify time share related definitions (i.e., time share accommodation, time share project, time share estate, time share instrument, time share interval, time share plan, time share property, time share unit, and time share use) to clearly include fractional ownership arrangements. Specifically, the definition of time share plan would be added to mean "any arrangement, plan, scheme, or similar device" that limits the owner to the right for "exclusive use of real property, or any portion thereof" for "less than a full year during any given year, on a recurring basis for more than one year." This means the use of any real property in which an owner has exclusive use of said property for less than the full year would be classified as a time share.

While the proposed amendments include minor clean-up revisions to the existing time share regulations for consistency with the modified definitions, no significant changes to the manner in which time shares are approved or development standards are proposed. Time shares uses would continue to be prohibited in all residential zoning districts and permitted in certain commercial and mixed-use zoning districts, specifically, the OA, OM, CG, CV, MU-V, MU-MM, MU-CV/15th St, MU-W1, MU-W2 zones, subject to the following:

- Approval of a Conditional Use Permit;
- The minimum number of units is 100 units, unless the time share is part of a resort hotel complex that has 300 or more units;
- A development agreement is required; and
- Approval of a sales plan, operating plan, management plan, and contingency plan is required.

In response to the Planning Commission's recommendation regarding advertising and enforcement, Section 20.48.220 was modified to make clear that unless a time share use is authorized in the specific commercial and mixed-use zoning districts discussed above, a number of activities related to time share uses are prohibited. These activities include the advertisement of a time share use and management of a time share use. Any violation of these requirements is subject to the penalties set forth in Chapters 1.04 and 1.05 of the NBMC. However, a time share use legally established prior to the effective date of the ordinance would remain legal nonconforming.

The proposed code changes are attached to this report in redlined format (Attachment E).

#### *Staff Recommendations Regarding Exception to Definition*

With respect to an exception to the definition of time share plan, Staff is recommending that the definition remain as proposed because the definition treats everyone equally and avoids creating a loophole that could be used to avoid regulation. Specifically, the definition of time share plan set forth in the proposed ordinances requires several conditions be met to trigger regulation and does not inadvertently capture non-time share uses such as the purchase of an entire property between family and friends and/or the bequeathing of a property by a family member. These conditions include: (i) the use of an accommodation; (ii) pursuant to a plan; (iii) whereby a purchaser, in exchange for consideration; and (iv) receives the right to exclusively use the accommodation for less than one year during a given year, on a recurring basis for more than one year. This definition tracks the definition set forth in the Vacation Ownership and Time Share Act of 2004 (set forth in the California Business and Professions Code established by the State Legislature) of what constitutes a time share plan, and the use of this definition ensures that this use is properly regulated.

### *Local Coastal Program Consistency*

The proposed Title 21 amendment serves to implement Coastal Land Use Plan (CLUP) Table 2.1.1-1 (Land Use Plan Categories) of the LCP, which establishes the type, density and intensity of land uses within the coastal zone, including residential land use categories that are intended for residential dwellings. The amendment clarifies that time share use of residential property is prohibited in order to maintain the residential character of communities. The proposed amendment would continue to allow time shares in other areas where visitor-serving uses are currently permitted. This includes the CM, CV, MU-H, and MU-W Coastal Land Use Designations, which are identified in CLUP Table 2.1.1-1 to provide visitor-serving uses.

While CLUP Policy 2.3.3-6 authorizes the short-term rental of dwelling units as a means of providing lower-cost overnight visitor accommodations, the maximum number of short-term rentals is capped at a maximum of 1,550 permits to prevent adverse impacts to residential areas and preserve housing stock within the coastal zone. Given the cost associated with this time share use, this use does not provide low-cost visitor accommodations, but it does have similar negative impacts to housing supply and neighborhood disturbances as short-term rentals. Therefore, it is appropriate to prohibit this type of visitor-serving commercial use in residential neighborhoods. Furthermore, this amendment will not impact the City of Newport Beach's (City's) ability to support the wide variety of visitor accommodations that are currently provided, including 4,086 hotel/motel rooms, a cap of 1,550 short term lodging units, and approximately 471 campground and RV sites.

### *Local Coastal Plan Amendment Process*

Any amendment to the LCP, including Title 21, must be reviewed and approved by the City Council, with a recommendation from the Planning Commission, prior to submitting the amendment request to the California Coastal Commission (Coastal Commission). The Coastal Commission is the final decision-making authority on amendments to the certified LCP; however, the City retains the ability to reject an LCP amendment in its entirety if the Coastal Commission includes suggested modifications.

To expediate the review and approval of the LCP Amendment, staff is recommending adopting the LCP Amendment as an ordinance and submitting the adopted ordinance to the Coastal Commission. If the Coastal Commission approves the LCP Amendment as submitted, the ordinance would immediately go into effect without the need to return for further City Council approval. Should the Coastal Commission make any suggested modifications, staff will then return to the City Council to accept any suggested modifications and adopt a new ordinance incorporating the modifications.

### **FISCAL IMPACT:**

There is no fiscal impact related to this item.

**ENVIRONMENTAL REVIEW:**

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) and 15061(b)(3) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This code amendment would clarify that fractional ownership uses are classified as time shares, which are currently regulated by the NBMC. This amendment does not alter the manner in which time shares are regulated and therefore would not result in a physical change in the environment. Additionally, the proposed amendments to Titles 20 and 21 of the NBMC are categorically exempt pursuant to Section 15308 because the ordinances involve regulatory actions to assure protection of the environment.

**NOTICING:**

Pursuant to Section 13515 of the California Code of Regulations, a review draft of the LCP Amendment was made available, and a Notice of Availability was distributed on June 24, 2022, to all persons and agencies on the Notice of Availability mailing list.

In addition, notice of this amendment was published in the *Daily Pilot* as an eighth-page advertisement, consistent with the provisions of the Municipal Code and State law. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

**ATTACHMENTS:**

Attachment A – Ordinance No. 2023-4: Adopting Title 20 Code Amendment  
Attachment B – Ordinance No. 2023-5: Adopting Title 21 LCP Amendment and  
Authorizing Submittal to the California Coastal Commission  
Attachment C – Fractional Ownership Map  
Attachment D – Compiled Meeting Minutes  
Attachment E – Planning Commission Resolution No. PC2023-018  
Attachment F – Planning Commission Resolution No. PC2023-019  
Attachment G – Planning Commission Draft Minute Excerpts, Dated April 20, 2023  
Attachment H – Proposed Code Text Changes (Redlined)