

INDIAN WELLS CITY COUNCIL
October 24, 2024



To: City Council
From: City Attorney
Prepared by: Todd Leishman, Best, Best, & Krieger LLP
Subject: **Ordinance Amending Chapter 21.32 Relating to Time-Share Provisions of the Municipal Code**

RECOMMENDED ACTIONS:

Council **ADOPTS** ordinance adding Chapter 21.32 "Time-Share Uses" and deleting Section 21.04.090 from Title 21 of the Indian Wells Municipal Code reinforcing the City's prohibition against time-share uses within the City; and

FINDS the action to be exempt from the provisions of the California Environmental Quality Act ("CEQA") under state CEQA Guidelines sections 15060(c)(2), 15060(c)(3), and 15061(b)(3).

—OR—

If the Council wants to consider "grandfathering" the two existing Pacaso timeshare properties — **DIRECTS** staff and the city attorney to prepare a revised draft ordinance for the council to consider at a future meeting.

BACKGROUND:

Since 1996, the City had a broad definition of *timeshare* and has generally prohibited timeshare uses, with the only exception being for two expressly exempted legacy timeshare projects.

In recent years, a "co-ownership" model of using a home has become more common. When it first came to the City's attention, the City determined that this model was a timeshare under the City's ordinance. But at around the same time, application of St. Helena's a similar timeshare ordinance to this same "co-ownership" model was challenged in court, so the City waited to learn the outcome of the litigation before applying its timeshare prohibition to this kind of use in Indian Wells.

The St. Helena litigation settled recently, and to avoid needless misunderstandings and litigation about Indian Well's restrictions, the city attorney's office recommended clarifying amendments to the City's existing timeshare restrictions. The amendments

would not change the prohibition or narrow the definition of *timeshare* in any way; they were drafted to maintain the status quo and current policy direction, while making their application to all forms of timeshare uses more obvious.

The Planning Commission considered and recommended approval of the proposed amendments, along with a recommendation that the Council consider whether and how to “grandfather” two existing “co-ownership” timeshares that have already been established in the City.

There are two “co-ownership” timeshares already established in Indian Wells. The Pacaso company bought the homes, formed a single-purpose LLC for each, and sold one-eighth interests in each of the LLCs to unrelated buyers. The buyers have separate ownership interests in the LLC, and the right to periodic exclusive use of the respective property. Pacaso manages each of the properties for the LLCs, and the LLC members’ rights to exclusive use of the properties are dependent on compliance with strict use-related rules.

Each of these Pacaso properties constitutes a timeshare under the City’s existing timeshare regulations, and they will remain so under the proposed amendments.

The City has not received any nuisance complaint regarding the use of either of the Pacaso properties.

At the last regular City Council meeting, the Council considered the Planning Commission’s recommendations and the proposed amendments. The staff report for that meeting describes the history and policy reasons for the existing timeshare restrictions and explains the purpose of the proposed clarifying amendments. A copy of the prior staff report is attached to this one, for reference.

The after hearing the evidence and deliberating, Council approved the proposed amendments for second reading — with the direction that the amendments be included on today’s agenda as a discussion item (not on consent), so that the Council may discuss whether and how to exempt the two existing co-ownership timeshare properties.

This staff report responds to that request.

DISCUSSION

Given the general uncertainty that public agencies and members of the public faced while the St. Helena litigation was pending (when the two Pacaso timeshares were established in Indian Wells), the city attorney’s office now recommends that the Council consider appropriately restricted “grandfathering” of the two existing Pacaso timeshares as part of the proposed amendments.

If the Council wants to consider adding an express exemption for the two existing Pacaso timeshare properties, consistent with the Planning Commission’s recommendation, the Council should direct staff and the city attorney to prepare a revised draft of the ordinance for the Council’s consideration (re-introduction and first reading again), perhaps at a

regular meeting in November. The “grandfathering” could be conditioned on adherence to appropriate operational standards to ensure that the properties are used in a way that prevents nuisances and adverse external impacts.

FISCAL IMPACT:

The proposed ordinance will not result in any new cost to the City.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

This action has been reviewed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State and local CEQA Guidelines, and the environmental regulations of the City. The City, acting as Lead Agency, has determined this action is not subject to CEQA because the adoption of this ordinance is not a “project” pursuant to Sections 15060(c)(2) and 15060(c)(3) of Title 14 of the California Code of Regulations. Specifically, this ordinance only affirms and clarifies existing regulations regarding time-share uses within the City and merely authorizes administrative and implementation activities which will not result in a direct or reasonably foreseeable indirect physical change to the environment.

Moreover, under Section 15061(b)(3) of the State CEQA Guidelines, this ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment.

ATTACHMENTS:

1. Ordinance