

ATTACHMENT #1

ORDINANCE NO. 761

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, ADDING CHAPTER 21.32 "TIME-SHARE USES" TO TITLE 21 OF THE INDIAN WELLS MUNICIPAL CODE; DELETING SECTION 21.04.090; AND FINDING THE ACTION TO BE EXEMPT FROM CEQA UNDER CEQA GUIDELINES SECTIONS 15060(C)(2), 15060(C)(3), AND 15061(B)(3)

WHEREAS, the City of Indian Wells is a popular tourist destination, known for its world-class resorts and small town residential-resort character; and

WHEREAS, preserving the quality and character of the City has been a focal point of the City's land use planning for decades; and

WHEREAS, the City stands out in the Coachella Valley for its ability to attract visitors while also supporting the needs of its resident population. Maintaining the balance between the quality of life for residents and those who work in the City and the visitors who help to sustain the City's tourist economy is key to maintaining a sustainable community and a stable economy; and

WHEREAS, the City values and welcomes all visitors to the City and recognizes their contributions to the City's economy, but finds that in order to maintain the City's long-term viability as a community where people not only come to visit, but also live, work, and contribute to the long-term betterment of the community through participation in the City's schools, local community groups, civic government, and local serving businesses, the City must maintain a balance between residential land uses and visitor-serving uses; and

WHEREAS, the City's existing housing stock is significantly impacted, with demand outweighing supply, resulting in extremely high housing prices as detailed in the accompanying staff report. A limited supply of suitable vacant land, exorbitantly high land costs, and limitations in the City's existing infrastructure, among other factors, can constrain the construction of additional housing in the City; and

WHEREAS, as noted in the Housing Element of the City's General Plan, which was certified in July 2024, the City is actively seeking to address the City's housing challenges and facilitate the development of affordable housing; and

WHEREAS, these efforts have highlighted the challenge of providing sufficient housing to meet demand, particularly at more affordable levels, due to the significant costs of acquiring housing or land for the development of housing in the City and the limited supply of such land; and

WHEREAS, the conversion of existing residential units to uses other than long-term residential use will further reduce the City's existing long-term housing supply, causing further imbalance between the demand for housing in the City and the existing supply, not only altering the character of the City's residential neighborhoods, but also presenting further challenges to the City's efforts to provide affordable housing within the community; and

WHEREAS, the City additionally has, for many years, worked to preserve its existing housing stock for long-term residential use, both to maintain the character of its residential neighborhoods and prevent residential districts from becoming visitor- and tourist-serving districts, and to ensure that the housing stock would not be converted to uses other than long-term residential uses; and

WHEREAS, to this end, in 1996, the City adopted Ordinance No. 387, which prohibited the creation of time-share projects as a use within any zone of the City, with only two exceptions for legacy projects. The City imposes this restriction because (a) the use of land and the conversion of residential dwelling units to time-share projects would reduce the availability of residential dwelling units that would otherwise be available for long-term occupancies and (b) time-share projects are inappropriate in residential areas because those uses have the same character as commercial hotels, motels, and other transient-occupancy uses and would result in increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods; and

WHEREAS, the City has historically not received complaints about time-sharing uses in residential neighborhoods (because they are clearly prohibited). In recent years, however, the City began receiving complaints regarding single-family homes in the City that were being marketed and sold as "fractional ownership" or "co-ownership" homes, wherein each buyer may acquire a one-eighth interest in a limited liability company that owns the home. Under the structure through which these dwelling units are marketed and sold, each owner gets a one-eighth share along with the right to use the home for one-eighth of each year indefinitely. During each owner's usage period, that owner has exclusive use of the entire house. All rentals are prohibited; only owners and their guests are permitted to use the house. Each owner pays regular assessments to fund the operating costs of the home and maintenance reserves; and

WHEREAS, this arrangement, which provides that each purchaser is entitled to exclusive use of the property for a fixed number of days each year, is a "time-share plan" as defined in Business and Professions Code section 11212, and a "time share project" as defined in Section 21.08.462 and a "time share program" as defined in Section 3.12.020 of the City's Municipal Code; and

WHEREAS, the City is aware of numerous complaints regarding these properties in the City and elsewhere, including parking impacts from large numbers of people staying at these properties; excessive noise late into the evening due to frequent outdoor parties; traffic due to frequent visitor turnover; traffic, noise and parking concerns due to frequent visits from cleaning, landscape maintenance and pool cleaning services that come to the properties in between each stay to prepare the home for the next guest; and an inability to maintain lines of communication to set community expectations with the users of the unit, as visitors only frequent the homes for short term stays of 2 to 14 days; and

WHEREAS, the complaints received by the City and other jurisdictions are reflective of the reasons that the City prohibited time-share projects within residential areas of the City. The time-share uses provide a short-term, high-impact, vacation-oriented use of property, where those that buy into the time-share use the home for entertaining and short-term stays while

visiting golf courses and other tourist-oriented locations in Indian Wells and the surrounding Coachella Valley; and

WHEREAS, this high-impact use, combined with the frequent turnover and commercial management of these properties is not consistent with the residential districts in which they are located. It is commercial in nature, in that these time-share uses are structured as a short-term, tourist-oriented, visitor-serving use of the subject properties. The use of these properties as time-shares adds excessive noise and traffic to residential districts by using these properties for high-impact tourist-oriented uses more appropriately located in commercial districts of the City; and

WHEREAS, expanded use of residential properties for time-share uses will further reduce the availability of housing stock for long-term residential use, and create a new demand for time-share uses of residential properties; and

WHEREAS, this encroachment of tourist-oriented, visitor-serving uses in residential neighborhoods will not only compromise the residential character of these areas, but will also further increase the costs for housing in the City, undermining the City's efforts to provide a balance of housing for all income levels in the City; and

WHEREAS, the City's authority to enact zoning ordinances is based on the powers accorded cities and counties under the state constitution to make and enforce police regulations. This police power grants the City broad authority to regulate the development and use of real property within its jurisdiction to promote the public welfare; and

WHEREAS, in accordance with this authority, the City Council desires to reaffirm its restrictions on time-share uses in residential areas, and to update the language of the Zoning Code to provide consistency with the terminology used to define time-share uses in state law; and

WHEREAS, the Planning Commission of the City of Indian Wells held a duly noticed public hearing on August 29, 2024, as required by law to consider all the information presented by staff, and public testimony presented in writing and at the meeting; and

WHEREAS, on August 29, 2024, the Planning Commission of the City of Indian Wells held a duly noticed public hearing, as required by law, to consider all the information presented by staff, and public testimony presented in writing and recommended the City Council approve this Ordinance amending the Municipal Code as described herein; and

WHEREAS, on September 5, 2024, the City Council held a duly noticed public hearing, accepted testimony from the public, considered the Planning Commission's recommendation, and discussed the proposed amendments and staff's recommended approval of this ordinance; and

WHEREAS, on October 24, 2024, the City Council held a second hearing on the ordinance and directed the city attorney to revise the draft ordinance and bring it back for re-introduction; and

WHEREAS, the proposed zoning amendments are consistent with the General Plan goals, policies and implementation programs as the ordinance will continue to preserve the small-scale residential-resort character of the City of Indian Wells; will preserve the City's residential districts for residential uses; and will help to preserve the City's existing housing stock for long-term residential uses to avoid further exacerbating the existing impacts on the City's housing supply; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIAN WELLS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are hereby incorporated as though set forth in this section.

SECTION 2. Chapter 21.32 is hereby added to Title 21 of the Indian Wells Municipal Code, to read in its entirety as follows:

"Chapter 21.32 TIME-SHARE USES

21.32.010 Purpose and Findings

21.32.020 Definitions

21.32.030 Time-share Uses Restricted

21.32.040 Violations, Enforcement and Civil Penalties

21.32.010 Purpose and Findings

- A. There is a critical shortage of permanent, long-term housing in the City of Indian Wells.
- B. A limited supply of suitable vacant land, land values, and market demand for land for other uses have limited the construction of additional housing in the City.
- C. The City is a popular tourist destination known for its scenic Coachella Valley location, exceptional resorts, and small-town character.
- D. The City stands out in the Coachella Valley for its ability to attract visitors while also supporting the needs of its resident population. Maintaining the balance between the quality of life for residents and those who work in the City and the visitors who help to sustain the City's tourist economy is key to maintaining a sustainable community and a stable economy.
- E. Time-share uses are not an appropriate land use in the City's residential districts due to the multiple transitory occupancy of time-share properties, the short-term tourist-oriented use of such property, and commercial management of time-share facilities, all of which create increased traffic generation, excessive noise, disruption to residential communities through commercial-level maintenance of the time-share facilities, and therefore are appropriately confined to commercial zoning districts.

F. Conversion of permanent housing to time-share facilities removes existing housing units from the City's existing stock and exacerbates an already severe housing shortage.

G. It is therefore in the public interest to prohibit conversions of existing housing units into time-share facilities, as to do so eliminates needed housing stock by diverting those units to tourist-oriented, commercial use.

21.32.020 Definitions

For purposes of this Chapter, the following words and phrases have the meaning respectively ascribed to them by this Section:

"Accommodation" means any dwelling unit, apartment, condominium, condominium hotel or hotel unit, hotel or motel room, or other structure constructed for residential use and occupancy, including but not limited to a single-family dwelling, or unit within a multifamily dwelling, all as defined in Chapter 21.08.

"Building" shall have the meaning ascribed to it by Chapter 21.08.

"Dwelling unit" shall have the meaning ascribed to it by Chapter 21.08.

"Managing entity" means the person who undertakes the duties, responsibilities and obligations of the management of a time-share plan.

"Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, or other legal entity, or any combination thereof.

"Time-share instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a time-share plan and includes the declaration dedicating accommodations to the time-share plan.

"Time-share interest" means the right to exclusively occupy a time-share property for a period of time on a recurring basis pursuant to a time-share plan, regardless of whether or not such right is coupled with a property interest in the time-share property or a specified portion thereof.

"Time-share plan" means any arrangement, plan, scheme, or similar device, whether by membership agreement, bylaws, shareholder agreement, partnership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives the right to exclusive use of an accommodation or accommodations, whether through the granting of ownership rights, possessory rights or otherwise, for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

"Time-share property" means one or more accommodations subject to the same time-share plan, together with any other property or rights to property appurtenant to those accommodations.

"Time-share use" means the use of one or more accommodations or any part thereof, as a time-share property pursuant to a time-share plan.

21.32.030 Time-share Uses Restricted

- A. Except as hereinafter provided, time-share uses are prohibited in all zones within the City.
- B. The following two time-share uses (previously referred to as time share projects), which were in existence as of October 16, 1980, shall be permitted subject to the following limitations:
1. Sweetwater Condoshare. The forty-four (44) condominium units designated in a document filed with the City Clerk's office as Palm Springs Condoshare Project I; and
 2. Worldwide Vacations. The forty-eight (48) hotel rooms are currently in existence and located at 75-188 Highway 111.
- C. The following two time-share uses, which were in existence as of January 1, 2024, shall be permitted subject to the limitations in subsection D below:
1. The "co-owned home" located at 77003 Iroquois Drive; and
 2. The "co-owned home" located at 45655 Apache Road.
- D. The two time-share uses identified in subsection C above are permitted subject to the following restrictions:
1. Rental of any part of the dwelling or property for fewer than 30 days is prohibited.
 2. Commercial events are prohibited.
 3. Large gatherings are prohibited. For purposes of this paragraph, "large gathering" means a gathering with more people than the twice the number of bedrooms in the dwelling.
 4. All violations of the city's noise ordinance or any other part of the city's code are prohibited.
 5. All vehicles for users of the dwelling must be parked in the garage or driveway or otherwise legally parked.
 6. Weapons at the property are prohibited.
 7. Unlawful substances are prohibited.
 8. Unlawful activities are prohibited.

21.32.040 Violations, Enforcement, and Civil Penalties

- A. Any responsible person, including but not limited to an owner of a time-share interest, management entity, agent, or broker who uses, or allows the use of, or advertises or causes to be printed, published, advertised or disseminated in any way and through any medium, the

availability for sale or use of an accommodation in violation of this chapter is guilty of a misdemeanor for each day in which such accommodation is used, allowed to be used, or advertised for sale or use in violation of this chapter. Such violation punishable in accordance with Chapter 1.16.

B. Time-share use or advertisement for time-share use of an accommodation in violation of this chapter is a threat to public health, safety, or welfare and is thus declared to be unlawful and a public nuisance. Any such nuisance may be abated or restored by the enforcement official and also may be abated in accordance with Chapter 1.16, except that the civil penalty for a violation is \$1,000.00 for each offence. Each day the violation occurs constitutes a separate offense.

C. Any responsible person who violates this chapter is liable and responsible for a civil penalty of \$1,000.00 per violation per day that such violation occurs. The City may recover such civil penalty by either civil action or administrative citation. Such penalty is in addition to all other costs incurred by the City, including without limitation the City's staff time, investigation expenses, and attorney's fees.

1. When the City proceeds by civil action, the court has discretion to reduce the civil penalty based on evidence presented by the responsible person that such a reduction is warranted by mitigating factors including, without limitation, lack of culpability or inability to pay. Provided, however, that in exercising its discretion the court should consider the purpose of this chapter to prevent and deter violations and whether the reduction of civil penalties will frustrate that purpose by resulting in the responsible person's enrichment or profit as a result of the violation of this chapter. In any such civil action the City also may abate or enjoin any violation of this chapter.

2. When the City proceeds by administrative citation, Chapter 1.20 governs.

D. Any violation of this chapter may also be abated or restored by the enforcement official and also may be abated in accordance with Chapter 1.16, except that the civil penalty under Chapter 1.16 for a violation is \$1,000.00.

E. Each day the violation of this chapter occurs constitutes a separate offense.

F. The remedies under this chapter are cumulative and in addition to any and all other remedies available at law and equity."

SECTION 3: Deletion of Section 21.04.090. Section 21.04.090 is hereby deleted in its entirety.

SECTION 4: CEQA. This ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (the "Guidelines"), and the environmental regulations of the City. The City Council hereby finds that this ordinance is not subject to CEQA because the adoption of this ordinance is not a "project" under Sections 15060(c)(2) and 15060(c)(3) of Title 14 of the California Code of Regulations.

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.

SECTION 5: Effective Date. This ordinance takes effect 30 days after adoption.

SECTION 6: Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 44950 Eldorado Drive, Indian Wells, CA 92210. The custodian of these records is the City Clerk.

SECTION 7: Severability. If any section, sentence, clause, or phrase of this ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 8: Publication. The City Clerk is hereby directed to certify the adoption of this ordinance. Not later than 15 days following the passage of this ordinance, the ordinance, or a summary thereof, along with the names of the City Council members voting for and against the ordinance, must be published in a newspaper of general circulation in the City of Indian Wells.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Indian Wells, California, at a regular meeting held on the 19th day of December, 2024.

GREG SANDERS
MAYOR

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF INDIAN WELLS)

CERTIFICATION FOR ORDINANCE NO. 761

I, Angelica Avila, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that Ordinance No. 761, having been regularly introduced at the meeting of November 7, 2024, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 19th of December, 2024 said ordinance was passed and adopted by the following stated vote, to wit:

and was thereafter on said day signed by the Mayor of the City of Indian Wells.

AYES:
NOES:

ATTEST:

APPROVED AS TO FORM:

ANGELICA AVILA
CITY CLERK

TODD LEISHMAN FOR
BEST BEST & KRIEGER LLP
CITY ATTORNEY