FRACTIONAL HOMEOWNERSHIP

Prepared For:

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Community Development Department

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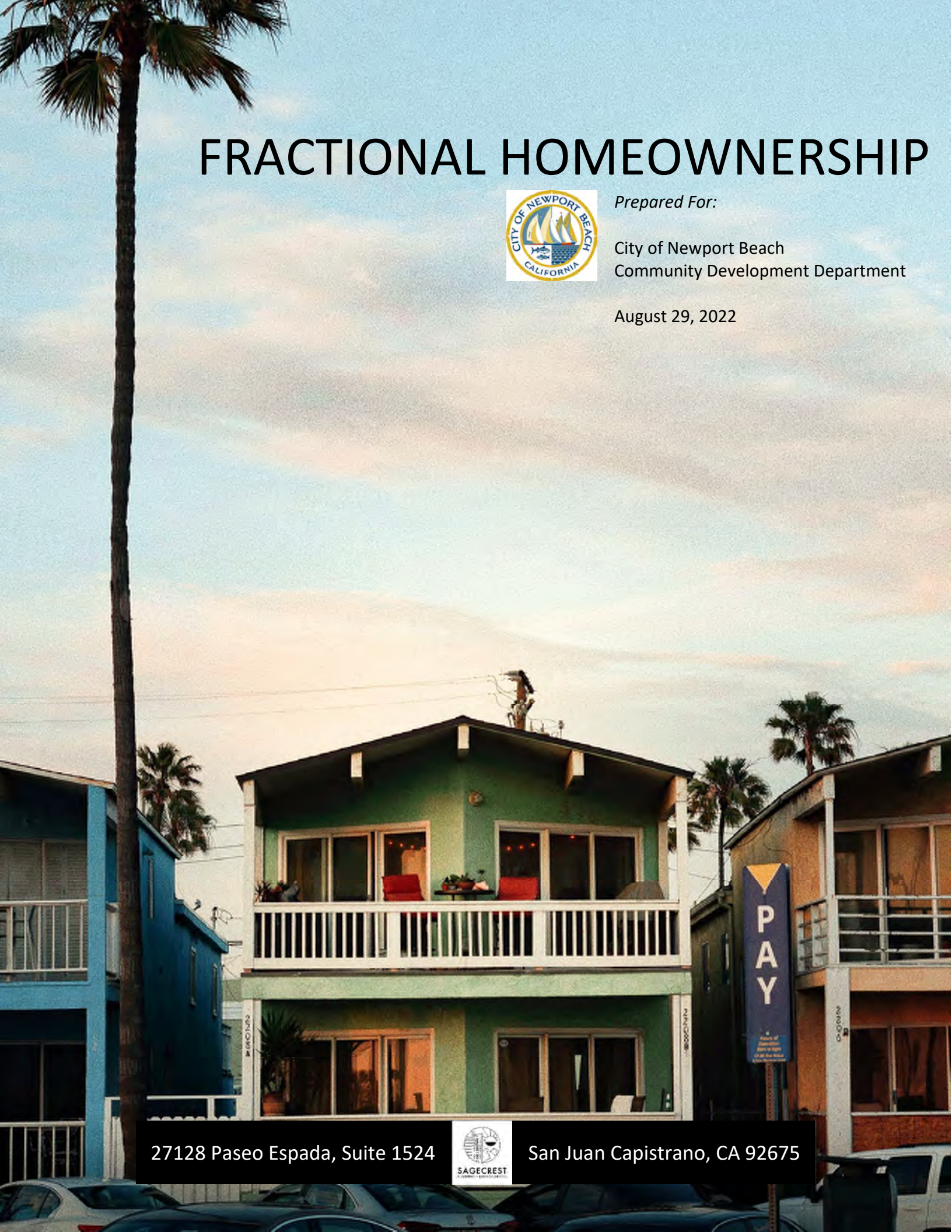

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EXECUTIVE SUMMARY

The City of Newport Beach (City) is beginning to see the rise of fractional homeownership of single-family houses. Fractional homeownership is when multiple owners purchase a property and split the allowed time at the property through a formal arrangement, as compared to multiple owners who occupy the residence full-time or have no formal arrangement for occupancy. In the fractional model, the allotted time for each owner is based on their percentage of ownership. In reviewing available data on fractional homeownership, there appears to be at least ten such properties within the City but there could be more. The City is receiving complaints from residents that these properties function similarly to short-term rental vacation homes and result in significant noise, traffic, and other impacts to residential neighborhoods. As a result of these concerns, the City asked Sagecrest Planning+Environmental (Sagecrest) to investigate how other jurisdictions are dealing with fractional housing and the companies that promote them. Based on this investigation, it appears that other communities are adopting moratoriums and pursuing operators of fractional housing companies through code enforcement actions.

BACKGROUND

Fractional homeownership (sometimes called co-ownership) is an emerging trend in real estate where ownership of properties is equally shared among multiple owners (typically between four and 12 owners). The amount of time the owner may spend at the property correlates to the fraction of ownership (e.g., a $^{1}/_{8}$ share owner would be allotted 45 days per year). This time allotment is not typically used consecutively, but rather one or two weeks at a time. In addition to the cost to purchase their share of the home, the owners are responsible for their share of the maintenance, property management fees, HOA fees, cleaning costs, utilities, taxes, insurance, and payment into a reserve fund to cover long-term repairs, such as replacement of the roof. Fractional owners maintain an ownership interest, benefit from a change in property value due to appreciation and have the potential to generate income through short-term rentals, although the City would maintain authority on short-term rentals. It should also be noted that some fractional homeownership companies prohibit short-term rentals in their management agreement.

Companies such as Pacaso, Sharetini, Ember, Equity Estates, and others facilitate the purchase of properties and provide the necessary maintenance, furnishments, property management, and cleaning services in exchange for a monthly fee. Many of these companies utilize ownership models that purchase and hold the properties under entities, such as limited liability companies, to avoid the need for a real estate transaction each time an owner sells their share. Alternatively, an ownership group could forego using a management company and self-govern the access to fractional housing.

Known/Suspected Properties in Newport Beach

Sagecrest reviewed the listings on various sites to identify properties in Newport Beach. Additionally, Sagecrest reviewed the City's database to find properties with mailing addresses that match the fractional home ownership companies. The following table lists the properties that are either known or suspected to be fractional ownership properties.

Property Address	Source
117 25th Street	Listed on Pacaso
121 Emerald Avenue	Listed on Pacaso
305 Grand Canal	Listed on Pacaso
315 East Bay Avenue	Listed on Ember
506 West Oceanfront	Listed on Pacaso
1703 Plaza del Sur	Listed on www.compass.com
2137 Miramar Drive	Listed on Ember
2628 Ocean Boulevard	City database mailing address match to Pacaso
3803 Marcus Avenue	City database mailing address match to Pacaso
4106 River Avenue	Listed on Pacaso

BENEFITS AND IMPACTS OF FRACTIONAL HOUSING

Fractional Housing Benefits

The primary benefit of fractional homeownership is to own a second home at a more affordable price. According to county records, the home at 506 W Oceanfront sold on March 14, 2022, for $6,800,000. A $^1/_8$ share of this house is currently being offered on Pacaso for $1,098,000.

According to Equity Estates, a vacation home investment firm, the benefits of fractional housing are: [1]

- *It's more affordable - Perhaps a $4M home is out of reach, but $1M is right in your wheelhouse. Fractional ownership lets you get the home you want in the most desirable location at the price you can afford. This goes for home upkeep and maintenance, too. By sharing the costs of upkeep, fractional ownership makes long-term ownership a much more realistic possibility.*

- *The home will get some love - No home should sit vacant 48 weeks out of the year. By sharing the ownership, the home will be opened up at regular intervals. Opening and closing windows and doors, running the water, turning on the AC and heater, and using amenities like the hot tub and pool—all of these are essential to maintaining the home. It provides an opportunity to identify issues early on and preserve the home's long-term value.*

- *Peace of Mind - Fractional ownership also means sharing the burden of homeownership. Rather than a single point of failure (i.e., you), you essentially have a group that shares accountability, schedules maintenance, checks on the home, and divides the work and chores that would otherwise be left to a single owner.*

Another fractional housing company, Pacaso, claims that its model reduces demand in the housing market. Specifically, they state, "*This demand on top of short supply has driven up home prices to unprecedented levels. Instead of eight second home buyers buying eight separate median-priced homes, which drives up prices even further, Pacaso consolidates those eight buyers into just one luxury home, which alleviates pressure at the median-priced tier.*"[2] To address concerns that they do not provide a benefit, Pacaso commissioned an economic impact analysis (Appendix A), which found that the average fractional ownership house generates an average of $48,390 in annual spending compared with the

[1] https://equityestatesfund.com/the-pros-and-cons-of-fractional-ownership, retrieved August 16, 2022
[2] https://www.pacaso.com/blog/economic-impact-study, retrieved August 16, 2022

average second home. The study further found that fractional housing generates an average of $3,780 additional revenue in local and state tax dollars over the average second home.

Fractional Housing Impacts

Notwithstanding the aforementioned benefits, many communities have received complaints from their residents that fractional housing creates adverse impacts on the neighborhoods in which they are located and the City as a whole. Jurisdictions that have taken a proactive approach to preventing fractional housing in their communities all have expressed concerns about the following:

- Fractional housing adversely impacts the affordability of full-time homes in the community. As more homes are taken out of the primary housing market and converted to vacation homes, the available housing stock is reduced. Even though the fractional housing companies focus on the high-end market, any loss in available housing supply results in increase costs across the entire market.
- Due to the high turn-over of occupants, fractional housing could adversely impact long-term residents in the surrounding neighborhood. Given that vacations typically last for short periods of time, these properties would have similar impacts as short-term rentals, such as noise, loss of privacy, loss of community buy-in, and decline in property values.
- The operation of the fractional homeownership companies within residential areas would result in the commercialization of residential neighborhoods. Several communities that Sagecrest spoke with noted that the operations of these companies would require a business license as they are establishing a commercial use.

Sagecrest discussed concerns with fractional housing with a major opponent to fractional housing, Stop Pacaso Now[3]. This organization consists of volunteers who provide resources to residents to oppose fractional housing from being established in their community. This includes providing sample yard signs, sample letters, and volunteer coordination guidance. In discussing the effectiveness of their outreach, Stop Pacaso Now stated that they have had great success in communities in which residents have organized. Stop Pacaso Now has sponsored four petitions on change.org (Sonoma[4], Dry Creek Valley[5], St. Helena[6], and a nationwide petition[7]) against fractional housing with a total of 7,411 signatures.

The Mitchell Hamline Law Journal of Public Policy and Practice published a journal article[8] that found that "*The increasing commodification of single-family homes has had cascading effects on housing and on communities in general*." Fractional housing is shared among various owners, as a result, an increase in

[3] https://stoppacasonow.com/

[4] https://www.change.org/p/sonoma-county-planning-commission-pacaso-time-shares-don-t-belong-in-sonoma-neighborhoods, retrieved August 16, 2022

[5] https://www.change.org/p/pacaso-time-shares-don-t-belong-in-dry-creek-valley-s-agricultural-zoning-and-farmlands, retrieved August 16, 2022

[6] https://www.change.org/p/mderosa-cityofsthelena-org-gellsworth-cityofsthelena-org-stop-pacaso-from-commercializing-our-residential-neighborhoods, retrieved August 16, 2022

[7] https://www.change.org/p/pacaso-stop-pacaso-s-takeover-of-housing, retrieved August 16, 2022

[8] Markuson, Christopher (2022) "A Timeshare By Any Other Name: Fractional Homeownership and the Challenges and Effects of Commodified Single-Family Homes," Mitchell Hamline Law Journal of Public Policy and Practice: Vol. 43: Iss. 2, Article 1. Available at: https://open.mitchellhamline.edu/policypractice/vol43/iss2/1

the number of units could decrease the demand for hotel rooms. This would likely result in a reduction in the amount of transient occupancy tax accrued by the City.

COMMUNITY SURVEY

Sagecrest researched other communities that have fractional ownership properties to determine if there is a concern with these properties and how the community is addressing these concerns. A summary of the actions is contained in the table below, followed by a description of each community.

	Considered Timeshare	Considered Short-Term Rental	Not Regulated	Enforcing Existing Regulations	Adopted/Pursuing Code Revisions to Strengthen Regulations	Adopted Moratorium
Beverly Hills, CA						✓
Carlsbad, CA	✓			✓		
Carmel by the Sea, CA	✓			✓		
Encinitas, CA			✓			
Fort Lauderdale, FL			✓			
Hermosa Beach, CA	✓				(a)	
Indian Wells, CA			(b)			
Monterey, CA	✓			✓		
Napa, CA				✓		
Village of North Haven, NY	✓			✓		
Oceanside, CA		✓		✓		
Pacific Grove, CA	✓				(a)	
Palm Desert, CA	✓				✓	
Palm Springs, CA	✓			✓		
Park City, UT	✓			✓		
Santa Barbara, CA			✓			
Santa Cruz, CA			✓			
South Lake Tahoe, CA	✓			✓		
Sonoma, CA	✓				✓	
St. Helena, CA	✓			✓		
Truckee, CA	✓			✓		
Vail, CO			✓			

Notes

(a) Code Amendment in Process

(b) City Council is split on whether or not fractional housing is a timeshare

City of Beverly Hills, CA

On July 15, 2021, the City of Beverly Hills adopted an urgency ordinance establishing a 45-day moratorium on fractional ownerships of residential and commercial properties. In the staff report, the City expressed concerns that the properties would impact the residents in the surrounding neighborhood since they would operate as vacation rental homes. The City noted these properties would likely "*experience high turnover rates of occupants, and result in impacts related to their operation such as noise, loss of privacy, loss of community buy-in, and decline in property values*." In addition to these impacts, the City expressed concerns that converting homes to fractional housing would remove permanent housing from the housing market. Notwithstanding this prohibition, the moratorium does allow the City Council to approve a fractional ownership dwelling if they adopt a finding that "*the fractional ownership of a property will not disturb the stability of a residential neighborhood or residential building and will not adversely impact future development, redevelopment, safety, and proper maintenance of the property*" during a duly noticed public hearing.

The moratorium was extended for ten months and 15 days on August 17, 2021 and extended again for a second year on June 14, 2022. The moratorium is now set to expire on July 14, 2023. The moratorium intends to allow the City staff time to study the issue and any potential impacts fractional housing may have on the health, safety, and welfare of those who live in surrounding homes and on the City as a whole. A copy of the urgency ordinance and staff report is included in Appendix B.

City of Carlsbad, CA

The City of Carlsbad noted that the use of fractional properties constitutes a timeshare. They have an existing timeshare ordinance (Appendix C), which they would enforce if they received a complaint. The City has not had an issue with operation of the fractional homes.

City of Carmel by the Sea, CA

The City is aware of fractional ownership companies and their assertation that they sell and manage properties, not timeshares. The City disagrees with this position and is of the opinion that any fractional housing has the same impacts on surrounding residential areas as short-term vacation rentals. Not only is it unlawful for any fractional ownership company to commence or carry on any kind of business in the City without first procuring a business license and pay the applicable business license tax, but any such business would be in violation of the City's prohibition of timeshares. The City noted that their regulations on transient commercial use of residential property have been previously adjudicated.[9]

Carmel by the Sea has issued a cease-and-desist order (Appendix D), ordering Pacaso to stop all advertising and sale of fractional ownership of residential properties within the City and will proceed through its code enforcement authority to obtain compliance.

City of Encinitas, CA

The City is aware of the fractional ownership model and that other communities are working on regulations. Since Encinitas has not had any issues with fractional homeownership, they are not working on any code updates or taking enforcement actions.

[9] Ewing v. City of Carmel-by-the-Sea (1991) 234 Cal.App.3d 1579

City of Fort Lauderdale, FL

The City of Fort Lauderdale does not regulate fractional housing since they are considered transient lodging. Within the State of Florida, transient lodging is regulated by the State. Provided the fractional housing is within any zone which permits transient lodging, it would be allowed.

City of Hermosa Beach, CA

The City of Hermosa Beach classifies fractional housing as a timeshare. They are concerned that the operation of the fractional housing and timeshares could change the character of residential neighborhoods as the guest of the units may naturally stay out later, entertain more, and gather in larger numbers while on vacation. Currently, the Hermosa Beach Municipal Code does not regulate timeshares, but the City is processing a code amendment to prohibit timeshares in residential zones. If approved, the code amendment would allow timeshares in commercial zones with approval of a Conditional Use Permit.

The Planning Commission conducted a public hearing on the code amendment on April 19, 2022, at which the Commission adopted a resolution (Appendix E) to recommend the City Council approve the code amendment. This amendment is currently scheduled for a public hearing before the Council on September 27, 2022.

City of Indian Wells, CA

The City of Indian wells does not currently regulate fractional housing but has received complaints from residents regarding impacts being created. The City Council discussed the matter on May 19, 2022, at which time the City Council was split if fractional housing constituents a timeshare or not. They expressed concerns about taking legal action on the fractional ownership companies due to the ongoing litigation in other jurisdictions. The City Council directed the City Attorney to return with options for them to consider on how to proceed. At this time, it is not known when this discussion will be taken back to the City Council.

County of Monterey, CA

Within areas of Monterey County that fall under the County's zoning jurisdiction, fractional ownerships are classified as timeshares. Pursuant to the Monterey County Municipal Code, timeshare projects are only allowed in zones where a hotel, motel, or similar visitor accommodation use would be permitted, and in such cases a Use Permit or a Coastal Development Permit would be required.

Monterey County is aware of certain homes advertised as fractional housing that are located in the Carmel Highlands and the Del Monte Forest. Both areas are within the County's zoning jurisdiction and are within residential zones. Monterey County has issued a cease-and-desist order (Appendix F), ordering Pacaso to stop all advertising and sale of fractional ownership of residential properties within these areas and will proceed through its code enforcement authority to obtain compliance.

City of Napa, CA

The City of Napa does not have an ordinance regulating fractional ownership citywide but does have a Master Development Plan (MDP) for the Stanly Ranch area. This MDP requires fractional ownership properties to pay a transient oriented tax for stays more than 14 days, but research indicates that no fractional ownership property has paid the TOT. In 2021, the City Council conducted a hearing to discuss the matter, during which residents complained of not wanting their neighborhoods to turn into a business venture for the wealthy. There has been no further discussion regarding fractional ownership.

Village of North Haven, NY

The Board of Trustees of the Village of North Haven enacted a prohibition on fractional ownership, timesharing, and interval uses in single-family homes in January 2022 (Appendix G). The Board found that the needs of transients are adverse to the interest that protect and preserve single-family homes. Furthermore, the prohibition was deemed necessary to prevent the unwarranted commercialization of residential areas. In a discussion with the Town staff, the ordinance would be enforced through code enforcement if they receive a complaint, but they were unable to confirm if action had been taken on any existing units.

City of Oceanside, CA

The City of Oceanside is not aware of any specific issues surrounding single-family homes used as fractional ownerships. The City does allow fractional ownership in their Downtown District as it pertains to traditional timeshare listings, provided a Conditional Use Permit is approved for the use. Given that most of these fractional ownership listings resemble short-term rental models, staff would consider fractional housing has short-term rentals in single-family homes, which would require the issuance of a short-term rental permit.

City of Pacific Grove, CA

Currently the City of Pacific Grove prohibits timeshares throughout the City. The City Council accepted public comment on fractional housing and timeshares on May 18, 2022, at the conclusion of which the Council directed staff to review the City's current timeshare ordinance and recommend changes to better effectuate the City's prohibition of timeshare projects, including fractional housing. The City anticipates having the draft ordinance to their Planning Commission in October 2022 and to the City Council by the end of year.

City of Palm Desert, CA

In November 2021, the City Council discussed the emergence of fractional ownership businesses within the City. In the Staff Report, the City Attorney opined that the fractional homeownership "*model fits within that definition of "time- share plan" as co -owners receive ownership rights to use a property for less than a year on a recurring basis*" (Appendix H). The City only allows timeshares in the Planned Residential, General Commercial, and Planned Commercial Resort zones. On May 12, 2022, the City Council adopted an ordinance updating the timeshare provisions of the Palm Desert Municipal Code. The updates include expanding the definition of timeshare that includes the shared use of any property, where the owners have the right of occupancy for less than full year during any given year. The ordinance also established enforcement procedures for violations of the timeshare ordinance.

City of Palm Springs, CA

The City of Palm Springs regulates where timeshares can be located within the City and taxes occupancy of timeshares. Timeshares are only permitted in zoning districts where hotel uses are permitted and with approval of a Conditional Use Permit. Notably, timeshares are not permitted in single-family zones. Furthermore, the City's business license ordinance requires any party that is transacting any business within the City to first procure a business license and pay the applicable business license tax.

Although the fractional ownership companies claim that they only purchase and sell luxury homes, and therefore they do not impact the availability of affordable housing. However, the City believes the basic laws of supply and demand dictate that every home that is made unavailable to a full-time resident,

whether "luxury" or not, necessarily reduces the supply of homes, and therefore reduces the affordability of housing in the City. In addition to the loss of housing, fractional ownership companies who involve multiple investors will result in their guests rotating the occupancy of the dwelling throughout the year. Although the fractional owners are not technically renters, the City believes the neighbors can expect the property to have many of the same secondary impacts that are caused by vacation rentals.

The City of Palm Springs has issued a cease-and-desist order (Appendix I), ordering Pacaso to stop all advertising and sale of fractional ownership of residential properties within the City and will proceed through its code enforcement authority to obtain compliance.

City of Park City, UT

Park City, Utah allows fractional ownership in single-family homes provided the ownership obtains approval of a Conditional Use Permit. The areas in which the City allows fractional ownership are identified in the City's General Plan and consists of areas that support the resort economy. These are the same areas that allow timeshares and private residential clubs. The fractional ownership properties must comply with specific prohibitions such as on-street parking, nightly rentals, the outdoor display of goods and merchandise, and signage. Additionally, the fractional housing must obtain approval of a management plan that outlines a satisfactory level of management and maintenance of the fractional housing.

The City is currently preparing a code amendment which would prohibit fractional ownership in most single-family zones. The amendments would allow fractional housing in zones where timeshares and private residential clubs are currently permitted. The amendment would also require a business license for fractional ownerships, submittal of a management plan, and prohibition of nightly rentals, on-street parking, outdoor display of goods, signs, and commercial uses (Appendix J). On August 30, 2022, the Planning Commission and City Council are scheduled to conduct a joint work session on the proposed amendments.

City of Santa Barbara, CA

The City of Santa Barbara does not have any regulation for fractional ownership. The City has received complaints regarding fractional housing in single-family residential area. The Planning Commission and City Council have conducted hearings on the matter but have not given staff direction for future research to regulate these ownerships.

City of Santa Cruz, CA

Even with fractional homes being offered within city limits, City staff was not aware of this type of ownership model. The City does not currently regulate fractional ownership or timeshares. Notwithstanding this, the City Council has placed a ballot initiative on the November election to establish a tax on residential properties that are occupied less than 120-days a year (Appendix K).

City of South Lake Tahoe, CA

The City stated that a property sale or deed that results ownership rights in or the right to use accommodations for a period of time less than full year during any given year is considered timeshare. Even though timeshares ten or fewer units are not subject to the Vacation Ownership and Timeshare Act of 2004[10], they are still subject to local authority. In fact, Section 11280(b) of the Business and Professions

[10] California Business and Professions Code §§1121-11288

Code expressly preserves the authority of local jurisdictions to regulate timeshares through "zoning, subdivision, or building code or other real estate use law, ordinance, or regulation."

South Lake Tahoe has issued a cease-and-desist order (Appendix L), ordering Pacaso to stop all advertising and sale of fractional ownership of residential properties within the City until such time they comply with the City's timeshare ordinance.

City of Sonoma, CA

On January 19th, 2022, the Sonoma City Council voted unanimously to adopt an urgency ordinance to prohibit timeshares and fractional housing. The Council adopted the urgency ordinance due to concerns that these uses threaten to reduce the housing supply in the City by turning long-term housing in the City into vacation rentals and reducing the affordable housing stock in the City. Furthermore, there are concerns that timeshare and fractional housing interest uses increase traffic and noise impacts as they have the same character as commercial hotels, motels, and other transient occupancy uses making them inappropriate for residential zones. On June 15, 2022, the Sonoma City Council adopted an ordinance (Appendix M) to amend the code to prohibit all timeshares and fractional housing in the City.

City of St. Helena, CA

Within St. Helena, timeshares are only permitted in Service Commercial District and Central Business District. The City Council recently updated the timeshare ordinance to specifically prohibit co-ownership of residential properties (Appendix N). The ordinance updated the definition of a timeshare to broaden its applicability to incorporate fractional housing and limits timeshares uses to their Service Commercial and Central Business District zone. The ordinance also bolsters the City's enforcement authority by including a specific prohibition on timeshare uses in most zones, but also outlines the enforcement process and mechanisms. The enforcement provision was modeled after the City's short-term rental ordinance to which they note has been very effective.

It is important to note that Pacaso filed a lawsuit against the City in federal court[11] (Appendix O). Pacaso seeks to stop the City from enforcing their timeshare ordinance against Pacaso and other fractional ownership properties because they feel the timeshare ordinance is invalid and enforcement of said ordinance violates the fractional homeowners and Pacaso's due process protection afforded by the 14th amendment to the U.S. Constitution. Pacaso had also claimed that the City's enforcement actions constituted an intentional interference with prospective economic advantage; however, the Court rejected this portion of the claim. The lawsuit remains pending.

Town of Truckee, CA

In May 2022 the Town of Truckee adopted a general zoning code cleanup ordinance (Appendix P). Among the various amendments included in the ordinance, the Town Council approved changes to the Town's timeshare uses. This includes outlining the application process, development standards and enforcement and violation protocols for time-share uses; as well as clarifying that timeshare properties are only allowed within existing legal nonconforming single-family residences in the CG (General Commercial) and CN (Neighborhood Commercial) zones.

[11] Pacaso Inc. v. City of St. Helena, 21-cv-02493-WHO (N.D. Cal. Jul. 15, 2021)

City of Vail, CO

The City does not have regulations regarding fractional ownership. Explaining the concerns of the business model, the City Attorney would agree it resembles a timeshare model but does not see how any City ordinance would be able to regulate it since it is the ownership of a property rather than a use in a portion of a building.

APPENDICES

Appendix A – Pacaso Economic Impact Analysis, prepared by EBP

EBP

PACASO

PACASO ECONOMIC IMPACT ANALYSIS

Introduction and Overview

Pacaso is a real estate marketplace and property management service that aims to make second homeownership more accessible by facilitating co-ownership of luxury homes between families. The company purchases homes above the median price in popular second home destinations, and then sells up to eight shares to individual buyers. Pacaso vets owners, furnishes and manages each property, and provides a mobile app for owners to schedule time at their home. Co-ownership of homes is an established practice that Pacaso is extending in new ways.

In 2022, Pacaso hired EBP, a national economics firm, to conduct a study to understand the net economic impact of its co-ownership model in five markets: Palm Springs, California, Colorado Mountains, New York City Area, San Francisco Bay Area, and South Florida. Key findings include the following:

- Across the five markets, the average Pacaso home generates nearly 10 times more in annual household spending compared with the average second home. This amounts to about $48,400 more per home.
- Compared with the average second home, the average Pacaso home also generates 10 times more in state sales tax revenue and nearly 10 times more in local sales tax revenue. This amounts to $2,400 more in state revenue and $1,400 more in local revenue per home.
- The average Pacaso home costs six times more than the average second home and seven times more than the average year-round home, meaning the company is unlikely to compete with middle-class or lower-income homebuyers in the five markets EBP studied.

Utilization

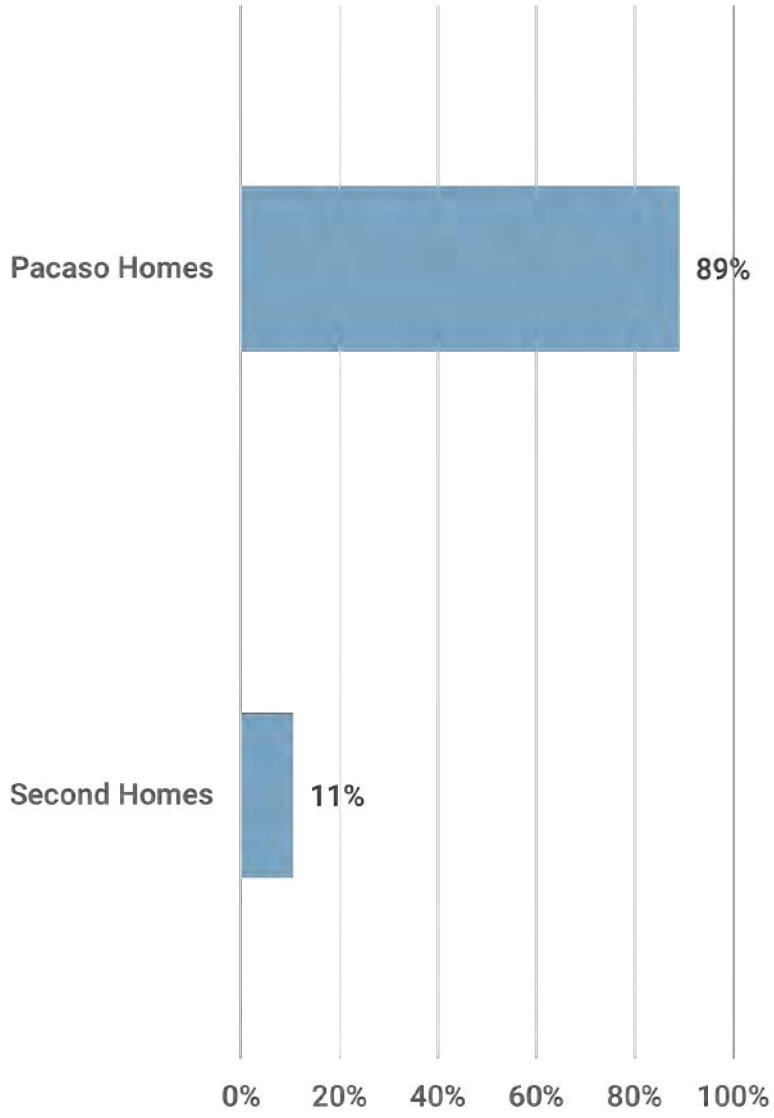
Co-ownership means higher utilization rates.

The average second home sits empty over ten months out of the year.[1] By comparison, the average Pacaso home is occupied 89 percent of the year — almost 11 months.[2]

Co-ownership makes more efficient use of second homes by increasing the amount of time they are occupied. Since the average Pacaso home is occupied more months of the year than other second homes, their owners spend more money in the community. This spending benefits local businesses and generates tax revenue.

As discussed later, Pacaso also enables people to share in ownership of homes that are significantly more expensive than average. By providing an alternative to median-priced homes, Pacaso can help maintain local housing affordability.

Figure 1. Average Annual Utilization Rates



Source: Pacaso and Census Bureau.

1 Census Bureau, 2019 American Housing Survey.

2 Pacaso, Second Homeowners Survey. Utilization is calculated based on the number of days a home is reserved.

Household Spending

Pacaso homes contribute more spending in their communities.

The average second homeowner spends money on a range of goods and services, as seen in the table below. Because Pacaso homes are utilized more than the average second home, they produce greater spending across all categories. The average Pacaso home generates an average of $48,390 in annual spending compared with the average second home. This additional spending benefits local restaurants, stores, and many other businesses.

Figure 2. Annual Household Spending By Market and Type

	Bay Area	Colorado Mountains	New York City Area	Palm Springs	South Florida
Average Second Home	$6,610	$4,960	$4,950	$3,990	$3,770
Average Pacaso Home	$72,240	$54,610	$53,850	$44,090	$41,450
Additional Spending	**$65,630**	**$49,650**	**$48,900**	**$40,100**	**$37,680**

Source: Esri ArcGIS Business Analyst Online and Pacaso.

Notes: Our approach involved adjusting year-round spending patterns from Business Analyst Online to better reflect spending patterns of Pacaso homeowners. See the Notes page for more details.

State Tax Revenue

Greater utilization drives more tax revenue for states.

Pacaso homes also generate additional tax revenue compared with the average second home. This includes revenue collected by states, part of which is distributed back to local communities. The table below shows that the average Pacaso home generates an average of $2,370 in additional state tax revenue compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 3. Annual State Sales Tax Revenue By Market and Type

	Bay Area	Colorado Mountains	New York City Area	Palm Springs	South Florida
Average Second Home	$370	$140	$195	$240	$235
Average Pacaso Home	$4,080	$1,555	$2,145	$2,650	$2,590
Additional Tax Revenue	**$3,710**	**$1,415**	**$1,950**	**$2,410**	**$2,355**

Source: Avalara.com. Tax rates as of March 2022.

Local Tax Revenue

Greater utilization drives more tax revenue for counties.

Pacaso homes also generate local tax revenue. The table below shows that the average Pacaso home also generates an average of $1,410 in additional local tax revenue compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 4. Annual Local Sales Tax Revenue By Market and Type

	Bay Area	Colorado Mountains	New York City Area	Palm Springs	South Florida
Average Second Home	$160	$200	$235	$70	$45
Average Pacaso Home	$1,740	$2,180	$2,570	$770	$490
Additional Tax Revenue	**$1,580**	**$1,980**	**$2,335**	**$700**	**$445**

Source: Avalara.com. Tax rates as of March 2022.

Notes: This study does not include the net increase in property tax revenue to counties from Pacaso homes, which is likely higher than that of traditional second homes or homes near the median housing price.

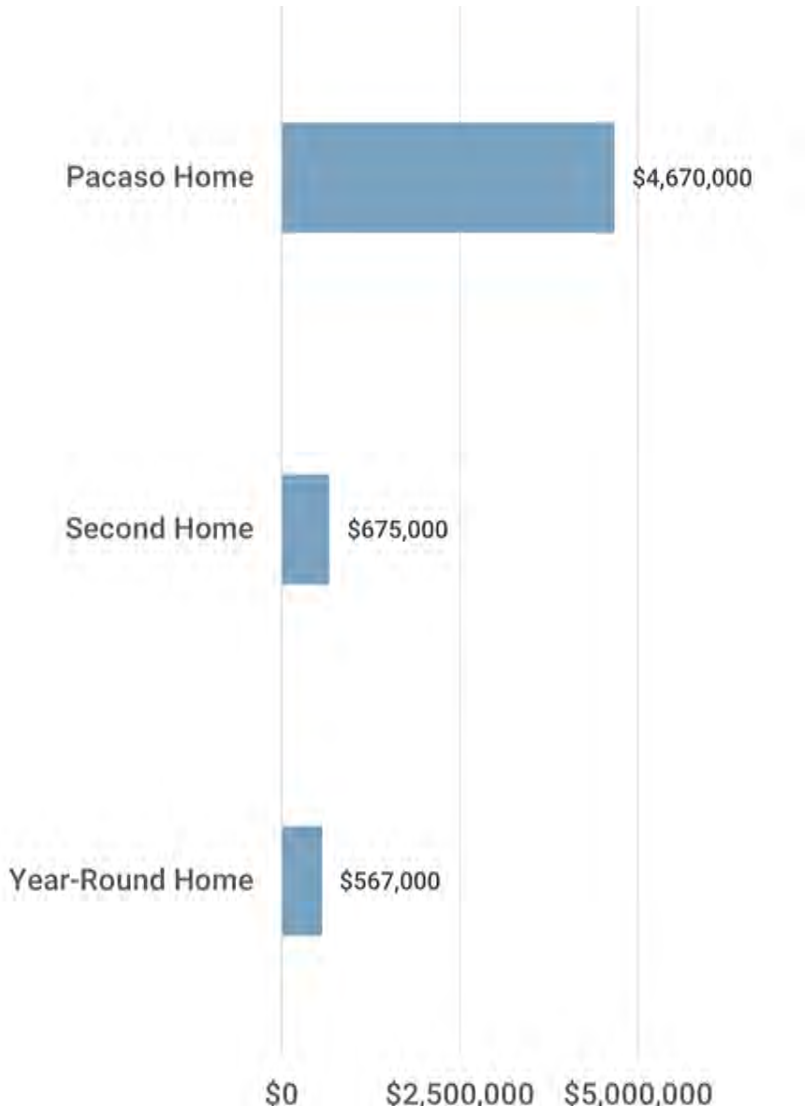
Housing Comparison

Pacaso concentrates demand into more expensive homes.

The median Pacaso home is 6.9 times the price of the typical second home and 8.2 times the price of the typical year-round home, as seen in the figure to the right.[3]

Through co-ownership, Pacaso concentrates demand for the most expensive homes in popular second home destinations, thereby shifting demand away from the median-priced market. The following page describes this in more detail.

Figure 5. Median Listing Price by Home Type



Source: Pacaso.

3 Definitions of second homes and year-round homes come from Optimal Blue, which is the source for Pacaso's price data.

Market Impact

Co-ownership concentrates demand into fewer homes.

The concentration of buyers into expensive homes likely relieves pressure on local housing markets in popular second home destinations. This is because in the absence of a co-ownership model, some second homeowners will likely purchase a median-priced home, reducing the supply available for year-round residents.

The scenarios to the left illustrate the potential effect of Pacaso on a segment of the housing market.

This effect is most likely to be experienced in in popular second home destinations, where the housing markets are very competitive, partially because of strong demand for second homes, especially in certain sub-markets. As Pacaso grows, the mitigating effect on the supply of median-priced homes will only increase.

Without Pacaso

Eight out-of-town buyers search for homes in a neighborhood with a mix of median-priced homes and high-end homes they are unable to afford. Wanting to spend a portion of the year in the area, they purchase eight median-priced homes, making them unavailable to year-round residents and bidding up the price of each.

With Pacaso

The same eight buyers purchase shares of a high-end Pacaso home, leaving the median-price homes on the market for year-round residents. Because Pacaso is available, there is less demand for the year-round homes, potentially keeping their sale prices lower than they would have been otherwise.

Notes

Pacaso is still in a growth phase, meaning EBP relied on assumptions based on industry and public record data. As Pacaso expands, its effect will likely become clearer, and we encourage future research to this end.

EBP and Pacaso made the following assumptions in completing this study. Adjustments to these assumptions could change the results.

- EBP used a national average utilization rate for Pacaso homes because market-specific rates fluctuate.
- We began our household spending analysis using values for all households in all jurisdictions included in our analysis, not spending by second homes or Pacaso homes specifically. To be more accurate, we made the adjustments listed in the table below to household spending categories pulled from our primary data source, Esri ArcGIS Business Analyst Online, which is itself based on data from the Bureau of Labor Statistics Consumer Expenditure Survey. This adjustment process was built on our assumption that second homeowner spending patterns fall somewhere in between short-term visitors and year-round residents. Compared to visitor spending patterns from various reports, we assumed that homeowners spend comparatively more (as a share of their budget) on food and beverages, a similar amount on retail, less on recreation, and less on transportation.
- For the tax impact analysis, we used state and county tax rates as of March 2022 from Avalara.com, a website that helps businesses calculate their tax bills. After comparing Avalara tax rates with tax rates published on several government websites for jurisdictions included in our analysis, EBP determined that it is a reliable source.

Cover Photography by Pacaso.

Appendix A. Household Spending Category Inclusion

Spending Category	Inclusion in Analysis
Alcohol	Included (37% under Dining Out and 63% under Food at Home).
Apparel	Included. Assumes co-owners spend like year-round residents during longer stays.
Dining Out	Included.
Education	Not included.
Entertainment and Recreation	Partially included (43%). Includes items, such as event admissions.
Finance	Not included.
Food at Home	Included.
Health Care	Not included.
Household Goods	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Household Services	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Housing	Not included. Mostly fixed housing costs, utilities, and maintenance and repairs.
Life Insurance and Pensions	Not included.
Miscellaneous Expenses	Not included.
Personal Care	Included. Assumes co-owners spend like year-round residents during longer stays.
Local Transportation	Partially included (20%). Includes items, such as gasoline and public transportation.
Travel	Not included. Related items are covered by other categories.

Source: Esri ArcGIS Business Analyst Online and Pacaso.

Appendix B. Annual Household Spending By Market and Category

Spending Category	Bay Area	Colorado Mountains	New York City Area	Palm Springs	South Florida
Average Second Home					
Apparel	$1,090	$820	$830	$650	$610
Dining Out	$1,950	$1,460	$1,440	$1,160	$1,090
Entertainment and Recreation	$280	$210	$200	$170	$160
Food at Home	$2,700	$2,030	$2,040	$1,650	$1,560
Personal Care	$430	$320	$320	$260	$250
Transportation	$160	$120	$120	$100	$100
Total	**$6,610**	**$4,960**	**$4,950**	**$3,990**	**$3,770**
Average Pacaso Home					
Apparel	$10,310	$7,790	$7,890	$6,130	$5,800
Dining Out	$18,450	$13,880	$13,600	$11,060	$10,360
Entertainment and Recreation	$6,260	$4,770	$4,530	$3,880	$3,600
Food at Home	$25,660	$19,260	$19,320	$15,670	$14,790
Personal Care	$4,070	$3,070	$3,030	$2,490	$2,360
Transportation	$7,490	$5,840	$5,480	$4,860	$4,540
Total	**$72,240**	**$54,610**	**$53,850**	**$44,090**	**$41,450**

Source: Esri ArcGIS Business Analyst Online and Pacaso.

Appendix C. Median Listing Price by Market and Type

	Bay Area	Colorado Mountains	New York City Area	Palm Springs	South Florida
Year-Round Home	$785,000	$600,000	$560,000	$500,000	$390,000
Second Home	$845,000	$815,000	$765,000	$530,000	$420,000
Pacaso Home	$4,500,000	$8,350,000	$4,700,000	$2,000,000	$3,800,000

Source: Pacaso.

Appendix D. Market Definitions

Market	Included Counties						
Bay Area	Napa	Marin	San Francisco	San Mateo	Sonoma		
Colorado Mountains	Eagle	Pitkin	Summit				
New York City Area	Bronx	Kings	Nassau	New York	Queens	Richmond	Suffolk
Palm Springs	Riverside						
South Florida	Broward	Miami	Monroe	Palm Beach			

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BAY AREA

PACASO ECONOMIC IMPACT ANALYSIS

Introduction and Overview

Pacaso is a real estate marketplace and property management service that aims to make second homeownership more accessible by facilitating co-ownership of luxury homes between families. The company purchases homes above the median price in popular second home destinations like the Bay Area, and then sells up to eight shares to individual buyers. Pacaso vets owners, furnishes and manages each property, and provides a mobile app for owners to schedule time at their home. Co-ownership of homes is an established practice that Pacaso is extending in new ways.

In 2022, Pacaso hired EBP, a national economics firm, to conduct a study to understand the net economic impact of its co-ownership model. As described in the following pages, we focused specifically on Pacaso's impact on home utilization, household spending, tax revenue, and the local housing market in the Bay Area, which includes Napa, Marin, San Francisco, San Mateo, and Sonoma counties.

Utilization

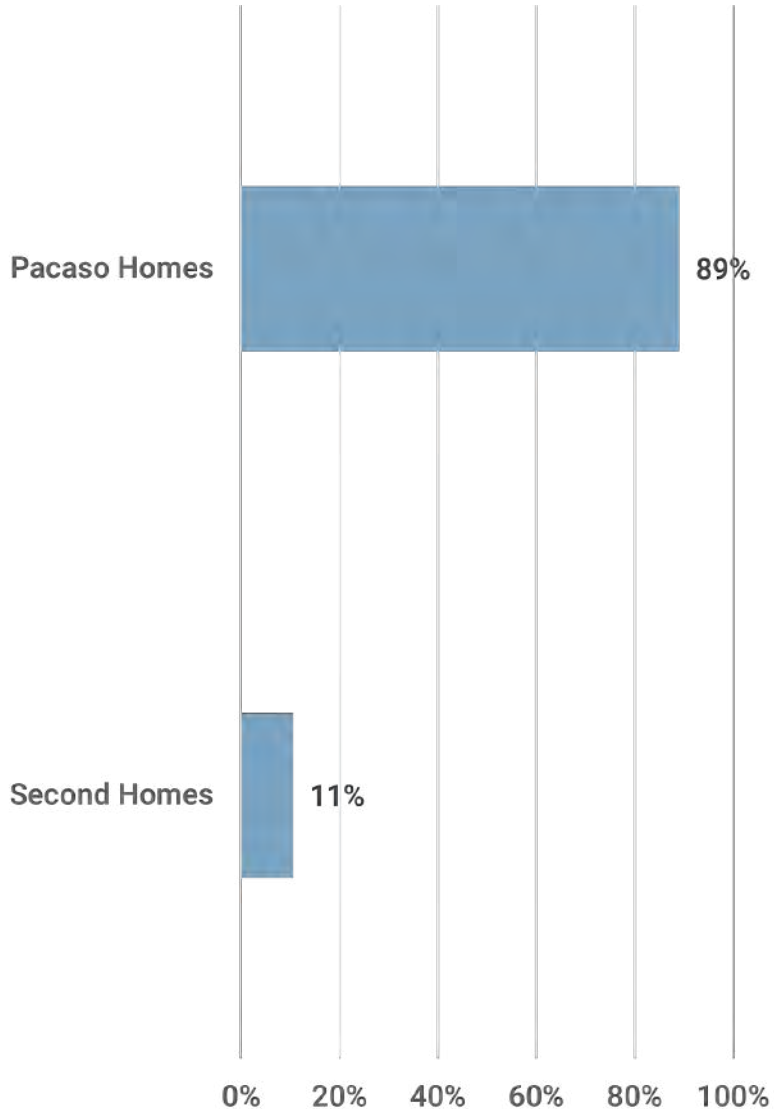
Co-ownership means higher utilization rates.

The average second home sits empty over ten months out of the year.[1] By comparison, the average Pacaso home is occupied 89 percent of the year — almost 11 months.[2]

Co-ownership makes more efficient use of second homes by increasing the amount of time they are occupied. Since the average Pacaso home is occupied more months of the year than other second homes, their owners spend more money in the community. This spending benefits local businesses and generates tax revenue.

As discussed later, Pacaso also enables people to share in ownership of homes that are significantly more expensive than average. By providing an alternative to median-priced homes, Pacaso can help maintain local housing affordability.

Figure 1. Average Annual Utilization Rates



Source: Pacaso and Census Bureau.

1 Census Bureau, 2019 American Housing Survey.

2 Pacaso, Second Homeowners Survey. Utilization is calculated based on the number of days a home is reserved.

Household Spending

Pacaso homes contribute more spending in their communities.

The average second homeowner spends money on a range of goods and services, as seen in the table below. Because Pacaso homes are utilized more than the average second home, they produce greater spending across all categories. The average Bay Area Pacaso home generates $65,630 more in annual spending compared with the average second home. This additional spending benefits local restaurants, stores, and many other businesses.

Figure 2. Annual Household Spending By Category and Type

Spending Category	Average Second Home	Average Pacaso Home	Additional Spending
Apparel	$1,090	$10,310	$9,220
Dining Out	$1,950	$18,450	$16,500
Entertainment and Recreation	$280	$6,260	$5,980
Food at Home	$2,700	$25,660	$22,960
Personal Care	$430	$4,070	$3,640
Transportation	$160	$7,490	$7,330
Total	**$6,610**	**$72,240**	**$65,630**

Source: Esri ArcGIS Business Analyst Online and Pacaso.

Notes: Our approach involved adjusting year-round spending patterns from Business Analyst Online to better reflect spending patterns of Pacaso homeowners. See the Notes page for more details.

State Tax Revenue

Greater utilization drives more tax revenue for the State of California.

Pacaso homes also generate additional tax revenue compared with the average second home. This includes revenue collected by the State of California, part of which is distributed back to the Bay Area. The table below shows that the average Pacaso home generates an additional $3,710 in state tax revenue on average when compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 3. Annual State Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Napa	$310	$3,450	$3,140
Marin	$390	$4,310	$3,920
San Francisco	$440	$4,780	$4,340
San Mateo	$430	$4,740	$4,310
Sonoma	$280	$3,110	$2,830

Source: Avalara.com. Tax rates as of March 2022.

Local Tax Revenue

Greater utilization drives more tax revenue for the Bay Area.

Pacaso homes also generate local tax revenue. The table below shows that the average Pacaso home generates an average of $1,580 in additional local tax revenue compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 4. Annual Local Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Napa	$90	$1,010	$920
Marin	$150	$1,620	$1,470
San Francisco	$190	$2,100	$1,910
San Mateo	$240	$2,670	$2,430
Sonoma	$120	$1,300	$1,180

Source: Avalara.com. Tax rates as of March 2022.

Notes: This study does not include the net increase in property tax revenue to counties from Pacaso homes, which is likely higher than that of traditional second homes or homes near the median housing price.

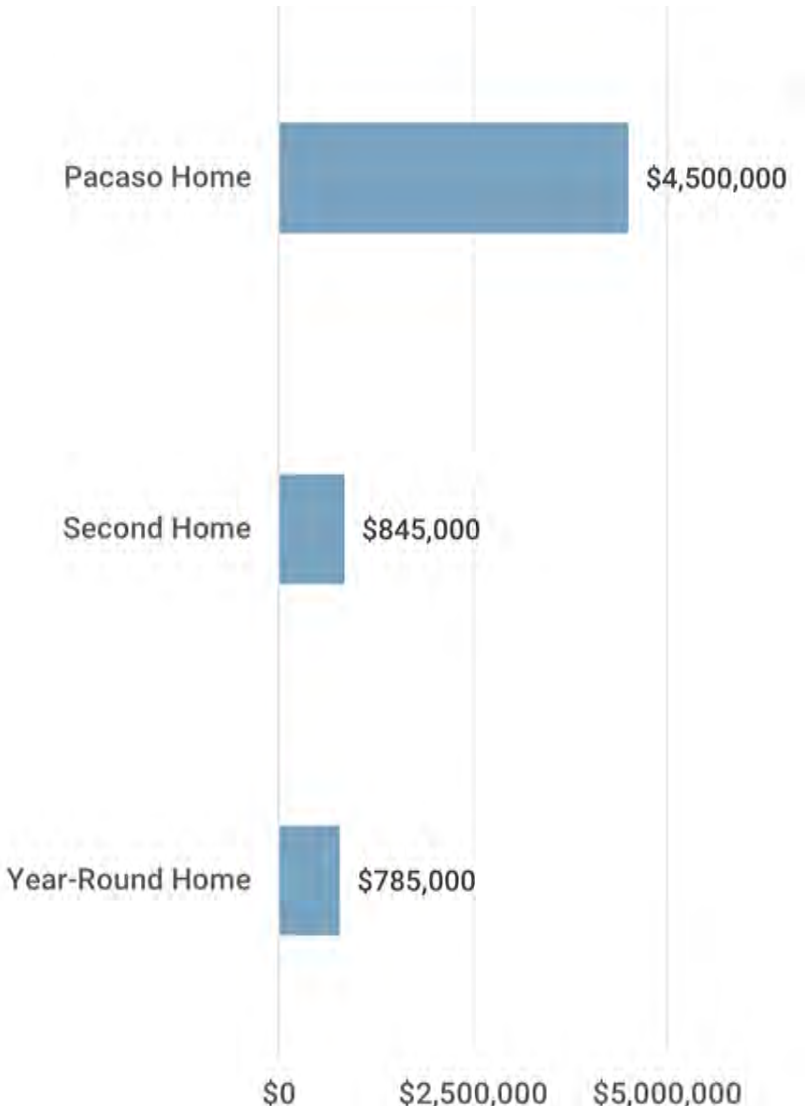
Housing Comparison

Pacaso concentrates demand into more expensive homes.

The median Pacaso home in the Bay Area is 5.3 times the price of the typical second home and 5.7 times the price of the typical year-round home, as seen in the figure to the right.[3]

Through co-ownership, Pacaso concentrates demand for the Bay Area's most expensive homes, thereby shifting demand away from the median-priced market. The following page describes this in more detail.

Figure 5. Median Listing Price by Home Type



Source: Pacaso.

3 Definitions of second homes and year-round homes come from Optimal Blue, which is the source for Pacaso's price data.

Market Impact

Co-ownership concentrates demand into fewer homes.

The concentration of buyers into expensive homes likely relieves pressure on the Bay Area's local housing market. This is because in the absence of a co-ownership model, some second homeowners will likely purchase a median-priced home, reducing the supply available for year-round residents.

The scenarios to the left illustrate the potential effect of Pacaso on a segment of the housing market.

This effect is most likely to be experienced in places like the Bay Area, where the housing market is very competitive, partially because of strong demand for second homes, especially in certain sub-markets. As Pacaso grows, the mitigating effect on the supply of median-priced homes will only increase.

Without Pacaso

Eight out-of-town buyers search for homes in a neighborhood with a mix of median-priced homes and high-end homes they are unable to afford. Wanting to spend a portion of the year in the Bay Area, they purchase eight median-priced homes, making them unavailable to year-round residents and bidding up the price of each.

With Pacaso

The same eight buyers purchase shares of a high-end Pacaso home, leaving the median-price homes on the market for year-round residents. Because Pacaso is available, there is less demand for the year-round homes, potentially keeping their sale prices lower than they would have been otherwise.

Notes

Pacaso is still in a growth phase, meaning EBP relied on assumptions based on industry and public record data. As Pacaso expands, its effect will likely become clearer, and we encourage future research to this end.

EBP and Pacaso made the following assumptions in completing this study. Adjustments to these assumptions could change the results.

- EBP used a national average utilization rate for Pacaso homes because market-specific rates fluctuate.
- We began our household spending analysis using values for all households in the Bay Area, not spending by second homes or Pacaso homes specifically. To be more accurate, we made the adjustments listed in the table below to household spending categories pulled from our primary data source, Esri ArcGIS Business Analyst Online, which is itself based on data from the Bureau of Labor Statistics Consumer Expenditure Survey. This adjustment process was built on our assumption that second homeowner spending patterns fall somewhere in between short-term visitors and year-round residents. Compared with Bay Area visitor spending patterns from a 2019 study by Dean Runyan Associates, we assumed that homeowners spend comparatively more (as a share of their budget) on food and beverages, a similar amount on retail, less on recreation, and less on transportation.
- For the tax impact analysis, we used state and county tax rates as of March 2022 from Avalara.com, a website that helps businesses calculate their tax bills. After comparing Avalara tax rates with tax rates published on several government websites for jurisdictions included in our analysis, EBP determined that it is a reliable source.

Cover Photography by Jacob Morch on Unsplash. Report Photography by Pacaso.

Appendix A. Household Spending Category Inclusion

Spending Category	Inclusion in Analysis
Alcohol	Included (37% under Dining Out and 63% under Food at Home).
Apparel	Included. Assumes co-owners spend like year-round residents during longer stays.
Dining Out	Included.
Education	Not included.
Entertainment and Recreation	Partially included (43%). Includes items, such as event admissions.
Finance	Not included.
Food at Home	Included.
Health Care	Not included.
Household Goods	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Household Services	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Housing	Not included. Mostly fixed housing costs, utilities, and maintenance and repairs.
Life Insurance and Pensions	Not included.
Miscellaneous Expenses	Not included.
Personal Care	Included. Assumes co-owners spend like year-round residents during longer stays.
Local Transportation	Partially included (20%). Includes items, such as gasoline and public transportation.
Travel	Not included. Related items are covered by other categories.

Source: Esri ArcGIS Business Analyst Online and Pacaso.

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COLORADO MOUNTAINS

PACASO ECONOMIC IMPACT ANALYSIS

Introduction and Overview

Pacaso is a real estate marketplace and property management service that aims to make second homeownership more accessible by facilitating co-ownership of luxury homes between families. The company purchases homes above the median price in popular second home destinations like the Colorado Mountains, and then sells up to eight shares to individual buyers. Pacaso vets owners, furnishes and manages each property, and provides a mobile app for owners to schedule time at their home. Co-ownership of homes is an established practice that Pacaso is extending in new ways.

In 2022, Pacaso hired EBP, a national economics firm, to conduct a study to understand the net economic impact of its co-ownership model. As described in the following pages, we focused specifically on Pacaso's impact on home utilization, household spending, tax revenue, and the local housing market in the Colorado Mountains, which includes Eagle, Pitkin, and Summit counties.

Utilization

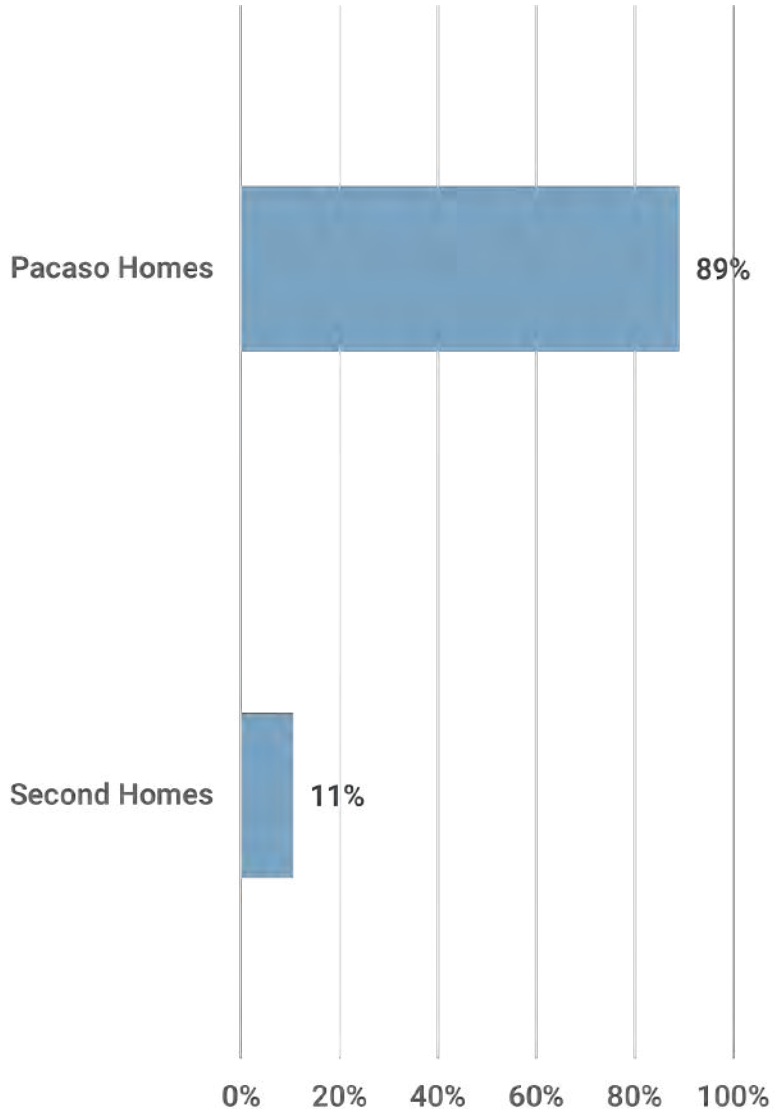
Co-ownership means higher utilization rates.

The average second home sits empty over ten months out of the year.[1] By comparison, the average Pacaso home is occupied 89 percent of the year — almost 11 months.[2]

Co-ownership makes more efficient use of second homes by increasing the amount of time they are occupied. Since the average Pacaso home is occupied more months of the year than other second homes, their owners spend more money in the community. This spending benefits local businesses and generates tax revenue.

As discussed later, Pacaso also enables people to share in ownership of homes that are significantly more expensive than average. By providing an alternative to median-priced homes, Pacaso can help maintain local housing affordability.

Figure 1. Average Annual Utilization Rates



Source: Pacaso and Census Bureau.

1 Census Bureau, 2019 American Housing Survey.

2 Pacaso, Second Homeowners Survey. Utilization is calculated based on the number of days a home is reserved.

Household Spending

Pacaso homes contribute more spending in their communities.

The average second homeowner spends money on a range of goods and services, as seen in the table below. Because Pacaso homes are utilized more than the average second home, they produce greater spending across all categories. The average Colorado Mountains Pacaso home generates $49,650 more in annual spending compared with the average second home. This additional spending benefits local restaurants, stores, and many other businesses.

Figure 2. Annual Household Spending By Category and Type

Spending Category	Average Second Home	Average Pacaso Home	Additional Spending
Apparel	$820	$7,790	$6,970
Dining Out	$1,460	$13,880	$12,420
Entertainment and Recreation	$210	$4,770	$4,560
Food at Home	$2,030	$19,260	$17,230
Personal Care	$320	$3,070	$2,750
Transportation	$120	$5,840	$5,720
Total	**$4,960**	**$54,610**	**$49,650**

Source: Esri ArcGIS Business Analyst Online and Pacaso.

Notes: Our approach involved adjusting year-round spending patterns from Business Analyst Online to better reflect spending patterns of Pacaso homeowners. See the Notes page for more details.

State Tax Revenue

Greater utilization drives more tax revenue for the State of Colorado.

Pacaso homes also generate additional tax revenue compared with the average second home. This includes revenue collected by the State of Colorado, part of which is distributed back to the Colorado Mountains. The table below shows that the average Pacaso home generates an additional $1,410 in state tax revenue on average when compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 3. Annual State Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Eagle	$150	$1,690	$1,540
Pitkin	$140	$1,520	$1,380
Summit	$130	$1,450	$1,320

Source: Avalara.com. Tax rates as of March 2022.

Local Tax Revenue

Greater utilization drives more tax revenue for the Colorado Mountains.

Pacaso homes also generate local tax revenue. The table below shows that the average Pacaso home generates an average of $1,980 in additional local tax revenue compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 4. Annual Local Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Eagle	$80	$880	$800
Pitkin	$360	$3,920	$3,560
Summit	$160	$1,740	$1,580

Source: Avalara.com. Tax rates as of March 2022.

Notes: This study does not include the net increase in property tax revenue to counties from Pacaso homes, which is likely higher than that of traditional second homes or homes near the median housing price.

Housing Comparison

Pacaso concentrates demand into more expensive homes.

The median Pacaso home in the Colorado Mountains is 10.2 times the price of the typical second home and 13.9 times the price of the typical year-round home, as seen in the figure to the right.[3]

Through co-ownership, Pacaso concentrates demand for the Colorado Mountains' most expensive homes, thereby shifting demand away from the median-priced market. The following page describes this in more detail.

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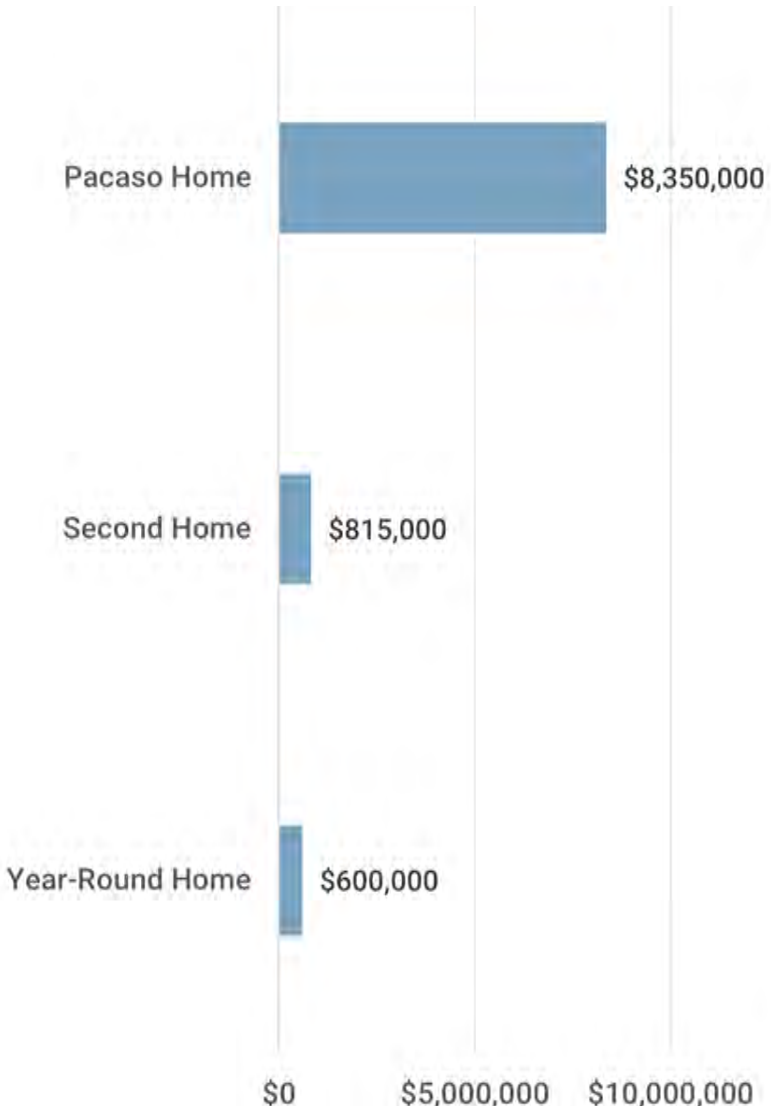

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Market Impact

Co-ownership concentrates demand into fewer homes.

The concentration of buyers into expensive homes likely relieves pressure on the Colorado Mountains' local housing market. This is because in the absence of a co-ownership model, some second homeowners will likely purchase a median-priced home, reducing the supply available for year-round residents.

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Without Pacaso

Eight out-of-town buyers search for homes in a neighborhood with a mix of median-priced homes and high-end homes they are unable to afford. Wanting to spend a portion of the year in the Colorado Mountains, they purchase eight median-priced homes, making them unavailable to year-round residents and bidding up the price of each.

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Travel	Not included. Related items are covered by other categories.

Source: Esri ArcGIS Business Analyst Online and Pacaso.

EBP

EBP

PALM SPRINGS

PACASO ECONOMIC IMPACT ANALYSIS

Introduction and Overview

Pacaso is a real estate marketplace and property management service that aims to make second homeownership more accessible by facilitating co-ownership of luxury homes between families. The company purchases homes above the median price in popular second home destinations like Palm Springs, and then sells up to eight shares to individual buyers. Pacaso vets owners, furnishes and manages each property, and provides a mobile app for owners to schedule time at their home. Co-ownership of homes is an established practice that Pacaso is extending in new ways.

In 2022, Pacaso hired EBP, a national economics firm, to conduct a study to understand the net economic impact of its co-ownership model. As described in the following pages, we focused specifically on Pacaso's impact on home utilization, household spending, tax revenue, and the local housing market in Palm Springs.

Utilization

Co-ownership means higher utilization rates.

The average second home sits empty over ten months out of the year.[1] By comparison, the average Pacaso home is occupied 89 percent of the year — almost 11 months.[2]

Co-ownership makes more efficient use of second homes by increasing the amount of time they are occupied. Since the average Pacaso home is occupied more months of the year than other second homes, their owners spend more money in the community. This spending benefits local businesses and generates tax revenue.

As discussed later, Pacaso also enables people to share in ownership of homes that are significantly more expensive than average. By providing an alternative to median-priced homes, Pacaso can help maintain local housing affordability.

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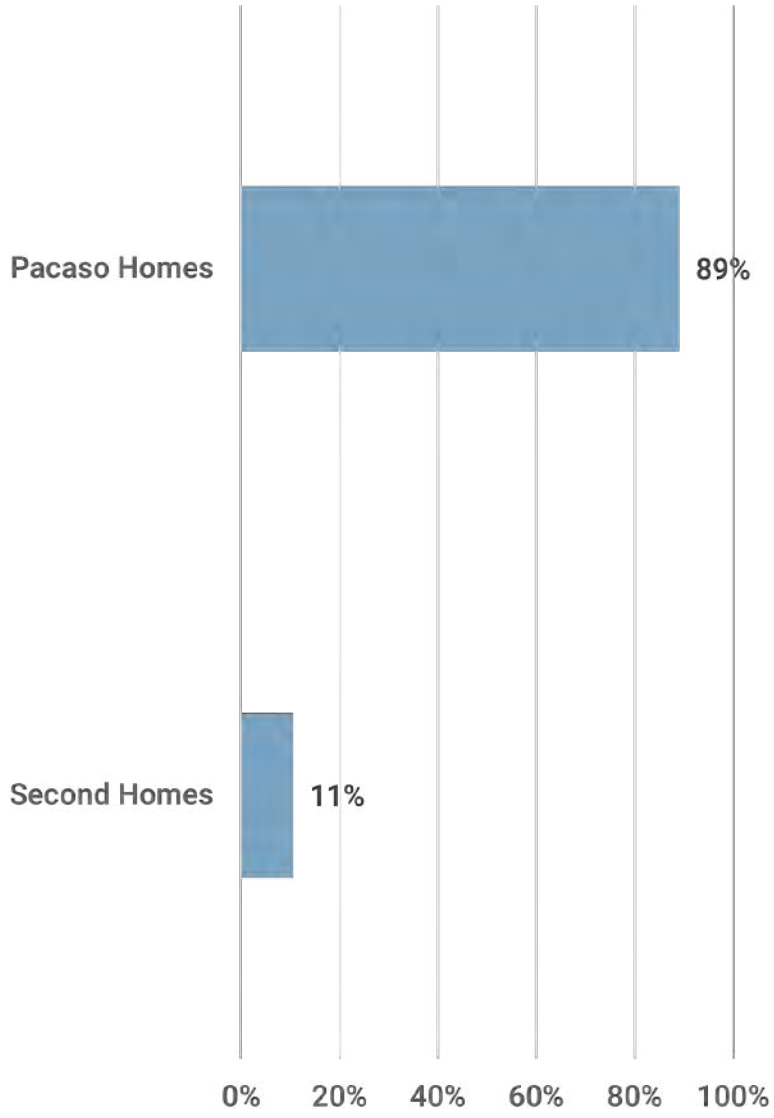


Source: Pacaso and Census Bureau.

1 Census Bureau, 2019 American Housing Survey.

2 Pacaso, Second Homeowners Survey. Utilization is calculated based on the number of days a home is reserved.

Household Spending

Pacaso homes contribute more spending in their communities.

The average second homeowner spends money on a range of goods and services, as seen in the table below. Because Pacaso homes are utilized more than the average second home, they produce greater spending across all categories. The average Palm Springs Pacaso home generates $40,100 more in annual spending compared with the average second home. This additional spending benefits local restaurants, stores, and many other businesses.

Figure 2. Annual Household Spending By Category and Type

Spending Category	Average Second Home	Average Pacaso Home	Additional Spending
Apparel	$650	$6,130	$5,480
Dining Out	$1,160	$11,060	$9,890
Entertainment and Recreation	$170	$3,880	$3,710
Food at Home	$1,650	$15,670	$14,030
Personal Care	$260	$2,490	$2,230
Transportation	$100	$4,860	$4,760
Total	**$3,990**	**$44,090**	**$40,100**

Source: Esri ArcGIS Business Analyst Online and Pacaso.

Notes: Our approach involved adjusting year-round spending patterns from Business Analyst Online to better reflect spending patterns of Pacaso homeowners. See the Notes page for more details.

State Tax Revenue

Greater utilization drives more tax revenue for the State of California.

Pacaso homes also generate additional tax revenue compared with the average second home. This includes revenue collected by the State of California, part of which is distributed back to Palm Springs. The table below shows that the average Pacaso home generates an additional $2,410 in state tax revenue compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 3. Annual State Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Riverside	$240	$2,650	$2,410

Source: Avalara.com. Tax rates as of March 2022.

Local Tax Revenue

Greater utilization drives more tax revenue for Palm Springs.

Pacaso homes also generate local tax revenue. The table below shows that the average Pacaso home also generates an additional $700 in local tax revenue compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 4. Annual Local Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Riverside	$70	$770	$700

Source: Avalara.com. Tax rates as of March 2022.

Notes: This study does not include the net increase in property tax revenue to counties from Pacaso homes, which is likely higher than that of traditional second homes or homes near the median housing price.

Housing Comparison

Pacaso concentrates demand into more expensive homes.

The median Pacaso home in Palm Springs is 3.8 times the price of the typical second home and 4 times the price of the typical year-round home, as seen in the figure to the right.[3]

Through co-ownership, Pacaso concentrates demand for Palm Springs' most expensive homes, thereby shifting demand away from the median-priced market. The following page describes this in more detail.

Figure 5. Median Listing Price by Home Type

Source: Pacaso.

3 Definitions of second homes and year-round homes come from Optimal Blue, which is the source for Pacaso's price data.

Market Impact

Co-ownership concentrates demand into fewer homes.

The concentration of buyers into expensive homes likely relieves pressure on Palm Springs' local housing market. This is because in the absence of a co-ownership model, some second homeowners will likely purchase a median-priced home, reducing the supply available for year-round residents.

The scenarios to the left illustrate the potential effect of Pacaso on a segment of the housing market.

This effect is most likely to be experienced in places like Palm Springs, where the housing market is very competitive, partially because of strong demand for second homes, especially in certain sub-markets. As Pacaso grows, the mitigating effect on the supply of median-priced homes will only increase.

Without Pacaso

Eight out-of-town buyers search for homes in a neighborhood with a mix of median-priced homes and high-end homes they are unable to afford. Wanting to spend a portion of the year in Palm Springs, they purchase eight median-priced homes, making them unavailable to year-round residents and bidding up the price of each.

With Pacaso

The same eight buyers purchase shares of a high-end Pacaso home, leaving the median-price homes on the market for year-round residents. Because Pacaso is available, there is less demand for the year-round homes, potentially keeping their sale prices lower than they would have been otherwise.

Notes

Pacaso is still in a growth phase, meaning EBP relied on assumptions based on industry and public record data. As Pacaso expands, its effect will likely become clearer, and we encourage future research to this end.

EBP and Pacaso made the following assumptions in completing this study. Adjustments to these assumptions could change the results.

- EBP used a national average utilization rate for Pacaso homes because market-specific rates fluctuate.
- We began our household spending analysis using values for all households in Riverside County, not spending by second homes or Pacaso homes specifically. To be more accurate, we made the adjustments listed in the table below to household spending categories pulled from our primary data source, Esri ArcGIS Business Analyst Online, which is itself based on data from the Bureau of Labor Statistics Consumer Expenditure Survey. This adjustment process was built on our assumption that second homeowner spending patterns fall somewhere in between short-term visitors and year-round residents. Compared with Palm Springs visitor spending patterns from a 2019 study by Dean Runyan Associates, we assumed that homeowners spend comparatively more (as a share of their budget) on food and beverages, a similar amount on retail, less on recreation, and less on transportation.
- For the tax impact analysis, we used state and county tax rates as of March 2022 from Avalara.com, a website that helps businesses calculate their tax bills. After comparing Avalara tax rates with tax rates published on several government websites for jurisdictions included in our analysis, EBP determined that it is a reliable source.

Cover Photography by Nathan Dumlao on Unsplash. Report Photography by Pacaso.

Appendix A. Household Spending Category Inclusion

Spending Category	Inclusion in Analysis
Alcohol	Included (37% under Dining Out and 63% under Food at Home).
Apparel	Included. Assumes co-owners spend like year-round residents during longer stays.
Dining Out	Included.
Education	Not included.
Entertainment and Recreation	Partially included (43%). Includes items, such as event admissions.
Finance	Not included.
Food at Home	Included.
Health Care	Not included.
Household Goods	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Household Services	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Housing	Not included. Mostly fixed housing costs, utilities, and maintenance and repairs.
Life Insurance and Pensions	Not included.
Miscellaneous Expenses	Not included.
Personal Care	Included. Assumes co-owners spend like year-round residents during longer stays.
Local Transportation	Partially included (20%). Includes items, such as gasoline and public transportation.
Travel	Not included. Related items are covered by other categories.

Source: Esri ArcGIS Business Analyst Online and Pacaso.

EBP

EBP

SOUTH FLORIDA

PACASO ECONOMIC IMPACT ANALYSIS

Introduction and Overview

Pacaso is a real estate marketplace and property management service that aims to make second homeownership more accessible by facilitating co-ownership of luxury homes between families. The company purchases homes above the median price in popular second home destinations like South Florida, and then sells up to eight shares to individual buyers. Pacaso vets owners, furnishes and manages each property, and provides a mobile app for owners to schedule time at their home. Co-ownership of homes is an established practice that Pacaso is extending in new ways.

In 2022, Pacaso hired EBP, a national economics firm, to conduct a study to understand the net economic impact of its co-ownership model. As described in the following pages, we focused specifically on Pacaso's impact on home utilization, household spending, tax revenue, and the local housing market in South Florida, which includes Broward, Miami-Dade, Monroe, and Palm Beach counties.

Utilization

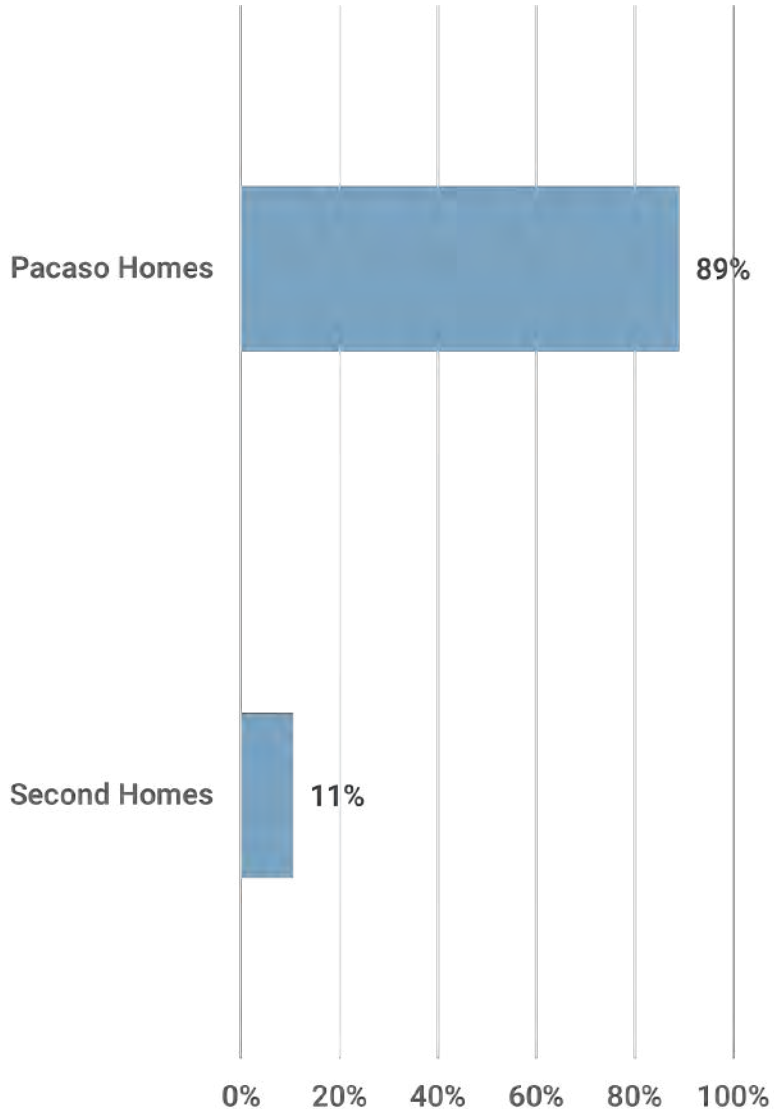
Co-ownership means higher utilization rates.

The average second home sits empty over ten months out of the year.[1] By comparison, the average Pacaso home is occupied 89 percent of the year — almost 11 months.[2]

Co-ownership makes more efficient use of second homes by increasing the amount of time they are occupied. Since the average Pacaso home is occupied more months of the year than other second homes, their owners spend more money in the community. This spending benefits local businesses and generates tax revenue.

As discussed later, Pacaso also enables people to share in ownership of homes that are significantly more expensive than average. By providing an alternative to median-priced homes, Pacaso can help maintain local housing affordability.

Figure 1. Average Annual Utilization Rates



Source: Pacaso and Census Bureau.

1 Census Bureau, 2019 American Housing Survey.

2 Pacaso, Second Homeowners Survey. Utilization is calculated based on the number of days a home is reserved.

Household Spending

Pacaso homes contribute more spending in their communities.

The average second homeowner spends money on a range of goods and services, as seen in the table below. Because Pacaso homes are utilized more than the average second home, they produce greater spending across all categories. The average South Florida Pacaso home generates $37,680 more in annual spending compared with the average second home. This additional spending benefits local restaurants, stores, and many other businesses.

Figure 2. Annual Household Spending By Category and Type

Spending Category	Average Second Home	Average Pacaso Home	Additional Spending
Apparel	$610	$5,800	$5,190
Dining Out	$1,090	$10,360	$9,270
Entertainment and Recreation	$160	$3,600	$3,440
Food at Home	$1,560	$14,790	$13,230
Personal Care	$250	$2,360	$2,110
Transportation	$100	$4,540	$4,440
Total	**$3,770**	**$41,450**	**$37,680**

Source: Esri ArcGIS Business Analyst Online and Pacaso.

Notes: Our approach involved adjusting year-round spending patterns from Business Analyst Online to better reflect spending patterns of Pacaso homeowners. See the Notes page for more details.

State Tax Revenue

Greater utilization drives more tax revenue for the State of Florida.

Pacaso homes also generate additional tax revenue compared with the average second home. This includes revenue collected by the State of Florida, part of which is distributed back to South Florida. The table below shows that the average Pacaso home generates an additional $2,360 in state tax revenue on average when compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 3. Annual State Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Broward	$220	$2,470	$2,250
Miami	$210	$2,290	$2,080
Monroe	$250	$2,800	$2,550
Palm Beach	$250	$2,800	$2,550

Source: Avalara.com. Tax rates as of March 2022.

Local Tax Revenue

Greater utilization drives more tax revenue for South Florida.

Pacaso homes also generate local tax revenue. The table below shows that the average Pacaso home generates an average of $450 in additional local tax revenue compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 4. Annual Local Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Broward	$40	$410	$370
Miami	$30	$380	$350
Monroe	$60	$700	$640
Palm Beach	$40	$470	$430

Source: Avalara.com. Tax rates as of March 2022.

Notes: This study does not include the net increase in property tax revenue to counties from Pacaso homes, which is likely higher than that of traditional second homes or homes near the median housing price.

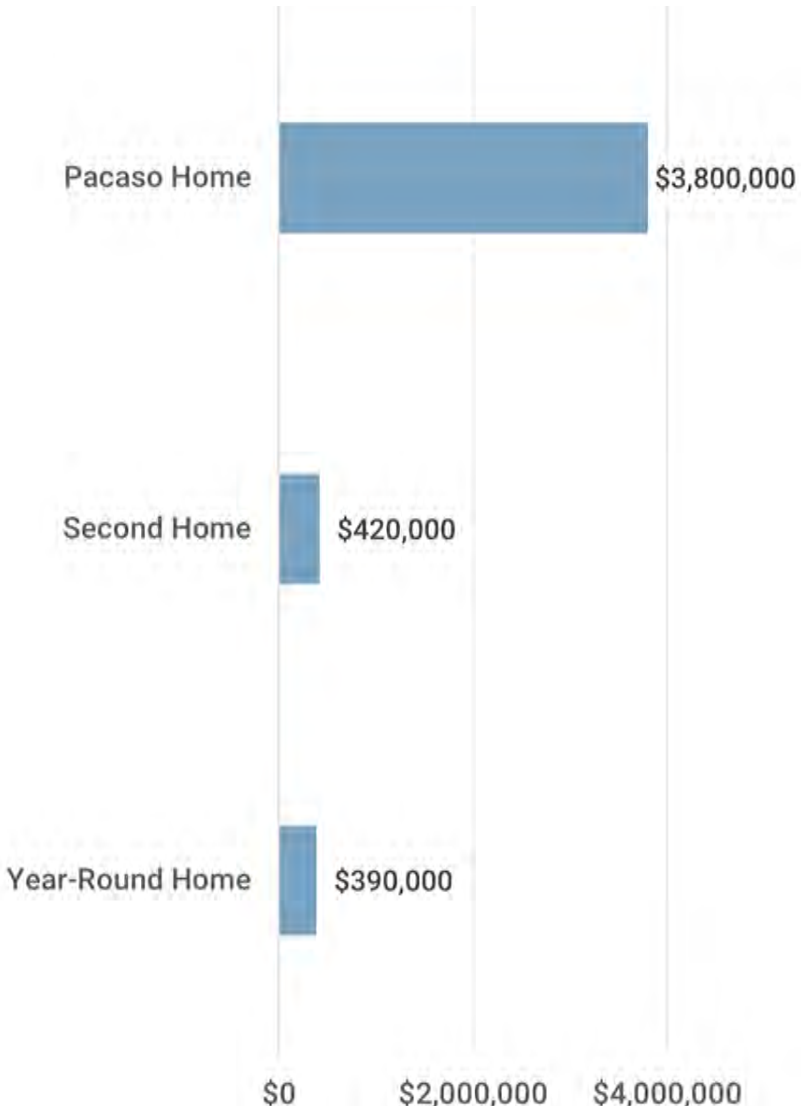
Housing Comparison

Pacaso concentrates demand into more expensive homes.

The median Pacaso home in South Florida is 9 times the price of the typical second home and 9.7 times the price of the typical year-round home, as seen in the figure to the right.[3]

Through co-ownership, Pacaso concentrates demand for South Florida's most expensive homes, thereby shifting demand away from the median-priced market. The following page describes this in more detail.

Figure 5. Median Listing Price by Home Type



Source: Pacaso.

3 Definitions of second homes and year-round homes come from Optimal Blue, which is the source for Pacaso's price data.

Market Impact

Co-ownership concentrates demand into fewer homes.

The concentration of buyers into expensive homes likely relieves pressure on South Florida's local housing market. This is because in the absence of a co-ownership model, some second homeowners will likely purchase a median-priced home, reducing the supply available for year-round residents.

The scenarios to the left illustrate the potential effect of Pacaso on a segment of the housing market.

This effect is most likely to be experienced in places like South Florida, where the housing market is very competitive, partially because of strong demand for second homes, especially in certain sub-markets. As Pacaso grows, the mitigating effect on the supply of median-priced homes will only increase.

Without Pacaso

Eight out-of-town buyers search for homes in a neighborhood with a mix of median-priced homes and high-end homes they are unable to afford. Wanting to spend a portion of the year in South Florida, they purchase eight median-priced homes, making them unavailable to year-round residents and bidding up the price of each.

With Pacaso

The same eight buyers purchase shares of a high-end Pacaso home, leaving the median-price homes on the market for year-round residents. Because Pacaso is available, there is less demand for the year-round homes, potentially keeping their sale prices lower than they would have been otherwise.

Notes

Pacaso is still in a growth phase, meaning EBP relied on assumptions based on industry and public record data. As Pacaso expands, its effect will likely become clearer, and we encourage future research to this end.

EBP and Pacaso made the following assumptions in completing this study. Adjustments to these assumptions could change the results.

- EBP used a national average utilization rate for Pacaso homes because market-specific rates fluctuate.
- We began our household spending analysis using values for all households in South Florida, not spending by second homes or Pacaso homes specifically. To be more accurate, we made the adjustments listed in the table below to household spending categories pulled from our primary data source, Esri ArcGIS Business Analyst Online, which is itself based on data from the Bureau of Labor Statistics Consumer Expenditure Survey. This adjustment process was built on our assumption that second homeowner spending patterns fall somewhere in between short-term visitors and year-round residents. Compared with South Florida visitor spending patterns from a 2019 study by the Greater Miami Convention and Visitors Bureau, we assumed that homeowners spend comparatively more (as a share of their budget) on food and beverages, a similar amount on retail, less on recreation, and less on transportation.
- For the tax impact analysis, we used state and county tax rates as of March 2022 from Avalara.com, a website that helps businesses calculate their tax bills. After comparing Avalara tax rates with tax rates published on several government websites for jurisdictions included in our analysis, EBP determined that it is a reliable source.

Cover Photography by Arnel Hasanovic on Unsplash. Report Photography by Pacaso.

Appendix A. Household Spending Category Inclusion

Spending Category	Inclusion in Analysis
Alcohol	Included (37% under Dining Out and 63% under Food at Home).
Apparel	Included. Assumes co-owners spend like year-round residents during longer stays.
Dining Out	Included.
Education	Not included.
Entertainment and Recreation	Partially included (43%). Includes items, such as event admissions.
Finance	Not included.
Food at Home	Included.
Health Care	Not included.
Household Goods	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Household Services	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Housing	Not included. Mostly fixed housing costs, utilities, and maintenance and repairs.
Life Insurance and Pensions	Not included.
Miscellaneous Expenses	Not included.
Personal Care	Included. Assumes co-owners spend like year-round residents during longer stays.
Local Transportation	Partially included (20%). Includes items, such as gasoline and public transportation.
Travel	Not included. Related items are covered by other categories.

Source: Esri ArcGIS Business Analyst Online and Pacaso.

EBP

EBP

NEW YORK CITY AREA

PACASO ECONOMIC IMPACT ANALYSIS

Introduction and Overview

Pacaso is a real estate marketplace and property management service that aims to make second homeownership more accessible by facilitating co-ownership of luxury homes between families. The company purchases homes above the median price in popular second home destinations like the New York City Area, and then sells up to eight shares to individual buyers. Pacaso vets owners, furnishes and manages each property, and provides a mobile app for owners to schedule time at their home. Co-ownership of homes is an established practice that Pacaso is extending in new ways.

In 2022, Pacaso hired EBP, a national economics firm, to conduct a study to understand the net economic impact of its co-ownership model. As described in the following pages, we focused specifically on Pacaso's impact on home utilization, household spending, tax revenue, and the local housing market in the New York City Area, which includes Bronx, Kings, Queens, Nassau, New York, Richmond, and Suffolk counties.

Utilization

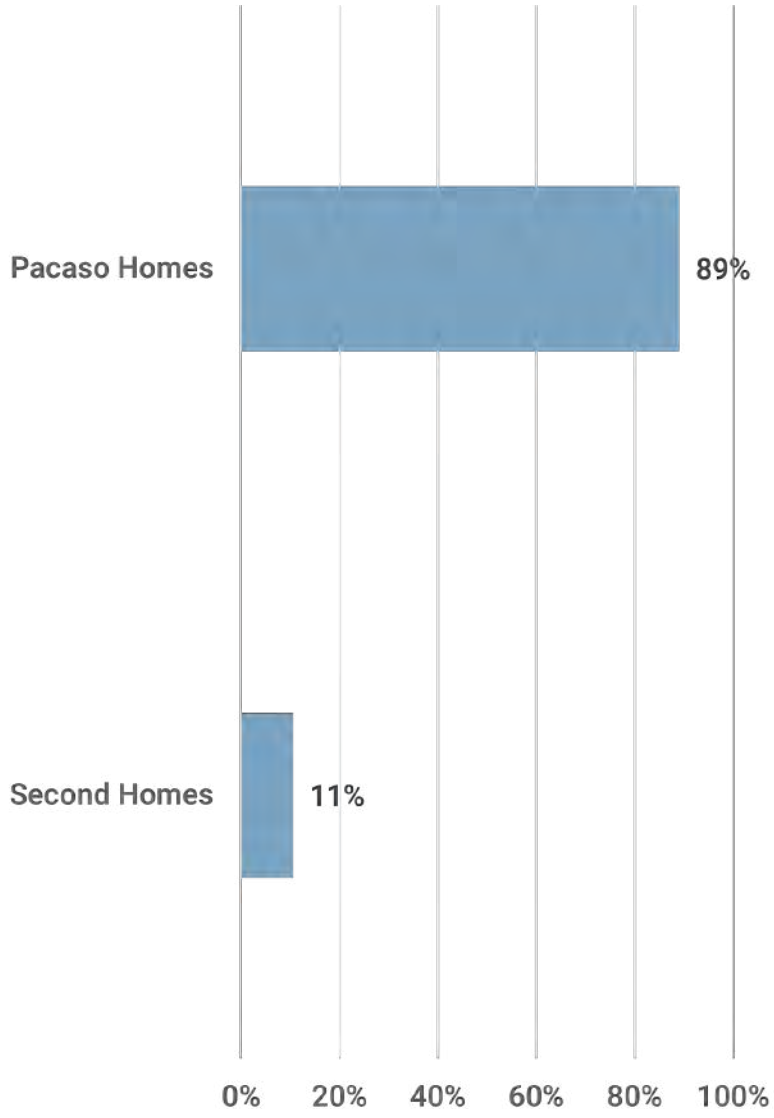
Co-ownership means higher utilization rates.

The average second home sits empty over ten months out of the year.[1] By comparison, the average Pacaso home is occupied 89 percent of the year — almost 11 months.[2]

Co-ownership makes more efficient use of second homes by increasing the amount of time they are occupied. Since the average Pacaso home is occupied more months of the year than other second homes, their owners spend more money in the community. This spending benefits local businesses and generates tax revenue.

As discussed later, Pacaso also enables people to share in ownership of homes that are significantly more expensive than average. By providing an alternative to median-priced homes, Pacaso can help maintain local housing affordability.

Figure 1. Average Annual Utilization Rates



Source: Pacaso and Census Bureau.

1 Census Bureau, 2019 American Housing Survey.

2 Pacaso, Second Homeowners Survey. Utilization is calculated based on the number of days a home is reserved.

Household Spending

Pacaso homes contribute more spending in their communities.

The average second homeowner spends money on a range of goods and services, as seen in the table below. Because Pacaso homes are utilized more than the average second home, they produce greater spending across all categories. The average New York City Area Pacaso home generates $48,900 more in annual spending compared with the average second home. This additional spending benefits local restaurants, stores, and many other businesses.

Figure 2. Annual Household Spending By Category and Type

Spending Category	Average Second Home	Average Pacaso Home	Additional Spending
Apparel	$830	$7,890	$7,060
Dining Out	$1,440	$13,600	$12,160
Entertainment and Recreation	$200	$4,530	$4,330
Food at Home	$2,040	$19,320	$17,280
Personal Care	$320	$3,030	$2,710
Transportation	$120	$5,480	$5,360
Total	**$4,950**	**$53,850**	**$48,900**

Source: Esri ArcGIS Business Analyst Online and Pacaso.

Notes: Our approach involved adjusting year-round spending patterns from Business Analyst Online to better reflect spending patterns of Pacaso homeowners. See the Notes page for more details.

State Tax Revenue

Greater utilization drives more tax revenue for the State of New York.

Pacaso homes also generate additional tax revenue compared with the average second home. This includes revenue collected by the State of New York, part of which is distributed back to the New York City Area. The table below shows that the average Pacaso home generates an additional $1,950 in state tax revenue on average, when compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 3. Annual State Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Bronx	$110	$1,200	$1,090
Kings	$180	$1,900	$1,720
Nassau	$250	$2,770	$2,520
New York	$260	$2,860	$2,600
Queens	$170	$1,840	$1,670
Richmond	$180	$2,000	$1,820
Suffolk	$220	$2,450	$2,230

Source: Avalara.com. Tax rates as of March 2022.

Local Tax Revenue

Greater utilization drives more tax revenue for the New York City Area.

Pacaso homes also generate local tax revenue. The table below shows that the average Pacaso home generates an average of $2,340 in additional local tax revenue compared with the average second home. This tax revenue is generated by spending with local businesses.

Figure 4. Annual Local Sales Tax Revenue By County

County	Average Second Home	Average Pacaso Home	Additional Tax Revenue
Bronx	$140	$1,460	$1,320
Kings	$210	$2,320	$2,110
Nassau	$290	$3,210	$2,920
New York	$320	$3,490	$3,170
Queens	$210	$2,240	$2,030
Richmond	$220	$2,440	$2,220
Suffolk	$260	$2,840	$2,580

Source: Avalara.com. Tax rates as of March 2022.

Notes: This study does not include the net increase in property tax revenue to counties from Pacaso homes, which is likely higher than that of traditional second homes or homes near the median housing price.

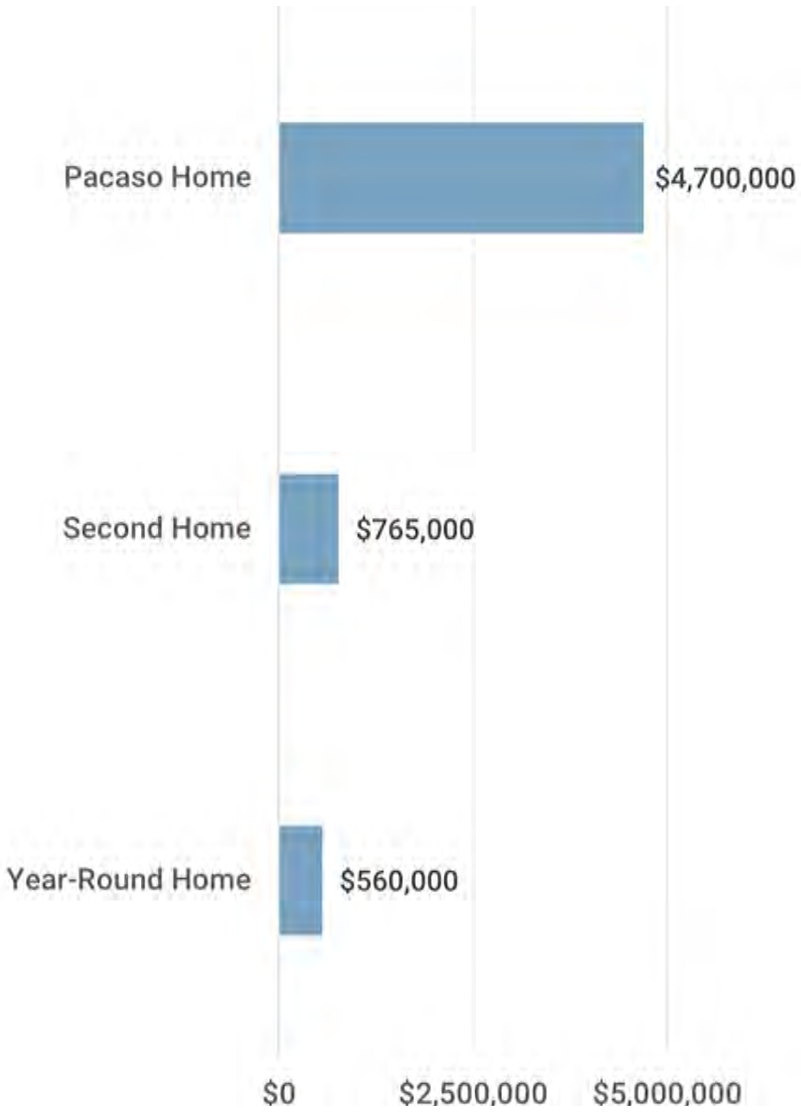
Housing Comparison

Pacaso concentrates demand into more expensive homes.

Though Pacaso does not currently operate in the New York City Area, the median Pacaso home is expected to be 6.1 times the price of the typical second home and 8.4 times the price of the typical year-round home. These values can be seen in the figure to the right.[3]

Through co-ownership, Pacaso is expected to concentrate demand for the New York City Area's most expensive homes, thereby shifting demand away from the median-priced market. The following page describes this in more detail.

Figure 5. Median Listing Price by Home Type



Source: Pacaso.

3 Definitions of second homes and year-round homes come from Optimal Blue, which is the source for Pacaso's price data.

Market Impact

Co-ownership concentrates demand into fewer homes.

The concentration of buyers into expensive homes likely relieves pressure on the New York City Area's local housing market. This is because in the absence of a co-ownership model, some second homeowners will likely purchase a median-priced home, reducing the supply available for year-round residents.

The scenarios to the left illustrate the potential effect of Pacaso on a segment of the housing market.

This effect is most likely to be experienced in places like the New York City Area, where the housing market is very competitive, partially because of strong demand for second homes, especially in certain sub-markets. As Pacaso grows, the mitigating effect on the supply of median-priced homes will only increase.

Without Pacaso

Eight out-of-town buyers search for homes in a neighborhood with a mix of median-priced homes and high-end homes they are unable to afford. Wanting to spend a portion of the year in the New York City Area, they purchase eight median-priced homes, making them unavailable to year-round residents and bidding up the price of each.

With Pacaso

The same eight buyers purchase shares of a high-end Pacaso home, leaving the median-price homes on the market for year-round residents. Because Pacaso is available, there is less demand for the year-round homes, potentially keeping their sale prices lower than they would have been otherwise.

Notes

Pacaso is still in a growth phase, meaning EBP relied on assumptions based on industry and public record data. As Pacaso expands, its effect will likely become clearer, and we encourage future research to this end.

EBP and Pacaso made the following assumptions in completing this study. Adjustments to these assumptions could change the results.

- EBP used a national average utilization rate for Pacaso homes because market-specific rates fluctuate.
- We began our household spending analysis using values for all households in the New York City Area, not spending by second homes or Pacaso homes specifically. To be more accurate, we made the adjustments listed in the table below to household spending categories pulled from our primary data source, Esri ArcGIS Business Analyst Online, which is itself based on data from the Bureau of Labor Statistics Consumer Expenditure Survey. This adjustment process was built on our assumption that second homeowner spending patterns fall somewhere in between short-term visitors and year-round residents. Compared with New York City Area visitor spending patterns from 2019 studies by Tourism Economics, we assumed that homeowners spend comparatively more (as a share of their budget) on food and beverages, a similar amount on retail, less on recreation, and less on transportation.
- For the tax impact analysis, we used state and county tax rates as of March 2022 from Avalara.com, a website that helps businesses calculate their tax bills. After comparing Avalara tax rates with tax rates published on several government websites for jurisdictions included in our analysis, EBP determined that it is a reliable source.

Cover Photography by Laurenz Heymann and Report Photography by Rafael Leão on Unsplash.

Appendix A. Household Spending Category Inclusion

Spending Category	Inclusion in Analysis
Alcohol	Included (37% under Dining Out and 63% under Food at Home).
Apparel	Included. Assumes co-owners spend like year-round residents during longer stays.
Dining Out	Included.
Education	Not included.
Entertainment and Recreation	Partially included (43%). Includes items, such as event admissions.
Finance	Not included.
Food at Home	Included.
Health Care	Not included.
Household Goods	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Household Services	Not included. There is likely a minimal net increase in spending by Pacaso homes.
Housing	Not included. Mostly fixed housing costs, utilities, and maintenance and repairs.
Life Insurance and Pensions	Not included.
Miscellaneous Expenses	Not included.
Personal Care	Included. Assumes co-owners spend like year-round residents during longer stays.
Local Transportation	Partially included (20%). Includes items, such as gasoline and public transportation.
Travel	Not included. Related items are covered by other categories.

Source: Esri ArcGIS Business Analyst Online and Pacaso.

EBP

Appendix B – City of Beverly Hills Urgency Ordinance

ORDINANCE NO. 22-O-2862

AN INTERIM ORDINANCE OF THE CITY OF BEVERLY HILLS EXTENDING INTERIM ORDINANCE NO. 21-O-2841 ESTABLISHING A MORATORIUM ON FRACTIONAL OWNERSHIP OF RESIDENTIAL AND COMMERCIAL PROPERTY, DECLARING THE URGENCY THEREOF AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. Legislative Findings.

A. California is experiencing a housing supply crunch. Existing housing in this state, especially in its largest cities, has become very expensive. California needs an estimated 180,000 additional homes annually to keep up with population growth, and the Governor has called for 3.5 million new homes to be built by 2025.

B. Fractional ownership of residential property for use or possession of the property for a period of less than a full year, akin to a vacation time-sharing property model, reduces the availability of residential property for long-term occupancies in the City. Thus, creating the need for more housing. Moreover, the use of fractional ownership can be detrimental to the City and its residents because such multiple occupancies disturb the stability of residential neighborhoods.

C. Fractional ownership of residential or commercial property, can adversely impact future development, redevelopment, safety, and proper maintenance of the property as a result of the complexities associated with the incongruent and changing objectives, intents, and goals of multiple owners.

D. The City Council believes that unregulated fractional ownership of residential or commercial properties with time-based occupancy restrictions would unduly impact the City. The City Council therefore believes there is a current and immediate threat to the public health, safety and welfare that is presented by such ownership models, and that a moratorium is necessary to continue studying the regulation of fractional ownership.

E. On July 15, 2021, the City adopted Interim Urgency Ordinance No. 21-O-2841, which imposed an initial 45-day moratorium on the fractional ownership of residential and commercial property within the City during the pendency of the City's review and adoption of permanent regulations governing fractional ownership in the City. The initial 45-day moratorium expired on August 29, 2021.

F. On August 17, 2021, the City adopted Ordinance No. 21-O-2842, which extended the Interim Urgency Ordinance No. 21-O-2841 for an additional ten (10) months and fifteen (15) days, with an expiration date of July 15, 2022.

G. The City Council continues to find that the time provided by the moratorium will allow for a comprehensive analysis of residential and commercial property ownership models, including fractional ownership, with time-based occupancy restrictions. During the extended period of the moratorium, the City will continue to analyze potential impacts on public health and safety related to time-based occupancy restrictions; and impacts on the public welfare due to the removal of full-time housing units from the market and replacing them with vacation or part-time units, the inference with the stability of residential neighborhoods and the impact on the maintenance and redevelopment of properties. The City Council finds that these analyses will help the City Council determine how to best prevent impacts to the public health, safety and welfare. The City Council further finds that extension of the moratorium will allow time to achieve a reasonable level of assurance that there will not be serious negative impacts to the overall community and ensure a positive and mutually acceptable set of outcomes for the City's residents, business community, and property owners.

H. Based on the foregoing, the City Council ultimately finds that if the City fails to extend the moratorium, fractional ownership of properties with time-based occupancy restrictions may be allowed under outdated zoning regulations that do not address the unique impacts of such ownership models before the City Council is able to review the matter in order to adequately protect the health, safety and welfare of the residents, business community, and property owners of the City. Therefore, a current and immediate threat to the public safety, health and welfare remains in existence.

I. A written report describing the measures taken to alleviate the conditions which led to the adoption of the aforementioned Interim Urgency Ordinance was issued by the City Council on June 2, 2022 which was at least ten (10) days prior to the expiration of the Interim Ordinance on July 15, 2022, in compliance with State law.

J. Pursuant to Government Code Sections 65858 and 65090, the City Council conducted a duly noticed public hearing on June 14, 2022, at which time the City Council considered this Ordinance to extend the existing moratorium on the establishment of the fractional ownership of residential and commercial property for an additional one (1) year period.

Section 2. <u>Authority.</u>

Pursuant to Government Code Section 65858, the City Council may adopt, as an urgency measure, an interim ordinance that prohibits any uses that may be in conflict with a contemplated zoning proposal that the City Council is considering, studying, or intends to study within a reasonable period of time.

Section 3. <u>Urgency Findings.</u>

The City Council finds and determines that there is an immediate threat to the public health, safety, or welfare, and that fractional ownership of residential and commercial properties with time-based occupancy restrictions constitute a threat to the public health, safety or welfare. As described in Section 1, the staff report accompanying this Interim Urgency Ordinance, and other evidence in the record, such fractional ownership in the City could threaten the health,

safety and welfare of the community through negative impacts that include, but are not limited to, removing full-time housing units from the market and replacing them with vacation or part-time units, interference with the stability of residential neighborhoods and interference with the maintenance and redevelopment of properties. To preserve the public health, safety, and welfare, the City Council finds that it is necessary that this Interim Urgency Ordinance take effect immediately pursuant to Government Code Sections 65858 to prevent such harm.

Section 4. Moratorium Extended.

Based on the facts and findings set forth in Sections 1 through 3 of this Interim Urgency Ordinance, and notwithstanding any other ordinance or provision of the Beverly Hills Municipal Code, the City of Beverly Hills hereby extends the following moratorium:

A. Definitions. For the purposes of this moratorium, the following phrase has the meaning given herein.

1. "Fractional Ownership" shall mean shared ownership of real property, entitlement to ownership rights of real property, entitlement to use of real property, or possession of real property through any of the following means:

    a. Direct ownership of the property;

    b. Indirect ownership of the property through a membership, stake, interest, share, association, or similar device in the owner of the property or a subsidiary or parent of the owner of the property; or

    c. A membership, stake, interest, share, association, or similar device in an entity, group, association or similar device which by virtue of such membership, stake, interest, share, association or similar device grants entitlement to ownership rights or the use or possession of the property.

B. Time-Based Occupancy Restrictions. Unless approved by a specific plan, fractional ownership of any real property in the City shall be prohibited if such ownership includes any arrangement, schedule, plan, scheme, or similar device, whether by agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby an owner of the property or a fraction thereof, receives ownership rights in, or the right to use, the property for a period of time less than a full year.

C. Request for Hearing. Any person with a fractional ownership in the City who is threatened with enforcement of time-based occupancy restrictions or to whom an administrative citation is issued pursuant to this Ordinance may apply to the City Council for a hearing to review the time-based occupancy restrictions as applied against the property with such fractional ownership. Any such application shall be in writing and shall be received by the Community Development Department. Any application as a result of an administrative citation shall be received by the Community Development Department within thirty (30) days after the date of the administrative citation.

D. Notification for Hearing. Hearings pursuant to this Ordinance shall be preceded by public notice by the following method:

1. Mailed Notices: The applicant shall mail notices providing, at a minimum, the property address of the property involved with the hearing, general scope of the request, basic hearing information, and City contact information to recipients of the notice. Such mailed notices shall be sent via private courier service with the ability to track delivery of the notice, and shall be mailed at least twenty (20) days prior to such hearing by the reviewing authority. Mailed notices shall be sent to properties within a 300-foot radius, measured from the exterior boundaries of the property involved with the hearing.

2. Affidavit/Proof of Mailing: The applicant shall submit an affidavit to the Community Development Department within five (5) days of mailing the notices required by this section, verifying that the mailings are in compliance with this section.

E. Exception to Time-Based Occupancy Restrictions. The time-based occupancy restrictions shall not apply to real property with fractional ownership if the City Council makes the following finding:

1. The fractional ownership of the property will not disturb the stability of a residential neighborhood or residential building and will not adversely impact future development, redevelopment, safety, and proper maintenance of the property.

Section 5. Enforcement.

The provisions of this Interim Urgency Ordinance shall be enforceable pursuant to the general enforcement provisions in Title 1 of the Beverly Hills Municipal Code.

Section 6. CEQA Findings.

The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain properties in order to protect the public health, safety and general welfare because the Ordinance will impose a temporary moratorium on certain fractional ownership in the City in order to protect the public health, safety and general welfare, and will thereby serve to avoid potentially significant adverse environmental impacts during the term of the moratorium. In addition, the Ordinance consists of minor alterations in land use limitations and do not result in any changes in land use or density. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Sections 15305 and 15061(b)(3) of the California Code of Regulations.

Section 7. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or portion of this Ordinance or its application to any person, place, or circumstances, is for any reason held to be invalid or unenforceable by the final decision of any court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases, or portions of this Ordinance, or its application to any other person, place, or circumstance. The City Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, phrase, or portion hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 8. Effective Date; Approval and Extension of Ordinance.

This Ordinance, being an Interim Ordinance adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare, containing a declaration of the facts constituting the urgency, and passed by a minimum four-fifths (4/5) vote of the City Council, shall take effect concurrent with the expiration of Interim Urgency Ordinance No. 21-O-2841, as extended by Ordinance No 21-O-2842, at midnight on July 15, 2022, and shall remain in effect for a period of one year, through and including July 14, 2023, in accordance with California Government Code Section 65858.

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Section 9. Publication.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause its publication in accordance with applicable law.

Adopted: June 14, 2022
Effective: July 15, 2022

LILI BOSSE
Mayor of the City of Beverly Hills, California

ATTEST:

(SEAL)
HUMA AHMED
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

GEORGE CHAVEZ
City Manager

Appendix C – City of Carlsbad Timeshare ordinance

ORDINANCE NO. 9663

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA AMENDING TITLE 21, CHAPTERS 21.04 AND 21.42 OF THE CARLSBAD MUNICIPAL CODE BY THE ADDITION OF SECTIONS 21.04.357 AND 21.42.010(10) TO DEFINE AND REGULATE THE CONSTRUCTION OF TIME-SHARE PROJECTS.

The City Council of the City of Carlsbad, California does ordain as follows:

Section 1: That Title 21 of the Carlsbad Municipal code be amended by the addition of Section 21.04.357 to read as follows:

21.04.357 Time-Share Project: "Time-Share Project" means a project in which a purchaser receives a right in perpetuity for life, or for a term of years to the recurrent exclusive use or occupancy of a lot, parcel, unit or segment of real property annually or on some other periodic basis, for a period of time that has been, or will be, allotted from the use or occupancy periods onto which the project has been divided.

Section 2: That Title 21 of the Carlsbad Municipal Code be amended by the addition of Section 21.42.010(10) to read as follows:

(10) V-R, R-P, R-3, RD-M and R-T zones only:

(A) Time-share projects as defined by Section 21.04.357 of this code and subject to the following regulations:

(i) A Conditional Use Permit shall be required for all time-share projects. All projects shall be subject to the development standards and design criteria of Chapter 21.45 of this code, except that:

I. The City Council may reduce the required resident parking down to one parking space per unit.

II. The City Council may waive the storage area requirements of Section 21.45.090(1). Any reduction in the parking or storage requirements shall be supported by a finding that the reduction is necessary for the development of the project and will not adversely affect the neighborhood.

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VINCENT F. BIONDO, JR.
CITY ATTORNEY - CITY OF CARLSBAD
1200 ELM AVENUE
CARLSBAD, CALIFORNIA 92008

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CARLSBAD, CALIFORNIA 92008

(ii) If a time-share project is proposed with reduced standards, the applicant shall provide a conversion plan showing how the project can be altered to bring it into conformance with the development standards and design criteria of the Planned Development Ordinance. A conversion plan shall be approved as and be made a part of the permit for the project.

(iii) All proposals for time-share projects shall be accompanied by a detailed description of the methods proposed to be employed to guarantee the future adequacy, stability and continuity of a satisfactory level of management and maintenance. A management and maintenance plan shall be approved as and made a part of the permit for the project.

(iv) All units in a time-share project shall be time-share units except a permanent on site management residence unit may be permitted. The maximum time increment for recurrent exclusive use of occupancy of a time-share unit shall be four months. A note indicating this requirement shall be placed on the final map for the project.

(v) In addition to the four mandatory findings required for the issuance of a conditional use permit, under Section 21.42.020, the City Council shall find that the time-share project is located in reasonable proximity to an existing resort or public recreational area and, therefore, can financially and geographically function as a successful time-share project and that the project will not be disruptive to existing or future uses in the surrounding neighborhood.

(vi) Time-share projects may be allowed in the P-C zone if specified in the Master Plan for the area in which they will be located and the land use designation for the Master Plan area in which the proposed time-share project will be located is similar to the R-P, R-3, RD-M or R-T zones.

(vii) All of the provisions of this section shall apply to the conversion of an existing structure to a time-share project.

(viii) All time-share projects shall be processed in accordance with this section except that subsequent to Planning Commission review, the matter shall be set for public hearing before the City Council. The City Council may approve, conditionally approve or deny the project. The decision of the City Council is final.

(ix) A subdivision map filed in accordance with Title 20 of this code shall accompany any application for a time-share project.

Section 3: The City Council hereby declares that it would have passed this ordinance phrase by phrase, sentence by sentence, paragraph by paragraph and section by section, and does hereby declare that the provisions of this ordinance are severable and, if for any reason any sentence, paragraph, or section of this ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this ordinance.

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in the Carlsbad Journal within fifteen days after its adoption.

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VINCENT F. BIONDO, JR.
CITY ATTORNEY - CITY OF CARLSBAD
1200 ELM AVENUE
CARLSBAD, CALIFORNIA 92008

INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City Council held on the 4TH day of January, 1983, and thereafter

PASSED AND ADOPTED at a regular meeting of said City Council held on the 18th day of January, 1983, by the following vote, to wit:

AYES: Council Members Casler, Lewis, Kulchin, Chick and Prescott

NOES: None

ABSENT: None

Mary H. Casler
MARY H. CASLER, Mayor

ATTEST:

Aletha L. Rautenkranz
ALETHA L. RAUTENKRANZ, City Clerk

(SEAL)

VINCENT F. BIONDO, JR.
CITY ATTORNEY - CITY OF CARLSBAD
1200 ELM AVENUE
CARLSBAD, CALIFORNIA 92008

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Appendix D – City of Carmel by the Sea Cease and Desist Order

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bpierik@bwslaw.com

April 7, 2022

VIA E-MAIL TO
PATRICK@PACASO.COM and
ELLEN@PACASO.COM

Patrick Abell
Senior Legal Counsel
Pacaso, Inc.
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Ellen Haberle, Director
Government & Industry Relations
Pacaso, Inc.
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Re: Request to Immediately Cease and Desist Unlawful Operations

Dear Mr. Abell and Ms. Haberle:

This law firm serves as City Attorney for the City of Carmel-by-the Sea, California ("City"). In that capacity, we are writing to advise Pacaso Inc. ("Pacaso") that Pacaso's current operations within the City are unlawful and must cease immediately. The City has been made aware of at least one property sold by Pacaso within the City at Dolores 7 SW 13th, Carmel by-the-Sea, CA 93921. The sale of this property constitutes the sale of a timeshare prohibited by the Carmel-by-the-Sea Municipal Code ("CMC") Section 17.28.010.

City Prohibition on Timeshare Uses

CMC section 17.28.010 provides that "[t]imeshare projects, programs and occupancies are prohibited uses within all of the zoning districts within the City." Timeshare projects, programs and occupancies are further defined in CMC Section 17.70.020:

- A “time-share program” is “[a]ny arrangement for a project whereby the use, occupancy, or possession of real property has been made subject to a time-share estate, use, or occupancy, whereby such use, occupancy, or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year, but not necessarily for consecutive years.”

- A “time share estate” is defined as “[a] right of occupancy in a time-share project that is coupled with an estate in the real property.

- A “time-share use” is “a license or contractual or membership right of occupancy in a time-share project which is not coupled with an estate in the real property.”

- A “time-share project” is “[a] project 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 a lot, parcel, unit, or segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted for the use or occupancy periods into which the project has been divided.

- A “project” specifically includes “[a]ny proposal for a new or changed use.”

Pacaso’s Business Involves the Sale and Management of Prohibited Timeshare Uses

Pacaso’s website indicates that its business model involves sales of property held by an limited liability company in 1/8 ownership shares, with the associated right to exclusive use of the subject property by the owner of the share, with Pacaso managing among other things, the upkeep of the property and providing an app to arrange for periods of exclusive use by the share owners. Pacaso’s website further states that each owner of a 1/8 share is entitled to 6 “general stays,” booked at least 61 days in advance, which may range between 2 to 14 nights, and unlimited “short notice stays” booked less than 60 days in advance. However, maximum stay length is limited to 14 nights regardless of the method of booking. Owners of two shares have the option to book stays up to 28 nights.

Pacaso’s business model meets the City’s Ordinance’s definition of a prohibited “timeshare program,” because the ownership of the property through the LLC is an “arrangement for a project whereby the use, occupancy, or possession of real property

has been made subject to a time-share estate, use, or occupancy," and rights to periods of exclusive use are circulated among the owners of the shares, in specific intervals up to 14 nights per 1/8 share, "according to a … floating schedule on a periodic basis for a specific period of time during any given year." Additionally, division of the property into fractionalized ownership under Pacaso's business model will create either a "time-share estate" or "time-share use" — either the owners of the shares of the LLC hold a "right of occupancy" and "an estate in the real property" which establishes a time-share estate, or if the LLC is deemed the sole holder of the "estate in the real property," then such owners have a "time-share use" because they will hold a right to determine and establish their rights of occupancy pursuant to their right to operate and control the LLC under the terms of any membership or operating agreements.

We are aware that Pacaso has asserted to other jurisdictions that the properties that they sell and manage are not timeshares, but rather "fractionalized ownerships." According to Pacaso, a Pacaso home is no different from any other single family residence. However, this is simply not true. Regardless of what Pacaso wants to calls its business model, the impact is the same — this type of commercially managed short-term vacation use has the same impacts on surrounding residential areas as short-term vacation rentals, which are generally prohibited by the City's municipal code. (See CMC Sections 17.08.040, 17.68.030; 17.28.040.) The frequent, rotating occupancy of the owners is functionally akin to short-term rentals, and the City's existing regulations on timeshare uses are specifically intended to minimize the impacts created by this type of use and occupancy of land. Similar prohibitions on short-term rotating occupancies have already found lawful under *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579, which found that the City could lawfully prohibit short-term rental of residential property for transient occupancy in residential neighborhoods as an incompatible "commercial" use.

Finally, several significant policy reasons justify the City's prohibition against timeshares. The City's prohibitions on timeshares were first adopted in 1988 in order to preserve housing stock. The Housing Element of the City's General Plan includes Goal G3-2, which is to "[p]reserve existing residential units and encourage the development of new multifamily housing in the Commercial and R-4 Districts." Furthermore, Goal G3-4 specifically requires that the City "[p]rotect the stability of residential neighborhoods by promoting year-round occupancy and neighborhood enhancement." As part of this goal, the City has committed to "maintain and encourage the expansion of permanent residential housing stock," because the Housing Element notes that "[a] substantial percentage of the City's housing stock lies vacant much of the

year as second homes occupied for weekends, vacations or on a seasonable basis" which "has the effect of reducing the number of permanent, year-round residents in the City." To avoid depletion of residents and associated impacts on community, City services, Goal G3-4 of the City's Housing Element specifically requires the enforcement of the prohibitions on short-term, transient rentals and timeshares in residential dwellings.

In sum, conversion of any existing housing stock into timeshares or "fractionalized ownerships" reduces the available supply of homes for occupation for full-time residency, and therefore reduces the affordability of housing in the City, based on basic laws of supply and demand.

Pacaso is Unlawfully Operating Without Required Business Licenses

Pursuant to CMC section 5.04.020, it is unlawful for any person employed by Pacaso to commence or carry on any kind of business in the City without first procuring a business license and pay the applicable business license tax. (CMC section 5.04.020.) Pacaso does not possess a City business license, nor has it paid any business license tax to the City. As a result, Pacaso's operations within the City also are in conflict with the City's business license ordinance. However, we note that even if Pacaso obtains a business license, the business may not operate in the manner described above due to the prohibitions in the City's Municipal Code regarding timeshares.

Request to Cease Unlawful Operation

In conclusion, Pacaso's current operations within the City are unlawful and must cease immediately. The City requests that Pacaso cease all advertising and sale of fractional ownership of residential properties within the City. Failure to comply may result in enforcement. Any violation of City zoning prohibitions is subject to administrative citation and imposition of new fines for each day of unlawful operation pursuant to CMC Chapter 18.04. Furthermore, any violation of CMC section 17.28.010 prohibiting timeshare uses is a misdemeanor subject to criminal prosecution, punishable by a fine not exceeding $1,000 and imprisonment for a term not exceeding a period of six months. (CMC 1.16.010, 17.66.040.)

We are requesting your written response to this letter by April 21, 2022 which you may submit to me via email to bpierik@bwslaw.com

Thank you for your cooperation.

Sincerely,

Brian A. Pierik
City Attorney
City of Carmel-by-the Sea

BAP:SAR/jc

CAM #4855-3499-0355 v1

Appendix E – City of Hermosa Beach Planning Commission Resolution

RESOLUTION P.C. 22-07

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH RECOMMENDING CITY COUNCIL APPROVAL OF TEXT AMENDMENTS TO THE CITY OF HERMOSA BEACH MUNICIPAL CODE AMENDING CHAPTER 17.40 (CONDITIONAL USE PERMIT AND OTHER PERMIT STANDARDS) TO ADD SECTION 17.40.230 (TIMESHARE USES) TO TITLE 17 (ZONING), AND AMENDING SECTION 17.26.030 TO PERMIT TIMESHARE USES IN SPECIFIED COMMERCIAL ZONES PURSUANT TO A CONDITIONAL USE PERMIT AND DETERMINING THAT THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

The Planning Commission of the City of Hermosa Beach does hereby resolve as follows:

SECTION 1. Findings.

A. The Planning Commission held a duly noticed public hearing on April 19, 2022 to consider a text amendments to the City of Hermosa Beach Municipal Code, Title 17 (Zoning), as described in the proposed ordinance attached as Exhibit A.

B. The City of Hermosa Beach ("City") is a scenic beachfront city, known for its many diverse restaurants, local retailers and popular commercial areas like its downtown area and Pier Avenue.

C. Preserving the City's costal resource and the quality and character of the City has been a focal point of the City's land use planning for decades, and remains a primary focus in the City's current General Plan.

D. 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. 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.

F. 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, have limited the construction of additional housing in the City.

G. According to the U.S. Census Bureau, the current median household income in the City is $136,702, while the estimated value of owner-occupied housing units from 2015-2019 was approximately $1,542,900 with current real estate listings suggesting that prices are increasing significantly, meaning that homes in the City are not affordable to the median household in the City.

H. 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.

I. 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 it would not be converted to uses other than long-term residential uses.

J. This high impact use associated with timeshares, combined with the frequent turnover and commercial management involved in timeshare properties is not consistent with the purpose and nature of residential districts in the City. Rather, they are commercial in nature, in that these timeshare uses are structured as a short-term, tourist oriented, visitor serving use of the subject properties. The use of properties as timeshares 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.

K. The use of residential properties for timeshare uses will further reduce the availability of housing stock for long-term residential use, and create a new demand for timeshare uses of residential properties.

L. This encroachment of tourist oriented, visitor serving uses in residential neighborhoods is likely to compromise the character of residential areas within the City, and 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.

M. 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.

N. Pursuant to and in accordance with this authority, the Planning Commission desires to prohibit timeshare uses in residential areas, and certain commercial zones and to

update the language of the Zoning Code to provide consistency with the terminology used to define timeshare uses in State law. Further, the City desires to provide greater clarity as to the zones which timeshare uses are permitted as conditional uses, and the standards pursuant to which they will be reviewed in those zones.

O. On April 19, 2022, the Planning Commission held a duly-noticed public hearing and considered the staff report, recommendations by staff, and public testimony concerning the proposed ordinance.

SECTION 2. 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" pursuant to Sections 15060(c)(2) and 15060(c)(3) of Title 14 of the California Code of Regulations. Specifically, this ordinance permits timeshares in specified zones within the City pursuant to a conditional use permit, and prohibits them in all other zones, and authorizes administrative and implementation activities which will not result in a direct or reasonably foreseeable indirect physical change in 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.

SECTION 3. The Planning Commission finds that the proposed amendments to the Municipal Code to permit timeshares in specified zones within the City pursuant to a conditional use permit, and prohibits them in all other zones within the City are consistent with the General Plan goals, policies and implementation programs as the Ordinance will continue to preserve the character of the City; 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.

SECTION 4. Based on the entire record before the Planning Commission, and all written and oral evidence presented, the Planning Commission hereby finds that the proposed ordinance is consistent with the City's adopted General Plan and does not conflict with any of the General Plan's goals or policies.

SECTION 5. The Planning Commission hereby recommends that the City Council adopt the attached proposed ordinance entitled, "**AN ORDINANCE OF THE CITY OF HERMOSA BEACH. AMENDING CHAPTER 17.40 (CONDITIONAL USE PERMIT AND OTHER PERMIT STANDARDS) TO ADD SECTION 17.40.230 (TIMESHARE USES) TO TITLE 17 (ZONING), AND AMENDING SECTION 17.26.030 TO PERMIT TIMESHARE USES IN SPECIFIED COMMERCIAL ZONES PURSUANT TO A CONDITIONAL USE PERMIT AND DETERMINING**

THAT THE PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

I HEREBY CERTIFY that the foregoing recommendation to the City Council was duly and regularly approved by the Planning Commission of the City of Hermosa Beach at a regular meeting of said Planning Commission held on April 19, 2022, by the following roll call vote:

VOTE:

AYES:	5 - Chair Pedersen, Vice Chair Izant, Commissioner Saemann, Commissioner Hoffman, and Commissioner Rice
NOES:	None
ABSTAIN:	None
ABSENT :	None

CERTIFICATION

I hereby certify that the foregoing Resolution P.C. 22-07 is a true and complete record of the action taken by the Planning Commission of the City of Hermosa Beach, California, at its regular meeting of April 19, 2022.

Dave Pedersen, Chairperson

Angela Crespi, Secretary

7/20/22

Date

Appendix F – County of Monterey Cease and Desist Order

MONTEREY COUNTY

OFFICE OF THE COUNTY COUNSEL
168 WEST ALISAL STREET, 3RD FLOOR, SALINAS, CALIFORNIA 93901-2439
(831) 755-5045 FAX: (831) 755-5283

LESLIE J. GIRARD
COUNTY COUNSEL

KELLY L. DONLON
ASSISTANT COUNTY COUNSEL

June 24, 2022

Patrick Abell
Senior Legal Counsel
Pacaso, Inc.
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Ellen Haberle, Director
Government & Industry Relations
Pacaso, Inc.
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San Francisco, CA 94115
ellen@pacaso.com

Sent via email

Re: Request to Immediately Cease and Desist Unlawful Operations

Dear Mr. Abell and Ms. Haberle,

I write to bring your attention to the requirements of the Monterey County Code[1] with regard to Pacaso's operations. As detailed fully below, to the extent that Pacaso's advertisements or operations are occurring in zones within the unincorporated areas of Monterey County ("County") where timeshares are not allowed, Pacaso's operations are unlawful and must cease immediately. For Pacaso's operations in zones where timeshares are allowed under the Monterey County Code ("MCC"), Pacaso must apply for a Use Permit in the inland zone or Coastal Development Permit in the coastal zone as applicable.

Under Chapters 20.06 and 21.06 of the MCC the following definitions are relevant to Pacaso's operations:

- "Timeshare Estate" is defined as "a right of occupancy in a timeshare project which is coupled with an estate in the real property."
- "Timeshare Use" is defined as "a license or contractual or membership right of occupancy in a timeshare project which is not coupled with an estate in the real property."
- "Timeshare Project" is defined as "a development in which a purchaser receives the right

1 https://library.municode.com/ca/monterey_county/codes/code_of_ordinances
http://www2.co.monterey.ca.us/planning/docs/ordinances/Title20/20_toc.htm

in perpetuity, for life, or for term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other 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. The definition of time share project includes a timeshare estate and a timeshare use."

Pacaso's website indicates that its business model involves sales of property held by limited liability companies in 1/8 ownership shares, with the associated right to exclusive use of the subject property by the owner of the share, with Pacaso managing among other things, the upkeep of the property and providing an app to arrange for periods of exclusive use by the share owners. Pacaso's website further states that each owner of a 1/8 share is entitled to 6 "general stays," booked at least 61 days in advance, which may range between 2 to 14 nights, and unlimited "short notice stays" booked less than 60 days in advance. However, maximum stay length is limited to 14 nights regardless of the method of booking. Owners of two shares have the option to book stays up to 28 nights.

Pacaso's business model clearly meets Monterey County's definitions of "Timeshare Estate" and "Timeshare Project", because Pacaso provides a right of occupancy which is coupled with an estate in real property. Specifically, individuals have a right to occupy/use the real property for a certain number of days per year, and they hold a fractional ownership interest in the real property.

Sections 20.64.110 and 21.64.110 of the MCC state that Timeshare Projects are only allowed in zones where a hotel, motel or similar visitor accommodation use would be permitted and in such a case a Use Permit or a Coastal Development Permit is required. Specifically, these zones include the following: High Density Residential, Mixed Use, Light Commercial, Heavy Commercial, Visitor Serving, and Coastal General Commercial. As such, in order for Pacaso to market and sell homes within these zoning districts, it first must apply with the County's Housing Community & Development department for a Use Permit or Coastal Development Permit depending on the prospective home's location.

We are aware that Pacaso has asserted to other jurisdictions that the properties that they sell and manage are not timeshares, but rather "fractionalized ownerships." According to Pacaso, a Pacaso home is no different from any other single family residence. However, this is simply not the case. Pacaso's business model of selling and then commercially managing short-term vacation use results in frequent, rotating occupancy, that has a dire impact on housing supply and community integrity. As discussed above, the County's existing timeshare regulations are specifically intended to minimize the impacts created by this type of use and occupancy of real property.

Monterey County is aware of certain homes advertised on Pacaso's website that are located in the Carmel Highlands and the Del Monte Forest. Both of these areas are zoned Low Density Residential, Rural Density Residential or Medium Density Residential, and therefore Timeshare Projects are not allowed per the MCC. The County respectfully requests that Pacaso cease all advertising and sale of fractional ownership of residential properties within incorporated zones where Timeshare Projects are not allowed. The County also requests, if applicable, that Pacaso apply with Housing Community & Development for an appropriate land use entitlement in zones where Timeshare Projects are permitted. Failure to comply with the MCC may result in enforcement. Any violation of the MCC is subject to administrative citation and imposition of new fines for each day of unlawful operation pursuant to Chapter 1.22 of MCC. Furthermore, any violation of the MCC is a misdemeanor subject to criminal prosecution, punishable by a fine not exceeding $1,000 and imprisonment for a term not exceeding a period

of six months pursuant to Chapter 1.20 of the MCC.

I appreciate your prompt attention to this matter. Please feel free to contact me with any questions at donlonkl@co.monterey.ca.us or 831-755-5313.

Sincerely,

LESLIE J. GIRARD
County Counsel

By: _____
Kelly L. Donlon
Assistant County Counsel

cc: Monterey County Board of Supervisors
Charles J. McKee, County Administrative Officer
Leslie J. Girard, County Counsel
Erik Lundquist, Director of Housing Community & Development

Appendix G – Village of North Haven Code Amendment

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North Haven adopted this legislation last Tuesday night.

PUBLIC NOTICE PLEASE TAKE NOTICE that the Board of Trustees of the Village of North Haven will hold a public hearing on the 18th day of January 2022, at 5:00 P.M., location to be determined based on current COVID-19 safety measures in place at the time of the meeting (please call 631-725-1378 for updates), to consider the adoption of a Local Law as follows:

LOCAL LAW NO. OF 2022 A LOCAL LAW ADDING TO VILLAGE CODE CHAPTER 163 ENACTING ARTICLE XII § 163-96 BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF NORTH HAVEN AS FOLLOWS: SECTION 1. THE ENACTMENT OF THE VILLAGE CODE ARTICLE XII §163-96 **§163-96 FRACTIONAL OWNERSHIP, TIME-SHARING, OR INTERVAL USES PROHIBITED**

The creation fractional ownership, time-sharing, or interval projects are prohibited in single-family residences within the Village.

A. Findings and Purpose. An important function of local land use regulation is the establishment and protection of single-family residential districts in which tranquil, healthy, and safe neighborhood environments are maintained for the quiet enjoyment of resident homeowners and their families.

1. Fractional ownership, time-sharing, or interval ownership projects have the same character as commercial hotels, motels, lodges, and other commercial occupancy uses due to their transient nature and multiple short-term (less than six months annually) occupancies. Such commercial or quasi-commercial like uses is inappropriate in residential areas due to the increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods.

2. The needs of transients are averse to the interests sought to be protected and preserved in single-family residential districts because commercial uses for transients may sacrifice other values critical to residential neighborhoods.

3. The Village deems it necessary and appropriate to protect the existence of single-family residences and the quiet and peace of the Village by preventing unwarranted commercialization from encroaching therein, including commercialization caused by the misuse of single-family residences. Thus, the Village Board finds and determines that this section is necessary to protect the public health, safety, and welfare of the residents of the Village.

4. B. Prohibition of fractional ownership, time-sharing, or interval projects in single-family zoning districts.

The use of any property in any single-family zoning district as a fractional ownership, time-sharing, or interval project shall be prohibited. A fractional ownership, time-sharing, or interval project shall exist if the following features are found: Multiple owners: Ownership is divided amongst 3 or more unrelated property owners, either through direct ownership of the property or indirect ownership through a membership, stake, interest, share, association, or similar device that grants entitlement to ownership rights or the use or possession of a property for the purpose of interval occupancy.

1. Time-sharing or interval occupancy: Use, possession, or occupancy of the property is transient in nature based on an arrangement, schedule, plan, agreement, license, or any other means or scheme whereby an owner of the property receives ownership rights or the right to use the property for a period of time less than six months.

2. Commercial purpose: Use of the property is commercial in nature based on an agreement, arrangement, or any other means or scheme whereby the owners retain, hire, or otherwise utilize a third-party individual or entity for a fee (service, management, etc.) to control, manage, or facilitate scheduling the use or occupancy of the property.

3. C. Exceptions. This subsection shall not be deemed to preclude the creation of mortgages, liens, easements or other similar interests encumbering the residential property as a whole to secure a loan or for any other legitimate purposes.

D. Severability. If any section, subsection, sentence, clause or phrase of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

E. Injunctive Relief. Any land use activity conducted contrary to this chapter may be enjoined or restrained by injunction or otherwise abated in a manner provided by law.

F. Violations and penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine not exceeding $500, or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than $750 nor more than $1,000, or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than $1,000 nor more than $2,500, or imprisonment for a period not to exceed six months, or both. Each week's continued violation shall constitute a separate additional violation.

SECTION 2. EFFECTIVE DATE. This Local Law shall take effect immediately upon filing with the Secretary of State as provided by law. All persons in interest will be heard by the Board of Trustees at the public hearing to be held as aforesaid and may appear in person or by representative. The Village Hall is accessible to handicapped persons.

Dated: January 6, 2022 BY ORDER OF THE BOARD OF TRUSTEES OF THE VILLAGE OF NORTH HAVEN. BY: Eileen Tuohy, Village Clerk/Treasurer

Appendix H – City of Palm Desert Ordinance

ORDINANCE NO. 1378

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, AMENDING PALM DESERT MUNICIPAL CODE, CHAPTER 25, MODIFYING SECTION 25.34.60 REGARDING TIME-SHARE PROJECTS
CASE NO: ZOA 22-0001

WHEREAS, the Planning Commission of the City of Palm Desert, California, did on the 18th day of January 2022, hold a duly noticed public hearing to consider the request by the City of Palm Desert for approval of the above-noted, and adopted Resolution No. 2805, recommending that the City Council adopt the Zoning Ordinance Amendment (ZOA) for said projects regulating the time-share projects; and

WHEREAS, the Zoning Ordinance Amendment (ZOA) modifies the Palm Desert Municipal Code (PDMC) Section 25.34.60 (Time-Share Projects) and implements a requirement for time share uses; and

WHEREAS, the City Council of the City of Palm Desert, did on the 24th day of February 2022, hold a duly noticed public hearing to, the City Council opened the public hearing and approved staff's request to continue to the 24th of March 2022. On the 24th of March 2022, another continuance of the public hearing was granted to the 28th of April 2022. On the 28th of April 222, the City Council considered the request by the City of Palm Desert for approval of a ZOA determined that the time-share process is consistent with the City's General Plan; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, said City Council did find the following facts and reasons exist to approve said request:

SECTION 1. Adoption of Recitals. The City Council hereby adopts the foregoing recitals as its findings in support of the following regulations and further finds that the following regulations are beneficial and appropriate to protect the health, safety, and welfare of the residents and businesses of Palm Desert within the City limits.

A. The City of Palm Desert, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

B. The Planning and Zoning Law authorizes cities to establish by ordinance the regulations for land use and development.

SECTION 2. Amendment. The City Council of the City of Palm Desert, California, approve, and adopt the PDMC amendment to Section 25.34.60 (Time-Share Projects) as shown in Exhibit A, which is attached hereto and incorporated herewith.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be

City of Palm Desert Document

unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 4. Publication. The City Clerk of the City of Palm Desert, California, is hereby directed to publish this ordinance in *The Desert Sun*, a newspaper of general circulation, published and circulated in the City of Palm Desert, California, and shall be in full force and in effect thirty (30) days after its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Palm Desert, California, at its regular meeting held on the 12th day of May 2022, by the following vote, to wit:

AYES: **KELLY, QUINTANILLA AND HARNIK**

NOES: **JONATHAN**

ABSENT: **NESTANDE**

ABSTAIN: **NONE**

JAN C. HARNIK, MAYOR

ATTEST:

05/18/2022

ANTHONY J. MEJIA, CITY CLERK
CITY OF PALM DESERT, CALIFORNIA

City of Palm Desert Document

ORDINANCE NO. 1378

"EXHIBIT A"
ZONING ORDINANCE AMENDMENT

SECTION 1. Amendment to Palm Desert Municipal Code. Palm Desert Municipal Code section 25.34.060 is hereby amended as follows:

25.34.060 Time-Share Uses

A. Purpose. The purpose of the special use regulations for time-share uses is to establish special location and site development standards.

B. Definitions.

1. "Accommodation" means any dwelling unit, apartment, condominium or cooperative 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 two family dwelling, three family dwelling, multiple family dwelling, or townhouse dwelling as defined in Section 17.04.160.

2. "Developer" means person, who at any point in time, owns, or has an option or contract to acquire eleven or more time-share interests for purposes of sale in the ordinary course of business if the time-share interests were acquired or are to be acquired from the original recipient of a public report for the time-share plan, or from a person who succeeded to the interest of the original recipient in eleven or more time-share interests in a time-share plan.

3. "Owner" means owner of a time-share interest.

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

5. "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.

6. "Time-share interest" means and includes either of the following:

(i) A "time-share estate," which is the right to exclusively occupy a time-share property for a period of time on a recurring basis pursuant to a time-share plan, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof.

(ii) A "time-share use," which is the right to exclusively occupy a time-share property for a period of time on a recurring basis pursuant to a time-share plan, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a time-share property.

7. "Time-share plan" means any arrangement, plan, scheme, or similar device, whether by membership agreement, sale, lease, deed, license, right to use agreement, or

City of Palm Desert Document

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. "Timeshare Plan" does not include arrangements whereby multiple parties join in directly purchasing full ownership of an accommodation and thereafter agree upon arrangements for their shared use.

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

9. "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.

C. Permitted zones. A time-share use shall be permitted only in a planned residential zone, a general commercial zone, or a planned commercial resort zone. Any time-share use shall be developed in conjunction with a resort hotel having 500 or more rooms and an 18-hole golf course of not less than 6,400 yards, and then only if and when a conditional use permit has been obtained from the Commission in accordance with Section 25.72.050 (Conditional Use Permit) of this code.

D. Application submittal requirements. In addition to standard application submittal requirements, an applicant for a conditional use permit approval involving a time-share use shall submit in the application at least the following information:

1. Copies of documents and information required pursuant to Article 12.2 of the California Code of Regulations, Sections 2809.1, 2809.2, and 2809.3 wherein the requirements for a "properly completed" application for a final subdivision public report are enumerated, excluding those documents so enumerated which are subject to the approval of the City and therefore otherwise available to the City. In the event such documents and information have not been filed with the California Department of Real Estate at the time an applicant applies for a conditional use permit, the applicant shall furnish such documents and information upon the submission of such documents and information to the Department of Real Estate, but in no event later than the issuance of the conditional use permit.

2. In the event an existing condominium project is proposed to be converted to a whole or partial time-share use, a verified description or statement of the number and percentage of the current condominium owners desiring or consenting to the proposed conversion of some or all of the units to a time-share basis shall be submitted. Also, in such instance there shall be submitted to the Commission prior to or during the hearing process, a verified statement of the number and percentage of owners who have received notification, either personally or by receipted certified US mail.

3. In the case of a new mixed project (i.e., time-sharing condominium/rental), a description of the means proposed to be employed to disclose the number and location of all time-share accommodations within the time-share use shall be submitted.

City of Palm Desert Document

4. Description of time periods, types of accommodations, and which accommodations are in the time-share program (if less than all), and the length of time each of the accommodations are committed to the time-share plan shall be submitted.

E. Requirements. Notwithstanding any other provisions of this chapter, the following requirements must be met by any time-share use in any permitted zone:

1. The time-share use must be composed of time-share interests.

2. All maintenance agreements and conditions, covenants, and restrictions must be approved by the City.

3. The minimum time-share interest exclusive occupancy period shall be for one week (seven days).

4. Developer of the time-share plan shall post a maintenance bond, letter of credit, or cash deposit to ensure the maintenance of any landscaping along the perimeter of the time-share use abutting any public right-of-way. The amount of the bond, letter of credit, or cash deposit shall be equal to 25 percent of the annual budget of the time-share use owner's association having the duty to maintain the exterior of the time-share property which is for such landscaping expenses. The bond, letter of credit, or cash deposit shall run to the City and shall remain in place for life of the time-share plan.

5. With respect to a time-share use, all interests created therein shall be subject to a public facilities impact mitigation fee of $150 per week share. With respect to each week share in a time-share use, a public facilities impact fee payable under this section shall be paid on the first day of the first calendar month following the sale and conveyance of such week share by the developer of a time-share plan to an individual consumer (excluding bulk sales from one developer to another, in which case the successor developer shall have the obligation to pay the public facilities impact fee described herein upon the sale and conveyance of a week share to a consumer). On the first day of each calendar month, or less frequently if required by the Council, a developer of a time-share plan shall also submit a written report to the City which specifies the number of week shares in the time-share plan which have been sold and conveyed in the preceding calendar month.

F. Minimum number of units. The minimum number of units in a time-share project shall be 50.

G. Development standards. Time-share uses shall be designed to conform to the standards for hotel developments in the event the time-share use is located in a planned commercial resort or general commercial zone. The time-share use must comply with all development standards of the zone in which it is located. With respect to time-share uses developed within a planned residential zone, the density of the time-share uses shall not exceed the density permitted in such zone for residential projects; with respect to time-share uses developed in a general commercial zone or a planned commercial resort zone, the density of the time-share uses shall not exceed the density permitted in such zone for general commercial or planned commercial projects. In determining the density of a time-share use, upon the request of an applicant, the Director shall have the authority to transfer the density permitted in other similarly zoned property owned by an applicant to the time-share use.

City of Palm Desert Document

H. Violations, Enforcement and Civil Penalties

1. 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 section 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 shall be punishable pursuant to Chapter 1.12 (General Penalty).

2. Any responsible person, including by 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 section is subject to administrative fines as set forth in Chapter 8.81 (Administrative Citations). Any person issued an administrative citation pursuant to this section shall for each separate violation be subject to: (1) an administrative fine in an amount not to exceed one thousand dollars ($1,000) for the first citation; (2) an administrative fine in an amount not to exceed three thousand dollars ($3,000) for a second citation issued for the same offense within a twelve-month period of the date of the first offense; and (3) a fine in an amount not to exceed five thousand dollars ($5,000).

3. Time-share use, and/or advertisement for time-share use, of an accommodation in violation of this section is a threat to public health, safety or welfare and is thus declared to be unlawful and a public nuisance and may be abated pursuant to Chapter 8.20 (Public Nuisances), Chapter 9.24 (Noise Control), and Chapter 9.25 (Multiple Responses to Loud or Unruly Parties, Gatherings or Other Similar Events).

4. Each day the violation of this chapter occurs shall constitute a separate offense.

5. The remedies under this section are cumulative and in addition to any and all other remedies available at law and equity.

City of Palm Desert Document

Appendix I – City of Palm Springs Cease and Desist Order

Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Los Angeles
(213) 617-8100
Manhattan Beach
(310) 643-8448
Ontario
(909) 989-8584

BEST BEST & KRIEGER LLP
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(916) 325-4000
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Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

Jeffrey S. Ballinger
(619) 525-1343
jeff.ballinger@bbklaw.com

December 6, 2021

VIA E-MAIL ELLEN@PACASO.COM

Ellen Haberle
Director, Government & Industry Relations
Pacaso.com
2021 Fillmore St. Suite 183
San Francisco, CA 94115

Re: Pacaso's Operations within the City of Palm Springs, California

Dear Ms. Haberle:

As you know, this law firm serves as City Attorney for the City of Palm Springs, California. In that capacity, we are writing to advise Pacaso.com that Pacaso's current operations within the City are unlawful and must cease immediately.

While I appreciate your recent efforts to meet with City officials and present Pacaso's position as to why the City's timeshare ordinance does not apply to Pacaso, as set forth more fully below, such a position it not legally tenable.

Pacaso is a company that holds itself out as a new way to own a second home. According to Pacaso's website (https://www.pacaso.com/learn), accessed earlier this year, Pacaso operates as follows:

> "Co-ownership with Pacaso is the best way to buy and own a great second home. From buying to closing here's how Pacaso works. First, tell us a little about yourself and what you are looking for in a second home. Then, start shopping. If a listing currently on Pacaso is not a fit, find one you love on any real estate site and share it with us. If the home is a match for Pacaso, we will partner with you to purchase up to half of the property in a private and professionally managed LLC uniquely designed for co-ownership. This LLC is referred to as the Pacaso Home LLC. On behalf of Pacaso, we line up financing for the LLC and close quickly. In parallel Pacaso remarkets remaining ownerships shares in the home to interested buyers. Buyers can purchase their desired amount of ownership from one-eighth

> to one-half of the whole home. We enable qualified buyers to access funds in the LLC and finance up to half of their purchase. The financing relationship is directly between the LLC and the buyer. Pacaso signs closing paperwork on behalf of the LLC. In parallel buyer signs the LLC owner operating agreement to complete their purchase. Ownership is recorded in the owner's schedule section of the owner operating agreement. Following closing the collective owners own 100% ownership interest in the LLC. We transform the home with modern interior design and address any necessary repairs. Owners use the mobile app to book stays 2 days to 24 months in advance. Scheduling is easy and equitable based on the number of shares owned. From there we take care of everything, overseeing local property management, bill pay and platform technology, all from the mobile app. Owners simply show up, relax and enjoy their Pacaso."

The maximum length of a stay is based on shares owned. Owners of one share can enjoy a stay anywhere from 2 to 14 nights. A stay with a duration of 2-7 nights counts as one general stay, while a stay with a duration of 8-14 nights counts as 2 general stays. Owners of two shares have the option to book stays up to 28 nights.

Pacaso asserts that the properties that they sell and manage are not timeshares. According to Pacaso, a Pacaso home is no different from any other single family residence. Pacaso further asserts that Pacaso co-owners agree to several restrictions to help ensure that their use promotes the public interest, safety and comfort. For example, Pacaso states that there is a maximum of eight co-owners for any home, with only one family using the property at a time; co-owners are prohibited from having large events or parties that exceed the maximum occupancy of the home; co-owners must adhere to a 9pm to 7am quiet hour policy; co-owners are prohibited from renting the home; and Pacaso encouraged homeowners to avoid parking on the street unless absolutely necessary. However, Pacaso does not provide any documentation or explanation of how these rules are enforced. The stays are reserved on an app, and while each co-owner is prohibited from renting the home as a short-term rental, they are permitted to allow other guests to stay there during their allotted days.

According to Pacaso, as of September, one single-family residence within Palm Springs has been fully sold, and Pacaso was marketing four others within the City.

City of Palm Springs Timeshare Ordinance

The City of Palm Springs regulates where timeshares can be located within the City and taxes occupancy of timeshares. Specifically, under the City's zoning ordinance, a timeshare

project is allowed only in those zoning districts where a hotel use would be permitted (i.e., R-3, R-4, R-4VP, C-B-D, C-1, C-1AA and C-2 zones, and G-R-5 and R-2 zones when fronting on a major or secondary thoroughfare). (Palm Springs Zoning Code, § 93.23.11(B).) Indeed, such uses are not allowed by right, but instead require a conditional use permit. Notably, timeshares are not permitted in single-family zones.

The City's Zoning Ordinance defines a "timeshare" as follows:

> **"**…a "time-share project" is one in which time-share rights or entitlement to use or occupy any real property or portion thereof has been divided as defined in Section 3.24.020(7) of the Palm Springs Municipal Code into twelve (12) or more time periods of such rights or entitlement." (PSZC, § 93.23.11(A).)

Section 3.24.020(7) defines timeshares, for purposes of taxation. It defines a "timeshare" as

> "occupancy related to the situation wherein a purchaser receives the right or entitlement in perpetuity, for life, or for a term of years or other extended term, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), hotel or portion thereof, or segment of real property, annually or on some other seasonable or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided. The said right or entitlement to occupancy may attach in advance to a specific lot, parcel, unit, room(s), or portion of a hotel, or segment of real property, or may involve designation or selection of the same at a future time or times."

Despite Pacaso's assertions to the contrary, Pacaso's business model meets the City's Ordinance's definition of a "timeshare". The City's definition, broken down into its constituent parts, applies to Pacaso.

Specifically, Pacaso's business model fits the following definition: "wherein a purchaser receives the right in perpetuity… or other extended term, to the recurrent, exclusive use or occupancy of a lot … annually or on some other … periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided."

Here, purchasers of a Pacaso LLC receive the right, in perpetuity or some other period defined in the LLC agreement, to the recurrent and exclusive use of the lot on which the residence

is located. The right to such use is on some periodic basis, for a period of time that is allotted under the LLC agreement.

Thus, by its terms, the City's ordinance applies to a use such as Pacaso's. As such, Pacaso's operations are not permitted in single family-zones within the City of Palm Springs, California.

In addition to the City's Zoning Ordinance, the City's business license ordinance requires any party that is transacting any business within the City to first procure a business license and pay the applicable business license tax. (Palm Springs Municipal Code, § 3.48.010.) Pacaso does not possess a City business license, nor has it paid any business license tax to the City. As a result, Pacaso's operations within the City also are in conflict with the City's business license ordinance.

Finally, several significant policy reasons justify the City's prohibition against timeshares in single-family zones. As the City's Housing Element of the General Plan states,

> "Palm Springs considers housing affordability to be a critical issue. The inability to afford housing leads to a number of undesirable situations, including the doubling up of families in a single home, overextension of a household's financial resources, premature deterioration of housing due to the high number of occupants, situations where children and seniors cannot afford to live near other family members because of the lack of affordable housing options, and in more extreme cases, homelessness." (City of Palm Springs General Plan, Housing Element, p. 3-19, (2014-2019).)

For every house that Pacaso sells to one of its limited liability corporations, to be used as a second, vacation home, that house becomes unavailable to a buyer or renter who could live there full time. This necessarily reduces the amount of housing stock that is available for full time residents in the City. The reduction in housing stock, in turn, feeds the affordability crisis, making the remaining houses within the City more costly.

Pacaso may claim that it only purchases and sells "luxury" homes, and therefore does not impact the availability of affordable housing. However, basic laws of supply and demand dictate that every home that is made unavailable to a full time resident, whether "luxury" or not, necessarily reduces the supply of homes, and therefore reduces the affordability of housing in the City.

One of the policies of the City's Housing Elements is to "protect established single-family residential neighborhoods from the transition, intensification, and encroachment of uses that

detract and/or change the character of the neighborhood." (Housing Element, HS1.8, p. 3-63.) Pacaso portrays its business model as "the modern way to buy and own a second home". However, Pacaso's "modern way" involves up to eight (8) investors and their guests rotating occupancy throughout the year. Although the LLC investors are not technically "renters", neighbors can expect the property to have many of the secondary impacts of vacation rentals, which are currently prohibited in many Coachella Valley cities and heavily regulated in Palm Springs. For example, house cleaners will have to come to the home in between each stay, and the home can turn over multiple times in a week. To a neighbor, that impact is very much the same as if the occupants were short-term vacation renters. In addition, the "co-owners" of the limited liability company really have no connection with one another, other than their investment in the company. All of this necessarily changes the character of a neighborhood, in contravention of the City's stated policy of preserving the single-family residential character of its neighborhoods.

Another Housing Element policy is to "preserve the supply of affordable rental housing in the community, including mobile home parks, publicly subsidized rental housing, and special needs housing." (Housing Element, HS2.9, p. 3-68.) As stated above, Pacaso's business model removes single-family homes from the housing market for individuals or families who wish to reside in Palm Springs and therefore reduces the supply of affordable rental housing for those individuals or families.

Therefore, Pacaso's current operations within the City are unlawful and must cease immediately.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Jeffrey S. Ballinger
of BEST BEST & KRIEGER LLP
City Attorney
City of Palm Springs

VIA E-MAIL ELLEN@PACASO.COM

cc: Hon. Mayor and Councilmembers
Justin Clifton, City Manager
Teresa Gallavan, Asst. City Manager
Flinn Fagg, Development Services Director

Appendix J – Park City Notice of Amendment

LAND USE REGULATIONS FOR FRACTIONAL OWNERSHIP AND USE OF SINGLE-FAMILY DWELLING VACATION HOMES

In the past two years, companies have started to modernize the practice of co-ownership of a property under a fully managed LLC of Single-Family Dwellings. This model has been introduced to the Park City community, fractionalizing the ownership of vacation homes. Planning Staff is working on Land Management Code amendments to protect primary residential neighborhoods, while allowing fractional ownership of Single-Family Dwellings to those Zoning Districts that support secondary residences.

The proposed amendments prohibit fractional ownership of Single-Family Dwellings in primarily residential areas, including the Historic Residential Zoning Districts, Single-Family Zoning District, and Estate Zoning District. The amendments allow fractional ownership of Single-Family Dwellings in those Zoning Districts where Timeshares and Private Residence Clubs are allowed. (Please see the map below.)

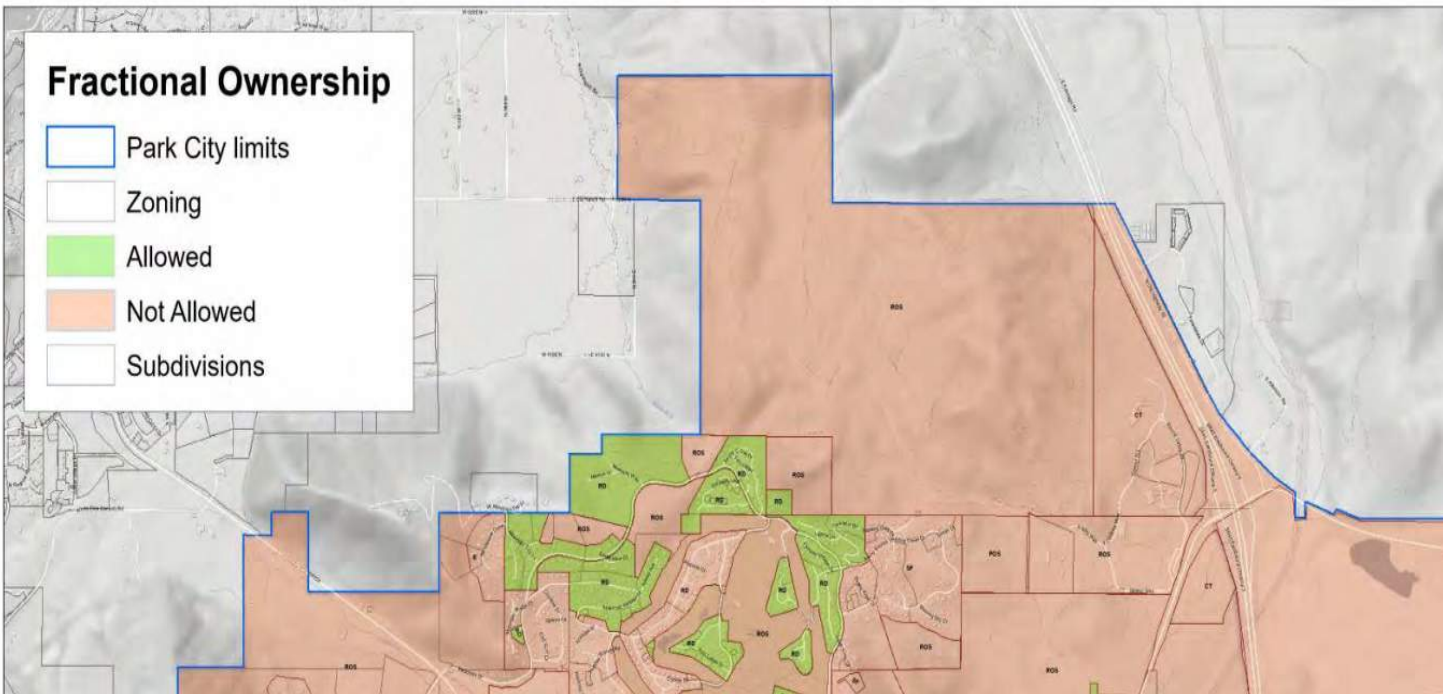
Originally, these amendments required a Conditional Use Permit, but Staff is evaluating regulation through a business license. Also, Staff is evaluating whether these could be allowed in all Historic Zoning Districts.

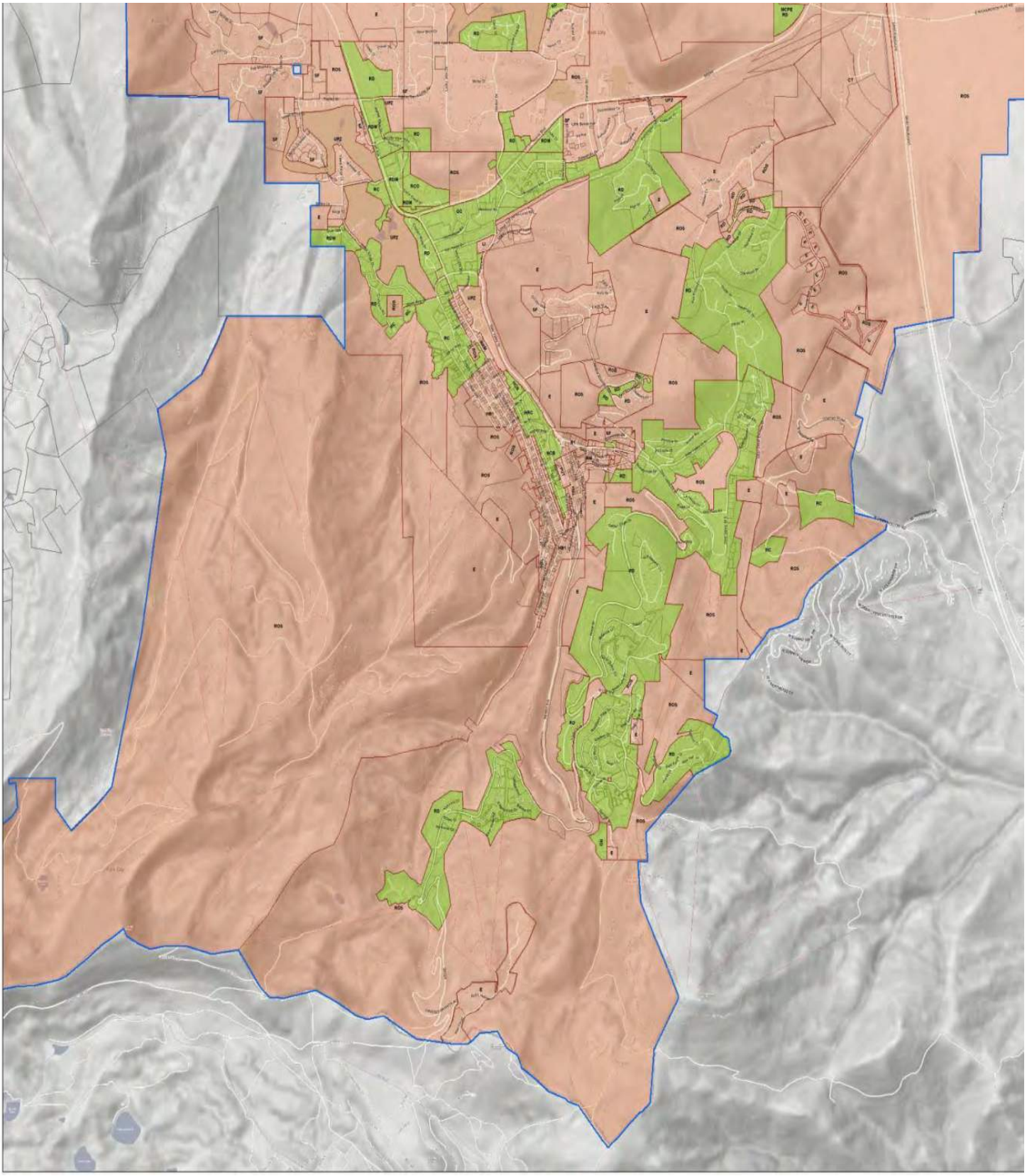
OPEN HOUSE

Please drop by on Tuesday, August 16, 2022, from 5:00 - 6:30 PM at the Park City Library, room 301 to meet with Staff and representatives from Pacaso to learn about the proposed Land Management Code amendments.

NEXT STEPS

On August 30, 2022, the Planning Commission and City Council are scheduled to conduct a joint work session on the proposed amendments. On October 6, 2022, the City Council is scheduled to conduct a public hearing on the proposed Land Management Code amendments. **Pacaso's Public Affairs Manger committed to pause acquisitions until these amendments are complete.**





The proposed Land Management Code amendments include:

1. Definition of Single-Family Dwelling Fractional Ownership/Use
    - Not all residences with multiple owners or owned by business entities (such as family trusts, LLCs, or corporations without fraction use limitations) fall under the proposed definition.

2. Establish Single-Family Dwelling Fractional Ownership/Use in Zoning Districts where Timeshares and Private Residence Clubs are allowed.
3. Establish regulations regarding management and use of the fractional ownership
    - To protect primarily residential Zoning Districts, the proposed amendments recommend restricting fractional ownership to the same Zoning Districts outlined for Timeshare Units and Private Residential Clubs. If adopted by City Council, the following Zoning Districts will allow Single-Family Fractional Ownership/Use as a Conditional Use:
        - Recreation Commercial
        - General Commercial
        - Historic Commercial Business
        - Historic Recreation Commercial
        - Residential Development*
        - Residential Development - Medium Density
        - Regional Commercial Overlay

    **If approved, Fractional Ownership/Use will be prohibited in subdivisions that have specifically prohibited nightly rentals, these include: April Mountain, Mellow Mountain Estates Subdivisions, Meadows Estates Subdivision Phases #1A and #1B, Fairway Meadows Subdivision, and Hidden Oaks at Deer Valley Phases 2 and 3.*

4. Require an active Business License
    - Requiring an active Business License helps the City monitor and ensure the fractional ownership of Single-Family Dwellings operates in compliance with the proposed amendments.

For more information, please see the following:

May 11, 2022: Planning Commission Work Session (Staff Report; Meeting Minutes)

May 25, 2022: Planning Commission Review and Public Hearing (Staff Report; Meeting Audio)

June 23, 2022: City Council Consideration and Public Hearing (Staff Report; Meeting Audio)

August 30, 2022: Joint City Council and Planning Commission Work Session

October 6, 2022: Upcoming City Council meeting and Public Hearing

Appendix K – City of Santa Cruz Ballot Initiative

Ballot Title:

AN INITIATIVE MEASURE PROPOSING AN ORDINANCE ADDING CHAPTER 3.38 TO THE SANTA CRUZ MUNICIPAL CODE TO ESTABLISH AN EMPTY HOMES TAX, A PARCEL TAX ON VACANT RESIDENTIAL PROPERTY IN THE CITY OF SANTA CRUZ

Summary:

If approved by the voters, this initiative would add Chapter 3.38 to the Santa Cruz Municipal Code, establishing a tax on residential parcels that are in use less than 120 days within a calendar year ("vacant parcels"). This would be a special tax, i.e., the City could use the revenue only for purposes specified in the measure. The tax would apply to various types of vacant properties, including single-family and multi-family residential parcels, condominiums, and townhomes.

The measure would require each owner of a residential parcel to submit an annual declaration to the City regarding the vacancy status of their property. The City would also be required to establish a process to annually audit properties declared "in use" to verify vacancy status. Making a false declaration as to a property's vacancy status would constitute a misdemeanor. Other violations of proposed Chapter 3.38 would be charged as infractions for the first two violations in a one-year period, and misdemeanors for three or more violations in the same time period.

The following annual tax rates would be established, subject to an annual CPI adjustment:

- $6,000 per vacant single-family residence;
- $6,000 per residential parcel with six or fewer units, where all units are in use less than 120 days per calendar year;
- $3,000 per vacant residential unit of a condominium or townhome; and
- $3,000 per vacant residential unit on residential parcels with seven or more units.

An owner would be permitted to claim an exemption from the tax in a number of enumerated circumstances, including demonstrable hardship, as defined, where the owner has experienced a significant medical event, construction activities are active or pending, where the property is affected by natural disaster, and other circumstances as specified.

The use of tax revenue would be restricted to specified purposes, including financing affordable housing construction, purchasing existing units for the purpose of maintaining or converting them to affordable housing, providing restroom and hygiene services to the homeless, and paying the costs of administering the tax and for independent audits of the use of tax revenues.

An Empty Home Tax Oversight Committee would be established to oversee the administration of the tax and to make recommendations to the City Council for improvement of zoning and land use designations in the interest of creating affordable housing. The Committee would have up to nine members, including three members who must be renters, two low-income individuals, two with financial expertise, one UCSC student, and one unionized city employee. The measure would require the City Manager or designee to provide clerical assistance, administrative support and technical assistance, and to attend Committee meetings.

This measure would authorize the City to adopt rules and regulations for implementation and administration of the tax. A simple majority of voters is required to pass the measure.

RESOLUTION NO. NS-30,016

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ 1) ORDERING AN ELECTION, 2) REQUESTING COUNTY ELECTIONS CONDUCT THE ELECTION, 3) REQUESTING CONSOLIDATION WITH THE GENERAL ELECTION ON NOVEMBER 8, 2022 FOR THE PURPOSE OF ADDING TWO MEASURES, AND 4) DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURES

WHEREAS, pursuant to Elections Code Section 10002, the governing body of any city or district may, by resolution, request the Board of Supervisors of the county to permit the county elections official to render specified services to the city relating to the conduct of an election; and

WHEREAS, the resolution of the governing body of the city shall specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002, the city shall reimburse the county in full for the services performed upon presentation of a bill to the city; and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10400, such election for cities and special districts may be either completely or partially consolidated; and

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city, or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation; and

WHEREAS, pursuant to Elections Code Section 10418, if consolidated, the consolidated election shall be held and conducted, election boards appointed, voting precincts designated, candidates nominated, ballots printed, polls opened and closed, voter challenges determined, ballots counted and returned, returns canvassed, results declared, certificates of election issued, recounts conducted, election contests presented, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the statewide or special election, or the election held pursuant to Section 1302 or 1303, as applicable.

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, various district, county, state, and other political subdivision elections have been called to be held on November 8, 2022.

NOW THEREFORE, BE IT RESOLVED AND ORDERED that the City Council of the City of Santa Cruz hereby orders an election to be called and consolidated with any and all elections also called to be held on November 8, 2022 insofar as said elections are to be held in the same territory or in territory that is in part the same and requests the Board of Supervisors of the County of Santa Cruz to order such consolidation under Elections Code Sections 10401, 10403, and 10418.

BE IT FURTHER RESOLVED AND ORDERED that the City of Santa Cruz hereby requests the Board of Supervisors to permit the Santa Cruz County Elections Department to provide any and all services necessary for conducting the election and agrees to pay for said services, and

BE IT FURTHER RESOLVED AND ORDERED that the Santa Cruz County Elections Department shall conduct the election for the attached measures to be voted on at the November 8, 2022 election.

BE IT FURTHER RESOLVED AND ORDERED that the Santa Cruz County Elections Department is requested to print the attached measure text exactly as filed or indicated on the filed document in the County Voter Information Guide for the November 8, 2022 election. Cost of printing and distribution of the measure text will be paid for by the City.

Pursuant to its right, title, and authority under Section 3 of Article XI of the California Constitution and Sections 1415(a)(2) and 9255(b)(1) of the California Elections Code, the City Council hereby calls an election to be held in the City of Santa Cruz on Tuesday, November 8, 2022 for the purpose of submitting to the voters the following measures (and such other questions as the City Council may hereafter order to be presented to the voters):

Measure "___" Empty Home Tax (see Exhibit A for full text)

Shall the City of Santa Cruz establish an "Empty Home Tax" on residences that are in use less than 120 days per calendar year in the amount of $6,000 per single-family residence, $6,000 per parcel with six or fewer units, and $3,000 per year on condominiums and residential units on parcels with seven or more units, with revenue allocated toward affordable housing projects, 15% for administration, and 5% for homeless sanitation services, with administration overseen by a community oversight committee?	Yes	
	No	

Measure "___" Our Downtown, Our Future – General Plan and Downtown Plan Amendment (See Exhibit B for full text)

Shall the City of Santa Cruz General Plan and Downtown Plan be amended to: (1) prohibit construction of the proposed Downtown Library and Affordable Housing Project and relocation of the Downtown Farmers Market; (2) require development of affordable housing on certain Downtown City-owned surface parking lots; and (3) designate the use of surplus parking district revenue for Downtown affordable housing development projects, alternative transportation programs for downtown workers and other non-parking related expenditures?	Yes	
	No	

BE IT FURTHER RESOLVED, arguments for or against either measure will be accepted after the deadline set by the City Clerk.

BE IT FURTHER RESOLVED, the City Council hereby directs the City Clerk to transmit a copy of the measures to the City Attorney. The City Attorney shall prepare an impartial analysis of the measures showing the effect of the measures on the existing law and the operation of the measures. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.

BE IT FURTHER RESOLVED, if any section, subsection, sentence, clause, or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED AND ADOPTED this 28th day of June, 2022 by the following vote:

AYES: Councilmembers Kalantari-Johnson, Cummings, Brown, Meyers; Vice Mayor Watkins; Mayor Brunner.

NOES: None.

ABSENT: Councilmember Golder.

DISQUALIFIED: None.

APPROVED: _____
Sonja Brunner, Mayor

ATTEST: _____
Bonnie Bush, City Clerk Administrator

RESOLUTION NO. NS-30,016
EXHIBIT A

AN INITIATIVE MEASURE PROPOSING AN ORDINANCE ADDING CHAPTER 3.38 TO THE SANTA CRUZ MUNICIPAL CODE TO ESTABLISH AN EMPTY HOMES TAX, A PARCEL TAX ON VACANT RESIDENTIAL PROPERTY IN THE CITY OF SANTA CRUZ

BE IT ORDAINED by the people of the City of Santa Cruz:

Section 1. Title
This Ordinance may be referred to as the "City of Santa Cruz Empty Home Tax."

Section 2. Purpose
The taxes imposed under this Ordinance are solely for the purpose of raising revenue necessary to support and fund the creation of affordable housing, and related programs, described below. Because the proceeds of the parcel tax will be deposited into a special fund restricted for the services and programs specified in this Ordinance, the tax is a special tax.

Section 3. Code amendment
A new Chapter is hereby added to the City of Santa Cruz Municipal Code to read as follows:

Chapter 3.38 Empty Home Tax

Section 3.38.010 Definitions
Section 3.38.020 Determination of vacancy
Section 3.38.030 Audit authority and procedures
Section 3.38.040 Imposition of parcel tax on vacant property
Section 3.38.050 Empty Home Tax Fund
Section 3.38.060 Use of Empty Home Tax Ordinance revenue
Section 3.38.070 Empty Home Tax Oversight Committee
Section 3.38.080 Accountability
Section 3.38.090 False declarations
Section 3.38.100 Enforcement and penalties
Section 3.38.110 Appeal process
Section 3.38.120 Administrative regulations and delegation

Section 3.38.010. Definitions.
"Affordable housing" means housing intended to operate as affordable to low, very low, and extremely low incomes as defined in Title 25 of the California Code of Regulations, Sections 6922 (Affordable Rent), 6924 (Affordable Housing Purchase) and 6932 (Income Limits) or their successor provisions by the California Department of Housing and Community Development, in perpetuity, and not subject to a single contract period, regardless of renewability.

"Calendar year" refers to the twelve-month period from January 1 through December 31 pursuant to which the City will determine whether any parcel or unit is subject to the tax.

"City" means the City of Santa Cruz.

"Committee" means the Empty Home Tax Oversight Committee which reviews the annual independent fiscal audits and is responsible to issue an annual report on its findings regarding the special tax proceeds being spent for their authorized purposes.

"Condominium" as defined in Section 4125 or 6542 of the Civil Code of the State of California.

"County" means Santa Cruz County.

"CPI" means the San Francisco - Oakland - Hayward, CA Consumer Price Index for All Urban Consumers (CPI-U) 12-Month Percent Changes, All Items Index, Not Seasonally Adjusted, for October of the subject year.

"Financial expertise" means understanding generally accepted accounting principles and financial statements, experience preparing, auditing, analyzing, or evaluating financial statements, and internal controls and procedures for financial reporting.

"In use" means physical occupancy of a residential parcel, dwelling unit, house, apartment, condominium, or townhome by a lawful inhabitant.

"LGBTQIA2S+" means Lesbian, Gay, Bisexual, Transgender, Queer and/or Questioning, Intersex, Asexual, Two-Spirit, and the countless affirmative ways in which people choose to self-identify.

"Long-term care facility" means any licensed facility as defined in California Health and Safety Code Chapter 2.4 Section 1418.

"Mixed-use" means a parcel where residential components must be the predominant use of the property with at least fifty (50) percent of the buildings' square footage or lot area to be allocated to residential uses and has at least one (1) residential unit and at least one (1) non-residential use.

"Mobilehome park" shall mean an area of land in the city where five (5) or more mobilehome spaces are rented, or held out for rent, or made available for use, to accommodate mobilehomes used for human habitation.

"Multifamily residential parcel" means a parcel that is improved with more than one (1) residential unit.

"Nonresidential parcel" means a parcel that is improved with uses other than residential units.

"Owner" means the owner or owners of the real property located within the City of Santa Cruz as of the last day of December of the calendar year pursuant to which a property is deemed to have been vacant or not vacant for the purposes of applying any exemptions defined in Section 3.38.040(G). The owner shall not be exempt from the tax unless each person or entity that owns a portion of the real property can separately demonstrate that they are entitled to an exemption.

"Parcel" shall mean a unit of real property in the City of Santa Cruz as shown on the most current official assessment roll of the Santa Cruz County Assessor.

"Public parcel" means a parcel that is publicly owned and that is normally exempt from the levy of general ad valorem property taxes under California law, including but not limited to public streets, schools, parks, public drainage ways, public landscaping, wetlands, greenbelts, and public open space.

"Residential parcel" means a parcel that is improved with one (1) or more residential units.

"Residential unit" means a building or structure, or portion thereof, designed for or occupied exclusively by one (1) household, including unrelated persons who live together and maintain a common household.

"Single-Family residential parcel" means a parcel which is improved with only one (1) residential unit.

"Tax" or "City of Santa Cruz Empty Home Tax" means the special tax authorized by this Chapter.

"Taxable property" means a parcel of real property excluding public, undeveloped, non-residential and mobilehome parks, within the City.

"Townhome" means a single-family dwelling unit constructed in a group of three (3) or more attached units in which each unit extends from the foundation to roof and with a yard or public way on not less than two (2) sides.

"Undeveloped parcel" means a parcel, regardless of zoning or other land use designation, upon which no permanent improvements are constructed or placed.

"Vacant" means in use for less than one hundred and twenty (120) days within a calendar year.

Section 3.38.020. Determination of vacancy.

A. For the purposes of this Chapter, a taxable property, shall be deemed "vacant" and subject to the tax imposed by Section 3.38.040 below if the parcel is any of the following:

1. A single-family residential parcel that is in use less than one hundred and twenty (120) days during a calendar year.

2. A condominium or townhome unit under separate ownership that is in use less than one hundred and twenty (120) days during a calendar year.

3. A multifamily residential parcel, including mixed-use, with six (6) Residential Units or less where all units are in use less than one hundred and twenty (120) days during a calendar year, assessed on a per parcel basis.

4. A multifamily residential parcel, including mixed-use, with seven (7) or more Residential Units where any unit is in use less than one hundred and twenty (120) days during a calendar year, assessed on a per unit basis.

B. The vacancy status of a taxable property shall be determined by an annual declaration of the owner, their agent, or a representative authorized to declare on their behalf.

1. The City shall establish a process for annual declaration of vacancy status for a taxable property, that shall include the following components.

a. A website or online portal which explains the Tax and allows declaration of vacancy status.

b. A paper declaration form and instructions to be mailed to owners no later than December 31 of the calendar year for which the Tax is being imposed using the name and address found on the Santa Cruz County Secured Tax Roll.

c. A method to claim exemption from the Tax pursuant to Section 3.38.040(G) of this Chapter. Any taxable property deemed exempt from the Tax shall not be required to submit an annual declaration of vacancy status.

2. The owner or their agent or representative shall declare vacancy status no later than April 15 of the year following the calendar year for which the Tax is being imposed.

Section 3.38.030. Audit authority and procedures

A. The City shall establish a process to annually audit taxable properties declared "in use" as defined in this Chapter to verify the declaration of vacancy status. The process shall include the following components:

1. A registered owner may be required to provide information at any time and for a period of up to three (3) years after the applicable calendar year respecting:

a. the property;

b. the identity and address of the registered owner;

c. the status of the property; and

d. the nature of the occupancy of the property.

2. If audited, the owner or their agent or representative shall be required to submit documentation or evidence as required by separate ordinance or regulation adopted by the City Council by resolution in support of their vacancy status declaration.

B. Not more than once annually, the City may examine and perform an audit to review the requested documentation or evidence submitted by an owner to substantiate their vacancy declaration status to ensure compliance with Section 3.38.020. Audits may be performed:

1. any time the City believes an owner is making a false declaration of vacancy status;

2. when there is a pending ownership change; and

3. at appropriate intervals as determined by the City.

Section 3.38.040. Imposition of parcel tax on vacant property.

A. A special tax in the amounts set forth below is hereby imposed on every taxable property within the City determined pursuant to Section 3.38.020, except as exempted, as described below in Section 3.38.040(G).

B. The Tax constitutes a debt owed by the owner of each taxable property to the City.

C. The County shall levy and collect the Tax on each taxable property in the City for which the owner receives a separate ad valorem property tax bill, at the same time and manner, and subject to the same penalties and procedures as ad valorem property taxes collected by the County except as otherwise set forth in this Ordinance.

D. The Tax shall be imposed on the ad valorem property tax bill for the fiscal year that begins July 1 following the end of the calendar year in which the taxable property was vacant. The special tax shall first be imposed no sooner than the ad valorem property tax bill for fiscal year 2024-2025 for taxable properties that were vacant in the previous calendar year.

E. Tax Rates.

1. The tax rates for each taxable property type shall be as set forth in the table below. The City shall be responsible for assigning a tax rate for each parcel. The City shall not lower the rates or adopt further categories of exemption without voter approval.

Taxable Property Type	**Annual Tax Rate**
Residential parcel with six (6) or fewer units	$6,000.00 per vacant parcel
Condominium or townhome under separate ownership	$3,000.00 per vacant residential unit
Residential unit on parcel with seven (7) or more units	$3,000.00 per vacant residential unit

2. For residential parcels with one to six (1-6) units, the parcel is not vacant if any unit on the parcel is "in use" as defined in this Chapter. A condominium or townhome under separate ownership is treated as a separate unit, and if not "in

use", is subject to the tax regardless of the status of any other unit on the same parcel, lot or that is part of the same development. For residential parcels with seven (7) or more units, the vacancy status of each unit is assessed individually for the purposes of this Chapter, and if it is not "in use", it is subject to the tax regardless of the status of any other unit on the same parcel or that is part of the same development.

3. On January 1 of the year after the tax in this Chapter is enacted, and every January 1 thereafter, the City shall adjust the tax rates in Section 3.38.040(E) to account for the rate of inflation by the lesser of the CPI for the prior year or two (2) percent, except that in the event of a negative CPI no adjustment shall be made, rounded to the nearest one dollar ($1). The incremental change shall be added to the associated tax rate for that year.

F. Real property otherwise wholly exempt from ad valorem tax by state law shall also be exempted from the tax imposed by this Chapter.

G. Claimed Exemptions.

1. A taxable property owner may claim an exemption from the tax imposed by this Chapter in any of the circumstances specified in this Section. The following exemptions shall be granted when such exemption has been properly claimed by the taxable property owner and when the grounds for such exemption have been fully verified:

a. An owner, for any period of time during the relevant calendar year, experienced a significant medical event that kept the owner from engaging in their normal work or business activities for at least thirty (30) days.

b. A taxable property that is vacant due to a demonstrable hardship that is unrelated to the owner's personal finances. The following circumstances constitute a "demonstrable hardship":

1) The subject taxable property was, for at least one hundred and eighty (180) days during the relevant calendar year, subject to a lis pendens, or similar court order, giving notice of a conflict regarding title or ownership interests, pursuant to any pending lawsuit, probate action, condemnation action or other action or proceeding filed with any court.

2) The owner, for at least sixty (60) days during the relevant calendar year, was serving in the military and deployed in another state or overseas.

3) The then owner died at some time during the relevant calendar year.

4) The owner inherited the taxable property during the relevant calendar year or in the immediately preceding calendar year.

c. The subject taxable property is under active construction. To qualify for this exemption, an owner must keep the building permit or permits active. The "active construction" exemption applies if the owner held, for at least fifty (50) days during the relevant calendar year, a valid and active building permit for the taxable property.

d. An owner of taxable property for which an active building permit application is being processed by the City. This "building permit application" exemption applies if during or previous to the relevant calendar year, the owner submitted a building permit application to the City and the total number of days during which the application was pending plus any number of days after the application was approved but before the end of the relevant calendar year was at least fifty (50) days.

e. An owner of a taxable property which is included in a substantially complete application for planning approvals that has not yet received approval. An owner of a taxable property for which a project with development entitlements has been approved but needing time for completion may apply for and receive a one-time three-year exemption. The "substantially complete application for planning approvals" exemption applies if the owner held a notice from the City stating that an application for planning approvals with respect to the subject taxable property was complete and such application remained pending for at least fifty (50) days during the relevant calendar year. After an application for planning approvals is approved for the subject taxable property, the owner may apply for an administrative one-time three-year exemption, exempting the subject taxable property from being deemed vacant for the calendar year during which the application for planning approvals was approved and for the following two calendar years. Exemption expires upon issuance of certificate of occupancy.

f. An owner of taxable property who demonstrates to the satisfaction of the City Planning Department that the taxable property is not habitable for at least one hundred and twenty (120) days during the calendar year, due to being affected by natural disaster or environmental hazard.

g. An owner placed in a long-term care facility or that has moved permanently into a family member or friend's home to receive care will receive a one-time three-year exemption from the tax which includes the calendar year the owner was placed in long-term-care outside of the taxable property.

h. Taxable property registered under the Santa Cruz Short Term Rental Ordinance.

i. One hundred (100) percent of the legal interest in the taxable property is transferred within the relevant calendar year.

2. Pursuant to Section 3.38.020(B) of this Chapter, the City shall establish the procedures and guidelines for owners to apply for, and grant, the exemptions identified in this Section as part of the declaration process. owners who claim an exemption may be required to submit information annually to substantiate their continuing qualification for an exemption.

3. The City Council may, by ordinance, provide supplemental definitions for the exemptions in this Section and for the administration of the exemptions.

Section 3.38.050. Empty Home Tax Fund.
The "Empty Home Tax Fund" ("Fund") is hereby created as a special revenue fund. Proceeds from the Santa Cruz Empty Home Tax, including penalties and interest earned on such proceeds, shall be deposited into the Fund and used only for the purposes listed in Section 3.38.060.

Section 3.38.060. Use of Empty Home Tax Ordinance revenue.
Monies deposited in the Empty Home Tax Fund shall be used solely for those purposes identified in this Section.

A. Monies in the Fund may be used to finance the construction of affordable housing as defined in this Chapter.

B. Monies in the Fund may be used to purchase existing housing units for the purposes of maintaining or converting them to affordable housing as defined in this Chapter.

C. A residential unit is considered affordable housing if it falls under any of the following restrictions:

1. public housing owned by the City, County, State, or Federal government, subject to internal legal restrictions on affordability consistent with affordable housing as defined in the Chapter;

2. privately owned housing with a transferrable affordability restriction applied on the deed consistent with affordable housing as defined in the Chapter;

3. housing under an easement contract owned by any government agency stipulating its usability only for affordable housing as defined in this Chapter; or

4. housing owned by a nonprofit affordable housing provider with internal bylaws that do not include a fixed contract term of affordability, and with a reasonable expectation of long-term affordability protections consistent with affordable housing as defined in the Chapter.

D. Up to five (5) percent of the revenue deposited into the Fund in any single year may be used to provide sanitation, bathroom, and hygiene services for the unhoused community in the City.

E. Monies in the Fund may be used to pay the costs of an independent third-party audit of the use of monies in the Fund.

F. Monies in the Fund may be used to pay for the costs of administering the Tax, regardless of how or by what entity those administrative services are provided. No more than fifteen (15) percent of the revenue deposited into the Fund in any single year may be used to pay for such administrative costs, except that revenue used to pay for the costs of the Empty Home Tax Fund Oversight Committee established by Section 3.38.070 shall not count toward the fifteen (15) percent. Notwithstanding the foregoing, the City shall be reimbursed for its administrative costs of establishing the program for collecting the tax, whose costs shall be confirmed by a third-party auditor. Administrative costs include, but are not limited to:

1. the costs to the City associated with monitoring and enforcing compliance with this Chapter;

2. the costs to the City associated with developing ordinances and regulations to implement this Chapter;

3. the costs to the City associated with the operations of the Empty Home Tax Fund Oversight Committee established by Section 3.38.070; and

4. the costs to the City associated with collecting the tax.

Section 3.38.070. Empty Home Tax Oversight Committee.

A. The Empty Home Tax Oversight Committee is hereby established for community oversight of the Tax established by this Chapter, and to make recommendations to the City to improve zoning and land use designations to better support the creation of affordable housing as defined by this Chapter.

B. The Committee shall meet at least one (1) time per calendar year and more frequently as needed. The first meeting of the Committee each year shall be held within three (3) months of the release of the annual audit. A majority of Committee members may request in writing that the City Council approve the Committee meeting more than once per year.

C. The Committee shall review relevant financial and operational reports, including enforcement and compliance data, related to the expenditures. The Committee shall publish an annual report that shall be posted on a dedicated page of the City of Santa Cruz website regarding how and to what extent the City has implemented this Chapter. Additionally, the Committee may obtain or prepare and publish reports regarding the following:

1. recommendations from the Committee for consideration by the City Council on how to prioritize the allocation of funds in accordance with the requirements of this Chapter, including for supporting the provision of affordable housing to households qualifying at least low-income households (those at fifty (50) percent Average Median Income or below); and

2. information, if available, concerning the impacts of programs funded by the Empty Home Tax in the City.

D. The Committee shall appoint a member as liaison to communicate with the City Manager and City.

E. The Committee shall consist of nine (9) members who are all residents of the City. No fewer than three (3) members must be renters. No fewer than two (2) members must be in the low, very low or extremely low income category but do not have to be renters. No fewer than two (2) representatives must have financial expertise. No fewer than one (1) member shall be a currently enrolled student at the Santa Cruz campus of the University of California at the time of appointment. No fewer than one (1) member must be a city worker who is an active member of a union bargaining unit during their tenure on the Committee. Members may fulfill more than one (1) of these criteria for the purposes of meeting these requirements. The City will hold an open application period for all seats similar to the process for other Advisory Bodies. Members of the Committee shall be appointed by the City pursuant to Section 2.40 of the City of Santa Cruz Municipal Code. Members of the Committee shall receive no salary for serving.

F. Members shall serve four (4) year terms, as provided for in Santa Cruz Municipal Code Section 2.40.011(c). No member shall serve more than two (2) consecutive four (4) year terms. Of the initial members of the Committee, three (3) appointments shall be for one-year terms, three (3) appointments shall serve for two-year terms, and three (3) appointments shall be for three-year terms. Thereafter, all terms shall be for four (4) years. All terms of members shall begin as of the date that nine (9) members have been appointed, which is when the Committee may begin its work. All future terms shall begin and end on that same day and month of subsequent years.

G. A quorum of the Committee shall never be fewer than five (5) members and if seats are not filled due lack of applicants, work may begin with five (5) members and a quorum will consist of three (3) members.

H. A member may be removed for cause by a majority vote of the City Council. Absence from three (3) consecutive regular meetings, or four (4) non-consecutive regular meetings during a single fiscal year, may constitute cause for removal from the Committee. In addition, any cause for removal may be voted on by the Committee and if a majority votes to recommend removal, it shall be referred to the City Council for a final vote on removal of the member from the Committee. If the City Council fails to appoint a Committee member following a vacancy within three months (3) of the vacancy, the Committee may appoint an interim Committee member by a majority vote.

I. The City Manager or designee shall provide clerical assistance, administrative support and technical assistance to the Committee and shall be present at the Committee meetings.

J. The Committee may hold at least one (1) meeting per year at a location outside of City Hall but within the City of Santa Cruz.

K. The Committee may convene community meetings to solicit community testimony and other input to build trust between the community, neighborhoods and the City, and to address other similar and relevant subjects as determined by the Committee within its jurisdiction.

L. The Committee may invite subject matter experts and individuals to provide informational presentations, including but not limited to representatives from faith-based groups, non-profit affordable housing developers, land use experts, unhoused community advocates, renters' rights groups, land trusts, youth groups, LGBTQIA2S+ advocates, veterans, racial equity experts, and other members of the community.

M. The Committee may establish by a majority vote, bylaws, working groups and sub-committees.

N. Committee members shall be provided and shall attend training on the following:

1. basic principles of Robert's Rules of Order and meeting procedures; and

2. the legal requirements of California's Political Reform Act (Cal. Gov. Code section 81000, et seq.), Santa Cruz's Conflict of Interest Code (Resolution No. NS-18,483 - 2/14/89), California's Brown Act (Cal. Gov. Code section 54950, et seq.), and California's Public Records Act (Cal. Gov. Code section 6250, et seq.) and diversity, equity and inclusion.

Section 3.38.080. Accountability.
In accordance with the requirements of California Government Code Sections 50075.1 and 50075.3, the following accountability measures, among others, shall apply to the tax:

A. A separate, special account, referred to as the Empty Home Tax Fund, shall be created, into which the proceeds of the Tax must be deposited.

B. The specific purposes of the Tax are for provision of affordable housing and for the other purposes set forth in Section 3.38.060 of this Chapter. The proceeds of the tax shall be applied only to these specific purposes.

C. The Committee established by Section 3.38.070 shall perform the oversight functions listed in that Section to ensure that the revenue from the tax is spent solely for the purposes listed in Section 3.38.060.

D. An independent third-party auditor shall perform regular audits at least annually to ensure accountability and proper disbursement of all revenue collected by the City from the Tax imposed by this Chapter, in accordance with the objectives stated herein and in compliance with provisions of California law.

3.38.090. False declarations.
Any person required to make, render, sign or verify any report under the provisions of this Chapter, who makes any false or fraudulent declaration, with intent to defeat or evade the determination of an amount due and required to be paid hereunder, is guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred (500.00) dollars or by imprisonment in the county jail for a period of not more than six (6) months, or by both such fine and imprisonment.

3.38.100. Enforcement and penalties.

A. Except as provided in Section 3.38.090, a violation of any of the provisions of this Chapter shall constitute an infraction for the first two (2) violations of this Chapter in a one-year period, which shall be punishable by a fine in a bail established by the City Council by resolution. Each person or entity in violation of this Chapter may be charged with a separate offense for each and every day during any portion of which any violation of any provision of this Chapter is committed, continued or permitted by such person or entity and shall, upon conviction, be punished accordingly. Three (3) violations within a one-year period shall constitute a misdemeanor, which shall be punishable by a fine of one thousand (1,000.00) dollars and/or by imprisonment in the county jail for a period of not more than six (6) months.

B. In addition to any other remedy provided by this code, this Chapter may be enforced by injunction issued by the superior court upon a suit brought by the City of Santa Cruz, or upon a suit brought by any aggrieved party. Pursuant to Section 4.04.020, as part of a civil action filed to enforce provisions of this chapter, a court may assess a maximum civil penalty of two thousand five hundred (2,500.00) dollars per violation of this chapter for each day during which any person commits, continues, allows or maintains a violation of any provision of this chapter.

C. This Chapter is enacted for the significant public benefit of promoting public health, safety and welfare to minimize any adverse impact on the community due to vacant residential units exacerbating the housing affordability crisis and to increase the affordable housing stock for the lowest income levels in the City. Therefore, if a private attorney general plaintiff successfully brings an action to enforce this Chapter against any offenders of this Chapter, it is the desire and intent of the city of Santa Cruz that the successful plaintiff be able to recover its reasonable attorneys' fees under Code of Civil Procedure Section 1021.5, or any similar private attorney general successor statute.

D. Repeated violations of this Chapter constitute a public nuisance which may be enjoined under all applicable law, including, but not limited to, Municipal Code Section 4.04.020 and Code of Civil Procedure Section 731. Therefore, pursuant to Municipal Code Sections 4.25.010 and 4.25.020, the prevailing party to an action or proceeding to enjoin a public

nuisance arising from violations of this Chapter shall recover the amount of its reasonable attorneys' fees.

E. If the owner of a taxable property previously declared "in use" cannot provide requested required documentation to substantiate that status, the taxable property will be considered to be "vacant", and excluding a successful appeal pursuant to Section 3.38.110 of this Chapter, be subject to the Tax and any associated penalties. Additionally, the owner of the taxable property shall be subject to all of the following:

   a. immediate audit of the declaration of vacancy status for the three (3) preceding calendar years, except; if the tax has not yet been enacted for the preceding three (3) calendar years, the declaration of vacancy status shall be audited for all preceding calendar years in which the tax was applied; if the current majority interest property owner has not owned the taxable property for the entirety of the audit period defined above, the audit will be constrained to only the time period the current owner held a majority interest in the taxable property; if one hundred (100) percent of the legal interest in the taxable property was transferred within the preceding three (3) calendar years, the declaration of vacancy status shall be audited only back to the calendar year immediately following the transfer;

   b. ongoing audit of the declaration of vacancy status for the two (2) following calendar years; and

   c. pursuant to Santa Cruz Municipal Code Chapter 4.26, any additional administrative costs associated with audits required due to an owner being unable to provide required documentation to substantiate vacancy status shall be recovered from the owner directly. Monies recovered through this provision shall be deposited in the Empty Home Tax Fund.

F. The City may take any other action permitted by law to ensure compliance with this Chapter and other City ordinances subject to its administration, including, but not limited to, general municipal code enforcement procedures in Santa Cruz Municipal Code Title 4.

G. The remedies provided herein shall be cumulative and not exclusive. No remedy provided in this Chapter shall be deemed to be a prerequisite to the taking of any other action provided for herein.

Section 3.38.110. Appeal process.

A. Request for Hearing. Following an adverse decision after an audit pursuant to Section 3.38.030 or the imposition of the tax pursuant to Section 3.38.040 an owner may, within twenty (20) days of notification of an adverse decision of an audit or receiving their ad valorem tax bill, file a petition and request an appeal hearing before a hearing officer as defined in Section 4.22 of the Santa Cruz Municipal Code. Upon such request, the City Manager shall randomly appoint an independent hearing officer from a panel of at least five (5) previously identified hearing officers.

B. Pre-Hearing Procedure. Prior to the hearing, the hearing officer may receive supplemental materials and evidence from the petitioner and the City. As soon as practical, the hearing officer shall set a deadline to receive any supplemental materials and evidence and shall set a hearing date.

C. Hearing Procedure. Formal rules of evidence shall not apply to the conduct of the hearing and decisions shall be made on the preponderance of the evidence standard. The hearing officer shall have the authority and discretion to permit examination of witnesses. Any party to a hearing may be assisted by a representative, including an attorney.

D. Decision Following Hearing. As soon as practical following the hearing, the hearing officer shall issue a written decision regarding the vacancy status of the subject taxable property. At the discretion of the hearing officer, the decision may, but is not required to, include findings of fact. The hearing officer's decision shall be considered final on the day it is executed by the hearing officer.

E. Further Action. After the hearing officer issues a final decision, any party may seek further appropriate relief from the superior court. Any person whose complaint, claim, or petition may be resolved by employing the administrative remedies provided in Section 3.38.110 (A-D) must exhaust those remedies before filing any suit for refund, rebate, exemption, cancellation, amendment, adjustment, or other codification of the tax.

Section 3.38.120. Administrative regulations and delegation.

A. The City is authorized to adopt rules and regulations consistent with this Chapter as needed to implement this Chapter, and to develop all related forms and/or other materials and take other steps as needed to implement this Chapter and make such interpretations of this Chapter as they may consider necessary to achieve the purposes of this Chapter.

B. The City Manager may delegate any authority within the City Manager's discretion pursuant to this Chapter as the City Manager deems reasonably necessary.

Section 4. Severability.

If any section or portion of this Ordinance is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of the remainder of the Ordinance, which shall continue in full force and effect, and to that extent, the provisions of this Ordinance are severable.

Section 5. California Environmental Quality Act requirements.

The City hereby determines that this Ordinance is not in-and-of-itself a "project" pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation CEQA Guidelines 15378(b)(4) and 1506l(b)(3), as it can be seen with certainty that there is no possibility that the adoption of the ordinance itself may have a significant effect on the environment. To the extent that special tax revenues generated by the Ordinance may in the future be used to fund the construction of capital improvements, the Ordinance may assist in the financing of future "projects" that will be subject to environmental review pursuant to CEQA at the "earliest feasible time" prior to "approval" consistent with CEQA Guidelines Sections 15004

and 15352.

Section 6. Approval; effective date.
This Ordinance, and all the provisions thereof, shall become effective only upon affirmative passage by a fifty (50) percent plus one (1) majority vote of the voters voting on the Ordinance. This Ordinance shall be considered adopted on the date that the City declares the results of the election at which it was voted upon and shall be effective ten (10) days thereafter.

Section 7. Council amendments.
This Ordinance may only be amended by a vote of the people if the amendment would result in the special tax being imposed, extended, decreased or increased in a manner not authorized by this Ordinance as originally approved by the voters. The City Council of the City of Santa Cruz is hereby authorized to amend Chapter 3.38 of the Santa Cruz Municipal Code as adopted by this Ordinance in any manner that does not decrease or increase the tax rates, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

RESOLUTION NO. NS-30,016
EXHIBIT B

The full text of the Measure is as follows:

The People of the City of Santa Cruz do hereby ordain as follows:

Section 1. Purposes

The purposes of this Measure are to establish policies:

(1) to address the City's housing crisis by prioritizing development of affordable housing on specified City-owned properties in Downtown Santa Cruz;

(2) to maintain the Downtown Farmers' Market and Downtown Library, important community institutions, at their current locations;

(3) to prevent the construction of a multi-level parking garage Downtown that transportation consultants to the City have concluded is unnecessary. The garage would contribute to increased greenhouse gas emissions.

(4) to prioritize the expenditure of surplus parking revenue for:

(a) promoting development of affordable housing Downtown,

(b) supplementing 2016 Bond Measure S funding to renovate and modernize the Downtown Library,

(c) making improvements to the public space hosting the Downtown Farmers' Market; and

(d) providing funding for transportation demand management programs that reduce vehicle trips and make more parking available to visitors.

This measure further directs City officials to make any further conforming changes to the General Plan, Downtown Plan, Zoning Ordinance, and/or Local Coastal Program that are necessary and appropriate to comply with this Measure and State law.

Section 2. Findings

The people of City of Santa Cruz find and declare:

1. **Action is needed to maintain Downtown as a place where a broad diversity of people can meet their needs in a Complete Neighborhood.**

The Santa Cruz 2030 General Plan explicitly values "Complete Neighborhoods." These are neighborhoods where people can live, work, access goods and services, recreate, learn, and

socialize. Complete Neighborhoods include housing for a diversity of income levels. The General Plan adds to the definition of Complete Neighborhoods: "Residents need access to parks, open space, and other places where they can relax and socialize." Planning for a Downtown that includes affordable housing prioritized on City-owned underutilized property, an improved Downtown Farmers' Market and event space, and a renovated and modernized Downtown Library at its historic location across from City Hall will enhance Downtown as a Complete Neighborhood. The experience of cities across the world is that Complete Neighborhoods reduce demand for auto transportation and parking.

2. Housing Affordability Is a Pressing Need.

A. According to the National Low Income Housing Coalition report (2019), Santa Cruz is the least affordable small city in the US. The limited supply of housing and especially affordable housing relative to demand causes stress and disruption of our community.

B. In Downtown locations where parking demand can be met, conversion of specified City-owned surface parking lots for development of affordable multi-family dwellings can add at least twice as many and potentially three times as many affordable housing units as currently proposed for City Lot 4, the current site of the Downtown Farmers' Market on Cedar Street, including 120 to 200 units on Lot 7, a City-owned lot on Front Street, and additional units on other City parking lots specified for affordable housing development in this Measure. Public parking continuing on the ground levels of these and other structures can meet localized parking demand.

C. The Housing Crisis Act of 2019 ("SB 330") calls for the expansion of residential development opportunities throughout the City, including opportunities for affordable housing development. Consistent with this State law, this Measure prioritizes affordable housing development on certain designated City-owned parcels that are now used as surface parking lots.

3. Farmers' Market Open Space is a Community Priority.

A. As more housing is developed Downtown, the need for public space for residents becomes more acute. As the City's General Plan provision calling for Complete Neighborhoods states, "Residents need access to parks, open space, and other places where they can relax and socialize."

B. Retaining the Downtown Farmers' Market where it has been for over two decades, at 119 Lincoln Street on the City-owned parcel known as Lot 4, will further the policies and goals of the City's General Plan that provides for "establishing a sense of place and walkability of the City," and of the Downtown Plan that provides that: "Open spaces within downtown Santa Cruz should have value and meaning; they should be carefully located where people want to be and in locations that take advantage of the unique resources, heritage, and traditions of the community." The proposed move of the Downtown Farmers' Market from its current location to the smaller Lot 7 on traffic-congested Front St. at Cathcart St. or another location would inhibit adherence to these policies and achievement of these goals,

and is inconsistent with the Downtown Plan.

4. The Downtown Library, thoroughly modernized at its current location, can serve the public well and enhance the Civic Center.

A. Measure S, passed in 2016, provides bond funds for the Santa Cruz Libraries Facilities Financing Authority to "modernize, upgrade and repair local libraries in Santa Cruz [and other locations] – replace failing roofs, outdated bathrooms, electrical systems/ structurally damaged facilities; support growing use by children, seniors, veterans and others; expand access to modern technology; and construct/ expand facilities where necessary."

B. City consultants Jayson Architecture have proposed plans to use a portion of the City's share of Measure S bond funds to thoroughly renovate the existing Downtown Library to create a 21st-century facility with new plumbing, electrical, HVAC, shelving, carpeting, lighting, and elevators, and adjacent handicapped and other parking. The proposal includes study rooms, a teen space, and a greatly increased children's area and large community room, both with outdoor patios.

C. Creating a state-of-the-art Downtown Library at its present site builds on the 117-year tradition of having the Library in the city's Civic Center.

5. Parking competes with and reduces opportunities for affordable housing.

A. Parking competes with housing for space. According to Urban Planning Partners, reporting to the Santa Cruz City Planning Commission on January 7, 2021, the space required to park two cars (including circulation space) is equivalent to the space required for a two-bedroom housing unit.

B. Parking competes with affordable housing for City funds. Tens of millions of dollars saved from not building a new garage can be used to support development of affordable housing Downtown.

C. Based on parking supply/demand projections and financial considerations, professional parking consultants have advised the City that a new parking garage is unnecessary. Nelson\Nygaard's "Economics of Parking: Santa Cruz Strategic Parking Plan" (2019), produced for the City of Santa Cruz, states, "The most fiscally prudent approach to accommodating additional demand: Modernize parking management and better align parking prices to the cost of building and maintaining the system." This report further states that "In aggregate almost thirty percent of off-street parking in the Downtown remains empty even at the peak of the peak times.... Oversupplying parking in a space-constrained area like a downtown can fragment the built environment, creating a less desirable place to work, live, visit, and walk around."

6. The City's Climate Action Goals can be advanced by this Measure.

A. Prioritizing a public space for the Downtown Farmers' Market on Lot 4, Cedar St., will

permit the preservation of ~~10~~ Heritage trees and preserve the parcel for possible future development as a public space, park, or commons, thereby advancing the City's Climate Action Goals, rather than undermining them.

B. Expansion of auto infrastructure undermines the ability of the City to reduce automobile dependency, the largest local contributor to global warming. The City failed to achieve its Climate Action Plan (2012) goal of reducing vehicle trips within town by 10% by 2020.

C. Increasing the City's supply of affordable and market-rate housing can enable more workers to live close to their jobs in Downtown Santa Cruz, reducing vehicle miles traveled.

D. Prioritizing Lot 4 for the Downtown Farmers' Market and other fairs and public events will allow use of 2016 Measure S Bond funds to renovate and modernize the Downtown Library at its existing location, thereby reducing the production of greenhouse gases required for the construction of a new library as part of a mixed-use project on Lot 4. As the 2021 winners of the prestigious Pritzker Architecture Prize assert: "Never demolish, never remove – always add, transform and reuse."

7. Surplus parking revenue can support Downtown as a Complete Neighborhood.

The City can avoid building a new garage by following consultant recommendations to make better use of existing parking resources. Savings from not building a garage can be invested in affordable housing and improvements to the Downtown Library and Downtown Farmers' Market infrastructure, as well as incentives for workers Downtown to commute by means other than single-occupant autos.

Section 3. Definitions

As used in this measure:

"Affordable housing" means residential dwelling units which are affordable to extremely low, very low, low, median, or moderate income households as defined by the Affordable Housing Provisions of the Santa Cruz Municipal Code (Chapter 24.16), or by any federal or state housing program and are subject to rental, sale, or resale provisions to maintain affordability.

"Downtown Plan" means the City of Santa Cruz *Downtown Plan* (September 1991) As Amended through January 28, 2020 and the date of approval of this measure by the voters of the City of Santa Cruz.

"General Plan" means the City of Santa Cruz 2030 General Plan, as amended through the date of approval of this Measure by the voters of the City of Santa Cruz.

"Lot 4" means the City-owned parcel at 119 Lincoln Street on the east side of Cedar Street between Lincoln and Cathcart Streets (APN 005-141-21), as shown on **EXHIBIT B**.

"Measure" means this Initiative measure, including its statement of reasons and full text.

"SB 330" means the Housing Crisis Act of 2019, as approved by the Governor on October 9, 2019 and subsequently codified in the California Government Code.

"Surplus parking revenue" means revenue determined by the City Council to be in excess of what is required in order to ~~provide and~~ maintain, improve or expand existing parking facilities or create new parking facilities in ~~of~~ the Downtown Parking District ~~and determined by the City Council as not needed to improve or expand such parking facilities~~.

"Zoning Code" means Title 24, Zoning, of the Santa Cruz Municipal Code.

Section 4. General Plan Amendments

A. The voters hereby amend the City of Santa Cruz 2030 General Plan, Chapter 5 (Mobility), to add the following new General Plan Policy (addition in underline text):

M1.5.7 Prioritize, in a manner consistent with State law, the expenditure of surplus parking revenue from the Downtown Parking District ~~that is in excess of funds needed to provide and maintain existing parking facilities and spaces~~ for use in: 1) supporting the development of affordable housing for people who work Downtown; 2) establishing transportation demand management programs for people who work Downtown, including free transit passes; 3) supporting two Complete Neighborhoods projects – ~~including~~ renovation and modernization of the Santa Cruz Public Libraries' Downtown Branch at 224 Church Street and improvements to Lot 4, to enhance the use of the space for public gatherings and recreation, including the Downtown Farmers' Market.

B. The voters hereby amend the City of Santa Cruz 2030 General Plan, Chapter 4, Land Use, to add the following new General Plan Policy LU3.7.2 under existing Policy LU3.7 as shown below (additions in underline text):

RESIDENTIAL USES

LU3.7 Encourage higher-intensity residential uses and maximum densities in accordance with the General Plan Land Use designations. Cf. LU4.1.

LU3.7.1 Allow and encourage development that meets the high end of the General Plan Land Use designation density unless constraints associated with site characteristics and zoning development standards require a lower density. Cf. LU1.3

LU3.7.2 Require, to the maximum extent feasible, that certain designated parcels situated within the City of Santa Cruz Downtown Plan area, as shown in **EXHIBIT A**, and with the APNs as shown, **that are City-owned parcels as of the date the voters approve this Measure**, shall be developed with permanently affordable housing, with parking **permissible on the ground level and** not permissible **on floors** above the ground level, and public park space permissible, where appropriate. For Lots 14 and 16, library facilities and library-associated functions shall also be permissible on floors above the ground level. This Policy shall apply notwithstanding any subsequent sale or transfer of any City-owned parcels to private parties after the date the voters

approve this Measure.

C. The voters hereby amend the City of Santa Cruz 2030 General Plan, Chapter 4, Land Use, to add the following new General Plan Policy LU1.1.6 under existing Policy LU1.1 as shown below (additions in underline text):

LU1.1.6 Recognize as a policy priority that the City-owned parcel at 119 Lincoln Street known as Lot 4 (APN 005-141-21) is the preferred long-term location of the Downtown Farmers' Market as well as other fairs and public events, with other ground-level uses incompatible with this priority strongly discouraged. This policy priority shall specifically not preclude the development of affordable housing and associated uses on Lot 4 above the ground level. Parking and other uses not associated with affordable housing are prohibited in any development on Lot 4 on floors above ground level.

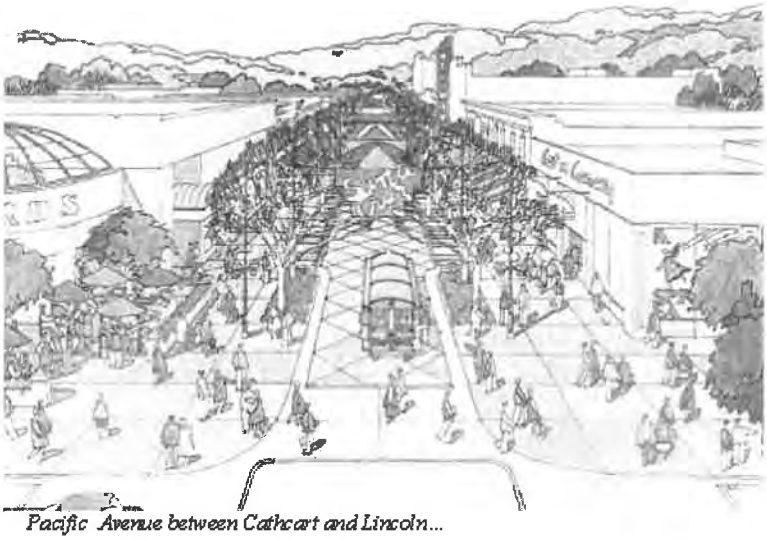
D. The voters hereby amend the City of Santa Cruz 2030 General Plan, Chapter 4, Land Use, to add the following new General Plan Policy LU1.1.7 under existing Policy LU1.1 as shown below (additions in underline text):

LU1.1.7 Recognize as a policy priority that the current location of the Santa Cruz Public Libraries' Downtown Branch at 224 Church Street is the preferred long-term location of this important community institution, with other uses incompatible with this priority strongly discouraged.

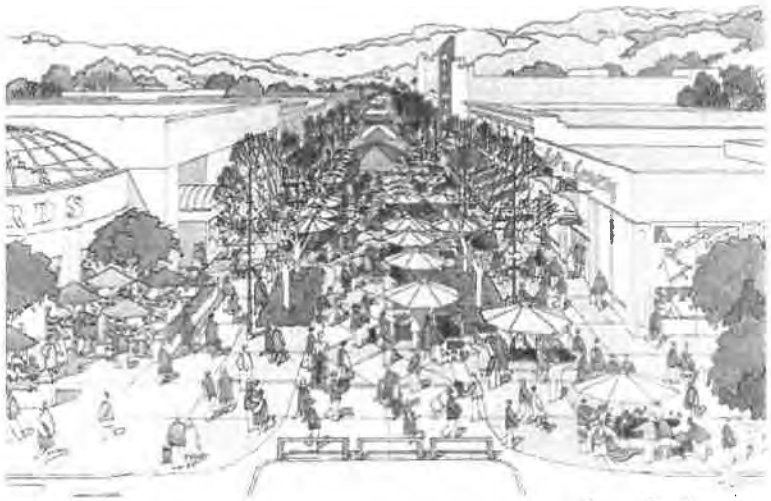
Section 5. Downtown Plan Amendments

A. The voters hereby amend the Downtown Plan, Chapter 1, Introduction, *Executive Summary*, pp. 10-11, to amend text as shown below (additions in underline text, deletions in ~~strikethrough~~ text):

[continued on next page]



Pacific Avenue between Cathcart and Lincoln...



... ~~will be transformed once a week into a Farmers Market.~~ can be transformed for special occasions and events.

Reinforcing the Pedestrian-Oriented Environment

Downtown Santa Cruz should be a place where pedestrians feel comfortable throughout the day and nighttime hours. Great pedestrian places are those that always feel full and active, with people promenading, window shopping or watching other people, people sitting in cafes with friends, people passing by on bicycles, or people enjoying a

spontaneous street performance. The public spaces and streets of downtown Santa Cruz must be appropriately scaled to ensure that a comfortable pedestrian environment is created. As the major open space within the downtown, streets should be designed to respond to the cyclical nature and needs of the community. The ability to have larger pedestrian spaces when they are needed and more intimate and active places at other times will give the streets a life and character of their own. For instance, an annual parade or festival may warrant the temporary closure of all of Pacific Avenue to automobiles~~, whereas a weekly farmer's market could be accommodated on a particular street segment (e.g., between Cathcart and Lincoln)~~. Similarly, traffic could be closed on other streets within the downtown (e.g., Cooper Street between Pacific and Front or Front Street between Water and River Streets) for special events.

B. The Downtown Plan, Chapter 1, Introduction, *Executive Summary*, p. 14 is amended as shown below (additions in underline text):

Housing Feasibility and Affordability

A comprehensive housing implementation strategy should be developed by the City to establish a feasible program for the creation of market-rate and affordable housing, including developer incentives, land write-downs, public participation in financing, parking reductions, etc. The Downtown Plan does not recommend the imposition of exactions on commercial developers for the creation of residential development. However, the Downtown Plan requires, to the extent feasible, that certain designated parcels situated within the City of Santa Cruz Downtown Plan area as shown **in Exhibit A, and with the APNs as shown, that are City-owned parcels as of the date the voters approve this Measure**, shall be developed with permanently affordable housing, with parking **permissable on the ground level and** not permissible **on floors** above the ground level, and public park space permissible, where appropriate.

C. The Downtown Plan, Chapter 3, Land Use Plan, *The Cedar Street Village Corridor*, p. 29, is amended as follows (additions in underline text):

The land use plan and the standards and guidelines strive to preserve and enhance the informal "village" qualities of the Cedar Street Corridor. Unlike the Pacific Avenue district, permitted ground-level uses include office in addition to retail, and residential uses are allowed at the ground level along the east-west streets and Center Street. No strict "build-to" lines are established, and the height of development is purposely stepped down to a maximum of 35 feet, or three floors. The land use plan further strives to preserve adequate space for the Downtown Farmers' Market on Lot 4, the City-owned parking lot at 119 Lincoln Street, the **east side of Cedar Street between Lincoln and Cathcart Streets** (APN 005-141-21).

D. The Downtown Plan, Chapter 4, Development Standards and Guidelines, *Additional Regulations – Upper Floor Uses*, p. 44, is amended as follows:

(2) Multi-family Housing. Development projects containing up to 60 units in size are principally permitted uses. Residential uses shall incorporate sound attenuation space planning designs and construction materials and methods such that noise from nearby

commercial activities do not unduly disturb occupants of new dwelling units. Residential development exceeding 60 units will be considered with a Special Use Permit if it can be demonstrated that such a development includes a mixture of unit types (e.g., variety of unit sizes) that will be attractive to a wide range of potential residents. Single-Room Occupancy projects require approval of an AUP and are subject to 24.12.1000 et seq. Single-Room Occupancy projects exceeding 60 units require approval of City Council. For properties east of Front Street between Soquel Avenue and Laurel Street, housing is a priority use and shall be at least 60% of the total floor area of the project. This requirement does not apply to properties within 75 feet of Laurel Street or Soquel Avenue. Parking shall be a prohibited use above the ground floor of any future development of the City-owned parcels referenced in Policy LU3.7.2 and shown in **EXHIBIT A** thereto, where upper level affordable housing development is prioritized.

E. The Downtown Plan, Chapter 6, Streetscape and Open Space Plan, *Pacific Avenue: Cathcart to Lincoln*, p. 105, first paragraph, is amended as follows (additions in underline text, deletions in ~~strikethrough~~ text):

Pacific Avenue: Cathcart to Lincoln

The segment of Pacific Avenue between Cathcart and Lincoln Streets has a right-of-way width of approximately 80 feet. The area is characterized by a significant number of vacant parcels resulting from the earthquake. These sites include the Ford's Department Store property at Cathcart and Pacific, Plaza and Logos Books, and the Good Times and Gularte properties on the east side of Pacific Avenue. In spite of this devastation, the area is also characterized by several strong destinations including the Del Mar Theater, the Plaza Books Annex, and the Cat 'n' Canary clothing store~~, and the weekly farmer's market on the Ford's property~~. Redevelopment efforts are fairly advanced in the area, with three approved projects: two retail/residential developments on the Gularte and Good Times sites, and a retail/office development that will replace Logos Books.

F. The Downtown Plan, Chapter 6, Streetscape and Open Space Plan, *Pacific Avenue: Cathcart to Lincoln*, p. 106, second paragraph, is amended as follows (deletions in ~~strikethrough~~ text):

The redevelopment of the Ford's and Plaza Books site will be critical to the achievement of a strong pedestrian environment in this area. The Plan recommends the consolidation of these two properties for the creation of a major retail anchor that could reinforce this portion of the downtown as a strong retailing destination. At the corner of Cathcart and Pacific, a setback of approximately 800 square feet is proposed as an entry plaza and cafe for this anchor use, to activate the street and to create a strong gateway to the downtown. Major storefront displays within the retail development would also serve to enliven the street and build off the creative windows across the street at Cat 'n Canary~~. The Plan also recommends that this segment of the street be closed on a weekly basis to accommodate the farmer's market.~~

G. The Downtown Plan, Chapter 7, Implementation and Management Strategy, *Downtown Management Strategy,* p. 130, is amended to delete text as follows (deletions in ~~strikethrough~~ text):

~~**Farmer's Market**~~

~~• The CRM [Cooperative Retail Management entity] would assist in the coordination and administration of the weekly farmer's market on the City owned parcel at 119 Lincoln Street, including issuance of permits, control over individual vendors, and logistics related to setup, trash control, storage of stalls and vehicles, and street cleanup.~~
~~• The CRM would also coordinate with adjacent property owners and retailers to ensure that the farmer's market continues to be compatible with their merchandising.~~

Section 6. Implementation

A. Effective Date. Upon the effective date of the approval of this Measure by the voters of the City of Santa Cruz, the provisions of Section 4 of the Measure **concerning parcels that do not lie within the Coastal Zone** are hereby inserted into the City of Santa Cruz General Plan, and the provisions of Section 5 of the Measure are hereby inserted into the City of Santa Cruz Downtown Plan; except that if the four amendments of the mandatory elements of the General Plan permitted by state law for any given calendar year have already been utilized in the year in which the Measure becomes effective, this General Plan amendment shall be the first amendment inserted into the City of Santa Cruz General Plan on January 1 of the next year. At such time as the provisions of Section 4 of the Measure are inserted into the City of Santa Cruz General Plan, and the provisions of Section 5 of the Measure are inserted into the City of Santa Cruz Downtown Plan, any provisions of the City of Santa Cruz Zoning Code, as reflected in the Zoning Code itself or in the City of Santa Cruz Zoning Map, that are inconsistent with the provisions of Section 4 and/or Section 5 of this Measure shall not be enforced. **The exception to the effective date is the Measure's application to parcels within the Coastal Zone. Parcels within the Coastal Zone require a Local Coastal Program amendment. The City Council is directed to submit an amended Local Coastal Program to the Coastal Commission within 6 months of voter approval, incorporating the provisions of Section 4 of this Measure. If the Coastal Commission denies the amendment, this Measure's application to parcels within the Coastal Zone will be void. If the Coastal Commission requires a modification of the amendment, the City Council will have 4 months to approve the modification or withdraw the amendment. For parcels within the Coastal Zone, the provisions of this Measure shall go into effect immediately upon Coastal Commission approval of an amended Local Coastal Program. No voter approval is necessary for the City Council to agree to a modification of the Local Coastal Program required by the Coastal Commission.**

B. Interim Amendments. The date that the notice of intention to circulate this Initiative was submitted to the City elections official is referenced herein as the "Submittal Date." The

City of Santa Cruz General Plan in effect on the Submittal Date as amended by this Measure is required by state law to comprise an integrated, internally consistent, and compatible statement of policies for the City of Santa Cruz. In order to ensure that nothing in this Measure would prevent the General Plan from being an integrated, internally consistent, and compatible statement of the policies of the county, as required by State law, and to ensure that the actions of the voters in enacting this Measure are given effect, any amendment or update to the General Plan that is adopted between the Submittal Date and the date that the General Plan is amended by this Measure shall, to the extent that such interim-enacted provision is inconsistent with the General Plan provisions adopted by this Measure, be amended as soon as possible to ensure consistency between the provisions adopted by this Measure and other provisions of the General Plan.

C. Compliance with SB 330. The City of Santa Cruz and its City Council are hereby authorized and directed to amend the Santa Cruz General Plan, Downtown Plan, all specific plans, the Zoning Ordinance, the Zoning Map, Land Use Maps, and any other ordinances and policies affected by this Measure as soon as possible and in the manner and time required by any applicable state law, to ensure consistency between the policies adopted in this Measure and any governing provisions of SB 330.

D. Other City Ordinances and Policies. The City of Santa Cruz and its City Council are hereby authorized and directed to amend the Santa Cruz General Plan, Downtown Plan, all specific plans, the Zoning Ordinance, the Zoning Map, Land Use Maps, and any other ordinances and policies affected by this Measure as soon as possible and in the manner and time required by any applicable state law, to ensure consistency between the policies adopted in this Measure and other elements of the General Plan, Downtown Plan, all specific plans, the Zoning Ordinance, the Zoning Map, Land Use Maps, and other City ordinances and policies.

Section 7. Severability and Interpretation

A. This Measure shall be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this Measure is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Measure. The voters hereby declare that this Measure, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are declared invalid or unconstitutional. If any provision of this Measure is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Measure that can be given effect without the invalid application. This Measure shall be broadly construed in order to achieve the purposes stated in this Measure.

B. If any portion of this Measure is held by a court of competent jurisdiction to be invalid, the voters hereby declare their strong desire that: (i) the City Council use its best efforts to sustain and re-enact that portion, and (ii) the City Council implement this Measure by taking all steps possible to cure any inadequacies or deficiencies identified by

the court in a manner consistent with the express and implied intent of this Measure, including adopting or reenacting any such portion in a manner consistent with this Measure.

C. Should the City Council determine that it is impossible to comply with the requirements of state law without amending the General Plan and/or Zoning Code in a manner inconsistent with the purposes, intent, or operative provisions of this Measure, it shall first seek voter approval of any proposed inconsistent amendments, and should the voters reject such amendments the City Council shall thereafter seek a judicial declaration or similar relief from a court of competent jurisdiction as to the existence and extent of the proposed amendments' inconsistencies with this Measure.

Section 8. <u>No Unconstitutional Taking</u>

This initiative is not intended, and shall not be applied or construed, to authorize the City to exercise its powers in a manner which will take private property for public use without the payment of just compensation, but shall be interpreted, applied and implemented so as to accomplish its purposes to the maximum constitutionally permissible extent. If application of this initiative to a specific property of record as of its effective date would create a taking, then the City Council may allow additional uses on said property, upon findings that the level of additional development permitted is the minimum necessary to avoid a taking, and no lesser level of development would be sufficient to avoid a taking.

Section 9. <u>Amendment or Repeal</u>

Except as otherwise provided herein, this Measure, including the General Plan Amendments and Downtown Plan Amendments enacted hereby, may be amended or repealed only by a majority of the voters of the City of Santa Cruz.

Section 10. <u>Effective Date and Duration</u>

A. The provisions of this initiative shall remain in effect through the year 2050.

B. This initiative shall take effect 10 days after the city council declares the results of the election approving this measure.

Section 11. <u>Conflicting Ballot Measures</u>

In the event that this Measure and another measure or measures relating to the same or similar subject matter shall appear on the same election ballot, the provisions of the other measures shall be deemed in conflict with this Measure. In the event that this Measure shall receive a greater number of affirmative votes, the provisions of this Measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

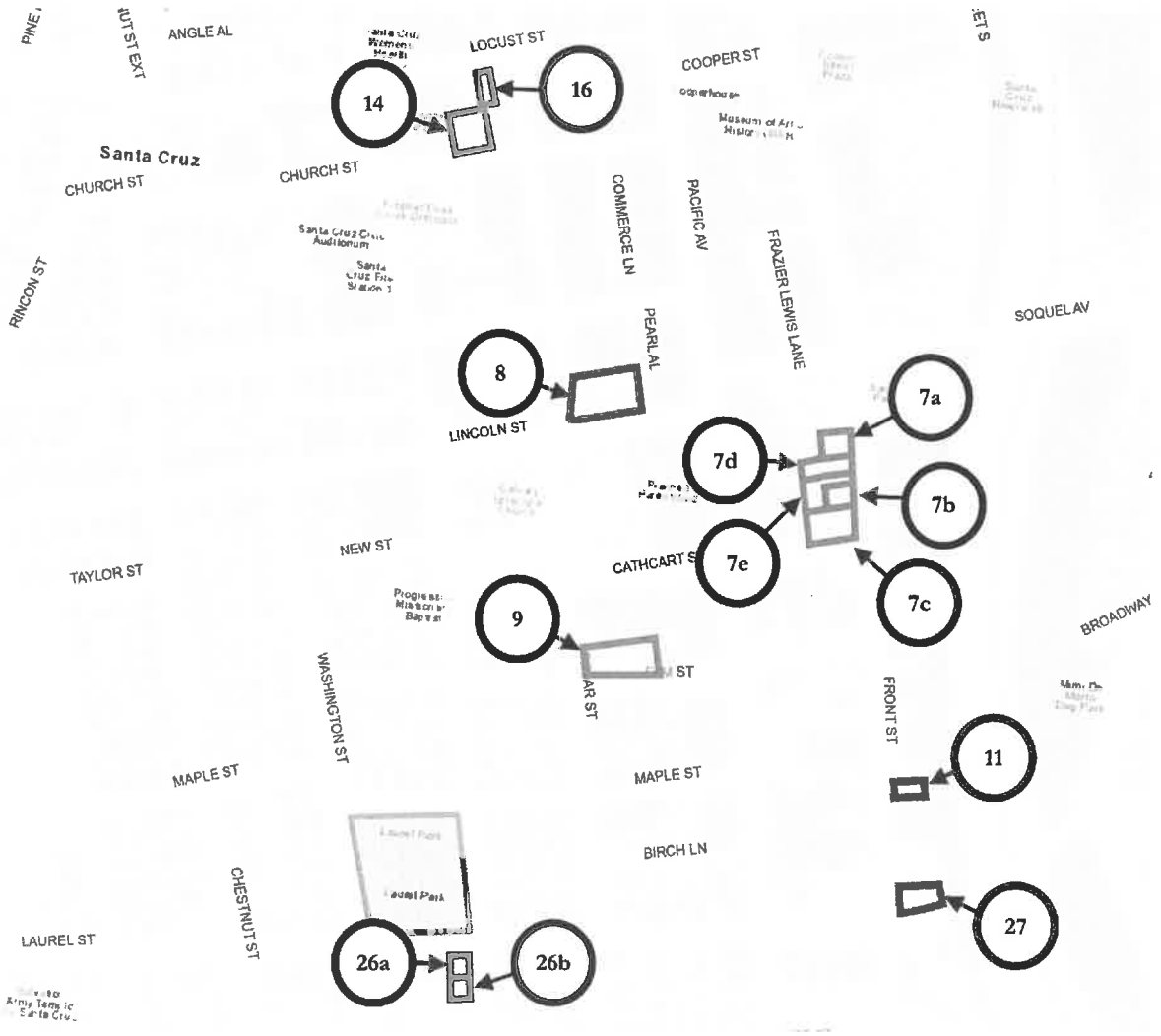
Exhibit List

EXHIBIT A. Map depicting City-owned parcels in the Downtown Plan area currently used as surface parking lots, to be prioritized for affordable housing development, as designated in this Measure (APN Nos. 005-048-11; 005-048-12; 005-075-12; 005-142-09; **005-151-35; 005-151-48;** 005-153-03; 005-153-05; 005-153-17; 005-153-28; 005-153-29**; 007-012-01; 007-012-02**).

EXHIBIT B. City Parking Lot 4. Map showing Santa Cruz City-owned parcel at 119 Lincoln Street on the east side of Cedar Street between Lincoln and Cathcart Streets (APN 005-141-21).

EXHIBIT A

Map depicting City-owned parcels situated within the Downtown Plan area, currently used as surface parking lots, to be prioritized for affordable housing development, as designated in this Measure.

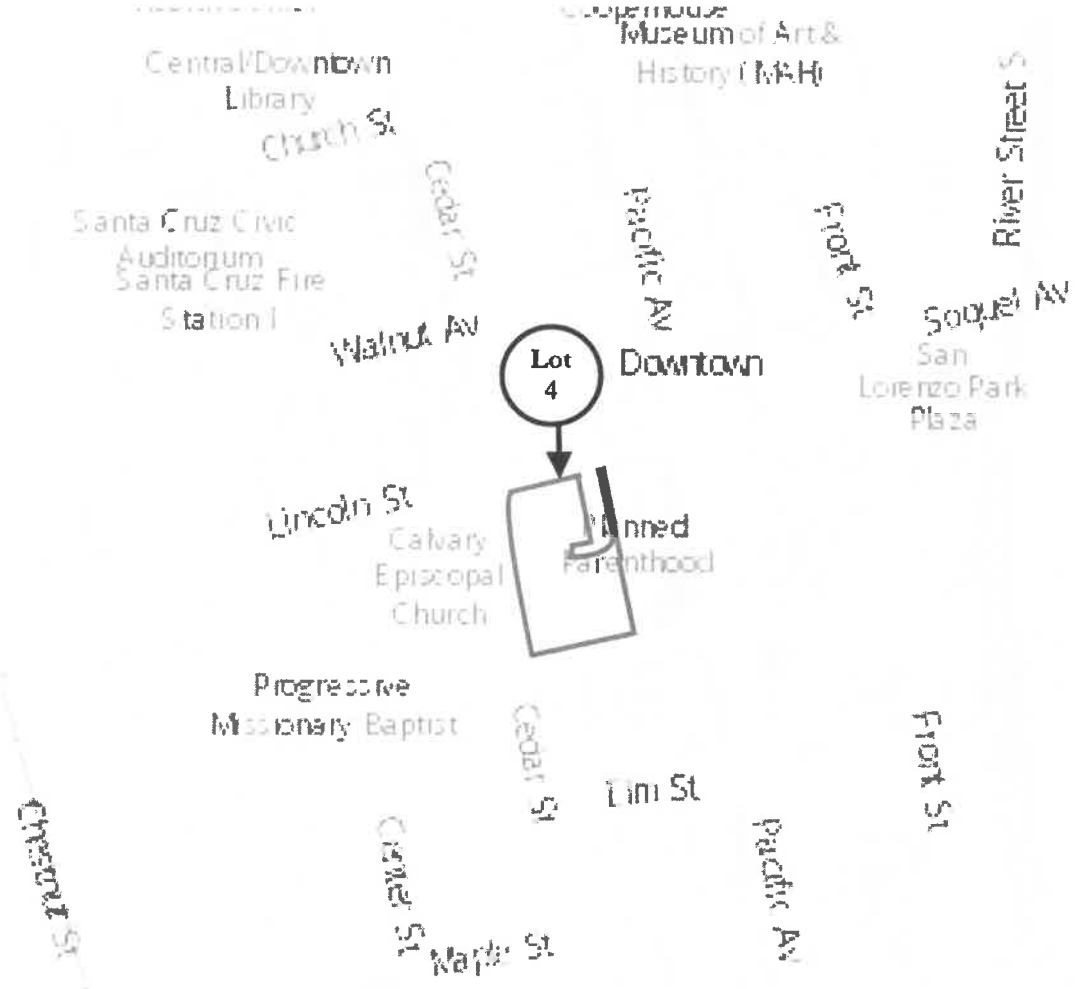


RESOLUTION NO. NS-30,016
EXHIBIT B

City Location on Map	Parking Lot	APN	Street Location
7a	7	005-153-03	Front Street
7b	7	005-153-05	Front Street
7c	7	005-153-17	Front Street at corner of Cathcart Street
7d	7	005-153-28	Front Street
7e	7	005-153-29	Front Street
8	8	005-075-12	Cedar Street at corner of Lincoln Street
9	9	005-142-09	Cedar Street at corner of Elm Street
11	11	005-151-35	Front Street
14	14	005-048-11	Locust Street
16	16	005-048-12	Church Street
26a	26	007-012-01	Center Street at corner of Laurel Street
26b	26	007-012-02	Center Street
27	27	005-151-48	Front Street at corner of Laurel Street

EXHIBIT B

City Parking Lot 4. Map showing Santa Cruz City-owned parcel at 119 Lincoln Street on the east side of Cedar Street between Lincoln and Cathcart Streets (APN 005-141-21).



Appendix L – City of South Lake Tahoe Cease and Desist Order

Office of the City Attorney
Heather L. Stroud

VIA EMAIL

July 12, 2021

Patrick Abell
Senior Counsel, Real Estate, Pacaso
patrick@pacaso.com

NOTICE TO CEASE AND DESIST

Dear Mr. Abell:

Thank you for acknowledging the Courtesy Notice of Zoning Regulations Restricting Time Share Use sent to Pacaso on May 14, 2021. I received your email dated May 20, 2021 which asserts that Pacaso is not subject to the City of South Lake Tahoe's time share regulations. I have reviewed your assertions and disagree that Pacaso is not advertising, selling, and operating time shares as defined in the South Lake Tahoe City Code. Section 6.60.020 of the South Lake Tahoe City Code broadly defines "time-share" as "the right to use and occupy a unit on a periodic basis in any manner which under the laws of the state of California constitutes a time-share arrangement or estate." Under California law, a "time-share plan" is similarly broadly defined to mean "any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, received ownership rights in or the right to use accommodations for 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." Bus. & Prof. Code §11212(z).

You attempt to distinguish Pacaso from a time share by stating that "Pacaso sells ownership interests in real estate." However, under the definition above, a "sale" or "deed" resulting in "ownership rights in or the right to use accommodations for a period of time less than a full year during any given year . . ." is a "time-share plan." You also note that time-share plans of 10 or fewer units are not subject to the Vacation Ownership and Time-Share Act of 2004, citing Business & Professions Code section 11211.5(b)(1). This does not mean that time-share plans of 8 units (like Pacaso's) are not time-share plans, just that they are not regulated by the state under this statute. The Vacation Ownership and Time-Share Act of 2004 includes a savings clause that expressly preserves the authority of local jurisdictions to regulate time shares through "zoning, subdivision, or building code or other real estate use law, ordinance, or regulation." Bus. & Prof. Code § 11280(b).

The City's zoning ordinance includes time share regulations that expressly prohibit conversion of residential structures to a time share use irrespective of the number of units. South Lake Tahoe City Code §6.60.040(B)(2). This provision was added in 2006, as the City Council found that "there is a

critical shortage of affordable housing" and "the conversion of residential property within the city to vacation time-sharing projects eliminates residential property otherwise available for rental in the city." South Lake Tahoe City Council Ord. No. 966. The City Council further found that "vacation time-sharing projects have the character of a commercial use due to the multiple occupancy of such projects by those participating in time-sharing projects" and "such commercial or quasi-commercial use is inappropriate in residential areas due to the increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods." *Id.* This provision broadened a 1987 prohibition on converting multi-family housing to time shares to include all residential dwellings.

Information from Pacaso's website, downloaded on April 27, 2021, indicates that Pacaso is advertising properties for sale of 1/8 fractional ownership, with the ability to have exclusive use of the property for 1/8 of each year, or 44 days split into non-consecutive short-term stays of between 2 and 14 days. Since property usage is allocated based on time, this type of commercially managed co-ownership falls within the broad definition of "time-share" under the City Code. This type of commercially managed short-term vacation use has the same impacts on surrounding residential areas as short-term vacation rentals, which are prohibited in residentially zoned areas in South Lake Tahoe following the passage of a citizens initiative in November 2018 (Measure T), and will be completely phased out of residential areas by the end of 2021.

In continuing to monitor the issue since sending the Courtesy Notice, I found three properties within the City of South Lake Tahoe on July 2 continuing to be advertised on Pacaso's website for sale of 1/8 fractional ownerships (3914 Saddle Rd., 1325 Wildwood Ave., and 783 Michael Dr. (with a note of "1 share left"). While the City is unaware of any Pacaso properties in operation as a time share use to date, we are concerned that potential buyers of fractional ownerships are not familiar with the City's time share regulations and Pacaso's advertising is misleading buyers whose use will be in violation of the South Lake Tahoe City Code from day one. Pacaso's continued solicitation and offering to sell illegal time shares is also a violation of South Lake Tahoe City Code. §§6.60.020(B), (D), (G); 6.60.040(B)(2); 6.60.070.

The City respectfully requests that Pacaso cease and desist all advertising and sale of fractional ownership of residential properties within the City of South Lake Tahoe. **Failure to comply with this request within 30 days (by August 11, 2021), may result in enforcement** including issuance of administrative citations under South Lake Tahoe City Code chapter 2.35. Further, any violation of the time share regulations in Chapter 6.60 is a misdemeanor and a public nuisance which may be enjoined in any court of competent jurisdiction under South Lake Tahoe City Code §6.60.080. Please note that there is also a private right of action for any person who has suffered damage as a result of a violation of the time share regulations under South Lake Tahoe City Code §6.60.090. I appreciate your prompt attention to this matter. Please feel free to contact me with any questions.

Respectfully,

Heather L. Stroud
City Attorney

cc: Joseph Irvin, City Manager
David Willbrand, Chief Legal Officer, Pacaso
Ellen Haberle, Director, Government & Community Relations, Pacaso

Appendix M – City of Sonoma Ordinance

City of Sonoma

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONOMA AMENDING SONOMA MUNICIPAL CODE TITLE 19, SECTION 19.10.050 (ALLOWABLE LAND USES AND PERMIT REQUIREMENTS) AND AMENDING TITLE 19, SECTION 19.50.140 (TIME-SHARES) TO THE CITY OF SONOMA MUNICIPAL CODE

WHEREAS, time share and fractional interest uses have been and currently are prohibited as uses not specifically enumerated in the Sonoma development code; and

WHEREAS, the City has recently become aware of time-share companies or fractional interest companies wishing to operate in the City; and

WHEREAS, a severe housing crisis exists in the state with the demand for housing outpacing the supply; and

WHEREAS, the City of Sonoma is particularly experiencing a housing emergency due to its relative isolation, limited housing supply, and desirable location; and

WHEREAS, time-share or fractional interest uses threaten to reduce the housing supply in the City by turning long-term housing in the City into vacation rentals and reducing the affordable housing stock in the City; and

WHEREAS, time-share and fractional interest uses increase traffic and noise impacts and have the same character as commercial hotels, motels, and other transient occupancy uses due to their transient nature making them inappropriate for residential zones; and

WHEREAS, the development of time-share or fractional interest uses in Commercial and Mixed Use zones (which also have a “residential component” requirement) will reduce the City’s ability to collect valuable property tax, sales tax, or Transient Occupancy Tax; and

WHEREAS, by allowing time-share or fractional interest uses in the City, market pressure will incentivize property owners to convert their existing commercial, hotel or residential uses, thereby reducing revenue to the City in the form of commercial property taxes, sales tax, Transient Occupancy Tax, and valuable existing housing stock; and

WHEREAS, allowing time-share or fractional interest uses in the Commercial and Mixed Use zones reduces the availability of suitable lands to provide housing units to meet the City’s Regional Housing Needs Allocation for the 5th and 6th Cycles; and

WHEREAS, by allowing times-share or fractional interest uses in the City, developers of those uses will seek to convert underutilized commercial uses (in Commercial and Mixed Use zones), thereby reducing the City’s ability to identify those sites as potential Housing Opportunity sites in the development of the City’s 6th Cycle Housing Element; and

WHEREAS, on January 19, 2022 the City Council adopted an Urgency Ordinance pursuant to Government Code Sections 36934 and 36937 to make express the City’s existing prohibition on time-share and fractional ownership uses in all zones in the City; and

WHEREAS, the City Council desires to adopt a non-urgency ordinance to supersede the urgency ordinance to ensure the City's municipal code addresses the impact that time-share and fractional ownership uses have and could have on the City's housing supply; and

WHEREAS, on February 10, 2022, the Planning Commission reviewed and discussed potential changes to the Sonoma Municipal Code to address time-share and fractional ownership uses and unanimously recommended that the item be continued to March 10, 2022; and

WHEREAS, on March 10, 2022, the Planning Commission held a public hearing to review and discuss potential changes to the Sonoma Municipal Code to address time-share and fractional ownership uses and unanimously recommended that the City Council introduce the attached ordinance; and

WHEREAS, the City Council found this action to be exempt from the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) pursuant to CEQA Guidelines section 15061(b) (3) prior to taking action; and

WHEREAS, on June 1, 2022, the City Council considered amendments to the Sonoma Municipal Code, consistent with the applicable policies of the Sonoma General Plan, at a public hearing; and

WHEREAS, the proposed amendments to the Sonoma Municipal Code are consistent with State Law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SONOMA DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS.

The above set forth recitals and findings are true and correct and incorporated herein by reference, as if set forth herein in full.

SECTION 2. FINDINGS FOR DEVELOPMENT CODE AMENDMENTS.

Pursuant to Section 19.86.070(B) of the Sonoma Municipal Code, the proposed amendments of the development code under this ordinance:

A. Are consistent with the goals, policies, and actions of the General Plan because the amendments the amendments promote and preserve the use of property for vital housing;

B. Would not be detrimental to the public interest, health, safety, convenience, or welfare of the city for the reasons described in the recitals above;

C. Comply with the provisions of the California Environmental Quality Act (CEQA) as described in Section 4 below; and

D. Are internally consistent with other applicable provisions of this development code because the amendments merely codify the existing prohibition on time-share and fractional ownership uses under the City's permissive zoning regime.

SECTION 3. MUNICIPAL CODE AMENDMENTS.

A. Tables 2-1, 2-2, 2-3 and 2-4 set forth in Sonoma Municipal Code section 19.10.050 are amended to read as set forth in Exhibit "A".

B. Section 19.50.140 of the Sonoma Municipal Code is amended to read as follows:

19.50.140 Time-Shares.

This section sets forth requirements for the establishment and operation of time-share uses.

A. Definitions.

1. "Accommodation" means any dwelling unit, multifamily dwelling, apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities therein that is designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals.

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

3. "Owner" means owner of a time-share interest.

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

5. "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.

6. "Time-share interest" means and includes either of the following:

a. The right to exclusively occupy a time-share property for a period of time on a recurring basis pursuant to a time-share plan, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof.

b. The right to exclusively occupy a time-share property for a period of time on a recurring basis pursuant to a time-share plan, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a time-share property or a specified portion thereof.

7. "Time-share plan" means any arrangement, plan, scheme, or similar device, whether by membership agreement, sale, lease, deed, license, right to use agreement, articles of organization or incorporation, operating agreement or bylaws, 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.

8. “Time-share property” means one or more accommodations subject to the same time-share instrument, together with any other property or rights to property appurtenant to those accommodations.

9. “Time-share use” and “fractional interest use” means the use of one or more accommodations or any part thereof, as a time-share property pursuant to a time-share plan.

B. Permitted zones. None. Time share uses and fractional interest uses are prohibited throughout the City of Sonoma

C. Violations, Enforcement and Civil Penalties

1. 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 section 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 shall be punishable pursuant to Chapter 1.12 (General Penalty).

2. Any responsible person, including by 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 section is subject to administrative fines and/or penalties as set forth in Chapter 1.28 (Administrative Citations).

3. Time-share use, fractional interest use and/or advertisement for time-share use and/or fractional ownership use, of an accommodation in violation of this section is a threat to public health, safety or welfare and is thus declared to be unlawful and a public nuisance and may be abated pursuant to Chapter 1.12 (General Penalty), Chapter 1.30 (Administrative Notice and Order Proceedings), Chapter 9.56 (Noise), and any other relevant provision of this code as it may be amended from time to time.

4. Each day a violation of this chapter occurs shall constitute a separate offense.

5. The remedies under this section are cumulative and in addition to any and all other remedies available at law and equity.

SECTION 4. CEQA.

This Ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the city. City Planning Staff has determined that the adoption and implementation of the Ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on theenvironment. As a text amendment and addition without any physical project being approved, it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment. The

proposed Ordinance is therefore exempt from the provisions of CEQA because it does not involve a commitment to any specific project that may result in a potentially significant physical impact on the environment. The City Council concurs in these findings and adopts them as its own. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Sonoma in accordance with CEQA Guidelines.

SECTION 5. SEVERABILITY.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect thirty (30) days after passage thereof.

SECTION 7. PUBLICATION.

This ordinance shall be published in accordance with the provisions of Government Code section 36933, subdivision (c)(1).

SECTION 8. THIS ORDINANCE PREVAILS WHERE THERE IS CONFLICT.

To the extent that this Ordinance conflicts with any other provision in the Sonoma Municipal Code or city ordinance (urgency or otherwise), policy or regulation, this Ordinance will control.

APPROVED:

_____
Jack Ding, Mayor

ATTEST:

_____
Rebekah Barr, MMC, City Clerk

* * * * *

I HEREBY CERTIFY the foregoing ordinance was duly adopted at a Regular Meeting of the City Council of the City of Sonoma held on the _____, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

Rebekah Barr, MMC, City Clerk

EXHIBIT A

Amendments to "Zones and Allowable Uses" (Title 19, Section 19.10.050) of the Sonoma Municipal Code.

A. Table 2-1 (Residential Uses and Permit Requirements) is hereby amended as follows:

Allowed Uses and Permit Requirements for Residential Districts (1)			*Permit Required by District (2)*				***P Use permitted*** ***UP Use Permit required*** ***L License required*** ***— Use not allowed***		
Land Use (1)	*R-HS*	*R-R*	*R-L*	*R-S*	*R-M*	*R-H*	*R-O*	*R-P*	*Specific Use Regulations*
AGRICULTURE, RESOURCE AND OPEN SPACE USES									
Animal Keeping	P	P	UP	—	—	—	—	—	Chapter 8.08 SMC
Crop Production and Horticulture	P	P	UP	—	—	—	—	—	
Produce Stands for On-Site Production	P	P	UP	—	—	—	—	—	SMC 19.50.070
MANUFACTURING AND PROCESSING USES									
Existing Uses	—	—	—	—	—	—	—	—	SMC 19.82.020
RECREATION, EDUCATION AND PUBLIC ASSEMBLY USES									
Equestrian Facilities	UP	UP	—	—	—	—	—	—	
Parks and Playgrounds	P	P	P	P	P	P	P	—	
Religious Facilities	—	—	UP	UP	UP	UP	—	—	
Schools – Public and Private	—	—	UP	UP	UP	UP	—	—	
RESIDENTIAL USES (2)									

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Duplex	—	—	UP	P	P	UP	UP	—	
Emergency Shelters	—	—	—	—	UP	UP	UP	—	SMC 19.50.033
Home Occupation	P	P	P	P	P	P	P	P	SMC 19.50.035
Live/Work Facilities	—	—	—	—	UP	—	—	—	
Mobile Home Park	—	—	—	—	—	—	—	UP	SMC 19.50.035
Multi-family Dwelling (Four or fewer units)	—	—	—	UP	P	P	P	—	
Multi-family Dwelling (Five or more units)	—	—	—	UP	UP	UP	P	—	
Personal Indoor Cannabis Cultivation (4)	P	P	P	P	P	P	P	P	SMC 19.50.032. A
Personal Outdoor Cannabis Cultivation (4)	P	P	P	P	P	P	P	P	SMC 19.50.032. B (Prohibited if multifamily dwelling or mobile home)
Residential Accessory Structures	P	P	P	P	P	P	P	P	
Residential Care Homes, Six or fewer clients	—	—	P	P	P	—	—	—	
Residential Care Homes, Seven or more clients	—	—	—	—	UP	—	—	—	
Single-Family Dwellings	P	P	P	P	P	UP	—	—	SMC 19.50.035
Accessory Dwelling Units	P	P	P	P	P	P	P	P	SMC 19.50.090
Accessory Dwelling Units, Junior	P	P	P	P	P	P	P	P	SMC 19.50.090

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Supportive Housing (3)	P	P	P/UP	P/UP	P/UP	P/UP	—	—	
Transitional Housing (3)	P	P	P/UP	P/UP	P/UP	P/UP	—	—	
RETAIL TRADE AND SERVICES									
Art, Antique, Collectible and Gift Sales	—	—	—	UP	—	—	—	—	
Artisan Shops	—	—	—	UP	—	—	—	—	
Bed and Breakfast Inns (B&Bs)	UP	UP	UP	—	—	—	—	—	SMC 19.50.030
Child Day Care Center	—	UP	UP	UP	UP	UP	UP	—	
Child Day Care: Small Family Day Care Home	—	UP	UP	UP	UP	UP	—	—	
Child Day Care: Large Family Day Care Home	—	—	UP	UP	UP	UP	UP	—	
General Retail	—	—	—	UP	—	—	—	—	
Governmental and Public Facilities	—	UP	UP	UP	UP	UP	UP	—	
Libraries and Museums	—	—	—	UP	—	—	—	—	
Medical Services – Extended Care	—	—	—	UP	UP	—	—	—	
Offices, Professional and Administrative	—	—	—	UP	—	—	—	—	
Personal Services	—	—	—	UP	—	—	—	—	
Restaurant	—	—	—	UP	—	—	—	—	
Senior Residential Care Facilities	—	—	—	—	UP	—	—	—	
Telecommunications Facilities, Commercial	See Chapter 5.32 SMC, Telecommunications Facility and Antenna Criteria								
Time-shares	**–**	**–**	**–**	**–**	**–**	**–**	**–**	**–**	**SMC**

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									19.50.140
SPECIAL PURPOSE USES									
Public Utility Facilities	—	—	—	—	—	—	—	—	
Public Utility Equipment	P	P	P	P	P	P	P	P	

Notes:
1. See SMC 19.10.050(C) regarding uses not listed. See Division VIII for definitions of the listed land uses.
2. New residential developments subject to the City's Growth Management Ordinance (SMC 19.94).
3. Supportive and Transitional Housing shall be subject to those restrictions that apply to other residential dwellings of the same type in the same zone. For example, such housing structured as single-family is permitted in the R-HS, R-R, RL and RS residential zones, whereas Supportive and Transitional housing structured as multi-family is limited to the RM and RH residential zones and the Mixed-Use Zone.
4. Personal cultivation of cannabis (Indoor and Outdoor) only allowable in conjunction with residential use subject to SMC 19.50.032.

B. Table 2-2 (Commercial Uses and Permit Requirements) is amended as follows:

Allowed Uses and Permit Requirements for Commercial Zoning Districts (1)	Permit Required by District (2)		***P*** ***Use permitted*** ***UP*** ***Use Permit required*** ***L*** ***License required*** ***—*** ***Use not allowed***
Land Use	C	CG	Specific Use Regulations
MANUFACTURING AND PROCESSING USES			
Artisans/Craft Product Manufacturing	UP	UP	
Food and Beverage Manufacturing	UP	UP	
Furniture/Fixtures Manufacturing, Cabinet Shops	UP	UP	
Recycling Facilities – Reverse Vending Machines	UP	P	
Recycling Facilities – Small Collection Facilities	UP	UP	
Research and Development (R&D)	UP	—	

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Warehousing, Wholesaling and Distribution	UP	—	
RECREATION, EDUCATION, and PUBLIC ASSEMBLY USES			
Clubs, Lodges and Private Meeting Halls	—	UP	
Community Centers	UP	UP	
Health/Fitness Facilities	P	UP	
Indoor Amusement/Entertainment Facilities	UP	UP	
Libraries and Museums	P	P	
Nightclubs and Bars	UP	UP	
Outdoor Commercial Recreation	UP	UP	
Religious Facilities	P	—	
Schools – Specialized Education and Training	UP	UP	
Studios for Art, Dance, Music, Photography, Etc.	P	UP	
Theaters and Auditoriums	UP	UP	
RESIDENTIAL USES (4)			
Emergency Shelters	UP	UP	SMC 19.50.033
Live/Work Facilities	UP	UP	SMC 19.50.050
Multi-family Dwelling (Four or fewer units)	UP	UP	
Multi-family Dwelling (Five or more units)	UP	UP	
Personal Indoor Cannabis Cultivation (7)	P	P	SMC 19.50.032.A
Personal Outdoor Cannabis Cultivation (7)	P	P	SMC 19.50.032.B (Prohibited if multifamily dwelling or mobile home)
Single Room Occupancy Housing	UP	—	
Supportive Housing	UP	UP	
Transitional Housing	UP	UP	
RETAIL TRADE (3)			
Accessory Retail Uses	P	P	
Adult Business	UP	—	

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Art, Antique, Collectible and Gift Sales	P	P	
Artisan Shops	P	UP	
Auto and Vehicle Sales/Rental	UP	—	
Building Material Stores	UP	UP	
Commercial Cannabis Activities (8):			SMC Chapter 5.36
Manufacturing	UP	—	
Non-store front retail	UP	—	
Store-front retail	UP	—	
Testing laboratory	UP	—	
Drive-In and Drive Through Sales	UP	—	
Furniture, Furnishings and Equipment Stores	P	P	
General Retail	P	P	
Grocery Store	P	P	
Music Venue	L	L	SMC Chapter 5.34
Outdoor Retail Sales and Activities	UP	UP	
Plant Nurseries and Garden Supply Stores	P	P	
Restaurant	UP	UP	
Second Hand Stores	P	P	
Shopping Center	UP	UP	
Special Event Venue (6)	UP	UP	
Wine Tasting Facilities/Wine Bars	WTUP	WTUP	SMC 19.50.120
Tap Rooms	UP	UP	SMC 19.50.130
SERVICES			
Banks and Financial Services	P	P	
Bed and Breakfast Inns (B&Bs)	UP	UP	SMC 19.50.030
Business Support Services	P	UP	
Child Day Care Facilities	P	P	
Drive-In and Drive-Through Services	UP	—	
Equipment Rental	UP	—	
Governmental and Public Facilities	P	P	

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Hotel or Motel	UP	UP	
Medical Services – Clinics, Offices, Laboratories	UP	UP	
Medical Services – Hospitals	UP	UP	
Mortuaries and Funeral Homes	UP	—	
Offices, Professional and Administrative	P	UP	
Personal Services	P	P	
Storage – Outdoor	UP	—	
Storage – Personal Storage Facility (Mini-Storage)	UP	—	
Telecommunications Facilities, Commercial	See Chapter 5.32 SMC, Telecommunications Facility and Antenna Criteria		
Time-shares	—	—	**SMC 19.50.140**
Auto Parts Sales	P	—	
Vacation Rental	—	—	SMC 19.50.110
Vehicle Services, Car Washes	UP	—	
Vehicle Services, Repair and Maintenance	UP	—	
Vehicle Services, Service Station	UP	—	SMC 19.50.100
Repair Services, for Consumer Products	P	UP	
SPECIAL CIRCUMSTANCES COMMERCIAL DEVELOPMENT			
Commercial Development, Large	UP	UP	Chapter 5.34 SMC
Development Adjacent to a Residential Zone (4)	UP	UP	
Formula Business, Small	P/UP (5)	P	SMC 19.50.035
Formula Business, Large	UP	UP	SMC 19.50.035
Formula Restaurant, Large	UP/– (6)	UP	SMC 19.50.035
Shopping Center, Reconfiguration	UP	UP	
SPECIAL PURPOSE USES			
Public Utility Facilities	—	—	
Public Utility Equipment	P	P	
Notes:			

1. See SMC 19.10.050(C) regarding uses not listed. See Division VIII for definitions of the listed land uses.
2. New residential developments subject to the City's Growth Management Ordinance (SMC 19.94).
3. Supportive and Transitional Housing shall be subject to those restrictions that apply to other residential dwellings of the same type in the same zone. For example, such housing structured as single-family is permitted in the R-HS, R-R, RL and RS residential zones, whereas Supportive and Transitional housing structured as multi-family is limited to the RM and RH residential zones and the Mixed-Use Zone.
4. Defined as new commercial construction or an addition to an existing commercial building, having an area of 1,000 square feet or greater.
5. Use Permit required within the historic overlay zone
6. Prohibited in /P Plaza Retail District. See SMC 19.50.035.
7. Personal cultivation of cannabis (indoor and outdoor) only allowable in conjunction with residential use subject to SMC 19.50.032.
8. ***No commercial cannabis activity may occur in these zoning districts unless and until a commercial cannabis business permit has been issued for that activity under Chapter 5.36.***

C. Table 2-3 (Mixed Uses and Permit Requirements) is amended as follows:

Allowed Uses and Permit Requirements for Mixed Use Zoning Districts (1)	Permit Required by District (2)	***P*** ***Use permitted*** ***UP*** ***Use Permit required*** ***L*** ***License required*** ***—*** ***Use not allowed***
Land Use	MX	***Specific Use Regulations***
MANUFACTURING AND PROCESSING USES (3)		
Artisans/Craft Product Manufacturing	UP	
Food and Beverage Manufacturing	UP	
Furniture/Fixtures Manufacturing, Cabinet Shops	UP	
Change in Existing Nonconforming Uses	UP	SMC 19.82.020
Recycling Facilities – Small Collection Facilities	—	
Research and Development (R&D)	UP	
Warehousing, Wholesaling and Distribution	—	
RECREATION, EDUCATION AND PUBLIC ASSEMBLY USES (3)		
Clubs, Lodges, and Private Meeting Halls	UP	
Community Centers	UP	

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Health/Fitness Facilities	UP	
Indoor Amusement/Entertainment Facilities	UP	
Libraries and Museums	UP	
Outdoor Commercial Recreation	—	
Religious Facilities	UP	
Schools – Specialized Education and Training	UP	
Studios for Art, Dance, Music, Photography, Etc.	UP	
Theaters and Auditoriums	UP	
RESIDENTIAL USES (4)		
Emergency Shelters	UP	SMC 19.50.033
Live/Work Facilities	UP	SMC 19.50.050
Multi-family Dwelling (Four or fewer units)	P	
Multi-family Dwelling (Five or more units)	UP	
Personal Indoor Cannabis Cultivation (7)	P	SMC 19.50.032.A
Personal Outdoor Cannabis Cultivation (7)	P	SMC 19.50.032.B (Prohibited if multifamily dwelling or mobile home)
Residential Care Homes, Seven or more clients	UP	
Single-Family Dwellings	P (5)	
Supportive Housing, four or fewer units	P	
Supportive Housing, five or more units	UP	
Transitional Housing, four or fewer units	P	
Transitional Housing, five or more units	UP	
RETAIL TRADE (3)		
Accessory Retail Uses	UP	
Art, Antique, Collectible and Gift Sales	UP	
Artisan Shops	UP	

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Auto and Vehicle Sales/Rental	—	
Building Material Stores	—	
Commercial Cannabis Activities (8):		
Manufacturing	UP	SMC Chapter 5.36
Non-store front retail	UP	SMC Chapter 5.36
Testing laboratory	UP	SMC Chapter 5.36
Drive-In and Drive-Through Sales	UP	
Farmers Market	UP	
Fueling Station	UP	
Furniture, Furnishings and Equipment Stores	UP	
General Retail	UP	
Grocery Store	UP	
Music Venue	L	Chapter 5.34 SMC
Outdoor Retail Sales and Activities	UP	
Plant Nurseries and Garden Supply Stores	UP	
Restaurant	UP	
Second Hand Stores	UP	
Shopping Center	UP	
Special Event Venue (6)	UP	
Wine Tasting Facilities/Wine Bars	WTUP	SMC 19.50.120
Tap Rooms	UP	SMC 19.50.130
SERVICES (3)		
Auto Parts Sales	UP	
Banks and Financial Services	UP	
Bed and Breakfast Inns (B&Bs)	UP	
Business Support Services	UP	
Child Day Care Facilities	UP	
Drive-In and Drive-Through Facilities	UP	
Equipment Rental	UP	
Governmental and Public Facilities	UP	

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Hotel or Motel	UP	
Medical Services – Clinics, Offices, Laboratories	UP	
Medical Services – Hospitals	—	
Mortuaries and Funeral Homes	UP	
Offices, Professional and Administrative	UP	
Personal Services	UP	
Storage – Outdoor	—	SMC 19.40.100(D)
Storage – Personal Storage Facility (Mini-Storage)	—	
Telecommunications Facilities, Commercial	See Chapter 5.32 SMC, Telecommunications Facility and Antenna Criteria	
Time-shares	**–**	**SMC 19.50.140**
Vacation Rental	—	SMC 19.50.110
Vehicle Services, Repair and Maintenance	UP	
Vehicle Services, Service Stations	—	SMC 19.50.100
Repair Services for Consumer Products	UP	
SPECIAL CIRCUMSTANCES COMMERCIAL DEVELOPMENT		
Formula Business, Small	UP	SMC 19.50.035
Formula Business, Large	UP	SMC 19.50.035
Formula Restaurant, Large	UP	SMC 19.50.035
SPECIAL PURPOSE USES		
Public Utility Facilities	—	
Public Utility Equipment	P	

Notes:
1. See SMC 19.10.050(C) regarding uses not listed. See Division VIII for definitions of the listed land uses.
2. New development in the Mixed-Use zone shall include a residential component unless waived by the planning commission through use permit review (see SMC 19.10.020(C)).
3. Uses within these categories are allowed only if the planning commission finds that the use will not result in the encroachment of incompatible commercial uses within an established residential area.
4. New residential developments subject to the city's growth management ordinance.
5. Limited to a single residence on an existing lot of record; otherwise, use permit approval is required.
6. On sites of one acre in size or larger.
7. Personal cultivation of cannabis (indoor and outdoor) only allowable in conjunction with residential use subject to SMC 19.50.032.

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8. No commercial cannabis activity may occur in these zoning districts unless and until a commercial cannabis business permit has been issued for that activity under Chapter 5.36.

D. Table 2-4 (Special Purpose Uses and Permit Requirements) is hereby amended as follows:

Allowed Uses and Permit Requirements for Special Purpose Zoning Districts	Permit Required by District				***P*** ***Use permitted*** ***UP*** ***Use Permit required*** ***L*** ***License required*** ***—*** ***Use not allowed***
Land Use (1)	A	Pk	P	W	Specific Use Regulations
AGRICULTURAL AND OPEN SPACE USES					
Crop Production and Horticulture	P	—	—	P	
Livestock Raising	P	—	—	—	SMC 19.50.020
Prescribed Grazing	—	UP	—	—	
Produce Stands for On-Site Production	P	—	—	—	SMC 19.50.070
Trails, Hiking and Bicycling	P	P	P	—	
MANUFACTURING AND PROCESSING USES					
Agricultural or Food Processing	—	—	—	UP	
Wineries	—	—	—	UP	
Winery Accessory Uses	—	—	—	UP	SMC 19.50.020
RECREATION, EDUCATION AND PUBLIC ASSEMBLY USES					
Community Centers	—	—	UP	—	
Community Garden	—	UP	UP	—	
Equestrian Facilities	UP	UP	—	—	SMC 19.50.020
Libraries and Museums	—	UP	UP	—	
Parks and Playgrounds	—	P	P	—	
Recreational Facilities	—	UP	P	—	

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Schools, Public and Private	—	—	P	—	
Theaters and Auditoriums	—	UP	P	—	
RESIDENTIAL USES (2)					
Agricultural Employee Housing	P	—	—	—	
Caretaker and Employee Housing	UP	UP	UP	UP	
Emergency Shelters, 15 or fewer beds	—	—	P	—	SMC 19.50.035
Emergency Shelters, 16 or more beds	—	—	UP	—	
Personal Indoor Cannabis Cultivation (3)	P	P	P	P	SMC 19.50.032.A
Personal Outdoor Cannabis Cultivation (3)	P	P	P	P	SMC 19.50.032.B (Prohibited if multifamily dwelling or mobile home)
Residential Accessory Structures and Uses	P	—	—	—	SMC 19.50.035
Single-Family Dwellings	P	—	—	—	SMC 19.50.035
Supportive Housing (4)	—	—	UP	—	
Transitional Housing (4)	—	—	UP	—	
Vacation Rental	—	UP	—	—	SMC 19.50.110
SERVICES					
Offices – Administrative	—	UP	UP	—	
Cemeteries	—	—	P	—	
Child Day Care Facilities	—	—	P	—	
Corporation Yard	—	—	P	—	
Farmers Market	P	P	P	—	
Governmental and Public Facilities	—	UP	UP	—	
Kennel	—	—	UP	—	
Medical Services – Hospitals	—	—	UP	—	
Telecommunications Facilities, Commercial	See Chapter 5.32 SMC, Telecommunications Facility and Antenna Criteria				
Timeshares	=	=	=	=	**SMC 19.50.140**
SPECIAL PURPOSE USES					
Public Utility Facilities	—	—	UP	—	
Public Utility Equipment	P	P	P	P	

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Notes:

1. See Section 19.10.050.C regarding uses not listed. See Division VIII for definitions of the listed land uses.
2. New residential developments subject to the City's Growth Management Ordinance (SMC 19.94).
3. Personal cultivation of cannabis (indoor and outdoor) only allowable in conjunction with residential use subject to SMC 19.50.032.
4. Supportive and transitional housing shall be subject to those restrictions that apply to other residential dwellings of the same type in the same zone.

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Appendix N – City of St. Helena Ordinance

CITY OF ST. HELENA

ORDINANCE NO. 2022-5

ADDING CHAPTER 17.138 "TIME SHARE USES" AND SECTIONS 17.138.010 – 17.138.060 TO TITLE 17, ZONING, OF THE ST. HELENA MUNICIPAL CODE, AMENDING SECTIONS 17.48.030 AND 17.52.030 AND DELETING SECTION 17.112.130 OF THE ST. HELENA MUNICIPAL CODE

WHEREAS, the City of St. Helena is a popular tourist destination, known for its scenic Napa Valley location, exceptional wineries and restaurants, historic Main Street and small-town agricultural character; and

WHEREAS, preserving the rural, small-town quality and agricultural character of the City of St. Helena has been a focal point of the City's land use planning for decades, and remains a primary focus in the City's 2040 General Plan; and

WHEREAS, the City of St. Helena stands out in the Napa 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, have limited the construction of additional housing in the City of St. Helena; and

WHEREAS, according to the U.S. Census Bureau, the current median household income in the City of St. Helena is $90,031, while the estimated value of owner-occupied housing units from 2015-2019 was approximately $1,112,100, with current real estate listings suggesting that prices are increasing significantly, meaning that homes in the City are not affordable to the median household in the City; and

WHEREAS, as noted in the St. Helena Housing Update Report prepared for the City in April 2018, "St. Helena has more local jobs than people in the labor force, demanding large numbers of commuters to fill local jobs. Workers commute daily into St. Helena, many because there is no local housing that is affordable at the incomes that

they make. Thirty six percent (36%) of St. Helena households cannot afford market rents while seventy percent (70%) of St. Helena households cannot afford to purchase a home. Paramedics and preschool teachers cannot afford St. Helena's market rents. Teachers, registered nurses, winery and hospitality managers and nonprofit directors cannot afford homeownership in St. Helena"; and

WHEREAS, the City has made significant efforts to address the need for housing at lower income levels, of which recent examples include providing assistance to local nonprofit Our Town St. Helena for the Brenkle Court development, a mutual self-help housing development providing homeownership opportunities to eight low income working families, as well as the acquisition of a home located at 963 Pope Street using a charitable sale strategy. The property at 963 Pope Street is being developed with an additional four units to provide a total of five new affordable rental units in the City; and

WHEREAS, further, in connection with the recently approved Farmstead lodging project, the City negotiated with the developer to contribute one million dollars toward the purchase of property to be used for the development of not less than twenty units of housing that will be affordable to low and very low-income households, and an additional two million two hundred thousand dollars to be used more generally toward the development of affordable housing in the City; and

WHEREAS, the City additionally provided substantial financial assistance to the recently completed Turley Flats Affordable Housing development, which provides eight units of rental affordable housing in a three story building located at 1105 Pope Street; and

WHEREAS, these efforts have helped to address the City's need for affordable housing, but have also 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 it would not be converted to uses other than long-term residential uses; and

WHEREAS, to this end, in 1982 the City adopted Ordinance No. 82-07, which prohibited the creation of time-share projects as a means of ownership of any single-family, two-family or multiple-family dwelling or any apartment house within the City. This restriction was imposed because the conversion of residential dwelling units to time-sharing projects would eliminate residential dwelling units that would otherwise be available for long-term occupancies, and were 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. Commencing in 2020, however, the City began receiving complaints regarding single family homes in the City that were being sold and/or marketed as "fractional ownership" or "co-ownership" homes, wherein each buyer may acquire a one-eighth interest in a limited liability company that will own the home. Under the structure pursuant to 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 program" as defined in Section 17.112.130 of the City's Municipal Code; and

WHEREAS, the City has received numerous complaints regarding these properties, 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 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 the property, where those that buy into the time-share use the home for entertaining and short term stays while visiting restaurants, wineries and other tourist-oriented locations in St. Helena and the surrounding Napa 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, pursuant to and 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. Further, the City desires to provide greater clarity as to the zoning districts in which time-share uses are permitted as conditional uses, and the standards pursuant to which they will be reviewed in those zoning districts; and

WHEREAS, the Planning Commission of the City of St. Helena held a duly noticed public hearing on March 1, 2022, 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 March 1, 2022, the Planning Commission of the City of St. Helena recommended that the City Council adopt this Ordinance amending the Municipal Code as described herein by a 5-0 vote; and

WHEREAS, on March 22, 2022, the City Council held a duly noticed public hearing, accepting testimony from the public, and discussed the proposed amendments and staff's recommended approval of this Ordinance; 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 agricultural, small town character of the City of St. Helena; 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 St. Helena does hereby ordain as follows:

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

SECTION 2: Chapter 17.138 and sections 17.138.010 – 17.138.060 are hereby added to Title 17 of the St. Helena Municipal Code, to read as follows:

"Chapter 17.138

TIME-SHARE USES

17.138.010 Purpose and Findings

17.138.020 Definitions

17.138.030 Time-share Uses Restricted to Service Commercial (SC) and Central Business (CB) Districts

17.138.040 Application Process and Development Standards

17.138.050 Violations, Enforcement and Civil Penalties

17.138.010 Purpose and Findings

A. There is a critical shortage of permanent, long-term housing in the City of St. Helena.

B. A limited supply of suitable vacant land, land values, and market demand for land for other uses, including but not limited to use of property for vineyards, have limited the construction of additional housing in the City of St. Helena.

C. St. Helena is a popular tourist destination known for its scenic Napa Valley location, exceptional wineries and restaurants, historic Main Street and small-town agricultural character.

D. The City of St. Helena stands out in the Napa 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 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 a tourist-oriented, commercial use.

17.138.020 Definitions

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

"Accommodation" means any dwelling unit, apartment, condominium or cooperative 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 two family dwelling, three family dwelling, multiple family dwelling, or townhouse dwelling as defined in Section 17.04.160.

"Building" shall have the meaning ascribed to it by Section 17.04.160.

"Dwelling unit" shall have the meaning ascribed to it by Section 17.04.160.

"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.

17.138.030 Time-share Uses Restricted to Service Commercial (SC) and Central Business (CB) Districts

Time-share uses are conditional uses within the City's Service Commercial (SC) District and Central Business (CB) District, subject to approval of a conditional use permit applied for and approved in conformance with this Chapter. Time-share uses are not permitted in all other Zoning Districts in the City.

17.138.040 Application Process and Development Standards

A. Application Process. Approval of a conditional use permit for time-share uses in the Service Commercial District or Central Business District shall be required in accordance with the requirements of Chapter 17.168. In addition to the application requirements contained in Chapter 17.168, an application for a time-share use shall be accompanied by the following documents which shall be subject to the approval of the planning director:

1. Management Plan. A management plan shall describe the methods employed by the applicant to guarantee the future adequacy, stability, and continuity of a satisfactory level of management and maintenance of the time share use.

2. Application Requirements. In addition to any application requirements established by this section and any other applicable requirements of this code, the following information shall be submitted as part of any application to develop or establish a time-share use:

a. Typical floor plans for each accommodation.

b. The phasing of the construction of the accommodations on the time-share property, if applicable.

c. A description of any ancillary uses which are proposed in conjunction with the time share use.

d. A description of the method of management of the time share use and indication of the management entity for the time-share property.

e. Any restrictions on the use or occupancy of the accommodations.

f. Any other information or documentation the applicant, city staff or commission deems reasonably necessary to the consideration of the time-share use, including any required environmental documents.

B. Development Standards and Operational Requirements. Notwithstanding any other provision of this chapter, the following conditions must be met by any time-share use in any conditionally permitted zone. Additional requirements may be attached to a conditional use permit or development agreement if found to be necessary to assure that the time-share use meets the intent of this chapter:

1. Time-share uses developed in the Service Commercial District or Central Business District shall be limited to accommodations in upper floors in conjunction with a mixed-use project.

2. No existing residential use in the Service Commercial or Central Business District shall be converted to a time-share use.

3. Development Standards. The time-share use shall comply with all development standards for the zone in which it is located.

4. Parking. Parking shall be provided as follows:

a. For accommodations of two or fewer bedrooms, one parking space shall be provided for each accommodation.

b. For accommodations of three or more bedrooms, two parking spaces shall be provided for each accommodation.

4. Modification or Waiver of Standards. The planning commission may modify or waive one or more of the regulations contained in this section if it determines that strict compliance is not necessary to achieve the purpose and intent of this section.

17.138.060 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 shall be punishable pursuant to Chapter 1.20.

B. Time-share use, and/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 and/or restored by the enforcement official and also may be abated pursuant to Chapter 1.12, except that the civil penalty for a violation shall be one thousand dollars ($1,000.00). Each day the violation occurs shall constitute a separate offense.

C. Any responsible person who violates this chapter shall be liable and responsible for a civil penalty of one thousand dollars ($1,000.00) per violation per day such violation occurs. The city may recover such civil penalty by either civil action or administrative citation. Such penalty shall be 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. Where the city proceeds by civil action, the court shall have discretion to reduce the civil penalty based upon evidence presented by the responsible person that such a reduction is warranted by mitigating factors including, without limitation, lack of culpability and/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 and/or enjoin any violation of this chapter.

2. Where the city proceeds by administrative citation, the city shall provide the responsible person notice of the right to request an administrative hearing to challenge the citation and penalty, and the time for requesting that hearing.

a. The responsible person shall have the right to request the administrative hearing within forty-five (45) days of the issuance of the administrative citation and imposition of the civil penalty. To request such a hearing, the responsible person shall notify the city clerk in writing within forty-five (45) days of the issuance of the citation. The appeal notification shall include all specific facts, circumstances and arguments upon which the appeal is based.

b. The city manager is hereby authorized to designate a hearing officer to hear such appeal. The city hearing officer shall conduct a hearing on the appeal within ninety (90) days of the request for the hearing unless one of the parties requests a continuance for good cause. The hearing officer shall only consider those facts, circumstances or arguments that the property owner or responsible person has presented in the appeal notification.

c. The hearing officer shall render a decision in writing within thirty (30) days of the conclusion of the hearing. The hearing officer shall have discretion to reduce the civil penalty based upon evidence presented by the property owner or responsible person that such a reduction is warranted by mitigating factors including, without limitation, lack of culpability and/or inability to pay. Provided, however, that in exercising its discretion the hearing officer 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 property owner's or responsible person's enrichment or profit as a result of the violation of this chapter.

d. Any aggrieved party to the hearing officer's decision on the administrative appeal may obtain review of the decision by filing a petition for writ of mandate with the Napa County superior court in accordance with the timelines and provisions set forth in Government Code Section 53069.4.

e. If, following an administrative hearing, appeal, or other final determination, the owner of the property is determined to be the responsible person for the civil penalty imposed by this section, such penalty, if unpaid within forty-five (45) days of the notice of the final determination, shall become a lien to be recorded against the property on which the violation occurred pursuant to Chapter 1.12. Such costs shall be collected in the same manner as county taxes, and thereafter the property upon which they are a lien shall be sold in the same manner as property now is sold for delinquent taxes.

D. Any violation of this chapter may also be abated and/or restored by the enforcement official and also may be abated pursuant to Chapter 1.12, except that the civil penalty under Chapter 1.12 for a violation shall be one thousand dollars ($1,000.00).

E. Each day the violation of this chapter occurs shall constitute 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 17.112.130

Section 17.112.130 is hereby deleted in its entirety.

SECTION 4: Amendment of Section 17.48.030

Section 17.48.030 is hereby amended to add the following text as a separate line immediately following "Theaters, movie and legitimate;", and immediately prior to "Tobacco/smoke shop, including the sale of tobacco, tobacco and/or nicotine products and equipment for smoking;":

"Time share uses, pursuant to Sections 17.138.030 and 17.138.040;"

SECTION 5: Amendment of Section 17.52.030

Section 17.52.030 is hereby amended to add the following text as a separate line immediately following "Theaters, movie and legitimate;", and immediately prior to "Tobacco/smoke shop, including the sale of tobacco, tobacco and/or nicotine products and equipment for smoking;":

"Time share uses, pursuant to Sections 17.138.030 and 17.138.040;"

SECTION 6: 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" pursuant to 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 6: Effective Date

This ordinance shall take effect 30 days after its final adoption, and a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the ordinance in the St. Helena Star, a newspaper of general circulation published in the City of St. Helena.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the St. Helena City Council on the 22nd day of March 2022, and was adopted at a regular meeting of the St. Helena City Council on the 12th day of April 2022, by the following vote:

Mayor Geoff Ellsworth:	**Yes**
Vice Mayor Paul Dohring:	**Yes**
Council Member Anna Chouteau:	**Yes**
Council Member Lester Hardy:	**Yes**
Council Member Eric Hall:	**Yes**

APPROVED:

Geoff Ellsworth, Mayor

I, CINDY TZAFOPOULOS, CITY CLERK of the City of St. Helena, California, do hereby certify that the foregoing Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 22nd day of March 2022. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 12th day of April 2022, by the following vote:

Mayor Geoff Ellsworth:	**Yes**
Vice Mayor Paul Dohring:	**Yes**
Council Member Anna Chouteau:	**Yes**
Council Member Lester Hardy:	**Yes**
Council Member Eric Hall:	**Yes**

ATTEST:

Cindy Tzafopoulos

Cindy Tzafopoulos, City Clerk

CITY OF ST. HELENA
Incorporated March 24, 1878
Re-incorporated May 14, 1889
STATE OF CALIFORNIA

Appendix O – Pacaso Inc. v. City of St. Helena

UNITED STATES DISTRICT COURT

for the

Northern District of California

PACASO INC. and PAC 6 CA 2021 LLC, *Plaintiff(s)* v. THE CITY OF ST. HELENA; PLANNING AND BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; DOE DEFENDANTS # 1 – 5, *Defendant(s)*	)	Civil Action No. 4:21-cv-02493 KAW

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* The City of St. Helena; Planning and Building Director Maya DeRosa; Mayor Geoff Ellsworth; City Attorney Ethan Walsh

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lance A. Etcheverry
Caroline Van Ness
Ashley Phillips
Osama Alkhawaja
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 4/8/2021

CLERK OF COURT
Susan Y. Soong

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

Northern District of California

PACASO INC. and PAC 6 CA 2021 LLC, *Plaintiff(s)* v. THE CITY OF ST. HELENA; PLANNING AND BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; DOE DEFENDANTS # 1 – 5, *Defendant(s)*	)	Civil Action No. 3:21-cv-02493

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* The City of St. Helena; Planning and Building Director Maya DeRosa; Mayor Geoff Ellsworth; City Attorney Ethan Walsh

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lance A. Etcheverry
Caroline Van Ness
Ashley Phillips
Osama Alkhawaja
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 3:21-cv-02493

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

From: ECF-CAND@cand.uscourts.gov
To: efiling@cand.uscourts.gov
Subject: [Ext] Activity in Case 3:21-cv-02493-KAW Pacaso Inc. et al v. City of St. Helena et al Electronic Filing Error
Date: 4/7/2021 8:59:00 AM
CC:
BCC:

Message:

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended. ***NOTE TO PUBLIC ACCESS USERS* Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered on 4/7/2021 at 8:59 AM and filed on 4/7/2021
Case Name: Pacaso Inc. et al v. City of St. Helena et al
Case Number: 3:21-cv-02493-KAW
Filer:
Document Number: No document attached

Docket Text:
Electronic filing error. Notice to Counsel: Summons cannot be issued to Doe Defendants. Counsel is directed to remove Doe Defendants #1-5 from the summons and re-file. [err102] This filing will not be processed by the clerks office. Re:[2] Proposed Summons filed by PAC 6 CA 2021 LLC, Pacaso Inc. (bnsS, COURT STAFF) (Filed on 4/7/2021)

3:21-cv-02493-KAW Notice has been electronically mailed to:

Caroline W Van Ness caroline.vanness@skadden.com

Lance Allan Etcheverry lance.etcheverry@skadden.com, ashley.phillips@skadden.com, candice.spoon@skadden.com, caroline.vanness@skadden.com, dlmlclac@skadden.com,

nberglun@skadden.com, osama.alkhawaja@skadden.com

3:21-cv-02493-KAW Please see Local Rule 5-5; Notice has NOT been electronically mailed to:

UNITED STATES DISTRICT COURT

for the

Northern District of California

PACASO INC. and PAC 6 CA 2021 LLC, *Plaintiff(s)* v. THE CITY OF ST. HELENA; PLANNING AND BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; DOE DEFENDANTS # 1 – 5, *Defendant(s)*	)	Civil Action No. 3:21-cv-02493

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* The City of St. Helena; Planning and Building Director Maya DeRosa; Mayor Geoff Ellsworth; City Attorney Ethan Walsh; Doe Defendants # 1 – 5

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lance A. Etcheverry
Caroline Van Ness
Ashley Phillips
Osama Alkhawaja
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____, a person of suitable age and discretion who resides there, on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT OF CASE TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL

Pursuant to General Order 44, the Assignment Plan of the United States District Court for the Northern District of California, this case has been randomly assigned to a Magistrate Judge.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including all pretrial and trial proceedings, entry of judgment and post-trial motions. Appeal will be directly to the United States Court of Appeals for the Ninth Circuit.

Attached is a form to complete to indicate whether you consent to proceed before the assigned magistrate judge or decline to proceed before the assigned magistrate judge. This form is also available from the Court's website: cand.uscourts.gov/civilforms. You are free to withhold consent without adverse consequences. If any party declines, the case will be reassigned to a district judge.

If you are the plaintiff or removing party in this case, you must file your consent/declination form within 14 days of receipt of this notice. Each other party must file its consent/declination form within 14 days of appearing in the case.

The plaintiff or removing party must serve a copy of this notice upon all other parties to this action.

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s) v. Defendant(s).	Case No. C CONSENT OR DECLINATION TO MAGISTRATE JUDGE JURISDICTION

INSTRUCTIONS: Please indicate below by checking **one** of the two boxes whether you (if you are the party) or the party you represent (if you are an attorney in the case) choose(s) to consent or decline magistrate judge jurisdiction in this matter. Sign this form below your selection.

☐ **Consent to Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment. I understand that appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

OR

☐ **Decline Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States magistrate judge conduct all further proceedings in this case and I hereby request that this case be reassigned to a United States district judge.

DATE: _____

NAME: _____

COUNSEL FOR (OR "PRO SE"): _____

_____
Signature

STANDING ORDER FOR ALL JUDGES OF THE NORTHERN DISTRICT OF CALIFORNIA

CONTENTS OF JOINT CASE MANAGEMENT STATEMENT

All judges of the Northern District of California require identical information in Joint Case Management Statements filed pursuant to Civil Local Rule 16-9. The parties must include the following information in their statement which, except in unusually complex cases, should not exceed ten pages:

1. Jurisdiction and Service: The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.
2. Facts: A brief chronology of the facts and a statement of the principal factual issues in dispute.
3. Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
4. Motions: All prior and pending motions, their current status, and any anticipated motions.
5. Amendment of Pleadings: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
6. Evidence Preservation: A brief report certifying that the parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines"), and confirming that the parties have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. *See ESI Guidelines 2.01 and 2.02, and Checklist for ESI Meet and Confer.*
7. Disclosures: Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26, and a description of the disclosures made.
8. Discovery: Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, a brief report on whether the parties have considered entering into a stipulated e-discovery order, a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f), and any identified discovery disputes.
9. Class Actions: If a class action, a proposal for how and when the class will be certified, and whether all attorneys of record for the parties have reviewed the Procedural Guidance for Class Action Settlements.
10. Related Cases: Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.
11. Relief: All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

12. Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.

13. Consent to Magistrate Judge For All Purposes: Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. ___ Yes ___ No

14. Other References: Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues: Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.

16. Expedited Trial Procedure: Whether this is the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64 Attachment A. If all parties agree, they shall instead of this Statement, file an executed Agreement for Expedited Trial and a Joint Expedited Case Management Statement, in accordance with General Order No. 64 Attachments B and D.

17. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.

18. Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.

19. Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding. In any proposed class, collective, or representative action, the required disclosure includes any person or entity that is funding the prosecution of any claim or counterclaim.

20. Professional Conduct: Whether all attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

From: ECF-CAND@cand.uscourts.gov
Sent: Thursday, April 8, 2021 12:37 PM
To: efiling@cand.uscourts.gov
Subject: [Ext] Activity in Case 4:21-cv-02493-KAW Pacaso Inc. et al v. City of St. Helena et al Clerk's Notice of Impending Reassignment - Text Only

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered on 4/8/2021 at 12:36 PM and filed on 4/8/2021
Case Name: Pacaso Inc. et al v. City of St. Helena et al
Case Number: 4:21-cv-02493-KAW
Filer:
Document Number: 9(No document attached)

Docket Text:
CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned.

ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.

This is a text only docket entry; there is no document associated with this notice. **(dtmS, COURT STAFF) (Filed on 4/8/2021)**

4:21-cv-02493-KAW Notice has been electronically mailed to:

Caroline W Van Ness caroline.vanness@skadden.com

Lance Allan Etcheverry lance.etcheverry@skadden.com, ashley.phillips@skadden.com, candice.spoon@skadden.com,

caroline.vanness@skadden.com, dlmlclac@skadden.com, nberglun@skadden.com, osama.alkhawaja@skadden.com

4:21-cv-02493-KAW Please see Local Rule 5-5; Notice has NOT been electronically mailed to:

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Pacaso Inc., et al., Plaintiff(s), v. City of St. Helena, et al., Defendant(s).	Case No. 3:21-cv-02493-KAW **CONSENT OR DECLINATION TO MAGISTRATE JUDGE JURISDICTION**

INSTRUCTIONS: Please indicate below by checking **one** of the two boxes whether you (if you are the party) or the party you represent (if you are an attorney in the case) choose(s) to consent or decline to magistrate judge jurisdiction in this matter. Sign this form below your selection.

☐ **CONSENT to Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment. I understand that appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

OR

☑ **DECLINE Magistrate Judge Jurisdiction**

In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States magistrate judge conduct all further proceedings in this case and I hereby request that this case be reassigned to a United States district judge.

DATE: April 8, 2021

NAME: Lance A. Etcheverry

/s/ Lance A. Etcheverry
Signature

COUNSEL FOR (OR "PRO SE"): Pacaso Inc. and PAC 6 CA 2021 LLC.

United States District Court
Northern District of California

ECF Registration Information

Electronic Case Filing (ECF or "e-filing") is mandatory for all civil cases in this court. Please refer to Civil Local Rule 5-1 for the Court's rules pertaining to electronic filing. Effective August 19, 2013, e-filing of initiating documents (complaints; notices of removal) is allowed, but is not mandatory; all other documents must be e-filed in civil cases.

Parties who are representing themselves pro se (without attorney representation) are not required to e-file and, in fact, may e-file only with the permission of the assigned judge.

Please review and attend to the following important notes and tasks:

- Serve this ECF Registration Information Handout on all parties in the case along with the complaint or removal notice and the other documents generated by the court upon filing.
- If not already registered, each attorney in the case must register to become an e-filer at cand.uscourts.gov/ECF. Your ECF registration is valid for life in this district; please do not register more than once.

IMPORTANT NOTICE: by signing and submitting to the court a request for an ECF user id and password, you consent to entry of your email address into the court's electronic service registry for electronic service on you of all e-filed papers, pursuant to rules 77 and 5(b)(2)(d) of the Federal Rules of Civil Procedure.

- If you are a party and do not have an attorney and would like to e-file in the case, please visit cand.uscourts.gov/ECF/proseregistration for instructions and information. Unless and until the assigned judge has given you permission to e-file, you are required to file and serve papers in hard copy (paper) form.
- Access dockets and documents using your PACER (Public Access to Court Electronic Records) account. If your firm already has a PACER account, please use that account. It is not necessary to have individual PACER accounts for each user in your office. To set up an account, visit: pacer.gov or call (800) 676-6856.

ECF interactive tutorials, instructions for e-filing and other information are available at: cand.uscourts.gov/ECF.

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC., et al., Plaintiffs, v. CITY OF ST. HELENA, et al., Defendants.	Case No. 21-cv-02493-KAW **ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Kandis A. Westmore . When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the Notice of Assignment of Case to a United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Plaintiffs or removing parties must file a consent or declination to proceed before a magistrate judge within 14 days of the filing of the complaint or the removal. All other parties must file a consent or declination within 14 days of appearing in the case. All parties who have made an appearance must file a consent or declination within 7 days of the filing of a dispositive motion or the case will be reassigned to a district court judge. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at http://www.cand.uscourts.gov/adr. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

IT IS FURTHER ORDERED that plaintiff or removing defendant serve upon all parties

the brochure entitled "Consenting To A Magistrate Judge's Jurisdiction In The Northern District Of California", additional copies of which can be downloaded from the court's Internet website: http://www.cand.uscourts.gov.

CASE SCHEDULE – ADR MULTI-OPTION PROGRAM		
Date	**Event**	**Governing Rule**
4/6/2021	Complaint Filed	
6/15/2021	*Last day to: • meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan	FRCivP 26(f) & ADR L.R.3-5
	• file ADR Certification signed by Parties and Counsel (form available at http://www.cand.uscourts.gov)	Civil L.R . 16-8(b) & ADR L.R. 3-5(b)
6/29/2021	**Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement (also available at http://www.cand.uscourts.gov)	FRCivP 26(a) (1) Civil L.R . 16-9
7/6/2021	INITIAL CASE MANAGEMENT CONFERENCE (CMC) at 1:30 PM in: Courtroom TBD Ronald Dellums Federal Building 1301 Clay Street Oakland, CA 94612	Civil L.R . 16-10

* If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 21 days in advance of the Initial Case Management Conference.

** If the Initial Case Management Conference is continued, unless otherwise ordered this deadline is continued to 7 days in advance of the Initial Case Management Conference.

UNITED STATES DISTRICT COURT

for the

Northern District of California

PACASO INC. and PAC 6 CA 2021 LLC, *Plaintiff(s)* v. THE CITY OF ST. HELENA; PLANNING AND BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; DOE DEFENDANTS # 1 – 5, *Defendant(s)*	)	Civil Action No. 3:21-cv-02493

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* The City of St. Helena; Planning and Building Director Maya DeRosa; Mayor Geoff Ellsworth; City Attorney Ethan Walsh; Doe Defendants # 1 – 5

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lance A. Etcheverry
Caroline Van Ness
Ashley Phillips
Osama Alkhawaja
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

LANCE A. ETCHEVERRY (SBN 199916)
Lance.Etcheverry@skadden.com
CAROLINE VAN NESS (SBN 281675)
Caroline.VanNess@skadden.com
ASHLEY PHILLIPS (SBN 318397)
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OSAMA ALKHAWAJA (SBN 334404)
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525 University Avenue, Suite 1400
Palo Alto, California 94301
Telephone: (650) 470-4500
Facsimile: (650) 470-4570

Attorneys for Plaintiffs
PACASO INC. and PAC 6 CA 2021 LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC. and PAC 6 CA 2021 LLC, Plaintiffs, v. THE CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; and DOES 1-5, Defendants.	Case No.:3:21-cv-02493 **PLAINTIFFS PACASO INC.'S AND PAC 6 CA 2021 LLC'S CERTIFICATION OF INTERESTED ENTITIES OR PERSONS PURSUANT TO F.R.C.P. 7.1 AND CIVIL L.R. 3-15**

Plaintiffs Pacaso Inc. and PAC 6 CA 2021 LLC disclose the following information for the limited purpose of complying with Federal Rule of Civil Procedure 7.1 and Civil L.R. 3-15 of the Northern District of California.

Pacaso Inc. and PAC 6 CA 2021 LLC do not have a parent corporation. No publicly held corporation owns 10% or more of the stock of Pacaso Inc. or PAC 6 CA 2021 LLC.

Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report, as no persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities, have an interest described in Civil L.R. 3-15 that could be substantially affected by the outcome of this proceeding.

DATED: April 6, 2021

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: */s/ Lance A. Etcheverry*
LANCE A. ETCHEVERRY
Attorneys for Plaintiffs
PACASO INC. and PAC 6 CA 2021 LLC

From: ECF-CAND@cand.uscourts.gov
To: efiling@cand.uscourts.gov
Subject: [Ext] Activity in Case 3:21-cv-02493-KAW Pacaso Inc. et al v. City of St. Helena et al Case Assigned by Intake
Date: 4/7/2021 7:41:00 AM
CC:
BCC:

Message:

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended. ***NOTE TO PUBLIC ACCESS USERS* Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered on 4/7/2021 at 7:41 AM and filed on 4/6/2021
Case Name: Pacaso Inc. et al v. City of St. Helena et al
Case Number: 3:21-cv-02493-KAW
Filer:
Document Number: 4(No document attached)

Docket Text:
Case assigned to Magistrate Judge Kandis A. Westmore.

Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit *E-Filing A New Civil Case* at http://cand.uscourts.gov/ecf/caseopening.

Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by

Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 4/20/2021. (bwS, COURT STAFF) (Filed on 4/6/2021)

3:21-cv-02493-KAW Notice has been electronically mailed to:

Lance Allan Etcheverry lance.etcheverry@skadden.com, ashley.phillips@skadden.com, candice.spoon@skadden.com, caroline.vanness@skadden.com, dlmlclac@skadden.com, nberglun@skadden.com, osama.alkhawaja@skadden.com

3:21-cv-02493-KAW Please see Local Rule 5-5; Notice has NOT been electronically mailed to:

LANCE A. ETCHEVERRY (SBN 199916)
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Caroline.VanNess@skadden.com
ASHLEY PHILLIPS (SBN 318397)
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Attorneys for Plaintiffs
PACASO INC. and PAC 6 CA 2021 LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC. and PAC 6 CA 2021 LLC, Plaintiffs, v. THE CITY OF ST. HELENA; PLANNING & BUILDING DIRECTOR MAYA DEROSA; MAYOR GEOFF ELLSWORTH; CITY ATTORNEY ETHAN WALSH; and DOES 1-5. Defendants	Case No.: **COMPLAINT FOR:** **(1) DECLARATORY JUDGMENT;** **(2) DUE PROCESS VIOLATION;** **(3) SELECTIVE ENFORCEMENT;** **(4) INVALID USE OF MUNICIPAL AUTHORITY; AND** **(5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE** **JURY TRIAL DEMANDED**

Plaintiffs Pacaso Inc., a Delaware corporation, and PAC 6 CA 2021 LLC (collectively, "Pacaso"), for their Complaint against the City of St. Helena ("the City" or "St. Helena"); Maya DeRosa ("DeRosa"), in her capacity as Planning & Building Director of St. Helena; Geoff Ellsworth ("Ellsworth"), in his capacity as Mayor of St. Helena; Ethan Walsh ("City Attorney Walsh"), in his capacity as City Attorney of St. Helena; and Does 1 through 5 (collectively, the "Defendants"), allege based on personal knowledge and on information and belief as follows:

INTRODUCTION

1. This case arises out of Defendants' calculated and intellectually dishonest campaign against Pacaso and its homeowners to violate their protected rights to share ownership of a single-family home with others. Acting under the false pretense of enforcing the City's time-share ordinance, codified in Section 17.112.130 of the St. Helena Municipal Code ("Section 17.112.130"), Defendants have sought to preclude Pacaso and its homeowners from enjoying the benefits of secondary home ownership in St. Helena—a privilege that they have sought to reserve only for those in the upper echelon of financial status (*i.e.*, those who can afford to purchase and own primary and second homes in St. Helena on their own, despite the astronomical housing prices in the area). Sadly, this is just the latest chapter in a long history of improper attempts by the City to exclude outsiders from the community. With Defendants now entrenched in this unprincipled position, Pacaso has no choice but to seek judicial intervention to guarantee the legally-protected rights of its homeowners to enjoy the benefits of owning property in the beautiful surrounds of St. Helena.

2. Defendants' crusade against Pacaso is based on manufactured, incorrect theories about both the scope of Section 17.112.130 and Pacaso's business model. One thing about Section 17.112.130 is clear: the Ordinance prohibits only "[t]he creation of a time-share project" in St. Helena. But Pacaso homes are not time-shares, and Pacaso does not create "time-share project[s]."

3. Instead, Pacaso has introduced a new pathway for second home ownership that provides individuals who have traditionally been excluded from the second home market an opportunity to turn their dreams into reality. Pacaso eliminates several significant barriers to second home ownership, including exorbitant costs, inevitable maintenance hassles, and even the

perceived guilt of having the home sit vacant. Pacaso prides itself in serving a diverse clientele, underscoring the power of ownership to unlock new opportunities for traditionally underrepresented communities. Its owner group is organically diverse: around two-thirds of Pacaso homeowners in St. Helena and 25% of Pacaso's total owner group are non-white or identify as LGBTQ+.

4. Pacaso's homeowners are not renters or investors. They co-own the home with up to seven other homeowners. Pacaso's co-homeownership structure has no resemblance to commercial or quasi-commercial use. Pacaso homeowners are true homeowners who make a significant financial investment in their home, and are in it for the long-haul. They are directly invested in the home, its surrounding neighborhood and community, and own for their personal use and enjoyment, not for profit. Pacaso homeowners cannot sell their ownership stake during the first year of ownership, and they are strictly prohibited from renting out the property at any point to anyone.

5. Unlike absentee second home owners, Pacaso homeowners occupy their home and support local businesses year-round, including those disproportionately impacted by COVID-19, such as wineries, restaurants, and retail shops. What is more, Pacaso itself employs between 8-10 local businesses per property, including real estate agents, property managers, landscapers, pool cleaners, home cleaners, laundry services, handymen, local artists, and more. Indeed, today, 60% of all residential properties in St. Helena did not take the owner occupant exemption, which means the owners patronize local businesses only a fraction of the year. In contrast, Pacaso homeowners use and occupy their home year-round, just like a primary residence. In sum, Pacaso's homeowners are part and parcel of the underlying economic ecosystem of St. Helena.

6. Pacaso is—and has always been—fully compliant with, and committed to upholding, the laws and values of St. Helena. Despite the obvious opportunities to develop a fruitful partnership, Defendants have rejected any attempt to embrace Pacaso and its homeowners as the equal community members they are. Instead, they have taken aim at Pacaso, seemingly at the behest of a few vocal St. Helena residents with improper outsider bias.

7. Defendants' recent challenge to Pacaso was launched less than a year after they first attempted to regulate Pacaso, but were forced to accept that co-ownership structures like Pacaso's are lawful and not subject to Section 17.112.130.

8. On July 14, 2020, reacting to "concerns" from neighbors about a listing for a Pacaso home, then-acting City Attorney Karen Ueda prepared a Report to City Council (the "July 2020 Report" or "Report," attached as Ex. A hereto). Desperate for a way to regulate and control Pacaso and its homeowners, the City Council directed City Attorney Ueda to evaluate the scope of Section 17.112.130 and whether it applied to Pacaso.

9. The answer was plainly "no." The July 2020 Report concluded that "a timeshare use differs from a fractional or partial ownership of a property." Report at 323. Not only that, any attempted regulation of this type of ownership would run afoul of a basic premise of the limits on zoning authority: "[B]y law zoning regulations must focus on the *use* of the land." (Report at 325 (emphasis added).) The July 2020 Report acknowledged that this "fundamental challenge" could not be cured by amendment to Section 17.112.130, because "zoning based solely on ownership, as opposed to the use of the land, is impermissible." Report at 326.

10. On July 14, 2020, City Attorney Ueda presented the findings of the July 2020 Report to the City Council and reiterated that the zoning code cannot regulate based on the identity of the homeowners: "Whether a residence is owned by a non-permanent city resident, for example, who may use that residence as a second home, isn't an issue that can be regulated by the zoning code. And so, ***we can't regulate based on the identity of the owner or of a tenant***."[1] July 13, 2020, Meeting at 3:20-21.

11. Extensive discussion ensued at that meeting about the limitations and impropriety of the City attempting to regulate partial ownership of single-family homes as reflected in numerous statements by City Council members including the Vice Mayor, including:

- Section 17.112.130 "was improperly written or inaccurately written" such that it does not cover partial ownership of a single-family home like a Pacaso home. (July 14, 2010, Meeting at 3:30.)

[1] Recording of July 14, 2020 City Council Meeting ("July 14, 2020, Meeting"), available at https://sthelena.civicweb.net/document/42347?splitscreen=true&media=true&timestamp=11860.

- "My concern is that ***we're overreaching what we can do legally*** though by, from what I understand, ***we can't control how people own this***. They're able to do it, and so I don't want us to go down the path of spending a lot of money ***trying to find our own way around what we can legally do***. And I think that ***there's other ways to regulate that we have like in our ordinance*** such as if there are loud noises, if that's the issue, if there's loud partying after a certain amount of hours. That's the kind of thing that I'd be more interested in looking at than regulating who gets to own the property if ***this is something that by law can happen***." (July 14, 2020, Meeting at 3:30-31.)

- "***What you want and what's legal are entirely different matters***. I think ***this is driven by case law and civil rights law*** and cases, you know, I could see the other side of this issue that ***we're not in the business of regulating families and how people come together to buy properties***." (July 14, 2020, Meeting at 3:31-32.)

- "***[W]e don't want to go down a path where we're going to get sued*** because that doesn't make any sense either, and then we need to focus on the issue, the noise and the nuisance and be a little bit more robust on that part of it. . . . ***I know the case law is sort of against us on this***." (July 14, 2020, Meeting at 3:32.)

12. In the face of these damning admissions—and without any changes in law or fact since July 2020—Defendants decided to change course in early 2021, threatening that unless Pacaso immediately ceased its efforts to market a home in St. Helena to prospective home buyers, it would contact all real estate agents in the area to "educate" them on the "illegality" of Pacaso's ownership model. Despite admissions on the public record from Defendant Walsh that the City had not yet been able to reconcile its newfound position with the clear guidance from former City Attorney Ueda, Defendants nonetheless followed through on their threat in an effort to chill real estate activity surrounding the Pacaso home—sending a letter to all real estate agents in the area that threatened sanctions if agents were to sell a purported "timeshare" property that was then currently listed on the MLS (*i.e.*, the Pacaso property). Defendants' plan worked to perfection, as Pacaso has been contacted by numerous real estate agents and potential buyers, concerned about possible retribution from the City if they proceed with attempts to buy or sell the Pacaso property in St. Helena.

13. Pursuing enforcement that is at odds with the City Attorney's own position on Section 17.112.130 is deeply problematic, violative of Pacaso's rights, and confirms that its latest attempt to interfere with Pacaso's operations and homeowner activity is motivated by an improper purpose.

14. Indeed, the City's reliance on Section 17.112.130 is nothing more than a pretext to erect barriers and deny homeownership to new diverse residents, and to control ***who*** owns and occupies a particular residence. This unlawful and exploitative conduct must be stopped.

THE PARTIES

15. Pacaso is a corporation formed under the laws of Delaware, doing business as "Pacaso," and headquartered in San Francisco, California. Pacaso, which previously operated under the brand name "Niner Homes," first started operations in 2020. It launched as Pacaso in October 2020. Pacaso currently owns and/or manages at least five single-family homes in the City of St. Helena.

16. PAC 6 CA 2021 LLC, a California limited liability company, is the property-specific LLC that owns deeded title to 1242 Madrona Ave., a single-family residence located in St. Helena.

17. The City of St. Helena is a municipality in Napa County, California and is part of the North Bay Region of the San Francisco Bay Area. St. Helena is a General Law City and operates a Council-City Manager style of government and derives its power from the California Constitution and laws enacted by the State legislature.

18. Defendant Maya DeRosa is the Planning & Building Director of St. Helena. In this role, she is responsible for reviewing, revising, and implementing St. Helena's General Plan and zoning ordinances. She provides regular staff support for the City Council and Planning Commission. As the Planning & Building Director, DeRosa has "the authority and powers necessary to gain compliance with the provisions of this code and applicable state codes," and is "considered to be [an] enforcement official[]." Section 1.12.040.

19. Defendant Geoff Ellsworth is the Mayor of St. Helena. The City Attorney acts under the Mayor and City Council's direction. Defendant Ellsworth served as City Council member from November 2016 until he was elected Mayor in November 2018. The Mayor presides over City Council meetings, signs official documents, and officiates at ceremonies and events. The Mayor is elected at-large to serve a two-year term as presiding officer at City Council meetings and as the official head of the City for legislative purposes.

20. Defendant Ethan Walsh is the City Attorney of St. Helena. As City Attorney, Mr. Walsh is responsible for providing legal advice to the City Council and staff in carrying out their duties in the operations of the City government. Mr. Walsh is responsible for bringing about suits on behalf of the City.

21. Doe Defendants #1-5 may include St. Helena City Council members including Vice Mayor Paul Dohring, Anna Chouteau, Lester Gardy, and Eric Hall. Although certain of their names are known, the basis for liability against the Doe Defendants has yet to be determined, because the full extent of their involvement in the ongoing violations of Pacaso's rights will only be uncovered through discovery. These members have collectively represented the City Council since November 2020, with Vice Mayor Dohring and Anna Chouteau serving since 2018. The City Council is the legislative and policy-making body of the City of St. Helena. Acting as a whole, but bearing individual responsibility, these members are responsible for setting the direction of City policy and for adopting ordinances, resolutions and other orders as necessary for governing the City. Given the lack of transparency around the City Council's involvement and Defendants' decision to depart from the July 2020 Report and to start enforcing Section 17.112.130 against Pacaso, Pacaso is ignorant of the true names of the Does who are also directly responsible for the conduct giving rise to the causes of action herein. Pacaso will later seek to amend the complaint to include the true names of the defendants once ascertained through discovery.

JURISDICTION AND VENUE

22. As this case involves questions which arise under the U.S. Constitution and the laws of the United States, the jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1331. This action is authorized by 42 U.S.C. § 1983. The Court has jurisdiction to issue relief pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201 and 2202. This court has jurisdiction to hear Plaintiffs' pendent state claim through the doctrine of supplemental jurisdiction set forth at 28 U.S.C. § 1367.

23. This district is the proper venue and jurisdiction to the location of some or all of the Defendants, and the location where the injury occurred, under 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

I. Pacaso Seeks To Democratize Second Home Ownership In St. Helena

24. Pacaso (formerly known as Niner Homes) launched in October of 2020 introducing a new pathway for second home ownership.

25. Pacaso currently owns and/or manages five single-family homes in the City of St. Helena.

26. Pacaso lowers the barriers to the second home market by simplifying and streamlining the co-ownership process by reducing costs and making ownership possible at a more accessible price point. Pacaso organizes the ownership group, manages the legal process, and provides a management service to streamline the home ownership process for the co-owners.

27. Pacaso further facilitates broader access to the second home market by allowing co-owners to buy partial interests in real property. Pacaso creates a property-specific LLC for each home, which owns deeded title to the real property. Then Pacaso organizes and vets a maximum of eight co-owners, who hold co-ownership interests in the LLC and co-own the home in increments ranging from 12.5% to 50%.

28. The co-owners can purchase their desired ownership interest based on their expected occupancy needs, financial means, and even in certain circumstances their desire to participate in the LLC with co-owners of their choosing. At closing, the co-owners enjoy 100% ownership in the property, and Pacaso's only role remains to serve, at the discretion of the homeowners, as program manager overseeing the LLC and employing local businesses to care for the home.

29. The concept of co-ownership through an LLC is far from new. In St. Helena, property ownership through LLCs or other vehicles that facilitate multiple owner arrangements is very common. But Pacaso simplifies the process in a novel way that makes the experience accessible to people who lack the resources or time to own and manage a whole second home. As a result, Pacaso has made second home ownership available to a broader set of people, including those in traditionally diverse and underrepresented communities.

30. In short, Pacaso's model seeks to enrich the lives of new and diverse second home owners and open the second home market, which has traditionally only been accessible to affluent and predominantly white buyers. Pacaso specializes in top second home destinations and is currently focused on 25 markets across 10 states.

31. This is especially true in St. Helena. In St. Helena, second home ownership has typically been possible only for elite and predominantly white buyers, particularly on St. Helena's affluent west side. In contrast, Pacaso's owner group is organically diverse; approximately 66% of Pacaso homeowners in St. Helena and 25% of Pacaso's total owner group are non-white or identify as LGBTQ+.

II. Pacaso Shifts Demand Away From The More Limited Supply Of Affordable Homes And Ensures Second Homes Are Fully Utilized

32. The workforce housing challenges in St. Helena are acute, and much of this shortage can be attributed to second home buyers purchasing moderately priced whole homes.

33. Since 2018, only 7% of homes sold in St. Helena were sold below $500,000, and 82% of those properties were purchased by second home buyers.

34. Pacaso's approach helps relieve competition for more affordable homes by giving second home buyers a better option. Instead of competing for a whole home valued at $525,000, for example, Pacaso offers second home buyers an option to be co-owners of a $4-5 million property for the same price. Just one Pacaso home can remove up to eight buyers from local competition.

35. Second homes are notorious for sitting empty much of the year. In contrast, Pacaso-managed homes are fully utilized, which means that Pacaso homeowners engage in their community and support local businesses year-round.

36. Just like their neighbors, Pacaso homeowners make large financial investments in their homes and bring an owner mentality, not a vacation mentality, to their use of the property. Short-term rentals are strictly prohibited, and all owners agree to Pacaso's policies, which prohibit large events or parties. A Pacaso home in St. Helena is subject to all of the same noise and nuisance ordinances that apply to other single-family residences.

III. In July 2020, The City Attorney And City Council Members Concluded That The Time-Share Ordinance Does Not Regulate Co-Owned Homes, Conceding That The Ordinance Does Not Apply To Pacaso

A. Overview Of Section 17.112.130, The City's Time-Share Project Ban

37. The City of St. Helena has a time-share ordinance, codified in Section 17.112.130, which states:

> The creation of a ***time-share project as a means of ownership*** of any single-family, two-family or multiple-family dwelling or any apartment house shall be prohibited within the city.

38. Section 17.112.130 sets forth a series of definitions—which are both circular, vague, and incomplete. For example, a "Time-sharing project" is defined as "any real property that is subject to a time-share program." Section 17.112.130(B).[2]

39. In turn, "time-share program" is defined to mean "any arrangement for time-share intervals [which is later defined as either a time-share estate or a time-share use] in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession *circulates* among *purchasers of the time-share intervals* . . . ." *Id.* (emphasis added).

40. Section 17.112.130 defines "time-share estate" as ownership in a "property devoted to a time-share fee" and "time-share use" means "any contractual right of exclusive occupancy, which does not fall within the definition of a time share estate, including, without limitation, a vacation license, prepaid hotel reservation, club membership, limited partnership, or vacation bond." *Id.*

B. Under Defendants' Own Analysis, Section 17.112.130 Does Not Apply To Pacaso

41. Defendants are carrying out an enforcement campaign against Pacaso that is *in direct conflict* with a position that City Attorney Ueda took in a written report and oral presentation

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[2] The ordinance also defines "offering" as "any offer to sell, solicitation, inducement or advertisement, whether by radio, television, newspaper, magazine or by mail, whereby a person is given an opportunity to acquire a time-share interval of a residence within the city," but "offering" is not used anywhere in Section 17.112.130 or its definitions.

(cont'd)

to the City Council in July 2020.[3]

42. The July 2020 Report was undertaken based on purported "concerns raised by both City residents and Council members after some residents discovered a real estate listing for a fractional or partial ownership interest in a residential home in town." Report at 323.[4]

43. As City Attorney Ueda and Maya DeRosa herself concluded, "timeshare use differs from a fractional or partial ownership of a property." *Id.*

44. Indeed, after laying out the "fairly circuitous definition"—as the City Attorney described it—"to determine if a project is a prohibited timeshare or not," the City Attorney conceded the differences between a time-share and a fractional ownership:

> What emerges from these various definitions is that a timeshare, as defined in the City's Zoning Code, ***is not identical to a fractional or partial ownership***; but, rather, a timeshare involves an ownership arrangement where the owners have purchased an allotted amount of time to use the property (a timeshare interval). The Code also notes that timesharing projects have the same character as commercial hotels and other transient uses. (Report at 324 (emphasis added).)

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[3] DeRosa, in her capacity as Planning & Building Director of St. Helena and acting under the color of law, *approved* the report and participated in the July 14, 2020 meeting at which its findings were presented, which both concluded that the time-share ban does not apply to a co-ownership models like Pacaso's, and that Pacaso's operations do not violate the ordinance. Ellsworth, in his capacity as Mayor of St. Helena and acting under the color of law, and the City Council also participated in July 14, 2020 meeting. *See* July 14, 2020, Meeting at 3:29; *see also* Regular City Council Meeting, August 11, 2020, at 39, https://sthelena.civicweb.net/document/43063/Regular%20City%20Council%20-%2011%20Aug%202020.pdf?handle=838240E8400F467DA80B707D222A9EA8. As such, Ellsworth was made aware of the July 2020 report and the issues surrounding application of the time-share ordinance against fractional or partial co-ownership structures.

[4] In the July 14, 2020 meeting regarding its findings, the discussion referenced "this particular piece of property"—*i.e.*, the Pacaso home that was the subject of Defendants' earlier correspondence. July 14, 2020, Meeting at 3:35. That this "piece of property" is a Pacaso property is confirmed by the fact that a City Council member stated that this property came to the attention of the City by way of a complaint from neighbors, as indicated in the City's May 22, 2020 Letter. Further, City Attorney Ueda later confirmed during the discussion that the structure of the "particular piece of property that we're talking about" was through a corporation (which is the exact structure of a Pacaso home).

45. The City Attorney further admitted that its time-share ordinance cannot regulate "based solely on ownership"—which is exactly what the City's recent challenge to Pacaso attempts to do:

> [Z]oning based solely on ownership, as opposed to the use of land, is impermissible. Timeshare regulations should, thus, focus on the type and use of the property and its related impacts, such as specific intervals of exclusive occupancy that render the use more akin to a transient commercial use. (Report at 326.)

46. The July 2020 Report identifies that this is indeed the goal of enforcement efforts against Pacaso, stating that the analysis stems from "***a concern that non-permanent City residents*** are purchasing property in St. Helena as a second home(s) either for themselves or their guests." Report at 325. Thus, the City Attorney cautioned against the very path that it is now pursuing: "[Z]oning regulations may not target individuals. In other words, the City may not adopt a zoning regulation based on the identity of a tenant or where a particular resident permanently resides." *Id.* (citing *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 1013 (2000)).

47. In fact, the City Council members were unable to state even ***one permissible purpose, goal or non-suspect reason*** to justify application of the time-share ordinance against partial co-ownership structures like Pacaso's. Rather, the primary concern identified at the July meeting was "different people coming in and out of the unit or house" (July 14, 2020, Meeting at 3:25):

> I think what concerns me about [Pacaso homes] and what the neighbors raised was, instead of having one family living next door to you, you have maybe six, and you know they'd alternate when they arrived and they felt, I think they alluded to it being like a short-term rental. But it certainly maybe isn't what the people think when you buy a single-family dwelling in an area that is known for single-family homes. I know over the years the definition of what's a family has gotten broadened, but I'm just wondering if there's a way to address the concerns of the neighbors if you see one because I'm sympathetic to . . . what they're saying. ***We have multiple people next door coming in and out. It's not really short term rental, but what can we do about that? Anything?*** (July 14, 2020, Meeting at 3:24-25.)

48. This purported "reason" clearly targets individuals and "the identity of a tenant or where a particular resident permanently resides"—which is strictly impermissible (*see infra* at

¶¶ 113-127). In fact, the City Attorney was forced to admit that this was improper grounds for invoking Section 17.112.130 and inconsistent with the purpose behind the ordinance:

> If the issue is primarily that there are different people coming in and out of the unit or house, then I'm not entirely sure what can be done about that . . . . The direction that it's gone in, in terms of potential regulation, is that ***if there's a concern about impacts that are caused from having too many people basically at a particular residence, [then] those impacts can be addressed by current standards in place for noise and parking standards and that type of thing***. So I think it's one thing to talk about people versus you know the potential impacts that could result. (July 14, 2020, Meeting at 3:25-26.)

49. The discussion of the July 2020 Report further confirmed Defendants' intent to improperly target particular types of homeowners. Notably, City Attorney Ueda confirmed that the City would ideally want to exclude *certain types of owners* based on family or friend relationships, from being barred from partial ownership of a residence in St. Helena:

> I do think the hardest part is really figuring out how to define the issue and the scope, right, because if we're getting at multiple ownership of one piece of property, it's really challenging to figure out a way to define that that doesn't preclude people who really do need to go buy a piece of property for financial reasons. . . . ***They may all be friends or family members, and I don't think that's the type of activity that the City would want to preclude***, and that's the challenge that we have in trying to figure out how to define this in a way that would work. (July 14, 2020, Meeting at 3:33-34.)

50. City Attorney Ueda also stated concerns over the "significant practical challenges to implementing and enforcing the existing timeshare regulations." Report at 325. This is because it lacks visibility into each residence's ownership structure and "[t]he City does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership arrangements." *Id.* As a result, and by its own admission, the City's outreach to Pacaso is targeted and arbitrary, based solely on a "tip" from a real estate agent.

51. Further, City Attorney Ueda conceded that the "City's code appears to try to . . . regulate timeshare uses as a commercial use." Report at 325. As explained below, Pacaso homes are strictly residential homes with no commercial purpose (*see infra* at ¶¶ 55-63).

52. In providing an example of a joint ownership scenario that *does not* trigger the City's time-share prohibition, the City specifically described a scenario where a residence is owned by multiple people who each do not choose to live in the residence, but the "joint or partial

ownership of the residence would not be considered a timeshare" because each "member could have equal access to the residence (as opposed to purchasing a limited amount of time)." Report at 326. This is Pacaso's model and Pacaso's homeowners do not "purchase a limited amount of time" in the residence.

53. In fact, the distinction between a "time-share" and other types of partial or fractional ownership structures is so obvious that even the National Association of Realtors (one of the most trusted sources for matters relating to residential real estate) explicitly acknowledges these distinct concepts:

> Fractional interest ownership, once used primarily with commercial tenants-in-common, has recently blossomed in the vacation home market. Not to be confused with a time-share or a destination club, fractional interest properties can be a sensible and profitable alternative to owning a second home.[5]

54. Consistent with its correspondence with Pacaso and public statements regarding the inapplicability of Section 17.112.130 to Pacaso, Defendants did not attempt to further interfere with Pacaso or its homeowners until recently.

A. **Pacaso Is Not A "Time Share Project"**

55. The City's July 2020 analysis flows from the simple and indisputable fact that Pacaso's small co-ownership model is starkly different from any "time-share project" purportedly covered by Section 17.112.130 or that is properly the subject of *any* zoning regulation.

56. Pacaso creates a property-specific LLC for each home, which owns deeded title to the property. Then Pacaso organizes and vets a maximum of eight co-owners, who have an ownership interest in the LLC and co-own the home in increments ranging from 12.5% to 50%. The co-owners can purchase their desired ownership interest based on their expected occupancy needs, financial means, and even in certain circumstances their desire to participate in the LLC with co-owners of their choosing. At closing, the co-owners enjoy 100% ownership in the property, and Pacaso's only role remains as program manager overseeing the LLC.

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[5] *See* Def. of Fractional Interest Ownership, *National Association of Realtors*, at https://www.nar.realtor/fractional-interest-ownership.

57. Pacaso's homeowners do not merely own the "right of exclusive occupancy," (Def. of "Time-share use," Section 17.112.130(B)) or a "use, occupancy or possession" right that "circulates among purchasers . . . according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year" (Def. of "Time-share program," Section 17.112.130(B)). Nor do they participate in an "arrangement for time-share intervals." Def. of "Time-share program," Section 17.112.130(B).

58. Rather, just like any other residential homeowner, Pacaso homeowners own a real property asset in a single-family home that includes real property interests, rights and obligations. An interest in a time-share project is vastly different from the rights inherent to real property co-ownership, including possession, control, exclusion, and disposition. Indeed, a Pacaso homeowner, just like any other homeowner, has rights *well* beyond a situation whereby "somebody literally gets a limited amount of time in a particular piece of property to use," which is how a "timeshare" was described by City Attorney Ueda. July 14, 2020, Meeting at 3:19.

59. Instead, Pacaso homeowners have inherent and inalienable rights inherent to owning property, which include the right to possession, to control, to use and quiet enjoyment, to privacy and to exclude others, to sell the property, to physically be on the property, to leave the property, to choose who else can be on the property, to build or alter the property, to make improvements or refurbish the property, and to sell or dispose of the property, among many other rights.[6]

60. Pacaso's involvement in management of the home, at the election of the home's co-owners, does not change the nature of the homeowners' interests and rights. Pacaso supports owners as a program manager, making their ownership experience seamless through LLC and property management services, interior design, scheduling service, and concierge services. In fact,

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[6] Further, an owner of a "time-share" interest, as opposed to an owner of a single-family home, is typically a member of a large commercial development of density, whereby multiple unrelated occupants are using the overall property at the same time, buying not for the purposes of real estate ownership, but for purposes of enjoying or benefiting from the time-share program or amenities.

if Pacaso homeowners collectively agree that Pacaso's services are no longer desired, the owners can choose to terminate their relationship with Pacaso and self-manage their property.

61. Plainly, Pacaso co-owners are not merely purchasing "time-share intervals." Def. of "Time-share program," Section 17.112.130(B). Pacaso homeowners' ability to stay in the home is not capped. Subject to availability and covering operating and ownership costs, a Pacaso co-owner can spend more time in the house, beyond the default time attributable to each co-owner's ownership stake. Co-owners' ability to spend time in the home is fluid and flexible.

62. Further, Pacaso homeowners are true owners with complete control of their home and expansive rights, rather than merely having a right of "use, occupancy or possession" that is limited to a time schedule. Def. of "Time-share program," Section 17.112.130(B). For example, Pacaso homeowners have the right to store their personal possessions on the property year round. Pacaso homeowners are also heavily involved in all levels of management and decision-making regarding the property. They vote on matters such as selecting and replacing the program manager, renovations on the home or other changes to the interior or exterior design, and various other fundamental homeownership matters. Co-owners can even sell the home outright. Pacaso is merely a service. Ultimately, Pacaso homeowners have complete control.

63. It is clear that Pacaso's properties do not fall within the purview of the City's time-share ordinance, which on its face does not apply to real property co-ownership structures like Pacaso's.

B. Section 17.112.130's "Findings and Purpose" Confirm that the Ordinance Does Not Apply to Pacaso

64. It is abundantly clear from the "Findings and Purpose" of Section 17.112.130 that Pacaso homes are not a covered "time-share project." Section 17.112.130 includes the following express purposes for the time-share ban:

1. There is a critical shortage of affordable housing in the city for long-term occupancies (more than six months annually), and the availability of additional residential dwelling units is substantially restricted by the growth management system;

2. The conversion of residential dwelling units within the city to time-sharing projects eliminates residential dwelling units otherwise available for long-term occupancies (more than six months annually) in the city;

3. Time-sharing projects have the same character as commercial hotels, motels and other transient occupancy uses due to their transient nature and to the multiple short-term (less than six months annually) occupancies by those participating in time-sharing projects;

4. Such commercial or quasi-commercial like use is inappropriate in residential areas due to the increased traffic generation and multiple occupancies disturbing the peace and quiet of residential neighborhoods; and

5. The city council finds and determines that this section is necessary to protect the public health, safety and welfare of the citizens of the city.

Section 17.112.130(A).

65. The City's attempt to obstruct Pacaso's operations lacks any rational connection to any of the stated purposes behind Section 17.112.130.

66. Targeting Pacaso does nothing to ensure homes are available for long-term occupancies. The City lacks all visibility and control into how much time homeowners intend to spend in their homes. Preventing Pacaso from buying properties does nothing to prevent other prospective buyers from buying the home as a second home that will remain unoccupied for the majority of the year, or that will be rented for periods under six months, or who buy anticipating the ability to use it for short-term rentals, among other non "long-term occupancy" uses.

67. In fact, Pacaso has the exact opposite effect by redirecting second homeowners who would have otherwise purchased affordable inventory needed by the local workforce to homes at a higher price point.

68. Pacaso homeowners are long-term oriented (like most homeowners) and have materially different incentives with respect to their conduct, use and treatment of the home as compared to short-term renters. This is because Pacaso homeowners are directly invested in the home, its surrounding neighborhood and community, and the long-term maintenance and success of the property and community at large. Pacaso homeowners are true homeowners who own for their personal use and enjoyment, not for profit. They can sell their interest at any point after the first year of ownership by listing the property on the Multiple Listing Service ("MLS") with a local real estate agent, and they are strictly prohibited from renting out the property at any point to anyone. In fact, Pacaso homeowners are "long-term" occupants under the City's stated "six-month" standard (Section 17.112.130(A)), as Pacaso homeowners are strictly prohibited from

selling their interest at any point before the *first year* of ownership or from renting out the property at any point to anyone.

69. In contrast, a time-share typically entails merely the right to use a fixed amount of time in a property. A time-share is highly restrictive in terms of resell ability, pricing and control. Time-share interests are usually held in multi-unit buildings or resort properties and use of the property is typically split across a large number of investors. Owners of a time-share interest are unlikely to have any interactions, let alone form a community. Behaviorally (and due to the nature of the properties, the structure of time-share ownership, and nature of the investment), time-share owners resemble short-term renters or hotel guests.

70. Nor is there a rational relation between the City's stated purpose of banning "commercial or quasi-commercial like use" in residential areas, such as that which results from "commercial hotels, motels and other transient occupancy uses," and any enforcement measures taken against Pacaso (Section 17.112.130(A)). Pacaso is a ***purely residential*** co-homeownership structure that lacks any resemblance to such "commercial or quasi-commercial like use."

71. Pacaso's homes are subject to the same residential occupancy rules as other homes, and homeowners respect the same rules that other owners are expected to follow. Unlike commercial properties, which are required to offer parking for each individual guest room, Pacaso homes are single-family homes with two parking spaces per dwelling unit, as required by Section 17.124.030.

72. Moreover, Pacaso co-owners use their homes in a way that is wholly consistent with other single-family residences. Their use does not cause "traffic generation and multiple occupancies disturbing the peace and quiet." Section 17.112.130(A)(4). Just like all other single-family homes, there is only one co-owner using the property at a time; co-owners agree not to have large events or parties; co-owners adhere to a 9 pm to 7 am quiet hour policy; co-owners agree not to rent the home to third parties; and Pacaso encourages homeowners to avoid parking on the street unless absolutely necessary. There is nothing "transient" or "commercial" about the co-owners who choose to share home ownership of property in St. Helena. In sum, Pacaso homeowners are

no different from other homeowners in St. Helena; Pacaso and its co-owners are dedicated to ensuring the peace, safety, and welfare of the citizens of St. Helena.

73. Indeed, in discussing the July 2020 Report, City Council members confirmed that the primary purpose behind the time-share ordinance is to regulate commercial uses. For example, one City Council member stated: "First of all, I think our whole timeshare thing probably came into being when Rodney Friedrich brought his hotel forward." July 14, 2020, Meeting at 3:24. This reference was to a hotel development approved by City Council in 2010, for a ***60-room hotel*** which would sell shares in the hotel rooms.

74. Further, the then-acting City Attorney stated: "[I]n a nutshell, the prohibition [is] . . . based, in part, on findings that the city council made, that timeshare uses are commercial for quasi-commercial uses that serve to reduce available residential housing and increase traffic and noise impacts." July 14, 2020, Meeting at 3:18. Thus, time-share ordinances generally "treat timeshares as commercial uses, often times in buildings that are like ***high rise condo-type buildings to other fractional ownership hotels***." July 14, 2020, Meeting at 3:20 (emphasis added).

75. On the other hand, as noted by City Attorney Ueda, "fractional or partial ownership interests may not necessarily trigger any concerns as more commercial uses would because, for example, multiple members of one family could decide to purchase a residence together, they may not stay there all at the same time, but they wouldn't necessarily be having interest like a timeshare either." July 14, 2020, Meeting at 3:21-22.

76. Pacaso and its homes do not implicate these "commercial" uses. As a result, the City Council members were unable to state even ***one purpose, goal or non-suspect reason*** to justify application of the time-share ordinance against partial co-ownership structures like Pacaso's (*see supra* at ¶¶ 47-49), and the City Council was forced to admit that the primary concern identified at the July meeting (*i.e.*, "different people coming in and out of the unit or house") is clearly impermissible (*id*; *see infra* at ¶¶ 125-27).

77. Nor do Pacaso homes detract from the City's goal of ensuring availability of "critical shortage of affordable housing in the city." Pacaso's service reduces competition for housing inventory critically-needed by the local workforce. Today, St. Helena's median home

value of $1.65 million is at odds with its median household income of $90,031; most of those employed in St. Helena cannot afford to live there. Pacaso offers second home buyers a better option than a whole home, thus redirecting second home buyers away from the low inventory available at that level.

78. The major disconnects between the stated goals underpinning Section 17.112.130, Pacaso's model, and the City's latest enforcement efforts against Pacaso suggest that the City's reliance on Section 17.112.130 is nothing more than a pretext to deny homeownership to new, diverse residents.

IV. Defendants Communicated To Pacaso Nearly A Year Ago Its Conclusion That Section 17.112.130 Does Not Apply To Pacaso

79. The City first raised the issue of the time-share ban with Pacaso (formerly Niner Homes) in May 2020. On May 15, 2020, Maya DeRosa, in her capacity as the Planning & Building Director of the City of St. Helena, sent a letter on behalf of the City to a Pacaso homeowner, giving notice that "if" the home located at 1005 Valley View Street were "used as a timeshare or short term rental," such use would be impermissible pursuant to the City Municipal Code. May 15, 2020 Letter. Those cc'd on the letter included: Elizabeth Olcott with Keller Williams; City Attorney Ueda, City Attorney; and Mark Prestwich, City Manager. *Id.*

80. On May 19, 2020, Pacaso responded on behalf of the Pacaso homeowner, explaining why Pacaso's operations do not violate such ordinances and that the homeowner's use of his property was entirely consistent with such laws. May 19, 2020 Letter.

81. On May 22, 2020, Maya DeRosa, cc'ing Mark Prestwich and City Attorney Ueda, replied on behalf of the City thanking Pacaso for providing an explanation of its proposed property ownership structure, its proposed use of the property, and the reasons Pacaso does not fall within a timeshare model.[7]

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[7] Defendant Maya DeRosa instructed the Pacaso homeowner to "direct any future correspondence through [her] on this matter as [she is] the designated point of contact for the City." May 22, 2020 Letter at 2.

82. Notably, in the May 22, 2020 letter, DeRosa and the City, tacitly acknowledging that Pacaso is not a "timeshare project," ***dropped any reference*** to a violation of the City's time-share ordinance, giving Pacaso the presumed green-light to move forward with its operations from this standpoint. Instead, the May 22, 2020 letter challenged only the homeowner's alleged posting of his home on "Luxury Retreats" for short-term rentals without a permit to do so.

83. Pacaso responded on May 26, 2020, confirming that the property would not be used as a short-term rental property in the future and that the homeowners would remove any posting on the "Luxury Retreats" website. May 26, 2020 Letter.

84. Following this initial exchange with the City, Pacaso moved forward with its operations, investing material resources, time, and efforts, in reliance on the City's representations that Pacaso's operations were permitted.

V. Despite Its Legal Conclusions That It Cannot Regulate Pacaso, Defendants Have Now Proceeded To Unlawfully And Brazenly Enforce The Ordinance Against Pacaso

85. Against the backdrop of Defendants' repeated conclusions that the time-share ordinance does not apply to fractional co-ownership structures like Pacaso's and that the time-share ordinance would need to be amended in order to reach such structures, Defendants, acting under the color of law, have nevertheless sought to enforce the time-share ordinance against Pacaso.

86. The change in position and determination to enforce the ordinance against Pacaso, absent any change in facts or law, is untimely, unfounded, and suspect.

87. In January 2021, a real estate agent for Pacaso received a letter from DeRosa regarding four Pacaso property listings, inaccurately charging that the properties are subject to the City's time-share ordinance. Jan. 25, 2021 Letter. With full knowledge and awareness of the chilling effect that her actions—as a enforcement official under St. Helena's Municipal Code—would have, DeRosa requested that the letter be forwarded to "the buyer and the buyer's agent" (*id.* at 1), and "any other agents that share these listings" to ensure that no zoning violations occur (*id.* at 2).

88. DeRosa's letter had only one purpose: to knowingly and falsely invoke Section 17.112.130 to prevent Pacaso and its homeowners from determining to share ownership of a home

together. DeRosa knew that in purporting to enforce the "local regulations in place pertaining to timeshares," she was unlawfully targeting Pacaso, despite her knowledge that Pacaso is not subject to Section 17.112.130, and that myriad other homes have identical co-ownership structures. Jan. 25, 2021 Letter at 1.

89. Ellsworth and City Council approved and were cc'd on the January 2021 letter, which they knew was inaccurate and sent with an improper purpose. Nonetheless, they failed to intervene to correct or retract the letter.

90. In response, Pacaso contacted DeRosa to confirm, again, that Pacaso is not a time-share, nor does the service allow time sharing use, and that Pacaso prohibits short-term rentals.

91. Next, at a City Council meeting on February 9, 2021, City Attorney Walsh again raised the issue of Section 17.112.130. City Attorney Walsh's update to the City Council and St. Helena residents confirms that he and the City had not reached a different conclusion regarding the time-share ordinance since the conclusion reached in its July 2020 Report.[8] Instead, City Attorney Walsh conceded that he and the City were still "looking at" and "delving further into that issue" (the applicability of the zoning ordinance), confirming that they had not yet determined what to do regarding co-ownership structures like Pacaso's and whether such structures could be regulated under the time-share ordinance. City Attorney Walsh further stated that he and the City were "looking into both what we can do under our current regulations and potentially looking at some

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[8] Ellsworth, in his capacity as Mayor, along with Paul Dohring, in his capacity as Vice Mayor, and Anna Chouteau, Eric Hall and Lester Hardy, in their capacities as City Council members, also attended the February 9 City Council meeting. See February 9, 2021 City Council Meeting Agenda, at https://sthelena.civicweb.net/filepro/documents/48295?preview=48296. Ellsworth, Dohring and Chouteau were made aware of and participated in discussions regarding the July 2020 Report, including the fact that applying the time-share ordinance against partial co-ownership structures like a Pacaso home was impermissible, unconstitutional, and exceeded the scope of the City's zoning authority and police power. Defendant Ellsworth, and Council Members Dohring and Chouteau were thus on notice that City Attorney Walsh was continuing to consider such impermissible actions, despite the July 2020 Report. Ellsworth had the power to prevent the City Attorney Walsh from taking such actions, but failed to intervene, as evidenced by the enforcement efforts against Pacaso that followed.

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changes to the existing regulations," confirming the need to amend the time-share ordinance in order for such co-ownership structures to be subject to the ordinance was still being considered.[9]

92. Nonetheless, and in the face of these statements, the *very next day* on February 10, 2021, City Attorney Walsh sent a letter to Pacaso stating that the City "disagrees" that "Pacaso is not operating a timeshare in St. Helena," and threatening "to enforce its restrictions on timeshares" as well as "action to educate brokers and the public about the ***illegal nature of Pacaso's timeshares***." Feb. 10, 2021 Letter. City Attorney Walsh suggested that the City's challenge was purportedly "[b]ased on the evidence that the City has received" about "the nature of Pacaso's and its buyers' intended use" of Pacaso homes, yet did not provide or describe such "evidence." *Id.* at 1.

93. Despite being unable to point to any alleged "evidence," and without any law or authority supporting his conclusion (which directly contradicts the earlier, reasoned analysis), the City Attorney improperly placed the burden on Pacaso, inviting it to "convince" the City that it was not subject to the time-share ordinance: "If Pacaso convinces the City that Pacaso's—and its buyers'—intended use of residential property in the City does not constitute a timeshare under state law and regulations or the City's code, the City will not apply the timeshare-prohibition." *Id.*

94. Meanwhile, to effectively foreclose any ability of Pacaso homeowners to become part of the City of St. Helena community (and thereby eliminate the need for the City Council to reconcile its elitist position with the plain language of the time-share ordinance), the City Attorney sent a threatening letter regarding timeshare regulations to all City listing agents and brokers on March 16, 2021 (the "March 2021 Letter") alleging that the City's timeshare regulations apply to co-ownership—thereby chilling, under threat of fines and other penalties, any desire on the agents' part to be involved in a sale of ownership interests in Pacaso properties in St. Helena.[10]

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[9] *See* February 9, 2021 City Council Meeting at 14:11-14:42 at https://www.youtube.com/watch?v=XUTsUdZ5wA8&t=759s&ab_channel=CityofSt.Helena.

[10] City Attorney Walsh was not acting within the scope of his official discretion when he sent the March 2021 Letter and performed other acts in furtherance of enforcing the time-share ordinance against Pacaso. City Attorney Walsh was merely attempting to implement a policy decision reached by the City. Those acts were not taken as part of any policy-making functions. In *(cont'd)*

95. City Attorney Walsh expressly warned that his letter applied to "several properties that are currently listed for sale"— plainly linking his notice of purported zoning violations to listings for interests in Pacaso homes. March 2021 Letter at 1.

96. Thus, City Attorney Walsh's March 2021 Letter to all real estate agents and brokers in St. Helena is the manifestation of this very threat "to educate brokers and the public about the illegal nature of Pacaso's timeshare" (Feb. 10, 2021 Letter), and constitutes the City's determination that it was "not convinced" that Pacaso's operations are permitted under Section 17.112.130.

97. City Attorney Walsh was not acting within the scope of his official discretion when he sent the February 2021 Letter or March 2021 Letter and determined to enforce the time-share ordinance against Pacaso; his actions were attempts to implement a policy decision, which he had no basis to reach, given the conclusions reached in the July 2020 Report. In light of the opposite conclusion reached in the June 2020 Report, he acted without due care by sending the February 2021 Letter in an effort to enforce the time-share ordinance against Pacaso.

98. Defendant Ellsworth had the power to prevent and should have prevented City Attorney Walsh from sending the February 2021 Letter and March 2020 Letter, but failed to intervene in order to stop the impermissible application of the time-share ordinance against Pacaso. Defendant Ellsworth knew that City Attorney Walsh's conduct would violate Pacaso's rights, as it constituted unlawful selective enforcement against Pacaso and violated Pacaso's due process rights by applying Section 17.112.130 in a manner that directly conflicted with the earlier analysis of the scope of the ordinance.[11]

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light of the conclusions reached in the June 2020 Report, City Attorney Walsh acted with full knowledge of the wrongfulness of his conduct.

[11] Moreover, "[s]tate law prohibits [St. Helena City] Council from taking action on any item not listed on the agenda." *See* St. Helena City Council Home, at https://www.cityofsthelena.org/bc-citycouncil. Following the July 14, 2020 meeting (which included on its agenda both the item for "Discussion Regarding Timeshare Issues" and an attachment to the July 2020 Report (*see* Agenda Item 11.2 at https://sthelena.civicweb.net/document/42347?splitscreen=true&media=true&timestamp=11860)), City Attorney Walsh, acting at the direction of City Council, nevertheless took an action at odds with the conclusion reached in the July 2020 Report and the July 14, 2020 City Council discussion without re-adding this item to any subsequent agenda for further discussion—including the

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99. On March 17, 2021, Pacaso responded to City Attorney Walsh, identifying the myriad ways in which the City's challenge to Pacaso is flawed and unsupported by fact or law. Pacaso requested confirmation by April 1, 2021, confirming that the City would adhere to the analysis and conclusions from the July 2020 Report, and would drop its improper crusade against Pacaso. The City and City Attorney Walsh failed to respond.

100. The March 2021 Letter, among other communications with real estate agents, brokers, and potential buyers in St. Helena—which Defendants have failed to retract—have caused Pacaso substantial harm. Among other harm, Defendants' misinformation campaign undermines Pacaso's existing relationships with real estate agents working on its behalf, interferes with Pacaso's business relationships and arrangements, tarnishes Pacaso's reputation and goodwill in the community, and impairs Pacaso from future development (including future business partners and key stakeholders in the St. Helena community) by calling into question the legality of Pacaso's operations.

101. These threats have scared real estate agents and chilled their efforts to buy and sell ownership interests in Pacaso properties. Likewise, Defendants' threats have deterred prospective buyers from purchasing Pacaso properties.

102. Indeed, as a direct result of the March 2021 Letter, individuals on NextDoor (a social networking service for neighborhoods) posted comments about Pacaso potentially being violative of the time-share ordinance, further reflecting the confusion created by the March 2021 Letter regarding Pacaso's legality. One user wrote:

> The [March 16, 2021] letter from the City of St. Helena didn't specify any action but did say violators of the City's . . . timeshare [ordinance] are subject to code violations and costly fines. The homes in St. Helena currently being offered for sale as fractional ownership purchases (8 separate owners per house) haven't closed yet. It's my understanding this Pacaso Fractional Ownership Management Company had a few months to find 8 buyers for each of these homes. If they were unable to do so, the listings would go back to the agents that initially listed these properties. I have no idea where they stand today. I haven't seen any reported sales of the properties in questions.

February 9, 2021 City Council meeting agenda. Adopting the enforcement policy set out in the February 2021 Letter, without adding this item to an agenda for further City Council discussion and public commentary, was impermissible.

103. By intentionally disrupting Pacaso's ability to list its properties on the MLS, discouraging real estate agents and brokers from working with or listing Pacaso properties, and causing confusion among residents, real estate agents, and potential buyers regarding the legality of Pacaso's operations in St. Helena (especially without first resolving Pacaso's challenge to such prohibitive actions by the City), Pacaso has directly suffered and continues to suffer damages.

104. To date, Ellsworth has failed to take action to terminate the violative effect of his, City Attorney Walsh's and DeRosa's actions.

VI. As The City Concedes, The Ordinance Is Ambiguous, Confusing, And Void For Vagueness

105. If the City's interpretation of Section 17.112.130 and recent conclusion that it does apply to Pacaso is accepted, then the time-share ordinance fails for being vague, ambiguous and overly broad as applied to Pacaso.

106. The City all but admits that its time-share ordinance is vague and difficult to determine whether conduct is prohibited, stating that it "has a fairly circuitous definition to determine if a project is a prohibited timeshare or not":

> The Code has a fairly circuitous definition to determine if a project is a prohibited timeshare or not. A "time-share project" means any real property subject to a "time-share program." A "time-share program" is defined as "any arrangement for time-share intervals in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year, but not necessarily for consecutive years." (SHMC § 17.112.130(A).) A "time-share estate" is defined in the Code to mean "an ownership or leasehold estate in property devoted to a time-share fee (tenants in common, time span ownership, interval ownership) or a time-share lease." (*Id.*) (Report at 324.)

107. In fact, during a City Council meeting discussing the time-share ordinance, City Attorney Ueda repeatedly stated that "the definition and the overall section is a little bit confusing," July 14, 2020, Meeting at 3:18, and that the ordinance " has some terms that are not defined." *Id.* at 3:19.

108. Likewise, one City Council member acknowledged that, as written, the time-share ordinance does not apply to fractional co-ownership structures, referring to it as "improperly written or inaccurately written," and requesting that the City "clean it up so that we extend the fractional and eliminate this activity" of Pacaso. July 14, 2020, Meeting at 3:30. City Attorney Ueda agreed, acknowledging that if the Council wants to regulate partial ownerships, it would be necessary for the City Attorney to "take a look at that and try to clean up the ordinance." *Id.* at 3:22.

109. After interpreting these "circuitous" definitions, City Attorney Ueda concluded that "[w]hat emerges from these various definitions" is that a timeshare *is not a* fractional or partial ownership, and that the ordinance only applies to timeshare intervals involving "an ownership arrangement where the owners have purchased an allotted amount of time to use the property":

> What emerges from these various definitions is that a timeshare, as defined in the City's Zoning Code, is not identical to a fractional or partial ownership; but, rather, a timeshare involves an ownership arrangement where the owners have purchased an allotted amount of time to use the property (a timeshare interval). The Code also notes that timesharing projects have the same character as commercial hotels and other transient uses. (Report at 324.)

110. The City's, City Attorney Walsh's, Ellsworth's and DeRosa's interpretation of the time-share ordinance and conclusion that it does not apply to fractional or partial ownerships in July 2020 cannot be squared with their position today that the ordinance applies to Pacaso.

111. Setting aside the vague and circuitous definitions in the ordinance, one thing is perfectly clear: the particular "use" that the ordinance intends to cover (and all it is permitted to regulate) are large-scale commercial and quasi-commercial use (like condominiums and hotels (*see supra* at ¶¶ 47-49; *infra* at ¶¶ 125-27)), which is completely different from the activity and use of Pacaso homes (among other single-family homes). By interpreting the ordinance to apply to Pacaso, Defendants' reading would cover *every single-family home with more than one owner* (whether through an LLC or otherwise), rendering the ordinance overbroad, failing to adhere to its stated legislative purpose, and defying common sense. Thus, Defendants' tortured application of the time-share ordinance against Pacaso is further vague, circular, and confusing, as the ordinance was never intended to apply to the partial ownership of single-family residential dwellings.

112. If the terms of Section 17.112.130 are so amorphous as to lead Defendants to conclude first that Pacaso is not covered, and then—with no change in underlying facts—that Pacaso *is* covered, the Ordinance should be deemed void for vagueness, as applied to Pacaso.

VII. **The Ordinance, As Applied To Pacaso, Exceeds The Scope Of Permissible Zoning Ordinances Under Government Code § 65850 And So Should Be Stricken**

113. Defendants' attempt to apply the time-share ordinance against Pacaso exceeds the scope of a municipality's zoning authority and police power under California Government Code § 65850(a), and is outside the scope of its authority to regulate permissible zoning subject matters.

114. A local legislative body may only adopt ordinances that regulate "the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes." Cal. Gov't Code § 65850(a).

115. The City acknowledged the limits on its power in this regard, and conceded that zoning ordinances "must focus on the use of land":

> The most fundamental challenge to amending the Zoning Code to regulate fractional or partial ownership in single-family residences is that by ***law zoning regulations must focus on the use of land.*** (See, e.g., O'Loane v. O'Rourke, 231 Cal.App.2d 774, 780 (1965) [zoning is "the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land."].) State law enumerates the specific types of permissible zoning regulations, ***which are likewise focused on "the use of buildings, structures, and land" and related physical requirements, such as the location and size of signs, buildings and structures.*** (Gov. Code, § 65850.) (Report at 325 (emphasis added).)

116. The City's time-share ordinance regulates beyond the mere "use" of buildings, structures, or land, as permitted in Gov. Code 65850(a). Defendants' application of Section 17.112.130 against Pacaso regulates the individuals and persons who can reside in a residential residence, and targets individuals "based on the identity of a tenant or where a particular resident permanently resides." Report at 325.

117. The City itself acknowledged this very concern by stating that zoning regulations may only regulate the *types* of uses, and cannot target individuals or adopt regulations "based on the identity of a tenant or where a particular resident permanently resides," and described the

"concern that *non-permanent City residents* are purchasing property in St. Helena as a second home(s):"

> While there may be a concern that non-permanent City residents are purchasing property in St. Helena as a second home(s) either for themselves or their guests, ***zoning regulations may not target individuals***. In other words, the City ***may not adopt a zoning regulation based on the identity of a tenant or where a particular resident permanently resides***. (See, e.g., Friends of Davis v. City of Davis, 83 Cal.App.4th 1004, 1013 (2000) ["a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like"].) City ordinances ***also may not regulate or define what constitutes a "family" for purposes of limiting the number of unrelated people who live together in a dwelling***. (City of Santa Barbara v. Adamson, 27 Cal.3d 123 (1980).) (Report at 325 (emphasis added).)

118. Indeed, Section 17.112.130 regulates the "means of ownership" in its prohibition of the "creation of a time-share project as a means of ownership." Instead of focusing on the "use" of land as between residential and other purposes, Section 17.112.130, by its terms, and Defendants, in their application against Pacaso, regulate and target individuals based on *who* the owners are.

119. Further highlighting Defendants' tortured application of the time-share ordinance against Pacaso, City Attorney Ueda stated "that it is difficult to regulate if we're primarily focused on ***taking a piece of property and looking at it in terms of how many people own that property because that's not really a particular use as the zone code regulates uses, but it focuses on ownership***." July 14, 2020, Meeting at 3:22 (emphasis added).

120. In fact, the City and City Council even conceded that Defendants are overreaching, and admitted that attempting to apply the time-share ordinance against Pacaso is wrongful, illegal, unconstitutional, and beyond the power of the City. As one City Council member acknowledged: "***[w]hat you want and what's legal are entirely different matters***," and suggested that regulating Pacaso under the time-share ordinance would be against "case law and civil rights," (July 14, 2020, Meeting at 3:31 (emphasis added)), stating that the City is "not in the business of regulating families and how people come together to buy properties." *Id.* at 3:32.

121. Another City Council member stated her concern "that [Defendants] are overreaching what [they] can do legally," stating that the City is not permitted to "control how people own" property, and that she does not "want [the City] to go down a path spending a lot of

money" battling a clearly-losing legal argument (like the one Pacaso brings here). July 14, 2020, Meeting at 3:31.

122. A land use ordinance exceeds municipal authority under the police power where it has no substantial relation to the public health, safety, morals or general welfare. Defendants' enforcement of the time-share ordinance against Pacaso is arbitrary and unreasonable, and has no substantial relation to the public health, safety, morals, or general welfare, let alone any of the other stated purposes underlying Section 17.112.130, as propounded against Pacaso. *See supra* at ¶¶ 47-50, 64-78.

123. In fact, the City itself stated to Pacaso in its May 22, 2020 letter that its property "came to the City's attention because neighbors in the surrounding area are concerned about [the] types of impacts" created by "loud parties, amplified sound, and increased traffic." May 22, 2020 Letter. However, the City previously admitted that "[i]f the City Council is concerned about the potential neighborhood impacts timeshare uses may create"—listing "large parties" as an example—"the City ***has existing regulations in place to address such impacts***." Report at 326 (emphasis added). Specifically, "if the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction." *Id.* "The City's Municipal Code also addresses nuisances generally and has parking standards in place." *Id.*

124. In fact, a City Council member confirmed that the primary "concern" with fractional co-ownership structures like Pacaso's stemmed from neighbors raising their gripe that "instead of having one family living next door to you, you have maybe six" that are "alternat[ing]." July 14, 2020, Meeting at 3:24.

125. However, City Attorney Ueda in July 2020 herself conceded that this stated concern was not a rational basis to apply the time-share ordinance against Pacaso:

> [I]f the issue is primarily that there are different people coming in and out of the unit or house, I'm not entirely sure what can be done about that, right, because different people could be at a house at any given time for whatever reason. They could be guests, or they could be people who own the house and their siblings or whatever. The direction that it's gone in in terms of potential regulation is that if there's a concern about impacts that are caused from having too

> many people basically at a particular residence and those impacts can be addressed by current standards in place for noise and parking standards and that type of thing. So I think it's one thing to talk about people versus the potential impacts that could result, and if there are specific impacts, we can look at what we have in place or if there are additional changes that could be made to perhaps is the nuisance abatement procedures and the nuisance, what we define as a nuisance, for sort of having a more quiet neighborhood. (July 14, 2020, Meeting at 3:25-26.)

126. Given the many other existing regulations and policies in place to address the supposed "concerns" the City had with Pacaso's properties and that supposedly underly the purpose and intent of Section 17.112.130, Defendants' attempt to apply this time-share ordinance against Pacaso is unreasonable, unwarranted, and an invalid land use ordinance under Cal. Gov't Code § 65850(a).

127. Thus, the City's determination that Pacaso's operations are "illegal" under the time-share ordinance—a decision reflected in the City Attorney's March 2021 Letter to all real estate agents and brokers in St. Helena—exceeds the scope of the City's zoning authority and police power under Cal. Gov't Code § 65850(a).

VIII. Defendants' Selective And Arbitrary Enforcement Of The Time-Share Ordinance Against Pacaso Is Impermissible

128. Defendants deliberately singled out Pacaso, attempting to enforce the time-share ordinance against Pacaso but not against those entities or individuals who are similarly situated or functionally the same as Pacaso.

129. The City's selective enforcement of the time-share ordinance against Pacaso highlights the very concerns that the City itself recognized in July 2020. The City conceded that one of the "significant practical challenges to implementing and enforcing the existing timeshare regulations" is that "[a]bsent a proposed new development to specifically construct a timeshare project, the City does not know when a residence becomes a timeshare, since the ownership change is a private transaction between private parties." Report at 325. The City conceded that it "does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership arrangements." *Id.*

130. City Attorney Ueda further highlighted these concerns during discussions of the July 2020 Report:

> [W]e also would have practical challenges implementing and enforcing timeshare regulations and that City generally doesn't know when a residence becomes a timeshare. Those are typically private transactions between private parties and the city doesn't monitor real estate sales, and . . . **some types of fractional or partial ownership interests may not necessarily trigger any concerns as more commercial uses would** because, for example, multiple members of one family could decide to purchase a residence together, they may not stay there all at the same time, but they wouldn't necessarily be having interest like a timeshare either. (July 14, 2020, Meeting at 3:21-22 (emphasis added).)

131. City Attorney Ueda further confirmed the selective and arbitrary approach the City is taking by pursuing enforcement only against Pacaso properties, but not fractional co-ownership structures among multiple friends who wish to purchase and co-own property (which is functionally the same as Pacaso's co-ownership structure):

> [I]f we're getting at multiple ownership of one piece of property, it's really challenging to figure out a way to define that. That doesn't preclude people who really do need to go buy a piece of property for financial reasons. They all want to have a piece of it. They may all be friends or family members, and I don't think that's the type of activity that the city would want to preclude, and that's the challenge that we have in trying to figure out how to define this in a way that would work. (July 14, 2020, Meeting at 3:33-34.)

132. In fact, in St. Helena, 559 second homes[12] are owned by an LLC, trust, or similar mechanism which facilitates multiple owner arrangements.[13] This represents 36% of all second homes and 21% of the entire housing stock. However, these non-Pacaso LLCs are still in existence, and do not differ from Pacaso with respect to the use of the residential single-family home. Nonetheless, Defendants have not pursued a similar enforcement agenda against them as against Pacaso.

133. Defendants' attempt to enforce Section 17.112.130 against Pacaso, where other co-owned residences (through LLCs or otherwise) have not faced similar challenges, is selective and

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[12] "Second home" refers to homes that did not take the owner occupant exemption.

[13] Among the 559 second homes, 221 are held as LLCs or other companies.

arbitrary, and based on invidious criteria—namely, to deny homeownership to new diverse and/or less affluent residents who hope to purchase property in St. Helena through a co-ownership structure.

IX. Defendants' Enforcement Agenda Against Pacaso Is The Latest Chapter In The City's Long History Of Exclusion

134. The City's arbitrary, selective, and pretextual enforcement of its invalid time-share ban against Pacaso—whose mission is to enrich the lives of diverse individuals by democratizing the ownership of second homes—is the latest chapter in a long history of the City of St. Helena erecting barriers to home ownership for people of diverse and less affluent backgrounds.

135. Notably, in St. Helena, second home ownership is typically accessible only to elite and predominantly white buyers. This is no "accident." The City has enshrined anti-growth principles into law, residents have filed lawsuits against affordable housing projects, and unelected neighborhood vigilantes have made it difficult for diverse individuals to move into the City.

136. For example, in 1993, the City of St. Helena adopted a long-term policy document that acts as a guide for future land use decisions called "The General Plan." *See* City of St. Helena, *General Plan Update* 4 (Apr. 2, 2018), https://www.cityofsthelena.org/sites/default/files/fileattachments/planning_resources/page/6501/st_helena_general_pan_nop_033018.pdf. The "primary goal of this General Plan is to preserve the rural, small town quality and agricultural character of St. Helena." City of St. Helena, *General Plan Introduction* 1-1 (1993), https://www.cityofsthelena.org/sites/default/files/fileattachments/planning/page/881/e_1_intro_1.pdf. The plan explicitly called for "growth management." *Id.* at 1-3.

137. Over the years, as the plan was updated, the City made it more and more difficult for affordable housing to be built on City property under the guise of managing growth. The latest plan, titled "the 2040 General Plan," was approved in 2019 by the St. Helena Housing Commission after nearly a decade of entanglements over environmental concerns, among other issues. *See* Uzo Ehi, *Legal Settlement Enables St. Helena to Embrace Density in General Plan*, California Planning & Development Report (June 3, 2019), https://www.cp-dr.com/articles/20190603_1.

138. Underpinning all the debates, however, is a general reluctance for progress and innovation in the City of St. Helena. Members of the City Council communicated to Pacaso representatives that they do not want things to change from how they have always been. In fact, St. Helena City Council Member and former Planning Commission Chair, Lester Hardy, stated that "the rise of anti-growth 'hopes' in St. Helena is not a recent development." *Id.* In fact, "[c]omparing the 2040 General Plan Update with the 1993 General Plan . . . I would say that anti-growth sentiment has as much influence today as it did then." *Id.* He further went on to say that the efforts to limit "population growth ha[ve] been a priority for many residents and voters in St. Helena for the last 30 years or more; this sentiment is always a factor in the city's land use policy decisions, of varying significance depending on the particulars." *Id.* This reality is in tension with St. Helena's stated legislative purpose behind the time-share ordinance, which purports to preserve "affordable housing in the city for long-term occupancies." Section 17.112.130(A)(1).

139. Discussions during City Council meetings regarding the time-share ordinance confirm this exclusionary sentiment among City Council members and residents alike.

CLAIM 1

DECLARATORY RELIEF: INAPPLICABILITY OF SECTION 17.112.130 (AGAINST THE CITY)

140. Pacaso adopts and reasserts the allegations contained in paragraphs 1-139 as if fully set forth herein.

141. There is an actual controversy now existing between Pacaso and the City concerning the application of Section 17.112.130 against Pacaso. Defendants have started enforcing Section 17.112.130 against Pacaso and its homeowners, have deemed Pacaso "illegal," are seeking to prohibit sales by Pacaso to multiple owners, and are taking steps to prevent real estate agents and brokers from working with or transacting with Pacaso under Section 17.112.130, despite the fact that this ordinance is inapplicable to Pacaso.

142. On March 17, 2021, Pacaso wrote to the City Attorney and identified the myriad ways in which Defendants' challenge to Pacaso is flawed and unsupported by fact or law. Pacaso

requested confirmation by April 1, 2021, confirming that the City would adhere to the analysis and conclusions from the July 2020 Report, and would drop its battle against Pacaso. The City and City Attorney failed to respond.

143. Section 17.112.130 does not apply to co-ownership of real property. Section 17.112.130 prohibits "[t]he creation of a time-share project as a means of ownership." A "time-sharing project" is defined as "any real property that is subject to a time-share program." Section 17.112.130(B). A "time-share program" is defined to mean "any arrangement for time-share intervals [which is later defined as either a time-share estate or a time-share use] in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals." *Id.* A "time-share estate" is defined as ownership in a "property devoted to a time-share fee" and "time-share use" means "any contractual right of exclusive occupancy." *Id.*

144. Pacaso's small co-ownership model is starkly different from any "time-share" project purportedly covered by Section 17.112.130, and thus does not apply to Pacaso. *See supra* at ¶¶ 56-80. Pacaso homeowners do not merely own the "right of exclusive occupancy," or a "use, occupancy or possession" right that "circulates among purchasers . . . according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year." Section 17.112.130(B), Def. of "Time-Share program." Rather, Pacaso homeowners own a real property asset in a single-family home that includes real property interests, and rights and obligations shared among co-owners.

145. Section 17.112.130 prohibits "[t]he creation of a time-share project as a means of ownership." Pacaso creates a property-specific LLC for each home, which owns deeded title to the property. The LLC which holds the Pacaso property does not constitute "[t]he creation of a time-share project as a means of ownership." Rather, it serves as a structure for homeowners to co-own a home and facilitates a collaborative ownership experience with diverse individuals of their choosing.

146. Further, the legislative intent of the Section 17.112.130 further confirms that it does not apply to Pacaso. The City's attempts to enforce Section 17.112.130 are wholly inconsistent with its stated "Findings And Purpose." Targeting Pacaso does nothing to ensure homes are available for long-term occupancies. The City lacks all visibility and control into how much time homeowners intend to spend in their homes. Preventing Pacaso from buying properties has no bearing on the likelihood that other prospective buyers are either buying the home as a second home, or anticipating the ability to use it for short-term rentals, among other non "long-term occupancy" uses. Nor is there a rational relation between the City's stated purpose of banning "commercial or quasi-commercial like use" in residential areas, as results from "commercial hotels, motels and other transient occupancy uses" and any enforcement measures taken against Pacaso. Pacaso is a purely residential co-homeownership structure that lacks any resemblance to such "commercial or quasi-commercial like use."

147. Because Section 17.112.130 does not apply to Pacaso, the City cannot enforce this section against Pacaso. Pacaso seeks declaratory judgment and a permanent injunction barring enforcement of Section 17.112.130 against Pacaso.

CLAIM 2

DUE PROCESS VIOLATION: DEFENDANTS' APPLICATION OF SECTION 17.112.130 TO PACASO IS UNCONSTITUTIONALLY VAGUE AND AMBIGUOUS

(AGAINST ALL DEFENDANTS)

148. Pacaso adopts and reasserts the allegations contained in paragraphs 1-147 as if fully set forth herein.

149. The Ordinance violates the due process guarantees of the Fourteenth Amendment and California Constitution because if the Defendants' interpretation of Section 17.112.130 as covering Pacaso is accepted, it is based on terms that are unconstitutionally vague and ambiguous.

150. Section 17.112.130 fails to provide Pacaso, homeowners, or real estate agents and brokers a reasonable opportunity to know what conduct is prohibited under the ordinance, or any guidance as to how to determine whether the activities fall within the prohibited conduct.

151. Instead, Defendants, acting under the color of law, are exploiting definitions in Section 17.112.130 that are unclear circuitous, and incomplete, in order to claim that Pacaso is a "timeshare project" within its meaning. For example, a "[t]ime-sharing project" is defined as "any real property that is subject to a time-share program." Section 17.112.130(B). In turn, "[t]ime-share program" is defined to mean "any arrangement for time-share intervals in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals." *Id.* The Code then defines "[t]ime-share interval" as "*a* time-share estate or a time-share use." *Id.* The Code then circuitously defines "[t]ime-share use" as "any contractual right of exclusive occupancy which does not fall within the definition of a time-share estate, including, without limitation, a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond," and defines "time-share estate" as ownership in a "property devoted to a time-share fee . . . or a time-share lease" (without further defining either of those terms). *Id.*

152. Further, the prohibited conduct under Section 17.112.130 is "[t]he creation of a time-share project as a means of ownership." Neither "creation" nor "means of ownership" are defined in the ordinance. And "means of ownership" does not specify the type of ownership interest held. This in turn conflicts with the definition of "[t]ime-share program," which focuses on "any ***arrangement*** for time-share intervals," and "[t]ime-share use" which focuses on a "contractual right of exclusive occupancy," both of which differ from "ownership" in the abstract. Section 17.112.130(B).

153. The City admits that under its time-share ordinance, it is difficult to determine whether conduct is prohibited, stating that it "has a fairly circuitous definition to determine if a project is a prohibited timeshare or not." *See* Report at 324.

154. Section 17.112.130 is further vague and ambiguous as applied by Defendants against Pacaso. A person of ordinary intelligence would read the time-share ordinance differently than Defendants have applied it, and when reading the time-share ordinance, it cannot reasonably be applied the way Defendants now interpret it. There is no reference in Section 17.112.130 or its

definitions to fractional or partial co-ownership structures like Pacaso's. The City, City Council, City Attorney and DeRosa confirmed this interpretation of the time-share ordinance in the July 2020 Report, finding that the time-share ordinance only regulates commercial use and that time-shares are distinct from fractional or partial ownership structures. Yet, Defendants, acting under the color of law, now apply a wholly different interpretation of the time-share ordinance against Pacaso, abandoning their previous position in the July 2020 Report, and now interpreting the ordinance to apply to Pacaso, a fractional co-ownership structure. Defendants' inconsistent interpretation and application of the time-share ordinance over the course of time has failed to give Pacaso fair notice that the time-share ordinance regulates partial or fractional ownership structures, and further highlights Defendants' arbitrary, capricious and unjustified standard of interpretation and enforcement of the ordinance.

155. The City's application of an unconstitutionally vague ordinance against Pacaso has been carried out through City Attorney Walsh's, DeRosa's, and Ellsworth's conduct, including through sending, and other acts taken in connection with, the January 2021 Letter, the City Attorney's February 2021 Letter to Pacaso, deeming Pacaso "illegal," and the City Attorney's March 2021 Letter to all real estate agents and brokers in St. Helena, acting on his threat to inform others that the City and City Attorney Walsh had determined that Pacaso was illegal, as well as Defendants' other communications to real estate agents, brokers and residents of St. Helena stating or suggesting that Pacaso's operations violate the time-share ordinance. Defendants have undertaken these actions against Pacaso by interpreting the time-share ordinance in such a manner that deprived Pacaso of fair notice that the unconstitutionally vague ordinance regulates partial or fractional ownership structures.

156. By enforcing Section 17.112.130 against Pacaso, DeRosa, Ellsworth and City Attorney Walsh, acting under the color of law, deprived Pacaso of its rights under the United States Constitution, by depriving Pacaso of fair notice that the unconstitutionally vague time-share ordinance regulates partial or fractional ownership structures. DeRosa's, Ellsworth's and City Attorney Walsh's actions were a direct cause of Pacaso's injuries, because their conduct directly

caused a violation of Pacaso's rights. DeRosa, Ellsworth and City Attorney Walsh are authorized to enforce Section 17.112.130 and they did so in an unlawful manner.

157. Ellsworth, acting under the color of law and in a position of superiority to City Attorney Walsh, failed to prevent or take action to correct the enforcement efforts against Pacaso carried out by City Attorney Walsh. Ellsworth was aware that his failure to prevent or take corrective actions would apply an unconstitutionally vague time-share ordinance against Pacaso in such a way that deprived Pacaso of its rights under the United States Constitution. As a result, Pacaso lacked fair notice that the ordinance regulates partial or fractional ownership structures. Nevertheless, Ellsworth knowingly failed to prevent or take actions to correct such enforcement efforts, despite his power and authority to do so.

158. DeRosa, in her capacity as the Planning & Building Director of St. Helena, is responsible for reviewing, revising, and implementing the City of St. Helena's General Plan and zoning ordinances, including the time-share ordinance; is "considered to be [an] enforcement official" with "the authority and powers necessary to gain compliance with the provisions of [the St. Helena Municipal] code and applicable state codes" (Section 1.12.040); and was the "designated point of contact for the City" with regard to time-share enforcement against Pacaso. As such, Defendant DeRosa had final policymaking authority concerning the review, revision, implementation, and enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

159. City Attorney Ethan Walsh is responsible for providing legal advice to the City Council in carrying out its duties in the operations of the City government, and for bringing about suits on behalf of the City. Walsh had final policymaking authority concerning the enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

160. City Council members, including Ellsworth, are responsible for reviewing public policy and adopting policies responsive to the community. Ellsworth had final policymaking

authority concerning the review, adoption, and enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

161. Defendants' enforcement of the time-share ordinance against Pacaso, which caused Pacaso to suffer a constitutional violation, is carried out pursuant to St. Helena's long history of exclusion, discrimination and anti-growth principles, which include actions designed to stifle diversity and housing opportunities for underrepresented communities. *See supra* at ¶¶ 134-39. The City's long-standing policy and practice of exclusion, outsider bias, and erecting barriers to home ownership for people of diverse and underrepresented backgrounds is so closely related to and coheres with the City's enforcement efforts against Pacaso as to be the moving force that caused it.

162. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers, Pacaso seeks injunctive relief against Defendants, whose enforcement of the vague and ambiguous time-share ordinance against Pacaso conflicts with and violates the Fourteenth Amendment and California Constitution.

CLAIM 3

SELECTIVE AND DISCRIMINATORY ENFORCEMENT

(AGAINST ALL DEFENDANTS)

163. Pacaso adopts and reasserts the allegations contained in paragraphs 1-162 as if fully set forth herein.

164. Defendants' pattern of selective and arbitrary enforcement violates Pacaso's constitutional rights.

165. Pacaso was and is treated differently from entities or persons similarly situated. Defendants, acting under the color of law, deliberately singled out Pacaso, attempting to enforce Section 17.112.130 against Pacaso, but not against those entities or individuals who are similarly situated or functionally the same as Pacaso.

166. For example, in St. Helena, 559 second homes[14] are owned by an LLC, trust, or similar mechanism which facilitates multiple owner arrangements.[15] This represents 36% of all second homes and 21% of the entire housing stock. These homes include single-family residences that are co-owned by multiple owners, and which do not different in any respect from how a Pacaso home is used by its co-owners.

167. These non-Pacaso LLCs are still in existence, and Defendants have not pursued a similar enforcement agenda against them as against Pacaso.

168. Defendants' unequal treatment of Pacaso (*i.e.*, its enforcement of Section 17.112.130 against Pacaso, where other co-owned residences, through LLCs, tenancy in common, or otherwise, have not faced similar challenges) was intentional and based on invidious criteria. Defendants have intentionally and deliberately singled out Pacaso on the basis of invidious criteria—namely, that Pacaso serves diverse individuals who, in the eyes of Defendants, are non-resident transients. Defendants' arbitrary and selective enforcement of Section 17.112.130 against Pacaso is the latest chapter in a long history of the City erecting barriers to home ownership for people of diverse backgrounds, and is a pretext to deny homeownership to new diverse residents who hope to purchase property in St. Helena through a co-ownership structure.

169. Defendants' unequal treatment of Pacaso is selective, arbitrary, and not rationally related to a legitimate governmental purpose. The City's stated reasons for enforcement against Pacaso cannot pass muster. The City stated to Pacaso in the May 22, 2020 letter that its property "came to the City's attention because neighbors in the surrounding area are concerned about [the] types of impacts" created by "loud parties, amplified sound, and increased traffic."

170. However, the City itself conceded that such stated reasons for enforcement were pretextual. For example, the City admitted that "[i]f the City Council is concerned about the potential neighborhood impacts timeshare uses may create" —listing "large parties" as an example—"the City ***has existing regulations in place to address such impacts***." Report at 326

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[14] "Second home" refers to homes that did not take the owner occupant exemption.

[15] Among the 559 second homes, 221 are held as LLCs or other companies.

(emphasis added). The City stated, "[I]f the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction." Report at 326. "The City's Municipal Code also addresses nuisances generally and has parking standards in place." *Id.*

171. Given the many other existing regulations in place to address the supposed "concerns" the City has stated with regard to Pacaso, the City's enforcement agenda against Pacaso is suspect and appears to be nothing but a pretext to deny homeownership to new diverse residents.

172. Further, Pacaso co-owners agree to several additional restrictions that ensure their use promotes the City's stated goals. For example, there is a maximum of eight co-owners for any home, with only one family using the property at a time; co-owners agree not to have large events or parties; co-owners adhere to a 9 p.m. to 7 a.m. quiet hour policy; co-owners are prohibited from renting the home; and Pacaso encourages homeowners to avoid parking on the street. Pacaso homeowners are no different from other homeowners in St. Helena, thus, efforts to preclude their homeownership does nothing to advance the City's stated goals for enforcement against Pacaso (and not other residential co-ownership structures).

173. Discussions regarding the July 2020 Report confirmed that Defendants were unable to state one purpose, goal or non-suspect "basis" to justify application of the time-share ordinance against Pacaso, and that the primary "concern" identified (*i.e.*, "different people coming in and out of the unit or house") is not a permissible (let alone rational) basis for enforcing the time-share ordinance against Pacaso.

174. Defendants' enforcement efforts against Pacaso are but a pretext for Defendants' improper motive and discriminatory design of exclusion and actions designed to stifle diversity and housing opportunities for underrepresented communities. The City itself concedes that one of the "significant practical challenges to implementing and enforcing the existing timeshare regulations" is that "[a]bsent a proposed new development to specifically construct a timeshare project, the City does not know when a residence becomes a timeshare, since the ownership change is a private transaction between private parties." Report at 325. The City concedes that it "does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership

arrangements." *Id.* The City's selective enforcement of the time-share ordinance against Pacaso highlights the very concerns that the City itself recognized.

175. The City's selective and arbitrary enforcement against Pacaso has been carried out through City Attorney Walsh's, DeRosa's, and Ellsworth's conduct, including through sending, and other acts taken in connection with, the January 2021 Letter, the City Attorney's February 2021 Letter to Pacaso, deeming Pacaso "illegal," and the City Attorney's March 2021 Letter to all real estate agents and brokers in St. Helena, acting on his threat to inform others that the City and City Attorney Walsh had determined that Pacaso was illegal, as well as Defendants' other communications to real estate agents, brokers and residents of St. Helena stating or suggesting that Pacaso's operations violate the time-share ordinance. Defendants have undertaken these actions against Pacaso, while failing to carry out an enforcement regime against similarly situated or functionally equivalent individuals or entities.

176. By enforcing Section 17.112.130 against Pacaso, DeRosa, Ellsworth and City Attorney Walsh, acting under the color of law, deprived Pacaso of its rights under the United States Constitution, by unlawfully targeting Pacaso without any rational basis for enforcing the law against Pacaso, but no other co-owners of homes within St. Helena. DeRosa's, Ellsworth's and City Attorney Walsh's actions were a direct cause of Pacaso's injuries, because their conduct directly caused a violation of Pacaso's rights. DeRosa, Ellsworth and City Attorney Walsh are authorized to enforce Section 17.112.130 and they did so in an unlawful manner.

177. Ellsworth, acting under the color of law and in a position of superiority to City Attorney Walsh, failed to prevent or take action to correct the enforcement efforts against Pacaso carried out by City Attorney Walsh. Ellsworth was aware that his failure to prevent or take corrective actions would deprive Pacaso of its rights under the United States Constitution by unlawfully targeting Pacaso without any rational basis for enforcing the law against Pacaso, but no other co-owners of homes within St. Helena. Nevertheless, Ellsworth knowingly failed to prevent or take actions to correct such enforcement efforts, despite his power and authority to do so.

178. DeRosa, in her capacity as the Planning & Building Director of St. Helena, is responsible for reviewing, revising, and implementing the City of St. Helena's General Plan and

zoning ordinances, including the time-share ordinance, is "considered to be [an] enforcement official" as the "planning director" and has "the authority and powers necessary to gain compliance with the provisions of this code and applicable state codes" (Section 1.12.040), and was the "designated point of contact for the City" with regard to time-share enforcement against Pacaso. DeRosa had final policymaking authority concerning the review, revision, implementation, and enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

179. City Attorney Walsh is responsible for providing legal advice to the City Council in carrying out their duties in the operations of the City government, and for bringing about suits on behalf of the City. City Attorney Walsh had final policymaking authority concerning the enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

180. City Council members, including Ellsworth, are responsible for reviewing public policy and adopting policies responsive to the community. Ellsworth had final policymaking authority concerning the review, adoption, and enforcement of the time-share ordinance against Pacaso, and, acting under the color of law, ratified, failed to prevent and/or carried out such enforcement efforts against Pacaso, which caused Pacaso to suffer a constitutional violation, on behalf of the City.

181. Defendants' enforcement of the time-share ordinance against Pacaso, which caused Pacaso to suffer a constitutional violation, was carried out pursuant to St. Helena's long history of exclusion, discrimination and anti-growth principles, which include actions designed to stifle diversity and housing opportunities for underrepresented communities. *See supra* at ¶¶ 134-39. The City's long-standing policy and practice of exclusion, outsider bias, and erecting barriers to home ownership for people of diverse and underrepresented backgrounds is so closely related to and coheres with the City's enforcement efforts against Pacaso as to be the moving force that caused it.

182. Pursuant to 42 U.S.C. § 1983 and the Court's equitable powers, Pacaso seeks injunctive relief against Defendants, whose selective and discriminatory enforcement of the time-share ordinance against Pacaso conflicts with and violates the Fourteenth Amendment and California Constitution.

CLAIM 4

DECLARATORY RELIEF: INVALID USE OF MUNICIPAL AUTHORITY

(AGAINST THE CITY)

183. Pacaso adopts and reasserts the allegations contained in paragraphs 1-182 as if fully set forth herein.

184. Section 17.112.130 is inapplicable against Pacaso for the separate and independent reason that it represents an invalid use of legislative authority, and exceeds the scope of a municipality's zoning authority and police power under Cal. Gov't Code § 65850(a).

185. The City's application of the time-share ordinance against Pacaso regulates beyond the mere "use" of buildings, structures, or land, as permitted in Cal. Gov't Code § 65850(a). Instead, the City's application of Section 17.112.130 against Pacaso targets individuals "based on the identity of a tenant or where a particular resident permanently resides" and tries to regulate the individuals and persons who can reside in a residential residence.

186. The plain language of Section 17.112.130 regulates the "means of ownership" in its prohibition of the "creation of a time-share project as a means of ownership." Instead of focusing on the "use" of land as between residential and other purposes, Section 17.112.130 focuses on *who* the owners are rather than the use of land as between residential and other purposes.

187. By applying Section 17.112.130 against Pacaso, the City is targeting individuals and regulating "based on the identity of a tenant or where a particular resident permanently resides." Report at 325.

188. Section 17.112.130 is arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.

189. The City's stated reasons for Section 17.112.130 and its enforcement against Pacaso have no rational basis or substantial relation to its legislative purpose and findings. The City itself

stated to Pacaso in its May 22, 2020 letter that its property "came to the City's attention because neighbors in the surrounding area are concerned about [the] types of impacts" created by "loud parties, amplified sound, and increased traffic." However, the City previously admitted that "[i]f the City Council is concerned about the potential neighborhood impacts timeshare uses may create"—listing "large parties" as an example—"the City ***has existing regulations in place to address such impacts***." Report at 326 (emphasis added). The City stated, "[I]f the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction." *Id.* "The City's Municipal Code also addresses nuisances generally and has parking standards in place." *Id.*

190. Further, Pacaso strictly prohibits short-term rentals, and all Pacaso homeowners agree to Pacaso's policies, which prohibit large events or parties.

191. Given the many other existing regulations and policies in place to address the supposed "concerns" the City had with Pacaso's properties and that supposedly underly the purpose and intent of Section 17.112.130, Section 17.112.130 (and the City's attempt to apply this section against Pacaso) is unreasonable, unwarranted, and an invalid land use ordinance under Cal. Gov't Code § 65850(a).

CLAIM 5

INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE (AGAINST THE CITY AND CITY ATTORNEY ETHAN WALSH)

192. Pacaso adopts and reasserts the allegations contained in paragraphs 1-191 as if fully set forth herein.

193. The City's and its employees' efforts to discourage real estate agents, brokers and potential home buyers from working or transacting with Pacaso constitutes a clear, intentional interference with Pacaso's business relationships with St. Helena residents, real estate agents and brokers in St. Helena.

194. Among other tortious behavior, City Attorney Walsh sent the March 2021 Letter to all real-estate offices in the City regarding time-share regulations in an effort to discourage agents and brokers from working or transacting with Pacaso. The March 2021 Letter intimidated and

threatened real estate agents and brokers from engaging and transacting with Pacaso, claiming the "objective" of the letter is "to ensure that no zoning violation occurs as a result of a transaction" in which the real estate agents or brokers and their clients are involved.

195. Likewise, Defendants, on behalf of and at the direction of the City, sent letters to Pacaso and its homeowners notifying them that if their home was used as a timeshare, such use would be impermissible pursuant to the City Municipal Code. *See supra* at ¶¶ 56-80.

196. The City's and City Attorney Walsh's actions and communications undermine Pacaso's existing contractual relationships with real estate agents working on its behalf, interferes with Pacaso's business relationships and arrangements, tarnishes Pacaso's reputation and good will in the community, and impairs Pacaso from future developments (including future business partners and key stakeholders in the St. Helena community) by calling into question the legality of Pacaso's operations.

197. The City and City Attorney Walsh are aware of Pacaso's business model, its target market, its customer base, and the importance of Pacaso's business relationships with real estate agents and brokers in St. Helena.

198. The actions and communications of the City and City Attorney Walsh were intentional and aimed at halting Pacaso's current and future business opportunities in St. Helena, and at discouraging real estate agents and brokers from working with Pacaso or listing Pacaso properties.

199. The interference with Pacaso's current and prospective business relationships is wrongful. It is based on an incorrect and erroneous application of a time-share ordinance that does not apply to Pacaso—a position that the City and City Attorney Ueda, conceded in the July 2020 Report, which made clear that Section 17.112.130 does not apply to ownership models like Pacaso. The City and City Attorney Walsh invoked Section 17.112.130 with full knowledge that it cannot be applied to Pacaso, and that enforcing it violated Pacaso's and its homeowners' constitutional rights.

200. Pacaso has directly suffered and continues to suffer damages resulting from the fact that the March 2021 Letter that discouraged transactions or working with Pacaso was sent to ***all***

real estate agents and brokers in St. Helena. This letter has (1) discouraged and continues to chill, under threat of fines and other penalties, agents from marketing Pacaso properties or being involved in a sale of ownership interests in Pacaso properties in St. Helena in any capacity; and (2) intentionally disrupted Pacaso's ability to list its properties on the MLS by discouraging real estate agents and brokers from working with or listing Pacaso properties.

201. Further, Pacaso suffered and continues to suffer damages as a result of the confusion caused by Defendants among all agents, brokers, and potential homeowners in St. Helena as to the legality of Pacaso's operations (especially without first resolving Pacaso's challenge to such prohibitive actions by the City), which further hampers Pacaso's operations and ability to sell ownership interests in Pacaso properties in St. Helena. Moreover, the confusion caused by Defendants as to the legality of Pacaso homes among existing Pacaso homeowners in St. Helena (and in other cities) has inappropriately caused such homeowners anxiety, fear, and distrust in Pacaso, causing such homeowners to reach out to Pacaso and the City as to their ability to resale the property.[16]

202. Absent corrective action, Defendants' prior communications to agents, brokers, and potential Pacaso homeowners will continue to cause irreparable harm to Pacaso.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief as follows:

a) For judgment in favor of Pacaso against Defendants on all Causes of Action;

b) For a judgment declaring that Section 17.112.130 does not apply to Pacaso;

c) For a judgment declaring that Defendants do not have the authority to enforce Section 17.112.130 against Pacaso;

d) For an injunction enjoining the City and Defendant Walsh from continuing to knowingly interfere with Pacaso's economic interests by communicating false information about the legality of Pacaso's operations and homes;

e) For a mandatory injunction compelling the City and Defendant Ethan Walsh to send a retraction letter to the real estate agents and brokers in St. Helena clarifying that real estate listings and transactions that sell co-ownership opportunities that are not

[16] Though the City's and Defendant Walsh's conduct has harmed Pacaso, Pacaso does not seek monetary or other damages based on their intentional interference with Pacaso's economic interests. As set forth herein, Pacaso seeks mandatory and prohibitory injunctions to cure Defendants' tortious conduct and to prevent future, recurring harms.

"time share projects" fall outside of the City's time-share regulations, and that no "zoning violation" will "occur[]" as a result of transacting with Pacaso and listing a home owned by Pacaso for sale;

f) For attorneys' fees pursuant to 42 U.S.C. § 1988 and Cal. Code of Civ. Proc. § 1021.5; and

g) For such other and further relief as this Court may deem proper.

DATED: April 6, 2021

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: */s/ Lance A. Etcheverry*
LANCE A. ETCHEVERRY
Attorneys for Plaintiffs
PACASO INC. and PAC 6 CA 2021 LLC

DEMAND FOR JURY TRIAL

Pacaso respectfully requests a trial by jury on all issues so triable.

DATED: April 6, 2021

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: */s/ Lance A. Etcheverry*
LANCE A. ETCHEVERRY
Attorneys for Plaintiffs
PACASO INC. and PAC 6 CA 2021 LLC

Exhibit A

Report to the City Council
Regular City Council - 14 Jul 2020

Agenda Section: **NEW BUSINESS**

Subject: **Discussion Regarding Timeshare Issues**

CEQA Determination: **Not a CEQA project**

Prepared By: Kara Ueda, City Attorney

Reviewed By: April Mitts, Finance Director

Approved By: Maya DeRosa, Planning & Building Director/Acting City Manager

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BACKGROUND

This agenda item is for informational purposes only to guide and facilitate a policy discussion amongst the City Council regarding timeshare uses and fractional ownership of residences in the City. The issue is being discussed following concerns raised by both City residents and Council members after some residents discovered a real estate listing for a fractional or partial ownership interest in a residential home in town.

The St. Helena Municipal Code currently prohibits creation of a timeshare project as a means of ownership of any single-family, two-family or multiple-family dwelling or any apartment house within the City. (SHMC § 17.112.130) The prohibition is based, in part, on findings made by the City Council that timeshare uses are commercial or quasi-commercial uses that serve to reduce available residential housing and increase traffic and noise impacts. (See SHMC § 17.112.130(A).) As explained further below, though, a timeshare use differs from a fractional or partial ownership of a property.

DISCUSSION

What is a timeshare?

State law and the California Department of Real Estate regulate the advertising and sale of timeshares pursuant to "The Vacation Ownership and Time-Share Act of 2004." (Bus. & Prof. Code, § 11210 et seq.). That law defines a "time-share plan" to mean "any arrangement, plan, scheme, or similar device, other than an exchange program,

whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations 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." (Bus. & Prof. Code, § 11212(z).) The law mandates certain registration and advertising requirements for timeshare plans and regulates the information and terms that must be included in a sale in order to protect consumers who may purchase time-share interests. However, the law does not regulate the location and use of timeshare plans, and it expressly does not invalidate or modify local "zoning, subdivision, or building code" ordinances. (Bus. & Prof. Code, § 11280.)

The St. Helena Zoning Code prohibits the creation of a timeshare project as a means of ownership of any single-family, two-family, or multi-family dwelling or apartment house. (SHMC § 17.112.130). The Code has a fairly circuitous definition to determine if a project is a prohibited timeshare or not. A "time-share project" means any real property subject to a "time-share program." A "time-share program" is defined as "any arrangement for time-share intervals in a time-sharing project whereby the use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year, but not necessarily for consecutive years." (SHMC § 17.112.130(A).) A "time-share estate" is defined in the Code to mean "an ownership or leasehold estate in property devoted to a time-share fee (tenants in common, time span ownership, interval ownership) or a time-share lease. (Id.) What emerges from these various definitions is that a timeshare, as defined in the City's Zoning Code, is not identical to a fractional or partial ownership; but, rather, a timeshare involves an ownership arrangement where the owners have purchased an allotted amount of time to use the property (a timeshare interval). The Code also notes that timesharing projects have the same character as commercial hotels and other transient uses.

Timeshares, thus, are somewhat similar to short-term rentals and fractional ownership hotels but differ from both in important ways. The City defines short-term rentals as a use in which overnight accommodations are provided to guests for compensation for periods of less than thirty (30) days in a single-family dwelling and are only authorized with a short-term rental permit. (SHMC § 17.04.160.) Short-term rentals are generally rented by guests on a short-term basis. After the guest leaves, they have no further obligation or ownership of the property. A timeshare, on the other hand, means that the person has an ongoing ownership interest in the property for a limited duration of time.

The City defines fractional ownership hotels as hotels with a minimum of 40 rooms, in which 75% or more of the rooms may be made available to individuals as "time-share estates," "which is defined as a time-share interest, which is the right to occupy a time-share property, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof, pursuant to Section 11212(x)(1) of the California Business and Professions Code, and subject to obtaining

permission required to do so obtained from the California Department of Real Estate." (SHMC § 17.112.150.) The Zoning Code provides that fractional ownership hotels are conditionally permitted in the Service Commercial district. Timeshares as discussed herein, by comparison, may be for any particular interval of time and are a type of fractional/partial ownership. But not all fractional/partial ownership interests are considered timeshare interests. For purposes of much of the discussion in this report, timeshares are discussed in the context of a single-family home rather than, for example, a large condominium project or converted hotel.

What are the challenges and limitations to regulating partial ownership in single-family residences?

City staff and the City Attorney's office have reviewed a small sample of other jurisdictions' ordinances regulating timeshares. What emerges as a theme from this limited review is that other jurisdictions appear to regulate timeshare uses as commercial uses, such as timeshare units in high-rise condominium buildings or something akin to fractional ownership hotels. The City's code appears to try to similarly regulate timeshare uses as a commercial use.

The most fundamental challenge to amending the Zoning Code to regulate fractional or partial ownership in single-family residences is that by law zoning regulations must focus on the use of land. (See, e.g., O'Loane v. O'Rourke, 231 Cal.App.2d 774, 780 (1965) [zoning is "the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land."].) State law enumerates the specific types of permissible zoning regulations, which are likewise focused on "the use of buildings, structures, and land" and related physical requirements, such as the location and size of signs, buildings and structures. (Gov. Code, § 65850.) Thus, the City's Zoning Code focuses on the types of uses, including, for example, different types of residential uses, winery uses, and commercial uses.

While there may be a concern that non-permanent City residents are purchasing property in St. Helena as a second home(s) either for themselves or their guests, zoning regulations may not target individuals. In other words, the City may not adopt a zoning regulation based on the identity of a tenant or where a particular resident permanently resides. See, e.g., Friends of Davis v. City of Davis, 83 Cal.App.4th 1004, 1013 (2000) ["a city does not have carte blanche to exclude a retail merchant that it, or some of its residents, do not like"].) City ordinances also may not regulate or define what constitutes a "family" for purposes of limiting the number of unrelated people who live together in a dwelling. (City of Santa Barbara v. Adamson, 27 Cal.3d 123 (1980).)

There are also significant practical challenges to implementing and enforcing the existing timeshare regulations. Absent a proposed new development to specifically construct a timeshare project, the City does not know when a residence becomes a timeshare, since the ownership change is a private transaction between private parties. The City does not have an easily available means to scrutinize such agreements or monitor the terms of particular ownership arrangements. Additionally, there may be a

number of joint ownership scenarios that do not necessarily trigger the same concerns as commercial transient uses or that do not qualify as a prohibited timeshare under the City's ordinance. For example, multiple members of an extended family may all wish to purchase a residence together. The family members may not all necessarily live in the home together at the same time, but they also did not set up an arrangement where they each have a timeshare interval. While this residence may be owned by multiple people who each do not choose to live in the residence, the joint or partial ownership of the residence would not be considered a timeshare as each family member could have equal access to the residence (as opposed to purchasing a limited amount of time). These challenges do not necessarily preclude regulating or prohibiting timeshare uses but should be considered in determining whether additional or amended regulations are desired.

What may the City regulate with respect to timeshares?

For the above reasons, zoning based solely on ownership, as opposed to the use of land, is impermissible. Timeshare regulations should, thus, focus on the type and use of the property and its related impacts, such as specific intervals of exclusive occupancy that render the use more akin to a transient commercial use.

If the City Council is concerned about the potential neighborhood impacts timeshare uses may create, the City has existing regulations in place to address such impacts. For example, if the concern is that part-time owners may infrequently visit the property and have large parties, the City's noise ordinance addresses noise and authorizes abatement and issuance of an infraction. The City's Municipal Code also addresses nuisances generally and has parking standards in place. However, these regulations all regulate the impacts of certain activities on the land, not the land uses themselves.

FISCAL IMPACT

None at this time. Additional staff time and research will be required if zoning amendments are proposed.

RECOMMENDED ACTION

Receive this report, discuss, and provide direction to staff if desired. City staff is seeking guidance and clarification from the City Council concerning the specific problem(s) a Zoning Code amendment could help resolve, but with the limitations noted above for regulating timeshares and partial ownership.

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

PACASO INC. and PAC 6 CA 2021 LLC

(b) County of Residence of First Listed Plaintiff San Francisco
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
Palo Alto, California 94301
Telephone: (650) 470-4500

DEFENDANTS

THE CITY OF ST. HELENA, PLANNING AND BUILDING DIRECTOR MAYA DEROSA, MAYOR GEOFF ELLSWORTH, CITY ATTORNEY ETHAN WALSH, DOE DEFENDANTS # 1 - 5

County of Residence of First Listed Defendant Napa County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment Of Veteran's Benefits
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders' Suits
- 190 Other Contract
- 195 Contract Product Liability
- 196 Franchise

REAL PROPERTY
- 210 Land Condemnation
- 220 Foreclosure
- 230 Rent Lease & Ejectment
- 240 Torts to Land
- 245 Tort Product Liability
- 290 All Other Real Property

TORTS

PERSONAL INJURY
- 310 Airplane
- 315 Airplane Product Liability
- 320 Assault, Libel & Slander
- 330 Federal Employers' Liability
- 340 Marine
- 345 Marine Product Liability
- 350 Motor Vehicle
- 355 Motor Vehicle Product Liability
- 360 Other Personal Injury
- 362 Personal Injury -Medical Malpractice

PERSONAL INJURY
- 365 Personal Injury – Product Liability
- 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- 370 Other Fraud
- 371 Truth in Lending
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- 441 Voting
- 442 Employment
- 443 Housing/ Accommodations
- 445 Amer. w/Disabilities–Employment
- 446 Amer. w/Disabilities–Other
- 448 Education

PRISONER PETITIONS

HABEAS CORPUS
- 463 Alien Detainee
- 510 Motions to Vacate Sentence
- 530 General
- 535 Death Penalty

OTHER
- 540 Mandamus & Other
- 550 Civil Rights
- 555 Prison Condition
- 560 Civil Detainee–Conditions of Confinement

FORFEITURE/PENALTY
- 625 Drug Related Seizure of Property 21 USC § 881
- 690 Other

LABOR
- 710 Fair Labor Standards Act
- 720 Labor/Management Relations
- 740 Railway Labor Act
- 751 Family and Medical Leave Act
- 790 Other Labor Litigation
- 791 Employee Retirement Income Security Act

IMMIGRATION
- 462 Naturalization Application
- 465 Other Immigration Actions

BANKRUPTCY
- 422 Appeal 28 USC § 158
- 423 Withdrawal 28 USC § 157

PROPERTY RIGHTS
- 820 Copyrights
- 830 Patent
- 835 Patent–Abbreviated New Drug Application
- 840 Trademark
- 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS
- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS–Third Party 26 USC § 7609

OTHER STATUTES
- 375 False Claims Act
- 376 Qui Tam (31 USC § 3729(a))
- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce
- 460 Deportation
- 470 Racketeer Influenced & Corrupt Organizations
- 480 Consumer Credit
- 485 Telephone Consumer Protection Act
- 490 Cable/Sat TV
- 850 Securities/Commodities Exchange
- 890 Other Statutory Actions
- 891 Agricultural Acts
- 893 Environmental Matters
- 895 Freedom of Information Act
- 896 Arbitration
- 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation–Transfer
- ☐ 8 Multidistrict Litigation–Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. § 2201 and 2202; 42 U.S.C. § 1983

Brief description of cause:
Pacaso seeks declaratory relief based on constitutional violations, improper use of police power, the inapplicability of a City ordinance, and intentional interference with prospective economic advantage.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY *(See instructions)*:

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA-MCKINLEYVILLE

DATE 4/6/2021

SIGNATURE OF ATTORNEY OF RECORD /s/ Lance A. Etcheverry

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."

II. Jurisdiction. The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

(1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.

(2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

(3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

(4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

(1) Original Proceedings. Cases originating in the United States district courts.

(2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.

(3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

(4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

(5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

(6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.

(8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.

Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

IX. Divisional Assignment. If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.

(Effective 1/2018)

JUDGE ORRICK'S STANDING ORDER FOR CIVIL CASES

1. Conformity to Rules

Parties shall follow the Federal Rules of Civil Procedure, the Civil Local Rules, and the General Orders of the Northern District of California, except as superseded by this Court's Standing Orders.

2. Communication with the Court

Unless otherwise authorized, parties shall not attempt to make *ex parte* contact with the Judge or his Chambers staff by telephone, facsimile, letter, or any other means but may contact Judge Orrick's Courtroom Deputy, Jean Davis, at whocrd@cand.uscourts.gov or 415-522-2077 with appropriate inquiries.

3. Scheduling

Civil Law and Motion Calendar is generally conducted on Wednesdays at 2:00 p.m. in Courtroom 2 on the 17th floor.

Civil Case Management Conferences are generally conducted on Tuesdays at 2:00 p.m. in Courtroom 2 on the 17th floor. See Judge Orrick's Standing Case Management Conference Order for information on telephonic appearances for CMCs.

Pretrial Conferences are generally conducted on Mondays at 2:00 p.m. in Courtroom 12 on the 19th floor.

Counsel need not reserve motion hearing dates, but should check Judge Orrick's calendar (at www.cand.uscourts.gov under "Calendar" and "Judges' Weekly Calendars") or contact his Courtroom Deputy to determine the next available law and motion calendar date. Motions may be reset as the Court's calendar requires. The order of call on each calendar will be determined by the Court.

4. Discovery Disputes

In the event of a discovery dispute, lead trial counsel for the parties shall meet and confer in person, or, if counsel are located outside the Bay Area, by telephone, to attempt to resolve their dispute informally. A mere exchange of letters, e-mails, telephone calls, or facsimile transmissions does not satisfy the requirement to meet and confer.

If, after a good faith effort, the parties have not resolved their dispute, they shall prepare a concise joint statement of five pages or less, stating the nature and status of their dispute, and certifying that they have met the meet-and-confer requirement. Absent an order of this Court, parties shall not file affidavits or exhibits, other than copies of the written requests for discovery and the answers or objections thereto.

If a joint statement is not possible, each side may submit a brief individual statement of two pages or less. In addition to the certification of compliance with the meet-and-confer requirement, the individual statement shall include an explanation of why a joint statement was not possible. The joint statement or individual statements shall be filed or e-filed, if in an e-filing case, and courtesy copies submitted as provided by the Civil Local Rules.

The Court will advise the parties of the need, if any, for more formal briefing or a hearing, pursuant to Civil Local Rule 7-1(b). The Court may also elect to refer the matter to a magistrate judge or special master. If a magistrate judge is assigned to a case for discovery, that judge shall handle any future discovery disputes in that case and the parties shall comply with the procedures set by that judge for discovery.

5. Courtesy Copies

All courtesy copies must be three-hole punched at the left margin. All courtesy copies of e-filed documents must bear the ECF stamp (case number, document number, date and page number) on the top of each page. Exhibits to motions or declarations shall be tabbed and numbered or lettered. Motions and briefs that are more than 50 pages in length, including exhibits, shall be submitted to chambers in binders. Courtesy copies are not required for certificates and proofs of service, notices of appearance, certificates of interested parties, and ADR certifications.

6. Summary Judgment Motions

Parties are limited to filing one motion for summary judgment. Any party wishing to exceed this limit must request leave of Court.

7. Class Action Settlements

Counsel are reminded to review and comply with the Northern District's Procedural Guidance for Class Action Settlements available on the Court's website at www.cand.uscourts.gov/ClassActionSettlementGuidance.

8. Service of Standing Order

Plaintiff (or in the case of removed cases, any removing defendant) is directed to serve copies of all Judge Orrick Standing Orders at once upon all parties to the action, and upon those subsequently joined, in accordance with the provisions of Federal Rules of Civil Procedure 4 and 5 and to file with the Clerk of Court a certificate reflecting such service, in accordance with Civil Local Rule 5-5(a).

9. Unrepresented (Pro Se) Parties

Parties representing themselves should visit the link titled "If You Don't Have a Lawyer" on the Court's homepage, www.cand.uscourts.gov. The link discusses the Court's "Legal Help Center" for unrepresented parties. The Legal Help Center can be reached at 415-782-8982. In San Francisco, the Legal Help Center is located on the 15th Floor, Room 2796, of the courthouse at 450 Golden Gate Avenue. In Oakland, the Legal Help Center is located on the 4th Floor, Room 470S, of the courthouse at 1301 Clay Street.

IT IS SO ORDERED.

Dated: 1/18/2018

William H. Orrick
United States District Judge

(Effective 3/2018)

JUDGE ORRICK'S STANDING ORDER ON ADMINISTRATIVE MOTIONS TO FILE UNDER SEAL

Any party seeking to file material under seal must comply with this Order and Civil Local Rule 79-5. The party that has designated material as confidential also must file a declaration in support of sealing that rebuts the strong presumption in favor of public access that applies to all documents other than grand jury transcripts and pre-indictment warrant materials. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

A. Administrative Motions to File Under Seal

Administrative motions to file materials under seal must contain the following information, presented in the following sequence:

1. A statement certifying that the filing party has reviewed and complied with this Order.
2. A statement certifying that the filing party has reviewed and complied with Civil Local Rule 79-5.
3. An identification of each document, documents, or portions of documents proposed to be sealed or redacted.
4. A statement identifying the entity that has designated the materials to be sealed as confidential. If a party seeks to seal numerous documents, the party shall provide a chart identifying the entity that designated each document as confidential.
5. A statement identifying the basis for sealing each document or portion of a document. If a party seeks to seal numerous documents, the party shall provide a chart identifying the basis for sealing each document or portion of a document. If the portions of documents sought to be sealed are voluminous, the Court will consider a single statement covering multiple documents if the basis for sealing those materials is the same.
6. All other materials required by the Local Rule, including courtesy copies in the correct format. *See* CIVIL L.R. 79-5(d).

B. Justification for Filing Under Seal

The following requirements apply to the Administrative Motion and/or declaration filed by the entity that has designated the material as confidential.

The party seeking to seal the material must establish that the following requirements are met:

1. The document or document portion sought to be sealed is "privileged, protectable as a trade secret or otherwise entitled to protection under the law." CIVIL L.R. 79-5(b). Supporting declarations must "'articulate [ ] reasons supported by specific factual findings'" to warrant sealing. *Kamakana*, 447 F.3d at 1178. Note that "[r]eference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable." CIVIL L.R. 79-5(d)(1)(A). Conclusory assertions of harm are also insufficient.
2. The "strong presumption of access to judicial records" is rebutted under the appropriate legal standard, i.e., the "good cause" or "compelling reasons" standard. The standard that

applies depends on whether the underlying motion at issue "is more than tangentially related to the merits of a case." *Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). The Administrative Motion or declaration must identify the appropriate standard and articulate why the materials to be sealed satisfy that standard. "The mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records." *Kamakana*, 447 F.3d at 1179.

3. The request is "narrowly tailored to seek sealing only of sealable material" and does not indiscriminately seek to seal documents or portions of documents which do not contain sealable material. CIVIL L.R. 79-5(b).

C. Proposed Orders and Service

1. Proposed Orders must identify with specificity each document, documents, or portions of documents proposed to be sealed or redacted in compliance with Civil Local Rule 79-5(d)(1)(B). If a party seeks to seal numerous documents, the Proposed Order should include a chart identifying each document or portion of a document sought to be sealed and the justification for each proposed sealing.

2. Electronic copies of proposed orders must be sent in Word format to whopo@cand.uscourts.gov.

3. The filing party must serve the above items, this Order, and a copy of Civil Local Rule 79-5 upon (i) any party who is not on ECF, and (ii) any non-party that has designated as confidential any material to be sealed. The filing party must then file a certificate of service to confirm that it has complied.

D. E-filing

1. For instructions on how to e-file the Administrative Motion to File Under Seal, see the directions on the Court's homepage at http://cand.uscourts.gov/ecf/underseal.

2. If the document sought to be filed under seal is a motion (for example, a motion to dismiss, a motion for summary judgment), counsel shall e-file, separately from the contents and attachments of the Administrative Motion to File Under Seal discussed above, a redacted version of the Motion. That separate filing will allow counsel to select a hearing date for the substantive Motion.

FAILURE TO COMPLY WITH THIS STANDING ORDER AND THE LOCAL RULES MAY RESULT IN SUMMARY DENIAL OF ADMINISTRATIVE MOTIONS TO FILE UNDER SEAL.

Dated: March 23, 2018

William H. Orrick
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

A jury trial has been set in this matter for << DATE >>, beginning at 8:00 a.m. with an attorney conference and jury selection to follow thereafter. A Pretrial Conference has been set for <<DATE >> at 2:00 p.m.

The following scheduling deadlines and hearing dates have been set:

1. Pretrial Conference and Statement

Not less than 28 days prior to the Pretrial Conference, counsel shall exchange (but not file or lodge) the papers described in Civil L.R. 16-10(b)(7), (8), (9) and (10), and any motions in limine.

At least 21 days before the Pretrial Conference, lead trial counsel shall meet and confer with respect to:

- Preparation and content of the joint pretrial conference statement;
- Resolution of any differences between the parties regarding the preparation and content of the joint pretrial conference statement and the preparation and exchange of pretrial materials to be served and filed pursuant to this Order. To the extent such differences are not resolved, the parties will present the issues in the pretrial conference statement so that the judge may rule on the matter during the Pretrial Conference; and
- Settlement.

At least 14 days prior to the Pretrial Conference, the parties shall file a joint pretrial conference statement containing the following information:

a. The Action

(i) Substance of the Action. A brief description of the substance of claims and defenses that remain to be decided.

(ii) Relief Prayed. A detailed statement of all the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents, or other evidentiary

material to be presented concerning the amount of those damages.

b. The Factual Basis of the Action

(i) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(ii) Disputed Factual Issues. A plain and concise statement of all disputed factual issues that remain to be decided.

(iii) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(iv) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

c. Disputed Legal Issues

(i) Points of Law. Without extended legal argument, a concise statement of each disputed point of law concerning liability or relief, citing supporting statutes and decisions setting forth briefly the nature of each party's contentions concerning each disputed point of law, including procedural and evidentiary issues.

(ii) Proposed Conclusions of Law. If the case is to be tried without a jury, unless otherwise ordered, parties should briefly indicate objections to proposed conclusions of law.

d. Trial Preparation

(i) Witnesses to be Called. A list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(ii) Exhibits, Schedules and Summaries. A list of all documents and other items to be offered as exhibits at the trial, other than solely for impeachment or rebuttal, with a brief statement following each describing its substance or purpose and the identity of the sponsoring witness. Unless otherwise ordered, parties will indicate their objections to the receipt in evidence

of exhibits and materials lodged and that counsel have conferred respecting such objections.

(iii) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

(iv) Use of Discovery Responses. Counsel shall cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, interrogatory answers, or responses to requests for admission. Counsel shall indicate any objections to use of these materials and that counsel has conferred respecting such objections.

(v) Further Discovery or Motions. A statement of all remaining discovery or motions, including motions in limine.

e. Trial Alternatives and Options

(i) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(ii) Consent to Trial Before a Magistrate Judge. A statement whether reference of all or part of the action to a master or magistrate judge is feasible, including whether the parties consent to a court or jury trial before a magistrate judge, with appeal directly to the Ninth Circuit.

(iii) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties' claims or defenses.

(iv) Bifurcation, Separate Trial of Issues. A statement of whether bifurcation or a separate trial of specific issues is feasible and desired.

2. Witnesses

a. Jury Trials. The Pretrial Conference Statement shall include the witness list required in part by 1(d)(i) above. In addition, in the case of expert witnesses, the summary shall clearly state the expert's theories and conclusions and the basis therefore and shall be accompanied by a curriculum vitae; if the expert has prepared a report in preparation for the testimony, a copy thereof shall be furnished to opposing counsel. Witnesses not included on the

list may be excluded from testifying.

b. Non-Jury Trials. In non-jury cases, any party may serve and lodge with the Court a written narrative statement of the proposed direct testimony of each witness under that party's control in lieu of a summary. Each statement shall be marked as an exhibit and shall be in a form suitable to be received into evidence.

3. Jury Instructions

a. Joint Set of Instructions. The parties shall jointly prepare a set of jury instructions, and shall file the proposed instructions at least fourteen days prior to the Pretrial Conference. The submission shall contain both agreed upon instructions (which shall be so noted), and contested instructions, all in the order in which they should be read to the jury. Where contested instructions are included, they should be annotated both with the proponent's authority for seeking the instruction and the opponent's reason for opposition. Counsel shall deliver to Chambers a copy of the joint submission on a CD/DVD in Word format. The label shall include the case number and a description of the documents.

b. Substance and Format of Instructions. The instructions shall cover all substantive issues and other points not covered by the Ninth Circuit Manual of Model Jury Instructions. Each requested instruction shall be typed in full on a separate page and citations to the authorities upon which the instruction is based shall be included. Instructions shall be brief, clear, written in plain English, and free of argument. Pattern or form instructions shall be revised to address the particular facts and issues of this case.

c. Preliminary Statement and Instructions. If the parties wish to have a preliminary statement read to the jury, and/or preliminary instructions given to the jury, they shall jointly prepare and file the text of the proposed preliminary statement and/or preliminary instructions at least fourteen days prior to the Pretrial Conference.

d. Voir Dire and Verdict Forms. Each party shall file proposed questions for jury voir dire and a proposed Form of Verdict at least fourteen days prior to the Pretrial Conference.

4. Findings of Fact and Conclusions of Law

In non-jury cases, each party shall file at least fourteen days prior to the Pretrial Conference proposed Findings of Fact and Conclusions of Law on all material issues. The Court requests that the parties hyperlink each proposed Finding of Fact to any supporting evidence. Proposed Findings shall be brief, written in plain English, and free of pejorative language, conclusions and argument. Parties shall deliver to Chambers copies of Proposed Findings of Fact and Conclusions of Law on a CD/DVD in Word format, with a label including the name of the case, the case number and a description of the submission.

5. Exhibits

a. Provide Copies of Exhibits to Other Parties. Each party shall provide every other party with one set of all proposed exhibits, charts, schedules, summaries, diagrams, and other similar documentary materials to be used in its case in chief at trial, together with a complete list of all such proposed exhibits. Voluminous exhibits shall be reduced by elimination of irrelevant portions or through the use of summaries. Each item shall be pre-marked with a trial exhibit sticker ("Trial Exhibit No.__"), not deposition exhibit label, and defendant's exhibit numbers shall be sequenced to begin after plaintiff's exhibit numbers. If there are numerous exhibits, they should be provided in three-ring binders with marked tab separators. All exhibits that have not been provided as required are subject to exclusion.

b. Stipulations re Admissibility. At least fourteen days prior to the Pretrial Conference, the parties shall make a good faith effort to stipulate to exhibits' admissibility. If stipulation is not possible, the parties shall make every effort to stipulate to authenticity and foundation absent a legitimate (not tactical) objection.

c. Objections to Exhibits. In addition to the exhibit list, counsel shall confer with respect to any other objections to exhibits in advance of the Pretrial Conference. Each party shall file a statement briefly identifying each item objected to, the grounds for the objection, and the position of the offering party at least fourteen days prior to the date set for the Pretrial Conference.

d. Provide Copies of Exhibits to Court. One set of exhibits shall be provided to the Court in Chambers on the Friday prior to the trial date, in binders, marked, tabbed, and indexed in accordance with Local Rule 16-10(b)(7). Exhibits shall be identified as follows:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRIAL EXHIBIT 100

CASE NO. _____

DATE ENTERED _____

BY _____
DEPUTY CLERK

Blocks of numbers shall be assigned to fit the needs of the case (e.g., Plaintiff has 1-100, Defendant has 101-200). The parties shall not mark duplicate exhibits (e.g., plaintiff and defendant shall not mark the same exhibit; only one copy of the exhibit shall be marked).

e. Witness Binders. If all of the exhibits in a case do not fit in one binder, then the parties shall prepare a witness binder for each witness that will testify regarding three or more exhibits.

f. Disposition of Exhibits after Trial. Upon the conclusion of the trial, each party shall retain its exhibits through the appellate process. It is each party's responsibility to make arrangements with the Clerk of Court to file the record on appeal.

6. Motions In Limine

Any party wishing to have motions in limine heard prior to the commencement of trial must file them at least fourteen days prior to the date set for the Pretrial Conference. All motions in limine shall be contained in one document, limited to 25 pages pursuant to Civil L.R. 7-2(b),

with each motion listed as a subheading. Opposition to the motions in limine shall be contained in one document, limited to 25 pages, with corresponding subheadings, and shall be filed at least seven days prior to the Pretrial Conference. No reply papers will be considered. The motions will be heard at the Pretrial Conference or at such other time as the Court may direct. Nothing in this provision prevents a party from noticing its motions in limine regularly for hearing on or prior to the final date for hearing dispositive motions. No leave to file under seal will be granted with respect to motions in limine.

7. Other Pretrial Matters

a. Status Conferences. Any party desiring to confer with the Court may, upon notice to all other parties, arrange a conference through the Courtroom Deputy, Jean Davis, at 415-522-2077 or whocrd@cand.uscourts.gov.

b. Settlement Conferences. Parties wishing to arrange a settlement conference before another judge or magistrate judge may do so by contacting the Courtroom Deputy.

c. Daily Transcripts. Should a daily transcript and/or realtime reporting be desired, the parties shall make arrangements with Rick Duvall, Court Reporter Supervisor, at 415-522-2079 or Richard_Duvall@cand.uscourts.gov, at least seven calendar days prior to the trial date.

8. Trial Matters

a. The normal trial schedule will be from 8:00 a.m. to 1:00 p.m. (or slightly longer to finish a witness) with two fifteen minute breaks. Trial is usually held from Monday through Friday.

b. Ordinarily, the Court will set fixed time limits for each side at the Final Pretrial Conference.

c. Expert witnesses are limited to the scope of their expert reports on direct examination. F.R.C.P. 26(a)(2) and 37(c).

d. Parties must meet and confer to exchange any visuals, graphics or exhibits to be used in opening statements. Unless otherwise agreed, the exchange must occur no later than

Wednesday before the trial. Any objections not resolved must be filed in writing by Thursday before trial. The parties shall be available by telephone Friday before trial to discuss the issue raised with the Court.

e. The parties shall disclose the witnesses whom they will call at trial on any given day by at least 2:00 p.m. the court day before their testimony is expected. Failure to have a witness ready to proceed at trial will usually constitute resting.

f. The Court takes a photograph of each witness prior to the witness's testimony.

g. Other than a party or party representative, fact witnesses are excluded from the courtroom until they are called to testify, and may not attend in the gallery until their testimony is complete.

h. The Court does not typically allow bench conferences. If there are matters that need to be raised with the Court outside the presence of the jury, the parties should raise them in the morning before trial or during recess. With advance notice, the Court is usually available at 7:30 a.m. to address such matters.

9. Miscellaneous

a. Please DO NOT call Chambers. If you need to contact the Courtroom Deputy, please call (415) 522-2077 and leave a message if the deputy is not available, or email whocrd@cand.uscourts.gov.

b. Copies. Each document filed or lodged with the Court must be accompanied by a three-hole punched copy for use in the Judge's chambers. In addition, one copy of the witness and exhibit lists should be furnished to the court reporter.

IT IS SO ORDERED.

Dated: February 2017

William H. Orrick
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IT IS HEREBY ORDERED that, pursuant to Fed.R.Civ.P. 16(b) and Civil L. R. 16-10, a Case Management Conference will be held in this case before the Honorable William H. Orrick on <<DATE>> at 2:00 p.m. in Courtroom 2, 17th Floor, 450 Golden Gate Avenue, San Francisco, California 94102. This conference shall be attended by lead trial counsel for parties who are represented. Parties who are proceeding without counsel must appear personally.

1. Case Management Conference Requirements

a. Plaintiffs shall serve copies of this Order at once on all parties to this action, and on any parties subsequently joined, in accordance with the provisions of Fed.R.Civ.P. 4 and 5. Following service, plaintiffs shall file a certificate of service with the Clerk of this Court.

b. Counsel are directed to confer in advance of the Case Management Conference. Not less than seven days before the conference, counsel shall file a joint case management statement in compliance with the Civil Local Rules and the Standing Order for All Judges of the Northern District of California. Failure to file a joint statement shall be accompanied by a signed declaration setting forth the grounds

for such failure. Failure to show good cause for such failure may subject the parties to sanctions.

c. Each party shall be represented at the Case Management Conference by counsel prepared to address all of the matters referred to in this Order, and with authority to enter stipulations and make admissions pursuant to this Order.

d. Any request to reschedule the above date should be made in writing, and by stipulation, if possible, not less than ten days before the conference date. Good cause must be shown.

e. At the Case Management Conference the parties should be prepared to address and resolve the following: setting the date and the estimated length of the trial; setting the date for discovery cutoff; setting the date to designate experts and other witnesses; and setting the date for the pretrial conference.

2. Telephonic Appearance Procedures for Case Management Conferences

a. Although the Court prefers in-person appearances, the Court allows attorneys whose offices are more than **thirty miles** from the Courthouse to appear for civil Case Management Conferences (only) by telephone. No motion or other formal request is required. Unless the parties propose a different procedure that the court authorizes, telephonic appearances are made through CourtCall, an independent conference-call company, pursuant to the procedures set forth in section 2b. If an individual schedules a telephonic appearance and then fails to respond to the call of a matter on calendar, the Court may pass the matter or may treat the failure to respond as a failure to appear. Scheduling simultaneous telephonic appearances in multiple courts does not excuse a failure to appear.

b. SCHEDULING A TELEPHONIC APPEARANCE. Absent an emergency, telephone appearances should be arranged by calling CourtCall at (866) 582-6878

no later than 3:00 p.m. the court day prior to the hearing date.

c. PROCEDURE FOR TELEPHONIC APPEARANCE. Court Call will provide counsel with written confirmation of the telephonic appearance, and give counsel a number to call to make the telephonic appearance. It is counsel's responsibility to dial into the call not later than 10 minutes prior to the scheduled hearing. **CourtCall does not place a call to counsel.**

The initial charge per participant for a CourtCall appearance is $30.00 for the first 45 minutes you are connected. For each additional 15-minute increment the charge is $7.00. If you do not timely call and connect with the Court Call operator, you will be billed for the call, and the hearing may proceed in your absence.

Telephonic appearances are connected directly with the courtroom's public address system and electronic recording equipment so that a normal record is produced. To ensure the quality of the record, the use of mobile phones, speakerphones, public telephone booths, or phones in other public places is discouraged except when completely unavoidable. Participants should be able to hear all parties without difficulty or echo.

At the time of your hearing, you may be in the listening mode initially, in which case you will be able to hear the case before yours just as if you were in the courtroom. After your call is connected to the courtroom, the Clerk will call the case and request appearances. Each time you speak, you should identify yourself for the record. The court's teleconferencing system allows more than one speaker to be heard; so the Judge can interrupt a speaker to ask a question or redirect the discussion. When the Judge informs the participants that the hearing is completed, you may disconnect, and the next case will be called.

3. Notice to Unrepresented (Pro Se) Parties in Non-Prisoner Cases

a. Parties representing themselves should visit the link titled "If You Don't Have a Lawyer" on the Court's homepage, www.cand.uscourts.gov. The link discusses the Court's "Legal Help Center" for unrepresented parties. In San Francisco, the Legal Help Center is located on the 15th Floor, Room 2796, of the courthouse at 450 Golden Gate Avenue. In Oakland, the Legal Help Center is located on the 4th Floor, Room 470S, of the courthouse at 1301 Clay Street. To make an appointment for San Francisco or Oakland, call 415-782-8982.

b. If you are representing yourself and you have not been granted leave to proceed *in forma pauperis* (IFP) by the Court, you must comply with the service requirements of Rule 4 of the Federal Rules of Civil Procedure, as set forth below. Failure to follow the procedures may result, under Rule 4(m), in dismissal of your case:

(i) It is your responsibility to obtain a valid summons from the clerk and to effect service of the summons and complaint on all defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure. If you have named the United States government, a federal agency, a federal official or a federal employee as a defendant, you must comply with the special requirements of Rule 4(i).

(ii) Service may be affected by any person who is not a party and who is at least 18 years of age, which means that you, as a party, may not affect service. If service of the summons and complaint is not made upon a defendant within 90 days after the filing of the complaint, your action will, under Rule 4(m), be dismissed as to that defendant.

(iii) Within 95 days after the filing of the complaint, you must file proof of service indicating which defendants were served within the 90 days allowed under Rule 4(m) and showing, in accordance with Rule 4(i), how each of those

defendants was served (for example, by attaching appropriate certificates of service). You must also show cause why a defendant not served within the 90 days allowed under Rule 4(m) should not be dismissed without prejudice.

(iv) Failure to do these things within the designated time will result in the dismissal of your case under Rule 4(m) and Rule 41(b).

Dated: January 2018

William H. Orrick
United States District Court Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF ELIGIBILITY FOR VIDEO RECORDING

This case is assigned to a judge who participates in the Cameras in the Courtroom Pilot Project. See General Order 65 and cand.uscourts.gov/cameras. The parties' consent is required before any proceedings in this case may be recorded. If a party, the presiding judge, or a member of the media requests that a proceeding be recorded, consent of the parties will be presumed unless a party submits an Objection to Request for Video Recording form as directed by the Cameras in the Courtroom Procedures.

Parties objecting to video recording are asked, for research purposes, to communicate to the Court the reasons for declining to participate. If you decline to participate, you should candidly convey the reasons for your decision. Whether you agree to participate or decline to participate will have no effect on your case whatsoever.

Susan Y. Soong

Susan Y. Soong, Clerk of Court

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC., et al., Plaintiffs, v. CITY OF ST. HELENA, et al., Defendants.	Case No. 21-cv-02493-KAW **ORDER REASSIGNING CASE**

IT IS ORDERED that this case has been reassigned using a proportionate, random and blind system pursuant to General Order No. 44 to the Honorable William H. Orrick in the San Francisco division for all further proceedings. Counsel are instructed that all future filings shall bear the initials WHO immediately after the case number.

All hearing and trial dates presently scheduled are vacated. However, existing briefing schedules for motions remain unchanged. Motions must be renoticed for hearing before the judge to whom the case has been reassigned, but the renoticing of the hearing does not affect the prior briefing schedule. Other deadlines such as those for ADR compliance and discovery cutoff also remain unchanged.

Dated: April 9, 2021

Susan Y. Soong

Susan Y. Soong
Clerk, United States District Court

A true and correct copy of this order has been served by mail upon any pro se parties.

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PACASO INC., et al., Plaintiffs, v. CITY OF ST. HELENA, et al., Defendants.	Case No. 21-cv-02493-KAW **ORDER REASSIGNING CASE**

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Dated: April 9, 2021

Susan Y. Soong

Susan Y. Soong
Clerk, United States District Court

A true and correct copy of this order has been served by mail upon any pro se parties.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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Parties objecting to video recording are asked, for research purposes, to communicate to the Court the reasons for declining to participate. If you decline to participate, you should candidly convey the reasons for your decision. Whether you agree to participate or decline to participate will have no effect on your case whatsoever.

Susan Y. Soong

Susan Y. Soong, Clerk of Court

Appendix P – Town of Truckee Ordinance

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TOWN OF TRUCKEE
California

DRAFT ORDINANCE 2022-05

AN ORDINANCE OF THE TOWN OF TRUCKEE AMENDING THE TRUCKEE MUNICIPAL CODE, TITLE 18, DEVELOPMENT CODE FOR CLEAN-UP AMENDMENTS

WHEREAS, the Town Council adopted the 2025 General Plan on November 16, 2006 thereby establishing the Council's policy on future growth, development, and conservation of natural resources; and

WHEREAS, the Council adopted the 2025 General Plan Implementation Program on November 16, 2006, establishing the priorities, responsibilities and timelines for implementing the actions and programs of the General Plan; and

WHEREAS, a number of actions and programs are to be implemented through the Development Code and will require amendments to the Development Code; and

WHEREAS, the Council may initiate amendments to the Development Code, and the Planning Commission is an advisory body to the Council on matters concerning land use regulation and the Development Code; and

WHEREAS, the Planning Commission adopted Resolution 2007-10 on June 13, 2007 recommending to the Council that the Council initiate a comprehensive update to Title 18, Development Code, of the Municipal Code; and

WHEREAS, the Town Council adopted Resolution 2007-36 on July 19, 2007 initiating a comprehensive update to Title 18, Development Code, of the Municipal Code; and

WHEREAS, on April 12, 2022, the Town Council adopted amendments to the Short-Term Rental Ordinance (Municipal Code Title 5, Chapter 5.02) which requires amendments to the Development Code (Municipal Code Title 18) to ensure consistency among Town regulations; and

WHEREAS, the Development Code is reviewed regularly to ensure consistency with recently adopted State law,

WHEREAS, clean-up amendments are incorporated in order to help provide accurate and consistent review of all projects; and

WHEREAS, the Planning Commission reviewed all proposed amendments at its April 19, 2022 public hearing and recommended approval to the Town Council.

The Town Council of the Town of Truckee Does Ordain as Follows:

Section 1.

Enactment. Title 18, Development Code, of the Municipal Code is hereby amended as designated in Exhibit "A" and Exhibit "B" attached hereto and incorporated herein by reference.

Section 2.

DocuSign Envelope ID: BD0F6A3E-BD93-4FB4-ADDF-2E34DFE15C26

Findings. The Council hereby adopts the following findings in support of adoption of this ordinance and the amendments to Title 18, Development Code. The May 10, 2022 Town Council staff report and meeting minutes, and the April 19, 2022 Planning Commission staff report and meeting minutes, are hereby incorporated herein by reference and provide a factual basis for the findings.

a. The proposed amendments directly implement and are internally consistent with the goals, policies, and actions of all elements of the 2025 General Plan. The proposed changes are clean-up amendments to ensure consistency with State law, the Town's recently amended Short Term Rental Ordinance, and to clarify and streamline Development Code requirements. Section 18.58.260 (Time-Share Uses) is incorporated to codify the Town's historical determination that time-share uses are considered commercial uses and to outline the application process, development standards and enforcement and violation protocols for these uses.

b. The proposed amendments would not be detrimental to the public interest, health, safety, convenience, or welfare of the Town.

Section 3.

CEQA Findings. The Council has determined that the proposed Development Code amendments were assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town. The amendments are 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. Moreover, under Section 15061(b)(3) of the State CEQA Guidelines, the amendments are 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 4.

Summary Publication. The Town Clerk is hereby directed to publish this ordinance in accordance with the law.

* * * * * *

The foregoing Ordinance was introduced at a regular meeting of the Truckee Town Council held on the 10th day of May, 2022, and adopted at a regular meeting of the Truckee Town Council on the 24th day of May, 2022, by Council Member Polivy, who moved its introduction, which motion was seconded by Council Member Zabriskie was upon roll call carried by the following vote:

AYES: **Council Member Polivy, Council Member Zabriskie, Vice Mayor Romack, Council Member Klovstad, and Mayor Henderson.**

NOES: **None.**

ABSENT: **None.**

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DocuSigned by:
0888E0BDF8F742A...

Courtney Henderson, Mayor

ATTEST:

DocuSigned by:
Judy Price
5015D6C8DD27409...

Judy Price, MMC, Town Clerk

APPROVED AS TO FORM:

DocuSigned by:
Andrew Morris
CE2C543093034B8...

Andrew Morris, Town Attorney

Attachments:

Exhibit A – Title 18, Development Code Amendments (Summary)

Exhibit B – Title 18, Development Code Amendments

****

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ORDINANCE 2022-05

EXHIBIT "A"

Title 18, Development Code Amendments

Title 18. Development Code, of the Truckee Municipal Code is hereby amended as follows:

Amendments to Article II, Section 18.08.030, Tables 2-2 and 2-3 (Allowed Uses and Permit Requirements for Residential Zoning Districts and Downtown Residential Zoning Districts), Section 18.12.030, Tables 2-7 and 2-8 (Allowed Uses and Permit Requirements for Commercial and Manufacturing Districts); Article III, Section 18.30.056.B (Easements), Section 18.30.120, Table 3-3 (Setbacks), Section 18.30.150 (Solid Waste/Recyclables Materials Storage), Section 18.58.025 (Accessory Dwelling Units), Section 18.58.070 (Bed and Breakfast Inns), Section 18.58.100 (Detached Living Areas), Section 18.58.220 (Residential Accessory Uses and Structures), Section 18.58.260 (Time-Share Uses); Article IV, Chapter 18.72 (Zoning Clearances), Section 18.88.030 (Vacations); Article V, Section 18.95.020 (Urban Lot Split Height Restrictions), Section 18.96.150 (Extensions of Time for Tentative Maps); Article VI, Section 18.200.040 (Enforcement); and Amendments to Article VIII, Chapter 18.220 (Definitions/Glossary) are hereby amended as designated in Exhibit "B" attached hereto and incorporated herein.

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DRAFT ORDINANCE 2022-05

EXHIBIT "B"

Title 18, Development Code Amendments

Title 18, Development Code, of the Truckee Municipal Code is hereby amended to read as follows (additions are shown by underline type; deletions are shown in ~~strikethrough~~ type; Commission modifications are shown in red underlined type; minor technical edits made by staff are shown in underline type):

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TABLE 2-2 – ALLOWED USES AND PERMIT REQUIREMENTS FOR RESIDENTIAL ZONING DISTRICTS (Continued)

LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See standards in Section:
	RR	RS	RM	
RESIDENTIAL USES				
Accessory dwelling units	P	P	P	18.58.025
Animal raising and keeping of household pets and backyard chickens	P	P	MUP	18.58.060
Detached living areas	P	P	P	18.58.100
Emergency shelters			UP	
Employee housing	P(3)	P(3)		
Farmworker housing, up to 12 units or 36 beds in group quarters	UP(4)			
Junior Accessory Dwelling Units	P	P		18.58.025.N
Manufactured home	P	P	P(5)	18.58.170
Mobile home, tiny home or recreational vehicle as a temporary residence during construction	P	P	P	18.58.160
Mobile home parks	UP	UP	UP	18.58.150
Multi-family dwellings, 2 to 10 units			P	18.58.180
Multi-family dwellings, 11 and more units			DP	18.58.180
Multi-family dwellings, individual ownership, 2 to 10 units		UP	P	18.58.180
Multi-family dwellings, individual ownership, 11 or more units		UP	DP	18.58.180
Residential care facilities, 1 to 6 clients	P	P	P	
Residential care facilities, 7 to 12 clients	UP	UP	UP	
Rooming and boarding houses			UP	
Senior citizen congregate care/congregate care housing			UP	18.58.240
Single-family dwellings(6)	P	P		
Supportive housing	P(3)	P(3)	P(3)	18.58.255
~~Transient rental, multi-family dwellings~~	-	~~P~~	~~P~~	-
Transient rental, single-family dwellings	P	P	P	
Transitional housing	P(3)	P(3)	P(3)	
RETAIL TRADE USES				
Accessory retail uses			UP	18.58.030

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirement	Procedure is in Section:
P	Permitted use, Zoning Clearance required for projects with less than 7,500 sq. ft. of floor area and less than 26,000 sq. ft. of site disturbance.	18.72
DP	Development Permit required for permitted projects with 7,500 sq. ft. or more of floor area or 26,000 sq. ft. or more of site disturbance.	18.74
MUP	Conditional use, Minor Use Permit approval required.	18.76
UP	Conditional use, Use Permit approval required.	18.76
TUP	Temporary use, Temporary Use Permit approval required.	18.80
	Use not allowed. See 18.03.020.E regarding uses not listed.	

Notes:

(1) Definitions of the listed land uses are in Chapter 18.220 (Definitions, Glossary).

(2) Section 18.58.060 (Animal Raising and Keeping) may require a Minor Use Permit for certain animals and household pets, the raising and keeping of animals or household pets over a certain number, and/or raising and keeping of animals on small parcels.

(3) Employee, supportive, and transitional housing are subject to the same regulations that apply to other residential uses of the same type in that zone.

(4) Farmworker housing is subject to the same regulations that apply to other agricultural uses in the same zone.

(5) Manufactured homes within the multi-family residential zone shall meet the requirements of the "Dwelling, Multi-Family definition.

(6) Small lot single-family subdivisions that comply with all requirements of Gov. Code, § 66499.40 are permitted in zoning districts that allow multi-family residential uses.

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TABLE 2-3 ALLOWED USES AND PERMIT REQUIREMENTS FOR DOWNTOWN RESIDENTIAL ZONING DISTRICTS (Continued)

LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See standards in Section:
	DRS	DRM	DRH	
RESIDENTIAL USES				
Accessory dwelling units	P	P	P	18.58.025
Animal raising and keeping of household pets and backyard chickens	P	P	MUP	18.58.060
Detached living areas	P	P	P	18.58.100
Emergency shelters			UP	
Employee housing	P(2)			
Junior Accessory Dwelling Units	P			18.58.025.N
Live/work units	MUP	UP	UP	18.58.130
Manufactured Home	P	P(3)	P(3)	18.58.170
Mobile home, tiny home or recreational vehicle as a temporary residence during construction	P	P	P	18.58.160
Mobile home parks	UP	UP	UP	18.58.150
Multi-family dwellings, 2 to 10 units	UP	P	P	18.58.180
Multi-family dwellings, 11 and more units	UP	DP	DP	18.58.180
Multi-family dwellings, individual ownership, 2 to 10 units	UP	P	P	18.58.180
Multi-family dwellings, individual ownership, 11 or more units	UP	DP	DP	18.58.180
Residential care facilities, 1 to 6 clients	P	P	P	
Residential care facilities, 7 to 12 clients	UP	UP	UP	
Rooming and boarding houses			UP	
Senior citizen congregate care/congregate care housing		UP	UP	18.58.240
Single-family dwellings(4)	P			
Supportive housing	P(2)	P(2)	P(2)	18.58.255
~~Transient rental, multi-family dwellings~~	~~p~~	~~p~~	~~p~~	-
Transient rental, single-family dwellings	P	P	P	
Transitional housing	P(2)	P(2)	P(2)	

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirement	Procedure is in Section:
P	Permitted use, Zoning Clearance required for projects with less than 5,000 sq. ft. of floor area and less than 26,000 sq. ft. of site disturbance.	18.72
DP	Development Permit required for permitted projects with 5,000 sq. ft. or more of floor area or 26,000 sq. ft. or more of site disturbance.	18.74
MUP	Conditional use, Minor Use Permit approval required.	18.76
UP	Conditional use, Use Permit approval required.	18.76
TUP	Temporary use, Temporary Use Permit approval required.	18.80
	Use not allowed. See 18.03.020.E regarding uses not listed.	

Notes:

(1) Definitions of the listed land uses are in Chapter 18.220 (Definitions, Glossary).

(2) Employee, supportive, and transitional housing are subject to the same regulations that apply to other residential uses of the same type in that zone.

(3) Manufactured homes within the multi-family residential zone shall meet the requirements of the "Dwelling, Multi-Family definition and the standards of other multi-family residential dwellings of the same type in the same zone.

(4) Small lot single-family subdivisions that comply with all requirements of Gov. Code, § 66499.40 are permitted in zoning districts that allow multi-family residential uses.

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TABLE 2-7 - ALLOWED USES AND PERMIT REQUIREMENTS FOR COMMERCIAL AND MANUFACTURING DISTRICTS (Continued)

	PERMIT REQUIREMENT BY DISTRICT					See standards
LAND USE (1)	CN (2)	CG	CH	CS	M	in Section:
RECREATION, EDUCATION & PUBLIC ASSEMBLY USES						
Community centers	P	P		UP		
Docks and piers, commercial	MUP	MUP				
Health/fitness facilities	UP	P		P		
Ice skating rinks		P		P		
Indoor recreation centers		P		P		
Libraries and museums	P	P				
Marina	UP	UP				
Membership organization facilities	MUP	P				
Outdoor commercial recreation	MUP	P	MUP			
Parks and playgrounds	UP	UP		UP	UP	
Public Assembly Uses	UP	UP		UP	UP	18.58.090
Recreational vehicle (RV) parks			UP			
Schools - Public and private	UP	P				
Schools - Specialized education and training		P		UP	UP	
Studios for art, dance, music, photography, etc.	P	P		P	P	
Theaters and event spaces	UP	UP				
RESIDENTIAL USES						
Accessory dwelling units	P(4)	P(4)		P	P	18.58.025
Caretaker housing	MUP	MUP	MUP	MUP	MUP	
Emergency shelters	UP	P	UP	P		
Live/work units	MUP	MUP		MUP	MUP	18.58.130
Multi-family dwellings, 11 and more units	UP(5)	UP(5)				18.58.180
Multi-family dwellings, in commercial/industrial project	P	P		P	P	18.58.180, 18.58.140
Senior citizen congregate care/congregate care housing	UP					18.58.240
Single-family dwelling(6)(7)						
Single-room occupancy (SRO) housing	UP	UP				
Supportive housing	P(3)	P(3)		P(3)	P(3)	18.58.255
Transitional housing	P(3)	P(3)		P(3)	P(3)	
Transitional Living Center	UP	UP		UP		
Work/live units	MUP	MUP		MUP	MUP	18.58.130

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirement	Procedure is in Section:
P	Permitted use, Zoning Clearance required for projects with less than 7,500 sq. ft. of floor area and less than 26,000 sq. ft. of site disturbance.	18.72
DP	Development Permit required for permitted projects with 7,500 sq. ft. or more of floor area or 26,000 sq. ft. or more of site disturbance.	18.74
MUP	Conditional use, Minor Use Permit approval required.	18.76
UP	Conditional use, Use Permit approval required.	18.76
	Use not allowed. See 18.03.020.E regarding uses not listed.	

Notes:

(1) Definitions of the listed land uses are in Chapter 18.220 (Definitions, Glossary).

(2) Use on a site adjacent to a residential zoning district shall comply with the special setback, screening and landscaping standards in Section 18.30.110(E) (Screening between neighborhood commercial and residential lands uses) and Section 18.40.040(E) (Landscaping requirements between neighborhood commercial and residential land uses).

(3) Supportive and transitional housing are subject to the same regulations that apply to other residential uses of the same type in that zone.

(4) Accessory Dwelling Units associated with multi-family residential project.

(5) Standalone residential uses shall be subject to the development standards of the RM zoning district and Section 18.58.180 (Multi-family Residential Projects)

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(6) Time-share uses are allowed within existing legal nonconforming single-family residences in the CG and CN zoning districts.
(7) Small lot single-family subdivisions that comply with all requirements of Gov. Code, § 66499.40 are permitted in zoning districts that allow multi-family residential uses.

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TABLE 2-8 - ALLOWED USES AND PERMIT REQUIREMENTS FOR DOWNTOWN COMMERCIAL AND MANUFACTURING DISTRICTS (Continued)

LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT				See standards in Section:
	DMU	DC	DM	DVL	
RESIDENTIAL USES					
Accessory dwelling units	P (2)(3)	P	P	P	18.58.025
Animal raising and keeping of household pets and backyard chickens	P (4)	P (4)	P (4)	P (4)	18.58.060
Caretaker housing	MUP (3)	MUP	MUP	MUP	
Detached living areas	P (3)				18.58.100
Emergency shelters/transitional living centers		UP			
Emergency shelters, accessory to a church/place of worship	MUP(3)				
Employee housing	P(6)				
Junior Accessory Dwelling Units	P				18.58.025.N
Live/work units	MUP (3)	MUP	MUP		18.58.130
Manufactured home	P (2)(3)(7)				18.58.170
Multi-family dwellings, 2 to 10 units	P (2)(3)				18.58.180
Multi-family dwellings, 11 and more units	DP (2)(3)			DP(5)	18.58.180
Multi-family dwellings, individual ownership, 2 to 10 units	P (2)(3)				18.58.180
Multi-family dwellings, individual ownership, 11 or more units	DP (2)(3)			DP(5)	18.58.180
Multi-family dwellings, in commercial/industrial project	P (3)	P	P		18.58.180, 18.58.140
Residential care homes, 7 to 12 clients	UP (3)				
Senior citizen congregate care/congregate care housing	UP (3)				18.58.240
Single-family dwellings(8)	P (2)(3)				
Single-room occupancy (SRO) housing	UP (3)				
Supportive housing	P(6)	P(6)	P(6)	P(6)	18.58.255
~~Transient rental, multi-family dwellings~~	~~P (3)~~				
Transient rental, single-family dwellings	P (3)				
Transitional housing	P(6)	P(6)	P(6)	P(6)	
Work/live units	MUP (3)	MUP	MUP		18.58.130

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirement	Procedure is in Section:
P	Permitted use, Zoning Clearance required for projects with less than 5,000 sq. ft. of floor area and less than 26,000 sq. ft. of site disturbance.	18.72
DP	Development Permit required for permitted projects with 5,000 sq. ft. or more of floor area or 26,000 sq. ft. or more of site disturbance.	18.74
MUP	Conditional use, Minor Use Permit approval required.	18.76
UP	Conditional use, Use Permit approval required.	18.76
TUP	Temporary use, Temporary Use Permit approval required.	18.80
	Use not allowed. See 18.03.020.E regarding uses not listed.	

Notes:

(1) Definitions of the listed land uses are in Chapter 18.220 (Definitions, Glossary).

(2) Stand-alone residential projects must comply with residential development standards of DRM zoning district.

(3) These uses are prohibited on ground floor spaces along Commercial Row. See Section 18.20.070.

(4) Section 18.58.060 (Animal Raising and Keeping) may require a Minor Use Permit for certain animals and household pets, or the raising and keeping of animals or household pets over a certain number, and/or the raising and keeping of animals on small parcels.

(5) Multi-family dwellings within the DVL zoning district shall have a minimum density of 16 dwelling units per acre.

(6) Employee, supportive, and transitional housing are subject to the same regulations that apply to other residential uses of the same type in that zone.

(7) Excludes sites listed on the National Register of Historic Places.

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(8) Small lot single-family subdivisions that comply with all requirements of Gov. Code, § 66499.40 are permitted in zoning districts that allow multi-family residential uses.

Table continues on next page.

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18.30.056 - Easements

A. Structures within easements. No structure shall be allowed within public utility easements, snow storage easements, access/driveway easements, drainage easements or any other easement offered for dedication to the County of Nevada or the Town, except as follows:

1. The structure serves the purpose of the easement. For example, an electrical transformer in a public utility easement;

2. The structure is allowed in the easement in accordance with the Public Improvement and Engineering Standards; or

3. The structure is allowed with Minor Use Permit approval. A Minor Use Permit for a structure within an easement may be granted only where the review authority first finds that the structure will not interfere with the purpose of the easement.

4. A single-family driveway, including retaining walls, bridge decks, and/or support posts, may be allowed within easements as approved by the Town Engineer.

B. Required parking, required landscaping, and required site improvements shall be prohibited within easements unless either: (i) the easement is amended, with the consent of all entities with an interest in the easement, to clarify that the parking, landscaping, and/or other improvements can remain in place in perpetuity notwithstanding any other provision of the easement; or (ii) all entities with an interest in the easement provide written consent for the parking, landscaping and/or other improvements to remain in place in perpetuity, which such consent is absolute, irrevocable, permanent, supersedes the easement to the extent it is inconsistent with the easement, and is recorded in the official records of Nevada County. ~~express written approval is provided from all utilities, agencies and entities with an interest in the easement.~~ Parking required to meet the minimum standards of Section 18.48.040 (Number of Parking Spaces Required) shall not be permitted within snow storage easements (Municipal Code Section 10.17.030).

18.30.060 - Exterior Lighting and Night Sky

A. Purpose. It is the purpose and intent of this Section to balance the goals of the Town of Truckee General Plan to maintain its small town character with the need to provide for safe lighting practices and to minimize light pollution for the enjoyment of Truckee's residents and visitors.

1. The use of outdoor lighting is often necessary for adequate nighttime safety and utility, but common lighting practices can also interfere with other legitimate public concerns. Principles among these concerns are:

   a. The degradation of the nighttime visual environment by production of unsightly and dangerous glare;

   b. Lighting practices that interfere with the health and safety of Truckee's residents and visitors;

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TABLE 3-3
REQUIRED SETBACKS - RESIDENTIAL ACCESSORY USES AND STRUCTURES

Accessory Use/Structure	Type of Setback (1)	Required Setback (2)
Air conditioning equipment, pool and spa equipment, ground-based antennas, generators	Sides, rear	5 feet
Garage	Front, street-side	1 foot and 20 feet from edge of street pavement
Gazebo, greenhouse, patio cover	Front, street-side Rear Interior (3)	15 feet 15 feet for single-family dwelling, 10 feet for multi-family dwellings 6 feet
Propane tank	Front, street-side Sides, rear	As required for main structure. 0 feet (4)
Stationary barbecue, fire pit	Sides, rear	5 feet
Swimming pool, spa, fish pond, outdoor play equipment	Street-side Sides, rear	As required for main structure. 5 feet
Other structures greater than 120 square feet	Front, street-side, sides, rear	As required for main structure.
Non-habitable structures less than 120 square feet and greater than 6 feet in height	Front, street-side Sides, rear	As required for main structure. 5 feet
Structures less than 120 square feet and 6 feet or less in height and not covered elsewhere in this section	Front, street-side, sides, rear	0 feet

Notes:

(1) When a setback is not specified, the setback shall be as required for the main structure. Where a parcel is situated so that the front, side or rear property lines are not readily determinable, required setbacks shall be established by the Director.

(2) A structure, projection or equipment shall not be placed or occur beyond the property lines of the subject parcel.

(3) Chapter 18.220 (Definitions, Glossary) for the definition of interior setback.

(4) Propane tanks must comply with the side, rear and interior setback requirements of the Town Building Code and the Truckee Fire Protection District.

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setback would be increased from the standard 20-foot rear yard setback to a 28-foot rear yard setback (addition of the eight-foot reduction to the rear setback).

For single-family residential dwellings on through lots that have two front yard setbacks, only one front yard setback may be reduced up to 50 percent of that required for other parcels in the same zoning district provided that the other (opposite) front yard setback is increased by the amount of the requested reduction. For through lots, only one front yard setback may be granted this reduction. On through lots with garages in the front setback, the reduction may only be granted to the front setback where the garage is located, if applicable.

The reduced front yard setback applies to all structures including the main structure, decks, eaves, etc. If the reduced front yard setback is used, the allowed projections of Table 3-2 (Allowed Projections into Setbacks) do not apply. Living space is permitted below a garage within the front yard setback in compliance with Section 18.30.120.F.3.f.

b. Side setbacks. A single-family dwelling and related accessory structures may extend up to two feet into a required side yard setback but no closer than eight feet to a side property line, and allowed projections as listed in Table 3-2 (Allowed Projections Into Setbacks) may be located up to five feet into a required side setback, but no closer than five feet to any side property line only as follows:

(1) The average width of the parcel at the building pad is 80 feet or less;

(2) The wall of the structure is located no closer than 15 feet to the wall of any structure on an adjoining parcel;

(3) The pitch of any portion of the roof within the side yard setback is not directed toward the side property line or the structure has a non-shedding roof with a deed restriction recorded on the property that limits the type of roofing materials to a non-shedding roof materials and/or snow retention mechanism for the life of the structure; and

(4) Windows and other wall openings of the structural wall within the side setback are limited to five percent or less of the total area of the wall.

c. Side setbacks for nonconforming structure. An addition or modification to a single-family dwelling that encroaches into the side setback may extend up to five feet into a required side setback, but no closer than five feet to a side property line, as follows:

(1) The Director finds all of the following:

(a) The height and design of the addition or modification is compatible with the existing structure;

(b) The side yard setback for the addition or modification is equal to or greater than the side yard setback for the existing dwelling;

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b. A written narrative shall accompany the solar evaluation, identifying solar opportunities for the development, as well as potential impacts to adjacent properties. Solar access opportunities include, but are not limited to identification of building orientation for maximum solar gain, appropriate landscaping, lot size and shape, building height, roof eave design, solar protection and street layout. To the extent feasible, the applicant shall incorporate these solar opportunities into the project's final design.

C. Orientation of structures. Future structures should be oriented to maximize solar access opportunities.

D. Pools and spas. A pool or spa facility owned and maintained by a homeowner's association or multi-family rental complex shall be equipped with a solar cover (i.e. an insulative thermal barrier designed to prevent heat loss and help facilitate solar gain). Solar water heating systems are encouraged.

E. Collector installation. Solar collectors, if provided, shall be located and installed in the following manner:

1. Roof-mounted solar collectors shall be placed in the least conspicuous location without reducing the operating efficiency of the collectors;

2. Wall-mounted and ground-mounted collectors shall be screened from public view, to the maximum extent feasible;

3. Roof-mounted collectors shall be installed at the same angle or as close as possible to the pitch of the roof. Solar panels may be placed on a flat roof in an angled position if they are appropriately screened from view by elements that are compatible with the architectural style, color and use of materials on the main portions of the building;

4. Appurtenant equipment, particularly plumbing and related fixtures, shall be installed in the attic whenever possible or screened from public view, to the maximum extent feasible; and

5. Exterior surfaces of the collectors and related equipment shall have a matte finish and shall be color-coordinated to harmonize with roof materials and other dominate colors of the structure.

E. Obstruction of solar access. Structures (building, wall, fence, etc.) should not be constructed or new vegetation placed or allowed to grow, so as to obstruct solar access on an adjoining parcel.

18.30.150 - Solid Waste/Recyclable Materials Storage

This Section provides standards for the construction and operation of solid waste and recyclable material storage areas in compliance with State law (California Solid Waste Reuse and Recycling Access Act, Public Resources Code Sections 42900 through 42911). All developments must comply with Solid Waste and Recycling requirements found in the Town of Truckee Municipal Code Chapter 6.

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A. Size Requirements. The dimensions listed in Table 3-4 represent the uninterrupted space requirements for material storage containers. Any additional bollards, posts, hinges or other building-related items must make way for these dimensions and are not included in the sizing requirements listed.

TABLE 3-4
STORAGE AREA REQUIREMENTS

Container	Inside Clearance Required		
	Width	Depth	Height
Dumpster	10 ft.	9 ft.	~~8 ft.~~; 10 ft. for enclosures with a roof
Wheeled Cart	2.6 ft.	2.6 ft.	4 ft.

1. **Required storage for multi-family projects.** Multi-family residential projects with five or more dwelling units shall provide solid waste and recyclable material storage areas as follows:

   a. **Individual unit storage area requirements.** Each dwelling unit shall be provided an internal area of a minimum of six cubic feet designed for the storage of solid waste and recyclable material. A minimum of three cubic feet shall be provided for solid waste and a minimum of three cubic feet shall be provided for recyclable material; and

   b. **Common storage area requirements.** Common solid waste and recyclable material storage containers shall be at least one third of a cubic yard of container capacity per unit (assuming average 2-3 people/unit and once-a-week collection). This is the sum of volumes of mixed waste and recycling, with proportions of 60% for mixed waste and 40% for recycling. Storage containers may be located indoors or outdoors as long as they are readily accessible to all residents. These minimum requirements may be reduced by the Community Development Director upon a finding that the reduced requirements will provide sufficient storage area for solid waste and recyclable materials generated by the structures and uses.

   c. **Alternative storage area requirements.** Subject to approval from the Community Development Director, if the above-referenced common storage area requirements are determined to be infeasible (i.e., insufficient space exists onsite to meet the minimum storage requirements), individual unit mixed waste compactors may be installed to reduce common storage area needs. Separate non-compacted individual unit recycling storage is also required.

2. **Required storage area for non-residential structures and uses.** Waste capacity is dependent on the type of occupant. Storage areas will be approved on a case-by-case basis in consultation with the Town's Solid Waste Division and local solid waste service provider.

B. Location requirements. Solid waste and recyclable materials storage areas shall be located in the following manner:

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1. Solid waste and recyclable material storage shall be adjacent/combined with one another. They may only be located inside a specially-designated structure, or the outside of a structure in an approved fence/wall enclosure, a designated interior court or yard area with appropriate access or in rear yards and interior side yards. Exterior storage area(s) shall not be located in a required front yard or street-side setback, parking, landscaped or open space areas, or any area(s) required by the Municipal Code to be maintained as unencumbered. If site limitations make adjacent mixed solid waste and recycling container storage infeasible, containers may be stored in separate locations with approval by the Community Development Director as long as recycling containers are as conveniently located as trash containers;

2. The storage area(s) shall be accessible to residents and employees. Storage areas shall be located within 250 feet of an access doorway to the commercial and residential units which they are intended to serve;

3. Driveways or aisles shall provide unobstructed access for collection vehicles and personnel and provide at least the minimum clearance required by the collection methods and vehicles utilized by the designated collector. Where a parcel is served by an alley, exterior storage area(s) shall be directly accessible to the alley; and

4. Alternate storage locations may be approved by the Community Development Director. A shared offsite storage area to serve more than one parcel may be approved if a deed restriction is recorded on the properties to ensure the future availability of the storage area to the parcels it is designed to serve.

C. Design and construction. The storage areas shall be designed and constructed to:

1. Be compatible with the project and surrounding structures and land uses;

2. Be properly secured to prevent access by unauthorized persons, while allowing authorized persons access for disposal of materials;

3. Be in compliance with the waste hauler requirements in terms of door security, reverse distance, turning radius, and roof clearance;

4. Provide a concrete pad within the fenced or walled area(s) and a concrete apron which facilitates the handling of the individual bins or containers;

5. Protect the areas and the individual bins or containers provided within from wildlife and from adverse environmental conditions which might render the collected materials unmarketable;

6. Be appropriately located and screened from view on at least three sides subject to the approval of the Director. The method of screening shall be architecturally compatible with the surrounding structures;

7. Screen all carts and other storage containers (grease containers, compost containers, etc.) for commercial and multifamily uses. Screening may be accomplished by buildings, architectural features, decks, or fencing; and

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Section 18.58.025 - Accessory Dwelling Units

This Section establishes standards for the development and operation of accessory dwelling units, previously known as secondary residential units and hereafter referred to as "ADUs." For information specific to junior accessory dwelling units (JADUs), see Subsection N-O below.

A. Applicability. Accessory dwelling units (ADUs) are allowed in all zoning districts that allow single-family and multifamily dwelling residential uses (i.e., DRS, DRM, DRH, RR, RS, RM, DMU, DC, DM, DVL, CN, CG, CS, M, RC and REC zoning districts) subject to compliance with the development standards of the underlying zoning district for the primary dwelling and the requirements of this Section. If a conflict arises between the general development standards and the development standards applicable to ADUs, the development standards of this Section shall supersede any conflicting development standard of Article II or Article III.

B. Types of ADUs.

1. **Attached ADU.** An attached ADU is within or directly connected to an existing or proposed primary dwelling or its attached garage, having a wall and/or other conditioned space in common. This can include remodeling an existing permitted living space into an ADU, converting existing non-living space into an ADU, adding square footage or an additional floor to the primary dwelling or its attached garage to create an ADU, etc.

2. **Detached ADU.** A detached ADU is physically separated from an existing or proposed primary dwelling and its attached garage, not sharing a common wall or other conditioned space. This includes converting an existing detached structure into an ADU, adding square footage or an additional floor to an existing detached structure to create an ADU, constructing a new detached structure to create an ADU, etc.

3. **Junior ADU (JADU).** A JADUs is a smaller type of attached dwelling unit that is no more than 500 square feet in size. Standards for JADUs are described in Subsection N-O below.

C. Number of units allowed. An ADU that conforms to the development standards in this Section is deemed to be an accessory use and/or an accessory structure and will not be considered to exceed the allowable density for the lot upon which it is located.

1. **Single-family parcels.** One accessory dwelling unit (attached or detached) and one junior accessory dwelling unit (JADU) shall be permitted on a legal parcel developed with one single-family dwelling. An ADU and/or JADU may be developed concurrently with a new single-family dwelling; however, final occupancy of the ADU/JADU shall not be issued prior to final occupancy of the new main dwelling.

2. **Multifamily parcels.** JADUs are prohibited on multifamily lots. On a lot with existing multifamily dwellings, the property owner of the underlying parcel may choose one or both of the following methods to create ADUs:

   a. **Detached ADUs.** Up to two detached ADUs shall be permitted with 16-foot height limits and 4-foot rear and side yard setbacks.

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b. Converted ADUs. Converted ADUs within portions of existing multifamily dwelling structures that are not used as livable space (e.g., storage rooms, boiler rooms, passageways, attics, basements, attached garages) shall be permitted; the number of converted ADUs permitted shall be one unit per existing multifamily development or up to 25 percent of the existing unit count in the building, whichever is greater.

For example, a multifamily property with 12 existing units could add two detached ADUs and three new attached ADUs converted from within the existing, non-livable space.

D. Size and location standards.

1. Development envelopes and easements. For ADUs constructed on lots where the recorded subdivision map established development/building envelopes and/or where there are recorded easements on the property, the building envelope and easement restrictions shall take precedence over any setback reductions provided within Subsection D.3 (Size limits, setbacks and standards) below.

2. Proximity. A detached ADU shall be located within 100 feet of the main dwelling, unless a greater distance is determined to be necessary by the Director to avoid on-site septic systems, water supply systems, geographic constraints, and/or environmentally sensitive areas as defined in Section 18.46.030.B (Environmentally Sensitive Areas).

3. Size limits, setbacks and standards. ADU size (i.e., floor area and height), setbacks, and development standards are directly correlated, therefore they are combined in this Subsection D.3 (Size limits, setbacks and standards). Where side yard setback reductions are allowed in this Subsection, these reductions do not apply to street-side setbacks on corner lots. Additionally, on a through lot, both lot lines facing streets are front lot lines and subject to standard front yard setback standards; the lot is considered to have no rear lot line in accordance with the Development Code definition of "Lot Line."

a. Standard ADUs.

(1) Standard maximum floor area. The gross floor area of an attached or detached ADU is subject to the following standards:

(a) For single-family parcels under 1 acre in size and all multifamily parcels, the maximum gross floor area of an ADU shall not exceed the following:

i) 850 square feet* for an efficiency unit, studio or 1-bedroom ADU; or

ii) 1,000 square feet* for an ADU with two or more bedrooms.

(b) For single-family parcels of 1 acre or more, the maximum gross floor area of an ADU shall not exceed 1,200 square feet*, regardless of the number of bedrooms within the unit.

** The actual gross floor area of a standard ADU may be limited to less than these maximum sizes based on the application of the setbacks, height limits, and general development standards described in Subparagraphs (2) and (3) below.*

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For example, a 2-bedroom ADU may be limited to 900 square feet in order to comply with the maximum allowable site coverage on the property.

(2) Setbacks and height. Any portion of ~~A~~n ADU that is 16 feet in height or less is permitted to be constructed with reduced side and rear yard setbacks, no closer than 4 feet to the side and/or rear property lines, including eaves. Any portion of an ADU structure that exceeds 16 feet in height from natural grade, shall comply with standard side and rear setbacks and height limits applicable to the main dwelling. (Note: Detached ADUs on multifamily lots shall not be permitted to exceed 16 feet in height per Section 18.58.025.c.2.a above.) ADUs shall comply with the standard front yard and street-side setbacks applicable to the main dwelling regardless of ADU height. The following standards shall apply to ADUs within the reduced side and/or rear yard setbacks:

(a) Roof design and materials. The pitch of any portion of the roof within the reduced setback shall not be directed toward the side or rear property line, or the structure shall have a non-shedding roof material and/or snow retention mechanism for the life of the structure. The Town of Truckee finds that, in accordance with Truckee Municipal Code Sections 15.03.080 (Declaration as High Snow Area) and 15.03.110 (Snow Loads) which declare that all of the Town of Truckee is classified as a severe climate and "high snow" area, the aforementioned design standards shall apply to roofs within setback areas to address snow-related issues associated with life safety, structural integrity, and property damage prevention.

(b) Architectural projections. All architectural projections shall comply with Table 3-2 (Allowed Projections in Setbacks) based on the standard setbacks for the zoning district, excluding eaves which are allowed up to 4 feet from side and rear property lines. For example, on a standard single-family residential lot in the RS zoning district, a deck may project up to 3 feet into the 10-foot side yard setback or 6 feet into the 20-foot rear yard setback. Projecting features shall not be permitted unless they comply with development standards (i.e., site coverage, floor area ratio, and open space).

(3) Other development standards. ADUs shall comply with all other general development standards applicable to the main dwelling, including site coverage, floor area ratio, and open space unless an exception is provided elsewhere in this Subsection D.3 (Size limits, setbacks and standards).

b. Deviations for smaller ADUs. An attached or detached ADU that has both a maximum gross floor area of 800 square feet and a maximum height of 16 feet from natural grade shall be permitted with the deviations to general development standards below. (An ADU that exceeds either 800 square feet of gross floor area or 16 feet in height from natural grade shall comply with Paragraph D.3.a (Standard ADUs) above.)

(1) Setback reductions. This category of smaller ADU, including eaves, is permitted to be constructed with reduced side and rear yard setbacks, no closer than 4 feet to the side and/or rear property lines. ADUs within the reduced side

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and/or rear yard setbacks shall comply with Subparagraphs D.3.a.2.a (Roof design and material) and D.3.a.2.b (Architectural projections) above.

(2) Deviations to development standards. This category of smaller ADU is permitted to deviate from the site coverage, floor area ratio, and open space standards applicable to the property. Any deviation(s) shall be the minimum necessary to accommodate the floor area of the ADU living space, not to exceed an 800-square-foot deviation, and any existing nonconforming conditions to the zoning/development standards proposed to be exacerbated by the creation of an ADU must be legal.

c. Conversion ADUs. An existing legally constructed portion of a single-family dwelling or residential accessory structure that is converted to or replaced with an ADU shall not be required to meet additional setbacks beyond those that were required at the time the original structure was built. For replacements, if the structure is partially or completely demolished and replaced with a structure for a new ADU, the replacement structure shall be in the same location and shall not exceed the dimensions of the original structure, including footprint, floor area, and height, except as permitted below. The maximum gross floor area of the ADU portion of a converted or replaced structure shall not exceed the size limitations of Paragraph D.3.a.1 (Standard maximum floor area) above. For example, if the converted or replaced structure is 1,500 square feet, the ADU portion of the structure shall not exceed 1,000 square feet of gross floor area for a 2-bedroom ADU, and the remainder may be used for other residential accessory uses.

(1) Garage conversions. In addition to Paragraph D.3.c (Conversion ADUs) above, an existing legally constructed garage located within a front yard or street-side setback that is approved for conversion to or replacement with an ADU shall not include any windows, doors, or other wall openings on the elevation(s) that is/are parallel to and facing the street(s) within the standard setback area. The Town of Truckee finds that the incorporation of this standard is in accordance with Truckee Municipal Code Chapter 10.17 (Snow Removal) and is necessary for life safety to protect residents within or exiting the ADU during snow removal operations as large ice chunks can be projected through the air into front and street-side setbacks and toward buildings and windows within those areas.

(2) Roof modifications. If the converted or replaced structure is within the standard setbacks applicable to the main dwelling, and if substantial modifications are proposed to the existing roof design or surface/material as a part of the ADU creation, the modifications shall comply with Subparagraph D.3.a.2.a (Roof design and material).

(3) Expansions of conversion ADUs. If a conversion ADU is less than the maximum allowable floor area for an ADU, an expansion/addition may be approved; however, any expansions shall be subject to the standard unit size, height limit, setbacks, site coverage, floor area ratio, open space, and other development standards that would be applicable to a new ADU.

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(4) Ingress/Egress for conversions. In addition to any expansion allowed under Subparagraph D.3.c.3 (Expansions of conversion ADUs), a conversion ADU may include an expansion of the existing structure up to 150 square feet for the purpose of accommodating ingress and egress to/from the ADU. This is permitted only for space that is unconditioned and not fully enclosed (e.g., front porch, covered stairway, breezeway, wheelchair ramp). This space is allowed to deviate from site coverage, floor area ratio, and open space standards applicable to the property up to 150 square feet, and, if relevant, may be used in addition to the deviations permitted for smaller ADUs in Subparagraph D.3.b.2 (Deviations to development standards) above.

(a) Setbacks for ingress/egress. A new ingress/egress feature for a conversion ADU shall be no closer than 4 feet to the side or rear property line and shall not extend further into standard front yard or street-side setbacks than the walls of the conversion ADU unless the feature is an architectural projection in compliance with Table 3-2 (Allowed Projections in Setbacks).

d. Minimum floor area. A minimum floor area of 150 square feet is required for all ADUs.

E. Parking and driveways.

1. Parking standard. One on-site parking space shall be provided for each ADU, in addition to any parking required for the main dwelling unit, in compliance with Chapter 18.48 (Parking and Loading Standards), unless an exemption is provided below:

2. ADU garage size. If a garage or carport for an ADU is proposed, it shall not exceed 500 square feet, shall comply with all general development standards applicable to garages and carports, including site coverage, floor area ratio and open space, and shall be consistent with Section 18.58.220.F.1.c (Residential Accessory Uses and Structures – Garages).

3. Parking exemptions. The one on-site parking space for the ADU shall not be required if any of the following situations apply:

a. The ADU is located within a half mile walking distance of a transit stop or within the Downtown Specific Plan Area General Plan Land Use Designation;

b. The ADU is part of an existing or proposed primary residence or an existing accessory structure; or

c. When on-street parking permits are required but not offered to the occupant of the ADU.

d. A car share vehicle station is located within one block of the ADU.

4. Replacement parking exemption. When a legally constructed garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or is converted to an ADU, replacement parking for the main dwelling is not required.

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5. **Parking location.** The Town of Truckee finds that in accordance with Truckee Municipal Code Chapter 10.17 (Snow Removal) and due to Truckee's unique winter climate, the necessity to provide fast and efficient snow removal operations to accommodate emergency response vehicles and enhance driver safety, and the need to minimize property damage to parked vehicles during snow removal operations, required parking for ADUs and any required replacement parking for the main dwelling shall meet the following criteria:

   a. All required parking shall be entirely on the private property and not in the right-of-way (Development Code 18.78.070.A, Location [of off-street parking]);

   b. No required parking shall be located within a snow storage easement (Municipal Code Section 10.17.030, Obstructing snow removal equipment prohibited). Required parking shall be prohibited within easements unless either: (i) the easement is amended, with the consent of all entities with an interest in the easement, to clarify that the parking can remain in place in perpetuity notwithstanding any other provision of the easement; or (ii) all entities with an interest in the easement provide written consent for the parking to remain in place in perpetuity, which such consent is absolute, irrevocable, permanent, supersedes the easement to the extent it is inconsistent with the easement, and is recorded in the official records of Nevada County;

   c. No required parking shall be located within five feet of side property lines (Public Improvements and Engineering Standards Section 4.07, Driveways); and

   d. Unless otherwise restricted by the above requirements, tandem parking and/or parking within setback areas is permitted.

6. **On-street parking restriction.** Nothing within Subsection ~~F~~ E (Parking and driveways), including the exemptions, shall be deemed to permit on-street parking during any time when such parking is prohibited. This includes, but is not limited to, the on-street parking restriction throughout Truckee from November 1 to April 30 annually (Truckee Municipal Code Section 10.17.030, Obstructing Snow Removal Equipment Prohibited).

7. **Shared driveway.** An ADU shall be served by the same driveway encroachment as the main dwelling unit. A second driveway for an ADU will be permitted only if all of the following standards are met: 1) The ADU is located on a corner lot or through lot where the ADU will be accessed from a street other than the street providing access to the primary residence, or the ADU is on a lot with road frontage exceeding 150 lineal feet; 2) the proposal shall demonstrate compliance with the maximum allowable site coverage applicable to the property; and 3) the proposal shall comply with all other applicable Development Code standards and Public Improvement and Engineering Standards for single-family driveways and required off-street parking locations, except as modified within Subsection ~~F~~ E (Parking and driveways).

F. ADU design features.

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1. **ADU entrance.** The ADU shall have an exterior entrance separate from the main entrance to the proposed or existing main dwelling; this egress/entrance shall include a continuous and unobstructed path of travel to/from the public way. Additionally, the ADU may share with the main dwelling and/or JADU a single interior entryway (e.g., airlock, mudroom) not to exceed 80 square feet that provides direct, private access to each unit; however, in no case shall the primary entrance to the ADU be through the main dwelling living area, JADU, garage, or other interior space. A shared entryway is considered part of the main dwelling and is subject to general development standards applicable to the main dwelling, including setbacks, height limit, site coverage, floor area ratio, and open space.

2. **Interior access.** Interior access between the ADU and the main dwelling, attached or detached garage for the main dwelling, and/or other residential accessory structures shall be allowed, in compliance with all applicable California Building Standards Code requirements, as adopted by the Town of Truckee. If interior access is proposed, the tenant of the ADU shall be able to lock the shared door from the interior of the ADU for privacy.

3. **Kitchen or cooking facilities.** An ADU shall include a permanent kitchen or cooking facility, consistent with the Development Code definition of a kitchen (Section 18.220.020.K, Kitchen or Cooking Facilities, Residential). At a minimum, an ADU kitchen shall include the following equipment:

   a. Cooking facilities (i.e., a standalone cooking appliance with at least two burners that is connected to a gas stub or 220 electric volt outlet; does not include portable cooking accessories such as hot plates and other temporary heat sources);

   b. A refrigerator (no minimum size); and

   c. A sink for dishwashing and sanitation purposes.

G. ADU historic design standards. *(Reserved for future use.)*

H. Water supply and sewage disposal. All water supply and sewage disposal shall be provided by an established community system or by an on-site system approved by the Nevada County Environmental Health Department. An ADU shall not be allowed on a parcel that is served by an on-site septic system unless approval is obtained from the Nevada County Environmental Health Department and the unit complies with the Lahontan Regional Water Quality Control Board.

I. Occupancy and rental requirements. The short-term rental of an ADU for a term of less than 31 consecutive days is prohibited ~~for all ADUs for which a building permit was issued on or after January 1, 2020, including after-the-fact permits for existing illegal ADUs described in Subsection L (Illegal accessory dwelling units) below. On a parcel with a primary dwelling unit and an ADU permitted prior to January 1, 2020, only one of the units may be short-term rented for a term of less than 31 consecutive days~~. There are no occupancy restrictions for long-term rentals of 31 days or more on either the primary dwelling unit or the ADU.

J. Sale of unit prohibited. No ADU shall be subdivided from the main dwelling through a condominium plan, community apartment plan, housing cooperative, or other subdivision. The

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sale or conveyance of an ADU independent and/or separate from the main dwelling shall be prohibited.

K. **Deed Restriction Requirements.** Prior to the issuance of a temporary or final certificate of occupancy, an ADU requires the recordation of a deed restriction in a form approved by the Town of Truckee, which shall run with the land, and shall include the following:

a. A prohibition on the sale of the accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers;

b. A restriction on the size and attributes of the accessory dwelling unit in compliance with this Section; and

~~a.~~c. A prohibition on the short-term rental of the accessory dwelling unit for a period of less than 31 consecutive days.

~~J.~~L. **Building code requirements.** Each ADU and JADU shall obtain a building permit from the Town of Truckee and shall be constructed in compliance with all applicable California Building Standards Code requirements, as adopted by the Town of Truckee.

1. **Fire sprinklers.** ADUs are not required to provide fire sprinklers if sprinklers are not required for the primary dwelling unit.

2. **Manufactured home, tiny homes, etc.** A manufactured home (a.k.a. mobile home), modular home (a.k.a. factory-built or prefabricated home), tiny home, park model home, or similar unit may be used as an ADU if it is permanently attached to a foundation and complies with the California Building Standards Code, as adopted by the Town of Truckee. A tiny home on a chassis or park model home on a chassis is not permitted for use as an ADU unless it is modified to meet the aforementioned standards.

3. **Movable units.** A recreational vehicle (e.g., motorhome, campervan, truck camper, travel trailer, pop-up trailer, fifth wheel trailer, toy hauler), travel van, or other movable habitable space generally cannot be approved as an ADU; however, it may be approved if it is permanently attached to a foundation and complies with the California Building Standards Code, as adopted by the Town of Truckee.

~~K.~~M. **Illegal accessory dwelling units.** This Section shall not validate any existing illegal ADU. To convert an unpermitted ADU to a legal, conforming unit, the standards and requirements for the conversion shall be the same as for a newly proposed ADU, including the rental restrictions described in Subsection I (Occupancy and rental requirements) above.

~~L.~~N. **ADU reversions.** If an ADU or JADU is legally permitted and constructed with deviations to the development standards that would otherwise be applicable to the property, as permitted by the Subsections D (Size and location standards) and/or ~~F~~ E (Parking and driveways) above, and the ADU is subsequently reverted or converted to another use other than an ADU/JADU, any deviations from development standards (e.g., setbacks, site coverage, floor area ratio, open space, parking) shall be brought into compliance with the standards in effect at the time a

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complete application for a reversion or conversion of the space is submitted to the Community Development Department.

~~M.~~O. Junior Accessory Dwelling Units (JADUs).

1. **Applicability.** JADUs are allowed in all zoning districts that allow single-family residential uses (i.e., RS, RR, DRS, DMU, RC and REC zoning districts), subject to compliance with the requirements of this Section.

2. **Number of units allowed.** A maximum of one junior accessory dwelling unit (JADU), in addition to one attached or detached ADU, shall be allowed on a parcel with an existing or proposed single-family dwelling.

3. **Location on site.** A JADU must share at least one wall, floor, and/or ceiling with the living space of the attached main dwelling. A JADU may be created by converting existing space within the walls of an existing single-family residence, built as an attached addition to an existing residence, or constructed concurrently as an attached unit to a new single-family residence. If a JADU is created as an addition to an existing residence or concurrent with a new residence, the JADU shall comply with all development standards applicable to the main dwelling, including setbacks, height limits, site coverage, floor area ratio, open space, etc.

4. **Floor area limitation.** The gross floor area of the JADU shall not exceed 500 square feet and shall not be less than 150 square feet.

5. **JADU separate entrance.** A JADU shall have an exterior entrance separate from the main entrance to the existing or proposed single-family residence; this egress/entrance shall include a continuous and unobstructed path of travel to/from the public way. Additionally, the JADU may share with the main dwelling and/or ADU a single interior entryway (e.g., airlock, mudroom) that provides direct, private access to each unit; however, in no case shall the primary entrance to the JADU be through the main dwelling living area, ADU, garage, or other interior space. A shared entryway is considered part of the main dwelling and is subject to general development standards applicable to the main dwelling, including setbacks, height limit, site coverage, floor area ratio, and open space.

6. **Interior access.** Interior access from the JADU to the main dwelling may be maintained; however, if the sanitation facilities are shared with the main dwelling as allowed in Subsection 8 below (Sanitation Facilities), unrestricted interior access to the sanitation facilities is required at all times. If interior access is proposed, the tenant of the JADU shall be able to lock the shared door from the interior of the JADU for privacy.

7. **Cooking facilities.** The JADU shall include an efficiency kitchen, which shall include the following:

   a. A cooking facility with appliances. (Note: Government Code Section 65852.22(a)(6) does not permit local jurisdictions to specify exactly what "a cooking facility with appliances" must include for JADUs. This standard can be met with basic plug-in kitchen appliances (e.g., microwave. hot plate, mini-fridge) or with a full, high-end kitchen (e.g., gas range, double oven, large sink with disposal, commercial

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refrigerator). Therefore, a JADU is not required to comply with the Development Code definition of a "Kitchen or Cooking Facility," which specifies several types of appliances required in residential kitchens.)

b. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

8. **Sanitation facilities.** A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

9. **Water supply and sewage disposal.** A JADU shall not be considered a separate or new dwelling unit for the purposes of providing service for water, sewer or power.

10. **Parking.** No additional parking shall be required for a JADU.

11. **Occupancy and rental requirements.**

    a. **Short-term rental restriction.** The short-term rental of a JADU for a term of less than 31 consecutive days is prohibited for all JADUs, including after-the-fact permits for existing illegal ADUs described in Subsection 13 (Illegal junior accessory dwelling units) below.

    b. **Owner occupancy.** On a parcel with a primary dwelling unit and a JADU, only one of the units may be rented; the owner must reside in either the remaining portion of the main dwelling or in the JADU. For example, the owner could reside in the main dwelling and long-term rent the JADU, or the owner could reside in the JADU and choose to long-term or short-term rent the main dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or housing organization.

12. **Deed restriction requirements.** Prior to the issuance of a temporary or final certificate of occupancy, a JADU requires the recordation of a deed restriction in a form approved by the Town of Truckee, which shall run with the land, and shall include the following:

    a. A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers; and

    b. A restriction on the size and attributes of the junior accessory dwelling unit in compliance with this Section.

    c. A prohibition on the short-term rental of the junior accessory dwelling unit for a period of less than 31 consecutive days.

    d. Requires owner occupancy consistent with Subparagraph M.11.b (Owner occupancy) above.

13. **Illegal junior accessory dwelling units.** This Section shall not validate any existing illegal JADUs. To convert an unpermitted JADU to a legal, conforming unit, the standards and requirements for the conversion shall be the same as for a newly proposed JADU,

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including the rental restrictions described in Subsection 11 above (Occupancy and rental requirements).

18.58.030 - Accessory Retail Uses

This Section establishes standards for the development and operation of retail sales and service establishments within/in conjunction with and accessory to a main commercial and/or manufacturing use where authorized by Article II (Zoning Districts and Allowable Land Uses). For example, these accessory uses include restaurants and pharmacies within hospitals, etc., and the sale of retail merchandise.

A. General standard. Accessory retail uses are allowed, provided there will be only minor external evidence of any commercial activity other than the main use of the parcel (e.g., no signs, windows with merchandise visible from adjoining public rights-of-way, etc.), nor access to any space used for the accessory retail use other than from within the main structure.

B. Commercial and manufacturing zoning districts. Restaurants and retail sales are allowed in the commercial zoning districts incidental and accessory to offices, hospitals and other medical facilities and pharmacies. Accessory restaurants, retail sales and other services are allowed in the manufacturing zoning district to serve the needs of the employees.

C. Residential and special purpose zoning districts. Membership organizations, social or recreational establishments may engage in retail sales for guests only.

D. Review and approval required. Accessory retail uses shall be subject to land use permit approval in compliance with Chapter 18.12 (Commercial and Manufacturing Zoning Districts). In order to approve an accessory retail use, the Director shall find that there will be no harm to adjoining existing or potential residential development due to excessive noise, traffic or other adverse effects generated by the accessory use.

18.58.040 - Accessory Uses — General Standards

This Section establishes standards defining the relationship between a main use and an accessory use on the same site, where the accessory use is a common feature of the main use but would not be allowed by the applicable zoning district as a main use on the same site. For example, a coffee shop in a CG (General Commercial) zoning district may include minor coffee bean roasting as part of its operations as an accessory use in compliance with this Section, but coffee roasting as a main use would be allowed as a main use only in the M (Manufacturing/Industrial) district.

A. Allowable accessory uses. Accessory uses are allowed in conjunction with a main use as follows:

1. **Accessory retail sales.** Accessory retail sales are allowed in compliance with Section 18.58.030 (Accessory Retail Uses), above.

2. **Residential accessory uses.** Residential accessory uses are allowed in compliance with Section 18.58.220 (Residential Accessory Uses and Structures).

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(2) Raising and keeping of backyard chickens in association with multi-family residential uses in these zoning districts may be allowed subject to Minor Use Permit approval

3. **Shelter requirement.** A coop shall be provided that meets the following minimum standards:

   a. Be predator-proof from the sides, the top, and from below.

   b. Be located a minimum of 20 feet to the nearest abutting residence and five feet to any property line.

   c. Movable chicken coops are allowed in compliance with Table 3-3 for Residential Accessory Uses and Structures, and shall be considered temporary structures.

18.58.070 - Bed and Breakfast Inns

This Section establishes standards for the development and operation of Bed and Breakfast Inns (B&Bs). The intent of these provisions is to ensure that compatibility between the B&B and any adjoining residential zoning districts/uses is maintained and enhanced.

A. **Applicability.** Bed and Breakfast Inns (B&Bs) are allowed in the RR, RS, DRS, RM, DRM, DRH, DMU, CN and CH zoning districts with Minor Use Permit approval in compliance with Chapter 18.76, and in the CG and DC zoning districts with Zoning Clearance approval in compliance with Chapter 18.72.

   1. **Hosted Rental Exceptions.** The renting of one designated bedroom within a single-family ~~or multi-family~~ dwelling for the purpose of overnight or vacation lodging as a hosted rental is allowed as a permitted use, ~~in the RR, RS, DRS, RM, DRM, DRH, DMU, CN, CH, CG and DC zoning districts~~ subject to compliance with Municipal Code Chapter 3.24 (Transient Occupancy Tax) and the following criteria:~~.~~

      a. A hosted rental requires the homeowner(s) to occupy the single-family dwelling as their principal place of residence (i.e., primary home);

      b. At least one homeowner shall live on-site in the main dwelling for the entirety of the visitor's stay, which may be for a period of up to 30 consecutive days;

      c. A maximum of one designated bedroom is allowed per single-family dwelling;

      d. A kitchen, cooking facility, wet bar, or sink outside of a permitted bathroom area shall be prohibited within the designated bedroom;

      e. The designated bedroom shall have internal, conditioned access to the main dwelling; and

      f. Guests shall be provided access to kitchen and sanitation facilities within the main dwelling.

      ~~a.~~g. Prohibited Spaces. This hosted rental exception ~~applies to a dwelling with one family in permanent residence renting a maximum of one bedroom per parcel. This exception~~

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does not apply to accessory dwelling units, junior accessory dwelling units, detached living areas, or any portions thereof. ~~Accessory dwelling units or any portion thereof may only be rented for a term of less than 31 days if permitted by Section 18.58.025.I (ADU Occupancy and rental requirements) and subject to compliance with Municipal Code Chapter 3.24 (Transient Occupancy Tax) and Municipal Code Chapter 5.02 (Transient Rentals of Residential Units).~~ Detached living areas may only be rented for a term of less than 31 days if ~~included~~ allowed as part of a Bed and Breakfast Minor Use Permit.

B. Exterior appearance. The exterior appearance of the structure housing the B&B in a residential zoning district shall not be altered from its original single-family character except for a sign as allowed by Subsection I, below, and those structural modifications necessary to comply with the requirements of Title 24 of the California Building Code of Regulations.

C. Fire safety. The B&B shall meet the requirements of the Truckee Fire Protection District.

D. Guest rooms. The availability of guest rooms are limited to a maximum of three rooms in the RR, RS and DRS zoning districts and five rooms in the other zoning districts. Guest rooms shall not contain food preparation facilities.

F. Internal access. All access to guest rooms shall be from within the B&B inn or the guest room shall be located in an approved detached living area.

F. Limitation on services provided. Service shall be limited to the rental of bedrooms or suites, and meal/beverage service shall be provided for registered guests only. Separate/additional kitchens for guests are not allowed. Receptions, private parties or similar activities, for which a fee is paid or which is allowable only as a condition of room rental, shall not be allowed.

G. Off-street parking. Off-street parking shall be provided at a ratio of one space for each guest room plus two for the on-site owner/manager of the B&B. Parking shall be located, to the extent possible, out of the required front and side yard setbacks. Parking spaces for the disabled may be counted toward the required off-street parking.

H. On-site management. The B&B shall be the main residence of the B&B owner or manager.

I. Signs. On-site signs shall be in compliance with Chapter 18.54 (Signs). The design, location and lighting of the sign shall ensure compatibility with the architecture of the B&B and the surrounding neighborhood.

J. Site requirements. The proposed site shall generally conform to the standards of the applicable zoning district.

K. Transient Occupancy Tax. B&Bs shall be subject to the Transient Occupancy Tax in compliance with Chapter 3.24 of the Municipal Code, and shall maintain guest registers to ensure accurate occupancy records.

18.58.075 - Cannabis Delivery Services

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~~18.58.100 – Detached Living Areas~~

~~This Section establishes standards for the development and operation of living quarters that are detached from and not a required element of the main dwelling and is designed for human occupancy. Detached living areas include bedrooms, recreation rooms, home offices and similar habitable areas in any area where single-family dwellings are allowed in compliance with Article II (Zoning Districts and Allowable Land Uses).~~

~~**A. Access.** The detached living area may have direct, covered access to the main dwelling, and shall be designed to provide practical pedestrian access to the main dwelling.~~

~~**B. Design standards.** A detached living area shall be designed as follows:~~

~~1. **Maximum floor area**. The gross floor area shall not exceed the lesser of 50 percent of the existing living area of the main dwelling or:~~

~~a. On parcels less than one acre: 800 square feet of gross floor area; or~~

~~b. On parcels of one acre or more: 1,200 square feet of gross floor area.~~

~~The floor area for a detached living area incorporated into a garage structure or in a separate residential accessory structure shall not be counted towards the maximum floor area limits for garages and residential accessory structures as set forth in Section 18.58.220.~~

~~2. The detached living area shall be designed to maintain visual consistency and compatibility with the main dwelling and with other residential structures in the surrounding neighborhood;~~

~~3. The detached living area may only include sleeping area and living area, except that there is no limit on the number of allowed bathrooms;~~

~~4. The detached living area shall not contain a kitchen or other cooking facilities;~~

~~5. A detached living area and accessory dwelling unit may not be located within a single detached residential accessory structure.~~

~~**C. Maximum number of structures.** Only one detached structure with living area shall be allowed on a single legal parcel of record.~~

~~**E. Plumbing and electrical installations.** Allowable plumbing shall be limited to that required for a single one-well sink with a maximum surface area of two square feet and for a single bathroom. The bathroom may only contain one water closet, lavatory and a shower or tub. Electrical installation shall be limited to the minimum required for heating, light and ventilation. Line drawings shall be submitted for approval, and shall delineate all plumbing and electrical installations proposed in compliance with this standard.~~

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~~**F. Rentals prohibited.** The detached living area shall not be separately rented or leased from the main dwelling, whether compensation is direct or indirect.~~

~~**G. Subdivision prohibited.** The portion of the site accommodating the detached living area shall not be subdivided from the portion of the site containing the main dwelling.~~

~~**H. Utilities.** All utilities serving the detached living area (e.g., electricity, gas, sewer and water) shall be common to and dependent on the main dwelling. The detached living area shall not be provided with separate utility meters.~~

18.58.110 - Drive-In and Drive-Through Facilities

A. Purpose and applicability. This Section establishes supplementary standards for drive-in restaurants and fast food establishments with drive-through facilities, located within the CH (Highway Commercial) zoning district, which conduct business while customers remain in their vehicles. Other types of drive-in and drive-through facilities are not permitted.

B. Permit requirement. Drive-in restaurants and fast food or counter-service establishments, with drive-through facilities, shall require Use Permit approval in compliance with Chapter 18.76 (Use Permits and Minor Use Permits).

C. General standards. Drive-in and drive-through facilities shall be designed and operated to effectively mitigate problems of air pollution, congestion, excessive pavement, litter, noise and unsightliness, and shall comply with the on-site circulation standards in Subsection E, below, which are not applicable to drive-in theaters or service stations.

D. Accessory use required. Drive-through facilities may only be accessory to an allowable main use.

E. On-site circulation. Parcels with drive-through facilities shall be provided with internal circulation and traffic control devices as follows:

1. **Aisle design.** Drive-through aisles shall be located and designed as follows:

   a. The entrance/exit of any drive-through aisle shall be at least 50 feet from an intersection of public rights-of-way (measured at the closest intersecting curbs) and at least 25 feet from the edge of any driveway on an adjoining parcel. The drive-through aisle or stacking area (see following Subsection E.2) shall not be located adjacent to a street frontage.

   b. Drive-through aisles shall be designed with a minimum 10-foot interior radius at curves and a minimum 12-foot width.

2. **Stacking area.** A clearly identified area shall be provided for vehicles waiting for drive-through service that is physically separated from other on-site traffic circulation.

   a. The stacking area shall accommodate a minimum of five cars for each drive-through window in addition to the vehicle(s) receiving service.

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18.58.220 - Residential Accessory Uses and Structures

This Section provides standards for specific residential accessory uses and structures allowed in the zoning district applicable to a parcel (see Section 18.08.030, Residential Zoning District Land Uses and Permit Requirements). Residential accessory uses include any use that is customarily related to a residence, including driveways, garages, greenhouses, storage sheds, studios, swimming pools/spas and workshops.

A. General requirements. Accessory uses and structures are subject to the following standards, except where more restrictive requirements are established by other provisions of this Section for specific uses.

1. **Relationship of accessory use to main use.** Accessory uses and structures shall be incidental to and not alter the character of the site from that created by the main use.

2. ~~**Attached structures**~~**Standards for accessory structures.** An accessory structure shall comply with the requirements of this Development Code applicable to the main structure, including heights, parcel coverage and setbacks, unless otherwise specified in this Development Code. An accessory structure for multi-family residential uses shall be architecturally compatible with the main structure.

3. **Detached structures.** A conditioned or unconditioned breezeway may be allowed to provide shelter between a detached accessory structure and the main dwelling. A breezeway is a roofed passageway with or without sides connecting two or more buildings or parts of a building.

   ~~a. **Breezeways.** A breezeway may be allowed to provide shelter between a detached accessory structure and the main dwelling when designed and constructed as a covered passageway which does not exceed 10 feet in width. A conditioned space connecting the detached structure to the main dwelling may qualify the structure as attached.~~

4. **Adjoining parcels under common ownership.** Residential accessory uses and structures, including the raising and keeping of animals, may be located on an adjoining parcel(s) if both parcels are under common ownership and the accessory use or structure complies with all provisions of this section. Recordation of a deed restriction tying the adjoining parcels together is required.

B. Building Permits. The Building Permit for a residential accessory use or structure shall not be:

1. Issued unless there is a residential use on the subject property or the permit is issued in conjunction with the residential dwelling permit; and

2. Finaled until there is a residential use on the subject property or the permit for the residential dwelling is finaled.

C. Antennas. Antennas are subject to the provisions of Section 18.58.250 (Telecommunications Facilities).

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D. Driveways and Parking Pads. Driveways and parking pads are accessory uses and only allowed if a residential use is already established on the same property or if a residential dwelling permit is issued in conjunction with the driveway or parking pad permit. Driveways and parking pads are subject to the provisions of Chapter 18.48 (Parking and Loading Standards).

E. Garages. Garages shall comply with the following standards, as well as the special setback requirements in Section 18.30.120.E (Setbacks Requirements for Specific Structures and Situations).

1. Maximum floor area.

a. A detached accessory garage for a single-family residential parcel shall not occupy more than 1,000 square feet of floor area on parcels less than an acre in size and 2,000 square feet of floor area on parcels between one and five acres in size. On parcels larger than five acres, a detached accessory garage may occupy up to 2,000 square feet of floor area or 100 percent the size of the main residence, whichever is greater.

i. The floor area for a secondary residential unit in a detached accessory garage shall not be counted as part of the floor area of the garage.

ii. The floor area for a detached living area incorporated into a garage structure or in a separate residential accessory structure shall not be counted towards the maximum floor area limits for garages and residential accessory structures. For example, a detached accessory garage on a parcel less than an acre with a 1,600 sq. ft. residence may have a maximum floor area of 1,800 square feet of floor area (1,000 sq. ft. for the garage and 800 sq. ft. for the detached living area). A detached living area and accessory dwelling unit may not be located within a single detached residential accessory structure.

b. The floor area of an accessory garage that is attached to a main structure is not limited, except as required by the Building Code or any other applicable Town Code.

c. A garage or carport for an accessory dwelling unit: 1) shall be limited to 500 square feet, regardless of whether it is attached to or detached from the accessory dwelling unit; 2) shall be dedicated for use only by residents of the accessory dwelling unit, not accessible to residents of the main dwelling; 3) shall not be counted toward the cumulative maximum size for detached garages on a single parcel if the garage *is* attached to the accessory dwelling unit or main dwelling; and 4) shall be counted toward the cumulative maximum size for detached garages on a parcel if the garage or carport is not attached to the accessory dwelling unit or main dwelling.

F. Detached Living Areas. Living quarters which are designed for human occupancy and are physically detached from and not a required element of the main dwelling. Includes bedrooms, recreation rooms, home offices and similar habitable areas in any area where single-family dwellings are allowed in compliance with Article II (Zoning Districts and Allowable Land Uses).

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1. **Access.** The detached living area may have direct, covered access to the main dwelling, and shall be designed to provide practical pedestrian access to the main dwelling.

2. **Design standards.** A detached living area shall be designed as follows:

   a. **Maximum floor area**. The gross floor area shall not exceed the lesser of 50 percent of the existing living area of the main dwelling or:

      i. On parcels less than one acre: 800 square feet of gross floor area; or

      ii. On parcels of one acre or more: 1,200 square feet of gross floor area.

   b. The detached living area shall be designed to maintain visual consistency and compatibility with the main dwelling and with other residential structures in the surrounding neighborhood;

   c. The detached living area may only include a sleeping area, living area, and a bathroom;

   d. The detached living area shall not contain a kitchen or other cooking facilities; and

   e. A detached living area and accessory dwelling unit may not be located within a single detached residential accessory structure

3. **Maximum number of structures.** Only one detached structure with living area shall be allowed on a single legal parcel of record.

4. **Plumbing and electrical installations.** Allowable plumbing shall be limited to that required for a single one-well sink with a maximum surface area of two square feet and for a single bathroom. The bathroom may only contain one water closet/lavatory and one shower/tub. Electrical installation shall be limited to the minimum required for heating, light and ventilation. Line drawings shall be submitted for approval, and shall delineate all plumbing and electrical installations proposed in compliance with this standard.

5. **Rentals prohibited.** The detached living area shall not be separately rented or leased from the main dwelling, whether compensation is direct or indirect.

6. **Subdivision prohibited.** The portion of the site accommodating the detached living area shall not be subdivided from the portion of the site containing the main dwelling.

7. **Utilities.** All utilities serving the detached living area (e.g., electricity, gas, sewer and water) shall be common to and dependent on the main dwelling. The detached living area shall not be provided with separate utility meters.

~~F.~~G. **Greenhouses.** An accessory greenhouse may occupy up to 500 square feet for each parcel less than or equal to 0.5-acres in size and up to 25% of the dwelling on parcels greater than 0.5-acres in size..

~~G.~~H. **Home occupations.** Home occupations are subject to the requirements of Section 18.58.120

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(Home Occupations).

~~H.~~I. **Swimming pools/spas/hot tubs.** Private swimming pools, spas and hot tubs are allowed accessory to approved residential uses on the same parcel, subject to the following provisions:

1. The pool is to be used solely by occupants of the dwelling(s) on the same parcel and their invited guests; and

2. The pool shall be secured by fencing and/or walls to prevent uncontrolled access by children in compliance with the Town Building Code.

3. The pool is subject to the setback requirement in Section 18.30.120.E Table 3-3.

~~I.~~J. **Tennis and other recreational courts.** Non-commercial outdoor tennis courts and courts for other sports (e.g., racquetball, etc.) accessory to a residential use are subject to the following requirements:

1. Fencing shall be subject to the height limits of Section 18.30.070 (Fences, Walls and Hedges). Fencing for non-commercial outdoor courts up to a maximum of 20 feet in height, located outside the required setbacks, may be authorized by the Zoning Administrator through a Minor Use Permit in compliance with Chapter 18.76 (Use Permits and Minor Use Permits);

2. Lighting for non-commercial outdoor courts may be authorized by the Zoning Administrator through a Minor Use Permit in compliance with Chapter 18.76 (Use Permits and Minor Use Permits).

~~J.~~K. **Vehicle storage.** The outdoor storage of vehicles, including incidental restoration and repair, is subject to Chapter 10.20 (Abandoned Vehicles) of the Municipal Code.

~~K.~~L. **Cumulative size of accessory structures.** The maximum cumulative size for all allowed accessory structures on a parcel, but not including an accessory dwelling unit in a detached structure, shall be in compliance with Table 3-17.

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a. **Allowable ground locations.** If ground-mounted, the antennas shall not be located between a structure and an adjoining street and shall be screened from public view and surrounding parcels;

b. **Screening.** If roof-mounted, the antennas shall be screened from ground view by a parapet or other type of screening. The minimum height and design of the parapet, wall or screening shall be subject to the approval of the Director;

c. **Size limitations.** The diameter of the ground-mounted antenna shall not exceed 12 feet. This provision may be modified by the Director if strict compliance would result in no/poor satellite reception;

d. **Height and location.** The height and location of the antennas shall comply with the requirements of the applicable zoning district. The height provision may be modified by the Director if strict compliance would result in no/poor satellite reception; and

e. **Setbacks.** If the subject parcel adjoins a residential zoning district, the antenna shall be set back a minimum distance from the property line that is equal to or greater than the height of the antenna, unless otherwise screened from public view to the satisfaction of the Director.

C. **Single pole/tower amateur radio antennas.** Single pole/tower amateur radio antennas shall be designed, constructed/installed and maintained in the following manner:

1. **Location requirements.** Antennas shall not be located in a front or side yard.

2. **Mounting.** Antennas may be ground- or roof-mounted.

3. **Height limit.** The maximum height shall not exceed 50 feet, measured from finish grade.

4. **Size limitations.** Any boom or other active element/accessory shall not exceed 25 feet in length.

D. **Television and radio broadcasting towers.** These towers shall be allowed in compliance with Chapter 18.76 (Use Permits and Minor Use Permits).

E. **Effects of development on antenna reception.** The Town shall not be liable if subsequent development impairs antenna reception.

F. **Variances.** Telecommunications facilities not complying with the requirements of this Section may be authorized only in compliance with Chapter 18.82 (Variances).

18.58.260 – Time-Share Uses

A. **Purpose** This Section establishes standards for the operation of time-share uses in commercial zones. The Town classifies time-share uses as commercial uses and the intent of these standards is to ensure compatibility of time-share uses, which are located in existing residential units, with any adjoining residential and commercial uses.

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B. Inapplicability of Section to Existing Time-Share Uses. Nothing in this Section shall be deemed to apply to time-share properties existing as of the effective date of this Section or to render such time-share properties nonconforming with this code, provided that such time-share properties were approved by the Town as such, and have been owned and operated as such, prior to the effective date of this Section.

C. Definitions. For purposes of this Section, the following words and phrases shall have the meaning respectively ascribed to them by this paragraph C:

"Accommodation" means any dwelling, apartment, condominium or cooperative 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 multi-family dwelling as defined in Section 18.220.020.

"Dwelling" shall have the meaning ascribed to it by Section 18.220.020.

"Management 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 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.

D. Time-share Uses Restricted to Existing Single-Family Dwellings in General Commercial (CG) and Neighborhood Commercial (CN) Districts. Time-share uses are permitted uses within the Town's General Commercial (CG) District and Neighborhood Commercial (CN) District, subject to issuance of a Zoning Clearance applied for and approved in conformance with this Section and Chapter 18.72. Time-share uses are not permitted in all other zoning districts in Truckee and are not permitted in multi-family dwellings.

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E. Application Process and Development Standards.

1. **Application Process.** Approval of a Zoning Clearance for time-share uses in the General Commercial (CG) District and Neighborhood Commercial (CN) District shall be required in accordance with the requirements of this Section and Chapter 18.72. In addition to any application requirements established by this Section and any other applicable requirements of this code, the following information shall be submitted as part of any application to develop or establish a time-share use:

   a. A description of the method of management of the time-share use and indication of the management entity for the time-share property.

   b. Any restrictions on the use or occupancy of the accommodations.

   c. Any other information or documentation the applicant or Town staff deems reasonably necessary to the consideration of the time-share use.

2. **Development Standards and Operational Requirements.** Notwithstanding any other provision of this chapter, the following conditions must be met by any time-share use in the General Commercial (CG) District or Neighborhood Commercial (CN) District:

   a. **Development Standards**. The time-share use shall comply with all development standards for the zone in which it is located.

   b. **Parking.** Two off-street parking spaces shall be provided for each time-share property.

   c. **Noise.** All time-share properties are subject to Chapter 18.44 (Noise) with the exception of Section 18.44.050 (Residential Interior Noise Standards). Time-share properties where the ambient noise levels may exceed 70 dB(A) CNEL are subject to Section 18.44.040.F.

   d. **Solid Waste.** All time-share properties are subject to Section 18.30.150.A.2 (Required storage area for non-residential structures and uses).

F. Violations, Enforcement and Civil Penalties.

1. 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 Section 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 Section. Such violation shall be punishable pursuant to Chapter 1.02.

2. Time-share use, and/or advertisement for time-share use, of an accommodation in violation of this Section 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 and/or restored by Town staff and also may be abated pursuant to Chapter 1.03, except that the civil

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penalty for a violation shall be one thousand dollars ($1,000.00). Each day the violation occurs shall constitute a separate offense.

3. Any responsible person who violates this Section shall be liable and responsible for a civil penalty of one thousand dollars ($1,000.00) per violation per day such violation occurs. The Town may recover such civil penalty by either civil action or administrative citation. Such penalty shall be in addition to all other costs incurred by the Town, including without limitation the Town's staff time, investigation expenses and attorney's fees.

   a. Where the Town proceeds by civil action, the court shall have discretion to reduce the civil penalty based upon evidence presented by the responsible person that such a reduction is warranted by mitigating factors including, without limitation, lack of culpability and/or inability to pay. Provided, however, that in exercising its discretion the court should consider the purpose of this Section 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 Section. In any such civil action the Town also may abate and/or enjoin any violation of this Section.

   b. Where the Town proceeds by administrative citation, the Town shall provide the responsible person notice of the right to request an administrative hearing to challenge the citation and penalty, and the time for requesting that hearing.

      i. The responsible person shall have the right to request the administrative hearing within forty-five (45) days of the issuance of the administrative citation and imposition of the civil penalty. To request such a hearing, the responsible person shall notify the Town Clerk in writing within forty-five (45) days of the issuance of the citation. The appeal notification shall include all specific facts, circumstances and arguments upon which the appeal is based.

      ii. The Town Manager is hereby authorized to designate a hearing officer to hear such appeal. The hearing officer shall conduct a hearing on the appeal within ninety (90) days of the request for the hearing unless one of the parties requests a continuance for good cause. The hearing officer shall only consider those facts, circumstances or arguments that the property owner or responsible person has presented in the appeal notification.

      iii. The hearing officer shall render a decision in writing within thirty (30) days of the conclusion of the hearing. The hearing officer shall have discretion to reduce the civil penalty based upon evidence presented by the property owner or responsible person that such a reduction is warranted by mitigating factors including, without limitation, lack of culpability and/or inability to pay. Provided, however, that in exercising its discretion the hearing officer should consider the purpose of this Section to prevent and deter violations and whether the reduction of civil penalties will frustrate that purpose by resulting in the property owner's or responsible person's enrichment or profit as a result of the violation of this Section.

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iv. Any aggrieved party to the hearing officer's decision on the administrative appeal may obtain review of the decision by filing a petition for writ of mandate with the Nevada County Superior Court in accordance with the timelines and provisions set forth in Government Code Section 53069.4.

v. If, following an administrative hearing, appeal, or other final determination, the owner of the property is determined to be the responsible person for the civil penalty imposed by this Section, such penalty, if unpaid within forty-five (45) days of the notice of the final determination, shall become a lien to be recorded against the property on which the violation occurred. Such costs shall be collected in the same manner as county taxes, and thereafter the property upon which they are a lien shall be sold in the same manner as property now is sold for delinquent taxes.

vi. Any violation of this Section may also be abated and/or restored by Town staff and also may be abated pursuant to Chapter 1.03, except that the civil penalty under Chapter 1.03 for a violation shall be one thousand dollars ($1,000.00).

4. Each day the violation of this section occurs shall constitute a separate offense.

5. The remedies under this section are cumulative and in addition to any and all other remedies available at law and equity.

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CHAPTER 18.72 - ZONING CLEARANCE

Sections:

18.72.010 - Purpose of Chapter
18.72.020 - Applicability
18.72.030 - Review and Decision
18.72.040 - Conditions of Approval

18.72.010 - Purpose of Chapter

A. This Chapter establishes procedures for the review and approval or denial of Zoning Clearances, which are required by the Town to verify that a requested land use activity and/or structure is an allowed land use within the applicable zoning district and complies with the development standards and any design guidelines applicable to the land use or the zoning district of the site.

B. The review process begins with the recognition that the proposed use/construction is allowed in the zoning district and focuses on issues related to site layout and design in order to arrive at the best utilization of the subject site and compatibility of design with surrounding properties.

C. The process includes the filing of a building permit application or land use permit application with the Director to verify compliance with all applicable land use development standards, any applicable design guidelines and the requirements of other Town departments.

18.72.020 - Applicability

Where Article II (Zoning Districts and Allowable Land Uses) requires Zoning Clearance, the Director shall evaluate the proposed use or structure in compliance with this Chapter.

A. Eligibility for Zoning Clearance. A Zoning Clearance may be issued by the Director for land use activities or structure(s) identified in Article II (Zoning Districts and Allowable Land Uses) as an allowed use as follows:

1. For projects of a single-family dwelling, accessory dwelling unit, and/or residential accessory structure, a change in land use, creation of time-share uses, new structures or additions to existing structures with a total gross floor area of less than 7,500 square feet (less than 5,000 square feet in Downtown Residential and Downtown Commercial and Manufacturing zoning districts); or

2. For non-residential projects, a change in land use, new structures, or additions to existing structures with a total gross floor area of less than 7,500 square feet (less than 5,000 square feet in Downtown Residential and Downtown Commercial and Manufacturing zoning districts); or

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3. For multi-family residential projects, a change in land use, new structures, or additions to existing structures with ten or less residential units; and/or

4. For all projects, a change in land use, new structures, additions to existing structures, new improvements, or additions to existing improvements with site disturbance (grading, impervious surfaces, and/or the removal of natural vegetation) of less than 26,000 square feet.

B. Streamlined Zoning Verification. For projects with a change of use that falls within the Zoning Clearance criteria in terms of floor area and site disturbance, but does not represent an expansion of the square footage and/or intensification of use, the project may qualify for a streamlined Zoning Verification review. This review shall verify that the proposed use is allowed in the zoning district in which the use is proposed, does not create significant impacts (e.g., parking, noise, solid waste storage, or environmental degradation), and does not require review by utility agencies, special districts, or departments, as determined by the Community Development Director. Streamlined Zoning Verifications require a public notice sign to be posted at the parcel from the time of application submittal until 10 days after approval of the application.

C. Other permits. A Zoning Clearance shall be required before the approval of a Building, Grading, or other construction permit or other authorization required by the Municipal Code or this Development Code for the proposed use or construction.

D. Incremental or phased development projects. Incremental or phased developments shall be treated on a cumulative basis. The approval of a Development Permit, in compliance with Chapter 18.74 (Development Permits) shall be required for additions to projects that would bring (1) the total project gross floor area for non-residential structure(s) to 7,500 square feet or more (5,000 square feet or more for projects located within the Downtown Residential and Downtown Commercial and Manufacturing zoning districts; (2) the total site disturbance area to 26,000 square feet or more; or (3) the total number of multi-family residential units to eleven or more units.

18.72.030 - Review and Decision

A. Project review procedures. Each application shall be analyzed by the Director to ensure that the application is consistent with the content, purpose and intent of this Chapter, this Development Code, any applicable design guidelines, the General Plan and any applicable Specific Plan.

B. Issuance of a Streamlined Zoning Verification.

1. **Time for decision.** The Director shall take appropriate action on the Zoning Verification within 30 days of finding the application complete in compliance with Section 18.70.060 (Initial Application Review/Environmental Assessment).

2. **Public notice.** Streamlined Zoning Verifications require a public notice sign to be posted at the parcel from the time of application submittal until 10 days after approval of the application.

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3. **Required findings.** The Director may approve a Streamlined Zoning Verification, with or without conditions, only if all of the following findings can be made:

   a. The proposed project is:

      (1) Allowed by Article II (Zoning Districts and Allowable Land Uses) within the applicable zoning district and complies with all applicable provisions of this Development Code, the Municipal Code and the Public Improvement and Engineering Standards; and

      (2) Consistent with the General Plan, any applicable Specific Plan and/or Master Plan, the Trails Master Plan, the Truckee Tahoe Airport Land Use Compatibility Plan and the Particulate Matter Air Quality Management Plan.

   b. The proposed project is located in an existing building and the tenant space was previously occupied by a permitted use for which no complaints have been received.

   c. No changes are proposed to the exterior of the building except signage or repairs consistent with the underlying land use approval.

   d. The Zoning Verification approval is in compliance with the requirements of the California Environmental Quality Act (CEQA) and there would be no potential significant adverse effects upon environmental quality and natural resources; and

   e. There are adequate provisions for public and emergency vehicle access, fire protection, sanitation, water and public utilities to ensure that the proposed development would not be detrimental to public health and safety. Adequate provisions shall mean that distribution and collection facilities and other infrastructure are installed at the time of development and in operation prior to occupancy of buildings and the land and all development fees have been paid prior to occupancy of buildings and the land.

   f. The subject site is:

      (1) Physically suitable for the type and density/intensity of development being proposed;

      (2) Adequate in size and shape to accommodate the use and all fences and walls, landscaping, loading, parking, yards and other features required by this Development Code; and

      (3) Served by streets adequate in width and pavement type to carry the quantity and type of traffic generated by the proposed development.

   g. The proposed development is consistent with all applicable regulations of the Nevada County Environmental Health Department and the Truckee Fire Protection District for the transport, use and disposal of hazardous materials.

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CHAPTER 18.88 - VACATIONS

Sections:

18.88.010 - Purpose of Chapter
18.88.020 - Applicability
18.88.030 - Findings and Decision

18.88.010 - Purpose of Chapter

This Chapter establishes procedures for the review and approval or denial of the vacation of streets and public easements and the release of covenants of easements, which is required by State law and the Town to ensure that the street or easement is not necessary for present or prospective public use.

18.88.020 - Applicability

Any and all requests for the abandonment, vacation, and/or release of streets and public easements shall be evaluated in compliance with this Chapter. Public streets and public easements within subdivided lands may be abandoned in accordance with Chapter 18.104 (Reversions to Acreage) or Section 66499.20 ½ (Merging and resubdividing without reversion) of the Subdivision Map Act.

18.88.030 - Findings and Decision

A request for the vacation of a street or public service easement or the release of a covenant of easement shall be reviewed and processed in compliance with this section.

A. Minor street vacation. A request for the vacation of a street may be approved, with or without conditions, by the Town Council by resolution without public hearing or notice only if the conformity of the request with the General Plan has been considered and one of the following findings can be made:

1. The street has been superseded by relocation of the street and utilities; the relocation of the street would not cut off all access to a person's property which, prior to relocation, adjoined the street; and the street is not necessary for present or prospective public use;

2. The street has been impassable for vehicular traffic for a period of five consecutive years, no public money was expended for maintenance on the street during such period, there are no in-place public utility facilities that are in use or would be affected by the vacation and the street is not necessary for present or prospective public use; or

3. The excess right-of-way of the street is not required for street purposes, there are no in-place public utility facilities that are in use or would be affected by the vacation and the excess right-of-way is not necessary for present or prospective public use.

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The resolution of summary vacation shall be recorded by the Town with the Office of the County Recorder.

B. Minor public service easement vacation. A request for the vacation of a public service easement may be approved, with or without conditions, by the Town Council by resolution without public hearing or notice only if the conformity of the request with the General Plan has been considered and one of the following findings can be made:

1. The easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the requested vacation and the easement is not necessary for present or prospective public use;

2. The date of dedication or acquisition of the easement is less than five years and more than one year, immediately preceding the requested vacation, the easement was not used continuously since that date and the easement is not necessary for present or prospective public use; or

3. The easement has been superseded by relocation, there are no other public facilities located within the easement and the easement is not necessary for present or prospective public use.

The resolution of summary vacation shall be recorded by the Town with the Office of the County Recorder.

C. Major street and public service easement vacation. A request for the vacation of a street or public service easement not meeting the requirements of Subsections A. and B. may be approved, with or without conditions, by the Town Council by resolution if all of the findings can be made:

1. The request was considered at a public hearing and noticed in accordance with the requirements of Sections 8322 and 8323 of the Streets and Highways Code;

2. The request was referred to the Planning Commission for their review and the Commission reported on the conformity of the request with the General Plan;

3. The street or public service easement is not necessary for present or prospective public use.

The resolution of summary vacation shall be recorded by the Town with the Office of the County Recorder.

D. Release of covenant of easement. A covenant of easement may be released, with or without conditions, by the review body if all of the findings can be made:

1. A public hearing was held and noticed in accordance with Chapter 18.180 (Public Hearings) to consider the release of the covenant of easement;

2. The covenant of easement and the restriction on the property are no longer necessary to achieve the land use goals of the Town and the approval of the release is consistent with

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the General Plan, any applicable specific plan, the Trails Master Plan and the Particulate Matter Air Quality Management Plan.

The release may be effected either by the Zoning Administrator, Planning Commission, or Council, depending upon which review body imposed the requirement of the covenant. A notice of the release of the covenant of easement shall be recorded by the Town Clerk with the Office of the County Recorder.

E. Abandonment of access easement. A request for abandonment of an access easement in which the Town of Truckee is a grantee or otherwise has a legal interest may be approved, with or without conditions, by the Town Council by resolution without public hearing or notice only if the conformity of the request with the General Plan has been considered and the following findings can be made:

1. All property owners with an interest in the access easement have provided written documentation giving the Town of Truckee authorization to abandon the easement on their behalf; and

2. The access easement and the restriction on the property are no longer necessary to achieve the land use goals of the Town and the approval of the release is consistent with the General Plan, any applicable specific plan, the Trails Master Plan and the Particulate Matter Air Quality Management Plan.

The resolution of summary vacation shall be recorded by the Town with the Office of the County Recorder.

~~E.~~F. Fee. The Town may impose fees to recover the Town's reasonable cost of processing a request for a release. Fees for the processing shall be specified in the Council's Fee Resolution.

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b. Each of the resulting lots must be between 60 percent and 40 percent of the original lot area.

8. Easements. The owner must enter into an easement agreement with each public service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.

a. Each easement must be shown on the Tentative Parcel Map.

b. Copies of the unrecorded easement agreements must be submitted with the application. The easement agreements must be recorded against the property before the Final Map may be approved, in accordance with subpart (C)(1) above.

c. If an easement is recorded and the project is not completed, making the easement moot, the property owner may request, and the Town will provide, a notice of termination of the easement, which the owner may record.

9. Lot Access. Each resulting lot must have access to, provide access to, or adjoin the public right of way. Access shall comply with Section 18.30.020 (Access, General Standard).

a. Each resulting lot must have frontage on the public right of way of at least 20 feet.

b. Access driveways shall be developed in compliance with the standards in Section 18.48.080 (Driveways and Site Access).

10. Unit Standards.

a. Quantity. No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under section 18.95.040 of this code, an ADU, or a JADU

b. Unit Size. The total floor area of each primary dwelling that is developed on a resulting lot must be less than or equal to 800 square feet.

(1) A primary dwelling that was legally established prior to the urban lot split and that is larger than 800 square feet is limited to the lawful floor area at the time of the urban lot split. It may not be expanded.

(2) A primary dwelling that was legally established prior to the urban lot split and that is smaller than 800 square feet may be expanded to 800 square feet after the urban lot split.

11. Height Restrictions. ~~On a resulting lot that is larger than 2,000 square feet or larger, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure. On a resulting lot that is smaller than 2,000 square feet, n~~ No new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds

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be subject to the codes and provisions that were in effect on the date that the extension request application was determined to be complete for processing.

B. Tentative Maps with multiple Final Maps.

1. Where a subdivider is required to expend more than $236,790, as increased by the registrar of contractors according to the adjustment of inflation set forth in the Statewide Cost Index for Class B construction as determined by the State Allocation Board, to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the Tentative Map, other than improvements of public rights-of-way which abut the boundary of the site and which are reasonably related to the development of the site, and multiple Final Maps are filed covering portions of a single approved Tentative Map, each filing of a Final Map shall extend the expiration of the Tentative Map by an additional 36 months from the date of its expiration, or the date of the previously filed Final Map, whichever is later. The total of all extensions shall not extend the validity of the Tentative Map more than 10 years from its approval or conditional approval.

2. Tentative Maps which do not require the subdivider to provide more than $236,790, as increased by the registrar of contractors according to the adjustment of inflation set forth in the Statewide Cost Index for Class B construction as determined by the State Allocation Board, for off-site improvements shall expire at the end of the initial time period of the approval, unless a Parcel or Final Map is recorded, or an extension of time is requested and approved in compliance with Subsection A. above.

C. Vesting Tentative Maps. The review authority which approved the Vesting Tentative Map may grant extensions of up to six years to the initial time limit, provided that the total of all extensions shall not exceed six years, in accordance with Subsection A., above. Any rights conferred by Section 18.96.120 (Vesting Tentative Maps) shall expire if a Final Map is not approved and recorded before the expiration of the vesting Tentative Map.

D. **Appeals.** A decision of the Zoning Administrator or Commission acting as the review authority for a Tentative Map Time Extension may be appealed in compliance with Chapter 18.140 (Appeals). The hearing on the appeal shall be held within 30 days after the date of filing the appeal, or if there is no regular meeting of the review authority within the next 30 days for which specified notice can be given, the appeal may be heard at the next regular meeting for which the specified notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. The appeal body shall reach its decision within 15 days following the conclusion of the hearing.

18.96.160 - Applications Deemed Approved

Any subdivision application deemed approved in compliance with Government Code Section 65956, or Map Act Sections 66452 et seq., shall be subject to all applicable provisions of this Development Code, which shall be satisfied by the subdivider before any Building Permits or other land use entitlements are issued. Parcel or Final Maps filed for record after the automatic approval of their Tentative Map shall remain subject to all the mandatory requirements of this Development Code and the Map Act, including but not limited to Map Act Sections 66473, 66473.5 and 66474.

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CHAPTER 18.200 - ENFORCEMENT

Sections:

18.200.010 - Purpose of Chapter
18.200.020 - Authority to Issue Citations
18.200.030 - Remedies are Cumulative
18.200.040 - Inspection
18.200.050 - Initial Enforcement Action
18.200.060 - Violations
18.200.070 - Legal Remedies
18.200.080 - Recovery of Costs

18.200.010 - Purpose of Chapter

The purpose of this Chapter is to provide for compliance with the requirements of this Development Code, other titles of the Municipal Code, and any conditions of an approved land use permit or entitlement.

18.200.020 - Authority to Issue Citations

A. Code Enforcement Director. The Town Code Enforcement Director shall be the person primarily responsible for enforcing the provisions of this Development Code and shall have the authority and immunity of a public officer and employee to issue citations whenever possessing reasonable cause to believe that the person to be cited has committed a violation of this Development Code, which constitutes an infraction or misdemeanor. The responsibilities of the Code Enforcement Director may also be carried out by the Code Enforcement Officer or the Department staff under the supervision of the Code Enforcement Director who shall also have the authority and immunity of a public officer and employee to issue citations whenever processing reasonable cause to believe that the person to be cited has committed a violation of this Development Code, which constitutes an infraction or misdemeanor.

B. Consultation with Police Chief. It may be necessary for the Code Enforcement Director to work with the Police Chief when enforcing the provisions of this Development Code, when the specific situation warrants uniformed police involvement.

18.200.030 - Remedies are Cumulative

All remedies contained in this Development Code for the handling of violations or enforcement of the provisions of this Development Code shall be cumulative and not exclusive of any other applicable provisions of Town, County, State, or Federal law. If a person is found guilty and convicted of an infraction or misdemeanor for the violation of any provision of this Development Code, the conviction shall not prevent the Town from pursuing other available remedy(s) to correct the violation.

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18.200.040 - Inspection

A. Access for initial inspection. Every applicant seeking an application, permit, or any other action in compliance with this Development Code shall allow Town officials access to any premises or property which is the subject of the application.

B. Access for ongoing inspections. If the permit or other action is approved, the owner or applicant shall allow appropriate Town officials access to the premises to determine continued compliance with the approved permit and/or any conditions of approval.

C. Failure to allow inspections. Failure to allow inspections for compliance shall automatically cause all permits and approvals to be suspended, pending a hearing before the Code Enforcement Director to void the permits and approvals.

D. Compliance. In addition, the Code Enforcement Director may withhold the processing of and/or issuance of any and all ministerial permits and discretionary land use permits, where a documented Code violation(s) exists, until the subject property is found to be in complete compliance with any and all applicable Code sections.

18.200.050 - Initial Enforcement Action

This Section describes the procedures for initiating enforcement action in cases where the Code Enforcement Director has determined that real property within the Town is being used, maintained, or allowed to exist in violation of the provisions of this Development Code. It is the objective of these provisions to encourage the voluntary cooperation of responsible parties in the prompt correction of violations, so that the other enforcement measures provided by this Section may be avoided.

A. The authority to abate and impose sanctions.

1. Enforcement of this Section may be accomplished by the Code Enforcement Director in any manner authorized by law.

2. The procedures identified in this Chapter shall not be exclusive and shall not, in any manner, limit or restrict the Town from enforcing other ordinances or abating public nuisances in any other manner provided by law.

3. Whenever the Code Enforcement Director determines that any condition exists in violation of this Development Code, the Code Enforcement Director may take appropriate enforcement action in compliance with this Chapter.

4. Notwithstanding the public nuisance abatement procedures, criminal and/or civil remedies may be employed as determined to be necessary and provided by law.

B. Notice to responsible parties. Whenever the Code Enforcement Director has inspected the location of the alleged violation and it has been found or determined that conditions constituting a Code violation exist on any property located in the Town, the Code Enforcement Director may prepare a notice and order and cause the owner of the property and the person, if other than the landowner occupying or otherwise in charge or control of the property, to be notified

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D. Definitions, "D."

Decibel (dB). A unit for measuring the amplitude of sounds, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, of 20 micropascals.

Deck. A platform attached to a house and supported by structural connections to the ground, including posts or piers, to provide outdoor living area that may be roofed (i.e., covered deck), but is without walls on at least two sides, and which includes railings where required by the California Building Code.

Density. The number of housing units per net acre, unless otherwise stated, for residential uses.

Department. The Town of Truckee Community Development Department, referred to in this Development Code as "Department."

Detached. Any structure that does not have a wall or ceiling/floor ~~or roof~~ in common with another structure.

Detached living area. A detached living area is an accessory structure within a residential zoning district, is not a required element of the main dwelling and is designed for human occupancy. It is intended to provide living quarter(s) within a detached residential accessory structure, located on the same premises with the main dwelling, for use by members of the family occupying the main dwelling and their non-paying guests.

Development. Any construction activity or alteration of the landscape, its terrain contour or vegetation, including the erection or alteration of structures. New development is any construction, or alteration of an existing structure or land use, or establishment of a land use, after the effective date of this Development Code.

Development Agreement. A contract between the Town and an applicant for a development project, in compliance with Chapter 18.150 (Development Agreements) of this Development Code and Government Code Sections 65864 et seq. A development agreement is intended to provide assurance to the applicant that an approved project may proceed subject to the policies, rules, regulations, and conditions of approval applicable to the project at the time of approval, regardless of any changes to Town policies, rules, and regulations after project approval. In return, the Town may be assured that the approved project will contain elements and components that are in the best interests of the Town and will promote the public interest and welfare of the Town.

Development Code. The Town of Truckee Development Code, Title 18 of the Truckee Municipal Code, referred to herein as "this Development Code."

Development Envelope. The designated development area on a parcel within which disturbance may occur (also known as a "building envelope"). The purpose of the development envelope is to preserve open space and ensure clustered development. All areas outside the development envelope are required to be maintained in a natural, vegetated state. The development envelope shall encompass all disturbance on a parcel, including structures

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B. Definitions, "B."

Backyard Chicken. A domestic chick or hen kept on a residential lot as a household pet. Does not include roosters.

Balcony. A platform that is cantilevered from a building wall and is enclosed by a parapet or railing.

Banks and Financial Services. Financial institutions including:

banks and trust companies
credit agencies
holding (but not primarily operating) companies
lending and thrift institutions
other investment companies
securities/commodity contract brokers and dealers
security and commodity exchanges
vehicle finance (equity) leasing agencies

This definition does not include escrow companies and title insurance companies which come under the definition "Offices, Business and Professional." See also, "Automatic Teller Machine," above.

Bars and Drinking Establishments. Businesses where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. Includes bars, taverns, pubs, tap rooms (i.e., a room that is ancillary to the production of beer where the public can purchase and/or consume only the beer produced onsite), tasting rooms, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May include entertainment (e.g., live music and/or dancing). May also include beer brewing as part of a microbrewery, and other beverage tasting facilities. Also includes restaurants and coffee shops that serve alcohol during hours of operation when food service is no longer the primary use.

Base flood. A flood having a one percent probability of being equaled or exceeded in any given year (also called the 100-year flood).

Bed and Breakfast Inns. Residential structures with one family in permanent residence, with up to three bedrooms in the RR, RS and DRS zoning districts and up to five bedrooms in other allowable zoning districts rented for overnight lodging, where meals may be provided subject to Section 18.58.070 (Bed and Breakfast Inns) and applicable Health Department regulations. A Bed and Breakfast Inn with more than five guest rooms is considered a hotel or motel, and is included under the definition of "Hotels and Motels." Does not include room rental in a "boarding house" situation; see "Rooming and Boarding Houses."

Bedroom. An enclosed habitable room planned and intended for sleeping, separated from other rooms by a door and accessible without crossing another bedroom, closet space, or bathroom. Includes studio units. A bedroom will have a built-in closet, emergency escape and rescue opening(s), and a minimum floor area of 70 square feet, exclusive of a closet. Additionally, it shall meet the requirements or be in accordance with the current codes adopted by the Town as listed in Title 15 of the Municipal Code.

Date: May 10, 2022

Honorable Mayor and Council Members:

Author and title: Laura Dabe, Associate Planner

Title: **Public Hearing to Consider 2022 Development Code Update; Ordinance 2022-05 (Clean-Up Amendments)**

Approved By: Jen Callaway, Town Manager

Recommended Action: That the Town Council: 1) Conduct a public hearing, introduce Ordinance 2022-05 and waive the first reading, amending the Truckee Municipal Code, Title 18 Development Code for Clean-Up Amendments; and 2) Determine the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3).

Discussion: The Town of Truckee is proposing Development Code Amendments to ensure clarity, streamline review processes, and ensure consistency with other Municipal Code sections.

Background: The Development Code update process was initiated in 2007 following adoption of the 2025 General Plan. Updates to the Development Code are intended to be an ongoing process to address current trends and issues as they arise. The December 14, 2021 Development Code, which is available online at https://www.townoftruckee.com/government/community-development/planning-division/plans-and-regulations/development-code/title-18-development-code or at the Community Development Department at 10183 Truckee Airport Road, is the most current Development Code. The proposed amendments contained in this staff report are minor. The following sections include staff and Planning Commission recommendations, and proposed amendment language. The complete Draft Ordinance 2022-05 is provided as Attachment #1. The topics contained in this staff report were reviewed by the Planning Commission at its April 19, 2022 public hearing and are included in this staff report for the Town Council's consideration. The Planning Commission staff report, minutes and resolution are provided as links within the attachments.

The following topics were reviewed and amendments were supported by the Planning Commission as proposed by staff, with modifications to one amendment topic. For Urban Lot Split Height Restrictions, the Commission recommended allowing additional height flexibility for smaller parcels created through a SB-9 lot split application. Where the Planning Commission recommendation deviated from staff's recommendation, additional discussion is provided.

Clean-up Amendments

Draft Ordinance 2022-05 (Attachment #1) contains several proposed clean-up amendments to help with accurate and consistent review of all projects. (Staff's proposed changes are shown in the text; Planning Commission edits are shown in red text.) A brief description of each clean-up amendment is provided below.

The Planning Commission recommended approval of the clean-up amendments as follows:

- Allowed Uses and Permit Requirements for Residential Zoning Districts and Downtown Residential Zoning Districts (Section 18.08.030, Tables 2-2 and 2-3) and Commercial and Manufacturing Districts (Section 18.12.030, Tables 2-7 and 2-8):
    - Remove multi-family residential transient rentals as a permitted use per the Short-Term Rental Ordinance adopted by the Town Council on April 12, 2022.
    - Add language permitting small lot single-family subdivisions that comply with the Subdivision Map Act (Gov. Code §66499.40) in zoning districts that allow multi-family residential uses.
    - Add footnote to allow time-share properties as a permitted use within existing legal nonconforming single-family residences in the CG (General Commercial) and CN (Neighborhood Commercial) zoning districts.
- Easements (Section 18.30.056.B):
    - Per direction from the Town Attorney, add language requiring a commitment from the easement owner that required parking, landscaping and/or site improvements within an easement will be allowed to remain in perpetuity.
- Setbacks (Section 18.30.120):
    - Add generators to the types of equipment that require a five-foot side and rear yard setback in Table 3-3.
    - Add language in the side setback reduction section to allow roofs with snow retention mechanisms in addition to roofs with non-shedding roof materials.
- Solid Waste and Recyclables Storage (Section 18.30.150):
    - Reduce enclosure height in Table 3-4 to six feet; 10 feet for enclosures with a roof.
    - Require bins and containers to be protected from wildlife.
- Accessory Dwelling Units (Section 18.58.025):
    - Clarify height and setback requirements for ADUs less than 16 feet tall.
    - Update language regarding parking within easements to mirror Section 18.30.056 (Easements).
    - Update occupancy and rental requirements for consistency with the Short-Term Rental Ordinance adopted by the Town Council on April 12, 2022, including clarification on the deed-restriction requirements for accessory dwelling units.
- Bed and Breakfast Inns (Section 18.58.070):
    - Clarify requirements for hosted rentals to ensure consistency with the Short-Term Rental Ordinance adopted by the Town Council on April 12, 2022.
- Residential Accessory Structures (Section 18.58.220):
    - Move detaching living area standards to Residential Accessory Structures section.
    - Clarify that breezeways are allowed for detached structures.
- Time-Share Uses (Section 18.58.260):
    - Add Section 18.58.260 (Time-Share Uses) to outline the application process, development standards and enforcement and violation protocols for time-share uses.
    - Clarify that timeshare properties are a permitted use within existing legal nonconforming single-family residences in the CG (General Commercial) and (Neighborhood Commercial) CN zoning districts.
- Zoning Clearance (Chapter 18.72):
    - Add time-share uses to list of projects that may be approved through a Zoning Clearance.
    - Clarify that tenant space must have a previous permitted use for a Streamlined Zoning Verification.
- Vacations (Section 18.88.030):
    - Add subsection to clarify process for abandonment of an access easement.
- Urban Lot Split Height Restrictions (Section 18.95.020):
    - Clarify height limits for resulting lots that are 2,000 square feet or larger.
        - As part of its discussion, the Planning Commission recommended applying the same height limit (22') for all parcels created through a SB-9 lot split, regardless of

parcel size. Modified language to reflect this recommendation is included in D Ordinance 2022-05.

- Extensions of Time for Tentative Maps (Section 18.96.150):
  - Add timeframe for Tentative Map Time Extension appeals for compliance with the Subdivision Map Act.
- Enforcement (Section 18.200.040):
  - Add ministerial permits to types of permits that may be withheld for processing due to Code Compliance violations.
- Definitions (Chapter 18.220)
  - Clarify that bedroom definition applies to studio units.
  - Clarify the definition of detached to be consistent with the attached dwelling definition.

Amendments proposed by staff and modified by the Planning Commission are shown in Draft Ordinance 2022-05 (Attachment #1).

ENVIRONMENTAL REVIEW

The proposed Development Code amendments were assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town. The amendments are 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. Moreover, under Section 15061(b)(3) of the State CEQA Guidelines, the amendments are 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

Priority:

☐ Enhanced Communication	☐ Climate and Greenhouse Gas Reduction	☐ Housing
☐ Infrastructure Investment	☐ Emergency and Wildfire Preparedness	☐ Core Service

Fiscal Impact: As proposed, there will be minimal fiscal impact to the Town in administering the 2022 Development Code Updates. The cost to apply the Ordinance to individual projects would be paid for by each project proponent as part of the land use application.

Public Communication: In addition to the standard noticing requirement for Council agendas, a ¼ page ad was published in the Sierra Sun on Friday, April 29, 2022. The hearing date with a link to the staff report was also provided on the Town website five days prior to the Council hearing.

Attachments:

1. Draft Ordinance 2022-05 – 2022 Development Code Updates
2. Link: April 19, 2022 Planning Commission Staff Report
3. Link: April 19, 2022 Draft Planning Commission Minutes
4. Link: Planning Commission Resolution 2022-08

TOWN OF TRUCKEE
California

DRAFT ORDINANCE 2022-05

AN ORDINANCE OF THE TOWN OF TRUCKEE AMENDING THE TRUCKEE MUNICIPAL CODE, TITLE 18, DEVELOPMENT CODE FOR CLEAN-UP AMENDMENTS

WHEREAS, the Town Council adopted the 2025 General Plan on November 16, 2006 thereby establishing the Council's policy on future growth, development, and conservation of natural resources; and

WHEREAS, the Council adopted the 2025 General Plan Implementation Program on November 16, 2006, establishing the priorities, responsibilities and timelines for implementing the actions and programs of the General Plan; and

WHEREAS, a number of actions and programs are to be implemented through the Development Code and will require amendments to the Development Code; and

WHEREAS, the Council may initiate amendments to the Development Code, and the Planning Commission is an advisory body to the Council on matters concerning land use regulation and the Development Code; and

WHEREAS, the Planning Commission adopted Resolution 2007-10 on June 13, 2007 recommending to the Council that the Council initiate a comprehensive update to Title 18, Development Code, of the Municipal Code; and

WHEREAS, the Town Council adopted Resolution 2007-36 on July 19, 2007 initiating a comprehensive update to Title 18, Development Code, of the Municipal Code; and

WHEREAS, on April 12, 2022, the Town Council adopted amendments to the Short-Term Rental Ordinance (Municipal Code Title 5, Chapter 5.02) which requires amendments to the Development Code (Municipal Code Title 18) to ensure consistency among Town regulations; and

WHEREAS, the Development Code is reviewed regularly to ensure consistency with recently adopted State law,

WHEREAS, clean-up amendments are incorporated in order to help provide accurate and consistent review of all projects; and

WHEREAS, the Planning Commission reviewed all proposed amendments at its April 19, 2022 public hearing and recommended approval to the Town Council.

The Town Council of the Town of Truckee Does Ordain as Follows:

Section 1.

Enactment. Title 18, Development Code, of the Municipal Code is hereby amended as designated in Exhibit "A" and Exhibit "B" attached hereto and incorporated herein by reference.

Section 2.

Findings. The Council hereby adopts the following findings in support of adoption of this ordinance and the amendments to Title 18, Development Code. The May 10, 2022 Town Council staff report and meeting minutes, and the April 19, 2022 Planning Commission staff report and meeting minutes, are hereby incorporated herein by reference and provide a factual basis for the findings.

a. The proposed amendments directly implement and are internally consistent with the goals, policies, and actions of all elements of the 2025 General Plan. The proposed changes are clean-up amendments to ensure consistency with State law, the Town's recently amended Short Term Rental Ordinance, and to clarify and streamline Development Code requirements. Section 18.58.260 (Time-Share Uses) is incorporated to codify the Town's historical determination that time-share uses are considered commercial uses and to outline the application process, development standards and enforcement and violation protocols for these uses.

b. The proposed amendments would not be detrimental to the public interest, health, safety, convenience, or welfare of the Town.

Section 3.

CEQA Findings. The Council has determined that the proposed Development Code amendments were assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town. The amendments are 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. Moreover, under Section 15061(b)(3) of the State CEQA Guidelines, the amendments are 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 4.

Summary Publication. The Town Clerk is hereby directed to publish this ordinance in accordance with the law.

* * * * * *

The foregoing Ordinance was introduced at a regular meeting of the Truckee Town Council held on the 10th day of May, 2022, and adopted at a regular meeting of the Truckee Town Council on the _____ day of _____, 2022, by Council Member _____, who moved its introduction, which motion was seconded by Council Member _____was upon roll call carried by the following vote:

AYES:

NOES:

ABSENT:

Anna Klovstad, Mayor

ATTEST:

APPROVED AS TO FORM:

Judy Price, MMC, Town Clerk

Andrew Morris, Town Attorney

Attachments:

Exhibit A – Title 18, Development Code Amendments (Summary)

Exhibit B – Title 18, Development Code Amendments

****

ORDINANCE 2022-05

EXHIBIT "A"

Title 18, Development Code Amendments

Title 18. Development Code, of the Truckee Municipal Code is hereby amended as follows:

Amendments to Article II, Section 18.08.030, Tables 2-2 and 2-3 (Allowed Uses and Permit Requirements for Residential Zoning Districts and Downtown Residential Zoning Districts), Section 18.12.030, Tables 2-7 and 2-8 (Allowed Uses and Permit Requirements for Commercial and Manufacturing Districts); Article III, Section 18.30.056.B (Easements), Section 18.30.120, Table 3-3 (Setbacks), Section 18.30.150 (Solid Waste/Recyclables Materials Storage), Section 18.58.025 (Accessory Dwelling Units), Section 18.58.070 (Bed and Breakfast Inns), Section 18.58.100 (Detached Living Areas), Section 18.58.220 (Residential Accessory Uses and Structures), Section 18.58.260 (Time-Share Uses); Article IV, Chapter 18.72 (Zoning Clearances), Section 18.88.030 (Vacations); Article V, Section 18.95.020 (Urban Lot Split Height Restrictions), Section 18.96.150 (Extensions of Time for Tentative Maps); Article VI, Section 18.200.040 (Enforcement); and Amendments to Article VIII, Chapter 18.220 (Definitions/Glossary) are hereby amended as designated in Exhibit "B" attached hereto and incorporated herein.

DRAFT ORDINANCE 2022-05

EXHIBIT "B"

Title 18, Development Code Amendments

Title 18, Development Code, of the Truckee Municipal Code is hereby amended to read as follows (additions are shown by underline type; deletions are shown in ~~strikethrough~~ type; Commission modifications are shown in red underlined type; minor technical edits made by staff are shown in underline type):

TABLE 2-2 – ALLOWED USES AND PERMIT REQUIREMENTS FOR RESIDENTIAL ZONING DISTRICTS (Continued)

LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See standards in Section:
	RR	RS	RM	
RESIDENTIAL USES				
Accessory dwelling units	P	P	P	18.58.025
Animal raising and keeping of household pets and backyard chickens	P	P	MUP	18.58.060
Detached living areas	P	P	P	18.58.100
Emergency shelters			UP	
Employee housing	P(3)	P(3)		
Farmworker housing, up to 12 units or 36 beds in group quarters	UP(4)			
Junior Accessory Dwelling Units	P	P		18.58.025.N
Manufactured home	P	P	P(5)	18.58.170
Mobile home, tiny home or recreational vehicle as a temporary residence during construction	P	P	P	18.58.160
Mobile home parks	UP	UP	UP	18.58.150
Multi-family dwellings, 2 to 10 units			P	18.58.180
Multi-family dwellings, 11 and more units			DP	18.58.180
Multi-family dwellings, individual ownership, 2 to 10 units		UP	P	18.58.180
Multi-family dwellings, individual ownership, 11 or more units		UP	DP	18.58.180
Residential care facilities, 1 to 6 clients	P	P	P	
Residential care facilities, 7 to 12 clients	UP	UP	UP	
Rooming and boarding houses			UP	
Senior citizen congregate care/congregate care housing			UP	18.58.240
Single-family dwellings(6)	P	P		
Supportive housing	P(3)	P(3)	P(3)	18.58.255
~~Transient rental, multi-family dwellings~~	-	~~P~~	~~P~~	-
Transient rental, single-family dwellings	P	P	P	
Transitional housing	P(3)	P(3)	P(3)	
RETAIL TRADE USES				
Accessory retail uses			UP	18.58.030

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirement	Procedure is in Section:
P	Permitted use, Zoning Clearance required for projects with less than 7,500 sq. ft. of floor area and less than 26,000 sq. ft. of site disturbance.	18.72
DP	Development Permit required for permitted projects with 7,500 sq. ft. or more of floor area or 26,000 sq. ft. or more of site disturbance.	18.74
MUP	Conditional use, Minor Use Permit approval required.	18.76
UP	Conditional use, Use Permit approval required.	18.76
TUP	Temporary use, Temporary Use Permit approval required.	18.80
	Use not allowed. See 18.03.020.E regarding uses not listed.	

Notes:

(1) Definitions of the listed land uses are in Chapter 18.220 (Definitions, Glossary).

(2) Section 18.58.060 (Animal Raising and Keeping) may require a Minor Use Permit for certain animals and household pets, the raising and keeping of animals or household pets over a certain number, and/or raising and keeping of animals on small parcels.

(3) Employee, supportive, and transitional housing are subject to the same regulations that apply to other residential uses of the same type in that zone.

(4) Farmworker housing is subject to the same regulations that apply to other agricultural uses in the same zone.

(5) Manufactured homes within the multi-family residential zone shall meet the requirements of the "Dwelling, Multi-Family definition.

(6) Small lot single-family subdivisions that comply with all requirements of Gov. Code, § 66499.40 are permitted in zoning districts that allow multi-family residential uses.

TABLE 2-3 ALLOWED USES AND PERMIT REQUIREMENTS FOR DOWNTOWN RESIDENTIAL ZONING DISTRICTS (Continued)

LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT			See standards in Section:
	DRS	DRM	DRH	
RESIDENTIAL USES				
Accessory dwelling units	P	P	P	18.58.025
Animal raising and keeping of household pets and backyard chickens	P	P	MUP	18.58.060
Detached living areas	P	P	P	18.58.100
Emergency shelters			UP	
Employee housing	P(2)			
Junior Accessory Dwelling Units	P			18.58.025.N
Live/work units	MUP	UP	UP	18.58.130
Manufactured Home	P	P(3)	P(3)	18.58.170
Mobile home, tiny home or recreational vehicle as a temporary residence during construction	P	P	P	18.58.160
Mobile home parks	UP	UP	UP	18.58.150
Multi-family dwellings, 2 to 10 units	UP	P	P	18.58.180
Multi-family dwellings, 11 and more units	UP	DP	DP	18.58.180
Multi-family dwellings, individual ownership, 2 to 10 units	UP	P	P	18.58.180
Multi-family dwellings, individual ownership, 11 or more units	UP	DP	DP	18.58.180
Residential care facilities, 1 to 6 clients	P	P	P	
Residential care facilities, 7 to 12 clients	UP	UP	UP	
Rooming and boarding houses			UP	
Senior citizen congregate care/congregate care housing		UP	UP	18.58.240
Single-family dwellings(4)	P			
Supportive housing	P(2)	P(2)	P(2)	18.58.255
~~Transient rental, multi-family dwellings~~	~~p~~	~~p~~	~~p~~	-
Transient rental, single-family dwellings	P	P	P	
Transitional housing	P(2)	P(2)	P(2)	

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirement	Procedure is in Section:
P	Permitted use, Zoning Clearance required for projects with less than 5,000 sq. ft. of floor area and less than 26,000 sq. ft. of site disturbance.	18.72
DP	Development Permit required for permitted projects with 5,000 sq. ft. or more of floor area or 26,000 sq. ft. or more of site disturbance.	18.74
MUP	Conditional use, Minor Use Permit approval required.	18.76
UP	Conditional use, Use Permit approval required.	18.76
TUP	Temporary use, Temporary Use Permit approval required.	18.80
	Use not allowed. See 18.03.020.E regarding uses not listed.	

Notes:

(1) Definitions of the listed land uses are in Chapter 18.220 (Definitions, Glossary).

(2) Employee, supportive, and transitional housing are subject to the same regulations that apply to other residential uses of the same type in that zone.

(3) Manufactured homes within the multi-family residential zone shall meet the requirements of the "Dwelling, Multi-Family definition and the standards of other multi-family residential dwellings of the same type in the same zone.

(4) Small lot single-family subdivisions that comply with all requirements of Gov. Code, § 66499.40 are permitted in zoning districts that allow multi-family residential uses.

TABLE 2-7 - ALLOWED USES AND PERMIT REQUIREMENTS FOR COMMERCIAL AND MANUFACTURING DISTRICTS (Continued)

	PERMIT REQUIREMENT BY DISTRICT					See standards in Section:
LAND USE (1)	CN (2)	CG	CH	CS	M	
RECREATION, EDUCATION & PUBLIC ASSEMBLY USES						
Community centers	P	P		UP		
Docks and piers, commercial	MUP	MUP				
Health/fitness facilities	UP	P		P		
Ice skating rinks		P		P		
Indoor recreation centers		P		P		
Libraries and museums	P	P				
Marina	UP	UP				
Membership organization facilities	MUP	P				
Outdoor commercial recreation	MUP	P	MUP			
Parks and playgrounds	UP	UP		UP	UP	
Public Assembly Uses	UP	UP		UP	UP	18.58.090
Recreational vehicle (RV) parks			UP			
Schools - Public and private	UP	P				
Schools - Specialized education and training		P		UP	UP	
Studios for art, dance, music, photography, etc.	P	P		P	P	
Theaters and event spaces	UP	UP				
RESIDENTIAL USES						
Accessory dwelling units	P(4)	P(4)		P	P	18.58.025
Caretaker housing	MUP	MUP	MUP	MUP	MUP	
Emergency shelters	UP	P	UP	P		
Live/work units	MUP	MUP		MUP	MUP	18.58.130
Multi-family dwellings, 11 and more units	UP(5)	UP(5)				18.58.180
Multi-family dwellings, in commercial/industrial project	P	P		P	P	18.58.180, 18.58.140
Senior citizen congregate care/congregate care housing	UP					18.58.240
Single-family dwelling(6)(7)						
Single-room occupancy (SRO) housing	UP	UP				
Supportive housing	P(3)	P(3)		P(3)	P(3)	18.58.255
Transitional housing	P(3)	P(3)		P(3)	P(3)	
Transitional Living Center	UP	UP		UP		
Work/live units	MUP	MUP		MUP	MUP	18.58.130

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirement	Procedure is in Section:
P	Permitted use, Zoning Clearance required for projects with less than 7,500 sq. ft. of floor area and less than 26,000 sq. ft. of site disturbance.	18.72
DP	Development Permit required for permitted projects with 7,500 sq. ft. or more of floor area or 26,000 sq. ft. or more of site disturbance.	18.74
MUP	Conditional use, Minor Use Permit approval required.	18.76
UP	Conditional use, Use Permit approval required.	18.76
	Use not allowed. See 18.03.020.E regarding uses not listed.	

Notes:

(1) Definitions of the listed land uses are in Chapter 18.220 (Definitions, Glossary).

(2) Use on a site adjacent to a residential zoning district shall comply with the special setback, screening and landscaping standards in Section 18.30.110(E) (Screening between neighborhood commercial and residential lands uses) and Section 18.40.040(E) (Landscaping requirements between neighborhood commercial and residential land uses).

(3) Supportive and transitional housing are subject to the same regulations that apply to other residential uses of the same type in that zone.

(4) Accessory Dwelling Units associated with multi-family residential project.

(5) Standalone residential uses shall be subject to the development standards of the RM zoning district and Section 18.58.180 (Multi-family Residential Projects)

(6) Time-share uses are allowed within existing legal nonconforming single-family residences in the CG and CN zoning districts.

(7) Small lot single-family subdivisions that comply with all requirements of Gov. Code, § 66499.40 are permitted in zoning districts that allow multi-family residential uses.

TABLE 2-8 - ALLOWED USES AND PERMIT REQUIREMENTS FOR DOWNTOWN COMMERCIAL AND MANUFACTURING DISTRICTS (Continued)

LAND USE (1)	PERMIT REQUIREMENT BY DISTRICT				See standards in Section:
	DMU	DC	DM	DVL	
RESIDENTIAL USES					
Accessory dwelling units	P (2)(3)	P	P	P	18.58.025
Animal raising and keeping of household pets and backyard chickens	P (4)	P (4)	P (4)	P (4)	18.58.060
Caretaker housing	MUP (3)	MUP	MUP	MUP	
Detached living areas	P (3)				18.58.100
Emergency shelters/transitional living centers		UP			
Emergency shelters, accessory to a church/place of worship	MUP(3)				
Employee housing	P(6)				
Junior Accessory Dwelling Units	P				18.58.025.N
Live/work units	MUP (3)	MUP	MUP		18.58.130
Manufactured home	P (2)(3)(7)				18.58.170
Multi-family dwellings, 2 to 10 units	P (2)(3)				18.58.180
Multi-family dwellings, 11 and more units	DP (2)(3)			DP(5)	18.58.180
Multi-family dwellings, individual ownership, 2 to 10 units	P (2)(3)				18.58.180
Multi-family dwellings, individual ownership, 11 or more units	DP (2)(3)			DP(5)	18.58.180
Multi-family dwellings, in commercial/industrial project	P (3)	P	P		18.58.180, 18.58.140
Residential care homes, 7 to 12 clients	UP (3)				
Senior citizen congregate care/congregate care housing	UP (3)				18.58.240
Single-family dwellings(8)	P (2)(3)				
Single-room occupancy (SRO) housing	UP (3)				
Supportive housing	P(6)	P(6)	P(6)	P(6)	18.58.255
~~Transient rental, multi-family dwellings~~	~~P (3)~~				
Transient rental, single-family dwellings	P (3)				
Transitional housing	P(6)	P(6)	P(6)	P(6)	
Work/live units	MUP (3)	MUP	MUP		18.58.130

KEY TO PERMIT REQUIREMENTS

Symbol	Permit Requirement	Procedure is in Section:
P	Permitted use, Zoning Clearance required for projects with less than 5,000 sq. ft. of floor area and less than 26,000 sq. ft. of site disturbance.	18.72
DP	Development Permit required for permitted projects with 5,000 sq. ft. or more of floor area or 26,000 sq. ft. or more of site disturbance.	18.74
MUP	Conditional use, Minor Use Permit approval required.	18.76
UP	Conditional use, Use Permit approval required.	18.76
TUP	Temporary use, Temporary Use Permit approval required.	18.80
	Use not allowed. See 18.03.020.E regarding uses not listed.	

Notes:

(1) Definitions of the listed land uses are in Chapter 18.220 (Definitions, Glossary).

(2) Stand-alone residential projects must comply with residential development standards of DRM zoning district.

(3) These uses are prohibited on ground floor spaces along Commercial Row. See Section 18.20.070.

(4) Section 18.58.060 (Animal Raising and Keeping) may require a Minor Use Permit for certain animals and household pets, or the raising and keeping of animals or household pets over a certain number, and/or the raising and keeping of animals on small parcels.

(5) Multi-family dwellings within the DVL zoning district shall have a minimum density of 16 dwelling units per acre.

(6) Employee, supportive, and transitional housing are subject to the same regulations that apply to other residential uses of the same type in that zone.

(7) Excludes sites listed on the National Register of Historic Places.

(8) Small lot single-family subdivisions that comply with all requirements of Gov. Code, § 66499.40 are permitted in zoning districts that allow multi-family residential uses.

Table continues on next page.

18.30.056 - Easements

A. Structures within easements. No structure shall be allowed within public utility easements, snow storage easements, access/driveway easements, drainage easements or any other easement offered for dedication to the County of Nevada or the Town, except as follows:

1. The structure serves the purpose of the easement. For example, an electrical transformer in a public utility easement;

2. The structure is allowed in the easement in accordance with the Public Improvement and Engineering Standards; or

3. The structure is allowed with Minor Use Permit approval. A Minor Use Permit for a structure within an easement may be granted only where the review authority first finds that the structure will not interfere with the purpose of the easement.

4. A single-family driveway, including retaining walls, bridge decks, and/or support posts, may be allowed within easements as approved by the Town Engineer.

B. Required parking, required landscaping, and required site improvements shall be prohibited within easements unless either: (i) the easement is amended, with the consent of all entities with an interest in the easement, to clarify that the parking, landscaping, and/or other improvements can remain in place in perpetuity notwithstanding any other provision of the easement; or (ii) all entities with an interest in the easement provide written consent for the parking, landscaping and/or other improvements to remain in place in perpetuity, which such consent is absolute, irrevocable, permanent, supersedes the easement to the extent it is inconsistent with the easement, and is recorded in the official records of Nevada County. ~~express written approval is provided from all utilities, agencies and entities with an interest in the easement.~~ Parking required to meet the minimum standards of Section 18.48.040 (Number of Parking Spaces Required) shall not be permitted within snow storage easements (Municipal Code Section 10.17.030).

18.30.060 - Exterior Lighting and Night Sky

A. Purpose. It is the purpose and intent of this Section to balance the goals of the Town of Truckee General Plan to maintain its small town character with the need to provide for safe lighting practices and to minimize light pollution for the enjoyment of Truckee's residents and visitors.

1. The use of outdoor lighting is often necessary for adequate nighttime safety and utility, but common lighting practices can also interfere with other legitimate public concerns. Principles among these concerns are:

   a. The degradation of the nighttime visual environment by production of unsightly and dangerous glare;

   b. Lighting practices that interfere with the health and safety of Truckee's residents and visitors;

TABLE 3-3
REQUIRED SETBACKS - RESIDENTIAL ACCESSORY USES AND STRUCTURES

Accessory Use/Structure	Type of Setback (1)	Required Setback (2)
Air conditioning equipment, pool and spa equipment, ground-based antennas, generators	Sides, rear	5 feet
Garage	Front, street-side	1 foot and 20 feet from edge of street pavement
Gazebo, greenhouse, patio cover	Front, street-side Rear Interior (3)	15 feet 15 feet for single-family dwelling, 10 feet for multi-family dwellings 6 feet
Propane tank	Front, street-side Sides, rear	As required for main structure. 0 feet (4)
Stationary barbecue, fire pit	Sides, rear	5 feet
Swimming pool, spa, fish pond, outdoor play equipment	Street-side Sides, rear	As required for main structure. 5 feet
Other structures greater than 120 square feet	Front, street-side, sides, rear	As required for main structure.
Non-habitable structures less than 120 square feet and greater than 6 feet in height	Front, street-side Sides, rear	As required for main structure. 5 feet
Structures less than 120 square feet and 6 feet or less in height and not covered elsewhere in this section	Front, street-side, sides, rear	0 feet

Notes:

(1) When a setback is not specified, the setback shall be as required for the main structure. Where a parcel is situated so that the front, side or rear property lines are not readily determinable, required setbacks shall be established by the Director.

(2) A structure, projection or equipment shall not be placed or occur beyond the property lines of the subject parcel.

(3) Chapter 18.220 (Definitions, Glossary) for the definition of interior setback.

(4) Propane tanks must comply with the side, rear and interior setback requirements of the Town Building Code and the Truckee Fire Protection District.

setback would be increased from the standard 20-foot rear yard setback to a 28-foot rear yard setback (addition of the eight-foot reduction to the rear setback).

For single-family residential dwellings on through lots that have two front yard setbacks, only one front yard setback may be reduced up to 50 percent of that required for other parcels in the same zoning district provided that the other (opposite) front yard setback is increased by the amount of the requested reduction. For through lots, only one front yard setback may be granted this reduction. On through lots with garages in the front setback, the reduction may only be granted to the front setback where the garage is located, if applicable.

The reduced front yard setback applies to all structures including the main structure, decks, eaves, etc. If the reduced front yard setback is used, the allowed projections of Table 3-2 (Allowed Projections into Setbacks) do not apply. Living space is permitted below a garage within the front yard setback in compliance with Section 18.30.120.F.3.f.

b. Side setbacks. A single-family dwelling and related accessory structures may extend up to two feet into a required side yard setback but no closer than eight feet to a side property line, and allowed projections as listed in Table 3-2 (Allowed Projections Into Setbacks) may be located up to five feet into a required side setback, but no closer than five feet to any side property line only as follows:

(1) The average width of the parcel at the building pad is 80 feet or less;

(2) The wall of the structure is located no closer than 15 feet to the wall of any structure on an adjoining parcel;

(3) The pitch of any portion of the roof within the side yard setback is not directed toward the side property line or the structure has a non-shedding roof with a deed restriction recorded on the property that limits the type of roofing materials to a non-shedding roof materials and/or snow retention mechanism for the life of the structure; and

(4) Windows and other wall openings of the structural wall within the side setback are limited to five percent or less of the total area of the wall.

c. Side setbacks for nonconforming structure. An addition or modification to a single-family dwelling that encroaches into the side setback may extend up to five feet into a required side setback, but no closer than five feet to a side property line, as follows:

(1) The Director finds all of the following:

(a) The height and design of the addition or modification is compatible with the existing structure;

(b) The side yard setback for the addition or modification is equal to or greater than the side yard setback for the existing dwelling;

b. A written narrative shall accompany the solar evaluation, identifying solar opportunities for the development, as well as potential impacts to adjacent properties. Solar access opportunities include, but are not limited to identification of building orientation for maximum solar gain, appropriate landscaping, lot size and shape, building height, roof eave design, solar protection and street layout. To the extent feasible, the applicant shall incorporate these solar opportunities into the project's final design.

C. Orientation of structures. Future structures should be oriented to maximize solar access opportunities.

D. Pools and spas. A pool or spa facility owned and maintained by a homeowner's association or multi-family rental complex shall be equipped with a solar cover (i.e. an insulative thermal barrier designed to prevent heat loss and help facilitate solar gain). Solar water heating systems are encouraged.

E. Collector installation. Solar collectors, if provided, shall be located and installed in the following manner:

1. Roof-mounted solar collectors shall be placed in the least conspicuous location without reducing the operating efficiency of the collectors;

2. Wall-mounted and ground-mounted collectors shall be screened from public view, to the maximum extent feasible;

3. Roof-mounted collectors shall be installed at the same angle or as close as possible to the pitch of the roof. Solar panels may be placed on a flat roof in an angled position if they are appropriately screened from view by elements that are compatible with the architectural style, color and use of materials on the main portions of the building;

4. Appurtenant equipment, particularly plumbing and related fixtures, shall be installed in the attic whenever possible or screened from public view, to the maximum extent feasible; and

5. Exterior surfaces of the collectors and related equipment shall have a matte finish and shall be color-coordinated to harmonize with roof materials and other dominate colors of the structure.

E. Obstruction of solar access. Structures (building, wall, fence, etc.) should not be constructed or new vegetation placed or allowed to grow, so as to obstruct solar access on an adjoining parcel.

18.30.150 - Solid Waste/Recyclable Materials Storage

This Section provides standards for the construction and operation of solid waste and recyclable material storage areas in compliance with State law (California Solid Waste Reuse and Recycling Access Act, Public Resources Code Sections 42900 through 42911). All developments must comply with Solid Waste and Recycling requirements found in the Town of Truckee Municipal Code Chapter 6.

A. Size Requirements. The dimensions listed in Table 3-4 represent the uninterrupted space requirements for material storage containers. Any additional bollards, posts, hinges or other building-related items must make way for these dimensions and are not included in the sizing requirements listed.

TABLE 3-4
STORAGE AREA REQUIREMENTS

Container	Inside Clearance Required		
	Width	Depth	Height
Dumpster	10 ft.	9 ft.	~~8-6~~ ft.; 10 ft. for enclosures with a roof
Wheeled Cart	2.6 ft.	2.6 ft.	4 ft.

1. **Required storage for multi-family projects.** Multi-family residential projects with five or more dwelling units shall provide solid waste and recyclable material storage areas as follows:

   a. **Individual unit storage area requirements.** Each dwelling unit shall be provided an internal area of a minimum of six cubic feet designed for the storage of solid waste and recyclable material. A minimum of three cubic feet shall be provided for solid waste and a minimum of three cubic feet shall be provided for recyclable material; and

   b. **Common storage area requirements.** Common solid waste and recyclable material storage containers shall be at least one third of a cubic yard of container capacity per unit (assuming average 2-3 people/unit and once-a-week collection). This is the sum of volumes of mixed waste and recycling, with proportions of 60% for mixed waste and 40% for recycling. Storage containers may be located indoors or outdoors as long as they are readily accessible to all residents. These minimum requirements may be reduced by the Community Development Director upon a finding that the reduced requirements will provide sufficient storage area for solid waste and recyclable materials generated by the structures and uses.

   c. **Alternative storage area requirements.** Subject to approval from the Community Development Director, if the above-referenced common storage area requirements are determined to be infeasible (i.e., insufficient space exists onsite to meet the minimum storage requirements), individual unit mixed waste compactors may be installed to reduce common storage area needs. Separate non-compacted individual unit recycling storage is also required.

2. **Required storage area for non-residential structures and uses.** Waste capacity is dependent on the type of occupant. Storage areas will be approved on a case-by-case basis in consultation with the Town's Solid Waste Division and local solid waste service provider.

B. Location requirements. Solid waste and recyclable materials storage areas shall be located in the following manner:

1. Solid waste and recyclable material storage shall be adjacent/combined with one another. They may only be located inside a specially-designated structure, or the outside of a structure in an approved fence/wall enclosure, a designated interior court or yard area with appropriate access or in rear yards and interior side yards. Exterior storage area(s) shall not be located in a required front yard or street-side setback, parking, landscaped or open space areas, or any area(s) required by the Municipal Code to be maintained as unencumbered. If site limitations make adjacent mixed solid waste and recycling container storage infeasible, containers may be stored in separate locations with approval by the Community Development Director as long as recycling containers are as conveniently located as trash containers;

2. The storage area(s) shall be accessible to residents and employees. Storage areas shall be located within 250 feet of an access doorway to the commercial and residential units which they are intended to serve;

3. Driveways or aisles shall provide unobstructed access for collection vehicles and personnel and provide at least the minimum clearance required by the collection methods and vehicles utilized by the designated collector. Where a parcel is served by an alley, exterior storage area(s) shall be directly accessible to the alley; and

4. Alternate storage locations may be approved by the Community Development Director. A shared offsite storage area to serve more than one parcel may be approved if a deed restriction is recorded on the properties to ensure the future availability of the storage area to the parcels it is designed to serve.

C. Design and construction. The storage areas shall be designed and constructed to:

1. Be compatible with the project and surrounding structures and land uses;

2. Be properly secured to prevent access by unauthorized persons, while allowing authorized persons access for disposal of materials;

3. Be in compliance with the waste hauler requirements in terms of door security, reverse distance, turning radius, and roof clearance;

4. Provide a concrete pad within the fenced or walled area(s) and a concrete apron which facilitates the handling of the individual bins or containers;

5. Protect the areas and the individual bins or containers provided within from wildlife and from adverse environmental conditions which might render the collected materials unmarketable;

6. Be appropriately located and screened from view on at least three sides subject to the approval of the Director. The method of screening shall be architecturally compatible with the surrounding structures;

7. Screen all carts and other storage containers (grease containers, compost containers, etc.) for commercial and multifamily uses. Screening may be accomplished by buildings, architectural features, decks, or fencing; and

Section 18.58.025 - Accessory Dwelling Units

This Section establishes standards for the development and operation of accessory dwelling units, previously known as secondary residential units and hereafter referred to as "ADUs." For information specific to junior accessory dwelling units (JADUs), see Subsection N-O below.

A. Applicability. Accessory dwelling units (ADUs) are allowed in all zoning districts that allow single-family and multifamily dwelling residential uses (i.e., DRS, DRM, DRH, RR, RS, RM, DMU, DC, DM, DVL, CN, CG, CS, M, RC and REC zoning districts) subject to compliance with the development standards of the underlying zoning district for the primary dwelling and the requirements of this Section. If a conflict arises between the general development standards and the development standards applicable to ADUs, the development standards of this Section shall supersede any conflicting development standard of Article II or Article III.

B. Types of ADUs.

1. **Attached ADU.** An attached ADU is within or directly connected to an existing or proposed primary dwelling or its attached garage, having a wall and/or other conditioned space in common. This can include remodeling an existing permitted living space into an ADU, converting existing non-living space into an ADU, adding square footage or an additional floor to the primary dwelling or its attached garage to create an ADU, etc.

2. **Detached ADU.** A detached ADU is physically separated from an existing or proposed primary dwelling and its attached garage, not sharing a common wall or other conditioned space. This includes converting an existing detached structure into an ADU, adding square footage or an additional floor to an existing detached structure to create an ADU, constructing a new detached structure to create an ADU, etc.

3. **Junior ADU (JADU).** A JADUs is a smaller type of attached dwelling unit that is no more than 500 square feet in size. Standards for JADUs are described in Subsection N-O below.

C. Number of units allowed. An ADU that conforms to the development standards in this Section is deemed to be an accessory use and/or an accessory structure and will not be considered to exceed the allowable density for the lot upon which it is located.

1. **Single-family parcels.** One accessory dwelling unit (attached or detached) and one junior accessory dwelling unit (JADU) shall be permitted on a legal parcel developed with one single-family dwelling. An ADU and/or JADU may be developed concurrently with a new single-family dwelling; however, final occupancy of the ADU/JADU shall not be issued prior to final occupancy of the new main dwelling.

2. **Multifamily parcels.** JADUs are prohibited on multifamily lots. On a lot with existing multifamily dwellings, the property owner of the underlying parcel may choose one or both of the following methods to create ADUs:

   a. **Detached ADUs.** Up to two detached ADUs shall be permitted with 16-foot height limits and 4-foot rear and side yard setbacks.

b. Converted ADUs. Converted ADUs within portions of existing multifamily dwelling structures that are not used as livable space (e.g., storage rooms, boiler rooms, passageways, attics, basements, attached garages) shall be permitted; the number of converted ADUs permitted shall be one unit per existing multifamily development or up to 25 percent of the existing unit count in the building, whichever is greater.

For example, a multifamily property with 12 existing units could add two detached ADUs and three new attached ADUs converted from within the existing, non-livable space.

D. Size and location standards.

1. Development envelopes and easements. For ADUs constructed on lots where the recorded subdivision map established development/building envelopes and/or where there are recorded easements on the property, the building envelope and easement restrictions shall take precedence over any setback reductions provided within Subsection D.3 (Size limits, setbacks and standards) below.

2. Proximity. A detached ADU shall be located within 100 feet of the main dwelling, unless a greater distance is determined to be necessary by the Director to avoid on-site septic systems, water supply systems, geographic constraints, and/or environmentally sensitive areas as defined in Section 18.46.030.B (Environmentally Sensitive Areas).

3. Size limits, setbacks and standards. ADU size (i.e., floor area and height), setbacks, and development standards are directly correlated, therefore they are combined in this Subsection D.3 (Size limits, setbacks and standards). Where side yard setback reductions are allowed in this Subsection, these reductions do not apply to street-side setbacks on corner lots. Additionally, on a through lot, both lot lines facing streets are front lot lines and subject to standard front yard setback standards; the lot is considered to have no rear lot line in accordance with the Development Code definition of "Lot Line."

a. Standard ADUs.

(1) Standard maximum floor area. The gross floor area of an attached or detached ADU is subject to the following standards:

(a) For single-family parcels under 1 acre in size and all multifamily parcels, the maximum gross floor area of an ADU shall not exceed the following:

i) 850 square feet* for an efficiency unit, studio or 1-bedroom ADU; or

ii) 1,000 square feet* for an ADU with two or more bedrooms.

(b) For single-family parcels of 1 acre or more, the maximum gross floor area of an ADU shall not exceed 1,200 square feet*, regardless of the number of bedrooms within the unit.

** The actual gross floor area of a standard ADU may be limited to less than these maximum sizes based on the application of the setbacks, height limits, and general development standards described in Subparagraphs (2) and (3) below.*

For example, a 2-bedroom ADU may be limited to 900 square feet in order to comply with the maximum allowable site coverage on the property.

(2) Setbacks and height. Any portion of ~~A~~n ADU that is 16 feet in height or less is permitted to be constructed with reduced side and rear yard setbacks, no closer than 4 feet to the side and/or rear property lines, including eaves. Any portion of an ADU structure that exceeds 16 feet in height from natural grade, shall comply with standard side and rear setbacks and height limits applicable to the main dwelling. (Note: Detached ADUs on multifamily lots shall not be permitted to exceed 16 feet in height per Section 18.58.025.c.2.a above.) ADUs shall comply with the standard front yard and street-side setbacks applicable to the main dwelling regardless of ADU height. The following standards shall apply to ADUs within the reduced side and/or rear yard setbacks:

(a) Roof design and materials. The pitch of any portion of the roof within the reduced setback shall not be directed toward the side or rear property line, or the structure shall have a non-shedding roof material and/or snow retention mechanism for the life of the structure. The Town of Truckee finds that, in accordance with Truckee Municipal Code Sections 15.03.080 (Declaration as High Snow Area) and 15.03.110 (Snow Loads) which declare that all of the Town of Truckee is classified as a severe climate and "high snow" area, the aforementioned design standards shall apply to roofs within setback areas to address snow-related issues associated with life safety, structural integrity, and property damage prevention.

(b) Architectural projections. All architectural projections shall comply with Table 3-2 (Allowed Projections in Setbacks) based on the standard setbacks for the zoning district, excluding eaves which are allowed up to 4 feet from side and rear property lines. For example, on a standard single-family residential lot in the RS zoning district, a deck may project up to 3 feet into the 10-foot side yard setback or 6 feet into the 20-foot rear yard setback. Projecting features shall not be permitted unless they comply with development standards (i.e., site coverage, floor area ratio, and open space).

(3) Other development standards. ADUs shall comply with all other general development standards applicable to the main dwelling, including site coverage, floor area ratio, and open space unless an exception is provided elsewhere in this Subsection D.3 (Size limits, setbacks and standards).

b. Deviations for smaller ADUs. An attached or detached ADU that has both a maximum gross floor area of 800 square feet and a maximum height of 16 feet from natural grade shall be permitted with the deviations to general development standards below. (An ADU that exceeds either 800 square feet of gross floor area or 16 feet in height from natural grade shall comply with Paragraph D.3.a (Standard ADUs) above.)

(1) Setback reductions. This category of smaller ADU, including eaves, is permitted to be constructed with reduced side and rear yard setbacks, no closer than 4 feet to the side and/or rear property lines. ADUs within the reduced side

and/or rear yard setbacks shall comply with Subparagraphs D.3.a.2.a (Roof design and material) and D.3.a.2.b (Architectural projections) above.

(2) Deviations to development standards. This category of smaller ADU is permitted to deviate from the site coverage, floor area ratio, and open space standards applicable to the property. Any deviation(s) shall be the minimum necessary to accommodate the floor area of the ADU living space, not to exceed an 800-square-foot deviation, and any existing nonconforming conditions to the zoning/development standards proposed to be exacerbated by the creation of an ADU must be legal.

c. Conversion ADUs. An existing legally constructed portion of a single-family dwelling or residential accessory structure that is converted to or replaced with an ADU shall not be required to meet additional setbacks beyond those that were required at the time the original structure was built. For replacements, if the structure is partially or completely demolished and replaced with a structure for a new ADU, the replacement structure shall be in the same location and shall not exceed the dimensions of the original structure, including footprint, floor area, and height, except as permitted below. The maximum gross floor area of the ADU portion of a converted or replaced structure shall not exceed the size limitations of Paragraph D.3.a.1 (Standard maximum floor area) above. For example, if the converted or replaced structure is 1,500 square feet, the ADU portion of the structure shall not exceed 1,000 square feet of gross floor area for a 2-bedroom ADU, and the remainder may be used for other residential accessory uses.

(1) Garage conversions. In addition to Paragraph D.3.c (Conversion ADUs) above, an existing legally constructed garage located within a front yard or street-side setback that is approved for conversion to or replacement with an ADU shall not include any windows, doors, or other wall openings on the elevation(s) that is/are parallel to and facing the street(s) within the standard setback area. The Town of Truckee finds that the incorporation of this standard is in accordance with Truckee Municipal Code Chapter 10.17 (Snow Removal) and is necessary for life safety to protect residents within or exiting the ADU during snow removal operations as large ice chunks can be projected through the air into front and street-side setbacks and toward buildings and windows within those areas.

(2) Roof modifications. If the converted or replaced structure is within the standard setbacks applicable to the main dwelling, and if substantial modifications are proposed to the existing roof design or surface/material as a part of the ADU creation, the modifications shall comply with Subparagraph D.3.a.2.a (Roof design and material).

(3) Expansions of conversion ADUs. If a conversion ADU is less than the maximum allowable floor area for an ADU, an expansion/addition may be approved; however, any expansions shall be subject to the standard unit size, height limit, setbacks, site coverage, floor area ratio, open space, and other development standards that would be applicable to a new ADU.

(4) **Ingress/Egress for conversions.** In addition to any expansion allowed under Subparagraph D.3.c.3 (Expansions of conversion ADUs), a conversion ADU may include an expansion of the existing structure up to 150 square feet for the purpose of accommodating ingress and egress to/from the ADU. This is permitted only for space that is unconditioned and not fully enclosed (e.g., front porch, covered stairway, breezeway, wheelchair ramp). This space is allowed to deviate from site coverage, floor area ratio, and open space standards applicable to the property up to 150 square feet, and, if relevant, may be used in addition to the deviations permitted for smaller ADUs in Subparagraph D.3.b.2 (Deviations to development standards) above.

(a) **Setbacks for ingress/egress.** A new ingress/egress feature for a conversion ADU shall be no closer than 4 feet to the side or rear property line and shall not extend further into standard front yard or street-side setbacks than the walls of the conversion ADU unless the feature is an architectural projection in compliance with Table 3-2 (Allowed Projections in Setbacks).

d. Minimum floor area. A minimum floor area of 150 square feet is required for all ADUs.

E. Parking and driveways.

1. **Parking standard.** One on-site parking space shall be provided for each ADU, in addition to any parking required for the main dwelling unit, in compliance with Chapter 18.48 (Parking and Loading Standards), unless an exemption is provided below:

2. **ADU garage size.** If a garage or carport for an ADU is proposed, it shall not exceed 500 square feet, shall comply with all general development standards applicable to garages and carports, including site coverage, floor area ratio and open space, and shall be consistent with Section 18.58.220.F.1.c (Residential Accessory Uses and Structures – Garages).

3. **Parking exemptions.** The one on-site parking space for the ADU shall not be required if any of the following situations apply:

   a. The ADU is located within a half mile walking distance of a transit stop or within the Downtown Specific Plan Area General Plan Land Use Designation;

   b. The ADU is part of an existing or proposed primary residence or an existing accessory structure; or

   c. When on-street parking permits are required but not offered to the occupant of the ADU.

   d. A car share vehicle station is located within one block of the ADU.

4. **Replacement parking exemption.** When a legally constructed garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or is converted to an ADU, replacement parking for the main dwelling is not required.

5. **Parking location.** The Town of Truckee finds that in accordance with Truckee Municipal Code Chapter 10.17 (Snow Removal) and due to Truckee's unique winter climate, the necessity to provide fast and efficient snow removal operations to accommodate emergency response vehicles and enhance driver safety, and the need to minimize property damage to parked vehicles during snow removal operations, required parking for ADUs and any required replacement parking for the main dwelling shall meet the following criteria:

   a. All required parking shall be entirely on the private property and not in the right-of-way (Development Code 18.78.070.A, Location [of off-street parking]);

   b. No required parking shall be located within a snow storage easement (Municipal Code Section 10.17.030, Obstructing snow removal equipment prohibited). Required parking shall be prohibited within easements unless either: (i) the easement is amended, with the consent of all entities with an interest in the easement, to clarify that the parking can remain in place in perpetuity notwithstanding any other provision of the easement; or (ii) all entities with an interest in the easement provide written consent for the parking to remain in place in perpetuity, which such consent is absolute, irrevocable, permanent, supersedes the easement to the extent it is inconsistent with the easement, and is recorded in the official records of Nevada County;

   c. No required parking shall be located within five feet of side property lines (Public Improvements and Engineering Standards Section 4.07, Driveways); and

   d. Unless otherwise restricted by the above requirements, tandem parking and/or parking within setback areas is permitted.

6. **On-street parking restriction.** Nothing within Subsection ~~F~~ E (Parking and driveways), including the exemptions, shall be deemed to permit on-street parking during any time when such parking is prohibited. This includes, but is not limited to, the on-street parking restriction throughout Truckee from November 1 to April 30 annually (Truckee Municipal Code Section 10.17.030, Obstructing Snow Removal Equipment Prohibited).

7. **Shared driveway.** An ADU shall be served by the same driveway encroachment as the main dwelling unit. A second driveway for an ADU will be permitted only if all of the following standards are met: 1) The ADU is located on a corner lot or through lot where the ADU will be accessed from a street other than the street providing access to the primary residence, or the ADU is on a lot with road frontage exceeding 150 lineal feet; 2) the proposal shall demonstrate compliance with the maximum allowable site coverage applicable to the property; and 3) the proposal shall comply with all other applicable Development Code standards and Public Improvement and Engineering Standards for single-family driveways and required off-street parking locations, except as modified within Subsection ~~F~~ E (Parking and driveways).

F. ADU design features.

1. **ADU entrance.** The ADU shall have an exterior entrance separate from the main entrance to the proposed or existing main dwelling; this egress/entrance shall include a continuous and unobstructed path of travel to/from the public way. Additionally, the ADU may share with the main dwelling and/or JADU a single interior entryway (e.g., airlock, mudroom) not to exceed 80 square feet that provides direct, private access to each unit; however, in no case shall the primary entrance to the ADU be through the main dwelling living area, JADU, garage, or other interior space. A shared entryway is considered part of the main dwelling and is subject to general development standards applicable to the main dwelling, including setbacks, height limit, site coverage, floor area ratio, and open space.

2. **Interior access.** Interior access between the ADU and the main dwelling, attached or detached garage for the main dwelling, and/or other residential accessory structures shall be allowed, in compliance with all applicable California Building Standards Code requirements, as adopted by the Town of Truckee. If interior access is proposed, the tenant of the ADU shall be able to lock the shared door from the interior of the ADU for privacy.

3. **Kitchen or cooking facilities.** An ADU shall include a permanent kitchen or cooking facility, consistent with the Development Code definition of a kitchen (Section 18.220.020.K, Kitchen or Cooking Facilities, Residential). At a minimum, an ADU kitchen shall include the following equipment:

   a. Cooking facilities (i.e., a standalone cooking appliance with at least two burners that is connected to a gas stub or 220 electric volt outlet; does not include portable cooking accessories such as hot plates and other temporary heat sources);

   b. A refrigerator (no minimum size); and

   c. A sink for dishwashing and sanitation purposes.

G. ADU historic design standards. *(Reserved for future use.)*

H. Water supply and sewage disposal. All water supply and sewage disposal shall be provided by an established community system or by an on-site system approved by the Nevada County Environmental Health Department. An ADU shall not be allowed on a parcel that is served by an on-site septic system unless approval is obtained from the Nevada County Environmental Health Department and the unit complies with the Lahontan Regional Water Quality Control Board.

I. Occupancy and rental requirements. The short-term rental of an ADU for a term of less than 31 consecutive days is prohibited ~~for all ADUs for which a building permit was issued on or after January 1, 2020, including after-the-fact permits for existing illegal ADUs described in Subsection L (Illegal accessory dwelling units) below. On a parcel with a primary dwelling unit and an ADU permitted prior to January 1, 2020, only one of the units may be short-term rented for a term of less than 31 consecutive days~~. There are no occupancy restrictions for long-term rentals of 31 days or more on either the primary dwelling unit or the ADU.

J. Sale of unit prohibited. No ADU shall be subdivided from the main dwelling through a condominium plan, community apartment plan, housing cooperative, or other subdivision. The

sale or conveyance of an ADU independent and/or separate from the main dwelling shall be prohibited.

K. **Deed Restriction Requirements.** Prior to the issuance of a temporary or final certificate of occupancy, an ADU requires the recordation of a deed restriction in a form approved by the Town of Truckee, which shall run with the land, and shall include the following:

a. A prohibition on the sale of the accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers;

b. A restriction on the size and attributes of the accessory dwelling unit in compliance with this Section; and

~~a.~~c. A prohibition on the short-term rental of the accessory dwelling unit for a period of less than 31 consecutive days.

~~J.~~L. **Building code requirements.** Each ADU and JADU shall obtain a building permit from the Town of Truckee and shall be constructed in compliance with all applicable California Building Standards Code requirements, as adopted by the Town of Truckee.

1. **Fire sprinklers.** ADUs are not required to provide fire sprinklers if sprinklers are not required for the primary dwelling unit.

2. **Manufactured home, tiny homes, etc.** A manufactured home (a.k.a. mobile home), modular home (a.k.a. factory-built or prefabricated home), tiny home, park model home, or similar unit may be used as an ADU if it is permanently attached to a foundation and complies with the California Building Standards Code, as adopted by the Town of Truckee. A tiny home on a chassis or park model home on a chassis is not permitted for use as an ADU unless it is modified to meet the aforementioned standards.

3. **Movable units.** A recreational vehicle (e.g., motorhome, campervan, truck camper, travel trailer, pop-up trailer, fifth wheel trailer, toy hauler), travel van, or other movable habitable space generally cannot be approved as an ADU; however, it may be approved if it is permanently attached to a foundation and complies with the California Building Standards Code, as adopted by the Town of Truckee.

~~K.~~M. **Illegal accessory dwelling units.** This Section shall not validate any existing illegal ADU. To convert an unpermitted ADU to a legal, conforming unit, the standards and requirements for the conversion shall be the same as for a newly proposed ADU, including the rental restrictions described in Subsection I (Occupancy and rental requirements) above.

~~L.~~N. **ADU reversions.** If an ADU or JADU is legally permitted and constructed with deviations to the development standards that would otherwise be applicable to the property, as permitted by the Subsections D (Size and location standards) and/or ~~F~~E (Parking and driveways) above, and the ADU is subsequently reverted or converted to another use other than an ADU/JADU, any deviations from development standards (e.g., setbacks, site coverage, floor area ratio, open space, parking) shall be brought into compliance with the standards in effect at the time a

complete application for a reversion or conversion of the space is submitted to the Community Development Department.

~~M.~~O. Junior Accessory Dwelling Units (JADUs).

1. **Applicability.** JADUs are allowed in all zoning districts that allow single-family residential uses (i.e., RS, RR, DRS, DMU, RC and REC zoning districts), subject to compliance with the requirements of this Section.

2. **Number of units allowed.** A maximum of one junior accessory dwelling unit (JADU), in addition to one attached or detached ADU, shall be allowed on a parcel with an existing or proposed single-family dwelling.

3. **Location on site.** A JADU must share at least one wall, floor, and/or ceiling with the living space of the attached main dwelling. A JADU may be created by converting existing space within the walls of an existing single-family residence, built as an attached addition to an existing residence, or constructed concurrently as an attached unit to a new single-family residence. If a JADU is created as an addition to an existing residence or concurrent with a new residence, the JADU shall comply with all development standards applicable to the main dwelling, including setbacks, height limits, site coverage, floor area ratio, open space, etc.

4. **Floor area limitation.** The gross floor area of the JADU shall not exceed 500 square feet and shall not be less than 150 square feet.

5. **JADU separate entrance.** A JADU shall have an exterior entrance separate from the main entrance to the existing or proposed single-family residence; this egress/entrance shall include a continuous and unobstructed path of travel to/from the public way. Additionally, the JADU may share with the main dwelling and/or ADU a single interior entryway (e.g., airlock, mudroom) that provides direct, private access to each unit; however, in no case shall the primary entrance to the JADU be through the main dwelling living area, ADU, garage, or other interior space. A shared entryway is considered part of the main dwelling and is subject to general development standards applicable to the main dwelling, including setbacks, height limit, site coverage, floor area ratio, and open space.

6. **Interior access.** Interior access from the JADU to the main dwelling may be maintained; however, if the sanitation facilities are shared with the main dwelling as allowed in Subsection 8 below (Sanitation Facilities), unrestricted interior access to the sanitation facilities is required at all times. If interior access is proposed, the tenant of the JADU shall be able to lock the shared door from the interior of the JADU for privacy.

7. **Cooking facilities.** The JADU shall include an efficiency kitchen, which shall include the following:

   a. A cooking facility with appliances. (Note: Government Code Section 65852.22(a)(6) does not permit local jurisdictions to specify exactly what "a cooking facility with appliances" must include for JADUs. This standard can be met with basic plug-in kitchen appliances (e.g., microwave. hot plate, mini-fridge) or with a full, high-end kitchen (e.g., gas range, double oven, large sink with disposal, commercial

refrigerator). Therefore, a JADU is not required to comply with the Development Code definition of a "Kitchen or Cooking Facility," which specifies several types of appliances required in residential kitchens.)

b. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

8. **Sanitation facilities.** A JADU may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

9. **Water supply and sewage disposal.** A JADU shall not be considered a separate or new dwelling unit for the purposes of providing service for water, sewer or power.

10. **Parking.** No additional parking shall be required for a JADU.

11. **Occupancy and rental requirements.**

    a. **Short-term rental restriction.** The short-term rental of a JADU for a term of less than 31 consecutive days is prohibited for all JADUs, including after-the-fact permits for existing illegal ADUs described in Subsection 13 (Illegal junior accessory dwelling units) below.

    b. **Owner occupancy.** On a parcel with a primary dwelling unit and a JADU, only one of the units may be rented; the owner must reside in either the remaining portion of the main dwelling or in the JADU. For example, the owner could reside in the main dwelling and long-term rent the JADU, or the owner could reside in the JADU and choose to long-term or short-term rent the main dwelling. Owner-occupancy is not required if the owner is a governmental agency, land trust, or housing organization.

12. **Deed restriction requirements.** Prior to the issuance of a temporary or final certificate of occupancy, a JADU requires the recordation of a deed restriction in a form approved by the Town of Truckee, which shall run with the land, and shall include the following:

    a. A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers; and

    b. A restriction on the size and attributes of the junior accessory dwelling unit in compliance with this Section.

    c. A prohibition on the short-term rental of the junior accessory dwelling unit for a period of less than 31 consecutive days.

    d. Requires owner occupancy consistent with Subparagraph M.11.b (Owner occupancy) above.

13. **Illegal junior accessory dwelling units.** This Section shall not validate any existing illegal JADUs. To convert an unpermitted JADU to a legal, conforming unit, the standards and requirements for the conversion shall be the same as for a newly proposed JADU,

including the rental restrictions described in Subsection 11 above (Occupancy and rental requirements).

18.58.030 - Accessory Retail Uses

This Section establishes standards for the development and operation of retail sales and service establishments within/in conjunction with and accessory to a main commercial and/or manufacturing use where authorized by Article II (Zoning Districts and Allowable Land Uses). For example, these accessory uses include restaurants and pharmacies within hospitals, etc., and the sale of retail merchandise.

A. General standard. Accessory retail uses are allowed, provided there will be only minor external evidence of any commercial activity other than the main use of the parcel (e.g., no signs, windows with merchandise visible from adjoining public rights-of-way, etc.), nor access to any space used for the accessory retail use other than from within the main structure.

B. Commercial and manufacturing zoning districts. Restaurants and retail sales are allowed in the commercial zoning districts incidental and accessory to offices, hospitals and other medical facilities and pharmacies. Accessory restaurants, retail sales and other services are allowed in the manufacturing zoning district to serve the needs of the employees.

C. Residential and special purpose zoning districts. Membership organizations, social or recreational establishments may engage in retail sales for guests only.

D. Review and approval required. Accessory retail uses shall be subject to land use permit approval in compliance with Chapter 18.12 (Commercial and Manufacturing Zoning Districts). In order to approve an accessory retail use, the Director shall find that there will be no harm to adjoining existing or potential residential development due to excessive noise, traffic or other adverse effects generated by the accessory use.

18.58.040 - Accessory Uses — General Standards

This Section establishes standards defining the relationship between a main use and an accessory use on the same site, where the accessory use is a common feature of the main use but would not be allowed by the applicable zoning district as a main use on the same site. For example, a coffee shop in a CG (General Commercial) zoning district may include minor coffee bean roasting as part of its operations as an accessory use in compliance with this Section, but coffee roasting as a main use would be allowed as a main use only in the M (Manufacturing/Industrial) district.

A. Allowable accessory uses. Accessory uses are allowed in conjunction with a main use as follows:

1. **Accessory retail sales.** Accessory retail sales are allowed in compliance with Section 18.58.030 (Accessory Retail Uses), above.

2. **Residential accessory uses.** Residential accessory uses are allowed in compliance with Section 18.58.220 (Residential Accessory Uses and Structures).

(2) Raising and keeping of backyard chickens in association with multi-family residential uses in these zoning districts may be allowed subject to Minor Use Permit approval

3. **Shelter requirement.** A coop shall be provided that meets the following minimum standards:

   a. Be predator-proof from the sides, the top, and from below.

   b. Be located a minimum of 20 feet to the nearest abutting residence and five feet to any property line.

   c. Movable chicken coops are allowed in compliance with Table 3-3 for Residential Accessory Uses and Structures, and shall be considered temporary structures.

18.58.070 - Bed and Breakfast Inns

This Section establishes standards for the development and operation of Bed and Breakfast Inns (B&Bs). The intent of these provisions is to ensure that compatibility between the B&B and any adjoining residential zoning districts/uses is maintained and enhanced.

A. **Applicability.** Bed and Breakfast Inns (B&Bs) are allowed in the RR, RS, DRS, RM, DRM, DRH, DMU, CN and CH zoning districts with Minor Use Permit approval in compliance with Chapter 18.76, and in the CG and DC zoning districts with Zoning Clearance approval in compliance with Chapter 18.72.

   1. **Hosted Rental Exceptions.** The renting of one designated bedroom within a single-family ~~or multi-family~~ dwelling for the purpose of overnight or vacation lodging as a hosted rental is allowed as a permitted use, ~~in the RR, RS, DRS, RM, DRM, DRH, DMU, CN, CH, CG and DC zoning districts~~ subject to compliance with Municipal Code Chapter 3.24 (Transient Occupancy Tax) and the following criteria:~~.~~

      a. A hosted rental requires the homeowner(s) to occupy the single-family dwelling as their principal place of residence (i.e., primary home);

      b. At least one homeowner shall live on-site in the main dwelling for the entirety of the visitor's stay, which may be for a period of up to 30 consecutive days;

      c. A maximum of one designated bedroom is allowed per single-family dwelling;

      d. A kitchen, cooking facility, wet bar, or sink outside of a permitted bathroom area shall be prohibited within the designated bedroom;

      e. The designated bedroom shall have internal, conditioned access to the main dwelling; and

      f. Guests shall be provided access to kitchen and sanitation facilities within the main dwelling.

      ~~a.~~g. Prohibited Spaces. This hosted rental exception ~~applies to a dwelling with one family in permanent residence renting a maximum of one bedroom per parcel. This exception~~

does not apply to accessory dwelling units, junior accessory dwelling units, detached living areas, or any portions thereof. ~~Accessory dwelling units or any portion thereof may only be rented for a term of less than 31 days if permitted by Section 18.58.025.I (ADU Occupancy and rental requirements) and subject to compliance with Municipal Code Chapter 3.24 (Transient Occupancy Tax) and Municipal Code Chapter 5.02 (Transient Rentals of Residential Units).~~ Detached living areas may only be rented for a term of less than 31 days if ~~included~~ allowed as part of a Bed and Breakfast Minor Use Permit.

B. Exterior appearance. The exterior appearance of the structure housing the B&B in a residential zoning district shall not be altered from its original single-family character except for a sign as allowed by Subsection I, below, and those structural modifications necessary to comply with the requirements of Title 24 of the California Building Code of Regulations.

C. Fire safety. The B&B shall meet the requirements of the Truckee Fire Protection District.

D. Guest rooms. The availability of guest rooms are limited to a maximum of three rooms in the RR, RS and DRS zoning districts and five rooms in the other zoning districts. Guest rooms shall not contain food preparation facilities.

F. Internal access. All access to guest rooms shall be from within the B&B inn or the guest room shall be located in an approved detached living area.

F. Limitation on services provided. Service shall be limited to the rental of bedrooms or suites, and meal/beverage service shall be provided for registered guests only. Separate/additional kitchens for guests are not allowed. Receptions, private parties or similar activities, for which a fee is paid or which is allowable only as a condition of room rental, shall not be allowed.

G. Off-street parking. Off-street parking shall be provided at a ratio of one space for each guest room plus two for the on-site owner/manager of the B&B. Parking shall be located, to the extent possible, out of the required front and side yard setbacks. Parking spaces for the disabled may be counted toward the required off-street parking.

H. On-site management. The B&B shall be the main residence of the B&B owner or manager.

I. Signs. On-site signs shall be in compliance with Chapter 18.54 (Signs). The design, location and lighting of the sign shall ensure compatibility with the architecture of the B&B and the surrounding neighborhood.

J. Site requirements. The proposed site shall generally conform to the standards of the applicable zoning district.

K. Transient Occupancy Tax. B&Bs shall be subject to the Transient Occupancy Tax in compliance with Chapter 3.24 of the Municipal Code, and shall maintain guest registers to ensure accurate occupancy records.

18.58.075 - Cannabis Delivery Services

~~18.58.100 – Detached Living Areas~~

~~This Section establishes standards for the development and operation of living quarters that are detached from and not a required element of the main dwelling and is designed for human occupancy. Detached living areas include bedrooms, recreation rooms, home offices and similar habitable areas in any area where single-family dwellings are allowed in compliance with Article II (Zoning Districts and Allowable Land Uses).~~

~~**A. Access.** The detached living area may have direct, covered access to the main dwelling, and shall be designed to provide practical pedestrian access to the main dwelling.~~

~~**B. Design standards.** A detached living area shall be designed as follows:~~

~~1. **Maximum floor area**. The gross floor area shall not exceed the lesser of 50 percent of the existing living area of the main dwelling or:~~

~~a. On parcels less than one acre: 800 square feet of gross floor area; or~~

~~b. On parcels of one acre or more: 1,200 square feet of gross floor area.~~

~~The floor area for a detached living area incorporated into a garage structure or in a separate residential accessory structure shall not be counted towards the maximum floor area limits for garages and residential accessory structures as set forth in Section 18.58.220.~~

~~2. The detached living area shall be designed to maintain visual consistency and compatibility with the main dwelling and with other residential structures in the surrounding neighborhood;~~

~~3. The detached living area may only include sleeping area and living area, except that there is no limit on the number of allowed bathrooms;~~

~~4. The detached living area shall not contain a kitchen or other cooking facilities;~~

~~5. A detached living area and accessory dwelling unit may not be located within a single detached residential accessory structure.~~

~~**C. Maximum number of structures.** Only one detached structure with living area shall be allowed on a single legal parcel of record.~~

~~**E. Plumbing and electrical installations.** Allowable plumbing shall be limited to that required for a single one-well sink with a maximum surface area of two square feet and for a single bathroom. The bathroom may only contain one water closet, lavatory and a shower or tub. Electrical installation shall be limited to the minimum required for heating, light and ventilation. Line drawings shall be submitted for approval, and shall delineate all plumbing and electrical installations proposed in compliance with this standard.~~

~~**F. Rentals prohibited.** The detached living area shall not be separately rented or leased from the main dwelling, whether compensation is direct or indirect.~~

~~**G. Subdivision prohibited.** The portion of the site accommodating the detached living area shall not be subdivided from the portion of the site containing the main dwelling.~~

~~**H. Utilities.** All utilities serving the detached living area (e.g., electricity, gas, sewer and water) shall be common to and dependent on the main dwelling. The detached living area shall not be provided with separate utility meters.~~

18.58.110 - Drive-In and Drive-Through Facilities

A. Purpose and applicability. This Section establishes supplementary standards for drive-in restaurants and fast food establishments with drive-through facilities, located within the CH (Highway Commercial) zoning district, which conduct business while customers remain in their vehicles. Other types of drive-in and drive-through facilities are not permitted.

B. Permit requirement. Drive-in restaurants and fast food or counter-service establishments, with drive-through facilities, shall require Use Permit approval in compliance with Chapter 18.76 (Use Permits and Minor Use Permits).

C. General standards. Drive-in and drive-through facilities shall be designed and operated to effectively mitigate problems of air pollution, congestion, excessive pavement, litter, noise and unsightliness, and shall comply with the on-site circulation standards in Subsection E, below, which are not applicable to drive-in theaters or service stations.

D. Accessory use required. Drive-through facilities may only be accessory to an allowable main use.

E. On-site circulation. Parcels with drive-through facilities shall be provided with internal circulation and traffic control devices as follows:

1. **Aisle design.** Drive-through aisles shall be located and designed as follows:

   a. The entrance/exit of any drive-through aisle shall be at least 50 feet from an intersection of public rights-of-way (measured at the closest intersecting curbs) and at least 25 feet from the edge of any driveway on an adjoining parcel. The drive-through aisle or stacking area (see following Subsection E.2) shall not be located adjacent to a street frontage.

   b. Drive-through aisles shall be designed with a minimum 10-foot interior radius at curves and a minimum 12-foot width.

2. **Stacking area.** A clearly identified area shall be provided for vehicles waiting for drive-through service that is physically separated from other on-site traffic circulation.

   a. The stacking area shall accommodate a minimum of five cars for each drive-through window in addition to the vehicle(s) receiving service.

18.58.220 - Residential Accessory Uses and Structures

This Section provides standards for specific residential accessory uses and structures allowed in the zoning district applicable to a parcel (see Section 18.08.030, Residential Zoning District Land Uses and Permit Requirements). Residential accessory uses include any use that is customarily related to a residence, including driveways, garages, greenhouses, storage sheds, studios, swimming pools/spas and workshops.

A. General requirements. Accessory uses and structures are subject to the following standards, except where more restrictive requirements are established by other provisions of this Section for specific uses.

1. **Relationship of accessory use to main use.** Accessory uses and structures shall be incidental to and not alter the character of the site from that created by the main use.

2. ~~**Attached structures**~~**Standards for accessory structures.** An accessory structure shall comply with the requirements of this Development Code applicable to the main structure, including heights, parcel coverage and setbacks, unless otherwise specified in this Development Code. An accessory structure for multi-family residential uses shall be architecturally compatible with the main structure.

3. **Detached structures.** A conditioned or unconditioned breezeway may be allowed to provide shelter between a detached accessory structure and the main dwelling. A breezeway is a roofed passageway with or without sides connecting two or more buildings or parts of a building.

   ~~a. **Breezeways.** A breezeway may be allowed to provide shelter between a detached accessory structure and the main dwelling when designed and constructed as a covered passageway which does not exceed 10 feet in width. A conditioned space connecting the detached structure to the main dwelling may qualify the structure as attached.~~

4. **Adjoining parcels under common ownership.** Residential accessory uses and structures, including the raising and keeping of animals, may be located on an adjoining parcel(s) if both parcels are under common ownership and the accessory use or structure complies with all provisions of this section. Recordation of a deed restriction tying the adjoining parcels together is required.

B. Building Permits. The Building Permit for a residential accessory use or structure shall not be:

1. Issued unless there is a residential use on the subject property or the permit is issued in conjunction with the residential dwelling permit; and

2. Finaled until there is a residential use on the subject property or the permit for the residential dwelling is finaled.

C. Antennas. Antennas are subject to the provisions of Section 18.58.250 (Telecommunications Facilities).

D. Driveways and Parking Pads. Driveways and parking pads are accessory uses and only allowed if a residential use is already established on the same property or if a residential dwelling permit is issued in conjunction with the driveway or parking pad permit. Driveways and parking pads are subject to the provisions of Chapter 18.48 (Parking and Loading Standards).

E. Garages. Garages shall comply with the following standards, as well as the special setback requirements in Section 18.30.120.E (Setbacks Requirements for Specific Structures and Situations).

1. Maximum floor area.

a. A detached accessory garage for a single-family residential parcel shall not occupy more than 1,000 square feet of floor area on parcels less than an acre in size and 2,000 square feet of floor area on parcels between one and five acres in size. On parcels larger than five acres, a detached accessory garage may occupy up to 2,000 square feet of floor area or 100 percent the size of the main residence, whichever is greater.

i. The floor area for a secondary residential unit in a detached accessory garage shall not be counted as part of the floor area of the garage.

ii. The floor area for a detached living area incorporated into a garage structure or in a separate residential accessory structure shall not be counted towards the maximum floor area limits for garages and residential accessory structures. For example, a detached accessory garage on a parcel less than an acre with a 1,600 sq. ft. residence may have a maximum floor area of 1,800 square feet of floor area (1,000 sq. ft. for the garage and 800 sq. ft. for the detached living area). A detached living area and accessory dwelling unit may not be located within a single detached residential accessory structure.

b. The floor area of an accessory garage that is attached to a main structure is not limited, except as required by the Building Code or any other applicable Town Code.

c. A garage or carport for an accessory dwelling unit: 1) shall be limited to 500 square feet, regardless of whether it is attached to or detached from the accessory dwelling unit; 2) shall be dedicated for use only by residents of the accessory dwelling unit, not accessible to residents of the main dwelling; 3) shall not be counted toward the cumulative maximum size for detached garages on a single parcel if the garage *is* attached to the accessory dwelling unit or main dwelling; and 4) shall be counted toward the cumulative maximum size for detached garages on a parcel if the garage or carport is not attached to the accessory dwelling unit or main dwelling.

F. Detached Living Areas. Living quarters which are designed for human occupancy and are physically detached from and not a required element of the main dwelling. Includes bedrooms, recreation rooms, home offices and similar habitable areas in any area where single-family dwellings are allowed in compliance with Article II (Zoning Districts and Allowable Land Uses).

1. **Access.** The detached living area may have direct, covered access to the main dwelling, and shall be designed to provide practical pedestrian access to the main dwelling.

2. **Design standards.** A detached living area shall be designed as follows:

   a. **Maximum floor area**. The gross floor area shall not exceed the lesser of 50 percent of the existing living area of the main dwelling or:

      i. On parcels less than one acre: 800 square feet of gross floor area; or

      ii. On parcels of one acre or more: 1,200 square feet of gross floor area.

   b. The detached living area shall be designed to maintain visual consistency and compatibility with the main dwelling and with other residential structures in the surrounding neighborhood;

   c. The detached living area may only include a sleeping area, living area, and a bathroom;

   d. The detached living area shall not contain a kitchen or other cooking facilities; and

   e. A detached living area and accessory dwelling unit may not be located within a single detached residential accessory structure

3. **Maximum number of structures.** Only one detached structure with living area shall be allowed on a single legal parcel of record.

4. **Plumbing and electrical installations.** Allowable plumbing shall be limited to that required for a single one-well sink with a maximum surface area of two square feet and for a single bathroom. The bathroom may only contain one water closet/lavatory and one shower/tub. Electrical installation shall be limited to the minimum required for heating, light and ventilation. Line drawings shall be submitted for approval, and shall delineate all plumbing and electrical installations proposed in compliance with this standard.

5. **Rentals prohibited.** The detached living area shall not be separately rented or leased from the main dwelling, whether compensation is direct or indirect.

6. **Subdivision prohibited.** The portion of the site accommodating the detached living area shall not be subdivided from the portion of the site containing the main dwelling.

7. **Utilities.** All utilities serving the detached living area (e.g., electricity, gas, sewer and water) shall be common to and dependent on the main dwelling. The detached living area shall not be provided with separate utility meters.

~~F.~~G. **Greenhouses.** An accessory greenhouse may occupy up to 500 square feet for each parcel less than or equal to 0.5-acres in size and up to 25% of the dwelling on parcels greater than 0.5-acres in size..

~~G.~~H. **Home occupations.** Home occupations are subject to the requirements of Section 18.58.120

(Home Occupations).

~~H.~~I. **Swimming pools/spas/hot tubs.** Private swimming pools, spas and hot tubs are allowed accessory to approved residential uses on the same parcel, subject to the following provisions:

1. The pool is to be used solely by occupants of the dwelling(s) on the same parcel and their invited guests; and

2. The pool shall be secured by fencing and/or walls to prevent uncontrolled access by children in compliance with the Town Building Code.

3. The pool is subject to the setback requirement in Section 18.30.120.E Table 3-3.

~~I.~~J. **Tennis and other recreational courts.** Non-commercial outdoor tennis courts and courts for other sports (e.g., racquetball, etc.) accessory to a residential use are subject to the following requirements:

1. Fencing shall be subject to the height limits of Section 18.30.070 (Fences, Walls and Hedges). Fencing for non-commercial outdoor courts up to a maximum of 20 feet in height, located outside the required setbacks, may be authorized by the Zoning Administrator through a Minor Use Permit in compliance with Chapter 18.76 (Use Permits and Minor Use Permits);

2. Lighting for non-commercial outdoor courts may be authorized by the Zoning Administrator through a Minor Use Permit in compliance with Chapter 18.76 (Use Permits and Minor Use Permits).

~~J.~~K. **Vehicle storage.** The outdoor storage of vehicles, including incidental restoration and repair, is subject to Chapter 10.20 (Abandoned Vehicles) of the Municipal Code.

~~K.~~L. **Cumulative size of accessory structures.** The maximum cumulative size for all allowed accessory structures on a parcel, but not including an accessory dwelling unit in a detached structure, shall be in compliance with Table 3-17.

a. **Allowable ground locations.** If ground-mounted, the antennas shall not be located between a structure and an adjoining street and shall be screened from public view and surrounding parcels;

b. **Screening.** If roof-mounted, the antennas shall be screened from ground view by a parapet or other type of screening. The minimum height and design of the parapet, wall or screening shall be subject to the approval of the Director;

c. **Size limitations.** The diameter of the ground-mounted antenna shall not exceed 12 feet. This provision may be modified by the Director if strict compliance would result in no/poor satellite reception;

d. **Height and location.** The height and location of the antennas shall comply with the requirements of the applicable zoning district. The height provision may be modified by the Director if strict compliance would result in no/poor satellite reception; and

e. **Setbacks.** If the subject parcel adjoins a residential zoning district, the antenna shall be set back a minimum distance from the property line that is equal to or greater than the height of the antenna, unless otherwise screened from public view to the satisfaction of the Director.

C. **Single pole/tower amateur radio antennas.** Single pole/tower amateur radio antennas shall be designed, constructed/installed and maintained in the following manner:

1. **Location requirements.** Antennas shall not be located in a front or side yard.

2. **Mounting.** Antennas may be ground- or roof-mounted.

3. **Height limit.** The maximum height shall not exceed 50 feet, measured from finish grade.

4. **Size limitations.** Any boom or other active element/accessory shall not exceed 25 feet in length.

D. **Television and radio broadcasting towers.** These towers shall be allowed in compliance with Chapter 18.76 (Use Permits and Minor Use Permits).

E. **Effects of development on antenna reception.** The Town shall not be liable if subsequent development impairs antenna reception.

F. **Variances.** Telecommunications facilities not complying with the requirements of this Section may be authorized only in compliance with Chapter 18.82 (Variances).

18.58.260 – Time-Share Uses

A. **Purpose** This Section establishes standards for the operation of time-share uses in commercial zones. The Town classifies time-share uses as commercial uses and the intent of these standards is to ensure compatibility of time-share uses, which are located in existing residential units, with any adjoining residential and commercial uses.

B. Inapplicability of Section to Existing Time-Share Uses. Nothing in this Section shall be deemed to apply to time-share properties existing as of the effective date of this Section or to render such time-share properties nonconforming with this code, provided that such time-share properties were approved by the Town as such, and have been owned and operated as such, prior to the effective date of this Section.

C. Definitions. For purposes of this Section, the following words and phrases shall have the meaning respectively ascribed to them by this paragraph C:

"Accommodation" means any dwelling, apartment, condominium or cooperative 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 multi-family dwelling as defined in Section 18.220.020.

"Dwelling" shall have the meaning ascribed to it by Section 18.220.020.

"Management 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 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.

D. Time-share Uses Restricted to Existing Single-Family Dwellings in General Commercial (CG) and Neighborhood Commercial (CN) Districts. Time-share uses are permitted uses within the Town's General Commercial (CG) District and Neighborhood Commercial (CN) District, subject to issuance of a Zoning Clearance applied for and approved in conformance with this Section and Chapter 18.72. Time-share uses are not permitted in all other zoning districts in Truckee and are not permitted in multi-family dwellings.

E. Application Process and Development Standards.

1. **Application Process.** Approval of a Zoning Clearance for time-share uses in the General Commercial (CG) District and Neighborhood Commercial (CN) District shall be required in accordance with the requirements of this Section and Chapter 18.72. In addition to any application requirements established by this Section and any other applicable requirements of this code, the following information shall be submitted as part of any application to develop or establish a time-share use:

   a. A description of the method of management of the time-share use and indication of the management entity for the time-share property.

   b. Any restrictions on the use or occupancy of the accommodations.

   c. Any other information or documentation the applicant or Town staff deems reasonably necessary to the consideration of the time-share use.

2. **Development Standards and Operational Requirements.** Notwithstanding any other provision of this chapter, the following conditions must be met by any time-share use in the General Commercial (CG) District or Neighborhood Commercial (CN) District:

   a. **Development Standards**. The time-share use shall comply with all development standards for the zone in which it is located.

   b. **Parking.** Two off-street parking spaces shall be provided for each time-share property.

   c. **Noise.** All time-share properties are subject to Chapter 18.44 (Noise) with the exception of Section 18.44.050 (Residential Interior Noise Standards). Time-share properties where the ambient noise levels may exceed 70 dB(A) CNEL are subject to Section 18.44.040.F.

   d. **Solid Waste.** All time-share properties are subject to Section 18.30.150.A.2 (Required storage area for non-residential structures and uses).

F. Violations, Enforcement and Civil Penalties.

1. 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 Section 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 Section. Such violation shall be punishable pursuant to Chapter 1.02.

2. Time-share use, and/or advertisement for time-share use, of an accommodation in violation of this Section 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 and/or restored by Town staff and also may be abated pursuant to Chapter 1.03, except that the civil

penalty for a violation shall be one thousand dollars ($1,000.00). Each day the violation occurs shall constitute a separate offense.

3. Any responsible person who violates this Section shall be liable and responsible for a civil penalty of one thousand dollars ($1,000.00) per violation per day such violation occurs. The Town may recover such civil penalty by either civil action or administrative citation. Such penalty shall be in addition to all other costs incurred by the Town, including without limitation the Town's staff time, investigation expenses and attorney's fees.

   a. Where the Town proceeds by civil action, the court shall have discretion to reduce the civil penalty based upon evidence presented by the responsible person that such a reduction is warranted by mitigating factors including, without limitation, lack of culpability and/or inability to pay. Provided, however, that in exercising its discretion the court should consider the purpose of this Section 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 Section. In any such civil action the Town also may abate and/or enjoin any violation of this Section.

   b. Where the Town proceeds by administrative citation, the Town shall provide the responsible person notice of the right to request an administrative hearing to challenge the citation and penalty, and the time for requesting that hearing.

      i. The responsible person shall have the right to request the administrative hearing within forty-five (45) days of the issuance of the administrative citation and imposition of the civil penalty. To request such a hearing, the responsible person shall notify the Town Clerk in writing within forty-five (45) days of the issuance of the citation. The appeal notification shall include all specific facts, circumstances and arguments upon which the appeal is based.

      ii. The Town Manager is hereby authorized to designate a hearing officer to hear such appeal. The hearing officer shall conduct a hearing on the appeal within ninety (90) days of the request for the hearing unless one of the parties requests a continuance for good cause. The hearing officer shall only consider those facts, circumstances or arguments that the property owner or responsible person has presented in the appeal notification.

      iii. The hearing officer shall render a decision in writing within thirty (30) days of the conclusion of the hearing. The hearing officer shall have discretion to reduce the civil penalty based upon evidence presented by the property owner or responsible person that such a reduction is warranted by mitigating factors including, without limitation, lack of culpability and/or inability to pay. Provided, however, that in exercising its discretion the hearing officer should consider the purpose of this Section to prevent and deter violations and whether the reduction of civil penalties will frustrate that purpose by resulting in the property owner's or responsible person's enrichment or profit as a result of the violation of this Section.

iv. Any aggrieved party to the hearing officer's decision on the administrative appeal may obtain review of the decision by filing a petition for writ of mandate with the Nevada County Superior Court in accordance with the timelines and provisions set forth in Government Code Section 53069.4.

v. If, following an administrative hearing, appeal, or other final determination, the owner of the property is determined to be the responsible person for the civil penalty imposed by this Section, such penalty, if unpaid within forty-five (45) days of the notice of the final determination, shall become a lien to be recorded against the property on which the violation occurred. Such costs shall be collected in the same manner as county taxes, and thereafter the property upon which they are a lien shall be sold in the same manner as property now is sold for delinquent taxes.

vi. Any violation of this Section may also be abated and/or restored by Town staff and also may be abated pursuant to Chapter 1.03, except that the civil penalty under Chapter 1.03 for a violation shall be one thousand dollars ($1,000.00).

4. Each day the violation of this section occurs shall constitute a separate offense.

5. The remedies under this section are cumulative and in addition to any and all other remedies available at law and equity.

CHAPTER 18.72 - ZONING CLEARANCE

Sections:

18.72.010 - Purpose of Chapter
18.72.020 - Applicability
18.72.030 - Review and Decision
18.72.040 - Conditions of Approval

18.72.010 - Purpose of Chapter

A. This Chapter establishes procedures for the review and approval or denial of Zoning Clearances, which are required by the Town to verify that a requested land use activity and/or structure is an allowed land use within the applicable zoning district and complies with the development standards and any design guidelines applicable to the land use or the zoning district of the site.

B. The review process begins with the recognition that the proposed use/construction is allowed in the zoning district and focuses on issues related to site layout and design in order to arrive at the best utilization of the subject site and compatibility of design with surrounding properties.

C. The process includes the filing of a building permit application or land use permit application with the Director to verify compliance with all applicable land use development standards, any applicable design guidelines and the requirements of other Town departments.

18.72.020 - Applicability

Where Article II (Zoning Districts and Allowable Land Uses) requires Zoning Clearance, the Director shall evaluate the proposed use or structure in compliance with this Chapter.

A. Eligibility for Zoning Clearance. A Zoning Clearance may be issued by the Director for land use activities or structure(s) identified in Article II (Zoning Districts and Allowable Land Uses) as an allowed use as follows:

1. For projects of a single-family dwelling, accessory dwelling unit, and/or residential accessory structure, a change in land use, creation of time-share uses, new structures or additions to existing structures with a total gross floor area of less than 7,500 square feet (less than 5,000 square feet in Downtown Residential and Downtown Commercial and Manufacturing zoning districts); or

2. For non-residential projects, a change in land use, new structures, or additions to existing structures with a total gross floor area of less than 7,500 square feet (less than 5,000 square feet in Downtown Residential and Downtown Commercial and Manufacturing zoning districts); or

3. For multi-family residential projects, a change in land use, new structures, or additions to existing structures with ten or less residential units; and/or

4. For all projects, a change in land use, new structures, additions to existing structures, new improvements, or additions to existing improvements with site disturbance (grading, impervious surfaces, and/or the removal of natural vegetation) of less than 26,000 square feet.

B. Streamlined Zoning Verification. For projects with a change of use that falls within the Zoning Clearance criteria in terms of floor area and site disturbance, but does not represent an expansion of the square footage and/or intensification of use, the project may qualify for a streamlined Zoning Verification review. This review shall verify that the proposed use is allowed in the zoning district in which the use is proposed, does not create significant impacts (e.g., parking, noise, solid waste storage, or environmental degradation), and does not require review by utility agencies, special districts, or departments, as determined by the Community Development Director. Streamlined Zoning Verifications require a public notice sign to be posted at the parcel from the time of application submittal until 10 days after approval of the application.

C. Other permits. A Zoning Clearance shall be required before the approval of a Building, Grading, or other construction permit or other authorization required by the Municipal Code or this Development Code for the proposed use or construction.

D. Incremental or phased development projects. Incremental or phased developments shall be treated on a cumulative basis. The approval of a Development Permit, in compliance with Chapter 18.74 (Development Permits) shall be required for additions to projects that would bring (1) the total project gross floor area for non-residential structure(s) to 7,500 square feet or more (5,000 square feet or more for projects located within the Downtown Residential and Downtown Commercial and Manufacturing zoning districts; (2) the total site disturbance area to 26,000 square feet or more; or (3) the total number of multi-family residential units to eleven or more units.

18.72.030 - Review and Decision

A. Project review procedures. Each application shall be analyzed by the Director to ensure that the application is consistent with the content, purpose and intent of this Chapter, this Development Code, any applicable design guidelines, the General Plan and any applicable Specific Plan.

B. Issuance of a Streamlined Zoning Verification.

1. **Time for decision.** The Director shall take appropriate action on the Zoning Verification within 30 days of finding the application complete in compliance with Section 18.70.060 (Initial Application Review/Environmental Assessment).

2. **Public notice.** Streamlined Zoning Verifications require a public notice sign to be posted at the parcel from the time of application submittal until 10 days after approval of the application.

3. **Required findings.** The Director may approve a Streamlined Zoning Verification, with or without conditions, only if all of the following findings can be made:

   a. The proposed project is:

      (1) Allowed by Article II (Zoning Districts and Allowable Land Uses) within the applicable zoning district and complies with all applicable provisions of this Development Code, the Municipal Code and the Public Improvement and Engineering Standards; and

      (2) Consistent with the General Plan, any applicable Specific Plan and/or Master Plan, the Trails Master Plan, the Truckee Tahoe Airport Land Use Compatibility Plan and the Particulate Matter Air Quality Management Plan.

   b. The proposed project is located in an existing building and the tenant space was previously occupied by a permitted use for which no complaints have been received.

   c. No changes are proposed to the exterior of the building except signage or repairs consistent with the underlying land use approval.

   d. The Zoning Verification approval is in compliance with the requirements of the California Environmental Quality Act (CEQA) and there would be no potential significant adverse effects upon environmental quality and natural resources; and

   e. There are adequate provisions for public and emergency vehicle access, fire protection, sanitation, water and public utilities to ensure that the proposed development would not be detrimental to public health and safety. Adequate provisions shall mean that distribution and collection facilities and other infrastructure are installed at the time of development and in operation prior to occupancy of buildings and the land and all development fees have been paid prior to occupancy of buildings and the land.

   f. The subject site is:

      (1) Physically suitable for the type and density/intensity of development being proposed;

      (2) Adequate in size and shape to accommodate the use and all fences and walls, landscaping, loading, parking, yards and other features required by this Development Code; and

      (3) Served by streets adequate in width and pavement type to carry the quantity and type of traffic generated by the proposed development.

   g. The proposed development is consistent with all applicable regulations of the Nevada County Environmental Health Department and the Truckee Fire Protection District for the transport, use and disposal of hazardous materials.

CHAPTER 18.88 - VACATIONS

Sections:

18.88.010 - Purpose of Chapter
18.88.020 - Applicability
18.88.030 - Findings and Decision

18.88.010 - Purpose of Chapter

This Chapter establishes procedures for the review and approval or denial of the vacation of streets and public easements and the release of covenants of easements, which is required by State law and the Town to ensure that the street or easement is not necessary for present or prospective public use.

18.88.020 - Applicability

Any and all requests for the abandonment, vacation, and/or release of streets and public easements shall be evaluated in compliance with this Chapter. Public streets and public easements within subdivided lands may be abandoned in accordance with Chapter 18.104 (Reversions to Acreage) or Section 66499.20 ½ (Merging and resubdividing without reversion) of the Subdivision Map Act.

18.88.030 - Findings and Decision

A request for the vacation of a street or public service easement or the release of a covenant of easement shall be reviewed and processed in compliance with this section.

A. Minor street vacation. A request for the vacation of a street may be approved, with or without conditions, by the Town Council by resolution without public hearing or notice only if the conformity of the request with the General Plan has been considered and one of the following findings can be made:

1. The street has been superseded by relocation of the street and utilities; the relocation of the street would not cut off all access to a person's property which, prior to relocation, adjoined the street; and the street is not necessary for present or prospective public use;

2. The street has been impassable for vehicular traffic for a period of five consecutive years, no public money was expended for maintenance on the street during such period, there are no in-place public utility facilities that are in use or would be affected by the vacation and the street is not necessary for present or prospective public use; or

3. The excess right-of-way of the street is not required for street purposes, there are no in-place public utility facilities that are in use or would be affected by the vacation and the excess right-of-way is not necessary for present or prospective public use.

The resolution of summary vacation shall be recorded by the Town with the Office of the County Recorder.

B. Minor public service easement vacation. A request for the vacation of a public service easement may be approved, with or without conditions, by the Town Council by resolution without public hearing or notice only if the conformity of the request with the General Plan has been considered and one of the following findings can be made:

1. The easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the requested vacation and the easement is not necessary for present or prospective public use;

2. The date of dedication or acquisition of the easement is less than five years and more than one year, immediately preceding the requested vacation, the easement was not used continuously since that date and the easement is not necessary for present or prospective public use; or

3. The easement has been superseded by relocation, there are no other public facilities located within the easement and the easement is not necessary for present or prospective public use.

The resolution of summary vacation shall be recorded by the Town with the Office of the County Recorder.

C. Major street and public service easement vacation. A request for the vacation of a street or public service easement not meeting the requirements of Subsections A. and B. may be approved, with or without conditions, by the Town Council by resolution if all of the findings can be made:

1. The request was considered at a public hearing and noticed in accordance with the requirements of Sections 8322 and 8323 of the Streets and Highways Code;

2. The request was referred to the Planning Commission for their review and the Commission reported on the conformity of the request with the General Plan;

3. The street or public service easement is not necessary for present or prospective public use.

The resolution of summary vacation shall be recorded by the Town with the Office of the County Recorder.

D. Release of covenant of easement. A covenant of easement may be released, with or without conditions, by the review body if all of the findings can be made:

1. A public hearing was held and noticed in accordance with Chapter 18.180 (Public Hearings) to consider the release of the covenant of easement;

2. The covenant of easement and the restriction on the property are no longer necessary to achieve the land use goals of the Town and the approval of the release is consistent with

the General Plan, any applicable specific plan, the Trails Master Plan and the Particulate Matter Air Quality Management Plan.

The release may be effected either by the Zoning Administrator, Planning Commission, or Council, depending upon which review body imposed the requirement of the covenant. A notice of the release of the covenant of easement shall be recorded by the Town Clerk with the Office of the County Recorder.

E. Abandonment of access easement. A request for abandonment of an access easement in which the Town of Truckee is a grantee or otherwise has a legal interest may be approved, with or without conditions, by the Town Council by resolution without public hearing or notice only if the conformity of the request with the General Plan has been considered and the following findings can be made:

1. All property owners with an interest in the access easement have provided written documentation giving the Town of Truckee authorization to abandon the easement on their behalf; and

2. The access easement and the restriction on the property are no longer necessary to achieve the land use goals of the Town and the approval of the release is consistent with the General Plan, any applicable specific plan, the Trails Master Plan and the Particulate Matter Air Quality Management Plan.

The resolution of summary vacation shall be recorded by the Town with the Office of the County Recorder.

~~E.~~**F. Fee.** The Town may impose fees to recover the Town's reasonable cost of processing a request for a release. Fees for the processing shall be specified in the Council's Fee Resolution.

b. Each of the resulting lots must be between 60 percent and 40 percent of the original lot area.

8. Easements. The owner must enter into an easement agreement with each public service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.

a. Each easement must be shown on the Tentative Parcel Map.

b. Copies of the unrecorded easement agreements must be submitted with the application. The easement agreements must be recorded against the property before the Final Map may be approved, in accordance with subpart (C)(1) above.

c. If an easement is recorded and the project is not completed, making the easement moot, the property owner may request, and the Town will provide, a notice of termination of the easement, which the owner may record.

9. Lot Access. Each resulting lot must have access to, provide access to, or adjoin the public right of way. Access shall comply with Section 18.30.020 (Access, General Standard).

a. Each resulting lot must have frontage on the public right of way of at least 20 feet.

b. Access driveways shall be developed in compliance with the standards in Section 18.48.080 (Driveways and Site Access).

10. Unit Standards.

a. Quantity. No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, "unit" means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under section 18.95.040 of this code, an ADU, or a JADU

b. Unit Size. The total floor area of each primary dwelling that is developed on a resulting lot must be less than or equal to 800 square feet.

(1) A primary dwelling that was legally established prior to the urban lot split and that is larger than 800 square feet is limited to the lawful floor area at the time of the urban lot split. It may not be expanded.

(2) A primary dwelling that was legally established prior to the urban lot split and that is smaller than 800 square feet may be expanded to 800 square feet after the urban lot split.

11. Height Restrictions. ~~On a resulting lot that is larger than 2,000 square feet or larger, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure. On a resulting lot that is smaller than 2,000 square feet, n~~ No new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds

be subject to the codes and provisions that were in effect on the date that the extension request application was determined to be complete for processing.

B. Tentative Maps with multiple Final Maps.

1. Where a subdivider is required to expend more than $236,790, as increased by the registrar of contractors according to the adjustment of inflation set forth in the Statewide Cost Index for Class B construction as determined by the State Allocation Board, to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the Tentative Map, other than improvements of public rights-of-way which abut the boundary of the site and which are reasonably related to the development of the site, and multiple Final Maps are filed covering portions of a single approved Tentative Map, each filing of a Final Map shall extend the expiration of the Tentative Map by an additional 36 months from the date of its expiration, or the date of the previously filed Final Map, whichever is later. The total of all extensions shall not extend the validity of the Tentative Map more than 10 years from its approval or conditional approval.

2. Tentative Maps which do not require the subdivider to provide more than $236,790, as increased by the registrar of contractors according to the adjustment of inflation set forth in the Statewide Cost Index for Class B construction as determined by the State Allocation Board, for off-site improvements shall expire at the end of the initial time period of the approval, unless a Parcel or Final Map is recorded, or an extension of time is requested and approved in compliance with Subsection A. above.

C. Vesting Tentative Maps. The review authority which approved the Vesting Tentative Map may grant extensions of up to six years to the initial time limit, provided that the total of all extensions shall not exceed six years, in accordance with Subsection A., above. Any rights conferred by Section 18.96.120 (Vesting Tentative Maps) shall expire if a Final Map is not approved and recorded before the expiration of the vesting Tentative Map.

D. **Appeals.** A decision of the Zoning Administrator or Commission acting as the review authority for a Tentative Map Time Extension may be appealed in compliance with Chapter 18.140 (Appeals). The hearing on the appeal shall be held within 30 days after the date of filing the appeal, or if there is no regular meeting of the review authority within the next 30 days for which specified notice can be given, the appeal may be heard at the next regular meeting for which the specified notice can be given, or within 60 days from the date of the receipt of the request, whichever period is shorter. The appeal body shall reach its decision within 15 days following the conclusion of the hearing.

18.96.160 - Applications Deemed Approved

Any subdivision application deemed approved in compliance with Government Code Section 65956, or Map Act Sections 66452 et seq., shall be subject to all applicable provisions of this Development Code, which shall be satisfied by the subdivider before any Building Permits or other land use entitlements are issued. Parcel or Final Maps filed for record after the automatic approval of their Tentative Map shall remain subject to all the mandatory requirements of this Development Code and the Map Act, including but not limited to Map Act Sections 66473, 66473.5 and 66474.

CHAPTER 18.200 - ENFORCEMENT

Sections:

18.200.010 - Purpose of Chapter
18.200.020 - Authority to Issue Citations
18.200.030 - Remedies are Cumulative
18.200.040 - Inspection
18.200.050 - Initial Enforcement Action
18.200.060 - Violations
18.200.070 - Legal Remedies
18.200.080 - Recovery of Costs

18.200.010 - Purpose of Chapter

The purpose of this Chapter is to provide for compliance with the requirements of this Development Code, other titles of the Municipal Code, and any conditions of an approved land use permit or entitlement.

18.200.020 - Authority to Issue Citations

A. Code Enforcement Director. The Town Code Enforcement Director shall be the person primarily responsible for enforcing the provisions of this Development Code and shall have the authority and immunity of a public officer and employee to issue citations whenever possessing reasonable cause to believe that the person to be cited has committed a violation of this Development Code, which constitutes an infraction or misdemeanor. The responsibilities of the Code Enforcement Director may also be carried out by the Code Enforcement Officer or the Department staff under the supervision of the Code Enforcement Director who shall also have the authority and immunity of a public officer and employee to issue citations whenever processing reasonable cause to believe that the person to be cited has committed a violation of this Development Code, which constitutes an infraction or misdemeanor.

B. Consultation with Police Chief. It may be necessary for the Code Enforcement Director to work with the Police Chief when enforcing the provisions of this Development Code, when the specific situation warrants uniformed police involvement.

18.200.030 - Remedies are Cumulative

All remedies contained in this Development Code for the handling of violations or enforcement of the provisions of this Development Code shall be cumulative and not exclusive of any other applicable provisions of Town, County, State, or Federal law. If a person is found guilty and convicted of an infraction or misdemeanor for the violation of any provision of this Development Code, the conviction shall not prevent the Town from pursuing other available remedy(s) to correct the violation.

18.200.040 - Inspection

A. Access for initial inspection. Every applicant seeking an application, permit, or any other action in compliance with this Development Code shall allow Town officials access to any premises or property which is the subject of the application.

B. Access for ongoing inspections. If the permit or other action is approved, the owner or applicant shall allow appropriate Town officials access to the premises to determine continued compliance with the approved permit and/or any conditions of approval.

C. Failure to allow inspections. Failure to allow inspections for compliance shall automatically cause all permits and approvals to be suspended, pending a hearing before the Code Enforcement Director to void the permits and approvals.

D. Compliance. In addition, the Code Enforcement Director may withhold the processing of and/or issuance of any and all ministerial permits and discretionary land use permits, where a documented Code violation(s) exists, until the subject property is found to be in complete compliance with any and all applicable Code sections.

18.200.050 - Initial Enforcement Action

This Section describes the procedures for initiating enforcement action in cases where the Code Enforcement Director has determined that real property within the Town is being used, maintained, or allowed to exist in violation of the provisions of this Development Code. It is the objective of these provisions to encourage the voluntary cooperation of responsible parties in the prompt correction of violations, so that the other enforcement measures provided by this Section may be avoided.

A. The authority to abate and impose sanctions.

1. Enforcement of this Section may be accomplished by the Code Enforcement Director in any manner authorized by law.

2. The procedures identified in this Chapter shall not be exclusive and shall not, in any manner, limit or restrict the Town from enforcing other ordinances or abating public nuisances in any other manner provided by law.

3. Whenever the Code Enforcement Director determines that any condition exists in violation of this Development Code, the Code Enforcement Director may take appropriate enforcement action in compliance with this Chapter.

4. Notwithstanding the public nuisance abatement procedures, criminal and/or civil remedies may be employed as determined to be necessary and provided by law.

B. Notice to responsible parties. Whenever the Code Enforcement Director has inspected the location of the alleged violation and it has been found or determined that conditions constituting a Code violation exist on any property located in the Town, the Code Enforcement Director may prepare a notice and order and cause the owner of the property and the person, if other than the landowner occupying or otherwise in charge or control of the property, to be notified

D. Definitions, "D."

Decibel (dB). A unit for measuring the amplitude of sounds, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, of 20 micropascals.

Deck. A platform attached to a house and supported by structural connections to the ground, including posts or piers, to provide outdoor living area that may be roofed (i.e., covered deck), but is without walls on at least two sides, and which includes railings where required by the California Building Code.

Density. The number of housing units per net acre, unless otherwise stated, for residential uses.

Department. The Town of Truckee Community Development Department, referred to in this Development Code as "Department."

Detached. Any structure that does not have a wall or ceiling/floor ~~or roof~~ in common with another structure.

Detached living area. A detached living area is an accessory structure within a residential zoning district, is not a required element of the main dwelling and is designed for human occupancy. It is intended to provide living quarter(s) within a detached residential accessory structure, located on the same premises with the main dwelling, for use by members of the family occupying the main dwelling and their non-paying guests.

Development. Any construction activity or alteration of the landscape, its terrain contour or vegetation, including the erection or alteration of structures. New development is any construction, or alteration of an existing structure or land use, or establishment of a land use, after the effective date of this Development Code.

Development Agreement. A contract between the Town and an applicant for a development project, in compliance with Chapter 18.150 (Development Agreements) of this Development Code and Government Code Sections 65864 et seq. A development agreement is intended to provide assurance to the applicant that an approved project may proceed subject to the policies, rules, regulations, and conditions of approval applicable to the project at the time of approval, regardless of any changes to Town policies, rules, and regulations after project approval. In return, the Town may be assured that the approved project will contain elements and components that are in the best interests of the Town and will promote the public interest and welfare of the Town.

Development Code. The Town of Truckee Development Code, Title 18 of the Truckee Municipal Code, referred to herein as "this Development Code."

Development Envelope. The designated development area on a parcel within which disturbance may occur (also known as a "building envelope"). The purpose of the development envelope is to preserve open space and ensure clustered development. All areas outside the development envelope are required to be maintained in a natural, vegetated state. The development envelope shall encompass all disturbance on a parcel, including structures

B. Definitions, "B."

Backyard Chicken. A domestic chick or hen kept on a residential lot as a household pet. Does not include roosters.

Balcony. A platform that is cantilevered from a building wall and is enclosed by a parapet or railing.

Banks and Financial Services. Financial institutions including:

banks and trust companies
credit agencies
holding (but not primarily operating) companies
lending and thrift institutions
other investment companies
securities/commodity contract brokers and dealers
security and commodity exchanges
vehicle finance (equity) leasing agencies

This definition does not include escrow companies and title insurance companies which come under the definition "Offices, Business and Professional." See also, "Automatic Teller Machine," above.

Bars and Drinking Establishments. Businesses where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. Includes bars, taverns, pubs, tap rooms (i.e., a room that is ancillary to the production of beer where the public can purchase and/or consume only the beer produced onsite), tasting rooms, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May include entertainment (e.g., live music and/or dancing). May also include beer brewing as part of a microbrewery, and other beverage tasting facilities. Also includes restaurants and coffee shops that serve alcohol during hours of operation when food service is no longer the primary use.

Base flood. A flood having a one percent probability of being equaled or exceeded in any given year (also called the 100-year flood).

Bed and Breakfast Inns. Residential structures with one family in permanent residence, with up to three bedrooms in the RR, RS and DRS zoning districts and up to five bedrooms in other allowable zoning districts rented for overnight lodging, where meals may be provided subject to Section 18.58.070 (Bed and Breakfast Inns) and applicable Health Department regulations. A Bed and Breakfast Inn with more than five guest rooms is considered a hotel or motel, and is included under the definition of "Hotels and Motels." Does not include room rental in a "boarding house" situation; see "Rooming and Boarding Houses."

Bedroom. An enclosed habitable room planned and intended for sleeping, separated from other rooms by a door and accessible without crossing another bedroom, closet space, or bathroom. Includes studio units. A bedroom will have a built-in closet, emergency escape and rescue opening(s), and a minimum floor area of 70 square feet, exclusive of a closet. Additionally, it shall meet the requirements or be in accordance with the current codes adopted by the Town as listed in Title 15 of the Municipal Code.