



COUNTY OF SONOMA

575 ADMINISTRATION
DRIVE, ROOM 102A
SANTA ROSA, CA 95403

SUMMARY REPORT

Agenda Date: 4/24/2023

To: Board of Supervisors

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number: Katrina Braehmer, (707) 565-1903

Vote Requirement: Majority

Supervisorial District(s): All

Title:

1:00 PM -ORD23-0002 Timeshare Ordinance

Recommended Action:

The Permit and Resource Management Department (Permit Sonoma) recommends that the Board of Supervisors hold a public hearing, adopt an ordinance amending text of Zoning Code Articles 4, 10, 28, and 77 to clarify timeshare regulations to incorporate short-term use of fractionally owned residential property, and find the action not subject to the California Environmental Quality Act.

Executive Summary:

Under the Sonoma County Zoning Code, the County regulates and permits several types of transient or short-term uses, including agricultural farmstays, agricultural marketing accommodations, bed and breakfasts, hotels, motels, resorts, hosted rentals, vacation rentals, and timeshares. On May 10, 2022, the Board of Supervisors adopted resolution number 22-0206 directing staff to study and develop an ordinance on the transient use of fractionally owned residential property. The proposed Zoning Code amendments will add definitions and standards for timeshares clarifying that the short-term use of fractionally owned residential property is a timeshare use, and update the Commercial Zones land use table to specify where timeshares may be permitted. The intent of the proposed ordinance is to regulate the use of residential properties as timeshares and not to prohibit fractional ownership of residential property.

Discussion:

Background

The Board of Supervisors, Planning Commission, and Permit Sonoma staff have received numerous comments regarding the transient and short-term use of fractionally owned residential property. Comments to the County have noted that such residences are generally fractionally owned by several people, often through a legal entity, where an owner or guest stays for short periods. Commenters to date have raised concerns related to noise, parking, traffic, fire evacuations, and the impacts to residential community character.

On May 10, 2022, the Board of Supervisors directed staff to determine how the use may be regulated under existing code, and whether new or amended regulations are necessary or appropriate. Staff evaluated existing County regulations on short-term rentals, state law, and approaches other California jurisdictions have taken to regulate timeshares and uses of fractionally owned residential property.

Fractional Ownership

“Fractional ownership” refers to ownership models which allow a fractional share of a property to be sold. In these models, a property is owned by an entity, such as an LLC, which in turn has co-owners. This ownership model has gained popularity in recent years as a method to co-own a second home or vacation home. Commercial real estate companies advertise this ownership model and, similar to timeshares, facilitate scheduling time to use the property among co-owners, sales of individual ownership shares to the property, and property maintenance.

Timeshares

Timeshares are not defined in the Zoning Code and are only identified as a conditionally permitted use in the VR (Visitor Residential) Combining Zone, a zone that may only be applied to parcels within the K (Visitor and Recreation Serving Commercial) Zoning District. The purpose of the VR Combining Zone is to “provide flexibility in types and terms of occupancy for residential units on lands zoned for recreation and visitor-serving uses,” (Zoning Code Section 26-77-005). Vacation rentals are explicitly prohibited within timeshares (Zoning Code Section 26-28-160(C)(1)(b)(iii)) and timeshares are prohibited within multifamily developments (Zoning Code Section 26-08-050(L)).

Staff reviewed the approaches that several California cities took to regulate fractional ownership uses. The City of Sonoma, City of Carmel, and City of St. Helena all elected to clarify existing or adopt new timeshare regulations to explicitly identify fractional home ownership as a timeshare use or define timeshares broadly enough to encompass fractional home ownership. All cities utilized direct or modified language from state law that regulates timeshares (California Business and Professions Code Section 11212) to define timeshare related terms.

PROPOSED ORDINANCE

The short-term use of fractionally owned residential properties managed through legal entities or corporate enterprises has commercial characteristics and presents potential impacts to housing stock and residential neighborhood character, namely in the form of traffic, noise, and parking concerns beyond what would normally be associated with full-time residential use.

Because the County’s Zoning Code does not currently provide a definition for timeshares or the short-term use of fractionally owned residential properties, and does not clearly identify the extent to which such uses are or are not allowed, there is confusion as to how to best regulate the latter. By conditionally permitting timeshares within the VR Combining Zone, the County has previously established that timeshares are a commercial, visitor-serving land use that are only appropriate within zoning districts intended for recreation and visitor-serving uses. The short-term use of fractionally owned residential property in accordance with a timeshare plan (i.e. a use agreement between co-owners managed by a corporate enterprise) is functionally equivalent to a timeshare use.

The proposed ordinance would make amendments to the Zoning Code to clarify that fractionally owned properties used pursuant to a timeshare plan, as defined, are considered timeshare uses and are only appropriate within the VR Combining Zone to preserve housing for long-term residents and limit commercial, visitor-serving land uses in residential areas.

The proposed zoning amendments would:

- Define timeshares in Article 4 (Glossary) as “any accommodation, or portion thereof, used pursuant to a timeshare plan”;
- Add timeshares to the land use table in Article 10 (Commercial Zones) to clarify that timeshares are conditionally permitted within the K (Recreation and Visitor-Serving Commercial) Zoning District subject to use-specific requirements;
- Add timeshares as a lodging use to Article 28 (Service Use Standards), define related terms to incorporate the short-term use of fractionally owned residential property, and specify that timeshares require a Use Permit and

- may only be permitted with a Zone Change to add the VR (Visitor Residential) Combining District; and
- Update Article 77 to amend the name of the VR Combining Zone to the VR Combining District for better consistency throughout the Zoning Code, remove obsolete references to the prior “X” Combining Zone, and add a development standard to the VR Combining District to highlight that all uses permitted within the combining district are subject to Article 89 (Affordable Housing Program Requirements and Incentives) as applicable.

The proposed ordinance defines terms related to timeshares as necessary for a complete understanding of the nature of the use, as follows.

- Timeshare plan is defined as:
“Any arrangement, plan, scheme, or similar device, whether established 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 receives the right to exclusive use of an accommodation(s) or portion thereof, according to a fixed or floating time schedule, 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. A timeshare plan shall be deemed to exist whenever such recurring rights of exclusive use to the accommodation(s), or portion thereof, are created, regardless of whether such exclusive rights of use are a result of a grant of ownership rights, possessory rights, membership rights, rights pursuant to contract, or ownership of a fractional interest or share in the accommodation (s), and regardless of whether they are coupled with an estate in real property such as a freehold interest or an estate for years in the property subject to the time-share plan.”
- Timeshare interest is defined as “the right to exclusively occupy an accommodation for a period of time on a recurring basis pursuant to a timeshare plan, whether or not coupled with an estate in real property.”
- Timeshare use is defined as “the use of one or more accommodations, or any part thereof, pursuant to a timeshare plan.”

The presence of a timeshare plan and a commercial entity with business interest in the property distinguishes timeshares and the short-term use of fractionally owned residential property from second home ownership between multiple, most commonly familiar, parties. Timeshares and fractional ownership models involve the use of property management companies for ongoing maintenance and property use scheduling, and sales of the right to use the property, which may be in the form of an ownership interest or other type of membership rights.

The amendments would allow timeshares uses to occur under the following circumstances:

- Within an existing, permitted single-family residence within the K Zoning District, with approval of a Use Permit and rezoning to add the VR Combining District
- Within a proposed single-family residence within the K Zoning District, with approval of a Use Permit and rezoning to add the VR Combining District
- Within existing or proposed hotel, motel, or resort structures within the K Zoning District, with approval of a Use Permit and rezoning to add the VR Combining District

PLANNING COMMISSION ACTION

On April 6, 2023, the Sonoma County Planning Commission held a public hearing, considered the proposed ordinance, and voted to recommend adoption to the Board of Supervisors with no changes.

The Planning Commission asked about how the proposed ordinance changes would affect existing uses. In general, if a use is legal when it is commenced and later becomes nonconforming due to a change in the Zoning Code, then that use may continue as a legal non-conforming use consistent with the parameters in Zoning Code Article 94. . Determining legal non-conforming status is a fact intensive determination that is done on a case-by-case basis based on the code and its interpretation that existed at the time the use

was commenced.

GENERAL PLAN CONSISTENCY

The proposed amendments clarify that timeshare uses, including short-term use of fractionally owned residential property, are permitted only on parcels within the K Zoning District with the addition of the VR Combining District. This is consistent with the permitted uses outlined in the Policy for Recreation and Visitor Serving Commercial areas in the General Plan Land Use Element.

The amendments are consistent with policies in the Housing Element calling for protection against the conversion of residential properties to vacation homes in residential zoning districts by clarifying that the short-term use of fractionally owned residential property is a timeshare use that is only appropriate within the K (Recreation and Visitor-Serving Commercial) District when compatible with surrounding uses and zones.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Permit Sonoma has determined that the proposed ordinance is not subject to the California Environmental Quality Act (CEQA) because the adoption of this ordinance is not a “project” as defined pursuant to Public Resources Code Section 21065, and CEQA Guidelines Sections 15060(c)(2) and 15060(c)(3) because adoption of the proposed ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. Specifically, the proposed ordinance will not authorize any development projects and any future development projects under the ordinance will be required to undergo CEQA review prior to authorization. Moreover, even if the proposed ordinance is a project under CEQA, it is exempt from CEQA under CEQA Guidelines Section 15061(b) (3) because it can be seen with certainty that the proposed ordinance will have no significant effect on the environment since the proposed ordinance only clarifies existing regulations and does not authorize any development projects.

Strategic Plan:

Not Applicable

Prior Board Actions:

On May 10, 2022, the Board of Supervisors adopted resolution number 22-0206 directing staff to study and develop an ordinance on transient use of fractionally owned residential property within Sonoma County.

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

Not Applicable

Narrative Explanation of Staffing Impacts (If Required):

Not Applicable

Attachments:

- Att 1 ORD23-0002 Ordinance
- Att 2 ORD23-0002 Planning Commission Resolution
- Att 3 ORD23-0002 Planning Commission Staff Report
- Att 4 ORD23-0002 Staff Presentation

Related Items “On File” with the Clerk of the Board:

Board of Supervisors Resolution #22-0206