

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

ORDINANCE NO. 2022-007

AN ORDINANCE AMENDING THE CARMEL-BY-THE-SEA MUNICIPAL CODE TO PROHIBIT TIMESHARE AND FRACTIONAL INTEREST USES, AS WELL AS ADVERTISING AND SALE THEREOF IN A MANNER FULLY IN CONFORMITY WITH THE COASTAL ACT (PUBLIC RESOURCES CODE SECTION 30510 *ET SEQ.*)

WHEREAS, timeshares involve the division of the exclusive rights to use, possess, and occupy any real property between multiple persons, pursuant to a fixed or floating time schedule; and

WHEREAS, since at least 1988, the City of Carmel-by-the-Sea has prohibited the establishment of timeshares within the City; and

WHEREAS, the Housing Element of the City's General Plan specifically recognizes that the City seeks to protect the stability of residential neighborhoods by promoting year-round occupancy, and to avoid depletion of residents and associated impacts on the 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; and

WHEREAS, the Planning Commission of the City of Carmel-by-the-Sea reviewed the ordinance, and on October 12, 2022, determined the ordinance was consistent with the City's General Plan, Local Coastal Plan, and all other relevant City and State codes and regulations, and having reviewed the Planning Commission's recommendations and the relevant provisions of the General Plan, the City Council finds that the ordinance is consistent with the City's General Plan; and

WHEREAS, recent increases in the development and sale of fractional interest ownerships have made it appropriate for the City to revisit its municipal code to clarify that fractional interest ownerships are prohibited timeshares and to also expressly prohibit the advertising and sale of prohibited timeshares and fractional interest uses.

WHEREAS, notice of the public hearing was published on November 25, 2022 in compliance with State law (California Government Code 65091), indicating the date and time of the public hearing; and

WHEREAS, on December 6, 2022, the City Council opened the public hearing to receive public testimony regarding the draft ordinance, including without limitation, information provided by City staff and public testimony, and continued the hearing to a date certain of January 10, 2023; and

WHEREAS, on January 10, 2023, the City Council re-convened the public hearing to receive further public testimony regarding the draft ordinance, including without limitation, information provided by City staff and public testimony; and

WHEREAS, this decision is made based upon evidence presented to the City Council at its December 6, 2022 and January 10, 2023 hearings including, without limitation, the staff report submitted by the Community Planning and Building Department and public testimony; and

WHEREAS, the City Council did hear and consider all said reports, recommendations, attachments and testimony herein above set forth and used their independent judgement to evaluate the ordinance; and

WHEREAS, the proposed amendments are in full conformity with the City's Local Coastal Plan and the California Coastal Act (Public Resources Code Section 30510 *et seq.*)

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES ORDAIN AS FOLLOWS:

SECTION 1. CEQA Review. The City Council exercises its independent judgment and finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections. 15060(c)(2), because the proposed ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; 15061(b)(3) because the proposed ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and 15308 because the proposed ordinance involves regulatory actions to assure protection of the environment. Therefore, the adoption of this ordinance is exempt from CEQA and no further environmental review is necessary.

SECTION 2. Amendment to the CMC.

1. Subsection A of Section 17.14.040 is amended and restated as follows:

17.14.040 Additional Use Regulations.

A. All Uses.

1. No new structure or modification to an existing structure shall be permitted nor shall any business license be issued that would allow the creation of publicly accessible retail space occupying fewer than 200 square feet or more than 5,000 square feet unless approved through a use permit and pursuant to the adoption of findings per CMC 17.64.200, Retail Space of Less Than 200 Square Feet or Greater Than 5,000 Square Feet.
2. No timeshare uses or fractional interest uses shall be established or permitted in any zone.
3. Except in restaurants, not more than five persons in any one individually licensed business shall be engaged in the production, repair or manufacturing of goods.
4. No use shall be permitted and no process, equipment, or materials shall be employed which is found by the Planning Director or by the Planning Commission to be objectionable to persons residing or working in the vicinity by reason of odor, fumes,

noise, vibration, illumination, glare, unsightliness, dust, cinders, dirt, refuse, water-carried wastes or heavy truck traffic, or involve any hazard of fire or explosion.

2. Section 17.28.010 is amended and restated as follows:

17.28.010 Timeshare and Fractional Interest Uses.

A. Timeshare uses and fractional interest uses are prohibited uses within all of the zoning districts within the City.

B. 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 real property 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 1.16 (General Penalty).

C. 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 real property in violation of this section is subject to administrative fines and/or penalties as set forth in Chapter 18.04 (Municipal Code and Ordinance Enforcement).

D. Each day a violation of this section occurs shall constitute a separate offense, and the remedies under this section are cumulative and in addition to any and all other remedies available at law and equity.

3. "Time-Share Definitions" of Section 17.70.020 is amended to repeal the definitions of "Time-Share Estate," "Time-Share Occupancy," "Time-Share Program," "Time-Share Project," and "Vacation-Time Sharing Project," and restated to enact the definitions of "Time-Share Plan," "Time-Share Use" and "Fractional Interest Use" to read as follows:

17.70.020 Definitions.

The words, terms, and phrases defined in this chapter shall, for all purposes connected with this title, be construed as having the meanings respectively set forth in this chapter.

...

Time-Share Definitions.

"Time-Share Plan" means 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, in exchange for consideration, receives the right to exclusive use of real property 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 real property 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 real property, and regardless of whether they are coupled with ownership of a real property interest such as freehold interest or an estate for years in the property subject to the time-share plan.

“Time-Share Use” and “Fractional Interest Use” means the use of real property or any part thereof, pursuant to a timeshare plan.

SECTION 3. Severability. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such a decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION 4. Publication. The City Clerk shall publish or post this ordinance in the manner required by law.

SECTION 5. Effective Date. This ordinance shall be effective 30 days after its adoption and after approval by the California Coastal Commission.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this XX day of XX 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVE:

ATTEST:

Dave Potter, Mayor

Nova Romero, MMC, City Clerk