



County of Sonoma
Permit & Resource Management Department

Sonoma County Planning Commission **STAFF REPORT**

FILE: ORD23-0002
DATE: April 6, 2023
TIME: At or after
STAFF: Katrina Braehmer, Project Planner

A Board of Supervisors hearing on the project will be held at a later date and will be noticed at that time.

SUMMARY

Address:	Countywide, excluding the Coastal Zone
Supervisory District(s):	All
Description:	Zoning Code text amendments to clarify timeshare regulations to incorporate fractional ownership uses.
CEQA Review:	Adoption of the proposed ordinance does not meet the definition of a project under Public Resources Code Section 21065 and CEQA Guidelines Sections 15060(c)(2) and 15060(c)(3). Alternatively, this would be exempt per CEQA Guidelines Section 15061(b)(3) (common sense exemption).
General Plan Land Use:	N/A
Specific/Area Plan Land Use:	N/A
Ordinance Reference:	Sonoma County Code Chapter 26, Articles 4, 10, 28, and 77
Zoning:	N/A



RECOMMENDATION

The Permit Resource and Management Department (Permit Sonoma) recommends that the Planning Commission approve a resolution recommending Board of Supervisors approval of the proposed ordinance to amend the Zoning Code to clarify timeshare regulations.

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.

PROJECT CONTEXT

Background

The Board of Supervisors, Planning Commission, and 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. With consultant support, 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.

Existing Local Regulations

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 facilitate with scheduling short time periods to use the property among co-owners.

The Sonoma County Code does not define fractional ownership, and only addresses it directly in Section 26-04-020 (Definitions). The definition of “primary owner” excludes any owner of a timeshare, or fractional ownership of six or more interests:



Primary Owner. The property owner who resides in the property for a majority of the year, and does not have another primary residence. Primary owner does not include residences or condominiums owned as a timeshare, limited liability partnership or corporation, or fractional ownership of six (6) or more interests.

The use of the term “Primary owner” in the Zoning Code is largely to describe the owner-in-residence of a property used for transient occupancy (Zoning Code Section 26-88-118, Special use standards for hosted rentals and bed and breakfast inns).

The Board of Supervisors directed staff to review regulations for the short-term use of residential properties under fractional ownership, not to regulate fractional ownership models where individual owners may own a fraction or percentage of the property.

Timeshares

Timeshares are not defined in the Zoning Code and are only identified as a use permitted with a Use Permit in the VR (Visitor Residential) Combining District, a zone that may only be applied to parcels within the K (Visitor and Recreation Serving Commercial) Zoning District, with the approval of a Use Permit. The purpose of the VR Combining District 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)).

Stock Cooperatives

Stock cooperatives are a type of common interest development in which a corporation is formed primarily for the purpose of holding title to real property and all shareholders of the corporation receive a right of exclusive occupancy in a portion of real property. While the corporate ownership structure is similar to the fractional ownership model, ownership in a stock cooperative entitles the owner to exclusive occupancy of a *portion* of the real property, while a fractional ownership in a property with a single-family dwelling unit entitles the owner to reside in the same property as the other owners for a portion of time. Stock cooperatives are permitted with a use permit in the County’s VR Combining District (Zoning Code Section 26-77-020).

Vacation Rentals

Vacation rentals are defined in Zoning Code Section 26-04-020 as “the tenancy of residential property for a term of thirty (30) days or less that is subject to transient occupancy tax.” As described above, vacation rentals are prohibited within timeshares and unlike vacation rentals, timeshares are not subject to transient occupancy tax. The short-term use of fractionally owned residential property differs from vacation rentals in that the occupants are generally understood to be the persons that have an ownership share or interest in the property either directly or through a legal entity.

Transient Use or Transient Occupancy

Transient occupancy or transient use is defined in Zoning Code Section 26-04-020 as “occupancy of a lodging facility or residence by any person other than the primary owner by concession, permit, right of access, license, gift or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.” This definition does not entirely account for the short-term use of fractionally owned residential property, which could occur in time periods longer than 30 days.



The County's recent decisions to update vacation rental regulations demonstrates a need and desire to regulate transient and short-term uses on residential properties to preserve housing stock for long-term residential use, protect the residential character of neighborhoods, and limit other impacts related to traffic, noise, garbage, and safety. Certain transient or short-term uses may only be appropriate in certain zoning districts depending on the nature and purpose of the use.

The Sonoma County Finance and Taxation Code exempts *timeshares* from transient occupancy tax:

Sec. 12-12 – Exemptions

The owner of a timeshare estate occupying a room or rooms in a timeshare project, as defined in Business and Professions Code Section 11212 or its successor statute.

The short-term use of fractionally owned residential property has not been subject to transient occupancy taxes due to the lack of clarity around the definition of the use. If the County elects to regulate short-term use of fractionally owned residential property as a timeshare use, the use would not be subject to transient occupancy taxes under Sonoma County Code Section 12-12.

Visitor Residential Combining District

The VR (Visitor Residential) Combining District was created by Ordinance 6041 in 2013 (previously called the “X Combining Zone”), borne by a need identified during the 2008 update to the County's General Plan to specify areas where both long- and short-term occupancies of property may be allowed such that both residential and visitor serving uses could occur on the same site at different times of year. The General Plan Land Use Element Policy for Recreation and Visitor Serving Commercial Areas describes this type of “mixed” residential and visitor-serving occupancy as a permitted use on parcels with the Recreation and Visitor Serving Commercial land use designation where compatibility can be clearly demonstrated. In addition to the uses allowed within the K Zoning District, the VR Combining Zone conditionally permits single-room occupancy facilities and other uses where a mixed of transient and long-term occupancies may be desired, such as a condominiums with mixed lengths of occupancy, timeshares, stock cooperatives, resorts, extended stay hotels, or similar projects.

Only one parcel across the County is within the VR Combining Zone. The property is located within Rio Nido (APN 070-291-007) and was rezoned to add the VR Combining Zone to allow the three duplexes onsite to be used for both long- and short-term occupancies depending on seasonal needs. There are 263 parcels with the K zoning district as the base zone. These parcels located throughout the unincorporated County with a large concentration in the Guerneville and Lower Russian River area.

State Law

State law currently does not define fractional ownership and there a number of ways to structure holding title to property.

The California Business and Professions Code Section 11212 defines timeshares through a series of related terms including but not limited to: accommodation, time share plan, time share interest, time share instrument, and time share property.

Case Studies

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 the California Business and Professions Code Section 11212 to define timeshare related terms.

Prior 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.

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

Alternative Actions

1. Direct staff to conduct further analysis as determined necessary and appropriate, and return with an amended ordinance.
2. Direct staff to take no action to regulate the short-term use of fractionally owned residential property.

ANALYSIS

General Plan Consistency

The following General Plan policies are applicable to the proposed ordinance, with staff's analysis below

- **Policy for Recreation and Visitor Serving Commercial Areas**

Permitted Uses. Primary uses include outdoor recreation facilities and tourist commercial uses, including golf courses, tennis and racquet clubs, marinas, race tracks, shooting ranges, and similar uses in private ownership. Other uses include campgrounds, recreational vehicle parks, indoor lodging, indoor recreation facilities, visitor information centers, museums, restaurants, and other uses oriented to the needs of visitors. Residential and recreational or visitor serving commercial uses may be combined in a single development where the residential use is clearly compatible with the recreational or visitor serving commercial use, and provides superior design qualities that allow for an integrated, livable environment. Where specified by a Land Use Policy for the Planning Area, this category provides for consideration of a single family residence in place of commercial and recreation uses allowed by zoning. Otherwise, residential use is limited to one caretaker unit for each parcel with recreational or commercial development.

Staff Response: *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.*

- **Policy LU-15m:** As allowed by the Recreation and Visitor Serving Commercial land use category, allow consideration of a single family residence as the primary use of a property so designated in this planning area (Russian River Planning Area).

Staff Response: *The K Zoning District permits the construction of a single-family residence with approval of a Use Permit, subject to certain standards. The proposed amendments are consistent with Policy LU-15m because they would allow timeshare uses within existing or proposed single-family residences in the K Zoning District with approval*

- **Policy HE-1J:** Avoid the loss of residential land in urban land-use designations for vacation or time-share uses.

Staff Response: *The amendments protect 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.*

- **Policy HE-2j:** Prevent the loss of urban housing sites to visitor-serving uses.

Staff Response: *The amendments ensure that visitor-serving uses, such as timeshares, do not impact the exiting housing stock in urban residential areas.*

Zoning Consistency

The ordinance would make text amendments to the Zoning Code to clarify the definition and standards for timeshares that, as proposed, would ensure internal consistency throughout the Zoning Code.

ENVIRONMENTAL ANALYSIS

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.

RECOMMENDATIONS

Staff Recommendation

The Permit Resource and Management Department (Permit Sonoma) recommends that the Planning Commission approve a resolution recommending Board of Supervisors approval of the proposed ordinance to amend the Zoning Code to clarify timeshare regulations.

ATTACHMENTS

1. Draft Zoning Amendments
2. Draft Planning Commission Resolution