



Legislation Details (With Text)

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On agenda: 11/16/2021 **Final action:**

Title: Update on the Litigation Pacaso Inc. v. City of St. Helena and Discussion of Land Use Impacts Associated with Temporary Usage By Non-Primary Owners of Fractionally Owned Homes

Sponsors: County Counsel, County Administrator, Permit and Resource Management

Indexes:

Attachments: 1. Summary Report, 2. Attachment 1.NPR Article.pdf, 3. Attachment 2A.Code Enforcement Courtesy for Notice 2252 West Dry Creek Road, Healdsburg.pdf, 4. Attachment 2B.Code Enforcement Courtesy for 1405 Old Winery Court, Sonoma.pdf, 5. Attachment 2C.Code Enforcement Courtesy for 6165 West Dry Creek Road, Healdsburg.pdf, 6. Attachment 3.Response to Code Enforcement Courtesy Notices.pdf

Date	Ver.	Action By	Action	Result
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To: Board of Supervisors

Department or Agency Name(s): County Counsel, County Administrator, Permit Sonoma

Staff Name and Phone Number: Tennis Wick x1925

Vote Requirement: Informational Only

Supervisory District(s): N/A

Title:

Update on the Litigation *Pacaso Inc. v. City of St. Helena* and Discussion of Land Use Impacts Associated with Temporary Usage By Non-Primary Owners of Fractionally Owned Homes

Recommended Action:

Receive an update on *Pacaso Inc. v. City of St. Helena* and hear public concerns regarding impacts to neighborhoods arising from temporary uses of fractionally owned residences by non-primary owners, including residences professionally managed by corporations such as Pacaso, and others, but excluding vacation rental uses.

Executive Summary:

Staff is recommending the Board of Supervisors gather information about impacts caused by temporary uses of residences held through fractional ownership by non-primary owners. Community members have expressed concern to staff about how these uses of residences impact neighborhoods. This public forum will provide the Board of Supervisors an opportunity to hear comments from the public on this topic and give direction to staff. The focus of this forum is not on vacation rental uses.

Discussion:

Temporary Uses of Residences

This Board item focuses on non-primary owners' short-term uses of residences in Sonoma County's unincorporated area, other than vacation rental uses. Under the zoning ordinance, a primary owner is the

property owner who resides in the property for a majority of the year, and does not have another primary residence. Vacation rentals outside of the coastal zone are regulated by the County's Vacation Rental Ordinance, which aims to regulate the impacts of vacation rental use. Thus, this forum is focused on gathering information about the impacts of other types of non-primary owners' short-term uses.

In some scenarios, outside companies might facilitate the acquisition of a residence and/or professionally manage it and its use. Pacaso is a recent, well-publicized example of a company that facilitates the sale and temporary use of residences, and their management by professional companies for non-primary owners and others. Pacaso's website is www.pacaso.com <<http://www.pacaso.com>> and an article from NPR on Pacaso is attached. (Attachment 1.)

Staff's understanding is that Pacaso currently operates in the following regions in California: Lake Tahoe, Napa-Sonoma, Santa Barbara, Southern California beaches, Palm Springs, and San Diego. Pacaso also operates out-of-state in Scottsdale Arizona; Park City, Utah; Aspen and other cities in Colorado and Florida commonly considered vacation destinations. To Staff's knowledge, Pacaso has facilitated the purchase of and management for about 10 homes in the Napa-Sonoma area. According to news reports, the company has received \$75 million in equity financing, and is rapidly expanding.

Beyond Pacaso, there are other companies that facilitate the purchase, use, and management of vacation or second homes, on a fractional, timeshare, or other basis, including companies operating in California, Florida, and Hawaii. Not every residence owned by an LLC or legal entity may be professionally managed, used for temporary stays, or used in a way that creates impacts. This public forum seeks information from the public on the nature of impacts created by temporary uses of residences that these types of companies specialize in, without regard to which entity or entities are involved.

Although the exact number is unknown at this moment, there are residences in the County owned by LLCs or trusts. Some of these properties are utilized as sources of income and used as short-term or long-term rentals. Those used as short-term rentals often utilize outside property management companies to provide services such as coordination of repairs, addressing neighbor complaints, paying utility bills, etc. But other short-term rentals are self-managed completely by the LLC managers or trustees. Outside of the coastal zone, the County regulates transient use related to the short-term rental of vacation homes through its Vacation Rental Ordinance. Where there are residences used for temporary stays or other uses by non-primary owners, but not renters, this forum seeks public input on possible impacts of those multiple uses as well. In short, there are various ways, beyond traditional vacation rentals, that temporary stays occur in residences that may create impacts similar to vacation rental uses. This forum seeks to understand those impacts.

St. Helena Litigation

The City of St. Helena commenced an enforcement action against Pacaso alleging violations of the city's timeshare ordinance. In response, Pacaso sued St. Helena in federal court. Pacaso's lawsuit alleges that St. Helena's application of its timeshare ordinance is unlawful because the ordinance is unconstitutionally vague, timeshares and fractional-ownership models are distinct so the ordinance cannot apply to Pacaso, St. Helena engaged in unconstitutional selective enforcement because it has not applied the ordinance to other co-ownership models like Limited Liability Companies, and the ordinance attempts to regulate land ownership, and not land use, because any impacts of fractional-ownership on communities can be regulated through other means such as noise ordinances.

Pacaso has displayed aggressive litigation tactics. Pacaso filed a motion to strike all of the affirmative defenses raised in St. Helena's answer and subsequently filed a motion to strike part of St. Helena's amended answer. The end result of these motions to strike was to require St. Helena to file amended answers, something that could be achieved through a more collegial approach of voluntarily meeting and conferring with opposing counsel. In addition, St. Helena had to file an anti-SLAPP (strategic litigation against public participation) motion due to Pacaso's lawsuit being based in part on a memorandum prepared by the city. This memorandum informed realtors that the issue of whether the sale of fractional interests in residential properties and short-term rentals was being reviewed by the city council after receiving concerns from constituents about these transactions potentially violating city ordinances. Despite Pacaso's opposition, the judge found in the city's favor and agreed that the fifth claim in Pacaso's lawsuit was improper and should be stricken.

The litigation is currently in the discovery phase and trial is scheduled for July 11, 2022. Discovery is a very time consuming and expensive process that can result in tens, if not hundreds, of thousands of dollars in expenses. Trial preparation also requires significant resources. Thus, if St. Helena does not prevail in defending against the lawsuit, Sonoma County staff estimates that the City's attorney's fees may amount to \$300,000 - \$400,000. Further, if Pacaso prevails on a constitutional argument, the judge may order the city of St. Helena to reimburse Pacaso for its attorney's fees, which could amount to \$800,000 - \$1,000,000. In the end, St. Helena may end up spending about \$1 - 1.5 million as a result of the litigation if Pacaso prevails. Staff has not confirmed these estimates with the City.

Courtesy Notices and Responses

Code enforcement in the County is complaint driven. If complaints are received about a potential violation of the County Code, Permit Sonoma either sends a code enforcement inspector to the subject parcel to investigate the conditions and discuss with the property owner/tenant how to remedy violations, if they exist, or sends a courtesy notice that discusses the possible violations and invites the property owner to contact Permit Sonoma to further discuss the issues.

After receiving complaints related to the short-term use of properties, Permit Sonoma staff sent Courtesy Notices to Pacaso providing notice that complaints had been received of potential violations of the County's Zoning Code on the properties located at 2252 West Dry Creek Road, Healdsburg, CA, 6165 West Dry Creek Road, Healdsburg, CA, and 1405 Old Winery Court, Sonoma, CA. These notices are attached. (Attachments 2-A, 2-B, 2-C.)

Pacaso responded to each Courtesy Notice alleging that the property identified in the Courtesy Notice is used as a single family residence as permitted by the Zoning Code, the terms of the LLC's operating agreement forbid the rental of the property, only one household may use the property at a time, and Pacaso provides scheduling and property management services. These responses are attached. (Attachment 3.)

Staff did not provide a reply. The County is exploring the impacts caused by the uses of such properties, as well as legal and other options for next steps.

Other Jurisdictions

Other than St. Helena, Staff is not aware of other jurisdictions who have held public forums to discuss non-primary owner temporary use of professionally managed residential dwellings. Staff is not aware of any jurisdiction that has issued a notice of violation or commenced litigation against Pacaso. St. Helena did not

commence a code enforcement action against Pacaso, but nevertheless was sued by Pacaso. Some jurisdictions may be waiting for the outcome of the St. Helena litigation for direction.

Strategic Plan:

N/A

Prior Board Actions:

N/A

FISCAL SUMMARY

Expenditures	FY 21-22 Adopted	FY22-23 Projected	FY 23-24 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

N/A

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment 1: NPR Article

Attachment 2-A: Code Enforcement Courtesy for Notice 2252 West Dry Creek Road, Healdsburg

Attachment 2-B: Code Enforcement Courtesy for 1405 Old Winery Court, Sonoma

Attachment 2-C: Code Enforcement Courtesy for 6165 West Dry Creek Road, Healdsburg

Attachment 3: Response to Code Enforcement Courtesy Notices

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

N/A