

- (a) *Rules of construction.* For the purpose of this chapter, the regulations are structured so as to be strictly permissive. As such, only those uses and structures which are specifically permitted in the Code of Ordinances are allowed. If there is no specific language in the Code which addresses a use or a structure, then said use or structure is not permitted.

The term "used for" shall include the term "designed for", the term "structure" shall include the term "building", the term "lot" shall include the terms "plot" or "tract", and the term "shall" is mandatory and not permissive.

In the interpretation or application of any provision of this chapter, it shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulations shall be controlling.

- (b) *Definitions.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accessory use or building or structure* means a subordinate use or structure customarily incident to the principal use or structure located on the lot or located on a contiguous lot when a unity of title has been provided.

*Acre* means, for the purpose of calculating dwelling units, an area or parcel of land containing 40,000 square feet.

*Alley* means a facility which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

*Attic* means non-habitable, unfinished space within the roof system of a building or structure with less than seven feet of head room, access by only pull down, non-mechanical stairs and used only for storage, mechanical or machinery use.

*Auto rental lot* means a lot or parcel of land on which passenger automobiles for active rental purposes only are stored or parked.

*Awning* means an accessory structure either temporary or permanent which is supported by an open framework and is covered by cloth material.

*Awning, sidewalk* means an awning that projects over a public sidewalk or walkway.

*Banks and financial institutions* means establishments providing saving, lending, trust, and other financial services to the public. Banks and financial institutions shall include, but not necessarily be limited to, banks, brokers and brokerage firms, savings and loan associations, mortgage companies, loan offices, credit unions, and trust companies.

*Bar/lounge* means an establishment dispensing alcoholic beverages for on-site consumption.

*Basement* means floor area situated under a building, such floor area having exterior perimeter walls and having a floor level two or more feet below the level of the contiguous exterior ground outside of the building and having one-half or more of its floor-to ceiling height below the average level of all of the exterior ground of the lot comprising the subject building development site. For additional regulations and the exceptions to the regulations of basements see sections 134-1608, 134-1609 and 134-1611. See also *sub-basement*.

*Essential services* means public utility facilities related to water supply, telephone, cable television, gas and electrical distribution systems, town-owned town-operated services such as sanitary sewer, stormwater drainage and solid waste collection and disposal systems, and town-owned municipal buildings and structures, including any necessary appurtenant structures serving the town, but not including buildings housing employees.

*Executive/employee/group vacation retreat* means simultaneous use or occupancy of a dwelling unit by a group of individuals other than a family.

*Executive office suites* means a tenant space shared by separate office and professional services, each of which has a fixed desk. The executive office suite and each office and professional service business within said suite is licensed and has a fixed desk for each employee.

*Family* means an individual; or two or more persons related by legal adoption, blood, or a licit marriage; or a group of not more than three persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling.

*Floor area total* means the sum of the gross horizontal area of all the floors of a building, except a basement or subbasement as defined, measured from the exterior faces of exterior walls and/or supporting columns.

*Formula restaurant* means a restaurant that is one of a chain or group of three or more restaurants in the nation, and which satisfies at least two of the following three descriptions:

- (1) It has the same or similar name, trade name, or trademark as others in the chain or group;
- (2) It has standardized and limited menus, ingredients, food and beverage preparation;
- (3) It offers any of the following characteristics in a style that is distinctive to and standardized among the chain or group:
  - a. Exterior design or architecture;
  - b. Interior design; or
  - c. Uniforms, except that a personal identification or simple logo will not render the clothing a uniform.

*Foster care facility* means a facility, licensed or funded by the state department of children and family services, housing foster residents and providing a family living environment for the residents, including such supervision and care as may be necessary to meet the physical, emotional and social needs of the residents and serving either children or adult foster residents.

*Frontage* means all the property on one side of a street or place between two intersecting streets or places measured along the line of the street or place, or, if the street or place is dead-ended, all of the property abutting on one side between an intersecting street or place and the dead end of the street or place.

*Garage, private* means a building or space used as an accessory to or part of a main building permitted in any residence district and providing for the storage of motor vehicles and in which no business, occupation or service for profit is in any way conducted.

*Garage, storage* means any building or premises, other than a private garage, used exclusively for the parking or storage of motor vehicles.

*Parking, required* means those parking facilities determined as the minimum facilities necessary to comply with this chapter as set forth in the schedule of off-street parking requirements.

*Parking, supplemental* means those parking facilities provided as a permitted or special exception and which are in addition to existing required parking as set forth in the schedule of off-street parking requirements. Supplemental off-site parking in an underground garage or surface, enclosed, partially enclosed, or a rooftop parking facility that is a permitted use in the C-TS, C-WA and C-OPI zoning districts is not required to be parking that is in addition to what is required in the schedule of off-street parking requirements in the code. This definition will sunset on March 13, 2024 and revert back to the definition prior to the adoption of Ordinance Nos. 1-2021 and 20-2021 unless extended or modified by the town council.

*Pergola* means an open, accessory structure comprised of a structural framework over an outdoor area usually covered with climbing shrubs or vines.

*Personal service establishments* means establishments primarily engaged in the provision of services to individuals dealing with their personal or immediate effects. Personal services would include, but not necessarily be limited to, hairstyling or beauty services, tailor/dressmaker, travel agent, cleaning services, interior decorator services, dance studio or similar personal instruction services.

*Public/private group use* means use of land or structures thereon or portions thereof for public structures, governmental operations, education, essential services, recreation and cultural amenities generally beneficial to the public health, safety and general welfare of the town's residents.

*Public structures* means municipally owned and/or operated structures used for public purposes such as, but not limited to, administrative offices, recreational buildings, police and/or fire stations and other public safety facilities.

*Quasi-commercial* means any activity that would seemingly or to some degree be normally considered commercial in nature.

*Rear height plane* means a height limit of a building in the R-B district as measured by the maximum overall height permitted on the abutting lot to the rear. When a lot abuts more than one lot to the rear, an average maximum overall height will be used to establish the rear height plane.

*Residential use* means use of land or structures thereon or portions thereof for residential occupancy of a permanent or semipermanent nature with an intended occupancy period, by any one individual or family, with or without bona fide nonpaying guests, of not less than three months; except that residential uses may be occupied by any one individual or family for periods of less than three months not more frequently than three times per calendar year; and except that this definition does not include occupancy of a transient nature such as in hotel, motel or timesharing uses.

*Restaurant* means every building or part thereof and all accessory buildings used in connection therewith or any place or location kept, used or maintained as, advertised as or held out to the public to be a place where meals and foodstuffs are prepared and served.

*Retail establishments* means establishments selling commodities or goods to ultimate consumers.

*Structural alteration* means any change, except the repair or replacement, in the supporting members of a building, such as bearing walls, columns, beams or girders, or the rearrangement of any interior partitions affecting more than 50 percent of the floor area of the building.

*Structure* means anything constructed, placed or erected on land, submerged land or over water, the use of which requires permanent or temporary location on the land, submerged land or over water, or attachment to something having permanent or temporary location on or over the land, submerged land, or water.

*Structure, principal* means a main and foremost building or structure located on a lot and in which is conducted the main and foremost use of the lot on which the building or structure is situated.

*Structure, public* means anything constructed, placed or erected on land, submerged land or over water by a Federal, State, County, City of West Palm Beach and City of Lake Worth governmental entities, the use of which requires permanent or temporary location on the land, submerged land or over water, or attachment to something having a permanent or temporary location on or over the land, submerged land, or water.

*Sub-basement* means a facility that is located underground and does not exceed in height the lowest point of the public sidewalk abutting the property or, alternately, the lowest point of the public street if there is no public sidewalk and no portion which is located beyond the confines of the outer walls of the main building located above ground level. For additional regulations and the exceptions to the regulations of sub-basements see [sections 134-1610, 134-1611 and 134-2179](#).

*Timesharing use* means the use of any unit under which the exclusive right of use or occupancy of the unit for a period of less than three months circulates among various occupants in accordance with a fixed time schedule on a periodically recurring basis for a period of time established by such schedule. Such a use is permitted in the town only by special exception in the C-OPI, C-PC, C-B and R-D(2) zoning districts.

*Townpersons* means all full-time and seasonal residents as well as visitors staying at accommodations and employees working in establishments located within the town.

*Town-serving* means establishments principally oriented to serving the needs of townpersons which would not substantially rely upon the patronage of persons not defined as townpersons. Town-serving establishments, by definition, would typically contain 4,000 or less square feet of interior gross leasable area (GLA) in the C-WA district, 3,000 or less square feet of interior GLA in the C-TS and C-B districts and 2,000 or less square feet interior GLA in the C-PC district. Establishment would also not engage in advertising designed to attract other than townpersons.

*Trellis* means an ornamental accessory structure of lattice work over which vines are trained, usually made of narrow strips of wood which cross each other at regular intervals.

*Use, principal* means a main and foremost use of improved or unimproved property, such use established on the property and which may be within or without any building on the property.

*Vacant land* means any lot or parcel of land which is completely open, has no use associated with it or upon it and is not utilized as the required yard area for any adjoining uses.

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## A Startup Is Turning Houses Into Corporations, And The Neighbors Are Fighting Back

AUGUST 24, 2021 · 6:30 AM ET



Greg Rosalsky



Brad Day and his neighbors in California's Sonoma Valley have noticed a real estate startup is turning houses in their community into limited liability corporations. A group has formed to oppose the company's moves. Day's favorite sign reads, "The Pacaso house is the big one on the right with no soul."

*Brad Day*

On a sleepy cul-de-sac amid the bucolic vineyards and grassy hills of California's Sonoma Valley, a \$4 million house has become the epicenter of a summer-long spat between angry neighbors and a new venture capital-backed startup buying up homes around the nation. The company is called Pacaso. It says it's the fastest company in American history to achieve the "unicorn" status of a billion-dollar valuation — but its quarrels in wine country, one of the first regions where it's begun operations, foreshadow business troubles ahead.

Brad Day and his wife, Holly Kulak, were first introduced to Pacaso in May after a romantic sunset dinner in their yard. "And we just saw this drone, coming up and over our backyard," Day says. "And we're like, what is that?"

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Sponsor Message

Pacaso denies directing or paying a drone operator to film the neighborhood. But its website does have drone photos of the house in question, located at 1405 Old Winery Court. It says it bought the photos after the fact.

Nonetheless, after the drone incident, Day and Kulak got suspicious about what was going on in their neighborhood. About a week later, their neighbors told them they were moving and selling their house to a limited liability corporation, or LLC. But they were super vague about it.

***[Editor's note: This is an excerpt of Planet Money's newsletter. You can sign up [here](#).]***



Day and Kulak began speaking with other residents on their cul-de-sac. One of them, Nancy Gardner, had learned from a friend in nearby Napa Valley about a new company called Pacaso that was buying houses in the area. The company was co-founded by a Napa resident, and it converts houses into LLCs. Pacaso then sells shares of these corporate houses to multiple investors. Gardner Googled Pacaso, and, sure enough, the house on their cul-de-sac was on its website. The company had named the house "Chardonnay" and was now selling investors the chance to buy a one-eighth share of it for \$606,000.

### **Pacaso is less than a year old**

Pacaso was founded in October 2020 by Austin Allison and Spencer Rascoff, two former executives at Zillow. The company is based in San Francisco, and as is typical of tech startups in the Silicon Valley area, its founders tell a lofty story about their business that's about more than just making money. The company says the motivation for the venture began when Allison and his wife, both based in Napa, bought a second home in Lake Tahoe. The night after they closed on the house, Allison says in a promotional video, he and his wife sat around a fire "thinking how appreciative we were to be second homeowners. And, from that moment, I've always been inspired about making the dream of second home ownership possible for more people."

To make second home ownership possible for more people — and, of course, make money — Pacaso uses a "fractional home ownership" model. They buy a house, lightly refurbish it, furnish it and then create an LLC for it. They then divvy up ownership of this corporatized house into eight fractions and sell those shares on their website.

If you buy a share in a house, you're able to stay in it 44 nights per year in increments that can't exceed 14 consecutive days per visit. You can also "gift" these stays to friends or family. Pacaso offers an app to handle the logistics of booking stays. It oversees management, maintenance and cleaning of the property. In exchange for all this, it charges 12% of the home's purchase price upfront and monthly fees going forward. If you buy a share in a house, you have to hold on to it for a year. After that, you can sell it and profit from any appreciation in the home's value (or be on the hook for any depreciation).

### **The neighbors got together to oppose Pacaso**

When Day, Kulak and their neighbors learned about Pacaso's business model, they were appalled. They saw the venture capital-backed company as invading their community and converting their neighbor's house into a revolving carousel of vacationers. They imagined endless parties, noise and cars overflowing their cul-de-sac. They worried those staying at "Chardonnay" would drive too fast and fail to heed local concerns about wildfires and droughts. But, most of all, they feared the Pacaso house and more like it would destroy their sense of community and turn their neighborhood into an "adult Disneyland."

The county, Day says, had designated their neighborhood an "exclusion zone," which bans Airbnb-style, short-term rentals to preserve the "residential character" of communities. But Pacaso argues that its clients are not short-term renters. They are co-owners of an LLC. This also means they don't have to pay the typical taxes on short-term rentals. Likewise, in the nearby town of St. Helena, Pacaso was trying to circumnavigate a city ban against timeshares with the same argument. Day says he and his neighbors saw Pacaso's newfangled business model as



nothing more than a "glorified timeshare" with a legal strategy aimed at "skirting regulations that are designed to keep communities intact."

The cul-de-sac sprang into action. It formed an organization called Sonomans Together Opposing Pacaso, which, not coincidentally, has the acronym STOP. It contacted the county Board of Supervisors. It created an anti-Pacaso website and circulated an online petition. It flooded the local newspaper with op-eds and letters to the editor. It lobbied local real estate agents not to work with Pacaso. "It feels like we're waging a war by land, air and sea," Day says.

Protest signs festoon the neighborhood's lawns, fences and cars. They say things such as "Stop Pacaso" and "Not here, Pacaso!" Day's favorite sign reads, "The Pacaso house is the big one on the right with no soul."

### **Customers are still buying shares in Pacaso's homes despite protest signs**

The signs, of course, make the prospect of buying a share in the Pacaso house awkward, to say the least. Alfred Miller, however, bought a share in "Chardonnay" before ever seeing it in person. Miller is a risk management consultant based in Los Angeles. He believes in Pacaso's business model. And he likes wine and Sonoma's climate. As he researched "Chardonnay" online, he liked the modern architecture and pool, and he decided he'd buy a one-eighth share of the house. It wasn't until a couple weeks after he made the purchase that he first drove up to Sonoma and witnessed the spectacle around his new investment.

"So, imagine me as a new owner driving up, and I get to the corner of Old Winery Court," Miller says. "There's a full-on, professionally printed sign that says 'No Pacaso.' " Miller then turned right onto Old Winery Court "and the more I drive

into the neighborhood, the more signs I see. Brad Day has three vehicles in front of his house, and each vehicle has an anti-Pacaso sign on it. I pull into the driveway — there are two signs on each side of the property. I mean, it was not what I would call very welcoming."

As it did on Old Winery Court, controversy erupted in Napa after the company bought a home worth \$1.13 million. That's about 35% higher than Napa's median home price. Pacaso insists it only buys luxury and ultra-luxury houses, and it therefore isn't competing with local middle-class families in the housing market. But this home, located two blocks from a high school, didn't quite fit its talking points. Some Napans were pissed. Pacaso says the house was the victim of trespassing and "illegal signage." Pacaso even claims it had to file a police report after a local wrote to the company and said, "I will burn down any home you buy in Napa. This is no joke."

Pacaso's CEO, who lives in Napa, saw firsthand how angry Napans were, and the company responded. In June, Pacaso agreed to sell the Napa home in a traditional manner "to a whole home buyer" rather than convert it into a corporation and sell it to multiple people. The company also pledged to beef up its "Owner Code Of Conduct" to include "decibel limits on all home sound systems," create a "local liaison" dedicated to assisting neighbors, not buy any homes in the area for under \$2 million, and, for each house sold in Napa and Sonoma counties, donate \$20,000 to a local nonprofit dedicated to affordable housing.

But while it has been trying to placate local communities with business reforms, Pacaso has waged a court battle with the town of St. Helena over whether its homes should be classified as timeshares. Pacaso is dead set against that classification. One reason might be that timeshares have a bad rap: While they're

a popular way to go on vacations, their costs and associated fees tend to make them money losers rather than a profitable investment.

### **The timeshare model — which Pacaso says it is not doing — is already illegal in many places**

Potentially even more damaging to Pacaso's ambitions, however: Timeshares are banned in many vacation communities around the nation. Hence, Pacaso has strong reasons to insist its homes are not timeshares.

"Unlike a timeshare model, the co-owners that Pacaso serves collectively own real estate, not time," says Ellen Haberle, director of community and government relations for Pacaso.

St. Helena disagrees, declaring Pacaso homes are not allowed in the town because of a city ordinance against timesharing. "Simply calling them co-ownership arrangements does not change that fact," City Attorney Ethan Walsh said. In response to the ban, Pacaso sued the town in federal court. The lawsuit is still pending.

Pacaso says it plans to expand across North America and Europe. Given the company's billion-dollar valuation, investors seem to believe that many people will be attracted to its model of fractional second home ownership. But local residents will likely continue to fight the unicorn stampeding into their towns.

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housing pacaso



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# MONTEREY COUNTY



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June 24, 2022

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**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<sup>1</sup> 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

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<sup>1</sup> [https://library.municode.com/ca/monterey\\_county/codes/code\\_of\\_ordinances](https://library.municode.com/ca/monterey_county/codes/code_of_ordinances)  
[http://www2.co.monterey.ca.us/planning/docs/ordinances/Title20/20\\_toc.htm](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.

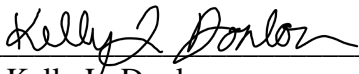
Monterey County is aware of certain homes advertised on Pacaso’s website that are located in the Carmel Highlands and the Del Monte Forest. Both of these areas are zoned Low Density Residential, Rural Density Residential or Medium Density Residential, and therefore Timeshare Projects are not allowed 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](mailto: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

April 7, 2022

VIA E-MAIL TO  
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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:

Patrick Abell  
Ellen Haberle  
Pacaso, Inc.  
April 7, 2022  
Page 2

- 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

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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 call 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

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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**

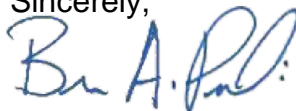
In conclusion, Pacaso’s current operations within the City are unlawful and must cease immediately. The City requests that Pacaso cease all advertising and sale of fractional ownership of residential properties within the City. Failure to comply may result in enforcement. Any violation of City zoning 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](mailto:bpierik@bwslaw.com)

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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



# Miami Beach embraces co-ownership

PUBLISHED DATE: APRIL 28, 2023



Miami Beach has recently taken a monumental step in recognizing co-ownership and co-ownership management, which is a significant milestone for Pacaso. Co-ownership is quickly becoming the future of second home ownership, and Miami Beach's recognition of this trend is validation that co-ownership is here to stay. By consolidating home buyers into fewer luxury homes, Pacaso is relieving the pressure of second home demand and unlocking benefits across the board for buyers, owners and communities.

*"Miami Beach's recognition of co-ownership is a game-changer for second home ownership, and Pacaso is excited to continue leading the way in this innovative approach to owning property. Good things happen when businesses and local governments collaborate sensibly and pragmatically."*

— Austin Allison, Pacaso CEO and Co-Founder

With the passing of the Miami Beach ordinance legitimizing co-ownership, Pacaso can continue to provide a unique solution to the problems that have plagued second home ownership for decades. From reducing ownership costs to providing support for local businesses and increasing tax revenue, co-ownership has proven to be a game-changer for second home ownership. Pacaso's co-ownership model also promotes accessibility and diversity in second home ownership, enabling a broader range of individuals to experience the benefits of owning a second home.

Pacaso owners take pride in not only enjoying their homes but also being responsible members of their community. To uphold this commitment, all owners sign the Pacaso Code of Conduct, and are supported by a dedicated local home manager who oversees the home and serves as a valuable resource to the surrounding community.

*"Being a good neighbor is at the core of our values, and I am committed to upholding these standards in Miami Beach. It's truly an honor to work alongside our owners to ensure they have the best possible experience in our community and be a local resource to both our owners and neighbors."*

— Ramon Antelo, Pacaso Miami Home Manager and Hospitality Committee Chair of the South Florida Hispanic Chamber of Commerce

With this new ordinance, co-ownership management companies will be required to adhere to a set of rules and regulations set forth by the City Commission. Pacaso recognizes the importance of these regulations and will continue to be good stewards by abiding by the new guidelines. By prioritizing responsible property management, Pacaso is committed to helping individuals create unforgettable memories in their home for years to come.

Miami Beach's recognition of co-ownership management comes on the heels of a solid first quarter for Pacaso. Pacaso's innovative business model saw a 40% increase in funded shares in Q1 2023, compared to Q4 2022.

"Pacaso's solid Q1 results and the passing of the Miami Beach ordinance validate our commitment to providing a hassle-free experience for our buyers and benefiting local communities," continued Allison.



We would like to extend our gratitude to the Miami Beach community, including Pacaso owners, owners of other co-owned homes, local realtors, business people, and others who spoke up in support of co-ownership. Your advocacy and support were instrumental in helping us achieve this important milestone. We also extend our thanks to the Miami Beach City Commission and staff for taking the time to understand the co-ownership model and the benefits it provides to the community. Moving forward, we will continue to work closely alongside stakeholders to ensure co-ownership benefits the entire Miami Beach community. Together, we can create a brighter future for second home ownership in Miami Beach and beyond.



(a) Definitions.

- (1) For purposes of this section, a "co-owned housing unit" means a residential dwelling unit managed by a co-owned housing unit manager and utilized exclusively for dwelling, lodging, or sleeping purposes by owners or members of a limited liability company, partnership, corporation, or other entity that owns the dwelling unit, as well as authorized guests who have not provided compensation to any party for use of the unit.
- (2) For purposes of this section, a "co-owned housing unit manager" means a person, corporation, trust, or other entity that manages a co-owned housing unit, including providing cleaning services and maintenance of the co-owned housing unit, on behalf of the owners of the co-owned housing unit.

(b) No co-owned housing unit manager shall engage in the business of managing a co-owned housing unit within the city without first having secured a current business tax receipt for such activity. As part of the application to secure a business tax receipt, each co-owned housing unit manager shall provide the city with a list of the addresses of each co-owned housing unit in Miami Beach that is managed by the co-owned housing unit manager. A co-owned housing unit manager shall provide an updated list to the city within 30 days of any change to the list of co-owned housing units managed by the co-owned housing unit manager.

(c) A co-owned housing unit manager shall at all times comply with the following minimum requirements and management regulations:

- (1) A co-owned housing unit manager must identify a designated responsible party that is a property management company, real estate broker or agent, lawyer, owner, or other individual, who resides within 25 miles of the property. The designated responsible party must be available by telephone, or otherwise, 24 hours per day, and must be able to respond to telephone inquiries within two hours of receipt of an inquiry. The designated responsible party shall also be designated as the agent for receiving all official communications from the city. The name, physical address, email address, and telephone number associated with any co-owned housing unit manager and designated responsible party shall be provided to the city in writing, and written notice of any change to the foregoing shall promptly be provided to the city.
- (2) As applicable only to co-owned housing units that are located in zoning districts where short-term rentals are prohibited, the co-owned housing unit manager and each individual owner shall be required to sign a sworn affidavit agreeing and acknowledging that, pursuant to the land development regulations, short-term rentals are prohibited in the co-owned housing unit,
- (3) A co-owned housing unit manager must provide or contract for the provision of yard maintenance services, including landscaping, weed control, and irrigation to a level that is consistent with the level of landscaping and maintenance on adjoining and nearby properties.
- (4) A co-owned housing unit manager must provide or contract for the provision of structural maintenance services as necessary for the maintenance of any buildings on the property.
- (5)

A co-owned housing unit manager must provide or contract for the provision of routine upkeep, including painting and repair, to a level that is consistent with the level of maintenance on adjoining or nearby properties.

- (6) A co-owned housing unit manager must provide or contract for the provision of garbage collection, and must ensure that garbage receptacles are retrieved and secured on the property within 24 hours of collection. The property shall be kept free from accumulated garbage and refuse.
- (7) The use of a co-owned housing unit shall at all times comply with all applicable use restrictions in the land development regulations. The co-owned housing unit manager shall ensure that the co-owned housing unit is not used in violation of the land development regulations.
- (8) A co-owned housing unit manager must require the co-owners of any co-owned housing unit to adopt and adhere to a code of conduct that, at a minimum, includes compliance with the requirements of this section, and also includes rules implementing the following:
  - a. A prohibition on hosting any event or party that would cause disruption to the neighborhood.
  - b. Requiring owners to adhere to quiet hours from 9:00 pm to 7:00 am each night. During these hours, all reasonable efforts shall be taken to ensure noise is not audible from the right-of-way or neighboring properties.
  - c. Requiring owners to park in a designated garage or driveway, whenever possible.
  - d. Requiring owners to comply with every applicable requirement of this Code, including without limitation chapter 46, article III ("litter") and article IV ("noise ordinance"); chapter 58 (including applicable property maintenance requirements); chapter 90 (including applicable sanitation requirements); and all applicable zoning requirements in the land development regulations.
- (d) Any violation of the requirements of this section or any other provision of this Code by a co-owned housing unit manager shall subject the co-owned housing unit manager to code enforcement proceedings under chapter 30 of this Code.
- (e) Penalties and enforcement.
  - (1) The following penalties shall be imposed for a violation of this section:
    - a. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$250.00;
    - b. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$500.00;
    - c. The penalty for the third or subsequent violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00.
  - (2) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the

violation may be appealed by requesting an administrative hearing before a special magistrate within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

- (3) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special magistrate.
  - a. A violator who has been served with a notice of violation must elect to either:
    - i. Pay the civil fine in the manner indicated on the notice of violation: or
    - ii. Request an administrative hearing before a special magistrate to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
  - b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code.
  - c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special magistrate, the special magistrate may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special magistrate, and shall be treated as an admission of the violation for which fines and penalties shall be assessed accordingly.
  - d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the 61st day following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien.
  - e. Any party aggrieved by a decision of a special magistrate may appeal that decision to a court of competent jurisdiction.
- (4) The special magistrate shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.

(Ord. No. 2023-4547, § 1, 4-28-23)



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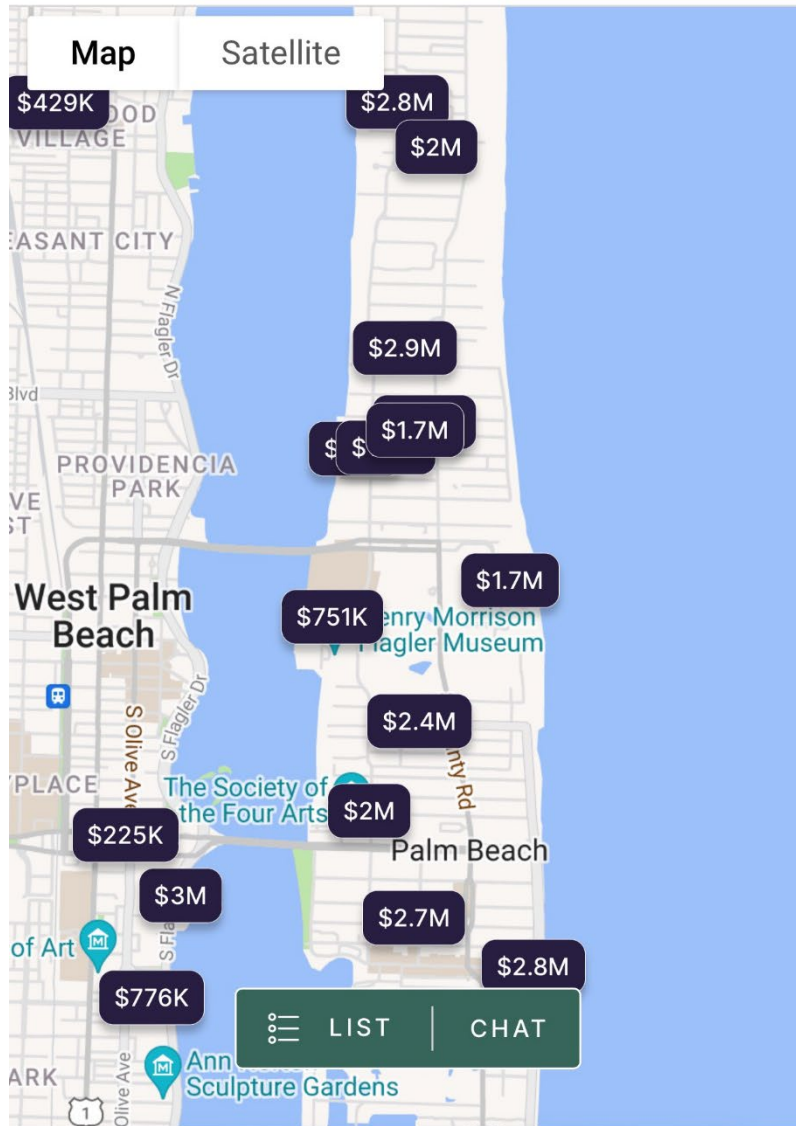


Map area



48 listings ?

REFINE



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pacaso.com

