

April 7, 2022

VIA E-MAIL TO
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2021 Fillmore St. Suite 183
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Ellen Haberle, Director
Government & Industry Relations
Pacaso, Inc.
2021 Fillmore St. Suite 183
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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:

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- 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 reasonable 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

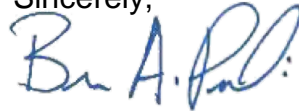
In conclusion, Pacaso’s current operations within the City are unlawful and must cease immediately. The City requests that Pacaso cease all advertising and sale of fractional ownership of residential properties within the City. Failure to comply may result in enforcement. Any violation of City zoning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

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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