

ORDINANCE NO. 24-019

ORDINANCE SUBMITTED TO VOTERS OF THE CITY OF PACIFIC GROVE AMENDING CHAPTER 23.45 OF THE PACIFIC GROVE MUNICIPAL CODE TO ADD A DEFINITION OF TIMESHARE PROJECT AND PROHIBIT ADVERTISING AND SALE THEREOF AND OTHER CHANGES IN A MANNER FULLY IN CONFORMITY WITH THE COASTAL ACT (PUBLIC RESOURCES CODE SECTION 30510 ET SEQ.)

FINDINGS

The People of the City of Pacific Grove hereby find:

1. Timeshare projects involve the division of the exclusive rights to use, possess, and occupy any real property between multiple persons, pursuant to a fixed or floating time schedule.

2. On March 18, 1981, the City Council of the City of Pacific Grove (“City”) adopted Ordinance No. 1250 N.S. which added Section 23.64.025 to the City Municipal Code and included for a definition of a timeshare project a reference to California Business and Professions Code Section 11003.5 and restricted timeshare projects to the C, I, V. C. and R-3-M Districts. All references to Sections in this Ordinance shall be to Sections of the City Municipal Code unless otherwise stated.

3. On November 2, 1982, the voters adopted Measure B Enacting Regulations For Multiple Unit Developments Involving Condominiums, Planned Unit Developments and Time-Shares and prohibited timeshare projects.

4. On November 17, 1982, the City Council adopted Ordinance No. 1315 N.S. which codified Measure B in Chapter 23.45 of the City Municipal Code.

5. Section 23.45.020 provides that timeshare projects shall not be permitted in the City.

6. Section 23.45.030 states that one of the intentions of Chapter 23.45 in prohibiting timeshares is to “avoid the conversion and loss of the city’s residential stock and character.”

7. On June 4, 1997, the City Council adopted Ordinance No. 97-22 which rescinded Section 23.64.025 due to a conflict with Section 23.45.020 (adopted by Measure B) which prohibits timeshare projects.

8. In 2004, Business and Professions Code Section 11003.5 was repealed by the California State Legislature.

9. Chapter 23.45 of the City Municipal Code does not include a definition of the term timeshare project.

10. The City Charter in Article 5.5 provides that the City “shall be guided by the determination of the people that Pacific Grove is primarily a city of homes and that business and industry shall be compatible with its residential character.”

11. The Housing Element of the City's General Plan specifically recognizes that the City seeks to protect the stability of residential neighborhood in Goal 1: Support the maintenance and rehabilitation of the city's existing housing stock and residential neighborhoods.

12. On March 11, 2020, the California Coastal Commission certified the City's Land Use Plan and Implementing Ordinances.

13. The Local Coastal Program consists of the City's Land Use Plans, zoning ordinance, zoning district maps and other ordinances and implementing actions.

13. City Municipal Code Chapter 23.90 is the City's Local Coastal Program Implementation Plan.

15. On June 13, 2024, the City Planning Commission has reviewed this Ordinance and determined this Ordinance is consistent with the City's General Plan, Local Coastal Plan, and all other relevant City and State codes and regulations, and having reviewed the Planning Commission's recommendations and the relevant provisions of the General Plan, the City Council has found that this Ordinance is consistent with the City's General Plan; and

16. Recent increases in the development and sale of fractional interest ownerships have made it appropriate to revisit the City Municipal Code to confirm that fractional interest ownerships are prohibited timeshares and to also expressly prohibit the advertising and sale of prohibited timeshare projects and fractional interest uses.

17. On June 20, 2024, notice of the public hearing before the City Council was published in compliance with State law (California Government Code 65091), indicating the date and time of the public hearing on this Ordinance.

18. On July 3, 2024 the City Council opened the public hearing to receive public testimony regarding this Ordinance, including without limitation, information provided by City staff and public testimony.

19. The amendments proposed by this Ordinance to the City Municipal Code are in full conformity with the City's Local Coastal Program and the California Coastal Act (Public Resources Code Section 30510 et seq.).

20. This Ordinance is necessary for the protection of the health, safety and welfare of the residents of the City.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PACIFIC GROVE DO ORDAIN AS FOLLOWS:

SECTION 1. Findings. The foregoing Findings are true and correct and are hereby incorporated by this reference as though set forth in full.

SECTION 2. CEQA Determinations. The City Council exercises its independent judgment and finds that this Resolution and the Proposed Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of

Regulations, Title 14, Division 6, Chapter 3, because the enactment of this Proposed Ordinance: (1) does not constitute a “project” as defined by CEQA pursuant to Sections 15060(c)(3) and 15378; (2) will not result in a direct or reasonably foreseeable indirect physical change in the environment pursuant to Section 15060(c)(2); (3) is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment pursuant to 15061(b)(3); and (4) involves regulatory actions to assure protection of the environment pursuant to Section 15308

SECTION 3. Amendment to Chapter 23.45 of the City Municipal Code.

Chapter 23.45 of the City Municipal Code is hereby amended to add the following:

23.45.015 Definition of Timeshare Project

(a) For purposes of Chapter 23.45 of the City Municipal Code, "Timeshare Project" means any arrangement, plan, scheme, or similar device, whether established by membership agreement, sale, lease, deed, license, right-to-use agreement, articles of organization or incorporation, operating agreement or bylaws, or by any other means, whereby a purchaser, in exchange for consideration, receives the right to exclusive use of real property or portion thereof, according to a fixed or floating time schedule, for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years. A timeshare project shall be deemed to exist whenever such recurring rights of exclusive use to real property are created, regardless of whether such exclusive rights of use are a result of a grant of ownership rights, possessory rights, membership rights, rights pursuant to contract, or ownership of a fractional interest or share in real property, and regardless of whether they are coupled with ownership of a real property interest such as freehold interest or an estate for years in the property.

(b) The definition of Timeshare Project set forth herein shall take precedence over the definition of a timeshare or timeshare project, by whatever name, if any, elsewhere in State law or the City Municipal Code.

(c) The definition of Timeshare Project set forth herein may be changed in the future by an ordinance adopted by the City Council without voter approval only to the extent that those changes would not lessen or eliminate the prohibition of timeshare projects.

23.45.025 Advertising of Timeshare Projects Prohibited

(a) Any responsible person, including but not limited to an owner of a timeshare project, management entity, agent, or broker who uses, or allows the use of, or advertises or causes to be printed, published, advertised, or disseminated in any way and through any medium, the availability for sale or use of real property in violation of Section 23.45.020 is guilty of a misdemeanor for each day in which such accommodation is used, allowed to be used, or advertised for sale or use in violation of Section 23.45.020. Such violation shall be punishable pursuant to the City Municipal Code.

(b) Any responsible person, including but not limited to an owner of a timeshare project, management entity, agent, or broker who uses, or allows the use of, or advertises or causes to be printed, published, advertised, or disseminated in any way and through any medium, the availability for sale or use of real property in violation of Section 23.45.020 is subject to administrative fines and/or penalties as set forth in the City Municipal Code.

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

(d) The prohibition of advertising timeshare projects set forth herein shall not apply to any lawful timeshare project established prior to the codification of Measure B in Chapter 23.45 of the City Municipal Code.

(e) The prohibition of advertising timeshare projects set forth herein may be changed in the future by an ordinance adopted by the City Council without voter approval only to the extent that those changes would not lessen or eliminate this prohibition.

23.45.035 Assisting with Timeshare Projects Prohibited

(a) No person or entity shall assist any other person or entity in the marketing, creation, use, sale or purchase of a timeshare project.

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

(c) The prohibition of assisting with timeshare projects set forth herein shall not apply to any lawful timeshare project established prior to the codification of Measure B in Chapter 23.45 of the City Municipal Code.

(d) The prohibition of assisting with timeshare projects set forth herein may be changed in the future by an ordinance adopted by the City Council without voter approval only to the extent that those changes would not lessen or eliminate this prohibition.

23.45.050 Severability.

Section 23.45.050 Severability is hereby amended to read as follows:

Severability and Interpretation. Chapter 23.45, including all amendments thereto, shall be broadly construed in order to achieve its purpose and shall be interpreted so as to be consistent with all applicable Federal and State laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of Chapter 23.45 is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of Chapter 23.45. The voters hereby declare that Chapter 23.45, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion

thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional. If any provision of Chapter 23.45 is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of Chapter 23.45 that can be given effect without the invalid application.

SECTION 4. Severability and Interpretation. This Ordinance shall be broadly construed in order to achieve its purpose. This Ordinance shall be interpreted so as to be consistent with all applicable Federal and State laws, rules, and regulations. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion of this Ordinance is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The voters hereby declare that this Ordinance, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, parts, or portions were declared invalid or unconstitutional. If any provision of this Ordinance is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Ordinance that can be given effect without the invalid application.

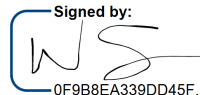
SECTION 5. Publication. The City Clerk shall publish and/or post this Ordinance in the manner required by law.

SECTION 6. Effective Date. This Ordinance shall become effective pursuant to applicable law.

SECTION 7. Amendment or Repeal. Except as otherwise provided in this Ordinance, this Ordinance may be amended or repealed only by the voters of the City of Pacific Grove.

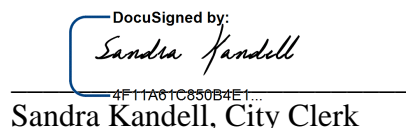
PASSED AND ADOPTED BY THE PEOPLE OF THE CITY OF PACIFIC GROVE this 5th day of November, 2024.

APPROVED:

Signed by:

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Nick Smith, Mayor

ATTEST: **12/11/2024**
DATE: _____

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Sandra Kandell, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Brian A. Pierik
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Brian A. Pierik, City Attorney