

**VILLAGE OF NORTH PALM BEACH
VILLAGE ATTORNEY'S OFFICE
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Honorable Mayor and Council

THRU: Andrew D. Lukasik, Village Manager

FROM: Leonard G. Rubin, Village Attorney
Jeremy Hubsch, Community Development Director

DATE: January 13, 2022

SUBJECT: **ORDINANCE 2nd Reading** – Ordinance Prohibiting Time Share Units and Fractional Ownership properties within the Village's Residential Zoning Districts

Based on concerns raised by residents, the Village Council directed the Village Attorney to draft an Ordinance prohibiting fractional ownership properties within the Village's residential zoning districts. A fractional ownership unit is similar to a time-share unit, which is defined by the Village Code as "a dwelling unit in which the right of use or occupancy circulates among various persons for specific periods of time less than one (1) year in accordance with a fixed time schedule." The Village Code currently restricts time-share units to the following three commercial zoning districts: the C-MU US-1 Mixed Use Zoning District, the C-NB Northlake Boulevard Zoning District, and the C-3 Regional Business District. While time-share units are not specifically prohibited within the Village's residential zoning districts, according to the principles applicable to the interpretation of municipal ordinances, the specific inclusion of a permitted use in one district generally means that the use is prohibited in other zoning districts where not specifically listed.

Fractional ownership v. time-shares:

The Code does not currently address the fractional ownership of real property, which differs slightly from time-share units. Fractional ownership of residential property is an emerging trend in which shares of ownership rights to a property are sold to multiple buyers, thus providing each buyer an ownership interest and the right to use the property for a certain period of time. Although this model effectively operates similarly to a time-share, fractional ownership typically conveys actual ownership rights instead of a right to use of the property for a certain period of time only, and also divides a property into fewer fractions than a typical time-share arrangement. In a typical fractional ownership scheme, the fraction of ownership may directly correlate to the amount of time the owner is permitted to use and/or occupy the dwelling unit, whereas in a typical time-share scheme, the customer typically buys only the rights to use the property for a set period of time.

Impacts of transient uses on established neighborhoods:

Both time-shares and fractional ownership negatively impact and undermine the stability of established residential neighborhoods by introducing transient uses and the adverse impacts typically associated with such uses. The introduction of time-share units and fractional ownership properties within established neighborhoods can disturb the quiet enjoyment of the residents of the neighborhood and create numerous secondary impacts, including noise, loss of privacy, traffic, parking and a greater

demand on public services. Fractional ownership further reduces the number of available housing units from the housing market for long-term residents to utilize and can adversely impact future development, redevelopment, safety and property maintenance as a result of the complexities associated with the incongruent and changing objectives, intents and goals of multiple owners. While the impacts of both time-shares and fractional ownership are similar to vacation rentals and community (recovery) residences, the Village is cannot prohibit these uses pursuant to state and federal law.

Proposed revisions to the Village Code (updated):

On first reading, Staff had proposed amending Section 45-2 of the Village Code to provide the following definition for the term fractional ownership:

Fractional ownership shall mean shared ownership of a property, entitlement to ownership rights of a property, entitlement to use a property, or possession of property through any means whereby an owner of the property or fraction thereof, receives ownership rights in, or the right to use, the property for a period of time less than one (1) full year within a two (2) year period.

At its December 9, 2021 meeting, the Village Council adopted the Ordinance on first reading but expressed concerns as to whether the definition was expansive enough yet sufficiently tailored to target the types of ownership schemes it is intended to prohibit. Having performed additional research and given the matter further consideration, Staff is now proposing to amend Section 45-2 to incorporate the following definitions:

Fractional ownership shall mean the occupancy or use of a dwelling unit by co-owners pursuant to a fractional ownership plan for any length of time. Fractional ownership includes direct ownership in a property as well as indirect ownership through a corporation, limited liability company or other entity holding title to the property.

Fractional ownership plan means an arrangement whether by tenancy in common, sale, deed or any other means, whereby the purchaser or co-owner receives an ownership interest and the right to use the property for a specific and discernible period through time-based division.

As discussed above, the Village Code already defines a time share unit as “a dwelling unit in which the right of use or occupancy circulates among various persons for specific periods of time less than one (1) year in accordance with a fixed time schedule.”

The Ordinance also amends Section 45-36 of the Village Code to add a new subsection (V) to read as follows:

V. *Time-share units and fractional ownership.*

Time-share units and the fractional ownership of any parcel of real property shall be prohibited in all residential zoning districts. Such prohibition shall not include community residences or vacation rentals as defined and regulated in this chapter.

Planning Commission:

At its November 9, 2021 meeting, the Planning Commission reviewed the original version of the proposed Ordinance at a public hearing and voted to recommend approval to the Village Council.

The attached Ordinance has been prepared by the Village Attorney and reviewed for legal sufficiency.

There is no fiscal impact.

Recommendation:

Village Staff requests Council consideration and approval on second and final reading of the attached Ordinance prohibiting time share units and fractional ownership properties within the Village's Residential Zoning Districts.

ORDINANCE NO. _____

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA, AMENDING APPENDIX C (CHAPTER 45), "ZONING," OF THE VILLAGE CODE OF ORDINANCES TO INCORPORATE A DEFINITION OF FRACTIONAL OWNERSHIP AND EXPRESSLY PROHIBIT FRACTIONAL OWNERSHIP UNITS AND TIME-SHARE UNITS IN THE VILLAGE'S RESIDENTIAL ZONING DISTRICTS; AMENDING SECTION 45-2, "DEFINITIONS," AND SECTION 45-36, "GENERAL PROVISIONS;" PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, to the extent not preempted by state or federal law, the Village possesses the Home Rule Authority granted by the Florida Constitution and Chapter 166, Florida Statutes, to regulate local land use issues; and

WHEREAS, the Village Code of Ordinances currently allows time-share units within specified mixed use and commercial zoning districts, specifically the C-MU US-1 Mixed Use District, the C-NB Northlake Boulevard Commercial District, and the C-3 Regional Business District; and

WHEREAS, according to the general principles applicable to the interpretation of municipal ordinances, the specific inclusion of a permitted use in one district means that the use is prohibited in other zoning districts where not specifically listed; and

WHEREAS, the Village Council wishes to confirm and expressly prohibit time-share units within its residential zoning districts and to expand the prohibition to include fractional ownership; and

WHEREAS, fractional ownership of residential property is an emerging trend in which shares of ownership rights to a property are sold to multiple buyers, thus providing each buyer an ownership interest and the right to use the property for a certain period of time; and

WHEREAS, although this model effectively operates similarly to a time-share, it typically conveys actual ownership rights instead of a right to use of the property for a certain period of time only, and also divides a property into fewer fractions than a typical time-share arrangement; and

WHEREAS, in a typical fractional ownership scheme, the fraction of ownership may directly correlate to the amount of time the owner is permitted to use and/or occupy the dwelling unit, whereas in a typical time-share scheme, the customer typically buys only the rights to use the property for a set period of time; and

WHEREAS, recent trends indicate that fractional ownership schemes are being applied to single-family residences; and

WHEREAS, both time-shares and fractional ownership negatively impact and undermine the stability of established residential neighborhoods by introducing a transient use and the adverse impacts typically associated with such use; and

WHEREAS, the introduction of time-share units and fractional ownership properties within established neighborhoods can disturb the quiet enjoyment of the residents of the neighborhood and

1 create numerous secondary impacts, including noise, loss of privacy, traffic, parking and a greater
2 demand on public services; and

3
4 WHEREAS, fractional ownership further reduces the number of available housing units from the
5 housing market for long-term residents to utilize; and

6
7 WHEREAS, fractional ownership can adversely impact future development, redevelopment, safety
8 and property maintenance as a result of the complexities associated with the incongruent and changing
9 objectives, intents and goals of multiple owners; and

10
11 WHEREAS, as required by Section 21-12 of the Village Code of Ordinances, the Village's Planning
12 Commission conducted a duly advertised public hearing on this Ordinance and provided its
13 recommendation to the Village Council; and

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15 WHEREAS, the Village Council determines that the adoption of this Ordinance benefits the public
16 health, safety and welfare of the residents of the Village of North Palm Beach.

17
18 NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF
19 NORTH PALM BEACH, FLORIDA as follows:

20
21 Section 1. The foregoing "Whereas" clauses are hereby ratified and incorporated herein.

22
23 Section 2. The Village Council hereby amends Article I, "In General," of Appendix C (Chapter
24 45), "Zoning," of the Village Code of Ordinances by amending Section 45-2 to read as follows
25 (additional language underlined):

26
27 **Sec. 45-2. Definitions.**

28
29 For the purposes of this Code, certain words and terms are defined as follows:

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31 * * *

32
33 Fractional ownership shall mean the occupancy or use of a dwelling unit by
34 co-owners pursuant to a fractional ownership plan for any length of time. Fractional
35 ownership includes direct ownership in a property as well as indirect ownership
36 through a corporation, limited liability company or other entity holding title to the
37 property.

38
39 Fractional ownership plan means an arrangement whether by tenancy in
40 common, sale, deed or any other means, whereby the purchaser or co-owner receives
41 an ownership interest and the right to use the property for a specific and discernible
42 period through time-based division.

43
44 * * *

45
46 Time-share unit is a dwelling unit in which the right of use or occupancy
47 circulates among various persons for specific periods of time less than one (1) year in
48 accordance with a fixed time schedule.

1 Section 3. The Village Council hereby amends Article III, "District Regulations," of Appendix
2 C (Chapter 45), "Zoning," of the Village Code of Ordinances by amending Section 45-36 to read as
3 follows:
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5 **Sec. 45-36. General provisions.**
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7 The provisions of this article shall be subject to the following provisions and
8 exceptions:
9

10 * * *

11
12 V. Time-share units and fractional ownership.
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14 Time-share units and the fractional ownership of any parcel of real property
15 shall be prohibited in all residential zoning districts. Such prohibition shall not include
16 community residences or vacation rentals as defined and regulated in this chapter.
17

18 Section 4. The provisions of this Ordinance shall become and be made a part of the Code of the
19 Village of North Palm Beach, Florida.
20

21 Section 5. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for
22 any reason held by a court of competent jurisdiction to be unconstitutional, inoperative or void, such
23 holding shall not affect the remainder of the Ordinance.
24

25 Section 6. All ordinances or parts of ordinances in conflict with this Ordinance are hereby
26 repealed to the extent of such conflict.
27

28 Section 7. This Ordinance shall become effective immediately upon adoption
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30 PLACED ON FIRST READING THIS ____ DAY OF _____, 2021.
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32 PLACED ON SECOND, FINAL READING AND PASSED THIS ____ DAY OF _____,
33 2021.
34

35
36 (Village Seal)

MAYOR

37
38
39 ATTEST:
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41 _____
42 VILLAGE CLERK
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44
45 APPROVED AS TO FORM AND
46 LEGAL SUFFICIENCY:
47

48 _____
49 VILLAGE ATTORNEY