



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: County Counsel  
Department No.: 013  
For Agenda Of: May 6, 2008  
Placement: Administrative  
Estimated Tme:  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors

**FROM:** Department Daniel J. Wallace, County Counsel  
Director(s)  
Contact Info: Rachel Van Mullem, Deputy County Counsel 568-2950

**SUBJECT: Regulation of Time-shares**

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**County Counsel Concurrence**

As to form: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:**

Planning & Development Department concurs.

**Recommended Actions:** Receive report.

**Summary Text:** The County of Santa Barbara does not presently regulate time-shares. Time-shares are distinguishable from fractional ownership and short-term rentals and are regulated by the California Department of Real Estate. Following California's 2004 enactment of the Vacation Ownership and Time-share Act, the County's ability to regulate time-share plans and exchange programs is preempted. Although appearing impractical to enforce, it appears that there is some room for local zoning restrictions that would apply to future time-share projects.

**Background:** The 2<sup>nd</sup> District Supervisor has requested information regarding the County of Santa Barbara's ability to regulate time-shares in the unincorporated area. Time-share plans and exchange programs are regulated by the California Department of Real Estate. Under the Vacation Ownership and Time-share Act of 2004, regulation of time-share plans and exchange programs is an exclusive power and function of the state. (Bus. & Prof. Code § 11280.) Although it is not certain after 2004, there appears to be some room for local zoning regulation of time-shares. The California Department of Real Estate does not presently regulate time-shares with ten or fewer owners. From an enforcement perspective, it would be difficult as a practical matter to effectively distinguish a time-share use from fractional ownership, which cannot be regulated, and short-term rentals, which may be regulated. The County does not presently regulate short-term rentals.

### Time-shares

Under the Vacation Ownership and Time-share Act of 2004, a time-share plan means an arrangement in which a purchaser “receives ownership rights in or the right to use accommodations 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.” (Bus. & Prof. Code § 11212 (z).) A time-share interest can be at multiple sites or a single site, depending on the plan. In a single-site time-share, there are multiple owners which have an ownership interest in one unit and usually each owner has a specific time period of use each year. With a time-share, there are multiple persons with an ownership interest and the time-share agreement regulates their use of the site.

At present, the County’s Land Use and Development Code does not address time-shares. Likewise, the County’s transient occupancy tax does not apply to time-shares. (County Code § § 32-11; 32-12.) Some jurisdictions, including the County of Monterey, the City of Healdsburg, and the City of St. Helena, regulate time-shares either by imposing a transient occupancy tax, restricting or prohibiting time-shares in specified zone districts, or requiring a conditional use permit. It appears that the jurisdictions that prohibit and regulate time-shares enacted their ordinances before the adoption of the Vacation Ownership and Time-share Act of 2004, and it is unclear whether or not their ordinances would now be preempted.

The City of Santa Barbara includes time-share projects for use of less than 30 consecutive days within its definition of a hotel and considers time-shares to be a commercial use. (Santa Barbara Municipal Code § 28.04.290.) Time-shares are allowed in some commercial zones within the city.

From an enforcement perspective, it would be difficult to distinguish between a time-share and fractional ownership or short-term rental. This is an important distinction because regulating structure of ownership, as with fractional ownership, is problematic whereas regulating use, as with short-term rentals, is within the County’s police power. (*Ewing v. City of Carmel-By-The-Sea* (1991) 234 Cal.App.3d 1579)

It appears the County may regulate time-shares through zoning restrictions; however, any new regulations would be future looking and would not apply retroactively.

### Fractional Ownership

Fractional ownership is similar to a single-site time-share. With fractional ownership, there would be multiple owners on title for a house; however, the use of the site may be different than a time-share. For instance, five owners, who may or may not be blood related, could own a fractional interest in one home but only one owner may live in the home. The owners could use the home like a time-share and evenly divide their use throughout the year. Alternatively, no one may live in the home and each family may use the home as a weekend get-away.

Fractional ownership is based upon the terms of title ownership, rather than use. Zoning ordinances may regulate use but cannot regulate terms of ownership. Generally, a County may not regulate the identity of the occupants of a dwelling. (*City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123 [holding that

an ordinance restricting the number of unrelated persons living in a household violated the Constitutional right to privacy.]) At least one court has found that use and ownership by four families of a home was consistent with a single family residential zone. (*Laguna Royale Owners Association v. Stanford P. Darger* (1981) 119 Cal.App.3d 670.) The court stated: “We cannot conceive a decision that the ownership of a private dwelling in an R-1 zone by four families to be used by each family 13 weeks each with no use being made by more than 1 family at any time would be a use in violation of the R-1 zoning.” (*Id.* at p. 686, fn. 9.)

The County’s regulation of fractional ownership, without a relation to use, would be open to challenge and be practically difficult to enforce.

### Short-term Rentals

Timeshares are also distinguishable from short-term rentals of single family homes. At present, the County does not prohibit or regulate short-term rentals of single family homes. Short-term rentals are usually defined as rentals for less than 30 days. The County has authority to change its ordinances to regulate short-term rentals of residential homes. (*Ewing v. City of Carmel-By-The-Sea* (1991) 234 Cal.App.3d 1579.)

### Conclusion

Your Board may amend the Land Use and Development Code to regulate time-shares or short-term rentals. Since zoning ordinances may regulate use but not terms of ownership, the County may not regulate fractional ownership.

Short-term rentals would be the easiest to identify and regulate, and regulation of short-term rentals would be the most defensible if challenged. Although there would be challenges in making the legal distinction between fractional ownership and time-shares, there appears to be some room to regulate time-shares through zoning restrictions. However, it is possible that regulation of time-share uses may be preempted.

Solid identification of your Board’s purpose in wanting to regulate time-shares or short-term rentals would help staff to draft any desired amendment to the County’s Land Use and Development Code.

### Performance Measure:

N/A

### Fiscal and Facilities Impacts: N/A

Budgeted:

Fiscal Analysis: N/A

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

Narrative: N/A

**Staffing Impacts:**

**Legal Positions:**

**FTEs:**

**Special Instructions:**

N/A

**Attachments:**

N/A

**Authored by:** Rachel Van Mullem, Deputy County Counsel

**cc:** John Baker, Director, Planning and Development