



NOTICE OF AVAILABILITY OF DRAFT LOCAL COASTAL PROGRAM AMENDMENT RELATED TO TIME SHARE USES

NOTICE IS HEREBY GIVEN that in accordance with applicable provisions of the Coastal Act and California Code of Regulations (CCR) §13515, a draft of the proposed amendment is available for public review and inspection at the Planning Division and at all branches of the Newport Beach Public Library for the following amendment to the Implementation Plan (IP) of certified Local Coastal Program (LCP):

Local Coastal Program Amendment No. PA2022-0202 – change to Sections 21.48.025 (Visitor Accommodations) and 21.70.020 (Definitions of Specialized Terms and Phrases) of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code. The proposed amendments would clarify that fractional ownership uses are defined as time share uses within the Coastal Zone.

The Planning Commission of the City of Newport Beach is scheduled to consider this item and make a recommendation to the City Council at a regular meeting to be held at 6:30 p.m. on Thursday, **April 20, 2023**, at the City of Newport Beach Council Chambers, 100 Civic Center Drive, Newport Beach, CA 92660. The date and time of the Planning Commission meeting has been noticed in accordance with City of Newport Beach notification requirements.

Furthermore, the City Council of the City of Newport Beach is tentatively scheduled to consider this item at a regular meeting to be held on Tuesday, **May 9, 2023**, at the City of Newport Beach Council Chambers, 100 Civic Center Drive, Newport Beach, CA 92660. The date and time of the City Council meeting will be noticed in accordance with City of Newport Beach notification requirements.

For questions regarding this Amendment, please contact Jaime Murillo, AICP, Principal Planner, at 949-644-3209 or jmurillo@newportbeachca.gov.

Proposed Local Coastal Program Amendment

Proposed Local Coastal Program Amendment No. PA2022-0202 Related to Time Share Uses

Section 1: Newport Beach Municipal Code (NBMC) Section 21.48.025 is proposed to be amended as follows:

SECTION 21.48.025 VISITOR ACCOMMODATIONS.

A. Applicability. The provisions of this section shall apply to applications involving the development of new visitor accommodations or the expansion, reduction, redevelopment, demolition, conversion, closure, or cessation of existing visitor accommodations.

B. Considerations. The review authority shall consider:

1. The development's ability to protect, encourage, or provide low cost visitor-serving and recreational facilities on the project site or in the immediately adjacent area; and
2. The development's impact to, and ability to provide, public recreational opportunities;
3. The feasibility to rehabilitate existing low cost accommodations to meet a minimum acceptable level of comfort and hospitality while maintaining the ability to provide low cost visitor accommodations; and
4. The range of room types and room rates Citywide.

C. Protection of Low Cost Visitor Accommodations.

1. Low, Moderate, and High Cost Visitor Accommodations Defined. For purposes of this subsection, visitor accommodations shall be defined as low, moderate, or high cost as follows:

- a. Low Cost. The average daily room rate of all economy hotels and motels in the City that have room rates that are below the Statewide average daily room rate or lower. Economy hotels and motels are AAA-rated one or two diamond hotels, or equivalent.
- b. Moderate Cost. The average daily room rate is between low cost and high cost.
- c. High Cost. The average daily room rate is one hundred twenty (120)

percent of the Statewide average daily room rate or greater.

For purposes of this section, room rate shall include the equivalent rental rate for campgrounds, recreational vehicle parks, hostels, and similar visitor accommodations.

2. **Feasibility Analysis Required.** An analysis of the feasibility of providing lower cost visitor accommodations shall be required for any application involving the expansion, reduction, redevelopment, demolition, conversion, closure, or cessation of any project involving visitor accommodations, with the exception of short-term lodging. If the proposed rates are not lower cost, the feasibility study shall explain why providing lower cost accommodations as part of the project is not feasible. This explanation shall address: the land value; development costs; a breakdown of the estimated annual revenues (including average daily rate and occupancy rates); a breakdown of the estimated operating costs; and any other information necessary to address the feasibility of providing lower cost accommodations on site.

The feasibility analysis shall be prepared at the applicant's expense.

3. **Impact Analysis Required.** An analysis of a development's impact on the availability of lower cost visitor accommodations in the City shall be required for any application involving:

- a. The expansion, reduction, redevelopment, demolition, conversion, closure, or cessation of any project involving visitor accommodations, with the exception of short-term lodging; or
- b. New or limited use overnight visitor accommodations.

The impact analysis shall be prepared at the applicant's expense.

4. **Impact Defined.** The proposed development would result in the decrease in the available supply of existing lower cost visitor accommodations, or would fail to provide a range of affordability, including at least twenty-five (25) percent of the rooms as low cost accommodations, or fail to use land suitable for lower cost accommodations for that purpose with the exception of short-term lodging.

5. **Mitigation.** If the review authority determines that the development will impact existing lower cost visitor-serving accommodations, or provide only high or moderate cost visitor accommodations or limited use overnight visitor accommodations, timeshare use such as timeshares, fractional ownership and condominium-hotels, then mitigation commensurate with the impact shall be provided by one of more of the following:

- a. Replacement of low cost rooms lost shall be provided at a one-to-one ratio either on site or a suitable off-site location within the City;

- b. Payment of an in-lieu fee commensurate with the impact shall be required;
- c. Programmatic components that provide low cost overnight accommodations; or
- d. Other form of mitigation addressing cost of stay.

The review authority may authorize deviations from development standards that provide economic incentives to the development to maintain affordability.

6. In-Lieu Fee Program. Specific detailed information regarding calculation and use of any required in-lieu fees as part of a mitigation program shall be included as a condition of approval of the Coastal Development Permit for the visitor accommodations.

7. Rate Control and Income Eligibility Requirements Prohibited. In no event shall a development as mitigation be required:

- a. To provide overnight room rental be fixed at an amount certain; or
- b. To establish any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

8. Protection of Short-Term Lodging. Most short-term lodging units meet the low cost definition when maximum occupancy is taken into account. Short-term lodgings can accommodate more people than a typical hotel room. They also provide full-sized, equipped kitchens allowing families or larger groups to reduce the overall cost of a visit by allowing them to prepare meals as an alternative to dining out. The City shall continue to permit short-term lodgings as a means of providing lower cost overnight visitor accommodations while continuing to prevent conditions leading to increased demand for City services and adverse impacts in residential areas and coastal resources.

D. Conversion to LUOVA Prohibited. The conversion of any hotel or motel unit or similar visitor accommodation for which a certificate of occupancy has been issued on or before July 14, 2009, to a limited use overnight visitor accommodations (LUOVA) shall be prohibited, except as provided in subsection (D)(1) of this subsection.

1. Exceptions to Conversion Prohibitions. A LUOVA project shall be permitted on the hotel resort property located at 1107 Jamboree Road, subject to a coastal development permit conditioned with the following requirements:

- a. LUOVA units shall be provided together with traditional overnight, hotel visitor accommodations; and
- b. A minimum of three hundred ninety-one (391) traditional hotel units shall

remain available for transient overnight use by the general public year round and no more than eighty-eight (88) of the total four hundred seventy-nine (479) units planned may be LUOVA units; and

c. Owner use of LUOVA units shall not exceed a maximum of ninety (90) days per calendar year with a maximum of twenty-nine (29) days of use during any sixty (60) day period; and

d. LUOVA units shall be maintained by the management of the hotel facility and shall be remain available for transient overnight use by the general public when not occupied by the owner; and

e. The hotel owner/operator shall retain control and ownership of all land, structures, recreational amenities, meeting space, restaurants, and other non-guest room/units; and

f. The proposed LUOVA project shall comply with the provisions of subsection (C) of this section.

E. Tsunami Information and Evacuation Plans. Visitor-serving accommodations in areas identified as susceptible to tsunami inundation shall be required to provide guests with information on tsunami information and evacuation plans.

Section 2: The following provisions within NBMC Section 21.070.020 are proposed to be amended as follows:

SECTION 21.70.020 DEFINITIONS OF SPECIALIZED TERMS AND PHRASES

L. "L" Definitions

~~"Limited use overnight visitor accommodations (LUOVA)" See "Time share use" means a development 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 an ownership interest in a lot, unit, room(s), or segment of real property, annually or on some other seasonal or 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 and shall include, but not be limited to, time share estate, interval ownership, fractional ownership, vacation license, vacation lease, club membership, time share use, hotel/condominium, or uses of a similar nature.~~

~~LUOVA. See "Limited use overnight visitor accommodations (LUOVA)."~~

T. "T" Definitions.

Time Share ~~Facility (Land Use).~~ See "Visitor accommodations."

V. "V" Definitions.

Visitor Accommodations (Land Use)

1. "Bed and breakfast inn" means a dwelling unit that offers guest rooms or suites for a fee for less than thirty (30) days, with incidental eating and drinking service provided from a single kitchen for guests only.
2. "Campground" means a lot upon which one or more sites are located, established, or maintained for rent as an overnight tenting or camping area for recreation or vacation purposes.
3. "Hostel" means establishments offering supervised overnight sleeping accommodations, primarily for travelers who use nonmotorized transportation or commercial or public transportation. Such sleeping accommodations are designed, intended to be used and are used, rented or hired out as temporary or overnight accommodations for guests in which daily services of linen change, towel change, soap change and general cleanup are provided by the management. If kitchen or eating facilities are provided, they are communal in nature.
4. "Hotel" means an establishment that provides guest rooms or suites for a fee to transient guests for sleeping purposes. Access to units is primarily from interior lobbies, courts, or halls. Related accessory uses may include conference and meeting rooms, restaurants, bars, and recreational facilities. Guest rooms may or may not contain kitchen facilities for food preparation (i.e., refrigerators, sinks, stoves, and ovens). Hotels with kitchen facilities are commonly known as extended stay hotels. A hotel operates subject to taxation under Revenue and Taxation Code Section 7280.
5. "Motel" means an establishment that provides guest rooms for a fee to transient guests for sleeping purposes. Guest rooms do not contain kitchen facilities. A motel is distinguished from a hotel primarily by direct independent access to, and adjoining parking for, each guest room. A motel operates subject to taxation under Revenue and Taxation Code Section 7280.
6. "Recreational vehicle (RV) park" means a lot upon which two or more recreational vehicle sites are located, established, or maintained for occupancy for a rental fee by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes.
7. "Short-term lodging" means a dwelling unit that is rented or leased as a single housekeeping unit (see "Single housekeeping unit") for a period of less than thirty (30) days.
8. "Single room occupancy, residential hotels (SRO)" means buildings with six or more guest rooms without kitchen facilities in individual rooms, or kitchen facilities for the exclusive use of guests, and which are also the primary residences of the hotel guests.

~~9. "Time share project" means a development 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 an ownership interest in a lot, unit, room(s), or segment of real property, annually or on some other seasonal or 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 and shall include, but not be limited to, time share estate, interval ownership, fractional ownership, vacation license, vacation lease, club membership, time share use, hotel/condominium, or uses of a similar nature. See also "Limited use overnight visitor accommodations (LUOVA)..~~

~~10. "Time share estate" means a right of occupancy in a time share project that is coupled with an estate in the real property~~

~~11.9. "Time share interval" means the period or length of time of occupancy in a time share unit.~~

~~10. "Time share plan" means any arrangement, plan, scheme, or similar device, whether by membership agreement, bylaws, shareholder agreement, partnership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives the right to exclusive use of real property, or any portion thereof, whether through the granting of ownership rights, possessory rights or otherwise, 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 plan shall be deemed to exist whenever such recurring rights of exclusive use to the real property, or portion thereof, 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 the real property, or portion thereof, 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 subject to the time share plan.~~

~~11. "Time share property" means one or more time share unit(s) subject to the same time share plan, together with any other property or rights to property appurtenant to those time share unit(s).~~

~~10.12. "Time share unit" means each portion of the real property or real property improvement in a time share project property that is divided into time share intervals.~~

~~11.13. "Time share use" means one or more time share(s) or any part thereof, as a time share property pursuant to a time share plan a license or contractual or membership right of occupancy in a time share project that is not coupled with an estate in the real property.~~