

MONTEREY COUNTY



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Sent via email

Re: Request to Immediately Cease and Desist Unlawful Operations

Dear Mr. Abell and Ms. Haberle,

I write to bring your attention to the requirements of the Monterey County Code¹ with regard to Pacaso's operations. As detailed fully below, to the extent that Pacaso's advertisements or operations are occurring in zones within the unincorporated areas of Monterey County ("County") where timeshares are not allowed, Pacaso's operations are unlawful and must cease immediately. For Pacaso's operations in zones where timeshares are allowed under the Monterey County Code ("MCC"), Pacaso must apply for a Use Permit in the inland zone or Coastal Development Permit in the coastal zone as applicable.

Under Chapters 20.06 and 21.06 of the MCC the following definitions are relevant to Pacaso's operations:

- "Timeshare Estate" is defined as "a right of occupancy in a timeshare project which is coupled with an estate in the real property."
- "Timeshare Use" is defined as "a license or contractual or membership right of occupancy in a timeshare project which is not coupled with an estate in the real property."
- "Timeshare Project" is defined as "a development in which a purchaser receives the right

¹ https://library.municode.com/ca/monterey_county/codes/code_of_ordinances
http://www2.co.monterey.ca.us/planning/docs/ordinances/Title20/20_toc.htm

in perpetuity, for life, or for 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 from the use or occupancy periods into which the project has been divided. The definition of time share project includes a timeshare estate and a timeshare use.”

Pacaso’s website indicates that its business model involves sales of property held by limited liability companies 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 clearly meets Monterey County’s definitions of “Timeshare Estate” and “Timeshare Project”, because Pacaso provides a right of occupancy which is coupled with an estate in real property. Specifically, individuals have a right to occupy/use the real property for a certain number of days per year, and they hold a fractional ownership interest in the real property.

Sections 20.64.110 and 21.64.110 of the MCC state that Timeshare Projects are only allowed in zones where a hotel, motel or similar visitor accommodation use would be permitted and in such a case a Use Permit or a Coastal Development Permit is required. Specifically, these zones include the following: High Density Residential, Mixed Use, Light Commercial, Heavy Commercial, Visitor Serving, and Coastal General Commercial. As such, in order for Pacaso to market and sell homes within these zoning districts, it first must apply with the County’s Housing Community & Development department for a Use Permit or Coastal Development Permit depending on the prospective home’s location.

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 the case. Pacaso’s business model of selling and then commercially managing short-term vacation use results in frequent, rotating occupancy, that has a dire impact on housing supply and community integrity. As discussed above, the County’s existing timeshare regulations are specifically intended to minimize the impacts created by this type of use and occupancy of real property.

Monterey County is aware of certain homes advertised on Pacaso’s website that are located in the Carmel Highlands and the Del Monte Forest. Both of these areas are zoned Low Density Residential, Rural Density Residential or Medium Density Residential, and therefore Timeshare Projects are not allowed per the MCC. The County respectfully requests that Pacaso cease all advertising and sale of fractional ownership of residential properties within incorporated zones where Timeshare Projects are not allowed. The County also requests, if applicable, that Pacaso apply with Housing Community & Development for an appropriate land use entitlement in zones where Timeshare Projects are permitted. Failure to comply with the MCC may result in enforcement. Any violation of the MCC is subject to administrative citation and imposition of new fines for each day of unlawful operation pursuant to Chapter 1.22 of MCC. Furthermore, any violation of the MCC 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 pursuant to Chapter 1.20 of the MCC.

I appreciate your prompt attention to this matter. Please feel free to contact me with any questions at donlonkl@co.monterey.ca.us or 831-755-5313.

Sincerely,

LESLIE J. GIRARD
County Counsel

By: 
Kelly L. Donlon
Assistant County Counsel

cc: Monterey County Board of Supervisors
Charles J. McKee, County Administrative Officer
Leslie J. Girard, County Counsel
Erik Lundquist, Director of Housing Community & Development