

ORDINANCE NO. 584

A ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, ADDING TO THE ZONING CODE CHAPTER 21.33, CONDOMINIUM HOTELS AND AMENDING SECTION 21.12.030, LAND USE MATRIX OF THE MUNICIPAL CODE

WHEREAS, the City of Indian Wells has proposed Condominium Hotel Zoning Ordinance No. 2006-03 (this "Condominium Hotel Zoning Ordinance" or this "Ordinance") to add to Chapter 21.33, Condominium Hotels, establishing a permanent zoning classification for Condominium Hotels and an application process for development approval of Condominium Hotel applications; and

WHEREAS, after careful consideration of the staff report and all of the information, evidence and testimony presented at its meeting, the City Council finds as follows:

General Purpose: The City of Indian Wells has vacant land zoned for the development of hotels as well as existing hotels. The current trend, both nationally and in California, in the hotel industry is the development and construction of condominium hotels as well as the conversion of existing hotels to condominium hotels having units to be sold to individual owners for short-term or permanent residences. At present the City has no land use development standards for this type of condominium hotel, which, absent this Ordinance, could be built as of right in zoning districts where hotels, tourist and vacation accommodations are permitted as of right. This Condominium Hotel Zoning Ordinance will establish minimum requirements pertaining to the operation and development standards for condominium hotels while at the same time preserving existing hotels and safeguarding hotel worker jobs and protecting the City's tourism economy.

Environmental Compliance: The passage of the proposed amendments is not a project because it can be seen with certainty that it will not have a significant effect on the environment. Therefore, the proposed amendments are exempt from the provisions of the California Environmental Quality Act ("CEQA"), and no further environmental review is necessary.

THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 21.33 is added to the Indian Wells Municipal Code to read as follows:

**CHAPTER 21.33
CONDOMINIUM HOTELS**

SECTIONS:

21.33.010	Purpose
21.33.020	Definitions
21.33.030	Condominium Hotel Regulations
21.33.040	Application for Condominium Hotel
21.33.050	Development Standards
21.33.060	Condominium Hotel Standards, Conditions and Requirements

21.33.070	Provisions for Conditions, Covenants & Restrictions
21.33.080	Enforcement
21.33.090	Condominium Hotel Association
21.33.100	Management of Condominium Hotel
21.33.110	Reporting and Inspection
21.33.120	Conversions

21.33.010 Purpose. The specific purposes of these regulations are to assure that Condominium Hotel projects are conditioned upon development approval in such a way as to ensure appropriate public health, safety, welfare and land use classifications and standards; to mitigate potential impacts of Condominium Hotels on traffic congestion, parks and recreation, air quality, building design and safety, police, fire and emergency services; to assure other adequate public facilities; to allow Condominium Hotel development projects' financial flexibility; to prohibit conversion of existing hotels to Condominium Hotels; and to provide the City of Indian Wells (the "City") with appropriate licensing, taxation, and ownership and operational controls.

21.33.020 Definitions. The following definitions shall govern the construction and interpretation of this Chapter. In the event a term that is used in this Chapter is not expressly defined herein, the definitions contained in Chapter 21.08 shall govern.

21.33.020(a) Condominium Hotel. A Condominium Hotel is defined as a commercial condominium project with Housing Units within a Hotel, which Units are individually owned, and, except as permitted in Sections 21.33.060 and 21.33.070, one hundred percent (100%) of which are made available for Transient use, as that term is defined in Section 3.12.020(h) of the Indian Wells Municipal Code, as short-term vacation or tourist rentals when not being used by the Unit Owner, as well as convention uses, group sales, special events and other uses typically associated with resort hotels.

21.33.020(b) Development Agreement. For purposes of this Chapter, the term "Development Agreement" means any of the following: (1) a statutory development agreement entered into pursuant to Government Code sections 65864 *et seq.*; (2) a disposition and development agreement entered into between an applicant and the City's Redevelopment Agency; or (3) an owner participation agreement entered into between an applicant and the City's Redevelopment Agency.

21.33.020(c) Effective Date. The Effective Date shall mean the date on which the ordinance adopting this Chapter becomes effective.

21.33.020(d) First Class Hotel. A "First Class Hotel" shall mean a Condominium Hotel where both of the following apply: (1) the Condominium Hotel has a brand that is included in the "Upscale Segment" or "Luxury Segment" as defined by J.D. Power and Associates as of the Effective Date; and (2) the Condominium Hotel satisfies the published requirements that will be sufficient for a ranking of no less than Four Stars in the most recent annual awards list published by AAA or Mobil Travel Guides as of the Effective Date. Changes in the J.D. Power and Associates, AAA or Mobil Travel Guide criteria and listings may be adopted on an annual basis as amendments to this Ordinance, or by Resolution of the City Council, or as approved pursuant to a Development Agreement that specifically defines the "First Class Hotel" standard.

21.33.020(e) Hotel. Hotel is defined as a building containing five (5) or more Housing Units available to vacationing or tourist members of the public for compensation, which may include convention uses, group sales, special events and other uses typically associated with resort hotels.

21.33.020(f) Housing Unit. The terms Housing Unit, Condominium Hotel Unit, or Unit shall all have the same meaning as provided in Section 21.08.296.

21.33.020(g) Personal Use. Personal Use shall mean the use or occupancy of a Unit by a Unit Owner or any guest of Owner for whom the Unit Owner may, and does, reserve its Unit in accordance with the procedures set forth in the CC&R's. Use of a Unit arising out of an exchange program with an affiliated hotel property shall be subject to transient occupancy tax in accordance with Municipal Code section 3.12.020(e) based on the equivalent daily rental value for that room exchanged free of charge or otherwise reduced in the program. Such use shall not be considered personal use by the Owner; provided, however, that no provision herein shall be deemed to permit a timeshare, fractional or other vacation ownership unit if otherwise prohibited by the Indian Wells Municipal Code..

21.33.020(h) Unit Owner. A Unit Owner or Owner is defined as an individual or entity that acquires any ownership interest in, and holds title to, one or more Condominium Hotel Units.

21.33.030 Condominium Hotels Regulations. No person or entity shall construct or operate a Condominium Hotel within the City without first obtaining all necessary entitlements pursuant to this Chapter. Except as specifically provided for in this Chapter, all other provisions of the Indian Wells Municipal Code, including, without limitation, Title 16 (Buildings and Construction), Title 20 (Subdivisions), and Title 21 (Zoning Code) shall be applicable to the construction and maintenance of Condominium Hotels; provided however, that the more specific provisions contained in this Chapter shall prevail over any general provisions set forth in the Indian Wells Municipal Code. A Condominium Hotel shall be allowed as a conditionally permitted use, subject to the terms of this Chapter, and only within those zoning districts in which Hotels or similar tourist and vacation accommodations are expressly permitted either conditionally or as of right, pursuant to the terms of Title 21. Each application for a Condominium Hotel will be reviewed by the City's Planning Commission and City Council. If the Planning Commission recommends granting approval of the application, the City Council shall set notice of a public hearing to be held within forty five (45) days thereafter or such later date as may be set by the City Council.

21.33.030(a) Each Condominium Hotel is subject to subdivision approval by the City as a tentative subdivision or as a vesting tentative subdivision.

21.33.030(b) Approval shall be subject to required conditions necessary to carry out the provisions of this Chapter.

21.33.030(c) A detailed site plan shall also be required to be approved concurrently with any Condominium Hotel application.

21.33.040 Application for Condominium Hotel. An application for a Condominium Hotel shall include a minimum of the following six (6) requirements, in addition to any other information that the City may determine is necessary to review the application. No Condominium Hotel may be approved without approval of all of the following requirements.

21.33.040(a) A Detailed Site Plan. A detailed site plan shall include the following: (1) a legal description of the subject property; (2) the property owner's name and address; (3) easements, liens and encumbrances; (4) proof of title in the applicant, or authority of the applicant to apply on behalf of the title owner; (5) location of boundary property lines; (6) location, width, and names of all existing or platted streets or other public ways within or adjacent to the project; (7) location, sizes, elevations and slopes of existing sewers, water mains, culverts, and other underground structures within the project and immediately adjacent thereto; (8) any existing permanent buildings; (9) all existing uses contiguous to the property within a distance of four hundred feet from any project boundary; and (10) preliminary landscape design and plans for all buildings and structures proposed on site to meet the exterior and interior standards required for the Condominium Hotel.

21.33.040(b) Development Agreement. A proposed Development Agreement application, which shall provide for enforcement of all conditions and standards required by this Chapter. In addition to any other provisions that may properly be included within the Development Agreement, the parties may agree to terms and conditions that are different from, or in addition to, and supersede the provisions and requirements of this Chapter.

21.33.040(c) Conditions, Covenants and Restrictions ("CC&R's"). The proposed CC&R's for the Condominium Hotel containing all the specific provisions required by Section 21.33.070 of this Chapter. The CC&R's shall, at a minimum, provide how the development will, on an ongoing basis, be managed and operated, and how the management and operation will be funded. The information required pursuant to Section 21.33.100 shall be included in the CC&R's or, unless specifically required by this Chapter to be included in the CC&R's, in any other legally binding agreement that is first approved by the City Manager and City Attorney in writing.

21.33.040(d) Environmental Assessment. Information necessary for the City to perform an environmental assessment of the proposed Condominium Hotel project, pursuant to the California Environmental Quality Act (Public Resources Code, §§ 21080-21094 and its implementing regulations).

21.33.040(e) Subdivision Application. Each Condominium Hotel application shall be accompanied by an application for a tentative or vesting tentative map pursuant to Title 20 of the Indian Wells Municipal Code.

21.33.040(f) Specific Plan. Each Condominium Hotel application shall be accompanied by an application for a specific plan, pursuant to Government Code sections 65450 et seq.

21.33.040(g) Conditional Use Permit. Each Condominium Hotel application shall be accompanied by an application for a conditional use permit pursuant to section 21.06.040.

21.33.050 Development Standards. The Condominium Hotel shall comply with all the development, use, area, parking and other applicable standards of the zone in which the project is located.

21.33.060 Condominium Hotel Standards, Conditions and Requirements. In addition to the standards referenced in Section 21.33.050, each Condominium Hotel is required to meet the following standards, conditions and requirements, as well as all other provisions of this Chapter:

1. Each Condominium Hotel shall be designed to provide a sufficient level of recreation facilities and other amenities (as determined by the City Council) to serve the occupants, as the extent of the facilities provided should be proportional to the size and number of Units at the project.
2. The CC&R's submitted with the Condominium Hotel application shall require operation, on a seven (7) day a week basis, of the following services: room service, housekeeping, food and beverage service, concierge, parking and bellman services.
3. For purposes of determining any payments referenced in section 21.33.060(10), a central reservation system for rental of all Units, as customarily employed by qualified Condominium Hotel management as referenced in section 21.33.100, shall be provided for all Units in the rental program.
4. All Unit Owners shall obtain third party insurance as required by the Condominium Hotel management.
5. No Condominium Unit may be converted into any form of permanent residence.
6. No more than one (1) Unit in each Condominium Hotel may be used for the occupancy by a person or family serving as the on-site manager of the Condominium Hotel. Such Unit must be owned by the declarant under the CC&R's, the Condominium Hotel association, or the Condominium Hotel management, and shall not be used for homestead purposes. This Unit shall be exempt from the thirty (30) day lease limit requirement as described in section 21.33.070 below.
7. All Condominium Hotel Units shall be completely furnished with furniture and appliances to the standards established by qualified Condominium Hotel management as referenced in section 21.33.100. A furniture, fixtures and equipment reserve account shall be established and maintained in order to maintain and, when necessary, replace the furniture, fixtures and equipment within the Units to maintain the facility in its First Class Hotel standard. In addition to the foregoing account, a reserve fund shall be established and maintained pursuant to California general law and Department of Real Estate regulations.
8. A front desk and lobby area accessible to members of the public.
9. The proposed location, use, and design of the Condominium Hotel shall be consistent with the City's comprehensive plan, zoning ordinances, and any specific plan covering the area in question.

10. Every Condominium Hotel shall be subject to the City's transient occupancy tax (Chapter 3.12 of the Indian Wells Municipal Code), as may be amended from time to time. If for any reason a transient occupancy tax is not collected or collectable pursuant to Chapter 3.12, as it may be amended from time to time, the City may require, as a term of the required Development Agreement, that an amount determined by mutual agreement of the applicant and the City Council shall be paid monthly or quarterly (at the sole election of the City Council) in an amount equivalent to the funds that would have been raised by the collection of the transient occupancy tax. Upon request of the City Manager or designee, the Condominium Hotel shall promptly provide to the City and its agents access during normal business hours to all rental records, tax receipts or any other documents relating to the Condominium Hotel and the Condominium Hotel Units necessary to verify conformance with the collection of the transient occupancy tax, including, without limitation, all records pertaining to the use of each Hotel Unit as required under the last sentence of section 21.33.100(c).
11. The Hotel operator and Unit Owners in a Condominium Hotel shall not be qualified to receive golf benefits, unless pursuant to the Development Agreement Unit Owners receive a condo-hotel resort benefit identification card for benefits in exchange for an additional amenity fee or other consideration to be provided to the City.
12. Each Unit Owner shall become a member of a Condominium Hotel association pursuant to the CC&R's, comprised of Unit Owners within the same Condominium Hotel. No Unit in a Condominium Hotel shall be used as a timeshare, fractional or other vacation ownership unit.
13. Any proposed Condominium Hotel that does not, as proposed, qualify as a First Class Hotel shall not be eligible to operate as a Condominium Hotel in the City of Indian Wells.
14. All ancillary or accessory uses to a Condominium Hotel, such as dining rooms, restaurants or cafes, shall be operated within the same building or buildings and principal access to all facilities shall be through an inside lobby, which shall have a front desk or office, which front desk or office shall be supervised by a person in charge at all hours. Condominium Hotel facilities shall be classified as a vacationing tourist dwelling facility, which may include convention uses, group sales, special events and other uses typically associated with resort hotels, and shall not permit permanent owner occupancy.
15. Each Condominium Unit must be made available to hotel guests for Transient use.

21.33.070 Provisions for Conditions, Covenants & Restrictions. Each Condominium Hotel is required to provide the City with a copy of the Condominium Hotel's CC&R's, which must be approved by the Community Development Director and the City Attorney prior to final approval of the Condominium Hotel application, and thereafter recorded against the subject property in the County Recorder's Office. All CC&R's shall include the following provisions:

1. The CC&R's shall stipulate that one hundred percent (100%) of the Units in the Condominium Hotel must be made available as rental units for hotel guests when not being used by the Unit Owner for the Unit Owner's Personal Use, or such lesser percentage than 100% as may be approved in the Development Agreement. In the event any Owner's Personal Use exceeds the time period contained in section 3.12.020(h) of the Indian Wells Municipal Code (Uniform Transient Occupancy Tax Ordinance), as such section exists or may be amended from time to time, the Owner shall be subject to the transient occupancy tax provided for in Chapter 3.12. Owners' Personal Use may not exceed these limitations, unless an amount in-lieu of the City's transient occupancy tax is collected and paid to the City pursuant to section 21.33.060(10).
2. The CC&R's shall provide for the enforcement by the City, in its discretion, of this Chapter and any conditions imposed on the Condominium Hotel or any Unit(s), as well as notice to future Unit Owners.
3. Subject to applicable California general law and Department of Real Estate regulations, the CC&R's shall provide that the obligation to pay the per diem amounts due pursuant to section 21.33.060(10) shall constitute a lien by the City on the Units for the amount owed, including any permitted penalties or interest, and that the City shall have the right, but not the duty, to foreclose on any such liens through equitable or legal proceedings.
4. The CC&R's shall provide that they shall not be amended without the prior written approval of the City Council.

21.33.080 Enforcement. Upon request of the City Manager, the management of each Condominium Hotel and each Unit Owner must provide the City and its employees and agents with access to all rental records, tax receipts or any other documents necessary to verify conformance with all of the standards, conditions and requirements set forth in this Chapter.

21.33.090 Condominium Hotel Association. The Condominium Hotel application and CC&R's shall require the Condominium Hotel association to hire a qualified professional management entity or branded company as management in order to maintain and operate all portions of the Condominium Hotel in a manner consistent with the First Class Hotel Standard required by this Chapter. A Condominium Hotel association shall be established to govern, maintain and operate the Condominium Hotel and its services. For these purposes, the association may hire a professional management company, as provided in section 21.33.100 of this Chapter or may contract with any other entity approved by the City Council pursuant to a contract approved by the City Council. Neither the identity of any such entity nor the contract approved by the City Council may be amended without the prior written consent of the City Manager and City Attorney.

21.33.100 Management of Condominium Hotel. The approved Condominium Hotel management or the entity approved by the City pursuant to section 21.33.090 shall enter into a contract with the Condominium Hotel association to manage the Condominium Hotel. The Condominium Hotel management shall have at least five (5) consecutive years of experience in the hotel management business in hotels that meet the First Class Hotel standard and have no fewer than ten (10) other properties (each in separate cities, or distinct and separate projects in