

TOWN COUNCIL STAFF REPORT

Title: Appeal of Administrative Citations for TOT enforcement case #44466
Monterey Pine Road.

Meeting Date: August 17, 2022

Prepared by: Rob Patterson – Administrative Services / Finance Director

RECOMMENDATION:

Make a finding of noncompliance with the Town of Mammoth Lakes Municipal Code and uphold the Notice of Determination and judgement of the administrative citation hearing officer in the amount of \$3,000.00.

BACKGROUND:

Chapter 3.12 of the Municipal Code established the Uniform Transient Occupancy Tax ordinance for the Town of Mammoth Lakes. This enforcement case is a zoning violation, meaning the operator is conducting business in an area not permitted for transient rental. Enforcement of the Municipal Code is a primary function of the Revenue team to preserve a transparent and equitable business environment. Owners who violate the zoning district regulations by conducting illegal transient rentals negatively affect legal businesses conducting transient rentals and paying tax.

Additionally, the Town Municipal Code includes the Quality of Life Ordinance found in section 5.40 which regulates transient rentals and states:

Section 5.40.070 – Violations

- A. A violation of any provision of this chapter, and/or the renting of any property in a zoning district that does not allow for such transient rental, or without proper land use approvals, is subject to the general penalty provisions and/or the administrative citation provisions set forth in Chapter 1.12 and Chapter 8.32 of the Municipal Code, respectively, and any other civil or administrative remedy allowed by law.
- B. Notwithstanding Chapter 1.12, the administrative fine for the operation of any transient occupancy facility without a valid business tax certificate, or the operation of any transient occupancy facility in violation of applicable zoning requirements of the town shall be five hundred dollars for the first violation and one thousand
- C. dollars for a second or subsequent violation within three years

ANALYSIS:

On March 15, 2022, Town Finance staff located the property, 466 Monterey Pine Road, on a rental website and found the owner was soliciting for transient rentals (less than 31 days) in an unpermitted zone. The first \$1,000 administrative citation was mailed and posted on the property for code violations including operating transient rentals in an unpermitted zone, transient rentals without remittance of taxes, and violations of Municipal Code Chapter 5.40.070.

Two additional \$1,000 administrative citations were sent to Mr. Lazar for soliciting transiently before correcting his advertisement. The hearing before Town Council is in reference to those three \$1,000.00 citations.

Mr. Lazar has an extensive history with the Town regarding TOT enforcement. This is the fourth enforcement case at Mr. Lazar's property for illegal transient rentals and the historical details are provided below.

The first enforcement case at Mr. Lazar's property was initiated in March 2012. The property was identified through an online listing for transient rental. An assessment was conducted based on the advertised nightly rate and the total due was \$69,756.00. Mr. Lazar provided customer checks and rental history data at an appeal of the assessment. On April 24, 2013, a Notice of Determination was conducted using actual revenue statements for transient rentals between January 2011 through September 2012. Below is a recap of the first enforcement case.

FIRST ENFORCEMENT CASE

| | |
|----------------------------|------------------|
| Gross Receipts | \$42,850.00 |
| TOT | \$ 5,570.50 |
| Penalties and Interest | \$ 2,470.66 |
| <u>Enforcement Charges</u> | <u>\$ 250.00</u> |
| Total Charges | \$ 8,291.15 |

In June 2018, Mr. Lazar's property was again identified advertising on an online rental platform for transient rental. Enforcement procedures commenced and due to a lack of compliance led to a property lien recorded on September 10, 2018, in the amount of \$43,893.75 for unpaid TOT, TBID, penalties, interest, enforcement charges, and administrative citations.

Below is a recap of the second enforcement case.

SECOND ENFORCEMENT CASE

| | |
|----------------------------|------------------|
| Assessed Gross Receipts | \$160,323.00 |
| TOT & TBID | \$22,445.22 |
| Penalties & Interest | \$12,448.53 |
| Administrative citations | \$ 8,500.00 |
| <u>Enforcement charges</u> | <u>\$ 500.00</u> |
| Total Charges | \$ 43,893.75 |

In March 2021, Mr. Lazar's property was once more identified through an online listing for transient rental. Enforcement procedures resumed resulting in a second property lien in the amount of \$152,442.00 for unpaid TOT, penalties, interest, enforcement charges, and administrative citations recorded on May 21, 2021. Below is a recap of the third enforcement case.

THIRD ENFORCEMENT CASE

| | |
|----------------------------|------------------|
| Gross Receipts | \$707,505.97 |
| TOT | \$ 91,975.76 |
| Penalties & Interest | \$ 48,966.26 |
| Administrative citations | \$ 11,000.00 |
| <u>Enforcement charges</u> | <u>\$ 500.00</u> |
| Total Charges | \$152,442.02 |

In June 2021, Mr. Lazar responded to staff enforcement efforts and by providing actual rental revenue documentation. A Notice of Determination was conducted in the amount of \$27,849.58 for unpaid TOT, penalties, interest, enforcement charges, and administrative citations.

Below is a recap of the findings.

NOTICE OF DETERMINATION

| | |
|----------------------------|------------------|
| Gross Receipts | \$75,990.45 |
| TOT | \$10,638.66 |
| Penalties and Interest | \$ 4,110.92 |
| Administrative citations | \$11,000.00 |
| Health Order Violations | \$ 1,600.00 |
| <u>Enforcement charges</u> | <u>\$ 500.00</u> |
| Total Charges | \$27,849.58 |

On August 17, 2021, a Settlement and Release agreement was signed by Mr. Lazar acknowledging advertising and renting on a transient basis is prohibited. Full payment for the NOD of \$27,849.58 was received.

The purpose of a settlement agreement is for the operator to acknowledge that the property cannot be legally rented on a transient basis and to strengthen the Town's position for any future enforcement activity, should the need arise. The agreement is a contract between Mr. Lazar and the Town outlining specific rights of the Town to seek additional remedies against Mr. Lazar due to continued illegal rental activity. Town staff pursued the Settlement and Release Agreement based on the operator's prior history. Key elements of the agreement are the application of fraud and fraud penalties, rescinding property lien releases, daily \$1,000.00 administrative citations, as well as the Town's ability to recover attorney's fees.

On March 15, 2022, Mr. Lazar's property continued to be available for transient rental through an online rental platform. Enforcement efforts once again resumed. The transient rental activity warranted enforcement action by listing the property for a minimum of 10 nights resulting in the issuance of administrative citations of \$1,000.00 per day. Advertisements remained live despite correspondence to cease any advertisements which resulted in a total of \$3,000.00 in fines.

On April 28, 2022, after receiving revenue documentation as requested by staff, a Notice of Determination was assessed. The NOD findings are:

| FOURTH ENFORCEMENT CASE | |
|---------------------------------|-------------------|
| Gross Receipts | 0 |
| Taxes, penalties, interest | 0 |
| Enforcement charges | 0 |
| <u>Administrative citations</u> | <u>\$3,000.00</u> |
| Total Charges | \$3,000.00 |

On May 11, 2022, Mr. Lazar exercised his right to appeal the Notice of Determination and an administrative hearing was scheduled and executed on May 25, 2022.

INITIAL APPEAL HEARING FINDINGS:

Hearing Officer Haislip Hayes presided over the administrative hearing and his rendered judgement determined the advertisement was actively listed online and reservations could be made for less than 31 days. "Considering the long history of violations, the executed settlement agreement, the staff collected screenshots of active advertising and successful attempts to create bookings I am denying the appeal and upholding all citations."

On June 6, 2022, Mr. Lazar exercised his right to further appeal to Town Council and a hearing was scheduled for August 17, 2022. Town received advanced deposit of the fine in the amount of \$3,000.00.

OPTIONS ANALYSIS

Option 1: Make a finding of noncompliance with the Town of Mammoth Lakes Municipal Code and uphold the Notice of Determination and judgement of the administrative citation hearing officer in the amount of \$3,000.00.

Option 2: Make alternate findings and direct staff accordingly.

FINANCIAL CONSIDERATIONS:

The Town of Mammoth Lakes relies on transient occupancy tax for more than 60% of its General Fund, without which it would not be able to provide services such as snow removal, recreation programming, and road maintenance. Operators of illegal transient rental properties are not only failing to contribute funds necessary for the Mammoth Lakes community to thrive but are taking away potential business from operators who are following the Town laws. To waive penalties, interest, enforcement charges, and/or administrative citations routinely would result in a significant loss of revenue and likely increase tax collection efforts and enforcement difficulties.

LEGAL CONSIDERATIONS:

The Town's Municipal Code does not authorize the Tax Collector to waive or reduce tax, penalties, interest, enforcement charges, or administrative citations that is due to the Town. The Town Council is acting in a semi-judiciary capacity and may reduce or amend the recommendation of the Tax Collector.