

TOWN COUNCIL STAFF REPORT

Title: Consider the ordinance amending Chapters 3.12 (Transient Occupancy Tax) and 5.40 (Transient Rentals of Residential Units) updating Citation Limits for Health and Safety Violations.

Meeting Date: November 2, 2022

Prepared by: Rob Patterson – Administrative Services / Finance Director

RECOMMENDATION:

Waive the reading and introduce by title only the ordinance amending Chapter 3.12.280 and 5.40.070 of the Town of Mammoth Lakes Municipal Code related to violation of Transient Occupancy Tax Code and Business Taxes, Licenses, and Regulation as outlined in Attachment A.

BACKGROUND:

The Town of Mammoth Lakes operates an aggressive transient occupancy tax (TOT) enforcement program. The mechanisms available to enforce the program include advertisement data mining, business and property certification, TOT assessments, penalties, interest, administrative citations, tax fraud, enforcement charges, and liens on real property. The program is led by the Town of Mammoth Lakes Tax Collector.

Municipal Code (M.C.) Sections 3.12, 5.40, and 8.32 authorize the use of the enforcement mechanisms and these sections of the Municipal Code are aligned with limits afforded within California Government Code Section 36900 – violation limits for city ordinances.

These governing limits were updated in 2021 to enhance enforcement of Short Term Rental Ordinances through the ability to impose higher fines for violations. The Town wishes to update the Municipal Code to incorporate these new limits.

ANALYSIS:

There are a number of updates that are incorporated in these changes. In all cases, the Town has elected to update the Municipal Code to the maximum penalties allowed by law. However, the intent of these adjustments is to set the upper limit of what is possible. In practice, Town staff will continue with standard practice for initial limits and only enhance for second offenses within the specified timeframe allowed by law.

Summary of Updates

1. Connecting Chapters 3.12 and 5.40 as the Town's "Short-term rental ordinance" such that a violation of either chapter is a violation of the same ordinance within the meaning of Section 36900.
2. Establishing the fact that violations of Chapter 3.12 of the code "pose a threat to public health and safety" within the meaning of Government Code Section 36900(d)(4).
3. Establishing the fact that violations of Chapter 5.40 of the code "pose a threat to public health and safety" within the meaning of Government Code Section 36900(d)(4).
4. Increase maximum fine amount to one thousand five hundred dollars (\$1,500) for first violation.
5. Increase maximum fine amount to three thousand dollars (\$3,000) for the second violation within one year.
6. Set a maximum fine of five thousand dollars (\$5,000) for each additional violation within one year of the first violation.
7. Defining a process for granting hardship waiver under certain circumstances when the full amount of the fine would impose an undue financial burden on the responsible party.

These elements have been incorporated in the attached ordinance updates as outlined in Exhibit A.

The following sections outline the enforcement process to be implemented with the new ordinance. The narrative covers details of both zoning and revenue violations.

Zoning Violation

A zoning violation occurs when a property is being used to conduct transient rentals in a zone that does not allow for the activity. These properties cannot be rented on a transient basis legally. An initial administrative citation is issued for \$1,500 and allows 15 days for the operator to achieve compliance. The initial administrative citation is sent both first class and certified mail as well as posted on the property. If the owner/operator responds and cooperates, reaching compliance within the 15-day window, the citation is rescinded. In order to reach compliance, the operator must supply the Finance Department with rental records from all rental platforms as well as any additional documentation including, but not limited to, bank statements, electronic commerce company or payment transfer application. Upon receiving the rental revenue statements a Notice of Determination (NOD) is conducted and sent both first class and certified mail as well as emailed to the owner/operator. The NOD allows for a 15-day response time to pay the full amount due or appeal the balance. If paid in full within 15 days, the zoning enforcement case is closed, and the property is continually monitored for illegal transient rental activity moving forward. When an owner/operator chooses to appeal an NOD, a hearing is set and the

aggrieved has an opportunity to deliver the reason for their dispute of the total due to the Town Council. The decision of the Town Council is final, and the amount owed is due immediately.

If an owner/operator is found to be in violation of a second violation within a 1-year period. The administrative citation amount increases from \$1,500 to \$3,000. This includes an owner/operator failing to respond to the initial administrative citation within the 15-day period from the date of issuance. A third or subsequent violation of the Town zoning code within a 1-year period will result in an administrative citation of \$5,000 for each and every day until the violation is corrected. When an owner/operator fails to respond and rectify the violation an assessment is conducted of assumed TOT. The assumption is based on the advertised nightly rate and the average number of nights rented for legally renting units. The assessment is sent first class and certified mail as well as posted on the property. The owner/operator has 15-days to respond to the assessment before the amount becomes due and payable. If the owner/operator does not respond to the assessment, all appeal rights are forfeited. As soon as 10-days after the intent to lien is sent first class and certified mail the Town can file the judgement against the property.

Revenue Violation

A revenue violation occurs when a property is being used to conduct transient rentals in a zone that does allow for the activity and the owner/operator has not secured the certificates to legally rent the property in advance. The enforcement process for a revenue violation mirrors the process of a zoning violation except the owner/operator can apply for the certificates if they choose. An initial administrative citation is issued for \$1,500 and allows 15 days for the operator to achieve compliance. The initial administrative citation is sent both first class and certified mail as well as posted on the property. If the owner/operator responds and cooperates, reaching compliance within the 15-day window, the citation is rescinded. In order to reach compliance, the operator must supply the Finance Department with rental records from all rental platforms as well as any additional documentation including, but not limited to, bank statements, electronic commerce company or payment transfer application. Upon receiving the rental revenue statements a Notice of Determination (NOD) is conducted and sent both first class and certified mail as well as emailed to the owner/operator. The NOD allows for a 15-day response time to pay the full amount due or appeal the balance. If paid in full within 15 days, the revenue enforcement case is closed, and the property is continually monitored for illegal transient rental activity moving forward. When an owner/operator chooses to appeal an NOD, a hearing is set and the aggrieved has an opportunity to deliver the reason for their dispute of the total due to the Town Council. The decision of the Town Council is final, and the amount owed is due immediately.

If an owner/operator is found to be in violation of a second violation within a 1-year period. The administrative citation amount increases from \$1,500 to \$3,000. This includes an owner/operator failing to respond to the initial administrative citation within the 15-day period from the date of issuance. A third or subsequent violation of the Town zoning code within a 1-year period will result in an administrative citation of \$5,000 for each and every day until the violation is corrected. Administrative citations can be appealed by the

owner/operator by written request, including the reason for the appeal, to an administrative citation hearing officer. Before the appeal hearing can be held the owner/operator must make a deposit for the full amount of the citations or submit an advance deposit hardship waiver.

When an owner/operator fails to respond and rectify the violation an assessment is conducted of assumed TOT. The assumption is based on the advertised nightly rate and the average number of nights rented for legally renting units. The assessment is sent first class and certified mail as well as posted on the property. The owner/operator has 15-days to respond to the assessment before the amount becomes due and payable. If the owner/operator does not respond to the assessment all appeal rights are forfeited. As soon as 10-days after the intent to lien is sent first class and certified mail the Town can file the judgement against the property.

The Town has had great success with enforcement efforts for Short-Term Rentals conducted within the Town of Mammoth Lakes. This focus is to level the playing field for operators that follow the rules when conducting this type of business. These additional tools along with the new Certified Property initiative will help to minimize the impact on quality of life for residents of the Town and business community.