

TOWN COUNCIL STAFF REPORT

Title: Adopt Ordinance amending Chapter 3.12 and 5.40

Council Meeting Date: 3/20/2024

Prepared by: Rob Patterson, Town Manager

Recommended Motion: Staff is requesting the Town Council waive the reading and adopt the ordinance amending Municipal Code Chapter 3.12 – Transient Occupancy Tax and 5.40 Transient Rental of Residential Units.

BACKGROUND:

The STR Advisory Committee subcommittee one (Certified Properties) convened to review specific elements of Short-Term Rental (STR) administration. Town Staff have been working on the program for a year and the general outline included a framework that would correct deficiencies of the current STR management program; however, there were a number of areas where the subcommittee reviewed best practices and appropriate responses based on their knowledge of the industry. These elements included upgraded safety inspection and requirements, tiered penalty structure, and fee schedule. These recommendations, along with an implementation plan defining the timing of the updates, are provided for review.

ANALYSIS:

The re-write of these chapters mainly reflects a significant shift in the way the Town issues licenses for the operation of a short-term rental. The previous version focused mainly on the rental operator which is the Business Tax Certificate (BTC) holder for short term rentals. These operators were required to obtain a Transient Occupancy Tax (TOT) certificate that outlined the allowable stats for each unit. In this case, the BTC holder was the main contact for the rental activity while the property owner had the ultimate responsibility for the rental activity occurring within their unit. For example, when tax is unpaid for a unit, the Town's final recourse for enforcement activity is a lien on the property. The Town also did not have an owner of record on file or any contact information of the actual property owner. The Certified Properties (CP) program flips that level of responsibility, placing the CP certificate above that of the BTC holder. The owner of the property is required to register with the Town and pay an annual fee to obtain a CP certificate. Once the certificate is acquired, the owner may have their property advertised by any BTC holder or choose to obtain their own BTC as an owner operator.

In addition to the fundamental change in responsibility, adjustments were made to address challenges staff has encountered while administering STR activity and conducting enforcement work. The items addressed are as follows:

Safety

The goal of the safety elements is to provide enhanced security for guests, quality of life for the community, and improve visitor experience. Our current inspection program includes a review to confirm that safety devices are in place and functional, the unit is in good working order with no defects to structure or fixtures, and all fire mitigation elements are in place and no hazards identified. The full list of the current program is attached (Attachment A).

Required Inspections

Currently some properties operating as STRs have never been inspected. They were grandfathered in during the initial push for registration in 2015. The proposal is to have every property certified for STR going through an inspection every 4 years. The 4-year mark is determined by the availability of inspectors, which are outside businesses, not Town employees. With a process of every 4 years, roughly 900 properties per year need to be inspected. In addition to an inspection every 4 years, if a property changes hands, it must go through an inspection before it can be certified for rental. The Town may also conduct interim inspections in response to complaints received. These inspections would be conducted by the Town's code enforcement unit within the Building department.

Emergency Contact

The emergency contact would need to be either a business in Town providing 24-hour contract services, licensed as such within the Town of Mammoth Lakes, a property management company that provides those services, or an owner who lives within 60 minutes of Town. All information will be verified and published as part of the interactive map.

Interactive Map

The Town would develop an interactive map via link from the Town website of all Certified Properties in the Town of Mammoth Lakes. Each listing would include the name and phone number of the 24-hour emergency contact, manager name and telephone number, occupancy limit of the unit, and available parking spots (if applicable).

Cleaning Services

The cleaning services for each unit can be the owner, property management company, or a licensed business in the Town of Mammoth Lakes. The assigned service provider information will need to be shared with the Town, so that the Town is able to reach out directly with inquiries on the property or health and safety orders or declarations.

Review Occupancy Increase Requests

The Town will review all previously authorized "Increase in Occupancy" that have been issued by the Town's previous process. The review will be based on tighter criteria than were used for the original approvals. Instead of all being approved unless there is a major concern, applicants would be required to make a case for why the increase is warranted over and above standards. These considerations would be based on unique elements of the property that make it atypical for standards. A simple request for additional occupancy would not be granted.

Educational Materials

Staff to develop a code of conduct document to be provided by each operator for all visitors to review. This is currently in development and may include other media such as videos or marketing pamphlets that may be shared during check in.

Penalties

The goal of any disciplinary action is to encourage operators to remain within regulation with potential implications that are both appropriate and impactful enough to be effective. The recommendations from the subcommittee were broken into two levels of severity.

Operational Issues – Minor Violations

On occasion, complaints are received on the condition of a property or actions of an operator. The Town can also be made aware of such problems through our normal inspections or code enforcement activity. These minor violations are considered nuisance issues, and the operator should have the opportunity to resolve the issue before any further action is taken. However, in the event that insufficient action is taken, the practices should escalate the Town's ability to get the problems fixed. Progressive process to address minor violations:

1. The operator is notified of the problems and will have 30 days to resolve the identified problems, to continue renting without penalty or suspension.
2. If the problems are not corrected in the initial 30 days, the operator will receive a fine, in accordance with the Town's fine schedule for non-compliance.
3. If the problems are not corrected within 45 days of initial notice, the operator would have their license to rent suspended until the problems are resolved to the satisfaction of the Town.
4. Continued operation after suspension, including advertising for rentals, would revert to our enforcement processes that could result in fines of \$5,000 per day.

Major Violations of Conduct

These violations are more egregious as they are obvious attempts to defraud the Town of revenue or could create unsafe conditions for patrons as well as the community. This willful intent demonstrates a clear understanding of the rules with a willful intent to disregard them. These violations automatically earn a suspension for a minimum of 90 days.

Examples:

1. During an audit, it is determined that an operator falsely reported income to minimize the amount of tax paid to the Town. During our audits, this occurs roughly 50% of the time and our current practice only requires them to pay penalties and interest on unreported activity. This practice will still require payment of penalties and interest on unreported revenue but would also require a 90-day suspension of activity. Any rental activity or advertisement for rental during the 90-day pause would result in normal enforcement activity up to \$5,000 per day.
2. Remodel or construction without a required building permit. If an operator does work without the appropriate permit, they will have their certificate suspended for 90 days. Any

rental activity or advertisement for rental during the 90-day pause would result in normal enforcement activity up to \$5,000 per day.

3. Three strikes rule. If an operator continues to have minor violations, meaning the problem is resolved but it occurs again due to their practices, they will face a 3 month suspension on the third occurrence. This process would be property based, not owner based, meaning they are issues occurring only at that property. This is important in the event the operator has multiple properties.
4. As stated, there is an initial suspension earned on the first occurrence. In the event the operator has multiple violations, they will receive progressive discipline that could suspend their operations for 1 year.

Updated Fees per Certified Property

Town fees are regulated by Proposition 4 and Article XIII B of the California Constitution which prevents a governmental entity from charging fees that exceed the costs reasonably borne by the entity in providing the product or service. The Town has a set of fees that are based on the cost of staff necessary to issue the license and certificates for any business. The recommendation is to expand the fee calculation to encompass the entire cost of staff necessary to administer the STR program. Staff has made the following assumptions in assigning the cost of the program to the certified properties engaged in STR activity. Assumptions of Cost:

1. Use total cost of salary and benefits for the Revenue team and Finance Director, minus one revenue specialist that is assigned to other Business Tax Certificate activity, and 60% of Finance Director to approximate other duties. The department cost, in net of adjustments noted above, is \$400,000.
2. Use 20% of Code Enforcement, Public Safety for STR responses - \$85,000.
3. Add 1 full-time staff member dedicated to Audit and Enforcement activities - \$110,000.
4. Add 1 part-time staff member dedicated to Enforcement Activities - \$30,000.
5. Estimated overhead cost of 30% of Staff costs, for facility and other Town costs. \$185,000
6. Contract cost for Rentalscape for online monitoring of STR activities. – \$90,000
7. Total cost of STR administration - \$900,000
8. Total number of Certified Properties, based on current number with incremental growth. 3,600
9. Annual fee for each Certified Property - \$250

In order to address the changes outlined above, staff had to modify most sections of Municipal Code 3.12 and 5.40. Staff has concluded this work with final review from the Town Attorney. Any update to the Municipal Code requires a three-step process to implementation:

1. The first reading. This is the first public presentation of the intended changes to the Municipal Code. Specific language can be reviewed, and feedback provided.
2. Second Reading – The second reading takes place at least 15 days after the first reading. This is the final step of review and public comment prior to implementation.
3. 30 – Days waiting period – The new laws take effect 30 days after the second reading and become law governing all existing and new business.

A potential timeline for implementation could have the new Municipal Code updates take effect by April 22, 2024. Once these edits are in place, the Town Council may choose to lift the moratorium on the issuance of new STR certificates. Staff has prepared a separate agenda item to address the lifting of the moratorium that would run concurrently with the adoption of these Municipal Code updates, effective April 22, 2024.