

TOWN COUNCIL STAFF REPORT

Title: Appeal of Enforcement Charges and Administrative Citations for TOT Enforcement at 246 Canyon Blvd Mammoth Lakes California 93546.

Meeting Date: July 3, 2024

Prepared by: Rob Patterson – Town Manager

RECOMMENDATION:

Make a finding of noncompliance with the Town of Mammoth Lakes Municipal Code and uphold the Notice of Determination amount due of \$3,614.88 for TOT, tax fraud, penalties, interest, and enforcement charges. Judgement from the hearing officer for administrative citations is included in this amount.

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 zoned for transient rental but is subject to the Municipal Code regarding the remittance of transient occupancy tax. Enforcement of the Municipal Code is a primary function of the Revenue team to preserve a transparent and equitable business environment.

Section 5.04.110 - Evidence of conducting business.

When any person shall by use of any promotional media—including but not limited to print, audio, visual, or electronic media including websites, web marketing, advertising or promotional websites, social media, or traditional promotional methods, including but not limited to signs, circulars, bills, cards, telephone books, or newspapers—promote, market, advertise, hold out or represent that they or an entity they own, operate, manage, or control are in business in the town, or when any person holds an active license or permit issued by a governmental agency indicating that they are in business in the town, and such person fails to deny by a sworn statement given to the collector that they are not conducting a business in the town, after being requested to do so by the collector, then these facts shall be considered prima facie evidence that they are conducting a business in the town.

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

5.40.020 - Permitted use.

Transient use of residential property shall be permitted as allowed by Title 17, Zoning. Transient uses shall comply with all applicable codes including the California Building Code and the California Residential Code and local amendments.

3.12.310 – Violation-Penalty.

A. Any person, including any transient, who violates any of the provisions of this chapter shall be guilty of an infraction. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person, and may be punished accordingly. The foregoing notwithstanding, in the discretion of the district attorney or the town attorney, upon a showing of gravity of offense, any violation of any provision of this chapter may be prosecuted as a misdemeanor.

ANALYSIS/DISCUSSION:

March 2023, an online advertisement was identified by Town staff soliciting for transient rental in the Residential Single Family (RSF) zone. The advertisement had 3 reviews in the months of November 2022, December 2022, and January 2023.

April 2023, Town staff conducted a sting booking of the unit that was confirmed for a single night. The total paid for the booking was \$488.25 and included line items for 13% tax, \$59.00 in Property Damage Protection, and a \$125.00 cleaning fee.

April 7, 2023, an initial administrative citation totaling \$1,500.00 was sent both first class and certified mail to the address on file with the Mono County Assessor’s office. The administrative citation was also posted on the property. Instructions on the administrative citation clearly state to correct the violation the operator must, immediately cease advertising for transient rentals as well as renting the property on a transient basis. Cancel all future transient rentals. Pay in full past due transient occupancy tax, TBID, all fines, penalties, interest, and enforcement charges.

April 26, 2023, due to being unable to collect the online rental platform records and revenue statements for the time-period requested, an additional administrative citation for \$3,000.00 was sent both first class and certified mail as well as posted on the property. With the absence of actual rentals revenues available to Town staff, an assessment of owed transient occupancy tax, tax fraud, penalties, interest, administrative citations, and enforcement charges was conducted. The second citation and assessment were posted on the property.

October 2023, after continuing to work with the operator for over 5 months, Town staff was able to collect the online rental platform booking records and revenue statement. Illegal transient rental activity was confirmed at the property for the months of November 2022, December 2022, and January 2023, totaling \$3,902.00. A Notice of Determination (NOD) was issued totaling \$5,864.88.

January 10, 2024, an appeal of the administrative citations was requested by the operator and conducted by Hearing Officer Haislip Hayes. The Hearing Officer found it prudent to reduce the administrative citations from \$4,500.00 to \$2,250.00.

January 18, 2024, a Notice of Determination was issued reflecting the Hearing Officers findings. The details of the final NOD issued are below.

NOTICE OF DETERMINATION		
Actual Rental Revenue from Summaries	\$	3,902.00
Transient Occupancy Tax	\$	507.26
Penalties and Interest	\$	230.80
Tax Fraud	\$	126.82
Administrative Citations - Post Appeal Hearing	\$	2,250.00
Enforcement Charges	\$	500.00
Payment Received	\$	-
Total Due	\$	3,614.88

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 \$3,614.88.

Option 2: Make alternate findings and direct Town 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, increase or amend the recommendation of the Tax Collector.
