



Date: Tuesday, January 24, 2023

Honorable Mayor and Council Members

Author and title: Rosie Johnson, Program Analyst II

Title: **Short-Term Rental Ordinance Update**

Approved By: _____ Jen Callaway, Town Manager

Recommended Action: Introduce Ordinance 2023-01 amending Chapter ~~3.24 (Transient Occupancy Tax)~~ and 5.02 (Transient Rental of Residential Units) of the Truckee Municipal Code.

Discussion: On Tuesday, April 12, 2022, the Town Council adopted Ordinance 2022-02 amending the Town of Truckee Municipal Code Chapter 5.02 regarding regulation of short-term rentals. Ordinance 2022-02 went into effect on May 12, 2022. Since then, staff have identified areas of the municipal code that warrant minor changes to provide clarity to internal processes. The intent of these changes is not to introduce significant policy changes to the STR program. Rather, these proposed updates are intended to expand on the existing short-term rental ordinance to improve the process and provide clarity.

Chapter 5.02: Transient Rentals of Residential Units

5.02.030 – Registration Certificate Requirements

A. Registration Certificate Required.

Recommended revisions to this section include prohibiting short-term renting of mobilehomes and manufactured homes that are not fixed to a permanent foundation (i.e. are attached to a chassis) and/or are in a mobilehome park or in a mobilehome subdivision. Mobile or manufactured homes that are on a fixed foundation and located outside of mobilehome park or mobilehome subdivision would be able to apply for a registration certificate since they are subject to the same standards as a single-family dwelling, as defined in Truckee Development Code section 18.220.020.

Currently the California Department of Housing and Community Development (HCD) manages registration & titling, permit requirements, inspections, and enforcement of regulations for mobilehomes and manufactured homes that do not meet the Development Code definition outlined above. The Town of Truckee currently defers to HCD when it comes to most projects including building permits and planning projects concerning mobilehomes and manufactured homes in mobilehome subdivision. Due to the Town of Truckee's limited regulatory governance over these mobilehomes and manufactured homes, staff recommends prohibiting the short-term renting of these property types.

There are currently no active registrations or waitlist applications for properties that meet these criteria.

C. Application to Join Waitlist.

- The waitlist process went into effect on June 13, 2022 and waitlist applications have been submitted for non-habitable properties and properties with land use issues (e.g. vacant land). Non-habitable properties include single-family dwellings that are currently still under construction and have yet to receive a Certificate of Occupancy. A Certificate of Occupancy is issued for a property when a final inspection has been completed by the Town's Building and Safety Division. The intent of the waitlist is for only habitable properties that have been inspected by the Town and meet all safety requirements to be eligible for the waitlist application process.

Staff proposes strengthening language in this section to include that potential operators can only submit a waitlist application for properties that have received a Certificate of Occupancy.

- Another scenario that has presented itself in the waitlist application process, is how to handle properties with an active code case with the Community Development Department (CDD). Currently, when this scenario occurs STR Division staff reaches out to CDD Code Compliance, and discuss the life safety concerns of the code case.

When the applicant has been unresponsive to CDD Code Compliance's communications, no action has been taken to remediate the violation, and life safety concerns exist at the property, approval of the waitlist application poses a concern. Under the current process, staff proceeds with approval of the waitlist application, places the application on hold, and notifies the applicant that their application is on hold until the code compliance issues are resolved. This promotes communication with CDD Code Compliance and requires the applicant to remedy the active code case prior to approving their waitlist application.

In accordance with section 5.02.060(B)(3), staff can deny, suspend, or revoke a transient occupancy registration certificate if the short-term rental operator or guest is currently in violation of, or has been found to be in violation of, any local, state, or federal laws, statutes, ordinances, rules, or regulations pertaining to the operation of a short-term rental. This language currently does not pertain to a waitlist application or certificate applications, only active registrants. Staff recommends providing further parameters in this section to give staff the authority to deny a waitlist application should there be an active violation associated with the property.

- Modifications to subsection 3 reference the requirement to distinguish the rental unit type (e.g. home, condominium). If there is more than one residential unit located on the property, the applicant must currently identify if the rental unit is the property's primary or secondary dwelling. Since May 12, 2022, section 5.02.030(E)(2)(c) has prohibited new transient occupancy registration certificates for accessory dwelling units and multi-family dwelling units. Considering this prohibition there is no need to differentiate if secondary units are the primary or secondary dwelling since accessory dwelling units (secondary dwelling units) are prohibited.

Staff recommends modifying the content of the rental unit type question to ask if the residential unit intended to transient rent is the applicant's primary residence or secondary residence. During the Town's STR certificate moratorium in 2021-2022, an advisory committee was formed to review the STR situation in Truckee. During the committee meetings several discussions were had around primary versus secondary inhabitation of a property, and regulations pertaining to ownership by residency status. Town staff derived their statistics in these discussions based on Truckee Donner PUD primary residence rate data and Nevada County homeowner tax exemption data. Should further regulations be explored around a property being one's primary or secondary residence it would be beneficial for Town of Truckee staff to have this data rather than relying solely on secondary sources.

D. Application for Certificate.

- Modifications are proposed to this section in reference to the previously described prohibition on vacant land or properties currently under construction and that have yet to receive their Certificate of Occupancy. Additional modifications have been proposed to this section in reference to the previously described limitations related to open code compliance violations.
- Modifications to subsection 4 of this section reference the previously described modification for the application to identify if the rental unit is the property owner's primary or secondary dwelling.

E. Transient Occupancy Registration Certificate Cap.

- Modifications have been proposed to subsection 2; subdivision c for the previously described prohibitions and limitations on the short-term rental of mobilehomes and manufactured homes.

F. Term and Scope of Certificate. As it presently reads, renewal applications may be submitted commencing on October 1st of each year. Active transient occupancy registration certificate holders have from October 1st to December 31st to renew their registration certificate for the following calendar year. The third calendar quarter for remittance of transient occupancy tax (TOT) ends amidst the renewal process on November 1st. The overlapping dates have caused confusion with operators, resulting in incorrectly submitted \$0 tax returns for the third quarter, and increases the administrative burden for staff to remedy the issues. To consolidate the process, staff recommends changing the commencement date for renewal to November 1st which will separate the renewal process from remittance deadline of the third calendar quarter.

5.02.050 – Prohibitions

A. Prohibited short-term rentals. Modifications proposed to this section are related to the previously described prohibitions and limitations on the short-term rental of mobilehomes and manufactured homes.

5.02.060 – Penalties; certificate denial, suspension, and revocation

A. Enforcement. The Town Council previously directed staff to increase penalties for violations of the ordinance to provide a significant deterrent for violations, including advertisement or rental of unpermitted units. The justification for this change was that for the fines to be effective the penalty for unpermitted STR activity must exceed the revenue potential from the rental. The modifications to administrative penalties increased from \$100 to up to \$1,500 for the first violation, \$3,000 for the second violation, and \$5,000 for subsequent violations. This aligned with the limits allowed by California Government Code (CGC) Section 36900.

The Town's changes went into effect on May 12, 2022. To enhance enforcement of the Short-Term Rental Ordinance Town staff propose maintaining these fines and updating the Short-Term Rental Ordinance to further align with Section 36900's intention. A summary of the changes proposed in the ordinance is provided below.

- Connecting TMC Chapters 3.24 and 5.02 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.
- Establishing that violations of Chapter 3.24 and 5.02 of the code "pose a threat to public health and safety" within the meaning of Government Code Section 36900(d)(4).
- The administrative fine for the operation of any transient rental without a valid transient occupancy registration certificate shall be \$500 for the first violation. Subsequent violations of this nature will then follow the administrative penalties as stated above.
- In accordance with CGC Section 36900, the \$1,500, \$3,000, and \$5,000 fines shall not apply to the following:

- First time offense of failing to obtain a transient occupancy registration certificate or pay a fee for a transient occupancy registration certificate. The fine for this offense is listed above.
- Violations committed in connection with the transient rental of a commercially operated hotel, motel, bed and breakfast inn, time-share property as defined by subdivision (aa) of Section 11212 of the Business and Professions Code.
- In accordance with state law, the Town will establish a formal 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.

B. Denial, Suspension or Revocation.

- In subsection 4 of this section, the code states that if three citations have been issued and upheld if there is an appeal, to a short-term rental for violations of chapter 5.02 within a 12-month period, the transient occupancy registration certificate shall be revoked and a new certificate shall not be issued for a period of 12 months from the date of the certificate's revocation. The code does not currently prohibit an individual from applying to the waitlist for any period following three (3) citations. Nor does it prevent someone whose license has been revoked from rejoining the waitlist. Staff recommends modifying the language in this subsection to align with and the remainder of the section prohibiting an applicant from applying to the waitlist for a period of 12 months from the date of the certificate revocation or receiving three citations.
- The Short-Term Rental (STR) Division has a robust auditing process including audits of properties that are advertised and not registered, delinquent transient occupancy tax payors, upholding transient occupancy registration certificate holders, and other aspects of the STR ordinance. Additionally, the STR team reviews any active code cases that the Community Development Department (CDD) has initiated on properties with an active transient occupancy registration certificate.

If a code case poses significant life safety concerns, no movement has been made at remedying the violation, and the certificate holder/property owner has not proactively communicated with CDD Code Compliance on rectifying the issues, then the STR division proceeds with a suspension of the transient occupancy registration certificate. While suspended, the advertisements for the property are required to be taken down and no active rents of the property should occur. This is done to help incentivize the STR operator to come into compliance with any violations. Once rectified, they can re-list their property to short-term rent.

This approach has been successful in incentivizing operators to follow-up on active code cases and there have even been code case closures in light of these suspensions. With the creation of this process, staff have uncovered the need for further parameters to be set around suspensions of transient occupancy registration certificates. Additions to this section include:

- Deny and revoke the opportunity to renew a suspended transient occupancy registration certificate should an active violation not be remedied within a certain timeframe as determined by Town staff.
- Revoke a suspended transient occupancy registration certificate should an active violation not be remedied within a certain timeframe as determined by Town staff.

Currently if a registration was suspended, we were approaching a renewal cycle, and if no forward movement was being made to remedy a violation, we do not have succinct verbiage in the STR ordinance to deny the opportunity for the certificate holder to renew. Furthermore, we do not want a suspended certificate to remain suspended indefinitely. Providing staff a timeframe to allot to a certificate holder to remedy a violation in association with a suspension, and if no further movement was made, staff are empowered to move forward with revocation of the certificate.

These proposed updates are reflected in the draft ordinance attached to this staff report as Attachment one.

Priority:

<input checked="" type="checkbox"/>	Enhanced Communication	<input type="checkbox"/>	Climate and Greenhouse Gas Reduction	<input checked="" type="checkbox"/>	Housing
<input type="checkbox"/>	Infrastructure Investment	<input type="checkbox"/>	Emergency and Wildfire Preparedness	<input checked="" type="checkbox"/>	Core Service

Fiscal Impact: There are no fiscal impacts associated with the proposed short-term rental ordinance updates.

Public Communication:

Ordinance 2023-01: Notification was published as part of the regular Town Council agenda packet.

Attachments:

1. Draft Ordinance 2023-01 – clean copy
2. Draft Ordinance 2023-01 – track changes from current STR ordinance