



August 14, 2019  
3:00 p.m.

MEMBER COMMENTS:  
PROPOSED CHANGES TO COVENANTS FINE SCHEDULE  
January 1 thru August 14, 2019

*Below are comments sent in for the 45-day member notification and comment period for the proposed changes to the Covenants Fine Schedule. Comments were received January 1 thru August 14, 2019. A total of 8 comments were received.*

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I read with great interest the proposed changes to the Covenants Fine Schedule. I fully support the proposed changes as, unfortunately, an increasing proportion of society today thinks that rules do not apply to them. So, perhaps raising the fines will encourage people to reconsider the potential cost of ignoring the rules. I do, however, have two concerns. First, a fine schedule is largely worthless if the organization - Tahoe Donner - does not have the courage, and does not commit the resources, to enforce the rules. In that regard, I find Tahoe Donner generally lacking. It is hard NOT to notice the contractor using a house as shop, office and worker dormitory directly across the street from TD's Maintenance Facility. Semi-tractor trailers deliver material there, trash trailers, scaffolding, ladders and other construction equipment are frequently present in front of the house, and the front driveway is occasionally used to fabricate and assemble things. How is it that TD remains totally oblivious to this commercial activity that is clearly obvious to the casual passerby? Drive all of Northwoods Blvd, and you will find other contractors storing business related items in clear view from the road. One contractor has had a large red JobBox stored in front of his garage for months. And, the issue of TD's willingness to enforce rules is not limited to contractors. The frequent parking violations and other behavior related to the two lodging establishments on upper Skislope come to mind. So, if the Board is going to consider changing the fine schedule, then they first should discuss how, and the extent to which, they intend rules to be enforced.

The second issue is what seems to be a relatively new, but increasingly common issue - people leaving dog poop bags laying along the roads and trails in our community. While I understand that there may be jurisdictional issues with regard to roads (Town vs Association property), this problem is not limited to TD. Nevertheless, it is a problem that detracts from our community, and quite frankly, is disgusting. I encourage the Board to establish a fine of at least \$500 for leaving a dog poop bag lying anywhere on TD or Association member property, and work with the Town to establish a similar fine for doing





so on public roads and Town property. By doing so, the Board will enable enforcement anywhere within TD.

Thank you for the opportunity to comment on the proposed changes, and for listening.

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I understand increasing fines to deter violations. However, as a part time resident I find the fine for garage spill violation a little unreasonable. I have concern for the rude neighbor (could be a renter) who might use my bear bin, not close it correctly and have a bear “spill” my garbage. I would have no idea that it happened but I assume you would send me the fine. Does that mean I have to get a camera on my bear box? Please consider this scenario when deciding on the fines. I would like to know what it would take to appeal such a fine.

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I am a Tahoe Donner property owner. My family enjoys the amenity of Tahoe Donner, and we rent the cabin on a short term basis.

We do appreciate the fact that there are rules of conduct for TD, and we recognize that an enforcement mechanism is needed. However, the proposed changes in fines, and the lack of concrete definitions are troubling. Just as important, the motivation, or need for these fine increases is not at all clear.

First, the proposed fines seem to be excessive. Many of the possible infractions are pretty minor—excessive light, parking off the road, parking a truck with dual rear wheels, etc. The proposed fine of \$400 seems out of scale with the importance of the infraction. The proposed fines for Noxious Activities and Business Activities seem unnecessarily high. A load party is a problem. But, if the people quiet down after a request, a fine of \$400 seems excessive. Of course, multiple infractions at the same location might require stiffer action.

Second, the new fine schedule includes ranges for Noxious Activities and Business Activities. There is no definition of the conditions that would determine what the level of fine should be within that range. This is wholly inappropriate in any sort of system of penalties. The conditions that would trigger a higher fine should be spelled out in terms that can be objectively determined.

As I noted above, we do rent our cabin on a short term basis. We have registered as a Short Term Rental. Under those conditions we agree to provide renters with the rules. It is difficult for us police the behavior of renters. We can agree that a modest fine will make us cognizant of the need to screen renters and make sure that they understand the rules. A potential fine of \$200 is plenty to catch our attention. A fine of \$400 seems to edge into the regime of revenue raising. Of course, if there are repeated problems at a given location,





implying that the owner frequently rents to obnoxious guests, then a stiffer fine might be justified.

It is not obvious that changes in levels of fines are necessary. The worst “problem” we have ever encountered is a neighbor’s floodlight—hardly worth filing a complaint. Before implementing, or even proposing such changes in fines it would be important to provide statistics on the numbers of violations with specific descriptions of their severity. In addition, there needs to be at least some argument why the proposed changes in fines would mitigate the problems. I would appreciate it if you would post such statistics on the TD website along with your discussion so that we can ascertain whether or not the proposed changes are needed and reasonable.

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I'm exhausted from attempting to get you to listen to a word that is said.

So I send you these comments out of obligation, having lost all respect for your process because you haven't treated us with respect.

The fine schedule is outrageous and absurd. There is no safe harbor for those acting in good faith. There is no protection from frivolous and vindictive complaints. There are no objective standards in any of your supposed "rules."

I sincerely doubt any court would uphold any of these fines as reasonable, because they are not even close to reasonable. You are wasting our precious HOA money on an agenda that was never supported by any data and seem to have lost all perspective and reason.

Mostly though I'm wondering when you are actually going to start listening and put aside the unsubstantiated agenda that has driven all this.

I'm wondering when you are going to start representing the interests of all homeowners rather than a tiny disgruntled minority with a chip on their shoulder.

This is not a retirement community. It's a vacation resort community. That's what it has always been.

Having little hope of actually being heard after what I've seen this past year, I submit these comments for the record for when the courts throw out your fines. Have you done the legal research? anything over a couple hundred dollars is unreasonable. It's established law.

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## BEGIN COMMENTS

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For "Private Property Rules Fines" these seem like they are higher than they need to be and seem unreasonable and unnecessarily complicated.

I would lower to:

- \$300 for the first fine. \$600 for subsequent violations and have this cover general fines, spilled garbage, and noxious activity violations. It seems like this 50% increase in fines should be more than enough. A doubling of fines seems draconian.

- The "business activity" violations seem especially high. I would like to get clarity on what is a \$400 vs. \$2000 (seems like a lot to put this in the hands of the committee w/o additional guidelines). I would also like clarify on what is a business activity (e.g. realtor signs are okay by the CCNRs, but apparently STR management signs are not, but if someone repaves your driveway their sign is okay? Seems strange.). Also it would be good to understand how often this fine could be applied (I did not see this anywhere). If someone has a pallet of widgets for their construction business stored outside of their house and just keeps it there forever, how often would they be fined? Once a month or ??

- I understand the "Tree and/or Vegetation Removal Violation" and "Fire Safety Violation" since they can or do have a heavy toll on the community and/or are generally not easily reversed.

The "General Common Area and Amenity Rules Fines" seem fairly reasonable.

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Also worth noting -- the board likely takes the data into consideration when making new rules and when interpreting owner feedback -- so I feel it is important to get right. I think the data released by the covenants committee needs to be better (but understand it is not easy). I would have liked to see the following data broken our by year for the last 10+ years.

- # of complaints submitted
- actual # of violations
- # of lots/homes w/ multiple violations
- # of owners who submitted complaints
- # of owners who submitted more than 1 complaint

Some of this data is in the report "Covenants Complaints & Violations Stats" by Annie Rosenfeld on September 22, 2018, here:





<http://www.tahoedonner.com/wp-content/uploads/2018/09/Item-9-Covenants-Stats-Highlights-9-22-18-2.pdf> but the data changes from actual violations to complaints mid 2017, making it harder to digest. This methodology change is *not* apparent in the Feb 2019 article, which may lead some owners and the board to misinterpret the data. (I did try to reach out earlier for clarification but never heard back, but I believe this to be the case.)

Note the following note is also included in the 9/22/18 report: "Stats do not indicate additional staff resolution based approach for random Covenants related issues. This reflects the softened approach directed rather than heavy handed." I think it is great that the staff is trying to resolve issues without fines, but would like this included in the data.

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END COMMENTS

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I object to the proposed increases in fines for covenants rules violation for the following reasons, among others:

1. The proposed fines are NOT reasonable. The fines are highly punitive and in most cases not reasonably related to the seriousness of the violations. They are MUCH higher than needed to (a) deter unwanted activity and (b) enforce rules after they are violated.

An article by the Educational Community for Homeowners (ECHO), a nonprofit membership corporation dedicated to assisting California homeowners' associations, includes the following language regarding HOA fine amounts:

"When figuring out how much money to fine for a violation, a board of directors should keep in mind the court's potential reaction. Although there are no statistical studies on this issue, it is likely that if an association imposes any fine totaling more than a few hundred dollars for a single violation, it will, if challenged in court, face an uphill battle in proving that the fine is reasonable. This does not mean that an association will never be permitted to impose a higher fine than \$200 or \$300 for a single violation; depending on the factors discussed above and the particular judge, it is possible that significantly higher fines may be allowed. However, if an association wants to minimize the possibility that a fine will be found to be unenforceable by a court, it should limit fines to a few hundred dollars per violation at most."

2. The proposed fine schedule, along with the STR rules and TDA's erroneous interpretation of the Business Activities rule, results in STR owners and guests being held to a stricter standard of behavior, and subject to a much higher level of fines, than non-STR owners and guests for identical behavior. This is NOT reasonable.





For example, if an STR guest makes excessive noise, holds a social event deemed as a "reception" or "corporate event", or parks on the street (even in summer months, when owners and non-STR guests are allowed to park on the street), then an STR owner could be fined up to \$2,000 for violating the business activities rule. The same behavior by an owner or non-STR guest would be subject to a lesser fine (in the case of excessive noise) or no fine at all (in the case of a reception or corporate event or parking on the street). This is not reasonable.

As another example, if someone files a complaint about a potential rule violation and the owner doesn't reply within 45 minutes of the complaint, the STR owner can be subject to a large fine while the non-STR owner hasn't violated any rule at all (and has two days to respond to a written notice from TDA). This different treatment of owners for the same underlying and identical behavior is not reasonable.

3. There should be an explicit, written policy of providing a warning for a first offense rather than a large fine.
4. The fines are especially unreasonable if an owner is being fined for the actions of a guest and the owner has provided a copy of the rules at the time of booking, received an acknowledgment from the renters that they have reviewed the rules and agree to follow them, and has posted the rules in the home. A responsible owner should not have to pay an excessively high fine due to the actions of his guests where the owner has otherwise been responsible and followed the rules.
5. Large fines put Tahoe Donner properties at a competitive disadvantage with other rental properties. This is detrimental to the interests of Tahoe Donner property owners. The competitive disadvantage is increased if a home risks a doubled or re-doubled fine due to prior bad behavior by a guest. Fines should not escalate when the violation was due to actions of a guest or tenant and the owner is otherwise following the applicable rules.
6. Many TDA rules include vague and ambiguous language, using terms such as nuisance, noxious, unreasonable, minimize, etc. There should be objective standards so owners and their neighbors can know what behavior is prohibited. These excessively high fines are especially unreasonable given the ambiguous and subjective nature of the rules.
7. There should be an increased effort on fining guests directly, rather than only fining an owner for the actions of a guest. This could include efforts to have the Town of Truckee issue citations for violation of rules related to issues such as excessive noise, illegal parking, and garbage spills.





Thank you for your consideration.

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I know the Board has made a lot of decisions over the past few months and is facing a lot of pressure to make more decisions. I urge you to pause your consideration of the fine changes and take the time to get more input and improve the proposal.

Do you believe that identical offenses should be subject to identical fines? This proposal creates discrepancies between identical offenses.

Do you believe that fines should be fairly applied? This proposal does not fairly apply the fines.

Do you believe in transparency and informing members about actions that might affect them? If so, you should pull back the fine proposal and be more forthcoming about how it negatively impacts certain specific members.

To help you understand the unfairness of the fine structure, I prepared the attached chart (comment document 2 of 2). Though I tried to inject a little humor in the described situations, the point should be very clear. Identical offenses at identical properties by identical guests are subject to different enforcement and fine provisions depending on whether the guest paid or didn't pay for their stay.

If your intent is to assure that non-TD guests abide by the rules, the rules should be uniformly applied to all non-TD guests.

If your goal is to be unfairly punitive to owners who occasionally rent their TD residences then this proposal does that. Having spoken to several of you in the past, I doubt this is your intention, but it certainly is the effect.

Regardless of whether you believe in equal application of the fine and enforcement provisions of the TD rules, I urge you to clarify and change the proposed fine changes.

The proposal would result in a first time offense such as parking a car legally (yes, legally!) outside of a driveway or noise after 10 pm being subject to fines of up to \$2,000







if the offense happens at a short term rental.. The exact same offense at another home where a non-owner non-paying guest may be staying, would result in no fine in the case of parking or a fine of up to \$400 for the exact same noise offense. Why the difference? I can't come up with a justification

unless you are trying to punish the STR owner for allowing occasional rentals. Both offenses are identical, both offenders are non-residents and both situations should result in the same level of engagement from TD staff and the Covenants Committee.

It was a surprise to me, as I'm sure it will be to many STR owners that the new "business activities violation" fine includes STR. If one thing should have been clear from your STR discussions, it is that those of us who occasionally rent our homes do not consider ourselves "businesses." From a business perspective, we would be considered big losers.

The different fine structure and added noxious-type activities impacts STR owners because they are now swept up in the business activities fine structure. This is not well known, yet it is one of the most significant aspects of your proposed fines structure.

I know several board members especially value transparency. In this case, the connection between the dramatic shift in fine structures for STR owners is shrouded from view.

If you don't believe me, I encourage you to look at the January Tahoe Donner News. In it you'll find pages about the new fine structure and pages about the proposed fines. Yet nowhere is there even a hint the two are connected.

Look at the two pages of information about the fine schedule. There is a list of effects and there are several paragraphs of background. Can you find any mention of STRs being impacted in a new and dramatic way by the new fines? I certainly can't.

Now jump to page 30 for a discussion of the new STR rules. The list of seven highlights does not say that STRs are now "business activities." The overview paragraph doesn't mention business activities. The seven highlights don't mention the business activity connection. The list of five rules doesn't mention the business activities inclusion. And, the page doesn't say anything about the forced removal of the good-neighbor property manager contact signs that was imposed because of the connection to the business







activity rules.

So, how would an STR owner know that their unit now falls under business activity rules and the new fine structure sweeps them into potentially usurious fines for simple violations like parking legally on the street?

I'll tell you how I found out. Even though I've been paying very close attention to the STR rules since I learned about them in mid-summer and even though I attended a Board meeting and read and commented on the STR rules, I did not realize the real-world impacts of "business activity" designation until I read some recent board and committee action material and saw that the Covenants Committee determined that short term rentals are business activities subject to the restrictive signage rules. They determined that STRs are "business activities" and that the "good neighbor" magnetic signs with the name and phone of a rental property manager are prohibited from being displayed pursuant to TD signage rules for businesses. As one of the very responsible property managers recently pointed out, such signs are used by neighbors and others to communicate with those responsible for a property and almost never used to get new renters.

Other STR owners are not as attentive as I am. I am confident that only a very small percentage of STR owners realize that the new proposed fine structure has a potentially dramatic impact on their TD home.

So, in the interest of transparency of board actions, the new fine structure should be delayed so that you can inform STR owners of the impact on them, solicit comments from the STR owners and make appropriate changes.

I am supportive of an enforcement structure and fines if they are fairly and equitably applied. Fines can be an important deterrent. This proposal, perhaps unintentionally, singles out one class of owner for especially punitive fines. This is unfair. It also serves to further undermine the cohesiveness of our community.

Please clarify that similar offenses will be subject to similar fines. The easiest way to do this would be to explicitly state that STRs are considered part of the non-business





activity fines structure.

In addition to the comments above, I have a few additional suggestions:

- Frankly, it seems quite harsh to fine someone \$400 or as much as \$2,000 for the first offense related to something that may have been inadvertent or even out of their control. Why not make the first offense a “warning” .. or at least make it clear that some categories of offenses (such as fireworks) are subject to fines on the first offense, while others (such as leaving a light on by mistake) are subject to a warning on the first offense.
- If an owner can demonstrate they informed a guest of the TD rules, they should be subject to a lesser fine structure or no fines at all. This should be the case in situation of both paying and non-paying guests.

Please also consider what the board actions taken on short term rentals and now the fine increases are doing to the cohesiveness of our community.

I bought my property so I could enjoy the environment and amenities of Tahoe Donner. I bought it with the knowledge that TD was welcoming to vacation renters and I knew I'd have to rent my home occasionally to vacation renters so I could financially justify owning my TDhome.

The actions related to STRs are destroying the pleasure I derive from being part of TD and they are diminishing the value of my home. I didn't buy my home so I'd have to get involved in the politics of TD .. I actually viewed it as a way to get away from the politics involved in my professional life. But now, instead of enjoying the peace of my TD home, I find myself spending hours reviewing the TD and Nextdoor sites for information about how TD is negatively impacting me and trying to develop arguments I hope you will listen to.

These recent actions are driving wedges in our community and hurting the community feel of Tahoe Donner. In addition to fixing the fine proposal, I strongly urge you to step back and work on ways to bring the sense of community back to Tahoe Donner.





Thanks you for considering my views.

| <b>Tahoe Donner Proposed Fine Structure Fairness Comparison</b>  |   |                               |   |                               |
|--|---|-------------------------------|---|-------------------------------|
| <b>Identical Occupants, Identical Offenses, Different Penalties</b>  |   |                               |   |                               |
| <b>Potential Violation</b>   | <b>Situation 1: Smith Family (2 adults, 2 children) stay at rental property for weekend</b> |                               | <b>Situation 2: Same Smith Family (2 adults, 2 children) stay at friend's house for the weekend</b> |                               |
|  | <i>1st Offense Owner Fine</i>   | <i>2nd Offense Owner Fine</i> | <i>1st Offense Owner Fine</i>   | <i>2nd Offense Owner Fine</i> |
| LEGAL PARKING: The Smith family invites several Tahoe Donner friends for dinner and to enjoy the warm summer evening and one friend parks legally on the street  | \$400-\$2000  | \$800-\$4000                  | None  | None                          |
| WEDDING GUESTS VISIT: Mr. Smith's sister gets married in Reno and the Smiths invite the wedding party of 6 people over for hors d'oeuvres to celebrate. A neighbor sees the wedding dress and wedding party and calls TD enforcement to report an illegal wedding reception. | \$400-\$2000  | \$800-\$4000                  | None  | None                          |
| SAFETY SIGNAGE: The Smith's arrive on a dark and stormy night so the owner puts a vacation rental sign at the driveway indicating this is the unit they're coming to. (Note: confirmed with Covenants Committee that this is a violation)                                    | \$400-\$2000  | \$800-\$4000                  | None  | None                          |
| RAPID RESPONSE TO COMPLAINT: A neighbor is uncomfortable with strangers and calls TD to complain. Enforcement staff is dispatched to the home at the same time the owner is at a   |   |                               |   |                               |





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| <p>movie theater that requires you to silence your cellphone. The owner doesn't see the message until 55 minutes after the call.</p>  | \$400   | \$800  | None  | None  |
| <p>NOISE: The Smiths decide to enjoy a date night and go out dancing at Moody's. The two children, ages 11 and 14 are left at the house. The children watch Star Wars and enjoy it so much that they turn the volume way up. At 10:15, a neighbor calls TD enforcement staff and they are dispatched to the house.</p>  | \$400-2000  | \$800-\$4000                                 | \$400 | \$800 |
| <p>LOGOS/ADVERTISING: The owner of the house is also Mr. Smith's friend. The owner has a car with the logo and phone number of their property rental company on the side door. Mr. Smith invites the friend to lunch at the house and the friend parks their car in such a way that the logo is visible from the street, constituting signage that is in violation of the business signage rules. An alert neighbor calls TD enforcement.</p> | Possibly \$400- 2000 (awaiting definitive answers from TD committees) | Possibly \$800-\$4000                        | None  | None  |
| <p>OCCUPANCY: The Smith's older son is having a birthday while at TD and asks to have a slumber party with a 8 friends. The family does this on a Saturday night of a stay without remembering that the long document they read when renting the place talked about occupancy limits.</p>   | \$400 if treated as a non-business violation                          | \$800 if treated as a non-business violation | None  | None  |





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|---|---------------------|----------------------|--------------|--------------|
| <p>GARBAGE: The Smith's have their 14 year old take out the garbage before they leave. The child fails to lock the bearbox and the bear box opens in the wind and there is a spill shortly after they leave. The maid comes and, finding garbage in the driveway parks on the street. The maid cleans the house first, but while there, neighbors complain and enforcement staff arrives to find both garbage and parking violations.</p> | <p>\$800-\$2400</p> | <p>\$1600-\$4800</p> | <p>\$400</p> | <p>\$800</p> |
|---|---------------------|----------------------|--------------|--------------|

I write to support the revisions to the Covenants fine schedule proposed by the Covenants Committee. The changes are incremental, and make sense given the passage of time since enacted. Also, they target the areas that are of most concern to the residents, i.e. noxious activities, and so are focused on where they will do the most good. The noxious activity rules and enforcement apply to all owners equally, and since the Covenants Committee is charged with enforcement, I support their views as to what is most helpful and needed.

