

# City of Brisbane

## Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Short Term Residential Rental Regulations

DATE: February 7, 2019

### **City Council Goals:**

To promote economic development that stabilizes and diversifies the tax base. (#4)

To provide public service that assures the safety of property and citizens residing, working or visiting in Brisbane. (#9)

To preserve and enhance livability and diversity of neighborhoods. (#14)

To encourage community involvement and participation. (#15)

To preserve the unique current character of Brisbane. (#16)

### **Purpose:**

For the City Council to consider the input from the City Council Planning Issues Subcommittee (CMs Cunningham and O'Connell) and provide further policy direction regarding the regulation of short term residential rentals.

### **Recommendation:**

That City Council provide policy direction and refer the matter back to the Planning Commission for consideration of zoning ordinance changes as needed.

### **Background:**

“Short term residential rentals” (STR’s), or rental of a room or an entire home for a period of less than 30 days, is currently prohibited in Brisbane’s residential zoning districts. In 2015, following Planning Commission and City Council study of the issue, the City Council directed its Planning Issues subcommittee to study the issue further. At subsequent subcommittee meetings in 2016, directed staff to consider potential STR regulations. Staff reports from 2015 and 2016 are attached to this report for reference purposes.

In November 2018, the Planning Issues subcommittee (Councilmembers Cunningham and O'Connell) reconvened to consider the previous subcommittee direction and provide updated direction to staff.

**Discussion:**

At the November 2018 Planning Issues subcommittee meeting, the subcommittee supported the concept of allowing STRs subject to regulatory program addressing the following components, at a minimum:

- Allow for hosted rentals (homeowner stays in the unit) with no time limits
- Allow for non-hosted rentals; (homeowner not in the unit) with time limits (duration TBD, subcommittee discussed maximum limits of 60-90 days)
- Require “Good Neighbor” policies/practices (noise, parking, garbage, etc.) with failure to comply with these measures as grounds for permit revocation
- Owner to demonstrate insurance/liability coverage
- Reasonable tax structure- transient occupancy tax, business license tax, and planning permit fee shouldn’t be overly burdensome to homeowners
- Prohibit STRs in accessory dwelling units

If the City Council wishes to consider permitting STRs subject to these standards and/or others that that might be discussed at tonight’s hearing, it would be appropriate for the City Council to refer the matter back to staff to prepare a draft ordinance which would be subject to public review before the Planning Commission.

**Fiscal Impact:**

Limited. If an ordinance is ultimately adopted which requires STRs to obtain planning permits, the permit fees shall cover city staff time to process such permits. On an ongoing basis, transit occupancy tax or other revenues accruing to the city from allowing STRs are not expected to be substantial.

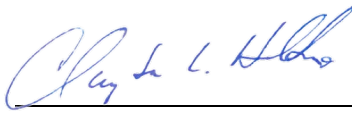
**Measure of Success:**

City Council policy direction on STRs which enables the City’s applicable ordinances to be updated accordingly.

**Attachments:**

1. November 28, 2018 staff memorandum to subcommittee
2. March 15, 2016 staff memorandum to subcommittee

  
\_\_\_\_\_  
Community Development Director

  
\_\_\_\_\_  
City Manager



## MEMORANDUM

DATE: November 28, 2018  
TO: City Council Liaisons to the Planning Commission  
FROM: John Swiecki, Community Development Director via Clay Holstine, City Manager  
SUBJECT: Short-term Residential Rental Regulation Update

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### Background

In early 2015 at the City Council's direction, the Planning Commission studied the issue of "short term residential rentals" (STR's), or rentals of a room or an entire home for a period of less than 30 days, which is presently prohibited in Brisbane's residential zoning districts. After conducting several workshops on the issue, the Planning Commission ultimately recommended that it be placed on the ballot.

In July 2015, the City Council considered the Commission's recommendation and ultimately opted not to move forward with a ballot measure, instead directing staff to research the legal ramifications of such an ordinance, other cities' ordinances, and to conduct additional public outreach.

In February 2016, staff presented their findings to the City Council liaisons to the Planning Commission, at which time the subcommittee directed staff to consider potential STR regulations (detailed in the March 15, 2016 subcommittee report, attached).

At a subsequent subcommittee meeting on March 15, 2016, the subcommittee directed staff to bring back information on other jurisdictions' ordinances that had not been summarized in staff's research to date.

Simultaneously, the regional housing policy working group 21 Elements- of which the City is a member- began a comprehensive Countywide study on the issue, including conversations with Airbnb and other hosting platforms, to formulate broader policy recommendations. Staff opted to wait to bring the item back to the Council subcommittee pending completion of the 21 Elements study. The results of the 21 Elements study did not suggest that a Countywide approach (from either a regulatory or financial standpoint) to regulating STRs would be appropriate.

### Discussion

As summarized above, the subcommittee in 2016 indicated support for adopting regulations to allow short term vacation rentals in Brisbane, subject to compliance with certain performance standards. Staff requests that the subcommittee review the subcommittee's prior direction and confirm if that remains the subcommittee's preference. Staff will bring back a summary of the

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subcommittee's recommendation, whether in support of or against adoption of short term rental regulations, to the full Council for action.

Should the Council ultimately wish to adopt an ordinance to regulate short-term rentals, the matter would go back to the Planning Commission for initial public hearings and a recommendation to Council. No further action would be required if the Council opts not to regulate short term rentals, as they are currently prohibited under the Municipal Code.

An issue previously raised by the subcommittee was the potential opportunity for the city to generate revenue from short term rentals via transient occupancy tax (TOT) or other means. The Finance Director will be attending the subcommittee meeting to further discuss this matter.

### Attachments

1. March 15, 2016 staff memorandum with attachments



# MEMORANDUM

DATE: March 15, 2016  
 TO: City Council Liaisons to the Planning Commission  
 FROM: John Swiecki, Community Development Director via Clay Holstine, City Manager  
 SUBJECT: Short-term Residential Rental Regulation Update

## Summary of February 24, 2016 Meeting

At its February 24, 2016 meeting, the Planning Commission liaisons gave preliminary direction to staff on the next steps for considering potential short-term residential rental (STR) regulations.

Specifically, a number of items were identified for consideration in any future proposed STR ordinance. These include:

- Including a mechanism to capture revenue (e.g., transient occupancy tax, business license, etc.);
- Limiting STRs to owner-occupied single family residences which is a homeowner's primary residence (as demonstrated through proof of homeowners property tax exemption or other similar);
- Homeowners must be "natural person", i.e. not a corporate entity;
- Prohibit use of secondary dwelling units for STR;
- Incorporate "Good Neighbor" requirements and educational materials;
- Include some form of neighbor notification;
- Limit maximum number of guests based on Building Code-defined bedrooms in the home and ensure that information is readily available for verification and/or enforcement purposes;
- Require proof of homeowners insurance specifically for STR use.

## Items for Consideration

Staff has also identified several other items that were not previously discussed, or that the liaisons discussed without reaching final policy direction. The Liaisons can provide further direction at this time, or wait for these issues to be addressed in a forthcoming draft ordinance.

### *On-site Parking*

Any future STR ordinance will need to address parking requirements. Specifically should additional on-site parking be provided above and beyond what is required for a single family

residence? If so, how much additional parking? What about cases where the existing parking is non-conforming? Jurisdictions with STR regulations vary in their treatment of parking, typically based on the general availability of parking in neighborhoods (refer to the staff memorandum and attachments of February 24, 2016).

### *Limit Number of STR's*

Another issue that was discussed was whether a cap or numeric limit on the number of STR's potentially allowed to operate would be desirable. A few of the jurisdictions researched by staff use this tool in their permitting process. If there is going to be a finite number, how will these permits be allocated?

### *Permit Process*

Another important consideration is the permitting process itself. The jurisdictions researched by staff illustrate a variety of both ministerial and discretionary processes that the city could consider.

### *Public Outreach*

As discussed previously, when the full City Council last considered this issue there was a desire expressed that staff undertake further community outreach on the issue of short-term rentals. For the reasons outlined in the February 24 report, staff does not believe that further outreach absent more definitive policy direction or a draft ordinance for the public to review and comment on will generate substantial new public input, or identify new issues that were not previously considered. Any input the Liaisons have in regard to desired further community outreach (form and timing) would be important.

## Next Steps

Subject to the concurrence of the liaisons, staff will schedule a follow-up meeting with the Planning Commission liaisons in April in order to finalize a recommendation back to the full City Council on how to proceed with potential regulations of short-term rentals.

## Attachments

1. February 24, 2016 staff memorandum



## MEMORANDUM

DATE: February 24, 2016  
 TO: City Council Liaisons to the Planning Commission  
 FROM: John Swiecki, Community Development Director via Clay Holstine, City Manager  
 SUBJECT: Short-term Residential Rentals Regulations Update

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### Background

On January 15, 2015, the City Council directed the Planning Commission to study the issue of "short-term residential rentals" (STR's), which are defined as rentals of a room or an entire home for a period of less than 30 days. Under the City's current Municipal Code regulations, this use is considered a hotel use, and is not permitted in residential zoning districts. In response, the Planning Commission held two public workshops during which over a dozen individuals highlighted the far-reaching impacts that regulating short-term residential rentals could have on the community, for better or for worse. Additionally, the Commission considered the results of a non-scientific survey to raise public awareness of the issue and solicit community feedback which received 188 responses.

On April 23, 2015 the Planning Commission voted to recommend to the City Council that the issue be placed on the ballot to determine whether a majority of Brisbane residents favored adoption of an ordinance to allow for and regulate short-term residential rentals, or whether they preferred to leave the current prohibition in place.

On July 16, 2015, the City Council considered the Commission's recommendation and ultimately opted not to move forward with a ballot measure at that time. Council directed staff to conduct research on the following topics to bring back for consideration at a future Council meeting:

1. Consult with the City Attorney to determine how an ordinance regulating STR's could be enforced by the City, and to discuss other legal ramifications of adopting such an ordinance.
2. Research successful STR ordinances, such as that in Bend, OR.
3. Conduct additional public outreach to determine if the use is appropriate in the community, with an emphasis on online engagement through the City's virtual "Town Hall."

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It should be noted that as of November 2015 the 21 Elements Group- comprised of all cities and the county of San Mateo- is moving forward with its own research regarding STR regulation. Their anticipated work products include a background report, comparison of existing legislation, data on number, location, and other characteristics of STRs in the county, and eventually a model ordinance to regulate STRs. Planning staff provided their research to 21 Elements to aid in their preparation of these deliverables. 21 Elements' consultants Baird + Driskell anticipate finalizing the model ordinance in spring 2016.

### Legal Review

Staff has contacted other cities with STR ordinances to gain insight on how burdensome enforcement of those ordinances has been on their staff (see attachments and discussion below). Staff has not moved forward in requesting additional research from the City Attorney's Office. The research completed to date reveals there are numerous approaches to regulating short term rentals, and each approach offers unique legal issues related to implementation and enforcement. Instead of researching the issue in a generic fashion, staff believes it would be appropriate for the City Council to provide basic policy direction so the City Attorney's research can be focused on how to best implement the Council-desired approach.

### Other STR Ordinances

The City of Bend, Oregon (pop. 76,639) was specifically named by Council as an example of an STR ordinance perceived as being successful. Planning staff contacted the Community Development Department of Bend, OR with targeted questions to determine how the ordinance was developed in regards to public outreach, as well as the success of its implementation. We learned that Bend employed a robust public engagement program, including appointment of a 23-member advisory committee with diverse representation of various stakeholders. The advisory committee meetings were open to the public, and structured Planning Commission "listening sessions" and online engagement forums were also used to collect detailed feedback from a variety of stakeholders. Bend staff describes the resulting ordinance as a true compromise between competing interests. They are in the process of collecting statistical performance data on the program and their City Council has indicated that it intends to revisit the regulations regularly if any issues arise. Enforcement is funded partially through hotel taxes and from General Fund revenues.

Planning staff also conducted additional research of short-term rental ordinances in California cities Encinitas (pop. 59,518), Newport Beach (pop. 85,186), and San Luis Obispo (pop. 45,119). That research is included in the attached memo. The purpose of staff's analysis in these research efforts was to identify different potential regulatory paths for short-term rentals and common elements of those ordinances.

Of the eight cities researched by planning staff, only one was of comparable size to Brisbane: St. Helena in Napa County, pop. 5,814. Staff followed up with St. Helena planners and found that City is in the midst of reconsidering certain aspects of their STR ordinance, originally adopted in 2012. Part of the Council's focus was on data analysis, specifically code enforcement complaints



received by their police department. Of the 22 permitted STRs in the city, a majority (63%) had no calls for service during the 3 years they have been operating. Similar results were found in an analysis of suspected unpermitted STRs. Their staff has concluded that the majority of STR operators are “good neighbors,” and only a few properties generate issues in their neighborhoods that warrant calls for Police Department response. The 22 permitted STR operators provide approximately \$144,000 in TOT to the city’s General Fund annually.

#### Public Outreach Efforts

In March 2015, planning staff launched a non-scientific survey available on SurveyMonkey as well as in hard copy (mailed to every household in the STAR, and available at City Hall and Library). 188 unique responses to the survey were received that indicated an almost 50/50 split between respondents who support permitting the use of STRs and those opposing STRs.

Due to the launching of the Parkside Precise Plan process as well as the Baylands Final EIR and Specific Plan public hearings, staff held off on conducting new public outreach on this issue. The citywide Baylands survey distributed by the city in September included short-term rentals as a potential response to a question of what issues are of community concern (Question 3). Of the 580 survey respondents, 25% (145 respondents) thought it was extremely to very important to address the issue of short-term rentals, while almost half of respondents (273 respondents) thought it was not very important at all. The remaining respondents found it to have some importance (151). This particular survey question gauges only community interest in the topic as a whole; it did not provide direction regarding the respondent’s personal feeling towards STR regulation.

Brisbane Town Hall does provide a new online engagement forum that staff can use for additional public outreach. Since its launch in November 2015, the primary discussion topics have focused on the Parkside Precise Plan process. Participation in Town Hall has been fairly low, although staff is constantly working to entice more users. The most popular discussion topic used a survey, as opposed to the other topics that requested written comments which have seen at most 3 responses per topic. Given the relatively low community interest in the issue overall, staff believes it is unlikely that another round of community engagement on this issue will garner a level of participation approaching what was achieved through the original survey.

#### Attachments

1. Q&A with Bend, OR Community Development Department
2. Baylands survey question 3 data
3. Updated staff research memo on STR regulation in other communities
4. [July 16, 2015 staff report to City Council](#) (link to PDF on City website; hard copy not provided.)

#### Q&A with Bend, OR Community Development Staff

##### **Q: How did the City conduct community outreach in developing the ordinance?**

A: A 23-member Vacation Home Rental Task Force, representing a diverse set of viewpoints, met every two weeks over the course of several months. All meetings were open to the public and allowed time for public comment. Public comment was also encouraged via the City’s project website, Bend Voice (which is an online conversation platform), a public listening session held by the Planning Commission, and two public hearings. All written or emailed public comment was posted on the City’s project website. This was a very hot topic in the city, so both TV and print media covered this story quite closely. Staff gave presentations to the Central Oregon Association of Realtors and city Neighborhood Associations. Also, as required by Oregon state land use law, all property owners impacted by the new program were sent a mailed notice about the first public hearing (I believe it was 15,000 postcards).

##### **Q: How has the new STR program been received by the community? Does the community and city staff perceive it as successful?**

A: The City Council established a 23-member Vacation Home Rental Task Force to seek a balanced approach between protecting neighborhood livability and economic vitality. The end result is a compromise, which means that the neighborhood and livability advocates would have liked to see more restrictions and the economic use of property advocates would have liked to see fewer restrictions. The Planning Commission and City Council both remarked that only time will tell if this approach is successful and they were very clear about their intention to review this program to see how it is working. As the program rolls out, staff are tracking a number of statistics on the program – including how many new permits are issued, how many properties give up or void their licenses, and the volume and validity of complaints and subsequent code enforcement of violations.

##### **Q: How has enforcement been managed in regards to staff time and resources?**

A: Code enforcement (for land use complaints and violations) is funded through the General Fund; City Council allocated additional resources to Code Enforcement this year to assist with increased call volume on all code complaints, including but not limited to short-term rentals. A portion of the Room Tax remitted to the City is allocated to Police and Fire. The cost of getting the new program up and running has been covered by Room Tax remittances; fortunately, Room Tax remittances have been on the rise, so there were unallocated funds that could be used for this project. The cost of permits and licenses are intended to cover the staff time to administer the permits and licenses, not the cost of enforcement.

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3. Next, below is a list of issues facing Brisbane residents. For each one, please indicate how important it is to you personally that Brisbane City government do something to address that issue.

	EXT IMPT	VERY IMPT	SMWT IMPT	NOT TOO IMPT	NOT AT ALL IMPT	DK/NA /REF	EXI/ VERY IMPT	TOTAL NOT IMPT
a. Parking on local streets -----	17%	23%	31%	21%	8%	1%	40%	28%
b. Open space preservation and enhancement -----	33%	32%	20%	10%	4%	1%	65%	14%
c. Replacing the old library-----	9%	16%	34%	28%	11%	1%	25%	39%
d. Potholes and street repair-----	12%	34%	36%	14%	3%	1%	46%	17%
e. Crime-----	28%	27%	24%	16%	4%	1%	55%	20%
f. The future of the Brisbane Baylands -----	51%	26%	17%	4%	1%	1%	77%	5%
g. Park maintenance -----	20%	46%	28%	4%	1%	1%	66%	5%
h. Maintaining Brisbane's small town character -----	43%	26%	18%	9%	3%	1%	69%	12%
i. Energy efficiency -----	32%	36%	23%	6%	2%	1%	68%	8%
j. Providing more housing alternatives -----	13%	18%	35%	21%	11%	1%	31%	33%
k. Recreational activities and programs-----	15%	33%	35%	14%	2%	1%	48%	16%
l. Water conservation -----	39%	35%	19%	5%	1%	1%	74%	6%
m. Short-term residential rentals, such as Airbnb-----	12%	13%	26%	25%	22%	2%	25%	47%
n. Creating more retail shopping and dining options-----	24%	20%	25%	18%	11%	2%	44%	29%

# Memorandum

**To:** John Swiecki, Community Development Director  
**From:** Julia Capasso, Associate Planner and Quinn Haaga, Intern to the City Manager  
**Date:** December 10, 2015  
**Re:** Regulating Short-term Residential Rentals- Updated Memo

## Background

Short-term residential (STR) rentals are typically defined as rentals of residentially-zoned properties for a period of less than 30 days. STR rentals fall into two general categories: those owned and operated by a permanent resident of the home (“homeshare”; owner/lessee may or may not be present during rental period), and those owned and operated by an individual or entity not living on-site (typically second homes or dedicated vacation rentals). Homeshare STR rentals have grown significantly as an industry since the advent of online hosting and advertising platforms, the most popular of which are Airbnb.com and HomeAway, Inc. (including VRBO.com and HomeAway.com). The industry has raised concern in municipalities due to its largely unregulated nature, loss of tax revenue, and incompatibility of transient rental uses in established single-family neighborhoods (e.g., parking and noise). In tourist-destination cities such as San Francisco and New York, housing advocacy groups have also lobbied for restrictions on STR rentals as long-term rental units become converted to such uses, further diminishing already strained housing supply.

Under current Brisbane Municipal Code zoning regulations, STR rentals are considered commercial hotel uses as defined in BMC Section 17.02.420.<sup>1</sup> Hotel uses include “...a building or group of buildings containing guest rooms or suites offered, for compensation, to the general public as transient lodging accommodations. The term includes...bed and breakfast establishment or similar use...” In the fall of 2014, Community Development staff sent code violation notices to seven owners of property listed on Airbnb.com in residential zoning districts, following up on a code enforcement complaint. Based on a cursory review of Brisbane listings on Airbnb.com (9 listings) and VRBO.com (2 listings, also posted on Airbnb) conducted in January 2015, STR rental listings in Brisbane fit in the “homeshare” category, where primary residences are offered by the owner/lessee for occasional occupation by transient users.

### *Transient Occupancy Tax*

The City collects uniform transient occupancy tax (TOT) as outlined in BMC Section 3.24. TOT is assessed based on use of any structure occupied by transient users for compensation. For TOT purposes, *hotel* is defined as “any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any...tourist home or house...lodginghouse, [or] roominghouse.” *Transient* is defined as “any person who exercises occupancy or is entitled to occupancy of a specific room in a hotel by reason of concession, permit, right of access, license or other agreement.” Under this definition, operation of STR rentals would be subject to TOT tax should the use be legalized.

<sup>1</sup> Per City Attorney opinion provided to City staff.

## Trends in Regulating Short-Term Rentals

As the STR rental industry has grown, online hosting platforms and users of the service have increasingly advocated for its legalization in jurisdictions where the service is prohibited in residential zoning districts. Some of the benefits of municipal regulation of the industry include increased TOT revenue, minimization of undesirable neighborhood impacts, and increased tourist activity. Below is a summary of recent ordinances adopted by jurisdictions in California and Texas that allow the operation of STR rentals in residential zoning districts.

### *City of San Francisco, CA (pop. 805,235)*

Approval process: Ministerial

Perhaps the most administratively complex of recently-adopted legislation is San Francisco’s Ordinance 218-14 adopted by the Board of Supervisors in November 2014. The ordinance amends the City’s Residential Unit Conversion Ordinance and Planning Code to define STR rentals as a subcategory of residential use, which may only be permitted if the following requirements are met:

- Only permanent residents may provide STR rentals. A permanent resident must be a natural person (i.e., not a corporation) who has resided in the unit for at least 60 consecutive days with the intent of establishing it as his/her primary residence. A permanent resident may be an owner or lessee.
- The permanent resident must reside in the unit for at least 275 days out of the calendar year during which the unit will be rented; or, if occupied less than a year, no less than 75% of the time during which the permanent resident has occupied the unit.
- The unit must be registered with the City’s Short Term Residential Rental Registry. All advertisements for the unit must include the registration number.
- Liability insurance of at least \$500K required; may be provided by a Hosting Platform (e.g. Airbnb.com).
- Unit may not have any outstanding code violations or ongoing enforcement; violations will suspend ability to rent unit.
- Unit may not be a designated affordable (below-market rate) unit.
- Business license is required.

The registry will be a publicly viewable database of information on permanent residents permitted to offer short-term residential rental units. Only one unit may be registered for each permanent resident. Registration costs \$50 and is valid for two years.

The ordinance also requires hosting platforms (i.e., Airbnb, VRBO, etc.) to collect and remit TOT taxes to the city from users. Hosting platforms must provide notice to users listing units in San Francisco of the codes governing STR rentals and requirements for payment of TOT. If the Hosting Platform does not comply with these regulations, the City will levy fines against them. Enforcement of the law will be complaint based and must come from an “Interested Party,” defined by the ordinance as a permanent resident, homeowner’s association, the owner of the unit (if offered by a lessee), the City and County of San Francisco, or housing preservation non-profits.



Shortly after the ordinance was approved, HomeAway, Inc. sued the City and County of San Francisco, as well as the Planning Director (in his official capacity) and several Does on the basis that the ordinance violates the Commerce clause of the US Constitution by granting Airbnb and other similar "agency" hosting platforms a legal monopoly in the STR rental market. As HomeAway users are typically owners of second homes or vacation rentals, most cannot meet the permanent residency requirement. Additionally, HomeAway's business model differs from Airbnb in that all financial transactions occur privately between renter and owner, at the discretion of the owner; the platform charges fees only to advertise the listing. Without a radical change to the company's business model, it would be impossible to collect and remit TOT as required by the ordinance.

The outcome of the legal challenge likely will not be seen for some time, and may set a precedent for municipal regulation of the industry. As of this memo, no injunction on the ordinance (meant to go into effect on February 1, 2015) had been issued.

**City of Palm Desert, California (pop. 48,445)**

Approval process: Ministerial

The City of Palm Desert adopted Ordinance 1236 in 2012, which defines a STR rental as a property rented for 27 days or less. Rather than defining STR rentals as a subcategory of residential uses, the ordinance defines the use as a hotel use subject to discrete regulation under the City's Revenue and Finance Code and Business Taxes, Licenses, and Regulations Code. The ordinance requires all STR rentals to obtain a permit from the City, to be renewed annually on the anniversary date of the initial application. The ordinance establishes minimum rental periods of no fewer than two consecutive nights and a maximum of two persons per bedroom. On-site parking is required, and occupants must comply with the City's noise ordinance. Responsibility for responding to noise complaints or other violation of adopted "good neighbor" policies is assigned to the property owner, who must make themselves available within 60 minutes of notification of a disturbance at the property. The permit number must be included in any advertisements for the unit.

Administrative or infraction citations may be issued by the City to the property owners, occupants, or operators of the STR rental for failure to comply with the requirements of the ordinance. It also establishes violation of the ordinance as a public nuisance.

This ordinance is remarkable in that it regulates STR rentals through the tax code rather than through the zoning code. STR rentals are not defined as any kind of use in the zoning code.

**City of St. Helena, California (pop. 5,814)**

Approval process: Discretionary

The City of St. Helena adopted STR rental regulations in 2012, adding a new chapter 17.134 to the Zoning Ordinance. The ordinance requires a permit to operate STRs of less than 30 days, and caps the total permits active at one time at 25 permits. The ordinance restricts STR to single-family homes only, expressly prohibiting multi-family units or second dwelling units to be offered as STR rentals. Applicants for an STR rental permit must own the property and must designate a party who can respond to the STR rental for any reason within 30 minutes. The property owner is responsible for collecting and remitting TOT to the City, and must maintain a valid business license.

The application is subject to review and discretionary approval by the Planning Director. Following receipt of a qualified application, notices are mailed to neighboring properties within a 300-foot radius of the subject property. If 30% or more neighbors submit written protest, or if the property owner is not a natural person (i.e., a corporate entity), the application is subject to review by the Planning Commission for consistency with findings of approval for a conditional use permit (though no CUP is applied for or issued). Both the Planning Director and Planning Commission's decisions may be appealed to the City Council. If approved, a permit is valid for two years, after which the owner must go through the application process once more.

This process provides more discretionary oversight than the previously described ordinances in terms of determining the appropriateness of the STR rental use to the site, and may allow for more active regulation of "problem" properties. By capping the number of issued permits, the City may be able to better allocate resources to monitor the program and assess and mitigate problems that may occur. Though it possesses the same owner-occupancy requirement as the City of San Francisco, it has not faced similar litigation likely due its small market-share of STR rentals.

**City of Austin, Texas (pop. 790,390)**

Approval process: Ministerial

The City of Austin's Ordinance 20130926-144 permits STR rentals in all residential districts and certain commercial districts. The ordinance permits STR rentals to be offered by an entity or individual, with operational requirements tailored to different ownership profiles and subject to approval of a permit. Permits are valid for one year and may be renewed upon expiration. Proof of insurance and a certificate of occupancy or building inspection are required prior to permit approval. Neighbor notification is required, but neighbor input is not considered in the permit approval process.

The ordinance establishes the following limits for STR rentals in any district:

District	Limitation
Single-family district	
Owner-occupied	No limitation
Not owner-occupied	3% of the single-family units within a census tract
Multi-family district	3% of the buildings on the property and 3% of the units in any building
Commercial district	25% of the units on a property and 25% of the units in any building

These restrictions are geared toward limiting the density of STR rentals commensurate with the local impact to the neighborhood or community, rather than capping the total number of rentals.

**City of Bend, OR (pop. 76,639)**

Approval Process: Ministerial

In April of 2015, a dramatic increase in short-term rentals prompted the City Council the City of Bend to update their short term rental regulations to more strictly regulate STR for the sake of the community. Short term rentals are defined by the City of Bend as rentals for 29 or fewer days per tenant. To guide

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the update process, the Council established a 23 person Vacation Home Rental Task Force. They met every two weeks over the course of several months and they also utilized "Bend Voice", an online conversation platform for other members of the public who could not attend the meetings. The City allocated additional resources to Code Enforcement to assist with increased call volume on all code complaints (including STR). The Task Force recommended that the City adopt amendments in the existing Development Code and to adopt a land use licensing program to regulate ongoing operation of STR. The City also adopted a set of Good Neighbor Guidelines for the renters and dwellers to follow.

STR rentals include whole-house rentals and the rental of up to 2 individual rooms in a house while the owner is present. In order to operate an STR, the property owner must obtain both a land use permit and operating license. STR's located in residential zoning districts must be located at least 250 feet away from other licensed STR's unless owner-occupied. The short-term rental must comply with specified performance standards including on-site parking. The ministerial review process is conducted by the Community Development Department.

Once granted, the land use permit remains valid in perpetuity until the use is abandoned (not rented for a period of at least 12 months) or the home is sold, with specified exemptions for unavoidable hardships. The operating license must be renewed annually, is non-transferable, and must be in the name of the property owner. The land use permit is voided if the operating license is not maintained. The property owner must prove that the property has been rented at least once in the past 12 months. The property owner or representative must be available 24/7 to address any concerns with the property. They must notify all neighbors within a 250 radius by mail or post a small placard that advises neighbors and tenants of the owner or authorized representative's contact information.

**Encinitas, CA (pop. 59,518)**

Approval process: Ministerial

The City of Encinitas defines a short term rental as renting a single-family home or duplex for "occupancy for dwelling, lodging, or sleeping purposes of 30 consecutive days or less." STR's may be operated on in single-family and duplex homes (including accessory structures) in residential districts and in condominium and multi-family developments in non-residential zones. STR's are prohibited in condominiums or multi-family developments in residential zones.

The short term rental property must have a permit that is renewed every year and is reviewed and issued by the office of the City Clerk. The permit application fee is \$150 and must include a floor plan. The STR must comply with defined performance standards including on-site parking. TOT payments are collected quarterly. The homeowner or responsible party designated by the property owner must respond to complaints in a timely manner and be available by phone 24/7. Although the responsible party can respond to complaints, it is ultimately up to the property owner to make sure that all laws and regulations are being followed. The short term rental unit must have an interior and exterior notice display for dwellers and the public. It is also required that adjacent property owners be notified of the STR use and contact information of the responsible party. The City Manager reserves the right to impose additional standards/or conditions to STR permits and can also investigate whenever there is reason to believe that a property owner has failed to comply with the provisions.

When the City of Encinitas adopted the Short Term Rental Ordinance they did not have an extensive community outreach component and the process was fairly straightforward. The City Council decided to regulate short term rentals because the City was received a lot of complaints related to STR regarding

noise, disorderly conduct, illegal parking, vandalism, overcrowding, and traffic congestion. The STR ordinance was adopted in 2006 and in January of 2009 TOT became collectable and enforceable.

**Newport Beach, CA (pop. 85,186)**

Approval Process: Ministerial

Chapter 5.95 of the Newport Municipal Code requires a STR permit for rental of a residential unit for 30 days or less. Newport's current STR regulations allow STR's to operate in duplex and multi-family districts only. STR's in single-family zones that were permitted prior to 2004 may continue to operate. The STR permits are reviewed and issued by the Finance Department, with supplementary review by the Planning Department. All short term rentals are subject to business license and TOT (TOT includes a 1% Visitor's Service Fee). The permit is valid for two years and must be placed in a conspicuous area with a contact (property owner or responsible party) who is available to deal with any issues or complaints 24/7. There is a disturbance advisement process through the Police Department that handles all loud and unruly gatherings that are sometimes common at short term rental properties.

Newport is unique compared to other cities reviewed because of the strength of its tourism industry; several thousand units are rented annually on a short term basis. The City of Newport recently initiated a review of its existing STR regulations in response to complaints from community members against short-term rental sites such as AirBNB that have increased demand for city services such as parking. In the summer of 2015 the City hired a temporary employee to inventory all of the short term rentals in the Newport area posted on various hosting websites. City staff will make a recommendation on what changes may be warranted to the existing STR regulations after the inventory and other background research is completed. There has been no targeted community outreach component in this review process.

**City of San Luis Obispo, CA (pop. 45,119)**

Approval Process: Ministerial

In January 2015 the City of San Luis Obispo adopted Ordinance no. 1611 that altered established Municipal Code Chapter 17.08 regarding a certain class of STR's referred to as "home stays". A home stay is defined as an owner-occupied dwelling unit (primary residence) where bedrooms are provided for compensation for fewer than 30 consecutive days with a maximum of four adult overnight guests. Regulation of only this specific class of STR is unique compared to other jurisdictions surveyed.

The City initiated a review of STR regulations in 2013 following numerous citizen complaints about short term rentals and their impact on the character of existing residential neighborhoods. At the time rentals less than 30 days were not defined under the land use code and therefore were not allowed. A new ordinance regulating home stays was crafted following a community engagement process that took a few months and incorporated SLO stake holders and the general public.

In order to operate a home stay the owner must obtain a ministerial permit and a business license through the department of Community Development. They also have to pay the TOT as well as a Tourism Business Improvement District tax. The owner has to provide evidence that this is their primary residence each year, such as a copy of the homeowner's tax bill indicating the homeowner's exemption at the subject property or other documentation. There is one parking space required in addition to their required residential parking. The Ordinance allows a maximum of four adult guests at any time. There must be a responsible party within a 15 minute drive of the property and available by phone 24/7 to

deal with any complaints or problems. The contact information of the responsible party must be provided to the guests as well as the adjacent neighbors. Home stays are not permitted in guest houses or guest quarters. Any violation of the requirements and standards will result in a revocation of the permit. At any time the permit can be referred to the Administrative Review Hearing where the permit can be revoked for code violations and/or infractions.

Path to Approval

Should the City Council wish to pursue legalization of STR rentals in residential districts in Brisbane, the regulatory programs described above set helpful precedents depending on the level of discretion desired. With the exception of St. Helena, most programs are ministerial in nature with clearly defined eligibility criteria and operation standards. Other common components include a public registry of permitted rentals and capping the number of permits issued based on varying criteria. Requirements for owner-occupancy may help protect the community character and/or public welfare and safety, with adequate explanation of why the restriction is necessary to achieve that objective.

In the event that legalization is desired, it may be helpful to conduct a workshop process with stakeholder groups to identify the concerns of neighborhood residents and STR rental operators and inform the breadth and components of a regulatory program for consideration by the City Council.

~~Attachments:~~

- ~~1. City of Palm Desert "Good Neighbor" brochure~~
- ~~2. City of St. Helena application packet~~
- ~~3. City of Austin, TX FAQ~~
- ~~4. City of Bend, OR FAQ~~

Not included.

**URL for July 16, 2015 City Council agenda report on City website:**

<http://www.brisbaneca.org/sites/default/files/Short%20Term%20Rentals.pdf>