



MEMORANDUM

DATE: 3/12/2015
TO: Planning Commission
FROM: Julia Capasso, Associate Planner, via John Swiecki, Community Development Director
SUBJECT: **Workshop: Short-Term Vacation Rentals in Brisbane**

Background

On January 15, 2015, the City Council directed the Planning Commission to review the City's current regulations regarding short-term vacation rentals under the Zoning Ordinance, Title 17 of the Brisbane Municipal Code (BMC) and make recommendations regarding what changes to the Municipal Code, if any, should be made. Short-term vacation rentals are defined and regulated in the Zoning Code as commercial hotel land uses, permitted to operate only within commercial zoning districts (SP-CRO, SCRO-1, and C-1 districts), and subject to the Transient Occupancy Tax under the Revenue and Finance Code. The January 15, 2015 City Council report and minutes are attached for reference. The entirety of the City Council's discussion of this matter can be viewed online at <http://www.ci.brisbane.ca.us/city-council/2015-01-15>.

Tonight's workshop is intended primarily to allow the community to provide input on this issue **before** a policy recommendation is developed. The City has been aggressively working to raise public awareness of this issue and specifically tonight's workshop. Along these lines, the City published a community survey on February 23, 2015 (available both on-line and via paper copy) intended to gauge community sentiment regarding short-term vacation rentals and identify potential concerns. As of the writing of this staff report, staff has received 116 survey responses, and the results will be updated at tonight's workshop. This workshop will provide a forum to discuss the community feedback resulting from the survey and from the audience in attendance.

Tonight's workshop is one step in the overall process. At a subsequent workshop or meeting, staff would be prepared to define a series of alternative approaches on how to address short-term rentals from a zoning perspective, and to provide additional information on how other jurisdictions in California regulate such uses. At the conclusion of this workshop, the Planning Commission should provide direction to staff regarding the recommended next steps in moving this process forward. It should be noted that the City Council anticipated that the Planning Commission's process would be completed in approximately 90-120 days.

Attachments:

1. January 15, 2015 City Council Report and Minutes

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: **City Regulations of Short Term Home and/or Room Rentals in Residential Zones**

DATE: January 15, 2015

City Council Goals:

To provide for effective and efficient delivery of City services. (Goal#1)
To preserve and enhance livability and diversity of neighborhoods. (Goal #14)

Purpose:

For the City Council to determine if it wishes staff to initiate a review of city regulations regarding short term rentals in residential zones, including but not limited to Bed and Breakfast establishments, AirBNB and vacation home rentals.

Recommendation:

That the City Council provide policy direction as it deems appropriate.

Background/Discussion:

In late 2014, a citizen complaint was filed against all properties in Brisbane with an active AirBNB listing, a total of seven at the time the complaint was filed. Inasmuch as City regulations do not permit Bed and Breakfast establishments (B&Bs) in residential zones, all these properties were issued a Notice to Correct, which in this case would involve removing their AirBNB listing.

One of the parties cited has raised a number of concerns with the city's regulations and their applicability to internet-based "home sharing", along with a lack of clarity regarding the applicability of the City's regulations to other similar activities such as vacation rentals, home exchanges, and the like. An excerpt from the correspondence received from this party is attached for information. Since the matter is the subject of an active code enforcement action, the author is not identified in the attached correspondence.

Currently the City's zoning ordinance includes B&Bs in the definition of hotels, which are prohibited in residential zones (see attached zoning code excerpts), and is silent on other uses such as vacation rentals. The policy question before the City Council is whether the City's current zoning regulations are appropriate and adequately responsive to internet-based alternative lodging options that now exist, or whether the City Council wishes to have staff reevaluate the City's regulations.

If the City Council chooses to direct staff to study this matter further, this evaluation would typically occur in the form of a potential zoning code amendment subject to Planning Commission review, unless the City Council chooses to establish a different review process. If the City Council chooses not to direct staff to review the current regulations, any party cited by the City has the right to appeal the citation pursuant to the procedures set forth in Chapter 1.16 of the Brisbane Municipal Code, which provide for an administrative hearing before an independent hearing officer.

Fiscal Impact:

City staff time if authorized by the City Council. Any changes in the city regulations to permit B&Bs or other forms of short term rentals could result in the collection of transient occupancy tax (TOT) by the City.

Measure of Success:

For the City Council to provide the appropriate policy direction.

Attachments:

Correspondence Excerpt From Cited Party
Zoning Code Excerpts



John Swiecki, Community Development Director



Clay Holstine, City Manager

CORRESPONDENCE EXCERPT FROM CITED PARTY

Home sharing on the Internet is a new phenomenon. All municipalities are having to review their Municipal codes and debate how best to change with the times, to make forward thinking decisions that benefit the most people, and create new legislation that addresses new sharing and business models. San Francisco, after much deliberation and public outreach, decided to allow homesharing with some limits. Arbnb worked with SF and now takes taxes directly from the online accounts and sends the tax revenue directly to the the tax collector. A simple solution that costs the City nothing and produces significant revenue for SF. Has Brisbane considered this? Has Brisbane addressed what kind of homesharing constitutes commercial use..renting a room for a month, for two weeks, renting a whole unit for 6 months, renting your home for the summer when you travel? Home swapping? Subleasing a rental for a long trip? These are all questions to be considered and addressed. Reactive decision making denies residents and the City of Brisbane of additional income and that the sharing economy can bring to a community. My guests have loved hiking the mountain and eating at our local restaurants, businesses who can certainly use additional patrons.

... I am respectfully requesting a formal review that includes community outreach, and an openness to consider how a thoughtful definition and response to homesharing can benefit our community. If Brisbane wants to outlaw homesharing across the board, I am interested in equal enforcement that includes VRBO, Craig's List, and investigation into all of the other hybrid rental arrangements that exist across town that may not be as obvious as an Arbnb listing, but that do exist.

17.02.420 - Hotel.

"Hotel" means 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 motel, inn, motor court, bed and breakfast establishment or similar use, but excludes single-room-occupancy dwelling units operated as supportive housing.

(Ord. 422 § 4(part), 1998).

(Ord. No. 564, § 1, 10-3-11)

17.06.020 - Permitted uses.

The following permitted uses shall be allowed in the R-1 district:

- A. Single-family dwellings.
- B. Accessory structures and uses incidental to a permitted use.
- C. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- D. Small family day care homes.
- E. Secondary dwelling units, when authorized by a permit granted pursuant to Chapter 17.43 of this title.

(Ord. 479 § 2, 2003; Ord. 463 § 6(part), 2002).

17.06.030 - Conditional uses.

The following conditional uses may be allowed in the R-1 district, upon the granting of a use permit pursuant to Chapter 17.40 or 17.43 of this title:

- A. Cultural facilities.
- B. Day care centers.
- C. Educational facilities.
- D. Group care homes.
- E. Large family day care homes.
- F. Meeting halls.
- G. Mobilehome parks
- H. Places of worship.

(Ord. 479 § 3, 2003; Ord. 463 § 6(part), 2002).

17.08.020 - Permitted uses.

The following permitted uses shall be allowed in the R-2 district:

- A. Single-family dwellings.
- B. Duplexes.
- C. Multiple family dwellings containing not more than six (6) dwelling units.
- D. Dwelling groups.
- E. Accessory structures and uses incidental to a permitted use.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- G. Small family day care homes.

(Ord. 463 § 7(part), 2002).

(Ord. No. 575, § 3, 12-3-12)

17.08.030 - Conditional uses.

The following conditional uses may be allowed in the R-2 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

- A. Cultural facilities.
- B. Day care centers.
- C. Educational facilities.
- D. Group care homes.
- E. Large family day care homes.
- F. Mobilehome parks.
- G. Multiple family dwellings containing seven (7) or more dwelling units.
- H. Meeting halls.
- I. Places of worship.

(Ord. 463 § 7(part), 2002).

(Ord. No. 575, § 4, 12-3-12)

After Councilmember clarifications and discussion, CM Conway made a motion, seconded by CM Lentz, to adopt Resolution No. 2015-02 as proposed. The motion carried unanimously by all present.

C. Consider adoption of Resolution No. 2015-03 approving a loan to the Successor Agency in order to provide funding to cover the Successor Agency's 14-15B Recognized Obligation Payment Schedule (ROPS) obligations and providing the Successor Agency will place on its 15-16A ROPS this loan for repayment

Administrative Services Director Schillinger said that when the Successor Agency had provided information to the Department of Finance (DOF), a duplicate subtraction had been approved by the DOF in error. He said that in speaking with the DOF, they concurred with the error and advised City Staff to put a loan on the 14-15 ROPS and then pay it back on the 15-16 ROPS. He said that the loan is necessary in order to avoid defaulting on an upcoming loan payment. He said the City would be getting back the shortfall in May or June so it would not affect any Marina projects.

Mayor O'Connell noted that the Successor Agency was meeting later this evening.

CM Miller asked about the e-mail from the DOF indicating that they would approve the repayment of the loan on the next ROPS and asked that a copy of that e-mail be provided to the Council and Oversight Board.

After Councilmember questions, CM Miller made a motion, seconded by CM Conway, to adopt the resolution as proposed. The motion carried unanimously by all present.

D. Consider directing staff to review City Regulations of Short Term Home and/or Room Rentals in Residential Zones

Community Development Director Swiecki said that in late 2014 a citizen complaint was filed against all properties in Brisbane with an active AirBNB listing. One party in that complaint questioned the City's current regulations. Mr. Swiecki indicated that a copy of the City's current regulations was provided in the Council packet for reference.

He said that under the current regulations AirBNB's would be included in the hotel category, which is not allowed in residential Brisbane. He indicated that the Council's decision, at this point, was whether or not staff should be directed to draft zoning changes allowing for this use in residential Brisbane. The draft would then go before the Planning Commission. He advised that if the Council chose not to direct staff to draft the change, the current complaint would move forward as usual. He also indicated that these regulations were in effect at least back to 1998 and clarified that the current regulations do not specifically define the term "Bed & Breakfast".

Councilmembers discussed they fact that a lot of thought to consider all of the complicated issues would need to be done to update the outdated regulations. They discussed sending it through the Planning Commission for a thorough review.

Due to the pending complaint and Councilmember discussion of the need for an update to the current regulations, they asked staff to work as expeditiously as possible to work through the many issues that were raised and draft needed changes for the Planning Commission's review and subsequent recommendations to the Council.

Community Development Director Swiecki said he thought the process might take approximately 90 days before coming back to the Council. Councilmembers agreed to put enforcement of the complaint in abeyance pending the regulation review.

A. Consider authorizing the Mayor to sign the Professional Services Agreement with Erler & Kalinowski, Inc. in the amount of \$190,500 to perform work on Water and Sewer Master Plan Updates

Public Works Director Breault said that the Water and Sewer Master Plans are important tools to evaluate the City's existing water and sewer infrastructure, and to recommend improvements necessary to handle the future anticipated demands on the utility systems. He said that regular updates of those plans on an approximate 10-year cycle are indispensable to maintaining a valid long-term Capital Improvement Plan (CIP) based on current engineering criteria and on the latest planning projections. He indicated that the latest Water and Sewer Master Plans were completed in 2003. He said that staff is recommending Council approve a contract with Erler & Kalinowski, Inc. (EKI) because of their professionalism and the ease in working with them on other projects.

Mr. Breault responded to questions from Councilmembers concerning why certain Baylands scenarios are being studied, sea level rise and settlement issues at Sierra Point and the Baylands, sewer infrastructure in the Baylands under the Bayshore Sanitary Districts' control and the lawsuit, invoicing milestones in the agreement, and the need for the Council Facilities Subcommittee and Council approval of the Master Plan.

Mayor O'Connell said she was not familiar with the Bayshore Sanitary District Lawsuit discussed earlier and asked that staff provide a detailed memo or make a presentation at a future Council meeting.

After further Councilmember discussion, Public Works Director Breault reiterated the changes proposed by Council including the highlighted language dealing with meeting appropriate milestones when billing is received, acknowledging the Bayshore Sanitary District in the scope of work, having the work product be subject to approval by the Council Subcommittee and Council, adding language explaining why only two Baylands alternatives are being studied, and adding language recognizing design challenges to settlement at Sierra Point and the Baylands.

With those proposed changes, CM Miller made a motion, seconded by CM Conway, to authorize the Mayor to sign the agreement as amended. The motion carried unanimously by all present.

STAFF REPORTS

A. City Manager's Report on upcoming activities