MEMO

Meeting Date: 10/03/24
From: Ingrid Padilla, City Clerk
Subject: Adopt an Ordinance of the City of Brisbane, Waiving Second Reading, Amending Chapter 3.24 of the Brisbane Municipal Code Concerning Voluntary Collection Agreement with Hosting Platforms for the Collection and Payment of Transient Occupancy Taxes

The following Ordinance was introduced at the City Council Meeting of September 19, 2024. It is now being considered for adoption at this meeting:

Adopt an Ordinance of the City of Brisbane, Waiving Second Reading, Amending Chapter 3.24 of the Brisbane Municipal Code Concerning Voluntary Collection Agreement with Hosting Platforms for the Collection and Payment of Transient Occupancy Taxes

Attachment: 1. Staff Report from the City Council Meeting of September 19, 2024

CITY COUNCIL AGENDA REPORT

Meeting Date: September 19, 2024

From: John Swiecki, Community Development Director

Subject: Voluntary Collection Agreement for TOT – Draft Ordinance

Community Goal/Result

Fiscally Prudent

Purpose

To amend the Brisbane Municipal Code (BMC) to allow the City to enter into a voluntary collection agreement (VCA) with hosting platforms for the collection and payment of transient occupancy taxes (TOT).

Recommendation

Introduce the attached draft ordinance.

Background

On February 15, 2024, staff provide the Council a report on the implementation of the City's Short-Term Rental (STR) Program. Among other things, the report recommended that the City Council direct staff to explore obtaining a VCA with Airbnb and other hosting platforms where practical to collect and remit TOT automatically to the City, rather than relying on permit holders to manually remit taxes quarterly.

When the City adopted its STR ordinance in 2020, it was not standard practice for hosting platforms to collect and remit occupancy taxes on behalf of their users to local municipalities. Since then, however, the list of jurisdictions with VCAs allowing hosting platforms to facilitate collection and remittance of TOT has increased and now includes several smaller jurisdictions, some with populations under 2,000.

Airbnb - the largest STR online travel agency in North America - will only enter into a voluntary collection agreement with jurisdictions that have an ordinance in place allowing it to do so. At the time of this report, the City is actively monitoring nearly 300 listings with 71% published to Airbnb, and another 16% on VRBO.

Brisbane Municipal Code (BMC) Chapter 3.24 – Uniform Transient Occupancy Tax, establishes regulations related to the collection and remittance of TOT, but it does formally authorize permit hosting platforms – that assist with arranging transient occupancy – to enter into a VCA (or equivalent) with the City for the collection and payment of transient occupancy taxes.

Discussion

Each hosting platform will need a VCA in place to automatically collect and remit TOT to the City, however, in order to enter into a VCA with Airbnb – which, as indicated above, captures a large portion of rentals and listings within the City – the City would need to amend Chapter 3.24 of the BMC to add such language.

The following changes, based on a review of the municipal codes of peninsula cities with a VCA with Airbnb, are proposed:

1. Add a definition for "Hosting Platform" or, generally, an internet-based platform that allows an (STR) operator to advertise and arrange for temporary occupation of a dwelling unit, or portion thereof, through a publicly searchable website.
2. Add a new section which stipulates any hosting platform that assists with arranging transient occupancy may enter into a VCA with the City for the collection and payment of transient occupancy taxes.

Additionally, the proposed amendments clarify that if/when a hosting platform has entered into a VCA with the City, the hosting platform will have the same responsibilities and liabilities of STR operators under BMC Chapter 3.24 with regards to duties, registration, reporting and remitting, penalties, etc.

Fiscal Impact

None. There is no cost to amend the BMC to allow the City to enter into a VCA with hosting platforms. Automatic remittance would reduce staff time involved in administering the STR program and result in more timely remittance of TOT.

Measure of Success

Adoption of a procedure to allow the City to enter into a VCA with hosting platforms for the automatic collection and payment of transient occupancy taxes to simplify the process of tax remittance for both the City and STR operator.

Attachments

1. Draft Ordinance

John Swiecki
_____
John Swiecki, Community Development Director

Jeremy Dennis
_____
Jeremy Dennis, City Manager

draft
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING CHAPTER 3.24 OF THE BRISBANE MUNICIPAL CODE CONCERNING VOLUNTARY
COLLECTION AGREEMENT WITH HOSTING PLATFORMS FOR THE COLLECTION AND PAYMENT
OF TRANSIENT OCCUPANCY TAXES

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Section 3.24.020 of the Brisbane Municipal Code is amended to read as follows:

3.24.020 – Definitions.

A. "Hosting Platform" means through which an operator may offer a dwelling unit, or portion thereof, for transient occupancy. A hosting platform includes, but is not limited to, an internet-based platform that allows an operator to advertise and potentially arrange for temporary occupation of the dwelling unit, or portion thereof, through a publicly searchable website, whether the transient user pays rent directly to the operator or to the hosting platform.

(Subsections A though G, no change; re-letter to B through H.)

SECTION 2: Section 3.24.075 is added to the Brisbane Municipal Code to read as follows:

3.24.075 - Collection by Hosting Platforms.

Any hosting platform that assists with arranging transient occupancy may enter into a voluntary collection agreement (or equivalent) with the City for the collection and payment of transient occupancy taxes. Where a hosting platform has entered into such an agreement, the hosting platform shall have the same duties and liabilities of the operator under this Chapter. Compliance with the provisions of this Chapter by either the operator or the hosting platform shall be considered to be compliance by both. To comply with Section 3.24.060, a hosting platform shall register in its own name and post its Transient Occupancy Registration Certificate on its website, if applicable. Operators that only use a hosting platform for providing lodging to transients shall not be required to register separately with the tax administrator or post a Transient Occupancy Registration Certificate on-site so long as such hosting platform used by the operator has registered pursuant to Section 3.24.060.

SECTION 3: Adoption of this Ordinance does not require environmental review because it represents general policy making that would not result in a direct or indirect physical change in the environment and therefore it is not a project under the California Environmental Quality Act. CEQA Guidelines, Section 15378 (b)(2).

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision

shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Terry O'Connell, Mayor

ATTEST: APPROVED AS TO FORM:

_____   _____
Ingrid Padilla, City Clerk   Thomas R. McMorrow, City Attorney