



## **CITY COUNCIL AGENDA REPORT**

**Meeting Date:** September 3, 2020

**From:** John Swiecki, Community Development Director

**Subject:** Second reading and adoption of Ordinance 655 – Short term rental regulations

### **Community Goal/Result**

Safe Community - Residents and visitors will experience a sense of safety

Economic Development - Brisbane will work with the businesses and residents to provide for economic vitality/diversity

### **Purpose**

For the Council to conduct the second reading and adopt Ordinance 655 regarding short term rental regulations.

### **Recommendation**

Adopt Ordinance 655 as amended.

### **Background**

On June 18, 2020 the City Council adopted Urgency Ordinance 656, immediately implementing regulations for short term residential rentals (defined as rentals of less than 30 consecutive days). The City Council also introduced Ordinance 655, a non-urgency ordinance that contained the same provisions as Urgency Ordinance 656, which is before the Council tonight for second reading and adoption.

### **Discussion**

The Urgency Ordinance will be rescinded by the Council at a future public meeting once Ordinance 655 is effective. Council should note that Ordinance 655 has been redlined to eliminate the 90-day amnesty period which was intended for the Urgency Ordinance only.

For a complete discussion of the short term rental regulations, please refer to the June 18, 2020 City Council agenda report and the June 18, 2020 Council meeting minutes and video.

### **Fiscal Impact**

Adoption of Ordinance 655 will allow the City to collect permit application fees for short term rental permits, as well as transient occupancy tax and business license fees.

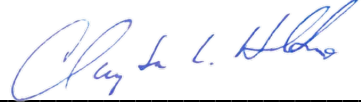
### **Measure of Success**

Adoption of Ordinance 655.

**Attachments**

1. Redlined Ordinance 655

  
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John Swiecki, Community Development Director

  
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Clay Holstine, City Manager

**ORDINANCE NO. 655****AN ORDINANCE OF THE CITY OF BRISBANE  
AMENDING TITLE 17 OF THE BRISBANE MUNICIPAL CODE  
TO REGULATE SHORT TERM RESIDENTIAL RENTALS**

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

**SECTION 1: Section 17.02.235 – Dwelling of Chapter 17.02 of the Zoning Ordinance is amended to read as follows:**

**17.02.235 - Dwelling.**

"Dwelling" means a place that is used as the personal residence of the occupants thereof, including transitional housing as defined in California Health and Safety Code Section 50675.2(h) and supportive housing as defined in California Health and Safety Code Sections 50675.14(b)(2) and (3). The term includes factory-built or manufactured housing, such as mobilehomes, but excludes trailers, campers, tents, recreational vehicles, hotels, motels, boarding houses and temporary structures.

- A. "Dwelling group" means a group of two (2) or more detached buildings located upon the same site, each of which contains one or more dwelling units.
- B. "Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for permanent residency by one household. Permanent residency shall mean continuous occupancy of the dwelling unit for a period of thirty (30) days or more.
- C. "Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (also see "duplex"). The term includes single-room-occupancy dwelling units, typically comprised of one or two (2) rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two (2) persons.
- D. "Accessory dwelling unit" means a separate dwelling unit created upon a site that contains a single-family dwelling or a multiple-family dwelling and for which an accessory dwelling unit permit or building permit has been granted pursuant to Chapter 17.43 of this title. Subject to the restrictions of this title, the accessory dwelling unit may be within, attached to, or detached from the single-family or multiple-family dwelling. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The term "secondary dwelling unit" shall have the same meaning throughout this title.
- E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established accessory dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.

**SECTION 2: A new Chapter 17.35- Short term residential rentals is added to the Zoning Ordinance to read as follows:**

**17.35.010 - Purpose**

The purpose of this Chapter is to regulate the short term rental of dwelling units to allow property owners to make economically viable use of their property, to provide diverse tourist lodging options in Brisbane, and to preserve the quality of life in Brisbane's residential neighborhoods.

**17.35.020 - Definitions**

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section:

- A. "Dwelling unit" shall have the same meaning as in Section 17.02.235 of Chapter 17.02 of this Title.
- B. "Host" shall mean a natural person who is the owner of record, including an authorized trustee if the property is held in trust, who resides at the dwelling unit for at least 275 days out of a given consecutive 12 month period and who offers the dwelling unit for short term rental of less than thirty (30) days ("short term rental").
- C. "Hosted stay" shall mean a short term rental of a permanent residence by the host while the host is present from 8 p.m. to 8 a.m. during the entire term of the rental. Hosted stays include situations where the host has obtained City approval to leave the premises during a scheduled hosted stay to address an unforeseen emergency.
- D. "Hosting platform" shall mean any person or business entity, including but not limited to websites or mobile applications, that provides services to hosts for advertising, administering, collecting payment, and/or facilitating the collection of payment for short term rentals, whether the short term renter pays rent directly to the host or to the hosting platform.
- E. "Notice of violation" shall mean any code enforcement citation, order, ticket or similar notice of violation of this Chapter and all other provisions of the Brisbane Municipal Code relating to the condition of or activities at the subject property, issued by the Brisbane Community Development Department, Brisbane Police Department, or North County Fire Authority pursuant to Chapter 17.58 of this Title and Chapter 1.14, Chapter 1.16, and Chapter 1.18 of this Code.
- F. "Permanent residence" shall mean the dwelling unit in which the host resides for at least two hundred seventy five (275) days out of a given, consecutive twelve (12) month period, the documentation of which may be confirmed by, but not be limited to, a driver's license, a vehicle registration certificate, State or Federal income tax statements, or a statement from a banking institution or any other institution which has issued a credit card.
- G. "Short term rental" shall mean the permanent residence of the host offered to a short term renter for financial compensation for the purpose of the short term renter's residing, sleeping or lodging purposes at the permanent residence for periods of less than thirty (30) consecutive calendar days. Portions of days shall be counted as full calendar days. Rooms or suites within hotels, transitional or supportive housing, or single-room-occupancy units, as such terms are defined in Chapter 17.02 of this Title, shall not be considered short term rentals.
- H. "Short term renter" shall mean a person who rents a dwelling unit from the host for a period of less than thirty (30) consecutive calendar days. Portions of calendar days shall be counted as full calendar days.
- I. "Unhosted stay" shall mean any short term rental that is not a hosted stay as defined in 17.35.020.C.

**17.35.030 – Short Term Rental Permit Procedures**

- A. Permit Required. ~~After ninety (90) calendar days from the effective date of this ordinance that adopts Chapter 17.35, n~~ No host shall conduct short term rental activity in the City of Brisbane without an approved short term rental permit issued by the City, pursuant to this Chapter.
- B. Permit Application. A host shall apply for a short term rental permit using forms provided by the City. At a minimum, the application shall provide the following information:
1. The address of the permanent residence being used for short term rental;
  2. The name and contact information of the host;
  3. A statement indicating that the host is the property owner;
  4. At least three (3) documents providing evidence of the host's permanent residence at the subject property;
  5. The number of habitable rooms to be provided for short term rental ;
  6. The number and location of existing parking spaces on the property;
  7. Evidence the host has acquired liability insurance in the amount of at least five hundred thousand dollars (\$500,000) specifically for short term rental activity within a permanent residence.
  8. An acknowledgement of compliance with the requirements of the City's Zoning Ordinance, Municipal Codes, applicable health and safety standards;
  9. Authorization from the property owner for City staff to enter the dwelling unit proposed to be offered for short term rental to confirm compliance with life safety standards prior to permit issuance;
  10. Acknowledgment and authorization for the City to provide the address of the short term rental and the host's contact information on a public registry; and
  11. Any other information as may be determined necessary by the Zoning Administrator.
- The application shall be accompanied by a filing fee in an amount as established by resolution of the City Council.
- C. Permit Application Review by Zoning Administrator. The Zoning Administrator shall review the application for a short term rental. Once a complete application is received, the Zoning Administrator shall provide written notice of the application to occupants and owners of property to either side of, to the rear, and in front of the subject property. Additionally, notification of the application shall be sent to occupants and owners of property on both sides of the block in which the property is located. The notice shall state the details of the application and shall provide a twenty-one (21) day period commencing from the notice mailing date for written comments on the application to be submitted.
- D. Action on Permit Application by Zoning Administrator. Following closure of the twenty-one (21) day noticing period, the Zoning Administrator may issue the short term rental permit and shall notify all parties who are named in subsection C of this Section 17.35.030 of permit issuance if the Zoning Administrator finds and determines that:
1. The application meets all operating standards and requirements of this Chapter;
  2. The dwelling unit to be offered for short term rental complies with life safety standards as certified by the applicant and confirmed by an on-site inspection by Building Department and/or North County Fire Authority staff; and
  3. The dwelling unit to be offered for short term rental is not the subject of an active code enforcement action or administrative citation from the City in the past twelve (12) months.

- E. **Permit Validity.** An issued short term rental permit shall be valid for an initial one-year period commencing from the date of final action on the permit application. An issued permit shall be valid only for the host or hosts named in the application and shall automatically expire upon sale or transfer of the subject property, or at such a time as the dwelling unit is no longer the permanent residence of the host. An issued short term rental permit may not be assigned, transferred, or loaned to any other person.
- F. **Permit Suspension and Revocation.** An issued short term rental permit may be suspended or revoked by the Zoning Administrator if the host or the conduct of the short term rental activity violates this Chapter or any other city, state, or federal regulation, ordinance or statute.
  - 1. **Suspension.** The Zoning Administrator shall suspend a short term rental permit for a minimum of thirty (30) days, or as long as at least one notice of violation is open and unresolved, whichever is longer, upon issuance of two (2) notices of violation within a twelve (12) month period. Additionally, a permit may be suspended should the host fail to submit an annual certificate of insurance to the Community Development Department. The suspension shall become effective 15 days after the Zoning Administrator mails a notice of intent to suspend the permit to the host and to all such parties who are named in subsection C of this section 17.35.030. The violation(s) shall be processed in the manner described in Chapter 1.14 of this Code. Appeals of permit suspensions shall be processed in the manner described in Chapter 17.56 of this Title. Short term rental activity may commence after thirty (30) days or until the notice(s) of violation is/are resolved, whichever is longer.
  - 2. **Revocation.** The Zoning Administrator shall revoke a short term rental permit should three or more violations be sustained (after exhaustion of any related remedies) within any twelve (12) month period. The revocation shall become effective fifteen (15) calendar days after the mailing of a notice of intent to revoke to the permit to the host and to all such parties who are named in subsection C of this section 17.35.030. Appeals of permit revocations shall be processed in the manner described in Chapter 17.56 of this Title. Short term rentals may not be conducted at a dwelling unit following revocation of an issued permit for one (1) year from the date of final action on the revocation and the City's approval of a new short term rental permit.
- G. **Permit Renewal.**
  - 1. The first short term rental permit issued shall expire one year after the date of final action on the initial permit application unless a permit renewal application is approved by the Zoning Administrator prior to the expiration date. A renewed permit shall be renewed for a subsequent two year period, except that the Zoning Administrator may renew the permit for a shorter period of time for factors including but not limited to the history of notices of violation and/or sustained suspensions during the life of the permit.
  - 2. The permit renewal application shall be accompanied by a filing fee in an amount as established by resolution of the City Council.
  - 3. The host shall submit such information concerning the short term rental activity as may be required to enable the tax administrator to verify that the amount of tax paid complies with Chapter 3.24.
  - 4. A safety inspection shall be conducted by the Building Department and/or North County Fire Authority prior to approval of each short term rental permit renewal to ensure the dwelling unit complies with the safety requirements of this Chapter and with general life safety standards under State law.
  - 5. The Zoning Administrator shall approve a permit renewal application if it is found that the host has complied with all provisions of this Chapter, including requirements for tax payment, and the

dwelling has passed a safety inspection. Notice of permit renewal shall be given to occupants and owners of property to either side of, to the rear, and in front of the subject property. Additionally, notification shall be sent to occupants and owners of property on both sides of the block in which the property is located.

#### **17.35.040 Short term rental operational standards.**

The following standards shall apply to the operation of short term rentals:

- A. **Unhosted Stays Prohibited.** This ordinance authorizes only hosted stays and prohibits unhosted stays, as such terms are defined in Section 17.35.020 of this Chapter.
- B. **Single-Family Dwelling Units.** Short term rentals may only occur within legal single-family dwelling units. Notwithstanding the foregoing, short term rentals shall be prohibited on properties occupied by single-family dwellings with legal accessory dwelling units established on or after April 1, 2017.
- C. **Accessory Dwelling Units.** Short term rentals shall not operate in accessory dwelling units.
- D. **Hosted Stays Unlimited.** There shall be no limit on the number of days habitable rooms within a permanent residence may be occupied as a short term rental during a hosted stay. The host shall be responsible for any nuisance complaints arising during short term rental activities during hosted stays. No more than two habitable rooms may be rented at any given time during a hosted stay, subject to the limitation on bookings as provided in subsection G of this section 17.35.040.
- E. **Short Term Rental Permit Number on Listings and Guest Materials.** Any listing advertising a short term rental and all materials provided to short term renters regarding applicable rules and regulations pertaining to their stay shall prominently display the permit number of the issued permit.
- F. **Insurance.** The host shall maintain adequate liability insurance in the amount of at least five hundred thousand dollars (\$500,000) specifically for short term rental activity within a permanent residence while the short term rental is occupied. The host shall annually submit insurance certificates to the Community Development Department.
- G. **Limitation on Bookings.** Individual rooms within a short term rental shall not be booked to separate, unrelated rental parties. If multiple listings are provided for the same residence, only one such listing may be booked on any given day, with the exception that check-out and check-in periods for separate bookings may occur on the same day.
- H. **Check-out and Check-in Times.** Short term renter check-out and check-in times shall typically occur after 7 AM and before 10 PM. Exceptions to the check-out and check-in times may be allowed only in extenuating circumstances, including unforeseen changes or delays in a short term renter's travel schedule or illness of the host or the short term renter. At all times, the host shall ensure that short term renter check-in and check-out is conducted in such a manner as to not result in unreasonable noise or disturbance to neighboring properties.
- I. **Parking.** At least one parking space shall be made available per on-site per habitable room available to rent as a short term rental. Existing on-site parking spaces shall be made available to short term renters. No additional on-site parking shall be required for short-term rentals.
- J. **Occupancy Limits.** No more than two (2) overnight short term renters (not including children) between the hours of 10 PM and 7 AM are allowed per habitable room provided in the short term rental. No more than four (4) daytime persons (not including children) between the hours of 7 AM and 10 PM are allowed per habitable room provided in the short term rental.
- K. **Noise Prohibited.** There shall be no use of sound amplifying equipment. There shall be no evening outdoor congregations of more than eight (8) people (excluding children), regardless of the number of

habitable rooms provided, after 10:00 pm. Short term rental stays are subject to the noise regulations in the Chapter 8.28 of the Municipal Code.

- L. Safety. Every host shall provide and maintain working fire extinguishers, smoke detectors, and carbon monoxide detectors, in compliance with fire, life and safety codes, and information related to emergency exit routes on the property.
- M. Guide for Short Term Renters. Every host shall provide a rental guide to short term renters that includes the operational standards listed in this Chapter, the contact information for the host , and other information to address behavioral, safety, security, and other standards.
- N. Special Events Prohibited. Weddings, corporate events, commercial functions, and any other similar events which have the potential to cause traffic, parking, noise or other problems in the neighborhood are prohibited from occurring at the short term rental property, as a component of short term rental activities.
- O. Transient Occupancy Tax (TOT). Short term rentals shall be subject to transient occupancy taxes pursuant to Chapter 3.24 of this Code. The host shall be responsible for collecting transient occupancy taxes and remitting them to the City, unless the host exclusively lists on hosting platforms that have signed a voluntary collection agreement (or equivalent) with the City.
- P. Records of Compliance. The host shall retain records documenting compliance with the requirements of this Chapter for each short term rental for a period of three (3) years, including but not limited to records showing payment of transient occupancy taxes by a hosting platform on behalf of a host. Upon reasonable notice, the host shall provide any such documentation to the Community Development Director or the Tax Administrator upon request for the purpose of inspection or audit.
- Q. Public Registry. The City shall maintain a registry accessible to the public of issued short term rental permits, including their address, the host name, and host contact information.

### **17.35.050 – Penalties**

Failure to comply with any provisions of this Chapter will constitute a violation of this Chapter, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code, and will subject the holder of a short term rental permit to the suspension and revocation proceedings described in Section 17.35.030 of this Chapter.

**SECTION 3:** Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

**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.



Ord. No. 655

\* \* \*

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 third day of September, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
City Attorney