



CITY COUNCIL AGENDA REPORT

Meeting Date: February 15, 2024

From: John Swiecki, Community Development Director

Subject: Short Term Rental Ordinance Implementation Update

Community Goal/Result

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

Fiscally Prudent - Brisbane's fiscal vitality will reflect sound decisions which also speak to the values of the community

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

Purpose

Update to the City Council on the current status of short-term rental (STR) activity monitoring, permitting, and tax collection by vendor Granicus, and request direction from the City Council on the future collection of transient occupancy tax (TOT).

Recommendation

That the City Council direct staff to explore obtaining an agreement with Airbnb and other hosting platforms where practical to collect and remit TOT automatically to the City.

Background

The City of Brisbane adopted an ordinance, effective summer 2020 permitting STRs subject to a number of operational and performance standards. In early 2021, the City entered into a contract with Granicus to automate the STR permit process and monitor STR activity on multiple listing sites, allowing the City to initiate code enforcement as needed and pursue the collection of TOT. The City has annually renewed its contract with Granicus, most recently in December 2023. In November 2021 the City Council passed an ordinance to increase the fines for STRs operating in violation of the City's regulations.

Discussion

A detailed report to the City Manager discussing ongoing permitting, monitoring, enforcement, and TOT collection issues was prepared in December 2023. This Council report provides an overview of these issues, with updated information as available. The detailed December 2023 report is attached for reference.

STR OPERATING PERMITS

The City has issued a total of 5 STR permits since the ordinance was adopted. One permit expired early in 2023 and was not renewed. Below is a table of active STR permit holders and the expiration date of their permits.

<i>Permit Number</i>	<i>STR Address</i>	<i>Expiration Date</i>
2022-STR-2	150 Kings Road	August 29, 2025
2022-STR-3	161 Tulare Street	March 16, 2024
2023-STR-1	461 Kings Road	May 23, 2024
2023-STR-3	433 Kings Road	September 13, 2024

MONITORING AND ENFORCEMENT

Granicus actively monitors more than 60 vacation rental websites and approximately 250 listings to verify compliance with the ordinance. The latest data from January 2024 identified up to eight units that are or could be an STR with active listings. Since October 2021, the City of Brisbane has averaged 4-6 STR units at any given time.

Suspected unpermitted STR units are issued a non-compliance warning letter from Granicus within two-three weeks. The letter specifies the listing must be removed from all sites within ten days and directs them how to apply for an STR permit. A copy of the offending listing(s) is also included with the warning letter. If the listing is not removed or amended to be a long-term listing, the case is referred to the City’s code enforcement officer and administrative citations may be issued. Five non-compliance warning letters were issued to first-time violators in 2023. No STR citations were issued in 2023.

TOT COLLECTION & ESTIMATES

Per the STR Ordinance, all STR permit holders are required to pay TOT taxes. This is required to be done quarterly either electronically via Granicus’ platform or in-person at City Hall. In addition to TOT taxes, all STR permit operators must pay a daily business license tax of \$2.50 for every room for which a transient has paid rent. Both the TOT and business license tax must be paid in four installments, due on January 1, April 1, July 1, and October 1 of each year. Permit holders have 30 days to remit payment before penalties and interest accrue, and permit holders are required to submit quarterly TOT reports even if there was no rental activity within the prior quarter. The attached memo details the fees and penalties prescribed under the Brisbane Municipal Code (BMC) for violations of the STR Ordinance and failure to timely remit TOT.

UPDATES TO THE CITY’S STR PERMITTING/IMPLEMENTATION PROCESS

As the City has implemented the STR ordinance, opportunities to improve the process have been identified. Staff has recently made the changes to the process for STR permitting and TOT collection. Adjustments to the language contained within automated email reminders and standard conditions of approval, and other STR permitting processes, such as the review of TOT payments and audits, are discussed within the attached memo.

AUTOMATIC COLLECTION OF TOT

When the City adopted its STR ordinance, it was not standard practice for hosting platforms, such as Airbnb, to collect and remit occupancy taxes on behalf of their users to local municipalities.

Since then, the list of jurisdictions with agreements allowing hosting platforms to facilitate collection and remittance of TOT has increased and also includes a number of smaller jurisdictions as well, such as Fowler and Dunsmuir, CA, which have populations under 7,000 and 2,000, respectively.

While an agreement would be required for each listing platform, the City could enter into agreements with the largest hosting platforms, like Airbnb and VRBO (Airbnb is the largest STR online travel agency in North America), and capture a large portion of rentals and listings within the City and potential collect TOT from permit holders automatically, rather than relying on permit holders to manually remit taxes quarterly.

If the City were to enter into an agreement, generally, such companies would offer hosts the ability to authorize the company to collect taxes on their behalf and to remit such taxes to the relevant tax authority. The payouts to host would be minus the applicable tax and, in the event that the taxes collected and/or remitted are insufficient to cover a host's tax obligations, the company may seek additional amounts from hosts. City staff would maintain the ability to audit permit holders under Granicus' current service agreement, regardless of an agreement to automate collection of TOT with hosting platforms. It is recommended the City Council authorize staff to further investigate the possibility of entering into an agreement with Airbnb for the automated collection and remittance of TOT.

Fiscal Impact

Any TOT collected for STRs- permitted or not- would be a net increase to the City's TOT revenue. Due to the small number of STRs in operation, it is unlikely that TOT revenues would be significant. However, an automated TOT collection and remittance system could reduce staff time and cost associated with monitoring TOT collection.

Measure Of Success

A tax collection policy for STRs that is equitable and holds STR operators accountable for their activity.

Attachments

1. Staff Memorandum on STR Implementation



John Swiecki, Community Development Director



Clay Holstine, City Manager



MEMORANDUM

Date: December 19, 2023

To: Clay Holstein, City Manager

From: John Swiecki, Community Development Director

Subject: Short Term Rental Monitoring, Permitting, & Collection of Transient Occupancy Tax

BACKGROUND

The City of Brisbane adopted an ordinance, which took effect in summer 2020, permitting short-term rentals (STRs) subject to a number of operational and performance standards. In early 2021 the City entered into a contract with a vendor (Granicus) to automate the STR permit process and monitor STR activity on multiple listing sites, allowing the City to initiate code enforcement as needed and pursue the collection of transient occupancy tax (TOT). Lastly, the City Council passed an ordinance, pursuant to SB 60, to increase the fines for STRs operating in violation of the City's regulations on November 18, 2021. Ongoing permitting, monitoring, enforcement, and TOT collection issues are discussed below.

STR PERMITTING

The City has issued a total of 5 STR permits since the ordinance was adopted. One permit expired earlier in 2023 and was not renewed. Below is a table of active STR permit holders and the expiration date of their permits. Permit renewal reminders are automatically sent via Granicus approximately 2-4 weeks prior to permit expiration. As of the date of this memo only two permit holders have had documented stays since their permit was issued, and were therefore required to remit TOT (150 Kings Road and 161 Tulare Street). 150 Kings has remitted TOT for all previous quarters while 461 Kings and 433 Kings have reported \$0 revenue for the latest quarter.

<i>Permit Number</i>	<i>STR Address</i>	<i>Host</i>	<i>Expiration Date</i>
2022-STR-2	150 Kings Road	Philipp Reichardt	August 29, 2025
2022-STR-3	161 Tulare Street	Jamesanne Dunn	March 16, 2024
2023-STR-1	461 Kings Road	Keith Bentz	May 23, 2024
2022-STR-3	433 Kings Road	Rhea Rivera	September 13, 2024

MONITORING AND ENFORCEMENT

- Granicus actively monitors more than 60 vacation rental websites and approximately 250 listings to verify compliance with the ordinance. Some of these are outside the City limits,

others are listed on a month-to-month basis and therefore not subject to the ordinance, and others are unverified. Listing data from vacation rental websites is pulled into Granicus' program every 3-7 days.

- 12 STRs with active listings were originally identified in June 2021 and the latest data from December 2023 identified seven STR units with active listings. This number fluctuates over time, and the current total of seven is three more than when last reported to the City Council in October 2023. Since October 2021, the City of Brisbane has averaged 4-6 active STR units at any given time. When first identified, STR units without permits are issued a non-compliance warning letter from Granicus within two-three weeks. The letter specifies the listing must be removed from all sites within 10 days and directs them how to apply for an STR permit. A copy of the offending listing(s) is also included with the warning letter. If the listing is not removed or amended to be a long-term listing, the case is referred to the City's code enforcement officer and administrative citations may be issued. Five non-compliance warning letters were issued to first-time violators in 2023.
- No STR citations have been issued in 2023.

The cost of Granicus' services has been approximately \$11,000 per year and the City has collected an average of \$5,750 in TOT per year. The City has cumulatively collected approximately \$15,000 in TOT from STRs.

FEES/PENALTIES/REVOICATION

Brisbane's STR ordinance establishes permitting requirements and operational standards for STRs, as well as penalties for failure to comply with the Ordinance. Per Section 17.35.050 of the Ordinance, "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."

Chapters 1.14, 1.16, and 1.18 establish the City's authority to enforce the Brisbane Municipal Code (BMC) and issue administrative citations and compliance orders to address any violations of the BMC. Of note, fines for violations of the STR ordinance start at \$1,500 and escalate to \$5,000, whereas all other administrative fines start at \$100 and increase to \$500. Violations of the City's STR ordinance would include, but is not limited to, operating without a permit, exceeding occupancy limits, hosting special events, and/or failure to pay the City's Transient Occupancy Tax (TOT).

While a permit holder may be subject to administrative fines and/or compliance orders for failure to pay TOT, the BMC also stipulates penalties for non-payment or late payment of TOT under Chapter 3.24. Below is a summary of TOT penalties:

- Original Delinquency. Failure to remit tax payment within 30 days is subject to a 10% penalty, in addition to the amount of the tax.
- Continued Delinquency. A second delinquency penalty of 10% is applied for nonpayment after 60 days, in addition to the amount of the tax and first penalty.

- Fraud. If nonpayment of any remittance is due to fraud, a penalty of 25% applies, in addition to the penalties above.
- Interest. In addition to the penalties imposed, failure to remit taxes on time will accrue interest at the rate of 1% per month on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

Note, every penalty imposed and interest accrued under BMC Chapter 3.24 becomes a part of the tax required to be paid under the BMC. And as stated above, violations of BMC Chapter 3.24 constitute a misdemeanor, punishable by the fines, penalties, and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of the BMC.

Finally, an issued STR permit may be suspended or revoked by the zoning administrator if the host or the conduct of the STR activity violates the City's Ordinance. Specifically, the STR Ordinance stipulates the zoning administrator shall act when there are two or more notices of violation within a 12-month period. Also of note, when approving or renewing an STR permit, the zoning administrator must find that the unit to be offered for STR is not the subject of an active code enforcement action or administrative citation from the city in the past 12 months. If there is either an administrative citation or active code enforcement action within the past 12 months, the permit could not be granted and/or renewed per the ordinance.

TOT COLLECTION & ESTIMATES

Granicus sends an automated email reminder quarterly to all permit holders and provides a link to make an online remittance. City staff is responsible for monitoring TOT payments; Granicus does not monitor or verify TOT payments. Granicus does provide staff estimates of average nightly rates, nights occupied, and estimated revenue for STRs; note, Granicus does not provide such estimates for rental units without any documented stays.

ACTIVE PERMIT HOLDER TOT REPORTING AND REMITTANCE

Permit holders 2022-STR-2, 2023-STR-1, and 2023-STR-3 have reported and remitted applicable taxes since issuance of their respective permits (the history of permit holder 2022-STR-3 is detailed below the table). Staff did not audit permit holders prior to the fourth quarter of 2023. However, staff closely examined the reported revenue for the last quarter of 2023 and the table below represents a summary of reported revenue and tax remittance for active permit holders for the fourth quarter of 2023.

Permit Number	Documented Stays (per Granicus)	Reported Revenue	Estimated Revenue (per Granicus)		Paid Amount (as of 1/31/24)
			Low	High	
2022-STR-2	0	0.00	\$0.00	0.00	NA
2022-STR-3	13	0.00	\$2,081.00	\$9,323.00	\$0.00
2023-STR-1	8	\$13,578.00	\$1,621.00	\$18,645.00	\$2,033.42
2023-STR-3	0	0.00	\$0.00	\$0.00	NA

Two of the four permit holders reported \$0.00 in revenue for the fourth quarter, which is supported by the number of documented stays identified by Granicus; no tax remittance is required. A third permit holder reported 51 nights occupied, more than the estimate provided by Granicus, and remitted payment to the City online via Granicus. The total remittance is correct, based on the reported revenue and number of nights occupied, and is inclusive of a payment processing fee.

STR permit 2022-STR-3, to date, has not reported fourth quarter revenue while Granicus identified 13 documented stays within the fourth quarter. Additionally, this permit holder has not reported nor remitted tax to the City since permit issuance on March 16, 2023. Below is a high-level summary of the estimated tax owed for 2022-STR-3 since permit issuance:

	<i>Gross Revenue</i>	<i>Nights Occupied</i>	<i>TOT & Fees</i>	<i>Penalties, Fees & Interest</i>	<i>Total Tax Due</i>
Q4	\$1,979-\$3,442	26-43	\$342-\$589	\$38-\$65	\$380-654
Q3	\$4,660	62	\$807	\$250	\$1,057
Q2	\$2,892-\$3,936	38-49	\$500-\$673	\$120-\$162	\$620-\$835
Total					\$2,057 -\$2,546

Staff has been in contact with the permit holder to ensure they are aware of their responsibilities to remit TOT, as well as the penalties and interest for both the second, third, and fourth quarters of 2023. Staff also provided a detailed copy of the estimated TOT accounting to the permit holder in December of last year and again in January of this year, and continues to remind them of their obligations under the BMC.

STR permit 2022-STR-3 expires one year from issuance, or in March 2024. As indicated previously, failure to pay TOT would be a violation of the operating standards of the STR ordinance and the zoning administrator would not be able to make the findings required to renew this permit; without remittance of all delinquent TOT (inclusive of penalties and interest), a renewal request would likely be denied.

UPDATES TO THE CITY'S STR PERMITTING/IMPLEMENTATION PROCESS

As the City has commenced implementation of the STR ordinance, opportunities to improve the process have been identified. Staff has recently made the changes to the process for STR permitting and TOT collection. Adjustments to automated email reminders, standard conditions of approval, and other STR permitting processes are discussed below.

AUTOMATED EMAIL REMINDERS

When implementing Granicus' monitoring and permitting platform, a number of automated emails were included for registration, payments, and reminders. In particular, a template was created to remind permit holders to pay TOT quarterly. Briefly, it indicated it was time for the permit holder to pay TOT, listed the address of the rental unit and the permit number, and

specified that even if there was no activity there permit holder still had to submit a report showing zero dollars. A link to report and pay online was included in the email.

In November 2023, staff directed Granicus to amend the TOT reminder template to add clarifying text specifying when TOT payments are due and the penalties for non-payment. The amended email now includes the following information, in addition to the prior content:

- Failure to report rental activity and remit payment to the City of Brisbane constitutes a violation of the City's short term rental operational standards and may result in suspension or revocation of your permit.
- Quarterly payments are due January 1, April 1, July 1, and October 1 of each year.
- Failure to remit tax payment within 30 days from the above dates is subject to a 10% penalty, in addition to the amount of the tax.
- A second delinquency penalty of 10% is applied for nonpayment after 60 days, in addition to the penalty above.
- If nonpayment of any remittance is due to fraud, a penalty of 25% applies, in addition to the penalties above.
- In addition to the penalties imposed, failure to remit taxes on time will accrue interest at the rate of 1% per month on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

PERMIT CONDITIONS OF APPROVAL

Standard conditions of approval are included with any approved STR permit and generally specify the following:

1. Off-street parking identified within the application shall be used to meet STR parking requirements.
2. The number and location of rooms that may be used for STR and the prohibition of utilizing any other rooms for STR activity.
3. The maximum occupancy of the STR.
4. Requirements to indicate the maximum occupancy and the general location of the room(s) available for rent within any rental listing.
5. The requirement to obtain a business license.

In addition to the conditions of approval, the operational standards specified within the STR Ordinance are included with approved permits and generally cover the regulations of the ordinance, such as:

- Unhosted stays and special events are prohibited;
- Hosts must maintain insurance;
- Limitation on separate bookings;
- Check-in and check-out times;
- Noise and safety requirements;

- Maintaining records of compliance;
- Expiration and renewal of permit the permit; and
- Requirement to pay TOT

In conjunction with the amendment to the email reminder to permit holders to pay TOT, staff has modified the standard conditions of approval to more explicitly specify when TOT is due. Rather than simply indicating TOT must be paid pursuant to the BMC, the conditions of approval and operating standards, going forward, will also stipulate TOT payment due dates and when payments are considered delinquent, the penalties and interest for late payments, and that failure to comply with any provisions of the STR Ordinance will subject the permit holder to administrative citations and compliance orders and suspension and revocation proceedings.

REVIEW OF TOT PAYMENTS

Until recently, it was not staff's practice to audit permit holders quarterly for TOT payment. This was due in part because prior to 2023, the City had issued only one STR permit. That permit, 2022-STR-2, has reported and paid TOT each quarter, and verification of remittance was performed when the permit was renewed one year after issuance. The procedure going forward will be for staff to more closely monitor TOT reporting and payments quarterly, as done for the last quarter of 2023. Staff will use Granicus' estimates as part of its monitoring, however, it is ultimately up to the operator to accurately report and remit payments as Granicus' estimates are just that, estimates. Of note, City staff maintains the ability to request additional documentation as part verifying accurate TOT remittance, and using Granicus' platform, can initiate an audit of any permit holder at any time. If an audit is initiated by staff, Granicus will send a physical letter to the auditee and provides them a secure URL to upload the following documents:

- Advertisement listing URLs
- Evidence of Revenue (i.e. platform screenshots, transaction history, bank statements)
- Evidence of payment (if applicable)
- Digital Signature

Staff would review the provided documentation; Granicus is not involved. If the results of an audit indicate under-payment, applicable penalties and interest will be required per BMC Chapter 3.24, and as discussed previously, noncompliance due to nonpayment is subject to administrative citations and/or compliance orders. In such instances, staff would involve the Code Enforcement Department.

AUTOMATIC COLLECTION OF TOT

When the City adopted its STR ordinance, it was not standard practice for hosting platforms, such as Airbnb, to collect and remit occupancy taxes on behalf of their users to local municipalities. Since then, the list of jurisdictions with agreements allowing hosting platforms to facilitate collection and remittance of TOT has increased and also includes a number of smaller

jurisdictions as well, such as Fowler and Dunsmuir, CA, which have populations under 7,000 and 2,000, respectively.

While an agreement would be required for each listing platform, the City could enter into agreements with the largest hosting platforms, like Airbnb and VRBO (Airbnb is the largest STR online travel agency in North America), and capture a large portion of rentals, listings, and potential TOT.

If the City were to enter into an agreement, generally, such companies would offer hosts the ability to authorize the company to collect taxes on their behalf and to remit such taxes to the relevant tax authority. The payouts to host would be minus the applicable tax and, in the event that the taxes collected and/or remitted are insufficient to cover a host's tax obligations, the company may seek additional amounts from hosts. City staff would maintain the ability to audit permit holders under Granicus' current service agreement, regardless of an agreement to automate collection of TOT with hosting platforms.

It is recommended that City staff explore obtaining an agreement with Airbnb and other hosting platforms where practical to collect and remit TOT.

ATTACHMENTS

None



John Swiecki, Community Development Director