



CITY COUNCIL AGENDA REPORT

Meeting Date: December 9, 2022 (Continued from the 12/8/22 CC Meeting)

From: Clay Holstine, City Manager & Michael Roush, Legal Counsel

Subject: Introduction of an Ordinance to Administer and Implement the Business License Tax Imposed on Hotels and Other Places Designed for Occupancy by Transients. This Ordinance is exempt from review under the California Environmental Quality Act because it is not a “project”. Section 15378 (b)(5) of the CEQA Guidelines.

Community Goal/Result:

Fiscally Prudent

Recommendation:

Introduce an Ordinance to add numerous sections to the Brisbane Municipal Code (Sections 5.20.036 through 5.20.044) to administer and implement the Business License Tax imposed on hotels and other places designed for occupancy by transients, which tax was approved by Brisbane voters at the November 8, 2022 general municipal election. Because of the numbering system in the Code, the current Section 5.20.040 (concerning the business license tax for street vendors) will need to be deleted and relocated to Section 5.20.235.

Background

In July 2022, City Council adopted Ordinance 674, adding Section 5.20.035 to the Brisbane Municipal Code, to impose a business license tax on hotels and other places designed for occupancy by “transients”—generally guests who pay to rent a room at a hotel or stay at a short term rental. The Ordinance provides that the hotel operator must pay a daily business license tax of \$2.50 for every room that is rented. The tax was contingent, however, on Brisbane voters approving it at the November 8, 2022 general municipal election. Voters approved the tax and hotels and similar businesses must begin paying the tax as of January 1, 2023.

That Ordinance, however, did not set forth how the tax would be administered or implemented, to address matters such as reporting and remitting the tax, penalties and interest if the tax is not paid timely, appeals, recording keeping, and similar provisions. Accordingly, staff has drafted the attached Ordinance to provide how the tax will be administered and implemented. These provisions did not need to be approved by the voters; only the tax itself.

Discussion

Separate from this tax, the City also has a Transient Occupancy Tax (TOT) Ordinance that requires hotel operators to collect this tax from paying guests and remit such tax to the City. Currently, as approved by the voters, this tax is 14% of the rate charged by the hotel for the accommodations.

The City's TOT Ordinance sets forth numerous provisions concerning the administration and implementation of that Ordinance and these provisions, to the extent applicable, have been incorporated into the attached Ordinance. Among other matters, they track the requirements of hotel operators under the TOT Ordinance to report and remit the tax, penalties and interest if the remittance is not timely, authorizing the tax administrator (Finance Director) to determine the tax if the operator fails or refuses to pay the tax, operator appeals, refunds, and violations of the Ordinance.

Because of the numbering system in the Municipal Code and the addition of these sections, the current section 5.20.040 which concerns the business license tax for "peddlers, hawkers and street vendors" needs to be deleted and relocated, without substantive change, to a new section 5.20.235.

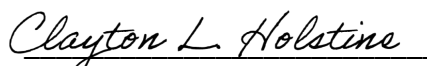
Assuming City Council introduces this Ordinance at its meeting on December 8 or December 9 if the item is carried over to that date, the second reading of the Ordinance may appear on the Council's consent calendar on December 15, 2022. It will go into effect 30 days later. Since these matters simply implement and administer the Ordinance that imposed the tax, they do not affect the requirement that hotels must begin paying the tax as of January 1, 2023. (The first remittance—covering January 1, 2023 through March 31, 2023—is not due until April 2023.)


CEQA Determination

Recently, a State appellate court has held that in order to comply with the Brown Act, certain agenda item titles must reflect what environmental review is associated with a proposed Council action and if the proposed action is exempt under CEQA, that exemption identified. The agenda title for this item reflects that this Ordinance is exempt under CEQA because it is an administrative activity of a government that will have no direct or indirect effect on the environment. CEQA Guidelines, Section 15378 (b)(5).

Fiscal Impact

There is no fiscal impact associated with the introduction or adoption of this Ordinance. Assuming that hotels are at 70% occupancy, staff estimates the City will receive \$250,000 annually from this tax.


Clayton Holstine, City Manager


Michael Roush, Legal Counsel

Attachment:

Ordinance to Administer and Implement the Business License Tax Imposed on Hotels and Other Places Designed for Occupancy by Tenants

ATTACHMENT 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRISBANE TO DELETE SECTION 5.20.040 AND TO ADD NEW SECTIONS 5.20.036, 5.20.037, 5.20.038, 5.20.039, 5.20.040, 5.20.041, 5.20.042, AND 5.20.043 TO IMPLEMENT AND ADMINISTER THE BUSINESS LICENSE TAXES FOR HOTELS AND OTHER PLACES DESIGNED FOR OCCUPANCY OF TRANSIENTS AND TO RELOCATE THE CURRENT SECTION 5.20.040 (PEDDLERS, HAWKERS AND STREET VENDORS) TO A NEW SECTION 5.20.235 WITHOUT CHANGE

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

Section 1. Section 5.20.040 (Peddlers, Hawkers, and Street Vendors) is hereby deleted.

Section 2. Sections 5.20.036 through 5.20.043, inclusive are hereby added to the Brisbane Municipal Code to read as follows

Section 5.20.036—Definitions

Terms used in Sections 5.20.037 through 5.20.043 shall have the same meanings as the definitions of those terms in Section 3.24.020 of this Code, as said Section may be amended from time to time.

Section 5.20.037 Reporting and Remitting

Each operator shall, on or before the last day of April, July, October and January, make a return to the tax administrator, on forms provided by the tax administrator, of the total rooms rented during the previous three months and the amount of tax calculated for such room rentals. The full amount of the tax calculated shall be remitted to the tax administrator at the time the return is filed. The tax administrator may require additional information in any returned. Such actions may be appealed under Section 5.20.040. Returns and payments are due immediately upon cessation of any business for any reason.

Section 5.20.038 Penalties and Interest

- A. Original Delinquency. Any operator who fails to remit any tax imposed by Section 5.20.035 within the time required shall pay a penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax.
- B. Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the ten (10%) penalty first imposed.
- C. Fraud. If the tax administrator determines that the non-payment of any remittance due under Section 5.20.035 is due to fraud, a penalty of twenty five percent (25%) of the amount of the tax shall be added thereto, in addition to the penalties stated in subsections A and B of this section.
- D. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by Section 5.20.035 shall pay interest at the rate of one percent (1%) per month or fraction

thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid in full.

- E. Penalties and Interest Merged With Tax. Every penalty imposed and such interest as accrues under this Section shall become part of the tax required to be paid by Section 5.20.035.

Section 5.20.039 Failure to collect and report tax—determination of tax by tax administrator.

- A. Assessment of Estimated Tax. If any operator shall fail or refuse to pay the tax and to make, within the time provided in Section 5.20.036, the tax administrator shall proceed in such manner as the tax administrator may deem best to obtain facts and information upon which to base the tax administrator's estimate of the tax due. As soon as the tax administrator shall procure such facts and information as the tax administrator is able to obtain upon which to base the assessment of any tax imposed by Section 5.20.035 and payable by any operator who has failed or refused to pay the same and to make such report and remittance, the tax administrator shall proceed to determine and assess against such operator the tax, penalty and interest provided by Section 5.20.038. The tax administrator may include in the assessment costs of any necessary audits or investigations.
- B. Notice of Assessment—Determination of Tax. Where a determination and assessment of the tax is made under subsection A of this Section, the tax administrator shall give notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the operator's last known place of address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, penalties, and interest, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give no less than five (5) days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in the notice why the amount specified in the notice should not be fixed for such tax, penalties and interest. At such hearing, the operator may appear and offer evidence why such specified tax, penalties and interest should not be so fixed. After such hearing, the tax administrator shall determine the proper tax, penalties and interest to be remitted and shall thereafter give written notice to the operator in the manner prescribed herein of such determination and the amount of such tax, penalties and interest. The amount determined to be due shall be paid in full within fifteen (15) days unless an appeal is taken as provided in Section 5.20.040.

Section 5.20.040 Appeal

Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, penalties and interest, if any, may appeal to the city manager by filing a notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The city manager shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at the operator's last known place of address. The city manager may designate a neutral hearing officer to hear the appeal and make a recommendation to the city manager as to the appeal. The findings of the city manager shall be final and conclusive and shall be served on the operator/appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon service of the notice.

Section 5.20.041 Records

It shall be the duty of every operator liable for the payment to the city of any tax imposed by Section 5.20.035 to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as the operator may have been liable for the payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times. Such records shall be maintained at the operator's premises or shall be available for delivery to the tax administrator within two weeks after request. Such records shall be so maintained for at least six months after a change of operator. The records shall include at least the following: Daily summaries of rooms rented.

Section 5.20.042 Refunds

- A. Whenever the amount of any tax, penalty or interest has been overpaid or paid more than once, or has been erroneously or illegally paid or received by the city under Section 5.20.035 or 5.20.036, it may be refunded as provided in subsections B and C of this Section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three years of the date of payment or the date the tax was due, whichever was earlier.
- B. An operator may claim a refund or take a credit against taxed to be remitted in the amount overpaid, paid more than once, or erroneously or illegally paid or received when it is established to the satisfaction of the tax administrator that the tax paid or received was overpaid, paid more than once, or erroneously or illegally paid or received by the city.
- C. No refund shall be paid under the provisions of this Section unless the operator establishes the right thereto by written records showing entitlement to such refund.

Section 5.20.043 Collection of tax

- A. Actions to Collect. Any tax required to be paid by any operator under Section 5.20.035 shall be deemed a debt owned by the operator to the city. Any operator owing money to the city under Section 5.20.035 shall be liable to an action brought in the name of the city for recovery of such amount.
- B. Notice of Intent to Record a Lien—Hearing. If the amount required to be paid to the city under Section 5.20.035 is not paid when due, the tax administrator may within three years after the amount is due, in addition to any other rights or remedies available for collection of such amount, give written notice to the operator and the owner of the property on which the hotel is located, if different, of the city's intent to record a lien against the property on which the operator's hotel is located. The notice shall specify a time and place at which a hearing will be conducted by the tax administrator to consider any objections by the operator or property owner to the recording of such lien, which hearing shall not be less than fifteen days from the date of the notice. The date of the hearing may be continued from time to time by the tax administrator. At the conclusion of the hearing, the tax administrator shall render a decision as to whether a lien should be filed with respect to any amount payable to the city under Section 5.20.035 that the tax administrator finds is then delinquent. The decision of the tax administrator may be appealed to the city manager as provided in Section 5.20.040.
- C. Recordation and Enforcement of Tax Lien. Upon a final determination of the amount of the delinquency by the tax administrator of the city manager on appeal, as the case may be, the tax administrator may file for record in the office of the San Mateo County recorder a tax lien specifying the amount of the tax, penalty and interest due, the name and address as it appears

on the records of the operator liable for same and the name of the property owner, and the legal description of the property on which the hotel is located. From the time of the filing for record, the amount required to be paid together with penalties and interest constitutes a lien upon such real property. Such lien shall be valid for a period of ten years and may be enforced by an action to foreclose the lien in a manner prescribed by law.

- D. Successor's Liability—Withholding by Purchaser. If any operator liable for any amount under Section 5.20.035 sells or transfers the hotel or any ownership interest therein, the successor or transferee shall withhold sufficient funds out of the purchase price to cover such amount until the former operator produces a receipt from the tax administrator showing that it has been paid or a certificate stating that no amount is due.
- E. Liability of Purchase. If the purchaser of a hotel fails to withhold funds from the purchase price as required, the purchaser shall become liable for the payment of the amount required to be withheld to the extent of the purchase price.
- F. Continued Liability of Operator. The sale or transfer of a hotel, dismissal of the operator, or other termination of the rights of an operator to operate the hotel shall not relieve the operator from liability for taxes due or owing under Section 5.20.035.

Section 5.20.044 Violations

Any violations of Sections 5.20.035 through 5.20.043 shall be punishable by fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16, and 1.18 of this code.

Section 3. Section 5.20.235 is added to the Brisbane Municipal Code as follows:

Section 5.20.235 Peddlers, Hawkers, and Street Vendors

- A. Every person carrying on the business of a peddler of any goods, wares or merchandise shall pay a license tax of twenty five dollars (\$25.00) per day in advance.
- B. For purposes of this Section, a "peddler" is defined to be and includes every person not having a regularly established place of business in the city, who travels from place to place, or has a stand upon any public street, alley, or other public place, doorway of any building, unenclosed or vacant lot, or parcel of land, who sells or offers for sale any goods, wares or merchandise in the person's possession.

Section 4. CEQA Determination

Introduction and adoption of this Ordinance is not subject to environmental review under the California Environmental Quality Act because it is not a project as defined under the CEQA Guidelines, Section 15378 (b) (5) [organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

Section 5. Effective Date.

This Ordinance shall become effective thirty days after its adoption.

Mayor

Attest:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas R. McMorrow, City Attorney

I certify that the foregoing Ordinance No. ___ was adopted by the Brisbane City Council at a regular meeting on December 15, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk