Agenda Item No. 16

File Code No. 640.09

CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: August 11, 2015

TO: Mayor and Councilmembers

FROM: City Attorney's Office

SUBJECT: Issuance Of Legislative Subpoena To Support Vacation Rental Enforcement

RECOMMENDATION:

That Council adopt, by reading of title only, A Resolution of the Council of the City of Santa Barbara Issuing Subpoenas for Certain Records Related to Short-Term Vacation Rentals in the City.

DISCUSSION:

In order to assist in the enforcement against unlawful vacation rentals in R-1, R-2, and R-3 residential zones, the City Attorney's Office is requesting that Council adopt a resolution authorizing legislative subpoenas to all companies that operate websites advertising vacation rental properties within the City of Santa Barbara. A legislative subpoena will ensure that the City Attorney's Office has all relevant records to conduct a thorough review to determine whether a rental property owner is violating the Municipal Code.

The majority of short term rentals are advertised on the internet. There are multiple vacation rental websites that advertise properties in Santa Barbara for short term rental. Information on these websites often includes photos of the property, reviews, rental rates, and location of the property. Community Development staff, through web-based research, has uncovered and compiled a list of ninety-one (91) websites containing short term vacation rental listings of properties in Santa Barbara.

The City Attorney's Office requests the issuance of legislative subpoenas on all websites that have active listings for vacation rentals in the City of Santa Barbara in order to investigate, and to obtain compliance with the Municipal Code. Without these legislative subpoenas the City Attorney's Office will be hampered in its effort to investigate and obtain vacation rental compliance.

The City Council has the authority to issue a legislative subpoena under Santa Barbara City Charter Section 509. Legislative subpoenas are issued in the name of the City and

attested by the City Clerk. In addition, a legislative subpoena issued under the powers delineated under the Charter is required to be served and complied with in the same manner as subpoenas in civil actions.

The City Council also has the authority to issue legislative subpoenas requiring the attendance of witnesses or production of documents pursuant to California Government Code section 37104. Under Government Code section 37105, legislative subpoenas are signed by the Mayor, attested by the City Clerk, and served in the same manner as civil subpoenas. If the subpoenaed party does not comply with the subpoena, Government Code section 37106 provides a remedy whereby the Mayor reports the noncompliance to the Santa Barbara Superior Court. A judge can then issue an Order to Show Cause (OSC) to the subpoenaed party to appear in court and explain the reasons for noncompliance. We recommend using both sources of subpoena authority.

The punishment for disobedience of a legislative subpoena is the same as if the contempt had been committed in a civil trial in superior court, namely when a subpoenaed party has disobeyed a duly served subpoena, that person has committed contempt. (California Code of Civil Procedure Section 1209, subd. (a) (10)). The court may then punish the subpoenaed party for contempt by imposing a fine not exceeding $1,000 or imprisonment not exceeding five days, or both. (Code Civ.Proc., § 1218).

The proposed Resolution authorizes issuance and service of legislative subpoenas to companies that operate current websites that have active listings for vacation rentals in Santa Barbara. The legislative subpoena directs the subpoenaed party to either appear at a specified city council meeting with the requested records or make arrangements for the production of records. If the subpoenaed party fails to comply, this Resolution further authorizes the Mayor to submit a report to the Santa Barbara Superior Court regarding noncompliance.

ATTACHMENT(S): Sample Draft of Legislative Subpoena

PREPARED BY: Ariel Pierre Calonne, City Attorney
John Steve Doimas, Deputy City Attorney

SUBMITTED BY: Ariel Pierre Calonne, City Attorney

APPROVED BY: City Administrator's Office

IN THE MATTER OF FACTUAL INQUIRY RELATED TO INVESTIGATION OF CHAPTER 4.08, 5.04 OF TITLE 28 OF THE CITY OF SANTA BARBARA MUNICIPAL CODE	LEGISLATIVE SUBPOENA (Government Code §§ 37104 *et seq.*) (SB City Charter §509) Date: Time: Place: City Hall City of Santa Barbara 735 Anacapa Street Santa Barbara, CA 93101

To: Custodian of Records for _____, Inc.

c/o XXX (agent for service of process for XXX, Inc.)

address

city, state, zip

Draft

1. On August 11, 2015, the City Council adopted Resolution No. (incorporated by reference into this subpoena).

2. Accordingly, you are ordered to appear in person and produce true and correct copies of the document specified in Attachment 1 at the regular City Council Meeting for the City of Santa Barbara ("City") at 735 Anacapa Street, Santa Barbara, California, 93101, on _____, 2015, at _____ p.m. (or as soon thereafter as the matter may be heard)

3. **You are not required to appear in person and produce the requested documents IF, <u>by 4:00 p.m. on XXX, 2015,</u> you deliver the document described in Attachment 2 to:**

XXX
Title
City of Santa Barbara
735 Anacapa Street
Santa Barbara, California 93101

4. All documents produced to the City shall be accompanied by a declaration or affidavit warranting to their accuracy and completeness sufficient to meet the requirements of Code of Civil Procedure section 2020.430. The City will pay all reasonable documented costs associated with photocopying the requested documents. If costs exceed $50.00 please contact XXX before copying.

The City requires these records to assist it in evaluating, investigating, and enforcing the municipal code compliance against unlawful vacation rentals in R-1, R-2, and R-3 residential zones pursuant to Santa Barbara Municipal Code Chapters 4.08, 5.04,

28.15, 28.18, and 28.21. The documents requested are material and good cause exists for their production as described in Attachment 3. This subpoena is issued pursuant to Santa Barbara City Charter section 509 and California Government Code section 37104 and authorized by the City of Santa Barbara Council.

Disobedience of this subpoena will be referred to the Superior Court for enforcement and is punishable as contempt pursuant to Government Code section 37109 and the Santa Barbara City Charter. Should you have any questions regarding this subpoena please contact:

Ariel Pierre Calonne (State Bar No. 110268)
City Attorney
John S. Doimas (State Bar No. 282346)
Deputy City Attorney
City Attorney's Office
740 State Street, Suite 201
Santa Barbara, California 93101
(805) 564-5326

Draft

Dated: XXX

City Council, City of Santa Barbara

By:_____
XXX
Mayor, City of Santa Barbara

Attest:

By:_____
XXX
City Clerk, City of Santa Barbara

APPROVED AS TO FORM:

By:_____
XXX

ATTACHMENT 1

The following documents must be produced to the City:

Request #1: Documents sufficient to identify all persons that through any website owned or controlled by ***Company Name*** who advertised, have rented, or offered to rent any HOTEL for a period of 30 consecutive days or less for dwelling, use, lodging or sleeping purposes in the City of Santa Barbara, California during the period from _____, through the present.

"HOTEL" is defined as a building, group of buildings or a portion of a building which is designed for or occupied as the temporary abiding place of individuals for less than thirty (30) consecutive days including, but not limited to establishments held out to the public as auto courts, bed and breakfast inns, hostels, inns, motels, motor lodges, time share projects, tourist courts, and other similar uses.

(1) Request #2: Documents sufficient to provide the following information for each person identified in response to Request #1:

a. The name, physical address, email address, and any other contact information for each person.
b. The url for each website which the person used to list a HOTEL.
c. The address of the person's HOTEL that has been rented, or offered to rent, for dwelling, use, lodging or sleeping purposes in the City of Santa Barbara through any website or property owned or controlled by _____ during the period from _____, through the present ("PROPERTY" means the HOTEL(S) rented as described in this paragraph by the person).
d. The dates and duration of stay for each time the PROPERTY was rented since _____, to present.

Draft

e. The rate charged and funds collected for each time the PROPERTY was rented since _____, to present.

f. The method of payment, including name of institution and type of account, for each time the PROPERTY was rented since _____, to present.

g. The name of any person who rented any PROPERTY from a person identified in Request #!, since _____, to present, as well as the renter's physical address, email address and other contact information.

h. The total gross revenue generated by the person renting the PROPERTY as a result of that renting since _____, to present.

(2) If documents do not exist sufficient to provide all of the information requested, the city requests that you produce electronically stored information that is sufficient to provide all of the information requested. This information must be provided in pdf, Microsoft Word or Microsoft Excel Format. If production in this manner is not feasible then it must be produced in a different format agreed to by the City.

Draft

ATTACHMENT 2

(3) **Alternatively, and in lieu of the documents requested in Attachment 1**, you may provide a list identifying all persons that through any website owned or controlled by ***Company Name*** who advertised the availability of a HOTEL for a period of 30 consecutive days or less for dwelling, use, lodging or sleeping purposes in the City of Santa Barbara, California during the period from _____, through the present. This list must also include the following regarding these rentals:

a. The name, physical address, email address, and any other contact information for each person.

b. The url for each website which ther person used to list a HOTEL.

c. The address of the HOTEL.

d. The dates and duration of stay for each time the HTOEL was rented.

e. The rate charged and funds collected for each time the HTOEL was rented.
f. The method of payment, including name of institution and type of account, for each time the HOTEL was rented.
g. The name of any person who rented any HOTEL, as well as their physical address, email address and any other contact information.
h. The total gross revenue generated by the person renting the HOTEL.

ATTACHMENT 3

[City Council Agenda Report]

Draft