



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 17, 2016

TO: Mayor and Councilmembers

FROM: City Attorney's Office

SUBJECT: Issuance Of Subpoenas To Assess And Collect Any Transient Occupancy Taxes Owed By Short-Term Rentals And To Investigate The Effects Of Short-Term Rentals In Residential Neighborhoods

RECOMMENDATION:

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

DISCUSSION:

Santa Barbara Municipal Code ("SBMC") Chapter 4.08 authorizes the City to collect TOT when a hotel, motel, or residential home is occupied for thirty consecutive days or less. If an owner or operator fails to remit TOT as required, the City may impose penalties and interest on the amount owed. The failure for owners and operators to remit the TOT that is owed results in a loss of funds due to the City and is unfair to those owners and operators who collect and remit the TOT due.

The majority of short term rentals are advertised on the internet. These subpoenas will greatly aid in investigating and obtaining compliance with SBMC Chapter 4.08. The subpoenas will assist in the assessment and collection of Transient Occupancy Taxes ("TOT") for the transient rental of Real Property. In addition, the subpoenas will gather information that would allow the City to study and investigate the effects of short-term rentals on the City's housing market and affordable housing stock as well as the impact they have on the character of existing residential neighborhoods.

The City will use these subpoenas to determine the extent of noncompliance with SBMC Chapter 4.08 and the details of the TOT revenue it has not collected. It is anticipated that these subpoenas will reveal significant TOT revenue that has not been collected. Also, because these subpoenas are being served on internet companies across the nation, their personal appearance at a regularly scheduled council meeting is

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not being requested. Instead, the City is requesting these companies to just produce the requested documents by June 28, 2016.

In addition, these subpoenas can be used to investigate the nature and extent of short term rentals in the City and its effects on the City's housing market and affordable housing stock as well as the impact they have on the character of existing residential neighborhoods and what impacts they have to adjacent properties.

The City Council has the authority to issue a subpoena under Santa Barbara City Charter section 509. Per the language in the City Charter, subpoenas are issued in the name of the City and attested by the City Clerk.

The City Council also has the authority to issue subpoenas requiring the attendance of witnesses or production of documents pursuant to Government Code section 37104. 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.

The punishment for disobedience of this 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. (Code Civ. Proc. § 1209(a) (10)). The court may then punish the subpoenaed party for criminal contempt by imposing a fine not exceeding \$1,000 or imprisonment not exceeding five days, or both. (Code Civ. Proc., § 1218).

ATTACHMENT(S): Sample Draft of Legislative Subpoena

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

SUBMITTED BY: Ariel Pierre Calonne, City Attorney

APPROVED BY: City Administrator's Office

CITY OF SANTA BARBARA SHORT-TERM RENTALS REVIEW AND AUDIT OF TRANSIENT OCCUPANCY TAXES AND INVESTIGATION INTO THE EFFECTS OF SHORT-TERM RENTALS ON THE CITY'S HOUSING MARKET AND THEIR IMPACTS IN RESIDENTIAL NEIGHBORHOODS

LEGISLATIVE SUBPOENA
(Government Code §§ 37104 *et seq.*)
(SB City Charter §509)

Date: June 28, 2016
Time: 2:00 p.m.
Place: City Hall
City of Santa Barbara
735 Anacapa Street
Santa Barbara, CA 93101

TO: Custodian of Records for **Company Name**
c/o XXX (agent for service of process for XXX, Inc.)
address
city, state, zip

FROM: CITY OF SANTA BARBARA, CALIFORNIA

1. On May 17, 2016, the Santa Barbara City Council adopted Resolution No. _____ authorizing the issuance of this subpoena. A copy of Resolution No. _____ is attached hereto and incorporated by this reference.
2. **YOU ARE ORDERED by the City Council of the City of Santa Barbara to produce documents described in Exhibit "1" by June 28, 2016. You are required to deliver true, complete, legible, and durable copies of the requested Documents described in Exhibit "1" to:**

John S. Doimas
Deputy City Attorney
City of Santa Barbara
735 Anacapa Street
Santa Barbara, California 93101

3. 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 John Doimas at (805) 564- 5326 before copying.
4. This subpoena is issued pursuant to California Government Code section 31704 *et seq.* and Santa Barbara City Charter section 509 and authorized, at a regularly noticed meeting of the City of Santa Barbara City Council.

5. Disobedience of this subpoena will be referred to the Superior Court for enforcement and is punishable as contempt to California Government Code section 37104 *et seq.* and as otherwise provided by law. 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

Date issued: May 17, 2016

City Council, City of Santa Barbara

Attest:

By: _____
Helene Schneider
Mayor, City of Santa Barbara

By: _____
Susan Gorman
City Clerk, City of Santa Barbara

APPROVED AS TO FORM:

By: _____
John S. Doimas
Deputy City Attorney

EXHIBIT 1

DEFINITIONS

“DOCUMENT” or “DOCUMENTS” means all writings, originals and duplicates as defined in California EVIDENCE Code sections 250, 255, and 260;

REQUESTED DOCUMENTS

Request # 1: Produce any and all 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 January 1, 2013, 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.

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 **Company Name** during the period from January 1, 2013, 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 January 1, 2013, to present.
- e. The rate charged and funds collected for each time the PROPERTY was rented since January 1, 2013, to present.
- f. The method of payment, including name of institution and type of account, for each time the PROPERTY was rented since January 1, 2013, to present.
- g. The total gross revenue generated by the person renting the PROPERTY as a result of that renting since January 1, 2013, to present.

Request # 3: 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.