



Staff Report

File #: 15-518, **Version:** 2

Yountville Town Council Staff Report

DATE: October 20, 2015

TO: Mayor and Town Council

FROM: Michael R. Cobden, Town Attorney

TITLE

Consider Adoption of Resolution Numbers 15-3301 and 15-3302 Issuing Subpoenas for Certain Records Related to the Rental of Rooms through Online Rental Booking Services AirBnB and HomeAway.

DISCUSSION/BACKGROUND

Planning staff has been investigating and enforcing violations of the Town Municipal Code in a variety of contexts, as directed generally by the Council and specifically by the Town Manager. One of the provisions of the Town Code which staff suspects is flagrantly violated on a regular basis is the rental of homes or rooms for short stays (i.e. less than 30 days). Not only is this activity unlawful under Section 17.28.030, such rentals also divert visitors from lawfully operating hotels which would collect and remit Transient Occupancy Taxes to the Town. Typically, staff can simply visit online rental booking sites such as AirBnB, HomeAway, and VRBO, and see if Town residents are illegally advertising their homes or rooms for rent. However, staff is not always able to identify whether a violation exists because property owners may advertise the unit in compliance with the Code but rent it for shorter periods of time. In addition, a single advertisement may indicate a single violation or many violations. It can be difficult to determine an exact number of violations for a single residence without obtaining records from the website or the property owner.

Several other cities, most notably Malibu, have used legislative subpoenas to obtain records of short term rentals within their jurisdictions. Government Code section 37104 et seq. authorizes the Town to issue such subpoenas to compel attendance at a meeting or to provide documents to the municipal legislative body. Staff therefore recommends that the Town Council authorize two such subpoenas to assist in code enforcement efforts. Each is adopted by separate resolution, and will be served by staff on the appropriate persons listed for such process.

ENVIRONMENTAL REVIEW

Exempt per California Environmental Act (CEQA) Guideline, Section 15061(b)(3)

FISCAL IMPACT

Is there a Fiscal Impact? Yes.

Is it Currently Budgeted? Yes.

Where is it Budgeted? Legal Services and Planning Staff.

Is it Mandatory or Discretionary? Discretionary.

Is there a Staff Resource Impact? Yes.

STRATEGIC PLAN GOAL

Is item Identified in Strategic Plan? Yes.

If yes, Identify Strategic Goal and Objective. 1.1.2 Protecting Community Health and Safety
2.0 Community Character; 2.4 Code Enforcement; 5.0 Fiscal Health; 5.3 Optimize Tourism Economy; 5.6
Fiscal Policies

Briefly Explain Relationship to Strategic Plan Goal and Objective. Consistent and effective code enforcement efforts protect the community's health and safety and the community's character by preventing activities which diminish the character established through careful legislative policymaking. By preventing unlawful rentals the Town focuses visitors to lawful facilities which comply with regulations and inspections, and pay taxes which are vital to the Town's economy.

ALTERNATIVES

Adopt both resolutions.

Reject one or both resolutions.

RECOMMENDATION

Receive staff report and direct questions to staff.

Receive public comment.

Conduct Council discussion on proposed resolutions.

Adopt Resolution Numbers 15-3301 and 15-3302 Issuing Subpoenas for Certain Records Related to the Rental of Rooms through Online Rental Booking Services AirBnB and HomeAway.

Town of Yountville
Resolution Number 15-3301

Issuing a Subpoena for Certain Records Related to the Rental of Rooms through the Online Rental Booking Service AirBnB

Recitals

- A. Government Code Section 37104 et seq. authorizes the Town Council to issue a legislative subpoena “requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding before it”; and
- B. The Town of Yountville Municipal Code Section 17.28.030 prohibits short term rental uses in many zones of the Town; and
- C. The Town of Yountville Municipal Code Section 3.16 requires that lawful short term rentals collect and remit to the Town a Transient Occupancy Tax (“TOT”) equal to 12% of the rental rate; and
- D. Town staff has reviewed the AirBnB website, and noted multiple listings advertising short term rentals of properties within the Town which are located in zones that prohibit short term rentals, or which appear to be operating without remitting to the Town any TOT; and
- E. The Town Council finds that it is reasonably likely that AirBnB has records of short term rental transactions in the Town which will assist the Town in enforcing its Code and lawfully collecting taxes owed to the Town; and
- F. The Town Council hereby determines that probable cause exists to issue a legislative subpoena for any and all records in the possession of AirBnB relating to short term rentals in the Town; and
- G. This legislative subpoena serves a lawful legislative purpose as it will allow the Town Council to determine how much transient occupancy tax is owned by the Operator and otherwise enforce the Town of Yountville Municipal Code.

Now therefore, the Town Council of the Town of Yountville does resolve as follows:

- 1. The Town Council finds and determines that the foregoing recitals are true and correct and adopts the recitals as findings in support of the actions taken herein.
- 2. The Town Council hereby issues a legislative subpoena commanding AirBnB to appear and/or produce certified copies of the following records covering the time period from January 2015 to October 2015, inclusive, on or before October 31, 2015, at the address indicated in the subpoena:
 - a) a complete listing of all properties listed for short term rental on the AirBnB website located within the Town of Yountville;
 - b) The username associated with each physical address, and that username’s email address, and other contact information;

- c) The dates and duration of stay for each time the structure or property associated with that username was rented;
 - d) The rate charged and funds collected for each time the structure or property was rented;
 - e) The method of payment including the name of institution and type of account, for each time the structure was rented;
 - f) The name of any person who rented any such structure or property, as well as their physical address, email address and other contact information;
 - g) The total gross revenue generated by the person renting the structure or property. All records produced pursuant shall be confidential to the extent provided for in California Government Code Section 6254(i).
3. The legislative subpoena issued by this Resolution shall be in a form provided by the Town Attorney. A draft subpoena form is attached to this Resolution as Exhibit A. The legislative subpoena shall be signed by the Mayor and certified by the Town Clerk. A copy of this resolution shall be attached to such subpoena and shall be incorporated by reference into the subpoena. The subpoena shall be served upon the Operator in the same manner as a subpoena in a civil action.
 4. Failure to comply with the subpoena shall be subject to the remedies set forth in Government Code Section 37104 et seq. or otherwise provided by law.
 5. The Mayor, Town Clerk and the Town Attorney are authorized to take all actions necessary to issue, serve and enforce the subpoena.
 6. The Resolution is hereby adopted and becomes effective and in full force immediately upon adoption.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Yountville, State of California, held on this 20th day of October, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

John F. Dunbar, Mayor

Resolution Number 15-3301

ATTEST:

Michelle Dahme
Town Clerk

EXHIBIT "A"

In re: Airbnb

) LEGISLATIVE SUBPOENA
) (Government Code §37104.)
)
)
)
) Date: November 3, 2015
) Time: 6:00 P.M.
) Place: Council Chambers
) 6550 Yount Street
) Yountville, CA 94599
)
)
)

TO: Airbnb
Attn: Belinda Johnson, General Counsel
888 Brannan Street
San Francisco, CA 94103

1. On October 20, 2015, the Town Council adopted Resolution No. [INSERT HERE] (incorporated by reference into this subpoena). Accordingly, you are hereby ordered to produce certified copies of the Records identified in Section 3 below as follows:

(A) You are ordered to appear in person and to produce true and correct copies of the records which you have in your possession described in Section 3 (“Records”) at the Town of Yountville, Town Council meeting on November 17, 2015 at 6:00 P.M. (or as soon thereafter as the matter may be heard), to be held at 6550 Yount Street, Yountville, CA 94599.

(B) Your personal attendance and the production of documents are required by this subpoena, unless compliance occurs as set forth in Section 2.

2. You are not required to appear at the Town Council meeting on the date and time set forth above if, prior to November 17, 2015, you produce true and correct copies of the Records to Sandra Liston, Planning Director, Town of Yountville, 6550 Yount St. Yountville CA 94599. All copies of documents shall be accompanied by a declaration or affidavit warranting to their accuracy and completeness. A declaration or affidavit meeting the requirements of Code of Civil

Procedure section 2020.430 shall be sufficient. The Town of Yountville will pay all reasonable fees associated with copying the Records.

3. The Records to be produced are as follows. These Records pertain to the transient renting of properties located within the Town of Yountville for the time period from January 2015 to October 2015, inclusive:

- (a) A complete listing of all properties listed for short term rental on the Airbnb website located within the Town of Yountville;
- (b) The username associated with each physical address, and that username's email address, and other contact information;
- (c) The dates and duration of stay for each time the structure or property associated with that username was rented;
- (d) The rate charged and funds collected for each time the structure or property was rented;
- (e) The method of payment including the name of institution and type of account, for each time the structure was rented;
- (f) The name of any person who rented any such structure or property, as well as their physical address, email address and other contact information;
- (g) The total gross revenue generated by the person renting the structure or property.

4. This legislative subpoena relates to the Town's enforcement of its Code, and collection of transient occupancy tax. This legislative subpoena is authorized by Government Code section 37104 *et seq.* Failure to comply with this subpoena is subject to the penalties and procedures set forth in Government Code section 37104 *et seq.* and otherwise provided by law.

TOWN COUNCIL OF THE
TOWN OF YOUNTVILLE

By: _____
John F. Dunbar
Mayor

(seal)

ATTEST:

Michelle Dahme, Town Clerk

Town of Yountville
Resolution Number 15-3302

Issuing a Subpoena for Certain Records Related to the Rental of Rooms through the Online Rental Booking Services HomeAway and VRBO

Recitals

- A. Government Code Section 37104 et seq. authorizes the Town Council to issue a legislative subpoena “requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding before it”; and
- B. The Town of Yountville Municipal Code Section 17.28.030 prohibits short term rental uses in many zones of the Town; and
- C. The Town of Yountville Municipal Code Section 3.16 requires that lawful short term rentals collect and remit to the Town a Transient Occupancy Tax (“TOT”) equal to 12% of the rental rate; and
- D. Town staff has reviewed the HomeAway and VRBO websites, and noted multiple listings advertising short term rentals of properties within the Town which are located in zones that prohibit short term rentals, or which appear to be operating without remitting to the Town any TOT; and
- E. The Town Council finds that it is reasonably likely that HomeAway and VRBO have records of short term rental transactions in the Town which will assist the Town in enforcing its Code and lawfully collecting taxes owed to the Town; and
- F. The Town Council hereby determines that probable cause exists to issue a legislative subpoena for any and all records in the possession of both HomeAway and VRBO relating to short term rentals in the Town; and
- G. This legislative subpoena serves a lawful legislative purpose as it will allow the Town Council to determine how much transient occupancy tax is owned by the Operator and otherwise enforce the Town of Yountville Municipal Code.

Now therefore, the Town Council of the Town of Yountville does resolve as follows:

- 1. The Town Council finds and determines that the foregoing recitals are true and correct and adopts the recitals as findings in support of the actions taken herein.
- 2. The Town Council hereby issues a legislative subpoena commanding HomeAway, to appear and/or produce certified copies of the following records covering the time period from January 2015 to October 2015, inclusive, on or before October 31, 2015, at the address indicated in the subpoena:

- a) a complete listing of all properties listed for short term rental on the HomeAway or VRBO websites located within the Town of Yountville;
 - b) The username associated with each physical address, and that username's email address, and other contact information;
 - c) The dates and duration of stay for each time the structure or property associated with that username was rented;
 - d) The rate charged and funds collected for each time the structure or property was rented;
 - e) The method of payment including the name of institution and type of account, for each time the structure was rented;
 - f) The name of any person who rented any such structure or property, as well as their physical address, email address and other contact information;
 - g) The total gross revenue generated by the person renting the structure or property. All records produced pursuant shall be confidential to the extent provided for in California Government Code Section 6254(i).
3. The legislative subpoena issued by this Resolution shall be in a form provided by the Town Attorney. A draft subpoena form is attached to this Resolution as Exhibit A. The legislative subpoena shall be signed by the Mayor and certified by the Town Clerk. A copy of this resolution shall be attached to such subpoena and shall be incorporated by reference into the subpoena. The subpoena shall be served upon the Operator in the same manner as a subpoena in a civil action.
 4. Failure to comply with the subpoena shall be subject to the remedies set forth in Government Code Section 37104 et seq. or otherwise provided by law.
 5. The Mayor, Town Clerk and the Town Attorney are authorized to take all actions necessary to issue, serve and enforce the subpoena.
 6. The Resolution is hereby adopted and becomes effective and in full force immediately upon adoption.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Yountville, State of California, held on this 20th day of October, 2015 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

John F. Dunbar, Mayor

Resolution Number 15-3302

ATTEST:

Michelle Dahme
Town Clerk

EXHIBIT "A"

In re: HomeAway) LEGISLATIVE SUBPOENA
) (Government Code §37104.)
)
)
) Date: November 3, 2015
) Time: 6:00 P.M.
) Place: Council Chambers
) 6550 Yount Street
) Yountville, CA 94599
)
)

TO: HomeAway, Inc.
Attn: Melissa Pearson Fruge, Vice President and General Counsel
1011 W. 5th Street, Suite 300
Austin, TX 78703

1. On October 20, 2015, the Town Council adopted Resolution No. [INSERT HERE] (incorporated by reference into this subpoena). Accordingly, you are hereby ordered to produce certified copies of the Records identified in Section 3 below as follows:

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2. You are not required to appear at the Town Council meeting on the date and time set forth above if, prior to November 17, 2015, you produce true and correct

copies of the Records to Sandra Liston, Planning Director, Town of Yountville, 6550 Yount St. Yountville CA 94599. All copies of documents shall be accompanied by a declaration or affidavit warranting to their accuracy and completeness. A declaration or affidavit meeting the requirements of Code of Civil Procedure section 2020.430 shall be sufficient. The Town of Yountville will pay all reasonable fees associated with copying the Records.

3. The Records to be produced are as follows. These Records pertain to the transient renting of properties located within the Town of Yountville for the time period from January 2015 to October 2015, inclusive:

- (a) A complete listing of all properties listed for short term rental on the Airbnb website located within the Town of Yountville;
- (b) The username associated with each physical address, and that username's email address, and other contact information;
- (c) The dates and duration of stay for each time the structure or property associated with that username was rented;
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TOWN COUNCIL OF THE
TOWN OF YOUNTVILLE

By: _____

John F. Dunbar
Mayor

(seal)

ATTEST:

Michelle Dahme, Town Clerk