

Agenda Item 768

TESTIMONY

REGULAR AGENDA

REVISE TRANSIENT LODGINGS TAX CODE - SUBPOENA AUTHORITY

IF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (PRINT)

ADDRESS AND ZIP CODE *(Optional)*

Email *(Optional)*

✓ Lightning		
✓ Mary Sipe		

Moore-Love, Karla

From: Dan Jarman <danj@crosswaterstrategies.com>
Sent: Monday, July 03, 2017 3:32 PM
To: Wheeler, Mayor; Commissioner Fritz; Commissioner Fish; Commissioner Eudaly; Commissioner Saltzman; Council Clerk – Testimony
Cc: Henderson, Maurice; Chisek, Kyle; Crail, Tim; Schmanski, Sonia; Dunphy, Jamie; Duhamel, Jamey; Grumm, Matt; Lannom, Thomas
Subject: Airbnb letter regarding item 768 - July 5, 2017
Attachments: AirbnbLettertoPortlandCityCouncil7-3-17 (1).pdf

Please see the attached letter, and let me know if you have any questions. Thank you, Dan

Dan Jarman
Crosswater Strategies
(503) 887-0284
www.crosswaterstrategies.com





July 3, 2017

Portland City Council
% Karla Moore-Love, Clerk for the City Council of Portland
1221 SW 4th Avenue
Room 130
Portland, OR 97204

Re: Proposed ordinance to revise transient lodgings tax code

Dear Mayor Wheeler and City Commissioners:

On behalf of Airbnb, we urge the City Council to reject the proposed ordinance regarding subpoenas.

We believe a more productive effort would be for the City to work with the short-term rental industry on comprehensive changes to Portland's law with the shared goal of increasing short-term rental permitting compliance, protecting long-term housing stock and strengthening Portland's communities through home sharing. As part of this comprehensive effort, we are willing to work with the city to share data that will make it easier for the city to enforce the rules while protecting hosts' privacy.

We've enjoyed a productive partnership with Portland. We also believe in paying our fair share of taxes, which is why we began voluntarily collecting and remitting taxes on behalf of our community in 2014.

However, the City Council should reject the proposed ordinance because it conflicts with, and is preempted by, the federal Stored Communications Act ("SCA"), which was passed to protect the due process and privacy rights of users of communications platforms like Airbnb. Specifically, the proposed ordinance purports to compel platforms to disclose a much broader range of detailed user information than is permitted by the SCA.

Additionally, this action will not solve the underlying challenges in the current short-term rental regulations. Rather than attempt to address the problematic ordinance with a patchwork of amendments, we urge the City of Portland and Portland City Commissioners to work with short-term rental platforms on a holistic solution.

We believe it's important to work together to find the right solutions for Portland. We remain willing to discuss creating rules and regulations that benefit all.



I am available to answer or address any questions or concerns as you continue to deliberate on issues regarding short-term rentals.

Thank you for your time.

Sincerely,

Laura Spanjian
Northwest Policy Director
Airbnb

Moore-Love, Karla

From: Lynda Gardner <LyndaGard@live.com>
Sent: Friday, June 30, 2017 4:03 PM
To: Moore-Love, Karla; Council Clerk – Testimony
Cc: Wheeler, Mayor; Commissioner Eudaly; Commissioner Fish; Commissioner Fritz; Commissioner Saltzman
Subject: Testimony in opposition to agenda Item # 768
Attachments: HomeAway written testimony to PDX City Council 2017-06-30.PDF

Dear Ms. Moore-Love,

I am a lobbyist for HomeAway. Please file the attached written testimony of HomeAway in opposition to Item #768, which will be on the Portland City Council agenda next Wednesday, July 5th.

Please let me know if you need any additional information.

Best regards,

Lynda Gardner
Lobbyist for HomeAway

Lynda Nelson Gardner, Esq.
Gardner & Gardner, Attorneys, P.C.
111 SW Columbia St., Suite 810
Portland, Oregon 97201

lyndagard@live.com
Office: (503) 224-3024
Cell: (503) 740-6629



June 30, 2017

Portland City Council
c/o Karla Moore-Love, Clerk for the City Council of Portland City Hall
1221 SW 4th Avenue, Room 110
Portland, OR 97204

Re: *Proposed Subpoena Ordinance*

Dear City Council Commissioners,

On behalf of HomeAway.com, Inc. (“HomeAway”), we urge the City Council to reject the Proposed Ordinance regarding subpoenas, which, as applied to hosting platforms like HomeAway, is preempted by a federal law, the Stored Communications Act (“SCA”), 18 U.S.C. § 2701 *et seq.*

HomeAway operates several vacation rental websites that allow individuals to search for and rent properties from listing owners.

The Proposed Ordinance would amend the Portland City Code to permit the City “[f]or the purposes of determining compliance with this Chapter,” i.e., the chapter governing the City’s Transient Lodging Tax, to issue subpoenas “to any Operator or Person for the production of all information, documents, reports, records, accounts, papers, and other data and documentary evidence, in whatever format or however stored, necessary to ensure compliance with this chapter.” Ordinance § 6.04.130(C). The Proposed Ordinance would put the burden on the subpoena recipient to file a motion to quash the subpoena to excuse compliance.

The Council should reject the Proposed Ordinance because it conflicts with, and is preempted by, the SCA. The SCA prohibits providers of electronic communications services and remote computing services from disclosing customer information absent the requisite legal process. If a provider violates these restrictions, it can be sued by its customers. HomeAway is both an electronic communications services and remote computing services under the statute and therefore bound by these prohibitions. Indeed, in recent litigation involving the City, a federal court ruled that the SCA covered HomeAway as a provider of both services.

Under 18 U.S.C. § 2703(c)(2), HomeAway may disclose the following information upon issuance of an “administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena”: “(A) name; (B) address; (C) local and long distance telephone connection records, or records of session times and durations; (D) length of service (including start date) and types of service utilized; (E) telephone or instrument number or other subscriber number or identity, including any temporarily

assigned network address; and (F) means and source of payment for such service (including any credit card or bank account number.”

The Proposed Ordinance conflicts with the SCA and would be ineffective for at least two reasons.

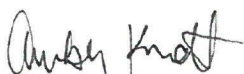
First, the administrative subpoenas contemplated by the Proposed Ordinance are not authorized by a “Federal or State statute,” as Section 2703(c)(2) of the SCA requires. The fact that the City Charter may authorize the City to exercise police powers to the same extent as the State or to issue subpoenas does not alter this conclusion because the City Charter is not a “Federal or State Statute.” To our knowledge, there is no federal or state statute that authorizes the City to issue administrative subpoenas.

Second, the categories of information the City is permitted to subpoena under the Proposed Ordinance are far broader than what Section 2703(c)(2) permits HomeAway to disclose. The Proposed Ordinance includes “all information, documents, reports, records, accounts, papers, and other data and documentary evidence, in whatever format or however stored, necessary to ensure compliance with this Chapter.” In contrast, Section 2703(c)(2) permits the disclosure of six discrete categories of information, as outlined above.

For these reasons, HomeAway respectfully urges the Council not to pass the Proposed Ordinance. HomeAway has indicated that it is willing to work with the City to find appropriate and lawful ways to share information, but the Proposed Ordinance is neither. It would be far better for both the City and HomeAway to work cooperatively and within the bounds of the law to reach a mutually satisfactory solution.

Please do not hesitate to contact me should you have any questions.

Sincerely,



Amber Knott

Director, State & Local Government Affairs

cc: Mayor Ted Wheeler
Commissioner Chloe Eudaly
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Dan Saltzman