



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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**File #:** 19-0267, **Version:** 1

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### **SUBJECT**

Introduce an Ordinance Adding Chapter 1.07 (Administrative Subpoena) to the Sunnyvale Municipal Code Authorizing City Staff to Issue Administrative Subpoenas in Connection with Code Enforcement Investigations

### **DISCUSSION**

Subpoenas are a legally enforceable order that can be used to compel a person to appear and testify at a legal proceeding and/or produce documents or records. There are three types of subpoenas: judicial, legislative, and administrative.

- Judicial subpoenas are issued by judges or attorneys in connection with a matter that is before the court.
- Legislative subpoenas are issued by a legislative body. For example, Section 613 of the Sunnyvale City Charter empowers the City Council to subpoena witnesses to appear at public hearings.
- Administrative subpoenas are issued by the staff of government agencies to assist in the performance of the agency's duties. Federal, state, and local agencies commonly use administrative subpoenas in order to gather information needed for regulatory enforcement. Although public employees do not have inherent authority to issue subpoenas, the authority can be granted by statute, local ordinance or charter provision.

Administrative subpoenas are different than search warrants and inspection warrants, which can only be issued by a judge. A subpoena legally compels a person to produce documents for inspection, but it does not allow Public Safety or other City staff to enter, search, or seize any private property. A subpoena can also compel a witness to testify at a code enforcement or other administrative hearing. The City would need to take additional legal steps to enforce the subpoena, such as citing the person for violation of the Sunnyvale Municipal Code (SMC). This provides judicial oversight of the reasonableness and legality of the subpoena.

In March 2018, the First District Court of Appeal upheld the City and County of San Francisco's use of an administrative subpoena to obtain documentation from Homeaway.com, Inc. The subpoena and enforcement action were initiated as part of San Francisco's effort to curb illegal short term rentals. Since that time, the Office of the City Attorney, along with Neighborhood Preservation, have researched drafting an administrative subpoena ordinance in order to support code enforcement efforts in the City for Council's consideration.

Currently, the SMC provides that administrative subpoenas may be issued in certain limited circumstances, including compliance with utility users tax (SMC section 3.12.220) and minimum wage (SMC section 3.80.080). The San Francisco case involved an administrative subpoena that was issued to the short-term rental platform to verify compliance with San Francisco's short-term

rental ordinance. Neighborhood Preservation anticipates that the authority to subpoena records and books in pending matters may be a useful tool in enforcement efforts involving companies that are suspected to be operating in violation of the SMC.

The recent San Francisco case emphasizes the utility of administrative subpoenas by local government as a tool for code compliance, not just with respect to short-term rentals but with other regulatory investigations such as unlawful waste hauling, revocation of use permits, payment of transient occupancy taxes and business license taxes, and massage establishment permits.

## **EXISTING POLICY**

### Sunnyvale General Plan

Chapter 4, Community Character, Policy CC-1.6 Maintain City neighborhoods as safe, healthy places to live.

Chapter 5, Housing. Goal HE-2.1 Encourage property owners to maintain rental and ownership units in sound condition through the neighborhood preservation and rehabilitation programs.

City Charter section 613 (Proceedings). The City Council shall establish rules for the conduct of its proceedings and may sanction members or other persons for disorderly or improper conduct at any meeting. It shall have the power and authority to compel the attendance of witnesses, to examine them under oath, and to compel the production of evidence before it. Subpoenas may be issued in the name of the City and be attested by the City Clerk. Disobedience of such subpoenas, or the refusal to testify (upon other than constitutional grounds), shall constitute a misdemeanor.

SMC section 3.12.220(b) The tax administrator may issue an administrative subpoena to compel a person to deliver, to the tax administrator, copies of all records deemed necessary by the tax administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business.

SMC section 3.80.080(c) Investigation. The city shall be responsible for investigating any possible violations of this chapter by an employer or other person. The city shall have the authority to inspect workplaces, interview persons and request the city attorney to subpoena books, papers, records, or other items relevant to the enforcement of this chapter.

## **ENVIRONMENTAL REVIEW**

The adoption of this ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that there is no possibility that it may have an impact on the environment. (CEQA Guidelines Section 15061(b)(3))

## **FISCAL IMPACT**

The primary fiscal impact to implement the ordinance can be absorbed with current staff resources.

## **PUBLIC CONTACT**

Public Contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk, and on the City's website.

### **ALTERNATIVES**

1. Introduce an Ordinance Adding Chapter 1.07 (Administrative Subpoena) to the Sunnyvale Municipal Code and find that the action is exempt under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).
2. Introduce an Ordinance Adding Chapter 1.07 (Administrative Subpoena) to the Sunnyvale Municipal Code with modifications and find that the action is exempt under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).
3. Do not introduce the Ordinance and provide alternative direction to staff.

### **RECOMMENDATION**

Alternative 1: Introduce an Ordinance Adding Chapter 1.07 (Administrative Subpoena) to the Sunnyvale Municipal Code and find that the action is exempt under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

#### **Staff**

Prepared by: Anais Martinez Aquino, Assistant City Attorney

Reviewed by: Christy Gunvalsen, Neighborhood Preservation Manager

Reviewed by: Jim Choi, Captain, Department of Public Safety

Reviewed by: Carl Rushmeyer, Deputy Chief, Department of Public Safety

Reviewed by: Phan Ngo, Director, Department of Public Safety

Reviewed by: John Nagel, City Attorney

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENT**

1. Ordinance