



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-22

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May 20, 2014

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by adding Subsection 5.48.010.F relating to hotel and motel rentals read the first time and laid over to the next regular meeting of the City Council for final reading; declaring the urgency thereof; and declaring that this ordinance shall take effect immediately. (Citywide)

DISCUSSION:

The attached amendment to Long Beach Municipal Code Section 5.48.010 regulating the inspection of hotel and motel registers is proposed to address an issue identified by the federal court in *Patel v. City of Long Beach* (DC No. 2:08-cv-02806-ABC-VBK).

In an effort to deter prostitution and other illegal activity, the Code requires that hotel owners collect and record information about guests, including name, address, arrival and departure information, the rate and method of payment and valid identification. Currently, the Municipal Code requires these records to be made available to any Long Beach police officer for inspection without consent or a search warrant. Failure to comply with an officer's demand is punishable as a misdemeanor.

Motel owners challenged the Code section, asserting a violation of the Fourth Amendment right to be free from warrantless searches. The trial court held for the City, and the plaintiffs appealed. The Ninth Circuit Court of Appeals reversed the decision, finding that a police officer's non-consensual inspection of business records constituted a Fourth Amendment search, and found that Section 5.48.010 did not contain a required procedural safeguard: the opportunity for judicial review. In order to comply with the Fourth Amendment, the City must either obtain an inspection or search warrant, or otherwise give hotel operators the opportunity to challenge the reasonableness of an officer's demand for inspection.

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The court's ruling is consistent with their recent ruling in *Patel v. City of LA* (738 F.3d 1058, 9th Cir., 2013) involving an ordinance similar to Long Beach's.

Accordingly, language has been added to Section 5.48.010 clarifying that an inspection or search warrant must be obtained in cases where consent is refused or cannot be obtained. It is proposed that this change be adopted immediately, as an urgency ordinance, to permit expeditious enforcement.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By



AMY R. WEBBER
Deputy City Attorney

REDLINE

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5.48.010 Hotel and motel rentals.

A. Every owner, manager or operator of any hotel or motel shall keep a register in which shall be entered the name and address of each guest. No owner, manager or operator of any hotel or motel shall let, lease, or rent a hotel or motel room to any person without verifying the guest has valid identification and has accurately and legibly completed the register and/or registration card with the information that corresponds to the valid identification presented by the guest. Said register shall also indicate the day, month, year and hour of arrival of each guest and the number or other identifying symbol of location of the room, dwelling unit or space rented or assigned each guest and the date that such guest departs. All such registers shall be maintained for a period of three (3) years from and after the date of entry. No person shall alter, deface or erase such a register so as to make the information recorded therein illegible or unintelligible.

B. No owner, manager, operator, employee, or agent of any hotel or motel shall rent or assign any room, dwelling unit or space in said hotel or motel to any person until such time as said person shall have registered as set forth in Subsection 5.48.010.A.

C. No owner, manager, operator, employee or agent of any hotel or motel shall rent any guestroom or dwelling unit in such hotel and motel more than once within a twelve (12) hour period. For purposes of this Section the terms "guestroom", "dwelling unit", "hotel", and "motel" shall be as defined in Chapter 21.15 of this Code.

D. No person shall provide any false information, register under a fictitious name or show or use a forged, altered or counterfeit identification when procuring a hotel or motel room within the City. The hotel or motel agent and/or employee shall be responsible for verifying the authenticity of the identification used by the person letting, leasing or renting the hotel or motel room.

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E. Inspection of hotels and motels that are open for business may be made at any reasonable hour by any member of the Police Department or by any employee of the department of financial management for the purpose of determining that the provisions of this Section are met.

F. Right to Judicial Review.

If permission to inspect is refused or cannot be obtained, a valid court order for inspection shall be obtained from a court of competent jurisdiction upon a showing of probable cause to believe that a violation of this Chapter may exist.

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING SUBSECTION 5.48.010.F RELATING TO HOTEL AND MOTEL RENTALS; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

The City Council of the City of Long Beach ordains as follows:

Section 1. Subsection 5.48.010.F is added to the Long Beach Municipal Code to read as follows:

F. Right to Judicial Review.

If permission to inspect is refused or cannot be obtained, a valid court order for inspection shall be obtained from a court of competent jurisdiction upon a showing of probable cause to believe that a violation of this Chapter may exist.

Section 2. Declaration of Urgency. This ordinance is an emergency measure, and it is urgently required in order to bring the City's Municipal Code into compliance with the ruling of the Ninth Circuit Court of Appeal in *Patel v. City of Long Beach* (No. 09-56099; DC No. 2:08-cv-02806-ABC-VBK).

Section 3. This ordinance is an emergency ordinance duly adopted by the City Council on _____, 2014, by a vote of at least five (5) of its members and shall take effect immediately. The City Clerk shall certify to a separate roll

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1 call and vote on the question of the emergency of this ordinance and to its passage by
2 the vote of five (5) members of the City Council of the City of Long Beach, and cause the
3 same to be posted in three conspicuous places in the City of Long Beach.

4
5 Section 4. This ordinance shall also be adopted by the City Council as a
6 regular ordinance, to the end that in the event of any defect or invalidity in connection
7 with the adoption of this ordinance as an emergency ordinance, the same shall,
8 nevertheless, be and become effective on the thirty-first day after it is approved by the
9 Mayor.

10
11 Section 5. The City Clerk shall certify to the passage of this Ordinance
12 by the City Council and cause it to be posted in three conspicuous places in the City of
13 Long Beach.

14 I hereby certify that on a separate roll call and vote which was taken by the
15 City Council of the City of Long Beach upon the question of emergency of this ordinance
16 at its meeting of _____, 2014, the ordinance was declared to be an
17 emergency by the following vote:

18 Ayes: Councilmembers: _____
19 _____
20 _____
21 _____
22 Noes: Councilmembers: _____
23 _____
24 Absent: Councilmembers: _____
25 _____

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I further certify that on _____, 2014, upon a roll call and
vote on first reading of the ordinance, it was adopted by the City Council of the City of
Long Beach by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

I further certify that the foregoing ordinance was thereafter adopted on final
reading by the City Council of the City of Long Beach at its meeting of
_____, 2014, by the following vote

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor