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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION
 16

17 AIRBNB, INC. and HOMEAWAY.COM,
 18 INC.,

19 Plaintiffs,

20 vs.

21 CITY AND COUNTY OF SAN
 22 FRANCISCO,

23 Defendant.
 24

Case No. 3:16-cv-03615-JD

**[PROPOSED] ORDER GRANTING
 PLAINTIFFS' JOINT MOTION FOR
 A PRELIMINARY INJUNCTION**

Judge: Hon. James Donato
 Courtroom: 11
 Time: Oct. 6, 2016 at 10:00 am

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[PROPOSED] ORDER

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2 Before the Court is the Motion for a Preliminary Injunction (“Motion”) of Plaintiffs Airbnb,
3 Inc. and HomeAway.com, Inc. (“Plaintiffs”). Having considered the papers and the entire record,
4 the Court finds, concludes, and orders as follows:

5 1. Plaintiffs have shown a likelihood of success on the merits of their challenge
6 to Sections 41A.5(e) and 41A.5(g)(4)(C)-(E) of the San Francisco Administrative Code (the
7 “Ordinance”), pursuant to 42 U.S.C. § 1983, the Declaratory Judgment Act, 28 U.S.C. § 2201, and
8 the court’s equitable powers, and Plaintiffs have also shown a likelihood of irreparable harm absent
9 injunctive relief and that the balance of the equities and the public interest tip in their favor.

10 2. Plaintiffs have shown a likelihood of success on their claim that the
11 Ordinance violates 47 U.S.C. § 230 and the Supremacy Clause because it would permit the
12 imposition of civil and criminal penalties on websites in their roles as publishers and speakers of
13 third-party rental listings and other information provided by third parties.

14 3. Plaintiffs have shown a likelihood of success on their claim that the
15 Ordinance violates the First and Fourteenth Amendments of the United States Constitution because
16 it would place content-based restrictions on speech by imposing civil and criminal penalties on
17 Plaintiffs as a result of the publication of third-party content, and the restrictions the Ordinance
18 would impose are not narrowly tailored to promote a compelling or substantial interest on the part of
19 Defendant City and County of San Francisco (“the City”).

20 4. Plaintiffs have shown a likelihood of success on their claim that the
21 Ordinance violates the First Amendment and Due Process Clause of the Fourteenth Amendment of
22 the United States Constitution because it purports to impose strict criminal liability for the
23 publication of third-party listings in the absence of proof of mens rea or scienter.

24 5. Plaintiffs have shown a likelihood of success on their claim that the
25 Ordinance violates the First Amendment and Due Process Clause of the Fourteenth Amendment of
26 the United States Constitution because the Ordinance is unconstitutionally vague and fails to
27 provide an ordinary person with notice of the conduct it punishes.

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1 6. Because the Ordinance will result in the immediate infringement of First
2 Amendment rights, the Court may presume that irreparable harm will result. In addition, Plaintiffs
3 have shown that they will suffer irreparable harm if the City is allowed to continue enforcing the
4 Ordinance because they will be forced to choose between risking criminal liability and censoring
5 third-party speech on their websites to ensure that no such conduct runs afoul of the Ordinance.
6 Plaintiffs also face irreparable harm because they face threats of prosecution and significant fines
7 under a preempted and unconstitutional law, and disruption to their businesses and a loss of
8 consumer goodwill.

9 7. There will be little harm to the City if it is forced to forgo enforcement of the
10 Ordinance against hosting platforms, as it can still enforce its short-term rental laws against property
11 owners and hosts who violate it. And any harm to the City is minimal in comparison to the
12 substantial threats to their free speech rights that Plaintiffs face from enforcement of the Ordinance
13 as well as threats of criminal and civil penalties under a preempted and unconstitutional law. The
14 balance of the equities therefore tips in Plaintiffs' favor.

15 8. An injunction is in the public interest. The public interest is served by “the
16 Constitution’s declaration that federal law is to be supreme.” *Am. Trucking Ass’ns, Inc. v. City of*
17 *Los Angeles*, 559 F.3d 1046, 1059-60 (9th Cir. 2009). In addition, ““it is always in the public
18 interest to prevent the violation of a party’s constitutional rights.”” *Melendres v. Arpaio*, 695 F.3d
19 990, 1002 (9th Cir. 2012).

20 THEREFORE, the Court ORDERS as follows:

21 (A) Plaintiffs’ Motion is GRANTED.

22 (B) Defendant City and County of San Francisco and its agents, servants, employees, and
23 attorneys are hereby enjoined from taking any action—including, but not limited to, any
24 investigation, arrest, citation, prosecution, or penalty—to enforce against Plaintiffs Sections
25 41A.5(e) and 41A.5(g)(4)(C)-(E) of the Ordinance, as well as the other portions of Chapter 41A of
26 the San Francisco Administrative Code providing for enforcement and penalties based on violations
27 of those provisions.

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1 (C) This injunction will issue without the requirement of any security bond because
2 Plaintiffs have shown a likelihood of success on the merits of their claims under the
3 Communications Decency Act and the First and Fourteenth Amendments. The Court additionally
4 finds that the City will suffer little or no harm from ceasing enforcement of the Ordinance against
5 hosting platforms.

6 (D) The injunction shall take effect immediately and remain in effect during the duration
7 of this action and through final judgment, absent reversal or amendment by appellate order.

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9 IT IS SO ORDERED.

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11 Dated: _____

Hon. James Donato
United States District Judge

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