THE CITY OF WINNIPEG

THE ACCOMMODATION TAX BY-LAW NO. 70/2008

A By-law of THE CITY OF WINNIPEG to impose a tax on accommodation of short duration in order to support tourism initiatives.

WHEREAS *The Municipal Revenue (Grants and Taxation) Act* provides that the council of a municipality may pass by-laws imposing such forms of taxes as it deems advisable within the municipality including, without restricting the generality of the foregoing, taxes on persons who purchase hotel and motel accommodation;

AND WHEREAS a tax on accommodations of short duration within the City of Winnipeg is intended to generate revenue to support Destination Winnipeg, the Winnipeg Convention Centre, special events as well as other organizations, projects and events that will encourage tourists to visit Winnipeg;

NOW THEREFORE THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

Short title

1 This By-law may be referred to as **the Accommodation Tax By-law**.

Definitions

2 In this By-law

"accommodation" means lodging, and the right to use lodging, that is provided for consideration, whether or not the lodging is actually used;

"accommodation tax" means the tax imposed by section 3 of this By-law;

"all-inclusive vacation package" means a vacation arrangement that, for a single price, includes at least one night's lodging in Winnipeg, round-trip transportation to or from Winnipeg and at least one other location, and meals, drinks and entertainment;

"establishment" means a business that provides accommodation at a particular location;

"lodging" includes:

(a) the use of a bedroom, a suite of rooms containing a bedroom or the use of a bed within a bedroom;

(b) the use of one or more additional beds or cots in a bedroom or suite; and

(c) food, drink, entertainment, use of equipment or facilities, and other amenities and benefits where these are included in the purchase price without additional charge to the purchaser;

"operator" means a person who sells, offers for sale, or otherwise provides accommodation;

"purchase price" means the price for which accommodation is purchased, including the price paid in money, the value of goods provided or services rendered or other consideration accepted by the operator in return for the accommodation provided, but does not include the goods and services tax imposed by the Government of Canada nor the retail sales tax imposed by the Province of Manitoba;

"purchaser" means a person who purchases accommodation;

"tax collector" means the Director of Assessment and Taxation of the City of Winnipeg and any employee of the City appointed by the Director to administer or enforce all or part of this By-law;

"time-share arrangement" means lodging that is purchased pursuant to a written agreement, typically known as a time share agreement, that

(a) has a term of two or more consecutive years;

(b) fixes the location and time of occupancy;

(c) fixes the total price and the terms and conditions for the payment of the total price for the accommodation; and

(d) provides for a cumulative number of nights of occupancy over the course of the agreement that is more than 30 nights.

Application of tax

3(1) Subject to this section, a purchaser must, at the time of purchasing accommodation, pay an accommodation tax in the amount of 5% of the purchase price of accommodation provided for a continuous period of 30 nights or less whether provided in a hotel, motel, inn, housekeeping unit, lodging house, boarding house, rooming house, bed and breakfast establishment, resort, hostel, dormitory or any place in which accommodation is provided.

3(2) For greater certainty, the continuous period referred to in subsection (1) is not disrupted by the purchase of different rooms, suites, beds or other lodging in the same establishment in the course of the continuous period.

3(3) The accommodation tax imposed by subsection (1) does not apply to:

(a) accommodation provided in establishments in which fewer than four bedrooms are available for purchase separately;

(b) accommodation where the purchase price is $30 or less per night or $210 or less per week;

(c) accommodation provided to patients or residents in a hospital, a sanatorium, a facility designated by regulations under *The Mental Health Act*, a personal care home licensed under *The Health Services Insurance Act* or a residential care facility licensed under *The Social Services Administration Act;*

(d) accommodation provided to a student by an educational institution while the student is registered at and attending the institution;

(e) accommodation supplied by employers to their employees in premises operated by or on behalf of the employer;

(f) a time-share arrangement;

(g) tent or trailer sites supplied by a campground, tourist camp or trailer park;

(h) a hospitality room in an establishment that

(i) does not contain a bed;

(ii) is not in a suite that contains a bed; and

(iii) is used for displaying merchandise, holding meetings or entertaining;

(i) elements of an all-inclusive vacation package that

(i) do not take place in, or on the grounds of, the establishment providing the accommodation; and

(ii) can be reasonably distinguished from the elements of the all-inclusive vacation package that are related to the accommodation.

3(4) Where clause 3(3)(i) (all-inclusive vacation packages) applies, the tax imposed by subsection 3(1) is imposed on that portion of the total purchase price of the all-inclusive vacation package that is reasonably attributable to the elements that are related to the accommodation.

Tax collected by operator

4(1) An operator must, as an agent for the tax collector, collect the accommodation tax from the purchaser at the time the accommodation is purchased.

4(2) The amount of the accommodation tax must be shown as a separate item or charge on a bill, receipt, invoice or similar document issued by the operator in respect of accommodation on which the tax is imposed.

Tax remitted and statement submitted by operator monthly

5(1) An operator must remit to the tax collector at the end of every month for each establishment the operator operates:

(a) the amount of the accommodation tax that was collected by the operator during that month;

(b) the amount of the accommodation tax that should have been collected by the operator during that month; and

(c) the amount that was collected in error by the operator during that month and that has not been refunded to the purchaser.

5(2) An operator must, on a form provided by the tax collector, submit to the tax collector at the end of every month a monthly statement for each establishment the operator operates, which statement must contain information reasonably required by the tax collector to administer or enforce this By-law including:

(a) the total revenue earned by the establishment from the sale of accommodations during the month;

(b) the amount of revenue earned from the sale of accommodations during the month that is not subject to the tax;

(c) the amount of revenue earned from the sale of accommodations during the month that is subject to the accommodation tax;

(d) the total accommodation tax collected; and

(e) the total accommodation tax remitted.

5(3) Unless otherwise permitted by the tax collector, the obligation to provide a monthly statement applies even when no taxes have been collected.

5(4) The obligation in subsection (1) to remit taxes and the obligation in subsection (2) to submit a monthly statement must be met no later than the 20th day of the month following the month in which the taxes were payable and for which the monthly statement is applicable.

Refunds

6(1) The tax collector shall refund to an operator all or a portion of an amount that was collected as if it were the accommodation tax if, within one year of the collection and remittance of the amount, the operator provides proof that:

(a) the amount was collected notwithstanding that it was not payable as an accommodation tax;

(b) the amount was remitted to the tax collector; and

(c) the amount has been refunded by the operator to the purchaser.

6(2) In complying with subsection (1), the tax collector may deduct the amount of the refund payable to the operator from the amount of the tax that the operator is required to remit under this By-law.

6(3) The tax collector shall refund to a purchaser all or a portion of an amount that was paid as if it were the accommodation tax if the purchaser applies for the refund within one year of the payment of the tax and provides evidence that:

(a) the amount was paid notwithstanding that it was not payable; and

(b) the operator has refused to refund the amount to the purchaser;

so long as the amount was remitted by the operator to the tax collector and has not been refunded to the operator by the tax collector.

6(4) The tax collector shall refund to a purchaser all of the accommodation tax paid in respect of accommodation purchased by or on behalf of an individual or one or more of the individual's family members during such time as the individual is in Winnipeg to receive medical treatment or to undergo testing at a hospital or Provincially-approved medical facility or to seek medical advice or treatment from a medical specialist if:

(a) the individual and, where applicable, the individual's family member or members do not reside in Winnipeg and have purchased temporary accommodation in Winnipeg while the individual is receiving medical treatment at a hospital, undergoing testing at a hospital, or seeking specialist medical advice or treatment; and

(b) within one year of the accommodation having been purchased, the tax collector receives a letter from the hospital, medical facility or a physician licenced to practise medicine in the Province of Manitoba stating that:

(i) the individual and the individual's family member or members do not reside in Winnipeg; and

(ii) the individual was required to be in Winnipeg to receive medical treatment at a hospital, undergo testing at a hospital, or seek specialist medical advice or treatment on or between specific dates.

Inspection, audit and collection

7 The tax collector has the powers of a designated employee under The City of Winnipeg Charter for the purposes of administering and enforcing this By-law and, without restricting any other powers he or she may have, may, for the purpose of enforcing this By-law, he or she, or agents acting under his or her authority, may enter any establishment

(a) to collect the tax imposed by this By-law, if necessary;

(b) to audit the books, records and accounts of the operator for the purpose of ascertaining the amount of tax to be collected and remitted;

(c) to place in the lobby or other part of the establishment such notices regarding the tax as the tax collector may consider necessary;

(d) to require the operator to produce for inspection any book, contract, agreement, letter, paper or document relating to the establishment, the accommodation provided or any other matter relating to this By-law; and

(e) make and remove copies of any documents or records required in the administration of this By-law.

Appeals

8 Where an order or decision under this By-law is subject to appeal, the appeal may be made in accordance with *The City of Winnipeg Charter* to the Standing Policy Committee on Finance.

Address for service

9 Where an address for service under this By-law is required, one of the following shall be used:

(a) if the person to be served is an operator, the street address of the establishment of which he or she is the operator;

(b) if the person to be served is not an operator, the address provided by that person in communication with the tax collector.

Interest penalties

10(1) A penalty equivalent to the product of 1.25% and the amount of unremitted taxes shall be applied to taxes imposed by section 3 that are required to be remitted by subsection 5(1) but have not been remitted by the date specified in subsection 5(4).

10(2) The penalty imposed by subsection (1) shall be compounded monthly on the 20th day of each succeeding month.

10(3) Once compounded, the penalties form part of the unremitted taxes and in subsequent months, penalties shall be charged upon the previous month's compounded amount until the taxes are remitted.

Other penalties

11 Every person who fails to comply with the provisions of this By-law is guilty of an offence and, in addition to being liable for payment of the penalty imposed by section 10, is liable on summary conviction

(a) for failing to collect or remit the tax, to a fine that is not less than double the amount of the tax that should have been collected and remitted to the City Treasurer;

(b) for failing to comply with other provisions of this By-law,

(i) if an individual, to a fine not exceeding $1,000 or to imprisonment for a term not exceeding six months, or to both fine and imprisonment;

(ii) if a corporation, to a fine not exceeding $50,000.00.

Transition measure

12 As a transition measure, upon application by a purchaser prior to January 1, 2009, the tax collector shall refund to a purchaser the accommodation tax paid in respect of accommodation

(a) that was purchased by written agreement entered into before March 26, 2008; and

(b) that was subsequently resold by the purchaser pursuant to one or more written agreements entered into prior to March 26, 2008:

(i) which do not require the subsequent purchaser to pay applicable taxes; and

(ii) in which the purchase price is fixed and cannot be changed to take into account the subsequent imposition of the accommodation tax.

Coming into force

13 This By-law comes into force on June 1, 2008.

DONE AND PASSED, in Council assembled, this 23rd day of April, 2008.