SUBMISSION TO EXECUTIVE POLICY COMMITTEE MEETING FEBRUARY 14, 2023

RE: SHORT TERM RENTAL (AKA TEMPORARY ACCOMODATION)

ZONING, REGULATION, LICENSING AND ENFORCEMNT

A. INTRODUCITON AND SUMMARY

My name is Judith Blair. My husband and I own and reside at 674 Wellington Crescent in Winnipeg, Zoned R1, single family. I am a retired family lawyer, formerly of MLT Aikins LLP, and I have taken a keen interest in this issue as the result of a neighbouring stately home, owned by a corporation, (the principle of whom is a resident of Gross Isle MB), and advertised as an Air BNB, providing accommodation for up to 12 people, renting out by the night, by the room or whole house.

I presented a written submission for the October 13, 2021 Meeting of the Standing Committee on Property, Planning, and Development, outlining the pertinent provisions of the City of Winnipeg Charter, Plan Winnipeg, and Winnipeg Zoning By-law 200-2006, dealing with the issue of STRs in areas zoned R1.

That is my focus again, although most of my comments will also apply to STRs in other Zoning districts.

I received all of the materials from the City on February 8, 2023, which was insufficient time to review the voluminous material provided, which I did wish to do before preparing my Submission. (In addition, and this may be an issue personal to me, I could not open the Appendices to the report, except for a very narrow band to the right of the page.) That said, I am happy to have the opportunity to make a submission for February 14, 2023 meeting of the Executive Policy Committee.

I observe that the Winnipeg Public Service has undertaken a Herculean task, and attempted to balance the interests of the inhabitants of the City of Winnipeg on one hand, with the business wishes of STR owners/operators, and tourists' wishes for alternate accommodation options, on the other hand.

They have done a commendable job. My comments primarily relate to "work-arounds" or loop-holes which exist to undermine the goals of the regime to ensure that risks are minimized and accountability is maximized.

I urge the Executive Policy Committee to recommend clear, strong measures to close the "loop-holes", create very punitive financial sanctions for breaches, particularly repeat offences, and operating without a license, and, in all considerations to bear in mind the jurisdiction of the City as conferred by the Province in the specific provisions of the City of Winnipeg Charter.

The City of Winnipeg Charter, S. 236(1) and (2) *mandate* the City to pass by-laws *to control or prohibit the use of property,* and the *power to regulate business in the City in the interest of the health, safety, welfare and protection of persons, or in the interests of property, or minimizing nuisances*, and empowers the City to pass by-laws *regulating activities and things on private property, that are in the opinion of council are or may become a nuisance or a detriment to persons or property*.

Additional Key sections of the Charter are sections 5 and 6 thereof, particularly s. 5(1) (c)and (d):

s.5(1) "The purposes of the City are

a) provide good government for the city;

b) provide services…

c) to develop and maintain safe, orderly, viable and sustainable communities; and

d) promote and maintain the health, safety and welfare of the inhabitants.

In the consideration of how STRs should be permitted/prohibited, licensed, regulated, and enforced, these purposes in 5 c) and d) must be front of mind.

We inhabitants of Winnipeg are entitled pursuant to The City of Winnipeg Charter, to the City *prioritizing* our health, safety and welfare, and our safe, orderly, viable and sustainable communities. Our homes are our sanctuaries, our places of respite, and in which we have invested our greatest resources, financially and emotionally. Our communities need to be places of healthy, safe and beneficial social contact.

Nowhere in the Charter is it stated that a purpose of the City is to promote the wishes of tourists, and specifically that they have accommodation options, at the expense of the health, safety and welfare of inhabitants of the City and/ or the safe and viable communities of the city. And there is no evidence that tourism in Winnipeg would be harmed or jeopardized by a robust regime to permit/prohibit STRs, regulate them judiciously, and enforce the regulations. The opposite seems more likely.

No where does the Charter give protection or rights to businesses generally or STR businesses specifically (especially business who have been operating without a license). Quite the opposite. **The City has the power to regulate businesses under s. 148 of the Charter *"in the interest of the health, safety, welfare and protection of persons, or in the interests of property or minimizing nuisances."***

At the October 13, 2021 Standing Committee Meeting in which I participated by Zoom, and in the on-line survey (in which 143 of 843 participants self-identified as STR hosts/ operators), both sides advanced their positions strenuously. It is typical to try to find a middle ground between parties. It appears that the Winnipeg Public Service has endeavored to find a middle ground between the STR owners/operators and inhabitants of Winnipeg. And generally the proposal is sound. However, there are areas of potential work- arounds, ways in which a regime could be undermined. Those concerns must be addressed. And in deciding whether to close the "loop-holes", the City should absolutely do so.

In the present situation, you are not dealing with two sides with equal competing *interests*. You have inhabitants of Winnipeg, who have the *interest* and *right,* to peaceable enjoyment of their homes and communities, protected by the City of Winnipeg Charter. And on the other hand, you have individuals, or corporations who may be residents of Winnipeg, Gross Isle, Toronto, Beijing, or elsewhere, wishing to conduct a business, possibly already operating a business (without a license or approval) which by its nature, has the potential if not likelihood, to create nuisance, noise, emotional harm, physical property damage, illegal activity, conflict, and the loss of value to ones' most significant investment.

The records which were part of the material forwarded by the City with its current Report, confirm the frequency of calls to police and other emergency services as a result of STRs in Winnipeg. Noteworthy are the repeat offences occurring with individual STRs. Clearly it is difficult to enforce existing laws to

keep the peace. Steps need to minimize the risk of malfeasance in all aspects, and increase accountability of owners and operators.

The on-line survey which formed part of the material was notable in the angst-filled comments of inhabitants of Winnipeg with extremely negative personal experiences with STRs. People should not have to be faced with such violations to the peaceable enjoyment of their homes.

The City simply owes no obligation to advance or protect the wishes of STR owners and operators - especially when they conflict with the legitimate right of inhabitants of Winnipeg to protection of their well-being.

The only way that an STR should be able to seek a license/ operate at all, and the only regime consistent with the City's mandates, and zoning upon which property owners are entitled to rely, is where an STR can't apply for a license to operate an STR , unless *all n*eighbours (within a city block surrounding the single family home – or an equivalent number of meters, etc.) or within a multi-unit building, *unanimously* agree, and where there are severe penalties for operating an STR in the absence of that agreement and proper City licensing. Only if there is unanimity, would the application process and licensing requirements even come into play.

(This appears to have been provided for with respect to condominium boards, on page 16 of the current Report. It should also apply with respect to single family homes.)

Where the neighbours unanimously agree with having one or more STRs, the process of applying for a license can occur, and if granted, the laws and enforcement would apply.

But in the absence of full unanimous agreement of the neighbours, the STR should be a non-starter. Period. Anything else flies in the face of the City's mandate to promote and maintain the health (including emotional health), safety and welfare of the inhabitants, and to maintain safe, orderly, viable, and sustainable communities, as its purpose.

2. Additional Restrictions and Closing "Loop-holes"

Now is the time for the City to enact a robust regime to minimize risk to neighbours and neighbourhoods associated with STRS, and to ensure that owners and operators are made accountable for malfeasance, and sustain actual and real consequences, for operating an STR without a license, and /or breaching the terms and conditions of the license, and/or the By-laws and Regulations enacted. Enforcement is key, and the devil is in the details.

a) **Corporations applying for an STR License** There are significant challenges and in some cases impossibility of enforcing sanctions and penalties against a corporation. Serious consideration should be taken whether to permit corporations or their agents/operators to be able to apply for a license at all. Why not limit the ability to apply for an STR license to individual property owners with real skin in the game. Again, the City owes no obligation to current or possible future STR owners. Now is the time to have strong protections in place against malfeasance, not after the horse is out of the barn.

If corporations are going to be allowed to apply for an STR license, recommended changes:

(i) The corporation's shareholders, including at least one Manitoba resident, and STR Operator must be Co-applicants, and be jointly and severally liable for all penalties, fines and charges. Similarly, the individual partners of a partnership should be Co-Applicants and are jointly and severally liable for all fines, etc.

(ii) To prevent a work-around of the restriction of the number of STRs simply by an individual or individuals owning multiple corporations, the By-law /Regs. Etc. must state: "Non-individuals (partnerships and corporations, *including all Affiliates as defined in The Manitoba Corporations Act, ……."* Per 2F of the Report

b) Tenants applying for an STR License: The proposed regime at first blush appears to restrict individual property owners to having two STRs – one at their principle residence and one other. This seems to be a sound plan. However, that intent is undermined by the provision allowing a tenant to apply for an STR. As a consequence, an individual could buy up multiple properties, and engage "tenants" for each property, who agree to put their name on and sign an application for an STR license, and move in and out, depending upon the STRs bookings. This would be particularly attractive for very young adults, still living at home. This doesn't appear to be the intent of the Report, but a very likely occurrence if the regime continues to allow tenants to apply. There is no valid reason to extend to applications to tenants.

(c) **Enforcement** Any and all penalties and fines, if unpaid within 30 days get added to the tax roll of the STR, and tax sale proceedings may be used to obtain payment. An STR license will be revoked for non-payment of penalties and fines. (These fines should be significant, particularly for more than one offence.)

d) **The maximum number of persons staying in an STR** should be two adults per bedroom plus children, or a maximum of 6 individuals, whichever is less. The maximum visitors of the persons staying in the STR permitted should be 4, and all guests must vacate the STR by 8:00 p.m. There can be only one STR per home.

These numbers restrictions are most critical to minimize the likelihood of noise, nuisance, excessive drinking, drugs, prostitution, garbage and sewage issues, property damage, parking and traffic issues and hooliganism. Again, there is/ should be no legitimate competing interest.

e) **The STRA platform** renting an STRA must be arms length from the STR.

f) Identification There should be a requirement for all adult guests to provide the Platform, and the STR owner/ operator with a copy of government issued photo identification with a current residence shown. AirBNB currently requires this of the applying guest, but other platforms may not. This may assist in motivating good behavior of a guest.

I would appreciate the opportunity to be able to participate in the continuing process, and possibly provide further input once I am able to review the Appendices to the Report.

In conclusion, the City should establish a robust regime with the foregoing suggestions implemented to avoid 'work-arounds". It will serve not only the inhabitants of Winnipeg, but peaceable tourists as well.

It will not impose undue hardship on legitimate owners and operators, but will make it easier for law-abiding owners and operators to insist on measures which serve *their* interests as well.

Judith M Blair