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January 25, 2023

VIA EMAIL: David.Cooke@fortworthtexas.gov

City Manager David Cooke

VIA EMAIL: Leann.Guzman@fortworthtexas.gov

City Attorney Leann Guzman

City Hall

200 Texas Street

Fort Worth, TX 76102

RE: Proposed Short-Term Rental Registration Ordinance

Dear Mr. Cook and Ms. Guzman:

I am writing you on behalf of my client, the Fort Worth Short Term Rental Alliance (“FWSTRA”), to express our legal concerns regarding the proposed Short-Term Rental Registration Ordinance. According to the City’s website, the City Council is scheduled to consider a registration ordinance for short-term rentals at its January 31 meeting. The City has not yet posted its agenda for the January 31 meeting.

In short, the FWSTRA has concerns regarding the timing of the City’s proposed actions to regulate STRs. The FWSTRA respectfully suggests that further and careful consideration should be given to the issue prior to the City moving forward with adoption of a registration ordinance, especially in light of legal concerns about certain provisions in the draft ordinance and current and pending legal rulings affecting STR ordinances.

While not an exhaustive list of the issues, the FWSTRA believes legal concerns with the draft ordinance and the City’s attempt to regulate STRs warrant a delay in the City Council’s current intent to place the item on the January 31 agenda.

The draft ordinance raises concerns that adversely impact landowners’ rights. As you know, in *Zaatari v. City of Austin*, 615 S.W.3d 172 (Tex. App. – Austin 2019, *pet. denied*), the court held that the city’s STR ordinance was subject to a viable claim that it was unconstitutionally retroactive. *Id.* at 191-92. The court also opined that even assuming the city set forth a compelling public interest basis for its ordinance, which it did not, private property ownership is a fundamental right and the ability to lease property is a fundamental privilege of property ownership. *Id.* at 190-91. Specifically with respect to the use of residential properties for short-term rentals, the court noted that such use was a historically allowable use. *Id.* at 191. As such, the court held that the property-owner plaintiffs in *Zaatari* had a requisite “settled interest in

their right to lease their property short term.” *Id.* See also *City of Grapevine v. Muns*, 651 S.W.3d 317 (Tex. App. – Fort Worth 2021, *pet. pend’g*) (rejecting city’s contention that before STR Ordinance passed in 2018, STRs were not permitted within the city because the city’s zoning ordinance did not specifically allow STRs and finding that property owners have fundamental leasing rights arising from their property ownership).

For many years, rental of residential properties in residential zones has been allowed within the City of Fort Worth and no specific prohibition existed. In fact, FWSTRA believes that the City at times collected Hotel Occupancy Taxes from short term rentals. Further, in recent years the City acknowledged the use of residential properties for short term rentals (i.e., “game day” and “vacation” rentals) in a residential overlay district. FWSTRA urges that the settled interest in their right to lease their property short term be addressed and preserved.

The City’s draft ordinance also places limitations on several aspects of the fundamental right to assemble as afforded by the Texas Constitution. Provisions limiting the assembly of tenants outside during certain hours and the number of persons who can assemble – very similar, if not identical to those in the City’s draft ordinance – have been successfully challenged.

In *Zaatari*, the court held that the city’s STR ordinance’s provisions to prohibit or restrict the peaceable assembly of citizens on private property with respect to the purpose, time, and number of people failed to withstand strict scrutiny examination. *Zaatari*, 615 S.W.3d at 199-202 (noting that ordinance failed strict scrutiny because the ordinance was not narrowly tailored and public interest could be achieved by less intrusive, more reasonable means, such as enforcement of already-existing ordinances regulating noise, parking, building codes, and disorderly conduct); compare *Hignell-Stark v. City of New Orleans*, 46 F.4th 317 (5th Cir. 2022) (in finding a violation of the dormant Commerce Clause, court rejected city’s proffered interests to prevent nuisances, promote affordable housing, and protect residential neighborhoods where city had many other reasonable alternatives to achieve goals). FWSTRA respectfully requests that the City not proceed with provisions that are similar to those that courts have already rejected as violations of the right to assemble under Texas law.

STR ordinances similar to the City’s draft ordinance have also been the subject of regulatory takings claims. In *City of Grapevine v. Muns*, 651 S.W.3d 317 (Tex. App. – Fort Worth 2021, *pet. pend’g*), the Fort Worth Court of Appeals upheld the trial court’s denial of the city’s plea to the jurisdiction as to the plaintiffs’ regulatory takings claim. The court found that fact issues existed regarding the STR ordinance’s economic impact on the plaintiff homeowners’ properties and the reasonableness of their investment-back expectations. *Muns* is currently pending before the Supreme Court of Texas and briefing has been submitted.

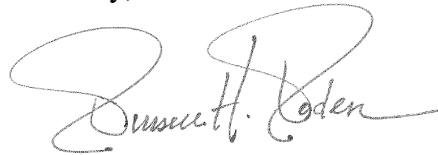
The FWSTRA also has concerns with several provisions of the city’s draft that have a prior-restraint impact on homeowners’ speech.

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In summary, the current draft of the city's ordinance includes provisions that have been successfully challenged in court. Additionally, significant issues relating to STR ordinances are currently pending review before the Supreme Court of Texas. For these reasons, FWSTRA respectfully requests that the City refrain from adopting the draft ordinance in its current form, refrain from enforcing the current ordinance as written except under currently written nuisance violations, and continue to dialogue with residents and stakeholders for legal, viable alternatives.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell H. Roden". The signature is fluid and cursive, with a large initial "R" and "H".

Russell H. Roden

:cc

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