




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Tourism and Culture Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	August 4, 2022
SUBJECT/REPORT NO:	Municipal Accommodation Tax (PED20009(c)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Pam Mulholland (905) 546-2424 Ext. 4514
SUBMITTED BY:	Carrie Brooks-Joiner Director, Tourism and Culture Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the By-law to establish a Municipal Accommodation Tax (MAT) at a rate of 4%, effective January 1, 2023, attached as Appendix "A" to Report PED20009(c), be passed;
- (b) That the single source procurement of the Ontario Restaurant Hotel and Motel Association (ORHMA) to collect the Municipal Accommodation Tax from Hamilton transient accommodations and remit the tax to the City of Hamilton pursuant to Procurement Policy #11 - Non-competitive Procurements, be approved;
- (c) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, a Municipal Accommodation Tax Collection Agreement, together with all necessary ancillary documents, between the City of Hamilton and the Ontario Restaurant Hotel and Motel Association with content acceptable to the General Manager, Corporate Services Department and the Director of Tourism and Culture, and in a form satisfactory to the City Solicitor;
- (d) That the Hamilton Tourism Development Corporation (HTDC) Sole Member Direction and Sole Member Declaration, attached as Appendix "B" to Report PED20009(c), be approved;

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

- (e) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, the Sole Member Direction and Sole Member Declaration, attached as Appendix “B” to Report PED20009(c), in a form satisfactory to the City Solicitor;
- (f) That three members of Council be appointed to the Board of Directors of the Hamilton Tourism Development Corporation for the 2022-2026 term of Council;
- (g) That the Operating Agreement between the City of Hamilton and Hamilton Tourism Development Corporation, attached as Appendix “C” to Report PED20009(c), be approved;
- (h) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, the Operating Agreement between the City of Hamilton and Hamilton Tourism Development Corporation, attached as Appendix “C” to Report PED20009(c);
- (i) That the Asset Transfer Policy, attached as Appendix “D” to Report PED20009(c), be approved;
- (j) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, a line of credit agreement between the City of Hamilton and the Hamilton Tourism Development Corporation, for financial support to an upset limit of \$250,000 for Hamilton Tourism Development Corporation start-up administrative expenses, in accordance with the terms outlined in Appendix “E” to Report PED20009(c) and such other conditions deemed appropriate by the General Manager, Corporate Services Department in consultation with the General Manager, Planning and Economic Development Department, and in a form satisfactory to the City Solicitor;
- (k) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, a line of credit agreement between the City of Hamilton and the Hamilton Tourism Development Corporation, for financial support to an upset limit of \$2,000,000 for Hamilton Tourism Development Corporation tourism promotion and product development expenses, in accordance with the terms outlined in Appendix “F” to Report PED20009(c) and such other conditions deemed appropriate by the General Manager, Corporate Services Department in consultation with the General Manager, Planning and Economic Development Department, and in a form satisfactory to the City Solicitor;
- (l) That the Interim Directors of the Hamilton Tourism Development Corporation be directed to establish a Hamilton Tourism Development Corporation Municipal

Accommodation Tax Reserve Fund;

- (m) That the annual interest costs associated with the lines of credit, as outlined in Recommendations (j) and (k) of Report PED20009(c), be funded from the Hamilton Tourism Development Corporation Municipal Accommodation Tax Reserve Fund; and
- (n) That staff be directed to report back to the General Issues Committee respecting a proposed methodology for Municipal Accommodation Tax collection from registered short-term rental operators in Hamilton and remittance of the tax to the City of Hamilton and the Hamilton Tourism Development Corporation.

EXECUTIVE SUMMARY

In 2017, the Province of Ontario granted municipalities the authority to implement a Municipal Accommodation Tax on transient accommodation stays to provide municipalities with a new revenue stream to support local tourism promotion and product development.

On February 23, 2022, Council approved the recommendations in Report PED20009(b), which:

- Authorized and directed staff to incorporate a Tourism Municipal Services Corporation, substantially in the form outlined in the Business Case Study (Appendix “A” to Report PED20009(b));
- Approved the City of Hamilton Municipal Accommodation Reserve Fund Policy (Appendix “B” to Report PED20009(b)), for the City’s portion of the Municipal Accommodation Tax;
- Approved the appointment of Interim Directors to the Board of Directors of the Tourism Municipal Services Corporation; and
- Provided staff and the Interim Directors of the Tourism Municipal Services Corporation the authority to develop the proposed Operating Agreement and Asset Transfer Policy between the City and the Tourism Municipal Services Corporation, to be presented to Council for approval.

Staff were directed to report back with recommendations relating to:

- The timing of the approval and implementation of the By-law (Appendix “C” to Report PED20009(b)), to establish a MAT at a rate of 4% and with a proposed effective date (assuming a level of recovery of the tourism industry); and

- The composition of the Board of Directors, and any required Corporate By-laws, Operating Agreement, Asset Transfer Policy, budget and other operational particulars to allow the Tourism Municipal Services Corporation to conduct its affairs and transactions per its mandate, objectives and applicable laws and regulations.

Since that time, staff have:

- Conducted all necessary corporate name searches and prepared the Articles of Incorporation to incorporate the Tourism Municipal Services Corporation as a Non-Share Capital Corporation with City as its sole member, named the "Hamilton Tourism Development Corporation";
- Prepared a Sole Member Direction and Sole Member Declaration for the HTDC, attached hereto as Appendix "B" to Report PED20009(c);
- Prepared all constating documents required for the incorporation of the HTDC;
- Prepared an "Operating Agreement" between the City and HTDC, attached hereto as Appendix "C" to Report PED20009(c);
- Prepared an HTDC "Asset Transfer Policy", attached hereto as Appendix "D" to Report PED20009(c), and
- Completed a review of HTDC financial support needed from the City for the organization to conduct its tourism functions until MAT is fully implemented.

Council approval of the Recommendations put forward in Report PED20009(c) would allow for:

- The enactment of the Municipal Accommodation Tax By-law concerning the purchase of transient accommodation in Hamilton on overnight stays of 29 nights or less, effective January 1, 2023;
- Approval of:
 - The HTDC Sole Member Direction and Sole Member Declaration;
 - The HTDC Asset Transfer Policy;
 - The Operating Agreement between the City and HTDC; and
 - Other enabling matters.

- The establishment of two HTDC lines of credit:
 - The Business Line of Credit for financial commitments toward future tourism events and initiatives; and
 - The Administrative Line of Credit for expenses including bookkeeping and administrative services, fees (e.g. banking, audit, insurance), computer software, and other supplies.

The implementation of the MAT to support and impact the recovery and growth of Hamilton's tourism industry directly aligns with the Council approved 2021-2025 Economic Development Action Plan, which includes the following stretch targets:

- Invest a minimum of \$1,000,000 in tourism development from the Municipal Accommodation Tax program; and
- Attract five major events that generate a total combined economic impact of at least \$50,000,000.

Recommendations (b) and (c) identify the Ontario Restaurant Hotel and Motel Association as the organization to collect, remit and operate the MAT in Hamilton. ORHMA is uniquely positioned to provide this service because ORHMA operates MAT on behalf of numerous municipalities (e.g. London, Kitchener and Waterloo) as its “collection agent” implementing thorough procedures and communication to industry, including awareness and training sessions.

Alternatives for Consideration - Not Applicable

FINANCIAL - STAFFING - LEGAL IMPLICATIONS

Financial: Spending arising from HTDC will be set out in annual Business Plans and Operating Budgets approved by the HTDC Board of Directors and adopted by Council.

MAT will fund HTDC operations once the Council-approved City of Hamilton Municipal Accommodation Tax Reserve Fund achieves a balance of \$2,000,000. A minimum of \$2,000,000 must always be available in the Reserve.

The HTDC Municipal Accommodation Tax Reserve Fund, to be developed and passed by the HTDC Board of Directors and endorsed by Council, will always require a minimum balance of \$2,000,000 to be available.

In Hamilton, the estimated pre-pandemic revenue of the MAT was

approximately \$2,000,000 per year based on the number of existing rooms, the average 2019 occupancy statistics, average room rate and a MAT rate of 4%. It is anticipated that the Municipal Accommodation Tax Reserve Fund will take two years of MAT collection to reach the requisite balances, after which MAT funds will fully fund HTDC operations.

To allow the HTDC to begin investing in tourism activities immediately, staff are recommending that the City provide the HTDC access to a \$2,000,000 “business” line of credit. This line of credit would allow the HTDC to make financial commitments toward future tourism events and initiatives while the Municipal Accommodation Tax Reserve Fund balance accumulates.

Without this line of credit, the HTDC would have to wait approximately two years for the Municipal Accommodation Tax Reserve Fund to reach the requisite balances before the organization could begin making financial commitments to host tourism events and develop tourism products. Alternatively, the HTDC would seek investment from the Tax Stabilization Reserve or other sources that have been utilized to fund major hosted events in recent years.

The HTDC will have start-up administrative expenses in 2022 through 2024 before collected MAT funds are available to support administrative expenses. Therefore, staff are also recommending the City provide HTDC access to a \$250,000 “administrative” line of credit to fund these expenses in years one and two.

The terms of these business and administrative lines of credit, including repayment conditions and commercially competitive interest rates to be paid to the City, are outlined in the attached Appendices "E" and "F" to Report PED20009(c). The “business” and “administrative” lines of credit would have no impact on the net levy and would be tracked through a Capital project that would remain unfunded until the line of credit is repaid.

Staffing: N/A

Legal: Legal Services will be required to:

- Incorporate the HTDC;
- Negotiate and provide legal advice to staff in relation to the preparation of the Municipal Accommodation Tax Collection Agreement;
- Prepare the corporate resolutions to appoint the interim Directors to the HTDC Board;
- Prepare the corporate resolutions to appoint officers to the HTDC; and

- Provide legal advice to staff in relation to the preparation of the two line of credit agreements between the City and the HTDC, as required.

HISTORICAL BACKGROUND

On February 23, 2022, Council approved the recommendations put forward in Report PED20009(b), which:

- Approved the Business Case Study for the creation of the HTDC;
- Provided staff with the authority and direction to incorporate HTDC;
- Approved the City of Hamilton Municipal Accommodation Reserve Fund Policy, Appendix “B” to Report PED20009(b), for the City’s portion of the Municipal Accommodation Tax;
- Approved the appointment of Interim Directors to the Board of Directors of the HTDC, namely the General Manager, Planning and Economic Development Department (President), Director of the Tourism and Culture Division (Vice-President) and Director, Financial Services, Taxation and Corporate Controller (Treasurer); and
- Provided staff and the Interim Directors of the HTDC the authority to develop the proposed Operating Agreement and Asset Transfer Policy between the City and the HTDC, to be presented to Council for approval.

Staff were directed to report back with recommendations relating to:

- The timing of the approval and implementation of the By-law (Appendix “C” to Report PED20009(b)), to establish a MAT at a rate of 4% and with a proposed effective date (assuming a level of recovery of the tourism industry);
- The composition of the Board of Directors, and any required Corporate By-laws, Operating Agreement, Asset Transfer Policy, budget and other operational particulars to allow the HTDC to conduct its affairs and transactions per its mandate, objectives and applicable laws and regulations.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Ontario Regulation 435/17 - Transient Accommodation Tax:

- Provides municipalities with the authority to impose a MAT by passing a By-law;

- Requires the City to provide a minimum of 50% of its MAT revenue to an “eligible tourism entity” and further requires the City and the eligible tourism entity to enter into an agreement respecting reasonable financial accountability matters to ensure that amounts paid to such entity are used for the exclusive purpose of promoting tourism and developing tourism products; and
- Does not mandate how municipalities may spend the remaining 50% of MAT revenue, although it is suggested that the funds support tourism-related opportunities and infrastructure. Research indicates that many communities are using the funds in this manner.

Pending Council approval of Report PED20009(c), the City will enact its Municipal Accommodation Tax By-law concerning the purchase of transient accommodation within the municipality.

The development of this new revenue stream is consistent with the objectives of the City’s 2021-2025 Economic Development Action Plan.

RELEVANT CONSULTATION

External

- Hamilton Hotel Association members
- Hamilton Tourism Development Investment Group
- Hamilton Halton Brant Regional Tourism Association
- Financial Controller, Ontario Restaurant Hotel and Motel Association
- President and CEO, Ontario Restaurant Hotel and Motel Association

Internal Consultation

- Legal and Risk Management Services Division, Corporate Services Department
- Tourism and Events, Tourism and Culture Division, Planning and Economic Development Department
- Financial Services, Taxation and Corporate Controller, Corporate Services Department

- Finance and Administration Corporate, Financial Planning Administration and Policy, Corporate Services Department

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The COVID-19 pandemic had a catastrophic impact on the tourism industry in Hamilton and around the country. Sporting, arts and culture venues, restaurants and hotels were forced to close or operated with restrictions for months as festivals, events and conferences were cancelled. Tourism businesses mitigated the impact on their operations by furloughing staff, reducing costs, pivoting to online sales and experiences, and rebooking confirmed business where possible.

In the Spring of 2022, the Province of Ontario eased pandemic-related public health measures on activities and companies whose operations impact transient accommodation sales including, but not limited to: travel; tourist attractions; spectator sports; arts and culture exhibits and performances; and conference and convention centre events. The lifting of restrictions was followed by increased business for the accommodation sector, with Hamilton hotels reporting a May 2022 occupancy rate of 74.5% compared to the May 2021 rate of 40.7%.

With the implementation of the new MAT revenue source and the creation of the HTDC, Hamilton will be better positioned to support the recovery and future growth of local tourism. According to its Articles of Incorporation, the objectives of the HTDC are to develop tourism products and promote Hamilton as a destination for tourists, visitors, festival and event attendees, conference delegates and business travellers. For greater clarity, tourism products relate to the eight sectors of the tourism industry: accommodation; adventure tourism and recreation; attractions; events and conferences; festivals; food and beverage; tourism services; transportation and travel trade.

Following Council's approval of the recommendations in Report PED20009(b), Legal Services staff have completed the following:

1. All necessary corporate name searches;
2. Preparation of Articles of Incorporation;
3. Preparation of a Sole Member Direction and Sole Member Declaration for the HTDC;
4. Preparation of all necessary constating documentation necessary for the incorporation of the HTDC;
5. Preparation of an HTDC "Asset Transfer Policy"; and

6. Preparation of an “Operating Agreement” between the City and HTDC.

Corporate name searches were conducted, and the proposed name: Hamilton Tourism Development Corporation, was available.

The Sole Member Direction and Sole Member Declaration of the HTDC sets out the following:

- The role of City as sole member of the HTDC;
- The roles and responsibilities of Directors and Officers of the HTDC;
- Procedural matters related to member meetings;
- Accounting, audit and record-keeping; and
- Other matters governing the relationship between the City and HTDC.

Pursuant to Ontario Regulation 435/17, the City is required to transfer 50% of MAT revenues, less reasonable collection fees and administrative costs, to the HTDC for Hamilton-focused tourism marketing, promotion and tourism product delivery. The HTDC will then provide such services to the City, pursuant to the terms and conditions in the Operating Agreement attached hereto as Appendix “C” to Report PED20009(c). An Asset Transfer Policy, as set out in Appendix “D” to Report PED20009(c), provides detailed guidance to the HTDC, staff and the public on the transfer, use and accounting of Corporate assets as approved by Council.

The Operating Agreement between the City and HTDC, attached hereto as Appendix “C” to Report PED20009(c), also sets out reasonable financial accountability matters to ensure that amounts paid to the HTDC are used to promote tourism, as required by Ontario Regulation 435/17.

The City’s Finance and Tourism and Culture Division staff completed a review of financial support needed by the HTDC from the City for the organization to conduct its tourism functions until MAT reserves each reach \$2,000,000. In addition, Finance staff reviewed start-up financial processes and procedures to be completed by the HTDC in 2022, including hiring services external to the City to support operations.

Next Steps

Hamilton Tourism Development Corporation:

Following the incorporation of the HTDC and Council's approval of the Sole Member Direction and Sole Member Declaration, Asset Transfer Policy, Operating Agreement, and terms of line of credit agreements, the Chair will call the first public meeting of the Board of Directors for the HTDC in the Fall of 2022.

Municipal Accommodation Tax Administration:

If Recommendation (b) is approved, the City will enter into a sole source agreement with ORHMA to collect MAT revenues on behalf of the City. Under the agreement, ORHMA will advise transient accommodation operators how to set up the collection system and train staff. Once MAT collection begins on January 1, 2023, ORHMA will administer the revenues collected from the accommodation providers, remit payments to the City and report on the financial transactions. The City, in turn, will remit 50% of MAT to the HTDC.

ORHMA is uniquely positioned to provide this service because:

- ORHMA along with the Provincial government, designed the MAT regulations (Ontario Regulation 435/17) and therefore, possesses a solid understanding of the governance required for compliance;
- ORHMA has been a consultant to many stakeholders on MAT throughout Ontario and continuously surveys the various MAT implementations generating best practices that will benefit the City's implementation; and
- ORHMA collects and remits MAT on behalf of numerous municipalities (e.g. London, Kitchener and Waterloo) implementing thorough procedures and communication to the tourism industry.

ALTERNATIVES FOR CONSIDERATION

Not Applicable

ALIGNMENT TO THE 2016 - 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED20009(c) - By-law to Establish a Municipal Accommodation Tax in Hamilton

Appendix “B” to Report PED20009(c) - Hamilton Tourism Development Corporation Sole Member Direction and Sole Member Declaration

Appendix “C” to Report PED20009(c) - Operating Agreement between the City of Hamilton and Hamilton Tourism Development Corporation

Appendix “D” to Report PED20009(c) - Asset Transfer Policy - Hamilton Tourism Development Corporation

Appendix “E” to Report PED20009(c) - Operating Line of Credit Agreement Terms and Conditions

Appendix “F” to Report PED20009(c) - Business Line of Credit Agreement Terms and Conditions

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