

Authority: Item 4, General Issues Committee
Report 22-015 (PED20009(c))
CM: August 12, 2022
Ward: City Wide

Bill No. 209

CITY OF HAMILTON

BY-LAW NO. 22-

A By-law to Establish a Municipal Accommodation Tax

WHEREAS section 400.1(1) of the *Municipal Act*, 2001, S.O 2001, c.25, (the “Act”) provides that a local municipality may, by by-law, impose a direct tax in respect of the purchase of transient accommodation within the municipality; and,

WHEREAS pursuant to section 400.1 of the Act and Ontario Regulation 435/17, the Council of the City of Hamilton wishes to establish a municipal transient accommodation tax rate to levy on the purchase of transient accommodation within the City of Hamilton; and,

WHEREAS pursuant to sections 400.1(3) of the Act, Council can establish enforcement measures as Council considers appropriate if an amount assessed for outstanding tax, penalties or interest remains unpaid after it is due.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

DEFINITIONS

1. In this By-law,
 - a. “Accommodation” means Lodging, and the right to use Lodging, that is provided for consideration, whether or not the Lodging is actually used;
 - b. “By-law” means this by-law and any amendments made thereto;
 - c. “City” means the City of Hamilton;
 - d. “Council” means the Council of the City of Hamilton;
 - e. “Eligible Tourism Entity” has the meaning given to it in Ontario Regulation 435/17, as amended;
 - f. “Establishment” means the physical location, a building or part of a building that provides Accommodation;
 - g. “Lodging” includes:

- (i) the use of a bedroom, a suite of rooms containing a bedroom, or the use of a bed within a bedroom, domicile or other physical location;
 - (ii) the use of one or more additional beds or cots in a bedroom or suite.
- h. "Multiple offence" means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this By-law;
 - i. "Municipal Accommodation Tax" or "MAT" means the tax imposed under this By-law;
 - j. "Provider" means a person or an entity that sells, offers for sale, or otherwise provides Accommodation, and includes agents, hosts or any others who sell, offers for sale or otherwise provides Accommodation;
 - k. "Purchaser" means a person who purchases Accommodation;
 - l. "Purchase Price" means the price for which Accommodation is purchased, including the price paid, and/or other consideration accepted by the Provider in return for the Accommodation provided, including all fees and surcharges for additional occupants and beds, but does not include the goods and services tax imposed by the Government of Canada or by the Province of Ontario; and
 - m. "Treasurer" means the City's General Manager, Finance and Corporate Services, or his/her designate.

APPLICATION

- 2. A Purchaser shall, at the time of purchasing Accommodation, pay the Municipal Accommodation Tax in the amount of 4% cent of the Purchase Price of Accommodation provided for any continuous period of 29 days or less provided in a hotel, motel, condo hotel, club, portion of a multi-use complex used as a hotel, motor hotel, hostel, lodge, inn, bed and breakfast, dwelling unit, domicile or any place in which Accommodation is provided.
 - a. For greater certainty, the continuous period referred to above in Section 2 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.

EXEMPTIONS

- 3. The Municipal Accommodation Tax imposed under this By-law does not apply to:
 - a. The Crown, every agency of the Crown in right of Ontario and every authority, board, commission, corporation, office, or organization of persons a majority of whose Directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council;
 - b. Every board as defined in subsection 1(1) of the *Education Act*, R.S.O. 1990, c.E.2;

- c. Every university and every college of applied arts and technology or post-secondary institution whether or not affiliated with a university, the enrolments of which are counted for purposes of calculating operating grant entitlements from the Crown;
- d. Every hospital referred to in the list of hospitals and their grades and classifications maintained by the Minister of Health and Long-Term Care under the *Public Hospitals Act*, R.S.O. 1990, c.P.40, and every community health facility within the meaning of the *Oversight of Health Facilities and Devices Act*, 2017, c.25, Sched.9, that was formerly licensed under the *Private Hospitals Act*, R.S.O. 1990, c. P24;
- e. Every long-term care home as defined in subsection 2(1) of the *Long-Term Care Homes Act*, 2007, S.O. 2007, c. 8;
- f. Accommodations provided by the City or its agents for shelter purposes;
- g. Accommodations provided by treatment centers that receives Provincial aid under the *Ministry of Community and Social Services Act*, R.S.O. 1990, c.M.20;
- h. Accommodations provided by a house of refuge, or Lodging for the reformation of offenders;
- i. Accommodations provided by a charitable, non-profit philanthropic Corporation organized as a shelter for the relief of the poor or for emergency purposes;
- j. Accommodations provided by tent or trailer sites supplied by a campground, tourist camp or trailer park;
- k. Accommodations supplied by employers to their employees in premises operated by the employer; and
- l. Accommodations provided by hospitality rooms in an establishment that may or may not contain a bed and is used for displaying merchandise, holding meetings, or entertaining.

TAX COLLECTED AND STATEMENT SUBMITTED

- 4. A Provider shall collect the MAT from the Purchaser at the time the Accommodation is purchased.
- 5. The amount of the MAT shall be identified as a separate item or charge on a bill, receipt, invoice or similar document issued by the Provider in respect of the Accommodation on which the tax is imposed and the item shall be identified as "Municipal Accommodation Tax".
- 6. A Provider shall, on or before the last day of every month, remit to the City, or its designate as the case may be, the amount of the MAT collected for the previous month and submit the monthly statements in the form required by the City detailing the number of Accommodations sold, the purchase price of each Accommodation, the MAT amount collected and any other information as required by the City for the purposes of administering and enforcing this By-law.

DELEGATION OF AUTHORITY

7. The Treasurer, or their designate, is hereby delegated the authority to enter into agreements, including all necessary documents ancillary thereto, with another person or entity as agent for the City, providing for the implementation and collection of the MAT, all in a form satisfactory to the City Solicitor.
8. The Treasurer, or their designate, is hereby delegated the authority to enter into agreements, including all necessary documents ancillary thereto, with Eligible Tourism Entity(ies) that receive(s) an amount of the MAT respecting reasonable financial accountability matters in order to ensure that amounts paid to the entity are used for the exclusive purpose of promoting tourism, and the agreements may provide for other matters, all in a form satisfactory to the City Solicitor.
9. The Treasurer, or their designate, shall be responsible for the administration of this By-law, including but not limited to approvals, appeals, enforcement, collection, and for instructing the City Solicitor to take such legal action as may be considered appropriate.

INTEREST PENALTIES

10. That a percentage charge of 1.25% of the amount of the MAT due and unpaid be imposed as a penalty for the non-payment of taxes on the first day of default based on the full occupancy of the Establishment unless the actual amount of the MAT owing can be determined by the City, in that case, the percentage charge of 1.25% of the actual amount of the MAT will be imposed.
11. That an interest charge of 1.25% each month of the amount of the MAT due and unpaid, be imposed for the non-payment of taxes on the first day of each month and subsequent months following the first day of default until the MAT, including all charges and interest owing, is paid in full.
12. A fee shall be charged in respect of all payment remittances that are not honoured by the financial institution upon which it is drawn in an amount as set out in the City of Hamilton User Fee By-law.

LIENS

13. All MAT penalties and interest that are past due shall be deemed to be in arrears, and may be added to the tax roll for any real property in the City of Hamilton registered in the name of the Provider to be collected in like manner as property taxes and shall constitute a lien upon the lands, but such lien shall not be a priority lien for the purposes of subsections 1(2.1), (2.2) and (3) of the Act and such lien will not have a higher priority than it would otherwise have in law in relation to other claims, liens or encumbrances.

AUDIT AND INSPECTION

14. The Provider shall keep all books, accounts, invoices, financial statements, records, electronic and such other documents sufficient to furnish the City or its agent with the

necessary particulars of sales of Accommodations, amount of MAT collected, payable and remitted, for no less than seven years.

15. The City or its agent may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or where anything is done in connection with any business or where any books or records are or should be kept and inspect and audit all books, records, documents, transactions and accounts of Providers and require Providers to produce copies of any documents or records required for the purposes of administering and enforcing this By-law, as required.
16. The City or its agent may require a Provider to:
 - i. Give the City all reasonable assistance with its audit or inspection;
 - ii. Answer all questions relating to the audit or inspection either orally or, if the City requires, in writing, on oath or by statutory declaration; and
 - iii. Attend at the premises or place with the City representative or agent for the purposes of giving reasonable assistance and answering questions relating to the audit or inspection.
17. The City or its agent may serve on a Provider a written demand for information or for the production on oath or otherwise of books, accounts, records, letters, invoices, financial statements, electronic and such other documents as the City or its agent considers necessary to determine compliance with this By-law. A Provider in receipt of such a demand shall comply with the demand within the time specified in the demand.

DETERMINATION OF AMOUNT

18. The City may make a determination of an amount of tax required to be remitted, together with any interest imposed upon any tax outstanding, if a Provider responsible for the payment or remittance of tax fails to pay, as required.
19. The City may assess or reassess for any tax payable by the Provider within three years from the day the tax was remittable, except that where the City establishes that a Provider has made any misrepresentation that is attributable to neglect, carelessness or willful default, or has committed any fraud in supplying any information under this By-law, or in omitting to disclose any information, then the City may assess or reassess, for any time the City considers reasonable, the tax payable.
20. The City shall send by mail or registered mail or deliver by hand, a notice of the calculation made under Section 18 herein to the Provider at the Providers' last known address, and that the amount determined is payable within 30 days from the date of mailing of the notice.
21. Liability to pay an amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.
22. The City is not bound by any information delivered by or on behalf of a Provider responsible for the payment of tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable.

23. This calculation, subject to being varied or adjusted due to an objection or appeal and subject to a recalculation, shall be deemed to be valid and binding despite any error, defect or omission in the assessment or in any proceeding related to it.

OFFENCES AND PENALTIES

24. Every person is guilty of an offence under this By-law who:
- a. Makes, participates in, assents to or contributes in the making of false or deceptive statements in a report, statement, form or other document prepared, submitted or filed under or for the purposes of this By-law;
 - b. Destroys, alters, mutilates, hides or otherwise disposes of any records or books of account, in order to evade payment or remittance of tax;
 - c. Makes, assents to or contributes in the making of false or deceptive entries, or assents to or contributes in the omission to enter a material, in any records or books of account;
 - d. Hinders, molests or interferes with any audit or inspection conducted by the City or its agent pursuant to Section 15 herein;
 - e. Willfully, in any manner, evades or attempts to evade:
 - (i) Paying tax;
 - (ii) Remitting tax; or
 - (iii) Otherwise complying with this By-law; or
 - f. Conspires with any person to commit an offence described in subsection 24 (a) through (e) herein.
25. Pursuant to the authority granted under the Act, any Provider who contravenes or fails to comply with any provision of this By-law is guilty of an offence and is liable to such penalties set forth in this By-law and recoverable under the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended.
26. Any Provider who is guilty of an offence is liable as follows:
- a. Upon a first conviction, a fine of not less than \$300 and not more than \$50 k if the Provider is an individual, and not less than \$500 and not more than \$100 k if the Provider is a Corporation;
 - b. Upon a second or subsequent conviction for the same offence, a fine of not less than \$500 and not more than \$100 k;
 - c. Upon conviction for a continuing offence, a fine of not less than \$500 and not more than \$10 k for each day or part of a day that the offence continues. Notwithstanding subparagraph 26(a) herein, the total of all of the daily fines for the offence is not limited to \$100 k;

- d. Upon conviction for multiple offences, for each offence included in the multiple offence, a fine of not less than \$500 and not more than \$10 k. Notwithstanding sub-paragraph 26(a) herein, the total of all fines for each included offence is not limited to \$100k.

GENERAL

27. This By-law shall come into force and effect on January 1, 2023.
28. If any section or portion of this By-law is found by a court of competent jurisdiction to be invalid, it is the intent of Council that all remaining sections and portions of this By-law continue in force and effect.
29. This By-law may be referred to as "The Municipal Accommodation Tax By-law".

PASSED this 12th day of August, 2022.

F. Eisenberger
Mayor

A. Holland
City Clerk