

Town of Whitby

Staff Report

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Report Title: Municipal Accommodation Tax

Report to: Committee of the Whole

Date of meeting: May 13, 2024

Report Number: CAO 13-24

Department(s) Responsible:

Office of the Chief Administrative Officer
Legal and Enforcement Services
Financial Services Department

Submitted by:

Sarah Klein, Director Strategic Initiatives
Francesco Santaguida, Commissioner,
Legal Services and Town Solicitor
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Services and Treasurer

**Acknowledged by M. Gaskell,
Chief Administrative Officer**

For additional information, contact:

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1. Recommendation:

1. That Report CAO 13-24 regarding Municipal Accommodation Tax (MAT) be received;
2. That the Clerk be directed to bring forward a Municipal Accommodation Tax (MAT) By-law, establishing a MAT rate of 4%, effective July 1, 2024, as appended to Report CAO 13-24 as Attachment 1;
3. That Staff be directed to formalize an agreement, and the Commissioner of Finance & Treasurer or designate be authorized to execute an agreement between the Town of Whitby and Ontario Restaurant Hotel & Motel Association (ORHMA) to collect the Municipal Accommodation Tax from Whitby accommodations in a form satisfactory to the Commissioner of Legal & Enforcement Services/Town Solicitor;
4. That Staff are authorized to incorporate a Tourism Municipal Services Corporation (MSC), named Whitby Tourism Development Corporation (WTDC), if available and as outlined in the Business Case Study

(Attachment 2) and that the Commissioner of Finance & Treasurer be authorized to execute any supporting documents confirming consent;

5. That the following list be appointed as the interim Board Members to the Whitby Tourism Development Corporation:
 - a. One (1) Member of Council, as appointed by the Mayor; and
 - b. Four (4) Staff Members.
6. That Staff bring forward in the fourth quarter of 2024, five (5) members to be appointed to the Whitby Tourism Development Corporation (WTDC) Board of Directors, and any required corporate by-laws, Operating Agreement, Asset Transfer Policy, budget, and other operational particulars to allow WTDC to conduct its affairs and transactions per its mandate, and applicable laws and regulations;
7. That the Program Manager, Events, Culture & Tourism and Senior Manager, Economic Development be authorized to request and obtain the consent of the Regional Municipality of Durham to create the Whitby Tourism Development Corporation pursuant to Section 11(4) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;
8. That the Mayor and Clerk be granted the authority to enter into agreements with the MSC on behalf of the Town, including all necessary documents ancillary thereto, with Eligible Tourism Entity(ies) that receive(s) an amount of the Municipal Accommodation Tax 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 Commissioner of Legal & Enforcement Services/Town Solicitor; and,
9. That a reserve fund, for the portion of the Municipal Accommodation Tax revenue that is retained by the Town, be established and that Staff bring forward a Municipal Accommodation Tax Reserve Fund Policy by the fourth quarter of 2024 for Council approval; and,
10. That Staff report back to Council in the fourth quarter of 2024 on the progress of the new Municipal Accommodation Tax and implementation plan.

2. Highlights:

- The purpose of this Report is to seek Council's approval of a Municipal Accommodation Tax for Whitby at a rate of 4% and to incorporate a Tourism Municipal Services Corporation, named Whitby Tourism

Development Corporation (WTDC) as outlined in the Business Case Study (Attachment 2).

- Municipal Accommodation Tax (MAT) is a local tax levied by municipalities on the purchase of transient accommodations such as hotels and motels. The purpose of the tax is to generate revenue to support local tourism initiatives.
- There are currently over 50 municipalities across Ontario with a Municipal Accommodation Tax. The most common rate for the tax is 4%.
- Per the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (the “*Municipal Act*”), municipalities must allocate a portion of the MAT revenue (50% of the MAT revenues after deduction of the municipality’s reasonable costs) to an “eligible tourism entity”. Whitby does not have an Eligible Tourism Entity and Staff are recommending the creation of a Municipal Services Corporation (MSC) to fulfill this requirement. The other 50% of the MAT revenues (net of reasonable costs) remain with the Municipality.
- Whitby will benefit from the new revenues as the Town will utilize the 50% portion of the MAT funds to expand the community’s capacity for tourism offerings such as sports, art, music, heritage, and cultural experiences. These enhancements not only enrich the quality of life for Whitby residents, but also involve the development of new programs and infrastructure aimed at enhancing the overall visitor experience and tourism products.
- Individual stakeholder engagement was conducted over the last few months with the local accommodations including the four hotels and two motels. Short term rentals such as VRBO, cabins and Airbnb will be phased into the MAT once the Short-Term Rental By-law is updated and approved.
- The Town of Whitby is recommending designating the Ontario Restaurant Hotel Motel Association (ORHMA) as its agent, to collect the MAT from accommodation providers and remit to the Town, starting July 1, 2024.
- Once approved, a MAT webpage will be established and will include information and frequently asked questions for both the accommodations and visitors.

3. Background:

Tourism is the movement of visitors to places and all the activities that visitors engage in when travelling outside their usual environment. A visitor is defined as someone who takes an overnight out-of-town trip or an out-of-town same-day trip

and travels more than 40 kilometres for leisure, business, or other purposes and may stay overnight in an accommodation such as a hotel or motel.

On November 23, 2017, the Province of Ontario issued the Transient Accommodation Regulation 435/17, which came into effect December 1, 2017, and provides the necessary provisions for municipalities across Ontario to implement a Municipal Accommodation Tax. The Regulation applies if a municipality imposes a tax through a By-law in respect of the purchase of transient accommodation in the municipality under [Section 400.1 of the *Municipal Act*](#).

The Province of Ontario developed the Municipal Accommodation Tax (“MAT”) as a funding source to support tourism in communities and allow growth in the sector to contribute to economic, social, and cultural development across Ontario. The aim of the legislation is to generate new revenues that increase capacity in the community for the development of competitive tourism products and promotion, increasing overnight stays which in turn increases local economic activity.

The common rate amongst major cities and towns across Ontario is four (4%) percent. Under the *Municipal Act* and its regulations, municipalities must allocate a portion of the revenue to an “eligible tourism entity”. The MAT is applied on all room accommodations of four hours or more and continuous stays of 29 nights or less. Other services, including meeting room rentals, food and beverage, room services, internet and phone charges are excluded from the tax provided they are itemized separately on the bill. HST is also payable on the MAT portion.

The MAT Program has been implemented by over 50 municipalities in Ontario including Oshawa, Toronto, Mississauga, Oakville, Markham, London, Vaughan, and Ottawa. Pickering is currently in the process of establishing their MAT.

Towns and cities of comparable size have reported that the tax can generate approximately \$400,000 to \$700,000 annually. City of Toronto generates approximately \$24 million annually through their MAT Program.

Whitby is home to four hotels and two motels with approximately 460 rooms. To forecast the MAT revenues for the Town, a calculation was done based on the existing number of rooms in hotels (less some 60 under exemption due to use for shelter purposes) and an average price of \$120/night. As part of the forecast, an annual average hotel occupancy range of 50 per cent and 75 per cent was utilized.

The table below provides a breakdown of the potential MAT revenues at the 4 per cent rate based on two occupancy levels. Based on recent data provided by Central Counties Tourism, 2023 hotel occupancy rates for Durham Region were 76.7 per cent.

Estimated MAT Revenues (12 months)		
	Occupancy	
	50%	75%
400 rooms	\$350,400	\$525,600

There are also exemptions noted in the By-law to account for hotel or motel rooms used by the Town or its service providers for shelter purposes (i.e. Durham Region) and the MAT will not be charged on these rooms. Based on these estimates, Whitby’s annual MAT revenues could range between \$350,400 and \$525,600 with half of the MAT revenue (adjusted for reasonable costs) to be allocated to a non-profit tourism entity whose mandate includes the promotion of tourism in Whitby and the balance being retained by Whitby for projects and initiatives that support tourism.

This project aligns with Goal 1, Action 1.2.4 - explore potential funding streams for tourism initiatives (Municipal Accommodation Tax) of [Destination Whitby- Tourism Strategy 2022 – 2025](#). A working group made up of staff members from Legal, Finance and Strategic Initiatives have been meeting and collaborating on MAT actions since the Fall of 2023 including the project plan, timeline and work associated with all the documents/agreements related to the MAT.

4. Discussion:

As a new funding option, the MAT will allow for new strategic projects that support tourism, increase visitor spending, and strengthen the local economy without impacting the property tax-funded budget. The *Municipal Act* specifically defines how the MAT revenues are to be spent. The legislation states under Ontario Regulation 435/17 that once reasonable costs of collecting and administering the tax are paid for, 50% of the remaining MAT shall be paid to an “eligible tourism entity” and the balance may be retained by the municipality to fund projects that support tourism. An “eligible tourism entity” is defined as a non-profit entity whose mandate includes the promotion of tourism in Ontario or the municipality.

At present, Whitby does not have an Eligible Tourism Entity and Staff are recommending the creation of a Municipal Services Corporation (MSC) to fulfill this requirement. Many comparator municipalities have found themselves in a similar situation to the Town of Whitby, without a registered not-for-profit tourism entity, and have elected to create an MSC to serve this purpose, including City of Hamilton, City of Brantford, City of Cornwall, Town of Huntsville, City of Markham, City of Sault Ste. Marie, City of Vaughan, City of Timmins, and still in progress, City of Pickering.

The benefits of the Town establishing the Corporation include:

- Satisfying the Province's requirement for a non-profit tourism entity to serve as an Eligible Tourism Entity that utilizes a minimum of 50% of the MAT revenues;
- Adopting a MSC model which provides accountability, corporate responsibility, and reasonable controls through the role of the voting members; and,
- Ensuring Council, as sole voting member, will be responsible for electing the Board of Directors (which will include a member of council, as appointed by the Mayor, staff representatives and industry stakeholders) that establish the governance framework for business plans, expenditures, and corporate policies.

The benefits of establishing a MSC extend beyond that of tourism development. MSCs often conduct business in a manner that meets the private sector requirement of timely, efficient and effective decision making.

A comparator of 8 municipalities with MSCs (listed above) was completed to understand the average administrative costs, how they are run, budgets and projects supported. The average administrative costs for the MSC's reviewed are approximately 10% of their annual budget with 90% of the funds being used for tourism promotions and projects and in some cases staffing for the MSC. This information will be considered when the Terms of Reference and budgets are developed for the MSC.

The Town proposes the incorporation of a non-profit, non-share capital Corporation as an MSC under the *Not-for-Profit Corporations Act, 2010* (Ontario) to be named "Whitby Tourism Development Corporation" (the "Corporation") if such name is available at the time of incorporation. Prior to creation of the MSC, Ontario Regulation 599/06 requires municipalities to conduct public consultation and develop a business case study. This was completed in March and April 2024.

Under Section 11 of the *Municipal Act*, Durham Region has exclusive authority over the collection and dissemination of information related to the promotion of all Durham Region local municipalities. For the Town to create the Corporation, the consent of Durham Region is required. Economic Development and Tourism staff have contacted their counterparts at the Region to begin this process and upon Council approval, will seek formal consent.

The MSC Business Case Study (**Attachment 2**) outlines the purpose, mandate and objectives, and governance structure of the proposed Whitby Tourism Development Corporation.

The mandate of the Whitby Tourism Development Corporation will be the promotion of tourism in alignment with the [Community Strategic Plan](#) and [Destination Whitby – Tourism Strategy 2022 – 2025](#). With the proposed implementation of the MAT, funding will be accessible to support the Tourism Strategy and related tourism initiatives moving forward.

MSC Corporate Governance Structure and Incorporation

To proceed with the establishment of the Municipal Services Corporation (MSC), the Town must submit an application to the province to incorporate a not-for-profit corporation under the *Not-for-Profit Corporations Act, 2010* (Ontario). The MSC will be created by way of articles of incorporation which will be drafted by the Town's Legal Services Department.

Staff propose the following positions to be the incorporators who will act as first interim Directors of the MSC:

- One (1) Member of Council, as appointed by the Mayor
- Director, Strategic Initiatives
- Commissioner, Financial Services and Treasurer
- Senior Manager, Economic Development
- Program Manager of Tourism, Culture and Events

The Interim Directors will have oversight and critical decision-making roles concerning the operation of the MSC. Staff will bring a report back to Council in Q4 2024 with final recommendations relating to establishing the new Board of Directors, their composition, Corporate By-laws, operating and asset transfer agreements, budget, and other details to bring the MSC to a complete stage of operation.

Collection of the MAT

The Town of Whitby is recommending designating the Ontario Restaurant Hotel Motel Association (ORHMA) as its agent to collect the MAT from Accommodation providers and remit to the Town. ORHMA works directly with the hotels and motels, provides training to staff, helps them set up a new tax code in their account, and works with booking agents such as Booking.com or Expedia to set up the tax code. After this process, it is the responsibility of the Accommodation provider to remit monthly reports to ORHMA, who will then collect and remit the funds to the Town, minus an administrative fee of 1.8% of the fees collected. Based on annual MAT revenues between \$350,400 to \$525,600, ORHMA fees related to the collection of Whitby's MAT would range between \$6,307 to \$9,460.

These fees are considered reasonable costs which will be deducted from MAT revenues.

Municipal Accommodation Tax Reserve Fund Policy

It is recommended that the 50% of the net MAT revenues retained by the Town be transferred to a new Municipal Accommodation Tax Reserve Fund. Subject to the establishment of the MAT reserve, as part to of the annual budget process, staff will recommend draws from this reserve to fund projects that support tourism within the Town so there will be transparency on how these funds will be spent. Unspent MAT funds will accumulate in the reserve to be used in future years and may be used to fund more significant (in terms of dollar value) projects that support tourism.

Town Staff will bring forward the MAT Reserve Fund Policy, for Council's consideration by the fourth quarter of 2024.

Use of Municipal Accommodation Tax Funds

The Town's half of the MAT will allow for new strategic projects that support tourism, increase visitor spending, and strengthen the local economy. Whitby will benefit from the new revenues by increasing capacity in the community for enhancing existing tourism products and experiences including sport, art, music, heritage, and other cultural offerings that contribute to Whitby's high quality of life for residents, as well as developing new programs and infrastructure that will improve visitor experience.

As part of the budget process, Strategic Initiatives (Creative Communities) will recommend tourism-related initiatives and/or infrastructure projects supporting tourism that may be funded from the MAT Reserve. Utilizing the municipal accommodation tax to fund tourism-related initiatives and infrastructure provides for a non-property tax source of funding for such projects to proceed/be implemented.

Some of the initiatives and projects will be chosen based on actions identified in the Tourism Strategy (wayfinding and signage, product or trail development, event, and attraction support) or related to actions in the Community Strategic Plan (support Public Art, a focus on the waterfront, downtown beautification etc.) and could support event space development.

In the near-term, some of the priorities staff may recommend being funded from the MAT reserve include:

- Addition of holiday lights throughout Whitby (Waterfront, Grass Park, Rotary Centennial Park, Four Corners, Centennial Building etc.)
- Rowe House Waterfront Pop-up (accessible dock, photo ops, maps, Adirondacks, and temporary visitors centre)
- Signature Event Support
- Tourism Wayfinding and Signage
- Downtown Placemaking Spaces

Projects to be funded from the MAT reserve will be part of the budget process and will be subject to actual MAT collections.

Implementation Plan and Next Steps

Upon approval of this Report and the Municipal Accommodation Tax By-law, Staff will take the following next steps to meet the targeted Municipal Accommodation Tax implementation date of July 1, 2024, and set up the Municipal Services Corporation (MSC).

- Implement the new Municipal Accommodation Tax By-law (**Attachment 1**), for the collection of a Municipal Accommodation Tax.
- Sign an agreement with Ontario Restaurant Hotel & Motel Association (ORHMA) so ORHMA can begin training local hotel and motel staff in collection and remittance practices.
- Obtain Durham Region's consent to create the MSC.
- Establish a MSC under the name "Whitby Tourism Development Corporation", if available, by:
 - Conducting the necessary corporate name search;
 - Preparing and filing articles of incorporation; and,
 - Preparing organizational by-law(s) and other documents for the MSC including its budget and a potential loan agreement with the Town for start-up costs.
- Create a separate bank account for the MSC through the Finance Department.
- Prepare a policy on asset transfers to the MSC which will be brought forward for Council's approval in Q4 2024.
- Recruit Directors for the MSC through the Clerks Department in the same way new members are recruited for Town Advisory Committee positions and bring forward the list of candidates for Council's approval in Q4 2024.
- Draft agreement between the Town and MSC pursuant to Section 6 of O.Reg. 435/17.
- Prepare a Municipal Accommodation Tax Reserve Fund Policy for Council's approval by Q4 2024.

Future implementation of MAT for short term accommodations such as Airbnb and VRBO

Short Term Rentals (i.e. Airbnb and VRBO) will not be included in this phase of the MAT. As per Council’s direction in Report LS 19 -19 and Council Update LS 06-20, Legal and Enforcement Services are currently working to create a regulatory framework and Zoning By-law amendments to control the short-term rental accommodations and licensing in Whitby. Public engagement was completed in Spring of 2021 and once the updated Short Term Rental By-law is brought forward to Council, these accommodation providers will be included in the MAT.

With the upcoming Consolidated Zoning By-law, the zoning regulation of short-term rentals will be addressed, at which point Legal and Enforcement Services will address the licensing component as well.

5. Financial Considerations:

Aside from property taxes and user fees, the Town has limited revenue tools. Implementation of a Municipal Accommodation Tax allows for tourism related initiatives and infrastructure to be implemented without an increase to property taxes.

The implementation of the Municipal Accommodation Tax is projected to generate between \$350,400 to \$525,600 of gross annual revenues based on 50% and 75% occupancy, respectively. As outlined in the table below, after deducting reasonable costs (currently only collection fees of 1.8%), it is expected that approximately \$172,046 to \$258,069 will be transferred to the MSC and the same amount is projected to be retained by the Town to fund future projects that support tourism:

	50% Occupancy	75% Occupancy
Projected MAT Revenues	\$350,400	\$525,600
Collection Cost (1.8%)	-\$6,307	-\$9,461
Net MAT (annual)	\$344,093	\$516,139
50% Allocation to MSC	\$172,046.50	\$258,069.50
50% Retained by Town (for tourism-related projects)	\$172,046.50	\$258,069.50
Total	\$344,093	\$516,139

It is anticipated that approximately 10% of annual funds allocated to the MSC will cover MSC-related administrative costs. Accordingly, the remaining 90% or approximately \$154,842 to \$232,263 of the net MAT revenues will be used by the

MSC, annually, for the promotion of tourism in Whitby. The MSC will prepare an annual budget that is separate from the Town of Whitby's budget.

As noted above, the Town will establish a MAT reserve for the projected 50% (e.g. approximately \$172,046 to \$258,069, annually) MAT revenues retained by the Town. Town of Whitby projects that support tourism to be funded from the MAT reserve will be part of the Town's budget process.

To date, approximately \$10,000 has been spent on external Legal fees to support the development of the MAT (including legal review of the draft policies, procedures and by-law related to a MAT program's governance, structure, and administrative procedures).

Once the MAT recommendations are approved by Council, additional costs to implement the program will include the following:

- Ontario Restaurant, Hotel and Motel Association (ORHMA) one-time fee (\$3,000)
- MSC/Whitby Tourism Corporation incorporation costs and NUAN's Search. (\$372.80)
- External Legal Costs to support the set-up of the MSC (\$5,000 to \$6,000)

The one-time/start-up costs, noted above, will be funded from the Creative Communities (Tourism) operating budget (Account 18132-52920) and staff will investigate whether these costs may be recovered from 2024 MAT collections. Staff will report back to Council on the first six months collection of the MAT and its distribution in late Q4 2024.

6. Communication and Public Engagement:

Prior to creation of the MSC, Ontario Regulation 599/06 requires municipalities to develop a business case study and conduct stakeholder consultation. The Creative Communities Team, in partnership with Economic Development staff began stakeholder meetings in late March/early April 2024 and met one-on-one with hotels and motels in Whitby to discuss and collect feedback on the Municipal Accommodation Tax. Follow-up emails were then sent out to the accommodation partners. A public notice was issued and the webpage whitby.ca/municipalservicescorporation was created for a short duration, as defined under the legislation.

Once the MAT is approved, a webpage specific to the accommodation tax will be created with information and frequently asked questions for both accommodation providers and visitors. The ORHMA will also host a training session in early June for accommodation providers on the MAT and how to remit.

7. Input from Departments/Sources:

The MAT Report and By-Law have been developed in partnership with staff from Strategic Initiatives, Financial Services and Legal and Enforcement Services.

8. Strategic Priorities:

In Whitby's Community Strategic Plan (CSP) 2023 – 2026, tourism is identified in the vision statement with the word explore. Improving the waterfront was highlighted by residents as the most important action to support the Whitby Economy. Action 1.2.2 in Strategic Pillar 1: Whitby's Neighbourhoods, the plan focuses on the need to enhance Whitby's culinary and live music sectors through collaborative partnerships. Action 3.1.3 identifies actions to enhance Whitby's tourism sector, with a focus on the waterfront. The Tourism Strategy builds upon these existing priorities and work plan alignment to ensure the pillars of the CSP are advanced. This project aligns with Goal 1, Action 1.2.4 explore potential funding streams for tourism initiatives (Municipal Accommodation Tax) of Destination Whitby - Tourism Strategy 2022 – 2025.

Tourism efforts in Accessibility and Sustainability are outlined in specific actions of the Tourism Strategy including Goal 3 – Building capacity for community tourism. Specific examples include investing and establishing a well signed, publicly accessible washroom in Downtown Whitby. The Whitby Food Guide was digitalized to allow for better accessibility. Action 2.1.4 under Objective 2, Goal 1 building Visitor Readiness identifies the need to invest in helping local businesses and stakeholders become "tourism ready" through online resources and training including the Safe Travels Stamp certification and the Green Step Sustainable Tourism certification program. The introduction of a Municipal Accommodation Tax will allow some of these actions to be funded as well as introduce new opportunities.

9. Attachments:

Attachment 1 – Draft By-law Municipal Accommodation Tax

Attachment 2 – Business Case Study: Whitby Tourism Development Corporation