



# Town of Whitby

## By-law # Insert Number

### Municipal Accommodation Tax By-law

Being a By-law to establish a Municipal Accommodation Tax.

Whereas subsection 400.1(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“Municipal 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 Municipal Act and Ontario Regulation 435/17 (Transient Accommodation Tax) under the Municipal Act, Council wishes to establish a municipal accommodation tax rate to levy on the purchase of transient accommodation within the town of Whitby; and,

Whereas pursuant to subsection 400.1(3) of the Municipal Act, Council may establish and use such 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 Corporation of the Town of Whitby hereby enacts as follows:

#### 1. Definitions

- 1.1. “Accommodation” means Lodging, and the right to use Lodging, that is provided for consideration, whether or not the Lodging is actually used.
- 1.2. “Books and Accounts” includes books, accounts, bills, receipts, invoices, financial statements, and records in any format.
- 1.3. “By-law” means this by-law and any amendments made thereto.
- 1.4. “Establishment” means the physical location, a building or part of a building that provides Accommodation.
- 1.5. “Lodging” includes:
  - a. 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; and,
  - b. the use of one or more additional beds or cots in a bedroom or suite.
- 1.6. “Multiple Offence” means an offence in respect to two (2) or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this By-law.
- 1.7. “Municipal Accommodation Tax” means the tax imposed under this By-law.
- 1.8. “Person” includes an individual, a corporation, a partnership, a sole proprietorship, a trust, a joint venture, an association or any other organization or entity of any kind and their respective heirs, executors, administrators, successors, assigns or other legal representatives of a person to whom the context can apply according to law.

- 1.9. "Provider" means a Person who sells, offers for sale, or otherwise provides Accommodation, and includes agents, hosts or any others who sell, offer for sale or otherwise provide Accommodation. Where a Provider cannot be easily determined, the owner of a property providing Accommodation is deemed to be the Provider.
- 1.10. "Purchase Price" means the price for which Accommodation is purchased, including the price paid and 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 harmonized sales tax imposed by the Government of Canada or by the Province of Ontario.
- 1.11. "Purchaser" means a Person who purchases Accommodation.
- 1.12. "Town" means The Corporation of the Town of Whitby.
- 1.13. "Town Solicitor" means the Commissioner of Legal and Enforcement Services/Town Solicitor, or their designate.
- 1.14. "Treasurer" means the Commissioner, Financial Services/Treasurer, or their designate.

## **2. Application**

- 2.1. Subject to the exemptions set out in section 3.1 of this By-law, a Purchaser shall, at the time of purchasing Accommodation, pay the Municipal Accommodation Tax in the amount of four per cent (4%) of the Purchase Price of Accommodation provided for a continuous period of twenty-nine (29) days or less, but greater than four (4) hours, provided in a hotel, motel, motor hotel, lodging house, inn, resort, or hostel. For greater certainty, the continuous period 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.

## **3. Exemptions**

- 3.1. The Municipal Accommodation Tax does not apply to Accommodation provided by:
  - 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*;
  - c. every university in Ontario and every college of applied arts and technology and post-secondary institution in Ontario whether or not

- affiliated with a university, the enrolments of which are counted for purposes of calculating operating grants 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* and every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*;
  - e. every long-term care home as defined in subsection 2(1) of the *Fixing Long-Term Care Act, 2021* and every hospice;
  - f. a hotel or motel used by the Town or its service providers for shelter purposes;
  - g. a treatment centre that receives private funding or provincial aid under the *Ministry of Community and Social Services Act*;
  - h. a house of refuge or Lodging for the reformation of offenders;
  - i. a “lodging house” as defined in the Town’s Business Licensing By-law #5545-04, as amended;
  - j. a charitable, non-profit philanthropic corporation organized as shelter for the relief of the poor or for emergency;
  - k. a tent or trailer site supplied by a campground, tourist camp or trailer park;
  - l. employers to their employees in premises operated by the employer;
  - m. a hospitality room in an establishment that may or may not contain a bed and is used for displaying merchandise, holding meetings or entertaining;  
or,
  - n. group bookings with contracts that are entered into prior to the date that this By-law takes effect.

#### **4. Collection and Remittance**

- 4.1. A Provider shall collect the Municipal Accommodation Tax from the Purchaser at the time the Accommodation is purchased.
- 4.2. A Provider shall identify the amount of the Municipal Accommodation Tax as a separate item on a bill, receipt, invoice or similar document issued by the Provider in respect of the Accommodation on which the tax is imposed and shall identify the item as “Municipal Accommodation Tax”.
- 4.3. A Provider shall be responsible for the collection and remittance of HST directly to the Government of Canada and/or the Province of Ontario.

- 4.4. A Provider shall, on or before the fifteenth (15<sup>th</sup>) day of the month, remit to the Town, or its tax collection agent, the amount of the Municipal Accommodation Tax collected for the previous month and shall submit monthly statements in a form required by the Town which details the number of Accommodations sold, the Purchase Price of each Accommodation, the amount of the Municipal Accommodation Tax collected and any other information as required by the Town of the purposes of administering and enforcing this By-law.
- 4.5. The Treasurer shall charge a fee for all payment remittances that are not honoured by the financial institution upon which it is drawn in an amount as set out in the Town's Fees and Charges By-law # 7220-17, as amended.

## **5. Delegation of Authority**

- 5.1. The Treasurer is authorized to administer and enforce this By-law, including approvals and collection, and to instruct the Town Solicitor to take such legal action as may be considered appropriate.

## **6. Tax Collection Agent**

- 6.1. The tax collection agent for the Town under this By-law is the Person who is designated in an agreement with the Town to collect the Municipal Accommodation Tax as an agent for the Town.
- 6.2. The Treasurer, in consultation with the Town Solicitor, may designate additional tax collection agents for the Town and is delegated the authority to enter into agreements with such designated tax collection agents.
- 6.3. The tax collection agent(s) shall collect and administer the Municipal Accommodation Tax as an agent for the Town in accordance with this By-law and the agreement between the Town and that tax collection agent.

## **7. Liens**

- 7.1. All Municipal Accommodation Tax, interest, and penalties that are past due will be deemed to be in arrears and may be added to the tax roll for any real property in the town of Whitby that is registered in the name of the Provider to be collected in the same manner as property taxes and will constitute a lien upon the lands, but such lien will not be a priority lien for the purposes of subsections 1(2.1), (2.2) and (3) of the Municipal 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.

## **8. Audit and Inspection**

- 8.1. A Provider shall keep all Books and Accounts that are sufficient to furnish the Town, or its representative with the necessary particulars of sales of

Accommodations and the amount of the Municipal Accommodation Tax collected, payable and remitted, for no less than seven (7) years from the date of the sale of the Accommodation.

8.2. A Provider shall permit the Town, or its representative, at all reasonable times, entry into any premises where any business is carried on, where any property is kept, where anything is done in connection with any business, or where any Books and Accounts are or should be kept and shall permit the Town or its representative to audit and inspect all Books and Accounts of the Provider. A Provider shall produce copies of any Books and Accounts that may be required by the Town or its representative for the purposes of administering and enforcing this By-law.

8.3. A Provider shall:

- a. give the Town or its representative all reasonable assistance with the audit or inspection;
- b. answer all questions relating to the audit or inspection either orally or, if the Town requires, in writing, on oath or by statutory declaration; and,
- c. attend at the premises with the Town or its representative for the purposes of giving reasonable assistance and answering questions relating to the audit or inspection.

8.4. A Provider shall comply with a written demand from the Town or its representative for information or for the production on oath or otherwise of any Books and Accounts as the Town or its representative 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.

## **9. Determination of Amount**

9.1. The Treasurer may determine an amount of the Municipal Accommodation Tax that is required to be remitted, together with any interest imposed upon any Municipal Accommodation Tax that is outstanding, if a Provider who is responsible for the payment or remittance of the Municipal Accommodation Tax fails to pay or remit as required by this By-law.

9.2. The Treasurer may impose an interest charge of one and one-quarter per cent (1.25%) of the Municipal Accommodation Tax that is outstanding on the first day of each month and subsequent months until the Municipal Accommodation Tax is paid in full.

9.3. The Treasurer may assess or reassess for any Municipal Accommodation Tax that is payable by the Provider within three (3) years from the day the Municipal Accommodation Tax was remittable, except that where the

Treasurer establishes that a Provider has made any negligent or wilful misrepresentation or has committed any fraud in supplying, or omitting to supply, any information under this By-law, then the Treasurer may assess or reassess, for any time that the Treasurer considers reasonable, the Municipal Accommodation Tax payable.

- 9.4. A Provider shall pay the amount of the Municipal Accommodation Tax and any interest set out in the notice of calculation made under this section 9 of this By-law within thirty (30) days from the date of mailing of the notice of calculation.

## **10. Offences and Penalties**

10.1. 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 that is prepared, submitted or filed under or for the purposes of this By-law;
- b. destroys, alters, mutilates, hides or otherwise disposes of any Books and Accounts in order to evade payment or remittance of any amounts owing under this By-law;
- c. makes, participates in, assents to or contributes in the making of false or deceptive entries, including omitting to enter an entry, in any Books and Accounts;
- d. hinders, obstructs or interferes with any audit or inspection conducted by the Town or its representative under this By-law;
- e. willfully, in any manner, evades or attempts to evade:
  - I. paying the Municipal Accommodation Tax;
  - II. remitting the Municipal Accommodation Tax; or,
  - III. otherwise complying with this By-law; or,
- f. conspires with any other Person to commit an offence described in subsections 10.1 (a) through (e) of this By-law.

10.2. Any Person who is guilty of an offence under this By-law is liable as follows:

- a. upon a first conviction, a fine of not less than \$300.00 and not more than \$50,000.00 if the Provider is a Person other than a corporation, and not less than \$500.00 and not more than \$100,000.00 if the Provider is a corporation;
- b. upon a second or subsequent conviction for the same offence, a fine of not less than \$500.00 and not more than \$100,000.00;

- c. upon conviction for a continuing offence, a fine of not less than \$500.00 and not more than \$10,000.00 for each day or part of a day that the offence continues and the total of all of the daily fines for the offence is not limited to \$100,000.00; and,
- d. upon conviction for Multiple Offences, for each offence included in the Multiple Offence, a fine of not less than \$500.00 and not more than \$10,000.00 and the total of all fines for each included offence is not limited to \$100,000.00.

## **11. General**

11.1. If any section or portion of this By-law is found by a court of competent jurisdiction to be invalid, illegal, unenforceable or of no force and effect, then it is the intention of Council that all remaining sections and portions of this By-law continue in force and effect to the fullest extent possible according to law.

11.2. This By-law may be referred to as the “Municipal Accommodation Tax By-law”.

## **12. Effective Date**

12.1. This By-law shall come into force and take effect on July 1, 2024.

By-law read and passed this Select date day of Insert Month, Year.

## **Appendices**

### **Appendix 1**

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### **Appendix 2**

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Elizabeth Roy, Mayor

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Christopher Harris, Town Clerk