

The Corporation of the City of Owen Sound

By-law Number 2023-127

A By-law to establish a Municipal Accommodation Tax (MAT) in the City of Owen Sound

WHEREAS section 400.1 (1) of the *Municipal Act 2001*, S.O. 2001 c. 25, as amended (the "Municipal Act"), provides that a municipality may pass by-laws imposing a tax in respect of the purchase of transient accommodation within the municipality; and

WHEREAS section 400.1 (2) of the Municipal Act and O. Reg. 435/17 Transient Accommodation Tax provides that the by-law must state the subject of the tax to be imposed, state the tax rate or the amount of tax payable and state the manner in which the tax is to be collected; and

WHEREAS section 400.1 (3) of the Municipal Act provides that the by-law may include penalties for failing to comply with the by-law, interest on outstanding taxes or penalties, the assessment of outstanding taxes, penalties or interest and may establish enforcement measures as Council considers appropriate if an amount assessed for outstanding tax, penalties or interest remains unpaid after it is due; and

WHEREAS section 400.4 (2) of the Municipal Act provides that outstanding taxes, interest or penalties cannot have priority lien status and any lien will not have a higher priority than it would otherwise have in law in relation to other claims, liens or encumbrances; and

WHEREAS the Corporation of the City of Owen Sound is desirous of implementing a municipal accommodation tax as provided in the Municipal Act and regulation thereto; and

WHEREAS on June 26, 2023, City Council passed Resolution No. R-230626-008 directing staff to bring forward the subject by-law for approval, in consideration of staff report CS-23-044 presented to the Community Development, Tourism and Culture Advisory Committee on June 9, 2023;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

Short title

1. This by-law may be referred to as the "Municipal Accommodation Tax By-law" or "MAT By-law" and when so referenced includes all future amendments unless otherwise specified.

Definitions

2. For the purposes of this by-law:
"Accommodation" means:
 - a. lodging in a room or suite of rooms containing one or more beds or cots in a hotel, motel, hostel, campground, bed and breakfast, club, condominium, condo hotel, short-term rental or portion of a large multi-use complex used as a hotel, for a period of a minimum of 4 hours and a maximum of 28 consecutive nights; and

- b. a tent, trailer, vehicle, recreational vehicle or other structure on a campsite or in a campground, regardless of whether the tent/trailer/vehicle/recreational vehicle/structure is brought to the campsite/campground by the patron or if it is existing on the campsite or in the campground and available for rent or use otherwise;

and whether or not additional amenities, services or the right to use additional space in the establishment, dwelling unit or campground/campsite are provided, where such rights are acquired for a purchase price.

"Agent" means the person or entity authorized and delegated the authority by the Treasurer to fulfill administrative duties regarding the implementation of the MAT.

"City" means the geographic area of the City of Owen Sound or the municipal corporation as the context requires.

"Council" means those individuals elected to govern the Corporation of the City of Owen Sound.

"County of Grey" means the Corporation of the County of Grey.

"Establishment Information Sheet" means the form established by the Treasurer to provide information about an establishment which provides Accommodation.

"MAT" or "Municipal Accommodation Tax" means the tax imposed under this by-law.

"MAT Remittance Report" means the form established by the Treasurer for reporting MAT collected and to be paid to the City or its Agent for a reporting period.

"Municipal Accommodation Tax" means the tax imposed under this by-law and where applicable, includes the tax assessed by the Treasurer. The Municipal Accommodation Tax may be referred to as the acronym MAT.

"Person" includes an individual, a sole proprietorship, a partnership, an unincorporated association, a trust, and a corporation.

"Provider" means a Person that sells, offers for sale, or otherwise provides Accommodation, and includes agents, hosts or others who sell, offer for sale by any means including through an on-line platform, or who otherwise provide Accommodation.

"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. Purchase price does not include the goods and services tax imposed by the Government of Canada or by the Province of Ontario. Purchase Price also does not include fees and surcharges for ancillary services including food, beverages, entertainment, internet, and telephone usage, unless such ancillary charges have not been separately itemized on the invoice for Accommodation.

"Purchaser" means a Person who, for a Purchase Price, uses, possesses or has the right to the use or possession of any Accommodation.

"Treasurer" means the person appointed by Council from time to time to act in the legal capacity as authorized by the Municipal Act 2001, S.O. 2001 c. 25, as amended, and includes his or her authorized designate.

Interpretation

3. Whenever this by-law refers to a person or thing with reference to gender or the gender neutral, the intention is to read the by-law with the gender applicable to the circumstances.
4. References to items in the plural include the singular, as applicable.
5. The words "include", "including" and "includes" are not to be read as limiting the phrases or descriptions that precede them. Any examples provided are intended to be representative examples and not intended to be an exhaustive list.
6. Headings are inserted for ease of reference only and are not to be used as interpretation aids.
7. Specific references to laws and regulations are meant to refer to the current laws applicable as at the time the by-law was enacted and shall include the laws as they are amended, restated or replaced from time to time.
8. Where a day or where the last day of a period of time, referenced in this by-law by a number of days, falls on a Saturday, Sunday or statutory or civic holiday, the day or last day as the case may be shall be deemed to be the next following business day.
9. The obligations imposed by this by-law are in addition to obligations otherwise imposed by law or contract.
10. Terms with capitals shall be read with the meaning in section 1 hereto, and other words shall be given their ordinary meaning.

Severability/Conflict

11. If any section, subsection, part or parts of this by-law is/are declared by any court of competent jurisdiction to be bad, illegal or ultra vires, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.
12. Nothing in this by-law relieves any person from complying with any provision of any Federal or Provincial legislation or any other by-law of the City.
13. This by-law shall supersede and rescind any by-law found to be inconsistent with the provisions contained herein.

Administration/Delegation

14. The Treasurer is delegated the authority to implement and administer this by-law, to collect the MAT and to take all actions and make all decisions required of the Treasurer under this by-law. Without limiting the generality of the foregoing, the Treasurer is delegated the authority to:
 - a. establish and amend from time to time, procedures, forms and documents, as the Treasurer may determine are required to implement and administer this by-law and to collect the MAT;
 - b. perform all administrative functions referred to herein and deemed necessary for the due administration, implementation and

enforcement of this by-law and collection of monies owing hereunder and authorize refunds in accordance with this by-law;

- c. designate tax collection agents for the City; and
 - d. carry out all duties assigned to the Treasurer under this by-law.
15. The Treasurer may delegate the performance of any one or more of his or her functions under this by-law to one or more persons from time to time as the occasion requires and may impose conditions upon such delegation and may revoke any such delegation. The Treasurer may continue to exercise any function delegated during the delegation.
16. Except as expressly provided to the contrary in this by-law, the decisions of the Treasurer are final.

Municipal Accommodation Tax (MAT) Imposed

17. Except as provided in section 21 of this by-law, every Purchaser shall, at the time of paying for Accommodation, pay to the Provider, Municipal Accommodation Tax in the amount of four percent (4%) of the Purchase Price of any Accommodation provided to the Purchaser for a continuous period of 28 days or less.
18. For greater certainty, the continuous period referred to in section 17 is not disrupted by the purchase of different rooms, suites, beds, campsites or other
19. Accommodation by the same Purchaser from the same Provider in the course of the continuous period.
20. The Municipal Accommodation Tax will be administered in accordance with a Municipal Accommodation Tax Agreement entered into with an eligible tourism entity.

Exemptions

21. Despite section 17, the Municipal Accommodation Tax imposed under this by-law does not apply to:
- a. the Crown, any agency of the Crown in right of Ontario or any 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. any Board as defined in subsection 1(1) of the *Education Act*;
 - c. any university in Ontario or any 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. any 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 license issued under the *Private Hospitals Act* and upon proclamation of the Lieutenant Governor of the amendment to Paragraph 4 of subsection 400.2 of the Municipal Act, to any community health facility within the meaning of the

Oversight of Health Facilities and Devices Act 2017 that was formerly licensed under the *Private Hospitals Act*;

- e. any long-term care home as defined in subsection 2(1) of the *Long-Term Care Home Act*;
- f. any retirement home as defined in the *Retirement Home Act, 2010*;
- g. any home for special care within the meaning of the *Homes for Special Care Act*;
- h. any non-profit hospice occupying land for which there is an exemption from taxation determined in accordance with section 23.1 of Ontario Regulation 282/98 made under the *Assessment Act*;
- i. any Person or entity as prescribed by regulation under the Municipal Act, as exempt from payment of Municipal Accommodation Tax;
- j. any treatment centre that receives provincial aid under the *Ministry of Community and Social Services Act*; or
- k. Accommodation provided:
 - i. in a house of refuge or lodging for the reformation of offenders;
 - ii. by charitable or not-for-profit corporations or by the City or County of Grey or its contractors or agents for the purpose of providing or operating a shelter or emergency shelter for the relief of the poor; or for the benefit of persons who are fleeing situations of physical, financial, emotional or psychological abuse; or for other persons who are suffering from homelessness;
 - iii. by an employer to its employees in premises operated by the employer.

Invoice to purchaser

22. Every Provider shall include on every bill, receipt, invoice or similar document for the purchase of Accommodation, a separate item identified as Municipal Accommodation Tax showing the rate at which the MAT is calculated, and the amount of the MAT imposed and collected.

Duty to collect

23. Every Provider shall collect the MAT from the Purchaser at the time the Accommodation is paid for.

Duty to report/duty to remit

24. Every Provider shall file annually, an Establishment Information Report with the City or its Agent, on or before the 31st of January each year.
25. Except as provided to the contrary in section 26 every Provider shall:
- a. on or before the last day of each month, file a MAT Remittance Report with the City or its Agent, setting out the MAT required to be charged and collected in the prior month; and
 - b. within 15 days after the MAT Remittance Report due date, pay to the City or its Agent an amount equal to the MAT required to be charged to and collected from Purchasers during the period reported in the MAT Remittance Report.

26. Despite section 25, a Provider may apply in writing for quarterly filing of MAT Remittance Reports and payment of MAT charged and collected. If quarterly filing is approved by the Director of Community Services and while any such approval is in good standing, the Provider shall:
 - a. on or before January 31, April 30, July 31 and October 31, in each year, file a MAT Remittance Report with the City or its Agent setting out the MAT required to be charged and collected for the three-month period prior to the month in which the MAT Remittance Report is due; and
 - b. within 15 days after the MAT Remittance Report due date, pay to the City or its Agent an amount equal to the MAT required to be charged and collected for the period reported in the MAT Remittance Report.
27. The Provider shall ensure that the MAT Remittance Reports required under section 25 or 26 are:
 - a. in the form established by the Treasurer from time to time;
 - b. filed with the City or its Agent in the manner established by the Treasurer from time to time;
 - c. filed with the City or its Agent in the timelines established in this by-law;
 - d. fully completed when submitted; and
 - e. signed by an authorized officer to confirm the accuracy of the report.
28. Every Provider shall file a MAT Remittance Report with the City or its Agent for a reporting period whether or not any MAT was collected during the reporting period.

Assessment – Failure to file remittance report or pay

29. Where a Provider has filed a MAT Remittance Report but failed to pay all or part of the MAT owing to the City, the Treasurer or his or her Agent may assess the amount of MAT payable to the City based on the MAT Remittance Report.
30. Where a Provider has failed to file a MAT Remittance Report, the Treasurer shall assess the amount of MAT payable to the City by multiplying the MAT rate of 4% X room rate X 100% occupancy.
31. The Treasurer or his or her Agent shall mail an invoice to the Provider setting out the amount of MAT assessed by the Treasurer under section 30, as payable by the Provider, and in the case of an invoice related to an amount assessed under section 30, advise the Provider of the rights to re-assessment under section 32. The Provider shall pay the assessed amount to the City or its Agent within 14 days from the date of the invoice whether or not the assessed amount was actually collected by the Provider and whether or not the assessment reflects the amount of MAT actually payable.
32. Despite section 31, where the Treasurer or his or her Agent has assessed MAT in accordance with section 30, the Provider may, within two months of the date of the invoice sent pursuant to section 31, apply to the Treasurer in writing for a re-assessment of the MAT owing to the City for the assessed period. No request for a re-assessment will be considered by the Treasurer unless the Provider also:

- a. submits or has submitted a completed MAT Remittance Report for the period to which the assessment applied;
 - b. paid the amount of the MAT assessed by the Treasurer, in accordance with section 30 and set out in the invoice sent in accordance with section 31; and
 - c. has paid any applicable interest or penalties on the amount of MAT assessed by the Treasurer or its Agent under section 44.
33. Upon a re-assessment by the Treasurer based on the MAT Remittance Report for the period, the Treasurer shall adjust the City records if necessary, to reflect the reassessment of the MAT and of any interest or penalties thereon.
34. In the event that the re-assessment by the Treasurer reveals an overpayment by the Provider, the Treasurer, will notify the Provider in writing and will provide a refund of the amount overpaid. No interest shall be paid on the amount of the overpayment.
35. Where the Provider who is entitled to do so, fails to apply for a re-assessment in accordance with section 32, the amount assessed by the Treasurer in accordance with section 30 shall be final, except as may be determined to the contrary by way of audit.

Audit and inspection

36. Every Provider shall keep books of account, records and documents sufficient to furnish the City or its Agent with the necessary particulars, as of any point in time, to verify the accuracy and completeness of the amount of MAT collected and paid to the City.
37. Every Provider shall retain such books of account, records and documents required under section 36, for a period of no less than 7 years.
38. Any Person authorized by the City for any purpose related to the administration or enforcement of this by-law may at all reasonable times enter into any premises or place where business of a Provider is carried on or any property is kept or where anything is done in connection with any business of a Provider or where any books of account, records and documents are required under section 36 are or should be kept and:
- a. audit or examine the books and records and any account, voucher, letter, facsimile, electronic or other document that relates or may relate to the information that is or should be in the books or records or to an amount payable under this by-law; and
 - b. require a person who is liable or possibly liable to pay MAT under this by-law, an officer, director, Agent or representative of that person or any person on the premises to:
 - i. give him or her all reasonable assistance with his or her audit or examination;
 - ii. answer all questions relating to the audit or examination either orally or, if he or she requires, in writing, on oath or by statutory declaration; and
 - iii. attend at the premises or place with him or her for the purposes of giving reasonable assistance and answering questions relating to the audit or examination.

39. Every Provider shall co-operate with the City or its Agent in the conduct of an inspection or audit under section 38 and cause its employees, agents and contractors to comply as required.
40. The Treasurer may for any purpose relating to the collection, administration or enforcement of this by-law serve on any Person personally, by mail or courier service, a written demand for information and for the production on oath or otherwise of books, records and documents as the Treasurer or any other person authorized by the City to make the demand, considers necessary to determine compliance with this by-law.
41. Every Person served with a demand under section 40 shall comply with the demand within the time specified in the demand.

Adjustment by Treasurer – Result of audit

42. Where the Treasurer determines as a result of audit of the Provider's records that MAT which accrued within a period of two years prior to the date of the audit, was not reported and paid by that Provider in accordance with this by-law, the Treasurer may make a determination of the amount of MAT properly payable for that period, adjust the City records appropriately to reflect the adjustment, and:
 - a. notify the Provider in writing:
 - i. of the period for which MAT was adjusted;
 - ii. of the basis for the adjustment;
 - iii. of the amount of MAT actually paid and the amount payable for the period of adjustment;
 - iv. of the amount now owing to the City or overpaid to the City; and
 - v. where applicable, that payment of any amount owing to the City is due within 15 days of the date of the notice.
 - b. in the event that an audit reveals an overpayment, the Treasurer will provide a refund of the amount of MAT overpaid. No interest shall be paid on the amount of the overpayment.
43. In the event the Treasurer establishes that a Person has made any misrepresentation that is attributable to neglect, careless or willful default or has committed fraud in supplying any information under this by-law, the Treasurer's right to adjust the MAT is not restricted to a two-year period, despite section 42.

Interest/penalty

44. Interest at the rate set out in the City's Fees and Charges By-law as the rate payable on overdue amounts owing to the City, shall be charged on the amount of any MAT owing to the City under this by-law including any MAT assessed under sections 29 to 35 or adjusted under section 42, from the day following the date on which the MAT was due and payable up to and including the date on which the MAT is paid in full.
45. Where the amount of any MAT owing to the City is determined in accordance with sections 42 and 43, interest shall start to accrue fifteen (15) days from the date of the invoice.

46. The Provider shall pay any fee or charge established in accordance with the City's Fees and Charges By-law for any late filings, dishonored payments, or other matters.

Application for refund

47. A Provider who has paid an amount as MAT which was not payable under this by-law and not addressed through a re-assessment in accordance with section 32 or through an adjustment in accordance with sections 42 and 43, may, within two years of the date the Provider becomes aware that the MAT may have been overpaid, apply in writing to the Treasurer to review the application for a refund and where a form has been established, shall use the prescribed form. The onus of proof shall be on the Provider, who shall provide to the Treasurer such information as the Provider intends to rely on in support of the application. No application for a refund will be accepted if the applicant is not current in filing of MAT Remittance Reports.
48. The Treasurer shall review the application, the supporting material provided by the applicant and any other information available to the Treasurer, make a determination of whether all or part of an amount of MAT was wrongly paid, and notify the applicant of his or her decision in writing.
49. Where, as a result of the review in section 48, the Treasurer is satisfied:
- a. there has been an overpayment of MAT, the Treasurer will notify the Provider and will: refund the overpaid amount. No interest shall be paid on the amount of the overpayment; or
 - b. that no overpayment has been made, the Treasurer shall notify the Provider of the decision in writing and shall provide particulars for disallowing all or part of the refund claimed.
50. Any refund authorized under section 49 shall be limited to the amount overpaid by the Provider during the two-year period prior to the date of the application and while the Provider owned the establishment which provided the accommodation.

Collection

51. All MAT, including MAT assessed under sections 29 to 35 or adjusted under sections 42 and 43 and related penalties and interest that are past due shall be deemed to be in arrears and a debt owing to the City. The Treasurer is authorized to employ any remedy available to the City to collect any such amount including without limitation:
- a. adding the amount to the tax roll for any real property in the City registered in the name of the Provider to be collected in like manner as property taxes and constituting a lien upon the lands;
 - b. bringing an action in the name of the City for the recovery of the amount in the court of appropriate jurisdiction;
 - c. referring the collection of the amount to a collection agency; and
 - d. exercising any other remedy available pursuant to the Municipal Act, 2001, or otherwise available at law.
52. The remedies provided for the recovery and enforcement of the payment of any amount required under this by-law are in addition to any other remedies existing at law.

Repayment agreements

53. Where the Treasurer, in his or her discretion, determines that it is in the best interests of the City to do so, the Treasurer will recommend to Council, a repayment arrangement with any Provider, providing for terms of payment of any MAT and interest and penalties thereon, which were not paid in accordance with this by-law. The Treasurer will recommend to Council, terms to be included in the repayment agreement. While the repayment agreement is in good standing, no further collection efforts shall be taken, despite sections 51 and 52. Council is not obligated to authorize a repayment agreement.
54. The repayment agreement shall terminate automatically upon breach of any provision thereof.
55. Interest shall continue to accrue on the amount of MAT outstanding during the term of the repayment agreement.

False statement

56. No Person shall:
 - a. make a false, inaccurate or intentionally misleading statement or representation in any document, statement or request provided for by this by-law; or
 - b. file a document, statement or request provided for in this by-law where such Person knows or believes it contains a false, inaccurate or intentionally misleading statement or representation, whether or not such statement or representation was made by the Person filing the document or application.

No interference

57. No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person exercising a power or performing a duty under this by-law.

Offence

58. Every person who contravenes any provision of this by-law and any director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.
59. For the purposes of section 58, each day on which a person contravenes any of the provisions of this by-law shall be deemed to constitute a separate offence under this by-law.
60. A Person who is convicted of an offence under this by-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500.00 and a maximum fine of \$10,000.00 and the total of all daily fines for the offence is not limited to \$100,000.00 as provided for in subsection 429(3)2 of the Municipal Act.
61. The levying and payment of any fine as provided for under the *Provincial Offences Act* shall not relieve a person from the necessity of compliance with the obligations under this by-law or from the obligation for payment of the MAT or any interest or penalty imposed by sections 44 to 46 of this by-law or such other penalties as may be provided for under the Municipal Act, as amended or replaced.

Enforcement

62. This by-law may be enforced by any Municipal By-Law Enforcement Officer or Agent, properly appointed by Council.

Confidential Information

63. All information submitted to and collected by the City, will, except as otherwise provided in this section, be available for disclosure to the public in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (MFIPPA), as amended.

64. In the event that any Person in submitting information to the City or to the Treasurer in any form, as required under this by-law, where such information is confidential or proprietary or otherwise may be exempt from disclosure under the MFIPPA, the Person submitting the information shall so identify that information upon its submission to the City or the Treasurer and shall provide sufficient details as to the reason for its purported exemption from disclosure.

Effective date

65. This by-law shall come into effect at 12:01 a.m. on March 1, 2024.

FINALLY PASSED AND ENACTED this 4th day of December 2023.

Mayor Ian C. Boddy

Briana M. Bloomfield, City Clerk