

# **The Corporation of the City of Port Colborne**

**By-law No. \_\_\_\_\_**

## **Being a by-law to establish a Municipal Accommodation Tax**

**WHEREAS** The Corporation of the City of Port Colborne may, through a by-law, impose a tax in respect of the purchase of transient accommodation in the municipality in accordance with Part XII.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “Act”), and Ontario Regulation 435/17 Transient Accommodation Tax;

**AND WHEREAS** at its meeting on March 22, 2022, the Council of The Corporation of the City of Port Colborne approved the establishment of a tax and the tax rate to be imposed on the purchase of transient accommodation in the City of Port Colborne;

**AND WHEREAS** the revenue collected from the tax levied on the purchase of transient accommodation is to be shared with a non-profit entity whose mandate includes the promotion of tourism in the City of Port Colborne, as further described in Regulation 435/17;

**AND WHEREAS** pursuant to section 400.1(3) and 400.4 of the Act, Council 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 Act provides that outstanding taxes, penalties or interest 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** section 425 of the Act provides that a person who fails to comply or contravenes the by-law of the municipality passed under the Act is guilty of an offence.

Now, therefore, the Council of The Corporation of the City of Port Colborne enacts as follows:

### **1. Definitions and Interpretations**

1.1 For the purposes of this by-law:

**"Accommodation"** means the use or possession or the right to the use or possession, for dwelling, lodging or sleeping purposes:

- on any camping site or land consisting of one or more tents, trailers, motor or mobile homes, recreational vehicles or any vehicle so constructed that it is suitable for being attached to a motor vehicle for the purpose of being propelled by the motor vehicle; and

- on or in a boat, watercraft or vessel which floats on the surface of the water, is capable of carrying people and is moored at Sugarloaf Marina.

**“Ancillary Charges”** means charges related to the purchase of Accommodation including, but not limited to, the purchase of food and beverages, internet, phone, gasoline, electricity, and any additional amenities.

**“City”** means The Corporation of the City of Port Colborne.

**“Council”** means the Council of The Corporation of the City of Port Colborne.

**“Eligible Tourism Entity”** has the meaning given to it in Ontario Regulation 435/17.

**“Establishment”** means the physical location, a building or part of a building that provides Accommodation.

**“Establishment Information Report”** means the form established by the Treasurer to provide information about the Establishment that provides Accommodation.

**“Municipal Accommodation Tax (MAT)”** means the tax imposed under this by-law, and where applicable, includes the tax assessed by the Treasurer.

**“MAT Remittance Report”** means the form established by the Treasurer for reporting MAT collected and to be paid to the City for a reporting period.

**“Person”** includes an individual, corporation, a sole proprietorship, a partnership, an unincorporated association, a trust, a firm 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 online platform, or who otherwise provide Accommodation.

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

**“Purchase Price”** means the price for which Accommodation is purchased, and where applicable, any other consideration accepted by the Provider in return for Accommodation. Purchase Price does not include Ancillary Charges that are itemized separately on the Purchaser’s bill, receipt, invoice or similar document. Purchase Price does not include the goods and services tax imposed by the Government of Canada and by the Province of Ontario.

**“Sugarloaf Marina”** means the location (Lat. 42° 52’ 37” North, Long. 79° 15’ 15” West), including all the navigable waters and any municipally owned foreshore, where a boat, watercraft or vessel is moored in the City of Port Colborne.

**“Treasurer”** means the person appointed as the Director of Corporate Services or an authorized representative.

- 1.2 Specific references to laws and regulations are meant to refer to the current laws applicable at the time the by-law was enacted and shall include the laws as they are amended, restated or replaced from time to time.
- 1.3 The obligations imposed by this by-law are in addition to obligations otherwise imposed by law or contract.
- 1.4 Terms with capitals shall be read with the meaning hereto and other words shall be given their ordinary meaning.
- 1.5 The words "include", "includes" and "including" 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.
- 1.6 References to items in the plural include the singular, as applicable.
- 1.7 Headings are inserted for ease of reference only and are not to be used as interpretation aids.
- 1.8 All days stated within this by-law shall be calendar days. Where the time for completing an act ends on a weekend or holiday, the act may be completed on the next business day.

## **2. Application of the MAT**

- 2.1 A Provider of Accommodation shall charge the Municipal Accommodation Tax, plus applicable taxes, to every Purchaser, at the time of purchase.
- 2.2 Except as provided in Section 3 of this by-law, every Purchaser shall pay to the Provider of Accommodation the Municipal Accommodation Tax, at the time of purchase, the amount of four per cent (4%) of the Purchase Price of the Accommodation which is provided for a continuous period of less than/equal to 30 days at a camping site or Sugarloaf Marina within the City of Port Colborne. The continuous period referred to above is not disrupted by the purchase of different accommodation or other Accommodation in the same Establishment in the course of the continuous period.
- 2.3 A Provider of Accommodation shall include on every bill, receipt, invoice or similar document for the purchase of Accommodation a separate item for the four per cent (4%) tax imposed on the purchase, and the item shall be identified as “Municipal Accommodation Tax”. Where the Provider of Accommodation fails to separately

itemize Ancillary Charges, the Municipal Accommodation Tax will apply to the total amount of the purchase price.

### **3. Exemptions**

Despite Section 2, 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*;
- (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 annual 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*;
- (f) Every retirement home as defined in the *Retirement Home Act, 2010*;
- (g) Every home for special care as defined in the *Home for Special Care Act*;
- (h) Every non-profit hospice occupying land for which there is an exemption from taxation determined in accordance with section 21.1 of Ontario Regulation 282/98 made under the *Assessment Act*;
- (i) Every treatment centre that receives provincial aid under the *Ministry of Community and Social Services Act*;
- (j) Every house of refuge or lodging for the reformation of offenders;
- (k) Every charitable or not-for-profit corporation or by the City 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 persons suffering from homelessness, or for the

benefit of persons fleeing situations of physical, financial, emotional or psychological abuse;

- (l) All lodging in a room, suite of rooms, area or dwelling containing one or more beds or cots, as the case may be in a hotel, motel, hostel, lodge, inn, club, resort, bed and breakfast, and vacation rental unit providing short-term or temporary occupancy;
- (m) All lodging in a room, suite of rooms, area or dwelling containing one or more beds or cots in park model trailers, manufactured homes, cottages, cabins or similar structures providing short-term or temporary occupancy;
- (n) Every accommodation supplied by employers to their employees in premises operated by the employer;
- (o) Every hospitality room in an establishment that may or may not contain a bed and is used for displaying merchandise, holding meetings, or entertaining; and
- (p) Every booking with signed contracts prior to the date that this by-law takes effect, whether paid partially or in full.

#### **4. Administration/Delegation**

4.1 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, including any and all enforcement measures, required under this by-law. Without limiting the generality of the foregoing, the Treasurer is delegated the authority to:

- (a) establish, amend and sign from time to time, procedures, forms, documents and agreements as the Treasurer may determine are required to implement and administer this by-law and to collect the MAT;
- (b) perform all administrative functions and conduct all enquiries, audits, assessments and approvals referred to herein and deemed necessary for the due administration, implementation and enforcement of this by-law and the collection of monies owing hereunder and to authorize refunds in accordance with this by-law; and
- (c) carry out all duties assigned to the Treasurer under this by-law.

4.2 The Treasurer may delegate the performance of any one or more of their functions under this by-law to one or more persons from time to time as the occasion requires, impose conditions upon such delegation and revoke any such delegation. The Treasurer may continue to exercise any function delegated during the delegation.

4.3 Except as expressly provided to the contrary in this by-law, the decisions of the Treasurer are final.

## **5. Duty to Collect, Report and Remit**

5.1 Every Provider shall collect the MAT from the Purchaser at the time the purchase of Accommodation is made.

5.2 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.

5.3 Every Provider shall file annually an Establishment Information Report with the City on or before the 31<sup>st</sup> of January each year.

5.4 Except as provided to the contrary in Subsection 5.5, every Provider shall:

- (a) file a MAT Remittance Report with the City on the 14<sup>th</sup> of December every year, including a statement detailing the number of Accommodation sold, the Purchase Price of each Accommodation, the MAT amount collected for the reporting period of December 1<sup>st</sup> to November 30<sup>th</sup>, and any other information as required by the City for the purposes of administering and enforcing this by-law; and
- (b) within 30 days after the MAT Remittance Report due date of 14<sup>th</sup> of December every year, pay to the City an amount equal to the MAT required to be charged to and collected from purchases during the period reported (December 1<sup>st</sup> to November 30<sup>th</sup>) in the MAT Remittance Report.

5.5 Despite Subsection 5.4, a Provider may apply in writing for a biannual filing of MAT Remittance Reports and payment of MAT charged and collected. If biannual filing is approved and while any such approval is in good standing, the Provider shall:

- (a) on or before the 14<sup>th</sup> of December and the 14<sup>th</sup> of June, in each year, file a MAT Remittance Report with the City setting out the MAT charged and collected for the six-month period previous to the month in which the MAT Remittance Report is due; and
- (b) within 30 days after the MAT Remittance Report due date, pay to the City an amount equal to the MAT required to be charged to and collected from purchases during the six-month period reported in the MAT Remittance Report.

5.6 When the MAT due date falls on a Saturday, a Sunday or a public holiday recognized by the Canada Revenue Agency, the payment is considered on time if received on the next business day.

5.7 The Provider shall ensure that the MAT Remittance Report(s) required under Subsections 5.4 and 5.5 are:

- (a) in the form established by the Treasurer from time to time;
- (b) filed with the City in the manner established by the Treasurer from time to time;
- (c) filed with the City in the timelines established in this by-law;
- (d) fully complete when submitted; and
- (e) signed by an authorized officer to confirm the accuracy of the report.

5.8 Every Provider shall file a MAT Remittance Report with the City for a reporting period whether or not any MAT was collected during the reporting period.

## **6. Assessment and Failure to File Remittance Report or to Pay**

6.1 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 may assess the amount of MAT payable to the City based on the MAT Remittance Report.

6.2 Where a Provider has failed to file a MAT Remittance Report, the Treasurer shall mail a notice of default informing the Provider that interest on the amount of the MAT payable to the City will be imposed as a penalty from the day following the date on which the MAT owing was due. After sixty (60) days following the issuance of the notice of default, the Treasurer shall assess the amount of MAT payable to the City by multiplying the MAT rate of four per cent (4%) X room rate X 100% occupancy.

6.3 The Treasurer shall mail an invoice to the Provider setting out the amount of MAT assessed by the Treasurer under Subsection 6.2, as payable by the Provider, and in the case of an invoice related to an amount assessed under Subsection 6.2, advise the Provider of the rights to re-assessment under Subsection 6.4. The Provider shall pay the assessed amount to the City within 15 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.

6.4 Despite Subsection 6.3, where the Treasurer has assessed MAT in accordance with 6.2, the Provider may, within two months of the date of the invoice sent pursuant to Subsection 6.3, 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:

- (a) submits or has submitted a complete 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 Subsection 6.2 and set out in the invoice sent in accordance with Subsection 6.3; and
- (c) has paid any applicable penalties or interest on the amount of MAT assessed by the Treasurer under Section 9.

6.5 Upon 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 re-assessment of the MAT and of any penalties or interest thereon.

6.6 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.

6.7 Where the Provider, who is entitled to do so, fails to apply for a re-assessment in accordance with Subsection 6.4, the amount assessed by the Treasurer in accordance with Subsection 6.2 shall be final.

## **7. Audit and Inspection**

7.1 Every Provider shall keep books of account, records and documents sufficient to furnish the City 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.

7.2 Every Provider shall retain such books of account, records and documents required under Subsection 7.1 for a period of no less than 7 years.

7.3 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, place or property where business of a Provider is carried on or where any books of account, records and documents required in Subsection 7.1 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 them all reasonable assistance with their audit or examination;
- (ii) answer all questions relating to the audit or examination either orally or, if they require, in writing, on oath or by statutory declaration; and
- (iii) attend at the premises or place with them for the purposes of giving reasonable assistance and answering questions relating to the audit or examination.

7.4 Every Provider shall co-operate with the City in the conduct of an inspection or audit under Subsection 7.3 and cause its employees, agents and contractors to comply as required.

7.5 The Treasurer may for any purpose relating to the 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.

7.6 Every Person served with a demand under Subsection 7.5 shall comply with the demand within the time specified in the demand.

## **8. Adjustment by Treasurer and Result of Audit**

8.1 Where the Treasurer determines as a result of an 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 overpayment.

8.2 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 a 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 Subsection 8.1.

## **9. Interest and Penalty**

9.1 Interest at a percentage established under By-law 6841/91/20, as amended, of the amount of the MAT due and unpaid shall be imposed as a penalty, including any MAT assessed under Section 6 or adjusted under Subsection 8.1, 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.

9.2 Where the amount of any MAT owing to the City is determined in accordance with Section 8, interest shall start to accrue fifteen (15) days from the date of the invoice.

9.3 The Provider shall pay any penalty fee or charge for any late filings, dishonored payments or other matters in accordance with the by-law adopted by Council which establishes fees and charges, as amended or replaced from time to time.

## **10. Application for Refund**

10.1 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 Subsection 6.4 or through an adjustment in accordance with Section 8, may, within two years of the date the Provider becomes aware that 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 the filing of MAT Remittance Reports.

10.2 The Treasurer shall review the application form, 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 their decision in writing.

10.3 Where, as a result of the review in Subsection 10.2, the Treasurer is satisfied:

- (a) there has been an overpayment of MAT, the Treasurer will notify the Provider and refund the overpaid amount. No interest shall be paid on the amount of 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.
- 10.4 Any refund authorized under Subsection 10.3 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.

## **11. Collection**

- 11.1 All MAT, including MAT assessed under Section 6 or adjusted under Section 8 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 role 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.
- 11.2 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.

## **12. Repayment Agreements**

- 12.1 Where the Treasurer, in their discretion, determines that it is in the best interests of the City to do so, the Treasurer is delegated the authority to make a repayment arrangement with any Provider, providing for terms of payment of any MAT and penalties and interest thereon, which were not paid in accordance with this by-law. While the repayment agreement is in good standing, no further collection efforts shall be taken, despite Section 11. Council is not obligated to authorize a repayment agreement.

- 12.2 The repayment agreement shall terminate automatically upon breach of any provision thereof.
- 12.3 Interest shall continue to accrue on the amount of MAT outstanding during the term of the repayment agreement.

### **13. False Statement**

- 13.1 No Person shall:
- (a) make a false, inaccurate or intentionally misleading statement or representation in any document, statement or request provided 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.

### **14. No Interference**

- 14.1 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.

### **15. Offence**

- 15.1 A 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, c. 33, as amended.
- 15.2 For the purposes of Subsection 15.1, 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.
- 15.3 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 in Subsection 429(3)2 of the *Municipal Act*, 2001.
- 15.4 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 penalty or interest imposed by Section 9 of this by-law or such other

penalties as may be provided for under the *Municipal Act, 2001*, as amended or replaced.

## **16. Confidential Information**

- 16.1 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. 56 (MFIPPA), as amended.
- 16.2 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 purposed exemption from disclosure.

## **17. Short Title**

- 17.1 This by-law may be referred to as the “Municipal Accommodation Tax By-Law” or “MAT By-Law”.

## **18. General/Severability**

- 18.1 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.
- 18.2 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.
- 18.3 Notwithstanding the repeal of this by-law, any enforcement, legal, or collection action arising from this by-law while this by-law was in effect shall survive its repeal.

## **19. Effective Date**

- 19.1 This by-law shall come into full force and effect upon September 1, 2022.

Enacted and passed this \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Acting City Clerk